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COURT OF APPEALS

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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 COY,
Respondent**

RESPONDENT'S APPEAL BRIEF

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ORIGINAL

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A. ISSUES

1. Do parties, in creating a parenting plan, have a right to agree and stipulate to a decision making process, allowing one party total discretion to decide certain issues?
2. Does the non-prevailing party have a right of de novo review from an agreed upon decision making process in the parties' parenting plan, if such decision does not alter the parenting plan in any way?
3. If the non-prevailing party has a right of review, what type of review is required by the Superior Court?
4. Was the granting of attorneys' fees appropriate by the trial court?

B. STATEMENT OF THE CASE

Ms. Coy adopts as a more accurate history of the case the procedural history as outlined by the arbitrator, Rebecca Reeder in her Findings of Fact adopted by the trial court on June 17, 2009. Said document is attached as Exhibit "A" and incorporated herein. CP206-221.

C. SUMMARY OF ARGUMENT

This case is not about relocating, nor is it a dispute over the terms of the parenting plan. This case is about whether or not the parties can agree and stipulate one party to be, in that party's discretion, a decider of whether or not the other party is co-parenting in a manner that is in the best interest of the parties' child.

Mr. Coy and Ms. Coy entered into a binding CR2(a) agreement that delineated the rights and obligations of the parties and spelled out residential time for each. The parties agreed that, in order for Mr. Coy to receive additional time with their child, he would have to demonstrate consistent co-parenting as decided by Ms. Coy in her sole discretion. This agreement is consistent with RCW 26.09.187 (2)(a)(ii), which states:

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority... when it finds that:

(ii) The agreement is knowing and voluntary.

Mr. Coy continued to, in Ms. Coy's belief, obstruct and fail to parent in a manner that was consistent with her belief and definition of co-parenting. Mr. Coy did not change his ways and continued in his obstructive and combative manner toward Ms. Coy. He continued to abuse his previously agreed upon residential time and continued his threatening and demanding ways in attempts to interfere with Ms. Coy's residential time with the parties daughter, all of which were not consistent with Ms. Coy's definition of a good co-parenting relationship.

Ms. Coy did not abuse her discretion. She advised Mr. Coy on numerous occasions that he was not following the terms of the parenting plan. CP 211-212.

If the Court finds that this matter is subject to review, the review should be a review of the Findings of Fact and Conclusions of Law and Order as entered by the Arbitrator, Rebecca Reeder, to see if there is evidence that Ms. Coy abused her discretion. De novo review is not mandated in this situation.

To allow a de novo review would result in rendering the whole process a fraud. It will allow the non-prevailing party, who happens to be more financially stable, the ability to keep the litigation going and increase the expenses to prohibitive heights.

This is not a case that requires a de novo review. It was reviewed by the Superior Court and the Findings of Fact and Conclusions and Order of the arbitrator were adopted.

D. ARGUMENT

The parties have the right to set up a decision making authority within the parenting plan which is not subject to de novo review.

RCW 26.09.187(2)(a)(ii).

The parties entered into an agreement on August 2, 2007, agreeing to allow Ms. Coy sole discretion to decide if Mr. Coy could accrue an additional overnight visit with his daughter. CP 143.

Mr. Coy was aware that his lack of co-parenting would now be subject to review by Ms. Coy in order for him to obtain increased

residential time. Mr. Coy did not yet have the right to this additional time in the parenting plan.

Ms. Coy agrees that *In Re: the Parentage of Austin Smith-Bartlett*, 95 Wn. App. 633, 976 P.2d 173 (1999) is one of the controlling cases in this litigation. Ms. Coy agrees that *Smith-Bartlett* requires a review by the Superior Court of parenting plan disputes that change the parties' residential time. In this case, however, there is no issue regarding the parenting plan. The issue is that the parties had an agreed upon and bargained for provision in a parenting plan that allowed Ms. Coy to exercise her discretion in deciding whether or not in the best interest of her child, an additional overnight visitation would be appropriate. Mr. Coy does not disagree with the fact that Ms. Coy has the right to do that. What he disagreed with was the fact that she found he was not co-parenting in a manner she felt beneficial to their child. So it is her decision and her discretion that he contests in this case.

