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Court of Appeals
Division II
State of Washington
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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Angela K. Scoutten/Schreiner

Appellant,

v.

Michael J. Scoutten

Respondent.

APPELLANT'S BRIEF

On Appeal from the Superior Court of Pierce County

No. 11-3-03452-5

Angela Schreiner
5105 Grand Loop Way #602
Tacoma, WA 98407

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B. ASSIGNMENTS OF ERROR

1. The trial court erred by Abuse of Discretion, misinterpreting the residential provisions of the parenting plan.
2. The trial court erred by Abuse of Discretion, lack of substantial evidence in support of its findings.
3. The trial court erred by Abuse of Discretion when it denied Ms. Schreiner her fundamental due process rights to respond to declarations filed in strict reply.
4. The trial court erred when it failed to strike untimely declarations submitted in a strict reply.
5. The trial court erred by not issuing an Order to Show Cause and lacked jurisdiction over the case.
6. The trial court erred by not providing Ms. Schreiner with counsel for the contempt motion. Mr. Rundle was only hired to appear in the DVPO matter.
7. The trial court erred by non-compliance with PCLSPR 94.04 (c) (8) Presentation of Court Orders.
8. The trial court erred by issuing punitive instead of remedial sanctions for civil contempt.
9. The trial court erred by Finding #1 Parenting time
10. The trial court erred by Finding #2 Decision-making
11. The trial court erred by Finding #3 Paragraph 3.10
12. The trial court erred by Abuse of Discretion by finding Bad Faith.
13. The trial court erred by issuing Attorney's Fees without assessing hours worked.

C. Issues Pertaining to Assignment of Errors

1. Can Mr. Scoutten perform his “parenting functions” as defined by RCW 26.09.004, from overseas, while on active duty “deployment” in the Army?
2. Is Mr. Scoutten required to legally delegate his residential time to a third party utilizing RCW 26.09.260(12) while on active duty deployment overseas?
3. Is a “limited” Power of Attorney not served to the other parent valid? Does a power of attorney require an expiration date?
4. Can a “limited” Power of Attorney legally transfer residential custody of a child to an unevaluated third-party for an indefinite period of time, or does residential custody of a child need to be granted by a court of record?
5. Can Ms. Schreiner be found in contempt of the residential provisions of a parenting plan with the father if the father is deployed overseas?
6. Did Ms. Schreiner have a fundamental due process right to respond to declarations submitted in a strict reply?
7. Was a Show Cause order required?
8. Did the court Commissioner have jurisdiction over the contempt motion?
9. Did the mother have a right to counsel to represent her on the contempt motion?
10. Did the trial court err by ordering Punitive vs. Remedial sanctions for civil contempt?
11. Was there substantial evidence to support the court’s findings?
12. Did the trial court err by awarding attorney’s fees and costs to Mr. Miller, without documentation of hours worked according to the Lodestar Method?

D. Argument

1. The Trial Court Erred when it misinterpreted residential provisions of parenting plan.

The parenting plan in this case can be found on CP (186-197). A trial court abuses its discretion by exercising it on untenable grounds or for untenable reasons. *Id.* at 440. Findings of fact in a contempt order are reviewed for substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003). In determining whether the facts support a finding of contempt, the court strictly construes the order alleged to have been violated, and the facts must constitute a plain violation of the order. *In re Marriage of Humphreys*, 79 Wn. App. 596, 599, 903 P.2d 1012 (1995).

The CPS report verifies that the father was on Active Duty deployment overseas during the time of the alleged violation of residential provisions. The CPS report stated “Father Michael Scoutten currently deployed” (CP 7). A plain violation of the order between the mother and the father did not occur. The step-mother is not a party to the parenting plan order. The current parenting plan does not grant the step-mother separate rights to residential time or visitation with the child.

"Our fundamental purpose in construing statutes is to ascertain and carry out the intent of the legislature." *In re Marriage of Schneider*, 173 Wn.2d 353, 363, 268 P.3d 215 (2011). "We determine legislative intent from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provisions, and the statutory scheme as a whole." *W. Plaza, LLC v. Tison*, 184 Wn.2d 702, 708, 364 P.3d 76 (2015) (citing *Dep't of Ecology v.*

Campbell & Gwinn, In re the Custody of M. W, No. 90072-8 (Wiggins, J., dissenting) Wn.2d 1, 9-12, 43 P.3d 4 (2002)).

