

FILED  
Court of Appeals  
Division II  
State of Washington  
3/18/2019 1:19 PM

No. 52476-7-II

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

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**JULIE R. IMPALA, Appellant**

**v.**

**ADAM J. IMPALA, Respondent**

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**BRIEF OF RESPONDENT**

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## I. STATEMENT OF THE CASE

### A. IDENTIFICATION OF THE PARTIES

This appeal involves the Final Parenting Plan (CP 1-13) entered in the parties' dissolution of marriage case on August 3, 2018. The Appellant is Julie Impala; the Respondent is Adam Impala.<sup>1</sup>

### B. HISTORY OF THE PARTIES

This case involves the dissolution of a sixteen (16) month marriage. Adam and Julie Impala were married on July 24, 2015 and they separated on December 4, 2016. CP 91; RP 113. The parties have a son, Cannon, who was two (2) years old at the time of trial and is now three (3) years old. RP 113. At the time the case was filed, Julie was in rehab for drug and alcohol abuse. CP 176.

Adam and Julie had a whirlwind romance. RP 120. They dated for a relatively short period of time and Julie became pregnant. RP 120. Thus, they decided to get married. RP 120.

After they were married, the truth about Julie started to reveal itself. When the parties were dating, she told Adam that she did not drink. She told him that she was "allergic to alcohol." RP 120-121. The fact that she didn't drink is one of the things that Adam found attractive about Julie.

She did not drink during her pregnancy, but she took narcotic pain medication. RP 122. She had to stay an extra day in the hospital after

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<sup>1</sup> For clarity, the parties will be referred to herein as Julie and Adam. No disrespect to the parties is intended by the use of these designations.

Cannon was born as a result. RP 122. After Cannon was born, Julie began drinking and started drinking heavily. RP 125-129. She also started abusing narcotic pain killers. RP 124-125.

Adam knew something wasn't right and so did his family. Adam's mom had a background check done on Julie and the results were startling. Leaving out traffic tickets and minor offenses, the highlights are as follows (CP 176-177):

1. August 28, 1998, Julie was charged with **DUI** in King County. RP 85.
2. August 13, 2001, Julie was charged with **reckless endangerment** in Pierce County. RP 85.
3. January 13, 2005, Julie was charged with **possession of drug paraphernalia** in Pierce County. RP 86.
4. June 6, 2005, Julie was charged with **felony possession of methamphetamine** in Pierce County. RP 87; CP 165-167.
5. September 28, 2005, Julie was charged with **unlawful possession of payment equipment**, and with **forgery**, here in Pierce County. These were felony charges. RP 87-88; CP 168-171.
6. On April 11, 2006, Julie was charged with **theft in the third degree**. RP 88.
7. On January 8, 2008, Julie was charged with **identity theft** here in Pierce County. RP 88-89.
8. On April 10, 2010, Julie was charged with another **DUI**, again here in Pierce County. RP 89.

Julie and Adam were sharing time with Cannon after they separated, shortly before this case was filed. When Julie had Cannon, her mom was providing child care. CP 213. When Adam had Cannon, his parents were providing child care. CP 213. About a week to ten days prior to the filing of this case, Julie checked herself into rehab at Schick Shadel Hospital. CP 177. Cannon moved in with Adam. CP 176.

Julie began sending Adam threatening text messages. CP 177. She threatened to take Cannon away from Adam and was threatening him with lawyers and legal proceedings. CP 177. Julie kept telling Adam that this is a “momma state” and she cannot lose. CP 177. She forced him to file this case and seek relief.

**C. SITUATIONAL HISTORY**

Adam works for the Boeing Company. RP 114. He works Monday through Friday, eight hours per day. RP 114. Adam has worked for Boeing since 2004. RP 114. Throughout the case, he has been working the second shift from 1:00 p.m. until 10:00 p.m. RP 114. This gives him the most time possible with Cannon. RP 114-115. Adam owns a home in Lakewood and has no plans to move. RP 113; 144-45. He wants to provide Cannon with the stability of having one home, one school district, and the continuity of having the same friends throughout his primary and secondary education. RP 144-45.

Julie works at Vakkar Salon, which her mother owns. RP 77-78. Julie is a hairdresser and works a sporadic schedule. RP 78-79.

Traditionally, Julie worked 40-50 hours per week. RP 32. In her first declaration she filed in this case, Julie said that she was only working one day per week and was earning approximately \$2,500.00 to \$3,000.00 per month. CP 205; RP 78. Julie is a signer on the business bank account. RP 79. She manages the business. RP 79. She doesn't pay a chair rental. RP 80. Julie uses no QuickBooks or accounting software for the business. RP 82. She currently lives rent free in a home that her brother owns. RP 82. The home is located in Eatonville, where Julie's parents live. She has no plans to relocate from Eatonville.

