

FILED
Court of Appeals
Division II
State of Washington
8/19/2019 4:09 PM

No. 53184-4-II

STATE OF WASHINGTON
COURT OF APPEALS, DIVISION II

SARA VALENCIA
Appellant,

v.

GUSTAVO VALENCIA
Respondent.

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

I. ASSIGNMENTS OF ERROR.....1

II. STATEMENT OF THE CASE – FACTS.....3

III. LEGAL ARGUMENT.....8

 STANDARD OF REVIEW.....8

 ATTORNEY’S FEES.....35

IV. CONCLUSION.....35

TABLE OF AUTHORITIES

Cases

<i>In re Marriage of Burrill</i> , 113 Wn. App. 863, 56 P.3d 993 (2002).....	21
<i>In re Marriage of Horner</i> , 151 Wn.2d 884, 893, 93 P.3d 124 (2004).....	8
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).....	9
<i>In re Marriage of McNaught</i> , 189 Wn. App. 545, 552, 359 P.3d 811, 814 (2015).....	12
<i>In re Marriage of McNaught</i> , 189 Wn. App. 545, 553-54, 359 P.3d 811, 815 (2015).	13
<i>In re Marriage of McNaught</i> , 189 Wn. App. 545, 556, 359 P.3d 811, 816 (2015).....	15
<i>Riccobono v. Pierce County</i> , 92 Wash. App. 254, 966 P.2d 327 (Div. 2 (1998)).	32
<i>Rush v. Blackburn</i> , 190 Wn. App. 945, 956, 361 P.3d 217 (2015).....	9
<i>Salas v. Hi-Tech Erectors</i> , 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010).....	9

Statutes

RCW 26.09.002	17
RCW 26.09.184	17
RCW 26.09.187	17
RCW 26.09.405-.560	13
RCW 26.09.520	14

I. ASSIGNMENTS OF ERRORS

1. The trial court abused its discretion when it failed to articulate the evidence relied upon for the findings and orders of the court, stating that is what the Court of Appeals is for.
2. The trial court abused its discretion as its findings and decision on the Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation) are based on untenable grounds or reasons.
3. The trial court abused its discretion when it failed to enter specific findings on each factor of RCW 26.09.520, and the parties did not present substantial evidence on each factor, and the trial court failed to make its findings and oral articulations that reflect its consideration of each factor.
4. The Parenting Plan entered by the trial court failed to provide for the best interest of the children and is inconsistent with RCW 26.09.187, 26.09.184, and 26.09.002.
5. The trial court abused its discretion in finding that the mother engaged in intransigence as the finding is based on untenable grounds and not supported by substantial evidence.
6. The trial court abused its discretion in finding that the father had incurred \$66,757.84 in attorney fees and costs as the finding is based on untenable grounds and not support by substantial evidence.
7. The trial court's findings in the Final Order and Findings on Objection related to factor "a. Relationships" is based on untenable grounds.
8. The trial court's finding that Rochelle Long wrote a report with a summary of treatment plan in September 2016 providing a reunification transition plan of reunification therapy and a successful phase in to visitation over approximately 12 weeks,

which the mother did not want to participate in so she raised licensing issues until Ms. Long no longer wanted to work with the family, is based on untenable grounds.

9. The trial court's finding that the mother had the children write letters is based on untenable grounds and not supported by substantial evidence.
10. The trial court abused its discretion in finding that the father endeavored to participate in the Triple P Program but the mother has not believed to have participated, as the finding is based on untenable grounds.
11. The trial court abused its discretion in finding that the mother moved two times without providing the father the address where she is living, as the finding is based on untenable grounds.
12. The trial court abused its discretion in finding that the mother obstruction has created an environment where young children believe that they have a choice in visiting their father, as the finding is based on untenable grounds.
13. The trial court abused its discretion in finding that if the mother was allowed to relocate it would block the entire reunification process and make it impossible to restore their relationship with their father, the finding is based on untenable grounds. (At time of relocation, no therapy was pending)
14. The trial court abused its discretion in finding that disrupting the children's contact with the moving parent would not be more harmful to them than disrupting their contact with the non-moving parent, as the finding is based on untenable grounds. (2 years of not seeing dad, going to live with stranger they are scared of)
15. The trial court abused its discretion in finding that the reasons for moving were not given in good faith, and finding the mother could have asked for a hardship from the Army to not relocate, as the finding is based on untenable grounds. (unknown if she put in a

request)

16. The trial court abused its discretion in the findings of the Quality of Life related to the relocation, as the finding is based on untenable grounds. (stats on school & mother not providing details)
17. The trial court abused its discretion in finding that there are no legitimate alternatives to fostering reunification therapy and co-parenting counseling that the parents are to be undertaking if the move was allowed, as the finding is based on untenable grounds.
18. The trial court abused its discretion by allowing Jennifer Knight to speculate as to what the Mother should have done in 2014.
19. The trial court abused its discretion by placing 100% of the blame for the children's relationship on the mother.

