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COA #420601

NO. 84912-9

IN THE SUPREME COURT OF THE STATE OF WASHINGTON
DIVISION II

ANTHONY H MILES

Appellant,

v.

KIMBERLY S MILES

Respondent

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 08-2-00045-3

BRIEF OF APPELLANT

Anthony H Miles
PRO Se
103 Rockwell Ave.# B16
Port Orchard, WA 98366

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Transcript of Proceedings

Date: April, 26,2002 Pre Trial Hearing

December 18, 2002 Dissolution Trial

January 3, 2003 Entry of Findings

August 28, 2009 Motion for contempt

July 16, 2010 Motion – Adequate Cause and Temporary Orders

I. ASSIGNMENTS OF ERROR

- A. The court erred by failing to act in best interest's of the child when it denied a modification on visitation absent any proof of harm.
- B. The court erred by applying an improper interpretation of the standard to restrict a parental right.
- C. The court erred by shifting the burden of proof to the non custodial parent which was untenable and violated public policy to promote visitation.
- D. The court erred by denying adequate cause to modify visitation, when the original parenting plan had provided for these changes in visitation.

- E. The court erred by imposing additional consequences to restore reasonable visitation, which violated a plea agreement by imposing additional jeopardy.

- F. The court erred in it's decision to impose an unreasonable financial obligation without consideration of the non custodial parents limited income and by not articulating how it found this decision to be reasonable.

- G. The court erred in it's decision to disregard the the custody report finding that Kimberly was the aggressor parent who had a history of prior issues of self control, a favoritism of one parent.

II. STATEMENT OF ISSUES

1. Whether the court erred by the improper application of RCW 26.09.191
2. Whether the court erred by disregarding the standards of evidence when it allowed the use of statements that were unproven or inadmissible as facts.
3. Whether the court has demonstrated favoritism by imposing an untenable restriction that is unreasonable and unsupported by the facts.
4. Whether the court has breached a duty to provide equal protection of a fundamental right to challenge evidence used at trial.

5. Whether the court has provided an improper “safe harbor” to a parent that has removed a child absent the proper procedures to permit the relocation of a child.

6. Whether the court has violated a [plea agreement] that restricted the use of it in any civil court action and imposing additional new penalties.

7. Whether the court failed to followed the proper guidelines of assessment by disregarding the history of aggressive behavior by Kimberly Miles that was provided in Caries Miles deceleration to the court and by the custody report.

8. Whether a trial court abused it’s discretion when it severely restricts a parental right, absent a qualified expert with the necessary credentials to qualify this action as the proper choice and insure the child’s best interest are advanced.

9. Whether the trial court failed to use the proper standards when it permitted Susan Caulkins falsification of a District court's findings of guilt as a basis to restrict a parental right to reasonable visitation.

CPE 22, 29, 41

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

1. Kimberly Miles motioned for a default order on April 12 2002 after 7 years of marriage. Anthony H Miles was unable to attend & a default order was issued.

2. A second hearing held on April 26, 2006, arguments made to set aside the prior order of default. Specific orders were granted for

a temp relocation to New Jersey on a conditional basis by the court. It was clarified that any decision to relocated required the necessary petition and hearing to change residence. Order was made without prejudice.

a. A District court plea agreement on an assault charge against Anthony was settled on May 2,2002

3. A third hearing was held in mid September 2002 on a motion to permit payment to some of the creditors to avoid a foreclosure action. Motion was denied.

4. A fourth hearing on September 13 for a partial disbursement to creditors roughly \$ 35,000.00 from a court account with the proceeds from the sale of the home.

5. The scheduled settlement conference on September 26th 2002

6. The trial was held on December 18th 2002 and the final pleadings were scheduled and heard on January 10, 2003

7. There was a criminal complaint filed on the Dissolution trial day December 18^t day 2002 requesting action on a no contact order violation by Anthony Miles. Filed by Susan Caulkins

8. The Court found the email to the father in law to be a willful attempt to violate the no contact order and fined Anthony \$ 500.00 then added an additional 24 months of no contact.
- 9 . Anthony Miles filed a motion for contempt on 7/27/ 2009 which was Denied , another on August 2009, again in November 2009 both on a contempt motion for a failure to obey court orders regarding improper relocation and Kimberly's limiting visitation schedule. These motions were all denied.
10. There was a motion for contempt filed on May 26th 2010 that was granted with a hearing scheduled for June 11th 2010.
11. The motion for contempt was withdrawn by counsel John Groseclose in June 2010 and a petition requesting the modification/ adjustment of the decree/ parenting plan/ residential schedule dated July 16th 2010. was Denied
12. This motion for Appellate review was filed on August 4th 2010

B. STATEMENT OF THE FACTS AND BACKGROUND

Anthony and Kimberly Miles meet at Island Lake, Kitsap County in late summer of 1994. They began dating and were married in January 1995. Due to the distance between homes they chose to marry soon after meeting.

This was a second marriage for both Kimberly Miles and for Anthony Miles, both had children from their previous relationships. Both had primary custody of their children. Kimberly had a daughter Joelle Hayes who was 5, Anthony had two daughters, Carrie who was 16 and Heather who was 11 years old at the time of the marriage. Kim's first marriage lasted for 3 years and Anthony's had been for 14 years.

The marriage was difficult at best and parenting styles were often the source of disputes with control issues as a common second issue of conflict.

Anthony was arrested on a DV assault charge on March 29th 2002 which resulted in a DV assault conviction on May 2, 2002.

There was a plea agreement to assault in the 4th degree, it was a gross misdemeanor not amounting to assault in first, second or third degree. The court required Anthony to state to the court in his own words what he did to make him guilty of the crime. Anthony's statement to the court was " that during an argument, I the defendant assaulted Kimberly Miles by pushing and grabbing her at some point during our argument on March 3, 2002 in Kitsap county Washington". This limited finding fails to meet the requirement of RCW 26.09.191 . and plea agreements are inadmissible as to guilt. The court rules are clear, ER -410 restricts any reference to this conviction in civil court.

Anthony Miles did and has accepted responsibility for his failure to prevent the events that night from escalating by pleading to his guilt without the necessity of a trial. The agreement forfeited the opportunity to argue his actions were the result of many years of abuse by Kimberly Miles. The state burden to disprove his actions were unreasonable has never been proven. Anthony perceived a danger to his sleeping son next to him in the bed. The rage demonstrated by Kimberly's aggression to gain control of the sleeping child was her intent. Kimberly's action's of ripping the

covers from the bed, was a clear effort to provoke Anthony. She then tried to forcibly remove the sleeping child from his arms by trying to pry the child away from Anthony. Kimberly's behavior was unjustified, unnecessary and absent reason.

There were never any previous events which led to the need of force by Anthony. This single event was the catalyst to end the marriage.

The many prior events by Kimberly all were witnessed by the children. Still the court chose to place the child with the parent who was the provoker with no rational to explain why Kimberly's conduct was a more appropriate choice of placement of SM. The court decision to focused on a single event by Anthony and to disregard the history of prior bad acts by Kimberly. Kimberly who had many years of a controlling aggressive behavior and a well documented factual history that she lacked self control. The custody report acknowledged that when she became stressed she was a clear danger to anyone in her way.

Anthony had surrendered his right to a self defense argument, not because it would have failed in court but to avoid the necessity of having the children appear in court to win the argument of which parent had a history of aggression that led to violent behavior.

The plea Agreement was the best option available to the state, absent any record of a single prior bad act by Anthony Miles and the difficulty to convict Anthony when the only prior visit by the police to the home was in fact an altercation with the oldest child and Kimberly Miles. This prior 911 call to the police was one of fear by the other children who were witnesses to this out of control altercation.

The single event on March 2002 was the only act of aggression by Anthony toward Kimberly over the 7 years; this fact made a conviction unlikely to prevail in court. The pattern of aggression as stated by the children was one sided and after several investigations by DSHS it had been determined that Anthony was a fit parent and had provided a good home.

Kimberly Miles filed for a petition for Dissolution on April 5th 2002. This was 7 days after the arrest of Anthony on the assault charge. The court proceedings on April 26th 2002 permitted a temporary relocation by Kimberly Miles with clear instructions that if Kimberly Miles had planed to stay in New Jersey that the she had to file a petition to relocate and a hearing on the relocation was mandatory.

The transcript of these proceeding of record are being provided and they demonstrate a clear acceptance by Susan Caulkins that she understood the order was requiring her compliance. She affirmed she would be typing the request to relocate promptly. Her failure to file timely was not optional and the failure to meet the requirements of RCW 26.09.430 demonstrates a failure to comply with the law. The court record indicates that the notice to relocate was filed on 6/18/2002

It is also clear when reviewing the record that the late filing was also absent the requirement of notice to the parent who had a right to object. The original objection to the relocation was on record as demonstrated in the April 26th 2002 Verbatim Report of Proceedings.

The settlement conference was held on September 26, 2002 and the assignment of a trial date with the remaining issues to be heard was by omission absent of the primary issue of a relocation request. The court order by Superior Court Judge Karen B Conoley was a material fact that required disclosure.

Susan Caulkins failure to disclose all material facts violates RCW 9A.110.04 (12) willfully disregard another persons rights. Cr 3.3 These statutory requirements of law are designed to prevent the children from being used as a tool to injure the other parent and to interfere with the rights of a parent. The court has a duty to promote this parental right, that each parent be permitted to continue to be a active participant in the rearing of their own children.

The custody report provided to guide the court on placement was not done by a GAL but by a court appointed investigator provided by the Kitsap County Juvenile Department.

In this report Nancy Tarbell stated she felt there was a remarkably consistent statement of the facts and that she felt confident she was receiving a balanced report of the facts.