***D. JULIE'S HISTORY OF SUBSTANCE ABUSE***

Julie has undergone drug and alcohol treatment at Schick Shadel on three occasions in 2007, 2010 and 2017. RP 23. Julie also suffers from anxiety. RP 25.

Julie went to treatment in 2007 for opioid addiction. RP 26. Julie was abusing the prescription drug Percocet. RP 26.

Julie relapsed in 2010. She was abusing alcohol as well as Percocet. RP 28. She suffered alcohol poisoning at that time. RP 30. In addition, she was taking 7-10 Percocet tablets daily. RP 31.

During that stay at Schick Shadel Hospital, Julie refused opioid treatment. RP 33, 34, 35, 41. Julie did not mention her 2007 Schick Shadel treatment in her interrogatory answers. RP 45. She did not mention her 2007 Schick Shadel treatment in her first declaration filed with the Court. RP 47.

Julie was being seen by Dr. Osman Carrim at the time the case was filed. He filed a declaration on her behalf, referenced in CP 204. Dr. Carrim was prescribing opioids for Julie, but Julie never told him she had been to rehab twice for opioids. RP 47-48.

Julie used opioids while she was pregnant with Cannon. RP 121-122. Cannon had to be monitored for opioid withdrawal after his birth. RP 122.

Julie started drinking after Cannon was born. RP 123. She continued to use opioids after Cannon was born. RP 124-125. She used opioids daily after Cannon's birth. RP 125.

The first time Julie drank alcohol after Cannon was born she said she wouldn't do it again. RP 126. However, she drank again the next night. RP 126. She started drinking several times a week. RP 127. Adam would come home from work and Julie would be on the floor. RP 128. Adam came from home from work in February 2017, to find the front door wide open and Julie babbling to the wall. RP 128.

Julie would call Adam at work, saying she had taken a pill and he needed to get home. RP 128. Adam would have to leave work early, race home and take care of Cannon. RP 128.

The parties were separated for six months prior to Julie going to rehab in 2017. RP 131. During that time, Adam saw Cannon every weekend. RP 131. During that period of time, Julie's living conditions were "gross" according to Adam. RP 132. On one occasion, Julie asked

Adam to watch Cannon at her place. RP 134. He did so and found her living conditions to be deplorable. RP 133; Exhibit 12.

Julie's mother, Terri Shelton, agreed with Adam that Julie needed help and she gave Cannon to him to care for. RP 139. Julie went to rehab for the third time at Schick Shadel Hospital in 2017. RP 140. Julie had to detox from alcohol for six days before she could start treatment. RP 54. Julie drank the day she checked into Schick Shadel, June 1, 2017. RP 76. Julie claimed that she only had one drink that morning, but her blood alcohol was tested during her intake at Schick Shadel Hospital and her blood alcohol level was .88 upon admission. RP 77.

Julie was not honest during her intake at Schick Shadel Hospital on June 1, 2017. RP 61. Julie admitted that she was not truthful about her alcohol use. RP 61. After she was admitted to the hospital, she reported to her clinical nurse that she would drink 3-4 times per week and was daily drinking six 32 oz margaritas and six shots of vodka. RP 62. She also told Schick Shadel upon admission that she had no history of suicide attempts. RP 55. In fact, Julie had attempted suicide twice before. RP 55-56.

For the six months of the parties' separation before Julie went to Schick Shadel for the third time, January 2017 – June 2017, Julie's mother Terri was helping her with Cannon. However, during this time Terri would bring alcohol to Julie's home. RP 242. She would have drinks with Julie during that period of time. RP 243. Terri testified that

Julie thought she could get off opioids by drinking alcohol. RP 243. Terri did not attempt to dissuade Julie of this idea. RP 243-244.

Julie testified that she started drinking because she had “postpartum depression.” RP 288. Julie was never actually diagnosed with postpartum depression, however. RP 289.

#### ***E. PROCEDURAL HISTORY***

Adam filed this case on June 5, 2017. CP 91-94. Adam obtained an ex parte restraining order on June 6, 2017, giving him temporary primary care of Cannon. CP 198-201. After a full hearing, a Temporary Parenting Plan was entered that provided daytime only visits for Julie for a period of thirty days. CP 226. Julie was to obtain random UAs for a period of time and file the results. CP 231. If the UAs were clean, her residential time would expand to an equal time parenting schedule, following the 2-2-5-5 model. CP 231.

Julie filed a Motion for Revision on July 17, 2017. CP 232-255. The motion was heard by the Honorable Bryan Chushcoff on August 18, 2017. Judge Chushcoff denied Julie’s motion. CP 256-257.

The case was tried before the Honorable Grant Blinn on June 21, 25 and 26, 2017. Judge Blinn issued a written decision on July 17, 2018. CP 102-108. A presentation hearing was held on August 3, 2018 and final pleadings were entered. CP 1-36. Julie filed a Motion for Reconsideration on August 13, 2018. RP 37-84. Judge Blinn entered an

order denying the motion for reconsideration on September 7, 2018. RP 85.