The parties disagree in the interpretation of the *Smith-Bartlett* case. The Court recognizes in *Smith-Bartlett* that a review of some kind is necessary. Generally, when the Court talks about review, it means de novo review, although that is not specified in the statute. RCW 26.09.184. At *Smith-Bartlett*, page 642, in discussing the issue of review, *Smith-Bartlett* cites *Kirshenbaum*, 84 Wn. App. 807, 929 P. 2d 1204 (1997), "What is

required here is a de novo review of the arbitration. It is the arbitrator's decision that the Superior Court must review."

In this case, it is the arbitrator's decision that the Court must review, not in the status of a de novo review, but in reviewing the Findings of Fact and Conclusions of Law and the Order that was entered into by Arbitrator, Rebecca Reeder. The Court looks at that to see if there was sufficient evidence presented and sufficient findings to justify and authenticate the fact that Ms. Coy did not abuse her discretion in making her decision.

The statutes and the case law recognize the fact that the parties have a right to create in their parenting plan provisions to resolve disputes.

Kirshenbaum, cited above, recognized the fact that the Court has the authority to vest in an arbitrator the right to oversee issues in a parenting plan. In this particular case, that arbitrator happened to be Ms. Coy. *Kirshenbaum*, at 800. The parties vested this decision making authority in Ms. Coy, in order to avoid the need for the parties to continue to go back to Court every time a dispute arose. In *Kirshenbaum*, the Court found that a designation of that authority was appropriate.

It is not the contention of Ms. Coy that the Court does not have a right to review, the contention is that a de novo review, which would constitute a complete re-trying and litigation of all of the issues regarding

whether or not Mr. Coy properly co-parented is unwarranted. The only issues that should be reviewed are whether or not Ms. Coy abused her discretion, and that could be reviewed by looking at the findings and conclusions as prepared by the arbitrator.

If a non-prevailing party has a right to review, what type of review is required by the Superior Court?

Interpretation of the parenting plan is not a modification of the plan itself, so the Court can delegate this responsibility. However, any modification, no matter how slight, requires an independent inquiry by the Court. *Smith-Bartlett*, at 640, citing RCW 26.09.260(1) and (4), and citing *Kirshenbaum*, at 807.

In this particular instance, the Court needs to understand that the parenting plan was not modified in any manner. Mr. Coy had not, in his negotiations, received an extra Wednesday night. It was only contemplated if he participated in and properly followed the parenting plan as it was written and was able to co-parent. There was a bargained for and agreed upon right by Ms. Coy to be the sole decision maker regarding whether or not Mr. Coy followed the terms of the parenting plan. Even after she gave notice to Mr. Coy that he was violating the terms of the parenting plan, he continued to violate the terms of the parenting plan. CP 211-212.

Since the interpretation by Ms. Coy did not, in any way, modify the parenting plan, the right to a de novo review is not absolute. What is required or allowed is a de novo review of the arbitration. It is the arbitrator's decision that the Superior Court must review. *Smith-Bartlett*, at 641, citing *Kirshenbaum*, at 807. The findings of fact and conclusions must be evaluated to decide if facts were presented sufficiently to eliminate her abuse of discretion.

E. CONCLUSION

If this Court requires that the binding arbitration as agreed to by the parties, which allowed for the decision made by Ms. Coy to be subject to de novo review, it basically makes futile the efforts by the parties to lessen constant court litigation.

An unintended consequence of a ruling remanding this case back for review would foster a lack of respect and confidence in the judicial system that allows one party to continue to litigate and extend litigation after making numerous agreements to refrain from such actions. Ms. Coy is asking that this appeal be dismissed, that the trial court order entered by

Superior Court Susan Serko be affirmed, and that Ms. Coy be awarded fees for having to defend this action.

