

No. 71899-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Parenting and Support of
OLIVIA ESTELLA DANHOF,
Child

EVELINA BARHUDARIAN,
Appellant,

and

ANDREW BERNARD DANHOF
Respondent.

REVISED AND CORRECTED BRIEF OF RESPONDENT

By: Andrekita Silva
Law Office of F. Andrekita Silva
1221 Second Avenue, Suite 500
Seattle, Washington 98101
206-224-8288
Attorney for Respondent

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STATE OF WASHINGTON
COURT OF APPEALS, DIVISION I

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ORIGINAL

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 - 1. The court properly considered statutory criteria and it is not required to cite the statute.
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1. The mother admitted authenticity in the Joint Statement of Evidence and even if she hadn't, the therapist's letter was properly authenticated by the father.

2. The therapist's letter containing the mother's statement for treatment in counseling was admissible pursuant to ER ER613(b) to impeach the mother's allegations of that she was fearful of the father and that father had been verbally and physically aggressive and violent.

3. Both the March 28, 2013 video and the May 10, 2013 videos were properly admitted pursuant to ER 402 to assist the court in understanding the communications between the parties and pursuant to ER 613(b) to impeach mother's allegations of that she was fearful of the father and that father had been verbally and physically aggressive and violent.
 - i. The video recordings contained relevant evidence and pursuant to ER 402 were admissible to assist the court in understanding the parties' communications.
 - ii. The video recordings were admissible to impeach the mother's allegations of verbal and physical aggression and abuse by the father both pursuant to ER 613(b).

4. Evidentiary rulings are reviewed for an abuse of discretion

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I. INTRODUCTION

This is not a case about the “friendly parent concept”. This is a action where the mother asked the court to adopt 24 provisions, at VI. OTHER PROVISIONS of the Parenting Plan, Final Order including two as follows: RP 307, lines 11-20, RP 499, lines 8-22, as follows.

5. It is expected that the parenting plan residential provisions will be flexible and adaptable in accordance with the child’s changing needs. As the child increases in age and maturity the child’s needs and desires will become increasingly important and will be considered by both parents in scheduling residential time. CP 222.
21. The parents understand that this residential schedule represents a minimum amount of time that the child will reside with the parents and that the child may reside with them in any other agreed to times. CP 224.

Prior to the court’s Oral Ruling, both parties indicated agreement to those provisions. RP 223, lines 13-21. In closing argument, mother’s attorney states:

“as it pertains to the parenting plan, all of those provisions that are in the back under Section 6 are other provisions that are all mutual. They are good provisions that are all mutual. They are good provisions for both parties to follow. They don’t apply unilaterally to either parent and have been recommended by the guardian ad litem, so we’re asking the Court to adopt those new recommendations for the final parenting plan.” RP 499, lines 8-15.

More generally, the mother asked the court to award her the primary care of the child, Olivia. RP 21, line 15- 21. She asked the court

to make a finding of domestic violence against the father, and to grant an Order of Protection. She alleged physical abuse, destruction of property, intimidation, and control by the father. RP 22, lines 7-15. Finally, she requested sole decision-making. , RP 306, lines 18-307, line 10. RP 492, lines 3-5.

The father opined that his daughter's well-being depended on a healthy relationship between both parents, and his purpose at trial was to protect his daughter, to establish who he was as a father, and to defend himself against allegations of "horrific acts." He asked for the primary care of Olivia. Due to the ease with which a male can be found to be the aggressor, he asked that the court permit him to defend himself through the introduction of video tapes and text messages. RP 25, line 14- RP 26, line 12.

In both the Oral Ruling and the Findings of Fact, which at Page 4, CP 205, incorporates the Memorandum of Opinion, CP 185-188, the court briefly addressed some undisputed facts relevant to the parenting plan criteria, CP 185, RP 510, line 16- 511, line 18, before moving on to the weightier issues.

The court's Oral Ruling and Memorandum of Opinion focused on the very weighty allegations of domestic violence, CP 186, RP 511, line 19- RP 513, line 6, and concerns over aggressive and openly hostile

behaviors by the mother towards the father which resulted in concerns for the potential damage to the child's well-being, CP 186-188, RP 514, line 25- 519, line 10.

ORAL RULING AND FINDINGS:

On March 27, 2014, the court ruled orally, making the following findings, most which were incorporated into the Memorandum of Opinion:

- The mother's allegations of domestic violence which were supported by the testimony of her witnesses lacked credibility and the photo, Ex 47, introduced by the mother to show bruising, did not contain bruising. CP 186, RP 511, line 19- RP 512, line 12.
- Credible testimony and exhibit information indicated abuse by mother's ex-husband, Kamo, the father of her older child. However, the mother first denied abuse, then expressed difficulty recollecting, and finally, retook the stand and recalled Kamo had committed physical abuse once during her pregnancy and once prior to separation. CP 186, RP 512, line 13- RP 513, line 6.
- The mother attempted to portray the father as an angry military person with active PTSD when evidence presented to the court established the opposite. CP 187-188, RP 513, lines 7- 25.
- On December 9, 2012, the mother threatened to put a bullet to the father's head; on March 28, 2013, she made a threat of bodily harm against father when she threatened to tie him up and feed him fish; on April 14, 2013, she yelled at the father "I am going to murder you." CP 186, RP 514, line 25- RP 515, line 15.
- The mother blocked the father's access to the child's medical records, potentially endangering the child in the event of a medical emergency, and a substantial number of text messages showed that efforts by the father to exchange healthcare information or to be involved in the child's health or medical appointments were refused by the mother. Her response text messages were laced with name calling, profanity,

and hostility. CP 187, RP 515, line 16- RP 517, line 22. One such text on March 4, 2013 by mother stated

“You are a worthless piece of sh-t. I got her from you already sick, jackass. You’re seriously a mental, stupid f-ck. Thanks for your cooperation, jerk off.” Exhibit 122, pg 2, RP 516, line 25- RP 517, line 3.

- The child’s doctor reported that the mother had a litany of negative things against the father. Although he saw no evidence of abuse or neglect, on approximately 15 occasions mother reported over-the-top health concerns and was extreme in her thinking that the father was a horrible person and responsible for the child’s illnesses. Mother stated the father is evil and should not be involved, and the child repeatedly heard the mother’s negative reports about the father at his office. CP 187, RP 517, line 23-RP 518, line 21,
- On September 6, 2012, the mother made an unfounded CPS complaint against the father. Exhibit 126. At trial, mother denied involvement and alleged emergency hospital staff initiated the complaint. Further questioning disclosed the mother made the CPS referral. CP 187, RP 518, line 22- RP 519, line 5.
- At the time of trial, the mother had not participated in counseling as recommended by the guardian ad litem. CP 188. RP 519, line 11-20.

After making the above findings in its Oral Ruling, the court briefly addressed the provisions requested by the mother. RP 519, line 21- RP 520, line 8. The informal philosophical musings about the father’s superior flexibility were not included in her Memorandum of Opinion dated April 3, 2014, CP 185-188, which was referred to or incorporated at paragraph 3.3 of her Findings of Fact and Conclusions of Law. CP 205.

The court asked the father to submit all orders to mother’s lawyer, with directions to mother’s lawyer to make any final edits that would have

been necessary in compliance with the court's order. RP 521, lines 19-25.

II. SUPPLEMENTAL FACTS IN THE CASE

WITNESS BIENZ, STEPMOTHER TO RESPONDENT

FATHER. In the 14 years she had known father, since he was age 17, she had never witnessed any display of violence, rage, or short fuse personality. RP 134, lines 4-6; If anything, Bienz found father to be extremely passive. RP 135, lines 5-6. During the father's and mother's relationship, mother shared concerns with Bienz. Her biggest complaint was that father should "grow a pair of balls because he was too passive." RP 139, line 25-RP 140, line 12.

Shortly before separation, father went to Bienz's home for counsel. The mother drove up, was irate and screaming and threw her engagement ring into the outdoor fire pit, cursed a few more times, and got into the car and left. Mother did not ordinarily discuss matters in a calm voice. There was a demand and instant escalation. RP 142, line 14- RP 143, lines 7-13.

Upon separation, father moved into Bienz's home and lived there for 8 months. RP 144, lines 11-22. The alternating care began immediately and continued while father lived with her and was still in effect on April 15, 2013 when she attended a medical appointment with father when she witnessed that mother had blocked father's access to medical records. . RP 149, line 7- RP 151, line 20, RP 162, line 12- RP 163, line 5. On April

15, 2013, Bienz advised father to secure a protection order as she understood mother had made a death threat against father the prior evening. RP 158, lines 3-20. Also, the mother had appeared at the medical appointment with the maternal grandmother and Danny, an ex-boyfriend. In the past, mother had described being fearful of him due to beatings by him to both she and her son, Allen. RP 155, lines 2- RP 156, line 2.

Over time, the child made statements and Bienz observed behaviors during the visitation exchanges that indicated to her that the exchanges were very stressful for the child. RP 164, line 7 - RP 165, line 13. A week or so prior to trial, she observed two long bruises on the child's rear, like she had been spanked. RP 163, lines 18- RP 164, line 6.

Bienz described positive parenting by father. RP 139, lines 16-20. RP 165, lines 17- RP 166, line 4.

WITNESS RORIE: He served in the military with father for 8 years, where initially father was his superior and later his counterpart. RP 94, line 14-RP 96, line 2. On October 30, 2009, after leaving military, they lived together in Rorie's home. RP 99, lines 16-25. The father began dating the mother and she confided being worried about her ex-boyfriend, Danny, and keeping her name off any housing lease to avoid being found by him. RP 100, line 12- RP 101, line 2. Once, when father lived in Sammamish with mother, he and the child, Allen, witnessed the mother

smacking the father across the face, the chest, and the arms with no physical response from father. RP 104, line 24- RP 105, line 21. On another occasion while driving to a Seahawks game, he overheard father and mother argue over the child on speakerphone and mother threatened “I will put a bullet in your head.” RP 110, line 16- RP 111, line 12. He described father’s positive communication and leadership style. RP 95, line 16- -RP 99, line 13.

WITNESS WOODS: She cared for the child on an alternating weekly basis for approximately 1.5 years. RP 423, line 9- 18. Her financial records and calendars corroborated the child’s alternating weekly schedule in her daycare. RP 426, line 15- RP 428, line 14. At times, the child had a bad diaper rash at the beginning of the week and she and father worked to ameliorate it. RP 423, line 19- RP line 5. She described the father’s positive relationship and appropriate care of the child, RP 424, line 23-RP 424, line 10, CP 310, and that she had no contact with the mother. RP 426, lines 2-10, CP310, Ex 139, Pg 9.

EXHIBIT #26: DECLARATION OF EVELINA B. IN RESPONSE TO PETITION FOR D.V. PROTECTION ORDER. The mother is silent regarding father’s call to police on April 14, 2013 but claims she was the one who called the police on April 15, 2013[sic] Ex 26, pg 2, lines 21-25. Regarding the April 14, 2013 incident, she states

“It appeared to me that Andrew had been drinking and I became concerned for Olivia’s well-being.... Andrew was slurring his words and was being very irrational..... Throughout the conversation, he kept laughing and yelling, which supported my belief that he was intoxicated. I was forced to call the police to make sure Olivia was safe.” Ex 26 Pg 6, lines 19-43.

EXHIBIT 35: CASE REPORT SUMMARY: Father called law enforcement at 18:53 hours on April 14, 2013. He reported mother’s two telephonic threats “I am going to murder you.” Ex 35 Pg 3. At 19:31 hours, the mother called police to request a welfare check on the child. She reported father called her at 18:38 hours, sounding HBD, and made threats toward her. She further reported father had prior military service, suffered from PTSD, was 60% disabled and heavily armed. Ex 35 Pg 4.

Law enforcement noted that at no time during the investigation was there any suspicion that the father had been drinking or that he had consumed any illegal narcotic. Ex 35, Pg 4.

EXHIBIT 27: REQUEST FOR RECORDS: On June 7, 2013, the mother issued a Subpoena Duces Tecum to CAC Remco for records pertaining to a fight on June 6, 2010 at the Columbia Tower. Ex 27, Pg 1. Production was issued on June 19, 2013. The Records Custodian did not identify the material produced, Ex 27, Pgs 2-3, and Exhibit 27 consists only of 3 still photos and a video recording with no sound.

The mother and father agree that the video recording shows them walking to security to call police and complete paperwork. RP 257, lines 7-20, RP 258, line 23-RP 259, line 1, RP 259, lines 16-17, RP 260, lines 1-3. Mother spoke to security regarding the altercation, RP 257, lines 6-8. The father points out that mother demonstrates to security where on her face the man struck her. RP 258, line 23- RP 260, line 2.

The mother had possession of production by the CAC Remco for almost nine months at the time of trial. The record is silent as to the mother's receipt of the written report and / or any efforts taken to resolve a key factual dispute by securing the written report.

EXHIBIT 45: FINAL PARENTING PLAN SIGNED APRIL 2, 2013 FOR 6 YEAR OLD ALLEN GASHKAYAN: Allen's father, Kamo, receives only one overnight visit every other week from 10:00 a.m. to Sunday at 6:00 p.m. plus Wednesday evening visits. Except for the award of a 7 day vacation to Kamo with Allen each July, the summer schedule is identical to the school year schedule. Pgs 2-5. The mother has sole decision-making. Pg 7-8. The GAL noted Kamo has little contact with Allen. CP 303, Ex 139 Pg 2, and that, per the doctor, mother reports Allen's medical issues in an extreme, dramatic, and exaggerated way. PC 312, Ex 139 P. 11. Both mother and grandmother, Yulia, testified mother and Kamo have a good parenting relationship. RP 29, lines 12-23. RP 371,

line 24- RP 373, line 10, RP 378, lines 5-15. However, this parenting plan at Ex 45 was the result of a modification action which increased the prior residential time had by Allen's father, Kamo. RP 378, lines 16-21.

EXHIBIT 47: TWO PHOTOS OF MOTHER AND CHILD, PLUS ONE PHOTO of a gun in a store rack. Yulia, the maternal grandmother, allegedly observed domestic violence in the form of a bruise on the mother's cheek, but mother did not wish to discuss it. RP 36, line 20- RP 37, line 1. The mother's friend, Angelina, allegedly observed a bruise on the left –hand side of the mother's face by the eye, and was told by mother that the father had punched her. RP 71.

Mother's sister, Anya, when asked regarding any signs of physical abuse she had actually observed, described receiving a crying and hysterical call from mother alleging the father had hit her. Subsequently she allegedly saw a bruise on mother's face. RP 118, lines 2-11.

Svetlana Pristupa, was a co-worker of mothers at TRAC. RP, lines 3-20. She testified that mother would cry at work and eventually talk about herself and home situation. She stated "And then one day when she came and... was kind of trying to hide some bruises on her face. ..." RP 57, line 22- RP 58, line 2. Svetlana could not say where the bruise(s) was on mother's face but answered affirmatively when asked by mother's counsel "So it was more around the eye?" RP 58, line 17- RP 59, line 1.

The mother identified only one incident where the father allegedly gave her a bruising blow to the face. As proof, she produced Exhibit 47 where she indicated the child was 4 or 5 months old, RP 249, lines 1-16. The photo shows a shadow on the left side of her face from the temple to the cheek. RP 250, 1-3. Ex 47.

Pursuant to mother's educational and employment history, RP 362, line 13- RP 370, line 18, she never returned to work after her employment with TRAC terminated in March of 2011, Exhibit 43. However, she physically stopped working in January of 2011 when she went on maternity leave. RP 370, lines 12-17. Query how Svetlana could have observed the bruise that allegedly occurred after the child's birth?

EXHIBIT 150: TEXT MESSAGES DATED NOVEMBER 1, 2011 establishing residential schedule: The mother, Eva, and father negotiate an alternating weekly residential schedule. Father asked to start on Monday, to enable the set up of daycare. The mother states

“No you wanted 50/50 from Tues to Tues. This was your choice, lets do that. I agree to that.” “Did you let me figure out the daycare or work you left me? No you packed your things and left me with two kids to figure everything out on my own. I am bringing her by today.”

EXHIBIT 143: BRE PROPERTY MANAGEMENT RECORDS. After separating and vacating the Pinnacle apartments in October of 2011, RP 46, lines 1-3, father paid rent through December 30,

2011 in the amount of \$1644.00 per month, made an ISTA payment of \$372.32 on October 21, 2013 and made payment on the final December 31, 2011 final utility bill. Mother and maternal grandmother concede November rent was paid on October 26, 2011. RP 45, lines 11-25. However, both persist in groundless accusations that father vacated, leaving mother with an eviction notice. RP 43, line 9-19, Ex 26, Pg 15. RP 44, line 18- RP 45, line 10. RP 309, line 8-RP 310, line 6.

JOINT STATEMENT OF EVIDENCE DATED MARCH 12, 2014: CP 334-342: The parties agreed to authenticity of Exhibit 114, Letter dated February 21, 2014 by Therapist James. The Joint Statement approved by father on March 12, 2014 identified his current Exhibit 147 (Journal entry dated May 10, 2013) as mother's Exhibit 42. RP 333, lines 1-25. RP 393, line 22- RP, line 12. At trial, father learned that mother removed the May 10, 2013 Journal from the Joint Statement and from her trial exhibits. RP 334, line 4-RP 336, line 2. RP 395, line 4-RP 396, line 12.

EXHIBIT 147: MAY 10, 2013 JOURNAL ENTRY- INSTRUCTIONS FROM PETITIONER TO RESPONDENT. It is undisputed that on mother submitted current Exhibit 147 (Journal Entry) with her ER904 Notice, RP 18, lines 23-RP line 19, RP 333, Lines 16-24. The journal entry gives father written instructions regarding the child's

dietary needs and contains the statement “I am writing this as you have failed to follow these instructions in the past.” 5/10/2013.

Prior to submitting the Journal with her ER904 Notice, it is undisputed mother added a notation signed by her witness, Angelina:

‘Declined to sign; took a picture with his cell phone; acted aggressive; was verbally abusive & rude. Dad witnesses. Angelina witnessed. (signature of Angelina is affixed).

This journal entry is the subject of the May 10, 2013 video recording at Exhibit 127.

EXHIBIT 127: RECORDING OF MAY 10, 2013

VISITATION EXCHANGE. This visitation exchange is approximately 1 minute and 45 seconds long, and takes place outdoor in open view, exposed to sidewalk and/ or street traffic in the child’s presence. The mother presents a journal entry/ instructions and attempts to extract father’s signature. Father protests the request, indicating an intent to follow dietary instructions, and denies ever denying receipt of dietary instructions given to him. Contrary to the allegations made on the journal entry by mother and her girlfriend, Angelina, the video recording contains no aggressive action, verbal abuse, or rudeness by father. EX 127.

EXHIBIT 125: RECORDING OF MARCH 28, 2013

VISITATION EXCHANGE. This exchange is 5 minutes and 45 seconds long and occurred outdoor in open view. The child’s dietary needs are

discussed in the presence of the child. Mother threatens to tie up father and feed him fish if the child is returned home with any medical issues.

EXHIBIT 139: GUARDIAN AD LITEM REPORT: The guardian ad litem investigated and prepared a report. She found the child to be doing well socially and developmentally but noted this could change due to the parental conflict and its potential harm to the child if the conflict is not controlled. CP 313-314. Ex 139 Pgs 12-13. She explained that the mother's use of language, anger, and bad-mouthing of the father is upsetting and will effect the child's perception of both of her parents and herself. CP 315-316. Ex 139 Pgs 14-15. She noted the parents have no clear history of cooperation. CP 314. Ex 139 Pg 13. Additionally, the parents lack of communication and absence of established skills to communicate or make decisions together. CP 316. Ex 139 Pg 15.

