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No. 52283-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

JACOB HOCKING,

Petitioner/Appellee,

v.

CHESTER D. FLAGGARD,

Respondent/Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE KARENA KIRKENDOLL

BRIEF OF RESPONDENT

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I. INTRODUCTION

On February 20, 2015, the trial court awarded non-parental custody of the 5-year-old S.N.F to Chester Flaggard, maternal grandfather. The courts decision was rendered after a contested trial where both parties were represented by counsel. The issue presently before the court relates to whether Jacob Hocking, S.N.F.'s biological father, has satisfied conditions imposed by the court and whether the court's refusal to find adequate cause and/or allow review is consistent with prevailing law.

It is important to note that the non parental custody trial came about following the tragic death of S.N.F.'s mother. Specifically, in May 2013, in violation of a five year no-contact order, Jacob was on the cell phone with, S.N.F.'s mother, Diana Flaggard, as Diana was driving herself and the child to Jacob's home when she ran a red light and was killed. S.N.F. was severely injured in the crash and spent weeks in a body cast. Jacob then soon took custody of S.N.F. and cut off all contact with Chester and the child's extended family on that side, despite the fact that S.N.F. had resided most of her life in Chester's home.

Jacob is more than \$21,000 in arrears in his support obligation to S.N.F. as of February 2018 and it is substantially more (\$28,000) now.

Jacob Hocking who has subsequently been diagnosed with Antisocial Personality Disorder, has a long history of criminality, domestic violence and drug/alcohol abuse. The trial court found that he abused, attempted to anally rape with a bottle of hot sauce, tortured and beat a number of female intimate partners, often in the presence of their very young children.

At a court hearing on March 30, 2018, Jacob shouted at the Court Commissioner, “This is Bullshit!” and added, “My daughter [S.N.F.] was taken from me without any evidence of any abuse at all!” This outburst further illustrates why it would be neither appropriate nor safe to consider Jacob Hocking the relief he now seeks.

II. RESTATEMENT OF FACTS

Jacob Hocking (father of subject child S.N.F.), now 32 years old, was raised as a child in a domestically violent, drug and alcohol fueled household where all his first-degree relatives have

significant criminal and chemical dependency issues. CP 139-140.

Jacob's own criminality goes back to at least 14 years of age and his abuse of drugs and alcohol go back to age 11. CP 29 and 141. Jacob has engaged in selling crack cocaine, attempted rape, torture and strangulation of adult females, admitted use of methamphetamines and significant domestic violence against women (15 or more incidents), often while their minor children were present, including S.N.F. CP 137 to 141. Here is a specific list of Jacob's known adult criminality:

- (1) Selling crack cocaine;
- (2) Threatening to kill wife (Batchimeg);
- (3) Tore up wife's clothes;
- (4) Smashed wife's windshield with her 1-year-old son in the car;
- (5) Hit, slapped and strangled wife;
- (6) Assaulted wife's sister;
- (7) Threatened to kill himself to wife;
- (8) Destroyed wife's cell phone;
- (9) Repeatedly yanked wife to the bed by her hair;
- (10) Held a knife to wife's throat;

- (11) Threw a knife at wife while she was holding their 4-year-old son and it stuck in the wall;
- (12) Dragged wife from outside the apartment by her hair up the stairs into the bedroom;
- (13) Demanded wife turn over her cell phone and passcode or her would shove a bottle of hot sauce up her rectum; Wife refused so Jacob obtained the bottle of hot sauce from refrigerator, tore off wife's clothes and underwear and proceeded to attempt to insert hot sauce bottle when wife relented and turned over phone and passcode; Parties' 4 year old son was present;
- (14) Unlawfully imprisoned wife for 3 to 4 hours until neighbors called police;
- (15) Smashed wife's computer;
- (16) Attempted to burn wife with cigarettes;
- (17) Caused wife to jump out of a moving car to avoid assault;
- (18) Threatened to kill girlfriend Louise;
- (19) Attempted to break into Louise's home;
- (20) Threatened to beat Louise so badly she'd end up in the hospital;

- (21) Implied to girlfriend Diana Flaggard that he would kill her family;
- (22) Slammed Diana's face into her laptop computer with such force it broke the screen, cut open Diana's face causing it to bleed and causing Diana's face to swell to the point of causing Diana difficulty in seeing;
- (23) Diana reported to the police that there had been 10 to 15 additional instances of unreported domestic violence and that it all occurs in the presence of the child;

CP 137-140.

