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DIVISION II

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STATE OF WASHINGTON

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**COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON
Case No. 39690-4-II**

MARK A. COY,
Appellant,

v.

KRISTINE J. COY,
Respondent.

BRIEF OF APPELLANT

TALIS M. ABOLINS, WSBA #21222
of Campbell, Dille, Barnett, Smith & Wiley, PLLC
317 South Meridian
P.O. Box 488
Puyallup, WA 98371
(253) 848-3513
Attorneys for Appellant

pm 5-2-10

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I. ASSIGNMENTS OF ERROR

1. The trial court erred by denying a parent's right of superior court review from the Parenting Plan dispute resolution process.
2. The trial court erred when it confirmed the arbitrator's ruling on the Parenting Plan dispute without affording the parent the right of superior court review set forth in RCW 26.09.184(3)(3), the Parenting Plan, and the CR 2A agreement.
3. The trial court by ordering a parent to pay attorney's fees and costs for their good faith attempt to exercise the right to superior court review of a dispute arising under the Parenting Plan.
4. The trial court erred by ordering a parent to pay attorney's fees and costs when there was no support in the record for the findings of fact necessary to support such an award.
5. The trial court when it allowed the filing and consideration of the arbitrator's written decision, thereby frustrating the parent's right to a de novo review of that decision.

II. ISSUES

1. Does a parent have a right of superior court review from an arbitrator's decision on disagreements arising under a Parenting Plan, when that right of review is granted by RCW 26.09.184(4)(e) and the Parenting Plan itself?
2. Is a parent's right to superior court review of disputes arising from the Parenting Plan somehow destroyed because the parent signed a CR 2A agreement which simply reaffirmed the same initial dispute resolution process identified in the Parenting Plan?
3. Can a parent be ordered to pay fees and costs for asserting their right to superior court review, when there are no supporting facts or findings of an abuse of the dispute resolution process, intransigence, or financial need?
4. Should the Parenting Plan dispute be reversed and remanded for de novo review by the superior court before a judge who has not reviewed the arbitrator's written findings, conclusion and order?

III. STATEMENT OF THE CASE

Mark A. Coy and Christine J. Coy married in 1996, and their daughter Abigail was born in 2000. See CP 3 and 8. Since her birth, Mr. Coy made Abigail a centerpiece in his life. Rather than enroll her in daycare, Mr. Coy began working the graveyard shift so that he could spend quality time with her, and keep her involved in enriching activities with friends and family. CP 73 - 74, par. 3.7.1.

The Coys divorced in 2002. CP 1-32 (dissolution papers). The dissolution papers and parenting plan were entered by agreement of the parents. CP 18, par. I, and par. 2.18. At the time of dissolution, the Parenting Plan awarded substantial residential time to both parents, with primary custody to the mother. CP 8-17. All major decisions regarding the child were to be made jointly. CP 14, par. 4.2.

The Parenting Plan also provided that if Ms. Coy sought to relocate Abigail's primary residence outside the school district, she must formally notify Mr. Coy. The notification was to apprise Mr. Coy of his right to petition the court for modification of the residential schedule. CP 13, par. 3.14, citing RCW 26.09.440 and RCW 26.09.260.

The Parenting Plan also included the mandatory dispute resolution provisions, originally directing counseling as a preliminary dispute resolution process. CP 15, par. V. Finally, the Parenting Plan expressly provided the parents with a right of superior court review of issues arising under the Plan: “The parties have the right of review from the dispute resolution process to the superior court.” CP 15-16, par. V(e).

The Coys’ Parenting Plan allowed Mr. Coy to continue parenting Abby on a daily basis. CP 73, par. 3.7.1; CP 74-75, par. 3.7.2. Even on his non-residential days, Mr. Coy consistently spent hours of quality time with Abigail, fostering her growth in a healthy and loving family environment. CP 73-74; 77, par. 3.7.7; see also CP 53, par. 3.5, fifth subparagraph; and CP 56, par. 3.13, par.s 1 (2007 Parenting Plan). In 2007, Mr. Coy was able to take an early retirement. This freedom Mr. Coy to continue his focus as a dedicated stay-at-home parent. CP 74. Although differences and disputes have arose with Ms. Coy, Mr. Coy has consistently demonstrated his caring devotion to Abby’s best interests since the day of her birth.

The Coys have had disputes under the Parenting Plan, and have attempted to resolve those differences through the required dispute

resolution procedures. For example, in 2005, the parties mediated certain issues relating to Abigail's schooling, and reached a Partial Settlement Agreement which was entered with the court. CP 35-38. Under the settlement, the Coys agreed to cooperate with one another in the selection of an appropriate school for Abigail. CP 36. Specifically, the parents agreed to explore alternative school programs, curriculum, and approaches to teaching. After evaluating this information, the parents agreed to meet and attempt to reach agreement on the best kindergarten for Abby. CP 36-37. Other issues regarding the residential schedule under the Parenting Plan could not be resolved through mediation. CP 36.

On August 2, 2007, an updated Parenting Plan was entered by the court. CP 51-60. Under the updated Parenting Plan, any disputes between the parties regarding parenting would first be submitted to a "[b]inding arbitration by Rebecca K. Reeder." CP 58, par. V. As before, the updated Parenting Plan granted the Coys a "right of review from the dispute resolution process to the superior court." CP 58-59, par. V(e).

In January of 2008, Ms. Coy relocated Abby's primary residence to University Place, which was outside of her school district. Abby was seven years old at the time of relocation. Although Ms. Coy informally

mentioned the potential relocation some months before, there was no dispute that she failed to provide the formal notification of relocation required by the Parenting Plan. CP 57, par. 3.14 (directing a relocating parent to the information required by RCW 26.09.440, and form DRPSCU 07.0500 – “Notice of Intended Relocation of Child”). Ms. Coy’s relocation notice should have included the required language informing Mr. Coy of his right to seek modification of the residential schedule within a specified time from the notice. See CP 57-58, par. 3.14 (“SUMMARY OF RCW 26.09.430-480, REGARDING RELOCATION OF A CHILD”); see also CP 79-80.