The GAL recommended that the mother be awarded the primary care and sole decision making for a period of time. CP 316-317, Ex 139 Pgs 15-16. However, the GAL did not interview all lay witnesses and relied primarily on written statements. RP 201, line 13- RP 213, line 20. During trial testimony, she clarified that the counseling she recommended for the father was not necessarily for PTSD. RP 213, line 21- RP 216, line 12. The two provisions requested by the mother which are paragraph 5 and 21 of VI. OTHER PROVISIONS were paragraphs 12 and 31 of the G.A.L.

recommendations. CP 320. CP 322. Ex 139 Pg 19, 21. The court did not adopt all of the G.A.L.'s ultimate recommendation.

FACTS REGARDING MOTION IN LIMINE

On February 24, 2014, father provided mother's counsel an ER904 NOTICE containing Respondent father's Exhibits 125 and 127, recordings of two separate visitation exchanges. CP 325, lines 21-31. Mother filed an Objection on the basis of "hearsay, not authenticated or relevant, made in violation of RCW 9.73.030, and not being the type that falls under ER 904." CP 332. On March 20, 2014, mother filed a Motion in Limine to exclude the video recording and all testimony pertaining thereto on the basis of RCW 9.73.030. CP 324, line 61- CP 333, line 79.

At trial, mother argued for exclusion pursuant to RCW 9.73.030(1)(b). She alleged no knowledge of and no consent to the video recordings. The uncontroverted facts are that:

- 1) The parties were involved in a high conflict relationship RP 216, lines 5-7, 23-24. RP 307, line 18- RP line 9. CP 313-314.
- 2) Father began recording visitation exchanges after December 2012 when the mother threatened to put a bullet to his head. RP 430, line 22-RP 431, Line 8. RP 445, lines 5-18.
- 3) The March 28, 2013 and May 10, 2013 recordings were 5 minutes and 45 seconds, and 1 minute and 15 seconds, respectively. Ex 125 and Ex 127.
- 4) Visitation exchanges occurred in the McDonald's parking lot or other public location in open view to the sidewalk or street

exposed to passersby and all exchanges occurred in the presence third parties or potential presence of third parties in addition to the child. RP 8, lines 13-18.

- 5) The father was present during the recorded communications and he consented to the recordings. RP 8, lines 6-9.
- 6) The May 10, 2013 recording took place after the May 10, 2013 court hearing. RP 338, lines 14-18. RP 340, lines 4-9.
- 7) On March 28, 2013, the mother threatened to tie up father and feed him fish to which he is allergic. Ex 125. RP 8, lines 19-21.
- 8) The mother is aware that father believes her to be mafia or associate with violent criminals. Ex 26, pg 4, line 31-35; RP 122, lines 7-8.
- 9) The child is the sole topic of communication between the parents. Ex 26, P 6, line 1-3. On at least one occasion, the mother took her friend Danny and her mother to the child's doctor's appoint. RP 155, lines 18-20. RP 331, lines 17-25. She routinely shared the status of the child's health telephonically with her sister, RP 123, lines 5-25.

The evidence was that the parties began weekly visitation exchanges on approximately November 1, 2011, Ex 150, Pg 1-3. RP 458, lines 4-18. The father took the mother's March 28, 2013 threat seriously, RP 442, line 19-RP 443, line 10, and on May 10, 2013, due to the hearing earlier that day, the father believed the mother was attempting to secure a false confession from him. RP 338, lines 14-18. RP 340, lines 4-9. RP 469, line 9-13. RP 470, lines 2-4.

On March 17, 2013, the court ruled that the recordings would not be admitted for truth of the matter but to assist the court in determining the

ability of the parties to communicate with each other. RP 10, lines 11-15.

On March 19, 2013, after both recordings had been viewed, the court found that Exhibit 125 contained a threat of bodily harm and that Exhibit 127 contained a threat of extortion. Exhibit 127 was admissible as rebuttal to mother's statements in Exhibit 147. RP 470, lines 5-17.

III. ARGUMENT

A. THE TRIAL COURT'S ORAL RULING AND FINDINGS FOCUSED ON THE RESPONSIBILITY EACH PARENT HAD TAKEN FOR PERFORMING PARENTING FUNCTIONS RELATING TO THE DAILY NEEDS OF THE CHILD, CONTAINED AT RCW 26.09.187(3)(i), THE FACTOR TO BE GIVEN THE GREATEST WEIGHT, AND IMPLIEDLY THE EMOTIONAL NEEDS AND DEVELOPMENT OF THE CHILD, AND THE PARENT'S POTENTIAL FOR FUTURE PERFORMANCE OF PARENTING FUNCTIONS, RCW 26.09.187(3)(a)(iii) AND (iv). DUE TO THE HIGH LEVEL CONFLICT, SOLE DECISION-MAKING WAS CORRECTLY ORDERED

1. The court properly relied on the statutory criteria and it is not required to cite the statute.

In fashioning a parenting plan, the court is required to make residential provisions 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. RCW 26.09.187(3)(a). Where the limitations of RCW 26.09.191 are not dispositive, the court is to consider factors (i) through (vii) set forth at

RCW 26.09.187 (3). However, the first factor (i) is to be given the greatest weight.

- (i) The relative strength, nature, and stability of the child's relationship with each child, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child.

It is crystal clear from the court's Oral Ruling and Findings that this is exactly what the court did. The mother complains at page 24 of her brief that the court "does not mention the statute or its factors at all in either its memorandum decision or oral ruling." However, the court is not required to do so. When evidence of the factors is before the court and its oral and written findings reflect *consideration* (emphasis added) of the statutory elements, specific findings are not required on each factor, Murray v. Murray, 28 Wn. App. 187,188, 622 P. 2d 1288(1981), citing In Re Marriage of Croley, 91 Wn. 2d 288, 588 P. 2d 738(1978).

In considering whether a parent has taken greater responsibility for performing parenting functions, it is helpful to look to the definition of "Parenting functions" as set forth at RCW 26.09.004. It is defined as those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

- (a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

- (b) attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, healthcare, and daycare, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
- (c) attending to adequate education for the child, including remedial or other education essential to the best interests of the child;
- (d) assisting the child in developing and maintaining appropriate interpersonal relationships;
- (e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances, and
- (f) providing financial support of the child.

In regards to RCW 26.09.004(a), the court's Findings acknowledge the child's bonding with both parents, CP 185, but also addressed the potential harm to the child by mother's conduct, CP 186-CP 187, which calls into question whether the appropriate nurturing exists.

In regards to RCW 26.09.004 (b), there was evidence before the court regarding the parties this factor. The court specifically addressed activity pertaining to the child's health care at length in its decision.

In regards to RCW 26.09.004(c), the court's findings acknowledged this 3 year old child's educational needs when addressing the change in residential schedule upon commencement or pre-school.CP 188.

In regards to RCW 26.09.004(f), financial support, evidence of the father's overpayment of his obligation pursuant to the Temporary Order of Child Support, CP 228-248, was before the court. RP 497, lines 18-22.

2. The court focused most heavily on the mother's past performance of parenting functions, including her high conflict behaviors, RCW 26.09.004(d) and (e), contained in RCW 26.09.187(3)(a)(i), and her potential for future performance of parenting functions, RCW 26.09.187(3)(iii) and the child's emotional needs, RCW 26.08.187(3)(iv).

The court relied on the criteria set forth at RCW 26.09.187(3)(a)(i), 26.09.187(3)(a)(iii), and RCW 26.09.187(3)(a)(iv) when awarding the primary care and sole decision-making to the father.

Pursuant to RCW 26.09.004(d) the court should consider mother's past inability and failure to assist the child in developing and maintaining an appropriate interpersonal relationship with the father. Pursuant to RCW 26.09.004(e), the court should consider mother's lack of judgment regarding the child's welfare consistent with the child's developmental level.

Both the court's Oral Ruling and Findings (which incorporate its Memorandum of Opinion) address the mother's unfounded CPS report, unfounded allegations of domestic violence and active PTSD had by the father, her lack of credibility by mother and her witnesses in regards to issues of violence, and the mother's threatening and openly hostile

behaviors which included threats on the father's life, name calling and extreme profanity when addressing important issues such as the child's health, and the mother's negative perceptions of the father repeatedly expressed to third parties in the presence of the child.

In addition to RCW 26.08.187(3)(a)(i), the court must consider:

RCW 26.09.187(3)(a) (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;

RCW 26.08.187(3)(a)(iv) The emotional needs and developmental level of the child;

The court expressly addressed the mother's past performance of parenting functions. As the court noted that the mother had not started counseling, there was no basis on which to find mother's potential for future performance of parenting functions would be any different. The court properly considered RCW 26.09.187(3)(a)(iii).

The court and GAL expressed concern for the high level of conflict between the parents and the potential negative impact on the child as a result of the mother's openly hostile and negative behaviors towards the father in the presence of the child. Although the court did not adopt the G.A.L.'s ultimate recommendation, it is not bound by the G.A.L.'s

recommendation, In Re Marriage of Swanson, 88 Wn. App. 128, 944 P. 2d 6 (1997). The court properly considered RCW 26.09.187(3)(iv).

The facts addressed by the court provide a clear statutory basis for the award of the primary care to the father. In Velickoff v. Velickoff, 95 Wn. App. 346, 968 P.2d 20 (1998), the court considered the issue of alienation. There, the mother interfered with the father's telephone access and made unsubstantiated allegations of sexual abuse, causing him to lose access to the child while the allegations were investigated. Citing In Re Marriage of McDole, 122 Wn. 2d 604, 859 P.2d 1239 (1993), the Velickoff court found that such interference was detrimental to the child's best interests. In McDole, the mother had obstructed the father's visitation rights and was slow to comply with the court's orders. The McDole court noted that continued conflict was detrimental to the child's best interests.

3. The court correctly ordered sole decision-making to the father based on the mother's objection to joint decision-making and in the absence of a demonstrated ability and desire to cooperate with one another in joint decision-making.

Pursuant to RCW 26.09.187(2)(b), the shall order sole decision-making to one parent when it finds that:

- i) A limitation on the other parent's decision-making is mandated by RCW 26.09.191;
- ii) Both parents are opposed to 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.

Pursuant to RCW 26.09.187(2)(c) , one of the criteria the court shall consider when allocating decision-making authority is:

RCW 26.09.187(c)(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(4)(a).

The mother argues at Pg 25-25 of her brief that no restrictions were found pursuant to RCW 26.09.191 to limit her decision-making. However, such restrictions are not a prerequisite. The mother clearly objected to joint decision-making, citing the high conflict nature of the relationship, and there was an abundance of evidence that the parents have not demonstrated a desire or ability to cooperate with one another. The court correctly ordered sole decision-making to the father.

- 4. The mother's high conflict behaviors are not transitional, and the danger of psychological harm exists to the child, the court does not have to wait until actual harm occurs.

The mother also argues at Pg 27 of her brief that her high conflict behaviors were the transitional and common behaviors as discussed in Jacobson v. Jacobson, 90 Wn. App. 738, 954 P. 2d 297, rev. denied, 136 Wn. 2d 1023 (1998), and that the court impermissibly punished her for the high conflict between the parents when it deprived her of the primary care

and decision-making as proscribed in Marriage of Cabalquinto, 100 Wn. 2d 325, 669 P. 2d 886(1983). That argument is without merit.

First, the mother grossly mischaracterizes Marriage of Cabalquinto, supra. In Cabalquinto, there was expert testimony regarding the lack of harm to the child should he visit his father in California where the father shared a home with his same sex partner. In restricting the visitation to the mother's environment in Washington, the trial judge made no findings that California visitation could endanger the physical, mental, or emotional health of the child. Instead, the trial court's ruling focused on its own antipathy to homosexual living arrangements and its belief regarding the immorality of homosexuality. Remanding the case, the Supreme Court found that visitation could not be based solely on a parent's sexual preference but had to be based on factors addressing the child's best interests.

Secondly, her reliance on Jacobson in urging the court to characterize her openly hostile and threatening behaviors as transitional and harmless behaviors of the past is without merit. She argues the G.A.L. noted her regret over the dated text messages and that there is no evidence of harm to the child as a result of the behaviors. Mother's brief Pg. 27.

It is well settled that the trial court need not wait for actual harm or damage to the child. The required showing is only that a danger exists,

Katare v. Katare, 175 Wn. 2d 23, 283 P. 3d 546(2012) at 23, referring to In re Marriage of Burrill, 113 Wn. App. 863, 872, 56 P.3d 993 (2002). The Katare court dealt with travel restrictions and the risk of abduction.

In Burrill, the mother had made unfounded allegations against the father of sexual abuse, mental instability, substance abuse, road rage, weapons brandishing, and anger management problems. It was found that the mother had engaged in the abusive use of conflict and father was awarded both the primary care and sole decision-making. On appeal, the mother argued that parenting plan restrictions was erroneous because there was no evidence that the children had been alienated from the father as a result of her actions. When affirming the trial court's ruling, the appellate court found that evidence of actual damage is not required, rather the required showing is that a danger of psychological damage exists.

As in Burrill, in our case the mother made an unfounded report to CPS. At trial, she attempted to secure the primary care and sole decision-making, with a low level of visitation to the father, by fabricating evidence in the form of her May 10, 2013 journal entry, Exhibit 147, and by making unfounded allegations against the father regarding anger management, domestic violence, substance abuse, and mental instability including active post traumatic stress disorder. The court correctly considered the mother's high conflict behaviors when awarding the father the primary care.

5. After the separation, the parents shared the care of the child equally for approximately 18 months. RCW 26.09.191(4) prohibits the court from drawing any presumptions from the provisions of the temporary under which placed the child in the mother's primary care pending trial.

The mother argues at Pg 27-28 of her brief that the court's change in the "pattern of interaction" is contrary to the State's general policy set forth at RCW 26. 09. 002. Citing In Re Marriage of Kovacs, 121 Wn. 2d 795, 800, 854 P. 2d 629 (1993), she acknowledges there is no presumption in favor of any primary parent when entering a permanent parenting plan.

However, mother obfuscates both the facts and law. In In Re Marriage of Kovacs, supra, the mother was the stay-at-home Mom of 3 children. The father was awarded the primary care despite his work outside the home throughout the marriage. The appellate court reversed the trial court, finding that the policy language of RCW 26.09.002 obligated an award to the mother, who had been the primary caretaker.

The Kovacs Supreme Court reversed the appellate court and affirmed the trial court's award of the primary care of the child to the father. Relying on rules of statutory construction and legislative history, it found that the court was obligated to make a determination based on its consideration of the criteria set forth at RCW 26.09.187(3).

During to the limited information available to the court in a temporary proceeding, the Parenting Act expressly prohibits the trial court

from drawing any presumptions from the provisions of the temporary parenting plan, RCW 26.09.191(4).

Here, the parties shared the care of the child on an alternating weekly basis for approximately 18 months until entry of the temporary parenting plan on May 10, 2013. The court may draw no presumptions from the provisions of that temporary order.

6. It is disingenuous for the mother to argue an impermissible reliance on the “friendly parent concept”, when it was her request to the court that invited the court’s philosophical references to the flexibility of the parties.

The mother requested that the court order the two following provisions at VI. OTHER PROVISIONS in the final parenting plan:

5. It is expected that the parenting plan residential provisions will be flexible and adaptable in accordance with the child’s changing needs. As the child increases in age and maturity the child’s needs and desires will become increasingly important and will be considered by both parents in scheduling residential time.
21. The parents understand that this residential schedule represents a minimum amount of time that the child will reside with the parents and that the child may reside with them in any other agreed to times.

The requested provisions required flexibility and encouraged deviation. In the hands of the wrong parent, the provisions also held the potential for abuse. The court correctly considered which parent, if any,

was capable of complying with the terms of the requested provisions such that an order containing those provisions would be in the child's best interest. The court's brief philosophic musing in the context of the requested provisions was reasonable.

Equally important, court charged the mother's lawyer with making any final edits that would have been necessary in compliance with the court's order. RP 521, lines 19-25. The record is silent on who prepared the final orders, but there is no evidence of a request by any party to remove provisions 5 and 21 from inclusion of in the final parenting plan.

7. The Doctrine of Invited Error prohibits mother's appeal of an error based on friendly parent concept.

The doctrine of invited error prohibits a party from setting up an error at trial and then challenging it on appeal, State v. Henderson, 114 Wn. 2d 867, 870, 792 P. 2d 514 (1990). The court deems a potential error waived if the party asserting error materially contributed thereto, State v. Barnett, 104 Wn. App. 191, 200, 16 P. 3d 74 (2001). No party is allowed to complain of an error that he or she induced the trial to commit, State v. Marks, 90 Wn. App. 980, 987, 955 P. 2d 406, review denied, 136 Wn. 2d 1024 (1998). If an error exists in our case, it was invited by the mother and any potential error is deemed waived.

8. Standard of Review.

The trial court's decision in a final parenting plan is reviewed for an abuse of discretion, In re Marriage of Kovacs, 121 Wn. 2d 795, 801, 854 P. 2d 629 (1993). The trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons, In re Marriage of Mansour, 126 Wn. App. 1, 8, 106 P. 3d 768 (2004). A court's decision is based on untenable grounds or reasons if the record does not support its factual findings, if it has used an incorrect standard, or if the facts do not meet the requirements of the standard, In re Marriage of Wicklund, 84 Wn. App. 763, 770n.1, 932 P. 2d 652 (1996).

In matters dealing with the welfare of the children, the trial court has broad discretion, Kovacs, 121 Wn. 2d at 801. An appellate court is reluctant to disturb a child custody disposition because of the trial court's unique opportunity to personally observe the parties, In Re Marriage of Murray, 28 Wn. App. 187, 189, 622 P. 2d 1288 (1981).

When ordering a parenting plan, the trial court must consider the criteria in RCW 26.09.187(3), In Re Marriage of Littlefield, 133 Wn. 2d 39, 51-52, 940 P. 2d 1362 (1997). When written findings do not clearly reflect a consideration of the statutory factors, the court may review the trial court's oral opinion, Murray, 28 Wn. App. at 189. Specific findings are not required on each statutory criterion when 1) evidence of that criterion is before the court and 2) its oral opinion and written findings

reflect consideration of them, Murray, 28 Wn. App. at 189. The presumption is that the trial court performed its duty and considered the statutory elements so long as it reviewed evidence on each factor, In re Marriage of Croley, 91 Wn. 2d 288, 291, 588 P. 2d 738 (1978).

In our case, the court properly relied on the statutory criteria and there is an abundance of evidence to support the trial court's ruling. The Parenting Plan, Final Order should not be disturbed but affirmed.

B. ASSIGNMENTS OF ERROR 2 and 3

The court properly considered and relied upon the statutory criteria at RCW 26.09.187(3) when making its parenting plan determination. The facts and factors given the greatest weight were clearly addressed in its Findings of Fact and Conclusions of Law (which incorporated its Memorandum of Opinion by reference at 3.3: Other.) The appellate court can also look to the court's oral ruling, In Re Marriage of Murray, 28 Wn. App. 187, 189, 622 P. 2d 1288 (1981).

Findings of fact are reviewed under a substantial evidence standard, defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true. Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn. 2d 169, 176, 4 P.3d 123 (2000). If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute

differently, Croton Chem. Corp. v. Birkenwald, Inc., 50 Wn. 2d 684, 314 P.2d 622 (1957). As set forth below at Assignment of Errors 7 and 8, all evidence considered was properly admitted. The court did not err.

C. MOTHER'S ASSIGNMENTS OF ERRORS 4 AND 5.

The court properly made its Parenting Plan, Final Order , and the mother's assignments of error 4 and 5 are without merit.

D. MOTHER'S ASSIGNMENT OF ERROR AT 6:

The mother assigns error to the court's denial of motion for reconsideration but provides no legal argument so the assignment of error is waived, Cowiche Canyon Conservancy v. Bosley, 118 Wn. 2d 801, 828 P. 2d 549 (1992), citing Smith v. King, 106 Wn. 2d 443, 451-452, 722 P. 2d 796 (1986).

