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DIVISION II

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No. 49112-5- II

STATE OF WASHINGTON

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In The
COURT OF APPEALS IN THE STATE OF WASHINGTON

DIVISION ONE

James M. Childs

Appellant,

v.

Olivia N. Walton

Respondent.

On Appeal from the Superior Court of Washington, County of Clark

Appellant's Opening Brief

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Table of Contents

A. INTRODUCTION.....	1
B. ASSIGNMENTS OF ERROR.....	3
C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.....	3
D. STATEMENT OF THE CASE.....	5
E. SUMMARY OF ARGUMENT.....	7
F. ARGUMENT.....	9
1. Judge Clarke did not genuinely believe anything was in controversy and therefore erred on infringing on Mr. Childs’ and E.L.C.’s rights.....	9
2. Judge Suzan Clark erred by not adhering to and applying RCW 26.16.125.....	14
3. Judge Suzan Clark erred by not adhering to or applying Stare Decisis and the US. Constitution.....	16
a) The Constitution Governs Domestic Relations.....	16
b) 1 st Amendment, Right to Association.....	18
c) Strict Constitutional Scrutiny Must be Applied.....	19
d) Best Interest of the Child is Insufficient.....	22
e) Married, Unmarried, Divorced, and Separated Parents Must Be Treated Equally.....	23
G. CONCLUSION.....	27

TABLE OF AUTHORITIES

Case law

<i>Boddie v. Connecticut</i> , 401 U.S., at 376 (1969).....	18, 26
<i>Byars v. United States</i> , 273 U.S. 28 (1927)	17
<i>Griswold v. Connecticut</i> , 381 U. S. 479, 485 (1965)	21
<i>In re Smith</i> , 137 Wash.2d at 13, 969 P.2d 21.....	22, 23
<i>Lehr v. Robertson</i> , 463 U.S. 248 (1983)	18
<i>Marbury v. Madison</i> , 5 US 137 (1803)	17
<i>Meyer v. Nebraska</i> , 262 U.S. 390 (1923)	18
<i>M. L. B. v. S. L. J.</i> , 519 US 102, 117 S. Ct. 555 (1996)	18
<i>Munoz v. Munoz</i> , 79 Wn.2d 810, 814, 489 P.2d 1133 (1971)	17
<i>People v. O'Rourke</i> , 124 Cal. App. 752, 759 (Cal. App. 1932)	15
<i>Planned Parenthood of Southeastern Pa. v. Casey</i> , 505 US 833 (1992)	20, 21

<i>Regents of the University of California v. Bakke</i> , 438 U.S. 265, 289 -90, 98 S. Ct. 2733, 57 L.Ed.2d 750 (1978).....	25
<i>Santosky v. Kramer</i> , 455 U.S. 745 (1982)	26
<i>Smith v. Organization of Foster Families for Equality and Reform</i> , 431 U. S. 816, 431 U. S. 844 (1977)	18
<i>Troxel v. Granville</i> . 530 U.S. 57 (2000)	22
<i>Wade v. Wade</i> , 38 FLW D2222 (Fla. 3d DCA 2013)	11, 12, 13
<i>Washington v. Glucksberg</i> , 521 US 702 (1997)	21
<i>Wisconsin v. Yoder</i> , 406 U. S. 205, 406 U. S. 231-233 (1972)	18

Constitutional Provisions

<i>1st Amendment</i>	16- 27
<i>9th Amendment</i>	16- 27
<i>14th Amendment</i>	16- 27

Washington Statutes

RCW 9A.40.060(3).....	1
RCW 26.09.002.....	6, 15, 17
RCW 26.09.191.....	1, 2, 8, 14, 21

RCW 26.16.125..... 3, 4, 6, 8, 14, 16, 27

Other Authorities

Black’s Law Dictionary, Fourth Pocket Ed, page 354..... 15

Black’s Law Dictionary, Fourth Pocket Ed, page 269..... 16

INTRODUCTION

The Appellant, herein (Mr. Childs) has continually brought forth and litigated his fundamental parental rights and liberty interests in this case regarding the parent-child relationship, and the trial court has continually dismissed the claims by means of either ignoring his claims, making rulings contrary to the Constitution and Stare Decisis, or by stating reasons which are clearly not genuinely in controversy.