II. STATEMENT OF THE CASE

The court entered a Final Parenting Plan following trial on November 11, 2013, which provided primary custody to the mother.¹ The parties operated on a long-distance Parenting Plan with the father located in Chula Vista, and the mother was in Washington.²

The girls visited the father for spring break 2014 and the summer of 2014.³ The day after the 2014 summer visitation, Valarie stopped talking to her father. The father exercised/received all of the court ordered

¹ CP 1.

² RP 64:10-11.

³ RP 75:5-18.

visitation between the entry of the Parenting Plan in November 2013 and 2016 as it relates to Natalia, with the exception of one holiday visit, a holiday the parties allegedly exchanged for a later date.⁴ Valaria was engaged in counseling with Kathi Jackson in order to address her issues with her father, and the father knew about the counseling in April 2015.⁵

The mother sought to modify the November 11, 2013 Parenting Plan, by filing a petition to modify on June 2, 2015.⁶

The mother alleged the child had expressed her wish not to spend time with her father to both her and to her counselor.⁷ The Court entered an ex parte restraining order on June 8, 2015, which required the father to attend 1-2 counseling sessions with Valaria in Washington along with Kathi Jackson.⁸

A finding of adequate cause occurred on July 8, 2015, and a temporary order was entered suspending the father's visitation with Valarie, but his time with Natalia remained the same.⁹ The Father was

⁴ RP 81:2-18.

⁵ RP 82:18-22.

⁶ CP 3.

⁷ CP 3.

⁸ CP 3.

⁹ RP 85:20-25.

required to complete a psychological evaluation prior to renewing visitation with Valaria.¹⁰

The original trial date of February 9, 2016, was continued on the father's motion, due to the father retaining counsel and the parties agreed it was in the best interest of the child.¹¹ The Father did not submit to a psychological evaluation until February/March of 2016.¹² Trial was continued again because of the mother's military obligations from May 2016 to August of 2016.¹³

In June of 2016, the father brought a motion to try and restrict the mother from going on a planned vacation because the court had just established a reunification counselor, Rochelle Long.¹⁴ The order stated if the reunification counselor were to set an appointment while the mother was to be out of town, the court would then order the mother back with the child by the date of the counseling appointment.¹⁵ At the time of the court order, there was no appointment setup with Ms. Long and Valarie or the mother.

¹⁰ CP 16.

¹¹ CP 26.

¹² CP 50.

¹³ CP 61.

¹⁴ CP 62.

¹⁵ CP 62.

The mother did have some problems with the scheduling of appointments for reunification counseling with Ms. Long, as Ms. Long would send emails in the middle of the night, or late afternoon, to schedule appointments for the next day.¹⁶ The mother had already informed Ms. Long she was not available, but Ms. Long scheduled appointments anyways and notified the mother via email.¹⁷

Ultimately, the father had a visitation with Ms. Long's supervision. After having some bad feelings, the mother found out that Ms. Long had been charged with perjury and plead to a lesser charge.¹⁸ Due to the seriousness of the allegations, the mother motioned the court for disqualification of the reunification counselor based on her crime of dishonesty.¹⁹

The court ultimately suspended reunification counseling with Ms. Long, and immediately appointed Jennifer Knight as the new reunification counselor.²⁰ The day before the hearing, the mother had found letters from the children indicating they may harm themselves if they were to be forced to see their father.²¹ Based on the letters, the father agreed to the

¹⁶ CP 69; RP 500:1-25; 501.

¹⁷ CP 69.

¹⁸ CP 66 & 67.

¹⁹ CP 76.

²⁰ CP 78.

²¹ CP 73 & 74.

suspension of his visitation, until Jennifer Knight determines the next steps in reunification.²²

Between September of 2016 and the trial date, the parties agreed to the entry of all orders, inclusive of trial continuances and what visitation would take place.²³ The parties were making progress with reunification counseling and wanted to see it out prior to the trial date.²⁴ Ultimately the parties entered a CR 2a agreement in November 2017 that laid out a path for the father to try and reunify his relationship with his daughters.²⁵

Between September of 2016 and November 2017, the father's visitation was dictated by the reunification counselor, Jennifer Knight. After several reunification appointments, Ms. Knight recommended supervised visitation with Kate Lee.²⁶

The mother attempted to establish standing weekly appointments for the supervised visitation, but Kate Lee indicated that the father needed to make the request first.²⁷ The mother made several attempts to make a standing appointment for visitation.²⁸

²² CP 78.

²³ CP 78-82, 97, 99

²⁴ CP 97.

²⁵ CP 100.

²⁶ CP 83.

²⁷ CP 113.

²⁸ CP 113.

In April of 2017, the mother received military orders, but she was able to ensure she stayed locally. Her PCS orders allowed her to relocate from Snohomish County down to JBLM, in Pierce County.²⁹ However, in May 2018, the mother received new orders to PCS to California.³⁰ During this time, while the parties had agreed that they would do Triple P Counseling, neither really knew what that was.³¹ After one session, the father sent the mother an email telling her to save her money regarding Triple P.³²

The father did not have further visitation and the parties ended up in trial on October 23, 2018. The Mother had relocated due to her military orders to California with the children.