The plain language the Legislature used to draft RCW 26.09.260(12) was with the intent for members of the military to delegate their residential time, or a portion thereof, to appropriate third-parties during periods of active duty “deployment or mobilization.” Mr. Scoutten failed to file a motion to modify the existing parenting plan utilizing RCW 26.09.260(12) in this case. Instead, his counsel argues that Mr. Scoutten could supposedly complete his parenting functions while on active duty deployment from overseas. This argument fails. RCW 26.09.004 defines, "Parenting functions" means those aspects of the **parent-child** relationship in which **the parent** makes decisions and **performs functions** necessary for the care and growth of the child.

Parenting functions include:

- (a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;
- (b) **Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care,** and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;
- (c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;
- (d) Assisting the child in developing and maintaining appropriate interpersonal relationships;
- (e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances;

and (f) Providing for the financial support of the child.

The definition in RCW 26.09.004 is unambiguous, “**the parent makes decisions and performs functions**” for the child. Mr. Scoutten and Ms. Schreiner are the only parents identified in the existing parenting plan. Mr. Scoutten is not able to perform his parenting functions outlined by RCW 26.09.004 “(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care...” Ms. Schreiner is the only other parent legally entitled to residential time with the child in the parenting plan, and the father left the child in the Ms. Schreiner’s physical custody.

Power of Attorney

The contempt hearing order states “step mother who is parenting by power of attorney while father is on Active Duty” (CP 222). First, Ms. Schreiner was never served with a power of attorney. The mother did not review, sign, or agree to a power of attorney.

Additionally, a limited power of attorney is not used to transfer residential custody of a child. A court of record is given such authority, after conducting a hearing and determining the best interests of the child of the deployed persons RCW 26.09.260(12).

A power of attorney is typically used when both parents are unavailable and agree to delegate emergency health care decisions for a child, but in this case the mother was available and granted rights to emergency healthcare decisions per parenting plan.

RCW 11.125.410 outlines a Power of Attorney’s power regarding health care decisions only. Agent authority—Principal's minor children.

Unless the power of attorney otherwise provides, the following general provisions shall apply to any power of attorney making reference to the care of the principal's minor children:

(1) A parent or guardian, through a power of attorney, may authorize an agent to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child **has no other parent or legal representative readily available and authorized to give such consent.**

(3) The authority of any guardian of the person of any minor child shall supersede the authority of a designated agent to make health care decisions for the minor only after such designated guardian **has been appointed by the court.**

(4) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control.

RCW 11.88.080 describes the rights of a guardian by *durable* power of attorney, a durable power of attorney does not exist in this case and both parents are alive. The step mother in this case was not granted legal guardianship of the child.

Guardians nominated by will or *durable* power of attorney (RCW 11.08.080).

“When either parent is deceased, the surviving parent of any minor child or a sole parent of a minor child, may by last will or durable power of attorney nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of executing the instrument or afterwards, to continue during the minority of such child or for any less time. This nomination shall be effective in the event of the death or incapacity of such parent. Every

guardian of the estate of a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed under this chapter. The court shall confirm the parent's nomination unless the court finds, based upon evidence presented at a hearing on the matter, that the individual nominated in the surviving parent's will or durable power of attorney is not qualified to serve. In the event of a conflict between the provisions of a will nominating a testamentary guardian under the authority of this section and the nomination of a guardian under RCW 11.125.410, the most recent designation shall control. This section applies to actions commenced under RCW 11.125.160.”

Both Mr. Scoutten and Ms. Schreiner are not deceased, so a power of attorney designating a guardian for a child is void and has not been granted by any court of record.

Delegation of residential time of a child during a parent’s military deployment is legal only when granted through a court of record, using RCW 26.09.260(12). A modification to the existing parenting plan was never initiated, and adequate cause was never established. RCW 26.09.260(12) must also consider the best interests of the child and if any .191 factors exist before delegating residential time to any third-party. The trial court did not consider those factors because Mr. Scoutten did not commence a modification action in this case. The trial court misinterpreted the parenting plan in this case. The step-mother Monica Scoutten has no rights to residential time with the child and has not been granted a delegation by the Superior Court.

Ms. Schreiner’s parental rights supersede any third-parties. The Supreme Court has repeatedly held that absent a valid statute, there is no right to third-party visitation under our existing laws. *TROXEL V. GRANVILLE* (99-138) 530 U.S. 57 (2000) 137 Wash. 2d 1, 969 P.2d 21, affirmed. They determined that the sweeping scope of the third party visitation

provisions, which enabled any party to petition for third-party visitation rights at any time, "impermissibly interfere[d] with a parent's fundamental interest in the 'care, custody, and companionship of the child.'" Smith, 137 Wn.2d at 21 (quoting In re Welfare of Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980)). The step mother did not commence an action to gain third-party visitation either.

