

FILED
Court of Appeals
Division II
State of Washington
5/24/2018 10:15 AM

No. 51183-5-II

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION II

CRYSTAL JEAN FOX
Appellant,

v.

DAVID LEE HAYES
Respondent.

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

I. ISSUES.....1

II. ARGUMENT.....1

 A. FINDINGS DO NOT SUPPORT
 CONCLUSIONS OF LAW.....1

 B. DUTIES UNDER THE PARENTING PLAN.....4

 C. SATISFACTION OF OBLIGATIONS.....13

 D. ATTORNEY’S FEES.....16

III. CONCLUSION.....17

 APPENDICES..... 19

TABLE OF AUTHORITIES

Cases

Johnston v. Beneficial Mgmt. Corp. of America, 96 Wn.2d 708, 713, 638 P.2d 1201 (1982)..... 4

In re Marriage of Rideout, 110 Wn. App. 370, 40 P.3d 1192 (2002). 13

Statutes

RCW 7.21.010(1)(b). 4

RCW 26.09.140 16

Appendices

Appendix A.....19

I. ISSUES

- A. Respondent's Statement of Facts are misleading and solely an attempt to confuse the issue before the court and inflame a passionate response.
- B. What are the duties of each parent under the parenting plan?
- C. How far must a parent's actions go to satisfy their obligation under exchange clause of a parenting plan?
- D. Attorney Fees are appropriate for the Appellant.

II. ARGUMENT

- A. The Respondent's Statement of Facts misleads the court in an attempt to frame their narrative.

Crystal relies upon her Statement of the Case in her Opening Brief.

It is submitted that the Statement of the Case proffered by Respondent ("David") is incomplete, inaccurate, and at times, a complete misrepresentation of the facts.

David continually makes an argument that Crystal has been unhappy with the modification that occurred in 2013. David claims the modification "represented a significant reduction in Crystal's residential time with the boys."¹ The 2011 parenting plan provided Crystal with visitation on Monday at 8:00am to Wednesday at 8:00 pm, then again on

¹ Resp. Br. 3

Saturdays from 12:00pm to 8:00pm every week.² Crystal's time with the children in the 2013 Parenting Plan provides she will have the children every other Saturday at 4:30pm to Monday at 8:00am and every Tuesday at 4:30 to Thursday at 8:00am.³ The 2011 parenting plan provided Crystal with eight (8) overnights per month, and approximately 272 hours of visitation a month. The 2013 parenting plan provides Crystal with twelve (12) overnights a month and approximately 237 hours of visitation. Crystal actually receives more overnights than she has had in the past and is named the custodial parent in section 3.12 of the 2013 parenting plan for Anthony.⁴

David continually claims Crystal is not happy with the "significantly reduced time," but this is simply not true. This misstatement is used solely to try and create a storyline for David so he can deflect the domestic violence protection orders filed against him from his previous girlfriends and allegations of abuse of the children, which caused Crystal to file a Petition to Modify the Parenting Plan to protect the children from a detrimental environment if the allegations were true.⁵

² See Appendix A – 2011 Parenting Plan 2:13-17.

³ CP 25:19-24.

⁴ CP 28:18-23.

⁵ CP 106:19 – 108:6, 161:11-20.

Most notably, David claims the litigation was redundant for a period of four (4) months.⁶ However, a Commissioner found that adequate cause existed due to the serious nature of the child's disclosure to the police and appointed a Guardian ad Litem to investigate the claims. No other litigation took place except David's motion for revision, which then Judge Johnson reversed the Commissioner's ruling.⁷ The GAL never completed an intake or even came close to an investigation as claimed by David. Yet during this time the child is still claiming his father has abused him.⁸

David continues on to claim Crystal is using CPS to make false allegations. This again is not true, while CPS has been involved, it was the child's counselor who made the referral.⁹ David says Crystal uses the police to make false allegations, this again is not true.¹⁰

David attempts to paint an incorrect picture of the facts of this matter. Crystal stands by her Statement of Facts reflecting she has complied with all requirements of the parenting plan which the court has

⁶ Resp. Br. 5

⁷ CP 162:23 – 163:6

⁸ CP 161:9-20; 162:10-13.