## **II. ARGUMENT**

### **A. SUMMARY OF POSITION**

It is Adam's position that Judge Blinn did not abuse his discretion when fashioning the Final Parenting Plan that was entered in this case. A trial judge is given great discretion in divorce proceedings and is in the best position to evaluate the evidence presented, particularly the live testimony of the parties and witnesses. Judge Blinn made it abundantly clear that he wants both parents involved in Cannon's life as much as possible, so long as Julie remains clean and sober. Judge Blinn also made it clear, however, that he valued stability in Cannon's life, and that once Cannon begins school his best interests will be served by having stability throughout the school week. That stability is best provided by Adam, given that Adam owns his home, will not be moving and is established in his neighborhood in Lakewood. Julie, on the other hand, currently resides over 30 miles away in Eatonville, in a home she rents from a family member.

Julie has not provided a factual or legal basis to support the argument that Judge Blinn abused his discretion in adopting the Parenting Plan that he adopted. Further, Julie never had a legal basis for her motion for reconsideration and, thus, has no legal basis to contend that her motion for reconsideration was wrongfully denied.

At the presentation hearing that was held on August 3, 2018, counsel for Julie asked Judge Blinn if he would leave the 2-2-5-5 parenting schedule in place when Cannon begins kindergarten, on the condition that Julie move into the same school district that Adam lives in. In response, Judge Blinn stated:

I actually considered that as a possibility when I was writing the letter, and I just decided not to address it unless there was a specific request to do so. It was my intent to enter an order that does allow Mr. Impala to have Cannon a majority of the time, even if Mrs. Impala moves into the district. For a variety of reasons, not all particular to Mrs. Impala. I just think there's a benefit to a child, a school age child, having a level of consistency in terms of what home they go to each night, the structure, the routine, the schedule, the homework expectations.

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. RP August 3, 2018, page 8, line 24 to page 9, line 15.

It is Adam's position that Julie's appeal should be denied and dismissed, and that he should be awarded attorney's fees for having to respond to it. Adam will explain his position in detail below.

**B. THE LEGAL STANDARD OF REVIEW FOR A FINAL PARENTING PLAN IS ABUSE OF DISCRETION**

As the Court of Appeals, Division II, stated in its opinion in *In Re Parentage of Schroeder*, 106 Wash. App. 343, 22 P.3d 1280 (2001):

The appellate court reviews the trial court's rulings on residential provisions in a parenting plan for an abuse of discretion. *Littlefield*, 133 Wash.2d at 46, 940 P.2d 1362. A trial court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Littlefield*, 133 Wash.2d at 46–47, 940 P.2d 1362. A decision is manifestly unreasonable if, based on the facts and the applicable legal standard, the decision is outside the range of acceptable choices. *Littlefield*, 133 Wash.2d at 47, 940 P.2d 1362. A decision is based on untenable grounds if the findings are not supported by the record. *Littlefield*, 133 Wash.2d at 47, 940 P.2d 1362. Finally, a decision is based on untenable reasons if the court applies the wrong legal standard or the facts do not establish the legal requirements of the correct standard. *Littlefield*, 133 Wash.2d at 47, 940 P.2d 1362. **Because of the trial court's unique opportunity to observe the parties, the appellate court should be “extremely reluctant to disturb child placement dispositions.”** *In re Marriage of Schneider*, 82 Wash.App. 471, 476, 918 P.2d 543 (1996), *overruled on other grounds*, *Littlefield*, 133 Wash.2d at 57, 940 P.2d 1362. *id* at 349 (*emphasis added*).

The various factors set forth by the *Schroeder* court in the excerpt above will be discussed throughout this brief. It bears repeating at this point, however, that the trial court's “unique opportunity to observe the parties” should be focused upon because much of the basis for Judge Blinn's parenting plan rulings was Julie's testimony, including the inconsistencies between her testimony and her own medical records, and the Judge's conclusion from those inconsistencies that Julie has “not yet fully confronted the nature and extent of her addiction.” RP 104.

Judge Blinn was also in the unique position to weigh Adam's credibility based upon his testimony, and his ability to provide consistency and stability in Cannon's life. Judge Blinn found Adam to be credible. RP 105.

Finally, Judge Blinn was in the unique situation of being able to evaluate the testimony of the parties' mothers, including which mother would provide a better support system for her child and her grandchild. Judge Blinn was concerned that Julie's mother "has at times provided alcohol to [Julie] even after knowing of her history." RP 104. Judge Blinn commented that "This suggests the [Julie's] support structure may not be sufficient for [Julie] to avoid relapsing again, or to promptly seek treatment in the event of another relapse." RP 104.

