

No. 48759-4
COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION TWO

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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In re the Parenting and Support of:

N.R.M; Child,

Duane Moore,

Appellant,

and

Kayla Vallee,

Respondent.

ON APPEAL FROM PIERCE COUNTY SUPERIOR COURT
Honorable Brian Chushcoff

APPELLANT'S OPENING BRIEF

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INTRODUCTION

Appellant, Duane Moore, Appeal's the decisions of the trial court in this matter. Mr. Moore is the father of the minor child, N.R.M. Mr. Moore has been the primary responsible parent to N.R.M since birth. For more than a year, the respondent Kayla Vallee and the appellant Duane Moore were in agreement to an almost split custody parenting plan when their relationship ended. This agreed parenting plan placed Mr. Moore as the primary parent for the majority of N.R.M's life. This included the majority of N.R.M's residential time to be with Mr. Moore.

The parenting plan court action was taken place by the respondent Kayla Vallee on May 8, 2015. The court commissioner adopted the practiced parenting plan as the initial temporary parenting plan. After accepting this parenting plan, the court commissioner adopted another parenting plan. Following the court proceedings leading up to trial; there were many violations towards 1. RCW 26.09 statutes, 2. CR 59, 3. Child Support Deviation, 4. Gross errors with merging case number 14-3-04779-6 with Mr. Moore's and Ms. Vallee's case, 5. Settlement Conference details, 6. Error in facts and acknowledgement within the judge's response towards "Motion for Reconsideration". 7. Sole decision making towards child care and more.

The matters before the court of appeals are amongst merits that are present within the January 19, 2016 trial as well as the unforeseeable errors after the courts conclusion. Mr. Moore would like to reserve the possibility of obtaining the January 14, 2016 trial if the court deems it necessary. It is respectfully requested that the Court of Appeals recognizes the numerous reversible issues associated with the trial court's orders and finds that the resolve requested is in the best interest of N.R.M.

ASSIGNMENTS OF ERROR

1. The trial court erred when it made gross errors by merging information from another family law case with Mr. Moore's family law case.
2. The trial court erred when it abused its discretion by not properly applying the "Childs Best Interest" laws within RCW 26.09.002.
3. The trial court erred when it did not address the settlement conference practices issue that were discussed during trial and during the reconsideration.
4. The trial court erred when it wrongfully assigned sanctions for Ms. Vallee's attorney's fees to Mr. Moore.
5. The trial court erred when it failed to acknowledge and assign deviation within the child support order when it was requested several times during trial and reconsideration.
6. The trial court erred when it miscalculated Mr. Moore's income on the child support worksheet although he specified his hours worked during trial.
7. The trial court erred when it provided incorrect facts within section (4) of the judges "Order on Respondent's Motion for Reconsideration".
8. The trial court erred when it failed to consider Mr. Moore's position as the primary parent of N.R.M.
9. The trial court erred when it gave Ms. Vallee sole decision making towards childcare despite all of the critical information presented against the best interest of N.R.M.
10. The trial court erred when it refused to address factors highly relevant within RCW 26.09.187 and assign a parenting plan accordingly.
11. The trial court erred by showing favoritism to Ms. Vallee and applied the friendly parent concept within the case.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err by making gross mistakes with merging another family law case with Mr. Moore's case?
2. Did the trial court err when it abused its discretion by not properly applying the "Child's Best Interest" laws within RCW 26.09.002?
3. Did the trial court err when it did not address the settlement conference practices issue that were discussed during trial and during the reconsideration?
4. Did the trial court err when it wrongfully assigned sanctions for Ms. Vallee's attorney's fees to Mr. Moore?
5. Did the trial court err when it failed to acknowledge and assign deviation within the child support order when it was requested several times during trial and reconsideration?
6. Did the trial court err when it miscalculated Mr. Moore's income on the child support worksheet although he specified his hours worked during trial?
7. Did the trial court err when it provided incorrect facts within section (4) of the judges "Order on Respondent's Motion for Reconsideration"?
8. Did the trial court err when it failed to consider Mr. Moore's position as the primary parent of N.R.M.?
9. Did the trial court err when it gave Ms. Vallee sole decision making towards childcare despite all of the critical information presented against the best interest of N.R.M.?
10. Did the trial court err when it refused to address factors highly relevant within RCW 26.09.187 and assign a parenting plan accordingly?
11. Did the trial court err by showing favoritism to Ms. Vallee and applied the friendly parent concept within the case?

