

NO. 368285-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY [Signature]

KAREN LYNN FISCHER,

Respondent,

v.

BRUCE ALAN FISCHER,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON FOR THURSTON COUNTY  
THE HONORABLE PAULA J. CASEY

**BRIEF OF APPELLANT BRUCE A. FISCHER**

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**ORIGINAL**

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## I. ASSIGNMENTS OF ERROR

No. 1. The trial court erred when it entered 9 post-judgment orders since the filing of the appeal and failed to receive the authority of the appellate court in accordance with RAP 7.2.

No. 2. The trial court erred when it found that Mr. Fischer had a history of domestic violence acts.

No. 3. The trial court erred when it failed to find that Ms. Fischer DID have a history of domestic violence acts and further erred when it refused to issue a protection order protecting Mr. Fischer from continued assault by Ms. Fischer.

No. 4. The trial court erred when it reissued the protection order against Mr. Fischer on the anniversary of the order on September 5, 2008.

No. 5. The trial court erred in not striking Ms. Fischer's Certified Statement seeking to extend and amend the protection order when it was determined that that the statement was not proper for consideration.

No. 6. The trial court erred when it determined that the children R.F. and C.F., should have restricted contact with their father and that the mother should have sole decision-making in the final parenting-plan.

No. 7. The trial court erred when it continued to enter increasingly punitive and restrictive orders after trial further restraining Mr. Fischer's contact with his children in part due to his refusal to attend a Domestic

Violence Perpetrator Program and without a showing of any identified increase in harm, which in effect modified the parenting plan without authority of the appellate court.

No. 8. The trial court erred when it awarded the wife exclusive use of the family home and required the husband to pay one-half of the mortgage to maintain her in the home until it sold with no rights of access, possession, or use absent a finding of need pursuant to statute.

No. 9. The trial court erred when it awarded \$15,000 to the wife in attorney's fees and failed to find the wife's abusive use of conflict as intransigence worthy of an award to attorney's fees to husband.

No. 10. The trial court erred when it adopted Ms. Fischer's child support worksheets that were calculated according using proprietary software and rejected Mr. Fischer's child support worksheets, which were calculated in accordance with the IRS and Washington state statutory instructions.

No. 11. The trial court erred in failing to determine the value of the real property by adopting the real estate agent's proposed value versus requiring a property appraisal, which would be used by the financial institutions.

No. 12. The trial court erred when it failed to enforce its personal property award to Mr. Fischer even after Ms. Fischer officially changed her residence.

No. 13. The trial court erred when it refused to modify the protection order to reflect the actual residence of Ms. Fischer and not require Ms. Fischer to provide notice of relocation as required in ¶3.14 of the Parenting Plan and in accordance with RCW 26.09.430 - .480.

No. 14. The trial court erred procedurally when it allowed the testimony of Peg Cain at trial after the written revocation of information release filed by Mr. Fischer and further in allowing her to testify to matters to which she had no firsthand knowledge.

No. 15. The trial court err in allowing the testimony of Maryanne Trause, Ph.d., regarding the quality of the relationship of the daughter with Mr. Fischer when she never observed Mr. Fischer and the daughter interact?

No. 16. The trial court erred procedurally when it rejected the reports of Domestic Violence assessor Dr. Notarfrancisco and Guardian Ad Litem (GAL) Hanrahan.

No. 17. The trial court erred procedurally when it refused to enter a temporary parenting plan throughout these proceedings, instead

choosing to manage the parent-child relationship through temporary protection orders.

No. 18. The trial court erred when it failed to honor its Oath of Office by failing to protect the constitutional rights of Mr. Fischer.

No. 19. The trial court erred when it failed to recuse itself when there was an accepted Affidavit of Prejudice against Judge Casey on record.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

No. 1. Did the trial court err when it entered post-judgment motions that changed the terms of the parenting plan on appeal; the domestic violence order on appeal; and the decree of dissolution on appeal without following the procedures set forth in RAP 7.2? (Assignment of Error 1)

No. 2. Did the trial court err when it found that Mr. Fischer had engaged in acts of domestic violence and imposed upon him continued protection orders restricting his contact with Ms. Fischer and the children; ordered Mr. Fischer to engage in a state-certified domestic violence treatment program and placed severe restrictions in the final parenting plan; when the evidence offered at trial by the petitioner consisted of her self-serving and uncorroborated testimony? (Assignment of Error 2)

No. 3. Did the trial court err in not finding that substantial evidence existed to support a finding that Ms. Fischer had engaged in acts of domestic violence against Mr. Fischer as defined in RCW 26.50? Did the court further err when it failed to issue an Order of Protection for Mr. Fischer under the same statute? (Assignment of Error 3)

No. 4. Did the trial court err when it renewed the protection order restraining Mr. Fischer's contact with his minor children for more than one year (a duration of three years now) absent a finding that Mr. Fischer is likely to resume acts of domestic violence under RCW 26.50.060(2), when there were not instances of events or actions over the past two years that would lead a reasonable person to believe that Mr. Fischer would resume alleged acts of domestic violence? (Assignment of Error 4)

No. 5. Did the trial court err in not striking Ms. Fischer's Certified Statement when it determined that it was not proper for consideration; and was that error harmless when, although the court stated that it was prepared to extend the order prior to hearing argument, it did not state whether its prior decision to extend the order involved prior consideration of the Certified Statement? (Assignment of Error 5)

No. 6. Did the trial court err in placing restrictions on Mr. Fischer's residential time under RCW 26.09.191 and denied him joint decision making when it made specific findings that Mr. Fischer was an

active and involved parent and where an objective observation by the court appointed guardian ad litem concurred with the court's observations of Mr. Fischer's positive parenting? (Assignment of Error 6)

No. 7. Did the trial court err when further restrictions on the father's residential time were granted restricting him from nominal contact during school activities and extracurricular activities absent a finding that any of the requirements of RCW 26.09.191(1) and (2) were present. (Assignment of Errors No. 6 and 7)

