

No. 46786-1-II

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THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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In re Marriage of:  
NICHOLAS F. CONKLIN,  
Appellant,  
v.  
LISA CHRISTENSEN,  
Respondent.

STATE OF WASHINGTON  
BY  DEPUTY

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FILED  
COURT OF APPEALS  
DIVISION II

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BRIEF OF APPELLANT

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**A. SUMMARY OF ARGUMENT**

Appellant and father Nicholas Conklin appeals the Honorable James Orlando's September 17, 2014 Order Denying Motion. CP 273. This order incorporates the Order Denying Motion for Reconsideration on August 29, 2014 (CP 260), which incorporates the July 11, 2014 Parenting Plan Final Order (CP 199), the resulting Order for Child Support (CP 208) and the Order re Modification. CP 222.

There is no substantial evidence in the record supporting the findings in Sections 2.1 and 2.2 of the Parenting Plan against the father. CP 199

Judge Orlando solely relied upon hearsay statements by a counselor that are not reliable and the mother had total control, influence and access to the counselor in influencing her work in this case.

The mother's original Petition (CP 63) and Proposed Parenting Plan (CP 70) did not even request the relief found in Section 2.1 of the Final Parenting Plan. CP 199.

To wit, the mother stated that there was conflict between the parents and that the father engaged in an abusive use of conflict. She asked for a non-mandatory RCW 26.09.191 restriction.

But, as the case progressed, her allegations became more and more trumped up to the point of alleging sexual abuse.

The appointed GAL did not make such findings. Neither did CPS. Neither did the police. CP 148.

The mother had alleged similar abuse of the father during the original dissolution trial after filing Proposed Parenting Plan that was inconsistent with her trial position. The Honorable Judge Chushcoff was so disturbed with the mother's antics and over-the-top testimony that he openly admonished her in court and entered a 50/50 Final Parenting Plan on December 30, 2010.

The father contended that there is overwhelming evidence that the mother was once again lying to the court and desperately attempting to prejudice the father and disparage the father to the child, in order to maintain control in this case.

At one point Judge Orlando announced on the record that only 4% of the time are sexual abuse allegations false, in a family court matter. The father/appellant filed a Motion for Reconsideration (CP 228) and pointed out to Judge Orlando within the motion that:

- (1) The judge was testifying in violation of ER 605.
- (2) The judge was testifying in violation of ER 602.

- (3) There was NO EVIDENCE before the court for Judge Orlando to draw a conclusion about all of the thousands of family law cases in this country and whether 96% of the time sexual abuse allegations were true.
- (4) Studies show rampant abuse of the court system and lies about domestic violence, child abuse/molestation are common in family court matters.
- (5) Judge Orlando relied merely upon prima facie allegations and did not make true findings of facts that warranted restrictions, but did a "just in case" scenario, in case the allegations were true, which is backwards procedure.
- (6) There is no substantial evidence in the record supporting taking the father completely out of the child's life.
- (7) The bar for modifications is high and the mother did not meet that threshold or burden of proof at trial.

During the hearing that Judge Orlando heard the father's Motion for Reconsideration (CP 228), Judge Orlando summarily stated:

"I'm just looking out for the best interests of the child."

But that is not the standard in RCW 26.09.260 modifications. There must be a finding of FACTS that there are actual substantial changes of circumstances. "Best interests" is not a "catch all" that can be used in every scenario that demands more, such as a modification where the threshold is high and the public policy is AGAINST modifying. In fact, RCW 26.09.002 reads that the court should KEEP the same pattern of parent/child interaction going to maintain the best interests (unless there's reason to protect the child). So, deference is given to the original order. But, Judge Orlando essentially confessed that he was restricting the father "just in case" there was truth to the mother's allegations. That's an abuse of discretion.

RCW 26.09.260 reads in pertinent part:

"(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall **NOT** modify a prior custody decree or 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 and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan."

RCW 26.09.002 reads as follows:

“Policy.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. **Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and 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.”**

What is in the best interest of a child “is a determination that often turns on the credibility of the parties”. In re Marriage of Venable, 118 Wn. App. 1049, 2003 Wash. App. LEXIS 2826 (2003).