E. ASSIGNMENT OF ERROR 7:

THE COURT CORRECTLY DENIED THE MOTHER'S MOTION IN LIMINE. HER BRIEF MISSTATES RCW 9.73.030, WHICH PROTECTS ONLY PRIVATE CONVERSATIONS, ABSENT AN EXCEPTION. THE FATHER'S VIDEO RECORDINGS TOOK PLACE IN THE CONTEXT OF A HIGH CONFLICT RELATIONSHIP AND INVOLVED SHORT COMMUNICATIONS OF A NON PRIVATE NATURE REGARDING THE CHILD'S HEALTH. THEY OCCURRED IN PUBLIC LOCATIONS WITH THE CHILD AND OTHER THIRD PARTIES PRESENT AND/ OR POTENTIALLY PRESENT. THERE WAS NO EVIDENCE OF A REASONABLE EXPECTATION OF PRIVACY AND SO, THE VIDEO RECORDINGS WERE NOT PROHIBITED. REGARDLESS, THEY ALSO CONTAINED THREATS OF EXTORTION AND/

OR BODILY HARM AND, THEREFORE, EXCEPTED FROM
THE PRIVACY ACT.

The Privacy Act in Washington prohibits only the recording of private conversations. RCW 9.73.030; State v. Babcock, 168 Wn. App. 598, 279 P. 3d 890 (2012), citing State v. Clark, 129 Wn. 2d 211, 224, 916 P. 2d 384 (1996). However, even where a communication is private, a conversation which conveys threats of extortion, blackmail, bodily harm, or other unlawful requests or demands may be recorded with the consent of one party to the conversation. RCW 9.73.030(2)(b). Whether a communication is private is a question of fact, but where the facts are undisputed, the determination becomes a question of law, State v. Babcock, 168 Wn. App. 598, 279 P. 3d 890 (2012), citing State v. Christensen, 153 Wn. 2d 186, 192, 102 P. 3d 789 (2004).

The term “private” is given its ordinary meaning, which is “belonging to oneself... secret... intended only for the persons involved (a conversation)... holding a confidential relationship to something... a secret message: a private communication... secretly: not open or in public.” Babcock, id., citing State v. Townsend, 147 Wn. 2d 666, 673, 57 P. 3d 255 (2002).

1. Criteria for determining reasonable expectations of the parties

The intent or reasonable expectations of the participants as manifested by the facts and circumstances of each case controls as to whether or not the conversation is private, State v. Clark, 129 Wn. 2d 211, 224, 916 P. 2d 384 (1996). So, to make that determination, the court asks (1) whether the parties manifest a subjective intent to have a private conversation, and (2) whether such intent is objectively reasonable, Babcock, id. citing State v. Modica, 136 Wn. App. 434, 448, 149 P. 3d 446 (2006). In answering those questions, the court considers (1) the duration and subject matter of the communication, (2) the location of the communication and the presence of potential third parties, and (3) the role of the non-consenting party and his or her relationship to the consenting party, Babcock, id., citing Townsend, 147 Wn. 2d at 673–74 (citing Clark, 129 Wn. 2d at 225-27).

A person has no reasonable expectation of privacy in a conversation that takes place in a meeting where one who attended could reveal what transpired to others, State v. Clark, 129 Wn. 2d 211, 226, 916 P. 2d 384 (1996), citing State v. Slemmer, 48 Wn. App. 48, 53, 738 P. 2d 281 (1987). Similarly a conversation on a public thoroughfare in the presence of a third party and within the site and hearing of passersby is not private, Clark, id. at 226, citing State v. Flora, 68 Wn. App. 802, 806, 845 P. 2d 1355 (1992).

Here, the father introduced Exhibit 125, a video recording of the March 28, 2013 visitation exchange, and Exhibit 127, a video recording of the May 10, 2013 visitation exchange. These exchanges occurred on a weekly basis, and were of short duration. It is undisputed that the 3 year old child as well as other third parties were present during the communications which occurred at McDonald's or other public location in open view to passersby.

It is also undisputed that the sole topic of conversation was the child's health. The evidence was that the mother took third parties to the child's medical appointment on at least one occasion and she routinely discussed the child's health with friends, so she did not treat the child's health information as a private matter. As these conversations took place in the context of a high conflict relationship, it would be unreasonable to expect a parent to disclose a confidence or secret during these brief exchanges, and even if one did, it would be unreasonable for the disclosing parent to have an expectation that the other parent would keep that secret confidential.

Finally, since the mother identified the May 10, 2013 journal entry as an Exhibit on her ER904 Notice and subsequently on her Joint Statement of Evidence, she made it crystal clear that anything disclosed during a visitation exchange was potentially public information.

On March 17, 2013, the court impliedly found the communications to be of a non private nature when it found that the video recordings were admissible, not for truth of the matter, but to assist the court in understanding the ability of the parties to communicate, an issue central to this case.

2. Exceptions to Privacy Act for threats of bodily harm or extortion

On March 19, 2014, after both recordings had been viewed, the court correctly found that they were exceptions to the Privacy Act pursuant to RCW 9.73.030(2)(b). Mother's threat to feed father fish at Exhibit 125 contained a threat of bodily harm. Likewise, mother's attempt to secure a false confession from father was a threat of extortion.

Although the court did not say so, the proof of mother's unlawful intent was evidenced by the fact that, having failed to secure the father's false confession on May 10, 2013, she and her friend, Angelina, fabricated evidence for trial in the parenting plan action. Had the father not video recorded the May 10, 2013 visitation exchange, there would have no objective evidence regarding the allegation that father "acted aggressive, was verbally abusive and rude."

3. Standard of Review Regarding Privacy Determination is Substantial Evidence

As stated above, where the facts are disputed, a determination as to whether a communication is private is a question of fact, Babcock, supra. The standard of review for questions of fact is the substantial evidence test. Substantial evidence is defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true, Wenatchee Sportsmen Ass'n v. Chelan County, 141 Wn. 2d 169, 176, 4 P.3d 123 (2000). If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently. Croton Chem. Corp. v. Birkenwald, Inc., 50 Wn. 2d 684, 314 P.2d 622 (1957). Mother presented no argument so her assignment of error is waived, Cowiche Canyon Conservancy, supra.

There is substantial evidence to support the court's ruling so, it should not be disturbed. Regardless, the mother presents no legal argument regarding 1) the criteria to determine the applicability of the Privacy Act or 2) exceptions thereto. Her assignment of error is waived.

As RCW 9.73.030 was not a barrier to admissibility of the recordings, the only remaining question is whether the recordings were properly admitted pursuant to other rules of evidence.

F. ASSIGNMENT OF ERROR 8:

THE THERAPIST'S LETTER CONTAINING MOTHER'S
STATEMENTS FOR TREATMENT PURPOSES WAS
PROPERLY AUTHENTICATED AND ADMITTED

PURSUANT TO ER 613(b) TO IMPEACH MOTHER'S
CREDIBILITY REGARDING HER ALLEGATIONS OF
DOMESTIC VIOLENCE.

The Mother's assertion that the therapist's letter was not properly authenticated is a gross misrepresentation of the facts. Further, mother's reliance on Wagers v. Goodwin, 92 Wn. App. 876, 964 P. 2d 1214 (1998) is misplaced and wrong. The authenticated letter was correctly admitted under the hearsay exception of ER 613(b) to impeach mother's credibility.

1. The mother admitted authenticity in the Joint Statement of Evidence and even if she hadn't, the therapist's letter was properly authenticated by the father.

Authentication is a threshold requirement designed to assure that evidence is what it purports to be, State v. Payne, 117 Wn. App. 99, 106, 69 P.3d 889 (2003), citing 5C K. TEGLAND, WASH. PRAC., EVIDENCE § 900.2, at 175; § 901.2, at 181-82(4th ed. 1999). Although ER 901 sets out ten different examples on how to establish authenticity in conformance to the rule. The illustrations set forth are by way of illustration, not by way of limitation. ER 901(b).

One method of authenticating is by the testimony of a witness with knowledge if the witness testifies that the matter is what is it claimed to be. ER 901(b)(1). Another method not enumerated at ER 901(b) is through the process set forth in King County's local rules at KCLCR 4(k).

There, no later than 5 days prior to trial, the parties are required to file a Joint Statement of Evidence that identifies witnesses and exhibits. As to each exhibit listed, it must have a notation as to whether all parties agree as to the exhibit's authenticity or admissibility. If authenticity is admitted on the Joint Statement of Evidence, then no more need be done.

In our case, the mother admitted the authenticity of Exhibit #114, the therapist's letter, in the Joint Statement of Evidence pursuant to KCLCR4(k). She does not disclose this admission in her brief. Instead, she obfuscates the issue by relying on Wagers v. Goodwin, 92 Wn. App. 876, 964 P. 2d 1214 (1998) for the proposition that the therapist's letter is inadmissible. That facts of Wagers bear no resemblance to our own. It is true that the Wagers court found the admission of the unsigned, undated letter to be an abuse of discretion. However, the mother fails to disclose that in Wagers, what was admitted was an excerpt from an unsigned, undated letter written by a third party which contained settlement negotiations. Finally, there, the excerpt was admitted to prove the truth of the matter asserted.

In addition to the mother's admission of authenticity, the father identified Therapist James's letter at trial. There was no testimony that the father had offered a forgery or fabricated letter on Therapist James's letterhead or that the letter suffered from any other defects rendering it

unauthentic. Given the low threshold for authentication, Therapist James's letter would have survived a challenge on the basis of authenticity.

2. The therapist's letter containing the mother's statement for treatment in counseling was admissible pursuant to ER 613(b) to impeach the mother's allegations of that she was fearful of the father and that father had been verbally and physically aggressive and violent.

The therapist's letter was properly admitted as a prior inconsistent statement pursuant to ER 613(b) and the letter contained a statement made for medical diagnosis or treatment pursuant to ER 803(a)(4).

Hearsay is a statement, other than one made by the declarant while testifying at trial, offered to prove the truth of the matter asserted. ER 801(c). Hearsay is not admissible as evidence except as provided by the rules of evidence, by court rules, or by statute. ER 802. An out-of-court-statement is hearsay when offered to prove the truth of the matter asserted, even if the statement was made and acknowledged by someone who is an in-court witness who testifies at trial, State v. Clinkenbeard, 130 Wn. App. 552, 123 P. 3d 872 (2005), citing State v. Sua, 115 Wn. App. 29, 41, 60 P. 3d 1234 (2003).

If an out of court statement falls within a hearsay exception, then those statements are not excluded by the hearsay rule even if the declarant is available as a witness. ER 801(a). Pursuant to ER 613(b), extrinsic

evidence of a prior inconsistent statement is admissible so long as the witness is afforded an opportunity to explain or deny the statement, and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interest of justice otherwise requires. ER 613(b).

A witness may be impeached with a prior out-of-court statement of a material fact that is inconsistent with his testimony in court, even if such a statement would otherwise be inadmissible as hearsay, State v. Clinkenbeard, 130 Wn. App. 552, 123 P. 2d 872(2005). Since the statements or omission are being introduced only for the limited purpose of impeachment, the requirements for admissibility are relatively lax, State v. Johnson, 90 Wn. App. 54, 950 P. 2d 981 (1998). Hearsay evidence may be admissible to assist the court in assessing credibility, State v. Magers, 164 Wn.2d 174, 189 P.3d 126 (2008).

Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or the inception or the general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment are exceptions to the hearsay rule, even though the declarant is available as a witness. ER 803(a)(4). In our case, under the medical diagnosis exception at ER 803(a)(4), it is not the statement by the therapist that is impeaching the

mother, it is the mother's own out-of-court hearsay statement to the therapist.

In State v. Ackerman, 90 Wn. App. 477, 953 P.2d 816 (1998) which involved sexual molestation charges, classmates and a counselor testified regarding statements to them by the victim. Citing, State v. DeBolt, 61 Wn. App. 58, 63, 808 P.2d 794 (1991) and State v. Alexander, 64 Wn. App. 147, 151, 822 P.2d 1250 (1992), the appellate court noted that the fact of complaint or "hue and cry" doctrine is a case law exception to the hearsay rule where there has been a timely complaint by the victim to someone after an assault.

If the prior statement omits a material detail that, under the circumstances, would have been included if true, the statement may be admitted to impeach the witnesses more detailed testimony at trial, Jenkins v. Anderson, 447 U. S. 231, 100 S. Ct. 2124, 65 L. Ed.2d 86 (1980). Likewise, if the witness testifies about the events in question then claims to have forgotten certain details, or claims to have forgotten making certain out-of-court statements, or gives conflicting testimony on important details, impeachment by prior inconsistent statements is proper, State v. Newbern, 95 Wn. App. 277, 975 P. 2d 1041 (1999).

In Newbern, a witness gave a detailed description of the shooting which included statements that the defendant had yelled at her to get off

the phone, and his pointing the gun directly at her while she stood outside the front door before the shooting. At trial, however, she recanted and testified the shooting was accidental and that earlier statement was a fabrication. The court admitted the prior inconsistent statement and addressed prior inconsistent statements at length. Noted that the purpose of using prior inconsistent statements to impeach is to allow an adverse party to show that the witness tells different stories at different times, Newbern id., at 293, citing 1, McCormick on Evidence §34, at 114(John William Strong 4th ed. 1992).”

Further, it noted that inconsistency is to be determined, not by individual words or phrases alone, but the whole impression or effect of what has been said or done, Newbern at 294. Finally, it noted that inconsistencies are important, not because one version of the events is more believable than the other, but because they raise serious questions about the witnesses credibility and perceptions, Newbern at 295, citing State v. Dickenson, 48 Wn. App. 457, 466-468, 740 P. 2d 312 (1987).

In our case, the mother described being extremely fearful of the father as a result of the ongoing physical violence and abuse by the father towards her. The father denied these allegations and testified that they had attended counseling together and that she had not made any such reports or complaints to the therapist. Had there been physical violence and abuse

by the father, this is information that the mother would have provided to the therapist, so that the therapist could properly address the issue during treatment. Particularly in light of the “hue and cry” doctrine which assumes a party is motivated to tell the truth during treatment in order to get an accurate diagnosis, this omission can be the basis for impeachment.

So long as the witness is afforded an opportunity to explain or deny the statement, and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interest of justice otherwise requires, the inconsistent statement is admissible. ER 613(b).

- 3.. Both the March 28, 2013 video and the May 10, 2013 videos were properly admitted pursuant to ER 402 to assist the court in understanding the communications between the parties and pursuant to ER 613(b) to impeach mother’s allegations of that she was fearful of the father and that father had been verbally and physically aggressive and violent.

As the video recordings were deemed authentic, the next inquiry was whether or not those video tapes were admitted for any proper purposes.

- iii. The video recordings contained relevant evidence and pursuant to ER 402 were admissible to assist the court in understanding the parties’ communications.

Here, the nature and quality of the communication between the parents was relevant to the parenting plan determination. The mother requested sole decision-making due to the high level of conflict, the

G.A.L. expressed concern regarding the high level of conflict and inability of the parties to communicate, both parties identified police incident reports on the Joint Statement of Evidence, and the mother requested parent plan provisions that required a certain level of flexibility and cooperation between the parties.

The video tapes contained communications by the parties during visitation exchanges of the child. As the video recordings were not excluded by any other rule of evidence, the court properly admitted the recordings to help the court understand how the parties communicate.

- iv. The video recordings were admissible to impeach the mother's allegations of verbal and physical aggression and abuse by the father both pursuant to ER 613(b).

The mother offered significant testimony, personally and through her supporting witnesses, that she was fearful of the father and that there was a history of verbal and physical abuse and violence by the father. Those allegations were the heart of her case.

Both the March 28, 2013 recording where the mother threatens to tie up the father and feed him fish when discussing the child's health issues, and the May 10, 2013 recording where the mother tries to extract a false confession from father were

Pursuant to ER 613(b), both video recordings, Exhibit 125 and Exhibit 127, were admissible for impeachment purposes. The mother's

words, tone, and demeanor in the recordings were relevant as impeachment of the mother's allegations that 1) she was fearful of the father, and that 2) the father was aggressive and violent on May 10.

In the case of the May 10, 2013 visitation, it is clear from a viewing of the May 10 recording, Exhibit 127, that the father did not demonstrate any acts of aggression, verbal abuse, or rudeness during the visitation exchange. So, the mother and her friend, Angelina, either believed their statements or were fabricating when they prepared Exhibit 147. The court reasonably found serious problems with the mother's credibility and perceptions.

3.. Evidentiary rulings are reviewed for an abuse of discretion

Evidentiary rulings are subject to the abuse of discretion standard. This would include ruling on the admission or exclusion of evidence, State v. C.J., 148 Wn. 2d 672, 686, 63 P. 3d 765 (2003), rulings on motions in limine, Clark v. Gunter, 112 Wn. App. 805, 808, 51 P. 3d 135 (2002), citing Gammon v. Clark Equip., 38 Wn. App. 275, 286, 686 P. 2d 1102(1984), aff'd, 104 Wn. 2d 613 (1985), and balancing the probative value of evidence against its prejudicial effect under ER 403, Holz v. Burlington N.R. Co., 58 Wn. App. 704, 708, 794 P. 2d 1304(1990). A trial court's ruling on evidentiary matters may also be sustained on alternative grounds, Thomas v. French, 99 Wn. 2d 95, 104, 659 P. 2d 1097 (1983).

The decision to admit evidence lies within the sound discretion of the trial court and should not be overturned on appeal absent a manifest abuse of discretion, State v. Crenshaw, 98 Wn. 2d 789, 806, 659 P.2d 488 (1983). An error in admitting evidence that does not result in prejudice to the defendant is not grounds for reversal, Brown v. Spokane County Fire Protection Dist. No. 1, 100 Wn.2d 188, 196, 668 P.2d 571 (1983). Error is not prejudicial unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred, State v. Tharp, 96 Wn. 2d 591, 599, 637 P.2d 961 (1981); citing State v. Cunningham, 93 Wn. 2d 823, 613 P. 2d 1139 (1980). The improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole, Nghiem v. State, 73 Wn. App. 405, 413, 869 P.2d 1086 (1994).

4. The mother presents no legal argument on her motion in limine or on the court's basis for admitting the video recording should they not be deemed private or on the therapist's letter, so those errors should be waived.

Here, the mother assigns error to the court's denial of her motion in limine to 1) exclude the video recordings there was substantial evidence and 2) the admission of the letter by Therapist James. However, she presented no relevant legal argument regarding the applicability of the Privacy Act to the recorded communications. Having failed to do that, she

also presented no relevant or meaningful legal argument regarding the court's evidentiary determination that the recordings were admissible.

In regards to the letter by Therapist James, apart from a single passing reference to ER 901, ER 801 and ER 804 at page 32 of her brief, and apart from a complete misrepresentation of the ruling in Wagers v. Goodwin, 92 Wn. App. 876, 964 P. 2d 1214(1998), as it applies to our case, the mother did not provide legal argument to support her assignment of error.

Where a party assigns error but presents no argument in their opening brief, the assignment of error is waived, Cowiche Canyon Conservancy v. Bosley, 118 Wn. 2d 801, 828 P. 2d 549 (1992), citing Smith v. King, 106 Wn. 2d 443, 451-452, 722 P. 2d 796 (1986).

G. MOTHER'S APPEAL IS FRIVOLOUS

An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists, In Re Marriage of Greenlee, 65 Wn. App. 703, 829 P. 2d 1120 rev. denied, 120 Wn. 2d 1002 (1992), citing Chapman v. Perera, 41 Wn. App. 444, 704 P. 2d 1224, review denied, 104 Wn. 2d 1020 (1985).

Here, the court entered a parenting plan which was clearly based on the statutory criteria at RCW 26.09.187(3). Mother assigns error

charging the court with reliance on the “friendly parent concept,” an improper standard. However, she fails to acknowledge her request for two parenting plan provisions at VI. OTHER PROVISIONS which invited the court’s consideration of the flexibility of each parent, and the role that deviations from the parenting plan might play when considering the child’s best interests.

The mother assigned error to other evidentiary issues that, even if the court were to find the trial court to have been incorrect, they would not have changed the outcome of the court’s ruling, and they do not justify the expense of an appeal.

Whether the mother did not understand the statutory criteria or whether her omissions on appeal were deliberate, the result is the same. Her appeal was frivolous and the father has incurred unnecessary and unreasonable legal fees.

