

No. 43900-0

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

VINCE BADKIN,

Appellant,

v.

SAMANTHA BADKIN,

Respondent.

RESPONDENT'S RESPONSE TO APPELLANT'S BRIEF

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COMES NOW, Samantha Badkin, by and through GSJONES LAW GROUP, PS and submits the following Response to Appellant's Brief:

INTRODUCTION

The parties obtained a dissolution. The Appellant did not appear on the day of the trial and the final pleadings reflected the testimony of the Respondent. The trial testimony was inadequate for the trial court to enter a final parenting plan and a trial on the parenting plan was conducted on September 10 and 11, 2012, in which both parents and the child offered testimony and the court entered a Final Parenting Plan and Child Support order.¹ The child, M.B., was/is of sufficient age and maturity to express an independent opinion about her preferences for a parenting plan. The court considered her testimony and the testimony of her parents and made a ruling with findings related to the factors set forth in RCW 26.09.187.

During the litigation of the matter there were numerous temporary orders and awards of fees and/or sanctions.²

The property division is 50/50 and the primary custodian of the child is the mother.

¹ The child support order obligor was dependent on the outcome of the trial.

² There was also a trial on the merits in 2011, however, prior to entry of the final pleadings the

ASSIGNMENTS OF ERROR

The Respondent does not allege any trial court errors.

STATEMENT OF CASE - Parenting

Mr. Badkin is most insistent that his daughter is mature, intelligent and that what he wants what his daughter wants which is to live predominately with him. Twice when questioned about why his plan should be adopted he pointed to M.B.'s declarations, her status as a party, and vague reference to the mother/daughter relationship and what he alleges are the valid reasons put forth by his daughter. RP 13, line 6 through RP 14, line 16. There is little doubt that M.B. would prefer to primarily live with her father, however, that is one statutory factor and the court is required to look at many.

The court entered a Final Parenting Plan that provides for primary residential placement with Ms. Badkin and alternative residential time with the Appellant. The court made a number of specific findings (A through U) and other findings contained within the child support order. The appellant fails to demonstrate that there was a lack of substantial evidence to support the findings.

ARGUMENT

The Appellant has the burden of complying with the rules and presenting a record adequate for review on appeal. In re Marriage of Haugh, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990). The trial court's rulings with regard to the placement of

Honorable Judge Spearman passed and the matter was set for a second trial.

children is reviewed under an abuse of discretion standard. *In re Marriage of Kovacs*, 121 Wn.2d 795 , 801, 854 P.2d 629 (1993)

TEMPORARY PARENTING PLAN

A temporary plan is not the type of a superior court decision that can be appealed. RAP 2.2(a). The appellant has an opportunity to ultimately prevail and the ruling, if in error, was harmless. RAP 2.2(a)(1). The appellant had a two day trial in which he, his spouse, and his daughter all offered testimony to the court.

ALTERNATIVELY, should the court review the issue, it is the respondent's belief that appellant takes issue with the designation of the mother as custodian of the child in the temporary parenting plan signed by Judge Olsen and the implication, if any, on child support. The mother's proposed parenting plan sought to end the alternate week on week off visitation. CP 19-28. The father's proposed parenting plan sought to keep alternating weeks. CP 50-56. The motion, response and reply contain supporting testimony that Mr. Badkin had moved to Florida and on his return gradually increased time with his daughter and that the parties had been doing a week-on /week-off arrangement for some time. CP 19-44. It was not an abuse of discretion for the court to find under RCW 29.09.197 that the parents had taken roughly equal responsibility for the care of their child and that it would be disruptive the child's emotional stability to change the arrangement. The court designated Ms. Badkin as the primary parent under

paragraph 3.12 of the parenting plan. It was also not an abuse of discretion based on the pleadings that the child was in the mother's primary care until after the child's birthday in late summer of 2010 and then an alternate care schedule was in place. CP 19-44. There are a variety of declarations in the record to support the decision and the judge adopted the visitation as proposed by the appellant. CP 119-125.