The child, herein (E.L.C), was born out of wedlock on June 6th, 2014 and was taken out of the state of Washington by the Respondent, herein (Ms. Walton), on June 13th 2014, without the knowledge or consent of Mr. Childs in an act that was in accordance with custodial interference, RCW 9A.40.060(3). The trial court erred on adopting a status quo that was illegally obtained and continually disregarded the fundamental rights and liberty interests of Mr. Childs and E.L.C. There has never been any RCW 26.09.191, limiting factors established or any just cause to infringe upon Mr. Childs' and E.L.C.'s Constitutional rights.

On July 1st 2015, the court ordered a temporary residential schedule (CP 102) that was nearly identical to the final order

currently in effect as of May 31st 2016 (CP 172). Neither order contains any RCW 26.09.191, limiting factors alleging Mr. Childs to be unfit or a harm to E.L.C., or any reason for that matter to constitute the infringement of Mr. Childs' rights and time (CP 102, 172).

At trial on May 31st 2016, Judge Suzan Clark concluded by simply stating she was "concerned" with Mr. Childs' criminal history and that she did not have enough information. Yet, Ms. Walton continually stated during trial, that E.L.C. was always returned safe after spending time with the father (RP 192). The Judge's decision to infringe on Mr. Childs' and E.L.C.'s rights was clearly in error as her concern is completely contrary to the very testimony of the Respondent, Ms. Walton. Ms. Walton stated Mr. Childs always brought E.L.C. back safe and sound yet, Judge Suzan Clark decided to infringe on Mr. Childs' and E.L.C.'s fundamental rights due to her alleged concern that clearly wasn't genuine due to the fact she ordered weekly overnights, making her statement of concern a contradiction to her actions and final order (RP 230).

ASSIGNMENT OF ERRORS

- 1) The trial court erred on its ruling by basing its determination off of factors that were clearly not in controversy and made no findings in the written order to have a legal basis for infringing on Mr. Childs' fundamental rights.
- 2) The trial court erred on not applying RCW 26.16.125 and not adhering to its concise, specific, instructive, and binding language.
- 3) The trial court erred on disregarding the fundamental rights of Mr. Childs and E.L.C. afforded by the US Constitution which are laid out in a long list of SCOTUS cases and further erred by not apply guaranteed constitutional protections to this fundamental right, such as applying strict scrutiny and the least restrictive means to make its ruling.

Issues Pertaining to Assignment of Error

- 1) In the same breath, Judge Suzan Clark alleged she was concerned with Mr. Childs' prior criminal history, yet, ruled to continue weekly overnight parenting time. Could Judge Suzan Clarke truly have believed her alleged concerns if she ordered

alone time and overnights between E.L.C. and Mr. Childs?

(Assignment of Error 1)

- 2) Was Mr. Childs' criminal past genuinely in controversy if weekly overnights with E.L.C. were ordered? (Assignment of Error 1)
- 3) Did Judge Suzan Clark err by not including any misconduct or reasons in her written findings of fact or the parenting plan as to why Mr. Childs rights were infringed upon? (Assignment of Error 1)
- 4) Does RCW 26.16.125 apply to this case? (Assignment of Error 2)
- 5) Did Judge Suzan Clark err by not determining the case based off of this statute? (Assignment of Error 2)
- 6) Did Judge Suzan Clark err by not applying the US Constitution to this case, specifically the 1st, 9th, and 14th Amendments? (Assignment of Error 3)
- 7) Does Mr. Childs have the same Constitutional, fundamental right to parent his child that married parents do who face the state or 3rd parties? (Assignment of Error 3)

8) Should strict Constitutional scrutiny have been used with the least restrictive means test to determine this case? (Assignment of Error 3)

