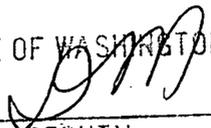


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DIVISION II

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STATE OF WASHINGTON

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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

ARACELI FELIX,
VS.
LUIS M. MELENDEZ

APPELLEANT'S BRIEF

Thurston County Superior Court Cause No. 12-3-00316-6
Honorable Richard Adamson presiding at the trial court

By
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I. IDENTITY OF PETITIONER

Araceli Felix (mother) asks this court to overturn the decision of the trial court below and direct the trial court to enter the proposed parenting plan the appellant filed in February 25, 2014 and to return the children in this matter back to the state of Washington. In the alternative, mother asks this court to grant a new trial with a new GAL and a recommendation before a different trial judge and to direct the court on remand to enter specific findings as to the factors listed in RCW 26.09.520 and whether the limitations of RCW 26.09.191 should apply.

II. ASSIGNMENTS OF ERROR

Petitioner Araceli Felix seeks this Court's review of the following decisions:

1. The trial court erred in allowing the children to leave the state on a permanently setting.
2. The trial court erred in entering a parenting plan giving primary placement of the children to the father and with no restriction in safeguarding the children in this matter.
3. The trail court erred in entering parenting plan with the recommendations of bias guardian ad litem (GAL).

4. The trial court erred in commenting in regards to his finding mid-trial, subsequently barring mother from having a fair trial which it is within her right of due process.
5. The trial court erred in denying Petitioner's Motion for Reconsideration, filed on October 02, 2015.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court committed reversible error when it entered findings that father and his wife had not committed abuse and neglect despite the enormous amount of evidence that the children were harmed.
2. Whether the trial court committed reversible error when it entered findings that the father had not committed parental interference despite the evidence.
3. Whether the trial court committed reversible error when the presenting judge refuse to allow the petitioner to enter evidence into the exhibit list.
4. Whether the trial court committed reversible error when the presenting judge refuse to allowed witness(s) to speak about abuse within the home of the father despite that the evidence pertaining to the adequate cause which is the reason why the trail was initially started and a guardian ad litem (GAL) introduced.
5. Whether the trial court committed reversible error when its finding indicated that there had been no evidence of abuse and neglect thus placing the children with father despite the vast amount of evidence indicating such abused had occurred.

6. Whether the trial court committed reversible error when its finding indicated that father was granted his petition for relocation of the children.
7. Whether the trial court committed reversible error denying mother's motion reconsideration based on new evidence.

IV. STATEMENT OF THE CASE

The mother appeals the order to allow the father to relocate to Florida; the new Parenting Plan currently in placed; the finding of adequate Cause; and the introduction of the GAL to this case. Filtering and restricting evidence and witness to the truth of the matters of abuse.

The children at issue in this case had resided in the state Washington since birth.

I. GAL REPORTS 2012-2015

A. GAL REPORT #1:

Initially, the GAL had recommended that the mother have primary custody and the father have liberal visitation with joint decision making for both parties; this GAL report was entered into the docket on August 17, 2012. The GAL had known about the mothers partner's (Virgilio M. Rodriguez aka Martin) DV history and still insisted that the children remain in mother custody. He stated:

“In September 2008, Virgilio's former wife filed for a protection order against Virgilio in King County Superior Court. According to the court dockets, *the matter was transferred to family court and the petition was dismissed*. In December 2008, Virgilio's former wife filed for a protection order again, but it appears that no one showed up at the hearing. *The docket does not indicate that a permanent order was ever entered based on this*

second filing. I attempted to call the former wife twice, and left messages both times, but she did not return my calls.

I spoke with Virgilio in my office. He produced records showing that he obtained counseling through that military based on the domestic violence allegation, and did what he was required to do through the military. I am not aware of any further domestic violence issues Virgilio since the 2008 filings”.

(Emphasizes added; GAL report 2012: Clerk Paper’s: Pages 453-463: Page 6: line 8-17)

In fact he continues in to page 8 of this GAL 2012 report, under section (iii) of the Statutory Factors: *Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child.*

“Araceli has taken greater responsibility for performing parenting functions relating to the daily needs of the children. This is partially due to [Mr. Melendez] being deployed at times, but also seems to have been the case when both parents were home. This is not to say that [Mr. Melendez] has been an uninvolved father”.

