

FILED  
May 27, 2016  
Court of Appeals  
Division I  
State of Washington

No. 74018-1

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

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In re the Parenting and Support of:  
DANIEL RAINBOW;

NATHAN BRASFIELD, Appellant

and

LAUREN RAINBOW, Respondent

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

The Honorable Suzanne R. Parisien, Judge

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BRIEF OF RESPONDENT

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## I. STATEMENT OF THE CASE

This case concerns the best interests of a five-year old boy, Danny. His father, Mr. Nathan Brasfield, is currently incarcerated in federal prison for being a felon in possession of several firearms. His mother, Ms. Lauren Rainbow, is a medical social worker in the Emergency Department at Harborview Medical Center. FOF 2. At trial, Ms. Rainbow testified that her primary goal was “what’s best for Danny. That’s why I’m here. That’s why I’ve come so far in this process and I’m here on my own. What’s best for Danny is for me to be safe and for his world to be stable.” RP 14. As the following describes, Mr. Brasfield has done much to put Danny’s life and well being in jeopardy, and the parenting plan that was entered as a result is the best way to protect Danny from his father.

Ms. Rainbow testified that when she first met Mr. Brasfield, things were great. RP 11. They both had a passion for animal rights that bonded them. RP 11. Their relationship moved quickly, and Danny was conceived after they had been together for four months. RP 38.

However, Ms. Rainbow did not know what she was getting into, and she did not know Mr. Brasfield’s criminal history, RP 38, which includes multiple felonies, RP 174, TRIAL EXHIBIT 1. When Danny was about one year old, Mr. Brasfield was arrested in their home for possession of stolen property. RP 38. Fortunately, Ms. Rainbow and Danny were in Denver for a wedding so they did not witness the arrest, but they did come home to police removing stolen property from the home

for three days. RP 38. During that time, Ms. Rainbow was not allowed to go into the home, use the car, get any child care materials, or tell anyone what was going on. RP 39. As a result of this incident, Ms. Rainbow became determined to become more independent, which included applying for graduate school, securing full time employment, and moving out of the residence with Mr. Brasfield in June of 2010. RP 39.

After Ms. Rainbow left Mr. Brasfield, it became increasingly difficult to coparent with him. RP 39. He became “more aggressive in terms of more phone calls and threats. . . . [H]e became extremely mean and seemingly disdainful. He was always high conflict after their separation.” GAL REPORT 6.

He did not want to contribute financially to care for Danny in any way. RP 39. After Ms. Rainbow pursued a parenting plan in court, as part of which child support was addressed, Mr. Brasfield became increasingly threatening about the things he would do if she did not drop her request for child support. RP 40-41. “Nate told me, quote, drop the child support or see what’s coming to you. I responded, are you threatening me? Nate responded, you figure that out, B-I-T-C-H. I said, Nate, you are not allowed to threaten me, I’m going to call the police. And I don’t remember exactly his – his exact words. But something along the lines of, go ahead and do it.” RP 44-45. Ms. Rainbow did call the police, who spoke with Mr. Brasfield and told him to stay away from Ms. Rainbow and leave her alone. RP 45.

The next morning, Ms. Rainbow woke up to find that her car had been stolen from her driveway. RP 45. Ms. Rainbow learned that just after Mr. Brasfield made his threat to her that night, he “sent somebody to [her]house in the middle of the night, came onto [her] property, stole [her] vehicle that [her] name was on the title of.” RP 46. As a result, Ms. Rainbow had no way to get herself or Danny around – not to school, not to work, not to daycare. RP 46-47. Further, she lost all of the items that were in her car, including her expensive graduate school textbooks required for her studies. RP 46-47. Not only was she paying her own way through school and working full time, but she was not receiving any child support or day care contributions from Mr. Brasfield, which extremely limited her ability to find a new car. RP 47. She was forced to install security cameras on her property out of fear that Mr. Brasfield would act out on further threats. RP 47.

Ms. Rainbow indicated that this was not the first time he had been violent or threatening to her, as he once threw their TV off of their deck into a vacant lot, he punched a hole in a wall in their home out of anger, he almost hit a neighbor with his car as part of an argument, and he almost caused several accidents while Ms. Rainbow was in the car with him - pregnant - when his road rage caused him to drive erratically and aggressively. RP 48. She described his severe anger, which caused him to act erratically and unpredictably. RP 48. It was especially terrifying that

he had such a “fascination” with deadly firearms. RP 48. He had also been previously arrested while carrying explosives. RP 51-52.

Also admitted as evidence of Mr. Brasfield’s animosity toward Ms. Rainbow was the fact that Ms. Rainbow cooperated with the FBI investigation into Mr. Brasfield’s activities, which eventually led to his current incarceration. RP 53. In fact, she helped the FBI gather the last pieces of evidence they needed in order to secure a search warrant. RP 55. Shortly after his arrest, he told his own mother that he had “thought many times about hurting Lauren [Ms. Rainbow], but that he had to make the decision whether or not Danny would be better off with a mom or a dad.” RP 57. TRIAL EXHIBIT 12. Specifically, he said “I can’t parent Danny. I have way too much anger built up towards his mom, and I don’t see it ever going away. . . . If you decide to talk to Lauren, please tell her that I will not harm her. Tell her that I’ve thought about it many times, and eer time I think about it, I have to decide if Danny’s better off having a mom or a dad.” TRIAL EXHIBIT 12. It should be noted that he gave his mother instructions to pass this message along to Ms. Rainbow *after* the Domestic Violence Protection Order was entered against him. TRIAL EXHIBIT 12.

Ms. Rainbow was extremely concerned about this statement, as she took its plain language to mean that Mr. Brasfield had contemplated killing her. RP 57. That the fact he had to decide whether Danny would be without a mom or a dad indicated that his decision to hurt Ms. Rainbow

would potentially leave Danny without her. RP 57. Ms. Rainbow further testified that even though Mr. Brasfield was incarcerated at the time, she was still scared of him due to his history of sending people to her house to remove property. RP 57. She feared that he would send someone there to hurt her, or even come after her himself when he is released from prison. RP 57. She talked about how he used coercion and control to get to her – by not dropping child support, he took away her mobility by having her car stolen, and by helping the FBI put him in prison, he stated he thought about hurting her to the point where Danny would not have a mom. RP 58.

Ms. Rainbow also described two incidents where she called CPS due to Mr. Brasfield's behavior. RP 59. The first time was when he took Danny, who was then one year old, to a construction site and locked him in a room with some toys, food, and a bottle. RP 59. Not only was this concerning as a parent, but as a social worker, Ms. Rainbow was a mandatory reporter who was required to contact CPS. RP 59. She called CPS a second time after Danny drank from a glass of rubbing alcohol that was sitting on a coffee table while with Mr. Brasfield, who did not then take him to the doctor or emergency services. RP 60. She later learned as part of Mr. Brasfield's deposition that he had taken Danny (who was four at the time) to someone's house to "trim" marijuana. RP 96. Although Mr. Brasfield stated that "someone's mom" was supposed to be watching Danny, Mr. Brasfield would not identify the person and took the Fifth

when asked. RP 96. Ms. Rainbow testified that Danny vomited and was very sick as a result of that day. RP 96.