The mother proposed that the father's residential time be reduced from a 50/50 even split schedule to a traditional every-

other-weekend one, with unsupervised overnights, and shared vacations and holidays as well as a two-week and one-week block in the summer. CP 70, Sections 3.2 – 3.8.

So, the mother did not even believe there was a cause for concern about the child's welfare until after she filed her Petition. And again, her allegations were not persuasive to the police, prosecutor, CPS or the GAL. The mother hand-picked a counselor whom she influenced to draw conclusions based solely upon hearsay.

The mother's allegations and conduct are consistent with someone abusing the system and being disingenuous with the court. She should not have been rewarded and the court should have taken more caution with the high standard presumption AGAINST modifications than with a general "just in case" concern for a "best interests" catch all.

After I pointed this error out to Judge Orlando in my second Motion for Reconsideration (CP 262), Judge Orlando would not allow a hearing for argument and denied the motion. CP 273.

## **B. ASSIGNMENT OF ERROR**

1. The trial court erred modifying the 50/50 Final Parenting Plan entered by Judge Chuschcoff, after a full trial. CP 52.
2. The trial court erred by making findings of sexual abuse and abusive use of conflict in Sections 2.1 and 2.2 of the new Final Parenting Plan. CP 199.
3. The trial court erred in modifying child support subsequent to modifying the Final Parenting Plan. CP 208.
4. Judge Orlando erred by testifying at trial (including but not limited to the issue of the percentages of family cases involving false allegations of child molestation).
5. Judge Orlando erred in using the “best interests of the child” standard for modifying instead of following RCW 26.09.260 and the policy of presumption against modifications.
6. The trial court erred by making 26.09.191 findings against the father in the parenting plan when there was no admissible evidence supporting those allegations.
7. The trial court erred by admitting ER 802 hearsay from the child and psychologist/counselor Alyssa Ruddell, Ph.D. and others.
8. The trial court erred by granting the mother’s relief requested at trial when the mother never amended her original petition (which

did not request termination of visitation, nor did it request any 26.09.191(2) findings of abuse).

9. The trial court erred by admitting and considering testimony by the mother and her witnesses that was not admissible, under ER 602, 702 and 802.
10. The trial court erred in finding the mother credible, especially after her previous pattern in attempting to mislead the court.
11. The trial court erred by not finding the mother to be disingenuous and to have continued to lie to the authorities and the court, which is an abusive use of conflict.
12. The trial court erred by not finding that the mother coached the child and disparaged the father to the child, which is a form of emotional abuse of the child.
13. The trial court erred in denying any father/child contact.
14. The trial court erred in relying on its own "expert" opinion and testimony.
15. The trial court erred by modifying when there was no substantial changes of circumstances, as Judge Chushcoff already stated on record that there was parental conflict and each parent.
16. The trial court erred by ordering the father to undergo a polygraph and psycho-sexual evaluation.

**C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. Should this court vacate and/or reverse Judge Orlando's Final Parenting Plan and order a return to the original Parenting Plan entered after the dissolution trial? [pertains to Assignments of Error 1 - 14]
2. Should this court find that there is no substantial evidence in the record to support the 26.09.191 findings in the Final Parenting Plan? [pertains to Assignments of Errors 1 - 14].
3. 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 child, and manipulate the child by planting false memories or coaching him, while lying to the authorities and court? [pertains to Assignment of Error 2, 4, 5 - 14].
4. Should this court vacate the final Order of Child Support? [pertains to Assignment of Error 3].

**D. STATEMENT OF THE CASE**

After a Dissolution trial, a Final Parenting Plan was entered on December 30, 2010. CP 52. The Parenting Plan gave the parents an equal 50/50 residential schedule, with no child support

obligation because of the schedule (transfer payment of \$0.00).

Judge Chushcoff had admonished the mother at trial to cease her over-the-top false allegations of the father. The judge made dicta findings that there was parental conflict with both parties.