STATEMENT OF THE CASE

E.L.C. was born on 6/6/2014 to Mr. Childs and Ms. Walton. On 6/13/2014, Ms. Walton took E.L.C. out of state without the consent of Mr. Childs (CP 167). Ms. Walton then committed custodial interference for the second time and withheld E.L.C from Mr. Childs and forced him to take court action (CP 167). Commissioner Jennifer Snider applied a status quo that was obtained illegally (CP, 29). On July 1, 2015, Commissioner Jennifer Snider ordered Mr. Childs and E.L.C. to have 36 hours a week with 1 overnight (CP, 102). Mr. Childs began arguing his constitutional rights and he was denied because the cases he provided were not “instructive” or “binding” because the cases provided were not parent v parent cases (CP, 132). Mr. Childs filed a motion to reconsider and then a motion for revision which were both denied, both times Mr. Childs argued this logic by Commissioner Snider was classifying divorced and separated parents as a separate class of citizens if they were not entitled to the same Constitutional rights and protections that married and

dating parents were when facing 3rd parties or the state (CP, 127, 134). In Mr. Childs' Motion for declaratory judgement and injunctive relief, he brought forth RCW 26.16.125 (CP, 141) where Judge Veljacic stated he did not believe the legislatures' intent was that parents were to have equal custody and that it was to override RCW 26.09.002, the policy and the "best interest" standard (CP, 147). At trial, Judge Clarke completely ignored Mr. Childs' Constitutional arguments asking him to move on by stating "Focus on RCW 26.09.187 which is the criteria for establishing a parenting plan" (RP, 215), during his closing argument and ignored RCW 26.16.125. In her conclusion, Judge Clark did not give any reason or justifications for ignoring Mr. Childs' and E.L.C.'s Constitutional rights and Washington State Statute: RCW 26.16.125, nor made any findings proving him unfit in order to infringe upon his rights (RP, 228,229,230). Judge Clark stated Mr. Childs provided no evidence of Mr. Childs' progress in treatment, yet, Ms. Walton stated during trial she was receiving Mr. Childs' UA test results. When Ms. Walton was asked "have you ever seen [a UA] that wasn't clean" Ms. Walton answered: "No" (RP 191). What better evidence could Judge Clarke have been given than that of Ms. Walton testifying on Mr. Childs' behalf. Further, Judge

Clarke did not genuinely believe the concerns she alleged because she ordered alone time between Mr. Childs and E.L.C. (RP 230). If she was truly “concerned” she would have been ordering E.L.C. to be in a “dangerous” situation.

SUMMARY OF ARGUMENT

The trial court erred on making its ruling and final order based off of alleged concerns that were clearly not in controversy.

During trial, Ms. Walton stated E.L.C. was always returned back to her care safe and sound over the course of the preceding residential schedules. Judge Suzan Clark alleged that she had concerns with Mr. Childs’ criminal history and ordered the same schedule that had been in place over the last year. If Judge Clark was genuinely concerned with Mr. Childs’ criminal history she would not have awarded weekly overnight parenting time with E.L.C. She truly had no substantive facts to have these concerns as Ms. Walton herself stated Mr. Childs was not a harm or danger to E.L.C. during trial. Awarding weekly overnights yet alleging concerns is completely contradictory and shows she clearly had no genuine concern with the 2-year-old child being in Mr. Childs’ care.

The Trial court erred on not applying Washington State Statute RCW 26.16.125.

Since there was clearly nothing in controversy, no valid reasons to limit Mr. Childs' parenting rights, and no RCW 26.09.191 limiting factors were found, the trial court was to abide by this statute which demands equal custody between parents.

The trial court erred on not abiding by stare decisis and the United States Constitution.

Judge Clark erred by not recognizing our fundamental parental rights and the liberty interests in this case which are established time and time again through a plethora of case law including the 1st amendment and the right to association. She also failed to apply the equal protection and due process clauses of the US Constitution and infringed upon Mr. Childs' rights by failing to use the least restrictive means test in deciding this case. Instead, Judge Clark used baseless and unfounded reasons to infringe upon the rights of Mr. Childs and E.L.C. Further, by ignoring our basic fundamental right to parent, Judge Clark segregated us to being a separate class of citizens (divorced/separated parents) who are treated differently than other parents, and we were not given our Constitutional right to parent our child.