Based on Abby’s relocation, Mr. Coy filed a formal objection, with a petition for modification of the Parenting Plan. CP 61-62, 71-78. Mr. Coy proposed a slightly revised Parenting Plan, with an increase of one overnight residential day per week. See CP 64, par. 3.2; CP 75, par. 3.7.3. In support of the modification, Mr. Coy updated the court on his role as a full time stay-at-home parent who effectively provides most of Abby’s daily care in a stable family environment. See CP 74-75, par. 3.7.2. Although Mr. Coy’s residence would officially be recognized as primary, both parents would continue to enjoy substantial residential time with

Abby, as well as joint decision making. CP 63-70.

Mr. Coy's proposed Parenting Plan also preserved the dispute resolution process set forth in the 2007 Parenting Plan. Any disputes would be submitted to a "binding arbitration", subject to the parties' "right of review from the dispute resolution process to the superior court." CP 69-70, Par. V.

The disputes over Abby's relocation were noted for trial to commence on May 16, 2008, and later renoted for August of 2008. CP 96-98. Shortly before the trial, the parties initiated an arbitration in accordance with the dispute resolution provisions of their Parenting Plan. CP 98. By agreement of the parties, the arbitrator referred a preliminary procedural question to the court. CP 98. Specifically, the court was asked to resolve Ms. Coy's argument that her informal notice of intent to relocate had triggered Mr. Coy's obligation to formally object, rendering his petition to revise untimely. See CP 100-102, and 128-130.

The trial court reviewed the arguments of counsel, concluded that Ms. Coy violated the statute requiring formal notice and that Mr. Coy's objection was timely. CP 133-134; Verbatim Report of Proceedings ("VRP") 11 (May 16, 2008). The parties agreed that under the court's

ruling, the relocation issue was subject to an automatic determination of adequate cause. VRP 11-12 (May 16, 2008); see RCW 26.09.260(6).

The matter was reset for trial on August 28, 2008. CP 133-134.

In August, no judges were available, so the matter was referred to mediation before Pro Tem Judge Michael Riggio. As a result of that mediation, the parties executed a CR 2(a) agreement, which was fully executed on August 28, 2008. CP 141-144. The CR 2(a) settlement agreement preserved the Parenting Plan dated August 2, 2007, with slight modifications regarding residential time, and the plan for Abby's schooling and insurance. With the exception of these changes, the 2007 Parenting Plan was "agreed to remain in full force & effect". CP 142.

Mr. Coy agreed to the language of the CR 2A agreement and forewent court action on the condition that, within the next year, he would have a right to gain the additional residential time sought in his original petition to modify the Parenting Plan. CP 142-143, par. 5 and 6.

Consistent with the Parenting Plan, any disagreement over Mr. Coy's agreed right to seek additional residential time would be subject to binding arbitration. CP 143, par. 7.

In 2009, after the one year period in the CR 2A agreement, Mr. Coy sought the additional residential time set forth in Paragraphs 5 and 6. Ms. Coy refused, asserting a series of disputed facts regarding Mr. Coy's performance as a parent. These disputes were submitted to arbitration with Rebecca Reeder. The arbitration was held in March, 2009, and the arbitrator denied Mr. Coy's request for the additional overnight residential time with his daughter, Abby. See CP 206-221 (Findings of Fact and Conclusions of Law, and an Order Re: Parenting Plan).

Mr. Coy objected to the proposed findings and conclusions, noting that the form of the ruling was inconsistent with his right of a de novo superior court review of the arbitrator's decision under RCW 26.09.184. CP 158. Notwithstanding this objection, Ms. Coy noted a motion for presentation of the arbitrator's Findings and Conclusions, and the order. CP 147-148. Mr. Coy objected to entry of the arbitrator's decision, and moved for his right to review of the disputes under the parenting plan through a trial de novo in superior court. CP 163; CP 167-172.

On June 17, 2009, the court called for the filing of the arbitrator's Findings of Fact and Conclusions of Law and Order. The court indicated that an order confirming the arbitrator's rulings would be entered, and that

the issue of attorney's fees relating to the trial de novo request would be addressed by a later order. CP 204-205.

Mr. Miller submitted a declaration of attorney's fees in support of an attorney's fees award, with a set of proposed findings and an order. CP 224-228. In response, Mr. Coy noted that the good faith pursuit of arbitration and review of his claim for additional residential time with Abby did not justify an award of attorney's fees. CP 230-231.

On August 7, 2009, the court entered findings and an order in which it: (1) confirmed the findings and conclusions of the arbitrator, (2) denied the request for trial de novo, and (3) awarded \$2,408.00 in attorney's fees to Christine Coy. CP 238-239. Thereafter, Mr. Coy filed a Notice of Appeal to this court. CP 237-259.

IV. STANDARD OF REVIEW

The trial court's interpretation of a parenting plan is a question of law subject to de novo review, as is the availability of a right to superior court review under state law. In Re Smith-Bartlett, 95 Wn. App. 633, 636, 976 P.2d 173 (1999). Statutory construction is a matter of law subject to de novo review. Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 806, 929 P.2d 1204 (1997). Interpretation of contracts, such as an arbitration

agreement is also subject to de novo review. See Peterson v. Schafer, 42 Wn. App. 281, 285, 709 P.2d 813 (1985).

V. SUMMARY OF ARGUMENT

This case involves a parent's right to superior court review of disputes arising under a Parenting Plan. In 2008, Ms. Coy relocated a young Abby Coy from her original primary residence to a new location outside her school district. This relocation triggered Mr. Coy's right to petition the court for modification of the residential provisions in the Parenting Plan. Mr. Coy did so, and Ms. Coy agreed to a mediated plan under which Mr. Coy could begin increasing residential time with his daughter after six months; the parties further agreed that Ms. Coy's refusal to allow the residential time would be subject to the mandatory dispute resolution process of the Parenting Plan, which included arbitration before Rebecca Reeder. When Ms. Coy ultimately refused to allow the additional time, Mr. Coy proceeded with arbitration, and then properly asserted his guaranteed right of review from the dispute resolution process to the superior court.

