

No. 74318-0-1

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION I

KATHERINE SUZANNE WARD.

Appellant

v.

KENNETH EUGENE WARD,

Respondent

ON APPEAL FROM
KING COUNTY SUPERIOR COURT
(The Honorable Julia L Garrett)

RESPONDENT'S BRIEF IN RESPONSE

James T. Hendry, WSBA No. 37411
Attorney for Kenneth Eugene Ward, Respondent

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COURT OF APPEALS
STATE OF WASHINGTON
BY 

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OBJECTION

The court was within its statutory authority to rule both on both residential and nonresidential aspects of the parenting plan. Appellant waived argument on these issues by not objecting at the time of trial or at the time of oral ruling. Appellant did object to objection to offer of proof that was not relevant to the issues of parenting. Sustaining objection to irrelevant testimony or offer of proof of irrelevant facts is appropriate.

The Court is asked to review a parenting plan decision for abuse of discretion. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). Because of the trial court's unique opportunity to observe the parties, the appellate court is extremely reluctant to disturb a trial court's child placement decisions. *In re Parentage of Schroeder*, 106 Wn.App. 343, 349, 22 P.3d 1280(2001).

The best interests of the child is the standard "by which the court determines and allocates the parties' parental responsibilities." RCW 26.09.002; *Schroeder*, 106 Wn.App. at 349. In establishing a residential schedule for children in a parenting plan, RCW 26.09.187(3)(a) identifies the following factors a trial court must consider:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of parenting functions . . . , including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

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

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

RCW 26.09.187(3)(a) states, "The child's residential schedule shall be consistent with RCW 26.09.191." RCW 26.09.191(3) allows a court to impose restrictions in a parenting plan if the court finds a parent's involvement or conduct may have an adverse effect on the child's best interest and if any of the factors in RCW 26.09.191(3) are present.

**The Court Has Broad Authority:
The Best Interests of The Children:**

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be

fostered unless inconsistent with the child's best interests.

Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.

Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm. (RCW 26.09.002: Policy).

Appeal is Misplaced:

Appellant complains that the court lacked authority to rule in this case, having dismissed mother's petition and then accepts the court's ruling after participating in a long trial: "Mother does not contest the review the trial court made or the changes the trial court made to the November 2013 Parenting Plan's residential provisions," (Appellant's Opening Brief Page 2).

Appeal should be denied because Appellant waived objection to the forum and the procedure.

Spontaneous UA Requests:

Mother has, under the Court Ordered Parenting Plan retained the right to spontaneously request Father submit to a urinalysis test. In the 24 months prior to trial Father had submitted to some 200 such tests. One (early on) was positive, one was positive for a prescription drug and one, taken in the summer months, was low on creatinine. The trial court was satisfied that the nearly 200 other negative test results demonstrated Father's commitment to sobriety. (RP 1042 14-21)

HIGH CONFLICT CASSES REQUIRE EXCEPTIONS 'IN THE BEST INTERESTS OF THE CHILDREN'

Parenting Classes/ Parenting Coaches: The trial court merely appointed a mediator who happens to be a parenting coach. There is nothing excessive about assigning a "Case Manager" as the mediator.

Unlike Shryock and Watson, the trial court here did not impermissibly modify the residential provisions of the parenting plan or impose restrictions the parties had not contemplated by the evidence. The court had authority under RCW 26.09.260(10) to

modify and/or clarify the parenting plan as it did. The trial court did not err in ordering the nonresidential changes to the parenting plan.

RCW 29.09.260(10) provides the court authority to make changes to the nonresidential aspects of the parenting plan: "The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section." Further, the court has authority to clarify a decree by defining the parties' respective rights and obligations. *In re Marriage of Christel*, 101 Wn.App. 13, 22, 1 P.3d 600 (2000). A clarification is not a modification: a modification occurs when a party's rights are either extended beyond or reduced from those originally intended in the decree. *Id.*

James Ward:

The Court's order is: a minor modification indeed that the trial court found after a protracted trial and extensive testimony by both parents; to be in the children's best interests.

Ms. Thompson's Irrelevant Testimony:

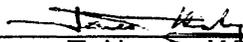
The only evidence at trial is relevant evidence. Mother's counsel veered far and wide of relevance while eliciting testimony from Ms. Thompson. While making an offer of proof Counsel described an event between Ms. Thompson and Mr. Ward that allegedly occurred at some place not with the children present, not with Ms. Ward present. The relevance that this episode was related to parenting was completely lost and a waste of the court's time. (RP 357: 2-9)

CONCLUSION:

The court was within its statutory authority to rule both on both residential and nonresidential aspects of the parenting plan. Appellant waived argument on these issues by not objecting at the time of trial or at the time of oral ruling. Appellant did object to objection to offer of proof that was not relevant to the issues of parenting. Sustaining objection to irrelevant testimony or offer of proof of irrelevant facts is appropriate.

Dated this 14th day of July, 2016

Respectfully submitted


James T. Hendry WSBA No. 37411

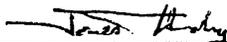
CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true and correct copy of Respondent's Response to the following:

Court of Appeals of The State of Washington One Union Square 600 University Street Seattle WA 98101 <input checked="" type="checkbox"/> Facsimilie: 206 389 2613	Western Washington Law Group 7599 212 th St SW Suite 207 Edmonds WA 98026 <input checked="" type="checkbox"/> Facsimilie: 425 955 5300
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DATED this 15^h Day of July, 2016 at Lynnwood Washington:



James T. Hendry WSBA No. 37411