

FILED
COURT OF APPEALS
DIVISION II

2014 NOV 20 PM 1:00

STATE OF WASHINGTON

No. 46424-1-II

BY

DEPUTY

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re Marriage of:

CHRISTOPHER A. WODJA,

Appellant,

v.

TERESA G. HARKENRIDER,

Respondent.

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

Appellant and father Christopher A. Wodja appeals the May 2, 2014 decisions of the Honorable James Orlando denying adequate cause to modify the December 16, 2011 Final Parenting Plan (CP 1) in this case.

There is no substantial evidence in the record supporting a dismissal. Judge Orlando solely relied upon hearsay statements in a GAL Report, from a GAL who had a very short appointment. Judge Orlando completely ignored the testimony and sworn recommendations of the court-appointed experts who are expert witnesses. He gave great weight to the GAL who found new, alleged possible allegations of misconduct by Wodja 3 1/2 years after he had been severed from the children. This is an obvious case of the mother brainwashing and/or coaching the children.

Dissolution trial Judge Kathryn Nelson stated that it was the court's intent to reunite the children with the father after he satisfactorily completes his court-ordered evaluations and treatments for anger management, and histrionic and narcissistic disorder. CP 68 (page 3, lines 15 - 18). The father did so. And because of an alleged hearsay statement from a GAL, from an alleged, unnamed and unknown counselor, who allegedly made never-before-mentioned

claims of Wodja's misconduct, because of this report, the father is permanently restrained from the children.

The mother stated on record that she never wants the father to see the children. Judge Nelson said the opposite. The mother has an agenda with a motive to lie. The mother has said the children are suffering since she has been the sole provider. This alone is a new, substantial change of circumstances because the mother said they were doing well after the father was cut off during the dissolution trial in late 2011. So, the mother's own admissions show that she is either lying to disparage the father, or she is manipulating and abusing the children. The mother has created more, new allegations of fatherly misconduct. The longer he goes without seeing the children, the more new allegations the mother comes up with to disparage the father. The mother cannot possibly be believed. No reasonable judge would believe her histrionic, over the top, inconsistent allegations.

Judge Orlando's order permanently terminates the father's parental rights and denies him access to the children with no recourse. This is Unconstitutional. Wodja's opportunity to regain access to the children was through satisfactory compliance with the court's orders for evaluations and treatments for anger

management and narcissistic and histrionic disorders. After Wodja completed all evaluations and treatments and has expert testimony supporting reconciliation, Judge Orlando still said no, not just to any contact, but he said that Wodja fulfilling the court's orders with the court-appointed experts is still not enough. Judge Orlando has inherently created a new requirement for Wodja, but he won't define what that is. He has inherently modified the Final Parenting Plan, ironically, without finding adequate cause to do so.

It was "backwards" and contrary to law to appoint a GAL and order an investigation without determining adequate cause. Judge Orlando wanted the GAL to talk to the experts, as if their clear, unambiguous testimonies were not enough. He also wanted the GAL to report on the children, but the GAL was not allowed anywhere near the children. Nothing was allowed that would facilitate a genuine fact-finding investigation. The GAL allegedly talked to people in the mother's "camp" who were not identified and whom the mother could completely influence. The father who IS a party to this case, who does have Constitutional rights had no part in the investigation or any ability to examine witnesses. The alleged mystery counselor was believe on the face of the report. The children were believed when it favored the mother's position and

disbelieved when it favored the father's position. To wit, Zoe allegedly stated that she wants to see her father. But, the GAL and court cannot believe that she is speaking properly or that that would be appropriate. Yet, the court can believe the hearsay statements of the children when it comes to disparaging allegations of the father. Are the children reliable or not? Only when it fits the mother's story, apparently.

There's overwhelming evidence that there is adequate cause and the father has done what Judge Nelson wanted him to do. The father cannot do any more. He has been deprived of a Constitutional right by Judge Orlando without trial. No reasonable judge would deny adequate cause and dismiss this case solely based upon the hearsay statements from a GAL who observed nothing in this case.

Hearsay is admissible via a GAL, but evidence allowed in court does not make it automatically credible. Just because an accusation is admissible does not make it true. In fact, the case law below shows that there is grave concern by the Legislature, attorneys and family law commissioners that GAL's act in rogue manners and abuse their independent positions. There has been concern that a judge often blindly relies on a GAL as the oracle of

truth. But, other judges have completely ignored and dismissed GAL reports, and have the authority to do so. Judge Orlando violated public policy and gave great weight to the GAL and give the father little to no time to examine the GAL's investigation, reporting and reliability--all while Judge Orlando completely ignored all the testimony by the experts the court itself appointed. It is almost as if there was no point in appointing this experts. The ruling is untenable. The system was broken in this case and the court made the father go through over 2 years of court appointed treatment only to find that it was moot, null and void, incriminating the trial court and having serving no purpose and it had no regard for its own orders, findings and its own ability in appointing experts.