Due to the Commissioner misinterpreting the residential aspects of the parenting plan, the court erred in its findings.

2. Lack of Substantial Evidence

"Parents are deemed to have the ability to comply with orders establishing residential provisions and the burden is on a noncomplying parent to establish by a preponderance of the evidence that he or she lacked the ability to comply. . . or had a reasonable excuse for noncompliance." Rideout, 150 Wn.2d at 352-53.

Ms. Schreiner lacked the ability to comply with the parenting plan because the father was deployed overseas. She could not return the child to the fathers care. Second, the mother had a reasonable excuse because the step mother was not a party to the parenting plan, and Ms. Schreiner was not served with a power of attorney or order establishing third-party custody rights. Third, after the child accused the step-mother of physically assaulting her resulting in a visible injury to her forehead, Ms. Schreiner had a reasonable and legal duty to protect the child.

Additionally, the dates of the alleged violations to the residential aspects of the parenting plan were vague, were not included in the order of contempt, and no make-up time was awarded by the court.

Mr. Miller states that a violation allegedly occurred on a “Sunday” (VRP 3), but does not give a date of the alleged occurrence. A plain violation of the order was not proven by substantial evidence.

MR. MILLER: “She failed and refused to return the child again under the parenting plan on a Sunday. She took the child to Mary Bridge Hospital, I believe, previously to that and kept her, and did not take her to school. That's number one violation” (VRP 3).

Mr. Miller does not specify on what “Sunday” the alleged violation occurred, or if it occurred on the fathers residential time while he was deployed overseas. Therefore, makeup time was not granted. Granting make-up time is a requirement when finding civil contempt of residential provisions of a parenting plan. The Order of contempt states make-up parenting time “Issue of make-up parenting time is reserved” (CP 224).

3. Due process right to respond denied.

Mr. Rundle objected to the Commissioners denial of Ms. Schreiner’s due process right to respond during the hearing. Under the due process clause of the Fourteenth Amendment to the United States Constitution and article 1 and 3, sections 10 and 3 of the Washington State Constitution Ms. Schreiner was entitled a right to respond to the contempt allegations. The contempt motion was not supported by declarations when filed. Declarations were untimely entered in strict reply a few days before the hearing, and Ms. Schreiner was denied her fundamental right to respond.

MR. RUNDLE: “And Your Honor, if I may, I am going to object to a lot of that stuff that was filed but we have a strict reply, because my client was denied the opportunity to respond at

all to any of that. That is fundamentally unfair. So I'm asking the Court to not consider anything that is additional testimony beyond the original motion for contempt and supporting declarations. My client responded and then they responded by way of strict reply with additional information. So at a minimum, Your Honor, if you are inclined, I would ask you to swear my client and let her address these concerns. But I think an easier way would be to strike them, and let's stick to the issues that –” (VRP 4).

4. Missing Declarations

The Commissioner erred when she failed to strike the strict reply declarations, upon which she based her contempt findings.

PCLSPR 94.04 (c)(1) states “All motions (except discovery motions which are heard on the Judges’ motion docket) shall be docketed by filing a Note for Commissioner’s Calendar at least fourteen (14) calendar days before the hearing, simultaneously with a Motion and Notice of Hearing and any supporting pleadings... The hearing shall be heard on the basis of affidavit and/or declaration.”

The court erred when it failed to strike the untimely declarations filed in a strict reply. Mr. Rundle asked the court to strike the documents during the hearing. A separate motion was filed for clarification of the parenting plan regarding vacation time, but that was the only declaration filed at the time the contempt motion was filed. Ms. Schreiner only responded to the clarification motion.

Pierce County Local Rules require that contempt motions attach declarations in support of the motion. In this case, a motion was filed without any supporting documents to respond to (CP

204-206). The contempt motion filed on February January 31st, 2017 mentions a “Declaration of Monica Scott filed herein” (CP 205), however no such declaration was filed until the strict reply on February 24th, 2017. Ms. Schreiner was denied an opportunity to respond to the contempt allegations.

Ms. Schreiner responded to the father’s declaration for the clarification motion in response to father’s request for vacation time only (CP 207-211). Ms. Schreiner did not have an opportunity to respond to contempt allegations or contempt declarations, because a declaration in support of the contempt motion was not filed with the motion for contempt.

A strict reply was filed on February 24th, 2017 (CP 212-216), (CP 217-220). Consequently, Ms. Schreiner was denied her fundamental due process rights to respond to the untimely declarations.

Make up time

RCW 26.09.160(2)(a)(b)(i)

(2)(a) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(b) If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court. Upon a finding of contempt, **the court shall order:**

(i) The noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance;

In this case, the court did not order make up time required by statute.