It was clear that she found it was undisputed that Kimberly was the parent who had a history of assaults and she failed to find that Anthony had any prior history of assaults. Her report provided no indication of any harm or a danger to merit a restriction. She indicated that if supervised or monitored visits should be considered that it would be limited to the age of 4 or until the situation stabilizes and trust is rebuilt that some oversight should be

considered. There was no indication she felt a need for it to be a permanent restriction and she recommended that 2 of the visits each year would be in Washington. It failed to establish the need to place a restriction on the non custody parent, only a concern do to the age of the child. She assumed the relocation would be approved and that New Jersey was the only option available. This report provided to the court by Nancy Tarbell failed to consider any other options that could provide SM more time with his father and indicated a hope that something better could be constructed by the parents. see (Exhibit Custody Report - NT-9-23-02 pg. 3)

The issue of relocation was raised again at the final pleadings held on January 10th 2003 as the final orders were signed and entered into the record.

The hearing on the entry of the findings concluded over Anthony's objection's to the courts failure to address the primary issue of relocation; but the court chose to dismiss this as to late to be considered.

This action was a clear disregard and violation of the prior court orders that were placed upon Susan Caulkins. It was contempt of

law and prevented the father from the proper opportunity to argue the merits of a relocation that would meet the procedural requirements of law.

Terry Mc Cluskey stated that it was not an issue that it had not been brought up at trial. The record reveals this was his error for not reviewing the prior court orders as a procedural requirement. That he be prepared for trial and that he follow all of the requirements of procedural due process to advance a just outcome. Anthony was not the party seeking to relocate or under a court order to hold the hearing. He believed the court order was a binding requirement that insured that his objection's to the relocation placed a mandatory requirement upon those who would be assigned the duty to ensure the procedural safeguards of due process were provided.

The verbatim report reveals that the many issues in the findings of fact and conclusions of law, the support order and the parenting plan were also never raised as issues for the court to adjudicate.

The failure to provide a due process requirement to hear and argue each factor the court was to rule upon or failure to make a clear orderly review of these very important issues in an impartial systematic assessment demonstrated a pre contrived outcome was the guaranteed result.

The court never considered it a necessity to allow debate of the facts and it's truth seeking role was absent. The findings of fact and conclusions of law, the support order and the parenting plan all were issues never raised for discussion in this short 3 ½ hour trial.. The failure to abide by the very principles of a legal standard of justice insults any reasonable notion that this was anything less than a breach of duty or a perversion of law. The argument that the orders obtained were valid enforceable and just is without merit. The orders are forgeries and the outcome beyond any reasonable measure of fairness.

This failure to provide a fair trial goes beyond an abuse of discretion standard, it is a failure to provide honest services, do to the complete absence of reason. This was a improper advantage taken on a unrepresented parent.

When a judge surrenders his duty and function to the judicial process by advancing injustice his orders are absent authority, they are not binding.

Double jeopardy standards must void this court order as an improperly obtained outcome. This decision of the court to ignore the ER-410 rule of evidence is not merely error but is an act of complicity in an act of fraud to rob a party of a constitutional protection. The court had no authority to redefine the level of guilt, the penalty or to alter the specific language of Anthony's plea agreement. These efforts were by design to allow the court to accumulate the means to apply the use of RCW 26.09.191

IV. ARGUMENTS

A.

This case calls upon the court to reaffirm the holding and rationale of **Flynn v Manis** 94 Wn. App.185 where the court found the facts, if

proven demonstrated the impracticality of continuing with the present parenting plan following her relocation. That It was upon the commissioner under these facts to consider adequate cause for a minor modification under these circumstances once the application was made under RCW 26.09.260 for relief. It also found that adequate cause may not exist for a hearing on a major change, but it does not mean a minor adjustment may not still exist.

The request for relief by Anthony was to promote visitation do to the hardship of the expense and the many years of limited income that had prevented the visitation envisioned by the court to be a practical choice. These facts were unknown and never considered, which the court had failed to address as appropriate or feasible when it adopted the original parenting plan.

B.

The court found in **Hardt v. Hardt** 39 Wn.493.693 P.2d. (January 10,1985) or alternatively to clarify the authority of Washington courts to disregard the statutory requirements to relocate a child or disobey a court order to obtain court approval in the proper manner. **Hardt** holds generally that CR60(b) allows this court to “ relieve a party or his legal representative from a final judgment for the

following reasons: (11) Any other reason justifying relief from the operation of the judgment . Courts may vacate judgments involving irregularities even where an order is unappealable for error of law. The court found that proceedings to vacate judgments are equitable in nature and the court should exercise its authority liberally “ to preserve substantial rights and do justice between the parties. The complexities of every child custody battle pivot on the ability of each party to be provided an opportunity to challenge each issue before the court. If the procedures are insufficient to permit the ability to challenge or dispute a matter of fact or law the court has failed to provide the necessary safeguards of due process and lacks jurisdiction over the defendant and cannot enter a valid order against him. *Ware v Phillips*, 77 Wn.2d 879,468 P.2d 444 (1970)

C.

If the court’s decision to not rule on the relocation issue due to the fact that it was never raised at trial was correct, then the failure to argue the merits on the restrictions imposed on Anthony’s visitation schedule also were never raised and it demonstrates a capricious standard. See (VB -Proceedings January 3 2003 p.143)

There is a more tenuous issue at play, can the court ignore a properly obtained order on an attorney to comply with RCW 26.09.430 that requires a parent to obtain a court order to relocate a child. Is this failure to comply to a court order mandate the application of RCW 9A.040.060(2) and RCW 9A.040.070(2) D.

This court has also held that its opinion in the Pennamen v Pennamen 135 Wn. App.790,(Nov. 2006) It found that default judgments are disfavored as a matter of policy and are normally appropriate only when the adversary process has been halted because of an essentially unresponsive party. The failure to provide the necessary notice of service on the petition to relocate and Susan Caulkins failure to obey a court order to obtain the court approval fails the procedural intent of the RCW 26.09.520 .

It is an additional tort that relocation was not in good faith but to advance a disregard for the law. Anthony's objection to the move was clear and the record of the proceedings on April 26th 2002 placed a condition on the petitioner's attorney that she obtain the proper court approval and obey the court order to do so as required.

(Verbatim Report p 13- 14 April 26 2002) (Exhibit VR-04-26-2002)

The Court: at p 13 stated.. pending the outcome of the relocation hearing.

The Court : at p 14 All I am allowing is a Temporary Order for her safety, A petition needs to be filed and a relocation hearing needs to be heard if she's going to stay there.

Mr. Oostenbrug request that this be placed on the calendar

The Court : denies request

Susan Caulkins: I will be filing it promptly because it is.. as soon as my fingers can type it..

Anthony's objection to the courts failure to address the relocation issue was raised at the final pleadings hearing. Which resulted in perjury by Susan Caulkins by her statement that she had received the courts permission. This fraudulent claim that her petition to relocate was approved, which in fact had not occurred or that she had disobeyed a court order to comply with the required procedures. (Transcript FP p. 142 January 2003)

Title 18 USC Sec 1201 RCW 9A.72.010 RCW9A.40.020 (d) RPC Rule 3.3 - a (1)

This fraud upon the court was a willful effort to mislead the court of her concealment that the relocation issue was never properly adjudicated to satisfy RCW 26.09.520 requirements. Extrinsic Fraud – practiced upon the court in the procurement of judgment. Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) Extrinsic Fraud prevents a party from knowing their rights are being violated or having a fair opportunity of presenting arguments at trial. . . subvert[s] the integrity of the Court itself, *or is a fraud perpetrated by officers of the court* so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Evans v. Gunter, 294 S.C. 525, 529, 366 S.E.2d 44, 46 (Ct. App. 1988) (emphasis added) (quoting Lightsey & Flanagan, supra, at 408). It has also been defined as "fraud that does, or at least attempts to, defile the court itself" 12 Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). Historically, after the period to claim relief under Rule 60(b)(1) through (3), SCRCP, has expired, courts have required a showing of extrinsic fraud to vacate a judgment. See Hagy v. Pruitt, 339 S.C. 425, 430, 529 S.E.2d 714, 717 (2000); Evans, 294 S.C. at 529, 366 S.E.2d at 46.

IN RE KROGH 489 85 Wn.2d 462, 536 P.2d 578

Perjury is likewise a felony under the laws of the state of Washington. RCW 9.72.

Lawyers are held to higher standards of moral conduct than are other citizens. Both the Washington State Bar Association and this court have long taken a strong stance on the matter of ethical standards for attorneys. The oath of attorneys contains an obligation to abide by the laws of the state and the nation.

E.

The court decision to place restrictions on Anthony was obtained by falsifying the record of the nature of what Anthony has been found guilty of, by placing into the record the language of a first degree assault charge that was utilize to impose a more restrictive consequence that petitioner was seeking in the parenting plan. This misrepresentation was deliberate, willful and prejudiced the resulting decision to allow the application of RCW 26.09.191 (3).

Which also violated the rules of evidence in a plea agreement as inadmissible under the proper standard of the ER – 410 restriction.

State v Elmore 139 Wn. 2d 250, The rationale behind the plea bargain rule is that the defendant in pleading guilty has bargained

for certain action by the State. In the usual plea bargain a defendant pleads guilty in exchange for a reduction in the degree of offense charged, dismissal of one or more crimes charged, or recommendation of a more lenient sentence. By pleading guilty a defendant gives up substantial rights: the right to a jury trial, to confront his accusers, to present witnesses in his defense, to remain silent, and to be convicted by proof beyond a reasonable doubt. SEE SANTOBELLO v. NEW YORK, SUPRA (Douglas, J., concurring). Because the State has bargained for this change in position by the defendant, it is appropriate that the State be held to its bargain by an **order of specific performance**. SEE STATE v. POPE, SUPRA. Plea bargains are favored in the law. SANTOBELLO v. NEW YORK, SUPRA.

The restrictions as applied in the parenting plan were imposed by the fraudulent and inappropriate application of and intent of RCW 26.09.191. The sentencing agreement that Anthony and the state agreed to, did not contain any of the language the petitioner claimed as fact in there written pleadings to the court.

The states plea agreement with Anthony was for assault in the fourth degree, it was a gross misdemeanor not amounting to assault in the first, second or third degree.

