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

In re the Marriage of:

ROGER WILLIAM CHRISTOPHER,

Respondent,

v.

CONNIE SUE CHRISTOPHER,

Appellant.

BRIEF OF RESPONDENT

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A. INTRODUCTION

With every argument, Connie Christopher only confirms the testimony below that she lacks introspective and suffers from a “debilitating level” of anger and paranoia that prevents her from cooperating with a court-ordered parenting plan that is in her children’s best interest. She continues to push that “paranoia” and “vitriol” onto her daughters, posing an immediate threat to their well-being. Her self-centered worldview is reflected in her argument that the trial court’s decision, which was well-informed and made with the children’s best interest in mind, was nothing more than an order “punishing” her. Appellant’s br. at 40.

This case is not about “punishing” Connie. This case is about the trial court resolving issues of fact and deciding what is in the best interest of six minor children in a “messy” dissolution proceeding. That fact-intensive determination should not be overturned on appeal. The trial court acted within its discretion by weighing the vast evidence at trial and fashioning a parenting plan that placed minimal restrictions on Connie,¹ restrictions aimed at repairing a rift in the family caused by her alienating behavior. Connie’s appeal merely seeks relitigate facts that the trial court

¹ This brief uses the first names of the parents for ease of reference. No disrespect is intended.

already considered. This Court should affirm and give the family the finality it desperately needs.

B. RESPONSE TO STATEMENT OF THE CASE

(1) Factual Background

Connie and Roger Christopher were married in 1993 and separated on April 20, 2017. RP 89. During their marriage, they bore seven biological children and adopted triplet boys. By the time their dissolution case came to trial, six minor children were involved in the case, three minor girls, ages 16, 13, and 10, and the seven-year-old, triplet boys.

Roger is a self-employed contractor and Connie has supported the family during the marriage as a stay-at-home mother. They first met at a church function when they were very young, and they married ten years later in 1993. RP 91. They moved into a property Roger bought before the marriage and had their first child a year later. *Id.* For many years, they provided a “very comfortable, loving home” for the children. *Id.* They traveled and were very active in their church. *Id.* Throughout their marriage, Connie and the children praised Roger for being a devoted father and husband. *See* Exs. 13, 14 (many notes and cards from the children and Connie); RP 92-94.

Around the year 2013, Roger noticed a major change in Connie’s mood and mental health. RP 97-99. She suffered several challenges,

including the death of her mother and a miscarriage that led to an emergency hysterectomy. RP 98. Roger encouraged Connie to seek counseling, but she never did. RP 98, 105-06. She became increasingly “delusional” and “paranoid.” RP 105. These tendencies were later reflected in the psychological testing Connie completed as a part of a court-ordered parenting evaluation. CP 541-42.

The relationship soured; Connie came to see Roger as the “devil,” and she began trying to turn the children against him. RP 100. She would make comments “degrading” Roger in front of the children. RP 102. She focused this alienating behavior on their daughters, and would often leave with them for entire weekends, without telling Roger where they went. RP 102. She began excluding him from their extracurricular activities. RP 102-03. This only worsened after the family began to separate. She put the children in the “middle” of the divorce and tried to “scare them” from wanting to spend time with their father. RP 108-10.

The family’s adult son² noticed these changes and Connie’s alienating behavior directed toward the girls. No child testified at trial, but their 23-year-old son submitted a declaration early in the case, in which he stated:

² This brief omits names of any of the children for privacy’s sake.

My primary concern is the psychological effect that being with [my mother] has had on the younger children. The children, primarily the five daughters, are told things that lead to contempt, disdain and disrespect for our father. It is something that was and is unhealthy for young children to hear especially when they are susceptible to the persuasive power of a parent. My sisters were at the ages of 4, 6, 8, 10, and 12 years old when this activity started approximately five years ago. For example, a few times I was told about altercations she had with my father. Unbeknownst to her, I had been home and witnessed them. They were regularly embellished or exaggerated. A shut door turned into a slammed door. A verbal request turned into a screamed threat. Discussions, arguments, or other problems between her and my dad that should have been kept private and resolved privately were continually brought by her to the attention and discussed in front of the kids, particularly my younger sisters. As things at home progressively worsened, the girls in the family were more closely monitored by her and she made sure that they stayed on her “side” by frequently disparaging our dad and by limiting their interaction with him.

