74221-3

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Washington State Appellate Court, Division One

Thomas O. Baicy, Petitioner	)	Brief of Appellant
	)	Case no. 74221-3-1
v.	)	
	)	Title Page
Danelle M. Shay, Respondent	)	

Review from King County Superior Court No. 09-3-03868-0KNT

by

Thomas O. Baicy, Appellant
1231 W. James St., Apt. 4
Kent, WA 98032

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v.	)	
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Review from King County Superior Court No. 09-3-03868-0KNT

Thomas O. Baicy appeals the order of contempt in the King County Superior Court, entered on July 29, 2015, and the denial of the motion for revision, on October 12, 2015, per RAP 2.2(a)(1).

ASSIGNMENTS OF ERROR

1. The court erred by entering an order that the petitioner was in contempt of his parenting plan by exercising his visitation on November 15 and 16, 2014.

Issues pertaining to assignment of error no. 1

1. Did the court error by reasoning beyond scope of the motion for contempt?

2. Is it possible for the father to be in contempt of the parenting plan for exercising visitation on the third weekend of the month when the third weekend is his designated weekend?

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3. Can the mother change her motion for contempt against the father in her reply?

4. Can the court hold the father is in contempt of the parenting plan by violating an alleged practice of the parties of counting Fridays when it is not provided for in the order?

5. Since the court admitted in the order of contempt that there was a certain degree of ambiguity in the parenting plan, was a finding of contempt possible?

Assignment of Error No. 2

The court erred by hearing for contempt motion on July 29, 2015 because the motion and order to show cause was served on the father on November 17, 2014, which was eight months prior to the hearing, so the order to show cause lapsed due to being heard beyond the time permitted by law.

Issues pertaining to assignment of error no. 2

1. What is the time period allowed by law for hearing on a contempt motion and order to show cause?

2. What is the effect of a contempt of court order entered beyond the time period allowed by law?

Assignment of Error No. 3.

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The court erred by awarding attorney fees to the mother's attorney, Richard Cassady, with whom the mother has three natural children, lives with in the same household, and has a meretricious relationship.

Issues pertaining to assignment of Error no. 3.

1. Does the law prohibit attorney fees when the representation is for a person whom the attorney bears a close relation, such as a meretricious relationship?

Assignment of Error no. 4

The court erred by holding the father had the ability pay child support despite the financial evidence showing his monthly income was below the poverty level, thereby showing as lack of ability to pay child?

Issues pertaining to assignment of error no. 4

1. Did the court error by ruling that the father had the ability to pay child support and failed to do so?

Assignment of Error no. 5

The court erred by refusing to hear and rule on the father's counter-claims in response to the mother's motion for contempt against him for non-payment of child support and violation of the parenting plan.

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Issues pertaining to assignment of error no. 5

1. The court erred by refusing to hear and rule on the father's compulsive counter-claim under CR 13(a).

2. The court erred by refusing to hear and to rule on the father's permissive counter-claim under CR 13 (b) and (c).

STATEMENT OF THE CASE

The petitioner moved for a motion and order to show cause for contempt on July 1, 2015 against the mother for back child support for the time she was incarcerated for drug use. CP at 7-9 At the return hearing on July 15, 2015, the respondent moved for the court to hear a motion and order to show cause she served on the father November 17, 2014, for allegations of violating the parenting plan and the order of child support. The court noted the mother's return hearing for July 29, 2015, and the father's return hearing for August 7, 2015. CP at 31-33 The mother's motion was heard the on July 29, 2015. CP at 133-143 The court ordered the father was in contempt of the parenting plan and order of child support, despite the fact that the Commissioner acknowledged the parenting plan visitation was ambiguous and the father showed his income by the required LFLR 10 financial sealed documents was below the poverty level. The court also refused to hear and to rule

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on the father's counter-claims. CP 144-150 The father's motion for contempt against the mother was re-noted for August 25, 2015. At the hearing on August 25, 2015, the court did not order that the mother was in contempt for failure to pay her back support, but merely subtracted the amount of support she owed the father from the amount the father owed the mother. Both parties filed motions for reconsideration, which were denied, so they subsequently filed motions to revise.

The petitioner father moved to revise the Commissioner's rulings on findings of contempt of the parenting plan, the order of child support and award of attorney fees and costs.

