

NO: 46888-3

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

ANGELA MIRANDA, APPELLANT

v.

CHRISTOPHER CRUVER, RESPONDENT

STATE OF WASHINGTON
BY _____
DEPUTY

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FILED
COURT OF APPEALS
DIVISION II

RESPONDENT'S BRIEF

Pierce County Superior Court Cause Number 14-3-02549-1
Honorable Katherine Nelson presiding at the Trial Court

Respectfully submitted:

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STATEMENT OF CASE

In June of 2014, Christopher Cruver's children traveled to Arizona to spend two weeks with him during the summer break. The children were to return to Washington on June 30, 2014. Prior to June 30, the children made disclosures to their father about treatment they were subjected to at their mother's house. They asserted being forced to eat habanero peppers as discipline and pointed to a habanero chili pepper in the aisle of the grocery store where they were shopping with their father. August 18, 2014 RP Pg 123 Ln 5-8. Mr. Cruver attempted to discuss the matter with Ms. Miranda but she was dismissive about the situation asserting that "that's what [we're] doing when they [the children] are lying." August 18, 2014 RP Pg. 96, Ln 11-13. Christopher Cruver was sufficiently concerned at the statements made by the children and the mother's reaction that he contacted the Washington Pierce County Sheriff's Office to file a report and took the children to CPS for an interview. August 18, 2014 RP Pg 123, Ln 19.

Arizona CPS interviewed the children separately and both made similar disclosures regarding abuse and maltreatment. Arizona CPS noted that both children appeared genuine and consistent in their reports. August 14, 2014 RP Pg 94, Ln 4-11. Per the Arizona CPS interview report, the

children were crying and shaking during the interview and both children gave detailed statements that social services felt were indicative of truthfulness. August 14, 2014 RP Pg 94, Ln 15-24. Washington CPS investigator T'Nesa Conklin reviewed the Arizona CPS records in her investigation of the matter. August 14, 2014 RP Pg 83, Ln 19-25 and Pg 85, 1-5; RP Pg 101, Ln 3-7. In addition to the use of habanero peppers, the children disclosed repeated use of a belt in spankings, one child being locked in dog kennel as punishment, that same child being locked in a shed for two hours, and finally, being made to sit in a chairs for periods of time ranging from hours to days with nothing to eat but cold pinto beans. August 14, 2014 RP Pg 93, Ln 11-18.

Despite the open CPS investigation, on June 30, 2014, Ms. Miranda filed a petition to establish a parenting plan and, at 3:30 pm on June 30, 2014, obtained an ex parte restraining order granting her custody of the children. See Exhibit A attached hereto and made a part hereof. She did not disclose to the Washington court that Arizona had an open CPS investigation and had requested that the children remain with the father until the investigation was complete. When Ms. Miranda informed Ms. Conklin that she was traveling to Arizona to pick up the children Ms. Conklin informed Ms. Miranda that the children would be taken into

protective custody if the children returned from their father's. August 14, 2014 RP Pg 95, Ln 1-11.

Despite the warning, Ms. Miranda went to Arizona to retrieve the children. August 18, 2014 RP Pg 104, Ln 1-3. Both children exhibited fear at the possibility of returning to Washington with their mother and the parties' son verbalized that he did not want to go. August 18, 2014 RP Pg 104, L 13-15. Despite the ongoing investigation, warning regarding protective custody, and children's fear of returning, the mother took the children from their father and returned to Washington. August 14, 2014 RP Pg 95, Ln 16-17. Ms. Conklin testified that she was submitting a finding of Neglect of children as to the Mother. August 14, 2014 RP Pg 100, Ln 12-15. Ms. Conklin further testified that there was some level of concern regarding a risk of danger to the children if returned to the care of the mother. August 14, 2014 RP Pg 100, Ln 16-19.

Washington Department of Social and Health Services, Division of Children's Services employee Kate Orland also testified at the trial. Ms. Orland reviewed the Arizona CPS records. August 20, 2014 Pg 4, Ln 12-14. Per Ms. Orlando, the children disclosed that both had been hit by their mother and their mother's boyfriend with a belt. August 20, 2014 Pg 4, Ln 24-25. The children disclosed being forced to sit in a corner for up to 8 hours at a time, being forced to perform extreme physical exercises as

discipline, the boy being locked in a dog kennel and being locked in a shed and that this was a particularly traumatic event for him, and finally that both children were afraid to return to Washington. August 20, 2014 RP Pg 5, Ln 1-11. Specifically, the sister reported that her brother was locked in a dog kennel and that he was crying and wanted out but that the mother's boyfriend refused to let him out. August 20, 2014 RP Pg 5, Ln 20-23. Both children disclosed the use of ghost peppers as a form of discipline and that they would be made to pout approximately a teaspoonful on their tongues and hold it there. Both children stated that this was extremely painful, it made them cry, and they would get upset stomachs from it. August 20, 2014 RP Pg 6, Ln 3-12. The son disclosed that his parent's (mother and her boyfriend) took him out to the shed because he was messing around at bedtime. He was locked in the shed in the dark and was scared and crying. August 20, 2014 RP Pg 6 Ln 15-18. Per Kate Orland, the sister's version of the event supported his story. The sister reported that she could hear him crying and that a few days later the shed was threatened as punishment again and it caused her brother to be scared and upset and begin crying again. August 20, 2014 RP Pg 6, Ln 19-24. Per Ms. Orlando's testimony, the mother admitted at the contested shelter care hearing to participating in some of the punishments at issue in this matter. August 20 2014 RP Pg 24. Ln 13-17. Ms. Orlando also

testified that the children had disclosed to their mother what Mr. Bishop was doing and that Social Services was concerned with a failure on her part to protect the children. August 20, 2014 RP Pg 34, Ln 20-25; Pg 35, Ln 3-4. Ms. Orlando ultimately testified that it would be more harmful to the children for them to return to Washington and enter foster care than to remain with their father. August 20, 2014 RP Ph 33, Ln 4-9.