H. THE MOTHER SUBMITTED 13 DOCUMENTS AND ONE EXHIBIT CONTRARY TO RAP 9.1

The mother submitted 13 documents and one exhibit contrary to RAP 9.1. Although RAP 9.6 (a) permits a party to designate those clerk’s papers and exhibits the party wants the clerk to transmit to the appellate court, RAP 9.1 (c) states: Clerk’s Papers. The clerk’s papers include the pleadings, orders, and other papers filed with the clerk of the trial court.”

The mother designated Document Sub No.'s : 6, 8, 9, 11, 24, 25, 26, 27, 28, 32, 38, 39, and 57. These pleadings were not placed before the trial court and consisted of 202 pages. Additionally, she designated Exhibit #136 which was rejected at trial. None of these were before the trial court. The mother made a least two cites to Exhibit #136 which was rejected at trial. These improper submittals created considerable confusion, delays, and unnecessary time spend by father's counsel. The court should disregard or strike any references the mother makes to improper submittals.

I. LEGAL FEES

This Court should deny the mother's request for legal fees on appeal. She is voluntarily unemployed and chooses to rely on the financial support of others. As she has not sought employment, there is no evidence that her earnings would be less than the father's if she secured a job. Equally important, the father does not have the ability to pay. Further, because this appeal is frivolous, the mother should not be rewarded with an award of attorney fees.

The court can award attorney fees after considering the relative resources of the parties and the merits of the appeal under RCW 26.09.140; In Re Marriage of Leslie, 90 Wn. App. 796, 807, 954 P. 2d 330(1998), rev denied, 137 Wn. 2d 1003 (1999). Where a litigant is forced

to respond to a frivolous appeal, the appellate court may award legal fees without regard to the other parties ability to pay, In Re Marriage of Greenlee, 65 Wn. App. 703, 711, 829 P. 2d 1120, rev. denied, 120 Wn. 2d 1002 (1992); RAP 18.9 (authorizing terms and compensatory damages for a frivolous appeal). The court should award the Respondent attorney fees and costs as he was forced to respond to this frivolous appeal. The mother's improper designations should be an additional basis for legal fees to the father.

The Respondent will comply with RAP 18.1(c) and submit an affidavit of financial need.

IV. CONCLUSION

This court should affirm the trial court's orders what were all made within its discretion and which were supported by substantial evidence. The court should deny the wife's request for legal fees and grant attorney fees to the father.

Respectfully submitted this 16th day of January, 2015.

LAW OFFICE OF F.ANDREKITA SILVA



Andrekita Silva, WSBA No. 17314
Attorney for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on January 16, 2015, I arranged for service of the foregoing Notice of Appearance of the court and to the parties to this action as follows:

Office of Clerk Court of Appeals, Division I 600 University Street Seattle, Washington 98101	<input type="checkbox"/> Email <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail, 1 st class postage prepaid
Todd R. DeVallance Tsai Law Company 2101 Fourth Avenue, Suite 1560 Seattle, Washington 98121	<input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail, 1st class postage prepaid
Valerie A. Villacin Smith Goodfriend, PS 1619 8 th Avenue North Seattle, Washington 98109-3007	<input checked="" type="checkbox"/> Email <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail, 1st class postage prepaid

DATED at Seattle, Washington this 16th day of January, 2014.


 Andrekita Silva

APPENDIX

Appendix

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6. RCW 26.09.004(2): Definitions: Parenting Functions
7. RCW 26.09.184(5): Permanent Parenting Plan: Allocation of
Decision-Making Authority
8. RCW 26.09.187(2) and (3): Criteria for Establishing Permanent
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9. RCW 9.70.030: Intercepting, Recording, or Divulging Private
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ORAL RULING
DATED MARCH 27, 2014

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

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In re the Parenting and)	
Support of:)	
OLIVIA ESTELLA DANHOF,)	
Child,)	No. 13-3-07923-6
EVELINA BARHUDARIAN,)	Appeal No. 71899-1-I
Petitioner/Appellant,)	
and)	
ANDREW BERNARD DANHOF,)	
Respondent/Respondent.)	

Bench Trial - Volume IV

Oral Ruling

Heard Before The Honorable Suzanne Parisien

March 27, 2014

Transcribed by: Shanna Barr, CETD
Reed Jackson Watkins
206.624.3005

A P P E A R A N C E S

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FOR THE PETITIONER:

TODD RICHARD DEVALLANCE
TLC Law Company
2101 Fourth Avenue
Suite 1560
Seattle, Washington 98121

FOR THE RESPONDENT:

ANDREW B. DANHOF
Pro Se
18907 Southeast 265th Street
Covington, Washington 98042

1 -o0o-

2 March 27, 2014

3
4 THE COURT: -- everyone. Please be seated.

5 Okay. We are here in the matter of Evelina Barhudarian v.
6 Andrew Danhof, Cause No. 13-3-07923-6, Seattle designation.
7 We're here for the Court's oral ruling following the trial
8 in this case, which lasted from March 17th through the 19th.

9 During this trial, the Court heard testimony from the
10 parties. Individual parties testifying: Yuliya Barhudarian
11 testified. Georgina Luiquin, Svetlana Pristupa, Angelina
12 Bakhchinyan, Kevin Sherry, Anya Barhudarian, Frank Rorie,
13 Karen Bienz. We had Melanie English, the GAL, who testified
14 telephonically. And we also had testimony from Natasha
15 Rakish and Jessica Woods, also telephonically.

16 This is a parenting plan action.

17 The parties' testimony is that the parties met sometime in
18 2009 and were involved for about two years until they
19 separated in October 2011. They had one child together,
20 Olivia, who is three years old. Mr. Danhof is the
21 acknowledged father, and this action is brought for a
22 permanent parenting plan.

23 Since the most important issue in this case is Olivia's
24 well being -- in fact, it's the sole issue for this case,
25 what's in her best interest -- the Court will begin by

1 noting, of course, that Olivia appears to be doing very
2 well. By all accounts, she is loved by many, more -- most
3 in particular, of course, her parents, but there was a lot
4 of testimony about the many people in her life who adore her
5 and who want to have deep bonds with her, and some of whom
6 already have those deep bonds, including grandparents on
7 both sides and, of course, aunts and uncles and cousins.
8 Olivia is fortunate enough to have an older brother, Allen,
9 who is five years old, who is the petitioner's son from a
10 prior marriage, and a new baby sister, Elsie, who is
11 approximately one month old, who is the respondent's
12 daughter.

13 There was a lot of testimony about Olivia being very
14 bonded with her brother. The Court certainly appreciates
15 the importance of that relationship and -- as well as the
16 relationship that she will be developing and hopefully
17 maintaining with her new sister, and is mindful of those
18 relationships and their importance.

19 The mother testified that there was a history of domestic
20 violence by Mr. Danhof. She testified to being struck on
21 the face. She provided photographs which purported to show
22 bruising around the eye area. She testified about being
23 intimidated and -- by Mr. Danhof and also feeling controlled
24 by Mr. Danhof.

25 There was testimony from some of the petitioner's

1 witnesses, who basically testified only to what the mother
2 told them, Ms. Barhudarian, and their observations about her
3 becoming more withdrawn. The photo which the mother
4 admitted into evidence did not appear to show any bruising.

5 The Court, frankly, did not find credible evidence of any
6 history of domestic violence by Mr. Danhof. That was not
7 just the photograph and the lack of credibility in the
8 witness testimony, but also by the statement of Linda James,
9 who was the therapist for some time for the parties, who
10 indicated that during their counseling sessions between the
11 two of them there was no mention of abuse or violence during
12 any of the sessions.

13 Perhaps most importantly, what led the Court to conclude
14 that domestic violence was not an issue in this case was the
15 testimony by the petitioner regarding domestic violence in
16 her prior marriage. The Court was troubled by petitioner's
17 testimony. She had told -- Ms. Bienz testified credibly
18 that she had been told that Allen's father had abused her
19 during their marriage. The -- there was also testimony
20 about that in some of the record -- there was also evidence
21 about the mother's prior claims of domestic violence with
22 Allen's father in other exhibits. When questioned, the --
23 by the Court, the petitioner specifically, when I asked her
24 whether there had been DV in her prior marriage, her direct
25 response, quoting, is "It's hard to remember whether there

1 was DV." The next morning, upon questioning by her
2 attorney, she testified that she had recalled two instances
3 of domestic violence. The Court finds petitioner's
4 testimony with regard to domestic violence to be not
5 credible, and there will be no 191 factors in this case --
6 I'm sorry, 191 restrictions in this case.

7 The Court was troubled by what appeared to be an effort by
8 the petitioner to portray the respondent as an angry
9 military person with active PTSD, and there was no testimony
10 of that, and, in fact, the testimony that was provided to
11 this court established the opposite, that Mr. Danhof does
12 not have active signs or symptoms of PTSD. There was
13 multiple exhibits offered to that.

14 The Court heard and questioned the guardian ad litem about
15 that specifically in an abundance of caution, and the
16 guardian ad litem admitted that she didn't have any evidence
17 either and that she just thought that it would be good for
18 him to do some individual counseling for that. When I asked
19 her whether or not her recommendation would change if she
20 learned that Mr. Danhof was not eligible for that kind of
21 treatment through the VA, she said, no, it would not change
22 her recommendation. The Court was persuaded by that as well
23 as Mr. Danhof's other evidence regarding his current
24 psychological state and the fact that there really is no
25 PTSD issue in this case.

1 The only evidence regarding any type of violence on behalf
2 of the respondent was regarding the wedding reception.
3 There was conflict in testimony about who initiated the
4 conflict and how it came to be. The Court did review the
5 video that was submitted by the respondent, and at most it
6 shows the respondent exercising poor judgment with regard to
7 another guest at the wedding, a gentleman. As to why it
8 happened or how it happened, it's not clear. What is clear,
9 though, is that there was no evidence of any violence
10 perpetrated against the petitioner.

11 The Court wants to address one last issue on this area
12 which regards -- which relates to, excuse me, the
13 petitioner's testimony that she felt intimidated when the
14 respondent would have a concealed weapon on him during
15 transfers. The Court would find that credible that the
16 presence of a concealed weapon would be intimidating, and I
17 believe that there is already a current order which
18 prohibits the respondent from carrying his weapon during
19 exchanges of Olivia, and the Court would want -- is ordering
20 that that order, if it exists, be continued indefinitely.
21 Unless the respondent can show this court why it's necessary
22 to carry a concealed weapon during transfers, there is no
23 reason to do that.

24 So that's the issue of domestic violence.

25 Turning to the petitioner. There was substantial evidence

1 introduced at trial regarding threatening and aggressive
2 behavior and, frankly, openly hostile behavior exhibited by
3 the mother to Mr. Danhof. The Court is troubled by that.
4 The Court found the testimony of Frank Rorie to be credible.
5 Specifically, that on December 9th, 2012, he heard the
6 petitioner state to the respondent that "I will put a bullet
7 to your head." On April 14th, 2013, the mother specifically
8 yelled to Mr. Danhof that "I'm going to murder you." The
9 Court heard a recording of March 28th, 2013, wherein the
10 petitioner threatened to tie Mr. Danhof up and feed him
11 fish, to which he is allergic. Interesting about that
12 recording is Mr. Danhof laughs, at which point the mother
13 said, "This is nothing to laugh about. This is serious and
14 I'm serious." So that's -- these are things that the Court
15 considered.

16 There was also substantial text messages which were
17 admitted at trial, and the contents of many of these text
18 messages sent by the petitioner are troubling to the Court.

19 In one message, in Exhibit 149 -- it's a text message from
20 July 21st, 2012 -- Mr. Danhof is trying to share information
21 regarding the mother -- regarding a rash that Olivia has.
22 He sends a text message, takes a photo of the rash, and
23 says, "I'm not sure what caused it, but it doesn't seem to
24 be bad." In response, the petitioner texts back, "Either
25 it's from your" -- "It's either from your dirty whore or her

1 nasty dog. It's from the filth that you live in and bring
2 my daughter into. And I'm picking her up at 1:00, actually.
3 I'll make an appointment for her." That's one text message.

4 There were many other text messages which specifically
5 showed Mr. Danhof's desire to participate in medical issues
6 and routine medical care and also more emergent medical
7 issue -- emergency medical issues regarding Olivia. That is
8 something that every parent not only has a right to do but
9 should be doing. The text messages from the petitioner
10 indicated unequivocally that she would not allow the father
11 to take Olivia to the medical appointments, either on his --
12 excuse me, either on his own, nor would she even allow him
13 to be present during visits that she took Olivia to. In one
14 of the messages, Exhibit -- I believe it is 136,
15 Ms. Barhudarian states, "You do not have permission to use
16 the insurance I provide for Olivia at any point."

17 There are other text messages with regard to Mr. Danhof's
18 efforts to be involved in his daughter's medical attention.
19 There was a text exchange between the parties on March 4th,
20 2013, regarding Olivia being -- an exchange going back to
21 the mother. Apparently she came back and was sick.
22 Mr. Danhof indicated that she had been sick when he got her
23 from the mother the week before and that he had taken a week
24 off from work and to which the mother responded in a text on
25 March 4th, 2013, "You're a worthless piece of shit. I got

1 her from you already sick, jackass. You're seriously a
2 mental, stupid fuck. Thanks for your cooperation, jerk
3 off." The father is trying to give information about what
4 she was fed and how the visit went, and that was the
5 response that he got.

6 The Court was very troubled by the petitioner's actions in
7 blocking the father's access to Olivia's medical records.
8 There's simply -- on the facts of this case and the evidence
9 in this case can be -- the Court cannot conceive of any
10 valid reason for any parent to block another parent's access
11 to medical information. Not only is it unnecessary and
12 punitive, it was potentially dangerous given that Olivia was
13 partly at this time in her father's care, and if he were to
14 have to take her for emergency care he would not have access
15 to medical information or the medical history that he might
16 need.

17 The other text messages, specifically Exhibit 117 and 122,
18 show the father again trying to offer input and communicate
19 about Olivia's health and the mother specifically stating
20 that he is not capable of caring or tending to Olivia.
21 Those were her exact words: Not careful -- not capable of
22 taking care of her.

23 The guardian ad litem testified regarding her
24 communications with Dr. Benci Franklin, who is Olivia's
25 pediatrician, "Dr. Franklin and his staff both report to the

1 guardian ad litem that the mother has a litany of negative
2 things against the father and that the mother can be extreme
3 in thinking that the father is a horrible person and
4 responsible for any of Olivia's illnesses." Dr. Benci
5 states -- I mean -- it's Dr. Franklin, excuse me. Dr. Benci
6 Franklin says he has had around 15 experiences with the
7 mother, and she reports, quotation marks, over-the-top
8 health concerns about Olivia, but he has never seen anything
9 to support these concerns or suggest any abuse or neglect by
10 either parent. He indicated that she goes to the emergency
11 room on a frequent basis and has abused the system in that
12 she is reporting concerns to be examined which most normal
13 parents would not be upset about.

14 Perhaps most troubling was Dr. Franklin's statements that
15 he -- that she's extremely anxious and has reported the
16 father is evil and should not be involved. He has
17 reportedly hurt Olivia's -- I'm sorry. He reports that
18 Olivia has heard the mother say this, quotation marks, a
19 million times. The Court doesn't need to tell the parties
20 how damaging it is for children to hear those kinds of
21 things from one parent about another.

22 The last point that I would make on this issue was the
23 testimony that the petitioner gave. There was an incidence
24 that -- when Olivia was taken to the hospital by her, and I
25 believe it was on September 6th, 2012. She testified on

1 direct examination that someone in the hospital was so
2 concerned about a bruise on Olivia that CPS was called.
3 Upon further questioning, however, it was revealed that the
4 mother actually made a CPS referral against the father and
5 it wasn't initiated by the hospital personnel.

6 These are all things that tell the Court that
7 Ms. Barhudarian is not interested in sharing important
8 decisions or communicating in a positive way with
9 Mr. Danhof. It's not something that she has shown or that
10 any of the evidence has shown.

11 With regard to the guardian ad litem's recommendation that
12 both parties engage in counseling, the father -- I'm sorry,
13 the Court noted that the father immediately began efforts to
14 comply with the recommendation that he start receiving PTSD
15 therapy until he learned that he was not even covered by it
16 by the VA, but the mother has not done any of the ten
17 counseling sessions that were recommended by the GAL, and
18 this is despite the fact that the father works full time and
19 the mother does not work and presumably has more time to
20 participate in counseling.

21 I want to talk philosophically for a moment about
22 parenting plans and my belief that parenting plans are
23 designed to be in the ideal setting very flexible, and
24 nothing will -- should deter the parties from, frankly,
25 going around the parenting plan and providing flexibility to

1 one another, compassion to one another, and frankly, more
2 access to one another if it works out that way. That's what
3 a parenting -- that's what the parties should do. The
4 parenting plan is just the court's order, but I always hope
5 that parents will work together to not, you know, abide by
6 the parenting plan every dotted I or crossed T, but rather
7 work together to -- in the best interests of their child,
8 and that's what this court wants.

9 With that in mind, however, given what I have already
10 discussed regarding the mother's hostility and uncooperative
11 nature toward Mr. Danhof, it's clear to this court that the
12 only party that is going to be flexible, at least at this
13 point, and perhaps provide more contact between the parent
14 and child is Mr. Danhof, and it is for that reason that the
15 Court is adopting, not a hundred percent, but in --
16 substantially is adopting Mr. Danhof's parenting plan. That
17 parenting plan, the essence of it is that until Olivia
18 begins school, it is a 50/50 parenting plan. Once Olivia
19 does start school, she will reside primarily with the
20 father. The mother will have alternating weekends and an
21 overnight on Wednesday.

22 The -- there was testimony from Ms. Barhudarian regarding
23 the very positive relationship that she has with Allen's
24 father, and the Court is hopeful that because they have this
25 good relationship that perhaps Allen's father will be

1 flexible with her and she can maximize the time with Allen
2 when she has Olivia with her. But it's clear that same
3 spirit of flexibility and cooperation has not been exhibited
4 by her to Mr. Danhof.

5 With regard to educational decisions and nonemergency
6 health care, those decisions will be made by the father.
7 With regard to extracurricular activities and daycare and
8 day camps, those will be joint decisions to be made by both
9 parents.

10 The petitioner's request for attorneys' fees is denied.
11 There is no evidence that the petitioner -- I'm sorry, that
12 petitioner has the need for attorneys' fees, frankly, nor is
13 there any testimony that the respondent has the ability to
14 pay attorneys' fees. Of course, it's noted and significant
15 that the respondent represented himself in this case.

16 There is also no basis to enter a continuing restraining
17 order, and the Court will decline to do so.

18 I would like the orders to be -- as I say, the Court is
19 adopting the father's parenting plan substantially. I will
20 make some changes when it comes to me, but I would give that
21 to Mr. DeVallance for you to submit to this court.

22 The other orders. Mr. Danhof, I would have you submit all
23 the other orders to Mr. DeVallance, and he can make any
24 final edits that are necessary in compliance with my order,
25 and I will -- and then send them to me.

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned, under my commission as a Notary Public in and for the State of Washington, do hereby certify that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this day of , 2014.

NOTARY PUBLIC in and for
the State of Washington,
residing at Redmond.
My commission expires 6-23-15.

MEMORANDUM OF OPINION
DATED APRIL 3, 2014

FILED
KING COUNTY SUPERIOR COURT

APR 03 2014

SUPERIOR COURT CLERK
BY: PAMELA ANZAI
DEPUTY

**Superior Court of Washington
County of King**

In re parenting and support of;

OLIVIA ESTELLA DANHOF,

Child,

EVELINA BARHUDARIAN,

Petitioner,

and

ANDREW BERNARD DANHOF,

Respondent.

