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COURT OF APPEALS DIVISION II
STATE OF WASHINGTON

In re Marriage of:

No. 52476-7-II

ADAM J. IMPALA,

Respondent,

and

JULIE R. IMPALA,

Appellant.

REPLY BRIEF OF APPELLANT

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No. 52476-7-II

ADAM J. IMPALA,

**REPLY BRIEF OF
APPELLANT**

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Appellant.

Response to Substantive Issues

At p. 9 of his Brief, Adam quotes Judge Blinn as saying, “Obviously, Cannon needs his mother and his father, but I think during school years, consistency is highly valued. And so, obviously, that could potentially be revisited down the road, but I want the order to be entered today to reflect exactly that.” Julie has very limited options in the future relative to an action for a major modification of this parenting plan.

Right above the last paragraph on p. 25 of Adam’s Brief, he states, “If Julie’s circumstances change substantially in the future, her remedy is

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modification under RCW 26.09.260.” Adam incorrectly states the law of modification. In relevant part, said statute states as follows:

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan. [Emphasis added.]

In fact, absent the parties' agreement, or her proving at least substantial change in circumstances in Adam's or Cannon's life not contemplated at the time of trial, Julie would be very unlikely to prevail in a modification action to changing the 86/14 residential schedule back to 50/50. Arguably, she might prevail in an action for minor modification, e.g., adding another 24 nights during the school year that Cannon is with her.

At p. 17 of his Brief, Adam asserts as follows: “The point here is that the entire statutory scheme, applied by a court with a unique opportunity to observe the parties, is how a permanent parenting plan is established, not be parsing out a single sentence of policy and relying exclusively upon it.” First, Julie did not rely exclusively on anything. Her Brief cited the same

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statutes as Adam’s Brief, and she spent several pages discussing them-- not just the last sentence in RCW 26.09.002.

Second, Julie wholeheartedly agrees with Adam’s assertion. But in applying the entire statutory scheme, Judge Blinn failed to consider or at least failed to protect against the deleterious consequences of going from a 50/50 to 86/14 residential schedule when Cannon begins kindergarten.

At p. 18 of his Brief, Adam quotes the penultimate sentence in RCW 26.09.002 as follows: “The best interests of the child are served by a parenting arrangement that best maintains a child’s emotional growth, health and stability, and physical care.” At the top of p. 19, Adam goes on to assert that Judge Blinn arguably focused on all this when rendering his decision. What Judge Blinn focused on is stated in his Decision. But again, what is lacking in his Decision is any discussion of the deleterious consequences of going from a 50/50 to 86/14 residential schedule when Cannon begins kindergarten.

Second, at pgs. 20-21 of Adam’s Brief, he misses the point in discussing applying case law relative to modification regarding the change in schedule when Cannon begins kindergarten. Julie agrees that a difference exists between a final parenting plan entered after a divorce trial and a final parenting plan entered as a result of a modification action. She

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is not asking the Court to ignore the tenet of finality in parenting plan law although she questions Adam's cite to In Re Custody of Halls, 126 Wn. App. 599, 109 P.3d 15 (2005) as authority for that principle.

The major point of her citing In re Parentage of Schroeder, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001)--a modification case--is to provide further authority for the proposition that changes in residences are highly disruptive to children. And changing Cannon's residence when he begins kindergarten from 50/50 to 86/14 (in favor of father during the school year) could be highly disruptive to Cannon at that time.

Relative to the last paragraph on p. 21 of Adam's Brief, Julie is arguing that Judge Blinn abused his discretion and she disagrees with his decision--all for the reasons stated in her initial Brief.

At the bottom of p. 21 of Adam's Brief, he states that, "[Julie] acknowledges that the bulk of the residential time she will lose will be the result of Cannon being in school Monday through Friday" Adam incorrectly states the facts. Julie discusses this issue at 13:19-23 of her Brief but never states that the time that she will be losing with Cannon once he begins kindergarten will be the "bulk" of her residential time. However, relative to the school schedule, and from an overnight point of view, she will lose the bulk of her time with Cannon, i.e., she will lose over a third of her

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time with him. That is, her 50 percent of the time will decrease to 14 percent of the time.

Regarding Adam’s discussion beginning in the last paragraph on p. 22 of his Brief and continuing to Section 3 on p. 23--Julie does not dispute that Judge Blinn focused on consistency and stability, and thus she had no reason to spend much time in her initial Brief addressing or analyzing those factors. What she disputes is the extent to which Judge Blinn took into consideration Cannon’s best interests in fashioning a remedy that significantly reduces his time with his mother once kindergarten begins.

Response to Request for Attorney Fees

This Court should deny Adam’s request for an award of attorney’s fees for the following substantive reasons:

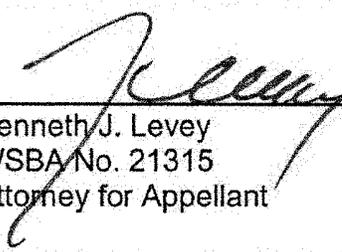
1. Relative to Julie appeal, debatable issues--as discussed in both of Julie’s Briefs--exist upon which reasonable minds might differ; and
2. Julie’s appeal contains sufficient merit that one cannot conclude that no reasonable possibility of reversal exists.

Streater v. White, 26 Wn. App. 430, 434–35, 613 P.2d 187 (1980).

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RESPECTFULLY SUBMITTED this 26th day of March, 2019.

Respectfully Submitted,
The Levey Law Group, P.S.

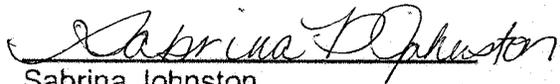

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the law of the State of Washington that on the below day, the document to which this Certificate is affixed was file in the Court of Appeals, and a true copy was sent to the following attorney of record through the Court of Appeals' portal, and via a direct email from me:

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SIGNED at Tomball, Texas, this 26th day of March, 2019.


Sabrina Johnston
Paralegal to Kenneth J. Levey

THE LEVEY LAW GROUP, P.S.

March 26, 2019 - 11:40 AM

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