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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____
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No. 42885-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

SARAH NICOL BENNETT

Respondent,

v.

JOSIAH DANIEL CHRISTENSEN

Appellant

APPEAL FROM THE SUPERIOR COURT OF PIERCE COUNTY,
CAUSE NO. 10-3-04-504-9

The Honorable Kathryn Nelson, Judge

BRIEF OF APPELLANT

Josiah D. Christensen
Appellant,
PO Box 65238
Port Ludlow, Washington, 98365
(805-236-2491)

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2. The court ruled based off the mothers false testimony and the recommendation of the GAL that was influenced by a psychological evaluation that was later shown to inaccurate, discriminate against the father, and be conducted in an unethical manner.

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unfounded. Did the courts ignore the facts and base its modification on the testimony of Mrs. Bennett?

2. RCW 26.09.191 section(n) states "If the court expressly find based on the evidence that contact between the parent and the child will not cause physical, sexual or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a) , (b), and (m)(i) and (iii) of this subsection." The appellant has been actively involved with his son since birth. From 09/15/2010 to 11/09/2011 he shared 50/50 joint custody, again all allegations of physical and sexual abuse that arose after the divorce have all been unfounded. Did the trial court show bias towards the father when enacting RCW 26.09.191?

II. STATEMENT OF THE CASE

On 10/20/11 the trial court stripped Mr. Christensen of his custody and ordered him into a 90 day non violent parenting class and a one year state certified domestic violence treatment program. *CP; Ex 16.*

On 11/18/11 Mr. Christensen filed a motion for reconsideration in this motion he stated.

> "Significant evidence that Noah was not abused was left out or not allowed at trial. My attorney failed to file a witness list and the court refused to allow the people who witnessed these injuries take the stand. There were also sworn testimonies of my father and mother, Jan and Janet Christensen that described how the injuries happened while in their care. These were filed with the court and used at another hearing but were not included at trial."
> "Three separate occasions the court has either dismissed petitions or admonished Mrs. Bennett for her behavior. There is no evidence to support her allegations. Upon careful review of medical records and NCIS reports, it shows that all evidence provided is nothing more than

> baseless allegations to healthcare workers and government agencies and all charges and allegations are later dismissed. Mrs. Bennett was unable to convince anyone who had direct involvement with her allegations. It was not until three years and 5000 miles latter that Mrs. Bennett was able to convince Mr. Pepping and this court that she was a victim of abuse, and it was done so based off her testimony and not evidence."

This motion was denied *CP; Ex 17.* On 12/09/11 Mr. Christensen filed a notice of appeal. Mr. Christensen was seen by Sierra L. Swing Psy.D. on 12/02/11 and 12/10/11. Dr Swing reviewed Mr. Pepping's evaluations and all the records he reviewed while making his determination, she also re-administered the tests conducted by Mr. Pepping. During her interaction with Mr. Pepping she learned that he had conducted Mr. Christensen's domestic violence evaluation as if Mr. Christensen had been court ordered as a perpetrator of domestic violence. There is no documentation present that states that Mr. Christensen's Domestic

Violence Evaluation was Court Ordered. Dr. Swing's concludes "current testing reveals no evidence that Mr. Christensen at risk for harming others. In fact, test results indicate that he is at a low risk for violence potential, spousal abuse, and sexual abuse. Additionally, based on the results of his current testing in comparison to what was presented in Steven Pepping's report, I would recommend that the court ruling with regard to his custody and parental rights be reevaluated. Current test results indicate that Mr. Christensen is not at risk for being a perpetrator of violence or harm toward others, and testing and previous reports of parental observation also supports that it is appropriate and safe for him to provide ongoing care and parenting, as well as equally share custody of his son Noah Christensen." *CP; Ex 22.*

III. Argument

1. The trial court abused its discretion when it found that there was a substantial change of circumstances to modify the parenting plan. Domestic Violence has never been committed by the father, the trial court committed error when it ignored three years of facts and evidence, instead finding the father to have a history of domestic Violence.