CP 130-31.³ Another adult son confirmed in his interviews with the parenting evaluator the “negative communication” between Connie and the girls about their father. CP 538.

Although Connie had historically been the primary caregiver as a stay-at-home mother while Roger operated his business, Roger began “primarily...taking care of the boys” as Connie “delegated those duties” to him as their relationship deteriorated. RP 101. Roger had grown concerned with Connie’s care for the boys; she spanked them excessively

³ Dr. Johnson considered this, and many other declarations, in making his report. CP 531-32.

and even slapped one of the boys across the face when he was 18 months old. RP 104. At one point, when speaking to a police officer called to deal with a family issue, she expressed “remorse” for having adopted the boys and said that she felt “coerced” into adopting them. *Id.*

When the parents separated and began living in separate houses in April 2017, the triplets resided with Roger. As their adult son wrote:

My dad’s level of commitment to the family goes beyond that of normal fathers. For example, I was still living at home when we adopted the triplets. I personally watched my dad change hundreds of diapers and feed hundreds of meals to them. He spent hours playing with them as well. This is all in addition to long days of work and taking care of our large residence. More recently, he has taken on the role of a single father of three while running a business and financially supporting a family of seven kids.

CP 131. The adopted triplets were exposed to drugs in utero and born premature. RP 114. By the trial, they were thriving in their father’s care, “doing well in school” and playing sports. RP 113.

Roger filed for divorce on September 14, 2017. CP 1. On December 13 and 20, 2017, temporary orders were entered establishing a temporary parenting plan, and a spousal and child support order. CP 8-45. In the temporary parenting plan, the father was named the primary parent for the triplet boys, while Connie was named the primary parent for the minor daughters, and visitation was granted for each parent. CP 8-12, 17-25. Because the children were in school and Connie would no longer be

responsible for the youngest children, the Court ordered that she should immediately look for a job or seek employment training. CP 8, 30.

The court reserved on making findings about any parental restrictions based on RCW 26.09.191. CP 18. This included any allegations from both parents for behavior that would justify restrictions, such as abandonment, alienation, domestic violence, and mental health. *Id.* The order allowed the father and the girls to engage in reunification counseling with Dr. Harry Dudley to repair the rift in their relationship. CP 22. The Court also appointed Dr. Kirk Johnson as parenting evaluator to investigate all issues related to entering a final parenting plan. CP 13-16.⁴

(2) The Court-Ordered Parenting Evaluation

Dr. Johnson is a well-respected psychologist who has conducted hundreds of parenting evaluations in his career. RP 25. He conducted a comprehensive report on the family which took about 15 months to complete. CP 531. He interviewed the entire family, several times, save for the triplets because of their age. CP 531-32. He reviewed scores of exhibits, texts, emails, declarations, and court filings. CP 531-32. He reviewed report cards and contacted the children's teachers. *Id.* He also

⁴ The parties engaged in extensive motion practice before trial on various issues related to the temporary orders. *See, e.g.*, CP 65-284. These motions are not necessarily relevant in the instant appeal, except they show that the trial court was very familiar with the family and had an extensive casefile to draw from when making its final decision.

administered psychological testing, the Minnesota Multiphasic Personality Inventory-2 (“MMPI-2”) to both parents. CP 531.

As is typical in dissolution cases – and every marriage for that matter – Dr. Johnson found that neither parent was perfect. This was corroborated by the rest of the family; for example, the adult boys were “fairly balanced” in describing each parent’s contribution to the breakdown of the marriage. RP 34.