RESPECTFULLY SUBMITTED this 1st day of June, 2010



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II FINDINGS OF FACT

A. PROCEDURAL HISTORY

2.1 Kristine Coy and Mark Coy were married on October 12, 1996. During their marriage they had one child, namely Abigail Coy. They subsequently separated on February 12, 2002. The parties marriage was dissolved on July 19, 2002 in the above entitled action, at which time Abigail was 22 months old. Abigail is currently 8 years old. Neither party was represented by counsel in the original dissolution action.

2.2 On July 19, 2002, the Court approved an agreed final Parenting Plan which designated the mother, Kristine Coy, as the custodian of the child. The same order outlined the father's residential time.

2.3 On March 24, 2005, Mr. Coy filed a Summons and Petition for Modification /Adjustment of Custody Decree / Parenting Plan / Residential Schedule through attorney Debra Morse, who first appeared at that time. Mr. John Miller appeared on behalf of Ms. Coy on March 28, 2005. An Order Enforcing Parenting Plan; Confirming School Enrollment and Allowing After School Care was entered on August 22, 2006. Said order indicates on page two as follows: "Ordered there is no adequate cause to modify the existing parenting plan." However, the order does make a few minor adjustments to the July 19, 2002 Parenting Plan pursuant to an agreement previously reached. Said order also indicated that the parties were to attend mediation to address additional issues related to residential time. This Order put an end to the Modification action previously filed. Debra Morse filed documentation with the court to withdraw on behalf of Mr. Coy on September 20, 2006.

2.4 On October 26, 2006, Mr. Coy filed a second Summons and

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1 Petition for Modification / Adjustment of Custody Decree / Parenting Plan /
2 Residential Schedule. Said documents were filed by Mr. Coy pro se. This was
3 approximately 2 months after the first Petition to Modify was denied. On
4 November 13, 2006, the court enter an Order Denying Adequate Cause and
5 Dismissing the Petition to Modify after finding that the matters were previously
6 before the court. Fees of \$1,000 were assessed against Mr. Coy.

7 2.5 Mr. Coy filed a Motion for Revision on November 21, 2006. Said
8 Motion for Revision was denied by Judge Serko.

9 2.6 On March 28, 2007, Ms. Coy brought a motion to restrain the
10 father from taking the child on an out of state vacation as she believed his
11 plans were in violation of the parenting plan. Mr. Daniel Smith appeared on
12 behalf of Mr. Coy on April 6, 2007. Ultimately the court allowed said travel as
13 reflected in the court order entered on April 17, 2007.

14 2.7 During late July 2007 or early August 2007 the parties entered into
15 voluntary mediation with PCCDR related to the Parenting Plan. Rebecca
16 Reeder was the volunteer mediator. Both Mr. John Miller and Mr. Daniel Smith
17 appeared with their respective clients at said mediation. These same attorneys
18 continue to represent these parties today.

19 2.8 Prior to the mediation, Mr. Coy's attempts to get any meaningful
20 changes to the Parenting Plan had been denied. Despite the fact that there
21 was no cause of action pending to modify, the parties agreed to enter into
22 mediation in good faith.

23 2.9 During the mediation process, the parties were able to reach an
24 agreement regarding future changes to the Parenting Plan. A parenting plan
25 was drafted at the conclusion of the mediation and signed off by all parties.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 3

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1 Said parenting plan was entered with the court on August 2, 2007. This
2 parenting plan continues to be the most recent parenting plan signed by the
3 court. This parenting plan was much more detailed in regards to outlining the
4 dates and times the father was to spend time with Abigail.

5 2.10 The parties did enter into an agreement for a trip which was filed
6 with the Court as an order on December 18, 2007.