ARGUMENT

1) Judge Clarke did not genuinely believe anything was in controversy and therefore erred by infringing on Mr. Childs' and E.L.C.'s rights

Judge Suzan Clark made her final judgement and order at the end of day of trial on May 31st 2016. Judge Clark stated: “but the real concern I have here is I don’t have any idea what progress you’ve made in treatment” (RP 228, 229). First of all, during trial when Ms. Walton was asked “have you ever seen [a UA] that wasn’t clean” Ms. Walton answered: “No” (RP 191). What better proof of sobriety could she have then Mr. Childs’ biggest critic, the opposition, Ms. Walton, to say Mr. Childs has had all clean UA results and has been in compliance? Judge Suzan Clark was clearly wrong when she said she had “no proof or evidence” because Ms. Walton stated the Mr. Childs has had no dirty UAs. No piece of paper could be submitted that could carry more weight than a statement from Ms. Walton. Further, the criminal history was brought in on day one of this case and had never posed as a serious threat or determination in the outcome of any hearing. It was almost completely disregarded in all proceeding hearings. Mr.

Childs had already been receiving overnights for the last twelve (12) months with E.L.C., and alone time with E.L.C. for the last eighteen (18) months. Further, Ms. Walton has stated time and time again that Mr. Childs was not a threat to E.L.C. during trial. When asked “And you stated she came back happy, healthy and fine, right?” she stated: “M-hm” (RP 192) and again when asked “So our child had no problems when she came back to you, she was safe, correct?” again, Ms. Walton answered: “M-hm.” (RP 192). Continually Ms. Walton never brought any issues into controversy regarding Mr. Childs’ ability to parent and had stated multiple times that our child was always returned happy and healthy. Yet, Judge Suzan Clark took it upon herself to use these as her sole criteria and reasoning to infringe upon and restrict the rights of Mr. Childs and E.L.C. Judge Suzan Clark’s ruling is contradictory, as she states she is “concerned” with Mr. Childs history, yet, still allows for 36 hours of alone time between Mr. Childs and E.L.C. every week. This is simple, a parent is either a threat/harm or they’re not, you cannot be ‘kind of’ a threat”. Similarly stated: “Moreover, on the very day that it ordered the Mother to submit to a compulsory psychological examination, the trial court also ruled that the Mother's scheduled parenting time

would take place. Thus, it appears that the trial court did not “genuinely” believe that the Mother’s mental condition was “in controversy” or that the children would be at risk if the scheduled visitation took place.” *Wade v. Wade*, 38 FLW D2222 (Fla. 3d DCA 2013). How can Judge Suzan Clark honestly believe that James Childs is a threat to E.L.C. yet in the same breath say she will continue to allow E.L.C. to have 36 hours a week with him and receive overnights at their home? If Mr. Childs was truly a threat, and Judge Suzan Clark was actually “concerned” she would have ruled in a manner that would have reflected that and kept E.L.C. from these fictitious “concerns,” such as by ordering supervised visits. Essentially, such a ludicrous order states that James Childs is only a threat or there is only a “concern” for the other 132 hours in a week. Such a statement would be the equivalent of putting a murderer in prison for only 132 hours a week because he doesn’t pose a threat the other 36 hours in a week. It is simple, a parent is either fit, or they are unfit, there is no in-between. Simply put, Judge Suzan Clark did not genuinely believe the “concerns” she alleged because her order of parenting time is completely contrary to her alleged concerns. If she was

truly concerned for our child she would not have allowed alone time and overnights.

The trial court gave no reasons, made no findings, nor did it create any limiting factors in its written order to limit Mr. Childs right to educational decisions, healthcare decisions, and limiting the parenting time to thirty-six (36) hours a week. "In addressing whether the Mother's mental condition was 'in controversy,' we note that the trial court's written order completely fails to address this 'essential prerequisite.' This alone may be sufficient to overturn the trial court's order."

"Moreover, on the very day that it ordered the Mother to submit to a compulsory psychological examination, the trial court also ruled that the Mother's scheduled parenting time would take place. Thus, it appears that the trial court did not 'genuinely' believe that the Mother's mental condition was 'in controversy' or that the children would be at risk if the scheduled visitation took place." *Wade v. Wade*, 38 FLW D2222 (Fla. 3d DCA 2013).