(GAL report 2012: Clerk Paper’s: Pages 453-463: Page 8: line 19-25)

*In his second report he contradicts what he said.

Also states:

“Araceli has a new boyfriend, who is also the father of her new baby. The children appear to get along well with him...”

(Emphasizes added: GAL report 2012: Clerk Paper’s: Pages 453-463: Page 9: line 13-14)

❖ And also stated for his recommendation:

“Araceli Felix should be named the primary residential parent for the children”.

(GAL report 2012: Clerk Paper’s: Pages 453-463: Page 9: line 26)

The Gal claims no concerns for the mother’s partner’s history, in fact he encourage the courts to not remove the children out of mother custody.

Relationship between Mr. Melendez and Children:

- Allison was born in Aug 2007, Mr. Melendez willing did not want to be there; in fact the father did not enter into Allison's life until she was almost one years old.
- Father moved in with mother in July 2008,
- Emily was born Jun 2009.
- Both parents lived together until March 2010 when both parties agreed that she should take the children with her to California.
- Mother and children moved back to Washington in September 2010.
- Five month later father deployed to Kuwait, it was February 2011 when he left.
- Father visited during his leave time for two weeks. At the end of his two week leave he was found passed out from intoxication with vomit all over his shirt¹.

Luis returned in early March 2012, at that point in time he had been absent from Allison's life from Aug 2007 to July 2008; again from March 2010- September 2010; and again from February 2011 to March 2012. Totaling out at 57% of her life and also the father was

¹ CAD 2011 PG1

absent from Emily's life from March 2010 to September 2010; and again from February 2011 to March 2012 totaling out at 43% of Emily's life.

In early 2012, the courts allowed the children to reside primarily with mother knowing full well of the Virgilio's history. Mr. Melendez then, after seen the GAL report (2012), emails a reply to the GAL report. This email basically slanders, desimates the mother's character, accused her of perjury and of drug addictions with no documentation nor evidence. With no evidence to adhere to, the GAL starts asking the mother to provide extensive evidence despite the fact that she had provided such and explained in to detail everything to him early that year. The GAL said that he needed to insure the mother was not lying or hiding anything from him.

B. GAL REPORT 2013 #2:

In February of 2012 the courts allowed the father to start having the child every weekend. That is when all sort of different issues arose, i.e., extreme sunburns (emergency room visit due to second degree burns); fist size bruises on buttocks; finger prints on child's arms; and Emily randomly urinating herself when the weekend came closer. The mother made these concern pubic to the GAL but instead he started blaming and questioning the mother of abuse within her home. Mother explained that these issues had not occurred prior to the new visitation

schedule, in fact the accusation that father was making could not be true because Virgilio was deployed from Oct 2012 to May 2013.

On several different occasion the GAL had tried to contact Jessica but was never able to get in contact with her, despite the fact that the GAL would leave voice mails for her to call back she never returned them. Mother and her partner attempted several times to get her to speak with the GAL but she was reluctant to speak with him. This went on for nearly two years until suddenly the GAL notified mother on June 10 that he had spoken to her. He insisted that Virgilio was a malicious individual and that he was abuse to mother. She denied these allegations and pointed to the evidence she had proved him with month prior. The GAL even stated that she need to move out immediately based on what Jessica had stated.

The GAL and Amica spoke several time without the mother knowledge, nor awareness. When the GAL again spoke with Amica on June 6, 2013, he gave her the contact information of Jessica so that she could initiate contact with Jessica first. Amica called Jessica and spoke with her for an unknown length in time. Throughout this conversation they spoke solely about mother's partner, Virgilio. Immediately after this conversation, Amica called the GAL. The details of this conversation could not be verified nor were they ever by investigated by the GAL. The GAL spoke with Jessica on June 07, 2013 (the length

in time is unknown). Immediately after the GAL contacted the father (the length in time is unknown) a few days later the GAL contacts mother and accuses her of lying and of perjury with no evidence. If these allegations were so concerning why did he wait so long to call the mother, or even file a petition on behalf of the children to remove them out of mother's care. Mother asked the GAL what was going on and he claimed that Jessica had told him "the whole truth". Mother asked him when he had contacted her and he stated that Amica called her first. Mother requested the GAL ask for a continuance so that he could properly investigate these accusations, but he denied it and stated that if mother wanted to she could motion the courts.