STATEMENT OF THE CASE

A. Procedural History

On May 8, 2015, a Petition for Residential Schedule/Parenting Plan/Child Support was filed in Pierce County Superior Court regarding N.R.M¹. Kayla Vallee, N.R.M's mother, was the petitioner, and Duane Moore, N.R.M's father and appellant herein, was the respondent. On May 8, 2015, a mutual protection order was placed by both parties that included a parenting plan that followed N.R.M's standard schedule with Mr. Moore of Friday to Tuesday morning every week (CP 43 – 46). This residential schedule with Mr. Moore had been practiced since N.R.M was 4 month old.

On June 11, 2015, the same court commissioner adopted a new temporary parenting plan that consisted of Mr. Moore practicing residential time with N.R.M on Monday at 5pm to Thursday at 8pm every week (CP 47 – 55). This schedule was proposed by Ms. Vallee. The commissioner's basis was on the fact that the amount of physical evidence and undeniable facts that Mr. Moore supplied to this case was overwhelming ("Present Sense Impression" admissible under ER 803(1)). Mr. Moore immediately filed a Motion for Revision on June 15, 2015 with Judge Chushcoff, addressing that the new temporary parenting plan created a situation where N.R.M and Mr. Moore's daughter will not see each other.

On July 2, 2015; Judge Chushcoff denied a revision although he was supplied with the same declaration which covered Mr. Moore's valid concerns, new sibling separation stresses and practiced residential schedule. On October 5, 2015 Kayla Vallee set a Motion for Contempt for child support payments, co-parenting counseling attendance, and daycare attendance. The Contempt charge was dismissed on November 2, 2015 with the findings

¹ For privacy purposes, the minor child will be referred to as, "N.R.M."

that child support payed by Mr. Moore was mistakenly applied to the account where Ms. Vallee was paying Mr. Moore (RP 200 -201) and that Ms. Vallee agreed upon a current family/marriage counselor that Mr. Moore's insurance paid for since cost was an issue (RP 172).

On December 14, 2015; Mr. Moore and Ms. Vallee partook in a Settlement Conference with Judge Martin. Trial commenced between Mr. Moore and Ms. Vallee on January 14, 2016 and concluded on January 19, 2016. On January 26, 2016; Judge Chushcoff ordered a Parenting Plan Final Order (CP 78 – 87), Order of Child Support Final Order (CP 59 – 77), Judgement and Order Establishing Residential Schedule/Parenting Plan Child Support (CP 93 – 99), and Finding of Facts and Conclusions of Law (CP 88 – 92).

On February 3, 2016 appellant Mr. Moore filed a timely Motion for Reconsideration with newly discovered evidence when he noticed errors within the final orders (CP 100 – 111)(CP 112 – 117). On February 22, 2016; Judge Chushcoff only changed Mr. Moore and Ms. Vallee's birthdates that were incorrect and denied everything else (CP 118 and 119). Mr. Moore then filed a Notice of Appeal when no resolve was found for the errors at the trial court and after further investigation presented even more unforeseeable errors and suffering.

B. Facts

Duane Moore swears into oath and testifies that his birthdate is 7/27/81 (RP 143). Mr. Moore diligently took on the role as primary parent to children that were not biologically his during his relationship with Ms. Vallee (RP 153 – 154) and even continued this practice even more so towards his biological son when he was born (RP 166 – 167). Mr. Moore primarily provided traditional care for all of the children in the house. This includes bathing, feeding, educating, playing, medical attention, etc. Mr. Moore even tried to keep a relationship with Ms. Vallee's other children after they separated because Mr. Moore has very strong family values and accountability towards his dedication as a father (RP 168). In addition, Mr. Moore feels that it is important to keep everything as normal as possible although he and Ms. Vallee were no longer together (RP 168). This brought forward Mr. Moore's continued primary role in N.R.M's life.