III. ARGUMENT

STANDARD OF REVIEW

The appellate court will review a trial court's decision concerning the welfare of children for an abuse of discretion.³³ A court abuses its discretion when its decision is manifestly unreasonable or based

²⁹ CP 91.

³⁰ CP 106.

³¹ RP 196:20-21.

³² CP 114.

³³ *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004).

on untenable grounds or reasons.³⁴ “A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.”³⁵ Unchallenged findings of fact are verities on appeal, and unchallenged conclusions of law become the law of the case.³⁶

The mother appeals the trial court’s decisions in its entirety as the decision of the trial court’s decision is based on untenable grounds as the findings are not supported by the record.

1. The Trial Court’s failure to articulate the substantial evidence in which it relied upon is an abuse of discretion.

The trial court abused its discretion by not articulating the evidentiary basis for its findings and decision, relying solely on its statement, “Based on the testimony at trial, my review of 179 trial exhibits, and my observation of the credibility of the parties, the evidence shows and the Court finds that the mother has engaged in a

³⁴ *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010).

³⁵ *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

³⁶ *Rush v. Blackburn*, 190 Wn. App. 945, 956, 361 P.3d 217 (2015).

long-term pattern of alienation of the children from their father and has engaged in an abusive use of conflict.”³⁷

In addition to solely making a generic shotgun statement about reviewing “179 trial exhibits,” the trial court required the parties to sign orders prepared by the court, but they were actually prepared by the Respondent’s counsel prior to trial, only with hand written changes by the court, that included errors.

The Mother’s attorney requested time to review the orders, but the court refused, only affording review for administrative information.³⁸ When the Mother’s attorney asked, “Is the Court telling me or ordering that I’m not allowed to ask the Court how the Court made the findings that they did based on what evidence?,” the Court responded with, “I’m not going to discuss it with you any further, no.”³⁹

The Mother’s attorney questioned the court further regarding its findings, “My question is: If I have an issue with a finding or a ruling and I want to ask the Court how the Court came to this conclusion, the Court’s telling me I can’t do that?”⁴⁰ Responding, the trial court

³⁷ RP 872:1-6

³⁸ RP 888:2-7

³⁹ RP at 888:12-17.

⁴⁰ RP at 888:17-19.

stated: “I’m telling you that’s what the Court of Appeals is for, Mr. Whalley.”⁴¹

The trial court’s demeanor, defensiveness and refusal to discuss the court findings, to the point the trial court judge ran off the bench, shutting down any request to discuss the findings of the court, coupled with the conflicting findings and orders, to the extent findings were made with no evidence presented to such findings, reflect the trial court was not paying attention, or did not review any such testimony or evidence presented when “creating” the final orders.

The Court abused its discretion in expecting the Appellate Court and parties to guess how and what the court relied upon to make its findings and orders.

2. The trial court abused its discretion as its findings and decision on the Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Order (Relocation) are based on untenable grounds or reasons.

Parental rights constitute a protected, fundamental liberty interest under the Fourteenth Amendment to the United States Constitution. This court reviews a trial court's Parenting Plan decision for an abuse of discretion. A trial court abuses its discretion when it makes a manifestly

⁴¹ RP at 888:20-21.

unreasonable decision or bases its decision on untenable grounds or untenable reasons.⁴²

The Child Relocation Act (CRA), RCW 26.09.405-.560, provides notice requirements and standards for changing the primary residence of a child who is the subject of a court order regarding residential time.⁴³ If a person entitled to residential time or visitation objects to a child's relocation, the person seeking to move the child may not relocate the child without court approval.

Upon a proper objection, a trial court must conduct a fact-finding hearing on the proposed move. RCW 26.09.520 establishes a rebuttable presumption permitting the move:⁴⁴

There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person.

This presumption incorporates and gives substantial weight to the traditional presumption that a fit parent acts in his or her child's best

⁴² *In re Marriage of McNaught*, 189 Wn. App. 545, 552, 359 P.3d 811, 814 (2015).

⁴³ RCW 26.09.405-.560

⁴⁴ RCW 26.09.520

interests, including when that parent relocates the child. “The CRA shifts the analysis away from only the best interests of the child to an analysis that focuses on both the child and the relocating person.” A person opposing the move must rebut the presumption by a preponderance of the evidence.⁴⁵

The court failed to make a finding that the objecting party had overcome the presumption, or even refer to the presumption in this matter. Further the findings of the court contradict the findings of the other orders entered by the court.

The Court found that children were engaged in counseling, and all of the professionals related to the co-parent counseling and other professionals were located in Washington, as a basis to restrict relocation.⁴⁶ However, at the time of the oral findings of the court, the findings were the parties were not engaged in treatment. The children were not in counseling.⁴⁷ Additionally, the Parenting Plan entered by the court included findings that the mother failed to provide any counseling for the children.⁴⁸ Yet, the children were engaged in counseling in this litigation since 2014 per court order. The mother’s concerns about the children’s

⁴⁵ *In re Marriage of McNaught*, 189 Wn. App. 545, 553-54, 359 P.3d 811, 815 (2015).