Only twenty days prior to the commencement of the trial the GAL filed his report recommending that the father be the primary parent and that the mother have restrictions based on the accusations of Jessica, whom he had just spoken with one time only. This was in violation of mother due process.

She states:

More importantly, I am concerned about Araceli's ability to protect the children. Knowing that [Virgilio] had not seen his own children in months, and knowing about 2008 domestic violence problems, she allowed [Virgilio] into the children's lives to where he is apparently important to them now"

It's curious that even though evidence i.e., email conversations were provided to the GAL detailing how Jessica did not want to get involved and refuse to answer text messages, voicemail and email

pertaining to the inquisition of martin history, Amica was able get in contact with Jessica and for her to speak with the GAL.

The GAL report seems like he had already written it immediately after speaking with Jessica. The GAL gives no exhibits, nor and contextual documentation to indicate that mother had ever perjured herself nor that her partner is of any threat to the children.

In this report he claimed that mother had deceived him. His report was almost word for word of what the father had accused mother of in the email he sent to the GAL. Please see attach document.

Mother filed a motion for a continuance so that she could be represented by an attorney⁰. The motion was denied. During the trial when the mother stated that she had filed for a motion to continue the matter the presiding judge stated that this matter need to be heard now; the process had taken long enough and the children need to be place in a suitable home.

~~The~~

C. GAL REPORT # 3:

Allison was one month shy of turning five years old and Emily had just turned four years old when they were placed in the father's care.

Since then there has been nothing but 'incidents' that have occurred in the father's home, especially with youngest daughter, Emily.

More predominate bruising on arms of Emily.

~~MOTION FOR CONTINUANCE 2013- PIG 3~~

Emily:

- Emily constantly urinating on herself through-out the day. Even at school.
- To this day wears pull ups.
- Emily alopecia (hair loss on scalp).
- Emily fractured wrist, in which she had to be placed in a cast for several months.
- Emily multiple reports of abuse from different sources
- Emily had to have her two front teeth removed due to sever decay.
- Emily to this day May 2016 still wears pull ups during bed time and at times during the day; she is turning seven next month.
- Emily multiple report of abuse^{5,6&7}

Allison:

- Allison's low grade scores⁸
 - Allison's excessive disruption in class
 - Allison's excessive talking.
 - Allison's not want to participate and listen to teacher.
 - Allison's Lower grade score in the year 2014 to 2015⁹
- The GAL made it a point to detail in his 2013 report that Allison

had been excessively late when children were in mother care.

“...I reviewed Allison Melendez' school attendance records and spoke with her teacher about her attendance. Before approximately mid-March 2013, Allison was tardy to school approximately 30 % of the time. Although many times Allison was only a few minutes late, *this is disruptive to the class as a whole... Nevertheless, one of the duties of a parent is to get the children to school on time.*”

(Emphasizes added; GAL report 2013: Clerk Paper's: Pages 464-468 & 469-482: Page 8: line 11-16)

⁵ CHILD ABUSE REPORT 2015 PG1

⁶ CPS REPORT 2015 PG 21

⁷ EXHIBIT# 5, 3, & 19 PG UNK

⁸ EXHIBIT# 10 FROM TRAIL EXHIBIT LIST PG UNK

⁹ EXHIBIT# 11 AND 12 FROM TRAIL EXHIBITS LISTPG UNK

During the trial on September 2015, the GAL was questioned on whether academic would be considered under his guidelines for detrimental and if he was required to look at for the adequate cause order.

Q: ... is the school grades part of the detrimental well-being of a child?

A: It can be, yes.

(Witness and Ms. Felix converse with the court)

A: to answer your question, it appears that this is Allison. In November, which would have been in 2013, she was --there what they have an "aim line". In November, she was on the aim line. In December, she was above it. And then in January, February, and March, she was below the aim line.

Q: Mr. Melendez intervenes with a question: what year was this?

A: By witness: 2013/14.

Courts: on the right, it says DIBELS.net. In the middle, it says student progress monitoring report.

(Witness, Mr. Melendez and Ms. Felix converse with the court)

Q: So the next remaining in the sheet are her weekly reports in 2013 and 2014. Is there a lot of N's on there?

