

No. 51579-2

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

---

ELIZABETH HOPE EVARTS,  
Appellant,

v.

JEREMY EVARTS  
Respondent.

FILED  
COURT OF APPEALS  
DIVISION II  
2019 DEC -3 PM 3:54  
STATE OF WASHINGTON  
RY  
DEFEND

---

**REPLY BRIEF OF APPELLANT**

---

Robert Helland, WSBA 9559  
Attorney for Appellant

HELLAND LAW GROUP, PLLC  
960 Market Street  
Tacoma, WA 98402  
(253) 572-2684

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES .....ii**

**ARGUMENT**

**I. PROCEDURAL BACKGROUND 1.**

**II. OBJECTIVES OF A PERMANENT PARENTING PLAN/  
BEST INTEREST OF THE CHILD 2.**

**III. 191 RESTRICTIONS 7.**

**IV. SPOUSAL MAINTENAINCE AND ATTORNEY'S FEES 13.**

**V. CONCLUSION 18.**

**TABLE OF CASES, STATUES AND OTHER AUTHORITIES**

**CASES**

*Bulicek v. Bulicek*, 59. Wn.App. 630, 633, 800 P.2d 394 (1990).....15  
*In re the Parentage of CMF*, 179 Wn.2d 411, 314 P.3d 1109 (2013) .... 13  
*In State v. Bilal*, 77 Wash.App. 720, 893 P.2d 674 (1995).....17  
*In Wolfkill Feed and Fertilizer Corp. v. Martin*, 103 Wash.App. 836.....17

**STATUTES**

RCW 26.09.002.....13  
RCW 26.09.090..... 14  
RCW 26.09.184(1) ..... 13

## **I. PROCEDURAL BACKGROUND**

The appellant initially filed a petition for order for protection on August 15, 2016 with a contested hearing date of August 29, 2016. The appellant likewise filed a petition for legal separation on August 29, 2016. RP 64-69. On August 29, 2016 the appellant agreed to dismiss the petition for order for protection in favor of mutual restraining orders issued in the legal separation proceeding. RP 97-101.

As a result of the appellant's petition for legal separation, the court entered a temporary parenting plan on September 27, 2017, following a contested hearing which allowed the respondent to raise all issues he had pertaining to the mother's parenting ability. RP 187-192. Although the respondent suggests that the court decided to leave the children with the mother since the mother was residing in the family home, there is no evidence in the record supporting said statement. The temporary parenting plan placed the children with the mother. RP 187-192. The

temporary parenting plan did not have any 191 restrictions against the mother. RP 187-192. The temporary parenting plan reserved 191 domestic violence restrictions against the father. RP 187-192. The temporary parenting plan did not place any restrictions on the mother's parenting whatsoever. RP 187-192.

The respondent did not seek reconsideration or revision of said temporary parenting plan, with the exception of summer visitation. RP 236-239.

The record does not reflect that the respondent brought any subsequent motion prior to trial to restrict or modify the temporary parenting plan.

## **II. OBJECTIVES OF PERMANENT PARENTING PLAN/ BEST INTEREST OF THE CHILD**

RCW 26.09.184 sets forth those objectives. Those objectives are based upon protecting the best interest of the child consistent with RCW 26.09.002, "the best interest

standard is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or is required to protect the child from physical, mental or emotional harm." RCW 26.09.002.

The majority of the father's concerns pertaining to the mother's parenting of the children were known to the father at the time of separation. These concerns were brought to the attention of the court Commissioner at the time of the initial temporary custody determination hearing. RP 122-124; RP 125-130; RP 131-132; RP 133-136; RP 137-139; RP 140-142; RP 143-148; RP 176-180. The court did not find any reason to limit the mother's contact with the children and placed the children with the mother subject to the father having visitation with the children. The father was not granted a 50/50 parenting plan despite the fact that the father claimed that he worked from home. RP 109.

The father/respondent had the opportunity to provide all information concerning the mother's parenting to the

Guardian ad litem. The father had the ability to provide the Guardian ad litem with collateral contact information for other references. The Guardian ad litem recommended that the mother be the primary custodian and, when communication improves between the parents, that there be joint decision-making. The Guardian ad litem recommended that both parents follow the recommendations stemming from the recent evaluations through Lori Harrison/Advantages Plus Counseling. The Guardian ad litem further recommended that both parents engage in parallel co-parenting classes. The only parent specific recommendation made by the Guardian ad litem was that the father and children engage in family therapy with an experienced therapist. RP 37-56.