No. 8. Did the trial court err when it awarded the wife exclusive use and control of the family home and required the husband to pay one-half of the mortgage to temporarily maintain her in that home until it sold with no rights of access, possession, or use when the court specifically found (1) the wife did not have a need for continued maintenance beyond September 2007; (2) the wife testified that she could not afford to stay in the home; (3) the husband testified that he could afford the home and moved post-judgment to have the home transferred to him; and (4) the courts actions forced the home into foreclosure? (Assignment of Error 8)

No. 9. Did the trial court err when it awarded \$15,000 to the wife in attorney's fees and failed to find the wife's abusive use of conflict as intransigence worthy of an award to husband of attorney's fees absent a showing of need? (Assignment of Error 9)

No. 10. Did the trial court err when it adopted Ms. Fischer's child support worksheets that were calculated using proprietary software and otherwise rejected Mr. Fischer's child support worksheets, which were calculated in accordance with the IRS income reporting rules and Washington state statutory instructions? (Assignment of Error 10)

No. 11. Did the trial court err in failing to determine the value of the real property by adopting the real estate agent's proposed value versus requiring a property appraisal, which would be used by the financial institutions? (Assignment of Error 11)

No. 12. Did the trial court err when it failed to enforce its personal property award and required Mr. Fischer to wait until the home was sold before he would have access to his personal property? (Assignment of Error 12)

No. 13. Did the trial court err when it refused to modify the protection order to reflect the actual residence of Ms. Fischer and not require Ms. Fischer to provide notice of relocation as required in ¶3.14 of the Parenting Plan and in accordance with RCW 26.09.430 - .480.

No. 14. Did the trial court commit procedural error when it allowed the testimony of Peg Cain at trial after Mr. Fischer filed a written revocation of information release prior to the filing of Peg Cain's report and further in allowing her to testify to matters to which she had no

firsthand knowledge? (Assignment of Error 14)

No. 15 Did the trial court err in allowing the testimony of Maryanne Trause, Ph.d., regarding the quality of the relationship of the daughter with Mr. Fischer when she never observed Mr. Fischer and the daughter interact? (Assignment of Error 15)

No. 16 Did the trial court err when it rejected the procedurally correct report of Domestic Violence Assessor Dr. Bill Notarfrancisco? (Assignment of Error 16)

No. 17 Did the trial court err procedurally when it refused to enter a temporary parenting plan throughout the pretrial proceedings, but rather chose to manage the parent-child relationship through temporary protections orders? (Assignment of Error 17)

No. 18 Did the trial court err when it failed to Honor its Oath of Office by failing to follow the Judicial Canons and protect the constitutional rights of Mr. Fischer? (Assignment of Error 18)

No. 19 Did the trial court err in failing to recuse itself when there was an accepted Affidavit of Prejudice against Judge Casey on record pertaining to all matters involving Mr. Fischer to include the specific case number assigned to the protection order matter and when Judge Casey believes that *lawsuits* naming her as a defendant or respondent were not appropriately taken? (Assignment of Error 19)

### **III. STATEMENT OF THE CASE**

#### **A. History**

##### **1. Background.**

The appellant in this case is Bruce A. Fischer, age 44. The respondent is Karen Fischer, age 43. The parties were married June 26, 1992. The parties were married for 14 years and had two children as issue of their marriage; a daughter Christina, age 12 and a son Ryan, age 10.

Bruce Fischer has a bachelor's degree in Business Administration and works as an account manager in the packaging industry. His employer is based out of Kent, Washington. Mr. Fischer was the primary financial support provider for the family. Karen Fischer holds a master's degree in speech language pathology and worked part-time outside of the home, three days per week on average, during the parties' marriage. Ms. Fischer is now employed full-time in the primary education field. The parties enjoyed a middle-class life, having lived in California, Colorado, King County, Washington, and Thurston County, Washington since 2004.

##### **2. Procedural.**

This matter is under appeal from the parties' dissolution, Thurston County Cause No. 06-3-00845-7 and Civil matter 06-2-30505-9, both heard at trial September 2007, before Thurston County Judge Paula Casey. The trial consisted of five partial days.

During the early evening of July 25, 2006, after arriving home from work, Mr. Fischer was served at his home with a restraining order that required him to leave his home. Mr. Fischer later cross-petitioned for a mutual restraining order that was denied. 8/18/06 RP. Mr. Fischer was restrained from contact with Ms. Fischer and the children and restrained from the family home. CP 12. Mr. Fischer was required to obtain a domestic violence evaluation. CP 64. He submitted to a psychological evaluation and domestic violence assessment from Dr. Bill Notarfrancisco that determined Mr. Fischer did not possess characteristics of a domestic violence perpetrator. CP 83. Thurston County Commissioner Christine Schaller rejected Dr. Notarfrancisco's report because he had not received direct input from Ms. Fischer prior to submitting his report to the court; she failed to return his telephone calls. 9/21/06 RP at 36, see also CP 249. Commissioner Schaller required Mr. Fischer to obtain a new assessment and required continuing professionally supervised contact between Mr. Fischer and the children; two two-hour visits per week. Mr. Fischer was restrained from contact with Ms. Fischer, the children and from ¼ mile of the family home. CP 62-65. He was permitted to participate in and attend the children's school and extra-curricular events so long as no direct contact was made with Ms. Fischer. CP 259. The only instances of contact between the parties since the entry of the initial restraining order

have been at legal proceedings. Ms. Fischer filed for divorce on August 4, 2006. CP 11.

The court appointed guardian ad litem Nancy Hanrahan to investigate the issue of domestic violence and to specifically answer whether the children had personally witnessed any incidents of domestic violence. CP 20. There have not been any allegations of domestic violence against the children by any party. Ms. Hanrahan testified there would be no problem with Mr. Fischer being with his children without supervision in September 2006. 9/21/08 RP at 26. Ms. Hanrahan submitted a report to the court in December 2006, finding that the children had not witnessed domestic violence in the home and providing recommendations as to parenting concerns and parenting plan issues. CP at 1173. On February 5, 2007, Mr. Fischer filed a motion for a temporary parenting plan and moved to adopt the guardian ad litem's recommendations. CP 291, 293. Mr. Fischer's motion was denied. CP 518. The court did not adopt any of the guardian's findings or recommendations and the guardian ad litem did not remain active in the matter after providing testimony to the court.