Ms. Vallee acknowledged in a text communication that Mr. Moore raised her son's while they lived together and that she was unsure whether Mr. Moore was going to continue to do so with Neo as he had been after she evicted him from their shared home in March 2014 (RP 239 – 240). The court was aware that Mr. Moore has an older daughter from another relationship and they were aware of their visitation schedule (RP 151). The court was also aware of the facts that Mr. Moore's daughter and N.R.M get along great and enjoy their time with each other (RP 151 – 152). Mr. Moore and N.R.M have a very strong father son relationship lead by consistency (RP 266).

ARGUMENT

1. The trial court erred by applying information from case number 14-2-04779-6 with Mr. Moore and Ms. Vallee's case.

This merging was not clear until Mr. Moore further investigated why he and Ms. Vallee had such incorrect birthdates on the orders and why the order appeared to be one made in error and does not comply with RCW 26.09.002. Due to the rarity of the matter, the confirmation of the merging was not found until after the reconsideration of the judge's final orders. The first question here is "How did the court obtain and apply two vastly different birthdates in different sections of Mr. Moore and Ms. Vallee's final orders?" It was definitely not an error using boilerplates because judge Chushcoff's court does not use boilerplates in such crucial forms. It was also not an autofill mistake made by the judge. The merging of the cases are a result of clear gross negligence.

Case number 14-2-04779-6 is a dissolution case and belongs to a man named Dewayne R. Jensen and a woman named Dannella Jensen. Birthdates of the parties are verified (CP 11). It is no coincidence that both fathers in each case share the same name but with different spellings. A boilerplate selection would not select Dewayne Jensen's birthdate as Duane Moore's birthdate or select Dannella Jensen's birthdate for Kayla Vallee's birthdate. This is clearly a mistake in identity and to make matters worse, the courts identity errors continued via email during the appeal proceedings and even applied name errors within pages of the Verbatim Report of Proceedings (Exhibit 1). The case would be properly title Vallee and Moore not Vallee and Vallee as it appears (RP 138 -142). With these types of negligence, what's to say that the trial court did not make more? Let's take a closer look.

The parenting plan from case 14-2-04779-6 appears to have identical residential days that Mr. Moore and Ms. Vallee have to date (CP 2). The brief from this case also emphasized the parenting plan schedule (CP 22). It also appears that the cases were held in time frame proximity. It is highly likely that judge Chushcoff was working on the cases at the same time and mixed up documents. With the inclusions of the errors made on multiple occasions by the court; these types of errors are considered grounds for a new trial.

2. The trial court erred when it abused its discretion by not properly applying the “Childs Best Interest” laws within RCW 26.09.002.

RCW 26.09.002 reads as follows:

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

Judge Chushcoff erred with applying this law by reducing N.R.M's time with Mr. Moore and his daughter by half of what N.R.M was accustomed to since 4 months old. This change in living conditions, primary parent change, and the diminished time spent with his father has severely affected N.R.M's emotional status. This is a direct violation of RCW 26.09.002 because it diminished N.R.M's emotional growth, health and stability and replaced his security with mental and emotional harm. N.R.M has never once cried for Ms. Vallee when away from her nor has he ever refused to go with Mr. Moore. N.R.M continues to

express stress and cry out for his father when he is with Ms. Vallee (RP 196). N.R.M becomes very upset, cries, and does not want to go with Ms. Vallee during residential transfers more than 65% of the time. It even became so extreme on September 11, 2016 when N.R.M physically tried to escape her grasp and when he did he tried to avoid her. Ms. Vallee became very angry with Mr. Moore and stated “Look at what you are doing to him you fu...ng jerk.” (Admissible under ER 803).