⁴⁶ Objection, at 3:16-18; 4:18-19.

⁴⁷ RP 878:23-25; 879:8-12; Parenting Plan at 3.

⁴⁸ Parenting Plan at 3:4-15.

writings were brought to the court's attention, as they were received the day before the hearing. The mother relied on the court's ruling regarding counseling, but yet the trial court has indicated she failed to act.⁴⁹

The court's findings indicate it is in the best interest of the children to remain in Washington so they can seek treatment without having to change providers. While the evidence will show they were not engaged with any providers after finishing with Ms. Knight, the mother engaged with all professionals that were court ordered, even driving two (2) hours per appointment so the children could have sessions and visitation with the father.

Further, the evidence supports that neither party was to remain in Washington and the father hadn't had an overnight visitation in several years. Removing the children from the mother's care is not in the children's best interest.

3. The trial court abused its discretion by failing to make specific findings on each factor and provide an oral articulation that reflect its consideration of each.

A trial court must consider all 11 statutory factors in child relocation matters to determine if a detrimental effect outweighs the benefits to both the child and the parent wishing to relocate. Each factor

⁴⁹ Parenting Plan at 3:4-7.

has equal importance, and they are not weighted or listed in any order but rather provide a balancing test between the competing interests and circumstances that exist when a parent wishes to relocate. The trial court must enter specific findings on each factor, or parties must have presented substantial evidence on each factor with the trial court making findings and oral articulations that reflect its consideration of each. A trial court abuses its discretion when it fails to consider each factor.⁵⁰

The trial court failed to make specific findings and oral articulations that reflect the consideration of each factor. The court stated, “I’m entering a Final Order and Findings on Objection about Moving with Children and Petition about Changing – on relocation case. I don’t feel that I need to read my findings into the record on that because I’m going to be filing them, but I am going to talk now about attorney’s fees.”⁵¹

Further, the findings that are provided in each factor fail to address the specific factor. The court never weighed the factors, not applied the presumption. The trial court simply stated they were removing the children from the mother and that the findings on relocation are included in the order. As the Court would not address each factor orally, or address

⁵⁰ *In re Marriage of McNaught*, 189 Wn. App. 545, 556, 359 P.3d 811, 816 (2015).

⁵¹ RP 880:24-25, 881:1-4.

what evidence was relied upon to make any such findings and conclusions, the trial court abused its discretion.

4. The Parenting Plan entered by the trial court failed to provide for the best interest of the children and is inconsistent with RCW 26.09.187, 26.09.184, and 26.09.002.^{52, 53, 54}

The Final Parenting Plan entered on January 9, 2019, removing the children from the mother is unconscionable, and not in the best interest of the children. While we will never know what the trial court relied upon to make the findings that the trial court stated the Court of Appeals had the duty to figure out, the trial court removed a fourteen (14) and thirteen (13) year old girls from their mother with whom they have lived their entire lives.⁵⁵

The Final Parenting Plan entered removed the children and provided the mother, with whom the children had a wonderful relationship, as supported by all professionals in this case, with fully supervised visitation five (5) hours from where she resides, for four (4) hours per week, all on her dime. There is no basis to support this parenting plan, only that the ruling of the court was punitive, and not focused on what was in the best interest of the children.

⁵² RCW 26.09.187

⁵³ RCW 26.09.184

⁵⁴ RCW 26.09.002

⁵⁵ RP 872:7-12

The GAL report and each professionals report reflected the children wanted to be with their mother. Yet the court stripped the children of this and forced them into a living arrangement where they are no longer able to communicate with their mother, and they are forced to live with a man they are scared of, who has a violent temper. Every professional in the case stated that the father gets “excitable,” and the trial transcript reflects this same demeanor shown while the father was on the stand.

Most interestingly, the court appears to take the father at his word, without any evidence to support his testimony to make findings. The court does not make one finding in the favor of the mother, or even an acknowledgment that any of her evidence was considered.

5. The trial court abused its discretion in finding that the mother engaged in intransigence as the finding is based on untenable grounds and not supported by substantial evidence.

The trial court’s findings of intransigence are not supported by substantial evidence. The trial court’s findings are based on the sole statements of the father, not the substantial evidence admitted at trial.