5. Missing Order to Show Cause and lack of Jurisdiction.

All litigants must comply with applicable statutes and rules. In re Pers. Restraint of Connick, 144 Wn.2d 442, 455, 28 P. 3d 729 (2001). 24 43920 -4 –II 1280 (2001).

PCLR require an Order to Show cause to appear before the court on a contempt charge. An order to show cause was never filed in this case. A SHOW CAUSE hearing scheduled for February 28th, 2017 shows as stricken/cancelled on the LINX website. Instead, Mr. Miller inappropriately asked Commissioner Kiesel to hear his show cause motion in an already scheduled Ex Parte Special Set Hearing regarding the DVPO matter. This hearing occurred at 8:54am in Ex Parte court in room 105. After Ms. Schreiner dropped the DVPO matter, the trial court erred by hearing the father's contempt motion without notice to the mother.

The Commissioner lacked jurisdiction over the contempt motion. Commissioner Keisel set a special set hearing to hear the DVPO, not the contempt motion. The hearing started at 8:45am, before the start of the day. The Commissioner was acting as an ex parte Commissioner at the time of the hearing. The hearing should have been set on the regular motion calendar with a regular Commissioner in a different court room. A summons was never filed. Additionally, counsel for the Petitioner, Ms. Schreiner, was limited to the DVPO issue that was dismissed. Lastly, Commissioner Kiesel and Mr. Miller (who also is a judge in Fircrest) have a long and

substantial relationship as demonstrated by the 1999 case against them (Court of Appeals of Washington, Division 2. Joseph D. KEARNEY, Appellant, v. Shelby KEARNEY, an individual, Defendant, Diana Lynn Kiesel, an individual; Law Office Of Diana Lynn Kiesel, Inc. P.S., a corporation; Naomi Huddleston, Dba/Rainier Associates, a business; John A. Miller, an individual; and Miller And Miller And Dart, P.S., Inc., a corporation, Respondents. No. 23214-6-II.). Commissioner Kiesel should have recused herself from hearing Mr. Miller's case.

Contested Family Law Matters are normally assigned to one of the Commissioners sitting in Civil Division A, B, or C. In this case, Commissioner Keisel scheduled a special set hearing at 8:54am while she was serving in ex parte court. It begs the question as to why Commissioner Keisel would supersede all court rules to accommodate Mr. Miller.

The following hearings were scheduled by Commissioner Keisel.

C4 - EXPARTE CALENDAR (Rm. 105) Motion Held

Confirmed 8:54 Special Set hearing

02/28/2017 C - COMM SPEC SET- MASTER CAL (Rm. 140) Motion Held

Confirmed 8:54 Special Set hearing

02/28/2017 C1- SHOW CAUSE/FAMILY LAW (Rm. 100) Cancelled/Stricken

Unconfirmed 9:00 Show Cause (Parenting Plans)

Scheduled By: Lennette Natucci

6. Failure to appoint counsel. Limited notice of appearance.

In proceedings civil in form but criminal in nature, due process rights to liberty, the Sixth Amendment, and Washington Constitution article 1, section 22, require that a party threatened with jail be represented by counsel. See *Tetro v. Tetro*, 86 Wash.2d 252, 253, 544 P.2d 17 (1975) (citing *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967)). Accordingly, wherever a contempt adjudication may result in incarceration, the person accused of contempt must be provided with state-paid counsel if she is unable to afford private representation. *Tetro*, 86 Wash.2d at 253, 544 P.2d 17 (citations omitted); see also, *In re Grove*, 127 Wash.2d 221, 237, 897 P.2d 1252 (1995).

Mr. Rundle, on behalf of Ms. Schreiner, entered a “limited notice of appearance” on 12/06/2016 relating to the DVPO matter only. Mr. Rundle was not hired to represent Ms. Schreiner in defense of a contempt action, and Ms. Schreiner was never summoned to appear for a contempt motion by an Order to Show Cause. The court erred when it failed to issue a Show cause order, and when it failed to issue counsel related to the Contempt Motion.

7. Presentation of Orders

The trial court erred by not allowing Ms. Schreiner to be at the presentation or review the written order of the court, before it was presented without her approval in violation of PCLR 94.04 (c) (8). “Presentation of Court Orders. All counsel or self-represented parties are responsible for preparing and presenting court orders (using mandatory Family Law pattern forms if applicable) at the conclusion of the motion **and shall remain in attendance in the court until the appropriate order(s) has been signed by counsel, all parties and the court.**”

PCLR 94.04 (c) (8).