In 2011, Jacob plead guilty to domestic violence against Diana Flaggard (the now deceased mother of subject child) and a 5 year no-contact order was entered between Jacob and Diana. CP 139. Despite the no contact order, Jacob impregnated Diana in 2013. CP 139. Also, in violation of the no contact order, in May 2013 Jacob was actively on a cell phone call with Diana Flaggard when she ran a red light on the way to his house and was tragically killed. CP 139. She was 16 weeks pregnant with his child at the time of her death. CP 139. The subject child S.N.F., then 4 years old, was in the back seat of Diana's automobile

when the collision occurred and was severely injured in the crash and spent weeks in a body cast. CP 139.

S.N.F., now 9 years old, has spent virtually her whole life residing in the home of her grandfather and Petitioner, Chester Flaggard, including from birth up until the death of her mother Diana Flaggard. CP 141.

Approximately 1 month after the deadly collision, Jacob took physical custody of S.N.F. from Chester Flaggard and proceeded to cut off all contact between Chester and S.N.F. over the next 5 ½ months until Chester was able to get legal assistance and into court to get S.N.F. returned to his custody. CP 140-141. Jacob also cut S.N.F. off from all extended family related to Chester. CP 141. The trial court found this conduct by Jacob to be outrageous. CP 141.

In the short period that Jacob had S.N.F. in his sole custody after the death of Diana Flaggard, he told S.N.F. that she had “ugly eyes” because of the shared Asian features S.N.F. shared with her deceased mother. CP 111, 141.

During the custody trial, Jennifer Knight a forensic counselor who has worked with over 4,000 children testified that S.N.F. told her, “That you have to be careful around daddy because daddy gets mad.

Daddy hit me in the head. Daddy hit momma just to be mean. Daddy pushed momma's face into a computer. There were a few other things." CP 110. Ms. Knight reviewed her notes and continued, "That daddy is only nice when people are looking. When I asked her if she was able to see grandma and grandpa while she was living with dad, she said that dad said that they were bad and she couldn't see them." CP 111. Ms. Knight also testified, "It's proven that if a child reminds them of somebody that they mistreated the child is at an even high risk." CP 112.

After a contested trial for custody of S.N.F. by Chester where Jacob was represented by counsel, testified himself and presented a number of witnesses on his behalf the trial court granted custody to Chester and entered a number of findings of fact and conclusions of law on February 20, 2015 that were not challenged or appealed by Jacob. CP 135-149.

The trial court entered the following findings and conclusions, in part:

The following reasons exist for limiting visitation of the

Respondent: Jacob Hocking:

Physical, sexual or a pattern of emotional abuse of a child.

A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

Other:

Limitations on visitation with the child will not adequately protect the child from the harm that could result if the child has contact with Jacob Hocking. As such, Jacob Hocking shall have no visitation with the child until he:

- A. Submits to a full forensic psychological evaluation with an agreed upon, or court authorized Ph.D. level, state licensed, psychologist. Such evaluation must include full collateral contacts including Chester Flaggard, the petitioner; Jennifer Knight, the child's counselor; all court records filed herein or referenced herein; and all police reports filed herein or referenced herein, and all CPS reports filed herein or referenced herein. Such evaluation to be solely at the expense of Mr. Hocking. The full

evaluation must be filed in this court file (under a confidential coversheet) and Mr. Hocking must have begun participating in any treatment recommendations as a condition precedent to filing a petition for minor modification of the parenting plan.