⁹ RP 22:11-15.

¹⁰ RP 17:23-18:19.

held her in contempt for. The facts of the case do not support a finding of contempt.

B. The 2013 parenting plan provides the responsibilities of each parent.

David has alleged Crystal is in contempt for failing to comply with the 2013 parenting plan. Contempt requires an “intentional...disobedience of any lawful...order...of the court.”¹¹ “The order must be strictly construed in favor of the contemnor...” and the “facts found must constitute a *plain violation* of the order.”¹² Before the court can make a determination as to whether Crystal intentionally violated the parenting plan or acted in bad faith, a review of the responsibilities of the parties under the parenting plan must be completed.

David asserts Crystal’s bad faith is based on her “refusal to perform duties set forth in a parenting plan.”¹³ David’s motion does not include the exact clause in the parenting plan he believes Crystal violates.¹⁴ David’s declaration discusses his missed visitation.¹⁵

¹¹ RCW 7.21.010(1)(b).

¹² *Johnston v. Beneficial Mgmt. Corp. of America*, 96 Wn.2d 708, 713, 638 P.2d 1201 (1982).

¹³ Resp. Br. 18.

¹⁴ CP 39-42.

¹⁵ CP 55-61.

Pursuant to the November 1, 2013 parenting plan entered in the Pierce County Superior Court the pertinent portions of the plan establish the following: David was named the custodial parent of Nathaniel.¹⁶ Crystal was named the custodial parent of Anthony.¹⁷ Crystal has visitation with the children from Saturday at 4:30pm until Monday morning before school (or 8:00am if there is no school), every other week; and from Tuesday at 4:30pm, or after work if later, until Thursday before school (or 8:00am if there is no school) every week.¹⁸ David is to have the other time with the children. The summer schedule is to be the same as the school year.¹⁹

The plan establishes that transportation arrangements for the children, between parents shall be as follows: Each party may have a designee that is licensed and insured to assist with the visitation exchanges. As much as feasible, if she is coming from work, the mother shall pick up the children from the father's home or from school. At the end of the mother's residential time, she may drop off the children at school (if feasible) *or the parties shall meet at an*

¹⁶ CP 49:19-23

¹⁷ Id.

¹⁸ RP 46:19-23

¹⁹ CP 47:19

*agreed upon location approximately half way between the parties homes.*²⁰

Decision making is joint for all major decisions regarding each child, including non-emergency health care.²¹ Any disputes regarding these decisions must be submitted to an agreed upon mediator or Pierce County Center for Dispute Resolution, with the request being made in writing to the other party.²²

Pursuant to the parenting plan, Crystal's responsibility was to return the children to the location (referred to in previous briefs and court papers as McDonald's or I5/512 interchange) agreed upon by the parties.²³ There is no evidence and no argument made that Crystal has failed to bring the children to the exchange location, pursuant to the transportation clause, section 3.11, of the parenting plan.

David argues "Crystal acted in bad faith by her failure to return Nathan and Anthony to their father's custody when she was capable of doing so."²⁴ He further states there is "substantial evidence [to] support the trial court's finding of contempt under RCW 26.09.160."²⁵

²⁰ CP 49:10-17 emphasis added.

²¹ CP 51:7-20.

²² CP 52:1-16.

²³ CP 77

²⁴ Resp. Br. 19.

²⁵ Resp. Br. 24.

Judge Schwartz found that Crystal, “has taken zero affirmative steps.”²⁶ There is no evidence to support the trial court’s finding, or support David’s argument.

The parenting plan is very clear, the parties shall meet at an agreed upon location approximately half way between the parties homes at the designated exchange days and times.²⁷ Crystal did this for every visit, which is not disputed.²⁸ In fact, the record reflects she did even more to try and help facilitate the exchanges.