On May 17, 2013, the mother Lisa Christensen filed a petition for a major modification of the Final Parenting Plan. CP 63. The petition alleged in Section 2.13 that the dangers to the child residing with the father included:

1. There is conflict between the parties and the father does not co-parent well.
2. The child has behavior problems in school.
3. The father exercised his joint-decision making right to decline putting the child with a counselor of the mother's choice.
4. The mother is remarried and the father drops the child off at the mother's home sometimes during his residential time.

As a result of these RCW 26.09.260 "detrimental harms" to the child, the mother swore under oath in her petition and her proposed parenting plan that the father should STILL have unsupervised, overnight residential time with the child, but only every other weekend during the school year and week-long vacations in Spring, Christmas Break and summer. CP 70.

Although, the mother never amended her petition, she sought a finding of sexual abuse against the father at trial.

Even though the mother never mentioned sexual abuse in her Petition, the mother called the police on May 13 with allegations of molestation. The police, prosecutor and CPS eventually did nothing about the matter as they found no credibility to the mother's allegations. CP 148.

On May 13, the mother was so distraught, worried and concerned about the child's safety, that she WAITED another THREE WEEKS to seek an order from the court in Ex Parte to suspend the father's visitation and "protect" the child.

GAL Kelly LeBlanc was appointed to investigate these and other issues. CP 162.

The mother obtained a temporary order suspending the father's visitation after Kindergarten teacher Maggie Davis wrote a letter stating the child had problems in school and made negative remarks about the father's parenting (although stated that the father was pleasant when appearing at the school). Maggie Davis' testimony included comments about the psychological effects of Derek's home life and his two day cares where Maggie was never present. Maggie stated that the mother frequently "pops in and out of the classroom".

On June 27, 2013, the father/Appellant submitted a Sealed

Confidential Report to the court. CP 3. This included a letter from the child's school district's legal team, officially stating that they did not approve of the letter of Maggie Davis, nor did the school take sides as her letter did. This Sealed cover also included a letter from Emily Balsler, MD who stated:

"I have had no concerns regarding seeing any evidence of physical abuse by either parent."

The GAL entered a report on November 27, 2013. CP 30.

Therein the GAL stated in part:

"Concerns investigated with regard to Mr. Conklin...

3. Physical and/or Sexual Abuse: ...I do not anticipate making any recommendation that Mr. Conklin engage in additional services as a consequence of the alleged disclosure (of alleged abuse). However, further discussion of the circumstances giving rise to the allegations is respectfully deferred pending further investigation.

4. Abusive Use of Conflict: ...I cannot say that the information would lead me to conclude that Mr. Conklin engaged in an abusive use of conflict... [page 5]

Behavioral concerns exhibited by [child]...

...Ms. Christensen...has seemingly **rejected the possibility** that a wider spectrum of information, that included history **from Mr. Conklin, might be of benefit** to Derek...[page 6, last paragraph]

...if Mr. Conklin has initiated a grievance [against Dr. Ruddell], it would appear that Dr. Ruddell may have a

conflict of interest. If that is the case, I would request that the Court designate an alternate provider [of co-parenting counseling]...[page 7, last bold paragraph]...

[page 8, para. 1] 2. Concerns regarding other adults: [the mother] made reference to an incident wherein [her new husband] had allegedly become aggressive while under the influence of alcohol...Ms. Christensen said there have been times when her husband has had too much to drink and one occasion where he was a little ugly, verbally...the Court may want to consider requesting that Mr. Christensen complete an alcohol assessment...

Parenting Abilities of both parties

...Both parties clearly have the basic qualifications to parent..."

At trial the final orders, being appealed, were entered and the father's residential time was permanently suspended, pending:

- (1) A polygraph evaluation as part of
- (2) A psycho-sexual evaluation
- (3) Multiple periods of re-unification therapy
- (4) Supervised visitation
- (5) Multiple review hearings

See CP 199, Section 3.10.

Two subsequent Motions for Reconsideration were denied.

CP 228, 260, 262, 273.