Similarly, the trial court restricted Mr. Childs' parental rights and time with E.L.C. even though just the day prior to trial, Ms. Walton gave Mr. Childs and child extra time together. Further, the trial court ordered that E.L.C. and Mr. Childs continue to receive

thirty-six (36) hours of alone time together each week, clearly showing that the trial court did not genuinely believe that Mr. Childs' parental fitness was in controversy or that E.L.C. would be at risk if this schedule continued. There was no evidence that Mr. Childs would have an adverse effect on E.L.C.; in fact, Ms. Walton stated multiple times that E.L.C. was brought back safely and in good health every time from Mr. Childs' home, including the nearly 48 hours Mr. Childs and E.L.C. spent together over the three (3) days prior to the trial date.

"To reiterate, the trial court ordered that the children should go home with the Mother for visitation *the very same afternoon* that it ordered her to undergo a mental evaluation. Thus, the trial court clearly did not think there was 'good cause' to believe that the Mother's mental status jeopardized the children's well-being." *Wade v. Wade*, 38 FLW D2222 (Fla. 3d DCA 2013). This reiterates the lack of reasoning and findings of facts for the court's decision on its order. Judge Clark clearly did not genuinely believe any parenting issues to be in controversy or either parent to be unfit to perform parental duties and responsibilities as she awarded thirty-six (36) hours a week of alone time between Mr. Childs and

E.L.C.; and if there were any valid concerns, this would not have been ordered.

2) Judge Suzan Clark erred by not adhering to and applying RCW 26.16.125

Since a parent can only be fit or unfit and clearly none of the issues Judge Suzan Clark stated were in controversy, she must abide by state statute. RCW 26.16.125 states: “Henceforth the rights and responsibilities of the parents in the absence of misconduct shall be equal, and one parent shall be as fully entitled to the custody, control and earnings of the children as the other parent, and in case of one parent's death, the other parent shall come into full and complete control of the children and their

The legislative language and intent of this statute is very clear, demanding equal custody for parents with the “absence of misconduct” or in other words having RCW 26.09.191 limitations. Now that we have made it clear that there are no issues in controversy, nor is there any misconduct or RCW 28.09.191 limiting factors, we can move onto the strong and deliberate intent of the rest of the statute. The statute begins off with “Henceforth” which means “From now on <the newly enacted rule will apply

henceforth>.” Black’s Law Dictionary, Fourth Pocket Ed, page 354. This statute begins off with clear and absolute language that clearly states this statute will surpass, overcome, and override any and all pre-existing statutes, such as the “Best Interest” standard of RCW 26.09.002. Since there are two fit parents, the legislature intends there to be no reason for the judiciary to step in and deny equal rights to parents who have not been adjudicated and determined unfit.

Further, the statute states: “shall be equal, and one parent shall be as fully entitled to the custody, control and earnings of the children as the other parent.” “The term ‘*shall*’ is a word of command, and one which has always, or which must be given a compulsory meaning” People v. O’Rourke, 124 Cal. App. 752, 759 (Cal. App. 1932). There is no room for judicial discretion within the meaning of shall. Judge Suzan Clark erred on limiting the rights and time of Mr. Childs by not following Washington State mandated statutes. This statute absolutely cannot be misinterpreted as its direct and clear language can give no misdirection and can only mean what it says. Further, this statute states: “entitled to the custody, control and earnings of the children as the other parent.” An Entitlement is defined as: “An absolute right to a benefit”

Black's Law Dictionary, Fourth Pocket Ed, page 269. Therefore, equal custody, control and earnings of E.L.C. was an absolute right of both parties in pursuance with RCW 26.16.125. The trial court was to order equal custody, control, and earnings of E.L.C. to the parties. Judge Suzan Clark erred on this order by ignoring Washington State Statute.

3) Judge Suzan Clark erred by not adhering to or applying Stare Decisis and the US. Constitution

The trial court erred on its order by infringing on Constitutional rights without meeting the Constitutional requirements to do so in order to protect the rights of free men. Judge Suzan Clark erred by not adhering to the Constitutional rights of the parties nor adhering to the protections the Constitution guarantees the citizens of the United States.