A: Well, during the week of April 18th to the 24th of 2014, there was no --there was a problem on Friday but not the rest of the week. The prior week, April 7th to April 14th, it needs improvement. The week before --well January 3st to February 6th, and I don't know why we're -- January 31st to --excuse me. January 13th to 17th of 2014, there was a "needs improvement every day of the week in that area.

(Court intervenes)

A: ... for December 6th of 2013, there was an "N" with a star, and the star says "Throwing is a safety concern"

Q: Well is there a lot of comments about being very talkative throughout these weeks?

A: Well, talkative for the week of April 17th --excuse me -- of April 7th. Talkative the week of January 13th. Talking on December 13th. So on three of the reports that I have, there's a comment about being talkative.

(Emphasized added: VBR at 66-71)

When GAL was question about the year 2104 through 2015, he stated:

Q: ... I'm going to give you a copy of Allison grades for 2014, 2015.

Q: Okay on page four, can you read the fifth sentence at the end of that paragraph?

A: "She grasps concepts being taught; however, she does not apply her skills consistently and accurately."

Q: Could you read to the end of the paragraph?

A: Oh. Oftentimes, Allison will rush through an assignment, turn it in, and then have to make several corrections. Slowing down and remembering to ask herself does my answers make sense is essential. Allison often [needs]... reminders about listening attentively during instruction.

A: I would like to amend my answer. When I said that I agree that she needs additional support and practice, that's for math, and it's for certain things... Especially on the third trimester, she has three's...

Q: ... I'm specifically speaking about winter quarter. For winter quarter she was getting two's. She was barely meeting requirements...

A: She was getting three's and two's, *but then she improved*... But, to me, it's *-I look at the global picture. I don't think its appropriate just to pick out one semester and say oh, she had problem then, especially when the next semester there was improvement...* the other thing I notice here is she had 3.5 absences and on tardy... when [Allison was] living with you; there was a consistent problem with tardiness and some absences. So at least when she was with... --you know living with [Mr. Melendez], she is getting to school on time.

Q: ... even though she was late, she was still meeting above average standards, was she not?

A: She may have been, but it's very disruptive to be tardy. And it's not just disruptive for your child; it's disruptive for every child in the class...

(Emphasize added; VRB at 74-77)

When asked about the difference in academics with Allison when she and her sister resided with the mother verse with the father, given that Allison's grades had decreased in both years while living with her father, the GAL instead of speaking about the subject that pertained to the question asked, he attempted to high light mother faults to cover the fact that he was bias on against mother and clearly showed preference to the

father. He stated "...when [Allison was] living with you, there was a consistent problem with tardiness and some absences. So at least when she was with...--you know, living with [Mr. Melendez], she is getting to school on time" (VBR at 77)

To the GAL it is more important to be on time, than to understanding the material. Apparently the bare minimum is good enough for the children, so long as he can stand correct in the court room.

When the children lived with mother, Allison was late due to mother's complications after giving birth naturally to Anthony (Allison and Emily's younger brother) and that the mother did not have her license at the time. But nevertheless the mother arrangement transportation for Allison to school in March 2013. She was not late once after that. Her tardiness improved after the winter quarter, but still this did not suffice to the GAL. Instead, to the date of the trial, the GAL still showed bias against the mother, and refuse to acknowledge that mother improved her abilities in transporting Allison to school and improved her tardiness attendance.

The GAL also claimed that Allison struggled in her reading material (VBR at 78: Exhibit examined: 10, 11, & 12). And in his GAL report of 2013 he states "Araceli has shown that she has a problem handling Allison's educational needs without help. That includes getting her on time as well as academics themselves..." (CP at 464-482: at GAL report 2013: pages 10: line 22-23). Allison school records show that when

the child were living in mother care, there was only improvements. In fact Allison's grade mark legend indicated that she was either meeting standards or above standards markers by the ending of the school year,¹⁰ compared to both 2013/14 and 2014/15 school grades, made better grades in mothers care. Allison did struggle emotionally, due to Virgilio being deployed, which every child does when an important member in their family deploys.

2. **Father abusive history**: When mother quested the GAL about Mr. Melendez' history with abuse, he only gave abstract definitions. When asked what he considers domestic violence he state "there are a number of definitions of domestic violence... When mother asked if throwing was considered domestic violence, he stated depend on what and where you throw... baseball players throw all the time... (VBR at 44 September 8, 2015) when asked to read off Mr. Melendez' mental health assessment, he read:

He reported three years ago his ex-wife, quote, got him really upset, close quote, and he threw a carton of orange juice towards the passenger side of the car while she was driving...