- B. Mr. Hocking must obtain a statement from the child's counselor, Jennifer Knight, and file it in this court file about whether reunification counseling should or should not commence between Mr. Hocking and the child and whether or not it is in the best interests of the child (this is merely a recommendation and not binding on this court) as a condition precedent to filing a petition for a minor modification of the parenting plan.
- C. Submits to a full state-certified domestic violence and chemical dependency evaluation by Castele Williams and Associates, or other agreed upon agency. Such evaluation must include same full collateral contacts as required by the forensic psychological evaluation described in A above. Mr. Hocking shall successfully be at least halfway through completion of any treatment

recommendations contained in said evaluations as a condition precedent to filing a petition for a minor modification of the parenting plan.

- D. Completes a 12-week parenting class through Catholic Community Services or the equivalent, as a condition precedent to the filing of a petition for minor modification of the parenting plan.
- E. Successfully completes at least 12 consecutive clean bi-weekly observed random 11 panel UA's (including ETG). He must provide proof under a confidential coversheet into this court file of six months of clean consecutive random weekly observed 11 panel UA's + ETG as a condition precedent to the filing of a petition for a minor modification of the parenting plan.

CP 142-143.

Jacob had a set of twins by another intimate partner who were born on the same day as S.N.F. and were the subject of dependency actions out of King County Superior Court under case numbers 14-7-02729-8 SEA and 14-7-02730-1 SEA. CP 91 and 180. Those twins were ultimately placed in Jacob's permanent custody.

In his Petition to dismiss Chester's custody decree, Jacob falsely states under penalty of perjury, "The evaluation [DV evaluation and chemical dependency evaluation], as well as the forensic psychological evaluation, included full collateral contacts." CP 180. This is simply false. The trial court specifically required that the collateral contacts include contact with Jennifer Knight, the child's counselor; all court records filed herein or referenced herein; and all police reports filed herein or referenced herein; and all CPS reports filed herein or referenced herein. CP 143. None of the aforementioned collaterals occurred by any of the evaluators or treatment providers as required by the trial court. Virtually all the aforementioned records and police reports were exhibits admitted at trial without objection by Jacob's then attorney.

Further, none of the evaluators (DV, Chemical Dependency, Dr. Wieder, Mary E. Hoppa) were either agreed upon by Chester or authorized by Pierce County Superior Court as required by the trial court. CP 142, 204, 274, 325-26. Mary E. Hoppa holds an online doctorate in Educational Psychology from Capella University but is not a licensed psychologist. CP 229, 233.

It is extremely troubling that no domestic violence evaluation

appears to have been completed of Jacob and, if it was, it certainly was not submitted to the court in support of Jacob's motion to dismiss Chester's custody decree of S.N.F. Because of this, there is no way to see what, if any, collateral contacts were performed by the evaluator and what, if any, documentation the evaluator reviewed. It appears that Jacob attended a number of DV treatment sessions. CP 3-27. There is reference to NAVOS Mental Health Solutions and a New Sunrise Counseling group, but neither group was agreed to by Chester nor approved by Pierce County Superior Court. CP 3-27. And, as previously mentioned, no indication as to what Jacob reported as to his history nor what collaterals or documents were reviewed.

As required by the trial court, Jacob failed to obtain a statement from Jennifer Knight, the forensic counselor who interviewed the child at least 5 times. CP 89, 142, 204, 274, 325-26.

On October 14, 2016, Gary Wieder, Ph.D. and licensed psychologist, diagnosed Jacob with Antisocial Personality Disorder amongst other troubling diagnoses. CP 103.

Regarding the Substance Use Disorder Assessment of 07/18/2016 that Dr. Wieder administered to Jacob, Dr. Wieder writes, "However, no collateral sources were contacted, and no objective measures of

substance use were employed.” CP 93. Dr. Wieder further points out that Jacob claimed to have not had any alcohol whatsoever since 2012, yet his fiancé’ Schynequa Mathis stated that Jacob last consumed alcohol in the summer of 2016. CP 97.

In his evaluation, Dr. Wieder makes the significantly false statement, “The child’s [S.N.F.] mother [Diana] died in a motor vehicle accident unrelated to Jacob.” CP 92. However, Jacob was on the cell phone with Diana when she was killed due to running the red light. It is not alleged that Dr. Wieder intentionally made a false statement, but Dr. Wieder does not appear to understand what actually occurred and why Jacob’s involvement in Diana’s death and the child’s severe injury is so significant.

