

No. 50141-4-II

**THE COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

KRYSSONDRA R. BURKE,
APPELLANT,
AND
DONILO C. BURKE,
RESPONDENT.

APPELLANT'S REPLY BRIEF

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Washington State Administrative Office of the Courts - DV Manual for Judges - 2015 (Updated 2.25.2016) – Chapter 2-5 – Section III. 9

ARGUMENT

The Trial Court did abuse its discretion when naming Mr. Burke the primary custodial parent and mutual decision-making based on RCW 26.09.191 after the Trial Court found that Mr. Burke had committed a “history of acts of domestic violence” throughout the marriage.

RCW 26.09.191 (1)/(2) states;

(1) “The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) *a history of acts of domestic violence as defined in RCW 26.50.010(3)...*”

(2)(a) “The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) *a history of acts of domestic violence as defined in RCW 26.50.010(3)...*”

RCW 26.50.010(3)(a) states;

(3) "Domestic violence" means: (a) *Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members...*"

The Trial Court found that Mr. Burke had in fact "engaged in a history of acts of domestic violence as defined in RCW 26.50.010" (CP page 5 - Finding and Conclusions about a Marriage – Findings of Fact page 5 of 6) to which Mr. Burke acknowledged. The Guardian Ad Litem, herein "GAL", also testified there had been at least "two or three" significant incidents of domestic violence disclosed by Ms. Burke. (RP page 38 – Line 19-20) There was further evidence and testimony provided throughout trial supporting not only Mr. Burke's physical abuse toward Ms. Burke, but his mental and verbal abuse as well. (RP page 190 lines 15-25, page 191 lines 1-10, page 295 lines 11-25, page 296 lines 1-8, page(s) 311-313, page(s) 328-329, page(s) 352-353) (EX 71 - Photograph)

Regarding the Trial Courts lack of finding Mr. Burke had engaged in abusive use of conflict/withholding of the Children under RCW 26.09.191(3)(e)(f), Mr. Burke quotes portions of the GAL report out of context. The GAL reported. "Mother did not always follow through with her promises to visit, and she did make references to father about returning to the marriage. Father was manipulative and withheld the children on several occasions. According to collateral contacts and documentations there are numerous

incidents in which mother requests, arranges to visit the boys, or attempts to call them and father withholds the children.” (CP 71 – GAL Report page 18) The GAL goes on to say, “For example father told mother that she could take the children trick-or-treating in exchange for her spending the night and day with him prior inappropriate and manipulative.” (CP 71 – GAL Report page 18) Ultimately, when Ms. Burke declined, Mr. Burke would subsequently withhold the children. (RP pages 423 lines 8-15, 425 lines 3-25). The GAL documents a significant incident at the children’s school as well as Mr. Burke’s manipulative and inappropriate behavior in her conclusion. (CP 71 – GAL Report page(s) 17-23). The GAL testified to these incidents at trial. (RP pages 31-74). It should also be noted, the GAL did not do a final report, but after her initial report was completed, she had little to no involvement as she testified Mr. Burke had not paid her. However, there were incidents that occurred during this time that went unacknowledged by the GAL due to this. (RP – page 46 lines 10-22, page 47 lines 1-16).

Lastly, the Trial Court erred in naming Mr. Burke the primary custodial parent. Mr. Burke cites RCW 26.09.187(3)(a). This law clearly, unambiguously states *“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...”*. RCW 26.09.187(2)(b)(i) states “

(b) *SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:*

(i) *A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191...*

Given a finding of a .191 factor was made, the Trial Court by law, was not supposed to name Mr. Burke the primary parent, and was also obligated by said law to impose restrictions on Mr. Burke. In the case of *In re the Marriage of C.M.C.*, the Court ruled “[w]e hold that the statute requires sole decision-making upon a finding of a history of acts of domestic violence...” *In re the Marriage of C.M.C.*, 87 Wn.App 84, 86, 940 P.2d 669 (1997).

In the Marriage of Caven, the Trial Court granted joint decision-making. The Court of Appeals reversed this ruling and made the following statement; “The decision of the Court of Appeals, Division I, correctly reversed the trial court which incorrectly interpreted RCW 26.09.191 (1)(c), resulting in that court erroneously granting the parties mutual decision-making. The trial court usually has broad discretion in determining matters relating to the welfare of children, but in matters of statutory construction this Court exercises de novo review.” *In re the Marriage of Caven* 136 Wn. 2d 800, 806, 966 p.2d 1247 (1998).