Mr. Coy's right to superior court review of this important issue is guaranteed by RCW 26.09.184, and confirmed by this court's decision in

In Re Smith-Bartlett, 95 Wn. App. 633, 976 P.2d 173 (1999). The right of review is also incorporated into the Parenting Plan itself, which sets forth the following two-step dispute resolution process: (1) a “binding arbitration” by Rebecca Reeder; and (2) “the right of review from the dispute resolution process to the Superior Court”. Parenting Plan, Par. V.

This two-step dispute resolution process was not altered by the CR 2A settlement agreement. The CR 2A agreement simply provided Mr. Coy with an opportunity to obtain additional residential time with Abby after a six and twelve month review period. If Mr. Coy disagreed with the handling of residential time with Abby, he would be subject to the same dispute process established in the Parenting Plan: a “binding arbitration” with Rebecca Reeder. Per the plan, the right of binding arbitration was subject to the right of review from the dispute resolution process to the superior court.

The court also erred by ordering Mr. Coy to pay attorney’s fees when there was no recognized basis for doing so. Mark Coy did not act with intransigence, and did not abuse his rights by seeking more residential time with his daughter through the established procedures for arbitration and court review.

In conclusion, the court's order denying the right of review should be reversed and remanded for a de novo trial, and the order that Mr. Coy pay attorney's fees should be reversed. On remand, the arbitrator's findings and conclusions should be sealed so that the matter can be tried de novo before a judge who has not reviewed them.

VI. ARGUMENT

A. This Case Should Be Reversed And Remanded So That Mark Coy May Exercise His Right To Superior Court Review Of A Parenting Plan Dispute.

Mr. Coy was entitled to a trial de novo from the arbitrator's ruling on disputes arising under the parenting plan. This right to a trial de novo is established through state statute, appellate decision, and the Parenting Plan itself. *See*, RCW 26.09.184(4), In Re: Smith-Bartlett, 93 Wn. App. 633, 636-641, 976 P.2d 173 (1999). As a matter of law, the trial court's decision denying review was an error and should be reversed and remanded for superior court review.

1. Mr. Coy's right of superior court review is guaranteed by RCW 26.09.184(4).

With the Parenting Act, the legislature provided a mandatory process for resolving disputes arising from permanent parenting plans. RCW 26.09.184(4). As an initial step, the dispute resolution process may

include counseling, mediation, or arbitration. *Id.* However, in light of the important interests at stake between parents and children, the legislature's dispute process also afforded an aggrieved parent a mandatory right of review from the initial dispute resolution process to the superior court.

RCW 26.09.184(4)(e). Specifically, the statute provides:

The parties have the right of review from the dispute resolution process to the superior court.

RCW 26.09.184(4)(e). The exceptions to this mandatory right of court review are very narrow, and none apply in this case. See RCW 26.09.184(4) (“... the process shall be provided unless precluded or limited by RCW 26.09.187 and 26.09.191.”).

This mandatory right of review for Parenting Plan issues is consistent with the statutory jurisdiction given to the superior court for accommodating the interests of children and parents under a Parenting Plan. For example under RCW 26.09.187(3)(a), “[t]he court shall make residential provisions for each child which encourage each parent to make a long-term loving and stable relationship.” In fulfilling this responsibility, the trial court fixes the residential provisions for each child in accordance with a set of seven specified factors, including the relative strength, nature and stability of the child's relationship with a parent.

RCW 26.09.187(3)(a)(i).

The statutory role of the superior court over Parenting Plan issues is further defined by RCW 26.09.260, which carefully defines the superior court's discretionary authority to modify a Parenting Plan. Modifications to Parenting Plans are generally prohibited, subject to a set of limited exceptions. RCW 26.09.260(1). For example, when Ms. Coy chose to relocate Abby from her established primary residence, this authorized the court to order adjustments to the residential aspects of Abby's Parenting Plan. Abby's relocation from the primary residence also gave Mr. Coy an automatic statutory right to petition for modification of the Parenting Plan, "including a change in the residence where the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself." See RCW 26.09.260(6). Thus, Mr. Coy's specific statutory right to superior court review of Parenting Plan disputes is bolstered by the fundamental structure of the Parenting Act itself, which establishes a prominent role for the superior court in evaluating the important and discretionary factors that govern the residential aspects of a child's life under a Parenting Plan.

2. Mr. Coy's right of superior court review is further supported by Smith-Bartlett.

In Smith-Bartlett, the Court of Appeals specifically addressed the extent to which the right of superior court review of Parenting Plans issues can be waived or delegated to a private arbitration process. The Court of Appeals reaffirmed the established rule that litigants cannot, consistent with the statutory nature of arbitration in Washington, “create their own boundaries of review” of an arbitration award. See Godfrey v. Hartford Cas. Ins. Co., 142 Wn.2d 885, 897, 16 P.3d 617 (2001) (citations omitted).

As in this case, the appellate court in Smith-Bartlett was asked to review a trial court's order denying de novo review of an arbitrator's decision on a Parenting Plan issue. As here, the Parenting Plan in Smith-Bartlett incorporated the required language of RCW 26.09.184(4) for alternative dispute resolution, with the mandatory right of review from the dispute resolution process to the superior court. Smith-Bartlett, 95 Wn. App. at 635. On appeal, the Court of Appeals reversed the trial court, and held that the superior court exceeded its statutory authority by denying the right of superior court review to an aggrieved parent.

The Court of Appeals found the trial court's ruling contrary to the law in several independent respects, most of which are directly relevant to

this case. *Id.*, at 639-640. First, the court's order was facially inconsistent with RCW 26.09.184(3)(e). Second, the ruling was contrary to the parenting plan itself which incorporated the statutory requirement of review by the trial court. Third, the order was inconsistent with the trial court's own findings and conclusions, which included a finding that the parties would be subject to an arbitration in accordance with the Parenting Plan. Fourth, the Court of Appeals noted that only parties, and not a court, can subject themselves to the restrictive provisions of binding arbitration under of Chapter 7.04 RCW. Fifth, and finally, the Court of Appeals described at length why a trial court does not have the jurisdiction or authority to allow modification of Parenting Plan issues without review by the trial court, even when the proposed delegation of that authority is agreed to by the parties. *Id.*, at 639-642.

