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COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

ARACELI FELIX,

VS.

LUIS M. MELENDEZ

APPELLEANT'S REPLY BRIEF

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

By
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Table of Contents

	<u>Page</u>
I. INTRODUCTION.....	4
II. REPLY ARGUMENT	5
A. Relocation Matter.....	5
B. Adequate Cause Motion.....	8
III. CONCLUSION	12

Table of Authorities

Table of Cases

	<u>Page</u>
<i>In re Marriage of Swenson</i> , 88 Wn. App. 128, 944 P.2d 6 (1997)	7
<i>In Re Dependency Of C.B.</i> , 79 Wn. App. 686, 692, 904 P.2d 1171 (1995).....	7
<i>In re Marriage of Watson</i> , 132 Wn. App. 222, 130 P.3d 915 (2006)	9
<i>In Re Marriage Of Katare</i> , 175 Wn. 2d 23, 35, 283 P. 3d 546 (2012), cert. denied 133 S. Ct.889 (2013).....	9
<i>Marriage of Kovacs</i> , 121 Wn.2d 798, 854 P.2d 629 (1993)	9

Statutes

RCW 26.09.191

RCW 26.090.520

RCW 34.05.470

I. INTRODUCTION

Over two third of Respondent's brief is devoted to arguing that Appallet's fiancé is a danger to the children in this matter. This argument is unresponsive as a lack evidence and has contrary evidence to dispute his allegations. In addition, Respondent's arguments regarding Mother's burden of evidence is moot. And such are addressed and rebutted in great detail in Mother's brief. Therefore, Mother will not directly address these arguments here.

Instead, this reply brief will refocus the court's attention on the mother's issues:

1. Whether the trial court committed irreversible 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 irreversible error when it entered findings that the father had not committed parental interference despite the evidence;
3. Whether the trial court committed irreversible error when the presenting judge refuse to allow the petitioner to enter evidence into the exhibit list;
4. Whether the trial court committed irreversible error when the presenting judge refuse to allowed witness(s) to speak about the abuse that had occurred within the home of the father despite 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 irreversible 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 irreversible error when its finding indicated that father was granted his petition for permanent relocation of the children, insisting that he had the primary bond with the children in this matter;
7. Whether the trial courts committed irreversible error when the finding in this case did not include the children's' wants in placement or needs in the GAL's report; and
8. Whether the trial court committed reversible error denying mother's motion reconsideration based on new evidence.

II. REPLY ARGUMENT

1. Relocation:

*Part One: The appellee did not show any undue stress to relocate. The father willingly quick skillful, great paying job in May of 2015 after he found out hat he would be terminate in the layoff due to his inability to ensure the safety of himself, his coworkers and the product. (VRB: Page 221: Line: 16). He then marries his wife. She 'quits' her reliable job in the state of Washington and finds employment in Florida. The father then files for relocation knowing full well that the courts would grant him his relocation motion on the premises of the

presumption statue. Instead fabricated a story attempting to show the courts a 'legitimate reason' to move.

*Part Two: The father never showed how this relocation would be in the best interest of these young girls. Instead made indications that these young girls would have better maternal figures i.e., his new wife and mother, and his new wife's family that lives in Florida would 'cover down'. In which the children in this case had only met once before several years prior.

The children have resided in the state of Washington since birth. The mother always exercised her visitation rights and 'phone call privileges'; Visitation consisted of every Wednesday and every other Thursday, Friday, Saturday, and Sunday. Which does not include the hundreds of volunteer hours that the mother attended at each of the children's schools.

These visitations also consisted with interaction between the children in this matter and their two baby brothers, Anthony and Victor Rodriguez. In the Gal report he never once spoke of the interactions of these two sets of biological children's and their bond to each other. Instead the Gal continues to show his bias against the mother by implicating that the mother is cohering the children to make claims of abuse.

Mother always attended parent teacher meets, correlated and converse on a daily bases with both of the girls teachers to insure that they were doing well academically. But despise all the mothers efforts and the children's hard work their academics lacked. The evidence clearly showed the lack of involvement

from the father. This showed in the oldest child's report card and when the mother brought this to the attention of the Gal, both during the investigation and during direct examination, the Gal twisted words and played game by gas lighted the mother, clearly in the direct examination:

Q. ...I have indicated on these documents the red star on the first page . That' s winter. Now, if you look at the first page where it says grade scale , can you tell me what number two says?

A. "Approaching grade level standards, needs additional support and practice."

Q. So would you agree at that time that Allison needed assistance and she wasn't getting it ?

A. I can read that the teacher says that she needed assistance. I can't - - I can't say that she wasn't getting it. Sometimes kids get assistance but they still - - but they continue to need it. And this report card says nothing about whether or not she' s getting assistance, so I can't agree with that part of the statement.

(Emphasizes added; VRB: September 08, 2015; Page 66-77)

On the grounds of the relocation statues: the father did not nor does he to this day show any form of stability for the children in this matter. At trial the mother showed evidence that the youngest child had to have her teeth removed due to server decay in her front two teeth. They were removed prematurely.

(VRB: Page326: Line 12-25 & Page 327: Line 1-3)

Despite the fact that the mother presented all this evidence of the Gal bias to the courts, the judge took the recommendation of the Gal report and dismissed the Adequate Cause Motion hearing and allowed the children to move

permanently to Florida, 3,000 miles away from everything that they know. “There was no need for adequate cause to hear the petition for modification” (VRB: Page 558: Line 8). The judge clearly was influenced by a bias Gal and thus denied the mother her due process.