The trial court had a duty to require substantial evidence to support its findings and the failure to articulate in the record on what it had based its decision on, or the evidence it was using to meet its obligation. This was an act of gross negligence, an inequitable breach of duty to not make reasonable inquire of the facts. It was well within the scope of the court to require some form of discovery to ascertain the sufficiency of supporting evidence. The additional requirement in the parenting plan at 3.13 that any modification is subject to; Anthony demonstrating to the court that he will not expose SM to the cycle of violent behavior. This was improper due to a failure to raise this issue at trial and this condition was in conflict with the findings in the custody report that stated Kimberly was often the parent who had succumbed to violence to demonstrate her frustrations. see(Exhibit CR- NT-9-23-02 pg. 2) It shifted the burden of proof to the parent who had maintained self control for 7 years. This decision was a clear act of favoritism and improper absent arguments or opportunity to challenge its accuracy or truthfulness.

F.

A parent's right to custody of their child has long been considered a fundamental right which cannot be interfered with unless the parent is proved unfit. *In re Hudson*, 13 Wn.2d 673, 684-85, 126 P.2d 765 (1942)(citing the common law of England, as adopted by the territorial law of 1863). Since the earliest of published cases, this has been the law of this state. *Love v. House of the Good Shepherd*, 9 Wn. 419, 37 P. 660, (1894); *In re Neff*, 20 Wn. 652, 56 P. 383 (1899); *In re Mead*, 113 Wn. 504, 194 P. 807 (1920); *In re Walker*, 43 Wn.2d 710, 263 P.2d 21 (1953); *In re Welfare of Baby Boy May*, 14 Wn. App. 765, 545 P.2d 25 (1976); *In re Dependency of T.J.B.*, 115 Wn. App. 182, 62 P.3d 891 (2003).

Following this principle, the United States Supreme Court and this Court have invalidated statutes that interfere with custody when there is no showing of parental unfitness. *In re Custody of Smith*, 137 Wn.2d 1,969 P.2d 2 1 (1 998), *aff d sub nom Troxel v. Granville*, 530 U.S. 57; 120 S. Ct. 2054 147 L. Ed. 2d 49 (2000). This Court noted that interference is justified "only when 'parental actions or decisions seriously conflict with the physical or mental health of the child.'" *Smith*, 137 Wn.2d at 18, 969 P.2d 21 (-*In re Welfare of Sumey*, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)).

These cases focus on the **parents'** behavior and the resulting effect of that behavior on the child. *Id.* Whether the parent is abusive, there is nothing in the record to support the court's failure to satisfy this requirement.

F.

There were no written findings that articulated in the record how the court determined that the requirements of RCW 26.191.071 on verification of income was obtainable absent the proper use of the tax records for the preceding 2 years. The record does not provide any effort to follow or to comply with the law. The record fails to explain why the court had found that the imputing of Anthony's income as the proper choice, when the oral and written record revealed Anthony had made a diligent effort to find work. If Anthony's financial record was complete, factual and nothing to dispute it as accurate was provided to the court, how did the court allow the burden of proving it as correct to be shifted to him. This with the many other factors listed above reveal the court was unable to provide an unbiased, fair and impartial trial that would promote the public confidence that justice was advanced.

G.

The failures to provide the necessary safeguards that insure that the requirements of law are met by a court order on a child relocation petition. One that was absent proper notice for Anthony, it is identical to a deprivation order and an unconstitutional act of the court absent findings of fact to support them. RCW 26.09.520 is the law.

This court error was extreme; by making no evaluation of the financial ability to permit the court's visitation provision's that required a trip to New Jersey, the cost was never considered and is a manifestly unjust choice. The financial inability to overcome the cost or ability to afford this visitation imposes an undue hardship. There is nothing to support it as a proper choice or that it was likely to happen absent the resources. This additional failure to address the limited income of the Anthony was unsound, making this choice untenable unreasonable as an unacceptable option for the court to consider. Then or today it is unjustly imposed as beyond the means of his limited income.

Anthony had in May 2010 only recently become employed again after 9 months of unemployment and the ability to take time off was impossible. The requested adjustment in the visitation was the right and proper choice. The past year has allowed the time necessary

to reestablish a good start to the reunification process that the court could have promoted. SM was entitled to be permitted the proper role of having a father involved in his life. Anthony was laid off again on October 20th 2010 and seeking employment.

This failure to provide the child reasonable access to his father is without merit and a breach of the role that the state has always seen as a protected right. It was absent a showing of harm and it is a public interest issue that affects all families.

The court has breached a public trust that violated the innate concomitant of the protected status accorded the family as a societal institution. If this were the only breach it would be easy to rectify but the courts failures are more accumulative in nature, they are unsupported by the facts or the record. The court failed to prevent an unjust decision by not taking the necessary time to review the evidence and to articulate in the record of how it's opinion was proper or supported by compelling evidence. It failed to provide any insight on how it reached the conclusions of law which were never raised or permitted to be challenged at trial.

These original trial court decision's failures requires vacating these as an improperly obtained judgment, as it was absent the

necessary procedural safeguards and the fabrication of evidence was prejudicial to the advancement of justice.

CONCLUSION

I pray that this court would take review of this matter. If unchallenged this decision threatens the very purpose of good government. When there are malicious efforts to undermine our courts, advanced by an officer of the court who employs the state to promote a scheme which is unjust and unfair.. There are few issues of greater importance to our community than to prevent these perverse attacks from a successful advancement or to become the law.

The decision of the Superior court adversely impacts issues altering a fundamental constitutional right and may be raised for the first time on appeal, RAP 2.5(a)(3); STATE v. DICTADO

The relief requested is:

1. Order a new trial in another county in Washington, Kitsap County Court's fail to provide the necessary procedural safeguards and has demonstrated a disregard of the boundaries set by the Supreme Court of Washington. (See Transcript – 8-28-2009)

2. The court to find Kimberly Miles and Susan Caulkins failure to comply with the relocation laws and violating RCW 9A.40.020

(d)

and RCW 9A.40.60

3. To order Kimberly Miles return to Washington with the child, for violating the relocation requirement of court approval and that the move was made in bad faith.

4. That a CPA be assigned to provide a cost study to determine the correct child support based on the tax record history of each parent for the tax years 2000-2003. The Supreme Court has stated the rule that "[w]hat has been given or paid under the compulsion of a

judgment the court will restore when its judgment has been set aside and justice requires restitution." UNITED STATES v. MORGAN, 307 U.S. 183, 197, 83 L. Ed. 1211, 59 S. Ct. 795 (1939). Section 74 of Restatement of Restitution (1937) provides in part at pages 302-03

5. That any over payment due to an unjust gain be repaid to Anthony Miles by Respondent within 60 days after the report is completed.

6. The CPA report shall be completed within 30 days of this court action.

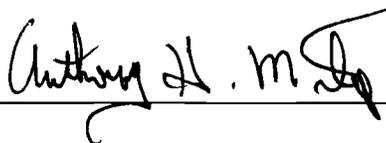
7. To find that Kimberly Miles be responsible for reasonable attorneys fees and all court costs provided by RCW 26.09.160 which is a proper request, when the non moving party has **failed to comply with court orders and violated the parenting plan.** This is also due to her failures to obey the law, Kimberly Miles left the state absent proper approval and has failed to give proper notice each time she has relocated which is contempt of the law.

8. RCW 26.09.140 trial court generally must balance the needs of the party requesting the fees against the ability of the opposing party to pay the fees. *Mattson*, 95 Wn. App. at 604. But the court may also award attorney fees based on a party's intransigence. *Id.* "Intransigence includes foot dragging and obstruction, filing repeated unnecessary motions, or making the trial unduly difficult and costly by one's actions." *Bobbitt*, 135 Wn. App. at 30.

9. RAP 18.1 Kimberly has withheld the child for an extended period of time and without cause; interfered with the time allowed in the visitation schedule by relocating without the proper court approvals which violated the parenting plan.

10. To order that make up time is appropriate due to the visitation time lost. RAP 18.1

Respectfully submitted this 8th day 2010

A handwritten signature in black ink, appearing to read "Anthony H. Miles", written over a horizontal line.

Anthony H MilesPetitioner

List of Exhibits

1. VR-4-26-2002
Report of Proceedings Volume I April 26th 2002
2. Declaration of Carrie Miles
Provided to the court on April 26th 2002
3. Custody Report NT- 9-23-02
Report of Custody Investigator Nancy Tarbell

Modified List

- 4 VR 12-18-2002
Report of the proceedings December 18 2002
5. VB 1-3-2003
Report of the proceedings January 3rd 2003

6. VR 8-28-2009
Transcript of Proceedings August 28, 2009
7. VR- Proceedings July 16 2010
Transcript of Proceedings July 16 2010

8. Kitsap Superior Court Case # 02-3-00421-6 Record p1-5
9. Original Trial Court Exhibit List

List of Exhibits

1. VR-4-26-2002
Report of Proceedings Volume I April 26th 2002
2. Declaration of Carrie Miles
Provided to the court on April 26th 2002
3. Custody Report NT- 9-23-02
Report of Custody Investigator Nancy Tarbell
4. Seded Financial Records are
provided.