## **E. ARGUMENT**

### **1. Judge Orlando entered an order to FIND OUT IF his findings are actually true**

The courts make findings of facts and conclusions of law and THEN make a ruling and judgment. This happens in criminal and civil cases. For example, a jury has to FIND that a defendant IS GUILTY of murder, AND ONLY THEN can a judge enter a sentence or judgment.

Judge Orlando made a finding of sexual abuse in this case, in Section 2.1 of CP 199. But, if this is a finding of fact, then why did he order me to GET EVALUATED to see IF I have an issue with sexual abuse of a child (Parenting Plan requires a psycho-sexual evaluation and a polygraph).

Judge Orlando obviously did not FIND that sexual abuse was true but was entering this order JUST IN CASE it was true. That's backwards. This may be a case of first impression as this issue may have never been addressed before. But, if a court enters a finding of a parenting deficiency AND THEN orders an investigation into that parenting deficiency, then the court did NOT REALLY believe that the deficiency is a fact. That is completely impermissible, and departs from the status quo of court procedure.

It would have been a different scenario if the court ordered me to engage in therapy or treatment for a finding of sexual abuse. But, the court, again, ordered that a specialist LOOK INTO WHETHER I have a problem or not. So, the court did not really believe its findings.

In fact, when I pointed out how false allegations are used and abused (and later briefed the court on this disconcerting phenomenon in my Motion for Reconsideration (CP 228)), Judge Orlando states that false allegations only occur in 4% of cases. He had no evidence in front of him supporting that testimony. In fact, he cannot testify himself as an expert in that area, or at all, as a judge. ER 602, 605, 702.

Then when confronted with this, he stated that he was only “looking out for the best interests of the child.” There was no authority for him “look out” for that, as if he was a child advocate. He was supposed to make findings of facts and conclusions of law that there were ACTUALLY a factual substantial change of circumstances and that a modification was warranted, under RCW 26.09.260 and .270.

But, Judge Orlando was very unsure of himself and was really entering a restriction against me, “just in case” I did do it.

Can a jury acquit a murderer and then the judge say, "Well, just in case you did it, I'm going to put in in prison for life, and we will order an investigation into the matter." Of course not. But, that's what Judge Orlando did. He wasn't sure that I was guilty of the allegations, but he ordered an investigation into whether I had a sexual deviancy problem AND THEN treatment would be considered. Why was this not done before trial? Judge Orlando was "looking out for the child" and erring on the side of caution. But, the courts are NOT PERMITTED TO ERR. They MUST make findings of facts and conclusions of law.

Because the court made a 26.09.191(2) finding, and then ordered an investigation into whether that is true (by the polygraph and psycho sexual evaluation), the court ESSENTIALLY made NO ACTUAL REAL FINDINGS to support its final order.

In Kruger v. Purcell, 300 F.2d 830 (1926), the court stated:

"A fair compliance with the rule requires the trial court to **find** the **facts** on every material issue, including relevant subsidiary issues, and to 'state separately' its **conclusions** thereon with clarity....

...The **findings** of **fact** and **conclusions** of law must be sufficient to indicate the bases of the trial court's decision. This requirement is not met in the instant cases.

A further obstacle to an intelligent consideration of the questions raised is the insufficiency of the record....This deficiency in the record is such as to preclude any determination as to whether or not the **findings of fact**, as sparse as they are, are clearly erroneous.

A remand of these actions to the District Court for the sole purpose of permitting it to state adequately its **findings of fact** and **conclusions** of law, would serve no useful purpose. Therefore, the judgments will be reversed and the actions are remanded with directions that a new trial be had."

Civil Rule 52 reads in part:

**“(a) Requirements.**

(1) *Generally.* In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law.”

The findings of fact and conclusions of law must be sufficient to indicate the bases of the trial court's decision.

**2. There’s no substantial evidence supporting sexual abuse**

Judge Orlando ordered a psycho-sexual evaluation

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).