David states that prior to June 29, 2017, there had been no issues with the exchange of the children and that they typically got out of the car by themselves.²⁹ On June 29, the first date in which Anthony, the nine (9) year old, eighty-six (86) pound child, would not go to his father’s house. At this exchange, David opened the back door to Crystal’s vehicle and he couldn’t get Anthony to go with him.³⁰

Following this exchange, Crystal agreed to bring Anthony back to the exchange location to try again with David’s father, Bruce

²⁶ RP 23:7.

²⁷ CP 49:10-17.

²⁸ CP 103:17.

²⁹ CP 104:14-17

³⁰ CP 58-59.

Hayes.³¹ The second attempt was not successful, so they attempted a third time on Saturday.³² When they arrived, Anthony threw a bigger fit, and Bruce attempted to get him to go with him to David's house.³³ Crystal agreed to try and get her new husband to talk to Anthony to see if he would go, but this, too, did not work.³⁴ This third attempt ended in David and Bruce giving Anthony a hug and leaving.³⁵

Following this third failed attempt, Crystal reached out to David and making plans for him to come to her house to try and get Anthony. When David and Bruce arrived, it took them fifteen (15) minutes to get Anthony to finally go with them.³⁶

Crystal went above and beyond the parenting plan in order to try and get her son to spend time with his father. She made four (4) attempts over the course of three (3) days in order to make sure the exchange occurred. She was the one who reached out to David in order to setup the fourth exchange at her house.³⁷ Yet the court made a finding she made "zero affirmative steps" and "she has done so in bad

³¹ CP 59

³² CP 82-83.

³³ CP 83.

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

faith...and intentionally violated...the parenting plan, a lawful order of the court.”³⁸

A plain reading of the order required Crystal to take the children to the exchange location at the date and time prescribed by the parenting plan, she did this. David was not able to get the child to go with him either. The elephant in the room is, what did the father do in order to get the child to go with him? The court found Crystal in contempt when both parents, and the paternal grandfather, were unsuccessful in getting the child to go with the father.

Crystal’s actions were consistent with the requirements under the 2013 Parenting Plan.

On July 20th, 2017 Crystal sent an email to David discussing the concerns the parties had with the children’s recalcitrance.³⁹ Crystal explains how she encourages the children to see their father, and how David’s attempt to get the children only lasted two (2) minutes, when David asked the children if they wanted to go with him and they stated no, so he just left.⁴⁰ Further, Crystal discusses how David called Crystal when she was at the hospital with her grandma to

³⁸ RP 23, CP 166-167

³⁹ CP 114

⁴⁰ Id.

tell her she needed to get the boys from school.⁴¹ When Crystal got to the location to help David, David told her to just take Anthony and he would deal with the cops.⁴²

The finding of the court is Crystal failed to take any affirmative steps to encourage visitation with the father, but her email to David rebuts this. Further, David's attempt to get the children at the exchange location reflect he doesn't make any efforts and calls upon Crystal to come and get the children, even when she is at the hospital with her grandma who just had a hear attack.⁴³

The next visitation date David describes as an example of Crystal's bad faith occurred on August 17, 2017.⁴⁴ Crystal arrived five (5) minutes early for the exchange, David and his mother were present.⁴⁵ David attempted to get both of the children to go with him and they both stated they did not want to go.⁴⁶ David did not try to physically remove the children from the vehicle.

The following day, both parties attended mediation, and Crystal's husband ("Wilbert") and David's father, Bruce, attempted to

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ CP 60

⁴⁵ Id.

⁴⁶ Id.

do the exchange while the parties were at mediation. Wilbert and Bruce spent forty-five (45) minutes trying to get the boys to go to their father's, but couldn't.⁴⁷

The next day, which was scheduled to be the beginning of David's vacation time, Crystal arrived at the exchange location and David did not appear.⁴⁸ David does not make any further attempts to get the children and filed his contempt motion the following week.

Crystal has appeared at the exchange location for every scheduled exchange, even when David did not show. She made additional attempts to have the children go to their father's house. She showed up multiple days in a row to try and facilitate the exchange, all with no luck. Additionally, her husband, the paternal grandparents and school have tried to get the children to go to the father's home, and they won't go.