The ultimate responsibility for overseeing the performance of the parenting plan remains with the court. Even the court's power to delegate its interpretive function is condition on the parties retaining the right of review by the court.

Smith-Bartlett, 95 Wn. App. at 640, *citing*, Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 804 and 807, 929 P.2d 1204 (1997). The Court of Appeals made it clear that the boundaries of review under Chapter 26.09

RCW are prescribed by statute, are jurisdictional, “and cannot be changed by stipulation”. *Id.*, at 640, *citing*, Sullivan v. Purvis, 90 Wn. App. at 456, 459-60, 966 P.2d 912 (1998); *see also* Godfrey, 142 Wn.2d at 897. Based on the foregoing, the case was remanded to superior court so that Ms. Smith could exercise her right to de novo review.

The court in Smith-Bartlett relied upon Kirshenbaum v. Kirshenbaum, which addressed for the first time the validity of a delegation of visitation suspension authority to an arbitrator. In addressing this question, the Court of Appeals upheld the delegation of authority under Chapter 26.09 RCW because “the arbitrator’s decision to suspend visitation is subject to immediate court review. . .” Kirshenbaum, 84 Wn. App. at 800-801. Given the availability of immediate trial court review, the delegation to the arbitrator was not a violation of state law, and left the ultimate decision to the trial court. *See also* In Re Lilly, 75 Wn. App. 715, 716-717, 880 P.2d 40 (1994). The delegation is temporary:

Because the suspended parent can request immediate review of the arbitrator’s decision, the court has, in effect, delegated only the power to act in a temporary fashion.

Kirshenbaum, 84 Wn. App. at 807. The Court of Appeals recognized that the Parenting Act “clearly envisions an independent inquiry by the court”

before parenting plans can be modified. The right of review from the arbitrator's decision is necessary to fulfill that requirement of independent inquiry by the superior court.

The foregoing legal analysis governs Mr. Coy's case. As a matter of law, parents have a mandatory right of superior court review of disputes arising under a Parenting Plan. This statutory right cannot be repealed by court order, or destroyed through a stipulated agreement of the parties.

Ms. Coy will likely argue that superior court review of the arbitrator's decision would frustrate the policies of judicial economy and efficiency which underlie the dispute resolution provisions of the parenting plan. This same argument was made by Mr. Bartlett and rejected. Smith-Bartlett, 95 Wn. App. 641. Mr. Bartlett also argued that denying de novo review was good public policy because it would divert Parenting Plan squabbles from the courts. The Court of Appeals firmly rejected this public policy argument, noting that Chapter 26.09 RCW expressly contemplated judicial involvement as being necessary. *Id.* at 642. The Court of Appeals reasoned that any concern with abuse of process was already discouraged through the mechanism of RCW 26.09.184(3)(d), which allows an award of financial sanctions when such abuses are found

to have occurred.

3. The CR 2A agreement properly incorporates the same mandatory dispute resolution process set forth in Paragraph V of the Parenting Plan.

The parties' CR 2A settlement agreement properly referenced that any remaining dispute regarding Mr. Coy's request for additional residential time would be subject to the same dispute resolution procedure of the Parenting Plan. If the parents were unable to resolve the issue of residential time with Abby after the six and twelve month periods, Mr. Coy would need to first pursue resolution through a "binding arbitration by Rebecca K. Reeder", as expressly required by the terms of the Parenting Plan. Compare CP 58, par. V (Parenting Plan requirement of "[b]inding arbitration by Rebecca K. Reeder") with CP 143, par. 7 (CR 2A requirement of "binding arbitration with attorney Rebecca Reeder"). By using identical language in the Parenting Plan, the parties objectively manifested their agreement to comply with the dispute resolution process, subject to the guaranteed right of superior court review. Any alternative interpretation would be inconsistent with state law and the Parenting Plan itself, which was expressly agreed to "remain in full force & effect" in the CR 2A agreement. CP 142.

Ms. Coy may argue that the parties' CR 2A agreement deprived the superior court of jurisdiction over such disputes, because the phrase "binding arbitration" was intended to invoke the Arbitration Act process, under which there is no right to de novo review. While the term binding arbitration generally refers to the arbitration process of Chapter 7.04A RCW, the dispute resolution process in this case is governed by the Parenting Act, and not the Arbitration Act. Consistent with the Parenting Act, the parties and the court had already assigned a meaning to "binding arbitration" – this was the alternative dispute resolution process that would be binding, subject to the guaranteed right of court review. Any other interpretation would be inconsistent with the parties' Parenting Plan, and with state law. As the court recognized in Smith-Bartlett, the statutory arbitration scheme of Chapter 7.04A "is not applicable" to arbitrations falling within the scope of RCW 26.09.184. Smith-Bartlett, 95 Wn. App. at 639. The mandate for a right of review is statutory, and neither the court nor the parties can repeal this mandate by mixing and matching arbitration rules. See Smith-Bartlett, 95 Wn. App. at 639, *citing* Northern State Const. Co. v. Banchemo, 63 Wn.2d 245, 249, 386 P.2d 625 (1999).

The right of review established in The Parenting Act reflects the legislative determination that parentage issues involve the fundamental rights of both parents and children, and are appropriately subject to a mandatory right of judicial review. The right of litigants to waive or modify their rights in connection with an arbitration are not absolute. *See Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885, 897 16 P.3d 617, (2001) (noting that litigants cannot “create their own boundaries of review” for arbitration awards that are governed by statute). Ms. Coy cannot destroy a parent’s right of review by advocating an interpretation of a handwritten CR 2A agreement that is contrary to law. As the Court of Appeals recently observed,

a provision in the agreement that is at variance with the provisions for judicial review set forth in the governing arbitration statute is void and unenforceable.

Optimer Int’l, Inc. v. RP Bellevue, LLC, 151 Wn. App. 954, 214 P.3d 954 Wn. App. Div. 1 (2009). Any efforts by private litigants to alter the fundamental provisions of the governing statutory arbitration act by an agreement are inoperative. *Id.*, citing Godfrey, 142 Wn.2d at 896; Boyd v. Davis, 127 Wn.2d 256, 262, 897 P.2d 1239 (1995). The mandatory review provisions of The Parentage Act facilitate the objectives of alternative

dispute resolution, but place an express limit on the parties ability to waive the fundamental right to superior court review of matters involving parentage.