For his part, “Roger was able to recognize that he did make some contribution to the difficulties in the family” and he actively engaged in family therapy to improve his relationship with his children. RP 30, 199-202. He admitted that he could have been more patient and a better listener at times during the marriage. CP 543. His physiological results yielded a “normal” profile with just a moderate level of defensiveness and “overall...cooperation with the examination.” CP 543. His cooperation and openness to better himself showed during his family counseling sessions, which resulted in “increasing comfort” in his relationship with the minor girls. RP 30. Dr. Dudley, the family counselor, confirmed that the father made significant progress in his relationship with his girls during their initial sessions. RP 201-04.

In contrast, “Connie was not able to identify any way, whatsoever, that she contributed to any of the problems in the family.” RP 30. Dr.

Johnson reported that this inability to recognize her own contribution to the breakdown of the relationship was “rare[.]” and “unusual.” RP 30. He reported, “This case has been remarkable for the amount of animosity and vitriol expressed by Connie Christopher toward Roger.” CP 544. “Connie is angry and approaching a debilitating level of paranoia with regards to her vilification of Roger.” CP 547.

Connie’s psychological testing reflected this vitriol and lack of self-awareness. The MMPI-2 contains a validity scale, and Connie’s answers showed that she deliberately tried to present herself “in a uniquely positive light.” CP 542. “Similar individuals feel positive about themselves and deny the most common of human foibles.” *Id.* Dr. Johnson reported that these results are typical of some with “little personal insight.” *Id.* Dr. Johnson reported that her ultimate results reflected a “high degree of sensitivity if not overt paranoid trends.” *Id.* A person with such a profile would “often present with well-organized and at times rather elaborate delusions of persecution or control.” *Id.* “Similar scoring individuals are rigid, resentful, hypervigilant, and hyperrational.” *Id.* “Her testing suggest[s] a high degree of anger, a rather brittle lack of personal awareness, paranoid sensitivity and overactivity, along with a tendency to project all problem[s] externally.” CP 544.

Connie continues to project paranoia and anger onto Roger, even

in her opening brief, accusing him of domestic violence and abusing her and the children throughout their marriage. *E.g.*, appellant's br. at 32-34. As he later testified at trial, Roger categorically denied Connie's claims that he abused her in any way. RP 106. Dr. Johnson investigated Connie's claims of abuse, and he determined that those reports were not credible. RP 32-33. There is no corroborating evidence for her claims in the record or from the rest of the family: "None of the children described what would be considered reportable abuse." RP 32. Dr. Johnson would later testify, "The level of conflict and abuse as described by Connie was - - Connie was just not consistent with what the girls expressed to me," including the two adult girls Dr. Johnson interviewed after submitting his report. RP 33. No child ever reported being "fearful" of the father. *Id.*; *see also, e.g.*, CP 131 (adult son declaring, "Not once have I felt neglected, unloved, abused, or any other sort unfairness. I believed he loves and shows the same care to all the children.").

Ultimately, Dr. Johnson recommended that the triplets continue residing with their father while visiting their mother on the weekends, and the girls move to "week on week off" schedule living with both parents. CP 547. Dr. Johnson made this recommendation after individually evaluating the factors under RCW 26.09.187 that courts must use when entering a parenting plan. CP 545-48.

Dr. Johnson also considered factors for restricting parental time under RCW 26.09.191. Although he was concerned about Connie's alienating behavior – particularly her influence over the girls and use of conflict to get them to view their father negatively – Dr. Johnson merely recommended that she undergo therapy “as opposed to, at this point, removing her from a parenting role.” CP 547. He recommended therapy to help her “move on from the role of victim, confront her projection and externalization of blame, and learn to keep the children away from parenteral conflict.” *Id.*