The court ordered the father to pay attorney fees but made not finding of need and ability to pay. The mother earns up to \$200,000 per year. She has no need. The court did not make any findings under RCW 26.09.260(13) in order to sanction the father. The court made no fair and equitable distribution of GAL funds. The court ordered the father to pay as a punitive sanction for him filing the modification, as if he should not have done so, when Judge Nelson encouraged him to do so when he satisfactorily completed treatments.

The court has left the father with no recourse. It made vague findings that he could do evaluations and treatments to fix his parenting deficits. But, the court turned around and said, "Not good enough" (paraphrased) even though the experts state that it was good enough.

Why did the court appoint experts if the court is not going to consider what the experts have to say? Why did the court rely upon a GAL who has never observed anyone or anything in this case's first 3 years, a GAL who is no expert of any kind and use her report to trump what the court-appointed experts said? The court disregarded RCW 26.09.002 that the goal is a relationship with both parents. The court originally found a .191 basis for restrictions, but gave a remedy to fix those issues. Then the court said our own remedy is not satisfactory because a GAL (not the experts we appointed years ago), but a newly appointed GAL says it's not a good idea.

A finding of adequate cause is not an automatic change of custody. It's just a finding that things have changed since the original order. The father has made progress and change according to the experts. The mother says the children suffer under her care, after she said they were doing great when they originally

were cut off from the father. These are basis to find adequate cause to simply at least look deeper into this matter, based on these changes of circumstances. The judge ordered the appointment of a GAL to investigate this case as if there was adequate cause, but limited the inquiry in a manner favorable to the mother, her influence and her control. The court concludes that the father's Constitutional right to his children is eliminated with no recourse.

B. ASSIGNMENT OF ERROR

1. The trial court erred in reversing a commissioner's finding of adequate cause. Judge Orlando erred by dismissing Christopher Wodja's Petition for Modification by denying adequate cause when there was overwhelming evidence to find adequate cause.
2. Judge Orlando erred by moving forward with a GAL appointment and investigation without finding adequate cause. He circumvented the law by acting as if adequate cause was found, warranting an investigation. But, the GAL pled allegations that the mother never responded with. Judge Orlando erred and should have found adequate cause before appointing a GAL.

3. The trial court erred in ignoring overwhelming evidence that the father had completed all necessary treatments (including expert testimony).
4. The trial court erred in wholly relying upon and trusting a GAL's report and recommendations when the GAL was only recently brought on board and did very little investigating, compared to the ongoing months and months of work by experts assigned by the court itself.
5. The trial court erred in denying any contact with the children.
6. The trial court erred as it, in effect has terminated the father's parental rights, with no recourse for an opportunity to re-enter the children's lives, especially considering there is not findings of any mandatory .191 restrictions in Section 2.1 of the parenting plan and all issues and requirements have been fulfilled. This is also err because the previously-assigned Judge Kathryn Nelson expressed a desire and wish of the court for the father to reintegrate with the children.
7. The court erred by disregarding one child's wishes to see her father. The court found it inappropriate to rely upon the child's wishes, yet, the court conversely relied upon the child's alleged hearsay statements, as reported by the newly-appointed, short-

term GAL, as allegedly reported by an unnamed counselor, regarding new allegations, never previously made in court (regarding child abuse) after the father has not seen the children for 3 years.

8. The court erred by finding the GAL report credible (which is err in finding the children's unnamed, mystery counselor credible, which is err in finding the children credible, since the mother has had total control of them and expressed a desire to never let the children in the father's life again, even though the original trial judge said that contact with the father was a goal of the court)
9. The trial court erred in making an impermissible modification to the parenting plan and adding requirements for the father, while simultaneously denying adequate cause to modify.
10. The trial court erred in preventing total control and dominance of this case by the mother by appointing the GAL to only interview those on the mother's "team" and the mother's allegations against the father and claims the children are suffering, have increased the longer she has been in total control and care of the children. To wit, the court did not allow any objective investigation into this matter, or reasonable inquiry. It is err to let one side dominate and control any alleged fact finding or

investigation as both sides to any contested case are allowed to do discovery and examine witnesses, instead of one party presenting his/her version of the issues.

11. Judge Orlando erred by making no findings warranting permanent termination of the father's parental rights, which is a Constitutional right, especially considering the father had satisfactorily completed all requirements of the trial judge.
12. The trial court erred in ignoring expert testimony of the witnesses that the court appointed in this case.
13. The trial court erred in testifying.
14. The trial court erred in relying on its own opinion and testimony.
15. The trial court erred in finding that the hearsay reports of a lawyer GAL (for children the court did not deem credible), that reporting was given greater weight than the investigations, expert evaluations, treatments and conclusions of experts appointed by the court.
16. The trial erred in relying upon the mother's testimony and not considering the mother's testimony to be inconsistent and disingenuous and not finding that she has an obvious agenda to alienate the children and manipulate them to report falsely to experts. The court specifically erred by not considering that the

longer the father has gone without seeing the children, the mother the mother changes her story, adds to allegations, says that the children are worse off, while all under her care.