The children returned from Arizona with their mother on July 11, 2014. On July 15, 2014 the first sheltercare hearing was held. The court entered an order in the dependency action that consolidated the dependency with the petition for a parenting plan and removed jurisdiction of the parenting plan action to the juvenile court where the dependency actions are heard. The contested sheltercare hearing was then continued to July 17, 2014 at which time extensive testimony was received and the children were placed with their father. As the father was not an unfit parent, the dependency petition could not be maintained and was dismissed. August 20, 2014 RP Pg 12, Ln 6-21. The court then set an expedited trial date on the matter of the parenting plan. Trial was initially set for July 31, 2014 but was continued until August 13, 2014 so that the parties could adequately prepare. The parties requested the appointment of a GAL but the court declined to delay a trial where social worker's had already investigated the parents.

Trial commenced on August 14, 2014 and concluded on August 20, 2014. Counsel for Ms. Miranda objected to the commencement of trial on the 14th based upon Mr. Cruver's failure to file a response to the parenting plan petition. August 14, 2014 RP Pg 4, Ln 7-12. The court overruled to objection and counsel for mom then indicated that she was prepared to proceed. August 14, 2014 RP Pg 4, Lon 19-20.

The court's decision was rendered on August 22, 2014. In her in her written findings and decision, the trial judge cited pertinent RCW's and made specific findings that mother had engaged in acts of physical and mental abuse and that the mother resided with a partner who had engaged in acts of physical and mental abuse of the children. The court found that mother had failed to follow through with the entry of an parenting plan in 2011 that would have ensured the father have both holiday and summer visitation with the children and then used the lack of a parenting plan to withhold the children from him for an extended period of time. Based upon the courts findings and cited RCW's, the court placed restrictions on the mother's time with the children. See Exhibit 2 attached hereto and made a part hereof. Counsel for the mother filed a motion for reconsideration which was denied after argument. This appeal follows.

STANDARD OF REVIEW

“A trial court’s parenting plan is reviewed for an abuse of discretion, which ‘occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons.’ ” *In Re Marriage of Chandola*, 180 Wash.2nd 623, 642 (2014) (citing *In re Marriage of Katare*, 175 Wash.2d 23, 35, 283 P.3d 546 (2012) citing *In re Marriage of Littlefield*, 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1987)) The trial courts findings of fact are treated as verities on appeal, so long as they are supported by substantial evidence, *Id* (citing *Ferree v. Doric Co.*, 62 Wash.2d 561, 568, 383 P.2d 900 (1963). “Substantial evidence” is evidence sufficient to persuade a fair minded person of the truth of the matter asserted. *Id* at 642.

An Appellate Court reviews a trial court's denial of a motion for reconsideration for a clear or manifest abuse of discretion. *McMullen v. Wright*, 2001 Wash. App. LEXIS 1998, 22 (Wash. Ct. App. Aug. 24, 2001) (citing *Telford v. Thurston County Bd. of Comm'rs*, 95 Wn. App. 149, 166, 974 P.2d 886, *review denied*, 138 Wn.2d 1015, 989 P.2d 1143 (1999). "Abuse of discretion occurs where the trial court's decision rests on untenable grounds or untenable reasons. *Telford*, 95 Wn. App. at 166.)

RESPONSE TO ASSIGNMENTS OF ERROR AND ARGUMENT

1. Trial Court Did Not Err In Setting The Parenting Plan Expeditiously

In the case *In re the Marriage of Wilson*, 117 Wn.App. 40 (Div 3) 68 P.3d 1121, Division Three of the Washington State Court of Appeals addressed the issue of the entry of a permanent parenting plan prior to the lapse of the 90 day period set forth in RCW 26.09.181(7). The court made the following assertions and findings:

RCW 26.09.181 governs both agreed plans and proposed permanent parenting plans (proposed plans). One or both parties may serve and file proposed plans. RCW 26.09.181(1). If one party does not submit a proposed plan, the other may move for a default order. RCW 26.09.181(1)(d). Under RCW 26.09.181(7), at least 90 days must have elapsed since filing and service, but what is to be filed and served is not specified. Agreed plans are permitted under RCW 26.09.181(4): "The parents may make an agreed permanent parenting plan." . . . Consistent with RCW 26.09.181(4), RCW 26.09.181(1)(c) provides: "No proposed permanent parenting plan shall be required after filing of an agreed permanent parenting plan, after entry of a final decree, or after dismissal of the cause of action." Regarding the entry of a final order, RCW 26.09.181(7) states in unnumbered paragraphs: "The final order or decree shall be entered not sooner than ninety days after filing and service. This subsection does not apply to decrees of legal separation." RCW 26.09.181(7) does not distinguish between agreed or proposed plans or modification orders. In this sense it is somewhat ambiguous.