CASE#: 02-3-00421-6 JUDGMENT# 02-9-01488-4 JUDGE ID:
 TITLE: KIMBERLY SUE MILES AND ANTHONY HAROLD MILES
 FILED: 04/05/2002
 CAUSE: DIC DISSOLUTION WITH CHILDREN DV: N

RESOLUTION: STPR DATE: 01/10/2003 SETTLED BY PARTIES AND/OR AGREED JUDGMEN
 COMPLETION: JODF DATE: 01/10/2003 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: APP DATE: 08/04/2010 ON APPEAL
 ARCHIVED: RESTORE DATE : 07/28/2009
 CONSOLIDIT:
 NOTE1:*SUPREME COURT NO. 84912-9
 NOTE2:*DECREE SIGNED ON 01-10-2003 BY TKM - 6 PAGES

----- PARTIES -----

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	SERVICE
PET01	MILES, KIMBERLY SUE		
RSP01	MILES, ANTHONY HAROLD		
ATP01	CAULKINS, SUSAN L.		
BAR#	15692		
WTR01	OOSTENBRUG, TERRANCE WAYNE		09/19/2002
BAR#	11143		
WTR02	GROSECLOSE, JOHN DANIEL		
BAR#	29104		

----- APPEARANCE DOCKET -----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
	04/05/2002	\$FFR	FILING FEE RECEIVED	120.00
		ATP01	CAULKINS, SUSAN L.	
1	04/05/2002	CICS	CASE INFORMATION COVER SHEET	
2	04/05/2002	SM	SUMMONS	
3	04/05/2002	PTDSS	PETITION FOR DISSOLUTION	
4	04/05/2002	MTAF	MOTION AND AFFIDAVIT/DECLARATION FOR EXPARTE RESTRAINING ORDER	
5	04/05/2002	FNDCLR	FINANCIAL DECLARATION	
6	04/05/2002	PPP	PROPOSED PARENTING PLAN	
7	04/05/2002	TPROTSC	TEMP REST ORD & ORD TO SHO CAUS	04-12-2002DS
		ACTION	SHOW CAUSE	
		JDG07	JUDGE M. KARLYNN HABERLY, DEPT 7	
	04/05/2002	EXWACT	EX-PARTE ACTION WITH ORDER	
8	04/12/2002	MTHRG	MOTION HEARING	
			SUMMARY MATTER: ORDER SIGNED	
		COM01	COMMISSIONER THURMAN LOWANS	
	04/12/2002	TPSOP	TAPES OF PROCEEDINGS CD-#12	
9	04/12/2002	TMO	TEMPORARY ORDER TWL	
10	04/12/2002	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
11	04/12/2002	PPT	PARENTING PLAN - TEMPORARY	
12	04/12/2002	ORS	ORDER FOR SUPPORT RWH	
	04/12/2002	CSW	CHILD SUPPORT WORKSHEET	
13	04/22/2002	NTAPR	NOTICE OF APPEARANCE	
14	04/22/2002	FNDCLR	FINANCIAL DECLARATION - RSP	

Exhibit 8

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
15	04/22/2002	DCLR	DECLARATION OF CARRIE MILES	
16	04/22/2002	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
17	04/22/2002	NTHG	NOTICE OF HEARING	04-26-2002DS
		ACTION	TEMP ORDERS	
	04/23/2002	RRL	REGISTRY REFERRAL LETTER -FAXED	
18	04/25/2002	DCLR	DECLARATION IN KIMBERLY MILES	
19	04/25/2002	NOTE	RECORD OF DISTRICT COURT CRIMINAL PROSECUTION	
20	04/25/2002	NOTE	EXHIBITS	
21	04/26/2002	OR	ORDER RE: TEMP ORDERS KBC	
22	04/26/2002	MTHRG	MOTION HEARING MOTION DENIED	
		VIS	COMMISSIONER KAREN CONOLEY	
	04/26/2002	TPSOP	TAPES OF PROCEEDINGS CD-#17	
23	06/18/2002	NTRLOC	NTC OF INTENDED RELOC OF CHILDREN	
24	06/18/2002	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
		ATP01	CAULKINS, SUSAN L.	
25	06/18/2002	MTDFL	MOTION FOR DEFAULT	
26	06/18/2002	NTHG	NOTICE OF HEARING	07-05-2002DS
		ACTION	MOTION FOR DEFAULT	
27	06/26/2002	RSP	RESPONSE	
28	07/01/2002	NTHG	NOTICE OF HEARING	07-19-2002DS
		ACTION	MOTION FOR TEMP ORDERS	
29	07/01/2002	MTAF	MOTION AND AFFIDAVIT/DECLARATION FOR TEMP ORDERS	
30	07/03/2002	NTC	NOTE FOR CALENDAR	07-12-2002T
		ACTION	SETTLEMENT CONFERENCE SETTING	
31	07/05/2002	HSTKNC	HRG STRICKN: NOT CONFIRMD & NOT HRD	
32	07/12/2002	STCS	SETTLEMENT CONFERENCE SETTING SEPTEMBER 26, 2002 @ 1:30	
33	07/19/2002	ORAP	ORDER APPOINTING CUSTODY INVESTIGATOR TWL	
34	07/19/2002	MTHRG	MOTION HEARING ORDER SIGNED	
		COM01	COMMISSIONER THURMAN LOWANS	
	07/19/2002	TPSOP	TAPES OF PROCEEDINGS CD-#26	
35	09/09/2002	NTWSUB	NOTICE WITHDRAW & SUBSTITUT COUNSEL	
		WTR01	OOSTENBRUG, TERRANCE WAYNE	
36	09/13/2002	MT	MOTION FOR ORDER DIRECTING SALE	
37	09/13/2002	OR	ORDER DIRECTING SALE INTO REGISTRY	
	09/13/2002	EXWACT	EX-PARTE ACTION WITH ORDER	
		JDG07	JUDGE M. KARLYNN HABERLY, DEPT 7	
38	09/18/2002	APPS	APPEARANCE PRO SE	
39	09/18/2002	PPP	PROPOSED PARENTING PLAN	
40	09/18/2002	CSW	CHILD SUPPORT WORKSHEET	
41	09/20/2002	CRRSP	CORRESPONDENCE	
42	09/23/2002	RPT	REPORT OF CUSTODY INVESTIGATOR	
43	09/24/2002	LTR	LETTER FROM STEWART TITLE	
	09/26/2002	STLCON	SETTLEMENT CONFERENCE/HEARING HELD	
		JDG05	JUDGE JAY B ROOF, DEPT 5	
44	09/26/2002	ASTD	ASSIGNMENT OF TRIAL DATE DECEMBER 18, 2002 2 DAYS	
45	10/10/2002	MTAF	MOTION AND AFFIDAVIT/DECLARATION	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
46	10/10/2002	DCLR	FOR TEMP ORDER DECLARATION OF SUSAN CAULKINS FOR FAX FILING	
47	10/10/2002	NTHG ACTION	NOTICE OF HEARING MOTION FOR TEMP ORDERS	10-18-2002DS
48	10/16/2002	RPT	REPORT OF CUSTODY INVESTIGATOR	
48A	10/17/2002	RSP	RESPONSE TO PETITIONER'S MOTION FOR TEMP ORDER	
49	10/18/2002	MTHRG	MOTION HEARING COURT GRANTES TEMPORARY ORDERS	
		COM03	COMMISSIONER DAVID HEDGER	
	10/18/2002	TPSOP	TAPES OF PROCEEDINGS CD-#40	
50	10/18/2002	AFSR	AFFIDAVIT/DECLARATION OF SERVICE	
51	10/22/2002	ORS	ORDER FOR SUPPORT AND	
	10/22/2002	CSW	CHILD SUPPORT WORKSHEET	
		COM03	COMMISSIONER DAVID HEDGER	
52	10/22/2002	ORDF	ORDER TO DISBURSE FUNDS	
		COM03	COMMISSIONER DAVID HEDGER	
	10/23/2002	RRL	REGISTRY REFERRAL LETTER -SENT	
53	10/28/2002	MTAF	MOTION AND AFFIDAVIT/DECLARATION FOR TEMP ORDER	
54	10/28/2002	NTMTDK ACTION	NOTE FOR MOTION DOCKET MOTION FOR TEMP ORDER	11-01-2002DS
55	10/31/2002	DCLR	DECLARATION OF KIMBERLY MILES	
56	10/31/2002	DCLR	DECLARATION OF SUSAN CAULKINS FOR FAX FILING	
57	11/01/2002	NTAB ATP01	NOTICE OF ABSENCE/UNAVAILABILITY CAULKINS, SUSAN L.	
58	11/01/2002	MTHRG	MOTION HEARING REASSIGNED TO JUDGE HABERLY	
		VIS	VISITING JUDGE - PETER MATTY	
	11/01/2002	TPSOP	TAPES OF PROCEEDINGS CD-#42	
59	11/01/2002	MTHRG	MOTION HEARING MOTION FOR FUNDS DENIED	
		JDG07	JUDGE M. KARLYNN HABERLY, DEPT 7	
		CTR07	COURT REPORTER KATHY TODD	
60	11/13/2002	NOTE	COVER PAGE OF INTERROGATORIES WITH ANSWERS	
61	12/18/2002	NJTRIAL	NON-JURY TRIAL	
		JDG04	JUDGE TERRY K. MCCLUSKEY, DEPT 4	
		CTR04	COURT REPORTER NICKIE DRURY	
61A	12/18/2002	STPORE	STIP&OR RET EXHBTS UNOPND DEPOSTNS TKM	
62	12/30/2002	MM	MEMORANDUM DECISION TKM	
63	12/30/2002	EXLST	EXHIBIT LIST ***** VOLUME 2 *****	
64	01/03/2003	NTHG ACTION	NOTICE OF HEARING FINAL PLEADINGS	01-10-2003TM
65	01/10/2003	MTHRG	MOTION HEARING COURT SIGNS DECREE OF DISSOLUTION	
		JDG04	JUDGE TERRY K. MCCLUSKEY, DEPT 4	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
66	01/10/2003	CTR04 PP	COURT REPORTER NICKIE DRURY PARENTING PLAN (FINAL ORDER)	
67	01/10/2003	ORS	ORDER FOR SUPPORT	
	01/10/2003	CSW	CHILD SUPPORT WORKSHEET	
68	01/10/2003	FNFLC	FINDINGS OF FACT&CONCLUSIONS OF LAW	
69	01/10/2003	DCD	DECREE OF DISSOLUTION	
	01/14/2003	RRL	REGISTRY REFERRAL LETTER -SENT	
70	04/21/2003	EXD	EXHIBITS DESTROYED AS PER STIP-PET	
71	04/21/2003	TRLC	TRANSMITTAL LETTER - COPY FILED RESPONDENT # 18---24	
72	04/21/2003	CRRSP	CORRESPONDENCE RE EXHIBITS-RESP	
73	04/23/2003	RTRCM	RETURN RECEIPT - CERTIFIED MAIL RESPONDENT	
74	09/15/2004	STFJG	SATISFACTION OF JUDGMENT	
75	07/27/2009	MTSC	MOTION FOR ORDER TO SHOW CAUSE	
76	07/27/2009	TPROTSC	TEMP REST ORD & ORD TO SHO CAUS **DENIED**	
	07/27/2009	EXWACT JDG02	EX-PARTE ACTION WITH ORDER JUDGE LEILA MILLS, DEPT 2	
77	07/27/2009	MTHRG	MOTION HEARING SHOW CAUSE DENIED	
		JDG02	JUDGE LEILA MILLS, DEPT 2	
		CTR02	COURT REPORTER DEBBIE ZURN	
78	08/28/2009	APPS	APPEARANCE PRO SE	
		RSP01	MILES, ANTHONY HAROLD	
79	08/28/2009	DCLR	DECLARATION RE SERVICE	
80	08/28/2009	DCLR	DECLARATION RE SERVICE	
81	08/28/2009	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
82	08/28/2009	MTSC	MOTION FOR ORDER TO SHOW CAUSE	
83	08/28/2009	ORRSR	ORDER RE: SERVICE *DENIED*	
84	08/28/2009	ORRSR	ORDER RE: SERVICE *DENIED*	
	08/28/2009	EXWACT JDG06	EX-PARTE ACTION WITH ORDER JUDGE RUSSELL W. HARTMAN, DEPT 6	
85	08/28/2009	MTHRG	MOTION HEARING MOTION DENIED - UNTIMELY APPEAL	
		JDG06	JUDGE RUSSELL W. HARTMAN, DEPT 6	
	08/28/2009	CDSOP	CD RECORD OF PROCEEDINGS #268	
	08/28/2009	EXWACT	EX-PARTE ACTION WITH ORDER	
86	05/26/2010	MTSC	MOTION FOR ORDER TO SHOW CAUSE	
87	05/26/2010	DCLR	DECLARATION RE SERVICE	
88	05/26/2010	ORTSC	ORDER TO SHOW CAUSE	06-11-2010TL
		ACTION	SHOW CAUSE RE CONTEMPT	
	05/26/2010	EXWACT JDG04	EX-PARTE ACTION WITH ORDER JUDGE THEODORE F SPEARMAN DEPT 4	
89	06/02/2010	NTAPR	NOTICE OF APPEARANCE	
		ATP01	CAULKINS, SUSAN L.	
	06/02/2010	\$FFR	FILING FEE RECEIVED	56.00
90	06/02/2010	SMPM	SUMMONS & PETITION FOR MODIFICATION	
91	06/09/2010	NTAPR	NOTICE OF APPEARANCE	
		ATR02	GROSECLOSE, JOHN DANIEL	
92	06/11/2010	MTHRG	MOTION HEARING MATTER NOT HEARD	
		COM01	COMMISSIONER THURMAN LOWANS	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
93	06/11/2010	CDSOP	CD RECORD OF PROCEEDINGS 288	
	06/14/2010	AMPT	AMENDED PETITION ***** VOLUME 3 *****	
94	06/14/2010	PPP	PROPOSED PARENTING PLAN	
95	06/14/2010	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
96	06/14/2010	NTHG	NOTICE OF HEARING	06-25-2010DS
		ACTION	TEMPORARY ORDER	
97	06/17/2010	FNDCLRR	FINANCIAL DECLARATION OF RESP	
98	06/17/2010	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
99	06/17/2010	DCLR	DECLARATION OF KAREN UNO	
100	06/17/2010	DCLR	DECLARATION OF DONNA GADBERRY	
101	06/17/2010	DCLR	DECLARATION OF WANDA MCEVOY	
102	06/17/2010	DCLR	DECLARATION OF RANDOLPH SMITH	
103	06/17/2010	DCLR	DECLARATION HEATHER M MILES	
104	06/17/2010	DCLR	DECLARATION OF CARRIE HUGHES	
105	06/25/2010	HSTKNA	HEARING STRICKEN:IN COURT NONAPPEAR	
106	06/25/2010	NTHG	NOTICE OF HEARING	07-16-2010DS
		ACTION	ADEQUATE CAUSE	
107	06/25/2010	NTHG	NOTICE OF HEARING	07-16-2010DS
		ACTION	TEMPORARY ORDERS	
108	07/14/2010	RSP	RESPONSE	
109	07/14/2010	DCLR	DECLARATION OF PETITIONER	
110	07/14/2010	DCLR	DECLARATION OF ATTORNEY	
111	07/14/2010	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
112	07/15/2010	DCLR	DECLARATION OF RESPONDENT	
113	07/16/2010	MTHRG	MOTION HEARING COURT GIVES ORAL RULING	
		COM01	COMMISSIONER THURMAN LOWANS	
	07/16/2010	CDSOP	CD RECORD OF PROCEEDINGS CD290	
114	07/23/2010	ORRACD	ORDER RE ADEQUATE CAUSE - DENIED	
		JDG02	JUDGE LEILA MILLS, DEPT 2	
	07/23/2010	EXWACT	EX-PARTE ACTION WITH ORDER	
115	08/04/2010	NTASC	NOTICE OF APPEAL TO SUPREME COURT	
116	08/05/2010	TRLC	TRANSMITTAL LETTER - COPY FILED C/NOTICE OF APPEAL SENT TO SUPREME COURT	
117	08/05/2010	FNDCLRR	FINANCIAL DECL OF RESP *AMENDED	
118	08/10/2010	RCP	RECEIPT(S)	
119	08/10/2010	PNCA	PERFECTION NOTICE FROM SUPREME COURT	
120	08/11/2010	NTWSUB	NOTICE WITHDRAW & SUBSTITUT COUNSEL	
		WTR02	GROSECLOSE, JOHN DANIEL	
121	08/16/2010	ACSR	ACCEPTANCE OF SERVICE	
		PET01	MILES, KIMBERLY SUE	
122	08/18/2010	ST	STATEMENT FROM RESPONDENT	