2. Adequate Cause Motion:

The procedural posture of this case was highly contested from the beginning. The adversarial posture of the parties required the court to apply extra diligence in safeguarding the due process rights of all parties. A concern for stability through quick resolution of issues is secondary to the need to safeguard due process when a parent's constitutional right to parent their children is at issue.

For example, in *In re CRB*, the trial court entered a final order on a May 9, 1990 review hearing that terminated mother's parental rights because the child had been found by DSHS to be dependent and the mother could not be located. Although mother's attorney requested the court proceed based on the trial schedule to a final hearing on the merits set for October 15, 1991 (5 months subsequent), the court denied this motion. *CRB*, 62 Wn. 608 at 613.

Citing its belief that there would be no change in the child's situation, the court terminated the mother's parental rights without adherence to the trial schedule. *Id.* On appeal, the Court of Appeals reversed. While noting that a child has a "right to a stable home," the court concluded that the trial court had violated Mother's due process rights. *Id.* at 606.

The statutes and case law are clear that the court is not to blindly follow the "status quo" in determining the provisions of a final parenting plan. In enacting RCW 26.09.187, the Legislature was "concern[ed] that the parent who had been awarded temporary residential placement of the child not be given unfair advantage when the permanent parenting plan was entered." *Marriage of Kovacs*, 121 Wn.2d 795, 808, 854 P.2d 629 (1993); See also *In re Marriage of Watson*, 132 Wn. App. 222, 234, 130 P.3d 915 (2006) ("the provisions of a temporary parenting plan or other temporary order should not adversely affect the final determination of a parent's rights") (emphasis added). RCW 26.09.060 (10 (a) ("A temporary order ... [d]oes not prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding").

The court's determination of abuse rested entirely on the determinations of the Gal report and testimony, especially noting his bias in this investigation. Thus, barring the CPS report, Cherri Pallet to testify on her interaction where the children not only reporting the abused and neglect that had occurred in the father's home, but their desire to live with the mother.

The fact that when the Gal was asked by the petitioner whether Allison had stated that she wanted to live with the mother and the Gal responded with implication of fault within the mother household showed bias. VRB (September 08,2015) page 65-66.

Citing case law, "We review a trial court's parenting plan for abuse of discretion. *In Re Marriage of Katare*, 175 Wn. 2d 23, 35, 283 P. 3d 546 (2012),

cert. denied 133 S. Ct. 889 (2013). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Katare, 175 Wn. 2d At 35.” By relying entirely on the Gal investigation report and disregarding all evidence to the contrary, the trial court demonstrated abuse of discretion against Mother. As discussed above, this bias was present from the beginning in the court's expressed desire to bar the witnesses in their testimonies during the direct examination.

Direct Examination of Cheri Paillet (CPS Social Worker)

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.

THE COURT: 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 CPS were either, one, not acted upon - - this witness knows what I'm talking about in terms of a screened out.

THE WITNESS: Screened out, uh - huh.

THE COURT: Meaning no action whatsoever. Or, two, investigated with an unfounded finding. That's the evidence which is currently before the court. Is this going to just 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 time on that.

(VRB: Page 372-373: September 10, 2016)

And again:

Q. In your face - to - face interview with Allison and Emily, at the end of the interview, did you ask Emily - - or 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...

THE COURT: 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. And again, this gets right back to the bottom line is, this was unfounded, and so I'm not going to permit a collateral attack on a finding of the department that was unfounded. That's really what this appears to amount to. I don't know. But the unfounded finding is it. I don't know how much more plain I can make that.

(VRB: Page 376-377: September 10, 2016)

At trial, the court must make its own findings and conclusions regarding whether abuse occurred, the risk of future abuse, and what parenting plan is in the best interests of the children. In making these determinations, the court is not bound by any prior investigations. *Cf In re Marriage of Swenson*, 88 Wn. App. 128, 138, 944 P.2d 6 (1997). Rather, the court must consider all testimony, evidence, and argument and make independent findings. *Id.* at 141 affirming that the trial court should "examine[] the GAL report and the particular facts," balance the "interests of all parties involved," while ensuring the children's "best interests [remain] paramount."

In this case, the Gal, Rick Bartholomew testified that the choice facing the court was whether to believe the children when reporting abuse or not was detrimental to the trial hearing, leading the courts to believe that abuse and neglect had not occurred. Thus subsequently influencing the courts to denied the modification based on RCW 26.09.260(2)(c) to modify before hearing the mothers evidence (VRB page 26 -September 08, 2016).

This framing of the issue struck at the heart of Mother's constitutional right to due process. The court had a duty to make an independent evaluation of all of the evidence and testimony and to make independent findings on whether abuse occurred and, if so, what the future risk of abuse would be without restrictions on father's residential time.

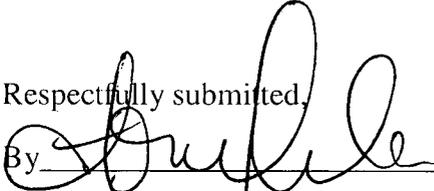
The Respondent's brief argues that the Gal's investigation report conclusions settled the matter. In effect, this is an argument that the court had no independent duty to make findings and no duty to consider the evidence mother presented that put the allegations of neglect and abuse into context or showed that it was not likely to occur in the future.

As Guardian ad litem, it is he that is bound by the court's findings, not the other way around. To conclude that a court was free to disregard mother's evidence and testimony or that the court was bound by a Gal investigation report destroys the notion of due process and renders the entire trial a farce.

III. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and grant the relief Mother requests in her Appellant Brief.

Dated this 3rd Day of October, 2016

Respectfully submitted,
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