On September 8, 2017, Crystal had notified David she had setup doctor appointments to get the kids back to counseling.⁴⁹ She also mentions setting up mediation and how David has been non-

⁴⁷ CP 61

⁴⁸ CP 79

⁴⁹ CP 116

responsive.⁵⁰ Crystal again reiterates she has explained to the kids they need to spend time with their father.⁵¹

The record clearly reflects Crystal is attempting to resolve this issue and has done everything the parenting plan asks of her plus more. Most interesting and ignored by the trial court is David points out that in 2011, the parenting plan required Nathan to go to counseling because he was having issues with visitation related to his mother.⁵² David frames the lack of counseling as something that caused the children to not want to spend time with him, but it clearly pertained to only the relationship of the mother and son.⁵³

The September 17, 2017 email from David does not reflect a father who accuses the mother of being the root of these issues. The email details the children wont listen to anyone, dad, grandparents, teachers, principal and counselors.⁵⁴ Coincidentally, it is ironic David argues that the children need to be in counseling, but alludes that they are seeing a counselor at school.⁵⁵

Crystal has complied with the parenting plan. She appears at the

⁵⁰ Id.

⁵¹ Id.

⁵² CP 126

⁵³ Id.

⁵⁴ CP 127.

⁵⁵ Id.

exchange location at the scheduled exchange dates and times. Crystal has made additional attempts beyond that prescribed in the parenting plan. There is no evidence to support a finding Crystal has intentionally violated the parenting plan or acted in bad faith to violate the terms of the parenting plan. Further, the trial court's finding that Crystal has taken "zero affirmative steps" is not supported by the evidence.

Crystal has complied with the terms of the parenting plan.

C. What must a parent do to satisfy their obligations under the exchange clause of a parenting plan?

David argues that Crystal was capable of returning Nathan and Anthony to his custody.⁵⁶ It is unclear from case law as to what, and where, the line in the sand is when it comes to a parent's responsibility when a child does not want to go to another parent's house. *Rideout* clearly establishes that a parent cannot fail to comply with the terms of a court order.⁵⁷ But the court has not defined how far a parent actually has to go in order to facilitate the exchange of a child.

Again, the elephant in the room is that the court never examines what David did, or did not, do in order to facilitate the exchanges. An

⁵⁶ Resp. Br. 19.

⁵⁷ *In re Marriage of Rideout*, 110 Wn. App. 370, 40 P.3d 1192 (2002).

examination of the record clearly reflects he had the same opportunity to facilitate the exchange as Crystal.

It is important to note, the children are a 14yr old 200lb child, and a 9yr old, 86lb child. As stated by Crystal, they are too big for her to lift out of the vehicle.⁵⁸ While David argues Crystal fails to establish the defense of an “innocent bystander,” what has David done?

Judge Schwartz found that Crystal made “zero affirmative steps” to facilitate the exchange.⁵⁹ Commissioner Gelman went further stating Crystal needed to “grab [the child] and pull him out of the car.”⁶⁰

According to the trial court, a parent who is providing the children to the receiving parent, must grab the children, physically removing them from the car. Unless Crystal did this, she was acting in bad faith, even though she testified she is unable to physically remove them due to their size.

Further the court has found Crystal in contempt because the children would not get on the bus at school, when Crystal was not present at school or had any contact with the child or father. When the father calls the mother, her agreeing to pick up the children for the father, is her acting

⁵⁸ CP 103:21-24

⁵⁹ RP 23

⁶⁰ CP 164:15-20

in bad faith. Under this premise, a parent should not attempt to pick up a child when it is not their residential time.

In the present case, the child walked six (6) miles to try and avoid having to go to the father's home. When David contacted Crystal, she sent him the mapquest directions as to how they drive home, which she believed to be the route her son would take. The court has essentially found her actions to be in bad faith because she notified the father as to the route she believed the child would take.

David argues bad faith, though Crystal's actions clearly comply with the terms of the parenting plan. This leaves the question as to how far a parent needs to go in order to act in good faith.