The court made a finding that the mother attempted to block the father’s 2014 spring break visitation, but the evidence reflects the father notified the mother he wasn’t going to exercise his visitation, until his

father came up with the money at the last minute.⁵⁶ The father states in an email that his family came up with the money, which is directly contradictory of his father's declaration which states he allowed both parties to use the credit card.⁵⁷ This follows his message to the mother on March 21, 2014 that stated he was in a really bad position and his tax return didn't come through so he wasn't going to exercise his visitation.⁵⁸

The trial court completely disregarded this email and makes a claim that the mother attempted to restrict the father's visit, yet it was he who wasn't going to be able to exercise his visitation. Most notably, the mother attempts to plan the purchase of the plane tickets for the next visitation.⁵⁹

Further, the trial court claims the dispute between the parties related to when the children get out of school and what date they were supposed to fly down to California was intentional.⁶⁰

The evidence reflects the mother was attempting to arrange the visitation, which the court states she didn't. The escalated costs were due

⁵⁶ CP 125.

⁵⁷ CP 125.

⁵⁸ CP 125.

⁵⁹ CP 125.

⁶⁰ RP 873:8-22.

to the father's late notice he was actually going to exercise his visitation, after previously stating he could not do it.⁶¹

The court makes a finding that the mother failed to reimburse the father for the visitation trips, but the father failed to provide any evidence of what those costs were. Further his father's declaration flies in the face of the email correspondence between the parties.⁶²

The Court then makes a finding that the mother failed to provide the father with her address on three different occasions, but this isn't true either. The court claims the mother filed a notice of relocation in May 2018, but failed to provide the address or school for the children.⁶³ The mother filed her notice upon receiving her PCS orders. She did not yet have the information regarding an address or schools, and the information was provided to counsel at trial when it was known.

Additionally, the court claims the mother made the children write fake suicide letters, but there is absolutely no proof or evidence of such behavior. The children don't indicate that with Ms. Knight, and actually indicate they did it together.⁶⁴

⁶¹ CP 125.

⁶² CP 125.

⁶³ RP 874:9-13.

⁶⁴ RP 380: 22-25; 381:1-9.

The Court makes a finding that the mother made claims of domestic violence, but there haven't been any findings.⁶⁵ However in the report of Rochelle Long, the father makes an admission related to a domestic disturbance in which he was arrested and charged with something.⁶⁶ Yet, the court sustained an objection to relevance when the father was asked if he had a criminal history. Criminal history is relevant in any, and all, custody cases.

The court makes a finding that the mother made a false allegation of sexual abuse.⁶⁷ Yet the evidence reflects that the mother only stated to the reunification counselor that the daughter came back from visitation from the father's residence and had a white substance in her vaginal area that wasn't going away.⁶⁸

Informing medical staff or the reunification counselor about the child's medical condition does not equate to false allegations. Telling the medical professionals that the child was with her father when a condition started is not a false allegation. It was the truth. Yet again, the court deems anything stated by the father to be fact, no matter how embellished. There is no evidence of CPS, no evidence that the mother came to court

⁶⁵ RP 882:4-8

⁶⁶ CP 72.

⁶⁷ RP 882:8.

⁶⁸ RP 392:3-11.

and made these claims, she simply reported the health issues that her daughter was having. That does not equate to substantial evidence of a false allegation/intransigence. Moreover, Ms. Knight confirms that after telling her about the child's medical issue, the mother didn't try to bolster her claim, she simply took the child to the doctor and found out it was vaginosis.⁶⁹ Most importantly, the mother only brought up her concerns because she was asked about concerns by Ms. Knight.⁷⁰

The Court attempts to claim that the mother took the child to Dr. Kahlon for unilateral decisions related to orthodontia.⁷¹ However, the evidence reflects the letter sent to the father from the mother was actually an update from the doctor informing the parents of his recommendation for orthodontia.⁷² The evidence reflects the mother did what she was supposed to do.

The court then makes a finding that the mother interfered with the court-ordered visitation, but this too isn't supported by substantial evidence.⁷³ Kate Lee testified that the mother was supportive of the children's visitation.⁷⁴ Ms. Lee states the mother attempted to setup a

⁶⁹ RP 392:8-11.

⁷⁰ RP 402:17-20

⁷¹ Order on Judgment at 4:5-7.

⁷² CP 58

⁷³ RP 883:5-10.

⁷⁴ RP 442:5-15.

weekly visitation schedule a couple times.⁷⁵ Ms. Lee confirms that she needed to hear from the father before she could schedule additional visits.⁷⁶ The visitation for the father was through Ms. Lee, and Ms. Lee testified that there were five (5) visits and all were attended.⁷⁷

Ms. Knight also confirms that the mother made all appointments and pushed for more appointments.⁷⁸ It should be noted that the mother had to drive the children two (2) hours down from Snohomish county for these appointment. According to Ms. Knight, the sessions ended because the father stated he was giving up.⁷⁹

The court makes findings that essentially equates to any action done by the mother is intransigence. The record clearly reflects that the mother was engaged in the process, yet it was time and time again that the father stated he was giving up, or that the counseling, visitation should stop because he wasn't making progress.

The court relies on *In Re Marriage of Burrill*, to support the finding of intransigence, which includes false allegations of sex abuse. However, this didn't happen here.⁸⁰ The only real issue with the case at

⁷⁵ RP 447:20-24.

⁷⁶ RP 448:1-2

⁷⁷ RP 452:15-17

⁷⁸ RP 386:22-25; 387:1-2.

