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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

Case No 438127II

CLERK

Court Of Appeals, Division II
Of The State of Washington

In re Marriage of

Matthew Smith, Respondent

&

McKayla Smith, Appellant

Amended Brief for Appellant

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ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the trial court had the authority under RCW 26.09, in an action to modify an existing final Parenting Plan, to enter a temporary Parenting Plan, Sua Sponte, on Feb. 5, 2010, at a non-evidentiary hearing, & to subsequently enter a new final Parenting Plan after a bench trial on April 8, 2010, when no petition to modify had been filed & no Adequate Cause finding had been made.

2. Whether the trial court abused its discretion in modifying the final Parenting Plan of Aug. 2009 & the Mandate which reinstated the 2008 Parenting Plan under RCW 26.09.260; RCW 26.09.270; 26.09.191 when the evidence introduced at trial was that: (1) I did not get along with the father or the GAL; (2) that I had given the father the children's medicine in an unmarked container; (3) that I had failed to provide the father with a list of health care providers; (4) that I sent the children to a church activity during the father's scheduled telephone calls as allowed under the Parenting Plan; (5) that our children had resided with me their entire lives; & (6) that our son's counselor testified that the modification was detrimental to our children. The Jun. 25, 2012 Parenting Plan says I have significantly abused health care decision & obtain health care against court orders (the only time I have not had joint decision is the Jun. 25, 2012 Parenting Plan), engaged in inappropriate behavior at transfers &

unwilling to allow the children to participate in extracurricular activities, failed to follow directions from the GAL, detrimental behavior resulting in further conflict in this litigation, the court saying that my mental health is an issue on parenting our children, I am to enroll in college level classes, however if you look at LSPR 94.03 (I) it states there must be two instructors. I objected on the record & now I do not agree with this parenting plan on Jun. 25, 2012 it is not in our children's best interest.

3. Whether the trial court had the authority to "ratify" a temporary Parenting Plan that had been signed by Hon. Judge Edwards on Feb. 5, 2010 which was later "ratified" on July 11, 2011 by Hon. Judge McCauley. (1) Did the trial court have jurisdiction to "ratify" an order that Hon. Judge Edwards signed when the Court of Appeals had issued an opinion stating that my "timely affidavit of prejudice divested Judge Edwards of authority to rule on a motion to modify the original Aug. 15, 2008 parenting plan, we vacate the Aug. 7, 2009 & April 30, 2010 parenting plans & the Jun. 1, 2010 order on attorney fees & costs, & remand for further proceedings before a different judge." At this point Mr. Smith should have been required to Petition / Motion for modification. Instead the court continued with previous filings signed by Hon. Judge Edwards dating back as far as Oct. 2008 which consisted of an amended parenting plan.

4. Whether the trial court should have removed the GAL under Rule 2 of the guidelines for a GAL. (1) Did the GAL do what she was assigned to do on Nov. 3, 2008 by proper investigation (2) was the GAL bias in this case.

Statement of the Case

Feb. 13, 2003 CS was born. Mr. Smith & I married on Aug. 16, 2003. I left Mr. Smith on July 11, 2006 & within a week filed for divorce. RS was born on Nov. 23, 2006. In Aug of 2008 I obtained full custody of our children.

Sep. 15, 2008 Mr. Smith filed a motion for contempt which claimed I had interfered with his visitation. A hearing was set for Sep. 29, 2008, but was continued several times. It was then heard on Oct. 27, 2008. SCP 206, SCP 203, SCP 200. You will see in SCP 200 that Mr. Smith claimed I threw rocks at his car. No evidence has been presented to the trial court other than Mr. Smith's word. I testified on March 16, 2012 pg. 62 about this incident.

Oct. of 2008 I filed my affidavit of prejudice & Mr. Smith filed an "Amended Parenting Plan." Two days prior to the hearing for contempt Mr. Smith filed a "Motion /Declaration for an Amended Parenting Plan" along with a proposed Parenting Plan with the court CP62 & CP 116. Unlike the WPF DRPSCU 07.0100 form that has been mandatory since Jun. of 2008, this pleading is devoid of the required information found in

the court mandate form. It merely states that Mr. Smith wants custody of CS & RS with the sole basis that I was a victim of assault. Mr. Smith had filed a request for what seemed to be a modification under RCW 26.09.260, my attorney at the time, Mr. Gomes, filed an affidavit of Prejudice with Grays Harbor County Superior Court & asked that Hon. Judge Edwards be disqualified from hearing the modification CP10. When my show cause hearing on contempt was heard the Hon. Judge Edwards refused to remove himself from the new modification case CP10. The record does not clearly state if I was held in contempt or not, but make up visitation for Mr. Smith was scheduled.

Nov. 3rd, 2008 An Adequate Cause hearing took place in front of Hon. McCauley & during the hearing the court decided they were not going to have a determination at that time, but instead appointed Ms. Cotton as the GAL for CS & RS. Ms. Cotton was given specific orders to investigate the assault & the unusual bruising that CS & RS were coming home with (Please review Nov. 3rd, 2008 transcript & please view exhibits from April 12, 2012 5, 6, 9 -14, 19, 21, 23 & exhibits from July 9, 2012 exhibit 1 photos show medical neglect, possible abuse, & unacceptable clothing our children were coming in). March 16th, 2012 pg.150 states on Aug. 28th, 2008, CS was interviewed & he reported that Ms. Cotter disciplined him with a spoon. March 16th, 2012 pg. 152 Ms. Cotton

testifies that Dr. Hutton did report to the case worker for CPS that the amount & locations of the bruises were concerning for a child of RS's age again Dr. Hutton was contacted in Feb. of 2010 see transcript March 16th, 2012 bottom pg. of 152 – 153 he also raised concerns about the supervision of the children. Ms. Glorian question Ms. Cotton on March 16th, 2012 pg. 154 - 155 about RS getting picked on & no adults intervened. Ms. Cotton says that the child said he was there & no adults saw what happened. Ms. Glorian asked Ms. Cotton if she included it in her report that Ms. Cotter's father had used a belt on the other kids & that CS went silent when asked if Mr. Smith used a belt. Ms. Cotton says no she didn't include it in her report. Ms. Cotton says that there was a safety plan put into place by CPS. March 16th, 2012 pg. 156 Ms. Cotton was asked about guns & CS's previous therapist, Ms. Lyle regarding her making a report to CPS & with concerns for CS. Ms. Cotton replies that yes & claims that Ms. Lyle had objections to the children hunting or learning gun safety. Furthermore CS at this time was 6yrs old.

Ms. Cotton then began her investigation & was to report back to court on May 8, 2010. The matter was continued until Aug. 7, 2010. The trial court file is devoid of any findings that Adequate Cause had been established to modify the Aug. 15th, 2008, Parenting Plan.

Aug. of 2009 I was given custody of our children again. On Feb.

5, 2010 Hon. Judge Edwards granted Mr. Smith temporary custody of CS & RS who had lived with me their entire life. Although Mr. Smith, Ms. Cotton, & Mr. Stewart claimed that I have mental health issues that were unknown to the court at the signing of the Aug. 15, 2008 entry of a Final Parenting Plan CP 191. An Adequate Cause hearing was scheduled for Nov. 3, 2008, but never took place.

Aug. 7, 2009 in Ms. Cottons' office we came to an agreed Parenting Plan SCP 218 that set very rigid visitation & telephone calls in effort to reduce the need of communication between Mr. Smith & myself with the opportunity for no misunderstandings SCP 222 & SCP 225. This particular Parenting Plan in Aug. of 2009 left it open for a review on Feb. 5, 2010, to make minor adjustments if necessary SCP227. In Aug. of 2009 Ms. Cotton indicated to the court that there were several minor issues that Mr. Smith & I did not agree on & then summarized them to the court, at which time the court set a review in six months to see how the Parenting Plan signed in Aug. of 2009 was working.

Feb. 5, 2010 Mr. Taschner attempted explain to the court some of the concerns & issues we had with the Parenting Plan of Aug. of 2009. Some of the issues were RS's birthday & thanksgiving because RS was born on Thanksgiving, ambiguity in the transportation schedule, tuition for private school, & my concerns for our youngest son RS's heart condition.

(Aug. of 2009). We agreed to a final Parenting Plan which was signed by the judge that morning SCP 218.

Feb. 5, 2010, review hearing Ms. Cotton gave an oral report to the judge. She indicated; I was not complying with the provisions of the Parenting Plan, telephone contact, exchanges of health care providers, & that I was incorrigible with Mr. Smith & Ms. Cotton. Mr. Stewart also repeated these allegations.

Mr. Taschner responded that the allegations were untrue & that there was an active CPS investigation going on in Mr. Smith home; based on a referral made by CS & RS's doctor & that Mr. Taschner was looking into it. Mr. Taschner contacted DSHS that day & was told that the investigation was still open, but was going to be closing soon. This review hearing was not evidentiary in nature, no motion was made by any of the parties involved & the court did not take any testimony (Feb. 5, 2010). At this time no statements had been made that the residential time had been impacted in any way SCP 234. Mr. Smith complained that I had enrolled the children in a church program called Awanas on Wed. nights to deprive him of his phone call time. Mr. Taschner then indicated to the court that this was not the case SCP 234. There were allegations made that I did not provide a doctors name to Mr. Smith, however I was forced to make an appointment with a specialist for RS for his heart & that information was

provide to Mr. Smith, but not until after this appointment because I was not sure who the doctor was at that time. Finally, Mr. Stewart & Ms. Cotton alleged that I was not sending the prescription medication for our children in the prescription bottle when our children went for visitation (Feb.5, 2010). Mr. Taschner tried to explain to Hon. Judge Edwards that Mr. Smith had not been returning the medication back to me. Mr. Taschner explained that I was given no option because if I was to give him the bottle I would be risking not being able to obtain the unused portion of medication. Hon. Judge Edwards announced he was “reversing” the Parenting Plan so that Mr. Smith & I had each other’s schedule. This was to take place at 4pm that day Feb.5, 2010 CP 001.

There was not an Adequate Cause determination & the Order Temporarily Amending Parenting Plan was then scheduled for review on March 12, 2010 at an Evidentiary Hearing. I was under the impression that the Aug. 2009 Parenting Plan had satisfied the Amending Parenting Plan Mr. Smith had filed in Oct. of 2008.

Mr. Taschner immediately filed a notice for Discretionary Review to the Court Of Appeal on Feb. 5, 2010 along with an Emergency Stay, which ended up being denied on Feb. 10, 2010. Mr. Taschner then began to draft a Motion for Discretionary Review on Feb. 25, 2010 SCP 230.

Feb. 23, 2010 Mr. Taschner withdrew as my attorney for trial

court because at the time he had decided that he wanted out of family law, but stayed on for my appeal. Ms. Darst then took over as acting attorney in this case. This case then went to trial on April 8th, 2010 after the March 12, 2010 "review" hearing was continued (April 12, 2012 exhibit 15 the Casa Certificate was offered up as an exhibit in the April 8th, 2010 court date CP133).

Hon. Judge Edwards ordered that the final Parenting Plan of Aug. 7, 2009, be permanently reversed & that our children should continue to reside the majority of the time with Mr. Smith April 30, 2010 Final Parenting Plan SCP 243 Hon. Judge Edwards then ordered that the matter be noted up for entry of orders if we could not agree (April 8 2010). On April 30, 2010 the trial court entered its findings of facts & conclusions of law in the Modification Order (April 30, 2010 report of proceedings). The court also entered a final Parenting Plan SCP244. On my behalf Ms. Darst objected to the new final Parenting Plan, the finding of facts, & the conclusions of law in their entirety (April 30, 2010 hearing for entry of final orders before Hon. Judge Edwards SCP 233 -237). The matter was set for oral argument on the motion for discretionary review on May 19, 2010. After trial court entered its final orders Mr. Taschner struck the hearing for discretionary review & filed a Notice of Appeal on May 14, 2010 SCP 256. Mr. Taschner filed an appeal based on the affidavit of

prejudice, lack of evidence, & other things.

Aug. 25, 2010 I was found in contempt of those orders. Then on Sep. 7, 2010, finding of facts, conclusion of law, & an order finding contempt were entered SCP208. However if you look at SCP 511, SCP 516, SCP 518, SCP521 exhibits from May 25, 2011 1-3 also exhibits from April 12, 2012 ,Pg. 15. The only charge I was unable to purge was regarding attorney fees. I was forced to quit my job due to complications of my pregnancy on Jun. 17, 2010 SCP511 & I returned to work around the first half of 2011.

Nov. 5, 2010 a motion & order to show cause was filed for a contempt action which kept being continued.

Nov. 11, 2010 my grandpa passing away. During this period Mr. Smith made it very hard to see CS & RS. Mr. Smith went to the extreme on the day of my grandpa's burial by texting & calling my mom's phone & demanding that our children be given back to him right after the funeral. So once again to avoid an issue, our children went straight back to him.

May 25, 2011 not only was I found in contempt, but I was also taken into custody that day SCP223.

Jun. 28, 2011 an opinion was presented CP008. In that opinion it was ruled that the record does not support Judge Edwards finding that my affidavit of prejudice was not untimely CP017.

On July 11, 2011 court was held on a motion for Mr. McNeil for his attorney fees to be paid for by the county because he was not contracted as a defender for the county (assigned by Hon. Judge Edwards). During this time Hon. Judge McCauley “ratified” the Feb. 5, 2010 temporary order of custody CP002 even after the opinion was given which put the Parenting Plan of Aug. 2008 in place. Hon. Judge McCauley went against the rules of the court of appeals & federal rules during the period of a mandate. Federal Rule 41 on Mandate talks about a mandate & issues with jurisdiction & it states if the appellate court’s judgment is not final, that court retains jurisdiction to decide rehearing petitions or otherwise amend its opinion or judgment. During this same period before the mandate issues &, indeed, since the initiation of the appeal, the district court lacks jurisdiction (I assume that trial court lacked jurisdiction), except for matters unrelated to the merits of the appeal or that are merely procedural, such as requests for attorney fees & costs or conferences to schedule anticipated future proceedings.

Aug. 1, 2011 a pretrial hearing took place in front of Hon. Judge Godfrey. Ms. Reid attempted to have the Mandate heard, but Hon. Judge Godfrey stated” he had taken the file home on Friday & it wasn’t in the file on Friday Aug. 1, 2011 pg. 15.” Hon. Judge Godfrey also stated that if there was a fourth judge he would have passed it to them Aug. 1, 2011 pg.

18-19. On Aug. 1, 2011 pg. 15- 16 It is also stated that no Adequate Cause had been entered & the filing they are going off of is the Amended Parenting Plan filed in Oct. of 2008. It is also stated on the Aug. 1, 2011 transcript pg. 15 that Mr. Smith was seeking for back child support & current. On the Mandate from Aug. 1, 2011 it clearly talks about child support & that particular order was also divested. With regards to the Final Parenting Plan in Aug. of 2008, not once did the trial court return CS or RS home with me; in fact it was the opposite of the trial court.

The trial court gave Mr. Smith temporary custody on July 11, 2011. On Sep. 6, 2011 a Petition/ Motion to Modify was filed for custody & in return my attorney Ms. Reid filed a motion to dismiss which was filed on Sep. 6, 2011. Then on Sep. 30, 2011 notice of hearing motion for temporary child support was filed although the temporary child support order was not entered until Oct. 17, 2011 which also granted back child support to Feb. 5, 2010 once again. On Dec. 22, 2011 a motion to vacate & dismiss were filed against the Motion/Petition to Modify Custody.

Although the record is not very clear on what was ordered I can only assume that it was denied. The Trial court has not had an Adequate Cause hearing & Finding of facts, conclusion of law since Sep. 7, 2010 when Hon. Judge Edwards was presiding over my case. That means there has not been proper procedures done in order to modify the Aug. 2008

Parenting Plan which gave me custody & Mr. Smith visitation.

March 16, 2012 the first part of the Trial for Custody began & carried through till April 12, 2010. Jun. 13, 2012, Hon. Judge Godfrey was to sign the Parenting Plan, but instead a continuance was granted. Also on this hearing Hon. Judge Godfrey went against the rules of conduct by threatening to throw me into jail because he claimed I was not using my manners Jun. 13, 2012 pg. 339. The order that came out on Jun. 13, 2012 states things I must do & if I do not do them, then my right will be terminated SCP489. RCW 13.34.180 gives grounds for terminating a parent's rights, which I do not meet the standard to terminate my parental rights.

Jun. 15, 2012 Ms. Glorian withdrew as my attorney. After she withdrew I never received a copy of the Parenting Plan until court. On Jun. 22, 2012, I put in a motion to have the mandate heard which was to be heard on July 2, 2012. Hon. Judge Godfrey not only ignored my request for matters to be stayed until the July 2, 2012 hearing, but he signed orders for Mr. Smith to have custody. July 2, 2012 my request for the removal of Ms. Cotton (the GAL) & all my other orders were denied.

