COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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No. 41648-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Parentage of:

MATHIAS JONES
Child,

DANIEL JONES
Respondent,

And

VERONICA THOMPSON
Appellant.

Pierce County Superior Court Cause No. 10-3-00069-0

The Honorable Frederick W Fleming

Respondents Brief

Clayton R Dickinson
Attorney for Respondent
6314 19th St. W., #20
Fircrest, WA 98466
PHONE: (253) 564-6253
FAX: (253) 564-6523

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ASSIGNMENTS OF ERROR

1. Judge Fleming did not err but exercised appropriate discretion in denying the appellant's motion for a continuance of the trial date.

2. Judge Fleming did not err in granting the respondent's motion for reconsideration and ordering sole decision-making as to the respondent.

3. Judge Fleming did not err or fail to make a decision regarding the appellant's motion for reconsideration, but appropriately denied the appellant's motion to change the parenting plan and ordered that the parties provide additional verification in order for the court to make a proper ruling in regard to child-support.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. When the attorney for the party moving for a continuance has had the case for six months, with known issues pending for the trial date, and fails to move for continuance until the day of trial; contrary to local court rules which require the motion to be brought by the deadline for filing the motion to adjust trial date which was over two months prior to this, which rule mandates that the motion be denied absent extraordinary circumstances; was it an abuse of discretion for the court to deny the motion to continue the trial date?

2. Is it an abuse of discretion for the court to order sole decision-making when one parent is opposed to mutual decision-making and such opposition is based upon a demonstrated inability and desire to cooperate between the parties in regard to education, nonemergency healthcare, and religion?

3. When the Court reached a decision regarding the motion for reconsideration regarding the parenting plan and the Court requested additional information be presented prior to its reaching a decision in regard to a deviation of child support and the moving party fails to provide the additional

information requested and has not renoted the motion, is there a proper issue before the Court of Appeals for consideration?

STATEMENT OF FACTS

A. Statement of Facts

The appellant, Veronica Thompson (mother), and the respondent, Daniel Jones (father), have one son, Mathias, born October 26, 2004. (RP 23) They met in June of 2001 and lived together for several years separating in May of 2006. (RP 23, 123) The mother has one child from a prior relationship, an older boy, Zekiah, who was born February 11, 1999. (RP 122)

During their relationship, the parties shared care of the children with the mother watching them during the morning while the father worked; and then when he got off in the afternoon, she would go to work and he would care for the children. (RP 23-24) Following their separation, they followed the same parenting arrangement that had existed when they were together, except that the father would bring the children to the mother's residence in the evening after she got home from work; and 95% of the time the children resided with the father on the weekends. (RP 24-25) This continued until the summer of 2009 when the mother moved to

Orting. (RP 27, 123) From that point on the father had them on the weekends. (RP 27, 124)

On November 6, 2009 the children were removed from the care of the mother following allegations of abuse from Zekiah. (RP 28) The father arranged for both of the children to be placed with his parents and he moved in with them to care for the children. (RP 28-29) He and Mathias continued residing with his parents until February 23, 2009 when the dependency court dismissed the dependency as to Mathias and placed him with his father. (RP 29-30) (CP 37-38) At that point he and Mathias moved back into his townhouse. (RP 29-30) Zekiah remained with the father's parents, and the mother had supervised visitation which also included time for the father's parents to have time with Mathias so that he could have time with his brother Zekiah. (CP 37-38) (RP 30-31)

The visitation with Mathias was ordered supervised by Daphne Gray. (CP 37, 149) She was originally agreed upon as she was a friend of the mother in the community. (RP 93) However, she and the mother later had a falling out and she refused to continue supervising the visits in July, a couple of months prior to the trial. (RP 31, 93, 128-129) Thereafter, the mother had no physical visits with the child prior to the trial. (RP 126) The father suggested the mother's mother and her sisters as alternative persons who could supervise the visits. (RP 144) However, her sisters

were unwilling to supervise the visits, and she and her mother are not on speaking terms so her mother could not act as a supervisor either. (RP 144-145) She only recommended her new husband, but that was not acceptable to the father, nor was that acceptable to the CASA guardian ad litem in the dependency case. (RP 81) The paternal grandparents were also not a resource for visitation because the mother does not get along with them; and in fact during one supervised visit with the paternal grandparents, the paternal grandfather had to ask the mother to leave his home due to her behavior. (RP 79-80, 113-114) In spite of the fact that she earns $15 an hour working full-time and her new husband earns $22.18 an hour working full-time, the mother claimed in court that she was unable to afford the cost of a paid professional supervisor. (CP 275-291) (RP 129)