7 2.11 In the late winter of 2008, Ms. Coy was in the process of
8 relocating her residence from North Tacoma to University Place, Washington.
9 This move would have enabled her to live closer to Mr. Coy who resides in
10 Fircrest, Washington. Mr. Coy filed an Objection to Relocation on March 7,
11 2008. The statute is clear that adequate cause for hearing a petition for
12 modification is not needed when a party is pursuing a relocation. According to
13 Mr. Coy's proposed parenting plan, he was also seeking to be designated as
14 the custodian of the child. During the school year Mr. Coy was offering Ms.
15 Coy every Wednesday as well as alternating weekends from Friday until
16 Monday morning. Additionally, in the summer months he offered her only one
17 week in June, one week in July and one week in August.

18 2.12 The court set trial on this matter for Thursday, August 28, 2008.
19 No orders were entered pending trial to alter the parenting plan in effect at that
20 time.

21 2.13 The parties were in court on August 28, 2008 for trial as no
22 resolution was reached prior to trial. No judges were available to hear the
23 matter. Therefore, the parties were referred to mediation with pro tem judge
24 Michael Riggio. Said mediation occurred on August 28, 2008.

25 2.14 The parties participated in the mediation with Pro Tem Judge

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 4

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1 Michael Riggio. They were able to reach an agreement. A handwritten CR 2A
 2 agreement was drafted and signed by all parties and their counsel on August
 3 28, 2008. Portions of said agreement are the subject of said dispute.

4 2.15 Pertinent parts of said agreement that are important here provide
 5 as follows:

6 The Parenting Plan entered into and signed on August 2, 2007, is
 7 agreed to remain in full force and effect EXCEPT for the following
 changes:

- 8 1. Residential time for father shall change as follows:
 - 9 a. Every Thursday overnight in place of Wednesday;
and
 - 10 b. Every other Friday to Monday morning at 9:00 am
or when school begins, if appropriate.
- 11 2. Father shall have every Wednesday from after school until
5:00 pm, not as residential time.
- 12 5. If after six (6) months from September 1, 2008, the father
13 has not interfered with Abbi's counseling, not talked about
14 parenting issues with Abbi and generally co-parents
15 consistent with the current parenting plan, at the discretion
of the mother, the father shall have additional residential
time as follows:

16 Father's residential time shall be increased to
17 include an overnight Wednesday after school, i.e.,
18 father shall have Wednesday overnight and
Thursday overnight during those weeks when he
does not have weekend residential time.
- 19 6. If after one (1) year from September 1, 2008, the father
20 continues to co-parent in compliance with paragraphs 1-5
21 above, he shall be allowed every Wednesday as an
overnight until the following morning at 9:00 am or when
school begins, if appropriate.
- 22 7. Mother shall decide at her discretion whether father has
23 complied with paragraphs 5 and 6 above. If father
disagrees, the parties shall have the matter heard in
24 binding arbitration with Attorney Rebecca Reeder.

25 2.16 The agreement states that the mother has sole discretion to

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 5

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1 implement the next phase of the residential schedule or not. In a letter from
 2 Ms. Coy's attorney to Mr. Coy's attorney dated January 16, 2009, Mr. Miller
 3 indicates in part as follows:

4 During our settlement conference in late August, my client made
 5 generous concessions to the Parenting Plan in an effort to reach a place
 6 where Mr. Coy would be content with the schedule and finally stop his
 7 on-going threats and battle for either custody or increased time with their
 8 daughter. The CR2(a) agreement states that Kristine has sole discretion
 9 to determine whether or not Mr. Coy has followed the terms of both the
 10 agreement and the Parenting Plan. We were very hopeful that this
 11 would be the end of this multi-year battle. Unfortunately, that has not
 12 been the case.