July 9, 2012 my affidavit of prejudice against all three Hon. Judges was denied. I know this is not the norm, but I didn't have anything set up to ask for a change of venue. I didn't know what else to do. I asked for

Hon. Judge Edwards to be removed because I wanted to make sure he was not going to see my case again. I asked for Hon. Judge McCauley to step down because he did not have the jurisdiction to make the decision to give Mr. Smith custody back because my case was still at the COAII. Also he “ratified” the order that Hon. Judge Edwards signed which was giving Hon. Judge Edwards back his power on the previous Feb. 5, 2010 order so what he did was go against the code of conduct. Hon. Judge McCauley took the advice of the GAL who on more than one occasion admits to not interviewing the children at all & then only interviewing the oldest for the first time on Aug. 1, 2011. Hon. Judge McCauley did not make his own conclusions of this case because he stated on record that he was unfamiliar with this case & that he was going off what the GAL said. I put in my affidavit on Hon. Judge Godfrey because he went against the code of conduct by threatening me with jail. Hon. Judge Godfrey even said he would have given my case to a fourth judge if there was one, which tells me he doesn’t care about the case. He also said he didn’t necessarily disagree with Hon. Judge Edwards, but he goes on to say he doesn’t necessarily believe the court of appeals is correct in their decision. I don’t believe that my case will ever have a fair hearing or trial as long as it stays in Grays Harbor Superior Court. I put in my affidavits of prejudice & on July 25, 2012 I filed my Notice of appeal to the Court of Appeals.

Argument

Trial courts are given broad discretion in matters dealing with the welfare of the children. In re Marriage of McDole, 122 Wn. 2d 604, 610, 859 P.2d 1239 (1993); In re Marriage of Kovacs, 121 Wn. 2d 795, 801, 854 P.2d 629 (1993) In re Marriage of Cabalquinto, 100 Wn. 2d 325, 327-28, 669 P.2d 886 (1983). However, “custodial changes are viewed as highly disruptive to children, & there is a strong presumption in favor of custodial continuity & against modification” McDole, 122 Wn. 2d at 610.

A superior court’s broad discretion in making custody determinations is not unlimited. Procedure relating to the modification of a prior Parenting Plan are statutorily prescribed & compliance with the criteria set forth in RCW 26.09.260 is mandatory. In re Marriage of Stern, 57 Wn. App. 707, 711, 789 P.2d 807, review denied, 115 Wn. 2d 1013 (1990). Failure by the trial court to make findings that reflect the application of each relevant factor is error. Stern, 57 Wn. App. At 711. RCW 26.09.260 governs the procedures for modifying a permanent Parenting Plan & contains varying standards depending on the kind of modification sought. These criteria & procedures limit a court's range of discretion. In re the Custody of Halls, 126 Wn App. 599, 606, 109 P.3d 15 (2005). In re Marriage of Stacey L Kinnan 131 Wash. App. 738, 129 P.3d 807 Statute governing modification of a Parenting Plan required the

court to set a date for a hearing on why the requested orders or modifications should be granted, & did not permit the court to engage in alternative dispute resolution & then hold a hearing in the event that matters were unresolved; trial court does not have the unfettered discretion to decide what kind of hearing to hold & when to hold it. RCW 26.09.270.

Therefore, a court abuses its discretion if it fails to follow the statutory procedures or modifies a Parenting Plan for reasons other than the statutory criteria. Halls, 126 Wn. App. At 606. On the other hand, statutory construction is a question of law requiring de novo review. In re the Marriage of Caven, 136 Wn. 2d 800,806,966 P. 2d 1247 (1998).

1. The trial court lacked the authority to Sue Sponte enter a Temporary Order "Reversing" The Aug. 7, 2009, & lacked the authority to enter A final parenting plan On April 30, 2010 & on Jun. 25, 2012. The trial court lacked authority once to sua sponte enter a temporary order "Reversing" The Aug.7, 2009 final parenting plan on July 11, 2011. The orders it was based off were null & void based on the mandate of Aug. 1, 2011 & to Enter a Final Parenting Plan on Jun. 28, 2012;The Trial Court Lacked Jurisdiction because the orders it was based off were null & void & did not follow Proper procedures beginning with the July 11, 2011.

As a general rule, the doctrine of res judicata prevents a final judgment from being collaterally attacked in another proceeding. State v.

Dupard, 93 Wn. 2d 268, 609 P. 2d 961 (1980); Bordeaux v. Ingersol Rand Co. 71 Wn. 2d 392, 429 P. 2d 207 (1967). The purpose of this doctrine is to support the policy of finality. Karen Nelson Moore, *Collateral Attack on Subject Matter Jurisdiction: A Critique of the Restatement (Second) of Judgments*, 66 *Corn. L. Rev.* 534 (1981). This policy of finality applies to final Parenting Plans in dissolution actions. Thompson v. Thompson, 82, Wn. 2d 352, 510 P. 2d 827 (1973).

a. The Court Did Not Follow Mandatory Procedures Relating To Entry Of Temporary Parenting Plans On Feb. 5, 2010 or on July 11, 2011.

A judge does not have discretion to summarily modify a final Parenting Plan without following the provisions laid out in RCW 26.09.260. Stern, 57 Wn. App. At 711. Courts have interpreted RCW 26.09.260 to mean that a modification is permissible only when there is sufficient evidence to support a finding that: (1) there has been a change in circumstances, (2) the best interests of the child will be served, (3) the present environment is detrimental to the child's well-being, & (4) the harm caused by the change is outweighed by the advantage of the change. George v. Helliard, 62 Wn. App. 378, 383, 814 P. 2d 238 (1991). If a court finds that there is Adequate Cause to modify the Parenting Plan it must find that a substantial change in circumstances has occurred with the non-moving party since entry of the last Parenting Plan RCW 26.09.260.

Questions of statutory construction, in this case the applicability of RCW 26.09.260, are reviewed de novo. Hollmann Corcoran, 89 Wn. App. 323, 332, 949 P.2d 386 (1997). The discretion of the court is limited to modification of a final Parenting Plan upon the procedures laid forth in RCW 26.09, which provides: of a custody decree or Parenting Plan shall submit together with his party seeking a temporary custody order or a temporary Parenting Plan or modification option, an affidavit setting forth facts supporting the requested order or modification & shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that Adequate Cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. RCW. 26.09.270.

The Court has no discretion with a Parenting Plan modification under RCW 26.09.260 unless it follows the mandatory procedures & makes an Adequate Cause finding. Which Hon. Judge McCauley & Hon. Judge Godfrey failed to do. In fact Hon. Judge McCauley said he was unfamiliar with the case on July 11, 2011, but was going to “ratify” the Feb.5, 2010 order. When Hon. Judge Godfrey saw the case on Aug. 1, 2011 he said Hon. Judge McCauley must have found Adequate Cause &

when I said he hadn't he then stated there was Adequate Cause. There has never been a finding of facts or Adequate Cause hearing. We do not determine whether the result reached by the trial court is correct in as much as we are uncertain whether the disposition of the trial court reflected the view that the welfare of the child was the paramount consideration or whether the right of the parents to custody was given improper weight. Lines v. Lines, 75 Wn. 2d 489, 451 P. 2d 914 (1969).

In order to obtain a finding on the issue of modification of a Parenting Plan, a party must submit with his or her motion an affidavit listing facts supporting the requested modification. RCW 26.09.270. The court must deny the motion unless it finds that the affidavits establish Adequate Cause for hearing the motion. RCW 26.09.270. Adequate Cause is something more than prima facie allegations which if believed would allow inferences that the statutory criteria could met. Roorda v. Roorda, 245 Wn. App 848, 611 P. 2d 794 (1980). Hon. Judge Godfrey never listed out the facts he was basing his decision on & if I understood the time frame that the court could look at a petition or motion to modify it is from the time the Final Parenting Plan is signed until the time that a petition or motion to modify is entered which in my case was from Aug. of 2008 until Oct. of 2008, however If you go off the mandate until the petition to modify it was from Aug. 1, 2011 until Sep. of 2011 which over all during

these periods of time no substantial change had occurred. The mandate was remanded for further proceedings on Aug. 1, 2011. Federal Rule 41 on Mandate states; the mandate's substantive aspects are most noticeable when the appellate court orders further proceedings on remand. Once it receives the mandate, the district court (I assume this rule applies with superior court also) may conduct those proceedings, but it must do so in accordance with what happened on appeal. Known as the "mandate rule," the mandate informs the district court of what it must do to implement the appellate decision on remand & limits further proceedings to the scope of the mandate. The lower court "must comply strictly with the mandate rendered by the reviewing court" & "*may not deviate*" (emphasis added) from the mandate. Huffman v. Saul Holdings Ltd P'ship, 262 F. 3d 1128, 1132 (10th Cir. 2001); see also, e. g., United States v. Rivera-Martinez, 931 F. 2d 148, 150 (1st Cir. 1991) "When a case is appealed & remanded, the decision of the appellate court establishes the law of the case & it must be followed by the trial court on remand "Relatedly, the parties generally cannot raise issues on remand that were not raised in the initial appeal. See, e. g., Engel Indus. Inc. v. Lockformer Co., 166 F.3d 1379, 1383 (Fed. Cir. 1999) the mandate rule limits the scope of what the district court may do on remand. Please see Appendix Pg. 6 for RCW 26.09.260 which lists reasons to modify a parenting plan.

In this case, no motion was made to modify the Aug. 7, 2009, Final Parenting Plan. No affidavits were filed, no Adequate Cause finding was made, testimony was not taken when the court formulated its Temporary Order Amending Parenting Plan on Feb. 5, 2010 & once again no hearing for Adequate Cause or finding of facts were done for the July 11, 2011 Temporary order of Custody & the record does not account for a motion or petition to modify. In fact it is my understanding that the trial court lacked jurisdiction to “ratify” the Feb. 5, 2010 order based on the fact that the mandate had not come down from COAII so at this time the only court that had any jurisdiction to do this would have been COAII. The order that Hon. Judge McCauley was going off of was the order that Hon. Judge Edwards signed & at this time he was divested of his power, which means the orders he had signed were null & void.

Furthermore the court simply decided sua sponte to enter a temporary Parenting Plan based upon allegations which at most would have constituted contempt when they signed the Temporary Custody Order on Feb. 5, 2010 & ratifying it on July 11, 2011. This is clearly derogation from the procedures laid forth above in RCW 26.09.270. & a direct violation of Federal Rule 41. Furthermore, when a court enters a temporary order relating to a Parenting Plan the court is required under RCW 26.09.197 to examine certain factors.

After considering the affidavit required by RCW 26.09.194(1) & other relevant evidence presented, the court shall make a Temporary Parenting Plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to: (1) The relative strength, nature, & stability of the child's relationship with each parent; & (2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending. The court shall also consider the factors used to determine residential provisions in the permanent Parenting Plan. Please see appendix Pg. 6 for RCW 26.09.197.

When looking at the criteria of 26.09.191, the trial court lacks sufficient evidence in saying that I was emotionally hurting our children. In fact when Ms. Lyle; CSs counselor testified she testified that CS had issues with his father & that even after he left my care & continued his sessions with Ms. Lyle he still identified his home as with me. Ms. Lyle had concerns about CS being in Mr. Smith's care because there were a few sessions that were held where CS had a lot of knowledge about guns & the guns being in the house were not properly secured. Looking at my evaluation with Dr. Whitehill please see appendix Pg. 79-82 he even states in his findings that I have a strong bond with my daughter & that my issues would not affect my parenting. In fact he goes on to say that my

issues have been brought to light because of the long history of court. Dr. Whitehill identified my issues as being 300.02 General Anxiety & v61.10 (Ex) - Partner Relational Problems SCP541. Although there is a mention of personality trait disturbances with narcissistic, histrionic, & compulsive it was explained to me that I have traits, but not a diagnosed issue with these. Some of which could be explained by the long on going issues of custody. I agree I have not always acted as the GAL thought I should be perceived as a mother,

Looking at SCP 542 you will see that the issues following the diagnosis Ex- Partner Relational Problems is that Mr. Smith & I have issues & can't agree on what is best for our children. Mr. Smith & his mom would threaten me with take our children & I would never see them again SCP489. Mr. Smith has filed contempt & Hon. Judge Edwards decided that I had violated the orders of the court by taking our children to the doctor & not paying his attorney fees; which at that point I had joint decision making so I am not sure why it was believed that I violated any orders. CS & RS were taken in to the ER for medical care. As a result Mr. Smith had me thrown into jail, by filing contempt charges, for trying to seek medical care for our children May 25. 2011 exhibit 1 & 3. At that time, our son told me that, (his dad), Mr. Smith, said I was a criminal & that's why I got put into jail. Mr. Smith has continually dragged me into

court even on frivols claims & has put restraining orders on me to prevent me from seeing our children for visitation. Mr. Smith has even stated in front of our children that he didn't have a problem with throwing me in jail March 16, 2012 pg. 188. I have been denied most recently visitation time with our children on Mothers' Day because he claims I spoke to him badly. The strange thing about that is I hadn't even talked to him. I was in contact with Mr. Stewart & Ms. Cotton about Mothers' Day via email & telephone. This is not the only thing that has been done to our children & myself; Mr. Smith has even made it a point for our children & I to not spend the holidays together since 2010. "The child should be placed where she will receive the greatest degree of affection & discriminating care which would better tend to fit her to take her place in the active affairs of life." In re Day, 189 Wn. 368, 65 P. 2d 1049 (1937)

Our children were taken away from the primary care taker, taken away from their entire family who has helped me raise them & help them grow, taken out of Awana's which is a youth group for church, away from CS's private school that I paid for since we came home in 2006, their little sister Kiele, their pets that they have had since we came home, & most of all away from everything they have ever really known.

The record shows on SCP542 my bond with Kiele & how she is well adjusted & bonded to me. It also states that there has been no

undersigned attention relative to my parenting of Kiele. Furthermore on SCP 542 it state that the evaluation should not be misconstrued as a custody recommendation, as *no comparable assessment of Mr. Smith has been conducted (emphasis added)*. Another thing that is mentioned in the report is that our children were not evaluated with me to see how we interact. Not only has this been the case with Dr. Whitehill, but Ms. Cotton as well. Ms. Cotton has not done a full evaluation of this case. Furthermore factor (i) shall be given the greatest weight. RCW 26.09.187(3). Therefore, in fashioning a temporary plan such as the Temporary Order Amending Parenting Plan the court is required to give consideration to the nature of the relationship of the child to the parent & which parenting arrangement will cause the least disruption in the life of the child. Moreover, the court is required to consider the factors in RCW 26.09.187(3) (i)-(vii). There is no evidence that the court considered anything at all. Instead the court summarily announced its ruling.

If the court had engaged in such a consideration the children would have stayed with me pending trial on April 8th, 2010. I have been the primary caretaker of our children their entire lives & suddenly moving them into the non-residential parents household is a gross disruption in their lives.

Please see Appendix Pg. 3-7 for RCW 26.09.197. RCW 26.09.187

(I) (3) states that "the relative strength, nature, & stability of the child's relationship with each parent" is the most important factor for the court to consider. These two RCW's go hand in hand. "In this case it appears to have been totally disregarded. More troubling, there was no evidence that Mr. Smith even sought primary residential placement of our children on Feb. 5, 2010. "Amending" the Parenting Plan of Aug. 7, 2009, which was an agreement between all of us without a motion being made & no findings to support the criteria required by RCW 26.09 relating to Parenting Plans is a clear abuse of discretion. Mr. Smith was never really involved in our children's lives until he obtained custody on April 30, 2010 & again on Jun. 25, 2012. Mr. Smith never went to doctor appointments, school activities, birthday parties, with the exception of the first birthday party after he got home from his tour of duty. I asked Mr. Smith several times about doctor appointments including the Heart Specialist for our youngest son when he was first diagnosed with heart issues. July 11, 2011 Mr. Smith still had not filed for custody & there still had not been a finding of facts, conclusions of law, or an Adequate Cause hearing. In fact there was not even a temporary order on July 11, 2011, because at this time the Court of Appeals had sent down its opinion on Jun. 28, 2011. Since the opinion was not considered on July 11, 2011 & Hon. Judge McCauley did ask for a temporary Parenting Plan when there

was already a permanent parenting plan on file April 30, 2010.

b. The Court Lacked the Inherent Authority to Modify The Final Parenting With its Feb. 5, 2010, Temporary Order & Its April 30, 2010 Modification Order & Final Parenting Plan. The Court Lacked The Authority Once Again To Modify The Final Parenting Plan Of Aug. 2008 With The “RATIFIED” Order Of Temporary Custody On July 11, 2011 & The Final Parenting Plan On Jun. 25, 2012.