Also of significance, during his self-report of Family History to Dr. Wieder, Jacob “described no unusual childhood trauma and no physical or sexual abuse, substance abuse, or criminal behavior perpetrated by his parents. He said that he remains close to his sister and brother “ CP 96. Yet, as pointed out in the trial court’s findings of facts, Jacob’s father was charged with domestic violence against his mother in 1991 when Jacob was 5 years old and the charges were dismissed because his mother refused to testify against his father. CP

140. Further, Jacob's mother was charged with assault on Halloween 2001. CP 140.

Jacob reported to Mary Hoppa that his mother was emotionally abusive to him during his childhood. CP 51. Mary Hoppa notes, "Mr. Hocking feels that his relationship with his mother was not good in that she was abusive verbally which led to him going to live with his father. Mr. Hocking feels that his older half-brother physically abused him when he (Mr. Hocking) was a boy;" CP 52. All of this directly contradicts what Jacob self-reported to Dr. Wieder. CP 96.

Jacob also directly reported or strongly insinuated to Mary Hoppa that he had not consumed alcohol since 2010. CP 52. Mary Hoppa writes, "The evaluator [Lori M. Rickert at Serenity Counseling] felt that Mr. Hocking was open and honest during the assessment and that the evidence gathered appeared to substantiate that. No further treatment was recommended." CP 52. In July 2016, Jacob reported his last use of alcohol to Ms. Rickert as being 2011 which would be after his 30-day inpatient treatment. CP 29. Yet, as noted by Dr. Wieder, Jacob's fiancé reported alcohol use by Jacob in 2016. It should be noted that Serenity Counseling was not agreed upon by Chester and not approved by the Pierce County Superior Court.

Dr. Wieder adds, “His [Jacob’s] score of 9 places him in the highest risk category of re-offense over the next 5 years. . . .” CP 101.

Even more troubling, Mary Hoppa further writes, “Mr. Hocking was forthcoming with his previous history of educational, judicial and substance abuse. . . . He has been truthful about his past history. . . .” CP 59.

On December 12, 2017, Jacob filed a Petition to Change a Custody Order to dismiss Chester’s Custody Decree of S.N.F. and to grant himself sole custody of her.

On March 30, 2018, at the hearing on reconsideration of denial of his petition for dismissal of Chester’s custody decree of S.N.F., Jacob disrupted the court proceedings and shouted at the Court Commissioner, “This is Bullshit!” and added, “My daughter [S.N.F.] was taken from me without any evidence of any abuse at all!” CP 336-337. Clearly showing zero insight into the severe damage he has caused all involved—particularly S.N.F.--through his criminality and utter lack of personal responsibility for his actions. Jacob’s outburst to the court let his true colors shine through.

As of February 2018, Jacob was more than \$21,000 in arrears in his child support obligation to S.N.F. and is substantially more in arrears

as of now (\$28,000). CP 212. Jacob had only paid less than \$1,400 towards his child support obligation as of February 2018 over the past 5 years. CP 212.

This court should also be aware that in his first declaration filed on January 29, 2018, Jacob feigns taking responsibility for his past criminality and domestic violence and states, “I make no excuses for my prior behavior. . . .” CP 195. Then in his declaration of February 26, 2018, Jacob writes, “Lastly, Mr. Flaggard’s mention of sexual abuse and torture is completely ridiculous. This in an additional fabrication brought on by one police report regarding a domestic violence dispute between my ex-wife and myself.” CP 229.

One more particularly disturbing fact is when Jacob writes, “Additionally, Shanel lived with me following the accident for 5 ½ months and did not show any signs of being traumatized by the accident. If she is being treated for trauma now then its [sic] due to imaginings by Mr. Flaggard being told to Shanel.” CP 229.