Similarly, RCW 26.09.181(7) is unclear as to what particular final order or decree it refers to, dissolution orders and decrees generally as provided in chapter 26.09 RCW or solely orders and decrees under RCW 26.09.181.

Under RCW 26.09.181 a court may act within its discretion to adopt and approve an agreed permanent parenting plan Before a final decree of dissolution, as was the case here. By doing so the court does not in a strict sense enter a "final" order. Rather it approves the adoption of the parties' agreement to parent their children until entry of the final decree or dismissal according to RCW 26.09.181(1)(c). Without this construction, a temporary plan would be required, a result precluded by RCW 26.09.181(1)(c). Logically, the approved agreed permanent parenting plan governs the parties until the further order of court, much like a temporary parenting plan.

Normally, when a final decree is entered, agreed plans become final. On the other hand, if the parties dismiss the dissolution, the dissolution court loses jurisdiction over the parties and the subject matter. Equally, any existing approved agreed permanent or proposed parenting plan is thus rendered ineffective.

Wilson at 45-47

The Wilson court eluded to the absurdity of a mandatory 90 day waiting period for the entry of a final parenting plan when the parties have agreed to the terms of the permanent plan. The Wilson court also noted that the 90 day period does not apply in cases where the parties have applied for legal separation. The conclusion eluded to by the Wilson court

is that if the parties are seeking a legal separation, there is no time period required prior to entry of a final parenting plan. Likewise, the court eluded to the fact that there is no 90-day period required when the parties are seeking a modification. The conclusion the Wilson court reached was that the 90-day period that must elapse prior to entry of a final order is the ninety days that must pass before a decree of dissolution is entered.

Following *Wilson*, the Washington Supreme Court addressed the 90-day issue as it relates to dissolutions in *Buecking v Buecking*, 179 Wn.2d 438 (Wash 2013) 316 P.3d 999. In that case, the Supreme Court stated: "As the Court of Appeals observed in *In re Marriage of Wilson*, 117 Wash.App. 40, 47, 68 P.3d 1121 (2003), "[w]hile a cooling off period may, for policy reasons, be required before dissolving the marital status, no similar logic dictates a cooling off period barring parents from reaching desirable agreements in parenting plans." *Buecking* at 446. In *Buecking*, one party raised the issue of the court having jurisdiction to enter a decree of dissolution prior to the lapse of the 90-day period required by the statute. The *Buecking* court held as follows:

To conclude a court has the subject matter jurisdiction to hear a case, but then can lose it based upon the timing of its decree, would conflict with the meaning of subject matter jurisdiction and our prior decisions. *Schneider*, 173 Wash.2d at 360, 268 P.3d 215 ("subject matter jurisdiction refers to the court's authority to entertain

a type of controversy, not simply lack of authority to enter a particular order"). The court either has subject matter jurisdiction or it does not; it cannot hinge a particular order on whether the 90-day requirement was met under the statute. *Williams*, 171 Wash.2d at 730, 254 P.3d 818; [316 P.3d 1006] *Posey*, 174 Wash.2d at 139, 272 P.3d 840. While we recognize that courts are obligated to follow statutory requirements, the failure to comply with the 90 day "cooling off" period is only a legal error, not a prerequisite for the court's exercise of jurisdiction. *Buecking* at 452.

...

Accordingly, we hold that the 90-day "cooling off" requirement under RCW 26.09.030 is not a jurisdictional limitation upon the court. Passage of the statute's 90-day period is not a necessary component of the superior court's subject matter jurisdiction. The 90-day requirement is a permissible procedural limitation upon the court's exercise of its jurisdiction. If the court's entry of a dissolution decree occurs before the 90-day period elapses, the court is not thereby stripped of its subject matter jurisdiction.

Here, the trial court's issuance of the dissolution decree before 90 days had elapsed was a legal error which did not affect its jurisdiction. *Buecking* at 454.

The *Buecking* court then denied Mr. *Buecking* relief under his petition for failure to raise the issue of the 90 day limitation in the lower court. "Because Mr. *Buecking* failed to raise this error at trial, we deny him relief. RAP 2.5 (allowing an appellate court to refuse to review a

claim that was not raised in the trial court, except where the error alleges a lack of trial court jurisdiction, failure to establish facts upon which relief can be [316 P.3d 1007] granted, or a manifest error affecting a constitutional right); *State v. Robinson*, 171 Wash.2d 292, 304, 253 P.3d 84 (2011) (" [t]he general rule in Washington is that a party's failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a ' manifest error affecting a constitutional right' " (internal quotation marks omitted) (quoting *State v. Kirwin*, 165 Wash.2d 818, 823, 203 P.3d 1044 (2009)))." Buecking at 454-455

As set forth in the above cases, the 90-day waiting period in RCW 26.09.181(7) is not binding on legal separations where parenting plans are entered nor is it binding on agreed parenting plans. The logical purpose for the waiting period is to coincide with the 90-day period cooling-off period required prior to entry of a final decree of dissolution. Furthermore, the court has the authority to control its own calendar. In *State v. Franks*, 105 Wn. App 950, 22 P.3d 269, (2001) the court addressed the authority of a trial court to control its own calendar and, citing prior case law, summarized the courts authority as follows:

In *Swan v. Landgren*, 6 Wn. App. 713, 495 P.2d 1044 (1972), the court was confronted with the procedural issue of when a trial court's authority to control its own trial calendar begins. The *Swan* court held that a court acquires "jurisdiction,"

including the ability to control its calendar, when a complaint is filed or a summons is served. *Swan*, 6 Wn. App. at 715-16. *Swan* noted, in passing, that "Article 4 of the Washington State Constitution defines the jurisdiction of our courts." *Swan*, 6 Wn. App. at 715. Likewise, *Daniel v. Daniel*, 116 Wash. 82, 198 P. 728 (1921), does not address the issue of how a superior court "acquires" any type of jurisdiction. *Daniel* notes, in dicta, that Const. art. IV, § 6 "defines the jurisdiction of the superior courts," but also states that this provision does not purport to regulate or control the manner in which courts exercise their "jurisdiction." *Daniel*, 116 Wash. at 84. *State v. Franks*, 105 Wn. App. 950, 956 (Wash. Ct. App. 2001) *Franks* at 956

It would not serve judicial economy to require courts to set out a parenting plan trial for 90 days simply to accommodate a waiting period prior to resolution of the matter. The court clearly has the authority to expedite trials where judicial economy is served. Finally, where the parties are not seeking a dissolution in conjunction with establishing a parenting plan, there is no logical basis for requiring a waiting period. This supports the Wilson courts position that the waiting period is solely related to dissolutions.

In the instant case, the parties were involved in a dependency where the children were placed with the father as there were no concerns for his parenting abilities. The parents had not previously established a parenting plan so the court set an expedited trial date to achieve stability for the children. This was well within the courts discretion and authority

and it would have defeated the purpose of speedy resolution to require the court to wait 90 days before entering a final parenting plan.

Appellant further asserts, in “issue pertaining to assignment of error number one”, that the court committed error by assuming the case from another judge. It should be noted that pursuant to RCW 13.04.030, the juvenile court shall have exclusive jurisdiction over all proceedings related to children alleged or found to be dependent. See RCW 13.04.030 (1)(b). The juvenile court signed and entered an order changing jurisdiction of the family court matter to the juvenile court when the children were found to be in need of shelter care. Counsel for the mother failed to object to this change and had only raised the objection in this appeal. Furthermore, the same court, Pierce County Superior Court is the court where jurisdiction originated and remained. It was only the judge that changed as a result of moving the case to the juvenile court concurrent with the dependency matter and the juvenile court had exclusive jurisdiction over the parties so the family case, by necessity, could not be maintained unless it was moved to the proper court.

2. Trial Court Did Not Err In Granting Primary Placement With The Father or Restricting The Mother’s Time With the Children

Petitioner in the appeal asserts several sub issues pertaining to the assignments of error. Sub-issues #1 and #'s 3-6 appear to be related to the

findings of the trial court, placement of the children with the father and restrictions on the mother and will be addressed in this portion of the respondent's brief.

As set forth in case law cited previously, the standard of review regarding establishment of a parenting plan is abuse of discretion. *Chandola*, 180 Wash.2d at 642. Findings of the court are verities on appeal. *Id*

Exhibit Two sets forth the findings of fact made by the trial court following the trial in the instant case. The court specifically found that the mother engaged in physical and emotion abuse of the children. The court also found that the mother admitted to the abuse although she engaged in minimizing and denying the impact on the children. The court found the father and social workers to be credible witnesses. The court found that mother resides with a person who engaged in emotional and physical abuse of the children and engaged in an assault that caused fear of grievous bodily harm. The court found that the above actions constituted a basis for restriction on the mother's time with the children.

The court further found that the mother did not file the agreed parenting plan according the parties agreement in 2011 and then used the lack of a parenting plan to withhold the children form the father. The court

further found that the mother admitted to one occasion where the children did see their father where she had to be talked into allowing the visit to occur. The court held that the mother's actions and inactions was a basis for a finding that she withheld the children from the father without good cause. The court stated that this was a further basis for restriction on mother's time with the children. Finally, the court found that by reporting the abuse to their father the children were exhibiting safety and security in his care.

The court's findings were consistent with the requirements of RCW 26.09.187 and 26.09.191. It is not required that every factor be found prior to restricting a parent's contact with a child but rather that the factors found support a basis for restriction. In the instant case, the finding of abuse and neglect by both the mother and her significant other, along with the finding of withholding the children unreasonably from the other parent, are sufficient bases to place the children with their father in a safe and stable home and impose restrictions on the mother. The trial court did not abuse its discretion in relocating the children or imposing restrictions on the mother.

3. Trial Court Did Not Err In Denying Mothers Motion For Reconsideration

An Appellate Court need not consider arguments that are not developed in the briefs and for which a party has not cited authority. *State v. Dennison*, 115 Wn.2d 609, 629, 801 P.2d 193 (1990); RAP 10.3(a)(5) (appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant parts of the record).

Counsel for the mother has not addressed this assignment of error in her brief except to state that the denial of reconsideration was error on the part of the trial court. Counsel has not stated any reason for her belief that the trial court's decision was incorrect. Counsel has not cited any case law that established the trial court's decision was in error. Pursuant to *Dennison*, this court should deny review of this issue. *Id* 115 Wn.2d at 629.