At trial and in her brief, Connie relied on the testimony of Dr. Landon Poppleton, who offered several critiques of Dr. Johnson's report. RP 251-326. But, as he admitted at trial, Dr. Poppleton did not conduct his own evaluation of the family. He offered no opinion whether Connie's unsubstantiated allegations of domestic violence were true, whether any parent engaged in abusive use of conflict, nor did he opine what parenting plan would be in the children's best interest. CP 306-07. Here merely “peer review[ed]” and critiqued certain aspects of Dr. Johnson's report that he felt were incomplete or underdeveloped, such as Connie's allegations of abuse and one event early in their separation where she

accused Roger of absconding with the triplets. CP 302-07.⁵

Dr. Poppleton also did not review all the materials that Dr. Johnson reviewed. This included many motions and declarations filed with the court that included key facts and background pertaining to the divorce. RP 299-302. Nor did he review the exhibits, including text messages the father sent the mother showing that he was trying to work out a living arrangement for the family, not absconding with the triplets without working out a parenting agreement as the mother claimed. Ex. 116; RP 302-03. He did not conduct his own psychological testing. RP 307. He never even met with the father. *Id.* Dr. Poppleton revealed that he merely had access to “some superficial background on the parties.” RP 308. His incomplete investigation contrasts with Dr. Johnson’s who performed testing, reviewed extensive background documents, and personally interviewed members of the entire family (other than the seven-year-old triplets) on several occasions. *E.g.*, CP 531-33 (list of items considered).

(3) The Trial Court Fashions a Parenting Plan After a Thorough Trial

Connie mischaracterizes the record to argue that the trial court

⁵ Connie is simply wrong that Dr. Johnson overlooked Connie’s absconding allegations. Appellant’s br. at 31-32. He investigated it, including both side’s differing accounts along with the other extensive evidence he reviewed, and considered it when making his ultimate conclusions. RP 42-43. The trial court also heard Roger’s explanation for this event that occurred years earlier when they first separated, *e.g.*, RP 89-91, and chose to believe him or assign little weight to the event given the rest of the evidence.

“abdicated” its role as the fact finder and simply rubber-stamped Dr. Johnson’s report when crafting the parenting plan. Appellant’s br. at 14-16, 21-29. Not true. Over three days, the trial court, the Honorable David E. Gregerson, heard from 13 separate witnesses, including pediatric nurses, accountants, social workers, family friends, colleagues, both parents, the family’s counselor, Dr. Dudley, and *two* child placement experts Dr. Johnson and Dr. Poppleton. *See generally*, RP. Along with the court file, the trial court also considered 100 exhibits, including expert reports, financial documents, letters, cards, text messages, emails, and other communications among the family. *See generally*, Exs. Connie goes to such great lengths to mischaracterize the in-depth review at trial, that she did not designate the exhibits for this Court to see. *See* Resp’t Supplemental Designation of Exhibits.

After reviewing all the evidence and testimony, the trial court ordered that the triplets reside with Roger, spending every other weekend with Connie, and the girls would alternate weeks between the two parents. CP 512-21. The court found that Connie’s abusive use of conflict “endangers or damages the psychological development of the children” and warranted restrictions, under RCW 26.09.191. CP 513. Although it made this finding, it only ordered the following *minimal* restrictions on Connie: (1) the residential schedule placing the triplets with Roger, which

had been where they resided since April 2017; (2) the requirement that she “affirmatively direct [the girls] to attend all scheduled residential time with their father”; (3) that she refrain from directing “any third parties (including adult children) to make parenting decisions, parenting instructions, or approve of the children being somewhere not with the father during his residential time”; and (4) that she participate in individual therapy, as recommended in Dr. Johnson’s report. CP 513. Roger was ordered to participate in family therapy with his daughters, and Connie was ordered to cooperate with that therapy. CP 519.

At the presentation hearing following the trial, the court made further refinements to the parenting plan. *See generally*, CP 404-74 (transcript of the presentation hearing), 512-21 (parenting plan, especially handwritten alterations).⁶ It ordered that *both* parents refrain from discussing aspects of the divorce with the minor children, including finances. *Id.* It clarified that the parents retained “joint decision making” over all the minor children. CP 462-63, 514.⁷ The order also added, “Each parent agrees to encourage and foster relationships between siblings

⁶ These refinements show that the trial court did not simply “rubber-stamp” Dr. Johnson’s findings, as Connie wrongfully contends in her brief.