The respondent mother moved to revise the commissioner's ruling for conditions purging the contempt, the award of attorney fees, the review date of the purge order, the make-up weekend for the mother, and the principal judgment amount and the amount of interest not being reflected on the judgment summary portion of the Commissioner's order on show cause.

On revision, Judge Amini affirmed the Commissioner's order of contempt against the father for violation of the parenting plan for allegations outside the motion for contempt, including allegations of visitation on weekends not included in her motion for contempt and

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based on allegations of a practice of counting Fridays to determine the weekend of the month, which is not a provision ordered by the court in the parenting plan. Judge Amini also affirmed the petitioner father in contempt for nonpayment of child support. CP at 159-167

The respondent mother was awarded attorney fees in the amount of $4,800 and costs in the amount of $418.09, a make-up week-end, an increase in the monthly payment of attorney fees from $50 to $200, a review date of December 4, 2015, reserved an accounting on attorney fee payment to the review hearing, and ordered Mr. Lawson should be removed as the petitioner's attorney of record. CP at 159-167

ARGUMENT

Issues pertaining to assignment of error no. 1

1. Did the court error by reasoning beyond scope of the motion for contempt?

As a matter of law, a person cannot be held in contempt of a parenting plan unless the person intentionally violates the terms of the order. As a matter of law, this issue requires denovo review.

The mother's motion for contempt of the parenting plan, dated November 14, 2014, alleges that the father was in contempt

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of the parenting plan because he exercised his visitation rights on the weekend of November 15 and 16, 2014, which was the third Saturday and Sunday of the month, thereby constituting the third weekend of the month under the plain meaning of weekend, since Monday, Tuesday, Wednesday, Thursday, and Friday are week days. CP at 257- 258 Saturday and Sunday are weekend days. Since the third weekend of the month is a visitation weekend of the father, he cannot be in contempt of the parenting plan for having their daughter on the third weekend as a matter of law under the parenting plan, as ordered by the court. The mother's motion for contempt was based on her mistake. The court erred by holding the father in contempt based on an alleged practice of counting Fridays to determine the weekend of the month. This alleged practice is not stated in the parenting plan and cannot be grounds for contempt as found by the court. Moreover, the occurrence of five Fridays in one month is so rare, it can hardly be considered as a practice of the parties, particularly, since the parenting plan was only in force for two years. The mother's strict reply evidences her mistake.

In the mother's strict reply, dated July 27, 2015, she attempts to back peddle out of her mistake, thereby confirming her own

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confusion, by alleging the father was in contempt of the prior weekend (Nov. 8 and 9, 2014) because it was actually the second weekend, which belonged to the mother. CP at 101-122 Her attempt to change the weekend she contends the father was in contempt is flawed because she does not allege in her motion for contempt any other weekend other than the November 14-17, 2014, so her motion is limited to the third weekend. Nevertheless, she consented to the father having visitation on the prior weekend due to her mistaken belief, so her consent would nullify contempt. The father cannot be held in contempt based upon the mother's mistaken belief. The father cannot be held in contempt for allegedly deviating from an alleged practice of counting Fridays to determine the weekend when the practice is not ordered in the parenting plan. The father must have intentionally violated the terms of the parenting without the consent of the mother to be in contempt of the parenting plan, as a matter of law. All the squabbling over whose weekend it was is irrelevant with respect to contempt if the actual weekend the father had the child was his weekend designated in the parenting plan, as is the case here.

Therefore, since November 15 and 16, 2014, was the third weekend of the month and the mother's contempt motion is based

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on the father having their daughter on that weekend, it is legally and factually impossible for the father to be in contempt of the parenting plan based upon the mother's motion, as a matter of law. That being the case, the court erred by holding the father in contempt of the parenting plan based on an alleged practice of the parties counting Fridays. Order on Show Cause re Contempt/Judgment, Paragraph 2.3, dated July 29, 2015, CP at 137-143.

2. Is it possible for the father to be in contempt of the parenting plan for exercising visitation on the third weekend of the month when the third weekend is his designated weekend?