According to Commissioner Gelman, a parent must physically remove a child from the vehicle, even if the parent is unable to do so. Further it seems to imply that the parent should then leave the child in the parking lot so that the child has no other choice but to go with the other parent. In the case at hand, even when the parents were not present, the children were out of the car and after 45 minutes, Wilbert and Bruce still couldn't get them to go to their father's house. So what does the parent do at this point?

According to Judge Schwartz, a parent should disregard the other provisions of a parenting plan and start making unilateral decisions.⁶¹

This begs the question, “What does a parent have to do, if they have complied with the terms of the parenting plan, but the children will not comply with the request of any party?” We ask the court to answer this question.

D. Attorney fees are appropriate for the Appellant.

Pursuant to RAP 801 and RCW 26.09.140 Crystal requests attorney’s fees. “The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith...Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.”⁶²

Attorney’s fees are appropriate in this matter as there is no basis for a finding of contempt, and Crystal should be awarded fees and cost for

⁶¹ RP 16:2-3, 18:14-19.

⁶² RCW 26.09.140

being the prevailing party. Further as there is no basis for the contempt finding, the court shall reverse the previous award to the Respondent, and deny his current request.

III. CONCLUSION

Crystal has complied with the terms of the parenting plan. She has also made reasonable efforts to require the boys to comply with the parenting plan. She has been timely to all scheduled visitation exchanges, picked up the children when requested by David, and arranged for additional, and alternative, attempts to exchange the children.

The trial courts application of *Rideout* to this case was not appropriate because the facts from this case vary so drastically from the ones in *Rideout*. Crystal has not done anything contrary to the language in the parenting plan, and the court has to find evidence she acted intentionally and in bad faith. There is no evidence to support such a finding.

Crystal respectfully requests that this court overturn the finding of contempt, establish a standard for parents to determine how far both parents must go to facilitate the exchange of children, and grant her request for attorney's fees and cost as the prevailing party.

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RESPECTFULLY SUBMITTED this 24th day of May, 2018.

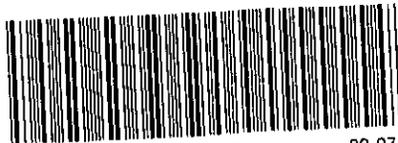


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APPENDICES

Appendix A

2011 Parenting Plan



10-3-03692-9 37078888 PP 09-07-11

FILED
IN COUNTY CLERK'S OFFICE

A.M. SEP - 6 2011 P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Superior Court of Washington
County Pierce

In re the Marriage of:

No. 10-3-03692-9

DAVID HAYES

Parenting Plan
Final (PP)

Petitioner,

and

CRYSTAL HAYES

Respondent.

This parenting plan is a final plan adopted by the court.

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

Name	Age
Nathaniel Hayes	8
Anthony Hayes	3

II. Basis for Restrictions

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the children and the right to make decisions for the children.

2.1 Parental Conduct (RCW 26.09.191(1), (2))

Does not apply.

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2.2 Other Factors (RCW 26.09.191(3))

Does not apply.

III. Residential Schedule

The residential schedule must set forth where the children shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the children shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the children and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children Under School Age

Prior to enrollment in school, the schedule for the children shall be:

With Mother: From 8:00 am Monday (or afterschool if school is in session) to 8:00 pm Wednesday and from noon Saturday until 8:00 p.m. Saturday every week.

With Father: From 8:00 pm Wednesday to noon Saturday and from 8 p.m. Saturday to 8:00 am Monday every week.

3.2 School Schedule

Upon enrollment in school, the schedule for the children shall be:

With Mother: From 8:00 am Monday (or afterschool if school is in session) to 8:00 pm Wednesday and from noon Saturday until 8:00 p.m. Saturday every week.

With Father: From 8:00 pm Wednesday to noon Saturday and from 8 p.m. Saturday to 8:00 am Monday every week.