This court should reverse and remand this matter so that Mark Coy can exercise his right to review of the arbitration decision. This right of review is set forth in state statute, established appellate precedent, and the Parenting Plan entered by the court in this very case. In addition, the arbitrator's decision and findings should not have been filed and reviewed by the trial court judge. RCW 26.09.187(4)(c) (the written record of the arbitration award "shall be provided to each party"). Accordingly, the arbitrator's written records should be ordered sealed, so that Mr. Coy can pursue his right of review before a judge who can provide a proper de novo review of his proposed Parenting Plan.

B. There Is No Basis For Awarding Fees And Costs Against A Father Who Follows The Proper Procedures For Seeking Residential Time With His Daughter.

In this case, the trial court improperly awarded attorney's fees and costs against Mr. Coy. First, the award of fees was improper because it was based on the erroneous assumption that Mr. Coy did not have a right to review. Second, the award is improper because, under RCW

26.09.184(3)(d), an award of fees is only allowed where there is evidence to support a finding that the parent has used or frustrated the dispute resolution process without good reason. The trial court was unable to make proper findings regarding such frustration, or regarding any of the other factors necessary to support an award of fees. *See* CP 238-239.

Mr. Coy did nothing wrong when he decided to pursue his legal rights under state law and a court-entered Parenting Plan. He did not abuse the dispute resolution process, and there was no evidence of intransigence. *See In Re Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992) (intransigence requires proof that a party created unnecessary delay and obstruction, or made the trial unduly difficult and costly). Rather than intransigence, Mr. Coy has merely made a good faith effort to exercise his right to seek more residential time with his daughter, Abby. *See also Kirshenbaum*, 84 Wn. App. at 807-808 (request for fees denied where issue regarding authority of arbitrator under Chapter 26.09 RCW was debatable, and requisite showing of financial need had not been made). Rather than punish Mr. Coy with a sanction of attorney's fees and costs, the trial court should have recognized his good faith and legally supported request for superior court review.

VII. CONCLUSION

The appellant Mark Coy respectfully asks that this court reverse and remand this case so that he can exercise his right of review from the dispute resolution process to the superior court. To facilitate that right of review, the trial court should be directed to seal the arbitrator's record of decision, including the written findings of fact, so that the right to de novo review may be honored.

RESPECTFULLY SUBMITTED this 1st day of March, 2010.



Talis M. Abolins, WSBA #21222
of Campbell, Dille, Barnett,
Smith & Wiley, PLLC
Attorneys for Appellant

Appendices

- A. Selected Statutes: RCW 26.090.080, .260, .430, .440, and .480.
- B. Parenting Plan (August 2, 2007), CP 51-60
- C. CR 2A Agreement, CP 141-144

RCW 26.09.080**Disposition of property and liabilities -- Factors.**

In a proceeding for dissolution of the marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for disposition of property following dissolution of the marriage or the domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner or lacked jurisdiction to dispose of the property, the court shall, without regard to misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

[2008 c 6 § 1011; 1989 c 375 § 5; 1973 1st ex.s. c 157 § 8.]

NOTES:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26.60.901.

RCW 26.09.260**Modification of parenting plan or custody decree.**

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and

further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) 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.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an

immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

[2009 c 502 § 3; 2000 c 21 § 19; 1999 c 174 § 1; 1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

NOTES:

Applicability -- 2000 c 21: See RCW 26.09.405.

Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.

Severability -- Effective date -- Captions not law -- 1991 c 367: See notes following RCW 26.09.015.

Severability -- 1989 c 318: See note following RCW 26.09.160.

RCW 26.09.430
Notice requirement.

Except as provided in RCW 26.09.460, a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. Notice shall be given as prescribed in RCW 26.09.440 and 26.09.450.

[2000 c 21 § 5.]

NOTES:

Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.

RCW 26.09.440**Notice -- Contents and delivery.**

(1) Except as provided in RCW 26.09.450 and 26.09.460, the notice of an intended relocation of the child must be given by:

(a) Personal service or any form of mail requiring a return receipt; and

(b) No less than:

(i) Sixty days before the date of the intended relocation of the child; or

(ii) No more than five days after the date that the person knows the information required to be furnished under subsection (2) of this section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-days' notice, and it is not reasonable to delay the relocation.

(2)(a) The notice of intended relocation of the child must include: (i) An address at which service of process may be accomplished during the period for objection; (ii) a brief statement of the specific reasons for the intended relocation of the child; and (iii) a notice to the nonrelocating person that an objection to the intended relocation of the child or to the relocating person's proposed revised residential schedule must be filed with the court and served on the opposing person within thirty days or the relocation of the child will be permitted and the residential schedule may be modified pursuant to RCW 26.09.500. The notice shall not be deemed to be in substantial compliance for purposes of RCW 26.09.470 unless the notice contains the following statement: "THE RELOCATION OF THE CHILD WILL BE PERMITTED AND THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT TO BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD."

(b) Except as provided in RCW 26.09.450 and 26.09.460, the following information shall also be included in every notice of intended relocation of the child, if available:

(i) The specific street address of the intended new residence, if known, or as much of the intended address as is known, such as city and state;

(ii) The new mailing address, if different from the intended new residence address;

(iii) The new home telephone number;

(iv) The name and address of the child's new school and day care facility, if applicable;

(v) The date of the intended relocation of the child; and

(vi) A proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation with the child, if any.

(3) A person required to give notice of an intended relocation of the child has a continuing duty to promptly update the information required with the notice as that new information becomes known.

[2000 c 21 § 6.]

NOTES:

Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.

RCW 26.09.480**Objection to relocation or proposed revised residential schedule.**

(1) A party objecting to the intended relocation of the child or the relocating parent's proposed revised residential schedule shall do so by filing the objection with the court and serving the objection on the relocating party and all other persons entitled by court order to residential time or visitation with the child by means of personal service or mailing by any form of mail requiring a return receipt to the relocating party at the address designated for service on the notice of intended relocation and to other parties requiring notice at their mailing address. The objection must be filed and served, including a three-day waiting period if the objection is served by mail, within thirty days of receipt of the notice of intended relocation of the child. The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief.