1. Courts Inherent Equitable Powers.

A family law court retains its common law equitable powers over matters relating to the welfare of minor children to the extent consistent with the Parenting Act, chapter 26.09 RCW. In re the Marriage of Possinger, 105 Wn. App. 326, 333-34, 19 P. 3d 1109 (recognizing a trial court's common law authority to enter an interim rather than permanent Parenting Plan at the time of entry of a dissolution decree even in the absence of express statutory authority), review denied, 145 Wn. 2d 1008, 37 P. 3d 290 (2001). Under the Parenting Act, "the best interests of the child" remains the touchstone for trial court decisions affecting the welfare of minor children.

RCW 26.09.002. When the best interests of the child require it, a court may defer permanent decisions on parenting issues until after a decree of dissolution is entered. Possinger, 105 Wn. App. at 336-37. As the Washington State Supreme Court stated: Family law courts have

always possessed the power, in whatever manner the question arose, of protecting & controlling the Property & custody of minors. That power is broad & plenary & is not derived from statute. While applied in divorce & separation cases, its exercise is not limited to those actions. In cases involving the custody of minor children, whether it be by divorce or separation proceeding the court is thus exercising its inherent power & jurisdiction in equity. Chandler v. Chandler 56 Wn. 2d 399, 403-04, 353 P. 2d 417 (1960). The Legislature may curtail the court's equitable jurisdiction by statute. However, if it does not express an intent to change current law & the statute is consistent with prior policy the appellate courts will presume that the Legislature intended to leave that prior equitable jurisdiction untouched. Little v. Little, 96 Wn. 2d 183, 194, 634 P. 2d 498 (1981). In Possinger, Division I of the Washington State Court of Appeals held that the Parenting Act, RCW 26.09, explicitly grants courts the authority to enter either a temporary Parenting Plan prior to entry of the decree of dissolution, or a permanent Parenting Plan at the time the decree of dissolution is entered. Possinger, 105 Wn. App. at 333. However, the Parenting Act is silent as to whether the court has the authority to enter a temporary Parenting Plan at dissolution of the marriage to see how things develop between the parents & the minor child. Id. at 335. Because the statute is silent as to whether a court may

enter an interim Parenting Plan at dissolution & to reserve on a final plan until a period of time has passed, the court in Possinger held that the court retained its equitable jurisdiction to make such provisional plans at dissolution. Possinger, 105 Wn. App. at 337. In two closely related case that predate the Parenting Act, the Washington State Supreme court held that a court may postpone the making of a custody determination pending a trial custody period, or the happening of some relevant future event. Phillips v. Phillips, 52 Wn. 2d 879, 884, 329 P. 2d 833 (1958); Potter v. Potter, 46 Wn. 2d 526, 528, 282 P. 2d 1052 (1955). In Phillips, the court rejected the argument that the court did not have the authority to defer entry of a final order. Phillips, 52Wn. 2d at 884. It is argued that the court was without authority to continue the hearing until six months after the date of the order, because, under Art. IV, § 20, of the state constitution, the court was required to render its decision within three months after the matter was submitted. In that provision, an exception is made where a rehearing is ordered, & this court has expressly approved such continuances in custody matters where the trial court, in its sound discretion, deems it wise to postpone final determination until after a trial period during which the effectiveness & propriety of its temporary order can be observed.

Id

Likewise, in Potter, the court deferred entry of a final plan pending review to see how it was working for the child. The trial court stated: The boy was twenty months old at the time of the trial. The decree provided that appellant should have the care, custody, & control of the child until Oct. 1, 1954 (5 months after entry of the decree). The decree further provided that, on Oct. 1, 1954, the parties should appear Before the court for a determination as to whether any change should be made in the custody provision. Potter, 46 Wn. 2d at 527, 528. However, the Parenting Act limits a court's discretion to delay decisions relating to child custody after final orders in a modification proceeding have been entered. While it may be that the court retains its inherent jurisdiction to enter Parenting Plans that would best be characterized as temporary in a dissolution under the Parenting Act, the matter before the court is not a dissolution action, but rather it originated in respondent Smith's motion to amend the Parenting Plan.

Both Possinger & Phillips involved dissolution proceedings. Furthermore, while, Potter, was a modification action it predated passage of the Parenting Act RCW 26.09. Unlike RCW 26.09.187, which contains the criteria for establishing a Parenting Plan during a dissolution, RCW 26.09.260 requires the court not to change a residential schedule unless it finds that facts that have arisen since the prior Parenting Plan that were

unknown to the court at the time of the prior decree or plan & that a substantial change has occurred in the circumstances of the child or the nonmoving party. Indeed, the predominate issue in Possinger, was whether the trial court could fashion a Parenting Plan based upon the criteria found in RCW 26.09.187 & avoid considering the mandatory criteria found in RCW 26.09.260. Possinger. 105 Wn. App. at 337 the court's discretion in a modification is limited by the requirement that the current residential schedule be retained unless: (a) The parents agree to the modification; (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the Parenting Plan; (c) The child's present environment is detrimental to the child's physical, mental, emotional health & the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or (d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered Parenting Plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 Or 9AAO. 070. RCW 26.09.260 The Legislature clearly expressed its intention in the modification statute to curtail the equitable power of the court to defer disposition of residential schedules once a final order had been entered in modification actions by

including strong presumptions in favor of retaining the current schedule. In Possinger, Potter, & Phillips, the orders issued by the court could best be considered provisional determinations regarding the residential placement of the children. To determine whether an order is final or temporary the court must look at the Parenting Plan itself & avoid simple semantic distinctions. Possinger, 105 Wn. App. 337. In Possinger the trial court stated in its "Permanent Parenting Plan": I am going to adopt the Parenting Plan proposed by the husband for a one year period of time until the child is in the first grade I would like you to have this matter reviewed by this Court at the end of that year's period of time This department retains jurisdiction for this issue. Id. at 329-330. Likewise, in Phillips & Potter the trial court expressly held that the matter of the permanent custody of the minor be continued six months. Phillips, 52 Wn. 2d at 882; Potter, 46 Wn. 2d at 527-528. This reading is consistent with policy of stability found within the Parenting Act RCW 26.09

The best interest of the child is ordinarily served when the existing pattern of interaction between a parent & child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm. The trial court is claiming I am hurting our children mentally & emotionally, however there has not been anything to support this in the record. RCW 26.09.002.

This does not mean that a court may not remove a child from a Harmful & dangerous situation pending resolution of any issues relating to a modification. A court may enter a temporary order relating to parenting on the basis of motion, declaration, & hearing. RCW 26.09.060, RCW 26.09.194 Stated: The court summed up this reasoning concisely in Possinger when it is under either label, the trial court properly considered the criteria contained in RCW 26.09.187 in formulating the 1999 parenting order, rather than treating the matter as a modification proceeding under RCW 26.09.260. The court's formulation of a residential schedule to cover Anna's school years was its initial decision in that regard, not a modification of its prior decision. Possinger, 105 Wn. App. at 337-338. In the present case Mr. Smith & I divorced with a final Parenting Plan being entered on Aug. 15 2008. Unlike Possinger, the court had already entered a permanent Parenting Plan Mr. Smith filed a motion to modify the Parenting Plan pursuant to RCW 26.09.260 on an unapproved court form. The Adequate Cause hearing was never held but continued pending the report of the GAL Ms. Cotton. Nov. 3, 2008 pg. 6-8 When the parties entered the Aug. 7, 2009, Parenting Plan the court was making a determination about a modification, not an initial determination in a dissolution. There can be no doubt that this action was a modification under RCW 26.09.260 because the trial court expressly stated that it was

modifying the Parenting Plan based upon 26.09.260 in its Modification Order. The court abused its discretion by deviating from the requirements imposed upon it by the Parenting Act when it modified the Aug. 7, 2009, Parenting Plan on Feb. 5, 2010, & then subsequently proceeded to trial on April 8th, 2010, without making an Adequate Cause finding, & then the signing of the Parenting Plan on April 30, 2010, when this court gave its opinion & then on Aug. 1, 2011 a mandate. The trial court by this time had already once again entered a temporary order which “ratified” the Feb. 5, 2010 plan on July 11, 2011 & a Final Parenting Plan once again on Jun. 25, 2012. As of this date no Adequate Cause determination has been made.

c. We did not agree to waive the Provisions of RCW 26.09.260(1) (2) Relating To The Modification Of Final Parenting Plans Nor Does The Aug. 7, 2009, Final Parenting Plan Express An Intent By The Court To Retain Jurisdiction Over The Residential Schedule Beyond Minor Adjustments. Yet The Trial Court Continues To Make Modifications & Continues To Change Parenting Plans.

Our Parenting Plan has been modified roughly 6 times since Aug. of 2008. We did not stipulate to, nor did the court expressly state, that the trial court would retain this authority. Paragraph V (m) of the Aug. 7, 2009, Parenting Plan did anticipate a review hearing that was limited to

minor adjustments. SCP 227 it states in full: This Parenting Plan shall be reviewed in six months to determine whether further minor adjustments or other actions are necessary to make it more workable & for the court to receive a report from the GAL on the parties' efforts at compliance.

Thereafter, any further changes shall only be upon proper filing & prosecution of a petition to modify the Parenting Plan. We had extensive off the record discussions about this provision & it was agreed that the Parenting Plan should be flexible enough to allow the court to make changes to the Parenting Plan that did not change the primary residential placement of the children with me. Support for this position is found throughout the Parenting Plan where provisions relating to our children's school schedule are planned out in some detail. For instance, in paragraph 3. 2 SCP 219 of the Parenting Plan which states that "until the youngest child reaches the second grade the schedule will be the same as paragraph 3. 1 SCP 219. If we had contemplated adjusting this section of the plan at the review hearing this provision would be meaningless. Likewise, if paragraph V (m) meant that the court was retaining jurisdiction to do a major modification then planning a summer schedule in section 3.5 SCP 220 would make no sense. The order was due to be reviewed well before summer. More importantly, the use of the term "minor modification" was not an accident. A minor modification is a very specific change to a

Parenting Plan that only impacts a child's residential schedule in limited ways. A minor modification is a change to the Parenting Plan based upon a substantial change of circumstance of either parent or the child that does not require the court to retain the current residential schedule unless the court makes specific findings. A minor modification "does not change the residence the child is scheduled to reside in the majority of the time &: (a) Does not exceed twenty-four full days in a calendar year; or (b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the Parenting Plan impractical to follow; or (c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or Parenting Plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, & further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. "

RCW 26.09.260(5).

When looking into the Final Parenting Plan of Aug. of 2009 SCP 218- 238 it was not done with the intent of the trial court to continue jurisdiction. Line m on SCP 227- 228 makes it very clear that only minor modifications should be done. Aug.1, 2011 mandate was sent down to trial court. The lower court “must comply strictly with the mandate rendered by the reviewing court” & “may not deviate” from the mandate. Huffman v. Saul Holdings Ltd P’ship, 262 F. 3d 1128, 1132 (10th Cir. 2001); United States v. Rivera-Martinez, 931 F. 2d 148, 150 (1st Cir. 1991) (“When a case is appealed & remanded, the decision of the appellate court establishes the law of the case & it must be followed by the trial court on remand.” Relatedly, the parties generally cannot raise issues on remand that were not raised in the initial appeal. See, e. g., Engel Indus., Inc. v Lockformer Co., 166 F. 3d 1379, 1383 (Fed. Cir. 1999) the mandate rule limits the scope of what the district court may do on remand. When the opinion was sent out I ended up in trial court again on July 11, 2011 for Mr. McNeils fees; which turned out to be not just for fees, but Hon. Judge McCauley “ratified” the temporary Parenting Plan that Hon. Judge Edwards signed please see appendix G Pg. 44-45. Which when you look at the legal definition of ratify it mean to confirm & adopt the act of another even though it was not approved beforehand. Moreover, the court never

indicated that it was deferring making a ruling on the issue of primary residential custody of the minors. Clearly, the plain language of paragraph V (m)(parenting plan of 2009) along with the statements made by the attorneys does not support the provision that I was waiving the provisions of RCW 26.09.260(1), (2). A party may waive the requirements of RCW 26.09.260. In re Marriage of Adler, 131 Wn. App. 717, 129 P. 3d 293 (2006). If paragraph V (m) constitutes such a waiver of the Adequate Cause requirement then it is a waiver only of the procedures required to review the plan to make adjustments that do not affect the primary residential placement of the children. While a court may retain jurisdiction to review the efficacy of its orders, in all cases where the court has found that the court did reserve such review of the primary residential schedule it was clearly & expressly stated by the court & present in the interim order. Phillips, 52 Wn. 2d at 889; Potter, 46 Wn. 2d at 527-528; Adler, 131 Wn. App. at 725; Possinger, 105 Wn. App. 333-34. in this case the court's order & the surrounding circumstances indicate that the Aug. 2008, Parenting Plan was meant to be a final order with regards to primary residential placement of our children with me. For this reason the Feb. 5, 2010 temporary order, July 11, 2011 & the final orders entered on Jun. 26 2012, should be reversed & the matter remanded to the trial court in Pacific County for an order reinstating the Aug. 2008 Parenting Plan.

If the Jun. 25, 2012 order is not a "final order" then agreeing to it would not impliedly waive any objections to the lack of Adequate Cause. Parties enter temporary orders all the time & merely stipulating to a temporary Parenting Plan during the pendency of a modification should not be seen as a waiver of the right to object to procedural irregularities at final judgment. For instance, in a case where the Division I of the Washington State Court of Appeal found that a party stipulated to Adequate Cause the party signed a stipulation that stated a substantial change in circumstances did exist & that it warranted a trial on the issues of custody, visitation & support. In re Marriage of Naval, 43 Wn. App. 839, 840, 719 P. 2d 1349 (1986). I did not agree to any such thing.

d. There Was No Substantial Change In Circumstances Because our Inability To Communicate & Effectively Co-Parent Was Anticipated In The Prior Final Parenting Plans.

Trial courts are vested with great discretion in determining the custody our minor children. Such exercise of discretion will not be disturbed on appeal absent an abuse. Munoz v. Munoz, 79 Wn. 2d 810, 813-14, 489 P. 2d 1133 (1971). A trial court's final Parenting Plan is reviewed for an abuse of discretion. In re Marriage of Cabalquinto, 100 Wn. 2d 325, 327, 669 P. 2d 886 (1983). A trial court abuses its discretion Only if its decision is manifestly unreasonable or based on untenable

grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn. 2d 39, 46-47,940 P. 2d 136 (1997).

A substantial change in circumstances sufficient to allow a change in the residential provisions of a final Parenting Plan must be based upon a change that has occurred since the entry of the order or upon facts that were unknown to the court at the time the order was entered. In re Marriage of Hansen, 81 Wn. App 494,914 P. 2d 799 (1996).

As is made repeatedly clear throughout this case is that the parties had a longstanding history of not getting along. During the trial Mr. Smith testified that even when we were married him & I did not get along & that I would not let him have telephone contact with the children. (CP133)

1) Aug. 2008 Final Parenting Plan

The court entered a final Parenting Plan in Aug. 2008 after a bench trial in the initial dissolution. SCP 191- 199. This plan provided for primary residential placement of the children with me. In Sep. of that year Mr. Smith brought a Motion for Contempt SCP 203- 204 & then in Oct. he brought a motion to modify the Aug. 2008 Parenting Plan. CP 20-21. In his declaration in support of this motion Mr. Smith states that the basis for his request is that I was recently the victim of a domestic violence incident & that I was previously involved in a similar situation. Id. at 21. When the matter came before the court on a show cause hearing on Nov. 3, 2010,

my attorney indicated that one incident occurred before the Aug. 2008 Parenting Plan & that one incident occurred after. This was not a fact unknown to the court prior to the entry of the Parenting Plan in Aug. of 2008. At this hearing Mr. Stewart also brought up an incident prior to the Aug. 2008 Parenting Plan where rocks were allegedly thrown at Mr. Smith by me when the children were being transferred. Neither this incident nor the assault on me was brought up in subsequent proceedings. Indeed, at the trial on April 8, 2010, the court hears nothing about the assault on me or the incident with the rocks.

A modification under RCW 26.09.260 may only proceed based upon facts that have arisen since the last plan or that were not known to the court then. Not only had the court never made an Adequate Cause determination, but the substantial change in circumstances that it cites in its Modification Order are not even remotely related to the declaration in support of the motion for modification. The Modification Order cites the Findings of Fact & Conclusion of Law set forth in section II of the order as the substantial change in circumstances. A cursory review of these Findings of Fact reveals that there had been no substantial change in circumstances since in these areas since the Aug. 2008 plan.