No. 13-3-07923-6 SEA

MEMORANDUM OF OPINION

This matter came on for trial on the Mother's Petition for Permanent Parenting Plan. Trial was held on March 17th through March 19, 2014. The parties met in 2009 and separated in October 2011. They have one child, Olivia, who is three years old. The Respondent is the acknowledged father. Olivia appears to be doing well despite the deep conflict existing between her parents. Testimony from witnesses on behalf of both parties revealed that Olivia is very bonded to both parents as well as extended family (grandparents) on both sides. The mother lives with her parents and Olivia is close to them. Additionally, Olivia is very bonded with her five (5) year old brother, Allen, who is the mother's son from a prior marriage. The respondent is currently living with his girlfriend, Natasha Rakish, with whom he has a one month old daughter, Elsie. The court considered these important sibling relationships in fashioning a residential schedule for Olivia.

MEMORANDUM OF OPINION

Judge Suzanne Parisien
King County Superior Court
401 4th Avenue North
Kent, WA 98032

ORIGINAL

The mother testified that there was a history of domestic violence perpetrated by the father. She testified to being struck on the face on one occasion and feeling intimidated and controlled by the father. There was vague testimony from some of the petitioner's witnesses about these allegations. Most reported only what the mother told them. The court did not find credible evidence of domestic violence. The evidence indicates that the domestic violence claim was a recent phenomenon. Additionally, the therapist, Linda James, who saw the parties for counselling together in February 2012 provided a statement indicating that the mother never mentioned domestic violence during any sessions. Most determinative to the court's opinion on this issue was the mother's contradictory testimony regarding the presence of domestic violence in her prior marriage. Other witnesses testified that the mother alleged that she was abused by her prior husband. When directly questioned regarding this, mother testified "it's hard to remember whether there was DV." The next day at trial, she testified that she now recalled two past instances of domestic violence involving her prior husband. The court did not find it credible that the mother (or anyone) would "forget" being the victim of domestic violence. Such testimony demonstrates that the mother was willing to either fabricate domestic violence or that her memory is such that it cannot be trusted on this point.

There was testimony that the respondent frequently carried a concealed weapon including times when Olivia was being transferred. The mother testified that she felt intimidated by this which the court found to be credible. Accordingly, respondent is to refrain from carrying his concealed weapon during exchanges of the child.

With regard to the petitioner, there was substantial evidence regarding the threatening and openly hostile behavior exhibited toward the respondent. The court found the testimony of Frank Rorie to be credible with regard to specifically hearing the petitioner tell respondent "I will put a bullet to your head" on December 9, 2012. On April 14, 2013, the mother yelled "I am going to murder you" to the father. On March 28, 2013, the petitioner threatened to tie respondent to a tree and force feed him fish (to which he is allergic).

MEMORANDUM OF OPINION

Judge Suzanne Parisien
King County Superior Court
401 4th Avenue North
Kent, WA 98032

Evidence at trial included a substantial quantity of troubling text messages written by the mother to the father evidencing open hostility, name calling and extreme profanity (Exhibits 149; 122; 136, and 117). Most importantly, the text messages between the parties showed the father repeatedly trying to be involved in the child's health and well-being (including efforts to go to doctor appointments and exchange medical information regarding Olivia) and the petitioner refusing such requests. Again, the texts were laced with name calling, profanity and hostility. The court was troubled by the petitioner's action in blocking the respondent from having access to any of Olivia's medical records and/or history. Petitioner also advised respondent that he was prohibited from using the insurance that she provided for Olivia. Such behavior with regard to the child's health is inexcusable and could potentially put the child's health at risk were she to experience a medical emergency while with the father.

The GAL reported that Olivia's pediatrician, Dr. Benci Franklin, reported that the mother has a "litany of negative things" against the father and that mother can be "extreme" in thinking the father is a horrible person and responsible for any of Olivia's illnesses. Dr. Franklin reported that the mother is obsessive with regards to the child's health making frequent visits for trivial matters. Dr. Franklin stated that he had around 15 visits with the mother and she reports "over the top" health concerns about Olivia **but he has never seen any abuse or neglect by either parent.** Dr. Franklin indicated the mother berates the father incessantly in front of Olivia and stated that she "abused the system" by running to the emergency room to report concerns of abuse and/or neglect by the father. The mother testified that in September 2012, she took Olivia to the emergency room because of a bruise on her arm. She testified that a nurse had initiated a CPS referral of the father for that injury. In reality, it was the mother who initiated the referral which was later determined to be "unfounded."

The mother also alleged that the father is suffering from PTSD (Post Traumatic Stress Disorder). There was no evidence of this. In fact, the evidence was to the contrary. The GAL

MEMORANDUM OF OPINION

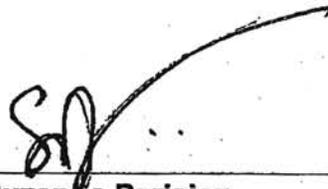
Judge Suzanne Parisien
King County Superior Court
401 4th Avenue North
Kent, WA 98032

testified that her recommendation that father attend 30 individual counseling sessions for PTSD was not based on any evidence that father was experiencing PTSD symptoms. VA records supplied by the father confirm that he is not experiencing any symptoms of PTSD. The court notes that in response to the GAL's recommendation that both parties participate in counseling, the father immediately began to comply with the recommendation (despite the fact that he is not entitled to paid therapy from the VA) and yet, the mother has yet to attend a single session.

Given the specifics of this case, and the court's ruling with regard to the father assuming the primary custodial role once Olivia starts school, the father may petition the court for a change in the child support calculation once mother obtains employment and/or Olivia begins pre-school or Kindergarten without a showing of adequate cause. Both parties are to notify one another within 72 hours if there are changes to their employment status or place of employment.

Dated: _____

April 30, 2014



Judge Suzanne Parisien

MEMORANDUM OF OPINION

Judge Suzanne Parisien
King County Superior Court
401 4th Avenue North
Kent, WA 98032

JOINT STATEMENT OF EVIDENCE

FILED

14 MAR 14 AM 11:22

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 13-3-07923-6 SEA

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

In re the parenting and support of:

OLIVIA ESTELLA DANHOF,

Child,

EVELINA BARHUDARIAN,

Petitioner,

and

ANDREW BERNARD DANHOF,

Respondent.

No. 13-3-07923-6 SEA

JOINT STATEMENT OF EVIDENCE

Honorable Suzanne Parisien
Trial: March 17, 2014

Come now the parties herein through their attorneys of record and submit the following Joint Statement of Evidence pursuant to KCLR 16(a)(4).

WITNESSES

A. Petitioner's Witnesses:

- Evelina Barhudarian
- Andrew Danhof
- Anya Barhudarian
- Kevin Sherry
- Angelina Bakhchinyan
- Yuliya Barhudarian
- Kyshali Agalieyev
- Georgina Luiquin
- Danny Hauter
- Svetlana Pristupa

1 **B. Respondent's Witnesses:**

2 Frank Rorie
 3 Karen Bienz
 4 Dr. Benci Franklyn
 5 Evelina Barhudarian

6 **PETITIONER'S EXHIBITS**

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
7 1.	Petition to Establish Parenting Plan and Order of Child Support	Petitioner	X		
8 2.	Response to Petition	Petitioner	X		
9 3.	Temporary Parenting Plan	Petitioner	X		
10 4.	Temporary Order of Child Support	Petitioner	X		
11 5.	Department of Social and Health Services (DSHS) benefit award letter for Petitioner	Petitioner	X		
12 6.	DSHS benefit confirmation letter for Petitioner re: Allen K. Gashkayan	Petitioner	X		
13 7.	Department of Social and Health Services (DSHS) benefits review and award letter for Petitioner	Petitioner	X		
14 8.	DSHS benefit application confirmation and interview reminder for Petitioner	Petitioner	X		
15 9.	DSHS benefits review reminder letter for Petitioner	Petitioner	X		
16 10.	DSHS benefit termination letter for Petitioner	Petitioner	X		
17 11.	Wells Fargo Combined Statement of Accounts for Accounts Ending in 5738 and 9599 for Petitioner	Petitioner	X		
18 12.	Earnings Statements for Respondent from Dynamic Sales and Service	Petitioner	X		

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
13.	Pay Stubs for Respondent from Dynamic Laundry Systems, Inc.	Petitioner	X		
14.	Wells Fargo Combined Statement of Accounts for Respondent for Accounts ending in 7733 and 8094	Petitioner	X		
15.	Washington Health Plan Finder Health Insurance Coverage Information for Petitioner, Allen Gashkayan, and Olivia Danhof	Petitioner	X		
16.	DSHS Health Coverage Termination Reminder for Petitioner	Petitioner	X		
17.	DSHS Health Coverage Reminder for Olivia Danhof	Petitioner	X		
18.	Medical Records for Olivia Danhof	Petitioner	X		
19.	Birth Certificate for Olivia Danhof	Petitioner	X		
20.	Regence Life Insurance Confirmation Statement for Respondent	Petitioner	X		
21.	Department of Veteran Affairs Appointment Reminder for Respondent	Petitioner	X		
22.	Department of Child Support (DCS) Custodial Parent Introduction to Support Enforcement Services for Petitioner	Petitioner	X		
23.	DCS Child Support Distribution and Disbursement Statement for Petitioner	Petitioner	X		
24.	Incident Report for 07/30/2012 occurring at 4704 NE 7 Place, Renton, WA.	Petitioner	X		

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
25.	Motion and Declaration for Ex Parte Restraining Order and Ex Parte Restraining Order/Order to Show Cause and Reissuance against Respondent		X		
26.	Declaration of Petitioner in Response to Petition for Domestic Violence Protection Order	Petitioner	X		
27.	Photographs and video of fight from Columbia Tower Club.	Petitioner	X		
28.	Respondent's Financial Declaration	Petitioner	X		
29.	Lease Agreement for Respondent at The Knolls at Inglewood Hill	Petitioner	X		
30.	Petitioner's First Set of Interrogatories and Requests for Production to Respondent as answered by Respondent without exhibits.	Petitioner	X		
31.	Photo of Olivia Danhof.	Petitioner	X		
32.	Photos of Natasha Rakish including Screen Shot of MySpace page.	Petitioner	X		
33.	Text Messages between Petitioner and Respondent	Petitioner	X		
34.	Photos of Olivia as posted by Natasha Rakish to Facebook	Petitioner	X		
35.	Public Disclosure Request and Denial, Incident Report and Case Report	Petitioner	X		
36.	Check made out to Petitioner as compensation under insurance claim.	Petitioner	X		
37.	Drug Test Results for Petitioner	Petitioner	X		
38.	Employment Visa for Petitioner	Petitioner	X		
39.	Emails between GAL and Petitioner	Petitioner			X

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
40.	Background Check Results for Natasha Rakish	Petitioner	X		
41.	Letters exchanged by Petitioner to Respondent	Petitioner	X		
42.	Respondent's Department of Veteran Affairs Rating Decision	Petitioner			
43.	Letter from TRAC associates re Petitioner's employment	Petitioner			
44.	Financial Declaration of Petitioner (updated)	Petitioner			
45.	Final Parenting Plan for Allen Gashkayan	Petitioner			
46.	Tsai Law Company Billing Summary	Petitioner			
47.	Domestic Violence photos	Petitioner			
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51.					

RESPONDENT'S EXHIBITS

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
101.	Medical forms from treatment in father's care	Respondent	X		
102.	Statement from Sergeant First Class Frank Rorie	Respondent		X	
103.	Incident History for 7/30/2012	Respondent	X		
104.	Text messages for 7/30/2012	Respondent	X		
105.	Case report for incident on 4/14/2013	Respondent		X	

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
106.	Temporary Order for Protection and related documents	Respondent		X	
107.	Text messages for 4/14/2013	Respondent			X
108.	Lease agreement for The Knolls at Inglewood Hill	Respondent	X		
109.	T Mobile statements	Respondent	X		
110.	Final Bill for The Knolls at Inglewood Hill	Respondent	X		
111.	Job Search Log	Respondent	X		
112.	Receipts for furniture	Respondent	X		
113.	Paperwork for 2007 BMW 530i	Respondent	X		
114.	Letter from Linda James	Respondent		X	
115.	Disbursal of Funds	Respondent	X		
116.	Text messages between Andrew Danhof and Evelina Barhudarian after break up	Respondent			X
117.	Text messages between Andrew Danhof and Evelina Barhudarian	Respondent			X
118.	End of lease paperwork for Pinnacle Sonata	Respondent	X		
119.	Billing documents for Pinnacle Sonata and work orders	Respondent	X		
120.	Text messages for use of birth certificate for travel	Respondent			X
121.	Text message regarding insurance	Respondent			X
122.	Text messages between Andrew Danhof and Evelina Barhudarian	Respondent			X
123.	Text messages between Andrew Danhof and Evelina Barhudarian after 5/10/2013	Respondent			X

Ex. #	Description	Party offering exhibit	No objection	Authenticity admitted but objectionable	Otherwise objectionable
124.	Communications with Petitioner's Attorney regarding move	Respondent		X	
125.	Recording of threat of bodily harm	Respondent			X
126.	Letter from CPS	Respondent	X		
127.	Recording of exchange on 5/10/2013	Respondent			X
128.	Recordings of exchanges at Danhof residence and of Olivia Danhof	Respondent			X
129.	Medical records for Andrew Danhof	Respondent	X		
130.	Non-Commissioned Officer Evaluation Report for Staff Sergeant Danhof	Respondent			X
131.	Photograph of Andrew Danhof, Evelina Gashkayan, Anya Barhudarian/Sherry, and Frank Rorie	Respondent			X
132.	Emails between Respondent and Guardian ad Litem	Respondent			X
133.	Emails between Respondent and Petitioner's attorney regarding video recording.	Respondent			X
134.	Fax cover sheet from Interrogatory response exhibits	Respondent			X
135.	Declaration of Andrew Danhof in Response to Ex Parte Restraining Order	Respondent			X
136.	Declaration of Andrew Danhof in Response to Petition for DVPO	Respondent			X
137.	Declaration of Natasha Rakish	Respondent			X
138.	Declaration of Karen Bienz	Respondent			X

The parties reserve the right to offer demonstrative and/or illustrative exhibits as needed to assist the Court in this case.

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Dated this 12th day of March 2014.

Dated this 12th day of March 2014.



Todd DeVallance, #32286
Attorney for Petitioner

See Attached

Andrew Danhof
Respondent

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Dated this 12th day of March 2014.

Todd DeValance, #32286
Attorney for Petitioner

Dated this 12th day of March 2014.

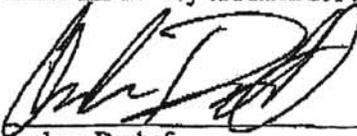

Andrew Danhof
Respondent

EXHIBIT #35
Public Disclosure Request
Incident Report 4/14/2013



City of Bothell

DATE 4/30/13
TO: Evelina Barhudarian
RE: PUBLIC DISCLOSURE REQUEST
INCIDENT NO: 13-8277

Enclosed is a copy of the public record(s) you requested. We have released the portions of the record(s), which are not exempt from disclosure by RCW 42.56.210 and/or other statutes. Information redacted is exempt from public disclosure for the following reason(s).

- 1. Complainant, victim or witness requested the information not be disclosed. (RCW 42.56.240)
- 2. Disclosure of the information would endanger a person's life, physical safety, or property. (RCW 42.56.240)
- * 3. Record includes information non-disclosure of which is essential to effective law enforcement. (RCW 42.56.240)
- 4. Record contains information the non-disclosure of which is necessary for the protection of a person's right to privacy. (RCW 42.56.230 or RCW 42.56.240) as defined by RCW 42.56.255 (Includes Social Security Number).
- 5. Record contains information on a juvenile, which is confidential and may not be released to the public except by court order under provisions of RCW 13.50.050 and 13.50.100(4) (a) and (b).
- 6. Investigative file is currently active with the prosecutor's office and non-disclosure is essential to effective law enforcement. (RCW 42.56.240)
- 7. Information protected under the Criminal Records Privacy Act. (RCW 10.97.080).
- 8. Record contains Attorney/Client information, protected under RCW 5.60.060(2).
- 9. Contains Official Confidential Information, protected under RCW 5.60.060(5).
- 10. Jail records including booking photos are protected under RCW 70.48.100.
- 11. Record contains medical information protected under RCW 70.02.005 and RCW 42.56.240.
- 12. Drivers or vehicle registration is protected under RCW 46.12.380.
- 13. Traffic accident reports are confidential and protected under RCW 46.52.080 and 46.52.083.
- 14. Results of toxicology or Field Sobriety Tests submitted to at the request of a police officer are protected under provisions of RCW 46.61.506(6).
- 15. Reports and records of autopsies and postmortems are confidential, protected under RCW 68.50.105
- 16. Other: 18 USC SECTION 2721 DRIVER'S LICENSE PRIVATE

Response to Public Disclosure Request prepared by: J. Merritt

Date: 4/30/13

* Case is active

Police Department
18410 101st Ave. NE
Bothell, WA 98011
425.486.1254
www.ci.bothell.wa.us



City of Bothell™

April 30th, 2013

Evelina Barhudarian
4704 NE 7th Place
Renton, WA 98059

Ref: Request for Bothell PD Case 13-8277

You requested a copy of case 13-8277 which occurred on April 14th in Bothell. The case is an open investigation and is exempt from disclosure.

If you have any questions, or need further assistance, please do not hesitate to contact the Bothell Police Department records section at 425-487-5121.

Most Sincerely,

A handwritten signature in black ink, appearing to read 'J. Merritt', is written over the typed name.

Jenny Merritt
Records Supervisor

Police Department
18410 101st Ave. NE
Bothell, WA 98011
425.486.1254
www.ci.bothell.wa.us



Case Report Summary



Print Date/Time: 05/03/2013 08:46
 Login ID: merrittj
 Case Number: 2013-00008277

Bothell Police Department
 ORI Number: WA0170300

Case

Case Number: 2013-00008277	Incident Type: Threats
Location: 14732 93RD BLVD NE BLVD NE H208	Occurred From: 04/14/2013 18:32
Reporting Officer ID: 0198 - Wilson	Occurred Thru: 04/14/2013 18:32
	Disposition:
	Disposition Date:
	Reported Date: 04/14/2013 18:53 Sunday

Offenses

No.	Group/ORI	Crime Code	Statute	Description	Counts
1	State	13C	9.61.230(3)(B),DV	HARASSMENT TELEPHONE THREAT TO KILL DV	1

Subjects

Type	No.	Name	Address	Phone	Race	Sex	DOB/Age
Suspect	1	Barhudarian, Evelina A	4704 NE 7 PL Renton, WA 98059	(425)449-2546	White	Female	10/24/1986 26
Victim	1	Danhof, Andrew B	14732 93RD BLVD NE h208 Bothell, WA 98011	(206)940-7134	White	Male	10/11/1982 30

Arrests

Arrest No.	Name	Address	Date/Time	Type	Age
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Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
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Vehicles

No.	Role	Vehicle Type	Year Make	Model	Color	License Plate	State
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OfficerID: wilsonj, Narrative
 04/14/13 / 1853 hours
 Threats / 13-8277
 14732 93 BLVD NE, H208
 Wilson #0198

On 04/14/13 at 1853 hours, I was dispatched to investigate a threats complaint at 14732 93 BLVD NE, #H208. Dispatch advised that the reporting party, Andrew Danhof, called to report his ex-fiance, Evelina Barhudarian, made threats to kill.

I arrived and made contact with Andrew who advised that he and Evelina were in a previous dating relationship and they have a 2 year old daughter named Olivia together. He advised that there were no orders and no parenting plan between he and Evelina. He advised that Olivia has been sick for several days. He attempted to contact Evelina to let her know, as she has insurance for

Olivia and he does not; but she never responded. He told me that Evelina does not share Olivia's medical information with him in respect to appointments, etc. Since he could not get in touch with Evelina he took Olivia to the Children's Hospital Urgent Care Center on 04/13/13. Andrew told me that Evelina made four phone calls to his cell phone today. The first call was at 1832 hours, during this call Evelina began yelling at Andrew for not being at the meet. Andrew hung



Case Report Summary



Print Date/Time: 05/03/2013 08:46

Login ID: merrittj

Case Number: 2013-00008277

Bothell Police Department

ORI Number: WA0170300

up the phone because Evelina was yelling at him and not letting him speak. The second call came in at 1834 hours. Andrew answered the phone and Evelina began yelling at him again. During this call, Evelina threatened Andrew at least twice by saying, I am going to "murder you." Andrew hung up the telephone. At 1835 hours, Andrew answered the phone and spoke with Evelina briefly before hanging up because he could not get her to calm down. At 1838 hours, Andrew answered the phone and spoke with Evelina. Evelina told Andrew that he was going to be murdered. Andrew responded by telling Evelina not to come to his house or he would call 911.