At this point, Ms. Rainbow became even more scared of Mr. Brasfield learning that she had filed the reports against him. RP 61. She was scared that he would retaliate against her. RP 61. In fact, after she did call CPS, he posted on Facebook about how “the bitch I had a kid with . . . is accusing me of false allegations again” and continued in a hostile, aggressive manner to say that she was lucky getting her car stolen was all she got as a result of pursuing child support. RP 75-76. TRIAL EXHIBIT 2, 3. Not only were the contents of these messages concerning and threatening, but the fact that Mr. Brasfield openly shared them on such a public forum was even more concerning. RP 76.

For a time after the parties' separation, Mr. Brasfield lived with his parents. RP 78. In December of 2013, he moved into his own residence without notifying Ms. Rainbow. After she did find out, he refused to tell her the new address, claiming she was making false allegations of child abuse against him. RP 79. Shortly after his move, on January 4, 2014, Danny mentioned there were guns at Mr. Brasfield's house. RP 78, 82. The previous day, Mr. Brasfield's father had dropped Danny off without any shoes or underwear, stating that Mr. Brasfield had left Danny with them. RP 80. Mr. Brasfield had denied there were any guns there, but months later he was arrested there and guns were found in the house. RP 79.

As Danny aged and entered school, he started exhibiting severe behavioral problems at school after spending time with Mr. Brasfield. RP 62. “Danny had started to show signs of increased behavioral problems at school aggression towards other children, having an inability to . . . follow directions to participate in a classroom milieu setting. He was having a really hard time. We noticed that . . . his symptoms and behaviors would increase after spending time at Nate’s house, and leading up to a weekend at Nate’s house. I noticed this, the staff noticed this . . . .” RP 62. “When Danny doesn’t feel settled or grounded, Danny has huge outburst at school, he’s removed from classrooms, he has social interaction problems with his peers.” These problems impacted his view of and performance at school, something that could impact him later in life. RP 66. After Danny started spending less time with Mr. Brasfield, his behavior improved. RP 62. “His behavior – it settled more. He was having less interaction – less negative interactions with staff at preschool. Danny seemed happier and more stable.” RP 62, 65. At the time Mr. Brasfield was incarcerated, he had only been seeing Danny about six days a month. RP 63.

Regarding Mr. Brasfield’s incarceration, on April 22, 2014, Nathan was charged in federal court for being a felon in possession of a firearm. TRIAL EXHIBIT 9. The Complaint for Violation (which is the basis for his current incarceration) states the following:

On or about April 22, 2014, in Lake Forest Park . . . NATHAN BRASFIELD after having been convicted of the following crimes punishable by imprisonment for a

term exceeding one year, to wit: *Possession of Stolen Property in the First Degree* . . . on or about May 31, 2011; *Possession of Stolen Property in the Second Degree* . . . on or about May 31, 2011 . . . did knowingly possess . . . Vector Arms .223 rifle . . . Glock 17, 9 millimeter pistol . . . FN Herstal, 5.7 x 28 handgun . . . .

TRIAL EXHIBIT 11. The affidavit for probable cause indicates that, before his current conviction, Mr. Brasfield had felony convictions for possession of stolen property (4), theft of telecommunication services (1), taking motor vehicle without permission (2), totaling seven felonies in the State of Washington. TRIAL EXHIBIT 11. The descriptions of Mr. Brasfield's possession of weapons went back to 2012, so it was over a couple of years that Mr. Brasfield was illegally possessing guns before his arrest. TRIAL EXHIBIT 11. As part of this investigation, Mr. Brasfield was recorded as saying that he went to friends' homes to shoot his guns so he could go in "fully-automatic mode," and he even offered to acquire guns for the informant. TRIAL EXHIBIT 11. He acknowledged that he was not allowed to shoot the guns at ranges. TRIAL EXHIBIT 11. Even though Mr. Brasfield stated he was aware that he was not allowed to possess firearms due to his convictions, his response was:

That's my home defense weapon. If, uh, you know, somebody's gonna break in here, out in the middle of nowhere here. They're not gonna find the body. . . . Okay the right of the people to keep and bear arms shall not be infringed, shall not. It means, it can't be done . . . . I still have the legal right to possess and bear firearms, guaranteed to

me by the Constitution no matter what the  
fucking government says about it . . . .

TRIAL EXHIBIT 11. On April 14, 2014, the FBI Agent who was investigating Mr. Brasfield was alerted that Ms. Rainbow had contacted the police because she learned Mr. Brasfield had a large illegal marijuana grow operation in his basement, and that her son had seen several guns inside the residence as well. TRIAL EXHIBIT 11. She was asked to help with their investigation, but she declined for them to interview Danny. TRIAL EXHIBIT 11. “She said she was already conflicted about her cooperation with law enforcement against BRASFIELD, and did not want her son involved any more than he needed to be in the investigation. She said that she was terrified of BRASFIELD and what he would eventually do to her once he learned about the information she provided.” TRIAL EXHIBIT 11. On April 22, 2014, the FBI executed a search warrant for Mr. Brasfield’s home and found three firearms in the hallway closet on the second floor of his house. TRIAL EXHIBIT 11. They located gun parts in other rooms in the home as well as a United States Postal Service Box in the living room with multiple boxes of ammunition inside. TRIAL EXHIBIT 11. Agents also found another man in the home who was hiding from an arrest warrant, about which Mr. Brasfield knew, and who was keeping a Springfield .40 caliber pistol in the closet of his bedroom. TRIAL EXHIBIT 11.

The basis for his detention included the following: 1) his lengthy criminal record includes multiple failures to appear; 2) he was under

investigation for “participating in ten arsons and assisting a domestic terrorist flee the United States”; and 3) he was on a terrorist watchlist.

TRIAL EXHIBIT 10.

On March 31, 2015, Mr. Brasfield entered a guilty plea for Felon in Possession of a Firearm and was sentenced to 48 months in prison.

TRIAL EXHIBIT 24. He is expected to be released in the Spring of 2017 to a half-way home then on to home confinement until his ultimate release to probation in October of 2017. FOF 2.