3.3 Schedule for Winter Vacation

In even years, the children shall reside with the mother for the first half of Winter Vacation and the father for the second half of Winter Vacation. In odd years, the children shall reside with the father for the first half of Winter Vacation and the mother for the second half of Winter Vacation. The first half of Winter Vacation shall be defined as 3:00 pm on the day school lets out (or immediately after school) until 10:00 am Christmas Eve. The second half of Winter Vacation shall be defined as 10:00 am on Christmas Eve through 6:00 pm the day before school resumes.

The regular week rotation will resume following Winter Vacation.

3.4 Schedule for Other School Breaks

1
2 In even years, the children shall reside with the mother for Spring Vacation and the
3 father for mid-winter vacation (if any). In odd years, the children shall reside with
4 the father for Spring Vacation and the mother for mid-winter vacation (if any).

5 Spring Vacation shall be defined as 8:00 am Monday to 5:00 pm Friday, so as not to
6 disturb the regular weekend rotation.

7 Mid-Winter Vacation shall be defined as 5:00 pm the day school lets out to 5:00 pm
8 the day before school resumes.

9 *Both children shall be subject to this schedule, even prior to Anthony starting school.

10 **3.5 Summer Schedule**

11 Same as school year schedule.

12 **3.6 Vacation With Parents**

13 The schedule for vacation with parents is as follows:

14 Each parent may take up to two weeks of uninterrupted vacation time with the
15 children. The parents shall exchange dates for vacation by May 15th of each year.
16 In the event of a conflict, the mother's dates shall take precedence in even years and
17 the father's dates shall take precedence in odd years.

18 **3.7 Schedule for Holidays**

19 The residential schedule for the children for the holidays listed below is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
New Year's Day	See Section 3.3	See Section 3.3
Martin Luther King Day	Even	Odd
Presidents' Day	Odd	Even
Memorial Day	Even	Odd
July 4th	Odd	Even
Labor Day	Even	Odd
Veterans' Day	Odd	Even
Thanksgiving Day	Even	Odd
Christmas Eve	See Section 3.3	See Section 3.3
Christmas Day	See Section 3.3	See Section 3.3
Easter	Odd	Even

22 For purposes of this parenting plan, a holiday shall begin and end as follows (set forth
23 times):

24 From 10:00 am or after school until 8:00 pm.

1 Thanksgiving shall commence upon release from school on the Wednesday prior and
2 end at 6:00 pm Sunday.

3 **3.8 Schedule for Special Occasions**

4 The residential schedule for the children for the following special occasions (for
5 example, birthdays) is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
6 Mother's Day	Every	
7 Father's Day		Every

8 **3.9 Priorities Under the Residential Schedule**

9 Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

10 Rank the order of priority, with 1 being given the highest priority:

- 11
12 4 winter vacation (3.3)
13 4 school breaks (3.4)
14 4 summer schedule (3.5)
15 3 holidays (3.7)
16 2 special occasions (3.8)
17 1 vacation with parents (3.6)

18 **3.10 Restrictions**

19 There are no limiting factors in paragraph 2.2.

20 **3.11 Transportation Arrangements**

21 Transportation costs are included in the Child Support Worksheets and/or the Order
22 of Child Support and should not be included here.

23 Transportation arrangements for the children between parents shall be as follows:

24 The mother shall pick the children up on Mondays (directly from father's home or
from school).

For all other exchanges, the parties shall meet at an agreed upon location
approximately half way between the parties' homes.

3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside almost equally with
the petitioner and the respondent. Petitioner shall be designated the custodian of
Nathaniel and Respondent shall be designated the custodian of Anthony solely for
purposes of all other state and federal statutes which require a designation or

1 determination of custody. This designation shall not affect either parent's rights and
2 responsibilities under this parenting plan.

3 **3.13 Other**

4 N/A

5 **3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

6 This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

7 If the person with whom the child resides a majority of the time plans to move, that
8 person shall give notice to every person entitled to court ordered time with the child.

9 If the move is outside the child's school district, the relocating person must give notice
10 by personal service or by mail requiring a return receipt. This notice must be at least
11 60 days before the intended move. If the relocating person could not have known
12 about the move in time to give 60 days' notice, that person must give notice within 5
13 days after learning of the move. The notice must contain the information required in
14 RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of
15 A Child).