The Constitution Governs Domestic Relations

SCOTUS has well established parenting as a fundamental right and liberty interest which guarantees Constitutional protections. "It is cardinal with us that the custody, care and nurture of the child reside first in the

parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.” Prince v. Commonwealth of Massachusetts, 321 U.S. 158 (1944) “If courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.” Marbury v. Madison: 5 US 137 (1803). This means the courts are to adhere to parent’s fundamental rights to parent their child and to disregard the “Best Interest Standard” set forth in state statute. As "it is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Byars v. United States 273 U.S. 28 (1927). This includes when the legislature enacts laws which are contrary to the Constitution such as RCW 26.09.002 which is the “best interest” standard. The trial court was to protect the Constitutional rights of all parties involved. Strict Constitutional Scrutiny must be applied to this case due to the heightened protection afforded to Constitutional rights and “[W]here the trial court does not follow the generally established rule of noninterference in [a liberty interest] in child custody case without an affirmative showing of compelling reasons for such action, we are of the opinion that this is tantamount to a manifest abuse of discretion." Munoz v. Munoz, 79 Wn.2d 810, 814, 489 P.2d 1133 (1971)

1st Amendment, Right to Association

There is nothing more important in our society than that of raising our children, it is the reason for our very being. "Choices about marriage, family life, and the upbringing of children are among associational rights this court has ranked as "of basic importance in our society," *Boddie v. Connecticut*, 401 U.S., at 376, rights sheltered by the Fourteenth Amendment against the State's unwarranted usurpation, disregard, or disrespect." "See, for example... *Meyer v. Nebraska*, 262 U.S. 390 (1923) (raising children)" *M. L. B. v. S. L. J.* 519 US 102, 117 S. Ct. 555 (1996). Mr. Childs and E.L.C. have the right to association and to live together as a family and not be relegated to a mere 4 days a month. "[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promot[ing] a way of life' through the instruction of children." *Smith v. Organization of Foster Families for Equality and Reform*, 431 U. S. 816, 431 U. S. 844 (1977) (quoting *Wisconsin v. Yoder*, 406 U. S. 205, 406 U. S. 231-233 (1972)). *Lehr v. Robertson* 463 U.S. 248 (1983). The orders of Judge Suzan Clark erroneously infringe upon this very intimacy of

association and the ability of Mr. Childs to instill his morals, values, teachings, and beliefs by limiting their time and blatantly taking away all of Mr. Childs' decision making rights. Since the parties are separated and no longer live together, the trial court was to use strict Constitutional scrutiny in its decision and make a ruling that was narrowly tailored using the least restrictive means test.

Strict Constitutional Scrutiny Must be Applied

Strict Constitutional scrutiny was to be applied in this case, in order to protect the fundamental rights and liberty interests of all parties involved, especially E.L.C. and Mr. Childs whose rights have been continually infringed upon over the two and a half (2 ½) years of E.L.C.'s life. Among these rights and liberties are; the interest to the care, custody, control, association, and influence of teachings and beliefs to E.L.C., which are de facto privacy rights. "It is settled now, as it was when the Court heard arguments in Roe v Wade, that the Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood, ...Our law affords constitutional protection to personal decisions relating to ...family relationships, child rearing, and

education... Our precedents "have respected the private realm of family life which the state cannot enter." ...The Constitution protects all individuals, male or female, married or unmarried, from the abuse of governmental power, even where that power is employed for the supposed benefit of a member of the individual's family... Throughout this century, this Court also has held that the fundamental right of privacy protects citizens against governmental intrusion in such intimate family matters as procreation, childrearing, marriage, and contraceptive choice." (Emphasis added) *Planned Parenthood of Southeastern Pa. v. Casey*, 505 US 833 (1992). Again, the Constitution is afforded to *all United States citizens* and protects *individuals* of the right to make decisions about family and parenthood whether *male or female, married or unmarried*, from the abuse of government. The trial court infringed on the fundamental rights of Mr. Childs to make decisions regarding the child and disregarded even the thought of applying strict Constitutional scrutiny.