**C. THE COURT DID NOT ABUSE ITS DISCRETION**

**1. One sentence in RCW 26.09.002 does not control this case.**

Julie is relying upon one sentence of "policy" under RCW 26.09.002 while ignoring the rest of the policy set forth in that statute and, more importantly, the entire body of statutory and case law governing the establishment of a final parenting plan.

**2. The statutory scheme governs the establishment and implementation of a permanent Parenting Plan.**

**a. Parenting Plan statutes:** Establishment of a permanent parenting plan is governed by several statutes – RCW 26.09.181-191. RCW 26.09.181 sets for the "Procedure for determining permanent

parenting plan.” RCW 26.09.182 directs the Court to review JIS for background on the parties and other adults in the child’s life. RCW 26.09.184 sets forth the objectives and contents of a current parenting plan, and RCW 26.09.187 sets forth the “Criteria for establishing permanent parenting plan.” All of these statutes work in conjunction as the framework to guide a trial court in fashioning a final parenting plan. The law that Julie relies primarily upon, RCW 26.09.002, sets forth general policy regarding parenting plans while the statutes give the Court actual direction in how to establish the terms and conditions of a final parenting plan in a given case.

***b. Objectives of a permanent Parenting Plan.*** It is interesting to note the “objectives” of a permanent parenting plan as set forth in RCW 26.09.184 (1). They are as follows:

- (1) OBJECTIVES. The objectives of the permanent parenting plan are to:
  - (a) Provide for the child's physical care;
  - (b) Maintain the child's emotional stability;
  - (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
  - (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
  - (e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

The Court met these objectives in fashioning its ruling. The Court provided for Cannon's care (a), sought to maintain his emotional stability (b), and provided for Cannon's changing needs in the future by adjusting the parenting schedule when Cannon begins school (c). Rather than having Cannon changing homes two or three times during the school week, and potentially having to drive over thirty miles each way to and from school, the Court determined that it would be in Cannon's best interest to have stability during the school week and provided for that now rather than having a "future modification" (c). The Court also set forth the authority and responsibilities of each parent (d) and minimized the child's exposure to harmful conflict (e). Finally, it's important to note that subsection (g) highlights the "best interests of the child" language of RCW 26.09.002, the statute Julie relies upon, which will be discussed in detail below.

**c. Statutory factors.** With the statutory objectives in mind, a trial court is then compelled by law to consider the evidence it was presented and analyze it using the factors set forth in RCW 26.09.187 (3). That is

exactly what the Court in this case did. The RCW 26.09.187 (3) factors are as follows:

**(3) RESIDENTIAL PROVISIONS.**

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

The Court analyzed each of these factors in its written decision, and gave factor (i) the greatest weight. It also made specific findings under RCW 26.09.191 that Julie “. . . has a long-term problem with drugs, alcohol or other substances that gets in the way of her ability to parent.” The Court stated in its decision, at CP 104-105, that:

The Court finds that a limiting factor exists pursuant to RCW 26.09.191(3)(c); namely that Mrs. Impala has a long-term impairment resulting from drug, alcohol or other substance abuse that interferes with the performance of parenting functions. This impairment is evidenced by her repeated stays at Schick Shadel Hospital. Mrs. Impala acknowledges being treated there in 2007, 2010 and 2017. The medical records in exhibit 13 suggest that there was one, and perhaps two, additional occasions where Mrs. Impala checked into in-patient treatment. Her in-patient treatment was necessitated by her addictions to alcohol, opioids and benzodiazepines. There is no evidence that she has relapsed in the last year since her most recent discharge. However, the Court has several ongoing concerns for her sobriety, and by extension, her ability to perform parenting functions. First, she has a history of returning to drugs and alcohol even after having completed treatment. Second, although she has a wonderful and tight-knit family, her mother has at times provided alcohol to Mrs. Impala even after knowing of her history. This suggests that her support structure may not be sufficient for Mrs. Impala to avoid relapsing again, or to promptly seek treatment again in the event of another relapse. Third, and most importantly, this Court believes that Mrs. Impala has not yet fully confronted the nature and extent of her addictions. Specifically, her statements to treatment providers are inconsistent, and these statements in turn are contradicted by

her testimony. For example, in 2017 she initially told the staff at Schick Shadel that she used alcohol, a few drinks, 3 times per month. At another point she indicated that she was drinking 3 or 4 times a week. She later admitted in treatment that she had not been truthful, that she had been drinking six 32 oz. "Sparks" margaritas or beers and 6 shots of vodka daily for the past two weeks. After discharge, she submitted a declaration to this court indicating that her reason for going to Schick Shadel was an aftercare checkup to restore and stabilize herself. Numerous similar inconsistencies are apparent when her testimony is compared with her statements to her treatment providers. All of this suggests that she has not fully addressed the nature and extent of her addictions, and may not yet have the tools to maintain ongoing sobriety.