The court issued subsequent temporary orders prohibiting Mr. Fischer's participation with the children during extracurricular and sporting activities and preventing him from coaching his son. CP 479,

526. The court required Mr. Fischer to complete domestic violence treatment and maintained restraints limiting contact and parenting of the children until compliance with the domestic violence treatment requirement. Mr. Fischer has not enrolled in the domestic violence treatment program.

Ms. Fischer petitioned to renew the domestic violence restraining order in August 2007. Mr. Fischer entered a response objecting to the renewal of the order citing there has been no contact or instances to indicate the need for renewal of the order. CP 128. The court entered a temporary order extending the restraining order pending trial. CP 381.

Trial for the parties' dissolution began August 27, 2007, and included testimony regarding the domestic violence issues related to the restraining order. The court found that Ms. Fischer testifies to having fear and issued an order renewing the restraining order, as modified by the temporary order in the dissolution matter, until September 5, 2008. CP 393, 395. In December 2007, the court modified the restraining order upon the request of Ms. Fischer to prohibit the exchange of greetings or hugs between Mr. Fischer and the children during his attendance at school or sporting events. The request was made after Mr. Fischer, having first discussed with counsel and seeking authorization from the children's school director/principal, delivered a Christmas card to the children in her

office on their last day of school before holiday break, for which they exchanged hugs. Ms. Fischer immediately contacted the police and an unsuccessful attempt was made to arrest Mr. Fischer that evening.

12/20/07 RP at 11-12. An officer was present at the pre-scheduled hearing the next morning to make an arrest but Mr. Fischer was not present due to work obligations and having counsel present. The matter was later dismissed by law enforcement investigators after receiving copies of all the variations of orders. The court then modified the terms of the restraining order to prohibit any potential for future contact between Mr. Fischer and the children, specifically such as a hug or returning a wave or greeting to the children. 12/20/07 RP at 13. The restraining order remains in place and was heard for renewal September 5, 2008, upon request of Ms. Fischer to be indefinitely extended and include restraints prohibiting Mr. Fischer's attendance at the children's' events and activities. CP 467. The order was renewed September 5, 2008 and amended September 8, 2008. CP 494, 499.

All visitation is governed by the Parenting Plan which contains limitations dependent upon the requirement that Mr. Fischer enroll in the Domestic Violence Perpetrator Treatment Program. CP 979. Currently Mr. Fischer is denied all means of contact with the children, to include

visitations, telephone calls, emails, etc., to include denial of access to therapy or related information. 8/27/07 RP at 221-224.

### **3. Family Home.**

The family home was ordered to be sold in the final divorce decree pursuant to trial. CP 1028-1035. Ms. Fischer was allowed to remain in the home and Mr. Fischer was ordered to pay for one half of the mortgage obligations. CP 1035. The court found maintenance was no longer appropriate because Ms. Fischer was capable of independently meeting her needs. CP 1038. The parties were listed as “Tenants in Common” on the property. CP1035.

The court did not order an appraisal or market analysis before ordering the property sold. It was then found that there was no equity in the home after a listing agent’s market analysis and several weeks on the market. 1/28/08 RP at 8. In fact, the transaction was shown to be a loss after considering realtor fees. Additionally, a preliminary title report revealed the title had become clouded by the attorney fee award to Ms. Fischer’s trial attorney, Mr. Lucenko, in the amount of \$15,000.

On December 11, 2007 Mr. Fischer petitioned the court through a CR-60(b) post trial motion (CP at 1066, 1190<sup>1</sup>, 1245) to transfer the house to his possession in order to prevent the large financial loss that would

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<sup>1</sup> Clerk’s Papers Index indicates Respondent’s Motion for Relief from Judgment or Order Pursuant to CR 60(b), filed December 11, 2007, as 1066-1082 and 1190-1206.

have resulted from a forced sale in the depressed market conditions. The trial court did not rule on the motion for over 90 days. CP 1478.

Petitioner's counsel brought multiple motions for CR-11 sanctions and forced sales in the interim. CP 1083. The court made its ruling on the CR-60(b) motion on March 18, 2008, with a firm denial. CP 1478.

Another hearing was scheduled for April 29, 2008, to re-address issues pertaining to the denied motion that remained unresolved some 100 plus days after Mr. Fischer's CR-60(b) filing for relief. CP 1502.

In December 2007, Ms Fischer ceased paying her portion of the court ordered mortgage obligations. CP 1289. That was the last payment of record by Ms. Fischer. Ms. Fischer then abandoned the home in February of 2007, leaving it vacant due to Mr. Fischer remaining restrained from the address. CP 457. Mr. Fischer ceased payment on the home mortgages in March when he was unsuccessful at obtaining the necessary orders of the court to quiet title as to the attorney lien and allow access and occupancy of the now vacant home. CP 1433. Mr. Fischer was no longer able to sustain the expense of two residences and necessary cost of maintaining legal action. The court continued to deny Mr. Fischer's request to transfer the home to him and he soon learned that the home had in fact met the inevitable fate of foreclosure, as he later discovered the lenders began proceedings on April 8, 2008.

Mr. Fischer made unsuccessful attempts to request this court's intervention to forestall the foreclosure. Mr. Fischer was informed by Court of Appeals Commissioner Skerlec that his request was mandamus and must be sought through the Supreme Court. The petition was dismissed as improper by Commissioner Steven Goff of the Supreme Court. Mr. Fischer has further sought relief through a civil suit seeking injunctive relief; that pursuit was also denied. The home was scheduled to be auctioned on August 15, 2008. Mr. Fischer recently learned that the home did not sell on August 15, 2008, and was set to be presented at auction again on September 19, 2008, and then again on September 26, 2008. Mr. Fischer has not received confirmation that the home has sold or what the final amount of deficiency and cost the lender will seek as judgment from the parties.