The trial court erred when orders were not prepared in advance and submitted to the court 2 days prior in violation of PCLR. Commissioner Kiesel did not make an oral ruling regarding the contempt motion. Instead, the trial court ordered Mr. Miller “you can pencil one out” (VRP 17, lines 4-9).

MR. RUNDLE: So we are going to wait for your decision,

Your Honor?

THE COURT: Yes, you are.

MR. RUNDLE: OK.

MR. MILLER: Do we need a written order for that?

THE COURT: You can pencil one out.

MR. RUNDLE: And then what we will do, Your Honor, is when we get your decision -- Mr. Miller and I will prepare an order and we'll just present it ex parte.

THE COURT: Alright. That'd be good.

(Proceedings adjourned at 9:15 a.m.)

At the conclusion of the motion, all parties left the ex parte courtroom without any ruling being issued. This is in violation of PCLR 94.04 (c) (8) which directs “All counsel are responsible for preparing and presenting court orders at the conclusion of the motion and shall remain in attendance in the court until the appropriate order(s) has been signed by counsel, all parties and the court.” Ms. Schreiner was not notified to come back into the ex parte court for presentation

of a written order, or have an opportunity to sign or object to it. The contempt order itself does not have a time listed, so it is unclear when it was presented in ex parte court without Ms. Schreiner. Mr. Rundle's limited notice of appearance only represented Ms. Schreiner for her DVPO motion, not defense against a contempt motion. His signature is void.

PCLSPR 94.04 (4) Working Copies/Proposed Orders. Copies of the motion, counter motion, e-filed Note for Commissioner's Calendar, together with all supporting documents including affidavits, declarations, certified statements, documents in strict reply and response documents, including briefs or memoranda and a copy of **proposed orders** shall be delivered to the Commissioners Service Department no later than 12:00 noon **two (2) court days prior to the hearing** or by using the Clerk's electronic working copy delivery process as defined in PCLGR 30(b)(5)(B).

Proposed orders were not delivered to the court 2 days prior to the hearing. Commissioner Keisel directed Mr. Miller to "pencil one out" during the hearing.

8. Punitive vs. Remedial sanctions

A trial court abuses its discretion when it exercises its discretion in a manifestly unreasonable manner or bases its decision on untenable grounds or reasons. *State v. Berty*, 136 Wash.App. 74, 83-84, 147 P.3d 1004 (2006) (citing *State v. Powell*, 126 Wash.2d 244, 258, 893 P.2d 615 (1995)). Generally, there are two types of contempt: civil and criminal. *Berty*, 136 Wash.App. at 84, 147 P.3d 1004. Washington's contempt statutes define contemptuous conduct but they do not distinguish between civil and criminal contempt. *State v. Hobble*, 126 Wash.2d 283, 292, 892 P.2d 85 (1995). Instead, the statutes distinguish between punitive and remedial sanctions

for contempt. RCW 7.21.010, .030, .040; *In re Marriage of Didier*, 134 Wash.App. 490, 500, 140 P.3d 607 (2006), review denied, 160 Wash.2d 1012, 161 P.3d 1026 (2007). A “punitive sanction” is “a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court.” RCW 7.21.010(2). A “remedial sanction” is “a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform.” RCW 7.21.010(3). Criminal contempt requires the extension of the constitutional safeguards afforded to other criminal defendants, including the filing of a criminal charge. *Didier*, 134 Wash.App. at 500, 140 P.3d 607 (citing *In re Interests of M.B.*, 101 Wash.App. 425, 438-40, 3 P.3d 780 (2000)).

The court erred by issuing punitive sanctions against the mother. The contempt motion asked the court to “Send ANGELA SCHREINER to jail. This court has found Angela Schreiner to be in contempt previously and granted a judgement against her for attorney fees incurred. She has ignored that judgement and refused to pay. We request jail time in addition to a judgement in the amount of \$3500.00 for attorney’s fees and costs incurred. Judgement to be paid as a condition of purging the contempt prior to Angela Schreiner being released from jail. Further, Petitioner/Mother can purge contempt by ceasing and desisting from any further harassment and interference in the child’s academics.”(CP 206, lines 3-6). He further requested “mother can purge contempt by ceasing and desisting from any further harassment and interference in the child’s academics.”