Abuse of alcohol, especially when paired with abuse of opioids and benzodiazepines, interferes with the performance of parenting functions. Mr. Impala testified to specific examples of this, such as arriving home and finding the door to the residence open and Mrs. Impala intoxicated and incoherent. The Court finds Mr. Impala credible. Even absent such examples, common sense dictates that there is interference with performance of parenting functions when a parent is engaged in regular co-occurring abuse of alcohol, opioids and benzodiazepines.

The Court commends Mrs. Impala for pursuing [sic] treatment, and does intend to attach a stigma to her addictions. However, to the extent that those addictions have not been fully addressed, they pose a risk of harm to Cannon, and limitations under RCW 26.09.191(3)(c) are appropriately ordered in this case.

Julie ignores, or fails to acknowledge, the portions of the Court's written ruling that deal with her limiting factor, which is her long-term impairment from drug, alcohol or other substance. The Court's

comments, findings, conclusions and rulings in this regard are the direct result of its "...unique opportunity to observe the parties . . ." The Court noted in its ruling that it has ". . . several ongoing concerns for [Julie's] sobriety, and by extension, her ability to perform parenting functions." It noted that she has a ". . . history of returning to drugs and alcohol. . .", that her ". . . support structure may not be sufficient . . . to avoid relapsing again. . .", and that Julie ". . . has not yet fully confronted the nature and extent of her addictions." Most importantly, the Court concluded ". . . to the extent that those addictions have not been fully addressed, they pose a risk of harm to Cannon . . ." CP 105.

These statutes are set forth herein to show that the entire statutory scheme is to be followed by a trial court in establishing a permanent parenting plan, not just a single sentence of policy in RCW 26.09.002. The trial court in this case properly followed the statutory scheme and fashioned a parenting plan that it found to be in Cannon's best interest. The Court acted properly and fully within its discretion, and as discussed above in the excerpt from the *Schroeder* opinion, the Court has very broad and great discretion when entering a permanent parenting plan.

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 by parsing out a single sentence of policy and relying exclusively upon it.

***d. The policy set forth in RCW 26.09.002. RCW 26.09.002***

states as follows:

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. 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. Further, the best interest of the child 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 as required to protect the child from physical, mental, or emotional harm.

Julie ignores parts of the very statute she relies upon. Julie points solely to the last sentence of that statute and ignores the critical language that comes directly before it, which states that:

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.

This is arguably a more important sentence than the final sentence because the final sentence adds to the main sentence. The sentence quoted above highlights the need for ". . . emotional growth,

health and stability. . .” which are arguably what the Court was focusing on when rendering its decision.

It is perfectly appropriate for a Court to enter a final parenting plan that contemplates a scheduling changing in the future, based upon facts that are known to the Court at the time it makes its ruling. The policy of not modifying a final parenting plan absent a substantial change in circumstances is a good and valid policy, designed to keep children from growing up in the throes of constant litigation. That is a different circumstance, however, than a Court entering a final parenting plan and tailoring the schedule to account for future changes, such as entering school, *that the Court is already well aware of.*

One of the cases that Julie relies upon is *In Re Parentage of Schroeder, id.* While Julie cites the *Schroeder* opinion for the point that “changes in residences are highly disruptive to children,” she ignores other important language in the opinion, such as:

In Washington, “the best interests of the child shall be the standard by which the court determines and allocates the parties’ parental responsibilities.” RCW 26.09.002. **While courts also should encourage the involvement of both parents, this is a secondary goal and courts should never sacrifice the best interests of the child to allow both parents to be involved. *In re Marriage of Littlefield*, 133 Wash.2d 39, 52–53, 940 P.2d 1362 (1997). *id* at 349 (emphasis added)**

The Court in our case made it quite clear that Adam’s stability in his life, home and work would provide the greatest stability to Cannon

during his school years. RP August 3, 2018, page 9, lines 2-15. While Julie argues that the Court made no finding that a reduction in Cannon's time with his mother once he begins kindergarten would be in his best interests, she ignores the Court's verbal explanation of its thinking and rationale given at the presentation hearing in response to her request for the same relief she is seeking on reconsideration. She is also ignoring section 14 of the parenting plan the Court adopted which states:

**The residential arrangements defined above are provided in the best interests of the child. The child's interests are best served by a full and regular pattern of contact with both parents, responsiveness and cooperation by both parents, involvement by both parents in all aspects of the child's needs and a reasonably consistent routine of activities, values and discipline throughout both homes. Absence, inconsistency and conflict are opposed to the best interest of the child. (*emphasis added*)**

Julie fails to acknowledge that the *Schroeder* court was dealing with a change of primary care – a change “in residence...” based upon an allegation of a substantial change in the circumstances of the parties and the child. In other words, *Schroeder* involved an actual modification of a final parenting plan. What Judge Blinn was dealing with was a change in Cannon's schedule that everyone involved in the case knew would occur in September, 2021 – Cannon beginning school – in his formulation of a final parenting plan.