### COURT PROCEEDINGS

Shortly after his arrest, Ms. Rainbow petitioned for a domestic violence protection order and to modify their parenting plan. FOF 2. On June 3, 2014, Mr. Brasfield agreed to and signed a Domestic Violence Protection Order against him. FOF 3. Specifically, the order he signed includes the following findings:

The court has jurisdiction over the parties, the minors, and the subject matter and respondent has been provided with reasonable notice and an opportunity to be heard. . . . This order is issued in accordance with the Full Faith and Credit provisions of VAWA . . . . Respondent’s relationship to the victim is: current or former dating relationship . . . parent of a common child.

DVPO 1. The findings further state: “**Respondent committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of petitioner; the court concludes as a matter of**

**law the relief below shall be granted.” DVPO 1.** This order was signed by counsel for Mr. Brasfield as an agreed order. DVPO 5.

Adequate cause was granted on June 16, 2014. FOF 2. David Hodges was appointed as Guardian ad Litem to investigate Mr. Brasfield’s criminal history, substance abuse, domestic violence, mental health, suitability of having Danny visit Mr. Brasfield in prison, the availability of other methods to maintain contact between Danny and Mr. Brasfield, and whether Mr. Brasfield’s parents were suitable chaperones to take Danny to visit Mr. Brasfield in prison. FOF 2.

### **DOMESTIC VIOLENCE**

Ms. Rainbow testified that “the collective of all of Nate’s words, actions and general demeanor towards me certainly has me fearful of Nate. Nate has made decisions that have – when Nate took my car, it wasn’t just taking my car. There was – there’s a big difference between him stealing my car after making a threat to me versus him just taking some random car. That was premeditated. He threatened me, he carried out that threat. He took something that was of value to me that limited my mobility and my freedom, that put me in a very vulnerable position. Also Nate stated that he has such animosity towards me that he could never picture himself cooperatively co-parenting with me. He has stated that he will never trust me again . . . he has so much anger towards me that we will never have a working relationship.” RP 137. “Nathan’s behavior showed a propensity, and a capability, and a potential for violent behavior. When I was in a

relationship with the person who is capable of throwing a flat screen TV 10 [feet] off of a porch into a lot, that sends a bit of a message of maybe we shouldn't make this person too mad." RP 140.

The GAL also described some additional aspects of Mr. Brasfield's past that were cause for concern. For example, he noted that Mr. Brasfield told him "he likes fireworks, things that go boom, and guns. He said he went to jail instead of to his graduation . . . Just prior to his high school graduation he got caught with an explosive device." GAL REPORT 11.

The GAL also noted that:

[T]he venomous hatred that Nate has for Lauren, coupled with his history of intimidating her and his youngest sister, along with his proclivity for weapons, his willingness to get someone to take the vehicle from her . . . and his sense of entitlement to create his own justice taken collectively make it entirely reasonable that she would be fearful. . . . [H]is threats can be considered control tactics and he has acted on them, for example when he had the car taken from Lauren.

GAL REPORT 24.

### **BIAS**

Mr. Brasfield via counsel (while Ms. Rainbow was *pro se*) appeared at trial with only nine exhibits, without providing the trial court any exhibits or trial materials until the morning of trial, and without even confirming whether Mr. Brasfield would attend or testify at trial. RP 2. Despite this, she took a recess to review the trial materials provided that morning. RP 2. The trial court made many accommodations for Mr.

Brasfield, including allowing him to testify by telephone, allowing for changes to accommodate his telephone difficulties, and changing the presentation of witnesses so that he could testify as he wished. RP 5-6. The trial court also made it clear to Ms. Rainbow that she would be held to the same standards as an attorney, RP 9-10, and even interrupted her opening statement when it started to venture into unsworn testimony, RP 11-12.

### **TRIAL**

At trial, Mr. Brasfield argued via counsel the same arguments raised on appeal here: 1) that there is no history of domestic violence; 2) that there should not be restrictions under RCW 26.09.191; 3) that the GAL's recommendations should be adopted; and 4) that Mr. Brasfield's visitation with the child post-incarceration should be reserved.

### **DANNY'S BEST INTERESTS**

Testimony at trial reflected that the child has had significant issues with stress and anxiety. RP 15. Despite his young age, he has been diagnosed with General Anxiety Disorder. RP 21.

The trial court heard from Jenna Genzale, Danny's therapist, a licensed Marriage and Family Therapist as well as a chemical dependency professional. RP 18. She had been working with the child for several months before trial. RP 18. The child first began seeing Ms. Genzale for a mental health assessment due to concerns about his anxiety levels. RP 18. The assessment "confirmed those concerns; that Danny does present

with several symptoms of anxiety, and worry, fear, difficulty concentrating, and staying focused.” RP 18. She further described Danny’s behavior as “an anxious temperament.”

He asks a lot of questions. He – copes with his anxiety by requiring facts and being well prepared, especially in new situations. And so that can kind of come up in perseverating on specific topics. So he may ask a lot of questions on one specific topic, and need a lot of answers, and a lot of security about what’s going to happen to – or so he can feel well prepared to be able to cope, especially in new situations.

Regarding contact with his father, Danny’s therapist described further concerns not only regarding his anxiety, but his age and ability to understand what is going on with his father.

Danny specifically has presented with some anxiety regarding his father being away and what that means for his life now. And just at his developmental stage, just overall kind of struggling with what his life is like, and what it means to not be able to see his dad. And the phone calls that he has with his dad are . . . sometimes difficult for him. . . . Danny just has a lot of questions about why his dad is suddenly gone and what does that mean, what does that mean about his dad. . . . when a young child goes through something like that, they don’t have the developmental emotional maturity to be able to make sense of that. And so it’s particularly difficult for his age.

RP 20. Danny’s therapist indicated that he was suffering from tremendous confusion about his father’s incarceration as well as bad feelings about what it means about his father. RP 21.

[Danny] says things like my dad must have made some mistakes because people that go to jail have broken the law. Danny has a lot of questions about if his dad is a bad person because he's in jail . . . [a]nd I don't think we have really gotten to the point where Danny has – really made sense of it. . . . I think he has conflict within himself about it.

RP 21-22. This is compounded by his anxiety, which has already caused him to exhibit defiant behavior and act out in school and at home. RP 22.

At school specifically, anxiety in young children actually can come out in behavioral issues. So what we may view as a child being defiant may actually be driven by anxiety. And so Danny has a few disciplinary issues at school . . . they have stemmed from Danny being not in control of a situation, or not being clear of what to expect . . . . So when Danny doesn't feel that he has control for himself, or that he knows what to expect, or is well prepared, his anxiety spikes. . . . He has very hard time transitioning . . . .

RP 22. Regarding whether or not Danny should visit his father in federal prison, Danny's therapist recommended against it due to his lack of "developmental capacity." RP 22.

I don't think any five year old really has the developmental capacity to really understand what he is undertaking, and what he may go through to visit his father in – in prison. And so I am not sure that he could adequately be prepared. And that is one of the main things that Danny needs to manage his anxiety is to be well prepared. So I think that, in and of itself, is a risk.