Andrew told me that he did not want to release Olivia to Evelina because she made threats to kill him, she was not responding to him when Olivia needed care, she was committing DSHS fraud, and he did not feel she was in the state of mind to care for Olivia. Andrew provided a two page written statement, which I placed with the case file. Andrew advised that he did not want to prosecute at this time.

At 1931 hours, dispatch advised that Evelina called to request a welfare check on Olivia. Evelina advised that her ex, Andrew, had her daughter, Olivia, at his residence. She was concerned because Olivia had medical issues which she believed Andrew was not addressing. Evelina advised that Andrew had prior military service and he suffers from PTSD. Evelina advised that she spoke with Andrew at 1839, he sounded HBD and made threats toward her. Evelina advised that Andrew was heavily armed and 60% disabled.

Olivia was at the door with Andrew. Olivia smiled at me and told me hello. Olivia seemed to be well cared for, her cloths were orderly, she was clean and she appeared to be happy.

At no time during the investigation did I suspect Andrew had been drinking or consuming any illegal narcotics.

I spoke with Evelina, via telephone. Evelina advised that she was concerned for Olivia, as she has a pre-existing medical condition and she was supposed to attend an appointment with a specialist on Monday, April 15, 2013. Evelina advised that she had medical insurance for Olivia and Andrew did not.

Evelina denied the allegation Andrew made about her threatening to murder him. Evelina told me that Andrew threatened her when he told her not to come to his house or she knows what will happen.

I re-contacted Andrew to see if he would consider allowing Evelina to take Olivia to the doctor appointment and he refused. I asked Andrew about the alleged threat. Andrew told me that he told Evelina not to come to his residence or he would call the cops.

I re-contacted Evelina and told her that Andrew refused to allow her to take Olivia. Evelina requested my information, which I provided to her.

Prior history of DV:

Both parties alleged that they were assaulted in the past by the other. No information provided to me during the investigation suggested that there was a recent assault.

Both parties were advised to obtain a parenting plan. Both parties were advised where to go to petition for a court order. Neither party had any supporting evidence to substantiate their complaint.

Case closed. Documentation only.

Routing:

BOTHELL POLICE DEPARTMENT

CASE NUMBER
13-8277

Time: 1933 Hours

Date: 04/14/13

Place: BOTHELL, WA

STATEMENT OF

Name: ANDREW B. DANHOF Address: 14732 93 BLVA NE, H 208

BOTHELL, WA 98011

D.O.B. 10/11/82

Employed:

Tel: (206) 940-7134

YESTERDAY, APRIL 13th, I BEGAN TRYING TO CONTACT MY DAUGHTER'S MOM TO INFORM HER THAT OLIVIA (DAUGHTER) WAS SICK AND TO GET MEDICAL INFORMATION FROM HER (EVELINA BARKHARDIAN). I WAS UNABLE TO GET A HOLD OF HER YESTERDAY AND TODAY, I ENDED UP HAVING TO TAKE OLIVIA TO CHILDREN'S HOSPITAL TODAY. AFTER RETURNING OLIVIA WAS VERY TIRED AND I PUT HER DOWN FOR A NAP. I ATTEMPTED TO CALL EVELINA AGAIN TO LET HER KNOW WHAT IS GOING ON AND TO CONFIRM THE CUSTODY EXCHANGE. SHE DID NOT PICK UP. AT 6:30PM TODAY EVELINA CALLED ME AND WAS SCREAMING AND CURSING AT ME OVER THE PHONE. AS SHE CONTINUED TO YELL, SHE SAID "I'M GOING TO MURDER YOU" ON TWO SEPARATE PHONE CALLS AND AT LEAST 3 TIMES TOTAL. THIS IS NOT THE

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

I hereby agree to appear in Court and testify to the facts contained in this statement should such testimony be necessary for prosecution.

Witnessed: [Signature] 4/14/13

Signed: [Signature]

BOTHELL
POLICE DEPARTMENT

Statement of ANDREW B. DANLOF (continued)

CASE NUMBER
13-8277

FIRST TIME SHE HAS MADE THREATS ON MY LIFE. SHE OFTEN HAS BRAGGED ABOUT BEING FRIENDS WITH DANGEROUS MEMBERS OF ORGANIZED CRIME GROUPS. SHE STATED TODAY ON THE PHONE "YOU ARE GOING TO BE MURDERED" ONE TIME. MY REASONS FOR NOT BEING AT THE EXCHANGE TODAY WAS THAT I DID NOT KNOW IF SHE WOULD BE THERE AND THAT OLIVIA WAS VERY SICK AND SLEEPING.

I DO NOT WISH TO PURSUE CRIMINAL CHARGES, ONLY TO RECORD THIS

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

I hereby agree to appear in Court and testify to the facts contained in this statement should such testimony be necessary for prosecution.

Witnessed: [Signature] #0190

Signed: [Signature]



Incident Report



Print Date/Time: 05/07/2013 15:35
Login ID: merrittj

Bothell Police Department
ORI Number: WA0170300

Incident: 2013-00008277

Incident Date/Time: 4/14/2013 6:53:10 PM
Location: 14732 93RD BLVD NE h208
Bothell WA 98011
Phone Number: (206)940-7134
Report Required: Yes
Prior Hazards: No
LE Case Number: 2013-00008277

Incident Type: Threat
Venue: BOTHELL
Source: Business Line
Priority: Prior
Status: Prior
Nature of Call:

Unit/Personnel

Unit	Personnel
3B1	0198-Wilson

Person(s)

No.	Role	Name	Address	Phone	Race	Sex	DOB
	Reporting Party	Danhof, Andrew B	<UNKNOWN>				

Vehicle(s)

Role	Type	Year	Make	Model	Color	License	State
------	------	------	------	-------	-------	---------	-------

Disposition(s)

Disposition	Count
SS	1
RR	1

Property

Date	Code	Type	Make	Model	Description	Tag No.	Item No.
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Petitioner ~~Barud~~ 1/17

13-3-07923-6SEA

Evelina A. Barhudarian

-vs-

Andrew B. Danof

FILED
COURT OF APPEALS
DISTRICT OF COLUMBIA

MAR 17 2014

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
BY: PAMELA ANZAI
DEPUTY

Offered and Admitted

GUARDIAN AD LITEM REPORT
DATED DECEMBER 7, 2013

SEALED SUB

FILED

14 JAN 10 PM 2:03

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

**Superior Court of Washington
County of King**

In re:

Evelina Barhudarian Petitioner(s),
and

Andrew Danhof Respondent(s).

S.C. No. 13-3-07923-6 SEA

**Sealed Confidential Reports
(Cover Sheet)
(SEALRPT)
Clerk's Action Required**

Sealed Confidential Reports

(List documents below and write "Sealed" at least one inch from the top of the first page of each document.)

This cover sheet shall be used to file the sealed portion of the following reports:

- Parenting evaluations
- Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court
- Risk Assessment Reports created by a qualified expert
- CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services
- Sexual abuse evaluations
- Reports of a guardian ad litem or Court Appointed Special Advocate
- Other:

The sealed portion of these reports include: 1) Detailed descriptions of material, or information gathered or reviewed; 2) Detailed descriptions of all statements reviewed or taken; 3) Detailed descriptions of tests conducted or reviewed; 4) Analysis to support the conclusions and recommendations.

Submitted by: Melanie English, PhD, MSW

Notice: The other party will have access to these confidential reports. If you are concerned for your safety or the safety of the children, you may redact (block out or delete) information that identifies your location.

*Sealed Confidential Reports (SEALRPT) - Page 1 of 1
WPF DRPSCU 09.0270 (6/2006) - GR 22(e)(1), (2)(B), (f)*

SEALED

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

Evelina Barhudarian,)	
)	
Petitioner,)	S.C. No. 13-3-07923-6 SEA
)	
and)	
)	
Andrew Danhof,)	GAL REPORT
)	<u>REPORT DATE: December 7, 2013</u>
Respondent.)	

RE: The Welfare of the
Minor Child:

Olivia Estella Danhof DOB 01/31/11

I. NATURE OF CASE

This is a paternity case involving one minor child, Olivia (almost 3 years old). This matter was transferred to this Guardian Ad Litem (GAL) on 05/10/13 but case information was not provided to this GAL until August 2013. A new order appointing the GAL was then filed and noted a report date to be on 11/15/13.

Per the court order, the GAL "shall investigate and report factual information to the court regarding the issues ordered to be reported or investigated to the court. The guardian ad litem shall always represent the child's best interests. The guardian ad litem may make recommendations based upon his/her investigation. The guardian ad litem shall report the child's expressed preferences regarding the parenting plan to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding."

Barhudarian/Danhof GAL Report, Sealed Copy

The report was to include recommendations and bases for those recommendations. Issues ordered to investigate and report include: "all issues relating to development of a parenting plan, substance abuse of both parties, domestic violence of both parties and mental health issues of both parties." The order otherwise noted the "GAL shall also report to the court on any other issues discovered that could affect the safety of the child."

Work commenced in this case in September 2014. Trial for this matter is set for 03/17/14.

II. BACKGROUND AND CURRENT INFORMATION

Evelina Barhudarian (27) and Andrew Danhof (31) met and began dating in 2009 and moved in together just weeks afterwards and the mother became pregnant a few months into their relationship. They did not marry and have one child together, Olivia (almost three years old, born 01/31/11). The parties didn't specify in their parent questionnaire forms when they separated but documents in the legal file suggest they separated when Olivia was a baby and in the fall of 2011. Around this time and for about one year, they shared Olivia on a rotating week basis but both report issues, concerns and problems with the other parent when on this schedule. The mother said she was intimidated by the father and agreed reluctantly to the schedule; the father said the mother withheld Olivia from him on multiple occasions.

The mother petitioned for a parentage action in April 2013 and a temporary parenting plan was issued on 05/10/13. Per this plan, Olivia resides primarily with her mother and has residential contact with her father on alternating weekends from Friday at 5:00 pm until Sunday at 5:00 pm and one overnight visit on the alternate Wednesday from 5:00 pm Wednesday until 10:00 am Thursday. RCW 26.09.191 factors were reserved in the temporary parenting plan as the court found "insufficient evidence" to determine any and the issue was reserved. Sole decision making was ordered to the mother given the "history of conflict between the parties."

There is an extensive legal file for this case, including a petition from the mother for a restraining order against the father and the father petitioning for an Order for Protection against the mother (KC SC. No. 13-2-17134-1 SEA). The court did not find there was a preponderance of evidence establishing domestic violence and no order was granted. Currently, there are mutual restraining orders in effect.

The mother has another child, Allen (7), from a previous marriage and Allen has little contact with his own biological father. The father in this case and his current girlfriend, Natasha Rakish, are expecting a little girl to be born in Spring 2014.

Both parties disagree on the best schedule for Olivia, raise communication and anger issues against the other parent during the relationship and also during exchanges and report concerns about Olivia's health and caretaking while with the other parent.

III. INFORMATION FOR THE REPORT

This report is based upon the following information:

1. Office interview with the mother on 09/09/13.
2. Office interview with the father on 09/17/13.
3. Home visit to the mother's house on 10/14/13.
4. Observation of the mother and Olivia (and with her other child, Allen). The maternal grandparents were also present.
5. Follow-up interview with the mother on 10/14/13.
6. Home visit to the father's house on 10/25/13.
7. Observation of the father and child at his house on 10/25/13.
8. Follow-up interview with the father on 10/25/13.
9. Follow-up email and/or phone contact with both parents.
10. Review of references (see section VIII).
11. Consultation with professional GAL and parenting evaluator colleagues.
12. Review of all documents provided by attorneys/parties, including copies of text messages between the parties.
13. Review of father's VA documents, dated 04/26/11, which note the father is a veteran of the Gulf War and served in the army from March 2003 until September 2010 when he filed for disability. The VA noted the father was found to have PTSD with insomnia, depressive disorder NOS, and alcohol dependence in remission. He was also found to have an injury to his left ankle, right knee and left knee. The father was a recipient of a Combat Action Badge. This report states that "there was no available treatment records from the VA Health Care System" showing treatment for his insomnia. The father had reported (past) PTSD symptoms as "being short-tempered, nightmares with sweating, intermittent low moods; anxiety attacks; and sleep impairment." He also reported alcohol use from 2004 to 2008 (and completed treatment). The father's mental status examination showed he appeared agitated "but with fair affect, good communication and normal concentration." There was no evidence of suspiciousness; paranoia; delusions; hallucination; obsessions/compulsions; suicidal/homicidal ideation; or difficulty performing activities of daily living." Thought process was intact with "good judgment." Alcohol abuse in remission was associated with his PTSD. He was given a fair prognosis.
14. Collateral contacts:
 - Jessica Woods, Olivia's former daycare provider.
 - Molly Monroe, PA, Covington Urgent Care.
 - Dr. Benci Franklin/nursing staff, Olivia's pediatrician.
 - Dr. Benci Franklin, Olivia's pediatrician.

IV. RE: MOTHER (this section is self-reported)

When asked what her goals for the evaluation were, the mother said she wants Olivia to be safe and happy and not to be impacted by her parent's separation. She indicated she feels "really bad"

about the child custody dispute and wants Olivia to feel "safe and stable." Her opinion is that Olivia should reside full time with her. She believes Olivia has a strong bond with her, is attached to her brother and parents and that the father has some issues. The mother believes every other weekend with the father is a possibility. The mother doesn't like the current schedule and reported the Wednesday visit is too short and Olivia "comes back very cranky. She thinks the father also wants Olivia full time with him.

The mother discussed their relationship history and how they met in 2009. She said he has a "very nice, soft side" and was in the military for 8 years, including 3 1/2 tours in Iraq. During their dating, things were "pretty mellow" but she recalled a few occasions of the father crying on the floor which she figured was him "unwinding" from being a soldier.

They began living together soon after meeting and the pregnancy was a surprise, but "he seemed to do OK" with it. The mother said the father has two sides, "hot and cold," and that he can be "nice and then very scary." She related the father smashed things in their house, including breaking a door, punching a wall, and an armoire. She said they had "numerous arguments" which no one won. One time, before her pregnancy, she said he came over "to try and punch me but he hit the headboard and then rocked me on the bed." She expressed worry he might do something like this if he was upset with Olivia and that he can snap and be "so overpowering." She said she never called the police as she was worried he would be more upset. In September 2010, she said he hit a plate and hurt himself because of it. She said there would be many occasions of Olivia crying and that when she would try and check on her, the father would allegedly grab and push her aside. She thought he did this because it was his way of discipline and parenting. She reported the father is disconnected from his own family and witnessed physical fighting between his mother and step-father as a child.

The mother talked about her own family and how she lives with her parents. She said she was born and raised in Turkmenistan and moved to the United States when she was 13 years old. She said she was "raised with a lot of love and respect." When she was nearly 18 years old, she married her high school boyfriend and stated he is the father of her other child, Allen (age 7). The mother said this marriage did not work out and her ex-husband "didn't take much interest in me or Allen." The mother said she has a parenting plan with her ex-husband stipulating he has every other weekend with Allen but according to her, he doesn't participate much and is "very passive and irresponsible." She reported Allen is doing well in school and socially.

The mother talked more about the father's anger and said he can curse and spit and she feels "so overpowered by his character." She said he has blocked doors and tried to kick her away. Another time, she said he smashed her phone after she was invited out by a friend. According to her, "he had something negative to say about everyone." The mother said the father's violence was directed at others and recalled a time when they were driving and another car was following them too closely. The mother said the father had a loaded gun and drew it half-way out the car

Barhudarian/Danhof GAL Report, Sealed Copy

window with Olivia in the back seat. She felt the father had "no regard" for people on the road and would speed. She said he would practice his gun draw at home and she didn't like that.

When they separated, the mother said she was still breastfeeding and that the father would keep Olivia longer than what was agreed between them and that this it was difficult to still nurse her. They gradually got into a 50/50 pattern but the mother says she wasn't happy with that arrangement. According to her, there were threats from the father and he called her a worthless immigrant and that he would take Olivia away from her. The mother said she was scared to go against the father and their 50/50 schedule was in place for about one year. She indicated the father didn't communicate things with her about Olivia, like her daycare and that "he'd say she was great but she'd come back sick." The mother said Olivia would return to her house with "fever, dehydration, vomiting and diarrhea" and she felt "consumed with doctor visits." Exchanges of Olivia were "so aggressive" and she said the father would bring his firearm and Olivia would "kick and scream." She said the father once "ripped her out of my arms" and held Olivia down in her car seat while she was screaming, 'Mommy.' Last year, the mother said the father hit her with the car door and "sped off like a lunatic."

The mother said Olivia would come back with diaper rash and she would "get her better, he'd get her worse." She said the father was not involved in medical decisions or appointments for Olivia. During exchanges, she said the father would yell at her and said "he would gladly snap my little neck in half." The mother said her parents began assisting with exchanges so she wouldn't have to see him anymore. She said the father would be 30-45 minutes late for exchanges and once she thought he was drinking when she spoke to him over the phone. She said he told her Olivia would not be returned to her and that he has yelled profanity at the mother in front of Olivia. She said the father alleged she threatened his life, which she denies.

The mother said the father has videotaped her at exchanges and tried to push her out of the way. She has concerns about him posting pictures of Olivia online. She acknowledged she was ashamed and regretted saying negative comments to the father during text exchanges but reports Olivia had been very sick at the time after being returned from the father.

The mother said she isn't working now as she cares for Olivia and Allen. She is worried about the father's stability.

V. RE: FATHER (this section is self-reported)

The father stated his goal in the parenting evaluation was to return to a 50/50 schedule but he also would like to consider being Olivia's primary parent. He noted there have been many ups and downs in the litigation and he hopes the mother will settle down.

The father talked about meeting the mother in late 2009 and indicated they began living together about one month later. He said the mother stated her previous boyfriend was physically abusive

Barhudarian/Danhof GAL Report, Sealed Copy

to her. The father acknowledged he didn't have many previous relationships as he was enlisted in the military from November 2002 until September 2010. According to him, the mother was controlling and manipulative with him. He felt like she would act like she was cheating on him and would then "rub it in my face." He felt she flirted with other men and when he was ready to end the relationship, he learned she was pregnant. He said the mother kept accusing him of cheating. He talked about her family and noted her father is "very nice, very respectful--a gentleman" and that her mother is "the sweetest lady ever." He noted her family has had screaming matches and that the mother's son, Allen, talks back and is "an out of control kid." He met Allen's father a couple of times but said he wasn't active with Allen.

The father said he is currently employed by a small industrial equipment company and often travels to four different local locations but can set his own hours and schedule. He works more when Olivia is not in his residential care.

The father feels the mother bullies him. He noted she "drives expensive cars but is on welfare." He said while they both drove BMW cars, Allen qualifies for free day care and while they were dating, they "lived beyond our means." The father said the mother often threatened to leave him and their relationship was tough. He said the mother would "smack me across the face with her hand." Physically it didn't bother him but he says she would do it in front of the children. After Olivia was born, things were a little better in their relationship but he says the mother would take off when he got home from work and would be out for 5 hours. He noted the mother breastfed Olivia but when she left, Olivia would be without milk such that one time he had to go buy formula and bottles because there were none. Sometimes the father would lock himself in the bathroom in order to keep the mother away from him.

In October 2011, he went to a week long training and said the mother was very upset about this and was allegedly partying while he was gone. When he returned, he indicated the mother was upset and "was full on hitting me in the face. I put my hand up to stop it and grab her wrists. Then I realized this was done." He said he had never touched or grabbed the mother before and that the mother didn't call the police during this incident because she was the one who allegedly hitting him. The father said he didn't call the police because he is a 200 pound combat soldier, has pride and "she is the mother of my child." He noted the mother had also once made a huge scene and threw back her engagement ring at him.