Julie would argue that the change in schedule when Cannon starts school equates to a “modification” of the 2-2-5-5 plan, but Cannon

beginning school *is not an unforeseen circumstance*. The Court's ruling gives Julie substantial time with Cannon for the next two years prior to his enrollment in school, at which time he will be less available to both parents and will need a stable school week/school year schedule. Julie is the one who is asking for a "modification" without the requisite procedures and a finding of adequate cause required by RCW 26.09.260. She is asking the Court to pre-judge her modification case and make a *conditional* ruling – to determine now that if she simply lives in the same school district as Adam that it will be in Cannon's best interest to be on a 2-2-5-5 schedule during his academic career. But we don't know where she will be living, who she will be living with, what her work schedule will be, and a whole host of other questions that could be asked. Julie is asking the Court to ignore a major tenet of Parenting Plan law – finality. *In re Custody of Halls*, 26 Wash.App. 599, 109 P.3d 15 (2005).

At the end of the day, Julie is not really arguing that Judge Blinn abused his discretion; rather, she is saying that she disagrees with Judge Blinn's decision and that the Court of Appeals should value her opinion more highly than it should Judge Blinn's opinion. This assertion is supported by Julie's own argument. She acknowledges that the bulk of the residential time she will lose will be the result of Cannon being in school Monday through Friday, where he will not be available for either party to spend time with. Brief of Appellant, page 13, lines 19-23.

Julie goes on to speculate that the change in schedule “. . . could put Cannon’s wellbeing as significant risk...” Brief of Appellant, page 14, line 6. Julie speculates that “. . . Cannon could develop significant problems after the schedule change goes into effect. It is common for children to develop issues of any sort when a substantial change is implemented.” Brief of Appellant, page 14, lines 10-12. This is sheer speculation on Julie’s part, however. There is no evidence on the record to support Julie’s contentions. In fact, Julie acknowledges that “. . . testimony was not provided at trial pertaining to issues that Cannon may or may not develop. He may weather this change without any issue whatsoever.” Brief of Appellant, page 15, lines 13-15. The point here is that Julie’s speculation does not, in any way, support the conclusion that Judge Blinn somehow abused his discretion.

Julie sums up the issue when she states “The question is, why “roll the dice” and put Cannon at risk of developing problems when he begins kindergarten?” Again, this is Julie speculating that Cannon might somehow develop problems as a result of the schedule change that takes place when he enters kindergarten. What Julie fails to do, however, is address or analyze Judge Blinn’s focus on consistency and stability, as set forth in his comments at the presentation hearing. For the sake of convenience, those comments are reiterated herein as follows:

And it was my intent to enter an order that does allow Mr. Impala to have Cannon the majority of the time, even if Mrs. Impala moves into the district for

a variety of reasons, not all particular to Mrs. Impala. I just think there's a benefit to a child, a school-aged child, having a level of consistency in terms of what home they go to each night, the structure, the routine, the schedule, the homework expectations.

Obviously, Cannon needs his mother and his father, but I think during school years, consistency is highly valued. RP August 2, 2018, page 9, lines 2-15.

Thus, the real question is how did Judge Blinn abuse his discretion in reaching his conclusions, based on the record before him? The plain and simple answer is that he did not.

***3. The Law Does Not Compel the Reserving of a Determination in This Case.***

Julie states in her brief that she relies upon the cases of *In Re Marriage of McDole*, 122 Wn.2d 604, 859 P.2d 1239 (1993), *In Re Marriage of Possinger*, 105 Wash.App. 326, 19 P.3d 1109 (2001), and *Matter of Marriage of Rounds*, 4 Wash.App.2d 801, 423 P.3d 895 (2018) for the proposition that Judge Blinn should have reserved making a final ruling on the Parenting Plan until Cannon begins kindergarten. What Julie fails to acknowledge, however, is that reserving the determination of a final parenting plan is a very unique remedy, used in very limited circumstances. For example, in the *Possinger* case, the trial court entered a final divorce decree but ruled that it would not enter a final parenting plan for one year. Unlike our case, however, the reason the Court delayed a year is because both parties' circumstances were

uncertain and in flux. In its opinion, the Court of Appeals, Division One, described the situation as follows:

At the time of the dissolution trial, Dawn Possinger expressed her desire to change her work schedule to a day shift. And the court noted that “[t]here was talk of ... moving” by one or both of the parents. Clerk’s Papers at 624 (Oral Decision). Jeffrey Possinger had not yet finished his first year of law school, and his future plans depended heavily upon whether he succeeded in law school or not.<sup>1</sup> After reviewing the circumstances of the parties, their respective testimonies, and the testimony of other witnesses including a family court caseworker, the court stated, “When I took your various scenarios and tried to work them out, and figure what is going to happen with this kid, it was very, very difficult for the Court to do.” *Id.* The court noted the parties’ respective work and school schedules were subject to change, there was mention of one or both parents moving, the child was due to begin kindergarten soon, and the child would begin first grade in approximately one year. *Id.* at 329

The challenge posed by the Appellant in the *Possinger* case was whether the trial court had the authority to enter a parenting plan that would be automatically revisited a year later, given the significant, but unknown, changes that were going to be occurring. The Court of Appeals ruled that the trial court had that authority.