Strict Constitutional scrutiny should have been applied to this case as there are a plethora of cases that provide insight to the dealings of the private family realm, the fundamental rights of parents, and the compelling state interests that allows for

governmental interference and to take *parens patriae*. “As we stated recently in *Flores*, the Fourteenth Amendment “forbids the government to infringe . . . ‘fundamental’ liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” 507 U.S., at 302. *Washington v. Glucksberg*, 521 US 702 (1997). Also, “The Court has held that limitations on the right of privacy are permissible only if they survive “strict” constitutional scrutiny—that is, only if the governmental entity imposing the restriction can demonstrate that the limitation is both necessary and narrowly tailored to serve a compelling governmental interest. *Griswold v. Connecticut*, 381 U. S. 479, 485 (1965).” *Planned Parenthood of Southeastern Pa. v. Casey*, 505 US 833 (1992). The court did not establish any compelling state interest to infringe upon Mr. Childs’ and E.L.C.’s Constitutional rights let alone apply the least restrictive means. Again, since there were no issues genuinely in controversy, no misconduct, and no RCW 26.09.191 limiting factors in this case, the court erred on not taking the least restrictive means in order to protect the rights of all parties involved. The least restrictive means test would have established a joint custody parenting plan that included joint decision making

and residential time. All that is necessary, in the face of two fit parents seeking custody, is for the state to preside over an equal shared parenting plan where each parent gets to decide the child's best interests during their parenting time. The only exceptions being where making such a decision would infringe the rights of the other parent. The only necessary decisions the court should have made are conflicts that can have only one outcome such as which school the child will attend or setting rules that protect the rights of both parents e.g. prohibiting unilateral decisions for things like elective invasive surgery.

Best Interest of the Child is Insufficient

Pursuant to SCOTUS "It is not within the province of the state to make *significant* decisions concerning the custody of children merely because it could make a 'better' decision." Troxel v. Granville 530 U.S. 57 (2000) "Parents have a fundamental right to autonomy in child-rearing decisions," In re Smith, 137 Wash.2d at 13, 969 P.2d 21, and this "liberty" interest is protected as a matter of substantive due process under the Fourteenth Amendment, Id. At 15, 969 P.2d 21. We held state interference with this interest must be subjected to strict scrutiny and thus "is

justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved.” “[s]hort of preventing harm to the child, the standard of ‘best interest of the child’ is insufficient to serve as a compelling state interest overruling a parent’s fundamental rights.” In re Smith, 137 Wash.2d at 13, 969 P.2d 21. Mr. Childs has received 36 hours a week clearly showing he is not a harm to E.L.C. Therefore, the court had no compelling state interest to overrule his fundamental parental rights.

**Married, Unmarried, Divorced, and Separated Parents Must
Be Treated Equally**

Married parents, parents v the state, and parents v a 3rd party are all afforded Constitutional rights and protections in a long list of hundreds of cases, yet, parent v parent cases are not afforded these same Constitutional rights and protections. This is completely contrary to the Equal Protection Clause of the 14th Amendment. Similarly, this court would not base the rights of parents off of skin color, religion, and sexual preference or orientation, yet they do based off of relationship status.

Under the Equal Protection Clause of the U.S. Constitution, neither Ms. Walton nor Mr. Childs automatically lose their constitutional rights to rear their child merely because they are no longer dating or married “the rights must be the same for the *unmarried and the married alike.*” *Eisenstadt v. Baird*, 405 US 438 (1972). Separated parents must be afforded the same protection as married or dating parents would have with their children, meaning no erroneous state interference due to a “best interest” standard and the state assuming *parens patriae* simply due to an ended relationship and parent’s disagreement over parenting time. Even married and dating parents may live in two separate households in separate states due to circumstances and even they may have disagreements over raising their children, yet their parental rights are not being threatened and infringed upon, and they do not lose custody of their children over mere disagreements. The trial court has made no findings of either party being unfit or not being able to adequately care for E.L.C. and yet has infringed upon the rights of E.L.C. and Mr. Childs. Mr. Childs should have been afforded the same equal protection as Ms. Walton and equal protection that married parents receive who are not subject to arbitrary and

erroneous orders for no other reason than what a judge thinks is best.