The CASA guardian ad litem, Sharon Green, conducted an investigation of the father's residence prior to Mathias being placed with him. She also observed his interactions with Mathias. (RP 64-66) She had no concerns regarding the placement of Mathias with his father. (RP 66) At the time of trial, she was still recommending ongoing supervised visitation for the mother. (RP 77-78)

The father's parents also testified in the case in support of the father, explaining to the court the many things that the father and Mathias

do together. (RP 99, 110) The paternal grandmother also testified that in her opinion the father was the better parent. (RP 105)

Following the trial, the court began its ruling by making the following statement:

> THE COURT: Observations. It appears that in this matter the mother is angry and disrespectful and has caused a concern to this Court with reference to her control of her anger, in particular, how it would affect her care of the children. (RP 201)

The court continued by discussing the problems that the mother had in finding someone to supervise the visitation. In particular commenting on the fact that she had been asked to leave the paternal grandparents' residence and that the subsequent visitation supervisor, the mother's friend, quit. (RP 201) He commented further on the fact that the mother does not speak with her own mother and even her sisters would not assist her with visitation supervision. (RP 202) The court concluded by maintaining the placement of the child with the father and ordering the mother to have supervision with a paid professional. (RP 202-204)

B. Procedural Statement of Facts

On the day of trial the mother moved the court to continue the trial. (RP 6) She had filed the motion eight days previously. (CP 158-159) The mother was arguing for three things. The first was that she had a

criminal trial pending in regard to her older child that was set for November 3, 2010, so she believed she would be prejudiced by this matter pending. She therefore was requesting that the case be continued until after that date. (RP 6) The next reason was because the mother felt that there were "major communication issues" between the parties regarding visitation and therefore a guardian ad litem should be appointed. (RP 6-7) The last basis for a continuance requested by her attorney was that a psychological evaluation had been done on her client in the dependency court, and she wanted to call the provider as a witness on the mother's behalf. Apparently the attorney for the mother had only recently become aware of this person. (RP 7)

The attorney for the father argued that the motion was improper under the local rules because it did not include a certification from the attorney that she had explained the continuance to her client and that her client was in agreement with it. (RP 8) It was further argued that the current trial date was not a surprise and that it was known to all parties. (RP 8) The Court asked counsel for the mother how long she had been the attorney on the case and she admitted that she had been on the case since March. (RP 11) (The trial date was September 16, 2010. (RP 1))

In addition, counsel for the father pointed out to the court that there was a guardian ad litem in the dependency case, and that the dependency

case would still be in existence after the criminal case was resolved. (RP 8-10) Lastly, counsel pointed out that Dr. Majovski who did the psychological evaluation, had not even been subpoenaed by the mother. (RP 9-10)

The Court asked the mother's attorney if it wasn't true that a guardian ad litem have looked into this case in the dependency matter and then stated:

> I don't think this is timely, Counsel. There is not good cause. I'm going to deny your motion to continue. We're going to move forward to resolve this matter. I think that's in the best interest of the child. And, under the circumstances, due process has been satisfied, in my mind. (RP 12)

When the attorney for the mother raised the issue of the continuance again during opening argument the court stated: "It wasn't timely. It came the day of trial, and you have this case for over six months." (RP 21)

On December 10, 2010, final papers were presented to the court. (RP December 10, 2010 3) At that time the court was advised that the criminal case had been dismissed; the oldest child had been returned to the mother in the dependency case; and that as a result of this the parenting plan being presented was changed to reflect unsupervised visitation. (RP December 10, 2010 4-5)