TEMPORARY CHILD SUPPORT ORDER

A temporary plan is not the type of a superior court decision that can be appealed. RAP 2.2(a). The appellant has an opportunity to ultimately prevail and the ruling, if in error, was harmless. RAP 2.2(a)(1).

The parties did testify on their income and expenses during the trial on September 10 and 11, 2012. The appellant had an opportunity to submit whatever evidence he wished the judge to consider and make whatever arguments he wished to make related to child support. The trial court denied the request to retroactively modify the temporary support for three reasons: 1) Mr. Badkin failed to appear at trial (5-7-2012); the court found no persuasive proof of Mr. Badkin was experiencing dire financial consequences; and 3) Mr. Badkin had a simple remedy available to him ie.. follow the temporary parenting plan. 9-14-2012 Oral Ruling RP 3, lines 1-25.

The legislature's stated intent in enacting the child support schedule statute, chapter 26.19 RCW, was "to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living." RCW 26.19.001. When the trial court issues a child support order, it begins by setting the "[b]asic child support obligation." RCW 26.19.011(1).

When the mother moved for a temporary order of child support in this case the father argued that he should have been designated the obligor. The court denied his request. The argument that the father, with a surplus of funds available to run his household to be an obligor is not well taken under the statutes, and a similar argument was made in State ex rel. M.M.G. v. Graham, 123 Wn.App. 931, 99 P.3d 1248 (Wash.App. Div. 1 2004).

Graham encourages this court to affirm the trial court's application of *Arvey* to the present situation, and to hold that *Arvey* also applies to situations where parents equally divide residential time with their children. However, *Arvey* specifically distinguished "split-custody" situations from equally shared residential arrangements where the parents divide time with their children. *Arvey*, 77 Wash.App. at 823, 894 P.2d 1346. Both M.M.G. and V.M.G spend an equal amount of residential time with each parent; they do not primarily reside with one parent or the other, they reside with both. The current situation presents a shared residential arrangement rather than the "split-custody" arrangement addressed by *Arvey*.

Id. At 940.

We hold that where the residential care of children is not split between two households as in *Arvey*, but is instead shared as in this case, *Arvey* does not apply. Rather, a trial court must calculate the

basic child support amount and may then deviate from that amount based on the amount of residential time spent with the obligor parent, pursuant to RCW 26.19.075, so long as doing so will not result in insufficient funds in the household receiving the support to meet the needs of the children while they are residing in that household. We remand for recalculation of the basic child support obligation and consideration of any deviation not based on *Arvey* that the court deems appropriate. Such deviation will require the trial court to enter findings of fact. RCW 26.19.035(2); RCW 26.19.075(3).^[2]

Id. At 941.

BACKGROUND ON MOTIONS PRACTICE IN KITSAP

Domestic hearings are normally set in front of a commissioner. Pursuant to Kitsap County Local Rule 77(k)(5)(E) show cause hearings and motions for temporary relief will be heard on Fridays at 9 a.m. (The domestic calendar). This particular calendar is usually staffed by the Commissioner although, in Kitsap County, as other judges finish their morning calendars several may engage in “calendar assist” and matters get brokered out to judges.

PRE-ASSIGNMENT OF A JUDGE

A dissolution matter is not pre-assigned a judge as a matter of course in Kitsap County. KCLCR 40(6)(c). A trial date is assigned after an unsuccessful settlement conference. KCLFLR 9(c). Trial dates may be changed upon written stipulation or motion of the parties. KCLFLR 9(d).

IT WAS NOT AN ABUSE OF DISCRETION TO TAKE TESTIMONY ON MAY 7, 2012 WHEN MR. BADKIN FAILED TO APPEAR DESPITE BEING AWARE OF HIS STATUS ON THE STANDBY CALENDAR AND RELYING ON A NOTICE OF UNAVAILABILITY

On April 23, 2012 the parties appeared on the call only calendar and learned that Judge Haberly was available to begin trial of the case. April 23, 2012 Transcript, RP 2, lines 3-4.³ The court placed the matter on standby and instructed counsel to check in with the court scheduler. RP 6, lines 9-10.