RP 23. She was also specifically concerned about Danny's ability to manage his anxiety in a prison setting. RP 23.

Danny – some of his anxiety does come up in being fidgety and like not being able to stay still. . . . he copes sometimes by kind of roaming around, kind of almost pacing. That helps him stay grounded and centered. I don't know if those things would be possible for him in a visit. So if it's a confined facility where he's expected to kind of stay in one area, that could be difficult for him. . . . I think [at] his developmental age, [he] just has a hard time staying on one task at a time. He . . . jumps from topic to topic, or task to task. And I think if he's expected to, again, be confined, I think he'll struggle with that. . . . I think that could – could really provoke him . . . into more anxiety.

RP 23. Ms. Rainbow later raised a similar concern about how well Mr. Brasfield would handle the same situation given what she had witnessed in the past. RP 68. She noted that even Danny's calls with Mr. Brasfield while incarcerated so far have been strained and contained conflict. RP 66-68. She even said that a visit that caused anxiety for Danny could even be traumatic for him, leading to post-traumatic stress as a child. RP 24.

I think if any of those things were to happen, if Danny did go on a visit and some of those symptoms that I just talked about did occur, it could actually lead into a traumatic event for Danny, and could actually move his anxiety into a deeper level, potentially post traumatic stress.

RP 24. Post-traumatic stress in a child manifests as the symptoms already described by the therapist, but "exacerbated." RP 24. While we do not know exactly how it would manifest, it would include intensifying his symptoms and even sleep disturbance. RP 24.

As a result, Ms. Genzale recommended against Danny visiting Mr. Brasfield in prison, as it could be traumatic for him, and any benefits he would gain from seeing his father would likely be outweighed by the damage it would do to him. RP 25.

Counsel for Mr. Brasfield suggested that Danny's anxiety could simply be addressed by giving him more information about his father, but Danny's therapist verified that Danny has already received all appropriate information and explanations about his father's incarceration as is appropriate in light of his age. RP 30.

Counsel for Mr. Brasfield also suggested that children go to prison to visit family members frequently, but Danny's therapist stated that "Danny is predisposed to having an anxiety disorder, and that this isn't the typical kid going to visit his father in prison . . . this is a child with an anxiety disorder. And so that is why I believe that this could provoke intensified anxiety in him." RP 32.

The trial court also heard about Danny's IEP in school which described the special education services that Danny receives based on his social, emotional and dysregulation, and also his speech disfluency. RP 64.

The trial court also heard from Candace Mangum, the principal at a school Danny attended for two years. RP 108. She described Danny's behavior at school and how he would "just get very agitated and upset." RP 111. After cutting back his time did not work, they noticed "he was

agitated on – on days, and not quite as agitated on other times. And it just – you know, it was -- it was hard to know why.” RP 111. She and other school staff noticed that Danny was more agitated when Mr. Brasfield dropped him off at school, and it was those times when the school had a “hard time calming him down.” RP 112. There were even instances where Danny was agitated and hurt kids or talked about guns or how his dad showed him a gun that caught the school staff’s attention. RP 114. They also noticed that on days when Mr. Brasfield was set to pick Danny up from school, Danny became increasingly agitated toward the end of the day. RP 115. He got angry, threw things, ran around, and would have to sit in the office to calm down. RP 115-16. The principal also described the number of times Mr. Brasfield dropped Danny off at school without lunch or in soiled clothes Danny had worn the day before (requiring the school to change him into school clothing). RP 117.

### **GAL REPORT**

David Hodges was appointed as Guardian ad Litem in this matter. RP 182, 185. He did file a detailed report. In addition to the incidents that have already been described, the GAL learned that there were two additional CPS reports filed against Mr. Brasfield – one by Danny’s school on May 13, 2013, after Danny told his school that “his dad locks him in the bathroom and hits him.” GAL REPORT 3. The second CPS report was filed by an FBI agent after they raided Mr. Brasfield’s home:

He said the father had been arrested. He was operating a marijuana grow operation

and there were chemicals and plants that were not secured from the child. The father also had firearms that were on a shelf in a closet which could have been accessible to the child during visits.

GAL 3. Apparently, the school informed the GAL that Danny had made other comments about “his Dad not being very nice. He plays games with him but most of the time they are not nice ones. Dad hits him sometimes and gets angry with him.” GAL 3.

Ultimately, the GAL recommended that Danny visit his father in prison, that the grandparents could be the ones who could chaperone Danny to the prison if Ms. Rainbow agreed, and that a post-incarceration visitation schedule be reserved. GAL REPORT 26.

The GAL report does not indicate why the GAL recommended that Danny visit the prison other than to describe the room where it would occur. GAL report 26. When asked on the stand why he believed Danny should have regular visitation with Mr. Brasfield, he stated that he based it on the general principle that children need to have ongoing contact with each parent. RP 265. When he mentioned that Danny did have some fun things he did with his dad, Mr. Hodges was unable to identify activities other than how Danny mentioned guns at his dad’s home. RP 266.

#### ABUSIVE USE OF CONFLICT

In addition to stealing her car in response to her request to pay child support and the other facts outlined above, Mr. Brasfield has involved the child in the litigation. RP 148. He has told Danny that he

“hates” Ms. Rainbow. RP 149. Mr. Brasfield has also stated that he plans to share all of the details of this court process with Danny. RP 152.

### **PATERNAL GRANDPARENTS**

Evidence was presented about Mr. Brasfield’s parents and whether they were suitable visitation supervisors. Many incidents were recounted wherein they failed to stand up to or act out against their son, whose behavior put Danny at risk. RP 78. For example, when Mr. Brasfield moved into the home that was ultimately raided by the FBI, he refused to tell Ms. Rainbow the address so she would know where her son was at. RP 78. When Ms. Rainbow approached Mr. Brasfield’s mother, Diane, she refused to get involved. RP 78. Later, after Mr. Brasfield was arrested, Ms. Rainbow learned that Mr. Brasfield’s parents knew he had a massive marijuana grow operation going on in the basement of someone’s house, and that there had been felons living with Mr. Brasfield. RP 105. TRIAL EXHIBIT 6. And yet, they still would not tell her where her son was staying while with his father. RP 105. Mr. Brasfield’s father, Larry, even stated that he did an “examination” of the marijuana grow operation to make sure it was “safe enough.” RP 106.

### **TRIAL COURT’S DECISION**

After hearing testimony from Ms. Rainbow, Danny’s therapist, Danny’s Principal, the GAL, Mr. Brasfield, Mr. Brasfield’s friends, and Mr. Brasfield’s parents, the trial court resolved the issues at trial (including whether Danny should go to prison for visitation with his

father, whether Mr. Brasfield's parents were suitable to chaperone Danny to the prison, whether a visitation schedule should be put in place after Mr. Brasfield is released from incarceration, and whether there should be an ongoing protection order) as follows.