⁷⁹ RP414:3-5.

⁸⁰ *In re Marriage of Burrill*, 113 Wn. App. 863, 56 P.3d 993 (2002)

hand was the children failing to return the father's calls at times when he would contact them directly.

Most concerning is the court completely disregards the finding from Ms. Knight in which she talks about the father's aggressive behavior and temper, but states that you have to take in consideration his ethnicity as he is Latino and they demand respect.⁸¹

6. The trial court abused its discretion in finding that the father had incurred \$66,757.84 in attorney fees and costs as the finding is based on untenable grounds and not support by substantial evidence.

The evidence presented to support the finding of the court for the award of attorney fees and cost was not presented by substantial evidence. While the attorney fees of trial counsel was submitted by declaration in the amount of \$18,832.84, the other amounts provided in the judgment were not substantiated by any evidence.⁸²

The testimony of the father was that one of his previous attorneys, Desmond Kolke, cost him about \$20,000.00 and the other attorney, Susan Kennedy, cost him easily over \$20,000.00.⁸³ There is no additional evidence related to attorney fees for the court to consider besides the testimony of the father, no fee affidavits or no invoices.

⁸¹ RP 418:9-25

⁸² CP 242.

⁸³ RP 794:10-14.

Further, the court provided that the father was entitled to unpaid airplane tickets which was paid for by the children's paternal grandfather.⁸⁴ Yet the testimony of the father was that he had a terrible memory remembering things like money.⁸⁵

Yet the court allowed him to pick pie in the sky to determine how much money he spent, with zero evidence he actually spent any of the money related to travel, daycare for having his mother watch the children, or plane tickets which were probably gifts from his father.⁸⁶

7. The trial court's findings in the Final Order and Findings on Objection related to factor "a. Relationships" is based on untenable grounds.

The trial court's findings do not specifically address the children's relationships with each parent, any siblings, and other important people in the children's life.⁸⁷ Additionally the findings of the court under Relationships is not supported by substantial evidence.

There is substantial evidence supporting the father had a "terrible" and "awful" relationship with Valaria and at the time of trial he had no

⁸⁴ RP 884:20-23,

⁸⁵ RP 792:17-19

⁸⁶ RP 884:20-25; 885:1-22.

⁸⁷ Final Order on Objection 2:15-3:14.

relationship with Valaria.⁸⁸ Reunification counseling did not help his relationship.⁸⁹

The children had a special relationship with their siblings that reside with their mother and with them. The father affirmed the need to maintain this relationship.⁹⁰ The evidence reflected the children and their siblings all were residing in California.⁹¹ However, the findings of the court state, “Additionally the mother has two children from a prior relationship that are young adults who may be staying in Washington. It is unknown if they are relocating to California or not.”⁹² While the court made the finding that it was unknown if the siblings were in California with the children, the only evidence presented indicated they had moved to California with the mother.⁹³

The Mother had a great relationship with her children. In fact, not only did the trial court place the children with the mother after the trial in 2013, and the GAL recommendation in the case at hand recommended that

⁸⁸ RP 122:18-24.

⁸⁹ RP 123:5-8; 386:14-16;

⁹⁰ RP 215:17-18.

⁹¹ RP 294:15-25.

⁹² Final Order on Objection 5:17-19.

⁹³ RP 294.

the children reside with the mother.⁹⁴ The mother had cared for the children since birth, fourteen and thirteen years respectively.

8. The trial court's finding that Rochelle Long wrote a report with a summary of treatment plan in September 2016 providing a reunification transition plan of reunification therapy and a successful phase in to visitation over approximately 12 weeks, which the mother did not want to participate in so she raised licensing issues until Ms. Long no longer wanted to work with the family, is based on untenable grounds.

The trial court's finding, "After Ms. Long recommended reunification between the children and the father, the mother raised bias and licensing issues against the counselor. Due to these issues, Ms. Long was no longer willing to work with the family."⁹⁵

This finding is false. Ms. Long was suspended from being the reunification counselor due to her charge of perjury that the mother discovered.⁹⁶ Ms. Long did not have a choice as to whether or not she could participate with the family, the court suspended her as the reunification counselor and appointed Jennifer Knight.

Further the court's other findings related to Ms. Long and her appointments is also false. The order entered in June of 2016, clearly

⁹⁴ CP 98 at 14.

⁹⁵ 1/09/2019 Parenting Plan, at 3.

⁹⁶ CP 76, 78.

states that IF there is an appointment then the court would order the mother and child back to attend the reunification counseling.⁹⁷

9. The trial court's finding that the mother had the children write letters is based on untenable grounds and not supported by substantial evidence.

There was no testimony, or evidence, presented that the Mother had the children write the letters regarding their intent to harm themselves if required to visit their father. In fact, the record reflects that the children told Jennifer Knight they, the children, had written them together.⁹⁸

10. The trial court abused its discretion in finding that the father endeavored to participate in the Triple P program but the mother has not believed to have participated, as the finding is based on untenable grounds.