In this case, the trial court issued punitive sanctions instead of a remedial sanctions for alleged civil contempt occurring in “the past” (CP 222, section 4 (a)). Ms. Schreiner was not refusing to perform an act that was yet within her power to perform. The first finding concluded that she had not returned the child after the conclusion of her residential time. However, the

finding indicated that the contempt had occurred in the past, and specified no dates of alleged violations. Ultimately, Ms. Schreiner received a punitive sanction to punish an alleged past contempt of court. She was not continuing to refuse to return the child when a finding of contempt was issued, and there was no need to coerce her to return the child. The child was in the father's custody the day the contempt order was issued, and the father was deployed when the vague "Sunday" contempt was alleged in the untimely declaration.

MR. RUNDLE:" On the contempt, Your Honor, the basis they are asking for imprisonment is we are just going to disregard our constitution from 1787 because we don't have debtor's prison in this country anymore. They are asking her to be found in contempt for not paying the attorney's fees. It is expressly in the contempt motion. That is not a remedy. The remedy is judgment and enforcement. We don't have debtor's prison.

THE COURT: But she can be sentenced to jail time for the other violations.

MR. RUNDLE: Well that's not what they asked for, Your Honor -- I'll let you sort through it, because I read the motion itself" (VRP 10-11).

The trial court erred when it issued punitive sanctions for past alleged violations of the parenting plan, and sentenced jail time for unpaid attorney's fees. The contempt motion itself asked for jail time for unpaid attorneys fees only, which is against the law.

9. Finding #1

The trial court erred by finding Ms. Schreiner in contempt for “Parenting time schedule by failing to return the child at the conclusion of her residential time.” Ms. Schreiner was unable to respond to strict reply documents, and the other parent was on active duty deployment. The court failed to specify when the alleged contempt occurred, or order make-up time. The punitive sanction issued was not coercing the mother to do something, or was it within the mother’s power to perform.

10. Finding #2

The trial court erred by finding Ms. Schreiner in contempt of “Decision Making by taking the child to the ER for non-urgent medical issues.”

Again, the punitive sanction issued was not coercing the mother to do something, or within the mother’s power to perform. The mother took the child to the Emergency room several months prior to a contempt motion being filed.

Additionally, there is not a clear violation of the order. The parenting plan states that the mother has the authority to take the child to the ER (CP 191-197),(VRP 11-12, lines 16-25) .

MR. RUNDLE: “And I told you I would get to that, and I’m going to point you to section 6, "Other", the parenting plan signed by Judge Arend, the catchalls. And it specifically says each parent shall have authority to give parental consent or permission as maybe required concerning school, daycare, or other programs for the child while the child is in his or her care. Further on down it says

each parent shall be in power to obtain emergency healthcare for the child. It goes on to say each parent shall have equal and independent authority to arrange emergency and medical and dental services for the child. And it says both parents may participate in school activities for the child such as an open house, attendance at an athletic event, etc. So Ms. Schreiner is being asked to be found in contempt of court, Your Honor, and for that to happen they have to show two things, number one that an order was violated -- that an order was violated in bad faith. And that simply does not apply here” (VRP 11-12, lines 14-25, 1-6).

The trial court erred when it disagreed with the hospitals finding that the incident qualified as an Emergency, and after the hospital referred the child’s complaint to CPS and the Tacoma Police Department. The CPS report states “Referrer is a RCW 13.50.100(5) who is calling out of concern for 6yo Memphis Scoutten who was in the care of Step Mother Monica Scoutten when the alleged incident occurred.” (CP 7). Further, even if the court found it to not be an emergency, the parenting plan does not specifically state that the mother cannot take the child to the Emergency Room for a “non-emergency”. The child’s pediatrician’s office is closed on the weekends.

11. Finding #3 Parenting plan provision 3.10

The finding states: “School records indicate on a contact list that a man described as “future step-father” would be around the child”...” additionally the records show that

she was willing to allow a person not authorized under paragraph 3.10 to have access to the child”(CP 222).

The record lacks any evidence to support that the mother made allegations against the step-mother. “It is reported that child was seen at Mary Bridge for a bruise to the middle of her forehead which **child reported** happened when her Step-MO, threw a cell phone at her forehead.” (CP 46).

The contempt order goes on to say “Angela Schreiner continues to violate the letter and spirit of the parenting plan by undermining the bond between the father and child through allegations and conflict with the step mother who is parenting by power-of-attorney while father is on Active Duty. Further, CPS records do not support her allegations.”(CP 222).

CPS reports **do** support the child’s allegations, and at no time did the child take back her statements that the step-mother had thrown a cell phone at her forehead. In fact, the child reiterated the same account in front of the step-mother on her second interview with CPS. “Child then said she remembered and that Monica threw a phone at her. SWer asked where was she when it happened. She stated that she was on the floor and Monica was on the couch” (CP 82). The CPS investigation was only a FAR referral, meaning CPS would not conduct an investigation for any findings. CPS only did a Family Risk assessment, and found the risk level changed from “low” to “moderate” risk for abuse (CP 27-29).