=====END=====

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

EXHIBIT LIST (EXLST)

No. 02-3-00421-6

TYPE OF HEARING: Bench Trial

Kimberly Miles Vs. Anthony Miles

OFFERED BY	NO. OF EXHIBIT	RULING	TITLE/DESCRIPTION OF EXHIBIT	DATE OF RULING
RESP	1		CMA REPORT	
RESP	2		QUIT CLAIM DEED	
RESP	3		WORLD SAVING	
RESP	4		RETIREMENT STATEMENT	
RESP	5		DISABILITY BENEFITS	
RESP	6		W-2'S	
RESP	7		PROPOSED ORDER OF CHILD SUPPORT	
RESP	8		SUMMARY OF GARAGE SALE	
RESP	9		COPY OF TITLE OF CHEV TK	
RESP	10		COPY OF TITLE OF PONT	
RESP	11		FUNDS SUMMARY	
RESP	12		FAX OF E-MAIL	
RESP	13		COPY OF E-MAIL	
RESP	14		CUSTODY REPORT	
RESP	15		JUDGMENT AND SENTENCE	
RESP	16		STATUS REPORT - ABUSE INTERVENTION	
RESP	17		PROPOSED PARENTING PLAN	
PET	18		ARTICLE	
PET	19		LETTER FROM LENDER	
PET	20		LOAN CALCULATOR	
PET	21		COPY OF CHECKS	
PET	22		PERSONAL GIFT	
PET	23		ARTICLE "SHOULD I GET A DIVORCE?"	
PET	24		PET. PROPOSED PARENTING PLAN	

Exhibit 9

Exhibit VR-4-26-2002

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

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KIM MILES,)	
)	
Petitioner,)	NO. 02-3-00421-6
)	
and)	
)	
ANTHONY MILES,)	
)	
Respondent.)	

REPORT OF PROCEEDINGS

VOLUME I

HEARING HELD APRIL 26, 2002

Debra R. Smith
 3212 NW Byron Street #104
 Silverdale, WA 98383
 (360)692-6415

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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KITSAP COUNTY

KIM MILES,)	
)	
Petitioner,)	NO. 02-3-00421-6
)	
vs.)	
)	
ANTHONY MILES,)	
)	
Respondent.)	

BE IT REMEMBERED that on the 26th day of April, 2002, Kitsap County Superior Court Cause No. 02-3-00421-6 came on for hearing before KAREN B. CONOLEY, Judge of the Kitsap County Superior Court, State of Washington;

The parties were represented as follows:

SUSAN CAULKINS, Attorney for Petitioner

TJERRY OOSTENBRUG, Attorney for Respondent

WHEREUPON, the following proceedings were had and done, to-wit:

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THE COURT: This is cause number 02-00421-6.

MR. OOSTENBRUG: There was a Reply Declaration (undecipherable) served.

THE COURT: Okay.

MR. OOSTENBRUG: Last night (undecipherable)

THE COURT: Just a moment, please. Ms. Caulkins?

MS. CAULKINS: Actually, it's Mr. Oostenbrug's Motion.

THE COURT: I mean Mr. Oostenbrug.

MS. CAULKINS: Yeah.