He also report breaking his cell phone ... he threw or broke things approximately five or six times. He recalls being jealous when they first married and on one occasion checked her cell phone for messages...

(CP at 6: page 5: paragraph 5) (VBR at 47; September 8, 2015)

When asked by the mother if he believe these acts are a form of Domestic Violence the GAL replied:

...I would consider it, you know, he was probably angry, he was probably upset, but depending on exactly what went on, that may or may not have been domestic violence....

¹⁰ ALLISON'S SCHOOL GRADES AND ATTENDANCE 2012-2013

(VBR at 47-48; September 8, 2015)

Apparently to the GAL, if Mr. Melendez was angry it is okay to throw items around. Depending on what transpired between Mr. Melendez and the mother to make him snap. In his 2013 GAL report he stated “

... She said [Virgilio] was controlling. He would ask where she was at all time and keep track of her. He would constantly go over Jessica's phone to see with whom she spoke....

3. CPS:

During trial, mother called the witness named Cherri Paillet, she is a CPS social worker, has a master in Positive Influence in Adolescent, and is currently working in the Pierce County office. She was the lead investigator in the most recent report of child abuse that Emily reported in the father house hold. While there was no findings in this investigation due to the custody battle between the parties, the Social worker still felt that it warrant that she speak to the GAL, and be a witness to the trail. She stated that she spoke to the GAL but he seemed bias against mother. He clearly showed he had invested time in helping Mr. Melendez obtain and maintain custody of the children. During trail when Mr. Paillet was asked about her investigation of child abuse she was silenced by the judge:

Q: When were you assigned to Emily's case?

A: On May 11th, 2015.

Q: Why?

A: A report came in that Emily had been physically abused by Amica.

COURTS: Ms. Felix I'm going to jump in here for a minute. We've already had testimony that the complaints actually filed by the both of you, and I believe one was also anonymous, with PS were either, one, not acted upon –this witness knows what I'm

talking about in terms of screened out... that's the evidence which is currently before the courts. Is this going to replicate that? Because if it was not founded or screened out, that ends it right there, and I don't know why we need to spend any more on that.

(VBR at 372: line 9-25 and at 373: line 2)

Q: In your face to face interview with Allison and Emily, at the end of the interview, did you ask Emily -- I'm sorry -- Allison any specific questions?

A: I always ask at the end of the interview if there's one thing that they could change about their family, and Allison said she wanted... --

COURTS: Just a minute. Stop right there. That's hearsay. Because if Allison were being interviewed by, say, a counselor and it was a statement made in the course of treatment is an exception to the hearsay rule. But this is hearsay, and I'm not going to permit the testimony of -- whatever Allison or Emily said to the caseworker is hearsay, so I'm not going to permit it.

(VBR at 376: line 8-22)

The presiding judge showed prejudices against mother in making a determination without hearing the full evidence and testimony from the witnesses, in turn, denying the mother of her right to a fair trial and due process by making a determination on the Adequate Cause Order before the trial had concluded.

During the trial in September 9, 2015 the mother asked the judge to allow her to enter police reports of abuse that had finally surfaced; these police report pertained to father abusive history of violently attacking mother in front of daughters. When petitioner asked the judge to enter the exhibit using the In Re Marriage of Timmons Annotate this Case 94 Wn.2d 594 (1980) 617 P.2d 1032; In the Matter of the Marriage of ELMER TIMMONS, Respondent, and WENDY TIMMONS, Petitioner.

No. 46571, the judge denied the request, primarily because he stated:

Ms. Felix: It's a CAD call in 2000 – I apologize –in 2010 of domestic violence between Luis and I. Under the –I was told to refer to this –to this trail that occurred on 1980 –that was ordered in 1980 in the matter of the marriage of a Elmer Timmons, respondent and Wendy Timmons, petitioner.

COURT: This is In re: Marriage of Timmons, 94 Wn. 2d 594, 1980 decision... Timmons case as support for your argument that a 2010 incident or alleged incident between you and Mr. Melendez should be considered by this court, even though it was not considered by the original trial court; is that correct?

Ms. Felix: Yes

COURT: ... "In limiting the scope of inquiry, it was assumed that the court granting the original degree made a decision based on knowledge of all the exiting circumstance.