III. LEGAL AUTHORITY AND ARGUMENT

A trial court's adequate cause determination on a nonparental custody petition is reviewed for an abuse of discretion, like in other custody determinations. *In re Custody of L.M.S.*, 187 Wn.2d 567, 574,

387 P.3d 707 (2017). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. *Id.*

Trial courts are given broad discretion in matters dealing with the welfare of children. *In re Marriage of McDole*, 122 Wash.2d 604, 610, 859 P.2d 1239 (1993).

If a custody decree follows a contested custody hearing under RCW 26.10.140, one would look to the court's findings of fact and conclusions of law to see whether unfitness or actual detriment were found. *See* CR 52(a)(1) and (2)(B) (requiring findings and conclusions). *In re Custody of Z.C.*, 191 Wn. App. 674, 696, 366 P.3d 439 (2015). In the case at bar, unfitness and actual detriment by Jacob was specifically found by the trial court after a full contested trial where Jacob was represented by counsel. CP 135. Because Jacob's liberty interests were protected under Washington law, he is subject to the adequate cause threshold established by RCW 26.10.190 more fully described below. *In re Custody of T.L.*, 165 Wn. App. 268, 284, 268 P.3d 963 (2011).

Jacob failed to appeal or challenge the trial court's findings of fact and conclusions of law entered after trial in 2014.

A. IT IS ACKNOWLEDGED THAT A FIT PARENT HAS A CONSTITUTIONALLY PROTECTED LIBERTY INTEREST TO RAISE CHILD WITHOUT STATE INTRUSION.

The United States and Washington State Supreme Courts have long recognized a parent's fundamental right to the care and custody of his or her child. This right is protected under the due process clause, and equal protection clause of the Fourteenth Amendment, and the Ninth Amendment. The right to raise his or her child is an essential basic civil right. *Stanley v Illinois*, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).

A state's interference with a parent's right to raise his or her child is subject to strict scrutiny, "justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved" *In re Custody of Smith*, 137 Wn.2d. 1, 15, 969 P. 2d. 21 (1998) aff'd *sub nom Troxel v Granville*, 530 U.S. 57, 120 S Ct. 20541 147 L. Ed. 2d 49 (2000). Only under extraordinary circumstances will Washington courts subordinate a parent's constitutional rights (to the care and custody of his or her child) to that of a non-parent. *In re Custody of Shields*, 157 Wn.2d. 126, 145, 136 P. 3d. 117 (2006).

Washington's Non Parental Custody Act, Chapter 26.10 RCW, addresses custody rights between parents and non-parents. Under Chapter 26. 10., to protect a parent's constitutional rights, Washington courts demand that a non-parent prove the natural parent is either unfit or that actual detriment will occur to the child, before it will consider even the slightest infringement on natural parents' constitutional rights. *In re Custody of E.A.T.W.*, 18 Wn.2d. 335, 344, 227 P. 3d. 1284 (2010).

At all stages, Jacob's constitutional right to safely parent S.N.F. has been protected by the courts. All of the power and ability for Jacob to rehabilitate, reunify and possibly dismiss Chester's custody decree over S.N.F. lies with Jacob. He simply has to complete each of the steps laid out with crystal clarity by the trial court in the findings of fact and conclusions of law. Chester has no ability to stop Jacob from completing the process. If Jacob runs into a roadblock that he believes is put up by Chester, that roadblock can be easily resolved by the trial court.

For example, if Chester disagrees with all evaluators proposed by Jacob, Jacob can ask the court to approve one because the findings provide, "or court authorized" on each type of evaluator or psychologist. CP 139. If the child's counselor Jennifer Knight refuses to give a

collateral contact to an evaluator or treatment provider, Jacob can raise the issue with the court. However, Jennifer Knight was never even contact by a single evaluator or treatment provider. CP 89.

The collateral contacts required by the trial court are essential to the future safety of S.N.F. when the evaluators are making treatment recommendations for Jacob and when the trial court is evaluating whether or not Jacob has rehabilitated his ability to safely parent S.N.F. because Jacob has a long history of not being truthful. See inconsistencies above by Jacob regarding his past history of alcohol and drug usage, violence in his childhood and extreme denial and minimization of his horrific actions against women and children. More importantly, the trial court made the unchallenged finding of fact, “This Court finds that Jacob Hocking was not credible and was generally not truthful in his denials and/or minimizations of the above criminal actions.” CP 139.