If the court concludes that the Feb. 5, 2010 & July 11, 2011 temporary order or Jun. 25, 2012 Parenting Plans were based upon the

motion for modification filed by the respondent in Oct. of 2008 then the decision of the trial court to modify the parenting based upon Findings of Fact numbers 2.1 (4)(a), (c), (h), (l), (q), (m) & Conclusions of Law numbers 1 was a manifest abuse of discretion & an error of law because it appears that these findings were based upon facts that preexisted the final Parenting Plan of Aug. 2008.

For instance, it was an abuse of discretion for the court to find that an ongoing pattern or refusal to cooperate with the father was a substantial change of circumstances from the Aug. 2008 order.

Indeed the court states in its ruling on April 8th, 2010: There has been a history of decisions by McKayla Smith since the inception of this case that establish poor judgment & inability to make good decisions both as it relates to herself & her children & to her relationships with other people. I don't know what she can do to obtain better skills at dealing with her ex-husband, his significant other & the GAL & anybody else in her life with whom she has found conflict. April 8th, 2010 128-129.

Likewise, the trial court manifestly abused its discretion when it entered Finding of Fact number 2.1 (4) (h) that I have displayed a history of poor judgment & an inability to make good decisions for myself & our children in its Modification Order. It is unclear what testimony the court heard during the trial that lead it to this conclusion. This finding appears to

be related to the declaration filed in support of the Motion to Modify the Parenting Plan almost 2 years previously. The trial court best revealed the source of the evidence that it was relying on to make these findings in Finding of Fact number 2.1. 4. J SCP 234 where it found that the mother's non-cooperation & obstruction of the father's visits & interactions with his sons dates back several years & that the mother's conduct demonstrated a deliberate & consistent interference in the relationship between the sons & the father in its Modification Order. However I do not handle the phone calls between our children & Mr. Smith & I do not do drop off or pick up with Mr. Smith.

The trial court is intimately related with the facts of this case & the Hon. Judge Edwards presided over the trial in Aug. of 2008 & also signed the final parenting after that trial. A judge manifestly abuses his discretion where it is apparent on the face of his findings that he is making factual findings not on the evidence submitted to him at trial, but facts which he has firsthand knowledge of. The legislature sought to curtail the inherent discretion of the Judge in a modification action to making changes in custody on the basis of unknown facts or circumstances that have arisen since the entry of the last Parenting Plan.

Moreover, the court erred in relying on Finding of Fact number 2.1 (4)(g) in its Modification Order that the mother scheduled discretionary

activities during the father's scheduled visitation & refused to cooperate on alternate dates & times for scheduled visitation & telephone calls with the father in its Modification Order. SCP234 (G). The GAL testified at the trial there had been problems with telephone calls prior to the Aug. 2008 Parenting Plan. The court abused its discretion in finding that past difficulties with telephone calls could establish a substantial change of circumstances under RCW 26.09.260, since this is not a fact that had arisen since entry of the order. Finally, it appears that the court considered evidence prior to the Aug. 2008 Parenting Plan when it entering Finding of Fact number 2. 1(4)(q) its Modification Order that less drastic alternatives, including mediation, to affect a positive co-parenting relationship have been attempted & have failed due to the mother's behavior CP 277. Mediation has never occurred prior to the Aug. 2008 Parenting Plan & it did not occur subsequent to it. While the parties did meet in the office of Jean Cotton prior to the entry of the Aug. 2009 Parenting Plan, this was not "mediation" but more of a settlement conference. In any event, there was no evidence presented that a mediation session had ever failed due to Ms. Smith's behavior.

Furthermore, the court abused its discretion in entering Finding of Fact number 2. 1 (4) (c) that the mother filed "unsupported" claims of abuse in it's the father in its Modification Order CP 276. The GAL

testified at the trial there had been problems with telephone calls prior to the Aug. 2008 Parenting Plan. The court abused its discretion in finding that past difficulties with telephone calls could establish a substantial change of circumstances under RCW 26.09.260, since this is not a fact that had arisen since entry of the order. Finally, it appears that the court considered evidence prior to the Aug. 2008 Parenting Plan when it entered Finding of Fact number 2. 1(4)(q) its Modification Order that less drastic alternatives, including mediation, to affect a positive co-parenting relationship have been attempted & have failed due to the mother's behavior SCP 234-235. Furthermore, the court abused its discretion in entering Finding of Fact number 2. 1 (4) (c) that the mother filed "unsupported" claims of abuse in its Modification. The record is devoid of any testimony relating to me reporting abuse. While the issue was raised at the Feb. 5, 2010, hearing, there was no testimony & no evidence taken. SCP 234 i . The Parenting Act clearly mandates that a judge may only look to facts & circumstances that have developed or were unknown at the time the last decree was entered. It is clearly error for the judge to look at facts that were known to the court or had occurred prior to the modification to form the basis for satisfying RCW 26.09.260's substantial change of circumstances requirement. Likewise, it would be error for the judge to consider facts that had occurred subsequent to the petition to

modify & certainly it would not want to use facts that were prior to the Aug. of 2008 Parenting Plan to modify & change it to the current Parenting Plan of Jun. 25, 2012. Although when you look at the Jun. 25, 2012 Parenting Plan you can clearly see that what the trial court did is carry accusations from what was said during Hon. Judge Edwards time on our case & what was outside the scope of the mandate & compiled a list of things that the trial court & the other parties felt were reasons to take our children from me. The trial court never followed the Mandate that gave me custody back on Aug. 1, 2011. Not only did the trial court not follow the mandate, but before the mandate even came down to trial court the trial court had “ratified” the order from Feb. 5, 2010 which there was no ground to do in the first place because there was not a temporary order that would allow for an Amended Parenting Plan to adjust a permanent Parenting Plan, but yet again the trial court did not have an Adequate Cause hearing or a finding of fact & conclusions of law; which would make it impossible to know exactly why our children were being taken out of my care.

2) Aug. 2009

Moreover, the court also abused its discretion in modifying the Aug. 2009 Parenting Plan on the basis of a substantial change in circumstances based on Findings of Fact numbers 2.1 .4(a)-(t) in its

Modification Order. Each & every one of these findings relate to difficulties that Mr. Smith & I were having prior to the entry of the Aug. 2009 Parenting Plan. At the Aug. 7, 2009, hearing for entry of orders the GAL & our attorneys reported on these issues in detail to the court. The trial court erred when it concluded that Finding of Fact number 2. 1(4)(d) that the mother's failure to provide the father with the necessary information regarding health care providers despite direction & order within the Parenting Plan to do so or that she has failed to notify the father of healthcare providers & appointments in its Modification Order was a substantial change in circumstances. SCP 234 (d) while the appellant denied that she had failed to comply with this provision because of the letter Mr. Taschner had mailed to Mr. Stewart & Ms. Cotton, certainly this was an issue that the court was aware of when the Aug. 2009 Parenting Plan was entered. For the same reason the court abused its discretion in finding a substantial change in circumstances in Finding of Fact 2. 1(4)(i) & (0) that the oral report of the GAL raised issues of immediate concern for the emotional, psychological, & physical health & safety of our children requiring immediate action. During Ms. Cotton's report on Feb. 5, 2010, she discussed her opinion that I was inflexible, that the children were not available for the Wednesday night telephone call, that I had sent medication for the children to Mr. Smith's home in unmarked containers,

& had failed to inform him of a doctor appointment. The only issue unknown to the court at the time the parties entered into the Aug. 2009 Parenting Plan was me sending medication home in an unmarked container because of the parties' difficulties co-parenting. This is nothing new. In addition the court also abused its discretion in ruling that a substantial change in circumstances has occurred as a result of its Finding of Fact number 2.1 (4)(m) & (0) that I allowed my personal feelings, issues, & anger about the dissolution of the marriage & my feelings towards Mr. Smith & his current significant other to damage my ability effectively & appropriately co-parent our sons in its Modification Order. We had agreed to try & resolve our differences in the Aug. 2009 Parenting Plan & the history & inability to get along were well documented. Clearly this is not a substantial change in circumstances. The Aug. 7, 2009 Parenting Plan, as a final order could only be modified if the court found that there had been a substantial change of circumstances since it had been entered. On the basis of the above argument the court abused its discretion when it cited Findings of Fact number 2.1. (4) (a), (b), (c), (d), (h), (i), G), (k), (1), (m), (0). & (q).

Jun. 25, 2012 Parenting Plan

The Parenting Plan of Jun. 25, 2012 should not be considered valid

because there was not findings of facts & conclusion of Law & there was never an adequate cause hearing. Hon. Judge McCauley “ratified” an order that the COAII had already decided was null & void because Hon. Judge Edwards had been removed & he is the one that signed it. I addressed some of this in other parts of my brief, but I want to make sure that I make it a point on its own. I believe this is also invalid because I was not served with the parenting plan instead Mr. Stewart served Ms. Glorian after she was off my case. When looking at this parenting plan you can see where the trial court states that because of my evaluations I am not going to obtain custody. RCW 26.09.191(1), (2) (3). As when looking at the Jun. 25, 2012 Parenting Plan on pg. two it talks about my behavior at transfers, but if you look at SCP 234-235 I believe it states in there that I do not even transfer our children, my parents do. When the trial court signed this Jun. 25, 2012 parenting plan it was not the one each party drew up, in fact it was the one that Hon. Judge Godfrey drew up. This final Parenting Plan also considers baseball to be more important than our children’s time with me over summer. There is not a holiday schedule in the parenting plan & the current child support dates back to Feb. 5, 2010 which if I understood correctly in the Mandate Hon. Judge Edwards was divested of his power so anything signed after Oct. of 2008 was null & void however the trial court continues to apply back child support & currently said I am to pay

almost 400.00. The Jun. 25, 2012 parenting plan does not allow a special occasion schedule, Holiday schedule or priorities. The other thing about this parenting plan is it does not allow me to make any decisions, however I am the one who had our children treated for abscess tooth, MRSA, ring worm, etc. Mr. Smith neglected to take our children to the hospital or provider & in fact this is part of the reason I was incarcerated in May of 2011. The trial court has not proven a reason to change of custody to Mr. Smith under RCW 26.09.260 RCW 26.09.004 RCW 26.09.191(3). I would like to think that this is a mistake by the trial court, but their actions speak louder than most. I am looking at being terminated as our children's mom because the Hon. Judge believes I should be forced into counseling & then release my records every month to the court. I feel as though I am a prisoner within a system; not a mom who does everything she can to make sure that our children have medical care when they need it & are safe every night. I believe that this appeal mirrors the 403005 division II appeal because the only difference is the fact that an affidavit was not put in a timely manner & that this time it is two Hon. Judges who have made the mistake.

2. The Court Abused Its Discretion In Entering The Jun. 25, 2012 Parenting Plan Because There Was Not Substantial Evidence Introduced At Trial That Modification Was Necessary To Serve The Best Interests Of The Children Or That The Children's Present Environment Was Detrimental.

The crux of the court's ruling in this case was that my inflexibility, difficulty in communicating with Mr. Smith, & that the current residential schedule was detrimental to the children. The harm in a disruption to their lives was outweighed by the benefit of a change in custody. This conclusion is not supported by the testimony nor is it logically cogent.

Please look at the appendix for Judicial Conduct, change of Venue Pg. 18 - 25, Testimony of Ms. Lyle can be found on Pg. 29- 31.

Please see Appendix for testimony's beginning on Pg. 26 -86

5. The Trial Court Abused Its Discretion in Making the Findings of Fact & Conclusions of Law In Its Modification Order in 2010 & this has been used currently for this case there has not been a new Finding Of Facts or Conclusion of Law.

While the court is granted great discretion in making factual determinations this discretion is not boundless. Littlefield, 133 Wn. 2d at 46--47. In the present case the court abused this discretion in making Finding of Fact numbers 2.1. (4) (a), (c), (h), & (q), in its Modification



Order because no testimony was presented to support these findings. Furthermore the court abused its discretion in entering Finding of Fact numbers 2. 1. 4(d), (e), (g), (i) - (0), (t). The testimony elicited at trial did not cast doubt on my veracity. Clearly I am upset at the trial court for removing two very young children from my home & placing them in an uncomfortable situation. It does not mean that I am untrustworthy & no instance of dishonesty on my part was elicited at trial. Clearly there was conflicting testimony, but it does not mean that I am not credible because I am upset.

Please see appendix from page 27-32 for testimony on April 8, 2010

Removal of GAL

Ms. Cotton has not done her job from day one on Nov. 3, 2008. Ms. Cotton has shown bias in this case on more than one occasion. A prime example of this is the letter dated July 26, 2010 SCP 512- 515. When looking at Rule 2 CP 174-179 of a GAL Ms. Cotton has violated the Rules of a GAL. Ms. Cotton has not remained professional through the court matters, she has yelled at me & hung up on me. Ms. Cotton even went to the extent in Dec. of 2009 to claim she was no longer on my case & then found out she was on my case & later gave an oral report & not a written. Ms. Cotton has never interviewed my parents, school, RS, Lynette Lyle, SCP500-SCP509, SCP512-SCP515, & SCP522-SCP523 & since the

beginning of this case Ms. Cotton has not had me in her office & has never even been to my house. Ms. Cotton continues to make assumptions about me & my life style, but has never met the main people in my life in her office (my mom, my dad, & my brother,). In testimony she gives a picture of what she believes is me while not ever seeing my interactions with all 3 of my children or McKenzie's interactions. I have gone above & beyond to attempt to make Ms. Cotton happy while attending Casa classes that cost me 150. 00 dollars & Divorced Parenting Classes which was another 50. 00 dollars (I believe). I have done an evaluation through BHR & Dr. Whitehill, but it seems to me she keeps reaching for more. She continues to focus on me while not even looking at the other side as a possible issue. I have raised issues with her about missing my 1st weekend in April, several phone calls, & feces in our youngest son's underwear several times. Our children are 10 & 6 both want to come home & ask me all the time how much longer, but Ms. Cotton claims our children are adjusting just fine. Ms. Cotton never contacted CPS, Looked into bruising, & asked my parents about exchanges. I don't claim to be nice to her at all times, in fact there are times I have been upset & said things out of anger & frustration. I am frustrated with the trial court & with Ms. Cotton's actions in this case. In closing on this matter I found a case Patel & Patel however it was not a Washington state case. It talks about a removal of a GAL. Ms.

Cottons own testimony, Rule 2 & RCW 13.34.105 (1) (f). The GAL's role is to "represent & be an advocate for the best interests of the child. In order to do so, the GAL must "investigate, collect relevant information about the child's situation, & report to the court factual information regarding the best interests of the child." RCW 13.34.105(1) (a) 144 P.3d 306 (2006) In re the Marriage of Kimberly S. Bobbitt, n/k/a Kimberly S. Esser, & Ronald K. Bobbitt. Bobbitt argues that there were four reasons why the first judge should have removed the GAL & appointed a new one: The GAL (1) failed to report the child's expressed preferences regarding the parenting plan as required by RCW 26.12.175(1)(b) & the order appointing her; (2) did not represent the child's best interests when she refused to interview Bobbitt & his identified collateral contacts; (3) did not maintain independence, objectivity, impartiality & the appearance of fairness; & (4) gave advice to Esser. Bobbitt relies on the GALR, which define the role & manner of performance for GALs, to show that the GAL did not meet the expected standards of impartiality during her investigation. It has long been a concern of the legislature that GALs, who are appointed in family law matters to investigate & report to superior courts about the best interests of the children, do their important work fairly & impartially. following public outcry about perceived unfair & improper practices involving GALs, the legislature adopted RCW

26.12.175 to govern the interactions of courts & GALs & our Supreme Court adopted the GALR. These measures are intended to assure that the welfare of the children whose parents are involved in litigation concerning them remains the focus of any investigation & report, & that acrimony & accusations made by the parties are not taken up by an investigator whose only job is to report to the court after an impartial review of the parties & issues. To that end, GALR 2 articulates the general responsibilities of GALs. As relevant here, it states:

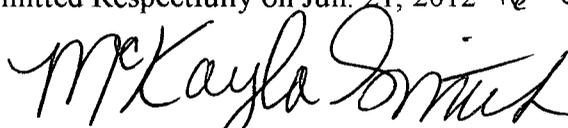
[I]n every case in which a GAL is appointed, the GAL shall perform the responsibilities set forth below. (b) Maintain independence. A GAL shall maintain independence, objectivity & the appearance of fairness in dealings with parties & professionals, both in & out of the courtroom. (f) Treat parties with respect. A GAL is an officer of the court & as such shall at all times treat the parties with respect, courtesy, fairness & good faith. (g) Become informed about case. A GAL shall make reasonable efforts to become informed about the facts of the case & to contact all parties. A GAL shall examine material information & sources of information, taking into account the positions of the parties. (o) Perform duties in a timely manner. A gal shall perform responsibilities in a prompt & timely manner, &, if necessary, request timely court reviews & judicial intervention in writing with notice to parties or affected agencies. In re

Guardianship of Stamm v. Crowley, 121 Wn. App. 830, 91 P.3d 126 (2004), to challenge "the impact [the GAL's] actions & inactions had on the litigation of the case & the resulting influence she had on the trial court." Appellant's Br. at 19. But Stamm is inapposite. Stamm involved a GAL appointed under chapter 11.88 RCW when children petitioned for guardianship of their father & the case was tried before a jury. Stamm, 121 Wash. App. at 832-34, 91 P.3d 126. At trial, the GAL described her role as the "eyes & ears of the court," testified about Stamm's alleged incapacity, & stated that she had found certain witnesses "to be credible." Stamm, 121 Wash. App. at 840, 91 P.3d 126. Division One of this court held that the GAL had improperly testified about witness credibility & had improperly aligned herself with the trial court to bolster her assessments, which created a substantial likelihood of affecting the jury's verdicts. Stamm, 121 Wash. App. at 840-41, 844, 91 P.3d 126

In Conclusion

I am asking that Ms. Cotton be re- moved as the GAL, Parenting Plan from Aug. of 2008 be re- instated again, & that when it is re-instated our children be returned to me the day the mandate is issued, back child support be overturned, Mr. Smith's current pay be looked at by trial court to establish support. I am asking that I be allowed a change of venue to Pacific County, since that is now the county that I reside in & I do not

believe a fair trial or hearing will ever take place in Grays Harbor. Last, but not least I am asking that this not be remanded for further proceedings other than child support because I believe our children have been put through enough. It is time in my opinion to allow some healing to begin & our children to be able to come home where they have always wanted to be. If the court disagrees, I would ask that Mr. Smith have to undergo the same evaluation that I was forced into doing & that it be with the same doctor, Dr. Whitehill. Mr. Smith has been involved in going to war twice & was told he had PTSD which he refuses to deal with. Mr. Smith was put on Prozac while we were stationed in Hawaii. I am concerned for our children's mental & physical well -being.