Why would judge Chushcoff reduce N.R.M’s time with Mr. Moore to half when he had been the primary parent? Judge Chushcoff had the opportunity to explain this within the Motion for Reconsideration but stated “I will not attempt to set out all of the circumstances that persuaded the court to issue its parenting plan in this case.” (CP 119). The court followed it’s very first temporary parenting plan order that consisted with what was primarily practiced since N.R.M was 4 months old (CP 46). There were no findings that would lead the court to make such a drastic change in parentage (CP 88 – 92) (CP 78 – 87). There was incredible procedural documentation throughout the case that clearly showed Mr. Moore as the primary parent, yet the court changed that by error.

The policy of RCW 26.09.002 promotes the continued parental involvement in the children's lives to the greatest extent possible, given the parents’ separation. In re Marriage of King, 162 Wn.2d 378, 174 P.3d 659 (2007).

The “welfare of the child is of supreme importance.” In re Marriage of Dunkley, 15 Wn. App. 775, 778, 551 P.2d 1394 (1976).

The court must balance the interests of all parties involved, while keeping in mind that the child's interests are paramount. In re McDaniels v. Carlson, 108 Wn.2d 299, 738 P.2d 254 (1987).

3. The trial court erred when it did not address the settlement conference practices issue that were discussed during trial and during the reconsideration.

During trial, it was stressed that Mr. Moore and Ms. Vallee did not complete the settlement conference and that they only touched bases on the residential schedule and nothing else (RP 235 – 236). The fact that Judge Martin hurried Mr. Moore and Ms. Vallee's settlement conference because she had an appointment was of no consideration to Judge Chushcoff. Mr. Moore even tried to reemphasize the importance of the settlement conference laws and the importance in his Motion for Reconsideration (CP 109). This was not addressed again. Rule LMSCR1 clearly shows the rules that a settlement conference is supposed to follow. Mr. Moore and Ms. Vallee's settlement conference did not follow these rules.

4. The trial court erred when it wrongfully assigned sanctions for Ms. Vallee's attorney's fees to Mr. Moore.

The court assigned sanctions to Mr. Moore of \$2,000.00 by findings of intransigence (CP 92). Mr. Moore felt bullied throughout the case by Ms. Vallee's attorney Kelly Malsam (RP 233). Mr. Moore pleaded with the court and tried to present all of the ways that bullying was commenced, but it was not considered (RP 233). Mr. Moore provided the opposing counsel what he agreed to in the parenting plan once he realized that he was being set up for failure. The parenting plan that was presented by the opposing party had many changes, inflations, strict deadlines and an unanswered double increased amount in child support that Mr. Moore tried to address and reached no resolve (RP 168 - 169). The fact that Ms. Vallee was preparing for trial while Mr. Moore was requesting justification for the undiscussed changes within the parenting plan and child support wasn't considered (RP 232).

The findings of intransigents is inappropriate for this matter and trial was not commenced due to Mr. Moore providing what he wanted in their parenting plan. It was clear that they would review it and they were already prepared for trial as they stated. Moreover, the judge cannot testify to Mr. Moore's state of mind, nor can the opposing counsel. ER 602, ER 605 and RPC 3.7. Judges and attorneys are not qualified to be witnesses. The content of Mr. Moore and Ms. Vallee's negotiations is inadmissible under the sacrosanct Rule of Evidence ER 408. The fact that the judge allowed this even to be talked about and considered is a violation of those policies (CP 109). When a party has made a proceeding unduly difficult and has thereby unnecessarily increased legal costs, sanctions and costs awards are appropriate. In re Marriage of Morrow, 53 Wn. App. 579, 770 P.2d 197 (1989).

5. The trial court erred when it failed to acknowledge and assign deviation within the child support order when it was requested several times during trial and reconsideration.