Appellant further asserts, in "issue pertaining to assignment of error number two", that the court committed error by failing to appoint a guardian ad litem. The role of the guardian ad litem 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 or 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. *In re Marriage of Swanson*, 88 Wn. App. 128, 137 (Wash. Ct. App. 1997). In

the instant case, the court had two social workers to report to the court regarding the children's situation and the resolution that would be in the best interest of the children. Appointment of a guardian ad litem is not mandatory, but discretionary within the court and in the instant case, the court chose to not delay the proceedings by appointment of yet another professional to review the ample COS document, but instead chose to expedite the resolution based upon the testimony of the experts who had already investigated the situation and who are also charged with representing the child's best interests to the court. It was not an abuse of discretion for the court to deny the appointment of a guardian ad litem in this instant case.

Finally, appellant asserts, in "issue pertaining to assignment of error number seven", that the trial judge exhibited bias against her at the July 31, 2014 hearing and the October 14, 2014 motion for reconsideration. The children were placed with the father at the sheltercare hearing that occurred on July 15, 2014 and at that hearing the court set the trial date for July 31, 2014. Pursuant to appellant's brief, the trial judge merely stated that a parenting plan was needed to go with the status quo. The status quo was placement with the father pursuant to findings of abuse by the mother at the sheltercare hearing that occurred only two weeks prior. THE court's statement was not indicative of bias against the

mother, but rather a statement on the need for a parenting plan commensurate with the existing findings from the contested sheltercare hearing.

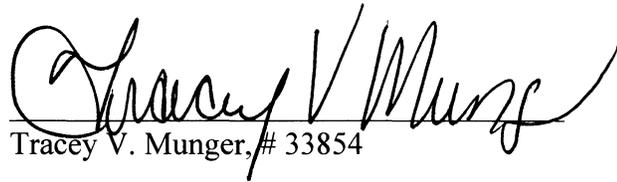
Appellant further asserts that the trial judge's comments from the October 24, 2014 proceedings were also indicative of bias against the mother and argue that the court found the motion itself to evidence a potential for abuse. However, the court did not state that. The court declined to reconsider its earlier ruling placing the children with the father and noted that mother's position for the motion for reconsideration was that she did not abuse the children. The court found mother's assertions in the motion to be supportive of the findings made after trial- that mother minimized the actions that constituted abuse of her children as well as the effect the abuse had on them. This is not evidence, or even suggestive, of bias and as such does not constitute abuse of discretion by the trial court.

CONCLUSION

For the reasons stated herein and the case law cited above, the court should find that the trial court did not abuse its discretion in this matter and should deny the appellants petition for relief.

DATED: March 19, 2015.

Respectfully submitted,



Tracey V. Munger, # 33854

CERTIFICATE OF SERVICE

The undersigned certifies that on March 19, 2015, this Response to Petition for Review was served via first class US Mail on Beverly Ibsen, Attorney for Appellant, 4700 Pt. Fosdick Dr. NW #301, Gig Harbor, WA 98335.

This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington.

Signed at Tacoma, Washington on March 19, 2015.



Alison Butler, Legal Assistant for Tracey V.
Munger

EXHIBIT

1

0074



**SUPERIOR COURT
OF THE
STATE OF WASHINGTON
FOR PIERCE COUNTY**

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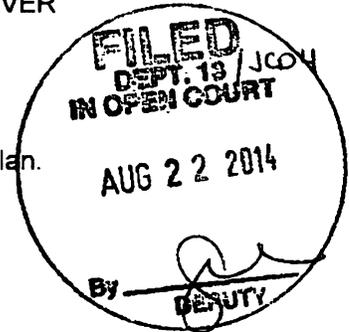
RE: ANGELA DAWN MIRANDA vs. CHRISTOPHER EUGENE CRUVER
Pierce County Cause No. 14-3-02549-1

Dear Counsel:

This matter comes on for a decision regarding a permanent parenting plan.

The objectives of the permanent parenting plan are to:

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) 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;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor child through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.



The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of

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family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

In fashioning such a parenting plan, the court must look to the above-cited criteria.

RCW 26.09.191 provides in pertinent part:

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: ... (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) ... an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

Based upon the testimony and other evidence at trial, the court finds that Mother engaged in physical and emotional abuse of the children.

Physical abuse included the spankings (some with a belt) and the use of peppers and pepper sauce as discipline, being force to stand on tip toe, groundings for up to 12 hours per day with only bathroom breaks and meal restrictions. These incidents were also emotional abuse. Additional emotional abuse of the children included being in a dog cage and shed, or the threat of being put in the shed. The court found Father's witnesses and social work experts credible, and it found that Mother admitted the abuse, although she engaged in minimizing and denying the impacts on the children.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: ... (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) ... an assault or sexual assault which causes grievous bodily harm or the fear of such harm;

Accordingly, Mother's residential time with the children shall be limited.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) ... an assault or sexual assault that causes grievous bodily harm or the fear of such harm;

Based upon the testimony and other evidence at trial, as set forth above, the court finds that Mother resides with a person who engaged in physical and emotional abuse of the children and engaged in an assault that caused fear of grievous bodily harm.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

The court finds that supervised contact between the children and Mother, together with a parenting coach during their next times together, together with orders from the court disallowing any of the aforementioned abuse, should adequately protect the children, provided Mother completes the 9 week parenting class she has enrolled in, and she receives a