COURT: okay two things that I think distinguish Timmons from the case of Felix versus Melendez, number one, there was a trial. In Timmons, there was not a trial. Number two you indicated to me Mrs. Felix, that you didn't know how to get the information. Im sorry? I can't put myself into that position...

Ms. Felix: ... when I was reading it, it said that there was two circumstances in which why you would be able to consider it, and one of them was if there was detrimental in the environment, and adequate –excuse me –adequate cause. It was already granted

COURT: ... Now, technically that matter was not litigated in the original divorce, but you were aware of it. I presume Mr. Melendez was at least aware of the complaint. Were you?

Mr. Melendez: ... Yes, your honor.

4. Relocation:

RCW 26.09.520

Basis for determination.

The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the

detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

The mother has a very strong bond with her children. When children were living in the state of Washington she would volunteer nearly every day at their school. Taking turns when she had other obligations that day. She spent nearly 2-3 hours at least 3 to 4 days out of the week in their schools. When mother had visitations she would take them to the park, painting at the park, swimming, hiking and even children's rock climbing. On the days the children would have homework she would go out of her way to get the material from the children's teacher so that she could learn it just in case the children had question.

When time would permit it during the week, the mother would drive 45 min to take the children to spend time with their brothers, Anthony and Victor Rodriguez. Not just that the children have requested to move back with mother several time (Trail exhibit: Exhibit 3).

(2) Prior agreements of the parties;

Does not apply.

(3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

The mother and children are extremely close, they even have their own secret hand shake. The children are used to seeing their mother nearly every day, flying them 3000 miles away would be detrimental not only to these girls but to the younger brother. The mothers' sons have already shown extreme emotions of anxiety and stress. They cry constantly for their sisters.

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

Does not apply.

(5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;

In five year mother will be able to move to Florida but that is a huge amount of time to be separated. Mother cannot leave the state of Washington, not while abandoning everything she has worked so hard, i.e., her Associate in Art Degree; her Real Estate Licenses and her acceptance in to St. Martin's University. She cannot leave without causing harm to her younger children.

(6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

Both of the minor children in this action are young growing children who need their mother, not to say that they do not need their father as well but study have should when pertaining to young girls that they are statistically less likely to become delinquents. (*How does the gender of Parents matter?*: Journal of Marriage and Family: Page 10: Table 2)

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

Allison and Emily have many family member here in the state of Washington, and most importantly they have the biological siblings here waiting for them.

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

Mr. Melendez stated that he be sure to make sure the children spoke to mother but nearly weeks go by before mother is allowed to speak with the children. Mr. Melendez hardly ever answers his phone nor answers his skype.

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

In five year mother will be able to move to Florida but that is a huge amount of time to be separated. Mother cannot leave the state of Washington, not while abandoning everything she has worked so hard, i.e., her Associate in Art Degree;

her Real Estate Licenses and her acceptance in to St. Martin's University. She cannot leave without causing harm to her younger children.

(10) The financial impact and logistics of the relocation or its prevention;

Mother has spent over 3, 000 dollar in traveling expenses to retrieve the children for her visitation, not to include the child care cost she pays while children are in Washington.

- ❖ Most recently mother filed for a reconsideration based on the fact that father had entered into a cult religion. The father wife Amica contacted mother informing her that she had to call the police on Mr. Melendez. When the police arrived they escorted him to get his thing and to get the children. The father stated in a hotel with the children. The children were late to school the next day.¹²

V. ARGUMENT

A. Summary of Argument

To be sustained on appeal, the trial court's orders must be supported by substantial evidence. See e.g. Rogers Potato Serv., L.L.C. v. Countrywide Potato, L.L.C., 152 Wn.2d 387, 391, 91 P.3d 745 (2004). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the finding's truth. See e.g. State v. Solomon, 114 Wn. App. 781, 789,

¹² Reconsideration and Email from Amica about Mr. Melendez pg1

60 P.3d 1215 (2002), review denied, 149 Wn.2d 1025, 72 P.3d 763 (2003). The findings of fact must support the conclusions of law. See e.g. *State v. Graffius*, 74 Wn. App. 23, 29, 871P.2d1115(1994). Even when mislabeled as findings of fact, the court reviews conclusions of law de novo. See e.g. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). See Virginia A. Petersen, Note & Comment, *In re Marriage of McDole: Modifying Child Custody By Ignoring Statutory Standards*, 69 WASH. L. REV. 1143, 1143 (1994) (discussing modification grounds of parenting plans in Washington state).