17. Judge Orlando erred by allowing the mother's attorney Stephen W. Fisher to testify and the court errantly relied upon his inadmissible testimony.

18. The trial court erred in granting the mother an award of attorney fees in the amount of \$5,000. There was no requisite finding of need and ability to pay. It was merely granted because it was merely requested. The mother is well off and has no need. The mother did not satisfy her burden to prove the father has the ability to pay. There were no statutory criteria by Judge Orlando to substantiate this ruling.

19. Judge Orlando erred by ordering the father to pay all GAL fees when the facts of the case spoke to the need for a GAL and the mother has substantial funds to cover all the costs or her fair portion.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Should this court vacate and/or reverse Judge Orlando's denial of adequate cause and dismissal and find that the denial and

dismissal was untenable, given the overwhelming facts of this case, warranting adequate cause? [pertains to Assignments of Error 1 - 17]

2. Should the court vacate and/or reverse the trial court's award of attorney fees? [pertains to Assignment of Errors 18].
3. Should this court find that there is no substantial basis in the record for prohibiting father/child contact? [pertains to Assignments of Errors 1 - 17].
4. Should this court find that there is substantial evidence in the record causing concern about the mother's conduct and/or agenda to permanently alienate the father from the children, and manipulate the children by planting false memories or coaching them to lie to maintain no father contact? [pertains to Assignment of Error 17].
5. Should this court vacate or reverse the award of GAL fees and order the mother to pay them or the parties to proportionately share the costs? [pertains to Assignment of Error 18].

D. STATEMENT OF THE CASE

After a Dissolution trial, final orders were entered on December 16, 2011, including a Final Parenting Plan (CP 1) and

Findings of Facts and Conclusions of Law. CP 9.

On February 8, 2012, the court entered a Corrected Findings of Facts and Conclusions of Law. Section 2.19 lays out reasons justifying a Final Parenting Plan which deprives the father from any contact with the children. It finds and requires the need for the father to get treatment for Axis II disorders of narcissism and histrionic disorders.

Page 7, line 16 of the Findings stated that no father/children contact would be allowed:

“pending further order of the Court as specifically set forth in the Parenting Plan.”

Section 2.21, page 9, line 7 of the Findings states that the mother has:

“alcohol dependency...was put on reand U.A.s by the Court...drank alcohol to excess...The court requires random testing through the anticipated April 27, 2012 hearing on a once to twice per month basis...file the results of those tests...”

Section 3.1 of the Parenting Plan states:

“The father shall have not residential time with the children until conditions are met in section VI. below.”

Section VI reads:

“Prior to the court allowing any contact between the father and children he shall comply with the recommendations of Dr. Mark Whitehill which include:

1. Twelve months of weekly individual psychotherapy with Michael Compte to address Father's personality disorders as set forth in Dr. Whitehill's report.

2. Successful completion of a course in anger management with Bill Notarfrancisco" (who was recommended by Whitehill).

On February 10, 2012, the court changed psychotherapy treatment providers for the father. CP 31.

On March 8, 2012, after the father had completed 90% of anger management treatment with Bill Notarfrancisco, the court ordered the father to start anger management treatment all over again with Steve Pepping, who was not available and eventually substituted with Diane Shepard, who was appointed on June 22, 2012. CP 44.

Section 3.13 of the Parenting Plan (CP 1) allowed for an April 27, 2012 review hearing to:

"assess Father's progress...i.e. and improvement in Father's condition through progress in his treatment and behavior that would allow a change in the no contact with the children provision that is the result of trial..."

On April 27, 2012, Judge Nelson, in her Order on Post-Decree Matters (CP 40):

(1) relieved the mother from any obligation for alcohol UAs

- (2) excused the mother for the UAs that she had missed
- (3) changed the psychotherapy provider to Paula van Pul
- (4) changed anger management provider to Bill Kohlmeyer, who later withdrew because of misrepresentations that the mother's attorney made about him.
- (5) ordered that there be no father/child contact, still.

On May 11, 2012, Judge Nelson clarified the following matters and entered the following orders (CP 42):

- (1) that the father is not required to do a year-long, domestic violence course, as requested by the mother
- (2) that any DV issues may be addressed by Paula van Pul
- (3) a new anger management specialist must be found to replace Bill Kholmeyer
- (4) if parties could not agree on anger management specialist, then the court would hear argument on that and reconsideration motion of father on 5/25/2012, his requests included re-evaluating the mother's alcohol issues

On June 22, 2012, Diane Shepard was appointed anger management specialist and to restart the treatment (6 months after Notarfrancisco's treatment was 90% complete).