The opposing counsel proposed that supplying Mr. Moore a deviation towards child support would cause Ms. Vallee hardship (RP 262). The court didn't address the fact or include in her financial declaration that she had a very large sum of money obtained by an inheritance. Ms. Vallee did supply that she paid off a car over \$10,000 and that she lived with two roommates. Judge Chushcoff was aware that Mr. Moore has an older daughter that he spends a significant amount of time with (RP 151). Mr. Moore's child support worksheet supplied to the court asks for deviation. Financial declaration also shows how much Mr. Moore pays for child support for his daughter. Mr. Moore also addressed deviation in his Motion for Reconsideration (CP 101). Deviation should have been applied appropriately to the child support order.

6. The trial court erred when it miscalculated Mr. Moore's income on the child support worksheet although he specified his hours worked during trial.

The hours that Mr. Moore worked at Brookdale are imputed as to working a full 40 hours each and every week as shown by the monthly net income on the child support worksheet (CP 61). Mr. Moore specifically stated the court many times that he does not work a full 40 hours consistently (RP 163). Mr. Moore had worked 72 hours every two weeks and this was verified by his Director from Brookdale within the appeal action for the emergency stay. This also reflects that I did not receive a merit increase for the year of 2016. The calculation caused an untrue amount towards income level while the hours worked were clearly understandable from the three paystubs Mr. Moore supplied the trial court (RP 158). The judge should have applied the actual income as well as the deviation for Mr. Moore's other child to be reasonable.

7. The trial court erred when it provided incorrect facts within section (4) of the judges "Order on Respondent's Motion for Reconsideration".

Mr. Moore did not agree that having every weekend with N.R.M was inappropriate as the judge states in his decision (CP 119). Mr. Moore tried to peacefully negotiate what Ms. Vallee wanted in addition to what was the best option for N.R.M (RP 150). This was in compliance to what was negotiated within the settlement conference. Understanding the involvement that Mr. Moore had in N.R.M's life; judge Chuschoff decided to dramatically reduce their time together instead of adopting a plan that will allow the impact of Mr. Moore's parenting to continue as the norm.

8. The trial court erred when it failed to consider Mr. Moore's position as the primary parent of N.R.M.

Mr. Moore had provided the court with a tremendous amount of information that showed that Mr. Moore was the primary parent in every way to N.R.M. What is it to just state that you are the primary parent; how much weight would that hold to just go by someone's words? Again, the court adopted the normal residential schedule in the very first court order temporary parenting plan following RCW 26.09.197. The court provided a second temporary parenting plan with minimal changes to the amount of residential time (CP 48).

RCW 26.09.187(3)(a) states: 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; (iii) 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; (iv) The emotional needs and developmental level of the child; (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities; (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her

residential schedule; and (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules. Factor (i) shall be given the greatest weight.

The trial court did not apply these residential provisions when everything within the case details clearly show Mr. Moore's depth of involvement. Mr. Moore's work schedule even allowed him to work from home (RP 149). Working from home continued to be unnecessarily challenged through trial by the judge and attorney (RP 228)(RP 156) with no challenges towards Ms. Vallee. Judge Chuschoff did not give any details in his findings of facts as to why he chose the parenting plan after the case concluded and within the Motion for Reconsideration. Judge Chuschoff refused to explain his decision. The court's findings of fact must be supported by substantial evidence. *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Bering v. Share*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986) (CP 110).

The court's findings of fact must, in turn, support its conclusions of law and decree. *Rockwell* at 242. A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 619, 224 P.3d 795 (2009). Discretion is abused when no reasonable person would have taken the view adopted by the trial court. *Carle v. McChord Credit Union*, 65 Wn. App. 93, 111, 827 P.2d 1070 (1992). Mr. Moore emphasized the importance of his impactful involvement in N.R.M's life and expressed the way the decision has harmed him (CP 102). Yet, no reconsideration was given and no further reason. Mr. Moore's involvement with his son naturally followed the objectives in RCW 26.09.002.

9. The trial court erred when it gave Ms. Vallee sole decision making towards childcare despite all of the critical information presented against the best interest of N.R.M.