#### **4. Maintenance.**

In September of 2006, Commissioner Schaller ordered Mr. Fischer to pay \$3,500 per month in "transitional" maintenance to Ms. Fischer beginning August 2006. CP 258. This was in addition to the \$700 monthly child support obligation that was ordered under the same order. Mr. Fischer was also ordered to pay for all of the revolving debt which totaled a monthly payment of \$350 to \$500. Ms. Fischer's only obligation was to pay for the car loan for the vehicle that she was driving.

In March of 2007, after eight months of paying to this schedule, Mr. Fischer petitioned the court to end the transitional maintenance. CP 291. Judge Casey reduced the maintenance down to \$2,500 per month “to cover the mortgage amounts.” CP 521. Mr. Fischer paid a total of fourteen months of transitional maintenance in addition to having the burden of the post trial obligation of half Ms. Fischer’s residence while she remained in the marital home.

#### IV. ARGUMENT

##### A. **The Trial Court Erred By Not Requiring The Application Of RAP 7.2 Before It Substantially Changed Orders Already On Review**

(e) Postjudgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion. The decision granting or denying a postjudgment motion may be subject to review. Except as provided in rule 2.4, a party may only obtain review of the decision on the postjudgment motion by initiating a separate review in the manner and within the time provided by these rules. If review of a postjudgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in rule 3.3(b).

RAP 7.2(e)

Since the filing of the Notice of Appeal, the trial court has entered at least 11 post-trial orders that modify orders pending review of the appellate court, without seeking the required permission of the appellate court for those orders that changed a decision subject to the Court's review. Further, the orders were issued without having been brought properly before the trial court pursuant to a postjudgment motion authorized by the civil rules, as required. Appellant seeks review of the postjudgment decisions, which are consolidated for the Court's review.

**B. There Was Not Substantial Evidence Produced At Trial To Support The Finding That Mr. Fischer Committed Multiple Acts Of Domestic Violence To Constitute A Finding Of A History Of Domestic Violence Acts**

Substantial evidence is that which is sufficient to persuade a fair-minded person of the declared premise. In re Marriage of Hall, 103 Wn.2d 236, 246, 692 P.2d 175 (1984). During the course of the dissolution proceedings Ms. Fischer initiated a Domestic Violence Petition. CP at 5. The protection order was sought 8 months after the stated incident for which she sought the order. Mr. Lucenko stated the December 2007 incident was the "primary impetus for Mrs. Fischer to get a protection order." 8/31/07 RP at 923. Her initial Protection Order was issued by Thurston County Commissioner C. Schaller. That ruling was

subsequently upheld, adopted, and renewed on September 21, 2006; October 20, 2006; September 5, 2007; and September 5, 2008. CP at 100, 12, 395, and (06-2-30505-9 Dkt 128). Since the superior judges have not revised the order as to Ms. Fischer and the parties' children, the commissioner's decision stands as the decision of the superior court that is before this court for review. RCW 2.24.050; In re B.S.S., 56 Wn.App. 169, 171, 782 P.2d 1100 (1989). Again the original final protection order was entered on August 16, 2006. During the trial commencing August 27, 2007, the only evidence provided as support for allegations of domestic violence and continued protection orders for Ms. Fischer and the children consisted of Ms. Fischer's self-serving testimony. She did not produce any witnesses or submit any statements for admission into evidence. Thus, none of the allegations or statements in the declarations prior to trial was before the trial court.

The trial court erred when it found that Mr. Fischer had engaged in acts of domestic violence and imposed upon him continued protection orders for Ms. Fischer and the children; ordered Mr. Fischer to engage in a state-certified domestic violence treatment program and placed severe restrictions in the final parenting plan; when the only evidence offered by the petitioner was her self-serving and uncorroborated testimony.

To refute Ms. Fischer's claims, Mr. Fischer presented unbiased tangible evidence and unbiased witness testimony in defense of the allegations of domestic violence. The court acknowledged during the October 20, 2006, hearing that the reason it was not finding domestic violence against Ms. Fischer is because it does not believe that Mr. Fischer is afraid of her. 10/20/06 RP 27. The court consistently excused Ms. Fischer's behavior, stating on 8/18/06 that Ms. Fischer has physically acted out in some form. 8/18/06 RP 198. She was also given this free pass as the trial court again characterized her behavior as reactive without any testimony to support that finding. 9/5/07 RP 12. There is nothing in the record from Ms. Fischer to explain why she decided to slap Mr. Fischer in front of the children. 8/29-30/07 RP 740. Her answer that she doesn't remember slapping him is outweighed by the fact that she recorded it in her journal. Exh. 145. This is an unacceptable explanation that would never be afforded a man. The citizens of Washington State are not allowed to act out their frustrations by violating another person's body regardless of gender. Ms. Fischer seems to be getting a free pass for her behavior directly from the court.

The court continues this pattern of abusive decision making on September 5, 2008. The court stated, "*I had a five-day trial. I determined that there had been actual acts of violence against Ms. Fischer.*" 9/5/08

RP 17. Mr. Fischer responded, “*Her testimony was uncorroborated, unsubstantiated, and self-serving.*” Id. The court, “*Yes. That - - that is usually the case when no other people are present. There is no one to verify what happened except the parties’ accounts.*” Id.

Mr. Fischer argues to this court that Ms. Fischer would have found it very offensive to be slapped in front of the children and to have water thrown on her body while she was sitting at her work desk. Mr. Fischer provided undisputed evidence that Ms. Fischer threw water on him. 8/29-30/07 RP at 697. She did not state that he got up and pushed her in retaliatory response. He knows better. In fact, he very well expects that he would have ended up in jail if he had just been “acting out” as the trial court tends to minimize her actions. It is inconceivable that the court would characterize Ms. Fischer’s actions after throwing water on Mr. Fischer to be just as benign as flipping a folder across the desk. 8/29/07 RP at 551. If she was furious enough to throw water on him without fear then she was furious enough to sweep all of his business things off his desk, just as he testified. In fact, he was not even in the office when she did engage in that hostile and undisciplined manner. 8/29-30/07 RP 698. Ms. Fischer was aware that Mr. Fischer’s desk contained items related to his work that were subject to deadlines that day. 8/29-30/07 RP 700.