Another review date had been set by the court for August 3, 2012. But, on July 26, 2012, the court struck that date and ordered a review date of August 31, 2012. This hearing was re-scheduled on September 12, 2012.

On September 12, 2012, the court entered an order with vague findings denying any father/child contact.

On November 29, 2012, stated in letter form that all review matters were ended and that the court stands by its 9/12/2012 order.

Over one year after the 9/12/2012 order (ending the post-decree review process), the father filed a September 27, 2013 Petition for Modification of Parenting Plan. CP 103.

Because of confusion about whether a judge had jurisdiction in this case, there were delays and continuances in hearings for adequate cause. CP 146, 191, 193.

On February 11, 2014, a Family Law Commissioner found adequate cause (CP 207) to modify the Final Parenting Plan (CP1). The mother filed a Motion for Revision. CP 215.

On March 14, 2014, Judge Orlando appointed a GAL to investigate whether reunification was appropriate and to speak to Paula van Pul, who already testified on the record and more. CP

209, 233. Judge Orlando did not find adequate cause but moved forward with this case and ordered action to be taken within this case when no adequate cause had been found.

The GAL filed a report on After reviewing the GAL's report, on May 2, 2014, Judge Orlando denied adequate cause and dismissed the modification action and ordered the father to pay all GAL fees. CP 244, 247, 248.

On May 12, 2014, the father moved for reconsideration. CP 250. Reconsideration was denied and the father was ordered to pay \$5,000 in attorney fees. CP 272.

The father appealed.

E. ARGUMENT

1. In general

The mother has resided in Massachusetts with the children since early 2012. The father has had no contact with the children. He has made no contact with the mother who is on the other side of the country. The mother stated on record that the children were doing well after the separation from their father. Nearly two years later, she said the children were suffering (while under HER care).

The father has completed all of the treatments required of

him and the main expert who has been appointed by this court and on this case for over two years, Paula van Pul, has made it clear in sworn testimony that the father has satisfied the court's requirements and is ready for reintegration with the children and poses no threat or risk to them. CP 46, 63. The treatment was adopted by the court in reliance upon Dr. Mark Whitehill's recommendations. The court entrusts many cases to Dr. Whitehill's expertise and values his professional opinion. Dr. Whitehill wrote that the court should rely upon Paula van Pul's assessment of the father in this case. CP 60. Other experts have verified that the father has satisfied their treatment plans, as ordered by the court. CP 49, 51, 99, 101.

There is nothing more the father can do to comply with the court's original Final Parenting Plan. CP 1.

The plain language of the court's order is that it is the intent of the court to reintegrate the children with the father. Judge Orlando has permanently shut the door on that possibility in that he does not even merely find adequate cause to keep a modification case alive. It is an untenable abuse of discretion to do so. The experts' opinions alone are overwhelming evidence that there is a substantial change of circumstances. And the mother's admission

that the children did well at the time of the Final Parenting Plan and they now have declined and are "suffering" shows that there are deficiencies in the mother's parenting. She only got them into counseling after I filed my Petition for Modification of Parenting Plan. There was no basis to deny adequate cause after a Family Law Commissioner found adequate cause.

A trial court's findings will be upheld if they are supported by substantial evidence. In re Marriage of McDole, 122 Wn.2d 604, 610, 869 P.2d 1239 (1993).

A reviewing court may not disturb findings of fact supported by substantial evidence even if there is conflicting evidence. Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

An appellate court may disturb findings of fact if they are not supported by substantial evidence. In re Marriage of Lutz, 74 Wn. App. 356, 370, 873 P.2d 566 (1994).

2. The standards for adequate cause are to determine facts based on affidavits -- the GAL report was not an affidavit. Judge Orlando misunderstood adequate cause.

Judge Orlando gave great weight to the GAL report. His decision simply adopted her recommendations. The GAL report was THE deciding factor to deny adequate cause. He ignored the

overwhelming evidence as mentioned above.

But, the GAL Report was not signed under oath and the mandatory, minimum requirements of adequate cause is for the court to consider facts based upon affidavits.

The burden was on the father to prove that he satisfied his requirements and that there was a change of circumstances to find adequate cause. Judge Orlando acted as if the mother had to prove that the children cannot have visitation right now. But, a finding of adequate cause does not mean an immediate order of visitation. In fact, adequate cause can be found and there can be no visitation until the matter goes to trial. Judge Orlando stopped adequate cause right away, as if the determination of visitation or custody was immediately at stake. There was a not a request solely for contact or visitation now, but at minimum a finding of adequate cause. The court can still deny visitation or contact along the way and even deny it at a modification trial. The mother and GAL deceived the court and Judge Orlando acted as if granted adequate cause alone was going to traumatize the children force them to be in the same room with their father without any safeguards. (The father did propose gradual reunification with safeguards and nothing drastic.)