13 Through the years, we have attempted to be very specific with the
 14 wording of new agreements or amended Parenting Plans, however, no
 15 matter how very specific we get, Mr. Coy immediately tries to twist and
 16 stretch the wording to further his advantage or asks for further
 17 concessions that he "forgot" to address during the meeting. This most
 18 recent agreement is no exception. Mr. Coy has repeatedly violated the
 19 terms of the agreement and the Parenting Plan and has shown an
 20 inability to co-parent and keep from causing continued conflict.

21 Accordingly, Kristine is asserting her authority under the terms of the
 22 CR2(a), and denying Mr. Coy's increase of residential time (every other
 23 Wednesday night). If you are not in agreement with this determination,
 24 according to the agreement you may schedule an arbitration with
 25 Rebecca Reeder.

The question becomes whether or not Ms. Coy abused her discretion to
 grant Mr. Coy the overnight Wednesday residential time.

B. FACTS SINCE CR 2A AGREEMENT ENTERED INTO

2.17 Ms. Coy articulated a number of areas where she felt the
 parenting plan was violated allowing her to use her discretion and deny the
 implementation of the next phase. She indicates that co-parenting has always
 been difficult with Mr. Coy and that she was hopeful that co-parenting would go
 easier with this carrot hanging over Mr. Coy. Ms. Coy indicates that over the
 past six months, Mr. Coy's behavior has not improved. Specifically she cites

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1 the following examples:

2 A. Ms. Coy believes that Mr. Coy did not follow the terms of the
 3 Parenting Plan related to Wednesdays on the following dates:
 4 9/24/08, 10/1/08, 10/8/08, 11/5/08, 11/19/08, 11/26/08, 12/10/08,
 5 1/7/09, 2/11/09, 2/18/09 and 2/25/09. Ms. Coy believes that Mr.
 6 Coy allowed third parties to pick up their daughter without
 7 advising her when she was available to spend time with Abigail.
 8 Further, third parties were allowed to pick up Abigail and Ms. Coy
 9 was not advised who Abigail was with or the contact information.
 10 Pertinent parts of the Parenting Plan regarding Wednesdays are
 11 as follows:

12 3.13 OTHER

13 During the school year, if the mother is working during her
 14 residential time and the father is not working, the father shall be
 15 entitled to spend the time with the child in lieu of having the child
 16 go to child care. The father shall be responsible for returning the
 17 child to the mother's work when she is scheduled to get off work
 18 at 5:00 pm. If the father fails to promptly return the child to the
 19 mother when mother gets off work, this provision allowing the
 20 father the after school time shall be removed from this plan at the
 21 mother's sole discretion...The child may also spend time with her
 22 grandparents during this period. If this occurs the other shall be
 23 advised that she is with the grandparents and where they will be
 24 and a phone number that can be used to contact the child. The
 25 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.

24 B. Ms. Coy sent Mr. Coy emails regarding her perception that Mr.
 25 Coy was not following the terms of the parenting plan regarding

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 7

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1 phone calls on 9/12/08, 11/13/08 and 11/14. Ms. Coy believes
 2 that Mr. Coy does not allow Abigail to contact her when she
 3 wants to during the father's residential time based on Abigail's
 4 assertion. After a long Christmas break Abigail indicates she was
 5 not able to call her mother while with her father with 2 exceptions,
 6 Christmas Day and December 30TH.

7 Pertinent parts of the Parenting Plan are as follows:

8 3.13(2) The father shall make himself available by cell
 9 phone while he has the child in his care.

10 3.13(5) The child(ren) shall have reasonable telephone
 11 privileges with the parent with whom the child(ren)
 is/are not then residing, without interference of the
 residential parent.

12 C. Ms. Coy expressed a desire to Mr. Coy in an email dated
 13 November 20, 2008 that communication regarding the parenting
 14 plan occur in writing so there are no misunderstandings. Mr. Coy
 15 agrees with this request for the reason stated by Ms. Coy.

16 D. Both parents indicate that the parenting plan was drafted in such
 17 a way that the exchanges of the child occur at school, which limit
 18 the amount of time the parents are together which also helps
 19 eliminate additional conflict.