Ms. Fischer has a documented and corroborated history of acts of domestic violence against Mr. Fischer. During trial the court admitted Respondent's Exhibit No. 145, which is an entry from the personal journal of Ms. Fischer in her own handwriting. In that entry Ms. Fischer clearly admits to physically assaulting Mr. Fischer and throwing the referenced water on Mr. Fischer. During trial Ms. Fischer stated that she recognized her handwriting but she does not remember actually writing that she had assaulted Mr. Fischer. In addition, Mr. Fischer offered the undisputed testimony of Mr. Mark Ricci who provided support to Mr. Fischer after a domestic argument between Mr. and Mrs. Fischer when they lived in Carnation, WA. Mr. Fischer described an incident where Ms. Fischer "*left a huge scratch - - gouges down my arms...*" 8/29-30/07 RP 730. Mr. Fischer testified that the children witnessed the incident. Id. Mr. Mark Ricci also testified that Mr. Fischer asked for refuge because Ms. Fischer assaulted him. Mr. Ricci testified that on this occasion Mr. and Ms. Fischer were estranged for about two or three months in 1999, Mr. Fischer lived with him. 8/29-30/07 RP 673. Mr. Ricci said he saw scratches on Mr. Fischer's arms when he arrived at his home; that Mr. Fischer's demeanor was low, upset, and disgruntled. Id. at 674. This further corroborated the earlier testimony of seeing the scratches and questioning Mr. Fischer about them by his mother in testimony provided

in August 2006. 8/18/06 RP at 147. The court characterized these multiple instances of corroborated and un-refuted evidence by stating that it believed Ms. Fischer's actions to be reactive behavior. 9/5/08 RP 12. Although Ms. Fischer testified on 8/18/06 that she journaled that she "*slapped him and threw water on his body tonight.*" 8/16/06 RP 150. She does not testify that she was responding to any act of aggression by Mr. Fischer. Evidence not disputed at trial remains undisputed on appeal.

The trial court erred by not finding that substantial evidence existed to support a finding that Ms. Fischer had engaged in acts of domestic violence against Mr. Fischer as defined in RCW 26.50.

**C. The Trial Court Erred When It Required Supervision Of Visits As A Restriction On Mr. Fischer's Residential Time With His Children**

RCW 26.09.191(2)(a) generally provides that the court shall impose restrictions on a parent's residential time with a child if said parent has a history of domestic violence as defined in RCW 26.50.010(1). Restrictions in a parenting plan must be reasonably calculated to address an identified harm. Katare v. Katare, 125 Wn. App. 813, 105 P.3d 44 (2004).

RCW 26.09.191(3) allows a court to limit any provision of a parenting plan if the court finds a parent's involvement or conduct may

have an adverse affect on the child's best interest and any of the factors in RCW 26.09.191(3) are present (fn10). Under RCW 26.09.191(3):

A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- (a) A parent's neglect or substantial nonperformance of parenting functions;
- (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
- (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- (d) The absence or substantial impairment of emotional ties between the parent and the child;
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
- (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or
- (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

It is an abuse of discretion of the trial court to deprive a parent of his fundamental right to make decisions concerning the care, custody, and control of his children absent substantial evidence to warrant such findings. 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. 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. To this end, the legislature endeavored to create a system that 'encourage[s] each parent to maintain a loving, stable, and nurturing relationship with the child.' RCW 26.09.187(3)(a).

Washington courts also recognize that the marital status of a child's parents shall have no bearing on the child's rights to a legally cognizable relationship with parents, see RCW 26.26.106; Kaur v. Chawla, 11 Wn. App. 362, 364, 522 P.2d 1198 (1974). The children had always known a close, bonded, and involved relationship with their father. They were abruptly denied any semblance of normalcy in their relationship with their dad with the imposition of the restraining order. The children knew a father they could sit near, hold hands with, and in fact had often been noted climbing and jumping on in visitation reports. CP at 27-33, 184-190, 560-572, 582-594, 653-655, 656-658, 659-662, 663-665, 666-669, 670-672, 673-675, 676-680. The Guardian Ad Litem, Nancy Hanrahan, after observing Mr. Fischer with his children, remarked "... *observed the children and the father together. I've done a home visit at Mr. Fischer's*

*home to be sure that the home is sufficient and appropriate, and I've watched the children with their father. I see no problem with him being with his children without supervision.” 9/21/06 RP 26.*

The trial court erred in placing restrictions on Mr. Fischer's residential time and denied him joint decision making when it contrastly made specific findings that Mr. Fischer was an active and involved parent. 9/5/07 RP 13. And where an objective observation by the court appointed guardian ad litem concurred with the court's observation. The trial court abused its discretion in denying the children and Mr. Fischer the right to a continuing relationship in accordance with the clear legislative intent and statutory guide purposed to serve the best interest of the children.

**D. The Trial Court Failed To Adhere To TCLR 5 (b)(2) When It Did Not Strike Ms. Fischer's Certified Statement From The Record**

Thurston County Local Rule LCR 5 (b)(2) requires:

*Non-dispositive Civil Motions. Briefs and all supporting materials for a motion which is not dispositive shall be filed and served before 12:00 noon, five court days before the hearing. Opposing briefs and materials shall be filed and served before 12:00 noon, two court days before the hearing. Reply briefs and materials shall be filed and served before 12:00 noon, one court day before the date scheduled for hearing. A working copy of each brief and other material shall be submitted to the court at the time of filing.*

Mr. Fischer objected to the late filing of a Certified Statement by Ms. Fischer for consideration on the September 5, 2008, Protection Order

Renewal hearing. 9/5/08 RP 5. The court was not familiar with the local court rule on timely filing. *Id.* at 7. Mr. Fischer made it clear to the court that the Certified Statement should be stricken but the court refused to do so simply stating that it had “*some question about whether it should have been filed sooner, because our original hearing was scheduled for Tuesday. And I am not going to consider it for purposes of this hearing.*”

9/5/08 RP 8. The court did not provide a specific reason for its refusal to strike the Certified Statement of Ms. Fischer from the official record. Mr. Fischer asked “*Is it stricken from the record?*” The court responded “*It’s in the court file. No, it’s not stricken from the record, but it will not be considered.*” *Id.* The rules of appellate procedure require references to the record to be based on information properly in the record. RAP 10.3. Failing to strike a Certified Statement that was not determined to be properly before the court and keeping the statement in the official record is an abuse of discretion. A trial court abuses its discretion when its ruling is manifestly unreasonable or based on untenable grounds. Mayer v. STO Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (citing Assoc. Mortgage Investors. v. G.P. Kent Constr. Co., 15 Wash.App. 223, 229, 548 P.2d 558 (1976)).