Appellate courts review **contested findings** for substantial evidence. Merriman v. Cokeley, 168 Wash.2d 627, 631, 230 P.3d 162 (2010) (citing In re Marriage of Schweitzer, 132 Wn.2d 318, 329, 937 P.2d 1062 (1997)). "Evidence is substantial if it is sufficient to persuade a fair-minded, rational person of the declared premise." Cokeley, at 631.

No fair-minded, rational person would say that I am a danger to a child, then restrict me from that child, AND THEN order, "We need to investigate whether he is a danger."

It's either a fact or it's not.

Findings must be consistent with conclusions.

Weyerhauswer v. Pierce County, 124 Wn.2d 26, 873 P.2d 498 (1994), RFA v. MSCL, 14 Wn. App. 339, 540 P.2d 1393 (1975).

**3. Judge Orlando relied on prima facie allegations and not real evidence and the mandatory standard for modifications**

Judge Orlando relied upon PRIMA FACIE allegations of the mother and Dr. Ruddell. And Dr. Ruddell was receiving much input and influence by the mother (whom the GAL reported was not interested in the father's participation in the child's life or how that benefited the child—see CP 30, page 6). Given the mother's propensity to want to separate the father from the child, or alienate the father or push the father into an irrelevant role, Judge Orlando should have been concerned that the mother orchestrated, coached and/or pushed for an illegitimate finding, in part, by influencing Dr. Ruddell's testimony and/or reporting.

All the evidence relied upon also qualifies as hearsay, lack of personal knowledge and a judge's own impermissible testimony. ER 602, 605, 702, 802.

"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).

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).

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.

Judge Orlando ignore the public policies in the next section.

There was not enough evidence to determine that I sexually abused our son and that I solely cause conflict and abuse the use of conflict. But, Judge Orlando made then finding, anyway and said that he was only "looking out" for the child. Well, he should have done so with the authority of the Legislature and the following public policy and started with the presumption that modifications are bad for children and harassing to a custodial parent (and I was an equal custodial parent per the original final order CP 52).

In fact, given the mother's REPEATED failures to get anyone to believe her allegations of me, it is MORE believable that the

mother abuses the process, makes false allegations and SHOPS for a favorable decision by some authority.

Yet, Judge Orlando found her prima facie allegations to be credible.

"Substantial evidence is evidence in sufficient quantum to ***persuade a fair-minded person*** of the truth of the declared premise." Brin v. Stutzman, 89 Wn. App. 809, 951 P.2d 291 (1998).

**4. The STRONG PRESUMPTION in public policy is AGAINST modifications—the court starts there**

RCW 26.09.260(1) reads in pertinent part:

“(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall ***not modify*** a prior custody decree or 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 and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

The mother's original petition stated a major issue was the parents inability to get along. The original divorce judge already stated on the record that this was true. This is not an unknown factor. The doctrines of res judicata, collateral estoppel and

judicial estoppel prevent the court from re-litigating this issue. In Kelly-Hansen v. Kelly-Hansen, 87 Wash. App. 320, 328, 941 P.2d 1108 (1997), Nielson v. Spanaway Gen. Med. Clinic, 135 Wn. 2d 255, 262, 956 P.2d 312 (1998), Johnson v. Si-Cor, Inc., 107 Wn.App. 902, 28 P.3d 832 (2001)

But, again, it's not a new issue. And there are no changes of circumstances on this point.

There also were no FACTS showing that I abused the child. The court doesn't even believe the finding, because the court wants further investigation after trial and after the mother already had a chance to prove her case. The court has extended this case into litigation *ad infinitum*, in violation of the public policy of finality.

The mother's entire petition is flawed because she never made the sexual abuse allegation therein. It appears to be a "set up" to help her modification action.

Litigation over custody is inconsistent with the children's welfare and best interests and trial courts should accord **great weight** to **prior** custody determinations. In re Marriage of Mangiola, 46 Wn. App. 574, 578, 732 P.2d 163 (1987)

The moving party must also produce facts that show the advantages of the change outweighing the PRESUMED harmful effects. In re the Marriage of Roorda, 25 Wn. App. 849, 853, 611 P.2d 794 (1980). “At the very minimum, “adequate cause” means evidence sufficient to support a finding on each fact that the movant must prove in order to modify; otherwise, the movant could harass a non-movant by obtaining a useless hearing.” In re Marriage of Lemke, 120 Wn. App. 536, 540, 85 P.3d 966 (2004).