It is legally impossible for a person to be in contempt of court for an act that is not in violation of the order. Since the father is alleged to be in contempt of court for having his daughter on November 15 and 16, 2014, the claim fails for impossibility because those days are the third Saturday and Sunday of the month, thereby constituting the third weekend of the month, which is his weekend in the parenting plan under paragraph 3.2. The parenting plan cannot be modified by conduct, so the claim of the mother that Friday is used to determine the weekend, is not grounds for contempt because it is not provided for in the parenting plan.

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Therefore, the father cannot be in contempt for exercising visitation on the third Saturday and Sunday of the month.

3. Can the mother change her motion for contempt against the father in her reply? The mother contends in her reply that the father had their daughter the weekend prior, so he was in contempt for that weekend. CP at 101-102 The mother cannot change her motion for contempt in her reply to a different weekend which she did not allege the father was in contempt in her motion and order to show cause because the father is only required to answer to the allegations in the motion before the court. Plus, the mother allowed the father to have their daughter the prior weekend, so she consented to the visitation the prior weekend, thereby waiving any objection or cause for contempt. More importantly, the motion and order to show cause does not allege the father is in contempt for having the child the prior weekend. CP at 257- 258 Consequently, the court erred by ruling the father was in contempt for having the child the prior weekend because it was not raised in the motion for contempt, therefore, it was waived.

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4. Can the court hold the father is in contempt of the parenting plan by violating an alleged practice of the parties of counting Fridays when it is not provided for in the order?

In determining whether the facts support a finding of contempt, the court must strictly construe the order alleged to have been violated, and the facts must constitute a plain violation of the order. *Johnston v. Beneficial Managegment Corp.*, 96 Wn.2d 708, 713-14, 638 P.2d 1201 (1982) Therefore, as a matter of law, a dispute arising out of an agreement of the parties not found in the parenting plan cannot be grounds for contempt, as a matter of law, because even if true, it is not a violation of the court order, so it cannot constitute contempt of court by law.

Here, the court found the father was in contempt over an alleged practice of counting Fridays to determine the weekend of the month, thereby finding an alleged practice of the parties as grounds for contempt, opposed to the plain language of the parenting plan itself. Since the court found contempt based upon the mother's allegation of counting Fridays to determine the weekend of the month, the court erred because it is not provided for in the court order. CP at 137-143 The plain language of the order applies unless otherwise defined in the order. The order does not

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redefine weekend to include Friday, so Friday is a week day as it is under the ordinary meaning.

Therefore, the court erred by finding the father in contempt based on a practice of counting Fridays as a basis for contempt, since it was not included in the parenting plan.

5. Since the court admitted in the order of contempt that there was a certain degree of ambiguity in the parenting plan, was a finding of contempt possible?

Under law, a parent's failure to comply with an order must be in bad faith to be found in contempt of a parenting plan. RCW 26.09.160(2)(b). Here, the court ruled the parenting plan was ambiguous regarding the counting of weekends, so a finding of bad faith could not be found, since either parent could be reasonably mistaken. CP at 137-143 Moreover, under the plain meaning of weekend, Saturday and Sunday comprise the weekend, and Monday thru Friday are week days. Consequently, even if the both parties believed November 15 and 16, 2014, was the second weekend, both were factually mistaken, so a finding of contempt was not legally possible. The father could not be in contempt of the parenting plan for having the child on the third weekend even if both parties believed it was the second weekend because it was

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the third weekend and the order provides the father has the child on the third weekend. Upon this finding, the court modified the parenting plan on July 29, 2015, stating from now on the Friday of the month will be used to determine the weekend of the month, thereby evidencing the ambiguity by the court. CP at 137-143 Notwithstanding, the court still held that the father was in contempt, even though he had the child on his designated third weekend of the month. Therefore, the contempt finding was based on an alleged counting of Fridays, not on the plain meaning of the parenting plan, so the court erred in holding the father in contempt because he did not violate the parenting plan as required by law.

Assignment of Error No. 2

The court erred by hearing the contempt motion on July 29, 2015, since the motion and order to show cause was served on the father on November 17, 2014, which was eight months prior to the hearing, so the order to show cause lapsed due to being heard beyond the time permitted by law. CP at 276

Issues pertaining to assignment of error no. 2

1. What is the time period allowed by law for hearing on a contempt motion and order to show cause?

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A motion and order to show cause for contempt is to be served on the non-moving party with a notice to appear before the court within two weeks. It is common for such motions to be re-noted by agreement of the parties or by order of the court. However, an eight month return time is beyond the scope of the statute.