The court stated “*...I am going to just announce at the outset, I don’t plan to do any modification. I just plan to extend the order.*” 9/5/08

RP 13. Mr. Fischer asked the court for clarification; “*Okay. So before you’ve heard any argument, you’ve already ruled?* Id. There was additional exchange on the subject between Mr. Fischer and the court where the court clarified, “. . . *I’ve read all that has been filed, which is very little, by Ms. Fischer, since I’m not going to be considering the new certified statement . . . And so unless I hear something today, I am prepared to extend the order. . . I’m going to let you present your argument as to why I should not make this ruling. And I’m going to let Mr. Lucenko present the argument about why he should have the extension.* 9/5/08 RP 13-14.

"Evidentiary error is grounds for reversal only if it results in prejudice." State v. Neal, 144 Wn.2d 600, 611, 30 P.3d 1255 (2001). “An error is prejudicial if, ‘within reasonable probabilities, had the error not occurred, the outcome of the trial would have been materially affected.’” Neal, 144 Wn.2d at 611 (quoting State v. Smith, 106 Wn.2d 772, 780, 725 P.2d 951 (1986)). “Improper admission of evidence constitutes harmless error if the evidence is of minor significance in reference to the evidence as a whole.” Neal, 144 Wn.2d at 611.

The trial court erred when it failed to strike Ms. Fischer’s Certified Statement, especially when it determined that the statement was not proper for consideration; and it was not a error harmless when although the court

stated that it was prepared to extend the order prior to hearing argument it did not state whether its prior decision to extend the order involved prior consideration of the Certified Statement.

**E. The Trial Court Abused Its Discretion When It Extended The September 5, 2007 Order Of Protection To September 5, 2009 To Include Ms. Fischer And The Parties' Children At The Hearing Held On September 5 2008 Absent Specific Reasonable Findings According To Statutory Guidelines**

Mr. Lucenko states, "*The standard is past violence and present fear.*" 9/5/08 RP 15. RCW 26.50.030 provides in pertinent part "*The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires.*" The statute requires the respondent to prove by a preponderance that he will not resume acts of domestic violence. Mr. Lucenko made the following statement to the court at the hearing stating, "*Mr. Fischer has not taken the domestic violence perpetrator treatment class . . . and his behavior subsequent to the entry of that initial protection order continues to cause Ms. Fischer fear.*" Id. Mr. Fischer presented undisputed evidence that there has not been any contact between him and Ms. Fischer in the last two years and there have been no acts that would give Ms. Fischer any reasonable feelings of fear; there have been no "*acts at all.*" Mr. Fischer

asked the court to require Mr. Lucenko to clarify his allegations regarding behavior but the record does not reflect that he was required to do so.

9/5/08 RP 16-18.

RCW 26.50.060(3) requires, "The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order." Ms. Fischer declares in her Petition for Renewal, "I want to renew the Order for Protection because the respondent has not completed the domestic violence treatment and I am still in fear of harm from the respondent." CP 466. Mr. Fischer has submitted extensive responsive documents to the petitions to renew the protection orders offering detailed evidence that there has not been a single incidence of contact between him and Ms. Fischer and that the existence of the protection order is unduly limiting his rights, freedoms, pursuits, and is exclusively used as a punitive mechanism to compel false admission and participation in the domestic violence treatment program. CP 128, 471, 496, 400.

Additionally, the court should have recused itself from hearing the renewal matter. The court was aware that Mr. Fischer filed an affidavit of prejudice in all matters pending before Thurston County Superior court including being filed under cause number 06-2-30505-9. CP 1485, 9/5/08 RP 8. The court was also aware that Mr. Fischer based the affidavit partially on the gender bias he felt that Judge Casey displayed on King 5

TV news. *Id.* at 9. The court simply replied, “*Right. And because I have made a previous ruling in this case, the affidavit of prejudice is not applicable.*” *Id.* There is not clarification in the record as to whether “*Right*” meant agreement with the perception of Mr. Fischer that Judge Casey was gender biased. The court and Mr. Fischer also participated in a colloquy on the subject of multiple court actions filed by Mr. Fischer where Judge Casey was named therein as a defendant as a basis supporting recusal for prejudice. Mr. Fischer states: “*And then are you also—are you also aware that you are party to the pending lawsuit that I filed on June 5<sup>th</sup> of this year?*” The court answered “*Well, I do know that you filed a lawsuit in the Supreme Court and one in Lewis County naming me as a party. And I understand that those two cases have been dismissed. But then I heard there may be another case; is that correct?*” 9/5/08 RP 9. Mr. Fischer goes on to ask the court, “*And are you aware that this protection order issue is currently still being in the appellate court under the appeal of the dissolution?*” The court replied “*I wasn’t aware that the protection order proceeding had been appealed.*” 9/5/08 RP 10. Mr. Fischer asks the court for affirmation of its position, “*And so based on all of that, can you say that you can act impartially and fairly in light of all these reasons I’ve stated?*” The court replied “*Yes, I can. Mr. Fischer, I know that you have been suing me a lot, but it is my belief that the lawsuits*

*are not appropriately taken, and I do not feel prejudiced against you because of your attempt to file those lawsuits.”* 9/5/08 RP 11. On its own observation the court noted, *“Now, I guess on the extension of this order, I don’t, by necessity have to hear this matter. . . .On the renewal of the protection order here, I suppose that could be heard by another person.”* The court decides to rule on the matter anyway. 9/5/08 RP 12.