⁷ Roger had requested *sole* decision-making power over the triplets. This shows that the trial court did not merely side with the father to “punish” Connie, as Connie also wrongfully contends in her brief.

in the family.” CP 520. The court appointed a parenting coordinator to assist the family going forward. CP 672-80, 749.⁸

The trial court entered its final orders on October 4, 2019, and Connie appealed.

(4) Connie’s Post-Trial Contempt of Court

Unsurprisingly, Connie’s behavior did not change after the court entered its final orders. She failed to cooperate with the parenting coordinator and continued to alienate the children against their father, discussing aspects of the divorce with them, allowing them to spend their residential time with Roger with their adult siblings, and otherwise failing to direct them to spend time with their father, in violation of the court’s orders. CP 560-606, 618-34, 749-56. Roger moved for contempt. *Id.* He alleged many failings on Connie’s part including that she continued to alienate the girls from him by speaking poorly about him and discussing the divorce, that she allowed the girls to spend much of their scheduled residential time with their father with their older siblings, that she did not show for pick-ups with the boys with no justification, and that she refused to sign paperwork so that the girls could engage in therapy as recommended by the parenting coordinator, among other things. *Id.*

⁸ Dr. Johnson did not recommend a parenting coordinator in his report. CP 548. This is another example showing that the trial court did not blindly adopt the report, but rather made a tailored decision after a fact-intensive trial.

The court-appointed parenting coordinator, Lisa Yenney, submitted a report in the contempt proceedings after working with the family for six months following the trial. CP 749-56. She confirmed the observations and conclusions that Dr. Johnson came to in his report about the mother's resistance to change⁹ and her lack of credibility.¹⁰ *Id.* Yenney also confirmed that she violated many of the provisions of the parenting plan and continued to undermine the court's order. *Id.* She summarized her findings, in part, as follows:

Mother's negative beliefs and attitude about father who is deemed unfit continues to triangulate the children. Mother is not supportive of enforcing the children spending custodial time with father. Mother has stated to me on more than one occasion that if father was not around the girls would thrive, he does not need to be part of her or [the girls'] lives. Furthermore, father is the one that needs to make all the changes/improvements to repair his relationship with his daughters. Mother shared several incidents in which she felt the girls were maltreated by father during his residential time; and has made reference

⁹ In contrast, Yenney noted that the father was very cooperative:

Overall father is motivated to become a better parent, he has engaged with Dr. Dudley, and with this PC. He can further develop his parenting and communication skills; he has been provided reminders and redirection but has overall endeavored to follow through with PC recommendations and coaching.

CP 754. This cooperation and desire to improve himself tracked Dr. Johnson's experience with the father.

¹⁰ Yenney also found no evidence to support Connie's allegations of abuse, CP 751, and was personally subjected to Connie's false allegations. CP 755 ("Mother has made reference that I have blocked her emails which I have not. Overall this PC's communication with mother has become untoward, which overall prevents progress."). This only supports the court's findings and credibility determinations made at trial.

to father of several these incidents as well in OFW. There is considerable debriefing at mother's home regarding father's transgressions. The children team up on father and then tell on father to mother. Mother allows empathizing in their plight with father. Mother also requests father to explain or provide details of his actions during his residential time. It's my belief that the children have repeatedly and continuously participated in contributing to shortchanging father of his custodial time due to mother's passive non objection. Mother's point of view has not changed, and she will not acknowledge her role in this family system dynamic.

...

Mother prolongs or does not follow[] PC recommendations. In addition to concerns stated previously, the girls are continuing to spend time with mother during father's residential time, she is resistant to more intensive services for the family because she does not see any value doing so. She continues to request father to provide and explain his parenting and time spent with the children while they are in his care; she does not foster or support the relationship between father and the children.

CP 754-55. Not only did this behavior violate the terms of the parenting plan, but Yenney also confirmed that it threatened the girls' long-term development and immediate well-being:

Currently there is such an extended period of hostility by the girls towards their father here is concern for their well-being...Children who are able to maintain a quality relationship with both parents often have better outcomes and are lower risk for unhealthy relationships, at risk behaviors, and mental health issues than children who do not have contact with both parents.