Therefore, the court should rule the hearing was against the law as a matter of law.

2. What is the effect of a contempt of court order entered beyond the time period allowed by law?

Whenever a trial court lacks personal jurisdiction over a party, any judgment entered by the court against that party is void. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 541 886 P.2d 189 (1994); *Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wn. App. 480, 486, 674 P.2d 1271 (1984). Where a judgment is void, CR 60(b)(5) authorizes vacation from judgment. Lack of jurisdiction is an exception to the rule requiring objection in the trial court. RAP 2.5(a) A motion to vacate a void judgment under CR 60(b)(5) may be brought at any time after judgment. When a court enters an order without having the authority to do so, the order is void. CR 60(b)(5)

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Here, the order to show cause was entered on November 17, 2014. CP at 276 The return hearing was on July 29, 2015. CP at 133-143 The court did not have the authority to hear a motion and order to show cause entered eight months prior to the hearing because it is beyond the time permitted by law. CP at 31-34 As such the order of contempt should be void for lack of jurisdiction over the father to hear the motion and order to show cause.

Therefore, the appellant moves the court to vacate the order of contempt against him entered on July 29, 2015.

Issues pertaining to assignment of Error no. 3.

1. Does the law prohibit attorney fees when the representation is for a person with whom the attorney bears a close relation?

The appellant argues that Richard Cassady, the attorney of the mother, is not entitled to attorney fees as a matter of law according to *Kay* and *Doe*, so this issue requires de novo review. As such his attorney fees in the amount of $3,800.00, entered by the court on July 29, 2015, should be reversed.

According to the United States Supreme Court, a lawyer may not recover attorney fees under § 1988 when the lawyer appears pro se. *Kay v. Ehrler*, 499 U.S. 432 (1991) Numerous

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courts have expanded the reasoning in *Kay* by applying it to cases where the attorney bears a close relation to the client and denied attorney fees by relying on the reasoning in *Kay.*

In *Doe v. Board of Education*, an attorney was the child's father and represented his son's interest under the Individuals with Disabilities Education Act. 165 F.3d 260 (4th Cir.1998), cert. Denied, 526 U.S. 1159 (1999) In *Doe*, the court applied the reasoning in *Kay,* ruling "the *Kay* decision controls the result. Granting fees was not necessary to encourage a parent to fight for his child, the court said, and rather than encouraging inexperienced parents to bring cases in the hope of a fee award, the court denied these fees."

Likewise, the appellant contends it is not necessary to encourage an attorney to fight for his meretricious spouse, especially in a custody proceeding against the natural father involving a child. There is the danger that the attorney will be motivated by emotion and fail to exercise professional judgment. Mr. Cassady has manifests the harm warned of by the high court in *Kay.*

Here, Richard Cassady, the attorney for the mother, has an intimate relationship with the custodial parent, since they also have three natural children together and all live in Mr. Cassady's home.

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Granting fees is not necessary to encourage Mr. Cassady to fight for the mother because naturally he wants to assist her, even though she is not paying him. There's even more emotion present, since the mother had an intimate relationship with the father of the child in this proceeding. Now Mr. Cassady is the attorney of the mother and also acts as a stepfather to the child, since the child lives in Mr. Cassady's home with the mother, with whom Mr. Cassady has three natural children, so the child is the half-sister of their three children. Therefore, the emotional concerns that undermine professional judgment as established in *Kay* and *Doe* are manifest in the family home of Mr. Cassady, since the mother and their common children, and the child at issue in this case, are all closely related.