The remaining issue that was argued was in regard to decision-making. The father wanted sole decision-making, and the mother wanted mutual decision-making. (RP December 10, 2010 7-10) The court ordered mutual decision-making. (RP December 10, 2010 10)

Both parties filed motions for reconsideration. The father filed a motion for reconsideration of the court's grant of mutual decision-making based upon the fact that he and the mother had been having ongoing disputes over immunizing Mathias and the father's efforts to give him cold medicine when he was ill. He also noted difficulties regarding religious upbringing and issues that the mother had raised regarding educational decisions. (CP 226-230) The mother filed a motion for reconsideration requesting that she be the primary custodian and that if that was denied the child-support orders should be changed to grant her a deviation for her older child. (CP 231-245) The mother also responded to the father's motion for reconsideration by stating that he knew that her religious beliefs did "not allow for the use of any medication". (CP 234)

These motions were argued on December 23, 2010. (RP December 23, 2010 1) At that time, counsel for the father pointed out to the court that the issues involving decision-making had not come up during the trial. (RP December 23, 2010 6) In fact, the declarations revealed problems with decision-making which were completely unknown to the court at the time

of the trial and at the time the final papers had been previously entered, this was basically new information the court did not previously have. (RP December 23, 2010 6) The court reconsidered its decision and ordered sole decision-making to the father. (RP December 23, 2010 11)

When counsel for the mother was explaining to the court that they had the mother's residential time as an issue to be argued in this hearing, the court stated: "But I ruled against you on residential time, didn't I?" (RP December 23, 2010 9) Following further discussion between counsel and the court, the court stated:

> Let me tell you about the history of this case. I remember this case. I remember that she was recalcitrant, the mother was. She also had problems with the juvenile dependency, and so on, issues that she had, which have now been resolved. But, historically, she, for whatever reason, in my opinion, when I entered my decision, I did not think that she had the child's best interest at heart. And, therefore, I ruled the way I did at that time. (RP December 23, 2010 9)

The court acknowledged that both the dependency and the felony charges had been dismissed. Then the following dialogue occurred:

> THE COURT: But, I'm saying, if anybody looks at the history of this case, and the mother's interaction with the child that I have responsibility for, I think they are going to see that she has been less nurturing than she should be.
> MS. WALKINS: Well, Your Honor, in the testimony that was given, it was more so focusing on why the child wasn't in her care, and that was because of the dependency – –
> THE COURT: I know. I'm not going to argue anything. (RP December 23, 2010 10)

At that point, counsel for the mother began her presentation regarding decision-making. (RP December 23, 2010 10)

After the court ruled against the mother in regard to decision-making, counsel for the mother began her argument regarding child support. (RP December 23, 2010 12) The mother was requesting a whole family deviation because she had her older child back in her home. (RP December 23, 2010 12-13) The father was opposed to that arguing that the whole family deviation was not automatic and that the mother was receiving $500 a month child-support from the biological father of the child. (RP December 23, 2010 13) The mother responded that she wasn't receiving the $500 a month child-support and the court ordered that there be some verification provided regarding the payment of child support for the older child. (RP December 23, 2010 13) There continued an ongoing discussion regarding the verification that the court would require, either the mother providing proof that she is not receiving the money, or the father proving that the mother was receiving the money through bank account records. (RP December 23, 2010 13-17) The concluding comments by the court and Ms. Walkins were as follows:

> THE COURT: So, if you want to modify, you have to follow what I indicated you need to have in order to modify it.
> MS. WALKINS: Your Honor, I'll do that. (RP December 23, 2010 17)

The mother/appellant took no further action to provide the court with any information, but simply filed this appeal.

ARGUMENT

I. WHEN THE ATTORNEY FOR THE PARTY MOVING FOR A CONTINUANCE HAS HAD THE CASE FOR SIX MONTHS, WITH KNOWN ISSUES PENDING FOR THE TRIAL DATE, AND FAILS TO MOVE FOR CONTINUANCE UNTIL THE DAY OF TRIAL; CONTRARY TO LOCAL COURT RULES WHICH REQUIRE THE MOTION TO BE BROUGHT BY THE DEADLINE FOR FILING THE MOTION TO ADJUST TRIAL DATE WHICH WAS OVER TWO MONTHS PRIOR TO THIS, WHICH RULE MANDATES THAT THE MOTION BE DENIED ABSENT EXTRAORDINARY CIRCUMSTANCES; IT WAS NOT AN ABUSE OF DISCRETION FOR THE COURT TO DENY THE MOTION TO CONTINUE THE TRIAL DATE.