Mr. Burke cites the Marriage of Cabalquinto, 100 Wn.2d 325, 327, 669 P.2d 886 (1983); this case speaks to undeniably irrelevant issues and does not have any substantial legal influence relating to the facts presented in this case. The same can be said for *In re Marriage of Murray* and *In re the Parentage of J.H.*

cases cited by Mr. Burke. These cases hold no weight or legal relevance to the issues pertaining to the case before the Court.

Irrefutably, the Trial Court and the GAL found that both the parents are capable for providing for their children. The Trial Court Judge warned Mr. Burke of his conduct and how it can harm the children, but a warning falls critically short for a person who has a history of five marriages and multiple accounts of domestic violence and the finding of a .191 factor. (RP page 454-456) Although, naturally the children have a bond and relationship with their father, that doesn't disqualify the fact that Mr. Burke's conduct is a pattern of behavior and one such that is detrimentally damaging to the children emotionally, mentally and also children can inadvertently learn from witnessing such conduct. This is why with the finding of a .191 factor, decision making, and the residential schedule is to be limited with that parent.

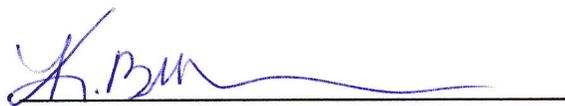
CONCLUSION

When reviewing the Domestic Violence Manual for Judges, it states “Domestic violence, also known as intimate partner violence, is a pattern of behavior that consists of multiple, often daily behaviors, including both criminal and non-criminal acts, injurious and non-injurious acts. While the criminal justice and sometimes even the civil court proceedings tend to focus on individual events, it is the entire pattern of the perpetrator’s conduct that shapes how the abused party, their children, and the abuser are affected and function. Whether or not children injured physically by the DV perpetrator, children are impacted by IPV as they are used by the perpetrator to control the adult victim and as they are exposed to one parent abusing the other. The entire pattern of the DV perpetrator’s conduct needs to be considered as civil and criminal courts deliberate about the most appropriate findings, sanctions, and court orders for a case involving DV.” *Washington State Administrative Office of the Courts - DV Manual for Judges - 2015 (Updated 2.25.2016) – Chapter 2-5 – Section III. The What: Behavioral Definitions of Domestic Violence.* This manual and the definitions contained therein, are crucial in a Courts understanding and making appropriate rulings in cases which involve domestic violence. This is especially critical with children whom have been raised amongst a fear based family dynamic.

In the Marriage of Caven, the Court of Appeals reversed the Superior Courts decision in granting mutual decision making after the father had engaged in a history of acts of domestic violence by making the following ruling: “We hold that the statute requires sole decision-making upon a finding of a history of acts of domestic violence regardless of whether those acts caused grievous bodily harm. Accordingly, we reverse.” *In re the Marriage of Caven* 136 Wn. 2d 800, 806, 966 p.2d 1247 (1998). Mr. Burke would have the Court believe that there was only a singular instance of domestic violence. However, ample testimony by witnesses and evidence provided documented more than one account of physical abuse, but also multiple examples of Mr. Burke’s egregious verbal and mental abuse towards Ms. Burke during and after the marriage.

With these factors and the findings pursuant to RCW 26.09.191 imposed on Mr. Burke, the Court must reverse the Trial Courts ruling in naming Mr. Burke the primary parent and giving mutual decision-making. The Court is asked to name Ms. Burke the primary parent which would be in the best interests of the children’s development, mental, social and emotional health. There is ample evidence supporting this case before the Court and the law is very clearly written.

Dated this 27th day of February 2018.



Kryssondra R. Burke
Pro Se/Appellant

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COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

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Appellant,) Cause No. 50141-4
-vs-)
)
) AFFIDAVIT OF SERVICE ON
) RESPONDENT
)
Donilo C. Burke,)
Respondent.)

I, Kryssondra Burke, Appellant, declares under penalty of perjury of the State of Washington that on February 27th, 2018 a copy of the Appellant's Reply Brief will be emailed to Donilo C. Burke at his regular email address; burkeandsons.db@gmail.com and that is our customary means of communication. A true and original copy will also be mailed to the respondent via USPS.

Dated this 27th day of February, 2018


Appellant

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