KCLCR 40(1)(B) provides:

(4) Standby Calendar. In the event that a case cannot be heard on the date set for trial it will be held on a standby calendar and counsel will be given a minimum of two hours notice for trial.

(A) Notification. The Court Scheduler shall contact the parties to advise them of the standby status of their case.

(B) Standby Calendar at Counsel Request. A standby calendar at the parties' request may be created with the following conditions and addressed to the Court Scheduler.

(i) Trial - Kitsap County Superior Court. If an attorney is in another trial in Kitsap County Superior Court.

(ii) Trial - Other Courts. If an attorney has a conflict with another Superior Court, Appellate Court, or Federal Court, with the approval of the Presiding Judge.

(iii) Emergency. If an illness or other emergency situation arises involving the litigants, witnesses, or lawyers, with the approval of the Presiding Judge.

(iv) Other Requests. Any other request must be made to the Presiding Judge.

Mr. Chabuk testified that on April 18, 2011 he received an e-mail from the court scheduler that the action would be on standby and that trial could not be

held until at least May 7, 2011. CP 450, line 4-6 and CP 333, lines 4-11. He then appeared on April 23, 2011 and was aware that the case was on standby status. He received an e-mail from the court scheduler about the trial date. CP 450, line 25-26 and CP 333, lines 11-15.

There is no dispute that Mr. Chabuk filed a NOTICE OF UNAVAILABILITY on May 1, 2011. The appellant does not offer an explanation for failure to request a continuance of the trial which would be required under KCLCR 40(1)(B)(iii) or KCLCR 40(1)(B)(iv). Appellant has suggested that his counsel's notice of unavailability, standing alone, had a legally binding effect on the Ms. Badkin's counsel and the trial court, but, he does not cite any authority supporting this position. See *In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 906, 232 P.3d 1095 (2010) (rejecting claim that litigant may unilaterally bind opposing counsel or tribunal merely by filing a notice of unavailability). Mr. Badkin had an opportunity to present his position and have the trial court consider it. Due process requires no more. See *Rivers*, 145 Wn.2d at 696-97.

Under CR 52(c) the court may enter findings if a party fails to appear at trial, after notice. Mr. Badkin had notice the court did not error in taking testimony and entering findings of fact and conclusions of law.

³ Neither party was aware a judge was available.

The court vacated the Decree, Child Support Order and Parenting Plan entered on May 7, 2012. Ms. Badkin does not allege error. As to the findings of Fact entered on May 7, 2012, Mr. Badkin failed to make a showing of a prima facia case. CP 389, lines 13-19. Mr. Badkin did not appear and his counsel leaving town while on standby and not being available for trial is not excusable neglect. CP 389, lines 20-23. Mr. Badkin did bring the motion timely. CP 289, line 25. Mr. Badkin provided no evidence of hardship. CP 390, line 3-4.

THE COURT DID NOT ERR IN ENTERING AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW ON AUGUST 3, 2012

The findings of fact entered on May 7, 2012 did not conform to the transcript of the hearing. An Amended Findings of Fact was set for presentation on August 3. This was the same date that the Decree and Child Support order were set for Presentation. Mr. Badkin alleges that the trial court lacked the authority to enter amended findings under CR 52(b).

This argument is first raised on appeal and should not be considered as Mr. Badkin had notice of the trial date and purposely chose to not appear. RAP 2.5(a)(3). The amended findings were also entered on August 3, 2012 at the same time as the judgment and therefore timely under the rule.

Mr. Badkin filed a motion to vacate the August 3, 2012 orders, however, it was stricken on September 7, 2012 for failure to comply with the procedure set forth in CR 60. It has not been re-noted.