When the mother received PCS orders allowed her to relocate from Snohomish County down to JBLM, in Pierce County.⁹⁹ During this time, while the parties had agreed that they would do Triple P Counseling, neither really knew what that was.¹⁰⁰ After one session, the father sent the mother an email telling her to save her money regarding Triple P.¹⁰¹ The mother subsequently relocated to California per her PCS orders.

11. The trial court abused its discretion in finding that reunification with Lori Harrison ended because the mother refused to

⁹⁷ CP 62.

⁹⁸ CP 125.

⁹⁹ CP 91.

¹⁰⁰ RP 196:20-21.

¹⁰¹ CP 114.

schedule sessions other than on a specific day of the week, as the finding is based on untenable grounds.

The court's finding that the mother is responsible for the failure of attending counseling with Lori Harrison is misplaced. Lori testified that the mother was requesting one appointment be at the time suggested by the father and one time suggested by the mother.¹⁰²

The court made a finding that the mother's request was the cause of the issue.¹⁰³ Yet Ms. Harrison stated it was a deadlock, the father would not agree to have one meeting in the day.¹⁰⁴

Again the expert stated both parties could not find a time that worked for them, yet the court blamed the mother.

12. The trial court abused its discretion in finding that the mother obstruction has created an environment where young children believe that they have a choice in visiting their father, as the finding is based on untenable grounds.

Any visitation which did not take place between either child and their father was per court order. Pursuant to the 2013 Parenting Plan the parties operated on a long-distance Parenting Plan with the father located in Chula Vista, and the mother was in Washington.¹⁰⁵

¹⁰² RP 473:18-22.

¹⁰³ Order on Judgment, at 4.

¹⁰⁴ RP 474:3-5.

¹⁰⁵ RP 64:10-11.

The girls visited the father for spring break 2014 and the summer of 2014.¹⁰⁶ The day after the 2014 summer visitation, Valarie stopped talking to her father. The father exercised/received all of the court ordered visitation between the entry of the Parenting Plan in November 2013 and 2016 as it relates to Natalia, with the exception of one holiday visit, a holiday the parties allegedly exchanged for a later date.¹⁰⁷ Valaria was engaged in counseling with Kathi Jackson in order to address her issues with her father, and the father knew about the counseling in April 2015.¹⁰⁸

The mother sought to modify the November 11, 2013 Parenting Plan, by filing a petition to modify on June 2, 2015.¹⁰⁹

The mother alleged the child had expressed her wish not to spend time with her father to both her and to her counselor.¹¹⁰ The Court entered an ex parte restraining order on June 8, 2015, which required the father to attend 1-2 counseling sessions with Valaria in Washington along with Kathi Jackson.¹¹¹

13. The trial court abused its discretion in finding that if the mother was allowed to relocate it would block the entire reunification

¹⁰⁶ RP 75:5-18.

¹⁰⁷ RP 81:2-18.

¹⁰⁸ RP 82:18-22.

¹⁰⁹ CP 3.

¹¹⁰ CP 3.

¹¹¹ CP 3.

process and make it impossible to restore their relationship with their father, the finding is based on untenable grounds.

The Court found that children were engaged in counseling, and all of the professionals related to the co-parent counseling and other professionals were located in Washington, as a basis to restrict relocation.¹¹² However, at the time of the oral findings of the court, the findings were the parties were not engaged in treatment. The children were not in counseling.¹¹³

14. The trial court abused its discretion in finding that disrupting the children's contact with the moving parent would not be more harmful to them than disrupting their contact with the non-moving parent, as the finding is based on untenable grounds. (2 years of not seeing dad, going to live with stranger they are scared of)

The trial court's findings do not specifically address the children's relationships with each parent, any siblings, and other important people in the children's life.¹¹⁴ Additionally the findings of the court under Relationships is not supported by substantial evidence.

There is substantial evidence supporting the father had a "terrible" and "awful" relationship with Valaria and at the time of trial he had no

¹¹² Objection, at 3:16-18; 4:18-19.

¹¹³ RP 878:23-25; 879:8-12; Parenting Plan at 3.

¹¹⁴ Final Order on Objection 2:15-3:14.

relationship with Valarie.¹¹⁵ Reunification counseling did not help his relationship.¹¹⁶

15. The trial court abused its discretion in finding that the reasons for moving were not given in good faith, and finding the mother could of asked for a hardship from the Army to not relocate, as the finding is based on untenable grounds.

The finding of the court in the Final Order on Objection to Relocate indicated that the mother could request a hardship stay in Washington for the purposes of the reunification therapy and co-parenting counseling as well as Natalia's counseling needs.¹¹⁷ However, the only evidence regarding the mother's attempts indicate that she did file a request which is how she stayed in Washington the first time she received her PCS orders.¹¹⁸

The trial court abused its discretion as there was no evidence before the court regarding the potential of a hardship stay, except for the mother's testimony that she had already done so to get her to Pierce County from Snohomish County.