B. CUSTODIAL CHANGES ARE HIGHLY DETRIMENTAL TO CHILDREN.

Case law adopts the strong statutory presumption in favor of custodial continuity and against modification. *In re Marriage of Roorda*, 25 Wn. App. 849, 851, 611 P.2d 794 (1980) *(citing* RCW 26.09.260, .270; *Anderson v. Anderson*, 14 Wn. App. 366, 541 P.2d 996 (1975); 9A

U.L.A. § 409, Comm'rs Note at 212 (Master ed. 1979)). “Custodial changes are viewed as highly disruptive to children.” *In re Marriage of Shryock*, 76 Wn. App. 848, 850, 888 P.2d 750 (1995) (citing *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993)). “Another purpose of the statute is to discourage a noncustodial parent from filing a petition to modify custody” because “[l]itigation over custody is inconsistent with the child’s welfare.” *Roorda*, 25 Wn. App. at 851-52, 611 P.2d 794.

The statutory requirement to establish adequate cause “provid[es] stability for the child by imposing a heavy burden on a petitioner which must be satisfied before a hearing is convened.” *Roorda*, 25 Wn. App. at 851, 611 P.2d 794. In *Roorda*, the court noted the related policy “of preventing harassment of the custodial parent and providing stability for the child by imposing a heavy burden on a petitioner which must be satisfied before a hearing is convened.” *Roorda*, 25 Wn. App. at 851, 611 P.2d 794. Of course, the burden to establish adequate cause by a parent against a non-parent custodian is lightened—particularly since the non-parent is not required to show a substantial change of circumstance in the non-parent custodian.

C. JACOB HAS NOT MET THE LESSER ADEQUATE CAUSE THRESHOLD REQUIRED BY RCW 26.10.190 AND RCW 26.09.270.

RCW 26.10.190 references RCW 26.09.260 and 270. RCW 26.09.270 states the court “shall deny the motion” to schedule a hearing on a petition to modify the parenting plan “unless it finds that adequate cause for hearing the motion is established by the affidavits.” *Id.*

In *Roorda*, we held that the adequate cause finding “requires something more than prima facie allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change.” *Roorda*, 25 Wn. App. at 852, 611 P.2d 794. In *In re Parentage of Jannot*, 110 Wn. App. 16, 25, 37 P.3d 1265 (2002), *affirmed*, 149 Wn.2d 123, 65 P.3d 664 (2003), the Washington Supreme Court held, “The court should require something more than unsupported conclusions.” “[T]he information considered in deciding whether a hearing is warranted should be something that was not considered in the original parenting plan.” *Jannot*, 110 Wn. App. at 25, 37 P.3d 1265 citing *Roorda*, 25 Wn. App. at 853, 611 P.2d 794). “[T]here must be some prima facie showing of each element.” *Jannot*, 110 Wn. App. at 24, 37 P.3d 1265.

As noted above, it is conceded that to establish adequate cause as contemplated by RCW 26.10.190, Jacob does not have to show a

substantial change of circumstances in Chester's situation, only his own. However, he has failed to do this.

In *E.A.T.W.*, the Washington Supreme Court interpreted the meaning of adequate cause. *In re the Custody of E.A.T.W.*, 168 Wn.2d at 344-48, 227 P.3d 1284 (2010). The court states, "RCW 26.09.270 requires that affidavits 'set[] forth facts supporting the requested order or modification.'" *E.A.T.W. at 347*. The court held that "at the very minimum," adequate cause under RCW 26.09.270 means a showing that supports " 'a finding on each fact that the movant must prove in order to modify.'" *E.A.T.W.*, at 347, (quoting *In re Marriage of Lemke*, 120 Wn. App. 536, 540, 85 P.3d 966 (2004)).