   The trial court's decision states "The court does believe that there is a substantial change of circumstance to modify the parenting plan obtained in Guam. Noah's bruises were reported to CPS. Who first observed that they were in unusual places and were not consistent with the activities of a similar aged toddler. The circumstance, that later CPS said the opposite and/or ultimately determined the matter to be unfounded, does not answer the question for this court. Further, the court here now knows the circumstances under which the agreed Guam dissolution occurred which set the original parenting plan, and it has authority to look back to all the circumstances when determining and appropriate

modification." It further goes on to say "under the statuette, only one parent must be limited in residential time. Father must be limited due to a history of domestic violence. Accordingly Mother is the primary parent and will remain so for all purposes until, if ever, Father is able to modify the plan due to the successful treatment and no further evidence of domestic violence." *CP; Ex 16.*Under RCW 26.09.260 findings of a substantial change in circumstances must be based on "facts that have arisen since the prior decree or plan that were unknown to the court at the time of the prior decree or plan." instead they ignored 3 years worth of facts disproving the allegation of domestic violence against the father. Basing their decision off of an improperly conducted evaluation, and the testimony of a woman who has been found incredible by physician's at USNH Guam, CPS, JCSO, who's actions have been considered disingenuous by Commissioner Clint P. Johnson, and who has a juvenile record for violence in Jefferson County and a current arrest for Criminal Assault in Pierce County, *CP Ex 11-12; CP Ex 22;*

Mr. Christensen was the plaintiff and divorced Ms. Bennett for infidelity as shown in, *CP; Ex 2;* no mention of domestic violence was made when the parties were granted a divorce and no limitations were placed on Mr. Christensen's visitation to the contrary both parties agreed to a 50/50 joint custody schedule for Noah. In addition, the allegations of physical and sexual abuse that arose after the divorce have all been unfounded. No substantial change in circumstances has occurred on the part of the father. Furthermore, the Trial Court ignored the facts. Ms. Bennett claims to have been chocked and punched several times, and then 10 days later pushed into a wall, slammed into a kitchen sink, and her arm twisted, yet the medical reports show the exact opposite of Ms. Bennett's testimony. She is treated by a physician that same day and the only injury a swollen hand. *CP; Ex 11; pg 31, lines4-13* the court enacted "26.09.191 limitation for a history of acts of domestic violence... or an assault or sexual assault which causes grievous bodily harm or the fear of such harm. Believing the testimony of Mother, the court finds both a history of acts and with respect to the eardrum also and assault ..." *CP; Ex 16;*

At a minimum, adequate cause requires a showing that there is evidence to support a finding on each element required to justify an order of modification. *In re the Marriage of Lemke*, 102 Wn.App. 536, 85 P.3d 966 (2004). Failure by the trial court to make findings that reflect the application of each relevant factor is error. *In re the Marriage of Stern*, 57 Wn.App. 707, 711, 789 P.2d 807 (1990). The Court of Appeals, Division II has established that in the context of modification that a court abuses its discretion where it fails to give reasons for finding adequate cause existing. *Kinnan v. Joran*, 113 Wn.App. 738, 750 (2006). The *Kinnan* court held that where the lower court fails to provide a justification for a finding of adequate cause the reviewing court must hold that the lower court abused its discretion. *Kinnan*, 131 Wn.App. at 750. The trial court committed error when it found domestic violence, for the purpose of modification, based off an allegation that has no investigation, no supporting evidence, and by Mr. Christensen's account and the account given to the doctor by Ms. Bennett. Mr. Christensen wasn't even home when the injury occurred.

2. The court ruled based off the mothers false testimony and the recommendation of the GAL that was influenced before trial by a psychological evaluation that was later shown to be inaccurate, discriminate against the father, and be conducted in an unethical manner.

The trial court based its decision off the testimony of the mother and the evaluations done by Mr. Pepping. The court states "the court here now knows the circumstances under which the agreed Guam dissolution occurred which set the original parenting plan." *CP; Ex 16;* Ms. Bennett lied under oath regarding the circumstances surrounding her divorce from Mr. Christensen, and the trial court ignored the facts choosing to believe her testimony. While under oath Ms. Bennett stated that Mr. Christensen came home from Afghanistan in June 2010 *RP; Pg 30;* Ms. Bennett also stated. "I think we discussed it in August because he wasn't going to give me a divorce, and so we decided that we would do the Guam divorce on – since it was a two-week divorce, it was quick, but there were terms and conditions that came along with that" Ms.

Bennett stated that she was dating her current husband Andrew Bennett in June and she wanted the Guam divorce so that it would be over as soon as possible, and that Josiah was not going to be amicable. *RP; Pg 33;* When questioned Ms. Bennett said the idea for the Guam divorce was mutual but that in order for Mr. Christensen to cooperate she had to agree to 50/50 Custody and take a disciplining session where Mr. Christensen would beat her for an hour: *RP; Pg 35-36;* Under cross-examination Ms. Bennett claimed that she did not contact an attorney in Guam while Mr. Christensen was deployed that it was after he had come home and they had discussed it, she also claimed that the parenting plan wasn't mutually agreed upon but instead had been what she was forced to agree to. *RP; Pg 55;* An excerpt from the Verbatim Report states "were you coerced into signing the parenting agreement? A. I was coerced into the terms of the parenting plan. I wasn't coerced to sign the parenting plan. Q. All right. So if you didn't sign the parenting agreement, how were you coerced? A. I had to – I had to agree to Josiah's terms for the divorce and to be spanked so that I could get the divorce. Q. Why did you not –

> all legit in Washington I have no problem with being the one to fly there but you are going to need to save some money to help pay for it."

