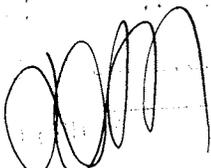


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NO. 35629-5 II

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

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IN RE THE MARRIAGE OF:

NATHAN WYRICK, APPELLANT,

V.

ERIN DEMETRO, RESPONDENT

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**RESPONSE TO APPELLANT'S BRIEF**

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## I. INTRODUCTION

Respondent, Erin Demetro, respectfully asks this Court to affirm the lower court's decision to order the child to reside with her and the father to make transfer payments to her.

## II. STATEMENT OF THE CASE

Ms. Demetro adopts the procedural background delineated by Mr. Warick. Brief of Appellant, pg. 6.

Upon conclusion of the trial, the court issued its ruling, finding a substantial change of circumstances had occurred and the modification was in the best interest of the child and is necessary to serve the best interest of the child. Order re Modification/Adjustment of Custody Decree/Paranting Plan/Residential Schedule, 3 November 2006; RCW 26.90.260(1).

## III. ARGUMENT

### A. The trial court's ruling was supported by substantial evidence.

Findings of fact made by the trial court cannot be disturbed appeal if there is

substantial evidence to support such findings.  
Peste v. Peste, 1 Wn.App. 19, 459 P.2d 70 (1969).  
The evidence presented at trial through testimony  
clearly establishes substantial evidence to  
support the finding of a detriment to the child's  
physical, mental, and emotional health.

In order to prevail, Mr. Warick has to show  
an abuse of discretion on the part of the trial  
court. Abuse of discretion is a finding that is  
"manifestly unreasonable, or exercised on  
untenable grounds, or for untenable reasons."  
State ex rel. Carroll v. Junker, 79 Wn.2d 12, 482  
P.2d 775 (1971).

The Findings of the Order to Modify found  
there was substantial evidence to support a  
finding of substantial change of circumstances.

Among the findings were, (1) the failure of  
the father to deal with the dental issues  
evidenced by the child, as well as his failure to  
properly provide the child with his medications;  
(2) that the father left the child in the care of

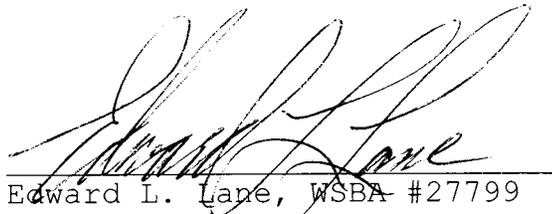
his step-mother while he was training in the Army without the consent of Ms. Demetro; (3) that Ms. Demetro secured primary care of the child beginning 7 April 2006, and the child resided in her primary care through the trial; (4) the step-mother assumed a parental capacity and role with the child's educators and health care providers without the knowledge, permission, or consent of Ms. Demetro; (5) the admission that father knowingly allowed the step-mother to change language in a military form submitted to his military supervisors after Ms. Demetro had signed the document; (6) the testimony confirming the diagnosis of ADHD, anxiety disorder, and PTSD and the father's refusal to believe these diagnosis.

There were thirteen findings made by the court. Mr. Warick addresses only whether there was a showing of "detriment". A review of the transcripts and a review of the findings and conclusions support a finding of detriment.

#### **IV. CONCLUSION**

For the reasons stated above and the record before the Court, Ms. Demetro asks the Court to affirm the trial court and to allow her to continue to be the primary parent.

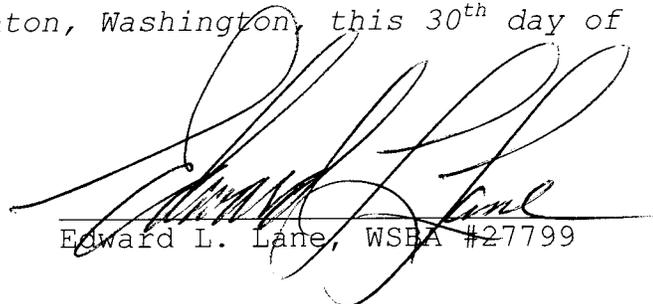
RESPECTFULLY submitted this 30<sup>th</sup> day of October 2007.

  
Edward L. Lane, WSBA #27799  
Attorney for Respondent

*I hereby declare under penalty of perjury under the laws of the State of Washington that I served a true and correct copy of this pleading upon Sally N. Rees, Attorney for Appellant, on 25 October 2006 by the following method:*

- a. Via email to snrees@juno.com*
- b. Via U.S. Mail*

*Dated at Renton, Washington, this 30<sup>th</sup> day of October 2007.*

  
Edward L. Lane, WSBA #27799