THE COURT: I'm sorry (undecipherable)

MR. OOSTENBRUG: May it please the Court. A little bit of history I think is appropriate here. Mr. Miles was arrested on...on or about March 29th. He was incarcerated until April 5th. That's the very day that this...this...that the original Ex Parte Temporary Restraining Order/Order To Show Cause was obtained by Ms. Caulkins. We don't know when in point of time, chronologically speaking, that was obtained, whether it was in the morning or the afternoon, but he was incarcerated until late in the day. He wasn't...wasn't served until 5 days later and it was 2 days prior to the scheduled hearing on the 12th. You heard what his concerns...his immediate concerns from both the 10th and the 11th. He had surgery. There's been a mischaracterization of that surgery as an extensive surgery. It took a number of hours, as opposed to the time period that Ms. Miles has alleged and that was the day before the hearing was scheduled. I submit to the Court that the Court should find that Rule 60, we have made

1 a sufficient showing under Rule 60 for the Court to overturn those Orders. If we
2 haven't, I would also point out to the Court that Ms. Miles is here in Kitsap County with
3 the minor child, Shane...has been for sometime...is in the process of removing property
4 from the family home and we do have an argued with the Court regarding visitation
5 with Shane for the up-coming few days and, of course, we're asking that the Court
6 require that Shane stay here in the...the State of Washington, not go back to New Jersey.
7 Let me address the...the visitation that's been proposed and ask the Court to consider
8 they do more than what might be...might be envisioned. We would like visitations to be
9 4 hours in...in duration. Mr. Baker, who is mentioned in our Reply Declaration is...is
10 willing to provide supervised visitation commencing at 4:00 o'clock tomorrow and
11 again on Sunday from 12:00 to 4:00. There's also a possibility to provide visitation
12 supervision today. It's been roughly a month now since my client has seen Shane. The
13 De...Dejongs are another couple who can provide supervised visitation. They live in
14 Gig Harbor and counsel has indicated to me that they can provide supervised visitation
15 tomorrow for 2 hours and the possibility of supervision on Monday, but, I guess, that's
16 unknown right now. It's...this is a fairly unusual claim that she made to the Court in her
17 original Declaration. She, basically, says that the reasons why she...she wants to be able
18 to go to New Jersey with her child is that she's concerned that if she stays here in the
19 State of Washington that she will be getting back together with Mr. Miles. That he will
20 somehow initiate contact with her or conjole her into renewing their relationship. Mr.
21 Miles is...is now presently under 2 Court Orders that he not have any contact with his
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1 wife. The...the criminal Court Order and now this Court Order and he has no desire to
2 violate that Court Order. So if there is going to be any contact that's going to be
3 initiated between Mr. and Mrs. Miles, it will be on Mrs. Miles' part, not Mr. Miles.
4 That does not seem to be a very significant or appropriate reason for the Court to
5 authorize a 2...2 year old child to travel all the way across the country and stay there at
6 the outset of this parti...this particular action. We also have the relocation statute that is,
7 essentially, being blatantly violated or circumvented, I should say. That's RCW
8 26.09.430 .480 and you heard a matter this morning on that very issue. It's totally
9 appropriate at this juncture of this case to, in essence, be circumventing that statute
10 entirely. There's a great deal that needs to be looked into before a relocation under that
11 statute should be authorized. This would disrupt the Guardian ad Litem investigation.
12 We...we have talked about the appointment of Steve Olsen as a Guardian ad Litem.
13 He's the second on the list I believe right now. That would be...that would
14 be...certainly, a...a choice that Mr. Miles would approve of. But how would the GAL
15 conduct the investigation if Shane and his mother are 3,000 miles away? This,
16 basically, cuts against everything that the Court does on a temporary basis in response to
17 cases like this. Typically, what the Court does is freeze the status quo and...and not
18 authorize the move of a child some 3,000 miles away. The money that Ms. Miles'
19 parents may be able to provide in this case should not be the deciding factor upon which
20 Shane resides on a temporary basis. As mentioned in his Declaration, Mr. Miles is in
21 treatment. That is a year long counseling program and it is anticipated and hoped that
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1 after the Guardian ad Litem gets involved and consults with the treatment provider, that
2 Mr. Miles would be authorized to have unsupervised visitation with Shane and the
3 sooner the better. Again, with Shane all the way across the country, that's very difficult
4 to...to accomplish. As to the financial issues that are before you, the Child Support
5 Order that was entered 2 weeks ago is totally unrealistic. Ms. Miles was aware of what
6 Mr. Miles' circumstances were at the time...that he was not making \$18.00 an
7 hour...not...not making any sort of...of substantial income whatsoever. The child
8 support that was ordered...the \$522.00 a month is...is totally...doesn't have any
9 semblance of reality at all. I would point out to the Court the allegation that he has
10 recently terminated his employment can now be made regarding Ms. Miles. She
11 terminated the employment that she had...nursing job...position she had in...in Tacoma
12 just recently and, extensively, that should be...should still be available to her if she
13 chooses to stay in the area. The debts, I've kind of summarized the debts that they've...I
14 think the total is roughly around \$54,000.00...\$55,000.00 in debts that they've got and
15 they're...they're in the process of selling the house to pay-off that debt. So that's really
16 the only source of...of funds that they have at the present time and that's going to have
17 to continue to go forward and I don't believe there's an issue there as far as continuing
18 to have that take place. The temporary that's...I'm sorry, the property that's been
19 temporarily removed from the family home should not leave the State. However, we
20 should be given something in writing as to where it's located. Not...not asking for an
21 authorization to enter that facility, whatever...wherever it may be stored. We are asking
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1 for some information about where it is located. This...the status quo of this...of this
2 matter needs to be frozen and Shane needs to...to stay here in the State of Washington,
3 so that a Guardian ad Litem investigation can take place and, hopefully, as soon as
4 possible. I'm ready to file an Answer, if need be, immediately...if the Court directs us to
5 get a Settlement Conference and I would ask the Court to appoint the Guardian ad
6 Litem. If counsel and I can't agree on who that will be, then that decision can be made a
7 week from today. It seems to me that the Orders that were entered on the 12th should
8 be...should be stricken and we should enter new Orders based upon our Motion today.

9
10 THE COURT: Ms. Caulkins.

11 MS. CAULKINS: Thank you. I will address what I will call the two step
12 process. Number one, the...whether or not the entry of the Temporary Orders on April
13 12th were proper and...and I submit that they were and that the circumstances have not
14 been set forth to justify vacating those Orders at this point. I'm going to be more
15 specific in my assertions than was Mr. Miles in...in response. Mr. Miles was
16 incarcerated at the time that we obtained the Ex Parte Restraining Orders. We first
17 attempted to serve him in the jail and it was only the following week that we discovered
18 he had been released before the jailers took them upstairs to him. He was ultimately
19 served at approximately 7:30 a.m. on Wednesday, April 10th. He made no phone call to
20 me nor any report to the Court that he was going to have any difficulty in appearing.
21 We have submitted that he didn't call me either on Thursday morning. He alleges he
22 went in to the SurgiCenter for his day surgery at 10:30 a.m. on Thursday. Ample
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VERBATIM REPORT OF PROCEEDINGS - 7

1 opportunity, again, to contact me and try to deal with the issues at hand. No indication
2 that he couldn't obtain proper transportation to the Court on Friday, the 12th of April.
3 Also, despite the circumstances surrounding his out-patient surgery procedure, he was
4 given due and proper notice, he failed to take action and I submit to the Court, upon the
5 information we've provided in our responsive materials, he had no intention that week
6 of appearing and responding. Prior to service upon him of the paperwork, he e-mailed
7 Ms. Miles' brother suggesting that she stay in New Jersey. That is appended to Ms.
8 Miles' Responsive Declaration to this Motion today. Then, subsequently after
9 service, he e-mailed Ms. Miles' brother again on the evening of April 10th saying that
10 while he didn't like the paperwork, he was going to sign them. So, again, it's not a
11 circumstance where he what he did was...where he failed to appear by...by neglect or
12 inadvertence or surprise. There was none of that. He failed to appear on April 10th or
13 April 12th, rather, because he had already made the determination that he wasn't
14 going to...that he wasn't objecting to the relief we had sought. So, again, I submit that
15 that hasn't been submitted as reasonable basis for vacating the Order. Furthermore, he
16 has shown no meritorious defense to the propositions that we were submitting. We did
17 ask the Court for leave for Ms. Miles to relocate to New Jersey and that's precisely what
18 was granted in the April 12th Order. We provided that in the Motion to Mr. Miles and
19 Mr. Miles had advance notice that she'd gone anyway. Again, as his e-mail of April 9th
20 indicates it was not a surprise to him and suggested that she stay there. Fine. No
21 meritorious defense because the reason she went to New Jersey in the first place is she's
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1 scared of this guy. We haven't...we haven't yet addressed, although it's replete in Ms.
2 Miles' original Motion in support of the Temporary Orders and in the police report we
3 submitted to the Court appended to the Criminal Complaint that Ms. Miles was savagely
4 beaten directly in front of their 20 month old son, Shane. Her Motion and Affidavit
5 reflect the 2 inch laceration above her left eye, her blackened left eye, her broken nose
6 and the contusion on her right cheek. She was transported to the hospital by ambulance
7 and, again, this took place in front of 20 month old, Shane. Ms. Miles' Declaration also
8 reflects Mr. Miles' pattern of behavior, including what I would call in...in our venacular
9 just...just reckless driving incidents. Now, I have no information. I do not believe that
10 Ms. Miles has seen the Criminal Complaint nor the Declarations of the arresting
11 Officers appended to that. But if you read...if you read those Declarations, they are
12 consistent with...

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14
15 MR. OOSTENBRUG: I'm going to...I'm going to object, Your Honor. I don't
16 think I've seen...were those filed recently?

17 MS. CAULKINS: The...yes. I...I delivered that to you yesterday with her
18 Responsive Declaration.

19 THE COURT: With her Responsive Declaration.

20 MS. CAULKINS: It's the...it's...it's entitled Record of District Court Cause
21 Prosecution Of Respondent. I delivered it at the same time I delivered the other one
22 yesterday entered in both the...the...

23
24 THE COURT: I assume you're referring to the Incident Investigation Report.