This took place while Mr. Christensen was in Afghanistan as he spent the 4th of July flying out of Kuwait and did not arrive back in the states until 07/05/10. The courts rationale for their findings is based off allegations that have all been proven false. In *Golberg v. Sanglier*, 96 Wn.2d 874, 880, 639 P.2d 1347, 647 P.2d 489 (1982). The court at a minimum had to provide a rationale for the finding of adequate cause and consider the statutory factors. It did not. The absence of these findings should be construed against the proponent. The absence clearly demonstrates the lack of objectivity in the finding. The other determining factor for the trial court was the evaluation conducted by Mr. Pepping which completely changed the GAL recommendation. Mr. Pepping conclusions as stated by the GAL,

> "Mr. Pepping did an evaluation of Mother and he also did an evaluation of Father. He conducted tests as well as conducted interviews with each individual parent, and his findings from all of the tests all of the collateral

> information as well, was that Mr. Christensen had a clearly defined pattern of violent or abusive behavior with family or household members and there was mutual combat between Mr. Christensen and Ms. Bennett on occasions and there was a flaring of tempers, controlling behavior, physical and sexual violence during the course of their relationship." *RP; Pg 111, lines 14-25,*

Mr. Pepping further goes on to diagnose Mr. Christensen with narcissistic personality disorder, histrionic personality traits, obsessive compulsive personality traits and paranoid personality features. *RP; Pg114 lines 11-21.* This is in stark contrast to Dr. Swing's findings.

> "There appear to be several inconsistencies between this domestic violence evaluation and the records, current ruling, and parenting plan. Additionally, there is some concerning information displayed in the evaluations completed by Steve C. Pepping, MA, CDP, DVP. Namely, some tests administered (PAI & MCMI) should only be administered by licensed clinical psychologists, and the

information in the report seems to have been copied and pasted from a computer generated report. This not only prevents the evaluator from taking relevant history and contextual information into account, but the practice is also considered to be unethical and dangerous when determining the fate of someone's future and their potential custody of their child. Psychological test results should not be taken as completely factual or as an absolute with regard to functioning, they should be taken into account with regard to history, contextual information, and congruent and/or incongruent evidence and behavior, in order to complete a fair and comprehensive psychological and risk evaluation. When psychological tests are scored, there is a statement on each test that reads, "The details in this report represent preliminary hypothesis or possibilities requiring verification through other aspects of a psychological evaluation. These include clinical interviews, behavioral observations, referral reasons, background information, psychological history, current circumstances, recent

stressors, physical condition, and other test results as applicable. No decisions should be based solely on the information contained in an individual report. This material should be integrated with all other sources of information in reaching professional decisions about this individual." These guidelines are clearly stated on print outs of the PAI and MCMI-III interpretive reports, which Mr. Pepping likely saw. However, there is concern that these guidelines were not taken into consideration when writing Mr. Christensen's report. Furthermore, there are inconsistencies between the two reports provided for Josiah Christensen and Sarah Bennett. Specifically, test results indicate some areas of concern for Mrs. Bennett with regard to her history of and potential for violence, however, no risk or concerns for her violence potential were raised in her report, while Mr. Christensen had similar, if not lower scores, yet significant concern was raised in his report."

Dr. Swing further goes on to say on *Pg 21,*

"It is concerning that, based on the information outlined

above, that Mr. Pepping was able to conclude that "Mr. Christensen has a clearly defined pattern of violent or abusive behavior with family or household members at this time," while it was also claimed that it is "unclear as to whether Ms. Bennett has a clearly defined pattern of violent or abusive behavior" when she has a clearly defined history of violence towards others and actual charges brought against her. It appears as though none of the NCIS documentation, nor the GAL report and the inconsistencies and concerns outlined by Ms. Kevetter were reviewed or even considered in Mr. Pepping's report, which is of utmost concern, especially when making recommendations to a court regarding a parent's ability to see their child." *CP; Ex 22;Pg 18-19*

When questioned The GAL further went on to say,

"Q. What is your ultimate recommendation now in this case? A. Okay, I received these reports from Mr. Pepping October 4th, and I believe I actually got them in hand that night. And it completely changes the recommendations,