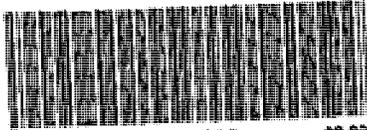
(2) Unless the special circumstances described in RCW 26.09.460 apply, the person intending to relocate the child shall not, without a court order, change the principal residence of the child during the period in which a party may object. The order required under this subsection may be obtained ex parte. If the objecting party notes a court hearing to prevent the relocation of the child for a date not more than fifteen days following timely service of an objection to relocation, the party intending to relocate the child shall not change the principal residence of the child pending the hearing unless the special circumstances described in RCW 26.09.460(3) apply.

(3) The administrator for the courts shall develop a standard form, separate from existing dissolution or modification forms, for use in filing an objection to relocation of the child or objection of the relocating person's proposed revised residential schedule.

[2000 c 21 § 10.]

NOTES:

Intent -- Captions not law -- 2000 c 21: See notes following RCW 26.09.405.



02-3-01122-4 27880325 PPP 08-02-07

FILED
IN COUNTY CLERK'S OFFICE

A.M. AUG 02 2007 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] DEPUTY

**SUPERIOR COURT OF WASHINGTON
COUNTY OF**

In re the Marriage of:

KIRSTINE COY

and

MARK COY

Petitioner,

Respondent

NO. 02-3-01122-4

PARENTING PLAN
FINAL ORDER (PP)

This parenting plan is:

the final parenting plan signed by the court pursuant to an order entered on this date which modifies a previous parenting plan or custody decree.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Abigail Coy	6

II. BASIS FOR RESTRICTIONS

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child(ren) and the right to make decisions for the child(ren).

2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

Does not apply.

PARENTING PLAN (PPP, PPT, PP) - Page 1 of 11
WPF DR 01.0400 (7/2003) - RCW 26.09.181; .187; .194

ORIGINAL

2.2 OTHER FACTORS (RCW 26.09.191(3)).

Does not apply.

III. RESIDENTIAL SCHEDULE

The residential schedule must set forth where the child(ren) shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child(ren) shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child(ren) and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE

There are no children under school age.

3.2 SCHOOL SCHEDULE.

Upon enrollment in school, the child(ren) shall reside with the mother, except for the following days and times when the child(ren) will reside with or be with the other parent:

From Friday from after school to Sunday at 7:00 pm. every other week.

Every Wednesday from after school until Thursday at 4:00 pm.

3.3 SCHEDULE FOR WINTER VACATION.

The child(ren) shall reside with the mother during winter vacation, except for the following days and times when the child(ren) will reside with or be with the other parent:

For Winter break 2007, the mother shall receive December 22, 2007 at 9:00 am to December 31, 2007. The father shall get the balance of winter break.

For winter break 2008, the father shall receive December 22, 2008 at 9:00 am to December 31, 2008. The mother shall get the balance of winter break that year.

Beginning with winter break, 2009, the break shall be divided as follows:

Every even winter vacation will be spent with the father.

Winter break starts the day after school lets out at 9:00 am and ends the day before school starts at 5:00 pm as defined by the child's school (subject to the changes outlined in paragraph 3.7 for New Years Eve \ Day.) However if winter break lets out on Wednesday, Father would still have the child overnight until 9:00 am on Thursday if it was the mother's winter break.

If winter break ends on a Wednesday, Father will still have his overnight and then would take the child to school on Thursday morning.

3.4 SCHEDULE FOR OTHER SCHOOL BREAKS.

The child(ren) shall reside with the mother during other school breaks, except for the following days and times when the child(ren) will reside with or be with the other parent:

Every EVEN numbered Spring break will be spent with the father. Other breaks from school shall be the same as School schedule. Spring break shall start at 9:00 am on Monday and end Friday at 5:30 pm.

Mother to have Spring break every ODD numbered years.

3.5 SUMMER SCHEDULE.

Upon completion of the school year, the child(ren) shall reside with the mother, except for the following days and times when the child(ren) will reside with or be with the other parent:

Same as school year schedule. Starting with the father's first weekend after school is dismissed for the summer, he shall have in addition to the regular visitation a Sunday overnight to end on Monday morning at 9:00 am. This extra Sunday overnight visitation will end with the last weekend visit with father prior to school commencing so that child is not with the father the night before school begins.

In addition, the father shall receive one full week in June one full week in July and one full week in August. Each week shall be defined as commencing Monday at 9:00 am and ending on Friday at 5:30 pm.

Likewise, the mother shall receive three weeks of vacation time with the child over the summer commencing Monday at 9:00 am and ending on Friday at 5:30 pm.

The father shall submit his requested weeks for summer on or before March 15TH. If there is a conflict and both parents are requesting the same block of time, unless the parents can agree to something different, the mother shall receive her requested days during even numbered years and the father during odd numbered years

During the summer, if the mother is working during her residential time and the father is not working AND the child is not enrolled in a summer camp or other structured activity then the father shall be entitled to spend the time with the child. However, mother may utilize up to five days per summer for the child to spend with persons other than the father. The father shall be responsible for promptly returning the child to the mother's home upon her arrival at home. Said time with the father shall not be his residential time in accordance with the terms outlined in paragraph 3.13(1).

mother
It is agreed that the ~~parties~~ *mother* may schedule summer camps for the child during the mother's residential time. Each party shall pay 50% of the cost of these camps *with father contributing a maximum of \$750 for 2007 and maximum to be reviewed each year as costs increase.*

[Handwritten signatures]

3.6 VACATION WITH PARENTS.

The schedule for vacation with parents is as follows:

Each parent shall be allowed to take the child out of school for one week every school year only and that one week shall not be scheduled prior to or immediately following any school mandated break.

The parties will endeavor to provide the other with one month's notice to the other parent whenever possible.