“Adequate cause has been defined as ‘something more than prima facie allegations which, if proven, might permit inference sufficient to establish’ grounds for a modification”. In re Parentage of Jannot, 149 Wn.2d 123, 65 P.3d 664 (2003).

The issue was if there could be an INFERENCE to establish grounds for a modification. The GAL, mother, and mystery counselor and Judge Orlando were acting like a finding of adequate cause was the end of the world for the children. They were acting like it was the full blown final determination at trial.

To establish that he or she is entitled to a full hearing on a modification petition, the petitioner ***must first demonstrate*** that adequate exists. RCW 26.09.270; In re Marriage of Mangiola, 46 Wn. App. 574, 577, 732 P.2d 163 (1987).

Adequate cause is a FIRST STEP for later determinations on visitation, custody, investigations, etc.

Judge Orlando had it backwards. He acted as if there was adequate cause, temporarily. And in an obvious bias against the father, once he found something that he could latch onto (the GAL Report), then he denied. But, appointing a GAL first, was backwards procedure. Adequate cause had to be determined before any other moves were to be made.

Compliance with the statute governing modification of a parenting plan is mandatory. In re Marriage of Tomsovic, 118 Wn.App. 96, 74 P.3d 692 (2003).

The procedures and criteria of RCW 26.09.260 and .270 **limit the court's range** of discretion. In re Custody of Halls, 126 Wn.App. 599, 606, 109 P.3d 15 (2005). 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. Id.

It was NOT the mother's burden to prove that the children weren't ready for immediate contact now. The issue was if there was actual adequate cause to consider modifying. The Judge relied on the GAL Report, but, again it was not signed under oath, so under public policy it CANNOT be considered for the adequate cause determination. There's plenty of authorization for a GAL under RCW 26.12.175, but not to determine adequate cause under RCW 26.09.260. Subsection .270 reads:

"A party seeking...modification of a custody decree or parenting plan shall submit together with his [or her] motion, **an affidavit** setting forth **facts** supporting the requested order or modification...The court shall deny the motion unless it finds that **adequate cause** for hearing the motion is established **by the affidavits...**"

“When a parent petitions for modification of an existing parenting plan, RCW 26.09.270 requires the trial court to first determine, **based on affidavits submitted by the parties**, whether adequate cause exists to justify a full modification hearing.”

The GAL Report cannot be considered under the law for a determination of adequate cause. Judge Orlando got it backwards. Compliance with .270 is mandatory. Supra Tomsovic.

The expert witnesses had affidavits. But, Judge Orlando ignored the affidavits and considered only the unsworn GAL Report. Even if a GAL should have been appointed (which cannot happen without adequate cause--the first step under Mangiola), in this case the GAL was ordered to investigate the children's best interests. CP 209. But, the GAL did not observe the children. She was limited to talking to a counselor, chosen by the mother, who says the children are suffering under her own care, and the mother only sought a counselor after the father filed a modification. The conduct of the mother and the entire process was dubious.

Under RCW 26.12.175(1)(b), the GAL's "role is to investigate and report factual information". How can the GAL get facts when she is only talking on the phone to a Johnny-come-lately counselor and the children are completely controlled by the mother who never

wants the father to ever see them again, which violates RCW 26.09.002 and Judge Nelson's intent and expectations, as she stated on CP 68 (page 3, lines 15 - 18):

"...With the modicum of change most recently demonstrated to Ms. Van Pul and reviewed on August 31, 2012, the court has renewed hope that with further counseling and practice of anger management techniques learned, Mr. Wodja will be able to demonstrate a change of circumstances that may support a Petition to Modify Parenting Plan."

Who else can testify to this area of expertise other than the actual experts appointed by the court. They have testified in favor of reunification. But, Judge Orlando chose to believe an attorney GAL who has no familiarity with this case and only regurgitated alleged PRIMA FACIE allegations, which are not part of a determination for adequate cause.

3. A GAL is not the sole provider of facts. Judge Orlando only considered the GAL as if there is an automatic presumption she reports factually and accurately--this violates public policy.

If the GAL's reporting can actually be considered to determine adequate cause (and it cannot because it was not purported under oath as mandatory 26.09.270 requires), the GAL is

still not the end-all, be-all, oracle of truth. In fact, the Legislature, some commissioners and family law attorneys have been concerned about rogue abuses and incompetence by GAL's over the years. So, a GAL Report can be disregarded or thrown out. The court cannot receive a GAL's work in a vacuum, but must weigh all the evidence. Judge Orlando made a blind-faith reliance upon the GAL report as if it all was 100% factual and only disparaged the father.