The Guardian ad litem's report indicates that the Guardian ad litem reviewed the court file which contained all pleadings and declarations filed on behalf of the respondent/father. RP 37-56.

Following the mother's trial testimony involving the

sex party and the attendance of a Pierce County Superior Court Commissioner, the trial court judge temporarily transferred custody of the children to the father and directed psychological evaluations with the court's preferred PhD level psychiatrist psychologist, Dr. Manley. RP 439-446.

The court directed that Dr. Manley be provided with collateral information including the mother's courtroom testimony and information to be provided by the father. RP 439-446.

Dr. Manley's report pertaining to the mother concludes with recommendations, which read in part as follows:

Ms. Everts would profit from active engagement in consistent, weekly individual counseling for 12 months with a licensed mental health provider. The therapist should have its expertise in dependent and histrionic personalities and domestic abuse. It is not necessary to seek a faith-based counseling

perspective. There is no reason to think Ms. Evarts cannot parent her children during this period.

Dr. Manley further recommended that Ms. Evarts be referred for a non-faith-based domestic violence survivor group for six months. RP 1053-1087.

Dr. Manley, as part of his forensic conclusion, found that Ms. Evarts appears to be a mother who has a good foundation of parenting skills. He found during his observation session that she approached her interactions with the children with a kind and soft tone. Dr. Manley noted that her past supervised visitations had gone well. Dr. Manley further found ample reports of Mr. Evarts dysregulated anger and implied violence through aggressive behaviors. RP 1053-1085.

As respondent states, Dr. Manley's conclusions cannot be ignored.

Notably absent in Dr. Manley's report is any finding

by Dr. Manley that the mother has a delusional disorder or suffers from any delusional traits.

Following the mother's trial testimony concerning the Pierce County Superior Court Commissioner, the court immediately temporarily transferred custody of the children to the father and required the mother to have supervised visitation. The court required supervised visitation with Kate Lee, with the mother being responsible for 100% of the cost of the supervised visitation. RP 439-446.

### **III. 191 RESTRICTIONS**

The court entered 191 restrictions against the mother including abusive use of conflict. RP 605-612. The respondent/father in his original proposed parenting plan did not claim that 191 restrictions for abusive use of conflict should be entered against the mother. RP 111-121.

The trial court was provided at time of trial, a copy of the Lori Harrison/Advantages Plus Counseling report evaluating the mother. EX 3. Ms. Harrison did not find any

significant limitations pertaining to the mother which would limit her ability to parent. The Guardian ad litem had access to and reviewed the report of Lori Harrison. RP 37-56.

Following trial, the court did not immediately enter its final order parenting plan. It wanted Dr. Manley's evaluation first. The court required mother to have supervised visitation. RP 439.446.

The trial court indicated that the supervised visitation was hopefully only temporary in nature. RP 439-446.

On December 21<sup>st</sup>, 2017 the Court ordered professionally supervised visitation for three times a week, two hours per time, with Kate Lee, at mother's expense, with a review hearing on June 15<sup>th</sup>, 2018. RP 384.

Between the entry of the final order parenting plan and the Court's first review, issues developed with the parties oldest child, Ellie. Ellie was not pleased with living with her father. Ellie wrote a series of three letters to the

judge which expressed her dissatisfaction with the court's ruling. RP 670-676. Ellie eventually started running away from her father's residence. RP 686-715. Shortly before the June 29, 2018 review hearing, Ellie had run away from her father. Ellie had been subsequently captured by her father and was dragged across the roadway by her father after capture. RP 733-848. Ellie had road rash and bruising as a result of that incident. RP 733-848. The court interviewed Ellie and determined Ellie should immediately live with her mother. The court directed Ellie to engage in counseling and said counseling would not be for litigation purposes. The court did not require the father to pay any portion of the counseling. RP 716.

The court at the same time, June 29, 2018, directed that the other three children would remain with their father and that those children would not have any contact with Ellie, in any way whatsoever. RP 716. The court allowed the mother to arrange for professionally supervised visitation between the siblings at mother's expense with neither parent being present for the visits. RP 716. The court

reduced mother's visitation with the remaining children to a 2 hour per week professionally supervised visitation with someone other than Kate Lee. RP 716. The court set a review date for August 17, 2018. RP 716.