The father said he begged the mother to go to counseling with him but she did not agree. He said he is involved with drop-in counseling programs at the VA and feels he has been doing "great" the last couple of years. Prior to that, he had night sweats but said he has not participated in any formal therapy and couldn't remember any specific person he met with at the VA. He denied any medications or history of medications but reports he does have a PTSD diagnosis and received disability because of this. According to him, the PTSD "doesn't affect me now but I keep the disability in case I need services in the future or if I get nightmares." The father acknowledged

Barhudarian/Danhof GAL Report, Sealed Copy

he was in "a lot of combat" but his last tour was in 2007 and he has lots of emotional support by his father and step-mother. The father acknowledged his brother has a substance abuse problem but is "a good person" and "doesn't have access to Olivia." The father indicated he feels stable, is working and in a positive relationship the last two years with Natasha Rakish.

After he and the mother went their separate ways, he asked her for a rotating week schedule and said she said yes to this. He found daycare for Olivia during the week that she would reside with him and a 50/50 schedule commenced around November 2011. Despite this, the father said there were several times when the mother would keep Olivia from him and that she would show up as much as an hour late. In December 2012, he said the mother told him over the phone that she was going to put a bullet in his head. After this, the father admitted he started recording every interaction with the mother and at the time of his interview, he noted he was still recording but only on his property. He says he has done this to protect himself.

The father has concerns with Olivia being cranky and napping as soon as she comes to his home. He said the mother blocked him from getting medical information for Olivia and that more than once he has had to take Olivia to the doctor without knowing her medical history. When he tried talking to the mother about this, he says she threatened to murder him, which was a comment that the father said "holds weight to me." The father acknowledges he does own firearms but says there are in a safe and "away from little fingers." The father denied drinking before an exchange in April 2013 and denied making threats to the mother to snap her neck. The father said he wants to get along with the mother "as friends" very much. He said he does not want to remove her from Olivia's life and noted he and the mother have both filed reports against the other. The father said he previously petitioned for a restraining order against the mother after alleging she physically took Olivia from his arms during a doctor's appointment.

The father talked about the current parenting plan and became emotional, saying it's "terrible" with the limited amount of time he has with Olivia. He talked about his current partner, Natasha Rakish, and stated they have known each other for 10 years and are expecting a baby girl in the spring. He says Olivia calls her 'Sasha' and he feels they get along great. He said they will be getting married in the future and that Natasha will be staying home with the baby and able to care for Olivia. The father said he has also been researching daycares in Covington and he and Natasha have recently purchased a home together.

The father believes the future can be better and he is "more than willing to give [the mother] more time than what he [initially] proposed." He believes Olivia gets along "great" with her mother though he and the mother don't have a lot of interaction anymore. He noted this is a challenge in that he and the mother have no means to communicate with one another. He supplied copies of text messages and pointed out the mother can be difficult and accusatory to talk with. The father noted he thinks the mother believes that either he stalks her or is a dead-beat dad. He stated he has never tried to be a dead beat dad and loves Olivia very much.

VI. RE: HOME VISITS

At both homes, Olivia (2) presented as a very engaging, sweet, social, confident, friendly, bright and outgoing little girl. With both parents, she was physically affectionate, responsive, expressive and pleasant. In turn, both parents were patient, soft spoken, encouraging, smiling and pleasant around her. Both parents noted no specific concerns with her behavior or development. Olivia has been potty trained for several months already.

The mother is currently residing with her parents and her son Allen (7) in a nicely decorated and large house in Renton, Washington. Allen was present during the home visit and presented as very polite, obedient, friendly, appropriately humorous and very sociable. Olivia interacted positively with him and was giggly and playful with Allen. Olivia and Allen have their own rooms and there were no concerns with the home environment.

During the home visit, Allen showed off his many school and achievement awards and also demonstrated some Tae Kwon Do. He spoke easily about his activities and interests and mentioned Olivia in them. He helped give a tour of the house and Olivia followed and made conversation when she could. Olivia, Allen, the mother and this GAL spent time in the play room together where Olivia became a little rambunctious throwing toys. The mother relayed she speaks mostly in Russian to Olivia. She redirected Olivia when she threw things and Olivia obliged. The mother said Olivia is not usually disobedient and throwing things. Allen demonstrated some video game skills and was mostly responsive when the mother told him his turn had ended. The maternal grandmother was also present for part of the visit and noted that while English isn't her first language, she has concerns about the father's stability and temper.

Downstairs there was a framed photograph of Allen and his father and Allen pointed this out casually to the GAL. He also joked he has a lot of toys. The mood was light and pleasant and Allen was very talkative. The mother was appropriate, attentive, patient and relaxed around Olivia and Olivia was appropriately responsive and interactive with the mother.

The father resides with Natasha Rakish in a three bedroom house in Covington. Olivia has her own room and the house was nicely decorated with no concerns. This GAL had a private interview with Ms. Rakish until the father and Olivia returned from an exchange. When the father and Olivia had arrived, Olivia had just fallen asleep in the car and Ms. Rakish stayed with her in the car for a few minutes while the father and GAL spoke. The father then went to get Olivia and brought her into the house. Olivia was visibly sleepy but somewhat awake. She cuddled with her father on his lap and with her arms around him. The father noted Olivia often falls asleep when driving home from an exchange and he has no idea if she has napped or eaten since he has no contact with the mother.

Olivia slowly woke up and was a little quiet and shy at first. The father spoke calmly to her and she was responsive and affectionate with him. Olivia eventually agreed to give a tour of the

house and put on a princess dress which she was excited about. She was chatty and playful and the father and Ms. Rakish were appropriate and interactive with her. The father talked about how he and Ms. Rakish are expecting a baby girl in the spring and that she will likely have a crib in Olivia's room (which is right next to their room). They weren't entirely sure if the mother knew Ms. Rakish was pregnant or not but they indicated they are very excited. The house was baby proofed and tidy, had age appropriate toys and Olivia was affectionate with Ms. Rakish (and her father).

VII. COLLATERAL CONTACTS

Jessica Woods, Olivia's former daycare provider. Ms. Woods reports she provided child care for Olivia from fall 2011 until April 2013. Olivia would attend day care during the weeks she was residing with the father and was with Ms. Woods from 8:00 am until 5:00 pm. Olivia was around 9 months old when she first began with her. Ms. Woods thought there was a slight adjustment for Olivia getting used to day care, especially every other week, but that after a couple of months "it wasn't a big deal" and "she was always happy to come." She said Olivia exhibited no fear of the father leaving and there was no distress in being dropped off.

Ms. Woods indicated Olivia was always prepared for day care and that the father had an "overflowing" diaper bag stocked with extra clothes, diapers, snacks and toys every day. She said the father was consistent in dropping off Olivia and picking her up at the same times and that the father always appeared pleasant. Her opinion was that the father and Olivia "obviously loved each other." Ms. Woods did not have any contact with the mother.

She reported Olivia frequently had diaper rash and that she and the father would treat it during his week but that she found the diaper rash would return after visiting with her mother. Ms. Woods acknowledged that Olivia probably had sensitive skin and "was prone to diaper rashes." She is aware there wasn't much communication between the parents.

Olivia left her day care when she was about 2 years old and Ms. Woods said she had developed into a "very sweet, snuggly, silly" child with no concerns and no abnormal behaviors. She said Olivia laughed a lot and was not mischievous. She reported the father was "really a great Dad" and she was surprised to hear there were allegations of him not being fit or stable.

Molly Monroe, PA, Covington Urgent Care. Ms. Monroe contacted this GAL after she had seen Olivia in the urgent care for a high fever in November 2013 and had a release signed by the father to communicate about her experiences of witnessing the parents communicate. While Olivia was being assessed, she said the father called the mother on his cell phone and she could hear the mother on the other end. It was her opinion that the mother sounded very "accusatory." She thought there was very poor communication by the mother and that she denied knowing anything about the fever and blamed the father for it. Ms. Monroe said the father "did a great job with Olivia" during the hospital visit and added that "fevers happen--it is no one's fault and can

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spike quickly."

Ms. Monroe said the mother called the father back and threatened to come down to the urgent care. Ms. Monroe indicated the office "didn't want any drama" as they were tending to Olivia, who was eventually fine and that the father told the mother not to come. Ms. Monroe said the father's girlfriend was also present and both she and the father appeared "very loving and concerned" toward Olivia. Ms. Monroe noted she would be very concerned for Olivia picking up on negative comments or communications between her parents.

Dr. Benci Franklin's nursing staff, Olivia's pediatrician. Dr. Franklin's nurse, Camille, reviewed Olivia's records and file and reported Olivia was last seen by Dr. Franklin on 10/23/13. She noted the mother had reported Olivia was wetting the bed at night but this wasn't a concern for Dr. Franklin since Olivia is only 2 1/2 years old. The mother had also reported seeing discharge on Olivia's underwear but a culture revealed everything was normal.

Camille reported the father had recently taken Olivia to urgent care in Covington and she had reviewed the notes from this, which reported no significant concerns. Her review of notes was that there was some hostility overheard from the mother toward the father.

Other past medical notes about Olivia included a mild limp after she had been jumping on a couch, which was "nothing significant" and a cut on her forehead in August 2013 when she was with her mother and tripped and fell. This required 2 stitches. Everything else in her chart suggested things were normal and she affirmed that Olivia is up to date on her immunizations.

Dr. Benci Franklin, Olivia's pediatrician. Dr. Franklin reported that overall Olivia is healthy, "quite bright and developmentally doing great." He noted there have been a few medical problems with her historically but nothing serious. He discussed how it was thought she previously had a urinary tract infection (UTI) but this wasn't the case. She also had a liver issue but this "went back to normal." He does not really know the father.

Dr. Franklin reported to this GAL that the mother has a "litany of negative things" against the father and that mother can be "extreme" in thinking the father is a horrible person and responsible for any of Olivia's illnesses. He indicated the mother comes in to see him frequently and usually when Olivia has just returned from her father's house. He indicated the mother can be obsessive in how horrible the father is and that the grandmother has come in with the same comments. Dr. Benci says he had had around 15 experiences with the mother and she reports "over the top" health concerns about Olivia but he has never seen anything to support those concerns or suggest any abuse or neglect by either parent. He indicated she goes to the emergency room on a frequent basis and has "abused the system" in that she is reporting concerns to be examined which most normal parents wouldn't be upset about.

Dr. Franklin also knows the mother's child, Allen, and reported while this may be a cultural thing, the mother also describes Allen's medical issues in a very extreme, dramatic and exaggerated way when there is "usually not much" to the symptoms. He indicated she is "extremely anxious" and has reported the father is evil and should not be involved. He reported Olivia has heard the mother say these things "a million times." He is aware that the father recently brought Olivia to urgent care with a spiked fever and that the mother reported the father didn't tell her anything, which was also a concern for him since he feels the mother and father "need to be able to communicate."

VIII. PERSONAL REFERENCES

The following references responded to a written questionnaire form and their comments are condensed.

The **mother's references included her mother and sister.** Both supported her parenting, supervision and relationship with Olivia. Her sister reported Olivia has been returned to the mother after spending time with the father having scratches and bruises and that she doesn't think the father seeks medical help when needed as Olivia is often returned to her mother when she is sick. Her sister reported she had witnessed the father being drunk and assaultive at a wedding and that he had to be escorted out. She also reported that Olivia is sleep deprived when coming back to the mother and that the father doesn't return items and doesn't dress Olivia appropriately.

The mother's mother reported the mother moved back home in November 2011 and described her to be "one of the most dedicated moms I know." She spoke positively about the mother's parenting and discipline and described the mother to have "a very soft personality by nature." She said the father used physical force when disciplining Allen and that the father would exhibit violence and aggression to the family. She described a time when Olivia was crying and the father would not allow the mother to go check on her in her crib. She also said the father used obscene language to the mother in front of the children. She gave other examples of conflict by the father and said these have occurred in front of Olivia.

The father supplied copies of declarations in the legal file but did not return any reference forms. His girlfriend, **Natasha Rakish**, was interviewed at his house. Ms. Rakish said she has no other children and has not been married before. She has worked as a salon manager for the past 5 years and has known the father for 10 years, keeping in touch periodically. They have been dating for two years and she described it to be a "wonderful relationship." She doesn't know the mother personally.

Ms. Rakish reported she doesn't see any PTSD symptoms or anger in the father and described him to be "very submissive." She indicated she is aware of what PTSD is and how it can manifest and pointed out it can be caused by different kinds of trauma, including car accidents, and she doesn't see any symptoms or have any concerns about the father's mental health or

stability. She spoke positively about his parenting and their relationship.

According to her, the custody dispute has allowed the father the designation of when he gets to see Olivia and that is an improvement from previously when she indicated the mother would often withhold Olivia from him. She noted the father doesn't have the mother's telephone number and if there is an emergency, there is no way to get in touch with her. Ms. Rakish indicated Olivia is attached to her father and that "for a long time, she would not want to go with her mom and would cling to her father" before an exchange. When Olivia first comes to stay with them, she needs some structure and reminders before settling in. Ms. Rakish said they have heard Olivia "say the F-word and shit," that she has said 'shut up' and used swear words in other contexts, which Ms. Rakish indicated is not used in their household. She discussed the rules of their home and that they don't allow more than 1 hour of television for Olivia and that the father enjoys reading, coloring, bath time and play time with her. Bed time is around 8 pm or 8:30 pm. Ms. Rakish said Olivia often falls asleep in the car after an exchange and sometimes that can make it difficult for her to fall asleep later.

Ms. Rakish is aware that the parents have no communication with one another about naps, health or other things. She discussed discipline and reported they typically give Olivia a time-out where she will "put her hands on the wall for 20-30 seconds" to calm down. Ms. Rakish says she knows the father's family well and that they get together often.

She reports she doesn't drink (she is pregnant) and that both of them do not use substances. Occasionally, the father will have a beer with dinner and prior to her pregnancy they would go out sometimes. She feels the relationship ended between the father and mother because they weren't compatible and that the father said the mother was very controlling. She denied any domestic violence or substance abuse by the father.

Ms. Rakish said Olivia recently told them that her mother bit her and showed bite marks on her arm. Another time, Olivia said her mother hit her. Ms. Rakish denied anything on her adult criminal background. She said she had an incident as a teenager talking back to her parents and then running away from the police.

IX. ANALYSIS OF INFORMATION:

This case was referred for an evaluation and recommendations which will maximize Olivia's emotional, physical, academic and psychological needs while protecting her from any risks to her emotional and/or physical health. Both parents were timely, appropriate and cooperative throughout the evaluation process. They have many of the same allegations against the other--of anger, yelling, neglecting Olivia, domestic violence towards the other, not tending to Olivia's health, being responsible for her illness/diaper rash, not communicating with the other and trying to keep the other from Olivia. The biggest concern in this case appears to be the ongoing litigation, Olivia's young age (she is almost three), the very poor and somewhat hostile

communication between the parties, the geographic distance between them and the difficulties in recommending a parenting schedule that will meet Olivia's needs for the next 15 years, especially since neither parent trusts the other and there is no clear history of cooperation.

Regardless, the parties need to have some parameters for straightforward, indirect communication with one another despite their history of conflict. They still need to be able to communicate about Olivia, for Olivia's sake, and should utilize a notebook brought to each exchange detailing Olivia's moods, health, diet, issues, if she has napped, etc. Both parents' comments in the notebook should be related to Olivia only and hopefully will eliminate the parties from texting each other (unless there is an emergency). This book could actually be a memento for them to keep and show Olivia later on so she can see her milestones and life as a young girl (and should hopefully be an incentive for the parents to use respectful, "Olivia centered" language).

Recommendations for a residential schedule pose some challenges given the father's work schedule and the mother's availability during the day. A mid-week visit for Olivia doesn't give her much quality time at her young age and is a disruption to her week routine--requiring her to quickly adjust between two households. As she gets older, the following recommendations may change and unfortunately, that may require the parties to review their plan.

To aid in recommendations for a final parenting plan and decision about Olivia, **the criteria for establishing a parenting plan are reviewed as follows:**

The relative strength, nature and stability of the child's relationship with each parent: In this evaluation, both parents were appropriate, cooperative, timely, calm, focused on Olivia, and open to any suggestions to help. Though both parents have concerns about the other's relationship with Olivia and parenting, she appears to have attachments to both parents that were observed during both sets of home visits and which were supported by collaterals.

Given Olivia's young age and the parties' very short relationship together, they have not had extended opportunities to observe the other's parenting and see any relationships growing--they are left to speculate and guess based upon their negative reception of the other. They probably have also not had the opportunity to talk in detail about their parenting goals, questions and concerns for Olivia's long term development, health, etc. Luckily, Olivia appears to be doing well socially and developmentally, but this may change if the parents (regardless of who does it more) cannot control conflict.

Co-parenting counseling was considered as a recommendation for the parents, but it doesn't appear like it would logistically work given the parties' geographic distance, their demands with other children and family, the father's work schedule, their allegations against one another and the parties' financial state. A concern about co-parenting counseling would be that each party

would analyze their past relationship, however, if they both were to agree to participate in some short term co-parenting counseling, they could theoretically have better, monitored, structured conversations about Olivia. This is not formally recommended but would be supported if the parties both agreed to it. Note that co-parenting counseling does not imply they are always in the same room together. The co-parenting therapist would need to have a background in high conflict couples.

The agreements of the parties, provided they were entered into knowingly and voluntarily: Does not apply, though the parties did agree to a rotating week schedule previously. The mother indicated she was intimidated by the father and that is why she agreed to it. This GAL would not have supported a rotating week schedule for a child as young as Olivia, both then and currently.

Each parent's past and potential for future performance of parenting functions, including whether a parent has taken greater responsibility for performing parenting functions relating to daily needs of the child: The parties have had a relatively short relationship history together and almost half of Olivia's life has been in litigation with her parents. Since the current parenting plan has been in effect, Olivia has been residing solely with her mother, who has been a stay at home mother since Olivia was born and Olivia is likely used to this schedule and her care during the week.

A noteworthy issue is the father's mental health though the information reviewed for this report suggests no serious, current issues from him which impact parenting. There was no further information from the VA (as they often typically do not wish to get involved in custody disputes) but what was reviewed suggests (and implies) that they are working with the father as need be, which would be expected and that he would have already been scrutinized in many ways to determine his stability in order to receive his discharge and disability. Of concern is that he doesn't appear to be in any individual therapy (he reports dropping in periodically but not working with one specific person) and while this may not have been formally recommended by the VA, this GAL supports individual therapy for the father to have a neutral place to discuss any remaining or resurfacing issues with his PTSD and also as a way to discuss and receive resources related to parenting, anger, frustrations with the mother and/or anything else. The course and focus of individual therapy can be agreed between the father and his therapist and therapy can commence through the VA. This GAL would recommend a minimum of 30 sessions of therapy (which is about 6 months if attending weekly) and he should follow any recommendations made therein after completion of a minimum of 6 months.

Another noteworthy issue is the collateral information and review of text messages noting the mother's anger and bad-mouthing of the father, which is addressed further in the coming section of this report. Only the mother can control what she says around Olivia and it is expected that the mother can learn to understand that her use of language will affect Olivia's perception of both

of her parents and herself. It may be the father has also engaged in abusive or negative language (as the mother has alleged) and the expectation applies to him also.

There is no easy clear opinion on assessing the allegations of violence between the parties. Both allege the other to have been violent, physically and emotionally and it seems the relationship was highly conflictual and volatile. The parties described more times of conflict with the other than times of peace, cooperation or fun in the relationship. It is hoped that any anger issues by either parent can be addressed in therapy. A primary aggressor can't easily be determined.