On page 15 of the Report, the GAL undermines Paula van Pul's testimony and says that it was not updated enough. But, if the father had his issues under control, how is the GAL going to report that he no longer has them under control any time thereafter. There was an obvious bias against the father, with a "presumption of guilt by the GAL. later on the same page, the GAL comments on "CT" the mystery counselor as "a professional collateral in the best position to comments [sic] on the children's current status." How does the GAL know this? The GAL did not witness or observe anything in the children's vicinity. How does the GAL know that the children weren't coached by the mother. Moreover, the GAL makes herself an expert witness in children psychology and makes her own assessment on page 15, lines 22 - 23, calling it "unusual" that

the children allegedly "took a year of constant contact to build a therapeutic rapport". How do we know that the mother did not rush unnecessary therapy and traumatize them, or that the mother completely isolates them? We don't because the GAL made no personal observations. She's not an expert in psychology, so she cannot make all the psychological links, conclusions and presumptions that she did, under ER 701, 702. She cannot testify to things that she did not personally observe under ER 602. Moreover, no reasonable judge would adopt such vague reaches and presumptions as facts.

Notice page 15, lines 25 - 26 that talks about Zoe having a history of nightmares and night terrors. This is under the MOTHER'S care. How do we know the mother has not relapses with her alcoholic issues? There are problems with the children AFTER the mother reported years ago they were doing well. The mother has been the ONLY caretaker. So, the mother is neglecting or refusing to perform parenting functions, or the children are traumatized by the absence of their father. Notice the specious wording of the GAL in her report. "Cory expressed no desire to see Mr. Wodja." The absence of an affirmative communication of the child's own volition does not mean the child does not want to see

the father. The fact that it wasn't mentioned cannot mean a conclusion to the other extreme (that Cory does not want to see his father). Notice the GAL continue on to make credibility determinations. That's a violation of public policy. It's not a GAL's role to do that. Being a veteran attorney, the GAL should know the law and case law better. The fact that she violates it demonstrates that she is in that category of GAL's that the Legislature is worried about.

Notice that is it the alleged hearsay opinion of the counselor that there is no coaching. But, again, we have nothing even remotely tangible to support this. Just a secret, mystery counselor, that the GAL never saw, who is on the other side of the phone. And Judge Orlando made a permanent decision to suspend the father's Constitutional rights and the children's rights to have a father, based upon this murky, vague, untangible report full of hearsay statements of a mystery unidentifiable person who repeats her guesses and "her opinion" as to whether something may be true or not. GAL's are supposed to report FACTS. This GAL made recommendations and credibility determinations based upon foggy, murky, unsubstantial alleged hearsay.

The GALR was created and implemented after it was well-

established that guardians ad litem regularly abused their authority and position. This was underscored when even King County Family Law Commissioner Bradburn-Johnson collaborated on an article published in WSBA News, regarding the “legitimate factual foundations” of the complaints of GALs and the “lack of accountability” and “lack of a system to oversee GAL activity”.¹

The weight the trial court attached to the GAL's recommendation is discretionary with that court. In re Marriage of Burrill, 113 Wn. App, 863, 868, 56 P.3d 993 (2002).

In re Marriage of Bobbitt, 135 Wn. App. 8, 24-25, 144 P.3d 306 (2006) reads:

“It has long been a concern of the legislature that GALs, who are appointed in family law matters to investigate and report to superior courts about the best interests of the children, do their important work fairly and impartially. Following **public outcry about perceived unfair and improper practices** involving GALs, the legislature adopted RCW 26.12.175 to govern the interactions of courts and GALs and 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 and report, and that acrimony and accusations made by the parties are not taken up by an investigator

¹ Hardy and Bradburn-Johnson, “Adjusting in the Aftermath: Guardians ad Litem Face the 1996 Statute Changes”, Washington State Bar News, Dec. 1997. Retrieved on February 13, 2008 from Washington State Bar Association website: www.wsba.org/media/publications/barnews/archives/dec-97-adjusting.htm

whose only job is to report to the court after an impartial review of the parties and issues.”

Former King County now Supreme Court Judge Mary Yu stated, as cited in In re Custody of Brown, 153 Wn.2d 646, 656, (2005):

“...I'm **not bound** by the G.A.L. recommendation...It's **simply** a recommendation. And **only when I hear all** the evidence, that then I make a decision.”

In Brown, the trial court's decision was affirmed because Judge Yu acted properly as follows:

“...the trial court did not consider these reports in a vacuum, but as part of an extended trial during which it heard testimony from all the parties and 12 witnesses, and reviewed 33 exhibits.” Brown at 655

In short, the statute's requirement that a guardian ad litem be appointed before a court can act ensures that due consideration will be paid to the rights of a child. Yet, we must stress, the trial judge is not bound by the guardian ad litem's recommendations. Rather, the court must balance the interests of all parties involved, while keeping in mind that the child's interests are paramount. McDaniels v. Carlson, 108 Wn.2d 299, 738 P.2d 254 (1987).

Again, Judge Orlando appointed a GAL when the first step

required is finding adequate cause. He got the cart before the horse and went backwards.