“The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to another”, “If both are not accorded the same protection, then it is not equal.” *Regents of the University of California v. Bakke*, 438 U.S. 265, 289 -90, 98 S. Ct. 2733, 57 L.Ed.2d 750 (1978). This court has continually dismissed these arguments on the basis the cases used do not apply to equally positioned parties, which in turn makes divorced and separated parents a separate class of citizens. This is the same segregation that limited the rights of women, blacks and homosexuals, diminishing their value, worth, and rights based off of their gender, color of their skin, and sexual preferences. This is discrimination solely based off of relationship status and not affording the same Constitutional rights and protections all other parents receive. This is a clear violation of the equal protection clause of the 14th Amendment. Parenting is a fundamental right that is guaranteed to all US citizens, individually. A child is not a right bound to the relationship but bound to each party individually. By singling out divorced and separated parents, the trial court has created a separate class of

citizens and is discriminating against these parents solely based off of our marital and relationship status where we are not afforded the same Constitutional protections regarding our fundamental rights and liberty interests to the care, custody, and association with our children. A relationship, including marital and dating relationships, are associational and privacy rights protected by the Constitution (see *Boddie v. Connecticut*, 401 U.S., at 376). Since our right to terminate our relationship is a right of association, we cannot be punished for exercising our right to disassociate, and it does not create a compelling state interest for this court to take *parens patriae* and decide our child's "best interest." "If the right of privacy means anything, it is the *right of the individual, married or single*, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child." (Emphasis added) *Eisenstadt v. Baird*, 405 US 438 (1972). Both parties *individually* hold the right to raise our child free from government intrusion until we are proven unfit.

Therefore "Until the State proves parental unfitness, the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Santosky v. Kramer* 455

U.S. 745 (1982) The Petitioner must be afforded equal rights to the custody and association of the minor child in pursuance to the aforementioned God given rights and liberty interests which are guaranteed and not merely granted by the state.

CONCLUSION

The trial court erred on its ruling by ruling on alleged concerns that were not genuinely in controversy and further ruled contrary to RCW 26.16.125 and the United States Constitution.

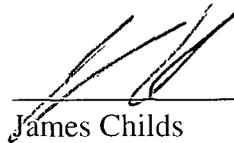
Therefore, Mr. Childs requests the following relief:

- 1) Find that the trial court did not genuinely believe that Mr. Childs' criminal history was an issue in controversy to infringe upon his rights, as the trial court awarded alone time and overnights between Mr. Childs and E.L.C.
- 2) Find that the court erred by not adhering to and applying RCW 26.16.125 which applies to this case and has clear and strict legislative intent.
- 3) Find that the trial court erred by not having written findings of fact as to why Mr. Childs and E.L.C.'s rights were infringed upon.

- 4) Find that the trial court erred by not applying the US Constitution to this case, specifically the 1st, 9th, and 14th Amendments.
- 5) Find that Mr. Childs does have the same constitutional, fundamental right to parent his child that married parents do and must be given the same Constitutional protections as parents facing the state and 3rd parties.
- 6) Find that strict Constitutional scrutiny must be used by applying the least restrictive means test to determine this case.
- 7) Remand this case to the trial court to make a ruling consistent with these requests.

December, 21st 2016.

Respectfully submitted,



James Childs

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STATE OF WASHINGTON

BY AP
DEPUTY

DECLARATION OF SERVICE:

I, James M. Childs, served a copy of the Appellants Opening Brief by the method, on the date, and on the parties identified below.

Method of Service:

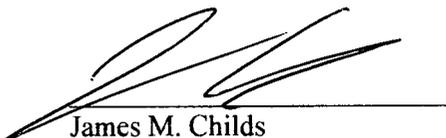
By causing a full, true and correct copy thereof to be Mailed by USPS to the party or attorney shown below, to the last known address on the date set forth below.

Person served:

Olivia N. Walton
37115 Goldenrain Street
Sandy, OR 97055

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

Executed December 21st, 2016, at Vancouver, Washington.



James M. Childs