CP 755.

After considering all the evidence and holding a hearing the trial court held Connie in contempt. CP 732-35. It ordered that Connie pay Roger \$2,500 in attorney fees for having to bring his motions and provide three weeks of “make-up parenting time without any interference from herself, the adult children, or any other third party.” CP 755. Connie appeals that discretionary decision too.

Even now, Connie’s behavior continues. Recently, Clark County Commissioner Carin Schienberg, found adequate cause to change the parenting plan because Connie “continues to engage in parental alienation and is obstructing the relationship between the father and his daughters.” *See* Order on Adequate Cause in Resp’t Second Supplemental Designation of Clerks Papers at 2 (appendix).¹¹ On August 10, 2020, the court issued a new temporary parenting plan, ordering that all the children be placed with their father and that Connie have supervised visitation. *See* Parenting Plan in Resp’t Second Supplemental Designation of Clerks Papers (appendix). It found that this further restriction was warranted due to her well documented abusive use of conflict and her “long-term emotional...problem that gets in the way of her ability to parent.”

C. SUMMARY OF ARGUMENT

¹¹ This brief is submitted before the father’s second supplemental designation of clerk’s papers was paginated. The latest orders designated are attached as an appendix.

This Court should affirm the highly discretionary decision on a parenting plan made by an informed trial court. The court did not abuse its discretion in entering a parenting plan that is in the children's best interest after hearing from over a dozen witnesses and considering 100 exhibits. Connie merely seeks to have this Court revisit and reweigh the evidence in her favor, most notably the testimony of the experts, something that is not within the scope of an appellate court's review. The parenting plan is supported by sufficient evidence where multiple professionals have documented Connie's abusive use of conflict, lack of emotional capacity to change, and contempt for court orders, which endangers the children's psychological development and continues to this day.

Nor did the trial court abuse its discretion in imputing minimum wage income to Connie. She held several jobs since separating from the father and had many prospects for future employment, but she never provided a full accounting of her actual wages to the court.

This Court should affirm and award Roger costs and attorney fees for having to respond to Connie's meritless arguments and ongoing intransigence.

D. ARGUMENT

(1) Standard of Review

Trial courts have broad discretion in adopting a parenting plan. *In*

re Marriage of Katare, 175 Wn.2d 23, 35, 283 P.3d 546 (2012), *cert. denied*, 568 U.S. 1090 (2013). Appellate courts “are reluctant to disturb a child custody disposition because of the trial court’s unique opportunity to personally observe the parties.” *Murray v. Murray*, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981). “The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court.” *In re Marriage of Kim*, 179 Wn. App. 232, 240, 317 P.3d 555 (2014), *review denied*, 180 Wn.2d 1012 (2014) (citing *In re Marriage of Landry*, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985)). Thus, “trial court decisions in dissolution actions will be affirmed unless no reasonable judge would have reached the same conclusion.” *Id.*¹²

(2) The Trial Court Did Not Abuse Its Discretion in Entering the Parenting Plan¹³

Connie attacks the parenting plan, claiming that the trial court

¹² The fact that both Judge Gregerson and Commissioner Scheinberg found reasons to place restrictions on Connie for her abusive use of conflict necessarily shows that that decision should be affirmed on appeal.

¹³ The latest temporary parenting plan raises a mootness issue at the outset. This brief addresses the mother’s attacks on the older parenting plan. Both are supported by sufficient evidence and support one another as multiple judicial officers have concluded at multiple times that Connie’s parenting time should be restricted. It also undermines the mother’s request at the end of her brief for a new judge. A new judge will change nothing, she needs to take accountability, follow court orders, and do what multiple judicial officers have determined is in her children’s best interest.

abused its discretion in several ways. She argues that the trial court did not consider the factors mandated by RCW 26.09.187 regarding a child's best interest. Appellant's br. at 24-29. Not true. She argues that trial court erred by relying on Dr. Johnson's report because she presented an expert who critiqued it, and that the trial court "abdicated" its role as a fact finder by adopting Dr. Johnson's recommendations. *Id.* at 21-29. She is wrong as a matter of law and as a matter of fact. And she argues that because Dr. Poppleton critiqued Dr. Johnson's report, the parenting plan cannot be supported by sufficient evidence. *Id.* at 29-40. Again, this argument has not merit. Her challenges are either false or boil down to an inappropriate request to have this Court reweigh the evidence on appeal. This Court should affirm; these challenges are not within this Court's scope of review, and the parenting plan is supported by sufficient evidence.