The trial court found Danny's therapist, Jenna Genzale, to be a credible witness, and that if Danny is permitted to visit Mr. Brasfield in prison, his anxiety disorder could move to PTSD. FOF 4. She also found that Danny is not a "typical child" going to visit a family member in prison due to his diagnosed General Anxiety Disorder. FOF 4. She also found Candace Mangum to be a credible witness, and found about the negative impact Mr. Brasfield had (before incarceration) on Danny's behavior and schooling. FOF 4.

The trial court found that Mr. Brasfield's parents were not suitable custodians for Danny, even in a limited capacity just for transporting him to/from the prison. FOF 6. She found that Mr. Brasfield's parents knew about Mr. Brasfield's criminal activities beginning at a young age, and that his parents minimized those behaviors. FOF 5. Further,

Mr. Brasfield testified that he was fully aware that Nate was operating a rather large "grow operation" out of his rental home in Lake Forest Park where he had many marijuana plants. By all accounts, the grow operation was rather sophisticated with special irrigation and lighting systems in place. In fact, [Mr. Brasfield] asked his father to "inspect" the grow room to make sure it was "safe" for Danny. [Mr. Brasfield's father] said, he saw the grow room on several occasions and it was "in

good shape” and was “safe for Danny to walk into it.” It is undisputed that the grow operation was located in the basement of the home that [Mr. Brasfield] was renting. It is also undisputed that the basement door was unlocked and Danny – and anyone else, could access the grow room from the rest of the house. [Mr. Brasfield’s father] saw nothing unsafe about a four year old living in a home with a large grow operation. His exact words were that the very fact there was a grow operation was “per se not a problem.” He did not acknowledge any concern that a large (and profitable) marijuana grow operation might be tempting venue for criminal behavior such as burglary and/or armed robbery.

FOF.6-7. Further, the trial court was also concerned that Mr. Brasfield’s father asked Mr. Brasfield – a convicted felon not allowed to possess firearms – to purchase an unregistered semi-automatic firearm for him.

FOF 7. It was also concerning that Mr. Brasfield’s father knew there was an arsenal of weapons in the home, and that his only shock about the discovery was that they were unlocked. FOF 8. Apparently, his father was similarly unconcerned about the heroin that was discovered in Mr. Brasfield’s home by the FBI, saying he would have been more concerned about there being heroin users in the home (which were also found). FOF 7.

The trial court also found that Mr. Brasfield’s mother was an unsuitable custodian as she was “similarly cavalier” in her view of Mr. Brasfield’s home. FOF 8. She knew about the grow operation, and she stated on the witness stand that Mr. Brasfield was not good at making sure

Danny was fed. FOF 8. It was also troubling that Mr. Brasfield's mother withheld his address from Ms. Rainbow – Danny's mother – on the basis that Mr. Brasfield had made her promise not to tell Ms. Rainbow, and that she wanted to keep her word to her son. FOF 9. This demonstrated that Mr. Brasfield's mother would (and has) put her son before Danny's safety and well-being, which made her an unsuitable custodian and/or chaperone for Danny. FOF 9.

The court declined to require Danny to visit Mr. Brasfield in prison, and that he could only have limited, supervised visitation with Danny after his release. PP 3. The court found that Mr. Brasfield's parenting of Danny was not the best, regardless of his current incarceration, noting the time when Danny drank rubbing alcohol with his father, coming home in soiled clothes that reeked of chemicals (which the FBI reported to CPS were not secure from Danny's reach), keeping firearms unsecured and where a child could reach them, keeping drugs and drug paraphernalia on the coffee table where Danny could reach them, etc. FOF 14. The court found Ms. Rainbow's testimony about Danny's calls with Mr. Brasfield credible as well, noting that they often did not go well, that Mr. Brasfield did not seem able to handle Danny's behavioral issues/anxiety, and how difficult Mr. Brasfield had made co-parenting with Ms. Rainbow in light of his behavior. FOF 14.

Further, the court relied on the professionals who testified, including Danny's therapist and his principal, that visits to the prison

might derail Danny's progress and "worsen his anxiety considerably."  
FOF 15.

The court did find that a continuing protection order was warranted, and that Mr. Brasfield's "aggressive behavior, escalating criminal conduct, open fascination with firearms, direct and indirect threats to Lauren and unrepentant animosity toward Lauren constitute domestic violence . . . ." FOF 3-4. The trial court found that Ms. Rainbow was a credible witness, and even Mr. Brasfield's own witnesses said that she was an excellent mother for Danny. FOF 9-10. As a basis for the protection order, the trial court focused on Mr. Brasfield's threat to Ms. Rainbow if she did not drop her request for child support, and his subsequent direction to have a stranger go to Ms. Rainbow's home in the middle of the night to take her car. FOF 10. This left her without her school books, Danny's car seat, or a way to get to school, work, or transport Danny. FOF 10. This was on top of the fact that a strange man was sent onto her property in the middle of the night by Mr. Brasfield. FOF 11. The trial court further found Mr. Brasfield's comments to Ms. Rainbow and to others concerning, especially when he admitted to his own mother that he had thoughts of physically harming Ms. Rainbow. FOF 11.

Also concerning, and an additional basis for an ongoing protection order, was that Mr. Brasfield openly and unabashedly blames Ms. Rainbow for his current incarceration, and Ms. Rainbow's fear of him is

credible in that regard. FOF 11. The trial court noted that his anger was apparent even while testifying via telephone. FOF 11.

## II. ARGUMENT

This case is about the best interests of a child, Danny, the primary focus of any child custody case, and interestingly enough, Mr. Brasfield's opening brief focuses on what he wants or is entitled to, but does not discuss Danny's best interests.

Our Supreme Court has made it clear that trial courts are given broad discretion in determining the residential placement of a child, and that such determinations should not be disturbed on appeal because the appellate courts are unable to view the parties, evidence, and testimony in the same light as the trial court. *Kelso v. Kelso*, 75 Wn.2d 24, 27, 448 P.2d 499 (1968) ("We will not substitute our judgment for that of the trial court"); *Baker v. Baker*, 80 Wn.2d 736, 743, 498 P.2d 315 (1972) ("This court is most reluctant to substitute its evaluation and judgment for that of the trial judge"). See also *In re Marriage of Rich*, 80 Wn. App. 252, 258, 907 P.2d 1234 (1996) ("Trial courts are given broad discretion in matters concerning children"); *In re Marriage of Luckey*, 73 Wn. App. 201, 208, 868 P.2d 189 (1994); *In re Marriage of Cabalquinto*, 100 Wn.2d 325, 327, 669 P.2d 886 (1983). Nor is it appropriate for the appellate courts to weigh evidence or make credibility determinations. *In re Marriage of Rich*, 80 Wn. App. At 259 ("Our role is not to substitute our judgment for

that of the trial court or to weigh the evidence or credibility of the witnesses.”).