Shortly thereafter, on July 2, 2018, the Guardian ad litem filed a letter with the court indicating that the Guardian ad litem had been contacted by Ellie. The Guardian ad litem described the telephone call as being from a child who was very distraught and highly emotional who claimed to have been recently hospitalized and was spiraling down. The Guardian ad litem expressed her serious concern with regard to Ellie and the children. The Guardian ad litem stated that Ellie had told her that her father had told all the children that they would never see their mother again because she has mental health issues. RP 645-646.

On July 19, 2018, the court directed that the mother's supervised visitation would be through the Multicultural Child and Family Hope Center in Tacoma. The Court indicated that it did not want any reports from the center

except if a serious situation occurs. RP 725-732.

Dr. Manley had recommended that the mother have 12 months of counseling to address issues raised by Dr. Manley, including the mother's exposure to domestic violence. Dr. Manley had recommended LaShanda Harvey. Her report filed with the court on June 22, 2018, indicates that the mother was appropriately attending all sessions and was appropriately involved in the counseling. RP 643.644.

At the Court's review hearing on August 17, 2018 the court directed the mother to continue to work with LaShanda Harvey to include issues pertaining to Ellie and how to support Ellie's relationship with her father. The court directed that the Mother's friend Beth could have contact with Ellie, but not with any of the other children. The court declined to set any further review hearings. RP 849-850. Therefore, the final order parenting plan and the Court's subsequent orders where mother will have once a week professionally supervised visitation remain in effect. The Mother will pay child support for all four children even

though Ellie lives with her. The three children live with the father will not be allowed to have any contact with their sister Ellie, or vice versa, except when mother arranges and pays for professionally supervised visitation between the children.

There is no professional recommendation that the mother's residential time with the children be limited or that mother cannot adequately parent the children.

There is no professional recommendation that the children be separated or that the children be prohibited from having any contact whatsoever with each other. There is no finding by the court why such arrangements are in the children's best interest.

The court has terminated its review of this matter. The Appellant's only recourse is to petition for modification of the parenting plan and show a substantial change of circumstance. The court no longer allows the supervised visitation provider to provide reports nor Ellie's counselor to

be involved in the litigation process.

In re the Parentage of CMF, 179 Wn.2d 411 our Court held that the parenting act of 1987 promotes the child's relationship with both parents. Id at 419.

The CMF court held:

A parenting plan's overriding purpose is to do what is in the best interest of the child. RCW 26. 09. 002; see RCW 26. 09. 184(1) (detailing the specific objectives of the parenting plan). The legislature specifically recognizes that the child's best interests are normally served "when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or is required to protect the children from physical, mental, or emotional harm." RCW 26. 09. 002. id at 419.

#### **IV. SPOUSAL MAINTENANCE AND ATTORNEY'S FEES**

The appellant was a homemaker and was not

working for many years prior to separation. RP 76-79.

The appellant was not employed at time of dissolution trial.

The trial court divided the parties' assets and liabilities on a 50/50 basis after a 16 year marriage. CP 586-588. The trial court directed the mother to pay child support in the amount of \$50 per month per child for a total of \$200 per month to be offset during the first 12 months against her spousal maintenance award of \$1,500 for 6 months and \$1,000 for 6 months. RP 592-599. Mother is solely responsible for the cost of: Supervised visitation for mother's visitation with the children; mother's weekly counseling expense with LaShanda Harvey; and supervised visitation expense between the children.

RCW 26. 09. 090, which deals with spousal maintenance, requires the court to consider:

1. The financial resources of each party; and

2. The time it would take for a spouse who is seeking maintenance to acquire education or training for employment; and

3. The standard of living and duration of the marriage; and

4. The physical and emotional condition of the spouse seeking maintenance; and

5. The ability of the spouse from whom maintenance is sought to meet his or her own financial obligations.

The trial court has broad discretion with regard to the award of maintenance. *Bulicek*, 59 Wn. App. 630, at 633. The only limitation on the amount and duration of the award is that, in light of the factors listed in RCW 26.09.090, the award must be just. *id* at 630.

The appellant does not believe the award of spousal maintenance was just. The court's decision attempts to divide the assets on the 50/50 basis.

The father claims that due to his \$3000 a month house

payment that he will not have sufficient funds to pay spousal maintenance. The husband was awarded all of the equity in the home and the wife was awarded an interest in the husband's retirement funds which are taxable to her upon withdrawal. Therefore, mother will be forced to liquidate her marital assets for support while the husband uses \$3000 a month to continue to build equity in the asset awarded to husband.