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

Division One Court of Appeals affirmed the dismissal of a modification action at the trial level in Roorda, which reads in pertinent part at 851:

“We observe a related policy expressed in the statute of ***preventing harassment of the custodial parent*** and providing stability for the child by imposing a heavy burden on a petitioner which must be satisfied before a hearing is convened.”

The purpose of the statute concerning continuity is to prevent the harassment of the custodial parent and to provide stability for the children and to discourage a parent from filing a major modification; therefore, there is a heavy burden placed on

the moving party. Magnolia at 577; Roorda at 851.

There is a strong presumption ***against*** modification of a parenting plan because ***changes in residential schedules*** are ***highly disruptive*** to children. In re Marriage of Shryock, 76 Wn. App. 848, 888 P.2d 750 (1995). In re Marriage of McDole, 122 Wash.2d 604, 859 P.2d 1239, (1993).

The mother's court action alone has caused problems for the child.

Depriving the child of a father makes things even worse.

There is a strong presumption IN FAVOR of custodial CONTINUITY and AGAINST modification. McDole at 610, Shryock at 888.

Accordingly, a court will **NOT** modify a prior parenting plan unless the party seeking modification **demonstrates** that a substantial change in circumstances has occurred and that modification is in the child's best interests. RCW 26.09.260(1); Shryock, at 851.

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**5. The father's parental rights were, in effect, terminated in violation of Constitutional public policy**

Not only did Judge Orlando ignore the mandates of modification public policy, he also was aloof to my Constitutional right and the high standard thereof.

Parental rights stem 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 man . . .It 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.

The court relied up in admissible "evidence" to find that I abused the child. Yet, the judge ordered an investigation as to whether I am sexually abusive (inconsistent with his own findings).

**6. Polygraphs and psycho sexual evaluations are unconstitutional and inadmissible.**

Consistent with his abuse of discretion and the weight he gives to INADMISSIBLE evidence, Judge Orlando ordered me to undergo a polygraph and a psychosexual evaluation. Again, I ask if

Judge Orlando is so confident in his findings, then why do I need an evaluation to determine that his findings of “facts” are true?

Division Two recently re-cited the following in State v. Fisher, No. 43870-4-II, 338 P.3d 897 (December 2, 2014):

“The general rule in Washington has ***long been*** that the ‘[r]esults of polygraph tests are ***not*** recognized in Washington as reliable evidence and are ... inadmissible without stipulation from both parties.’ State v. Thomas, 150 Wn.2d 821, 860, 83 P.3d 970 (2004)....”

[emphasis added]

The fact that Judge Orlando ignored public policy that has “long been” a general rule shows his propensity to abuse his discretion, on top of his flippant insertions of his own “expert” testimony of data and statistics and defaulting to “looking out” for the child in general, instead of adhering to statute.

Psycho-sexual evaluations are unconstitutional, invasive and harassing and inappropriate, except for a convicted sex offender in a civil commitment trial after fulfilling a prison term. In re Marriage of Ricketts, 111 Wn. App. 168, 43 P.3d 1258 (2002).

**F. CONCLUSION**

This court should reverse or vacate the Final Parenting Plan and subsequently reverse and vacate the Order of Child Support and any award of fees and costs because the Petition for Modification was without merit and brought in bad faith, warranting all my incurred costs to be paid by the mother, per RCW 26.09.260(13).

**Declaration of service**

I declare under penalty of perjury that this email is being served upon Respondent's attorney of record, Daniel Cook, simultaneously with the filing, by forwarding the brief to Mr. Cook's email of [DCook@fjr-law.com](mailto:DCook@fjr-law.com).

Respectfully submitted February 24, 2015

A handwritten signature in black ink, appearing to read 'N. Conklin', with a long horizontal flourish extending to the right.

Nicholas Conklin, Appellant, pro se