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favorable report from a parenting coach who works with Mother and the children. Mother should continue to abstain from alcohol or driving when she might fall asleep when caring for the children.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

The court does not find evidence that Mother's parenting plan should be limited due to (a) through (e) above. However Mother did not follow the parties' agreement to enter the parenting plan by agreement in 2011, and this court concludes from all the circumstances that whether intentional or not, Mother used the non-entry of the parenting plan to dictate the residential time with the children at her whim, rather than in accordance with a plan. She withheld summer vacation time that Father was to have two out of three summers, and she failed to allow the children to be with their Father one summer. Her testimony was that she had to be talked into sending the children to their Father in 2014 by Mr. Bishop. The court finds that this is withholding the children from the other parent for a protracted period of time without good cause. It serves as a further basis for the restrictions.

RCW 26.09.187 in pertinent part provides:

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

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

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

feel safe, their Father. Both parents work and are with the children outside of work and the children's schooling.

The court is not ordering a drug/alcohol evaluation, however the court is ordering that Mother abstain from the use of alcohol when Mother is caring for the kids. The court is not ordering a parenting evaluation, except to the extent that the parenting coach needs to assess the situation to coach Mother. The parenting coach shall be provided with all dependency and other related background information, including information on Mother's accident and .20 blood draw result. The court is ordering successful completion of the 9 week parenting class. The court also orders supervised visits with a parenting coach, until the parenting coach indicates that Mother has learned and demonstrates the skills to safely parent.

The court approves Father's proposed plan for Mother to have odd year Winter/Christmas vacations, every spring vacation and Thanksgiving in 2016 and even numbered years thereafter. The court approves the provisions regarding times for Mother if she travels to Arizona. The court will not order Mother's Day and Father's Day or the children's birthdays due to the distance, except that Mother may include Mother's Day and the children's birthdays in the provisions regarding times for Mother if she travels to Arizona, not to exceed one 4 day holiday per month. Father's Day may conflict with the summer vacation, so it is not specifically ordered for Father each year.

The payment of transportation terms proposed by Father are approved. Mother will bear the cost of meeting the restrictions, such as the parenting coach. Phone/Skype contact is approved, no corporal punishment, access to information and enrichment activities and other provisions of Father's plan 9-17 appear appropriate.

RCW 26.09.187 also provides:

- (1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process.

As the court finds limiting factors apply, there will be no dispute resolution, except court action. Father's plan both excludes dispute resolution and provides for it. It should be excluded.

- (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

- (i) The existence of a limitation under RCW 26.09.191; There are 191 limitations.
- (ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a); The original agreed parenting plan did not include a section on decision making. It does not appear that Mother made joint decisions with Father, but rather acted alone.

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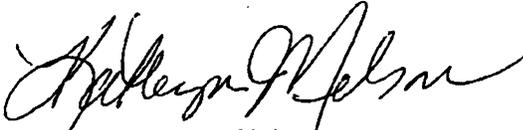
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(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); Father's proposed parenting plan does provide for joint decision making in one part and does not provide for it in another part. The children shall attend school in proximity to their Father's residence. If there are choices and options with respect to which of several schools the children may attend, Mother shall participate in that decision making, provided that there is an agreement as to any additional cost for the children's attendance. Non-emergency healthcare may be joint. Each may include the children in religious upbringing of their choice when the children are with the parent.

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions. Although geographically apart, it does not appear that this would prevent joint decision making.

Final documents should be prepared by Father's counsel and provided to Mother's counsel for review and approval no later than September 10, 2014. Final documents shall be presented to the court on Friday, September 19, 2014 at 11:00 a.m. at Remann Hall, 5501 Sixth Avenue, Tacoma, Washington.

Sincerely,



Judge Kathryn Nelson
Pierce County Superior Court

cc: Pierce County Clerk for filing

EXHIBIT

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14-3-02549-1 42841719 MTROTSC 07-01-14

FILED
IN COUNTY CLERK'S OFFICE

A.M. JUN 30 2014 P.M.

PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

**Superior Court of Washington
County of**

In re Parentage:
Angana Cruver
Cain Cruver Petitioner,
and
Angela Miranda Respondent
and
Christopher Cruver Respondent.

No. 14 3 02549 1
**Motion/Declaration for Ex Parte
Restraining Order and Order to
Show Cause
(MEXRSC)**

I. Motion

Based upon the declaration below, the undersigned moves the court for a temporary order and order to show cause.

1.1 Ex Parte Restraining Order

A temporary restraining order should be granted without written or oral notice to the other party or the other party's lawyer because immediate and irreparable injury, loss, or damage will result before other party or the other party's lawyer can be heard in opposition. This order should restrain or enjoin:

- (Name) Christopher Cruver from disturbing the peace of the other party or of any child.
- (Name) _____ from entering the residence of (name) _____. The protected person (name) _____, waives confidentiality of the address which is (address) _____.
- (Name) _____ from going onto the grounds of or entering the home, work place or school of the other party or the day care or school of the following children:

(Name) _____ from knowingly coming within or knowingly remaining within (distance) _____ of the home, work place or school of (name) _____ or the day care or school of the children.