3.7 SCHEDULE FOR HOLIDAYS.

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
New Year's Day	ODD	EVEN
Martin Luther King Day		EVERY
Presidents' Day	EVERY	
Memorial Day	EVEN	ODD
July 4th	EVEN	ODD
Labor Day	ODD	EVEN
Veterans' Day	ODD	EVEN
Thanksgiving Day	EVEN	ODD
Christmas Eve	EVEN	ODD
Christmas Day	ODD	EVEN
Christmas Day evening	EVEN	ODD
Easter	ODD EVEN	EVEN ODD
Halloween	EVEN	ODD
New Year's Eve	EVEN	ODD

Handwritten initials and marks:
 MC
 ODD
 ODD
 ODD

For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

Begins at 9:00 am and end at 7:00 pm except for:

- a) Christmas Eve begins at 2:00 pm on December 23RD and end at 2:00 pm on December 24TH.
- b) Christmas Day begins at 2:00 pm on December 24TH and ends at 2:00 pm on December 25TH.
- c) Christmas Day evening begins at 2:00 pm on December 25TH and ends at 2:00 pm on December 26TH.
- d) New Years Eve/Day holiday begins on December 31ST at 9:00 am and ends on January 2ND at 9:00 am. The first will always be an overnight, even if school starts on the second.
- e) July 4TH and Halloween will include overnight to 9:00 am the next day.

Handwritten signatures:
 [Signature]
 [Signature]

- f) Thanksgiving will be from 5:30 pm Wednesday through 7:00 pm on Sunday. On Mother's years for Thanksgiving, Father will have child overnight on Tuesday prior to Thanksgiving (in lieu of his regular Wednesday overnight.)
- g) All other holiday exchange times are flexible as agreed by the mother and father. If there is no agreement, holidays not otherwise specified shall begin at 9:00 am (or from after school if a school day) and end at 7:00 pm.

Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

The residential schedule for the child(ren) for the following special occasions (for example, birthdays) is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
Mother's Day	EVERY	
Father's Day		EVERY
Child's birthday	ODD	EVEN

Special occasions shall begin at 9:00 am (or from after school if a school day) and end at 7:00 pm.

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

If the residential schedule, paragraphs 3.1 - 3.8, results in a conflict where the children are scheduled to be with both parents at the same time, the conflict shall be resolved by priority being given as follows:

Rank the order of priority, with 1 being given the highest priority:

- 1 winter vacation (3.3)
- 1 spring vacation (3.4)
- 1 summer schedule (3.5)
- 2 special occasions (3.8)
- 2 holidays (3.7)
- 3 school schedule (3.1, 3.2)
- 3 vacation with parents (3.6)

3.10 RESTRICTIONS.

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

3.11 TRANSPORTATION ARRANGEMENTS.

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child(ren), between parents shall be as follows:

The receiving parent shall provide transportation. However, the father shall provide all transportation when the child is scheduled to be returned to school as well as all time outlined in Paragraph 3.13

3.12 DESIGNATION OF CUSTODIAN.

The children named in this parenting plan are scheduled to reside the majority of the time with the mother. This parent is designated the custodian of the child(ren) solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER.

1. During the school schedule, if the mother is working during her residential time and the father is not working, the father shall be entitled to spend the time with the child in lieu of having the child go to child care. The father shall be responsible for returning the child to the mother's work when she is scheduled to get off work at 5:00 pm. If the father fails to promptly return the child to the mother when mother gets off work, this provision allowing the father the after school time shall be removed from this plan at the mother's sole discretion. Any child care costs incurred for after school care would be divided based on the Order of Child Support in effect at that time. The child may also spend time with her grandparents during this period. If this occurs the mother shall be advised that she is with the grandparents and where they will be and a phone number that can be used to contact the child. The father remains responsible for all transportation.

It is understood by granting the father time with the child while the mother is working that he shall not be allowed to infringe on the mother's residential time. For instance, if the mother gets off work early and the child is with her father, the mother shall notify the father that she is off work early and the child shall be promptly returned to the mother. The child is to be released to the mother without undue issues.

2. The father shall make himself available by cell phone while he has the child in his care
3. Any extra residential time that the father has been given on the basis of this parenting plan shall not be a basis for a child support residential credit.
4. Each parent shall keep the other apprised of his or her current residence address and residence telephone number.
5. The child(ren) shall have reasonable telephone privileges with the parent with whom the child(ren) is/are not then residing, without interference of the residential parent.

6. The parents agree that the child shall continue at Lowell Elementary.
7. The father shall have the child participate in after school activities at least two times per week when available. Those activities would be swimming, gymnastics, etc.
8. Neither parent shall discuss the proceedings with the child or make derogatory or inflammatory remarks about the other parent to the child or in the child's presence.

3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A CHILD.

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

IV. DECISION MAKING

4.1 DAY-TO-DAY DECISIONS.

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 MAJOR DECISIONS.

Major decisions regarding each child shall be made as follows:

Education decisions	joint
Non-emergency health care	joint
Religious upbringing	joint

4.3 RESTRICTIONS IN DECISION MAKING.

Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

V. DISPUTE RESOLUTION

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

Binding arbitration by Rebecca K. Reeder. If she is not available, then the parties shall attend mediation at Pierce County Center for Dispute Resolution.

The cost of this process shall be allocated between the parties as follows:

As determined in the dispute resolution process.

The counseling, mediation or arbitration process shall be commenced by notifying the other party by written request.

In the dispute resolution process:

- (a) Preference shall be given to carrying out this Parenting Plan.
- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the superior court.

VI. OTHER PROVISIONS

There are the following other provisions:

1. RIGHT TO RECORDS

Each parent shall have equal and independent right to all records on the child from any healthcare provider and/or school where the child has been treated or taught.

2. PARTICIPATION IN CHILD'S EVENTS

The parent then in residence shall accompany the child at the time of any given school and/or extracurricular activities for the child, such as an open house, or attendance at an athletic event. The other parent shall not be limited or excluded from attendance at that event, provided that said attendance is peaceful.

VII. DECLARATION FOR PROPOSED PARENTING PLAN

Does not apply.