25
VERBATIM REPORT OF PROCEEDINGS - 9

1 MS. CAULKINS: Yes. Okay. Let me take a look at this. Now, the...again, the
2 Officer's recitation of having to chase Mr. Miles down the road at a high rate of speed.
3 The Officer was going 55 miles an hour and...and Mr. Miles was pulling away, is
4 consistent with Ms. Miles' recitation of what...of some of the things...some of the
5 irrational behavior Mr. Miles has demonstrated when he has gotten angry. Her
6 Declaration, appended to the original Motion, indicated that he often would take off
7 recklessly no matter who was in the vehicle with him. This time she was in the vehicle
8 with him. He had taken Shane after he had beaten up Ms. Miles and she had sought
9 help, he sped out with Shane in the vehicle and had to be chased down by the police
10 officers.
11

12 THE COURT: Ms. Caulkins, I'm going to remind you, you have about 3
13 minutes.
14

15 MS. CAULKINS: Thank you. So I submit there has been no meritorious
16 defense to what Ms. Miles...what action she took to obtain safety for herself, her son
17 and her daughter, Joele, who...who is Mr. Miles' step-daughter, to return to New Jersey
18 where her parents live, her brother lives and Joele's natural father resides. Her...her
19 support group where she can feel safe and secure out of the cycle of violence. She
20 has...she has indicated that Shane has demonstrated mimicry in...in beating her and then
21 trying to pacify her. Mr. Miles' materials try to deflect responsibility...minimize the
22 violence. We're trying to get her out of the cycle of violence and that can't happen here.
23 This marriage is over. We need to address it. We did propose to counsel this morning
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1 the DeJongs to provide the supervised visits for this weekend. But Mr. Miles permitted
2 her...he said, fine. Go to New Jersey. Stay there. She's done that. She needs to
3 be allowed to stay there with Shane. It's going to happen anyway and any...our
4 proposed Parenting Plan and the Temporary Parenting Plan allow for the...for the
5 visitation and the schedule to be re-visited when he completes his Domestic Violence
6 Perpetrator's Program and a domestic violence parenting class because Shane needs to
7 be removed from just the attitudes of an abuser.
8

9 THE COURT: Okay. Thank you.

10 MR. OOSTENBRUG: Yes, thank you. Well, there are a host of other issues
11 involved in the parenting of Shane and, notably, there has been no response whatsoever
12 to the allegations made by Carrie Miles, who is an adult who lived with these parties
13 for a number of...of years. I remind the Court that Mr. Miles raised both Carrie and
14 Heather by himself since their...their ages of 3 ½ and 8, I believe...essentially, by
15 himself for a number of years until he...he remarried...married Kimberly. But there are
16 a host of other issues as addressed in Carrie's Declaration regarding Kimberly that have
17 to be addressed as well and the cycle of violence where it's both of these parties or one
18 of these parties does, indeed, have to be addressed and the mimicry issue that's arisen
19 has to be addressed as...as well. We're not talking about Mr. Miles being...being
20 allowed to drive anywhere with Shane. What we're talking about is Shane being able to
21 preserve his relationship with his father, which, as this Court has heard, as numerous
22 experts on...on child development will tell the Court, has to be preserved if at all
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1 possible and it certainly is...is possible here. We were never even aware...Mr. Miles was
2 never even aware until he got out of jail and was served with these documents that his
3 wife...his wife had left and returned to New Jersey. There was never any statement by
4 him or authorization by him for her to go to New Jersey. There was just no
5 communication whatsoever on that issue. She chose to go to New Jersey and she chose
6 to return and, I guess, what I point out to the Court is from a factual standpoint, we
7 could turn black...back the clock two weeks and we would have the exact same situation
8 that we had two weeks ago we're presenting to the Court this afternoon. Mrs. Miles and
9 Shane are present here in Kitsap County. She has removed items of personal property.
10 Those items of personal property...property can certainly be moved into an apartment
11 and she can take up residence here until the issue regarding custody and/or visitation
12 with Shane is...is resolved. It's, I think, notable and...and certainly something that the
13 Court should consider that my client doesn't have any active income to be able to
14 transport himself 3,000 miles back and forth across the country. I...there's been no
15 response to our allegation that Ms. Miles' parents are wealthy.

16
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18 MS. CAULKINS: Objection because there's no foundation for person...you
19 know, it's lack of personal knowledge. It's not relevant.

20 MR. OOSTENBRUG: Well...

21 THE COURT: It's not relevant.

22 MR. OOSTENBRUG: Well, true. That's exactly why Ms. Miles should stay
23 here because nobody has any money to be able to preserve this relationship with this
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1 little boy, which is what the Court needs to be concerned about.

2 THE COURT: Okay. Court...Court will allow her to move to New Jersey under
3 a Temporary Order pending the outcome of the relocation hearing. He should be
4 entitled to supervised visitation with Shane this weekend and today, if a supervisor
5 can be available and I understand it there's not a problem with the agreement of the
6 supervisor.

7 MS. CAULKINS: Right.

8 THE COURT: And it should be for the duration set or previously cited because
9 this is a 2 year old. Certainly, if counsel agrees, I can appoint a Guardian ad Litem, but,
10 right now, I've heard that neither party has an income. So, if that's the case, then you
11 need to have your clients fill out Affidavits for the Juvenile Department to see if they
12 can operate as a Custody Investigator in the short run. I don't know what the assets of
13 your clients are, but you told me that neither one of them is employed. The Parenting
14 Plan should...the Temporary Parenting Plan...I guess, I'm going to wait until the
15 Guardian ad Litem is appointed to deal with anything other than the immediate. I don't
16 know what else I can do with today.

17 MR. OOSTENBRUG: Your Honor, effectively, there's not going to be any
18 visitation unless the Court requires that Mrs. Miles transports the child back and,
19 effectively, there won't be any...any investigation by either a Custody Investigator or
20 Guardian ad Litem.

21 THE COURT: I can't solve that problem today. There can be a Custody
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1 Investigator appointed from the Juvenile Department if possible who can make
2 recommendations to the Court. I don't know when your trial's going to be or your
3 Settlement Conference is going to be, but, obviously, the Court can order that Shane
4 be brought at those times and I don't know...he's going to...I mean, if there's no...if
5 neither person has a job, I can't do anything.

6 MR. OOSTENBRUG: And there's been no relocation petition and I...

7
8 THE COURT: Right. And that needs to be filed. All I'm allowing is a
9 Temporary Order for her safety...for her to be in New Jersey and for immediate
10 visitation to happen. Because she...a Petition needs to be filed and a relocation hearing
11 needs to be heard if she's going to stay there.

12 MR. OOSTENBRUG: I would ask that this matter be placed on the calendar
13 next week to determine whether or not that Petition has been filed and determine where
14 we stand with the Juvenile Department.

15
16 THE COURT: I'm not going to monitor whether that Petition has been filed.

17 MS. CAULKINS: I will be filing it promptly because it is...as soon as my fingers
18 can type it.

19 THE COURT: Okay. But I...I think that the issue of a Guardian ad Litem needs
20 to be addressed because I agree with you, Mr. Oostenbrug, but I don't have any other
21 choices today, I don't believe. I think she...that...no money from either one of these
22 parties, no ability to pay child support, no ability to pay spousal maintenance and she
23 has no job. The best place for her and this child to be where they're going to have,
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1 apparently, a roof over their heads is with her family in New Jersey.

2 MR. OOSTENBRUG: It...Your Honor...

3 THE COURT: It...I would also indicate that I did review his e-mails and he
4 seemed to have no opposition to her staying for awhile in New Jersey. This matter is
5 too soon before the Court, apparently. Counsel's not offering me any options.

6 MS. CAULKINS: Thank you, Your Honor.

7
8 MR. OOSTENBRUG: Your Honor, we'd ask that the Court make an order that
9 the...both the Temporary Order and the Order Of Child Support...

10 THE COURT: I haven't entered the Order Of Child Support.

11 MR. OOSTENBRUG: But it was entered two weeks ago.

12 THE COURT: Oh, okay. I'm sorry. I thought we were only dealing with the
13 Parenting Plan. The Court will abate the Child Support Order.

14 MR. OOSTENBRUG: Okay.

15 MS. CAULKINS: That's fine.

16 THE COURT: Okay. I'm sorry. I thought we were just dealing...

17 MS. CAULKINS: That's fine.

18 MR. OOSTENBRUG: Thank you.
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1 STATE OF WASHINGTON)
: ss.
2 COUNTY OF KITSAP)

3 I, the undersigned Notary Public in and for the State of Washington, do hereby
4 certify:

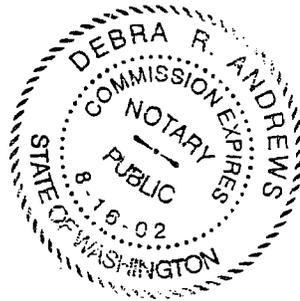
5 That the annexed and foregoing hearings of the cause named herein was taken by
6 tape recording and reduced to typewriting by me;

7 I further certify that I am not a relative or employee or attorney or counsel of any
8 of the parties to said action, or a relative or employee of any such attorney or counsel,
and that I am not financially interested in the said action or the outcome thereof;

9 I further certify that the hearing, as transcribed, is a full, true and correct
10 transcript of the testimony, including questions and answers, and all objections,
11 motions, and exceptions of counsel made and taken at the time of the hearing, as taken
from the tapes provided by the Kitsap County Superior Court;

12 I further certify that I am sealing the transcription in an envelope and promptly
13 mailing the same to Anthony Miles, Respondent.

14 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
15 seal this 28th day of May, 2002.



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Debra R. Andrews
Debra R. Andrews
Notary Public in and for the State of
Washington, residing at Bremerton
My appointment expires: 8-16-02



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**SUPERIOR COURT OF WASHINGTON
COUNTY OF KITSAP**

In Re the Marriage of:)	NO. 02-3-00421-6
)	
KIMBERLY SUE MILES,)	DECLARATION OF
)	CARRIE MILES
Petitioner,)	
)	
vs.)	
)	
ANTHONY HAROLD MILES,)	
)	
Respondent.)	
)	

CARRIE MILES, under penalty of perjury under the laws of the State of Washington, declares and states as follows:

I am the daughter of Anthony Miles, the Respondent in this case. I live at 4670 Barrington Road SE, Lacey, Washington 98513, and my telephone number is (360) 491-1084. I work for Wells Fargo Bank.

I was living with my father when he married Kimberly. I was 15 years of age and lived there until I was 18, moved back in when I was 20 years of age, and lived there another two years until the end of January of this year. I am presently 23 years of age.

DECLARATION - 1

San Officer of
TERRY W. OSTENBRUG
 (360) 698-7020 • FAX (360) 698-0006
 4102 N.W. Anderson Hill Road
 Silverdale, Washington 98383

1 I have never seen my father strike Kim. I have seen Kim strike my father
 2 numerous times. The typical scenario is that they would get into an argument,
 3 and she would come over to him and strike him once or twice, and he would do
 4 nothing. This would be the culmination of the argument, and after she would
 5 strike him, things would die down. As my dad has put it to me, this time, she
 6 wouldn't stop, and he decided to defend himself. Apparently, he went too far.