In *In re V.R.R.*, 134 Wash. App. 573, 141 P.3d 85 (2006), the court laid out the standard for review of a denial of a motion for continuance. They stated:

> We review a trial court's decision to deny a continuance for manifest abuse of discretion. *City of Tacoma v. Bishop,* 82 Wash.App. 850, 861, 920 P.2d 214 (1996). A trial court abuses its discretion when it exercises that discretion based on untenable grounds or reasons. *State ex rel Carroll v. Junker,* 79 Wash.2d 12, 26, 482 P.2d 775 (1971). In deciding a motion to continue, the trial court takes into account a number of factors, including diligence, due process, the need for an orderly procedure, the possible effect on the trial, and whether prior continuances were granted. *Bishop,* 82 Wash.App. at 861, 920 P.2d 214. When denial of a motion to continue allegedly violates constitutional due process rights, the appellant must show either prejudice by the denial or the result of the trial would likely have been different if the continuance was granted.

> *State v. Tatum,* 74 Wash.App. 81, 86, 871 P.2d 1123, *rev. denied,* 125 Wash.2d 1002, 886 P.2d 1134 (1994). (at 580-581)

In the above case, a dependency termination trial, the father had received appointed counsel the day before the trial was to begin. On the day of trial the father did not show up and the court denied the motion to continue the trial. In that case the court found that it was an abuse of discretion because the continuance impacted the father's due process right to counsel. That is not the case here, in our case the mother had been represented by counsel for six months prior to the trial. Also, the mother was present at the trial and testified in her own behalf.

The last case cited in the above quote was *State v. Tatum*, 74 Wash. App. 81, 871 P.2d 1123 (1994). This case is more analogous to the case before the Court as it involved a requested continuance due to an unavailable witness. In that case the trial court had denied the motion for continuance of the trial based upon the unavailability of a witness that the defendant asserted was material on the basis that a new subpoena had not been sent to that witness following the prior continuance of the case. The Court of Appeals concluded that as a matter of law the trial court was mistaken in its belief that a new subpoena had to be issued following the prior continuance of the trial. However, they concluded that even had that witness testified, the outcome of the trial would not have been different

and therefore the defendant had failed to show any prejudice in the denial of the motion to continue the trial. In doing so the court stated:

> Nevertheless, even where the denial of a motion for continuance is alleged to have deprived a criminal defendant of his or her constitutional right to compulsory process, the decision to deny a continuance will be reversed only on a showing that the accused was prejudiced by the denial and/or that the result of the trial would likely have been different had the continuance not been denied. *State v. Eller,* 84 Wash.2d 90, 95–96, 524 P.2d 242 (1974); *see also State v. Edwards,* 68 Wash.2d 246, 255, 412 P.2d 747 (1966). The determination as to whether the defense was prejudiced and whether the result would likely have been different "must be [based on] the circumstances present in the particular case." *Eller,* 84 Wash.2d at 96, 524 P.2d 242. (at 86)

In the case before the Court there is no harm that can be shown from the refusal to continue the case. Even after the trial court became aware that the criminal case had been dismissed and that the dependency court was returning the mother's other child to her, the trial court still maintained the parenting plan as ultimately presented, but with unsupervised visitation, and ordered sole decision-making to the father. The testimony from the Guardian ad litem, Mr. Jones parents, and Mr. Jones, were all sufficient to justify the court's decision. There was also no offer of proof as to what Dr. Majovski would have testified to so the trial court was not given sufficient information to know how that would have impacted its decision one way or the other. There is no proof in this case

now the outcome of the trial would have been any different had the case been continued.