16 If the move is within the same school district, the relocating person must provide
17 actual notice by any reasonable means. A person entitled to time with the child may
18 not object to the move but may ask for modification under RCW 26.09.260.

19 Notice may be delayed for 21 days if the relocating person is entering a domestic
20 violence shelter or is moving to avoid a clear, immediate and unreasonable risk to
21 health and safety.

22 If information is protected under a court order or the address confidentiality program,
23 it may be withheld from the notice.

24 A relocating person may ask the court to waive any notice requirements that may put
the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

**If no objection is filed within 30 days after service of the notice of intended
relocation, the relocation will be permitted and the proposed revised residential
schedule may be confirmed.**

A person entitled to time with a child under a court order can file an objection to the
child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU
07.0700, (Objection to Relocation/Petition for Modification of Custody
Decree/Parenting Plan/Residential Schedule). The objection must be served on all
persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless:
(a) the delayed notice provisions apply; or (b) a court order allows the move.

1
2 If the objecting person schedules a hearing for a date within 15 days of timely service
3 of the objection, the relocating person shall not move the child before the hearing
4 unless there is a clear, immediate and unreasonable risk to the health or safety of a
5 person or a child.

4 IV. Decision Making

5 4.1 Day-to-Day Decisions

6 Each parent shall make decisions regarding the day-to-day care and control of each
7 child while the children are residing with that parent. Regardless of the allocation of
8 decision making in this parenting plan, either parent may make emergency decisions
9 affecting the health or safety of the children.

10 4.2 Major Decisions

11 Major decisions regarding each child shall be made as follows:

12 Education decisions: joint

13 Non-emergency health care: joint

14 Religious upbringing: joint

15 Marriage before 18: joint

16 Tattoos/Piercings: joint

17 Driver's License: joint

18 Military Service: joint

19 4.3 Restrictions in Decision Making

20 Does not apply.

21 V. Dispute Resolution

22 *The purpose of this dispute resolution process is to resolve disagreements about carrying out
23 this parenting plan. This dispute resolution process may, and under some local court rules or
24 the provisions of this plan must, be used before filing a petition to modify the plan or a motion
25 for contempt for failing to follow the plan.*

26 Disputes between the parties, other than child support disputes, shall be submitted to
27 (list person or agency):

28 mediation by Pierce County Center for Dispute Resolution, or another agreed
29 upon party,

30 The cost of this process shall be allocated between the parties as follows:

31 50% petitioner 50% respondent.

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3 The dispute resolution process shall be commenced by notifying the other party by certified mail.

4 In the dispute resolution process:

- 5 (a) Preference shall be given to carrying out this Parenting Plan.
- 6 (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- 7
- 8 (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- 9
- 10 (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
- 11
- 12 (e) The parties have the right of review from the dispute resolution process to the superior court.

13 VI. Other Provisions

14 There are the following other provisions:

- 15 1. Parents will honor the school and homework schedule for the children and shall both ensure that the homework or other assignments are completed. Both parents shall make sure they are fully advised of what any assignments may be while the children are under their care.
- 16
- 17 2. The children shall be promptly sent to school at all times.
- 18 3. All visitation transfers are to have a ½ hour grace period. If a significant unforeseen event occurs the parents shall communicate this to one other in a timely fashion.
- 19
- 20 4. Discipline of the children shall be by the biological parents only and shall not involve corporal punishment.
- 21 5. If issues arise regarding either parent's parenting style the parties agree to enroll in co-parenting counseling with either a provider through available insurance or through an agency such as Catholic Community Services as they are cost effective (or another agreed upon agency).
- 22
- 23 6. If either parent changes their work schedule or moves from their current residence they shall advise the other parent and the parenting plan shall be mediated if necessary.
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7. All communications for scheduling issues or issues pertaining to the children shall be via email (unless otherwise agreed to by the parties).

8. Either parent may have grandparents assist in transferring the children in their absence.

9. Both parents agree to pursue "counseling" for the children (i.e. an outlet) if necessary, which may be a counselor, social worker, teacher, etc.