THE ISSUE OF A PRE-ASSIGNED JUDGE WAS MOOTED

The Badkin matter had a trial date of April 23, 2012 and the matter had been pre-assigned. April 23 Transcript the court did not have a judge available for trial and the parties appeared for a “call only” hearing in front of the Honorable Judge Haberly. Mr. Chabuk did object to the affidavit of prejudice, however, Judge Haberly indicated the matter was moot because Judge Dalton was also not available on that date to start trial. The trial was continued at the request of Mr. Chabuk and placed on the standby calendar.

Mr. Badkin asserts that Judge Anna Laurie took the case upon herself. As with many courts, the number of matters that are set for a particular trial date frequently outnumber the number of judges or court rooms that are available and require the court to prioritize the matters and authorize a standby schedule. Respondent has no idea why Judge Anna Laurie presided over the May 7, 2013 calendar, however, does not allege error.

It is uncontested that Mr. Chabuk failed to seek a continuance; failed to appear and instead relied upon a notice of unavailability knowing that the matter was on standby and knowing that May 7, 2012 had some import.

ALTERNATIVELY, Ms. Badkin requested for a fee waiver and Judge Dalton required her to make monthly payments for the filing fee based on her financial circumstances. RCW 4.12.050 allows a judge to set an action and have it not be considered a discretionary decision similar to the trial setting orders with fill in the blanks in Hanno v, Neptune Orient Lines, 67 Wn. App. 681, 838 P.2d 1144 (1992).

DIVISION OF ASSETS AND DEBTS

It appears that the appellant's argument is that the parties previously divided the property and the trial court lacked authority to divide it. Even if the appellant had appeared at trial, it is difficult to characterize dividing the assets and the debts equitably 50/50 as an error that would have been substantially different based on his testimony. The revocation of the joinder also found the matter from an agreement to a contested matter.

The trial court is obligated to dispose of the property and liabilities of the parties in a manner that "shall appear just and equitable after considering all relevant factors." RCW 26.09.080. In re the Marriage of Brady, 50 Wn. App. 728, 731, 750 P.2d 654 (1988). The trial court has broad discretion when distributing property in a dissolution proceeding and disposition will not be disturbed on appeal absent a showing of manifest abuse of discretion. In re Marriage of Kraft, 119 Wn.2d 438, 450, 832 P.2d 871 (1992).

The findings of fact support the decree of dissolution. The findings are not challenged on appeal. (Appellant is challenging the authority of the trial court to enter them, but not the findings). The findings of the trial court are unchallenged and should be treated as verities on appeal. In re Estate of Watlack, 88 Wn. App. 603, 609, 945 P.2d 1154 (1997). It should be noted that, appellant argues that the marital community owed the home. The testimony of Ms. Badkin was her mother owned the home. Mr. Badkin's belief that he had an ownership interest does not mean one existed. Additionally, the remedy for Mr. Badkin is a post dissolution action related to an undivided asset, if it was an omitted asset.

THE TRIAL COURT DID NOT ERR AND CONSIDERED THE STATUTORY FACTORS SET FORTH IN RCW 26.09.184 and RCW 26.09.187 WHICH ARE SET FORTH IN THE FINDINGS OF FACT A THROUGH U.

The court considered the objectives of a parenting plan in RCW 26.09.184. Specifically, for RCW 26.09.184(4) (dispute resolution) and RCW 26.09.184(5) (decision making) both parties requested dispute resolution and joint decision making in their proposed parenting plans. Those requests were honored and supported by Finding of Fact E.

The court found that the final parenting plan offered by the mother met the objective to maintain the child's emotional stability under RCW 26.09.184(1)(a)

This is supported by the court's findings C and O.

The court found that the final parenting plan offered by the mother met the objective to maintain the child's emotional stability under RCW 26.09.184(1)(b)

This is supported by the court's findings Q.

The court found that the final parenting plan offered by the mother met the objective to provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan under RCW 26.09.184(1)(c)

This is supported by the court's findings S.