8 My father's method of dealing with issues in the past, during the time that I
 9 have grown up with him was to raise his voice when he was directing us children
 10 to do something. When he would get angry, he would yell, but he never struck
 11 anyone. On the other hand, when Kimberly gets angry, she strikes my father.

13 I'm not trying to defend what my father may have done to Kimberly.
 14 However, his explanation makes sense to me because I have seen this happening
 15 over the years. It seems that I would witness he and Kimberly getting into an
 16 argument with Kimberly striking him once every couple of months or so. Again,
 17 I'm not justifying what my father did, but apparently, he couldn't take this type of
 18 behavior on Kimberly's part any longer.

21 I declare under penalty of perjury under the laws of the State of Washington
 22 that the foregoing is true and correct to the best of my knowledge.

23 Signed this 19 day of April, 2002, at Lacey, Washington.

24 
 25 CARRIE MILES

28 **DECLARATION - 2**

Law Offices of
TERRY W. OSTENBRUG
 (206) 608-7020 • FAX (206) 608-0200
 4102 N.W. Anderson Hill Road
 Silverdale, Washington 98383

Exhibit Custody Report
MT-9-23-02

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITSAP COUNTY

In re the marriage of:)	
KIMBERLY SUE MILES)	No. 02-3-00421-6
Petitioner,)	
and)	REPORT OF CUSTODY
)	INVESTIGATOR
ANTHONY HAROLD MILES)	
Respondent.)	September 23, 2002

TO THE PRESIDING JUDGE OF THE SUPERIOR COURT:

Parties involved:	Kimberly Miles	Mother
	Anthony Miles	Father
	Shane Miles	Child, dob 7-5-00

Investigation Issues: "Parenting Arrangements"

Investigation:

On July 19, 2002 the Court appointed the Kitsap County Juvenile Department to act as Custody Investigator for Shane Miles. For some unknown reason, the actual appointment order did not reach the Juvenile Department until September 9, 2002. This led to a shortened time frame for investigation. Fortunately, the information gathered has been remarkably consistent, which leads to a high degree of confidence that the Court is receiving balanced information.

In preparation for this report I have spoken in person with Mr. Miles and separately with Heather Miles, his 18 year old daughter. I have spoken by telephone with Ms Miles; Carrie Miles, 23 year old daughter of Mr. Miles; Hope Habda, counselor for Ms. Miles; Dan Joehnk, counselor for Mr. Miles; Karen Uno, sister of Mr. Miles; and Peggy Held, former babysitter of Shane and family friend.

Background: The Miles' have been married for over seven years. Both came to this marriage with daughters they were raising. Each party stated that soon after the wedding they individually wondered if they had made a mistake. Each party thought they were getting a "Christian" mate, each party interpreted this expectation as being different from the reality embodied in the person they married. Mr. Miles stated that Ms Miles was very encouraging and supportive of him when it came to items of great importance such as building their home and his changing careers.



One reference characterized the marriage as "rocky". References speak of many arguments and an unsettled atmosphere in the home. Both parties expressed that they could not please the other. Ms Miles states that she could not "read" Mr. Miles' moods, and he would be unreasonably demanding or "explode" with little provocation. References indicate that arguments may become heated and Ms Miles would, at times, slap Mr. Miles, often on his shoulder. The reference stated this wasn't to cause harm, but to express frustration. Until March 28, 2002, Mr. Miles had never returned the slap.

On March 28th, Mr. Miles slapped back. Mr. Miles related the following account of that night. After returning his wife's slap, he went to bed. Shane was also in the bed, asleep. Ms Miles had to go pick up the girls, who were out of the house at the time. She moved to take Shane with her, indicating that since Mr. Miles had just slapped her, she could not trust him at that moment with Shane. He took this move as provocation and stated, "What do you want him to see? Do you want him to see this?" Then Mr. Miles slugged his wife and the assault continued. Mr. Miles was found guilty of Fourth Degree Assault, D/V.

Mr. Miles stated to me that it is now his opinion that Ms Miles orchestrated that night to so provoke him that she would later be able to divorce him and ensure that Shane would be with her. Mr. Miles stated that in light of her manipulation, he "deserves Shane because of being set up" in this manner. He also desires to reconcile with his wife. To this end Mr. Miles proposes that Ms Miles work with his counselor. Ms Miles has been communicating with her own counselor.

Hope Habda, Ms Miles' counselor, stated that she specializes in trauma counseling and works often with assault victims. It is her opinion that Ms Miles suffers from Post Traumatic Stress Disorder as a result of the assault. Ms Miles is taking an antidepressant medication in conjunction with treatment, and is functioning fairly well. Ms Habda expects this disorder to resolve over time and not be debilitating. It is the counselor's opinion that Ms Miles is in no way a danger to her children and has been heard to be gentle and kind in her interactions with the children. Much of the counseling has been long distance. Shortly after the assault Ms Miles moved to her parents' home in New Jersey. Ms Habda suggested that if Ms Miles brought Shane for visitation in Washington State, the visitation be structured so that Mr. Miles would not know her whereabouts, nor be able to directly contact her.

Parenting: Mr. Miles had two daughters from a previous marriage; he raised the girls on his own for many years. Both daughters speak well of their father; both were very surprised that he assaulted Ms Miles. Most references described Mr. Miles in terms of being quick to anger, to act on that anger, and to apologize. Mr. Miles states that at times he would lose his temper and react overly harshly; one time while in a store he picked up his young daughter by her hair in order to gain her attention. Both daughters stated that they could "read" their father and knew when their actions were about to draw parental ire. The parties agree that CPS has investigated twice in connection with Mr. Miles' actions. According to Mr. Miles, CPS made no requirements of him in regard to these investigations. CPS has not yet responded to my request for information.

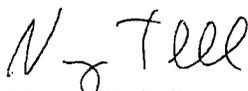
References and the parties indicate that both parents have very different parenting styles. Mr. Miles is much more authoritarian, Ms Miles much more permissive. In addition to having their own differing styles, many issues arose concerning step parenting. References indicate that Mr. Miles successfully raised two girls, and has the skills to parent Shane. Ms Miles has also been characterized as a good parent.

It appears that during the marriage Ms Miles was the primary caretaker for Shane. Mr. Miles described the arrangement as follows: Ms Miles worked ten days a month. During her workdays, Mr. Miles would wake Shane, feed him and take him to the babysitter. In the afternoon Mr. Miles would transport Shane from the sitters' to home where one of the girls, primarily Ms Miles' daughter, Joelle, would care for Shane until Ms Miles returned from work. On the days Ms Miles did not work, she stayed with Shane and cared for him. Mr. Miles devoted much of his time to work related activity. During the little time the family was together, Mr. Miles participated in raising Shane. It is clear both parents love their son.

Conclusions and Recommendations: At present Shane is with Ms Miles and Joelle at his grandparents' home in New Jersey. Given the history of this marriage, it appears in Shane's best interests to stay in the primary care of his mother. The difficulty arises in fashioning a visitation plan given Shane's young age, the distances involved, the many unresolved issues between the parents, the protection order, and the court ordered D/V counseling Mr. Miles is still working through. I have requested both parents to try to come up with some creative ideas in this regard. I understand Ms Miles has family and friends in Washington. There may be accommodations open to her that would allow Ms Miles, her parents or her brother to accompany Shane to Washington for visitation. In addition, Shane's half-sisters are in this area and there is the potential pool of supervisors/monitors should that be ordered. Supervised or monitored visits should be considered at least until the situation stabilizes and trust is rebuilt.

If pressed for a recommendation regarding visitation, the best I can come up with is four weekly visits a year, at least two taking place each year in Washington, supervised until Mr. Miles completes all the requirements arising from the D/V case, then, if all his counselors, including Romalina Steiner, agree, monitored visitation to be in place at least until Shane reaches four years of age. During the visitation times, Shane to spend much of the day with his father, returning at night to sleep with Ms Miles or whoever accompanies Shane to Washington. It is my hope Shane's parents will be able to come to a more satisfactory resolution than I have reached.

Respectfully submitted,



Nancy Tarbell
Custody Investigator

cc: Mr. Miles
Ms Caulkins, attorney for Ms Miles

Form 10. Cost Bill [Rule 14.4]

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

Anthony Miles
V
Kimberly Miles

No 84912-9

Cost Bill

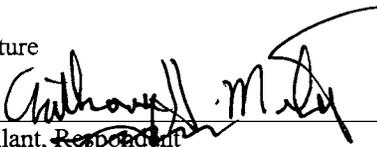
Anthony H Miles appellant, asks that the following costs be awarded:

1.	Statutory attorney's fees	\$
2.	Preparation of original and one copy of report of proceedings	\$ 860.00
3.	Copies of clerk's papers	\$ 45.00
4.	Transmittal of record on review	\$ 65.00
5.	Expenses incurred in superseding the decision of the trial court Kitsap County	\$
6.	Charges of appellate court clerk for reproduction of briefs, petitions, and motions	\$
7.	Preparing 50 pages of original documents	\$
8.	Filing Fee	\$
	Total	<u>\$ 970.00</u>

The above items are expenses allowed as costs by rule 14.3, reasonable expenses actually incurred, and reasonably necessary for review. Kimberly S Miles should pay the costs.

December 8, 2010

Signature



Appellant, Respondent

[Name, address, telephone number, and Washington State Bar
Association membership number of attorney]

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SUPERIOR COURT
COUNTY OF TACOMA

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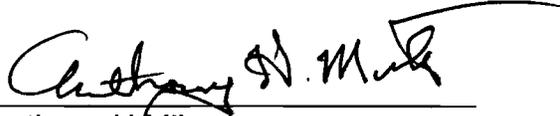
BY RONALD K. CARPENTER

CLERK

I certify under penalty of perjury that on this date I hand – delivered one copy of this brief to Susan Caulkins addressed to:

Susan Caulkins 920 Fawcett - P. O. Box 1657
Tacoma, Washington 98401

Dec 8th 2010



Anthony H Miles