Wife who has no work history since 2004 is required to pay child support in the amount of \$200 per month for the four children residing with the father. Now that one of the children is living with the mother the child support remains the same, \$200 per month to father and mother receives no support for the child living with her.

Mother is required to pay all costs of professionally supervised visitation for herself to see the three children living with father as well as the professionally supervised visitation for the children to see each other together with mother's weekly counseling session.

The same arguments apply to the appellant's request for attorney's fees at time of trial.

## RECUSAL

Appellant requested the court to recuse itself insofar as it appeared to the mother that the court was punishing her for her testimony that a Pierce County Superior Court Commissioner was involved in a sexual party.

*In Wolfkill Feed and Fertilizer Corporation v. Martin*, 103 Wash.App. 836, at 841 the court stated:

Due process, the appearance of fairness, and the Canon 3(d)(1) of the code of judicial conduct requires disqualification of the judge when bias against the party or whose impartiality may be reasonably questioned.

*In State v. Bilal*, 77 Wash.App. 720, at 722 the court stated:

Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and

disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing.

Ignoring professional recommendations and further restricting the mother's professionally supervised time without reason and creating a parenting plan that is not reviewable except by filing a petition to modify the parenting plan and entering an order which prevents the children in the father's custody from having any contact with the child in mother's custody, raises a question of unfairness of the court.

## **V. Conclusion**

The court Commissioner addressing the parties' temporary parenting plan entered at the onset of the legal separation proceeding did not find any basis to limit the mother's contact with the children or to place any 191 restrictions against her, including abusive use of conflict or alienation of the father. In fact, the court Commissioner placed the children with their mother.

Lori Harrison/Advantages Plus Counseling did not raise any issue supporting a transfer of the children from mother to father or otherwise limiting the mother's ability to parent the children on a full-time basis.

The Guardian ad litem did not find any limiting conditions that would justify a transfer of custody of the children from mother to father. In fact, the Guardian ad litem recommended that the children remain with their mother and the only specific counseling for either parent was directing the father to be involved in counseling with the children.

Dr. Manley did not find the mother to be delusional, or to have delusional traits. Dr. Manley did not find any reason why the mother could not parent the children effective immediately.

The supervised visitation provider directed by the court, Kate Lee, had significant concerns pertaining to the children's relationship with their father. Kate Lee did not

have any concerns pertaining to the children's relationship with their mother.

The oldest child ran away from her father's home after the children were placed with their father.

The mother's counselor, LaShanda Harvey, has not stated any concerns pertaining to the mother's involvement with her counseling, or otherwise.

The court has now prohibited the three children residing with the father from having contact with their sister living with the mother in any way whatsoever except through a professionally supervised situation, paid for by the mother. The Court has not stated why such an arrangement is necessary or is in the children's best interest.

The mother's professionally supervised time with the children has been reduced for no stated reason.

The court divided the parties' assets and liabilities on a 50/50 basis and declined to award any attorney's fees and provided limited spousal maintenance.

The court has not provided a mechanism to allow for review of the parenting arrangements for the children without the filing of a petition to modify the parenting plan and obtaining an order of adequate cause.

The appellant does not believe that the orders of the trial court are in the children's best interest.

DATED this 3<sup>rd</sup> day of December 2018

RESPECTFULLY SUBMITTED,

  
\_\_\_\_\_  
Robert Helland, WSBA #9559  
Attorney for Hope Evarts, Appellant

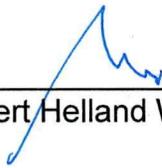
**Declaration of Transmittal**

Under penalty of perjury under the laws of the State of Washington I affirm the following to be true:

On this date I transmitted the original document to the Washington State Court of Appeals, Division II, by personal service and delivered a copy of this document via US POSTAL SERVICE:

Joseph Loran  
Loran & Ritchie, P.S.  
615 Commerce Street, Suite 103  
Tacoma, WA 98402  
joe@loranritchie.com

Signed at Tacoma, Washington on this 3<sup>rd</sup> day of December 2018.

  
\_\_\_\_\_  
Robert Helland WSBA 9559

BY \_\_\_\_\_  
DEPUTY

STATE OF WASHINGTON

2018 DEC -3 PM 3:55

FILED  
COURT OF APPEALS  
DIVISION II