Other: _____

(Name) _____ from assaulting, harassing, stalking, or molesting (name) _____ or the children, or using, attempting to use, or threatening to use physical force against the protected party or the children that would reasonably be expected to cause bodily injury, or engaging in other conduct that would place the protected party in reasonable fear of bodily injury to himself/herself or the children.

If the court orders this relief, and the restrained person and the protected person are spouse or former spouses, current or former domestic partners, parents of a child in common, or current or former cohabitants as part of a dating relationship, the restrained person may be prohibited from obtaining or possessing a firearm, other deadly weapon, concealed pistol license, or ammunition under state or federal law for the duration of the order.

(Name) Christopher Craver from removing any of the children from the state of Washington.

Other:

The other party should be required to appear and show cause why these restraints should not be continued in full force and effect pending final determination of this action.

1.2 Other Ex Parte Relief

Order that (name) Angela Miranda shall be the person with whom the children reside until the hearing.

Other:

1.3 Ex Parte Surrender of Firearms or Other Dangerous Weapons

Does not apply.
 The court should require (name) _____ to surrender any firearm or dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the sheriff of the county having jurisdiction of this proceeding, to his or her lawyer or to a person designated by the court.

1.4 Other Temporary Relief

Does not apply.
 (Name) Christopher Craver should also be required to appear and show cause why the court should not enter a temporary order which:

orders child support as determined pursuant to the Washington State Child Support Schedule.

approves the parenting plan which is proposed by (name) Angela Miranda

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requires (name) Christopher Cruver to pay temporary attorney fees, other professional fees and costs in the amount of \$ 2500 to:

~~Angela~~ Beverly Ibsen
253-475-3000

appoints a guardian ad litem on behalf of the minor children.
 other:

1.5 Other

Dated: 6/30/14

Angela Miranda
Signature of Requesting Party or Lawyer/WSBA No.

Angela Miranda
Print or Type Name

II. Declaration

2.1 Injury to be Prevented

The ex parte restraining order, other relief, or surrender of weapons requested in paragraph 1.1, 1.2, and 1.3 above are to prevent the following injury (define the injury):

2.2 Reasons why the Injury may be Irreparable

This injury may be irreparable because:

2.3 Reasons for a Temporary Order

- Does not apply.
 It is necessary that the court issue a temporary order with the relief requested in paragraph 1.4 above for the reason set forth below.

Christopher did not return children
as agreed on June 30 2014 @
9:25am via Alaska Airlines.

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2.4 Service Member or Dependent of Service Member

- If the other party is not present and:
 - a) is on active duty and is a National Guard member or Reservist residing in Washington, or
 - b) is a dependent of a National Guard member or Reservist residing in Washington on active duty, list the reasons why this temporary order should be granted despite the absence of the other party:

2.5 Was notice of this request for an emergency order given to the other party or lawyer?



Yes. Explain what efforts have been made to give written or oral notice to the other party or other party's lawyer:

called multiple times, no answer or reply. Called wife, family members and no one can get a hold of him

- No.** Explain the reasons why you believe that immediate and irreparable injury, loss, or damage will happen if notice is given:

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

Signed at (city) Tacoma, (state) WA on (date) 6/30/14

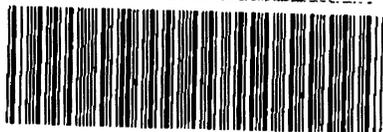
Angela Miranda
Signature of Requesting Party

Angela Miranda
Print or Type Name

Do not attach financial records, personal health care records or confidential reports to this declaration. Such records should be served on the other party and filed with the court using one of these cover sheets:

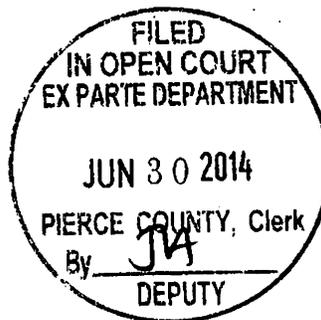
- 1) Sealed Financial Source Documents (WPF DRPSCU 09.0220) for financial records
- 2) Sealed Personal Health Care Records (WPF DRPSCU 09.0260) for health records
- 3) Sealed Confidential Report (WPF DRPSCU 09.270) for confidential reports

If filed separately using a cover sheet, the records will be sealed to protect your privacy (although they will be available to all parties in the case, their attorneys, court personnel and certain state agencies and boards. See GR 22(C)(2).)



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Superior Court of Washington
County of PIERCE

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In re Parentage:
Aryana Cruver
Cath Cruver Petitioner,
and
Angela Miranda Respondent
and
Christopher Cruver Respondent.

No.

Ex Parte Restraining
Order/Order To Show Cause
(Parentage)
(TPROTSC/ORTSC)

Clerk's Action Required
 Law Enforcement Notification, ¶
4.1, 4.3

Restraining Order Summary:

Does not apply. Restraining Order Summary is set forth below:

Name of person(s) restrained: CHRISTOPHER CRUVER Name of person(s)
protected: ANGELA MIRANDA See paragraph 4.1.

Violation of a Restraining Order in Paragraph 4.1 below with actual knowledge of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.26.590.

I. Show Cause Order

It is ordered that (name) Christopher Cruver appear and show cause, if any, why the restraints below should not be continued in full force and effect pending final determination of this action and why the other relief, if any, requested in the motion should not be granted. A hearing has been set for the following date, time and place:

Date: 7-22-14 Time: 9:00 a.m./p.m.