In *Doe*, the court cited *Kay* as relevant, stating, "*Kay* clearly does have relevance here. After all, the central thrust of *Kay* is that fee-shifting statutes are meant to encourage the effective prosecution of meritorious claims, and that they seek to achieve this purpose by encouraging parties to obtain independent representation. Like attorneys appearing pro se, attorney-parents are generally incapable of exercising sufficient independent judgment on behalf of their children to ensure that "reason, rather

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than emotion" will dictate the conduct of the litigation. *Kay*, 499 U.S. at 437. Certainly the danger that a child's meritorious claim will be ineffectively prosecuted by an irrationally emotional attorney-parent is at least equal to the danger that the meritorious claim of a pro se civil rights plaintiff, who is also a lawyer, will be bungled without the assistance of an independent attorney." Mr. Cassady embodies the concerns of the High Court in *Kay* and the Fourth Circuit in *Doe*, specifically, that attorneys are generally incapable of exercising sufficient independent judgment on behalf of their children (or children of a meretricious partner) to ensure that "reason, rather than emotion" will dictate the conduct of the litigation. The nature of this element is manifest in the relationship of the attorney to the person represented, not necessarily in the nature of the case itself. However, the nature of the case may increase the risk of compromising the professional judgment of an attorney, such as in family law cases, in which, family emotions naturally run high.

Therefore, if *Kay* controlled the result in *Doe*, it should control the result in the instant case because the same emotional concerns are present in the close relationship between Mr. Cassady and his client and the child at issue.

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It is very arguable that the U.S. Supreme Court concerns in *Kay* are heightened in this case because it is a family law proceeding. Some states, such as New York, will not allow a person who is intimate with another person to represent that person in a family law proceeding for the very reasons expressed in *Kay.* Mr. Cassady illustrated his lack of professional judgment when he filed a motion and order to show cause for contempt against the father on Monday, November 17, 2014, even though it was the third weekend of the month, which was the father's weekend under the parenting plan. CP at 270-271 After the father pointed out that it was his weekend (CP at 87-91), Mr. Cassady changed his allegation in his reply on July 27, 2015, stating, the father certainly must be in contempt for the prior weekend, since he had the child. CP at 125-130 This reasoning is flawed as a matter of law, since the prior weekend was not in the motion for contempt, so the father had no duty to respond to the allegation, or to explain the circumstances of the parties consenting to exchange weekends. But most importantly, no other weekend was at issue in the motion, so the entire contempt motion was flawed due to legal and factual impossibility. CP at 257- 258

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Mr. Cassady neglected his motion for several months and then raised it orally in court at the father's return hearing on the motion and order to show cause on July 15, 2015, against the mother for her for nonpayment of back child support. CP at 31-34 Mr. Cassady persuaded Commissioner Hillman to hear the mother's motion for contempt filed on November 17, 2014 on July 29, 2015, without prior close service as required by law when noting a hearing for contempt, despite the eight month lapse in time. The father contends that noting the hearing after the eight month lapse time is beyond the scope of two week notice requirement from the date of service and the return hearing time, so a new motion and order to show cause was required to allow the father proper notice in preparation for a meaningful opportunity to be heard in compliance with Due Process of law under the Fourteenth Amendment to the U.S. Constitution.

The Commissioner re-noted father's contempt motion for nonpayment of back child support against the mother for August 7, 2015, which was re-noted again to August 25, 2015, due to Mr. Cassady's failure to appear with the mother. The court offset the back support of the mother against the back support of the father, resulting in a back support obligation of the father in the amount of

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$1,419. Mr. Cassady filed a motion for reconsideration because he claimed the father owed the mother $1,667, amounting to an additional $247. He also contested a $71 sheriff's process service fee to serve the mother the contempt motion. It made sense to Mr. Cassady to file a motion for reconsideration that would yield his client an additional $318 if he won. The court denied his motion. However, according to Mr. Cassady's professional judgment, it also made sense to file a motion for revision on the same grounds.

Mr. Baicy filed a motion for revision, arguing that a contempt finding against him for violation of an ambiguous provision, as evidenced by Commissioner Hillman regarding the weeks visitation, is not possible as a matter of law, since it is not possible to be found in contempt based on an ambiguity. A finding that the father must have been in contempt of the prior weekend is impossible, since it was not raised in the motion for contempt, therefore, Mr. Baicy had no duty to respond to an allegation that was not made in the motion. However, Judge Amini affirmed the reasoning of Commissioner Hillman based on a prior weekend that was not an allegation in the motion for contempt. CP at 159-161