The trial court erred in failing to recuse itself when there was an accepted Affidavit of Prejudice against Judge Casey on record pertaining to all matters involving Mr. Fischer to include the specific case number assigned to the protection order matter; and when Judge Casey believes that *lawsuits* naming her as a defendant or respondent were not appropriately taken; and where she acknowledges that someone else could hear the matter to avoid the perception of prejudice.

**F. The Trial Court Also Erred When It Renewed The Protection Order Restricting The Contact Between Mr. Fischer, Ms. Fischer And The Parties’ Children For An Additional Year When There Were Not Specific Instances Of Events And Actions Over The Past Two Years That Would Lead A Reasonable Person To Believe That Mr. Fischer Would Resume Alleged Acts Of Domestic Violence**

Ms. Fischer did not allege that Mr. Fischer committed any acts that would lead a reasonable person to believe that acts of domestic violence would resume. "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily

injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. She did not allege any reasonable belief that any of the requirements stated in the definition applied as a basis for her renewal. At trial Ms. Fischer testified that there had been no contact between her and Mr. Fischer since the filing of the divorce petition. 8/29-30/07 RP 638. And although it had been an additional year without contact at the time of the renewal the court accepted her attorney's representations that *"there was an initial finding of domestic violence. And the reason it is being renewed is because Ms. Fischer has indicated in her initial filing that she is still afraid and that you have not accessed your domestic violence treatment that you were ordered into."* 9/5/08 RP 20. Neither of those reasons is reasonable. The trial court has been expressing this untenable position for an extended period of time. At trial Ms. Fischer's attorney acknowledged, "The only reason we're here is because of his refusal to acknowledge that he's committed acts of domestic violence." 8/31/07 RP at 962.

At the hearing held on March 18, 2008, the court stated: *"Mr. Fischer has no privileges with respect to meeting the children at this time."* 3/18/08 RP 14. It is Ms. Fischer who has been using the courts to

file motions to further restrict Mr. Fischer's access to his children.

The trial court abused its authority when it entered modifications to the orders for protection post-trial that further restricted the father's contact with the children without requiring a showing that the children were subjected to or in danger of any increase of a specifically identified harm. The trial court modified the restrictions on access to the children to deny them the opportunity to hug or acknowledge their father or to wave or to have any other communication; verbal, non-verbal, written, or third-party messaging at school functions and other extracurricular activities without requiring a showing that waving to, hugging, or general communications to the children in a social environment was detrimental to the health, safety, or welfare of the children or that the contact was not in the best interests of the children. The trial court gave no explanation or justification why contact in the supervised environment at the school was any different from contact in the supervised environment of a paid observation contractor. This action is a violation of the children's and fathers rights to indulge in the natural parent child bond to which they had been accustomed without due process. The court failed to identify the specific harm it intended to avoid in violation of current Washington Law. Per RCW 26.09.191(6), the DV rules of evidence exemption do not apply in setting terms of the Parenting Plan.

In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

RCW 26.09.191(6) (emphasis added)

The statute further sets forth standards for the determining the inclusion of restrictions in the parenting plan in RCW 26.09.191(2)(n), if the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations; the excepted limitations do not apply. Katare.

RCW 26.09.191(1) and (2) require the court to restrict a parent's contact and involvement with the child if the court finds that a parent has abandoned, neglected, or abused a child, or if the parent has a history of domestic violence, violent assault, or is an adjudicated sex offender. The court noted that Mr. Fischer had impressive parenting skills, that he focused on the children during visits, that he demonstrated a fairness between the two children, and that he demonstrated creativity in organizing activities for the visits. 9/5/07 RP 13. The children were ripped away from a very involved and loving relationship with their father. Ms. Fischer even provided testimony that their daughter, C.F., pleaded, “I

just want to be a normal kid.” 8/29/07 RP at 593. It is expected that they have been traumatized by such a drastic approach by the court to handling the parents’ dissolution. However, the children’s access to their father should have never been part of the restrictions resulting from the changed nature of the parents’ relationship.

The trial court erred when the father’s access to his children was restricted in the parenting plan and when further restrictions on the father’s residential time were granted restricting him from nominal contact during school activities and extracurricular activities absent a finding that any of the requirements of RCW 26.09.191(1) and (2) were present.

In re the Welfare of J.G.W., 433 N.W.2d 885, 886 (Minn. 1989) held that “It is a violation of a parent’s [F]ifth [A]mendment privilege to directly require the parent to admit guilt as part of a court-ordered treatment plan” as quoted by In re Dependency of J.R.U.-S, 126 Wn.App. 786; 110 P.3d 773 (2005). RCW 26.09.187(3)(a)(i) – (vii). Factor (i), *The relative strength, nature, and stability of the child's relationship with each parent*, shall be given the greatest weight. Marriage of Kovacs, 121 Wn.2d 795, 854 P.2d 629 (1993). Marriage of Kovacs, 67 Wn.App. 727; 840 P.2d 214 (1992) refers to RCW 26.09.002 as guidance for the court to maintain appropriate considerations in making decisions on parenting plan provision. Mr. Fischer believes that he has to admit guilt to be reunited

with his children. See also, CP 471. He feels that the situation did not warrant this court's actions and thus believes that the courts actions have not been in the best interests of the children. He believes that the court has caused a huge amount of emotional and psychological damage to his children; scars from which they will have to address for a very long time. He strongly believes that any long-term therapy that they may have to endure is a direct result of the courts punitive actions and demonstrated gender bias towards him.

RCW 26.09.002 provides: [T]he 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.