This discretion is not due to mere respect for judicial colleagues or out of a desire for judicial economy; it is because the trial courts sit in an entirely different position from the appellate courts. “Trial courts are given this broad discretion because they have the great advantage of personally observing the parties.” *In re Marriage of Luckey*, 73 W. App at 208. This is especially true in matters regarding children, as “a trial court enjoys the great advantage of personally observing the parties, [making us] reluctant to disturb a custody disposition.” *In re Marriage of Timmons*, 94 Wn.2d 594, 600, 617 P.2d 1032 (1980). The custody determinations of a trial court must be given great deference because:

so many of the factors to be considered can be more accurately evaluated by the trial judge, who has the distinct advantage of seeing and hearing witnesses, and is in a better position to determine their credibility, than the members of the appellate court, who have access only to the printed record on appeal, and to the briefs and argument of counsel.

*Chatwood v. Chatwood*, 44 Wn.2d 233, 240, 266 P.2d 782 (1954). In *Chatwood*, for example, our Supreme Court went so far as to say it would have made a different decision than the trial court. *Id.* But, because the evidence had been presented to the trial court, and after weighing that evidence, the trial court had made a decision, the Court did not want to disturb that custody determination. *Id.*

Therefore, the trial court's decision is only to be disturbed if it constitutes an abuse of discretion. "Because the complexities inherent in child custody matters defy precise definition, let alone categorically sound solutions . . . a trial judge's findings and conclusions will not be reversed unless the evidence clearly preponderates against them." *Richards v. Richards*, 5 Wn. App. 609, 613, 489 P.2d 928 (1971). "A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds." *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). A decision is manifestly unreasonable if it "is outside the range of acceptable choices, given the facts and the applicable legal standard . . ." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). A decision is based on untenable grounds if "the factual findings are unsupported by the record" or if "it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *Id.*

#### **A. THE TRIAL JUDGE DID NOT ABUSE HER DISCRETION**

In the instant case, there is substantial evidence to support the judge's findings and entry of a parenting plan. The facts as outlined speak for themselves. Mr. Brasfield's arrest and current incarceration mean that he is not available to be in Danny's life for several years, but it also brings to light his parenting and his honesty about his parenting. He lived in a home where he chose to create a large, illegal drug operation, allow wanted felons to live with him, allow drug users to live with him (and

leave drug paraphernalia in the home), and keep an arsenal of weapons at his disposal – weapons he knew he was not allowed to have via his history of seven felony convictions. Even before his arrest, Danny told Ms. Rainbow and the school about his encounters with guns at Mr. Brasfield’s home – his response to which was to say that there were no guns in his home (which we now know is not true). Before that, he made threats to Danny’s mother, sent a stranger to Danny’s home in the middle of the night to steal Ms. Rainbow’s car (and Danny’s car seat), which meant that Ms. Rainbow had no way to transport Danny even in an emergency. His actions before his arrest show disregard for Danny’s welfare, and Danny’s behavior at school shows that Danny was negatively impacted by just spending time with his father. On top of this, Mr. Brasfield has demonstrated no remorse about any of this; rather, he has demonstrated rage at Ms. Rainbow for his current circumstances. The trial court’s decision is supported by substantial evidence and should be upheld.

**B. RESTRICTIONS PER RCW 26.09.191 WERE  
APPROPRIATE IN LIGHT OF THE EXTREME FACTS  
PRESENTED**

Mr. Brasfield makes many claims about what is required before a court can make a finding under RCW 26.09.191, but fails to acknowledge prevailing law that makes it clear the trial court is not required to wait for actual damage to occur before making a finding or imposing a restriction per RCW 26.09.191. “[T]he trial court need not wait for actual harm to accrue before imposing restrictions on visitation. *In re Marriage of*

*Burrill*, 113 Wn. App. 863, 872, 56 P.3d 993 (2002) (“evidence of actual damage is not required”). Instead, it is sufficient just for the danger of damage to exist. *Id.* “[D]eciding whether to impose restrictions based on a threat of future harm necessarily involves consideration of the parties’ past actions.” *In re Marriage of Katare*, 175 Wn.2d 23, 39-40, 283 P.3d 546 (2012). RCW 26.09.191 requires the court to consider whether a parent’s involvement or conduct “may” have an adverse effect on the children’s best interests. “To make this determination, the court must engage in a form of risk assessment.” *Id.* The focus is not on “hardships which predictably result from a [separation of parents],” *id.*, but rather on imposing restrictions that are similar in severity to the nature of the potential harm, *In re Marriage of Chandola*, 180 Wn.2d 632, 327 P.3d 644 (2014). “A trial court abuses its discretion if it imposes a restriction that is not reasonably calculated to prevent such a harm.” *Id.* at 648.

In this case, as described above, there are serious concerns about Mr. Brasfield’s parenting even regardless of his current incarceration. The home life he created for Danny was not in Danny’s best interests and actually did cause Danny harm in many ways (from vomiting after drinking rubbing alcohol to living in a home with heroin users and a grow operation and guns to simply being so angry and violent that Danny acts out in school after being with his dad). The findings made by the court do reflect the evidence at hand as described above, and restricting/limiting Mr. Brasfield’s time absolutely has a nexus to the concerns about Danny’s

welfare. Mr. Brasfield has demonstrated that he cannot make good parenting decisions about Danny and will be dishonest about Danny's care with him. His visitation should be supervised and limited until he can demonstrate that he has turned his life around.

**C. DOMESTIC VIOLENCE DID EXIST IN THIS MATTER  
SUCH THAT A PROTECTION ORDER IS WARRANTED**

Domestic violence is defined by RCW 26.50.010(3) as:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault . . . (b) sexual assault . . . or (c) stalking as defined in RCW 9A.46.110.

Stalking is further defined by RCW 9A.46.110 as "intentionally and repeatedly harasses . . . [and] the person being harassed . . . is placed in fear that the stalker intends to injure the person, another person, or property of the person . . . . The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and . . . the stalker either . . . intends to frighten, intimidate, or harass the person; or . . . knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person."

In the instant case, the protection order entered against Mr. Brasfield is absolutely necessary and important for the safety of both Ms. Rainbow and Danny. First, Mr. Brasfield has inflicted in Ms. Rainbow the fear of imminent physical harm, bodily injury, or assault. Her testimony as outlined above and in the record demonstrates how he threatened her,

bot directly over the telephone, and indirectly to the public. He followed through with that threat by having a stranger go to her home in the middle of the night to steal her car. His characterization of this behavior as simply collecting his property after she violated an agreement makes no sense; if he thought he had a legal right to collect the car, then he would not need to send a stranger in the middle of the night to steal it – he could have gone to the house and taken it with her full knowledge. Having someone take it in the middle of the night sends a different message, and is much more concerning than a simple property dispute. It is intimidating and terrifying to think that at any moment, he could send someone else to her property to carry out another threat.