10. Both parents recognize that Nathaniel has an immediate need for counseling regarding issues pertaining to his spending time with his mother. The parties shall pursue counseling for this issue with both parents having access to the counselor and involvement in the process. Dad agrees to be present for transfers of Nathaniel between the parents as able to help address this issue.

11. Parents agree to keep Anthony in "social programs" as suggested by the GAL to assist him with working on his speech. The parents may use facilities close to their respective homes, but they will try to find complimentary programs to find consistency for Anthony. Both parents may participate in any of these programs for Anthony.

VII. Declaration for Proposed Parenting Plan

Does not apply.

VIII. Order by the Court

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected. "JLS" PUN.

Dated: 9-6-11 FILED IN COUNTY CLERK'S OFFICE Judge/Commissioner

Presented by: [Signature] A.M. SEP - 6 2011 Approved for entry. P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY [Signature] 22459 DEPUTY [Signature] 35382

Raj Baines
Signature of Party or Lawyer/WSBA No.

Nicole M. Bolan
Signature of Party or Lawyer/WSBA No.

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SEE ATTACHED
David L. Hayes
Petitioner

Crystal Hayes
Crystal J. Hayes
Respondent

please see attached
Laurie Ault-Sayan, GAL

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Laurie Ault-Sayan
Laurie Ault-Sayan, GAL

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David L. Hayes
Petitioner

Crystal J. Hayes
Respondent

Laurie Ault-Sayan, GAL

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

In re the Marriage of:

DAVID HAYES

and

CRYSTAL HAYES

Petitioner,

Respondent.

No. 10-3-03692-9

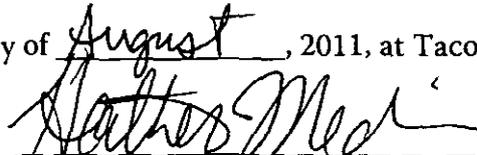
DECLARATION RE:
FAX SIGNATURE

HEATHER D. MEDINA, declares and states as follows:

The foregoing facsimile signature of Laurie Ault-Sayan, which is page nine (9) of the pleading entitled Final Parenting Plan, is a complete and legible facsimile that I have examined personally and that was received by me via Fax number (253) 627-6252.

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

SIGNED this 30th day of August, 2011, at Tacoma, Washington.



HEATHER MEDINA, Paralegal

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

<p>9 In re the Marriage of:</p> <p>10 DAVID L. HAYES,</p> <p>11 Petitioner,</p> <p>12 and</p> <p>13 CRYSTAL J. HAYES,</p> <p>14 Respondent.</p>	<p>No. 10-3-03692-9</p> <p>GR 17 DECLARATION OF COUNSEL</p>
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15

16 RAJ BAINS, under penalty of perjury hereby declares as follows:

17 I am DAVID L. HAYES' attorney, and submit this declaration pursuant to GR 17. I

18 have knowledge of the facts contained herein and am competent to testify thereto. The

19 Parenting Plan signature page was received on August 23, 2011 by facsimile. The facsimile

20 pleading has been examined, is complete and legible, and consists of twelve (12) total pages

21 (inclusive of signature page, exclusive of this GR 17 Declaration).

22

23 DATED this 6th day of September, 2011.

24

25 UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON, I HEREBY DECLARE THAT THE
26 FOREGOING IS TRUE AND CORRECT.

27


RAJ BAINS

28 GR 17 DECLARATION OF COUNSEL-1

29

LAW OFFICES OF RAJ BAINS, P.S.C.
33305 - 1st Way South; Suite B-205
P.O. BOX 23637 Federal Way, WA 98093
Tel.: (253) 838-3377 Facsimile: (253) 838-5188

WHALLEY LAW PLLC

May 24, 2018 - 10:15 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51183-5
Appellate Court Case Title: David L. Hayes, Respondent v. Crystal J. Fox (Hayes), Appellant
Superior Court Case Number: 10-3-03692-9

The following documents have been uploaded:

- 511835_Briefs_20180524100624D2832879_8960.pdf
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Briefs - Appellants Reply
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