Submitted Respectfully on Jun. 21, 2012 *Re-submit on July 17, 2012*

By: McKayla E. Smith

Appendix A

Table of Contents for Amended

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July 11, 2013

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Appendix B

Statues of Amended Brief

July 11, 2013

Statues

RCW 13.34.105 (1) (a) (f)

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RCW 26.09.004 (2), (a), (b), (c), (d), (e), (f) (3)

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RCW 26.09.270

RCW 26.12.175 (1) (b) (c)

Federal Rule 41 on a Mandate

LSPR 94.03 (I)

GALR

The outline of RCW 26.09.260 provides that a court shall not modify a Parenting Plan unless: It finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party & that the modification is in the best interest of the child & is necessary to serve the best interests of the child. In applying these standards, the court shall retain the residential schedule established by the decree or Parenting Plan unless: (a) The parents agree to the modification; (b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the Parenting Plan; (c) The child's present environment is detrimental to the child's physical, mental, or emotional health & the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or (d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered Parenting Plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A. 40.060 Or 9A.40.070.

RCW 26.09.197. The relevant criteria for determining the residential portions of a Parenting Plan are as follows: (a) the court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, & nurturing relationship with the child,

consistent with the child's developmental level & the family's social & economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, & stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly & voluntarily;
- (iii) Each parent's past & potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs & developmental level of the child;
- (v) The child's relationship with siblings & with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parents & the wishes of a child who is sufficiently mature to express reasoned & independent preferences as to his or her residential schedule; &

(vii) Each parent's employment schedule, & shall make accommodations consistent with those schedules.

Appendix C

Table of Authority for Amended

Brief

July 11, 2013

Table of Authorities

In re Marriage of McDole, 122 Wn. 2d 604, 610, 859 P.2d 1239 (1993)

In re Marriage of Kovacs, 121 Wn. 2d 795,801,854 P.2d 629 (1993)

In re Marriage of Cabalquinto, 100 Wn. 2d 325,327-28,669 P.

2d886(1983)

In re Marriage of Stern, 57 Wn. App. 707, 711, 789 P.2d 807, review denied, 115 Wn. 2d1013(1990).

In re the Custody of Halls, 126 Wn. App. 599, 606,109 P.3d 15 (2005).

In re Marriage of Stacey L Kinnan 131 Wash. App. 738, 129 P. 3d 807)

In re the Marriage of Caven, 136 Wn. 2d 800,806,966 P.2d 1247 (1998).

State v. Dupard, 93 Wn. 2d 268, 609 P. 2d 961 (1980);

Bordeaux v. Ingersol Rand Co. 71 Wn. 2d 392, 429 P. 2d 207 (1967).

Thompson v. Thompson, 82, Wn. 2d 352,510 P. 2d 827 (1973).

Roorda v. Roorda, 245 Wn. App 848, 611 P. 2d 794 (1980).

Huffman v. Saul Holdings Ltd P'ship, 262 F. 3d 1128, 1132 (10th Cir. 2001);

United States v. Rivera-Martinez, 931 F. 2d 148, 150 (1st Cir. 1991)

Lines v. Lines, 75 Wn. 2d 489, 451 P. 2d 914 (1969).

George v. Helliar, 62 Wn. App. 378, 383, 814 P. 2d 238 (1991).

Hollmann v Corcoran, 89 Wn. App. 323, 332, 949 P. 2d 386 (1997).

Day, 189 Wn. 368, 65 P. 2d 1049 (1937)

In The Marriage of Possinger, 105 Wn. App. 326,333-334, 19 P. 3d 1109

Little v Little 96 Wn. 2d 183, 194, 634 P. 2d 498 (1981)

Phillips v. Phillips, 52 Wn. 2d 879, 884, 329 P. 2d 833 (1958)

Potter v. Potter, 46 Wn. 2d 526, 528, 282 P. 2d 1052 (1955).

Chandler v. Chandler 56 Wn. 2d 399, 403-04, 353 P. 2d 417 (1960).

George v. Helliard, 62 Wn. App. 378, 383, 814 P. 2d 238 (1991).

In re Marriage of Adler, 131 Wn. App. 717, 129 P. 3d 293 (2006).

In re Marriage of Littlefield, 133 Wn. 2d 39, 46-47,940 P. 2d 136 (1997).

In re Marriage of Hansen, 81 Wn. App 494,914 P. 2d 799 (1996).

In re Marriage of Kimberly S. Bobbitt n/k/a/ Kimberly S. Esser & Ronald

Bobbitt 144 P3. d 306 (2006)

In re guardianship of Stamm V Crowley 121,Wn. App 830,832-34, 840-

41, 844 91 P.3 d 126 (2006)

Appendix D

Amended Brief

Assignments of Errors of the case

Assignments of Error

1. The trial court erred on July 9, 2012 when they denied the removal of the Guardian of Litem; Ms. Cotton.
2. The trial court erred on July 2, 2012 when a Removal of GAL was denied & Affidavit of Prejudice for Hon. Judge Edwards, Hon. Judge McCauley, & Hon. Judge Godfrey was also denied.
3. The trial court erred when placing our children in Mr. Smith's custody on Jun. 25, 2012
 - 2.1 Parental Conduct (RCW 26.09.191(1), (2) the trial court erred in 2. 1 of the Parenting Plan due to lack of evidence.
 - 2.2 Other Factors (RCW 26.09.191(3) the trial court erred due to lack of evidence.
 - 3.2 The trial court erred when they placed our children with their father, Mr. Smith.
 - 3.4 The trial court erred when they separated our children for spring break instead of keeping them together for visitation.
 - 3.5 The trial court erred, when placing our children with Mr. Smith for the school year & for the summer schedule to take place after baseball season.
 - 3.7 The trial court erred when not setting a holiday schedule for visitation with our children.
 - 3.8 The trial court erred when they did not assign a schedule for special occasions.
 - 3.9 The trial court erred when they did not assign priorities to the schedule
 - 3.10 The trial court erred when they stated their Parental Conduct & other factors
 - 3.12 The trial court erred by not assigning a designated custodian.

4.2 The trial court erred when they assigned sole decision making to the father.

4.3 Restrictions in Decision making is an error because the factors listed are not supported.

VI other provisions (e) not supported

4. The trial court erred when they did not assign findings of facts when granting custody to Mr. Smith on Jun. 25, 2012

5. The trial court erred on Jun. 3, 2012 when ordering me to undergo counseling & if I don't then my rights will be terminated.

6. The trial court erred in Oct. of 2011 when granting back child support from Feb. 5, 2010 until current.

7. The trial court erred on Aug. 1, 2011 when granting Adequate Cause because there was never a hearing for Adequate Cause & Aug. 1, 2011 was a Pre-Trial Hearing.

8. The trial court erred when they granted a temporary Parenting Plan on July 11, 2011 due to the trial court's lack of jurisdiction & the trial court did not follow the outline of RCW 26.09.194 which clearly states what is needed for a temporary Parenting Plan to be put into place in 1(a-e) & 3. None of this was considered.

9. The trial court erred when they allowed the amended Parenting Plan to be "ratified" on July 11, 2011 there was not a temporary Parenting Plan in place RCW 26.09.194 number 4 this court had given its opinion on Jun. 28, 2011 allowing the Aug. of 2008 Parenting Plan to be in place.

10. The trial court erred in changing the residential schedule of the minor children at the Feb. 5, 2010, review hearing.

11. The trial court erred in relying on previous allegations & motions in making its Findings of Fact in the Order re Modification Adjustment of Custody Decree Parenting Plan Residential Schedule (hereafter referred to as "Modification Order") in 2.1 (1).
12. The trial court erred in entering Finding of Fact number 2.1(4) (a) that I have a longstanding & ongoing pattern of refusal or inability to cooperate with Mr. Smith in its Modification Order
13. The trial court erred in entering its Finding of Fact number 2.1(4)(b) that the Aug. 7, 2009, the Parenting Plan provides for review which might require 'further action' of the court including, but not limited to, minor adjustment in its Modification Order.
14. The trial court erred in entering Finding of Fact number 2.1(4) (c) which alleged that I filed "unsupported" claims of abuse in its Modification Order.
15. The trial court erred in entering Finding of Fact number 2.1(4)(d) which alleged that I had failed to provide the father with the necessary information regarding health care providers despite direction & order within the Parenting Plan to do so or that I have failed to notify Mr. Smith of healthcare providers & appointments in its Modification Order.
16. The trial court erred in entering Finding of Fact number 2.1(4) (e) which states that I was not credible or believable because of my demeanor & behavior while testifying in its Modification Order.
17. The trial court erred in entering Finding of Fact number 2.1 (4)(g) that states I scheduled discretionary activities during Mr. Smith's scheduled visitation & refused to cooperate on alternate dates & times for scheduled visitation & telephone calls with Mr. Smith in its Modification Order.

18. The trial court erred in entering Finding of Fact number 2.1(4) (h) that states that I have displayed a history of poor judgment & an inability to make good decisions for myself & our children in its Modification Order.

19. The trial court erred in entering Finding of Fact number 2.1 (4)(I) in its Modification Order that the Feb. 5, 2010, an oral report from the GAL raising issues of immediate concern for the emotional, psychological, & physical health & safety of the minor children requiring immediate action.

20. The trial court erred in entering Finding of Fact number 2.1(4)(j) that states that I was non-cooperative & obstructed Mr. Smith's visits & interactions with our children that dates back several years & that the conduct demonstrated a deliberate & consistent interference in the relationship between our children & Mr. Smith in its Modification Order.

21. The trial court erred in entering Finding of Fact number 2.1(4)(1) that states that our eldest child has shown improvement in school & attendance & academic performance since placement with Mr. Smith on Feb. 5, 2010 in its Modification Order.

22. The trial court erred in entering Finding of Fact number 2.1(4) (m) that states that I was allowing my personal feelings, issues, & anger about the dissolution of the marriage & my feelings towards Mr. Smith & his current significant other to damage me from effectively & appropriately co-parent our children in its Modification Order.

23. The trial court erred in entering Finding of Fact number 2.1(4) (n) that states that the best interest of our children required immediate action on Feb. 5, 2010, & nothing shown at the April 8th, 2010, testimonial hearing requires or supports change of that finding & Order of the court in its Modification Order.

24. The trial court erred in entering Findings of Fact number 2.1 (4)(0) its Modification Order states that my personal feelings, psychological or emotional issues & anger must be addressed & treated before I can effectively & appropriately co-parent the children.
25. The trial court erred in entering Finding of Fact number 2.1(4)(q) its Modification Order states that less drastic alternatives, including mediation, to affect a positive co-parenting relationship have been attempted & have failed due to my behavior.
26. The trial court erred in entering Finding of Fact number 2. 1 (4)(t) in its Modification Order that states the evidence presented clearly, cogently, & convincingly that I have failed to act in the best interests of the children & that their best interests are best served by residential placement with Mr. Smith.
27. The court erred in entering its Conclusion of Law 1) in its Modification Order that states that I have displayed a pattern of behavior & decision making that is injurious to our children; which includes a willful & wanton disregard for the orders of the trial court & the rights of Mr. Smith & fails to act in the best interest of our children.
28. The trial court erred in entering Conclusion of Law number 2) in its Modification Order that states that residential placement of our children should be with Mr. Smith.
29. The trial court erred in entering Conclusion of Law number 3) in its Modification Order that states that I should undergo a psychological or psychiatric evaluation & complete whatever therapy or counseling is recommended.
30. The trial court erred in entering Conclusion of Law number 4) in its Modification Order that states that I should enroll in parenting classes at a community college or higher level of instruction.

31. The trial court erred in entering Conclusion of Law number 8) in its Modification Order that states that our children's present environment when placed primarily with me is detrimental to our children's physical, mental, or emotional health & the harm likely caused by a change of environment & placement primarily with Mr. Smith is outweighed by the advantage of a change to our children.

32. The court erred in finding that modification was authorized under RCW 26.09.260(1), (2) in number 2.2 of its Modification Order.

33. The trial court erred in changing the residential schedule of our minor children in its Modification Order in number 3.1.

34. The trial court erred in failing to establish Adequate Cause prior to modifying the Aug. 7, 2009, Parenting Plan & the Aug. 2008 Parenting Plan.

Appendix E

Judicial Conduct/ Change of Venue

Affidavit Filed & addressed

July 2 & 9, 2012

Judicial Conduct & Change of Venue

Judicial Conduct of Washington State Canon 1 under 1. 1 a judge shall comply with the law, including the Code of Judicial Conduct.

1A. Hon. Judge McCauley clearly did not comply when he ratified the Feb. 5, 2010 order allowing Mr. Smith temporary custody of our minor children within a 30 day mandate (CP 001 & CP 002). Not only did he lack jurisdiction, but the court of appeals had divested Hon. Judge Edwards of his power (CP 017). When you look at the word ratified or ratification it states in the black law dictionary that it is a confirmation of a previous act done either by the party himself or by another; confirmation of a voidable act. So essentially what Hon. Judge McCauley did was give the power back to Hon. Judge Edwards by allowing the Feb. 5, 2010 order to be “ratified.” Not only was the law disregarded, but he clearly states on July 11, 2011 pg.13 “that he was going to stick with the order whether or not it’s effective, because Hon. Judge Edwards signed it. I’m going to adopt that schedule today until the hearing. I’m open to discussion on all of the evidence because I don’t know anything about the case. But when I hear the GAL telling me that has concerns, then I have concerns. ”

1B. Hon. Judge Godfrey clearly violates the Judicial Conduct of Washington State Canon 1 less than 1.1 by stating that there was adequate cause to remove our children from my care (Aug. 1, 2011 pg.18) when there was never an adequate cause hearing nor was there any findings of

facts. Hon. Judge Godfrey also states on the Aug 1, 2011 pretrial hearing pg. 19-20 that he had looked in the file Friday up till Friday afternoon & he didn't see anything from the Court of Appeals, but if you look on Aug. 1, 2011 pg. 19 you will clearly see where Ms. Reid told the court that she supplied the mandate by fax & email to the court on Aug. 1, 2011 (CP006). With these series of violations compiled, it then resulted in the signing of child support & another Final Parenting Plan (CP132-142) in Mr. Smith's favor.

1C. Hon. Judge Edwards violated the law by allowing an Amended Parenting Plan to be filed when there was not a motion in the file & there was not a temporary parenting plan in place.

RULE 1.2 Promoting Confidence in the Judiciary a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, & impartiality of the judiciary, & shall avoid impropriety & the appearance of impropriety.