The court "is not bound by the GAL's opinions, and know it may ignore those opinions if they are not supported by other evidence or are otherwise unconvincing. Finally, because the GAL is court-appointed, it is important to avoid any appearance that her views are those of the trial court." In re Guardianship of Stamm, 121 Wn. App. 830, 839-840, (2004).

"[T]he court also is free to ignore the guardian ad litem's recommendations if they are not supported by other evidence or it finds other testimony more convincing." Fernando v. Nieswandt 87 Wn. App. 103, 107, 940 P.2d 1380 (1997).

RCW 26.12.175(1)(c) permits **parties** to:

"file with the court written **responses to any report filed by the GAL or investigator**. The court **shall** consider **any written responses** to a report filed by GAL or investigator, **including** any factual information or recommendations..."

Section (1)(b) of same statute requires:

"...the guardian ad litem's **role** is to investigate and report **factual** information to the court concerning parenting arrangements for the child, and to represent the child's best interests. Guardians ad litem and investigators under this title may make recommendations based upon an independent investigation regarding the best interests of the

child, which the court **may** consider and weigh **in conjunction with** the recommendations of **all of the parties...**"

In re Marriage of Swanson 88 Wn. App. 128, 944 P.2d 6

(1997) also provides:

"The role of the GAL is to investigate the **relevant facts** concerning the child's situation. He or she analyzes the courses of action available to the trial court, identifies the course of courses that he or she thinks will best serve the child's interests, and makes a report and recommendation to the court concerning those interests. For purposes of any appeal, it is important that **the propriety** of the GAL's **performance** show on the record. The **role** of the **other parties**, who often include the child's **parents** and the State, is to **highlight and comment on deficiencies** in the GAL's performance. The purpose of such comment is not to benefit the commenting party, although that may be a side effect; rather, the purpose is to benefit **the child** and **assist the trial court**....the child usually cannot perceive deficiencies in the GAL's performance... such comment and **criticism** is an important way—and sometimes the only practical way—of unearthing **deficiencies** in the GAL's **performance**. The trial court receives the GAL's report and recommendation, and **considers** the other **parties'** **comments and criticisms**. Then it 'balances the interests of all parties involved, while keeping in mind that the child's interests are paramount'. It is **not bound** by the GAL's report or recommendation, but instead must make its own assessment of the child's best interest." **Id** at 137-138

Some of the more bizarre, dubious things that the GAL reported as fact was that the children have new fears of the father and past memories of him committing inappropriate conduct.

These things were never brought up in the mother's response nor anytime in the many hearings we've had since the Final Parenting Plan was entered, when the mother had zealous representation. The GAL said it's inappropriate to pursue Zoe's specific wish to see her father because Zoe, in short, cannot be relied upon. Yet the GAL made her recommendations based upon things Zoe allegedly said and/or felt. So, the GAL relied upon things that disparage the father and dismissed things that favored the father's position. This was an obviously biased disposition of the GAL.

4. The father's parental rights were, in effect, terminated with no remedy or recourse, even though he completed all treatment required (which the court intended for reunification)

The purpose of the ordered treatments for the father was not for him to just do a drill, or to take up a hobby. It was a means to an end. It was to get him help for what the court found to be parenting deficiencies warranting restrictions. Judge Nelson specifically said it was the court's hope that Wodja overcome his issues in order to reunify with the children and get a modification.

So, the issue was whether he completed that--not whether the children felt like seeing the father. There's no statute that gives

grounds to deny adequate cause because the children don't want to see the father. That's a determination to make AFTER adequate cause is found.

So, what else can the father possibly do on his end? He did everything and more that the court asked. But, Judge Orlando said that it's not enough. So, he's making an impermissible modification to the Parenting Plan's requirements.

Moreover, and even worse, Judge Orlando has terminated the father's parental rights without a fair hearing. Since the original trial and subsequent hearings resulted in a "hope" by Judge Nelson of a return to court to modify, and Judge Orlando has permanently "shut the door", since he said the father's work is not good enough, then there is no recourse. Wodja parental rights have been terminated, without any recourse. This is Unconstitutional.

The parental right stems from the liberty protected by the Due Process Clause of the Fourteenth Amendment. The United States and Washington Supreme Courts have long recognized parents' fundamental rights to the care and custody of their children. The rights to conceive and to raise one's children have been deemed essential, basic civil rights of manIt is cardinal with us that the custody, care and nurture of the child reside first in

the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), (quoting Meyer v. Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944)).

The rights have been recognized as protected by the due process clause of the Fourteenth Amendment, the equal protection clause of the Fourteenth Amendment and the Ninth Amendment. Id.