The court found that the final parenting plan offered by the mother met the objective to Minimize the child's exposure to harmful parental conflict under RCW 26.09.184(1)(e)

This is supported by the court's findings K, M, N.

THE PARTIES DID NOT AGREE ON THE RESIDENTIAL PROVISIONS OF THE PARENTING PLAN AND THE COURT IS REQUIRED TO CONSIDER THE FACTORS SET FORTH IN RCW 26.09.187

(i) The relative strength, nature, and stability of the child's relationship with each parent;

This is supported by the court's findings F, G, H, I, J, K, P

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

There were no written agreements outside of the requests by both parties for mediation and joint decision making.

(iii) Each parent's past and 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;

This is supported by the court's findings S, M, N.

(iv) The emotional needs and developmental level of the child;

This is supported by the court's findings M, N, L, R

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

This is supported by the court's findings F, G, H, I, J, K, L, M, N, P, Q, R, T.

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule;

The parents both desire to be the primary residential parent. The child desires to primarily reside with the father. This is supported by the court's findings T.

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

Both parents work full-time and appear to have a Monday-Friday schedule.

FINDING A: The Respondent was not in dire financial straits. CP 603 27-29 and CP 604, line 1-2.

The trial court found no persuasive proof of Mr. Badkin's dire financial circumstances citing his income of \$5,300.00 month; no rent since January of 2012 (he did pay utilities); he had voluntarily increased his car payment expense and he had a simple remedy available that he chose not to pursue. (Follow the parenting plan). RP 3: September 14, 2012 Oral Ruling of the Trial Court.

Mr. Badkin testified he was living paycheck to paycheck for an extended period of time. RP 23, line 23 –RP 24, line 1: September 10, 2012 Trial – Direct of Vincent Badkin. Trial Exhibit #10 (8-25-2011 RP 194) and Trial Exhibit #14 (11-14-2011) were financial declarations of Mr. Badkin to compare with his financial declaration prepared for the trial (Exhibit #13 RP 170).

Mr. Badkin testified his prior vehicle payment was around \$300 a month. Id at RP 198, line 1-2. He purchased a different vehicle and his payment increased to \$504.00 a month. Id at line 6-9. Mr. Badkin was asked what steps he took to try to change his financial crisis and he indicated he attempted to refinance the vehicle (unsuccessful) and has no other bills. Id at RP 198, line 13 to RP 199 line 25. He also testified he did not have enough to eat. Id at RP 200, line 1-2.

Mr. Badkin was ordered to provide bank statements in response to discovery but chose to only provide bank statement from February of 2008 through December of 2010. Id at RP 201, lines 17-20.

Mr. Badkin and his daughter moved in with Mr. Chabuk in January of 2012. RP 17, line 18-19. He did not pay anything to Mr. Chabuk. Id. RP 208, lines 6-7. Mr. Badkin moved to a residence with Mr. Miller as his landlord after he left Mr. Chabuk's home and did not pay rent. Id at RP 207, lines 8-9. He did pay utilities. Id at lines 12-21. The last time Mr. Badkin paid rent was to Mr. Danford for December of 2011. Id at RP 208, lines 16-21.

FINDING B: The trial court found that Mr. Badkin's testimony that he was not willing to bundle his child into a car against her will histrionic and not reliable. September 14, 2012 Oral Ruling of the Court: RP 16, lines 14-17.

Mr. Badkin testified he would have to physically force his daughter, at great emotional distress, to go to her mother's house. September 10, 2012 Direct of Mr. Badkin at RP 24, line 14-16 and RP 25, line 13-18. The judge did not find Mr. Badkin credible and found the child credible that she wanted to spend some time with her mother. Id at RP 105, line 18-25 and RP 106, line 1.

The child testified that she has no problem with spending time with her mother; long amounts of time; but doesn't see living with her mother as helpful for her. Id at RP 8, line 25 to RP 9 line 5.

FINDING C: The trial court found both parents capable for providing for the child's physical care.