1A. Hon. Judge McCauley in my opinion did not follow Rule 1.2 on July 11, 2011 by allowing Ms. Cotton's opinion to control the situation rather than investigating the situation for himself. Not only did he allow this to happen, but he "ratified" the Feb. 5, 2010 order which does not show independence, integrity, or being impartial to the situation. When Hon. Judge McCauley "ratified" that order, I lost faith in his decision making for a judge because he did not even look at the opinion from this court,

instead he allowed Hon. Judge Edwards decision to override what had been divested & sent our children back to Mr. Smith without adequate cause. Also on Oct. 24, 2011 he assigned child support & back dated it to Feb. 5, 2010 which is improper because this court divested Hon. Judge Edwards of his power & by back dating the support it goes against what the Mandate actually ordered.

1B. Hon. Judge Godfrey in my opinion did not follow Rule 1. 2 When on Aug. 1, 2011 he stated that there was adequate cause even though there had not been a hearing for adequate cause & there had not been a Finding of Facts & Conclusion of Law entered in my case. Not only did he make a decision off assuming that Hon. Judge McCauley had found Adequate Cause, but he did not even look at the Mandate on Aug. 1, 2011. Hon. Judge Godfrey also shows his impropriety by stating "If you people don't like what I just did, appeal me (Aug. 1, 2011 pg.18)." Also "If we had a fourth Judge, I would ship it over to the fourth judge, but we don't. So courtesy, professionalism, let's go to court (Aug. 1, 2011 pg.19)." Hon. Judge Godfrey goes on to mock the court of appeals "I don't want to embarrass the court of appeals, because if you go to the opinion that was written by the court of appeals, you can read & I know the exhibit number 1 I believe is this motion to amend that's titled motion to amend where-number 2, whatever it was here. Anyway, if you take a look at document it reads, motion declaration for amended parenting plan. It does not read motion to modify. So I believe the nuance here is the problem." And

again, I guess maybe the court of appeals needs to pay attention to their business because the opinion reads & note, please, that I'm referring to the document motion for declaration for amended parenting plan dated Oct. 24, 2008. If you read the court of appeals decision on pg. 3, on Oct. 24 Mr. Smith moved to modify the parenting plan, & then you go through & you read the decision of why they recognize that judge Edwards affidavit of prejudice because, quite, on pg. 8, even when one judge previously settled a child custody issue & entered a parenting plan during a dissolution trial these statutes entitle the parties to disqualify the judge from hearing a later petition to modify the parenting plan(Aug. 1, 2011 pg. 109- 111). ” There is more of Hon. Judge Godfrey mocking the court of appeals which in my eyes shows a lack of respect for a higher court.

1C. Hon. Judge Edwards in my opinion didn't follow the guide lines to modify & he did not remove himself from making decision in my case so in my eyes he didn't show me how I could possibly have confidence in him or his authority even more so when he had me incarcerated.

RULE 2.2 Impartiality & Fairness

A judge shall uphold & apply the law, & shall perform all duties of judicial office fairly & impartially.

1A. Hon. Judge McCauley did not follow this rule in my opinion because on July 11, 2011 he “ratified” an order that Hon. Judge Edwards signed & according to the court of appeals he was divested of his power in Oct. of

2008. He also stated on July 11, 2011 that when a GAL is concerned he is too.

1B. Hon. Judge Godfrey did not show fairness when he began to say he didn't necessarily agree with the court of appeals, but he didn't necessarily disagree with Hon. Judge Edwards.

1C. Hon. Judge Edwards has been removed from my case, but he did violate this rule by not being fair. On Feb. 5, 2010 he refused to see the pictures of abuse, but allowed Mr. Smith to enter in a letter from CSs teacher.

RULE 2.3 Bias, Prejudice, & Harassment

1B. Hon. Judge Godfrey in my opinion is prejudice to my case because in testimony on Sep. 9, 2011 pg.127 he states "because I know I'm always right." So regardless of what the court of appeals said he was going to do what he wanted because he is always right. "I probably abused my discretion (pg.130)" "I think you are going to find yourself over in county jail writing a manners report if you interrupt me one more time (Jun. 13, 2012 pg.339)." If you look prior to Hon. Judge Godfrey saying this it shows he is done talking & I addressed him properly & I was cut off by Hon. Judge Godfrey stating the few sentences prior. He also signed an order on this date that if I don't get treatment or continue it he will terminate my rights (SCP 489).

1C. Hon. Judge Edwards shows that he is bias by refusing to step down when I filed my affidavit of prejudice against him in Oct. of 2008.

RULE 2.5 Competence, Diligence, & Cooperation

(A) A judge shall perform judicial & administrative duties, competently & diligently.

(B) A judge shall cooperate with other judges & court officials in the administration of court business.

1A. Hon. Judge McCauley in my opinion lacked competence because he did not look at the opinion of the court of appeals & “ratified” an order that was null & void if I understand what divested is.

1B. Hon. Judge Godfrey did not cooperate with this court by not enforcing the Mandate on Aug. 1, 2011. Instead & if you look at Hon. Judge McCauley “ratified” an order by the Hon. Judge Edwards who was divested of his power. Hon. Judge Godfrey should have looked at the record & he should have looked at the mandate instead of granting adequate cause without a hearing or checking the mandate. Hon. Judge Godfrey did not cooperate with the court of appeals decision & instead of cooperating he mocked the court of appeals & did not re-instate the Parenting Plan of Aug. of 2008.

RULE 2.6 Ensuring the Right to Be Heard

1B. Hon. Judge Godfrey violated my rights to be heard by cutting me off on Jun. 13, 2012 & telling me he was going to throw me in jail & write out of his book of manners. I could go on with other things, but the point I am attempting to make is the reason for all three affidavits of prejudice is because I do not feel I will have a fair hearing or trial in Grays Harbor County Superior Court. There has been so many procedural errors & disregard for rules; that I believe the only way this case will ever be resolved is by a change of venue. I did not ask for this because I did not have a hearing or trial coming up & it is my understanding unless you have one of these coming up you can't ask for a change of venue. More importantly my attorney of record Ms. Glorian refused to ask for a change of venue even though I asked her to ask for it prior to the trial for custody. Ms. Glorian said that because my case had been in Grays Harbor for so long she felt I wouldn't prevail

Appendix F (1)

Testimony Ms. Cotton (Gal)

on April 8, 2010

As a preliminary matter, the court abused its discretion by relying on the oral report of the GAL. A GAL or an investigator may be appointed by a court under either RCW 26.09.220 or RCW 6.12.175. RCW 26.09.220 states: The investigator shall (italic added) mail the investigator's report to counsel & to any party not represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court for good cause shown.

RCW 26.09.220(3). Furthermore, RCW 26.12.175 requires that a GAL provide a written report prior to the hearing. The guardian ad litem shall (italic added) file his or her report at least sixty days prior to trial. The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem or investigator. The court shall (italic added) consider any written responses to a report filed by the guardian ad litem or investigator, including any factual information or recommendations provided in the report. RCW 26.12.175(b),(c). Regardless of which statute applies in the present case the court abused its discretion in relying on her oral report when a written report is mandated by statute. The GAL's testimony did not support the position that the children's present environment was detrimental & that the harm from a change in residential placement was outweighed by the benefits of such change. The GAL testified on a wide range of facts regarding the parties' efforts at compliance with the August 7, 2009, Parenting Plan. She indicated that she had not

been actively involved in the case since the final Parenting Plan was entered on August 7, 2010. April 8th, 2010 pg. 10. However, she did testify that she had some contact with parties in the intervening time since the August 7, 2009, order had been entered. For instance on direct examination she states that set times & days for the telephone calls was Ms. Smith's request & done to accommodate her work schedule. April 8th, 2010 Pg 11. She also stated that since the plan had been entered that if Mr. Smith did not call, or Ms. Smith was not available to take the call that "Ms. Smith was making the determination of how that would be resolved, regardless of the content of the Parenting Plan. April 8th, 2010 pg 11. It was an abuse of discretion for the court to find that the mother was interfering with the father's telephone calls on the basis of this testimony. The August 7, 2009, Parenting Plan had a very explicit plan to deal with this issue. Paragraph VI (b) states "if for any reason (*italic added*) the receiving party is not available for the call, the calling party shall leave a message & the receiving party shall make reasonable efforts to have the children return the call within 24 hours." This appears to be exactly what Ms. Smith did. Ms. Smith submitted literally hundreds of pages of her phone records that indicate when Mr. Smith called & she was not available that the calls were returned within 24 hours. When questioned about the phone records the GAL admitted that she had seen them & after some equivocation admitted that they showed the

make-up calls had been made & that the majority of the telephone calls had occurred as scheduled. April 8th, 2010 pg. 28. Ms. Cotton also indicated that she felt that I was withholding information about the children's doctors from Mr. Smith. As proof she cited a request that she made for documents that indicated that RS was unable to travel because of a health condition. April 8th, 2010 pg. 14.

However, I was not required to produce such records because such records do not exist. According to paragraph VI (G) of the Final Parenting Plan such a letter need only be produced if the condition did interfere with the travel plans of one of the parents. Ms. Cotton understands that I was not required to produce such a letter but could if Rhylie doctors have concerns. As I indicated to the court back in August of 2009, it was unknown whether Rhylie heart condition would pose a risk to his health that would rise to the level of life threatening, as requested by Ms. Cotton. Furthermore, Ms. Cotton denied receiving a letter that I had sent out on September 29, 2010, providing the names of the children's doctors. April 8th, 2010 pg.15. She felt that Ms. Smith had not cooperated with the requirement present in paragraph VIC d) of the Parenting Plan that required Ms. Smith to give Mr. Smith a list of the doctors. When Mr. Smith claimed that she had not provided the list of doctors, I sent a list to Mr. Stewart & cc'd it to Ms. Cotton. It is unknown why Ms. Cotton did not receive this letter. It may have something to do with her testimony that her staff

believed that she was no longer working on the case when the letter was sent. April 8th, 2010 23-24. It appears that Ms. Cotton believed that somewhere in the Final Parenting Plan that I was required to release the children's medical records to her. Surprisingly, when asked whether she felt that I was justified in believing that she had complied with the court order requiring her to notify Mr. Smith of all the children's doctors Ms. Cotton replied: "No, I mean she turned over the name, but she didn't turn over any documentation." April 8th, 2010 pg. 30. Considerable doubt on the reliability of her contention that she did not receive the letter should have arisen in the fact finder's mind when, after testifying that she had never seen the letter. she goes on to state that she had been provided the names. Ms. Cotton also expressed considerable concern about medication being sent with the children by from me once in an unmarked container. April 8th, 2010 pg. 18-20. However, Ms. Cotton does state that the reason this was done was that Mr. Smith had refused to return unused medication in the past. SCP 234 i. Ms. Cotton stated that she understood Ms. Smith's concern but thought that it had been handled poorly. As Ms. Cotton stated "She knew I was involved; she could have asked me to get it. But instead she asked no one & then refused to give a bottle of the prescription. So it's very concerning to me." April 8th, 2010 pg. 20. Ms. Cotton's suggestion that I should have asked her to get the medication ignores that fact that, as Ms. Cotton testified, her office had erroneously told

me she was not involved in the case anymore. Ms. Cotton did state on the record in her oral "report" that I have been the parent primarily responsible for parenting Collin & Rhylye their entire lives. April 8th, 2010pg. 32- 33. When asked by Ms. Darst whether a sudden change of custody can be traumatic for a child Ms. Cotton replied that it can but she felt that several things were present in this case that would traumatize a child. April 8th, 2010 pg 32. She did not identify if those "things" were present in this case. The GAL appears to defer to the opinion of the Collin's counselor, Ms. Lyle, on whether the sudden change of custody had been traumatic for the children. April 8th, 2010 32-33. During Ms. Cotton's testimony she indicates that she has not met with the children, & only recently met with Ms. Lyle. She does not indicate whether she thinks the residential placement of the children should be changed or whether she believes that the harmful impacts on the children from a change in the primary residential schedule is outweighed by the benefit of such a change. More importantly she does not indicate whether the children have witnessed any of the strife between parents. However, she does correctly state that under the August 7, 2009, parenting plan that my mother, Barb Clinton, has been providing the transportation for the children. SCP 234-235 it is that I have been interfering with Mr. Smith's visitation when she is not present is not explained.

Appendix F (2)

Ms. Lynette Lyle

Testimony of April 8, 2010

Lynette Lyle's Testimony

Ms. Lyle testified at the trial that she had been seeing Collin for over a year & began seeing him prior to the August 7, 2009, Parenting Plan. April 8th, 2010pg. 42. I had brought Collin to see Ms. Lyle for separation anxiety & bed wetting. April 8th, 2010 pg. 42. Ms. Lyle went on to testify that Collin had never brought up conflict with his parents as a source of his anxiety but that he has lots of issues with his father & wants to live with his mother. April 8th, 2010 pg. 43. Collin primary concern is that his father does not pay attention to him, his father is mean to him, & he felt lost living in his father's home with 13 other people. April 8th, 2010 pg. 44. His concerns about his mother revolve around how much he misses her & fears being away from home. April 8th, 2010pg 44. Ms. Lyle stated that Collin separation anxiety about his mother has grown worse since the February 2010 temporary order & he was now displaying symptoms of what she called grief issues. April 8th, 2010 44-45. Ms. Lyle did speak: about a referral to CPS that Ms. Lyle made after Collin reported that his father was having him shoot guns. April 8th, 2010 pg.47. Ms. Lyle's impression about Mr. Smith was that he was polite but that he appeared to roughhouse a lot with the boys & that I was the parent who expected the children to be well behaved & to use proper manners. April 8th, 2010pg.48, 62. In contrast to Ms. Cotton's characterizations of me is being resistant to suggestions, Ms. Lyle explained how she & I worked on improving my parenting skills & that her impression was that I was not

resistant to these suggestions at all. Ms. Lyle also has observed that when Collin is brought to counseling with Mr. Smith that he is hyperactive if he has been with his father for any period of time. April 8th, 2010pg. 50.

Ms. Lyle also testified that Collin is profoundly sad since the February 5, 2010, temporary order & that Collin identifies me as his primary parent.

April 8th, 2010pg. 51. On cross examination Ms. Lyle conceded that she did not have any concerns with Mr. Smith as a parent. April 8th, 2010 pg.56. She also testified that it is normal for a child even in an optimal situation to have some separation issues when they go & spend significant periods of time with the non- custodial parent. She also stated that if the mother was more supportive of the visitation it actually could make Collin anxiety worse. April 8th, 2010pg. 59-60.

Appendix F (3)

McKayla Smith

Testimony April 8, 2010

McKayla Smith (me) Testimony

I testified that my mother handles all of the phone visitation because Mr. Smith has hassled me over the phone. April 8th, 2010 pg. 64. I testified that my mother handles all of the exchanges of custody. I stated that I have provided the doctor's information to Mr. Smith multiple times & that they had been provided to him in Ms. Cotton's office during the settlement meeting as well as by way of letter from my attorney Mr. Taschner. April 8th, 2010pg. 66. I testified that I could not remember when the AWANA meeting was changed to Tuesday night but that she always made sure that the children called Mr. Smith within 24 hours as required by the Parenting Plan. April 8th, 2010pg. 69. I stated that since the Aug. 7, 2009, Parenting Plan was implemented that I have suffered stress seeing the boys go back to their father. They cry, begging me not to send them back, asking me if they can stay. For me it's stressful, too, because I hate to have to tell them no. I want to be able to tell my kids that they can stay with me, & that's very hard for me to have to return them when they're upset like that. April 8th, 2010pg. 69-70. On cross examination I denied that I had ever interfered with Mr. Smith's visitation or that he had been excluded from the AWANA program. I also denied that I had told Mr. Smith that the Wednesday telephone call could not be moved to another night. In response to Mr. Stewart's questions about whether the kids are picking up on her anger issues with Mr. Smith when the visitation exchange is made I correctly pointed out that I am not present when this happens. April 8th,

2010pg. 74. I also denied that I did not want the kids going to Mr. Smith's house & is stressed out about it only because the children get so upset.

April 8th, 2010pg. 75. I also testified that I had no animosity towards Mr. Smith, only against his significant other. When Ms. Cotton was cross examining me, Ms. Cotton learned for the first time that in Aug. 2008 was when the prescription medication had not been returned by Mr. Smith.

April 8th, 2010 pg. 78.

Ms. Cotton asked me whether Mr. Smith had any input on when the Wednesday night phone call would be returned. I responded that I was never able to get a hold of him at the times he suggested so I began calling whenever I had the kids at my mom's house. April 8th, 2010 pg. 80.