Further, Mr. Brasfield admitted that he had considered physically harming Ms. Rainbow, and the fact that he made that consideration known to Ms. Rainbow is further intimidation. As she testified, he had carried out his threats before. She testified as to his violence, which was widespread and included road rage incidents toward other drivers, fights with friends, attempting to hit a neighbor with a car, and the destruction of property. The court also heard extensive information about Mr. Brasfield's long criminal record, which includes his current incarceration for violating a court order and the law against felons possessing weapons. In sum, he threatened her, demonstrated to her that he would carry through on his threats, made it clear that he contemplated harming her physically, and demonstrated to her that he has a lot of anger and problems managing

that anger. On top of this is his propensity for associating with other felons, the fact that she assisted the FBI in his arrest which forms the basis of this action (and his current incarceration), and his admitted, unabashed anger and hatred toward Ms. Rainbow that, by his own words, will never diminish. These form the basis for the finding that Mr. Brasfield committed domestic violence against Ms. Rainbow, and more importantly, that a domestic violence protection order is critical for Ms. Rainbow's safety.

Further, Mr. Brasfield ignores the fact that he signed an agreed Domestic Violence Restraining Order. While he claims it was because he was facing a criminal case, the order itself makes no such contingencies. Instead, the order contains an explicit finding – an admission by Mr. Brasfield – that domestic violence occurred and there is a basis for the order. His position is that he had no choice due to his criminal case, but that does not prevent him from either requesting a continuance of the DV hearing until his criminal case is resolved or otherwise arguing about other allegations in the petition. He did not exercise those options, and instead he reaped whatever benefit he saw from signing an agreed order. He should be judicially estopped from now saying that order has no meaning.

Moreover, Mr. Brasfield argues that the five-year protection order violates RCW 26.50.060(2), which states that “[i]f a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year.” This rule

does not apply, however, since the protection order in effect does not prohibit Mr. Brasfield from contacting Danny. Further, the statute itself exempts protection orders issued under RCW chapters 26.09, 26.10, or 26.26, which makes it inapplicable in this case. Lastly, the length of the order is important here, as Mr. Brasfield will be incarcerated for longer than a year, and it may indeed take quite some time before his anger with her for assisting the FBI might dwindle. While Mr. Brasfield's brief makes the point that protecting Ms. Rainbow has nothing to do with protecting Danny, Ms. Rainbow is Danny's primary parent and his main source of stability; protecting Ms. Rainbow from harm has very much to do with protecting Danny and serving his best interests.

Finally, Mr. Brasfield claims that combining the determination of the domestic violence matter with the parenting plan modification matter was improper. However, that ignores the clear statutory language of RCW 26.50.025, which states that "[a]ny order available under this chapter may be issued in actions under chapter 26.09 . . . [and] [i]f a party files an action under chapter 26.09 . . . an order issued previously under this chapter between the same parties may be consolidated by the court under that action and cause number." Additionally, Mr. Brasfield points to no part of the record where he requested that the matters not be consolidated or that the trial be bifurcated.

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**D. IT WAS APPROPRIATE IN LIGHT OF ALL EVIDENCE  
NOT TO ADOPT THE GAL RECOMMENDATIONS**

GAL recommendations are not binding on the trial court, and the “trial court remains free to ignore the [GAL’s] recommendations if they are not supported by other evidence or if it finds other testimony more persuasive.” *In re Guardianship of Stamm*, 121 Wn. App. 830, 836, 91 P.3d 126 (2004); *Fernando v. Nieswandt*, 87 Wn. App. 103, 107, 940 P.2d 1380 (1997).

In this case, the GAL recommendations were brief with little explanation as to their basis. What was developed on the stand at trial, however, was that Mr. Hodges made his recommendations based on general principles that children should have access to both parents. However, Danny’s therapist, Ms. Genzale, made it clear that Danny is not an ordinary child going to visit his dad in prison, and it could very likely exacerbate his severe anxiety and lead to a traumatic event or even PTSD. She worried that the combined effect of Danny’s General Anxiety Disorder with his age and current developmental stage, and his current feelings about his father, could all cause Danny to derail from progress he has made, damage his relationship with his father, and even worsen Danny’s mental and emotional health. These issues were not addressed by the GAL, and Mr. Brasfield provided no counter-evidence that would explain away these concerns. The court had substantial, un rebutted evidence that the child might face severe damage if he were to visit his

dad in prison, and therefore it was an acceptable option for the court to determine those visits were not appropriate in light of that evidence.

Regarding the GAL's recommendation that Mr. Brasfield's parents could chaperone Danny to and from prison for visits, it was only recommended if Ms. Rainbow agreed to it (which is overlooked by Mr. Brasfield in his brief). Since there was good reason not to allow the visits at all, it is not too important to focus on this recommendation, but nevertheless, the trial court focused on how Mr. Brasfield's parents protected their son and minimized his criminal activities. That an illegal, large scale marijuana grow operation in the basement of a father's home would ever be deemed "safe" for a child shows a serious lack of judgment on the grandparents' part (not to mention how they put Mr. Brasfield's wishes over Danny's safety or were not too concerned about wanted felons residing with Mr. Brasfield or that there were drugs, drug users, and an arsenal of illegal weapons in the home). Even if the court were to consider visitation, it would not be appropriate to trust Danny to grandparents who could not exercise appropriate judgment for his safety.

Finally, Mr. Brasfield takes fault with the fact that the court did adopt a visitation schedule to be in place after his release from incarceration, but he fails to note how that is a legal violation. There is nothing that says a court is required to reserve a visitation schedule for later determination; if anything, the court's goal is to enter a schedule that minimizes repeat court appearances and ongoing conflict between the

parties. RCW 26.09.003. Again, the GAL recommendations are not binding on the court, and the fact that the court did put in place a schedule only avoids the inevitable rush to court after his release. Further, per RCW 26.09.260, parenting plans can be changed, so Mr. Brasfield still has options to modify the parenting plan if he demonstrates adequate cause.

**E. NO EVIDENCE HAS BEEN PRESENTED OF JUDICIAL BIAS**

Mr. Brasfield also argues that Judge Parisien was biased in presiding over the parties' trial, but fails to mention that he made no motion for her recusal. The allegation of bias was raised but it was simply requested that the "court consider that going forward during this trial." RP 88. Nevertheless, the court maintained that "I have no bias against you, Mr. Carney. And if you're asking me to somehow recuse myself or do something, I'm not going to do that." RP 88.