20 E. Ms. Coy believes that Mr. Coy does not do a sufficient job of
 21 assisting Abigail with homework, making a co-parenting
 22 arrangements even more difficult for herself and Abigail.

23 F. Ms. Coy believes that Abigail is being punished for sharing with
 24 Ms. Coy things that occur at her father's house. Abigail is now
 25 asking her mother to keep quiet regarding what she is told.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 8

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- 1 G. Abigail knows about this action, which involves her in this
2 litigation contrary to the parenting plan paragraph 3.13(8).
- 3 H. Ms. Coy indicates that Mr. Coy has a history of threatening
4 litigation if Ms. Coy does not do as he wishes, threats that have
5 continued since the CR2A agreement. Mr. Coy recently
6 threatened an emergency motion in court if Ms. Coy did not
7 respond to a request.
- 8 I. Ms. Coy believes that the parties are able to work out the annual
9 schedule on a large scale, but feels great pressure to address the
10 schedule immediately when tasked with it by Mr. Coy. Threats
11 are then received if she is not responsive fast enough. She also
12 indicates she is constantly badgered with emails and phone calls
13 on the subject.
- 14 J. Ms. Coy believes that agreements are reached and Mr. Coy
15 continues to press for more. A recent example is the desire to
16 have more than 5 vacation days from school for Abigail during
17 this school year despite the clear terms of the parenting plan.
- 18 K. Ms. Coy believes communication is strained between the parties,
19 making co-parenting even more difficult.
- 20 L. Ms. Coy believes that Mr. Coy is not truthful with her on a number
21 of areas. Examples include the Wednesday afternoons. She
22 believes he has been caught in a number of lies as to where
23 Abigail was on Wednesday.
- 24 M. Ms. Coy believes that Mr. Coy purposefully withholds information
25 from her.

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- 1 N. Ms. Coy believes that Mr. Coy attempts to micro manage her.
2 O. Ms. Coy believes that these numerous communications with Mr.
3 Coy since the CR 2A agreement was entered were more than
4 enough warning that Mr. Coy was not following the parenting plan
5 and was in jeopardy of losing out on the Wednesday overnights.

6 2.18 On the other hand, Mr. Coy was able to provide information
7 related to his perception of their ability to co-parent and why the next phase
8 should be implemented allowing him overnight residential time on Wednesday.
9 Specifically he cites the following examples:

- 10 A. Mr. Coy sent Ms. Coy an email on 9/3/08 asking her to advise
11 him if she believes he is not complying with the existing parenting
12 plan. He believes she never advised him specifically that he was
13 *in jeopardy of losing his Wednesday overnight residential time.*
14 B. Mr. Coy does not believe that Ms. Coy came to him on any
15 occasions to warn him that he was in jeopardy of losing the
16 Wednesday overnights based on his behavior.
17 C. Mr. Coy indicates that when both he and Ms. Coy were
18 requesting time on Wednesday, he conceded the time to her.
19 D. Mr. Coy believes that he and Ms. Coy have successfully co-
20 parented Abigail in the past and particularly since September 1,
21 2008 when the CR2A was executed. Mr. Coy believes that both
22 parents have been involved in Abigail's daily care such as feeding
23 her, bathing her, participating in activities around the house and
24 in the community, etc.
25 E. Mr. Coy believes they worked together well in coordinating

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FINDINGS OF FACT AND CONCLUSIONS OF LAW - 10

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Abigail's activities to include her guitar lessons and gymnastics.

F. Mr. Coy believes that he has allowed Abigail open communication with her mother during his residential time. He indicates he only restricts telephone contact during dinner and during activities where Abigail may lose or damage the phone. He also indicates that the mother never called Abigail when she wanted to speak to her during his residential time.

G. Mr. Coy believes that he was present with Abigail on Wednesdays and denies that his parents picked her up without him, despite what Abigail repeatedly told her mother. There was one exception when he needed medical attention to treat his kidney stones.