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The parties motions for revision were together on October 12, 2015. On revision, Judge Amini required Mr. Cassady to present his motion and order to show cause because it was not present in the recent case history when the hearing on July 29, 2015, was scheduled. After three months, Mr. Cassady said he could not produce the motion and order to show cause, so the court denied his motion for revision, so he was not awarded his claim of an additional $247 in back child support. CP at 144-167 He spent several months litigating a claim worth two hours of his time, but since his client isn't actually paying him (due to their meretricious relationship) his client has no reason, evidently, to keep Mr. Cassady in check by questioning the services he is providing to her which an ordinary client would have to pay for to pursue a valid claim. Mr. Cassady was not motivated by reason in filing a motion for contempt or his motion for revision, but by his own emotion, thereby manifesting the danger expressed by the United States Supreme Court in *Kay* and as relied on in *Doe.*

Mr. Cassady has also pursued claims in which his client has no interest. The father paid all of his back support, so he qualified to claim his daughter on his federal tax return for 2012 and 2014, since the time to amend his returns had not expired. Admittedly, the

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mother does not file federal income tax returns, so the exemption is of no benefit to her. Nevertheless, Mr. Cassady contested the father's request for the mother to sign the federal dependency exemption waiver, despite her not claiming the child daughter herself.

It's apparent that Mr. Cassady has been guided by his emotion more than his professional judgment as an officer of the court, thereby satisfying the concerns of the U.S. Supreme Court in *Kay*, and as extended in *Doe* for denying attorney fees in such cases where the attorney bears a close relation to his or her client, as a matter of law.

Therefore, the appellant requests the court to reverse the award of attorney fees to Mr. Cassady in the amount of $3,800.00, which were ordered on July 29, 2015.

Issues pertaining to assignment of error no. 4

1. Should the court have found the father in contempt for non-payment of child support?

Under RCW 26.18.050(4), "If the obligor contends at the hearing that he or she lacked the means to comply with the support

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or maintenance order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court's order."

Here, the father provided his response with his financial declaration and sealed financial information evidencing his only income from a four-plex which provides a a gross rental income of $2,350 from three apartments, but after costs and property taxes, the father's net income for 2014 was only $7,162.00. CP 195 - 231 The court disregarded the financial evidence and ordered the father was in contempt, regardless of his inability to pay. Then on reconsideration, ruled an inability to pay child support was not an element of a contempt proceeding, thereby contradicting the RCW 26.18.050, which allows the obligor to show his inability to pay child support to avoid a contempt judgment.

The father also raised the issue of transportation under the parenting plan which requires him to pick up and return the child sixty-three times a year on week days (Friday afternoon and Monday morning) during daytime work hours, resulting in a parenting plan that is impractical to follow unless a person does not have to work days. The mother has the burden of only transporting our daughter

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three times a year and only in the summer months. The father provides all other transportation during the year, resulting in substantial time on the road from Kent to Redmond and back at two hours a trip during rush hour. In short, the impractical transportation arrangements has resulted in unemployment and a substantial financial hardship. The court held the father in contempt of child support and ordered him to pay the Division of Child Support monthly for back support and to stay current on his present support. The father does not contest the payment plan for back child support and attorney fees, but he should not be found in contempt, since he did not have the ability to comply with the child support order.

Therefore, since the father provided the financial evidence as provided by law of his inability to pay child support, the court should not have held him in contempt, so the order should be vacated with respect to the contempt for non-payment of child support and attorney fees, which is addressed hereafter.

Assignment of Error no. 5

The court erred by refusing to hear and rule on the father's counter-claims in response to the mother's motion for contempt against him for non-payment of child support and violation of the parenting plan. CP-87-91

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Issues pertaining to assignment of error no. 5

1. The court erred by refusing to hear and rule on the father's compulsive counter-claim under CR 13(a).

In response to the motion for contempt of the parenting plan, The father counter-motioned that the mother and her attorney be sanctioned for filing the motion for contempt, however, the court refused to hear the motion.

LFLR 1 provides that the Washington State Court Rules and King County Local Rules are included in family law proceedings. CR 13(a) allows a compulsory counterclaim for an issue arising from the same subject matter and the same occurrence. Under CR 11(a) sanctions are allowed for bringing a frivolous motion and sanctions are allowed under LFLR 1 for failing to comply with the King County Local Rules.