Pierce County Local Rule 40 (g)(2)(B) states as follows:

> **Continuance of Trial Date.** A request to change the trial date to a date more than 30 days before or after the original trial date shall be made by motion and will not be granted unless the motion is supported by a showing of good cause. The new trial date shall not be selected without first consulting with the department's judicial assistant in order to accommodate the Court's calendar. If a motion to change the trial date is made after the Deadline to Adjust Trial Date, the motion will not be granted except under extraordinary circumstances where there is no alternative means of preventing a substantial injustice. A continuance may be granted subject to such conditions as justice requires. If an attorney moves for a continuance of the trial date under this subsection, the motion shall not be considered unless it is signed by both the attorney and the client or it contains a certification from the attorney that the client has been advised of the motion to continue the trial date as well as the basis for the motion and that the client agrees with the motion to continue.

First of all, the motion for continuance that was filed in this case did not comply with the local rule as it was not signed by the client and did not contain a certification that the client was advised of the motion to continue and was in agreement with it. (CP 158-159) However, even putting that aside the deadline for filing motion to adjust trial date was July 2, 2010 and the motion was not even filed until September 8, 2010 and argued on the day of trial, September 20, 2010. There is no question in this case that the court rule was not complied with.

It is next argued that this was an extraordinary circumstance and that there was no other means of preventing a substantial injustice because the mother was facing criminal charges and was in the midst of the dependency at the time of the trial. This argument assumes that the trial judge would be unable to discern the facts of the case and would simply place the child with the father because the mother was not an alternative. It furthermore assumes that the trial judge would be unable to be in partial. However, there was nothing in this case preventing the mother from putting on her case that she was the better parent and that the child should be placed with her.

In this case the only witnesses that testified on behalf of the mother were herself and her new husband. The facts of the case themselves made it clear that the mother had some issues and the very fact that she could not find anyone else to testify on her behalf was as revealing and telling to the trial court as what was said. The judge noted the mother's demeanor in court and the fact that she essentially burned her bridges with her family and friends. The evidence presented by the father was not just that mother had criminal charges with a dependency pending, but that he and the mother had equally shared parenting, with him having both children every weekend and almost daily after work up until six months prior to the children being removed from the mother. He also presented testimony that

he had the children every weekend from June until November when the children were removed from the mother. His parents and the guardian ad litem all testified as to his parenting and the condition of his home. They were both supportive of the father and provided negative testimony as to the mother independently of any dependency action. It was this testimony, and not the mere fact that the dependency and criminal action were pending, that persuaded the court to rule in the father's favor. Therefore, there is no proof in this case that a substantial injustice occurred as a result of the failure of the trial court to continue the trial.

Lastly, counsel had no explanation for the court as to why she waited until the day of trial to move to continue the case when she had been on the case for six months. It should not have been any surprise to her that the dependency case would still be pending at the time of trial prior to the date for adjustment of the trial date. Basically, there were no extraordinary circumstances that would justify a continuance in this case. In short, there was no abuse of discretion on the part of the court for its refusal to grant a continuance on the day of trial under the circumstances.

II. IT IS NOT AN ABUSE OF DISCRETION FOR THE COURT TO ORDER SOLE DECISION-MAKING WHEN ONE PARENT IS OPPOSED TO MUTUAL DECISION-MAKING AND SUCH OPPOSITION IS BASED UPON A DEMONSTRATED INABILITY AND DESIRE TO COOPERATE BETWEEN THE PARTIES IN REGARD TO EDUCATION, NONEMERGENCY HEALTHCARE, AND RELIGION.

Sole decision-making is outlined in RCW 26.09.187(2) (b) & (c) which reads as follows:

> (b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:
>
> (i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;
>
> (ii) Both parents are opposed to mutual decision making;
>
> (iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.
>
> (c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:
>
> (i) The existence of a limitation under RCW 26.09.191;
>
> (ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);
>
> (iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and
>
> (iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

In this case one parent, the father, is opposed to mutual decision-making and such opposition is reasonable based upon the fact that there is

a demonstrated inability to cooperate on the part of the mother in decision-making.