VIII. ORDER BY THE COURT

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.040.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: AUGUST 2, 2007



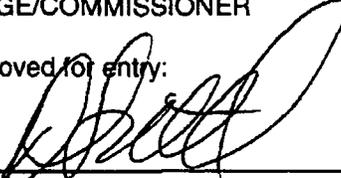
JUDGE/COMMISSIONER

Presented by:

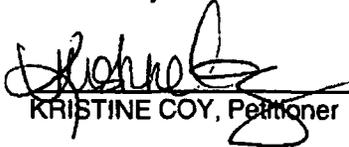
Approved for entry:



JOHN A. MILLER, WSBA #5741
Of Attorneys for Petitioner



DANIEL W. SMITH, WSBA #15206
Of Attorneys for Respondent



KRISTINE COY, Petitioner



MARK COY, Respondent

FILED
IN COUNTY CLERK'S OFFICE
A.M. AUG 02 2007 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

November 19 2008 11:41 AM

KEVIN STOCK
COUNTY CLERK
NO: 02-3-01122-4

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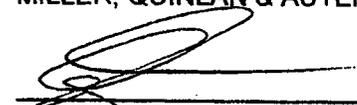
**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

In Re the Marriage of:)	
)	
KRISTINE COY,)	NO. 02-3-01122-4
)	
Petitioner,)	CR 2 AGREEMENT
)	
vs.)	
)	
MARK COY ,)	
)	
Respondent.)	

SEE ATTACHED Agreement signed by the parties and their respective counsel on August 28, 2008

DATED this 10th day of November, 2008.

MILLER, QUINLAN & AUTER, P.S., INC.



John M. Miller, WSBA #5741
Attorney for Petitioner

CR 2 AGREEMENT

Miller, Quinlan & Auter, P.S., Inc.
1019 Regents Blvd., Ste. 204
Fircrest, WA 98466
Telephone: (253) 565-5019
Facsimile: (253) 564-5007

CR2A

The parenting plan entered into ~~with~~ and signed on 8/2/07 is ~~being~~ equal & remains in full force & effect except for the following ~~and~~ changes -

- (1) Residential time ^{for father} shall change as follows
 - (a) Every Thursday overnight in place of Wednesday
 - (b) Every other ~~Friday~~ ^{Friday} to Monday morning at noon or when school begins, if appropriate.
 - ~~(c) Every Wednesday after school from till 5:00pm~~

- (2) Every Wednesday ^{father shall have} from after school till 5:00 PM, not as residential time.

- (3) Abbi shall remain in Lowell through the 4th grade and then be enrolled into the U.P. school district.

- (4) The parties shall place Abbi on the best insurance plan available ~~to~~ from Kristina's work, Mark's work or Kristina's husband's work. Best available shall be based on coverage not cost. The cost shall be shared on a proportional amount as designated by the current child support order.

- (5) If after 6 months from Sept 1, 2008, the father has not interacted with Abbi's counsel, not talked about financial issues with Abbi and

MSU

MSU
DL

generally co-parents consistent ^{with} the current parenting plan, ~~parent~~ at the discretion of the mother, the father shall have additional residential time as follows:

(A) Father's residential time shall be amended to include an overnight weekend off school on two weeks when father does not have weekend time. i.e. father will have weekend overnight ^{overnight} on Thursday night when he does not have weekend time.

(B) the weekend that ~~is~~ ^{is} not overnight ^{with} father does not have ~~the~~ supervised visits w/ abbi

(C) if after 1 year from Sept 1, 2008 the father continues to be parent ~~at the discretion~~ in compliance with above paragraph 5, he shall be allowed every weekend overnight.

(D) Mother shall decide at her discretion whether father has complied with paragraph 5 above.

If father disagrees, the parties shall have the matter heard in binding arbitration with attorney Rebecca Rooder.

(E) Nothing in this agreement shall be construed to change the current child support order in effect. Father agrees not to change the existing child support order.

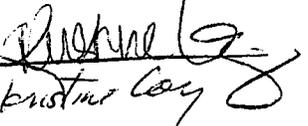

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(9) Father shall contribute \$5,000 as a fee attorney fees within 60 days of Sept 1, 2008. If not paid within that time a judgment shall be entered upon notice to father.

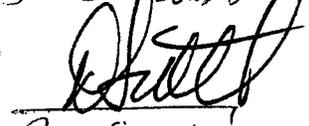
(10) The parties agree that Abbi can be put into a maximum of 4 summer camps with each parent paying 50% of the cost. Each parent shall select 2 each, if one parent chooses to not select a camp the other parent will be allowed to select a camp with it same split of costs. Both parents agree that Abbi will attend all scheduled days of camp.

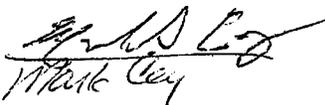
(11) ^{Mother is} Father agrees that by this agreement, neither party ~~shall be~~ will bring further proceeding a court except as provided in the agreement.

(12) The Parties agree that Abbi shall begin counseling as soon as practicable. The counselor shall be selected by having Abbi's Pediatrician recommend 3 child counselors and each party has the right to strike one from the list with the remaining counselor designated as Abbi's counselor. The cost shall be ~~shared~~ shared ~~equally~~ with the court all support orders.


John Miller

Kristine Coyle

Dated
8/28/08


Dan Smith

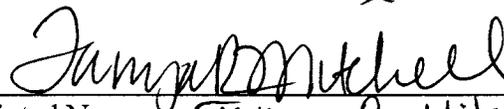

Mark Coyle

David Ponzoha, Court Clerk
Court of Appeals, Division Two
950 Broadway, Ste. 300
Tacoma, WA 98402

That she placed and affixed proper postage to the said envelopes,
sealed the same, and placed it in a receptacle maintained by the United
States Post Office for the deposit of letters for mailing in the City of
Puyallup, County of Pierce, State of Washington, and that she mailed the
envelopes first class, postage prepaid.


MICHELLE A. LEA

SUBSCRIBED AND SWORN to before me this 2 day of
March, 2010.


Printed Name: Tanya R. Mitchell
NOTARY PUBLIC in and for the State of
Washington residing at Tacoma
My commission expires: 9-13-13