The court erred by giving Ms. Vallee sole decision making towards childcare when Mr. Moore and Ms. Vallee had always shared decisions towards childcare. Mr. Moore even showed great details within his declarations as to interviews that he conducted with childcare providers for Ms. Vallee's other children before N.R.M was even born. The court did not consider this as a violation to Mr. Moore's fundamental rights as a parent within RCW 26.09.184(1)(5)(a)(b)(6). Specifically, RCW 26.09.184 (5)(b) reads: Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent. This restriction takes Mr. Moore's right to make this sort of decision and it was a vital concern towards the childcare provider that Ms. Vallee was using (RP 238).

This was heavily emphasized within prior declarations that the judge had seen. N.R.M would consistently have diaper rashes, scratches and wounds, as well as other concerns within the childcare provider's home. Why would anyone want to use this type of childcare when these things were happening? Mr. Moore provided undeniable evidence of this and it was not considered. The childcare Mr. Moore provided during all of the times during and before N.R.M's existence are state approved and licensed providers. The court could have reviewed all of the information provided as a fundamental truth.

The court begins the matter with the presumption that I am a fit parent acting in the best interests of our child. *Troxel v. Granville*, 530 U.S. 57, 66, 68, 120 S.Ct.2054, 147 L.Ed 2d 49 (2000).

A simple disagreement between the court and a parent over a child's best interests is not sufficient to override the parent's fundamental rights. In re Custody of R.R.B., 108 Wn App. 602, 612-13, 31 P.3d 1212 (2001). Any preliminary determination of unfitness of a parent must be based on a well-founded allegation and any interference with a parent's fundamental right must be based upon a compelling interest, which must be narrowly drawn. In re Custody of Nunn, 103 Wn. App., 883, 14 P.3d 175.

10. The trial court erred when it refused to address factors highly relevant within RCW 26.09.187 and assign a parenting plan accordingly.

(the policy that he has to consider all the factors of .187, especially (3)(i) which get the greatest weight). See In re Marriage of Kovacs at 121 Wn.2d 795, 800, 807 854 P.2d 629 (1993). (i) The relative strength, nature, and stability of the child's relationship with each parent. Would this not apply to Mr. Moore? When N.R.M's disruptive and stressful behavior during exchanges with Ms. Vallee and at her home when away from his father cause concern of this parenting plan being for his best interest? (CP 102) (RP 196). During the Motion for Reconsideration, the court continued to ignore the fact that Ms. Vallee was difficult and otherwise not easy to work with (CP 116 – 117). N.R.M has a strong attachment to Mr. Moore because Mr. Moore has always been the primary parent since his birth. N.R.M has separation anxiety when he is without Mr. Moore and this causes eating and sleeping issues. Picture taking your child to a babysitter for the first time. Many children panic that their parent is leaving them. This is the type of behavior N.R.M displays consistently regardless is Mr. Moore drops him off at Ms. Vallee's house, she picks him up at the park, or when she pick him up from Mr. Moore's home. Although N.R.M is two years old, the court should treat his dramatic changes in behavior and personality as signs that this is the wrong parenting plan that is not in his best interest. The judge concluded trial by stating that Mr. Moore and Ms. Vallee have managed to have almost split custody and it seems to be working (RP 268).

If N.R.M was the legal age to be able to choose which parent he wants to live with; he would with no doubt choose Mr. Moore and would be clearly able to express his reasons why. Since he is almost three years old, his behavior and stresses should be given that same value. Ms. Vallee refuses to acknowledge the destruction that this parenting plan is causing in his life; even blaming Mr. Moore for him being attached to him and for her detachment. It is fundamentally logical and sound that N.R.M resides with Mr. Moore.

When Mr. Moore and his daughter had to create a parenting plan, it was sound for her mother to have custody over her because the mother was a stay at home mom and Mr. Moore was the financial provider. Thus this parenting plan should have those same consideration with Mr. Moore. Yet Mr. Moore was trying his best to negotiate and have a close to equal parenting plan. Mr. Moore did not want to give up his residential time which is considered life time with N.R.M by giving Ms. Vallee the title of custodial parent. He freely gave her this title because even with a split custody plan, one parent has to legally be labeled the custodial parent. It was for this purpose alone and Mr. Moore wanted to conclude court in peace (RP 193).