The Washington Supreme Court in *Jannot* expressly adopts an abuse of discretion standard and emphasizes that the child's "weighty interest in finality" distinguishes the statutory adequate cause determination from other cases where a child's living arrangements are not at stake. *Jannot*, 149 Wn.2d at 126-28. "[W]e recognize that a trial judge does stand in a better position than an appellate judge to decide whether submitted affidavits establish adequate cause for a full hearing on a petition to modify a parenting plan." *Jannot at 126*.

Parenting plans are “individualized decisions that depend upon a wide variety of factors, including ‘culture, family history, the emotional stability of the parents and children, finances, and any of the other factors that could bear upon the best interests of the children.’ ” *Jannot* at 127 (quoting *Jannot*, 110 Wn. App. at 19-20, 37 P.3d 1265). The court concluded the relevant factors “and their comparative weight are certain to be different in every case, and no rule of general applicability could be effectively constructed.” *Jannot* at 127. A trial court must “weigh these varied factors on a case-by-case basis.” *Id.* “Because adequate cause determinations are fact intensive,” the court held the trial court must articulate “on the record ... the reasons for denying a full hearing.” .

In the case at bar, Jacob has utterly failed to establish that he has rehabilitated and can safely parent S.N.F. He totally disregarded the trial court’s requirements to find evaluators and psychologists that were either agreed upon or authorized by the Pierce County Superior Court—presumably with Chester’s input. Then, despite the issues regarding the agreed upon evaluators/psychologist, Jacob fails to obtain the statement from Jennifer Knight (S.N.F.’s counselor) and appears to either lie or make significant inconsistent statements to the evaluators/psychologist. On top of that, there clearly was not the level of collateral contact with

people and documents as required of the evaluators/psychologists by the trial court.

In fact, Jacob was so cavalier about the requirements listed by the trial court in the Findings of Fact and Conclusions of Law that he did not even get Dr. Wieder's psychological evaluation to his lawyer until after the initial Adequate Cause hearing forcing his lawyer to have to bring a motion for reconsideration to get it before the court, wasting additional time and money for everyone involved. CP 258-262.

D. ATTORNEY'S FEES ON APPEAL

Chester asks for his fees on appeal on two theories: (1) this appeal by Jacob is frivolous and (2) Jacob's continuing intransigence.

As previously noted, Jacob is already more than \$21,000 in arrears in his support obligation to S.N.F. This litigation and appeal just further takes money away from the child. Jacob was given a clear and unequivocal roadmap to rehabilitation, reunification and ultimately termination of Chester's custody decree over S.N.F. However, Jacob has bucked the system and insists on doing it his way, not the court's way. It is indisputable that Jacob provided no evidence of submitting to a domestic violence evaluation. It is indisputable that there were not proper collateral contacts for his substance abuse evaluation nor the

evaluations by Wieder and Hoppa. Jacob even failed to get his evaluation to Wieder submitted to the court in a timely fashion causing even more fees, costs and hearings. This improper litigation is bad for S.N.F. and causes unnecessary and significant financial and emotional stress to her maternal grandfather Chester Flaggard.

“An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists.” *Chapmanv. Perera*, 41 Wn.App. 444, 455–56, 704 P.2d 1224, *review denied*, 104 Wn.2d 1020 (1985). Because Jacob's arguments turn on the trial court's clear and explicit findings of fact and conclusion of law and determinations of credibility and weight of the evidence or lack of evidence, matters which are not subject to review, this appeal presents no debatable issues upon which reasonable minds might differ and is devoid of merit. Chester therefore requests reasonable appellate attorney fees to under RAP 18.9 upon his compliance with RAP 18.1.

IV. CONCLUSION

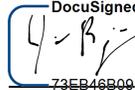
Based upon the foregoing, this court should affirm the trial court in all regards. This court should reject Vaughn’s appeal and award Turner her attorney fees on appeal.

For the foregoing reasons, this Court should affirm the denial of Adequate Cause in its entirety and grant Chester's request for an award of attorney fees.

Dated this 28th day of May, 2019.

RESPECTFULLY SUBMITTED,

DocuSigned by:



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Attorney for Respondent

BENJAMIN & HEALY

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