State interference with the parents right to rear her or his children is subject to strict scrutiny, justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved. In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), aff'd sub nom. Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

There was nothing narrowly drawn as, again, the court relied on a vague, muddled, murky report of a GAL that was not rooted in

substantial evidence or facts, but vague references to hearsay and a mystery counselor who allegedly spoke on the phone to a GAL. All of this was reported in a document not signed under oath and affidavits are required to make adequate cause determinations.

5. The award of attorney and GAL fees was inappropriate

Judge Orlando ordered me to pay all the GAL fees and the mother's attorney fees in the amount of \$5,000. CP 244, 272.

In a modification action, under RCW 26.09.260(13), attorney fees can be awarded if a modification was "brought in bad faith". Judge Orlando made no such finding. He made no findings regarding attorney fees, so they should not have been awarded.

An award of attorney fees under a statute or contract is a matter of trial court discretion, which we will not disturb absent a clear showing of an abuse of that discretion. Fluke Capital & Mgmt. Servs. Co. v. Richmond, 106 Wn.2d 614 , 625, 724 P.2d 356 (1986).

In Bobbitt, "the trial court made no findings about the attorney fee award. It merely stated that \$10,000 in attorney fees was awarded "for the necessity of having to pursue this action." The trial court must provide sufficient findings of fact and

conclusions of law to develop an adequate record for appellate review of a fee award. Mahler v. Szucs, 135 Wn.2d 398 , 435, 957 P.2d 632 (1998). The Bobbit court said, "Thus, we vacate the judgment for attorney fees and remand for a new hearing on attorney fees based on adequate information and for entry of specific findings of fact and conclusions of law regarding any attorney fee award." Id. at 29 - 30.

The court also reversed for a fair and equitable allocation of payment of GAL fees that was fair and equitable.

Neither party is entitled to attorney fees as a matter of right. In re Marriage of Leslie, 90 Wn. App. 796, 805, 954 P.2d 330 (1998), review denied, 137 Wn.2d 1003 (1999).

A party relying on RCW 26.09.140 "must make a showing of need and of the other's ability to pay fees in order to prevail." Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 808, 929 P.2d 1204 (1997) (citing In re Marriage of Konzen, 103 Wn.2d 470, 693 P.2d 97 (1985)).

More specifically, the party requesting the attorney's fees under RCW 26.09.140 must make a **present** showing of need to support the award. In re Marriage of Konzen, 103 Wn.2d 470, 478, 693 P.2d 97, CERT. DENIED, 473 U.S. 906 (1985).

RCW 26.09.140 reads in part:

“Payment of costs, attorney’s fees, etc.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining **or defending** any proceeding under this chapter and for reasonable attorney's fees **or other professional fees** in connection therewith, including sums for legal services rendered **and costs** incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.”

In re the Marriage of Pennamen 135 Wn. App. 790, 146 P.3d 466 (2006), the court awarded **neither** party fees, as the parties demonstrated **in their financial affidavits** that they had no ability to pay. Financial Declarations are the **bare minimum** method of demonstrating the element of ability to pay.

F. CONCLUSION

This court should reverse or vacate the order denying adequate cause and dismissing my modification action. This court should vacate or reverse the award of attorney fees and the order requiring me to pay 100% of the GAL fees.

Because of substantial evidence in the record, this court should order that there is adequate cause for a modification in this case.

This court should also find that Judge Orlando abused his discretion in moving forward with a fact-finding investigation by appointing a GAL without finding adequate cause and that nothing can happen in a modification action unless adequate cause is first found. This court should also find that Judge Orlando abused his discretion and made an untenable ruling by terminating my parenting rights with no recourse and defied the integrity of the judicial system and the public's confidence therein by essentially stating that I cannot obtain relief from the court, even when I follow the court's guidelines and orders. To wit, Judge Orlando stated that he did not care that I followed the court's orders and requirements and that the experts all testified that I complied because Judge Orlando was going to rule against me anyway and in turn rule against the court's own orders. This court should clarify and inform Judge Orlando that a finding of adequate cause does not change a parenting plan and force the children to contact the father. That is another matter that can be determined at a later date.

Respectfully submitted November 20, 2014.

A handwritten signature in black ink, appearing to read 'C. A. Wodja', written over a horizontal line.

Christopher A. Wodja, Appellant, pro se

**COURT OF APPEALS, STATE OF WASHINGTON
DIVISION TWO**

CHRISTOPHER A. WODJA

Appellant,

TERESA G. HARKENRIDER

Respondent.

No. 46424-1-II

**RETURN OF SERVICE OF
BRIEF OF APPELLANT**

I certify, under penalty of perjury under the laws of the State of Washington, that on this 20th day of November, 2014, at 11:42 a.m., I emailed a true copy of this Brief of Appellant to the Respondent's attorney of record, Barbara McInville (WSBA #32386) pursuant to our CR 5(b)(7) agreement to serve via email at her email address:

Barb@HellandLawGroup.com

Signed at Spanaway, WA on November 20, 2014.



Christopher A. Wodja, pro se
Appellant