The case of *In re Marriage of Jensen-Branch*, 78 Wash. App. 482, 899 P.2d 803 (1995), from Division 1, dealt with the issue of religious decision-making. In that case, the wife specifically requested that she have sole decision-making regarding religious upbringing. In that case the court cited the standard for review of decision-making and in particular for review of religious decision-making as follows:

> A trial court's decision concerning parental decision-making is ordinarily reviewed for an abuse of discretion. Munoz v. Munoz, 79 Wash.2d 810, 813–14, 489 P.2d 1133 (1971); In re Marriage of Kovacs, 121 Wash.2d 795, 801, 854 P.2d 629 (1993). In exercising discretion, a trial court can consider the parents' religious affiliations in making decisions affecting parental rights. See In re Marriage of Murphy, 48 Wash.App. 196, 200–01, 737 P.2d 1319 (1987); In re Marriage of Hadeen, 27 Wash.App. 566, 588, 619 P.2d 374 (1980) (Dore, J., dissenting), review denied, 95 Wash.2d 1009 (1981). However, in order to protect the parents' respective constitutional rights to the free exercise of religion, Washington courts have created a separate standard where a trial court's order regarding decision-making authority restricts those rights: there must be a substantial showing of actual or potential harm to the children from exposure to the parents' conflicting religious beliefs.2 See Munoz v. Munoz, 79 Wash.2d 810, 813–14, 489 P.2d 1133 (1971) (must be evidence establishing that the exposure to separate religions has had, or will have, an adverse affect upon the children); Hadeen, 27 Wash.App. at 579, 619 P.2d 374 ("religious decisions and acts may be considered in a custody decision only to the extent that those decisions or acts will jeopardize the temporal mental health or physical safety of the child"); Robertson v.

> Robertson, 19 Wash.App. 425, 427, 575 P.2d 1092 (1978); see also, Annot. "Child Custody and Visitation–Religion", 22 A.L.R.4th 971 (Supp.1993).
>
> Although the above-referenced court decisions predate the Parenting Act, the holdings of each address the best interests of the child in the context of religious upbringing. These are the same considerations that survive intact in the current code provisions. See RCW 26.09.002; 26.09.184(4)(a). Former RCW 26.09.250 (enacted in 1973, repealed in 1987) granted the custodial parent decision-making authority over "religious training". When the Hadeen case refers to restrictions on the "religious training" of a child, it is in effect talking about decision-making authority. The statute has changed, but the standards have remained constant, as have the parents' rights to free religious exercise. (at 490-491)

As can be seen from the above decision-making is reviewed for an abuse of discretion. In general, the abuse of discretion standard is that which applies to decision-making. However, decision-making in regard to religion has an additional component because of the constitutional rights of the parents. For this reason religious decision-making is reviewed from the perspective of a substantial showing of actual or potential harm to the child.

In this case there was certainly evidence showing that the parents were unable to cooperate in regard to decision-making. The mother also appeared to have anger issues. In regard to religious decision-making in particular, the mother, although not extremely religious, stated that her religious beliefs did not allow for the use of any medications. She

specifically was opposed to immunization and was also opposed to the father giving the child cold medication when he was ill. This demonstrates both an issue regarding religious and nonemergency healthcare decisions.

If the child is not immunized there is a potential harm to the child if he contracts one of the diseases for which he could have been immunized and protected. Cold medication provides assistance with pain, fever, and can also help prevent serious injury in the event of a fever that becomes very high. There is no middle ground by which someone can compromise in these regards. Either the child is going to be provided medication and immunization, or he is not. If the mother's religious views are opposed to immunization and medication, her refusal to cooperate in this regard places the child at risk and effectively gives her sole decision-making by her simple refusal to cooperate; and her unilateral and unconditional refusal to agree to allow the child to be immunized nor to agree to medication being provided to him when he is ill. Therefore, it is not possible to have joint decision-making on these issues. As a result, there was not an abuse of discretion on the part of the court in ordering this.

III. WHEN THE COURT REACHED A DECISION REGARDING THE MOTION FOR RECONSIDERATION REGARDING THE PARENTING PLAN AND THE COURT REQUESTED ADDITIONAL INFORMATION BE PRESENTED PRIOR TO ITS REACHING A DECISION IN REGARD TO A DEVIATION OF CHILD SUPPORT AND THE MOVING PARTY FAILS TO PROVIDE THE ADDITIONAL INFORMATION REQUESTED AND HAS NOT RENOTED THE MOTION, THERE IS NOT A PROPER ISSUE BEFORE THE COURT OF APPEALS FOR CONSIDERATION.