> looking at domestic violence as well as the personality disorders. The first change would be that the recommendations for treatment set forth by Mr. Pepping be adopted to both parents; that until domestic violence treatment has progressed to the point where the therapist feels that Father is making progress. Is engaging in the therapy as opposed to just manipulating it, that Noah live with his mother primarily and have visitation with father. And he has – Noah has a really strong bond with his father," *RP; Pg116, lines 9-23,* "At this time, I would recommend two weekends of visitation, then one weekend off; two weekends of visitation. So there would need to be a phased –in plan because of the shortness of obtaining these reports." *Pg 117, lines 6-10,*

Now during the cross-examination from Mr. Levey the GAL stated.

> "Now, he was very cordial over the phone. He was -- he worked with me real hard because he was kind of the – the logical difficulty since he was out in Port Ludlow, and we

tried very hard to figure out different ways of trying to make a visit out to Port Ludlow work. And then when I realized that there wouldn't be a possibility of making that happen, given constraints, he worked with me on – he worked real hard with me to try to figure out another way of doing things. And when I suggested things work in my office, he was very agreeable to that." *RP; Pg 120, lines 13-23,* "I reviewed the CPS records. I reviewed a lot of NCIS records. I reviewed some police reports. There was a Port Orchard police incident report of March 14. I looked at the interlocutory judgment of divorce, the Navy – Departments of Navy assault records, and then I was sent a transcription of the June 22 hearing. So those are documents that I specifically reviewed for this. I did look at more documents that are in the court file, but I didn't take those down and go through them again and highlight them for purposes of the report. Q. All right. To your knowledge, have either party been convicted of any crime? A. I know that Mother has a juvenile record. Whether that

was a conviction or not, I do not know, but to my knowledge, Father has not been convicted of a crime. Q. Do you know if either party has been charged with any crime? A. When it comes to Mother's juvenile record, I don't know. To my knowledge, Father has not. Q. Are you aware that Mother was charged with an assault in September of this year? A. I did hear something about that," *Pg 121 lines 20- Pg 121 lines17*, "Without – prior to the DVEs, domestic violence evaluations, who would you have recommended have Noah a majority of the time? A. Okay. Prior to the domestic violence evaluations coming back, I would have recommended that Father have Noah the majority of the time. Q. Why? A. Because the CPS records don't make a whole lot of sense without -- the cps records state that mother wasn't credible. They raise issues and concerns of Mother using this child in an abusive way to handle her conflict with Father, and you know, my report reflected that. If there's no domestic violence, then Mother is clearly using Noah in a bad way. Because of the

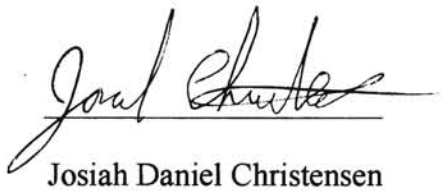
incomplete information, it really looked, from cps records, and then the NCIS records as well seem to indicate that there is an abusive use of conflict," *Pg 126 lines 7-24,*

Mr. Pepping's report was the determining factor in this case it caused the GAL to completely change her recommendations, the very same recommendations that were adopted by the court. It was later shown that Mr. Pepping's evaluation was inaccurate, unethical, and that he turned a blind eye to the facts instead interpreting what he wanted from the tests and harming Noah in the process. Noah now finds himself in an unfortunate situation being constantly used as a weapon by his Mother to hurt his Father. As there is no evidence to support the modification The court employs a strong presumption against modification because changes in residences are highly disruptive to children. *In re Marriage of* McDole, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

IV. CONCLUSION

Mr. Christensen is a loving and caring father who has never committed acts of domestic violence. He has been found credible by every person or agency he has worked with up until Mr. Pepping's blatantly biased evaluation. The trial court made a grave error in there ruling. I ask that this court reviews Dr. Swings report in great detail and reverse the trial court's decision restoring me to the active place in my son's life that I've held since the day I delivered him.

Dated this 28th day of May 2012



Josiah Daniel Christensen

Pro Se, Appellant

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

In re: SARAH NICOL BENNETT **Respondent,** **and** JOSIAH DANIEL CHRISTENSEN **APPELLANT,**	**No.** 42885-7-II

I Declare:

1. I am over the age of 18 years, I served the Brief of the Appellant to Jason Benjamin the attorney for Sarah Bennett by united states mail on the 29th of May, 2012.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Clerks Office, _____ on 05/29/12.

Josiah Christensen
Signature