Finally, I stated that when the kids are returned to Mr. Smith's house I keeps a stiff upper lip & tells the kids that they have to go & that it is court ordered. April 8th, 2010 pg. 80. When Ms. Cotton asked me why I did not try something more positive I testified that I had tried that & it has not worked. April 8th, 2010 pg. 81.

Appendix F (4)

Barb Clinton

Testimony April 8, 2010

Barbara Clinton's Testimony

Mrs. Clinton testified that she has become involved in the telephone calls & the visitation exchanges because the kids parents don't get along. Since she began doing this she stated that the children have become more upset since Feb. 5, 2010 (April 8, 2010 pg. 82). She recounted an incident when CS locked himself in the car & would not come out screaming "No, I don't want to go." April 8, 2010 pg. 83. She also testified that she has accommodated Mr. Smith's schedule & had the children make calls at different times of the day. April 8th, 2010 pg. 85. Mrs. Clinton testified that she wanted Mr. Smith to be a part of the children's lives & would not let her daughter exclude Mr. Smith.

Appendix F (5)

Testimony of Mr. Smith

April 8, 2010

Mr. Smith's Testimony

He testified that throughout their marriage Ms. Smith would not allow him to speak to CS & RS on the phone. April 8th, 2010pg. 95. He stated that he did ask Ms. Smith if he could call the boys on a day other than Wed. & that she said "no", & correctly pointed out that she 24 hours to return a call. Mr. Smith testified that CS' attendance at school had improved since Feb. April 8, 2010 pg. 99 He testified that throughout their marriage Ms. Smith would not allow him to speak to CS & RS on the phone. Mr. Smith also testified that Ms. Smith has not kept him updated on all the children's medical appointments. "Just last week she took them to the doctor, & I had no clue they went to the doctor. There was two counseling appointments last week. I was only aware of one counseling appointment last week" April 8th, 2010 pg. 99. He also stated that things have been much better with the visitations & the phone calls since Barb Clinton got involved well over a year before. April 8th, 2010 pg. 100. He also testified that rather than ask Barb to reschedule the phone calls he has only asked Ms. Smith, despite talking to Barb most of the time. April 8th, 2010 pg. 101. He acknowledged under cross examination that Ms. Smith has made him aware of appointments that she has made & he has taken the children to the doctor on the basis of this information. He also acknowledged that while CS's attendance & reading had improved that his grades in fluency, effort, self-control, independent working, & staying on task had declined. April 8th, 2010pg. 102-103. Mr. Smith states that he has observed fits of

rage from the boys when they are transferred to his custody but that it subsides within 2 miles.

Appendix G (1)

Mr. McNeil

Testimony from July 11, 2011

Mr. McNeil

Mr. McNeil was appointed by Hon. Judge Edwards & was ordered to take care of the issues revolving around the contempt matter & the contempt, which included an appeal to have me released from being incarcerated. He also put in an order to for his fees & to be released from the case Mr. McNeil also talks in reference to what the court of appeals did in reference to Hon. Judge Edwards (July 11, 2011 pg. 3-4)

Appendix G (2)

Mr. Stewart

Testimony on July 11, 2011

Mr. Stewart

Mr. Stewart begins to discuss the issues of Mr. McNeil & the opinion from the court of appeals. “Yes your honor. That was a procedural matter. The meat of today’s hearing is the court of appeals did send the matter back. We have not yet received their mandate, but the decision was that Judge Edwards would not hear anything further & they set aside a couple of court orders. They specifically mention in their ruling a Feb. 5, 2010 order, but they don’t set that one aside (CP001). They set others aside, they do not set that one aside & that’s the one that temporarily placed custody of the two boys with my client, Mr. Smith (July 11, 2011 pg. 9).” “Yes. But the court said the affidavit of the prejudice was on the matter, not on the old matter. &, in fact, you had previously ordered Ms. Cotton to be appointed as GAL back in 2008, I believe, Nov. of 2008, to report back on parenting issues. &, in fact, Judge Edwards’ decision on Feb. 5, 2010 to reverse the order was in response to the first matter, not the second matter. So that has not been set aside (July 11, 2011 pg. 9).” “After in time, but the court of appeals specifically set aside two orders mentioning the Feb. 5, 2010 order, but did set it aside, so that order stands (July 11, 2011 pg. 13).” In reading this Mr. Stewart contradicts himself within his own testimony & later on Ms. Cotton also talks about the appeal.

Appendix G (3)

Mr. Taschner

Testimony July 11, 2011

Mr. Taschner

“Well, Your honor, I represent Ms. Smith at the appellate court & the order of contempt is currently stayed & on appeal this moment. I just want to make sure that that’s vacating the order of contempt & dismissing the petition. & if it’s not, I think I speak with all of the parties & everyone is in agreement that should happen. I just want to make sure that Mr. McNeil-(July 11, 2011 pg. 7) Mr. Taschner also mentions that the opinion has come down in favor of me.

Appendix G (4)

Ms. Cotton

Testimony on July 11, 2011

Ms. Cotton

Well, Your Honor, we've had several hearings with testimony & ultimately the bottom line is we have very significant concerns about Ms. Smith. I recommended to the court a list of things that I thought would be appropriate, including a psychological evaluation. I think Mr. Stewart has delineated them in his paperwork I have very serious concerns about Ms. Smith. I do believe that Mr. Stewart is adequately or accurately reported what the court of appeals did & that Feb. order remains in effect & should remain in effect. (July 11, 2011 pg. 10). "I am not sure of the specific details of it, but it is the one where Mr. Smith is the primary parent (July 11, 2011 pg. 11)." What Ms. Cotton fails to report is that the court of appeals made it very clear that Hon. Judge Edwards was divested of all his power & that it was dated back to Oct. of 2008 when I first asked for Hon. Judge Edwards to step down. What Ms. Cotton also fails to report is what her concerns are. Ms. Cotton continues to say she has concerns, but never actually reports what her concerns are. Ms. Cotton never reports about the concerns of abuse, CPS, Dr. Hutton reporting he has concerns about the bruise of RS, & Ms. Lyle reporting to CPS her concerns also. Ms. Cotton not only goes against GALR 2, but several other codes.

Appendix G (5)

Hon. Judge McCauley

Testimony July 11, 2011

Hon. Judge McCauley

Hon. Judge McCauley tell Mr. McNeil “They didn’t order him removed. They found there was a valid affidavit of prejudice correct (July 11, 2011 pg. 3). Hon. Judge McCauley asks me “Was that after the affidavit of prejudice filed (July 11, 2011 pg. 9)?” this is in response to summer visitation. After I respond that the affidavit was before Hon. Judge McCauley then sides with Ms. Cotton. “Well, I’m not going to be able to decide anything based on argument of counsel. It sounds to me like what Judge Edwards did, the made a ruling basically that the affidavit of prejudice was good as to certain decisions he made & he had ruled that it was I guess untimely. So that doesn’t mean that he did anything wrong, it simply mean that he should have been off the case. So I guess I’m concerned because the GAL is concerned, but everybody has a right to come forward & represent their evidence & testimony. So I would like you to get a date. I guess right now you already have a two/two week summertime going on (July 11, 2011 pg. 11-12). I attempt to explain to Hon. Judge McCauley that his decision changes what the court of appeals order in the mandate. Hon. Judge McCauley says “Listen to me again. I’m concerned about the situation because of *what the GAL is reporting*(emphasis added) to me today, So I’m going to stick with that order whether or not it’s effective, because Judge Edwards signed it I’m going to adopt that schedule today until the hearing. I’m open to discussion on all of the evidence because I don’t know anything about the

case. But when I hear the GAL telling me that she has concerns, then I have concerns. So get that date today (July 11, 2011 pg. 13).” What Hon. Judge McCauley did is once again grant Mr. Smith custody on an Amended Parenting Plan which can not be used because not only do you file an amended parenting plan on a temporary order, but it goes outside the scope of the mandate per. Federal Rule 41& it was within the 30 day mandate period.

Appendix G (6)

McKayla Smith

Testimony on July 11, 2011

I testifying that the affidavit was before the parenting plan summer schedule that Ms. Cotton was talking about 2 weeks 2 weeks. “No sir that was after (July 11, 2011 pg. 12 this is in reference to the affidavit) I also tried to explain to Hon. Judge McCauley that his decision he was making goes outside of what the decision was. “Your honor, that totally changes what the court of appeals said though. & if you don’t mind—(July 11, 2011 pg. 13).

Appendix H (1)

Testimony of Hon. Judge Godfrey

Aug. 1, 2011

Hon. Judge Godfrey Testimony

“Why do I feel like I'm hearing Catch 22? By the way, the Court of Appeals decision is going to come down that no one gave me a copy of & I don't know what the Court of Appeals, da da da da. But you people have a hearing in two & a half weeks. Now, I did review the part there is adequate cause. Let's go with that Number 1, there is adequate cause. Number two, in the next two & a half weeks we do not need to reinvent the wheel or anything else. There's not going to be any changes of any doctors or any schools or any visitations, period. Now, you people come in on the 18th & whoever the judge happens to be, get your pretrial statements & lay them out & we'll go from there. & I guess I'll tell you right now, if you people don't like what I just did, appeal me.” Aug. 1, 2011 Pg18. This was at the pre- trial hearing so how was adequate cause found if on July 11, 2011 was set by Mr. McNeil for his attorney fees? Well, if we had a fourth judge, I would ship it over to the fourth judge, but we don't. So courtesy, professionalism, let's go to court. Aug. 1, 2011 Pg. 19. This was Hon. Judge Godfrey response to how this case is so procedural wrong. Hon. Judge Godfrey did not even state what the adequate cause was nor was it stated in any order other than the final parenting plan which contradicts its self. CP 143-CP152. Although if you look at the exhibits I named in the brief there are doctor notes & a letter about health care, behavior at transfers is impossible because I do not do the exchanges, as far as my behavior to Ms. Cotton there was testimony

that also states Ms. Cotton has not always acted professional towards me,
Extracurricular activities is impossible for me to interfere when Mr. Smith
has custody. Why would I object to extra activities when I had CS in
Spanish club at St. Mary's, Awana's, Violin, etc.?

Appendix H (2)

Mr. Stewart

Testimony on Aug. 1, 2011

Mr. Stewart

Mr. Stewart is talking about the mandate & wanting back child support after the mandate clearly divested Hon. Judge Edwards of his power. Why was back child support awarded when the COA said that the parenting plan of 2008 is in place? How can you grant child support for children who are supposed to be residing with their mom? "You're Honor, this is a pretrial conference & also our motion regarding child support. Normally we would have waited just for the hearing on that but after the Court of Appeals sent out its decision, but the mandate apparently is coming down today, Ms. Smith took steps to contact WIC & CPS & transfer - to change the kids' doctor & did some other things. We now have an order sign by Judge McCauley that said the kids are with dad, we're going to use a certain parenting plan from several years ago as the one that controls, but these other issues came up with regard to child support. Now, in the meantime, my client has been laid off by his government contractor job at the Fort & has gone back to school. I believe Ms. Smith is not currently employed. So we just need an order that establishes even minimum child support & directs OSE to continue to collect the back child support.

They've said, well, we - we hear that the custody has changed & something got thrown out, we've looked at the court appeals decision, so we're not going enforce any child support orders at all. & she's taking the kids from one doctor, given them to another doctor she's tried to change entitlements, we need something that directs that she cannot do that. Child

support is still owed & still will be collected. The current child support is -
it needs to be paid. My client's advocated since last Feb. - Feb. of 2010.
Excuse me. So that's what we're looking at there. & I don't believe the
order entered by Judge McCauley specifically said adequate cause has
been determined from a review of the child. The judge specifically said I
reviewed this long file & asked that a hearing be set. So we need
something that has that language, adequate cause has been determined.
Aug. 1, 2011 Pg. 14-15. At this point there was not an adequate cause
hearing & at this point the mandate should have been the only order that
was valid because the temporary order was signed July 11, 2011 & this
order from COA was signed Aug. 1, 2011.

Appendix H (3)

Ms. Reid

Aug. 1, 2011

Ms. Reid Testimony

Thank you, Your Honor. At this time I think that we fundamentally have a difference of opinion on where the parties stand. There was a mandate that was sent down today from the Court of Appeals & the opinion was attached to it. In that opinion, basically it's our position from that reading that anything that was entered by Judge Edwards on the motion to modify the parenting plan from 2008 has been vacated because Judge Edwards did not have the authority to enter orders on that case. The order that was entered by Judge McCauley on July 11th when the parties were here was referring back to an order that Judge Edwards had entered in Feb. of 2010. It seems to be kind of a circular argument. But at this point Ms. Smith's position is that the Court has not determined that adequate cause has been found to move forward. & I have to let the Court know I am at a bit of a disadvantage. I wasn't here on the July 11th hearing, but there's been no order of adequate cause entered with the court at this time. If Mr. Smith wishes to pursue his petition to modify the parenting plan we filed in 2008, then I believe the next step would be to have a finding of adequate cause. & Ms. Smith has the ability - or should have the ability to adequately respond to that motion. Am I going to fast? I'm sorry. That motion of adequate cause. I at this point, too, I'm asking the Court to either just deny the request for child support or order that that be heard on Aug. 18th, because I understand the Court did issue or asked the parties to obtain a date to have a full hearing on Aug. 18th regarding these matters,

because we have no financial information provided from Mr. Smith for anyone to be able to make that determination. Aug. 1, 2011 Pg. 15-16
Your Honor, just for the court record, *I actually did supply the mandates* (emphasis added) to the Court because I had it faxed over & e-mailed this morning from the Court of Appeals to ensure there is a copy in the record, so I supplied it as soon as we got it from the Court of Appeals. Aug. 1, 2011 pg.19.

Appendix H (4)

Ms. Cotton

Aug. 1, 2011

Ms. Cotton

Good morning, Your Honor. This case has been a procedural nightmare to say the least. So to clean up a little bit of that I think would be in order to have the Court to specifically make a finding of adequate cause & enter an order to that effect today. I believe Judge McCauley actually orally did that at the July 11th hearing. He did order the hearing to be set on Aug. 18th, but it wasn't put into writing on that date when Ms. Smith wasn't cooperating with the entry of orders that day. Also, Judge McCauley made a specific ruling on that day that despite the Court of Appeals rulings that had set aside or vacated several of the orders over the period of time, one of them had not been set aside. & he had reviewed the file & he of his own accord was adopting a parenting plan pending this hearing that was consistent with the Feb. 2010 order, that's what was entered. That order cites back to an Aug. 2009 parenting plan that was reversed by - in Feb. 2010, very convoluted. You know, thank heaven there is a hearing coming up on the 18th so maybe we can get something in writing that is really clear & concise. At this point of time I received numerous phone calls from various entities within DSHS because of Ms. Smith's shenanigans trying to change entitlements for the children to her when she's not the primary parent, changing the name of the doctor, changing insurance. I have informed them on each occasion. It's my understanding based on Judge McCauley's ruling in July Mr. Smith remains the primary residential parent until further order of this Court after hearing on Aug.

18th & they have a note in their file not to take any more such requests from Ms. Smith. But I think it would be highly appropriate for that to be very specifically put into an order that she is not to change or attempt to change any doctors or entitlements for the children pending on that hearing. Aug. 1, 2011 Pg. 16-17 -- to make a very brief record. This is kind of unusual. I know that Ms. Smith may or may not have Ms. Reid representing her after today because she's here on a limited notice. So Ms. Smith needs to understand the rules - the court rules & such & that can be daunting. But Ms. Smith sent her documents to me at an incorrect address by certified mail, return receipt, restricted delivery. & I want her to understand that it's a huge waste of money on her part, but more importantly, I may not be available between business hours for the post office to pick up restricted delivery. So if she does this again, there's no guarantee I'll get it. So I would appreciate it if she just use the Post Office Box, mail it, that's all she has to do. But I want her to understand if she does this again, I may not get the documents Aug. 1, 2011 Pg. 20. This whole testimony to say the least is inaccurate. Hon. Judge McCauley states on record he is not familiar with this case so he is going to go off what Ms. Cotton states. Hon. Judge McCauley never found adequate cause. No one found adequate cause between June 28, 2011 - Aug. 1, 2011.