Here, the mother and her attorney should have known the the third Saturday and Sunday of the month are the third weekend of the month. Their failure to look at the calendar and to count to three constitutes a frivolous motion because her motion for contempt is based on her claiming it was the second weekend, thereby constituting a factually impossible basis for contempt. Attorney Cassady responded that the father cannot file a counter-claim unless

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it is pre-approved by a UFC Judge since the court did not order that the father was unable to defend himself by raising counter-claims, and such would be a denial of his Due Process rights under the Fourteenth Amendment to the United States Constitution.

Therefore, the motion for contempt should have been heard because it was without cause, frivolous, and so it was grounds for sanctions under CR 11(a) and LFLR 1. The father requested sanctions against the attorney in the amount of one thousand dollars. A party requesting sanctions must provide a financial declaration and sealed financial information, so such was filed together with the compulsory claim per CR 13(a) and LFLR 10(a)(1)(C) and LFLR 10(b). CP 195-231

2. The court erred by refusing to hear and rule on the father's compulsive counter-claim under CR 13(b) and (c), to modify the parenting plan?

Under CR 13(b), a party may state as a permissive counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is of the subject matter of the opposing party. CR 13(c) allows a claim for relief exceeding in amount or different in kind from that sought by the opposing party.

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LFLR 1 incorporates the State Court Rules into proceedings under the LFLRs.

Here, the subject matter of the opposing party's claim is the parenting plan, so CR 13 (b) allows the father to state a claim regarding the parenting plan not arising out of the same occurrence as the stated by the mother. The father states that the mother should be held in contempt for violating the parenting plan by construing the vacation provision after May 1 of the year in bad faith. The father also contends that the mother's exploitation of the vacation provision should be grounds for modifying the parenting plan according to the applicable LFLRs.

The parenting plan provides under paragraph 3.6 that if a parent wishes to take a vacation with the child, that parent shall notify the other parent by May 1st of the year of a two week vacation or two one week vacation periods. If a parent fails to give notice by the May 1st deadline, the parent shall not be precluded from taking a vacation, but the vacation "must be scheduled such that it does not conflict with the vacation of the other parent, or previously scheduled activities, camps, or events for the child." The vacation taken after May 1st "must be scheduled" to provide advance notice to the other parent. The meaning of "schedule" means to plan in advance certain

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events or activities with the intent of clearly marking the future. In the parenting plan, the intent is to give notice to each parent of the others plans to take a vacation. The essence of scheduling is reasonable advance notice to the other parent of an intended vacation. CP 87-91

Here, the mother has used the after May 1st vacation provision to declare without advance notice that today she is taking a vacation, commencing on the days of the father's visitation. The mother texts the father on the pick up day or the night before declaring a vacation. This has occurred three times this summer already. On Thursday, June 4, 2015, 4:57pm, the day before father's pick up day on Friday, mother texts father, "I'm going to utilize my vacation time" with no consideration of the reasonable notice requirement inherent in scheduling a vacation. On Friday, June 26, 2015, 8:58am, the mother texts the father on the day of father's visitation "taking vacation time with 'B' [Bainya, daughter] for this weekend." On Friday, July 17, 2015, 10:25am, mother texts the father "B has been invited to a party and horseback riding, so I'm taking vacation time this weekend." The mother construes "scheduling a vacation" like an employee calling in for sick leave without consideration of the father's plans with the child. Her

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practice is in clear violation of the inherent intent of the vacation notice provision. The parenting plan is the same subject matter, but the vacation exploitation is a different occurrence but is all under CR 13(b) and LFLR 1 as a permissive counterclaim any claim, so the trial court should have heard this counter-claim, and based on the facts, should have held the mother in contempt for violation of the vacation provision thereunder. CP 87-91

Therefore, the court should have heard the counter-claim and found the mother in contempt of the parenting plan and ordered sanctions against her and her attorney, Richard Cassady, since they made these vacation decisions jointly in a meretricious relationship.

CONCLUSION

Based on the aforementioned, the appellant requests the court to reverse the order of contempt against the father on July 29, 2015, for contempt of the parenting plan and the child support order, grant the father his counter-claims, and reverse the award of attorney fees to the mother.

I respectfully request the Court of Appeals to reverse the order of the trial court, dated July 29, 2015, by reversing the order

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of contempt of the parenting plan, the contempt of the child support, and the order of attorney fees.

May 13, 2016.

Respectfully submitted,
Signature

Thomas O. Baicy

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Affidavit of Service to Parties is filed together with this Petition.

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