The *Possinger* case is completely different than our case, however. Contrary to what Julie suggests, the Court of Appeals was not promoting the idea of automatically reviewable parenting plans. It merely ruled that under the unique set of circumstances in the Possinger’s situation, the trial court had the authority to do what it did. *Possinger* was

unique in that both parents' situations were so much in flux, and it was unknown at the time of trial where each parent would be living the following year when the child was to begin attending school on a full-time basis. In our case, the situation is the exact opposite. Adam's living and working circumstances are fixed and stable, and have been for some time, and they give Cannon the opportunity to live in one home and one neighborhood throughout his primary and secondary schooling. Interestingly, Julie testified at trial that she planned to stay in her same neighborhood (Eatonville), living on one of the properties her parents own. She never suggested at trial that she was contemplating moving closer to Adam to shorten the geographic distance between their two homes. It was only after the Court's ruling that Julie brought up the idea of moving to Lakewood. She has yet to testify that she has a firm plan in place to do so. To "build in" a change to the Parenting Plan based on Julie's whim, whether she moves to Lakewood or not, is inappropriate and is a procedure that is not contemplated by the law. If Julie's circumstances change substantially in the future, her remedy is modification under RCW 26.09.260.

"The major purpose behind the requirement of a detailed permanent parenting plan is to ensure that the parents have a well thought out working document with which to address the future needs of the children." *In re Marriage of Pape*, 139 Wash.2d 694, 705, 989 P.2d 1120 (1999) (quoting 3 WASH. STATE BAR ASS'N, FAMILY LAW

DESKBOOK § 45.3(3) (rev. ed. 1996)); *Possigner* at 114-15 (emphasis added).

In the *Rounds* case, the trial judge retained jurisdiction over the case “to resolve any future disputes that arise under the parenting plan.” *Rounds* at 802. In the *Rounds* case, the mother made numerous and serious false allegations about the father, including sexual abuse of the children. The trial court found that no abuse occurred and that the mother’s conduct amounted to an abusive use of conflict that “harmed the children by depriving them of a loving father.” *Id.*, at 803. Based on mother’s abusive use of conflict, the court restricted her time with the children. The court appointed a case manager to resolve future disputes. The court added language to the parenting plan that states that “if the case manager cannot resolve the dispute, then court action is necessary. Judge North reserved jurisdiction over this matter should return to court be necessary.” *Id.*, at 805.

The mother raised a single issue on appeal, that is an abuse of discretion for a trial court to retain jurisdiction indefinitely. *Id.*, at 804. To resolve that issue, the Court of Appeals stated:

Judge North's retention of jurisdiction was based on the particular facts of this case. His findings emphasize the highly contentious nature of the parties' relationship, their inability to resolve disputes independently, and Brinette's repeated manipulation of others to gain advantage over Lance in the litigation. It was reasonable for Judge North to anticipate that if Brinette is free to take future parenting plan disputes to a judge who is

unfamiliar with her history of manipulation, she is likely to try it again. *Id.*, at 804-805.

Just as with the *Possinger* case, the facts of the *Rounds* case do not correlate with the facts of our case. The rulings contained in the *Rounds* opinion do not support the proposition that Judge Blinn should have either refrained from entering a final parenting plan for two and a half years or should have entered a “conditional” parenting plan.

Finally, the *McDole* case does not support Julie’s position either. The *McDole* case involved a *modification* of a final parenting plan, not the creation of a final parenting plan. In *McDole*, the father filed a petition for modification seeking primary care of the parties’ son, Joseph, after the mother (who previously exhibited a long history of alienating behaviors) took the child and moved to Utah, to marry a man the child had only met one time, with no notice to the father. The trial court granted the petition and gave father primary care of the child. The Court of Appeals, Division III, reversed the trial court and remanded the case for establishment of a new residential schedule.