11. The trial court erred by showing favoritism to Ms. Vallee and applied the friendly parent concept within the case.

The largest error that the court made was with their decision towards the declarations that Mr. Moore supplied throughout the case. Although the information was extreme, it was very vital to the case. The depth of detail which included documentation that was 100% undeniable, was profound in truth and facts. The court decided that it was over the top but it was of fundamental truth. Mr. Moore only supplied this information to the court as a counter to the misleading declarations that Ms. Vallee supplied to the court.

The information provided was meant to be for counseling when Mr. Moore and Ms. Vallee was trying to settle their differences and remain in a relationship (RP 167 -168). Mr. Moore felt that there were accountability issues with extreme events with Ms. Vallee and felt that since he believes she will deny these things in counseling, he could just show evidence. Instead of acknowledging the evidence as undeniable truth, the court decided to reject everything. As a generic example of the court proceedings, I will use a metaphor. Mr. Moore could per say talk to the court about a blue glass on a table. Mr. Moore provides a picture of the blue glass sitting on the table. With absolutely no evidence of the glass, Ms. Vallee could simply say that the glass was not on the table and the glass was green. The court takes Ms. Vallee's word over Mr. Moore's word with included supporting evidence.

The proceedings seemed to be biased and heavily represents a poster image of reasons to have a new trial per CR 59 (1, 3, 4, 5, 6, 7, 8, and 9 which reads: (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial. (3) Accident or surprise which ordinary prudence could not have guarded against; (4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial; (5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice; (6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property; (7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law; (8) Error in law occurring at the trial and objected to at the time by the party making the application; or (9) That substantial justice has not been done.

The details of Mr. Moore's declarations were severe enough to hold concern under any person who would have reviewed the information. Once the information was exposed; Ms. Vallee worked hard to deny everything that was declared by Mr. Moore by declaring the exact opposite (RP 245 – 247). Ms. Vallee and her witnesses lied consistently about her involvement with the children's care, responsibilities, concerns etc and the court believed her. Mr. Moore represented the truth and 95% was provable with evidence and the court did not consider him. Mr. Moore continued to prove Ms. Vallee's claims as false and no consideration was taken. For example; Ms. Vallee states that she never threatened Mr. Moore with taking N.R.M away from him. Yet when Mr. Moore submits a message that she wrote to Mr. Moore in evidence; she conveniently had forgotten that she stated that (RP 245).

Another instance of denial was when Ms. Vallee stated a few times in trial that Mr. Moore did not raise her twin boys (RP 246 -247). Mr. Moore shortly supplied a letter directly from Ms. Vallee stating that he had raised the twins (RP 240). In another instance, Mr. Moore expressed that he had concerns about Ms. Vallee's anger outbursts. Ms. Vallee took antidepressants to control this and when she did not take them, her episodes were extreme. Ms. Vallee denies taking antidepressants within her cross examination (RP 242). Mr. Moore later supplies a letter into evidence where Ms. Vallee states that she didn't want to admit to needing the medication and that she did have outbursts of anger (RP 251 – 253). This was brought to the court for the concern of this matter, not for embarrassment. This is also great examples as to how the court was extremely biased when Mr. Moore continued to provide undeniable proof throughout the case.

The "best interests of the child" control when determining who will parent a child daily. In re Parentage of Schroeder, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001). The court clearly showed favoritism towards Ms. Vallee by overlooking the factors within the case and the history of both parent's involvement with N.R.M. Ms. Vallee did everything she could do during the case to appear to be an active mom (RP 213). Ms. Vallee began creating opportunities to present herself as an active mother such as scheduling gymnastics for the children, cooking meals, cleaning etc. when she rarely ever did these things before since Mr. Moore was engaging in most of the care for the kids. Ms. Vallee even went as far as attempting to change N.R.M's Dr. and schedule unnecessary appointments for a new Dr. when Mr. Moore has always been responsible for N.R.M's healthcare (RP 213 – 214). Ms. Vallee was creating a false image though court with absolutely no evidence of proof and the court believed her.