After the court agreed to strike all documents related to issues “interfering with school”, yet a reference to this stricken document is included in the order of contempt.

MR. RUNDLE: And Your Honor, if I may, I am going to

object to a lot of that stuff that was filed but we have a

strict reply, because my client was denied the opportunity to respond at all to any of that. That is fundamentally unfair. So I'm asking the Court to not consider anything that is additional testimony beyond the original motion for contempt and supporting declarations. My client responded and then they responded by way of strict reply with additional information. So at a minimum, Your Honor, if you are inclined, I would ask you to swear my client and let her address these concerns. But I think an easier way would be to strike them, and let's stick to the issues that --

THE COURT: OK. The only issue not pled then was interfering with school.

MR. RUNDLE: Correct.

THE COURT: Alright. We can deal with that at a different motion if necessary.

MR. RUNDLE: Thank you, Your Honor (VRP 4).

Additional finding

The court found “Angela Schreiner continues to provide false information to the court. School records indicate on a contact list that a man described as “future step-father” would be around the

child after denying any male friend would be around the child”(CP 222). There isn’t a court order stating that Ms. Schreiner’s friends or family cannot “be around” or have “access to the child.”

MR MILLER: “If the Court recalls -- and maybe not because you only hear one or two of these a day -- but the last time we were here I asked Ms. Schreiner, I said it is our understanding that you have a significant other. And if that person is spending a lot of time with Memphis, we need to know his name, and we need to know his birthdate. And she denied it. I think Mr. Rundle agree with her, but I'm not putting any words in his mouth. She denied it. And if you look at the subpoenaed information from St. Pat's, she signed a permission slip. And in that permission slip the emergency contact person was a Mr. Brian -- I don't know what his last name was -- as future father. And this was just two weeks prior to the hearing when she stood in front of you and denied it. She wasn't under oath and denied it front of everybody” (VRP 6).

Ms. Schreiner was never sworn in to testify under oath, so she cannot be found in contempt of lying to the court. She also did not submit a declaration responding to the alleged

contempt under penalty of perjury. The mother never acknowledged the person named in the unverified "permission slip" at all.

Additionally, the parenting plan does not prevent contact with Ms. Schreiner's friends or family. Section 3.10 of the parenting plan states Ms. Schreiner cannot **leave the child in the care** of anyone else besides her mother. No evidence was submitted that she violated that order or left the child in the care of anyone. The back-up number listed to reach the mother was not used, and a violation did not occur.

Further, Ms. Schreiner is allowed to sign permission slips for the child per parenting plan (CP 196).

Mr. Rundle: In Ms. Scoutten's strict reply, she misinterprets the parenting plan about Angela not having any say in anything. And I told you I would get to that, and I'm going to point you to section 6, "Other", the parenting plan signed by Judge Arend, the catchalls. And it specifically says each parent shall have authority to give parental consent or permission as maybe required concerning school, daycare, or other programs for the child while the child is in his or her care...And it says both parents may participate in school activities for the child such as an open house, attendance at an athletic event, etc. So Ms. Schreiner is being asked to be found in contempt of court, Your Honor, and for that to happen they have to show two things, number one that an order was violated -- that

an order was violated in bad faith. And that simply does not apply here.”(VRP 11-12).

If Ms. Schreiner wouldn't have been denied her fundamental right to respond, she would have explained that she was present during the field trip and volunteered that day with the school, it was also a residential day for Ms. Schreiner to have with the child. Additionally, nothing in the parenting plan bars Ms. Schreiner from having a partner, and at no time was the child left with anyone. Substantial Evidence was lacking for this finding and the order was not violated. It was badly misinterpreted by Mr. Miller and the court.

12. Bad Faith

An attempt by a parent to refuse to perform a duty provided in a parenting plan is deemed to be bad faith. RCW 26.09.160. If a trial court finds after a hearing that a parent has “not complied with the order establishing residential provisions” of a parenting plan in “bad faith,” the court “shall find” the parent in contempt of court. RCW 26.09.160(2)(b).

As Mr. Rundle argued, mom had a legal duty to take the child to the ER when the child alleged she had been assaulted by the step-mother. It was not proven to be in bad-faith.

MR. RUNDLE: “...And the DVPO is not done in bad faith,

Your Honor. you know as well as anyone with your years of

experience, when there is an issue of a child possibly

being abused, if you don't take an action, CPS will come

after you for failure to protect. So Ms. Schreiner did

exactly what she was required to do”(VRP 14).