16. The trial court abused its discretion in the findings of the Quality of Life related to the relocation, as the finding is based on untenable grounds.

¹¹⁵ RP 122:18-24.

¹¹⁶ RP 123:5-8; 386:14-16;

¹¹⁷ Final Order on Objection, at 5.

¹¹⁸ RP 518:3-21

The court's finding on the quality of life in the Order on Objection wasn't based on any evidence in the record.¹¹⁹ Most interestingly, the father testified he was going to leave Washington no matter what the court was going to do. Yet the court failed to provide any findings as to the father's intended location of relocation.

The findings that were entered into the Order, indicated school stats.¹²⁰ The only evidence related to school show both children are doing well in their new school in California.¹²¹

Strangely the court fails to specifically talk about the children and their school. Additionally, the court does not make any findings related to the impact of the children having to change schools again, especially when the evidence reflects the children are flourishing in their current school.

The Court's ruling includes information that is not part of the record and quite frankly it is impossible to know where the court got the information. However, when reviewing this order with the one provided as a working copy from the father, it appears the court failed to review the findings in the orders and compare them to the evidence before the court.

There is no evidence to support the finding made under quality of life in the Order on Objection.

¹¹⁹ Order on Objection, at 5:3-9.

¹²⁰ Order on Objection, at 5:3-9.

¹²¹ CP 131 & 132.

17. The trial court abused its discretion in finding that there are no legitimate alternatives to fostering reunification therapy and co-parenting counseling that the parents are to be undertaking if the move was allowed, as the finding is based on untenable grounds.

The Court's finding is contrary to the testimony of Ms. Harrison. Ms. Harrison testified the parties could conduct reunification counseling and co-parent counseling telephonically.¹²²

18. The trial court abused its discretion by allowing Jennifer Knight to speculate as to what the Mother should have done in 2014.

The trial court abused its discretion by allowing Jennifer Knight to speculate as to what the Mother should have done in 2014.

The Court's decision to overrule an objection that allowed Jennifer Knight to speculate about what the mother should have done in 2014 is an abuse of discretion which allowed the father to wrongfully permeate his claim the mother was alienating him. The court should not have permitted Jennifer Knight to testify as to what the mother should have done four (4) years prior as the questions requires speculation and there was a lack of foundation.¹²³

¹²² RP 483:5-7.

¹²³ RP 382:21-25, 385:1-22.

ER 702 precludes an expert from making conjecture or speculation.¹²⁴ Ms. Knight lacked a sufficient basis to opine to such a question, further, even if the court properly admitted the testimony, the testimony is insufficient to support a finding of alienation. Further, as to alienation being identified as a medical diagnosis by a counselor, Ms. Knight failed to testify regarding alienation on a more than probable basis.

The Court should not have considered any speculative testimony from Ms. Knight related to alienation as there was no legal basis to admit the speculation from Ms. Knight.

19. The trial court abused its discretion by placing 100% of the blame for the children's relationship on the mother.

The findings of the court in the Final Parenting Plan, Order on Objection, Order on Judgment, and Order on Petition, all place the entirety of the blame on the mother. Yet all five (5) experts, Lori Harrison, Jennifer Knight, Kate Lee, Suzanne Dircks, and Rochelle Long, speak about the anger issues of the father. They all speak to the fear of the children due to his parenting style and demanding nature.

¹²⁴ Evidence Rule 702. See *Riccobono v. Pierce County*, 92 Wash. App. 254, 966 P.2d 327 (Div. 2 (1998)).

The GAL's report addresses abusive use of conflict and does not make a finding of such after addressing the issues with both parents.¹²⁵

The court's findings are not supported by substantial evidence.

ATTORNEY'S FEES

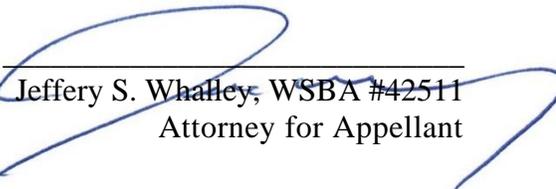
The Mother has had a judgment entered against her for the amount of approximately \$46,000.00, of which the mother cannot afford based on her military salary. Currently her salary is being garnished.

The Mother requests attorney fees as the prevailing party pursuant to RAP 18.1.

IV. CONCLUSION

The mother appeals the trial court's decisions in its entirety as the decision of the court is manifestly unreasonable and outside the range of acceptable choices, given the facts and applicable legal standard. Further the trial court's decision is based on untenable grounds as the findings are not supported by, and some are contradictory to, the record.

RESPECTFULLY SUBMITTED this 19th day of August, 2019.



Jeffery S. Whalley, WSBA #42511
Attorney for Appellant

¹²⁵ RP 98.

WHALLEY LAW PLLC

August 19, 2019 - 4:09 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53184-4
Appellate Court Case Title: Sara Valencia, Appellant v. Gustavo Adolfo Valencia, Respondent
Superior Court Case Number: 12-3-04361-1

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