The court has the ability to address these types of matters and apply restrictions to residential time if any of the rules in RCW26.09.191 apply. In this case, there are no rules from RCW26.09.191 that applied. A guardian ad litem was denied and unnecessary to show the concerns Mr. Moore presented towards Ms. Vallee because she and the opposing council did everything possible to change Ms. Vallee's character and create a new one that was appealing to the court. The only benefit the guardian ad litem could have been helpful in this case is showing N.R.M's interactions with his parent's and how dramatically different these interactions are in comparison. This would have verified the intensity and stress upon N.R.M that Mr. Moore explains. Mr. Moore expressed his feelings towards his family in his closing argument (266 – 277).

CONCLUSION

Mr. Moore brings these issues of the Parenting Plan, Child Support, and errors within the case for the best interest of N.R.M. He seeks to do the right thing for his son and end the hardships that have taken place upon he and N.R.M with the courts final orders. Being a parent is one of the most important jobs anyone can have in the world. Why pull a child away from a beneficial part of their life? As much of a blessing that all children are; no one with children can ever imagine being less of a parent. To have less smiles and laughter each day. To have less moments of guidance towards their lives. To have less comforting and developmental moments. To have less of them.

1. It is requested with respect that the court provides Mr. Moore and new trial, provide him with a Friday to Sunday residential schedule every week, or provide him with a weekly residential schedule that complies with RCW 26.09.002.

2. It is requested with respect that the court applies a deviation to Mr. Moore in the Child Support order for time spent and for having another child.

3. It is requested with respect that the court reverses the trial courts order to pay the opposing counsels attorney fees.

4. It is requested with respect that the court removes the sole decision restriction for childcare attendance decisions from the parenting plan.

5. It is requested with respect that the trial court provides details of the trial court's decision towards the case within the Findings of Facts and Conclusion of Law.

6. It is requested with respect that the court denies the opposing parties request for attorney fees towards the appeal.

Respectfully Submitted this 16th day of September, 2016.

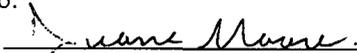

Duane Moore. Pro Se

Exhibit 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

KAYLA VALLEE,)	
)	
)	
Petitioner,)	
)	
and)	No. 15-3-01760-7
)	COA No. 48759-4
)	
KAYLA VALLEE,)	
)	
)	
Respondent.)	

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VERBATIM REPORT OF PROCEEDINGS (Volume 2)

BE IT REMEMBERED that on the 19th day of January 2016, the following proceedings were held before the Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of the State of Washington, in and for the County of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to wit:

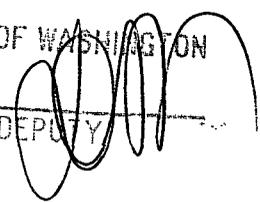
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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY _____
DEPUTY



IN THE COURT OF APPEALS, DIVISION II
FOR THE STATE OF WASHINGTON

DUANE MOORE,
Appellant,
and,
KAYLA VALLEE,
Respondent.

APPEAL NO. 48759-4

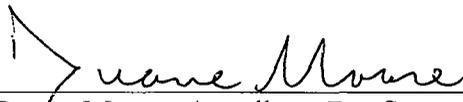
**AFFIDAVIT OF SERVICE FOR
APPELLANT'S BRIEF**

CERTIFICATE OF SERVICE

I, Duane Moore certify that on the 16th day of September, 2016, I caused a true and correct copy of the APPELLANT BRIEF, CLERKS PAPERS, AND VERBATIM REPORT OF PROCEEDINGS to be served on the following in the manner indicated below:

Counsel for Kayla Vallee
Name Kelly Malsam
Address 15 S. Grady Way Ste #400
Renton, WA 98057

First Class Mail with signature
 Hand Delivery



Duane Moore, Appellant, Pro Se