Place: PIERCE COUNTY SUPERIOR COURT Room/Department: AS POSTED - 18th FLOOR

If you disagree with any part of this order, you must respond to the motion in writing before the MONITOR hearing and by the TACOMA, WA 98402 county. At the hearing, the court will consider Written sworn affidavits or declarations. Oral testimony may Not be allowed. To respond you must: (1) file your documents with the court; (2) provide a copy of those documents to the judge or commissioner's

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staff; (3) serve the other party's attorney with copies of your documents (or have the other party served if that party does not have an attorney); and (4) complete your filing and service of documents within the time period required by the local court rules in effect in your county. If you need more information, you are advised to consult an attorney or a courthouse facilitator.

Failure to appear may result in a Temporary Order being entered by the court which grants the relief requested in the motion without further notice.

II. Basis

A motion for a temporary restraining order without written or oral notice to (name) Christopher Cruver or that party's lawyer has been made to this court.

III. Findings

The court adopts paragraphs 2.1, 2.2, and 2.4 of the Motion/Declaration for an Ex Parte Restraining Order and for an Order to Show Cause (Form WPF PS 04.0150) as its findings, except as follows:

- Further, the court finds that the nonrequesting party is absent and a) is on active duty as a National Guard member or Reservist residing in Washington, or b) is a dependent of a National Guard member or Reservist residing in Washington on active duty. Despite the service member's or dependent's absence, failure to enter the temporary orders below would result in manifest injustice to the other interested parties.

IV. Order

It is Ordered:

4.1 Restraining Order

Violation of a Restraining Order in Paragraph 4.1 with actual notice of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.26.590.

- Does not apply.
- (Name) Christopher Cruver is restrained and enjoined from:
 - disturbing the peace of (name of protected person) Angela Miranda or of any child.
 - going onto the grounds of or entering the home, work place or school of the protected person or the day care or school of the following protected children:
 - knowingly coming within or knowingly remaining within, (distance) _____ of the home, work place, or school of the protected person or the day care or school of the protected children.
 - assaulting, harassing, stalking, or molesting the protected person or the children, or using, attempting to use, or threatening to use physical force against the protected person or children that would reasonably be expected to cause bodily injury, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to himself/herself or the children. (If the court

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orders this relief after the hearing, the restrained person and the protected person are current or former spouses, current or former domestic partners, parents of a child in common, or current or former cohabitants as part of a dating relationship, the restrained person may be prohibited from obtaining or possessing a firearm, other dangerous weapon, concealed pistol license or ammunition under state or federal law for the duration of the order.)

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Clerk's Action. The clerk of the court shall forward a copy of this order, on or before the next judicial day, to (name of the appropriate law enforcement agency) Kingman AZ SOUTH BEND 911 which shall enter this order into any computer-based criminal intelligence system available in this state used by law enforcement agencies to list outstanding warrants. (A law enforcement information sheet must be completed by the party or the party's attorney and provided with this order before this order will be entered into the Washington Criminal Information Center computer.)

Service.

The requesting party must arrange for service of this order on the restrained party. File the original Return of Service with the clerk and provide a copy to the law enforcement agency listed above.

Full Faith and Credit

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

4.2 Other Restraining Order

BOTH NAMED PARTIES ABOVE ARE

(Name) Christopher Carter is restrained and enjoined from removing any of the children from the state of Washington.

(Name) _____ is restrained and enjoined from entering or returning to the residence of (name) _____. The protected person (name) _____ waives confidentiality of the address which is:

The children shall reside with (name) Angela Miranda until the hearing.

Other:

RESPONDENT (FATHER) SHALL IMMEDIATELY RETURN CHILDREN, TO WIT: ARYANA (AGE 10),

4.3 Surrender of Firearms or other Dangerous Weapons

AND CARIN CASEB) TO THE STATE OF WASHINGTON

Does not apply.

It is ordered that (name) _____ surrender any dangerous weapon in his or her immediate possession or control or subject to his or her immediate possession or control to the person or agency named in the Order to Surrender Weapons (Issued without Notice) signed by the court on this date, under this cause number.

4.4 Expiration Date

This order shall expire on the hearing date set forth above or 14 days from the date of issuance, which ever is sooner, unless otherwise extended by the court.

EXTENDED TO HEARING DATE

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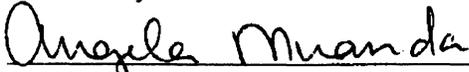
4.5 Waiver of Bond

- Does not apply.
- The filing of a bond or the posting of security is waived.

4.6 Other "JCS" RUN PER PARTIES AGREEMENT.

Dated: JUN 30 2014 at 3:17 a.m./p.m. 
 Judge/Commissioner

Presented by:


 Signature of Requesting Party or Lawyer/WSBA No.

MARK L GELMAN
COURT COMMISSIONER

Angela Miranda 6/30/14
 Print of Type Name Date

Petitioner/Respondent/Plaintiff/Defendant may seek review of this order in the Ex Parte Department, Room 105, prior to the scheduled hearing, after giving at least 24 hours notice to the opposing party or his/her attorney AND upon proper written motion.

No one shall drive the child without a valid driver's license, insurance and appropriate child safety restraints.
 Parties shall comply with all existing court orders and treatment requirements, if applicable, from any tribal, municipal, district, superior or federal court.