Appendix I (1)

Ms. Cotton

Aug. 18, 2011

Ms. Cotton

Yes. I believe it was the younger child RS. She had indicated that RS had a heart condition & that he - you know, he was somewhat delicate & she was expressing concern at the time about Mr. Smith's intent to travel with the children for a visit to family, I believe it was in Colorado, somewhere near there. In the course of the discussion of that she disclosed that she was however going to be taking the children white water rafting. So it - it seemed a little bit strange. & I asked her to produce the medical records from RS's doctor that showed he had a serious heart condition that would not allow him to travel or that would make travel very unsafe for him. Aug. 18, 2011 Pg. 27. The same bickering. If Ms. Smith complained about something that Mr. Smith did, for example, I would contact you & your client, I would talk to Mr. Smith, you know, suggest some ways of altering behavior or other ways of handling the matter & he did. He - he always was very cooperative SPC 512-515. Sometimes he didn't understand that he had done something wrong, other times he would acknowledge, yeah, I shouldn't have done that. But he always cooperated. On the other hand, along the same example, if Mr. Smith called and complained about Mr. Smith & I would contact her, always got resistance, always got hostility, always got denial that she had done anything wrong & the pattern has continued over time & gotten worse. From my observation, McKayla views everyone else in the world as being wrong & if they disagree with her, they're wrong. Only her way or the highway. & it didn't matter if it was medical professionals, legal professionals, court staff, myself, Mr. Smith, CPS. It just didn't matter. If it wasn't what McKayla wanted or what she thought it was the way it should be done, there was a battle & - & usually it involved a great deal of hostility & animosity on her part. Aug. 18, 2011 Pg. 28-29 Yes, I did. In preparation for this hearing, after all of the procedural nightmares this case has gone through, I felt it was appropriate & necessary to write a written

report & put it before the Court & put it in the record & I did so. Aug. 18, 2011 Pg.30. I have come to believe - & I am not a medical professional - but just through my observation & my experience over the years, either Ms. Smith is just so obstinate & is intentionally trying not to get along or perhaps there is a medical explanation that a psychological evaluation by an appropriate level professional could identify & treat to assist in her behaviors for the benefit of these children. That's my goal is to get things square for these kids. They are suffering. Aug. 18, 2011 Pg.32. This is just the pattern. She has made reports to law enforcement & CPS that have just not panned out so it's just over & over again & there are several examples that are - are set forth in my report. I have recently met with the children early on, they were far too young to do that. & RS seems like a very happy little boy, very attached to his father. I would like to see them with - with Ms. Smith as well so that I could observe their demeanor with her. Aug. 18, 2011 Pg.33 (to this current date I have never been seen in Ms. Cotton's office with our children). I'm going to hope that that visit went well. Oftentimes when kids behave that way they get to the visit & that everything is okay. I'm hoping it is that way for CS, but he definitely needs to be in therapy. & I'm worried if this goes on much longer it's going to have serious consequences for these kids. Aug. 18, 2011 Pg.34 She wasn't available & the appointments were cancelled & had to be rescheduled. One was even surgical Aug. 18, 2011 pg. 36. SCP 518 Yes, I did. You know, it - I don't know how to say this. It is unfortunate that we ran into procedural problems in this case. I'm not sure that had that affidavit of prejudice not existed or even if a different judge had heard the same testimony in evidence that was presented in the cases that were heard by Judge Edwards, that a judicial officer would make any different determination that Judge Edwards did. Aug. 18, 2011 Pg. 39. (Ms. Cotton has ignored the bruising & medical neglect since in Mr. Smith's care). Judge McCauley established an order for the visitation that was consistent with

the Feb. 5, 2010 order. It wasn't that he reinstated it, he adopted (order says ratified please see order of July 11, 2011) the provisions in it as the new current order & Ms. Smith had left the courtroom. The judge had instructed that a handwritten order be prepared, which I believe you did, I reviewed it. It appeared to be consistent with what Judge McCauley ordered & you asked me to take it out to ask Ms. Smith because she was refusing to talk to you. At the time she was unrepresented by counsel. I gave it to Ms. Smith & she just proceeded to refuse to sign. Aug. 18, 2011 Pg. 40. We don't do home visits in Grays Harbor, unless they're specifically ordered by the court. We have not done home visits in this case. (Q) Its been several months. (A) Correct. Aug. 18, 2011 Pg. 42. I could literally go on about the things Ms. Cotton has testified about & how a majority of what she is saying is untrue, but I believe I have painted an idea of just what transpired that day with Ms. Cotton I also would like you to look at exhibits from May 12, 2010 15 17,18. Once again Ms. Cotton testifies to things that either she has not investigated or is only telling half truth. I never planned a trip for white water rafting. I do not even know how. There was orders that I refused to sign, but it was because I disagreed with the orders. There has never been a finding of facts & conclusion of law, adequate cause, or even a hearing for child support.

Appendix I (2)

McKayla Smith

Aug. 1, 2011

McKayla Smith

According to the letter that I received from Mary Bridge Children's Hospital it was postponed because the anesthesiologist said RS's oxygen level was not high enough. I was asked by the nurse. The nurse raised the issue. She had asked me. No, I was not able to Aug. 18, 2011 Pg.81. (this is in regards to the accusations that I cause the oral surgery to be continued to another day). My understanding was that anything Judge Edwards had made a decision on was divested, which after looking it up, it basically said that anything that he had signed from the time that I had filed an affidavit was not valid. Aug. 18, 2011 Pg. 86. I - I understood that custody was to be reverted back to me according to the 2008 parenting plan & that it was okay for me to make adjustments for the kids to be in my household. Aug. 18, 2011 Pg. 86

Appendix I (3)

Mr. Smith

Aug. 1, 2011

Mr. Smith

Yes two tours in Iraq. Aug. 18, 2011 Pg. 91. We had had a visit with the boys & we got a small – it was almost like a toy bottle & it had some pink liquid in it. She - we had a - I think it was an either a letter or Barb told us what it was. I'm not sure what we had. & she told us what it was, what the dose was, how to give it to him, what not. But there was nothing - there was no prescription with it, there was no box, no nothing else. Aug. 18, 201 Pg. 92. The anesthesiologist came in & said, you know, with his - his heart condition &, you know, the possibility of him being sick, they were just going to go ahead & cancel it. Aug. 18, 2011 Pg. 96. When did CS stop going to his counselor?

It was several months ago, I want to say maybe six months ago or longer. I'm not exactly sure when. Aug. 18, 2011 Pg. 104. (Yet Ms. Cotton says she wants the children in counseling & Mr. Smith does what she asks of him). Here again he admits to not following orders of the gal, however she states I am the one who does not comply.

Appendix J (1)

Hon. Judge Godfrey

Sep.9, 2011

Hon. Judge Godfrey

I can only then interpret that the Court of Appeals decision is wrong because Judge Edwards would then have been ruling on a motion to amend & therefore an affidavit of prejudice would not be valid against him on a motion to amend, it would be valid on a motion to modify. Sep. 9, 2011 Pg. 119. The other thing that happened is on July 11th when Judge McCauley heard this case he made a finding that after review of the file he was ordering the entry of the parenting plan temporarily, subject to the testimonial hearing, that was consistent with the order that was entered Feb. 5th. He wasn't adopting a ruling by Judge Edwards, he was making an independent ruling on what the schedule was. Sep. 9, 2011 Pg. 122

Appendix K (1)

Dr. Whitehill

March 16, 2012

Testimony of Dr. Whitehill

Dr. Whitehill is a licensed psychologist & certified sex offender treatment provider; he has had his private practice since 1987 & Dr. Whitehill specializes in forensic psychology, which is issues that arise in psychology & law. One of his prominent aspects of forensic psychological practice is in the assessment of parental fitness March 16, 2012 Pg. 5. Dr. Whitehill does not record his sessions so there is a possibility that some of what is on the report is mistyped March 16, 2012 Pg.8. Dr. Whitehill does say that he was made aware of a typo about Mr. Smith biting my arm because it was my foot March 16, 2012 Pg. 9-10. There was an elevation in the scale of narcissistic, histrionic, & compulsive personality traits. I was not diagnosed with a personality disorder, but Dr. Whitehill stated that they were relevant in so much as they warrant some degree of clinical attention, especially given their potential ramifications for parenting. Dr. Whitehill gives the court a little clarity that “narcissistic sensibility is an individual who essentially does not acknowledge difficulties, who seems to be very defensive, strong minded.” I was identified as being somewhat rigid in my coping & somewhat hedonistic meaning someone who seeks for stimulation-seeking activities & it’s recommended that counseling be done to address them March 16, 2012 Pg. 14. When looking at adult adolescent parent inventory my scores were in the severe range which means an elevated risk, but Dr. Whitehill goes on to say “I am a severe risk for abuse or neglect of children March 16, 2012 Pg. 15. I made a strong effort to respond as a parent who wants to be seen as unduly confident, a bias often seen in parenting evaluations. ” In my case there is a greater than unusual level of deficiencies in my profile, consistent with the way I responded to the MCMI III March 16, 2012 Pg. 12-13. Also a recognition on my part that I am experiencing a significant life stress, “Which is to say factors external to parenting that have potential impact on the quality of parenting March 16, 2012 Pg. 20. “One prominent aspect are

these legal proceedings, (emphasis added) which in my calculation, have lasted more than five & a half years March 16, 2012 Pg. 16. ” Dr. Whitehill was asked if there were in built in biases & he responded that there is a bias even to the extent that the raw data together is a potential for bias as well March 16, 2012 Pg. 17. “The significant omission was that there was no opportunity to observe Miss. Clinton & her sons March 16, 2012 Pg. 19. ” When typically doing these test he observes the parent & child/children & in my case that was not done March 16, 2012 Pg. 19. Ms. Glorian goes on to ask “& to have a fuller picture, would it have been helpful to perhaps done an evaluation of Mr. Smith?” Dr. Whitehill “Absolutely March 16, 2012 Pg. 19. That is whatever findings I provided here & however they are viewed by the court, it’s important to recognize that at no time do I make a custody recommendation, which would not be ethically permissible without a comparable assessment of Mr. Smith.(emphasis added) March 16, 2012 Pg. 19. ” Ms. Gloria “& under the circumstances of this case, as you know, based on the collateral information, does it make sense that my client would not necessarily handled some of the conflict situations during the last few years appropriately?” Dr. Whitehill “Absolutely, yes that’s my understanding & assessment March 16, 2012 Pg. 20 & 21.” None of his findings render me an unfit parent. There are no indicators that I am less fit of a parent than Mr. Smith. As far as counseling needing to be a prerequisite for me having our children back it was not required. “You know, I would point out, that, of course, Miss. Clinton has custody of her youngest child, Kylie (phonetic spelling). I had the pleasure of her interaction with her mother, there seemed to be a very strong bond. That is not a parenting assessment, per say, but the fact that Kylie has been in Miss. Clinton’s care since birth, certainly speaks to her capacity as a parent March 16, 2012 Pg. 21-22. ” Mr. Stewart asks” Would having a 5 yr & 9 yr boy with you, one of them possibly having ADD or ADHD,(CS has ODD & Mr. Smith is treating him for the wrong thing) would that likely

increase someone's life stressful life stress level? " Dr. Whitehill "Um, well single parenting is a stressful challenge as we parents know, but it's my understanding of Miss. Smith or Miss. Clinton Smith's psychological stress is largely a function of the ongoing legal dispute that she has had with your client, & so to the extent that that's through, the presence of the boys with her as in the primary residential custodian may, in fact, diminish the level of stress March 16, 2012 Pg. 28-29(emphasis added) even though parenting 3 children rather than 1 on a full-time basis, in respects is likely to increase stress. " Mr. Stewart " You are saying that this custody dispute is increasing her stress level, but your findings were, & I think the specific dates were long-held personality traits more than 5 ½ yrs; is that correct March 16, 2012 Pg. 30?" Dr. Whitehill" well you may be mixing apples & oranges there are certainly legal proceedings of this type, how long they last are incredibly stressful when they last as long as these have. " Dr. Whitehill few events in life will generate antagonism more than one's concern for the welfare of one's children. "I found Miss. Clinton to be a strong-minded person, & that she would be, perhaps, dramatic at times. Exhibitionistic can even-- it's a term of art within that vernacular, that she is-- that she would be strong minded & assertive, over assertive, I see that, & that's not hard to envision March 16, 2012 Pg. 32. "

Appendix K (2)

Ericka Cotter

March 16, 2012

Erica Cotter March 16, 2012

Erica was asked if Matt was working & she goes on to say that he is not working & that he has been laid off April or May the year prior. He has been on unemployment & going to school at this point March 16, 2012 Pg. 161.

Appendix K (3)

Mr. Smith

March 16, 2012

Mr. Smith's testimony

Ms. Glorian "&, during the past several years, there was a period of time that you & Ms. Cotter shared a home with her parent's is that correct?" Mr. Smith "yes" Ms. Glorian" How many people were in the household at that time?" "I don't want to guess, it's let's see 13 or 14 March 16, 2012 Pg. 167." Ms. Glorian" Miss. Cotton had recommended that CS get counseling; is CS in counseling currently?" Mr. Smith "not currently." basically it than goes on to say we have not been decent to each other. Pg. 172- 177 goes into Mr. Smith & Ms. Glorian discussing a letter from Early learning which is a state department for child care(May 25 2011 exhibit 2). Mr. Smith called Early learning & made false accusations against me which not only jeopardized my job (May 25, 2011 exhibit 2), but it states on the daycares record which could potentially cost her clients. Mr. Smith claims it was to claim child support, but not once was child support brought up in this letter. Mr. Smith begins to talk about phone calls & how he doesn't always get them back, but on a previous court date there was testimony given stating that I had phone records to show all phone contact & that my parents handled the phone calls March 16, 2012 Pg. 79 & visitation so what is interesting here is how can I be held accountable for something I am not a part of March 16, 2012 Pg.80. Mr. Smith goes on to state that he in fact got medication in an unmarked bottle, but had doctor instructions. The testimony on pg. 82 that I was assaulted between Aug. of 2009 & Feb. of 2010 is a complete lie (case No. 64926-4-I) can prove this. McKenzie & I began dating in Oct. of 2008 so the fact that it was & during the period of Aug. 2009 & Feb. of 2010 is a lie. When Mr. Smith begins to talk about appointments on pg. 83 he says he very rarely got a phone call the same day the dr. appointments were made. There is a lack of evidence on this not to mention that he does acknowledge the fact that he was notified the night before & on occasions a few days out. Also they begin to talk about the dentist & the dental

records were not allowed in as exhibits, but if you were to look at them you would see I began the process prior to Mr. Smith getting custody & CS was scheduled on Feb. 22, 2010 to see a dentist in Bremerton & RS was supposed to come in for a checkup prior to Mr. Smith getting custody (Aug. 25, 2010 5 & 6, May 25, 2011 exhibit 1). When Mr. Smith was told this he did not follow through with the appointments. Mr. Smith begins to talk about Mary Bridge & states on pg. 85 I began to say that he (RS) was sick about 2 weeks ago every time someone would walk in, however if you look on SCP521 you will see he was scheduled for surgery on Oct. 8, 2010 it states he recently had bronchitis & Mary Bridge was uncomfortable with doing the surgery at that time (May 25, 2011 exhibit 1 & 3). So once again I am being blamed for something I had nothing to do with also with SCP 518 you will clearly see a letter from Mary Bridge.

Appendix K (4)

James Clinton

March 16, 2012

Testimony of James Clinton

Mr. Clinton testifies that I attempt to limit what CS & RS hear because I do not want them burden with this. If he had concerns of me having custody of CS & RS he would state it March 16, 2012 Pg. 179. CS & RS were blossoming into young men & now they have not gained a lot of weight since being in Mr. Smith's care & on CSs 6 birthday he received a .22 caliber rifle. At the time Mr. Clinton goes on to say he felt at that age the rifle was a little inappropriate for his age. On CSs 7 birthday Mr. Clinton had seen Arthur which is Erica's father going after CS at the YMCA & it looked as though he was going to go after him a physical way. "CS seems mixed up & confused still." "CS is pretty distant. He is withdrawn into himself from-- a little bit, from what I can tell. He is more worried about his world, I guess. " Ms. Glorian" has RS had any health issues that concerned you?" "Some bruising. " (April 12, 2012 exhibits 4-6 & 9-14, 19, 21, 23 & July 9, 2012 exhibit1) March 16, 2012 Pg. 180-182.

Appendix L (1)

McKayla Smith

July 9, 2012

McKayla Smith

To be perfectly honest with you, Your Honor, if you look at the original order that was signed in 2008 by McCauley, it states that she's to investigate bruising along with an assault that is it. She has gone in depth even further, some of the things she's said is false, some of it is even partly true, some of it she hasn't investigated, nor she asked she never investigated the assault. She's never investigated the bruising, she never talked to Lynette Lile. She only talked to Karen Anderson on one occasion after she & Mr. Smith had agreed that that's who the children were going to go see. She's hung up on me, she's been verbally attacking me numerous times since she's been assigned. I have my father here who can testify to that because he heard her on speaker phone. It's not just one thing. There's numerous issues that have, you know, arose with Ms. Cotton throughout the years. These pictures are only part of what's happened throughout the years that she hasn't investigated. July 9, 2012 Pg. 129-130

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