The mother argues that the trial court failed to rule on the issues in her motion for reconsideration. However, the record is clear that counsel did argue the matter before the trial court and in essence her motion was denied. In the process of denying her motion the court explained to her the reasoning of his decision, that he believed the mother did not have the best interest of the child at heart. The record is very clear that the court had no intention on reconsidering its decision. Finally, the court told counsel "I'm not going to argue anything." (RP December 20 310) Although perhaps not the most clear and articulate of conclusions, it was however obvious that with the court intended was that he was not going to continue arguing with counsel about the matter. There is no doubt from this record that the court denied the mother's motion.

The next thing that the mother argues is that the court refused to rule on her motion for reconsideration and told her to go to the commissioner's court. However, the record is again clear that the court

requested additional information and that upon providing that she could bring the motion.

RAP 2.2 states in relevant part as follows:

> **(a) Generally.** Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:
>
> (1) *Final Judgment.* The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.
>
> (2) [Reserved.]
>
> (3) *Decision Determining Action.* Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.
>
> .....
>
> (13) *Final Order After Judgment.* Any final order made after judgment that affects a substantial right.

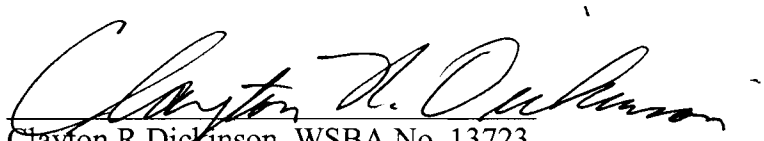
In this case, the mother is not challenging the final orders entered by the court, i.e., that the child was placed with the father nor the order of child support itself that was entered. These were the final orders that were entered by the court. What she challenges is her claim that the court did not consider her motions for reconsideration. This is not something that is properly the subject of appeal under the court rule. Furthermore, the appeal is factually incorrect because the court did rule on reconsideration of the placement of the child and requested additional information or verification information prior to reaching a decision regarding child

support. In regard to child-support the mother never filed the additional information and never sought to have the court reconsider its decision in light of the additional verified information requested. Therefore, the mother's last issue is not properly before this Court and this issue should be dismissed.

CONCLUSION

There was no abuse of discretion of the court's decision to deny the motion to continue the trial as the mother provided no proof of prejudice as a result of the denial. There was potential harm to the child due to the mother's religious beliefs against the use of immunizations and medication and the father's request for sole decision-making was reasonable. Lastly, there is no basis for appeal of the motion for reconsideration and that matter should be dismissed. For the foregoing reasons, the mother's appeal should be denied and dismissed.

Respectfully submitted on June 23, 2011.



Clayton R Dickinson, WSBA No. 13723
Attorney for the Appellant

11 JUN 24 PM 1:15
STATE OF WASHINGTON
BY_____
DEPUTY

CERTIFICATE OF MAILING

I certify that I mailed a copy of Appellant's Motion for Accelerated Review to:

Daniel Jones
19215 15th Ave. N.E. Unit 2
Shoreline, WA 98155

And I certify that I sent a copy of Appellant's Motion for Accelerated Review by ABC Legal Messengers to:

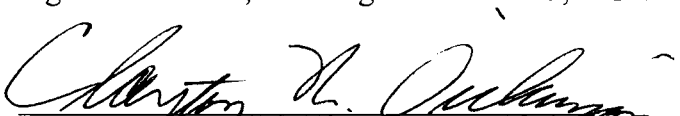
Doris Walkins
4424 6th Ave. Ste. 1 #4
Tacoma, WA 98406

And that I sent the original and one copy to the Court of Appeals, Division II, for filing by ABC Legal Messenger Service;

All postage prepaid, on June 23, 2011.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Fircrest, Washington on June 23, 2011.



Clayton R. Dickinson, WSBA No. 13723
Attorney for the Appellant