H. Mr. Coy believes that he is entitled to exercise residential time with Abigail every Wednesday after work regardless of Ms. Coy's schedule, despite the fact that the agreement indicates that this time period is not his residential time.

J. Mr. Coy believes that he can have anyone pick up Abigail on Wednesdays and is not in violation of the parenting plan if he allows someone else to pick her up without advising Ms. Coy. He also believes that anyone can assist him with transporting Abigail despite the fact that the parenting plan indicates he is responsible for transportation.

K. Mr. Coy is no longer employed outside the home. (He is, however, investigating starting a business locally.) This makes him available for a great deal of residential time with Abigail while

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- 1 the mother continues to work full-time.
- 2 L. Mr. Coy believes that he shelters Abigail from any discord with
- 3 Ms. Coy. In fact, he indicates he rarely sees Ms. Coy and speaks
- 4 to her infrequently. The exchanges are mainly at school in order
- 5 to reduce conflict.
- 6 M. Mr. Coy believes that he does homework with Abigail when there
- 7 is sufficient time. He notes on Wednesdays when she was in
- 8 guitar there was not always time for homework while in his care.
- 9 N. Mr. Coy indicates that he has been planning these actions which
- 10 would ultimately result in him having 50% of the time with Abigail.
- 11 The entry of the CR 2A is in furtherance of his plan.
- 12 O. Mr. Coy does not believe that he violated any portion of the
- 13 Parenting Plan or CR2A agreement.
- 14 P. Mr. Coy understands that the term "sole discretions" mean that
- 15 Ms. Coy has the right to eliminate a provision and that he agreed
- 16 to said term.

III CONCLUSIONS OF LAW

18 The court makes the following conclusions of law from the foregoing
 19 findings of fact:

- 20 3.1 The court has jurisdiction over the subject matter and the parties
- 21 herein.
- 22 3.2 That the provisions for the parenting plan for the parties
- 23 dependent child entered on August 2, 2007 and the CR 2A agreement signed
- 24 on August 28, 2008 are hereby confirmed and ratified.
- 25 3.3 That the provisions in the CR 2A give Ms. Coy the ability to

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decide at her discretion whether father has complied with paragraphs 5 and 6 of the agreement, to include whether Mr. Coy has generally co-parented consistent with the current parenting plan by agreement.

3.4 A dispute has occurred regarding the execution of the terms of the CR 2A. Therefore, the court should make provisions for a future parenting plan for the parties minor children of the marriage consistent with the express agreement contained in the Parenting Plan and subsequent CR 2A agreement.

DATED this 18TH day of March, 2009.

By Rebecca K. Reeder
REBECCA K. REEDER, WSBA# 25079
Arbitrator

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STATE OF WASHINGTON

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MARK A. COY,)	
)	
Appellant,)	NO. 39690-4-II
)	
v.)	AFFIDAVIT OF
)	SERVICE
)	
KRISTINE J. COY,)	
)	
<u>Respondent.</u>)	

BY _____
NOTARY

LENNETTE NATUCCI, being first duly sworn on oath deposes
and says:

That on the 28 day of May, 2010, I placed a true copy of
RESPONDENT'S APPEAL BRIEF on file in the above-entitled matter, in
an envelope addressed to Daniel Smith as follows and caused to be
delivered to Daniel Smith via ABC Legal messengers at the following
address:

Daniel Smith
Campbell, Dille, Barnett, Smith & Wiley, P.L.L.C.
317 South Meridian
Puyallup, WA 98371-0164

Lenette Natucci
LENNETTE NATUCCI

SUBSCRIBED AND SWORN to before me this 28 day of May, 2010.



Keri D. Wickoren
Printed Name: KERI D. WICKOREN
NOTARY PUBLIC in and for the State of
Washington residing at: Puyallup
My Commission Expires: 03.26.2013