The emotional needs and developmental level of the child: Olivia is 2 years old and appears socially and emotionally healthy. Collaterals and her pediatrician confirmed this. Both parents should appreciate that Olivia appears to be doing so well and is not displaying any serious behavioral concerns, physical or learning concerns or other developmental issues at this time. Given that she has witnessed name calling, yelling, conflict and more between or by one of her parents, she could have feelings of confusion, hurt, anger or sadness in the future. A noteworthy concern is what Olivia's doctor's office reported to this GAL about the mother speaking negatively about the father in Olivia's presence on multiple occasions. Olivia is old enough now to pick up on this. Put-downs of the other parent are a put-down of Olivia as she is a product of both parents. Negative comments about another parent in front of the child can greatly upset that child, as the child likely loves both parents and has relationships with both parents, like Olivia does. Negative comments can be internalized by a child and can also lead to the child feeling resentment at the parent making the comments. Both parents in this case will need to find some strengths from their (past) relationship so that when Olivia asks about their relationship as she gets older, she has the benefit of seeing and hearing positive comments. She will never see her parents living together or experience simultaneous joys with both parents; it is their duty to shield her from negative comments and try to support Olivia's relationship with the other parent.

Another concern is regarding Olivia's health. Both parents purport concerns to varying degrees about the other neglecting Olivia's health (colds, fever, diaper rash, bruises, scratches, etc). The information reviewed for this report suggests the real problem is that while children do get sick and fevers do come and spike quickly, *the biggest issue is the lack of communication between the parties and both of them accusing (or implying) the other is responsible for her sickness--and sickness and modest cuts and bruises can and will happen regardless.* If the parents can effectively communicate via notebook (or co-parenting therapy), they would better be able to proactively address Olivia's sickness, health, naps, etc. Olivia needs the same kind of schedule at each house for naps and routines. She also deserves both parents communicating neutrally with one another in the event she is sick. If the parents look at it from Olivia's perspective, she may likely want both comfort and contact with both parents if she is sick.

This leads into decision making. At this time, the parties have no established skills to communicate or make decisions together. The mother should have sole decision making *until*

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the father has completed 30 sessions of individual therapy (as outlined below). This delay hopefully allows for a slight cooling off period between the parties while they both participate in therapy and hopefully settle their case and cease litigation. The mother still needs to provide health information, history, notice of appointments and more to the father during this brief time period and both parents should recognize that most decisions are day-to-day ones with children; very few are major at this point/age.

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: Olivia appears well loved by her parents and extended family (a real benefit). Collaterals suggest no developmental concerns with her other than communication problems between the parents.

At her mother's house, Olivia has attachments to her grandparents and brother and at her father's house she has a growing relationship with his girlfriend and will soon have a baby sister. It is hoped the extended family members will not disparage the other parent and Olivia can learn to enjoy having extended sets of families and traditions with each. Olivia is also a bi-lingual child and this is something both parents should keep in mind when understanding the world according to Olivia and how she reports, talks or shares information (which may not always be accurate). The father is encouraged to support her being bi-lingual and take any steps, classes, read books, etc. which he feels would be helpful.

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: Does not apply.

Each parent's employment schedule, and shall make accommodations consistent with those schedules: The following schedule was created around the father's work schedule and since the mother is not working. A concern in any kind of week day schedule is that Olivia would be in limited child care during day time visits during the father's residential time. While she fortunately adjusted well previously to this (per her previous day care provider), she is old enough now where they may be more adjustments, questions or difficulties. Plus—it does not give her any bonus time with the father as he would be paying for her to be in child care and she would not see him until after work. Though his girlfriend, Natasha Rakish, may not be working once their baby is born, having her care for Olivia during the father's weekday residential time is not necessarily ideal either as she will be very busy with a new born and Olivia's mother is able to care for her during that time. The father and Olivia should have time together, however, and it appears the best way to maximize Olivia's time with both parents is for her to have residential time with her mother during the week and residential time with her father on the weekends, as outlined below.

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Mid-week overnights are not recommended to continue at this time given Olivia's young age for so many transitions and the tension between the parties surrounding this issue, which Olivia may pick up on, however, in the future, the father should have a consistent dinner date each week with Olivia which could likely be an overnight in the future under different circumstances. When Olivia starts pre-school or kindergarten, his weekends should include Sunday overnight with a drop off at school Monday morning.

Olivia is young enough where she cannot predict and understand the schedule, but the recommendations below do allow for her to have weekly, quality blocks of time and overnights with each parent without much disruption and back and forth.

The purpose of this evaluation was not to determine who the best parent is but to make recommendations for a schedule that will not negatively impact Olivia and which will allow for her to have some continuity and structure which is important for a child of her age. Both parents have allegations and some challenges, but also have obvious strengths and love for Olivia. She will fare better by having both of them in her life and having each parent support the other as best as possible.

Under these recommendations below, Olivia sees both of her parents each week, with some blocks of time with each. At this time, the parents don't have the communication skills or geographic proximity for a shared residential schedule and Olivia is too young to be apart from one parent for an extended period of time. Further contact or changes from what is noted below may be difficult for the parties given increased exchanges and back and forth for Olivia.

The parties will most likely need to revisit this schedule when/if their work schedules change and as Olivia gets older and starts school. It is expected that both parents will be involved with Olivia and any future changes to the parenting plan will be in good faith and to allow each parent to be equally involved with Olivia as best as possible.

XI. RECOMMENDATIONS

This evaluation has concluded there are no RCW 26.09.191 restrictions for either though abusive use of conflict was considered.

1. **Residential Time:** Olivia should reside with her mother and father as follows and this schedule is based upon the parent's schedules and her young age. Olivia should have residential contact with her father the 1st, 2nd, 4th and 5th weekend (when available). Time should begin after the father's work (or 5:00 pm until Sunday at 5:00 pm). When Olivia starts pre-school or kindergarten, the father's residential weekend should extend to Monday morning drop off at school and should include a weeknight play date/dinner near her mother's house (perhaps after school until 7pm).

In addition, the father should have three day weekends and special occasions as noted below.

Third parties should continue to assist with the pick-up and drop offs.

2. **Vacations when Olivia is 5 (school age):** For Christmas (winter) break, one parent should have the child from 5:00 p.m. on the last day of school before the break through Christmas Eve at 7:00 p.m. and the other parent should have the child from Christmas Eve at 7:00 p.m. until 6:00 p.m. the day before school begins (mother the first half in even years, father the first half in odd years). The mother and father should alternate spring vacation with Olivia, with the mother in even years and the father in odd years. When Olivia turns 6, each parent should have up to two weeks of uninterrupted time with her each year.

Prior to school age, Olivia should have up to three consecutive days with her father around each Christmas. Christmas Eve and Christmas Day should be rotated between the parties.

3. **Holidays:** Parents should alternate the following holidays (assuming both of them do not work on these days): Martin Luther King Day (mother even, father odd), President's Day (mother odd, father even), Memorial Day (mother even, father odd), July 4th (mother odd, father even), Labor Day (mother even, father odd), Veterans Day (*every--father*), and Thanksgiving Day (father even, mother odd). When Olivia is three years old, holidays that fall on a Friday or a Monday should include Saturday and Sunday. Thanksgiving should be defined as 5:00 p.m. the day before Thanksgiving to 6:00 p.m. the day before school begins.
4. **Special Occasions:** The mother should have Olivia for her birthday and Mother's Day, and the father should have Olivia for his birthday and Father's Day. The parents should detail other special occasions on their parenting plan (*such as sibling birthdays, grandparent birthdays, or other religious holidays and events, etc.*). The father should have Olivia on her birthday in even years and the mother should have Olivia on her birthday in odd years.
5. **Decision making:** Each parent should make decisions regarding the day-to-day care and control of the child while the child is residing with that parent. Either parent can make emergency decisions affecting the health or safety of the child.

The mother should have sole decision making *until* the father completes a minimum of 30 sessions of individual therapy. Once complete, his therapist can write a letter to the mother and decision making should then be joint. At that time, both parents should then have joint decision making for major decisions such as education, non-emergency health care and religious upbringing. In the event the mother wishes to make any *major* decisions in the next few months (prior to the father's completion of therapy), she should submit the decision in writing to the father. Major decisions in this time period are not expected and both parents

should know that most decisions are not major ones, but day-to-day ones when Olivia is in their care.

6. **Dispute Resolution:** If the parents have disputes regarding the parenting plan, they should submit the disputes to mediation.
7. Both parents should use a notebook during exchanges which details Olivia's nap schedule, diet, routine changes, appointments, health, etc. It is each parent's responsibility to bring the notebook to each exchange. If Olivia has any medications (including over the counter medications and/or things like diaper rash cream), each parent should detail the exact medication brand, amount, times and dosages given. The parents shall speak to each other only regarding issues relating to the child's health, welfare, education and the parenting plan issues and consider Olivia reading the notebook when they are writing in it.
8. The father should participate in a minimum of 30 sessions of individual therapy with a minimum of a master's level therapist through the Veteran's Administration. It is expected that therapy would begin within 30 days of the release of this report and that a minimum of 30 sessions would be completed within one year or less. Focus of treatment can be determined between the father and his therapist. The father should supply a copy of this 22 page GAL report for reference. The father should follow any recommendations made therein.
9. The mother is encouraged to participate in individual therapy and length of therapy should be agreed upon between the mother and therapist. The therapist should have a minimum of a master's degree and background in counseling, psychology and/or social work. The mother should supply a copy of this 22 page report to her therapist. It is expected that therapy would commence within 30 days of this report and would cover stress tolerance, communication and other parenting issues.
10. Each parent shall notify the other parent by text as soon as reasonably possible of when there is an issue related to the child's medical care. Texts should be respectful with no name calling and factual information only.
11. The parents will give the child all medication when and as prescribed by a doctor.
12. It is expected that the parenting plan residential provisions will be flexible and adaptable in accordance with the child's changing needs. As the child increases in age and maturity the child's needs and desires will become increasingly important and will be considered by both parents in scheduling residential time.
13. Both parents may participate in school and extra-curricular activities for the child regardless

- of the residential schedule. Both parents shall be cordial and friendly during any such events for Olivia's sake.
14. Both parents shall have full access to school, day care, medical and other records of the child. Both parents will advise the other parent in advance of the child's doctor, dentist and counseling appointments. Both parents shall have equal and independent authority to confer with school, child care and other programs with regard to the child's educational, emotional, and social progress.
 15. Neither parent shall ask the child to make decisions or requests involving the residential schedule. Neither parent shall discuss the residential schedule with the child except for plans that have already been agreed to by both parents in advance.
 16. Neither parent shall encourage the child to change their primary residence or encourage the child to believe it is their choice to do so. It is a decision that will be made by the parents, or if they cannot agree, by the courts.
 17. The child shall not reside with a parent outside of the state of Washington without a prior order of this court or notarized agreement of the parties, filed with this court.
 18. Both parents should be self informed of the child's school activities and conferences.
 19. Neither party shall be recording video or audio during any child exchanges or of the other parent at any child centered events now or in the future.
 20. Each parent shall provide the other with the address and telephone number of his/her residence and workplace and update such information promptly whenever it changes.
 21. Neither parent, nor any other adult in their presence, shall make any disparaging remarks about the other in the presence of the child.
 22. When a child of the parties is not residing with a given parent, that parent shall be permitted unimpeded and unmonitored telephone access with the child of not less than two calls per week at reasonable times and for reasonable duration. Phone messages left will be shared with the child.
 23. Each parent shall exert every reasonable effort to maintain free access and unhampered contact and communication between the child and the other parent, and promote the emotions of affection, love and respect between the child and the other parent. Each parent agrees to refrain from words or conduct, and further agrees to discourage other persons from uttering words or engaging in conduct, which would have a tendency to estrange the child from the

other parent, to damage the opinion of the child as to the other parent, or to impair the natural development of the child's love and respect for the other parent.

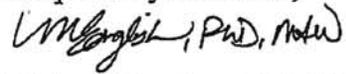
24. Each parent shall honor the other parent's parenting style, privacy and authority. Neither parent shall interfere in the parenting style of the other nor shall either parent make plans or arrangements that would impinge upon the other parent's authority or time with the child, without the express agreement of the other parent. Each parent shall encourage the child to discuss his or her grievance against a parent directly with the parent in question. It is the intent of both parents to encourage a direct parent-child bond and communication.
25. Neither parent shall advise the children of any child support or other legal matters.
26. Neither parent shall use the child, directly or indirectly, to gather information about the other parent or take verbal messages to the other parent.
27. Neither parent shall schedule activities that interfere with the other parent's residential time with the child or impose a financial burden on the other parent without that parent's consent.
28. The parents may revise the parenting plan by mutual consent in writing at any time.
29. Neither parent shall use any physical or corporal punishment or discipline on the child or threaten to do so.
30. The parent with the child will be responsible for transporting the child to and from regularly scheduled activities such as school, athletics, practices, games, club meetings and church activities.
31. The parents understand that this residential schedule represents a minimum amount of time that the child will reside with the parents and that the child may reside with them at any other agreed to times.
32. Both parents should keep any firearms out of sight and reach of Olivia and should have proper storage and locking mechanisms. The father should not bring any firearms with him to child exchanges.
33. Neither parent should consume alcohol or non-prescription drugs in Olivia's presence and no alcohol should be consumed 8 hours prior to any residential contact.
34. This GAL should be dismissed.

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 7th day of December, 2013.

Respectfully submitted,



Melanie English, PhD, MSW
16840 Bothell Way NE, Suite F
Lake Forest Park, WA 98155
Tel. 206.465.6112
Fax 206.268.0107

**SELECT PROVISIONS OF
PARENTING ACT
RCW 26.09**

RCW 26.09.004

Definitions.

The definitions in this section apply throughout this chapter.

(1) – not provided with appendix

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

(3) -not provided with appendix

(4) - not provided with appendix

[2009 c 502 § 1; 2008 c 6 § 1003; 1987 c 460 § 3.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

RCW 26.09.184

Permanent parenting plan.

(1) -not provided with appendix

(2) -not provided with appendix

(3) - not provided with appendix

(4) - not provided with appendix

(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) - not provided with appendix

(7) - not provided with appendix

(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.

[2007 c 496 § 601; 1991 c 367 § 7; 1989 c 375 § 9; 1987 c 460 § 8.]

Notes:

Part headings not law -- 2007 c 496: See note following RCW 26.09.002.

Severability -- Effective date -- Captions not law -- 1991 c 367: See notes following RCW 26.09.015.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

Failure to comply with decree or temporary injunction -- Obligations not suspended: RCW 26.09.160.

RCW 26.09.187

Criteria for establishing permanent parenting plan.

(1)- not provided with appendix

(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.

RCW 26.09.187

(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.

[2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

Notes:

*Reviser's note: RCW 26.09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2).

Part headings not law -- 2007 c 496: See note following RCW 26.09.002.

Custody, designation of for purposes of other statutes: RCW 26.09.285.

**SELECT PROVISIONS OF
PRIVACY ACT
RCW 9.73**

RCW 9.73.030

Intercepting, recording, or divulging private communication — Consent required — Exceptions.

(1) Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any:

(a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication;

(b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation.

(2) Notwithstanding subsection (1) of this section, wire communications or conversations (a) of an emergency nature, such as the reporting of a fire, medical emergency, crime, or disaster, or (b) which convey threats of extortion, blackmail, bodily harm, or other unlawful requests or demands, or (c) which occur anonymously or repeatedly or at an extremely inconvenient hour, or (d) which relate to communications by a hostage holder or barricaded person as defined in RCW 70.85.100, whether or not conversation ensues, may be recorded with the consent of one party to the conversation.

(3) Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

(4) – not included in appendix

[1986 c 38 § 1; 1985 c 260 § 2; 1977 ex.s. c 363 § 1; 1967 ex.s. c 93 § 1.]

Notes:

Reviser's note: This section was amended by 1985 c 260 § 2 and by 1986 c 38 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability -- 1967 ex.s. c 93: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 93 §7.]

RCW 9.73.030

King County LCR 4(k)
Joint Statement of Evidence

KING COUNTY LOCAL CIVIL RULES (LCR)
CR 4. CIVIL CASE SCHEDULE

- (a) Case Schedule. -- not included in appendix
- (b) Cases not governed by a Case Schedule. -- not included in appendix
- (c) Service of Case Schedule on Other Parties.- -- not included in appendix
- (d) Amendment of Case Schedule. -- not included in appendix
- (e) Form of Case Schedule. -- not included in appendix
- (f) Monitoring. -- not included in appendix
- (g) Enforcement; Sanctions; Dismissal Terms -- not included in appendix
- (i) Failure to Appear on Scheduled Trial Date-- not included in appendix

- (j) Exchange of Witness and Exhibit Lists. In cases governed by a Case Schedule pursuant to LCR 4, the parties shall exchange, no later than 21 days before the scheduled trial date: (A) lists of the witnesses whom each party expects to call at trial; (B) lists of the exhibits that each party expects to offer at trial, except for exhibits to be used only for impeachment; and (C) copies of all documentary exhibits, except for those to be used only for illustrative purposes. In addition, non documentary exhibits, except for those to be used only for illustrative purposes, shall be made available for inspection by all other parties no later than 14 days before trial. Any witness or exhibit not listed may not be used at trial, unless the Court orders otherwise for good cause and subject to such conditions as justice requires. See LCR 26 (witness disclosure requirements).

- (k) Joint Statement of Evidence. In cases governed by a Case Schedule pursuant to LCR 4 the parties shall file, no later than 5 court days before the scheduled trial date, a Joint Statement of Evidence, so entitled, containing (A) a list of the witnesses whom each party expects to call at trial and (B) a list of the exhibits that each party expects to offer at trial. The Joint Statement of Evidence shall contain a notation for each exhibit as to whether all parties agree as to the exhibit's authenticity or admissibility (emphasis added).

- (l) Non dispositive Pretrial Motions. -- not included in appendix
- (m) Trial Briefs, Proposed Findings of Fact and Conclusions of Law, and Jury Instructions. - not included in appendix

[Adopted effective January 1, 1990; amended effective September 1, 1992; September 1, 1993; September 1, 1996; September 1, 2001; September 1, 2002; September 1, 2003; September 1, 2004; September 1, 2008; June 1, 2009; September 1, 2010; December 1, 2010; March 1, 2011; June 1, 2011; September 1, 2011; September 1, 2012; September 2, 2013.]

King County LCR 4(k)

**SELECT
RULES OF EVIDENCE**

RULE ER 403
EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF
PREJUDICE, CONFUSION, OR WASTE OF TIME

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

[Adopted effective April 2, 1979.]

Comment 403

[Deleted effective September 1, 2006.]

RULE ER 613
PRIOR STATEMENTS OF WITNESSES

(b) Extrinsic Evidence of Prior Inconsistent Statement of Witness. Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

[Amended effective September 1, 1992.]

Comment 613

[Deleted effective September 1, 2006.]

RULE ER 801 DEFINITIONS

The following definitions apply under this article:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements Which Are Not Hearsay. A statement is not hearsay if--

(1) Prior Statement by Witness. The declarant testifies at the trial or hearing and is subject to cross examination concerning the statement, and the statement is (i) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (ii) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification of a person made after perceiving the person; or

(2) Admission by Party-Opponent. The statement is offered against a party and is (i) the party's own statement, in either an individual or a representative capacity or (ii) a statement of which the party has manifested an adoption or belief in its truth, or (iii) a statement by a person authorized by the party to make a statement concerning the subject, or (iv) a statement by the party's agent or servant acting within the scope of the authority to make the statement for the party, or (v) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

[Amended effective September 1, 1992.]

Comment 801

[Deleted effective September 1, 2006.]

RULE ER 803

HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL

(a) Specific Exceptions. The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

[Amended effective September 1, 1992.]

Comment 803

[Deleted effective September 1, 2006.]

RULE ER 901

REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION

(a) General Provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule:

(1) Testimony of Witness With Knowledge. Testimony that a matter is what it is claimed to be.

(9) Process or System. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

[Adopted effective April 2, 1979; amended effective December 10, 2013.]

Comment 901

[Deleted effective September 1, 2006.]

[Deleted effective September 1, 2006.]

RULE ER 803(a)(4)

RULE ER 901