The Supreme Court reversed the Court of Appeals and held that the trial court did not abuse its discretion in finding that a substantial change in circumstances had occurred, that the child’s environment with mother was detrimental to his health, and that a change of primary care was in the child’s best interests. In doing so, the Supreme Court stated in its opinion that:

Custodial changes are viewed as highly disruptive to children, and there is a strong presumption in favor of custodial continuity and against modification. See *In re Marriage of Stern*, 57 Wn. App. 707, 712, 789 P.2d 807, review denied, 115 Wn.2d 1013 (1990); *Anderson v. Anderson*, 14 Wn. App. 366, 541 P.2d 996 (1975), review denied, 86 Wn.2d 1009 (1976). Nonetheless, trial courts are given broad discretion in matters dealing with the welfare of children. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993); *In re Marriage of Cabalquinto*, 100 Wn.2d 325, 327-28, 330, 669 P.2d 886 (1983). A trial court's decision will not be reversed on appeal unless the court exercised its discretion in an untenable or manifestly unreasonable way. *Cabalquinto*, at 330; *In re Marriage of Griffin*, 114 Wn.2d 772, 779, 791 P.2d 519 (1990); *In re Marriage of Timmons*, 94 Wn.2d 594, 600, 603-04, 617 P.2d 1032 (1980); *George v. Helliard*, 62 Wn. App. 378, 385, 814 P.2d 238 (1991); *Chapman v. Perera*, 41 Wn. App. 444, 446, 704 P.2d 1224, review denied, 104 Wn.2d 1020 (1985). Moreover, a trial court's findings will be upheld if they are supported by substantial evidence. See *Chapman*, at 449.

On the record before us we find that the Court of Appeals substituted its judgment for that of the trial court. Here, the trial court had presided over this case since the parties' dissolution. Before ordering a change of residential placement the court took testimony from the parties and considered expert testimony. The court was entitled to find from the evidence that Hatch had obstructed McDole's visitation rights from the beginning, and left the state with Joseph after denying that she was leaving. The court was also aware that Hatch had been slow to comply with the Court's orders. The court had warned the parties that it would find continued conflict detrimental to the child's best interests. A therapist and counselor experienced with the family testified that Hatch's behavior was harmful to Joseph. The trial court reasonably concluded that Hatch would continue this disruptive and harmful conduct in the future. The court thus

did not abuse its discretion when it held that there had been a substantial change in circumstances, that the child's environment was detrimental to his mental health, and that a placement modification was necessary to serve the child's best interests. *Id* at 610-611

Again, the *McDole* case involved a petition for modification filed after a final parenting plan was established. It cannot be read to support the idea that "reserving" the entry of a final parenting plan in our case, or requiring a "conditional" parenting plan, is somehow warranted and the Judge Bliss committed legal error by not doing so.

**4. *The Trial Court Did Not Err in Denying Julie's Motion for Reconsideration.***

Julie provides no analysis or legal authority for her contention that the trial court erred in denying her motion for reconsideration. She simply cites the reasons set forth elsewhere in her brief. Brief of Appellant, page 17, lines 18-19. In response, Adam contends that Judge Blinn properly denied Julie's motion for reconsideration for the reasons set forth in the memorandum he filed in opposition to Julie's Motion. CP 258-269. As the Court can see from Adam's memorandum, Julie's motion was procedurally deficient, as well as legally deficient. CP 258-269.

**D. *ATTORNEY'S FEES ON APPEAL***

Julie's appeal is frivolous and Adam should be awarded attorney's fees for having to defend it.

In determining whether an appeal is frivolous, the Court should consider the following:

(1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the argument are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so total devoid of merit that there was no reasonable possibility of reversal.

*Streater v. White*, 26 Wn.App. 430, 435, 613 P.2d 187 (1980); see also *Delany v. Canning*, 84 Wn.App. 498, 510, 929 P.2d 475 (1997).

Julie's argument on appeal is that Judge Blinn's Parenting Plan is either manifestly unreasonable or is based upon untenable grounds or reasons. Given, however, the great discretion a trial court has in fashioning a Parenting Plan, and given the statutory scheme set forth above which values stability for a child, Julie has failed to posit a legitimate argument that Judge Blinn has abused his discretion. In other words, Julie has failed to raise an issue upon which reasonable minds might differ. Accordingly, upon the filing of an attorney fee affidavit, Adam should be awarded attorney's fees on appeal.

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**III. CONCLUSION**

For the reasons set forth above, Adam Impala requests that the trial court's rulings be upheld, that Julie Impala's requests for relief be denied, and that Adam be awarded attorney's fees and costs.

**RESPECTFULLY SUBMITTED** this 18<sup>th</sup> day of March, 2019.

  
\_\_\_\_\_  
Joseph J. Loran, WSBA #14746  
Attorney for Respondent, Adam Impala

**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 email, and delivered a copy of this document via e-mail to:

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Signed at Tacoma, Washington on this 18<sup>th</sup> day of March, 2019.

  
\_\_\_\_\_  
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**LORAN & RITCHIE, P.S.**

**March 18, 2019 - 1:19 PM**

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**Appellate Court Case Title:** Adam J. Impala, Respondent v. Julie R. Impala, Appellant  
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