

36888-9-II

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

SHARON K. MARSHALL (FKA RASH)

Appellant,

v.

KENNETH RICHARD RASH,

Respondent.

REPLY BRIEF OF APPELLANT

LAW OFFICES OF
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DIVISION II
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STATE OF WASHINGTON
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A. REPLY ARGUMENT

1. Ms. Marshall Established a Reasonable Excuse by a Preponderance of the Evidence (Relying Upon the Recommendations of the GAL/PI Report), for her Failure to Comply with the Parenting Plan.

The following facts are undisputed:

1. Mr. Rash beat Ms. Marshall unconscious in the presence of the children in 1995. RP 30, lines 1-4.
2. While in jail for this 1995 incident he attempted to commit suicide by hanging himself with a bed sheet. RP 30, lines 5-7.
3. After the child returned to Ms. Marshall's residence in August 2005 (the last time he had any visitation with the child), he sent an email to the child stating in part, ***"If you don't come back soon then I am going to have to kill myself because I am not going to live in this world without you."*** RP 29, lines, 7-9.
4. Mr. Rash reported to the GAL that he was suicidal after the child left. RP 29, lines 9-10.
5. Mr. Rash has been arrested many times by the police. RP 33, line 22.
6. Mr. Rash has been a party to 7 separate protection orders involving 3 different women. RP 31, lines 20-22.
7. Mr. Rash had no visitation with the child and took no steps to see the child from August 2005 through October 2006. RP 22, lines 21-23.

8. On December 5, 2006, Commissioner Johnson found no contempt on the part of Ms. Marshall when she refused to send the child for visitation with Mr. Rash. RP 49-53.
9. On June 28, 2007, Ms. Marshall filed a Motion/Declaration for Ex Parte Restraining Order and for Order to Show Cause to suspend Mr. Rash's visitation by court order. RP 57-59.
10. On June 28, 2007, and July 1, 2007, Ms. Marshall, through counsel, notified Mr. Rash, through his counsel, that said motion for ex parte relief would be presented anytime that Mr. Rash's counsel would be available. RP 101-103.
11. With the letter of July 1, 2007, Ms. Marshall paid the \$115 fee that Mr. Rash incurred by moving the Winter 2006 airline ticket for the child to July 1, 2007. RP 103.
12. On July 19, 2008, (the date is wrong on the order, it shows what appears to be July 18, but both hearings occurred one right after the other on July 19, 2008 VP 9, lines 6-16) Commissioner Marshall found Ms. Marshall in contempt for not sending the child and then in the same hearing suspended Mr. Rash's visitation with the child. RP 131-141.

Ms. Marshall, the child of this action, the older brother of this child, the oldest half brother to this child and the collateral witness interviewed by the GAL all make extremely troubling allegations against Mr. Rash and corroborate each others allegations. RP 25-42.

There is no statutory or common law duty to modify the parenting plan or to put a court order in place in order to not send the child on visitation as the sole means to defend against a finding of contempt. Pursuant to RCW 26.09.160(4) Ms. Marshall only needs to “establish a reasonable excuse for failure to comply with the residential provision of a court ordered parenting plan by a preponderance of the evidence.” Id. Notwithstanding, pursuant to Commissioner Marshall’s recommendation, she filed a motion to suspend Mr. Rash’s visitation on June 28, 2007, and through counsel invited Mr. Rash’s counsel to indicate a date he would be available to have the motion heard. RP 101-103. Rather than reply, Mr. Rash’s counsel obtained an Order to Show Cause RE: Contempt on July 5, 2007, without notice to Ms. Marshall’s counsel wherein her motion to suspend Mr. Rash’s visitation could have been heard on the same date. RP 80-105.

Even though Mr. Rash’s petition to modify the parenting plan that he filed clear back in 2005 was pending for trial on September 11, 2007, in an abundance of caution, Ms. Marshall filed her own petition to modify the parenting plan on July 19, 2007. RP 108-114.

In fact, Judge Serko herself stated during her ruling denying Ms. Marshall's Motion for Revision, "**Maybe it was justifiable**, but it still was contempt in this Court's opinion." VP 23, at lines 7-8. (Emphasis added).

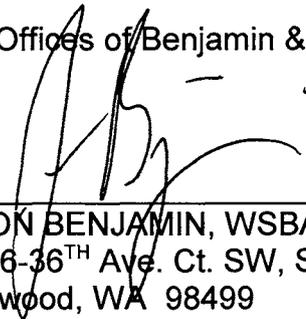
Surprisingly, throughout all of these hearings, neither Commissioner Marshall, nor Judge Serko ever desired to hear from the GAL. VP 12, lines 6-11. Ms. Rash, at her expense, made sure the GAL was present in case Judge Serko wanted to hear from the GAL. VP 12, lines 6-11.

B. CONCLUSION

Throughout this case Ms. Marshall has acted appropriately, in good faith and in the best interests of her child. It is extremely disturbing that this woman who was battered, beaten and tormented for years by Mr. Rash, in the presence of her children, was found in contempt for attempting to protect her child and ordered to pay thousands of dollars in fees and costs to the batterer. I sincerely hope that justice finally prevails in this matter.

DATED this 27th day of May, 2008.

Law Offices of Benjamin & Healy, P.L.L.C.

A handwritten signature in black ink, appearing to read 'Jason Benjamin', is written over a horizontal line.

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| | | |
|-------------------------|---|----------------|
| SHARON RASH (MARSHALL), |) | |
| |) | |
| Appellant, |) | No. 36888-9-II |
| |) | |
| and |) | CERTIFICATE OF |
| KENNETH RASH, |) | SERVICE |
| |) | |
| Respondent. |) | |
| _____ |) | |

CERTIFICATE OF SERVICE

I certify that on the 27th day of May, 2008,
I caused a true and correct copy of this Brief of
Appellant to be served on the following persons in
the manner indicated below:

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