This was inferred from the evidence.

FINDING D: The trial court found that the week on / week off arrangement was not working for the needs of the child. CP 604, line 3-6.

Ms. Badkin testified that the visitation arrangement (week on/week off) was not working. Trial Testimony, RP 68, lines 22 and RP 145, lines 14-23. Ms. Badkin indicated academics were an issue. Id. Ms. Badkin indicated that shoplifting had been an issue. Id. RP 69 at lines 2-3 and RP 76 lines 3-4.

Mr. Badkin testified that his proposed parenting plan with the child in his primary care was in the child's best interest. (Trial Exhibit #12,) Id. RP 161, lines 16-24.

Finding E: The parties agree on every aspect of the parenting plan except who should be the primary custodial parent and who should have visitation. Oral Ruling of Court: RP 7 at 24-25.

Ms. Badkin proposed a parenting plan. Trial Exhibit #1. Mr. Badkin proposed a parenting plan. Trial Exhibit #12. The plans differ in paragraph 3.1 through 3.5 in describing the custodial parent. The court did not error in finding that the parents agreed on the other aspects of the parenting plan except custody/visitation.

FINDING F: The court found the mother/daughter relationship did not have the extreme hostility and antagonism as perceived by Mr. Badkin and the child's relationship with the mother was historically close. Oral Ruling of Trial Court; RP 9, lines 1-11. CP 604, line 12-18.

Mr. Badkin left the state and the child was in the care of the mother with Mr. Badkin visiting on occasion and the child visiting the father in Florida. 9/10/12 Trial Testimony, RP 4, lines 11-18; RP 5 line 23 – RP 6, line 20. The child testified that her relationship with her mother is not as strong as it could be and will be in the future. 9/10/12 Trial testimony of M.B. at RP 8, line 23. The child testified that she has no problem with spending time with her mother; long amounts of time; but doesn't see living with her mother as helpful for her. *Id* at RP 8, line 25 to RP 9 line 5.

FINDING G: The strength of the relationship between mother and daughter is very strong. CP 604, line 7-11.

FINDING H: The nature of the mother/daughter relationship exemplifies a parent-child relationship. She understands the boundaries and consequences. She acted appropriately when confronted by with bad behavior and the mother's relations with the child is very very good. 9/14/12 Oral ruling of Court: RP 11 at line 14 through RP 12 line 8. CP 604, line 7-11.

The mother testified that if her daughter had academic issues there were consequences in the home that included losing the ability to do the fun things her daughter wanted to do. Trial Testimony, RP 81 at lines 5-24. M.B had consequences for shoplifting. *Id* at RP 82, lines 3-6. M.B had consequences for

inappropriate pictures on her cell phone. Id RP 82 at 13. There were consequences for bad grades. Id RP 82 at 13. There were consequences for drug activity. Id RP 83 at lines 7-25

FINDING K: The nature of the relationship between father and daughter does not minimize the child’s exposure to harmful conflict. The father has exposed the child to every aspect of the litigation and this does not protect the child from conflict rather, immerses the child in it. CP 604, line 19-22.

The father testified that his daughter would have to return to the primary care of her mother and that he could not meet the financial demands and that her mother was trying to get money. Trial Testimony, RP 32 at lines 16-25. The litigation has caused an impact in the father daughter relationship. Id at RP 69, lines 8-13. Mr. Badkin speaks to his daughter about the litigation if it affects her directly. Id RP 213 at lines 2-6. Mr. Badkin testified that the parenting plan affects his daughter. RP 213, lines 16-19. Mr. Badkin explains to his daughter what is going on with the finances when she does not have food in the refrigerator or there is not enough gas or the child needs new shoes. Id RP 213 at line 20 – RP 214, line 3.

“I have seen anger in the courtroom , I have seen glares and stares, I have seen parties who could not stand to be in the same room with each other, but I have rarely seem such venom as Mr. Badkin directed to Ms. Badkin.....But,

the glare and the venom and hatred were not imagined. Exposing M.B. to that on a constant basis is unhealthy.” Id RP 14, line 11-19.