MR RUNDLE: “Memphis came home with a bruise on her forehead and said I was hit in the head by a cell phone. She has an obligation to call the authorities. She went to -- she didn't call CPS. She went to Mary Bridge to have the child evaluated. Mary Bridge calls CPS. Angela did not. Everything that flowed was from Mary Bridge doing it...But the point is, she did what our laws say she has to do. She did what Judge Arend says she is entitled to do at school. And I pointed to -- and I don't mean to pick on Ms. Scoutten, but if you look at her supplemental declaration, she is just flat out wrong. She is interpreting the CPS records in a way that she wants it to look and to favor her and Mr. Scoutten. Well, reality is, CPS doesn't say anywhere in there we told Ms. Schreiner there is nothing here. They don't say it. They -- in fact, they flip-flop. They say it was a low risk, it was a moderate risk depending on where they go. And then they made a FAR referral. That is not something that Ms. Schreiner ever represented to this court.” (VRP 11-12, lines 16-25, lines 1-6).

MR. RUNDLE: I just don't think the evidence is here to show that she willfully violated a court order in bad faith when there are two interpretations (VRP 14, lines 9-11).

Again, it was not within Ms. Schreiner's power to perform an act or coerce performance, making this a punitive sanction. Ms. Schreiner took the child to the ER “in the past”, after the child alleged that the step-mother threw a cell phone at her forehead.

Even if the trial court found that an alleged assault against the child doesn't qualify as an emergency, the parenting plan does not specifically that the mother can't take the child to the ER for non-emergencies. The child's pediatrician's office is closed on the weekends.

The contempt motion did not include the required affidavit or documentation to support the finding that Ms. Schreiner took the child to the ER for a non-emergency, and she was unable to respond. The hospital found the child's allegation qualified as an Emergency. Substantial evidence is required to meet the contempt threshold. Bad faith was not established during the court hearing. The hospital referrer classified it as an Emergency and contacted CPS and the Tacoma Police Department (CP 7). It was not Ms. Schreiner who determined that the visit was an Emergency, the ER doctor did. Ms. Schreiner did what she was supposed to do by law. Instead, the court punished Ms. Schreiner for taking her daughter for treatment.

No evidence supports that the child was coached by the mother as Mr. Miller misrepresents in the hearing.

MR. MILLER: "She takes this child to the emergency room. She tells this child what to say. They make false statements. They make false allegations. And we have to defend it. It is difficult to defend, and it is expensive to defend" (VRP 5).

The CPS report did not support Mr. Millers argument that the mother coached the child into making the statements. The CPS report says "Swer asked child if anyone told her that is what happened to her, **she stated no** and that is what she told the Police Officer too."(CP 82).

13. Attorneys Fees

Washington courts have adopted the “lodestar” method as the preferred means of determining reasonable attorney fees. *Scott Fetzer Co. v. Weeks*, 114 Wash.2d 109, 124, 786 P.2d 265 (1990) (Fetzer I); *Martinez v. City of Tacoma*, 81 Wash.App. 228, 239, 914 P.2d 86, review denied, 130 Wash.2d 1010, 928 P.2d 415 (1996); *Absher*, 79 Wash.App. at 846-47, 917 P.2d 1086. The lodestar method is set out in *Bowers v. Transamerica Title Ins. Co.*, 100 Wash.2d 581, 593-94, 675 P.2d 193 (1983):

Under this method, there are two principal steps to computing an award of fees. First, a “lodestar” fee is determined by multiplying a reasonable hourly rate by the number of hours reasonably expended on the lawsuit. Second the “lodestar” is adjusted up or down to reflect factors, such as the contingent nature of success in the lawsuit or the quality of legal representation, which have not already been taken into account in computing the “lodestar” and which are shown to warrant the adjustment by the party proposing it. (citing *Miles v. Sampson*, 675 F.2d 5, 8 (1st Cir.1982)).

The attorneys involved in litigation must provide reasonable documentation of the work they performed before the court can determine the number of hours reasonably expended in the litigation. *Bowers*, 100 Wash.2d at 597, 675 P.2d 193. Mr. Miller provided no argument or documentation to support the extremely high fees of \$3500 in relation to one motion. .

MR. MILLER “But what we are asking for in our contempt -- we are asking for jail time. We are asking for a penalty of \$100. We are asking for attorney's fees of \$3,500.”

E. **Conclusion** Due to the obvious errors of the trial court, abuse of discretion, and violation of due process rights, reversal is required.

ANGELA SCHREINER - FILING PRO SE

November 18, 2017 - 3:41 AM

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