Whether the court's exercise of discretion is based on untenable grounds or is manifestly unreasonable, or is arbitrarily exercised, depends upon the comparative and compelling public or private interests of those affected by the order or decision and the comparative weight of the reasons for and against the decision one way or the other. See e.g. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). "When the State seeks to deprive a person of a protected interest, procedural due process requires that the person receive notice of the deprivation and an opportunity to be heard to guard against an erroneous deprivation of that interest." *Pal v. Washington State Department of Social and Health Services*, No. 45594-3-II (Feb. 3, 2015) at 7.1

In this case, the court abused its discretion by (1) Scheduling a trial and entering a final parenting plan less than two months after petitioner filed to establish a parenting plan²; (2) Denying the use of supportive

reference, i.e., Timmons Vs. Timmons case; (3) Entering a finding of child abuse without any evidence that the children were harmed; (4) Entering findings of emotional abuse and neglect without any evidence of harm or specific findings as to harm; (5) Failing to consider the future risk of harm as provided by RCW 26.09.191; (6) Placing the children with father despite father's failure to provide evidence as to several key factors required by RCW 26.09.187; (7) Making comments at the September 2015 hearings indicating the judge had decided the case prior to hearing testimony.

RCW 26.09.002 provides that "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 ... required to protect the child from the physical, mental, or emotional harm" (emphasis added). For this reason, the court may order placement with a parent even if it makes a determination that abuse had occurred and has wide latitude to decide what restrictions, if any, are necessary to safeguard the child while maintaining the status quo as much as possible.

If the court expressly finds based on evidence that contact between the parent and the child will not cause physical ... harm to the child and that the probability that the parent's or other person's harmful or conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m) (i) and (iii) of this subsection ... then the court need not apply the limitations of (a), (b), and (m) (i) and (iii) of this subsection.

RCW 26.09 .191 (n) (emphasis added). "Trial courts have broad discretion to create parenting plans tailored to the needs of the individuals

involved ... " In re Marriage of Chandola, 180 Wn.2d 632, 658, 327 P.3d 644 (2014). This discretion is broad enough to permit the court to apply limitations on a parent's residential time even if it makes a finding that abuse or neglect had not occurred. See RCW 26.09.191 (n).

Washington courts have yet to create a standard for when the risk of harm is "so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m) (i) and (iii)" of RCW 26.09.191. However, in interpreting RCW 13.34.136 (permanency plan of care), the court addressed what constituted a "risk of harm" to the children. "The legislatively-mandated risk of harm must be an actual risk, not speculation" Dependency of T.L.G., 139 Wn. App. 1, 17-18, 156 P.3d 222 (2007) (finding that "While these parents may well have acted inappropriately five years ago, that incident is ancient history in the lives of this family. Something more than opinions based on a single incident is necessary to support a finding of risk of harm") Id at 18. When RCW 26.09.191 is at play, the court must make specific findings. See e.g. Kinnan v. Jordan, 131 Wn. App. 738, 752, 129 P.3d 807 (2006) (specific findings as to factors in RCW 26.09.191 is mandatory). In making findings on future risk of harm, the court can consider the "potential for progress" by a parent in their efforts to improve their parenting skills. Mansour v. Mansour, 126 Wn. App. 1, 10, 106 P.3d 768 (2004) In this case, the court made no findings as to future risk of harm.

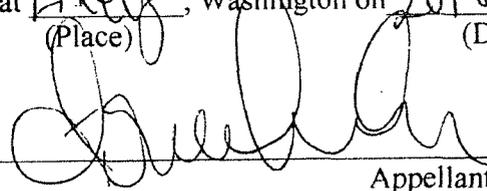
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I. CONCLUSION

For the foregoing reasons, this Court should remand the order that the court in Washington were enter in September 2015 giving the mother primary placement in the alternative, this court should order a new trial and an independent investigation. The trial court should be directed to enter specific findings as to factors set forth in RCW 26.09.187 and whether the limitations of RCW 26.09.191 apply.

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

Signed at Lacey, Washington on 2016 05 10
(Place) (Date)



Appellant; Por Se
Araceli Felix

Araceli Felix

Type or Print Name