**G. The Trial Court Erred When It Failed To Adopt The Child Support Worksheets Provided By Mr. Fischer**

The court should have adopted the child support worksheets provided by Mr. Fischer. CP at 75 and 196. Mr. Fischer's deductions are calculated as provided by statute, actual amounts to be deducted from gross income. His submissions included the instructions as adopted by the courts and the calculation by the IRS. The court rejected his IRS calculation and instead adopted the erroneous calculations of Ms. Fischer

which were produced with legal industry software. Using the IRS calculations would have adjusted his net income and the percentage of each party's proportionate share appropriately. The child support worksheets should be remanded back to the trial court with instructions to calculate adjusted net income using the IRS rules and regulations. The court commented that the tax withholding deductions allowed for Mr. Fischer according to Ms. Fischer's proposed worksheets seemed low, but ultimately accepted her calculations.

The trial court entered an order of child support requiring frequent periodic adjustments that exceed statutory provisions without finding the existence of criteria provided in subsections (5), (6), (9), and (10) of RCW 26.09.170 or a showing of a substantial change of circumstances to support the deviation. RCW 26.09.170 provides:

- (1) Except as otherwise provided in subsection (7) of RCW 26.09.070, the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in subsections (5), (6), (9), and (10) of this section, only upon a showing of a substantial change of circumstances.

(emphasis added)

Further, Mr. Fischer objected to the mandatory wage assignment. Mr. Fischer has not missed a payment, nor become delinquent and yet he

has been subjected to wage assignment through his employer. Mr. Fischer demonstrated that an erroneous reporting was made to reflect negatively on his credit report by DSHS. The department eventually corrected the record of his account but refused to notify the reporting agencies to correct the derogatory reflection on his credit report. Mr. Fischer argues that the legislative policy statement expressed in RCW 26.23.010 should have been objectively considered before making the assignment automatic.

It is also the intent of the legislature that child support payments be made through mandatory wage assignment or payroll deduction **if** the responsible parent becomes delinquent in making support payments under a court or administrative order for support.

RCW 26.23.010 (emphasis added)

RCW 26.23.050(1)(b)(i) should also have been considered:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due.

(emphasis added)

Mr. Fischer contends that the child support orders demonstrate an abuse of authority and have acted to unnecessarily violate his rights and result in personal harassment and harm. The order of child support should be remanded to the trial court for entry of orders consistently with the statutory guide for imposition of mandatory wage assignment and provisions for adjustment of the order.

**H. The Trial Court Abused Its Discretion In The Case Of Clear Washington Authority When It Refused To Transfer Possession Of The Family Home To Mr. Fischer And To Allow Him To Take Over The Mortgage**

The trial court was provided with extensive briefing materials by Mr. Fischer in support of his CR 60(b) motion to have the family home transferred to him in this down market. CP at 1066. Mr. Fischer pleaded with the court repeatedly to have the home transferred to him. 3/4/08 RP 9. The court stated *“I said it before and I’ll say it again that Mr. Fischer will occupy the home when he completes his refinancing.”* 3/4/08 RP 9. The court was aware of the changed circumstances of the real estate market, as well as the changed circumstances in the banking industry. 1/8/08 RP 2; 3/18/08 RP 21. The court stated *“... I’d like the ruling to be for a sale price that results in no deficiency to the parties.”* Without any reasoning, the court stated that a looming foreclosure did not constitute an emergency. 3/4/08 RP 10. The court refused to award Mr. Fischer the home absent an absolute refinance and refused to consider the definite arrangement that Mr. Fischer was able to commit to, which was to take over the mortgage of the family home and have Ms. Fischer quit claim her interest subject to any equity contained in the home at the time of transfer. Mr. Fischer cited In the Marriage of Trubner-Biriai, 72 Wn. App. 858, 866 P.2d 675 (1994) in the Memorandum of Authority filed January 25, 2008,

as authority authorizing the court to order the transfer of the home to Mr. Fischer. 1/25/08 RP at 5. Ultimately the loan offers were revoked due to the derogatory impact upon Mr. Fischer's credit from the late and non-payment acts of Ms. Fischer of which he repeatedly warned the court and sought relief. Mr. Fischer's attempts were met with disregard by the trial court. The court refused evidence at trial related to Ms. Fischer's payment history, stating, "Really, that's not an issue in this dissolution. You've made your point, Ms. Amamilo." 8/29/07 RP at 530.

Even after Ms. Fischer vacated the property in February 2008, the court still refused Mr. Fischer access to the property and subjected him to arrest and criminal penalty by leaving the family home address on the Order of Protection while refusing to reveal the true address of Ms. Fischer and his children. 3/18/08 RP 14. As earlier stated, the home is subject to foreclosure and most likely an irreparably lost asset that will result in further judgment against the parties.

#### **I. Request for Attorney Fees**

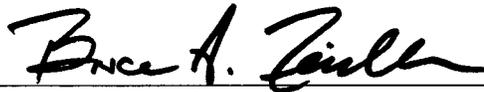
Mr. Fischer requests the court award him attorney fees should he prevail on appeal. He has expended a significant amount of resources in exercising his legal rights and has a need at this time for an attorney fee award. The appellate court may award attorneys fees. Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost

to the other party of maintaining the appeal and attorney's fees in addition to statutory costs, pursuant to RCW 26.09.140.

## V. CONCLUSION

Mr. Fischer respectfully requests that the appellate court vacate the orders of protection and other orders of the trial court that were not properly authorized under RAP 7.2; remove the limitations in the parenting plan that are based on the orders of protection; remand to the lower court for the proper calculation by the trial court of the income based on IRS guidelines for child support; transfer possession of the family home to Mr. Fischer; and enter an Order of Recusal prohibiting Judge Casey from presiding over any of his future matters.

RESPECTFULLY SUBMITTED this 3rd day of October, 2008.



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NO. 368285-II

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

KAREN LYNN FISCHER,

Respondent,

v.

BRUCE ALAN FISCHER,

Appellant.

CERTIFICATE OF  
SERVICE

**CERTIFICATE OF SERVICE**

I certify that I caused a true and correct copy of the Brief of Appellant Bruce A. Fischer to be served via US Mail, postage paid, on the following:

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DATED this 3rd day of October, 2008.



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