FINDING L: The child is immature in her developmental process. CP 604, line 23-26.

FINDING M: Mr. Badkin has been unable to protect his daughter from harmful parental conflict. CP 604, line 27-29.

That Mr. Badkin defers to his daughter so completely is not evidence of a healthy bond. 9-14-12 Oral Ruling RP 13, lines 7-8. Mr. Badkin is not protecting her from this conflict, rather he is immersing her in it and this is not good parenting. Id RP line 8-11.

Mr. Badkin has been unable to communicate and effectively parent M.B with Ms. Badkin in the last year, year and a half. Id RP 212 at lines 2-7. Mr. Badkin speaks to his daughter about the litigation if it affects her directly. Id RP 213 at lines 2-6. Mr. Badkin testified that the parenting plan affects his daughter. Id RP 213, lines 16-19. Mr. Badkin explains to his daughter what is going on with the finances when she does not have food in the refrigerator or there is not enough gas or the child needs new shoes. Id RP 213 at line 20 – RP 214 line 3.

M.B. was actually in the primary care of her father for the summer prior to the trial and Ms. Badkin and her daughter were isolated from each other in contravention of the argument that if the child were in the primary care of the

father that the relationship between mother and daughter would somehow magically heal. Id at RP 13, line 18-24.

FINDING N: Mr. Badkin's behavior at trial, in some instances, demonstrated venom and hatred and exposure of the child to that on a constant basis is unhealthy. CP 605, line 1-4.

The trial court listened to the parties, watched the parties and watched their interactions. Mr. Badkin on at least two occasions gave Ms. Badkin looks that the court had rarely seen. 9-14-12 Oral Ruling, RP 14, line 18.

“I have seen anger in the courtroom , I have seen glares and stares, I have seen parties who could not stand to be in the same room with each other, but I have rarely seem such venom as Mr. Badkin directed to Ms. Badkin.....But, the glare and the venom and hatred were not imagined. Exposing M.B. to that on a constant basis is unhealthy.” Id RP 14, line 11-19.

Mr. Badkin's demeanor, his presentation, his body language, his tone, all combine to diminish his credibility before the court. Id RP 20, lines 10-12. Further, his emphasis on money and finances and his claim of poverty diminished his credibility when the facts were examined. Id at 13-15. Finally, his immersion of M.B. in this lawsuit and the harm he did her but refuses to acknowledge distracted from his

FINDING O: The room for McKenna at her mother's home is adequate

It is hard to fathom how much time was spent on this topic when the child had the same room in the mother's home as when the parties were together. This court did not err.

FINIDNG P: There has not been a stable residential placement for the father in the last 8 months. RP 14, line 21. CP 605, line 5-9.

Mr. Badkin was at Mr. Chabuk's residence in January of 2012. Trial Testimony, RP 17, lines 18-19. He resided at Mr. Danford's home in December of 2011. Id RP 208, lines 8-21. He moved into Mr. Miller's residence on a temporary basis from February to the trial date waiting to move back to Mr. Danford's home. Id RP 209 at lines 8-24.

FINDING Q: A parent should not add to the emotional instability of a child. CP 605, line 10-14.

Mr. Badkin was present when his daughter read an e-mail from Phil (Significant other of Ms. Badkin) and he went over to his daughter to console her, but, read the e-mail and became very distraught and agitated. Id RP 178, lines 10-25.

FINDING R: The boundaries that the father established for his daughter caused concern to the court in light of the concern expressed for her sexual exploration, drug exploration and academic crisis. CP 605, line 15-17.

Mr. Badkin claimed that his daughter was under 24/8 adult supervision in his care. Id RP 211 at 6-11 and RP 213, lines 6-13. Mr. Badkin swung to the opposite extreme and despite knowing his daughter was engaged in sexual exploration, drug exploration and academic crisis allowed his daughter to stay in Seattle for a week-end with a friend that just turned 18. Id RP 218, lines 4-23.