Nevertheless, a court's denial of a motion that it recuse, if that is what the above exchange could be called, is reviewed for an abuse of discretion. *Wolfkill Feed & Fertilizer Corp. v. Martin*, 103 Wn. App. 836, 840, 14 P.3d 877 (2000). Due process, the appearance of fairness, and Canon 3(D)(1) of the CJC (Code of Judicial Conduct) require that a judge disqualify herself from hearing a case if that judge is biased against a party or if her impartiality may be reasonably questioned. *Id.* at 841 (citing *State v. Dominguez*, 81 Wn. App. 325, 328, 914 P.2d 141 (1996)). Trial court judges are presumed to perform their functions regularly and properly and without bias or prejudice. *Id.* (citing *Kay Corp. v. Anderson*,

72 Wn.2d 879, 885, 436 P.2d 459 (1967)). Judges are required to maintain an appearance of fairness in order to insure public confidence by preventing a biased or potentially biased judge from ruling on a case.

*State v. Carter*, 77 Wn. App. 8, 12, 888 P.2d 1230 (1995). Evidence of a judge's actual or potential bias is required. *State v. Post*, 118 Wn.2d 596, 619, 826 P.2d 172 (1992). Under the appearance of fairness doctrine, a judicial proceeding is valid if a reasonably prudent and disinterested person would conclude that the proceedings were fair, impartial, and neutral. *State v. Bilal*, 77 Wn. App. 720, 722, 893 P.2d 674 (1995).

Here, Mr. Brasfield has not presented any evidence of actual or potential bias during the trial other than his own bald assertion that it existed.

**F. ANY MISSING FINDINGS ARE SUPPORTED BY EVIDENCE AND DO NOT REQUIRE REVERSAL**

Mr. Brasfield makes vague allegations throughout his brief that the trial court did not make appropriate findings. However, what he does not point out is whether objections were raised at the time the trial court made those findings. Appellate courts presume that trial courts considered the statutory elements as long as the record shows that it reviewed evidence on the statutory factors, and where written findings are missing, the appellate courts can look to the record and the court's oral decision for the basis of the decision. *Murray v. Murray*, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981); *In re Marriage of Dalthorp*, 23 Wn. App. 904, 598 P.2d 788 (1979).

**G. WHETHER OR NOT MOTHER BREACHED AN ORAL PARENTING AGREEMENT IS IRRELEVANT**

Lastly, Mr. Brasfield makes extensive argument about how he believes Ms. Rainbow “breached” their contract. While this offers insight into his way of thinking and how it came about that he sent someone to steal her car in the middle of the night for “violating” the alleged contract, it is inapposite to the matter at hand. Agreements between parties about visitation and child support, even if documented in a written separation contract, are not binding on courts and are subject to modification. RCW 26.09.070(3). *See also In re Marriage of McCausland*, 129 Wn. App. 390, 410, 118 P.3d 944 (2005); *Pippins v. Jankelson*, 110 Wn.2d 475, 478, 754 P.2d 105 (1988). RCW 26.09.260 provides the requirements for modifying a parenting plan, and since adequate cause was granted (a necessity that Mr. Brasfield does not dispute due to his incarceration), it is not relevant whether Ms. Rainbow “breached” any alleged visitation/child support contract. Further, it should be noted that conditioning visitation with child support, as Mr. Brasfield did via his alleged “contract,” is in violation of RCW 26.09.160(1). When Ms. Rainbow “breached” the alleged contract and requested a parenting plan and child support, Mr. Brasfield threatened her to drop the requests and then had her car stolen from her property as punishment. Ultimately, and unlike non-family law matters, the most important aspect of any decision or agreement about visitation is whether it is in the child’s best interests. RCW 26.09.187(3)(a).

### III. CONCLUSION

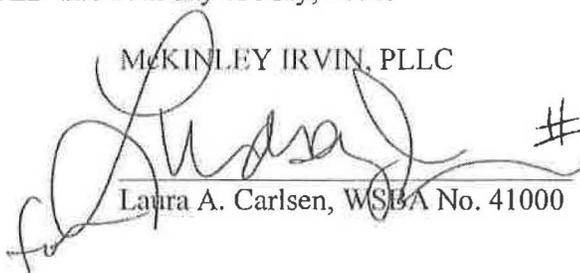
For the foregoing reasons, Ms. Rainbow respectfully requests that this Court affirm the trial court's decision and award her attorney fees for the necessity of responding to these appeals. RAP 18.1 allows a party to recover attorney fees in responding to an appeal. RCW 26.09.140 and RCW 4.84.185 allow for recovery on a frivolous matter that is advanced without reasonable cause. In this case, Mr. Brasfield has persisted in driving forward litigation without evidence or legal arguments to support his claims and without facing any financial responsibility for the claims since others are paying his fees. To the extent that Ms. Rainbow's appeal has been handled *pro bono*, it is possible to request fees as a reimbursement of time nevertheless pursuant to prevailing case law that allows fees regardless of whether the representation is *pro bono* or not. *See, e.g., Frank Collucio Const. Co. v. King County*, 136 Wn. App. 751, 780, 150 P.3d 1147 (2007); *Blair v. Wash. St. Univ.*, 108 Wn.2d 558, 570-71, 740 P.2d 1379 (1987); *Council House v. Hawk*, 136 Wn. App. 153, 160, 147 P.3d 1305 (2006) (“[U]nless a statute expressly prohibits fee awards to pro bono attorneys, the fact that representation is pro bono is never justification for denial of fees.”) (citing *Blair v. Wash. St. Univ.*, 108 Wn.2d at 571 (“trial court abused its discretion in even considering plaintiffs’ public interest representation”).

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SIGNED AND DATED this 27th day of May, 2016.

McKINLEY IRVIN, PLLC



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Laura A. Carlsen, WSPA No. 41000

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**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I**

**In re the Custody of:**

DANIEL RAINBOW,

Child,

NATHAN BRASFIELD,

Appellant,

and

LAUREN RAINBOW,

Respondent.

No. 74018-1-I

**PROOF OF SERVICE**

**PROOF OF SERVICE**

Shelley Solie certifies as follows:

On May 27, 2016, I served upon the following a true and correct copy of this Respondent's Response Brief, via

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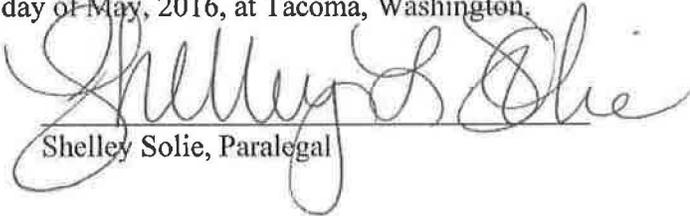
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED AND DATED this 27th day of May, 2016, at Tacoma, Washington.



Shelley Solie, Paralegal