FINDING S: Mr. Badkin's failure to follow court orders caused concern for the court in light of his histrionic and unreliable testimony and the real possibility he will continue to isolate the child from her mother much to detriment of the child's future. CP 605, line 18-23.

Mr. Badkin was not following the alternating week parenting plan and Ms. Badkin last saw her daughter on June 18, 2012. Id RP 79, lines 16-18. It was Mr. Badkin's position that he would have to physical force his daughter to visit and he was unwilling to do so. SEE FINDING B.

FINDING T: The child desires to have a warm and loving part time relationship with her mother.

The child testified that her relationship with her mother is not as strong as it could be and will be in the future. 9/10/12 Trial testimony of M.B. at RP 8, line 23. The child testified that she has no problem with spending time with her

mother; long amounts of time; but doesn't see living with her mother as helpful for her. Id at RP 8, line 25 to RP 9 line 5.

FINDING U: The child is in a diversion program and needs to live where the judge tells her to get the benefit of the diversion

The trial court explained to the court and the child that because the child is in a diversion in juvenile court, she is required, pursuant to the juvenile court's order, to live in an approved placement to get the benefit of the diversion. 9-14-12 Oral Ruling, RP 18, lines 15.

Ms. Badkin testified that her daughter was accused of shoplifting and that her daughter was on a deferral for two years. RP 75, lines 3-8. Trial Exhibit #5.

The trial court did not err and there is substantial evidence to support her finding.

CHILD'S DECLARATIONS

The child wrote a number of declarations (that were not admitted at trial) and the father referenced the child's declarations as why it was not in the child's best interests to live predominately with her mother. 9/1/12 Trial Testimony RP 13, lines 9-23. The child was asked to express her concerns to the judge with the declarations in front of her and she expressed concerns about support and expenses and her mother's intent to allow her to move to her father's home and

then recantation of the same. 9/10/12 Testimony of M.B at RP 12, line 18, through RP 15, line 25.

The court may have reviewed the declarations in the context of other hearings, however, at trial, Mr. Badkin did not admit the declarations into the trial court record.

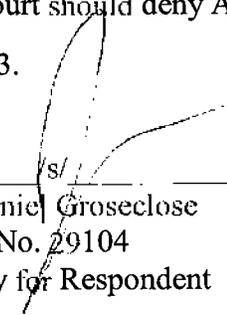
REQUEST FOR ATTORNEY FEES ON APPEAL.

The Respondent does not request attorney fees.

CONCLUSION

For the aforementioned reasons the Court should deny Appellant's appeal.

Dated this 22nd day of November, 2013.



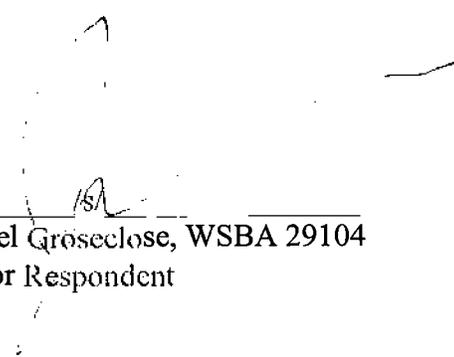
John Daniel Groseclose
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CERTIFICATE OF SERVICE

I certify under penalty of perjury of the laws of the state of Washington that I served a copy of the foregoing Response of Ms. Badkin on the 22nd day of November, 2013, to the following counsel of record at the following addresses:

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GSJONES LAW GROUP PS

November 22, 2013 - 4:41 PM

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Case Name: In re the Marraige of Badkin

Court of Appeals Case Number: 43900-0

Is this a Personal Restraint Petition? Yes No

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Statement of Arrangements

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Cost Bill

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Letter

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Personal Restraint Petition (PRP)

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Petition for Review (PRV)

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Comments:

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