(a) The Trial Court Considered the Mandatory Best Interest Factors

Connie claims that the trial court "made no attempt to address the mandatory factors under RCW 26.09.187" when assessing the children's best interest and entering the parenting plan. Appellant's br. at 25. She is wrong. Connie ignores the court's oral ruling where it began with the acknowledgement that it was bound to "consider the statutory factors"

when entering the parenting plan. CP 370. She ignores the fact that Dr. Johnson's report, which she also faults the trial court for "adopting," addresses each factor individually. CP 545-48. And, incredibly, she ignores the court's written findings of fact where, besides making findings as part of the extensive mandatory forms that apply to dissolution proceedings, it stated:

The court signed the final Parenting Plan filed separately today. The Parenting Plan should be ordered based on the factors set forth in RCW 26.09.181-187 and RCW 26.09.191. The Court considered all statutory factors listed therein.

CP 496. This is more than enough to sustain a parenting plan, which appellate courts are extremely "reluctant to disturb." *E.g., Murray, supra.*

As our Supreme Court clarified decades ago, a parenting plan will not be overturned for failure to make detailed findings on every specific factor, rather a trial court merely must "consider all listed factors" when determining what is in a child's best interest. *In re Marriage of Croley*, 91 Wn.2d 288, 291-92, 588 P.2d 738 (1978). "Where...the record indicates substantial evidence was presented on the statutory factors thus making them available for consideration by the trial court and for review by an appellate court, specific findings are not required on each factor." *Id.* at 292. In *Croley*, the Supreme Court refused to overturn a parenting plan because, "[t]he trial court stated both in its oral opinion and in its findings

of fact, that it was making the custody award in accordance with what it deemed to be the best interest of the children.” *Id.*¹⁴

Here, the trial court not only issued a parenting plan that it found was in the best interest of the children, but it explicitly acknowledged that its decision was informed by a consideration of the statutory factors. Substantial evidence on those factors was provided throughout the trial, and especially during the testimony of Drs. Johnson and Poppleton and in Dr. Johnson’s report made at the court’s request, which addressed every mandatory factor. *E.g.*, RP 39, 41-42, 56, 67, 258, 324-25; CP 545-48.

For contrast, *Young v. Thomas*, 193 Wn. App. 427, 378 P.3d 183 (2016), is an example of truly deficient findings. There, the trial court entered a parenting plan after the mother failed to appear for the fact-finding hearing. The court merely placed the father on the stand and asked him whether his proposed parenting plan was “what he still want[ed].” *Id.* at 443. The only other evidence the court considered was its own review of the “Judicial Information System” data “as to both parents.” *Id.* This

¹⁴ *Croley’s* holding is settled law that courts consistently apply to this day. *See, e.g., Matter of Marriage of Mkrtchyan & Adamyan*, 12 Wn. App. 2d 1018, 2020 WL 806343, review denied sub nom. *Mkrtchyan v. Adamyan*, 468 P.3d 618 (2020) (“Because the statute merely requires consideration of every factor, the record shows the parties presented extensive evidence on each factor, and the court’s ruling is consistent with having reviewed the evidence presented, we conclude the court adequately considered the RCW 26.09.187(3)(a) factors.”) (noting that, as here, the trial court reviewed exhibits and testimony from experts and GALs who specifically addressed the mandatory factors and best interests of the children).

Court wisely held that such findings were insufficient because “the trial court did not establish a parenting plan by applying the required statutory factors.” *Id.* at 443-44.

This case is vastly different from *Young*. The trial court did not merely award one parenting plan in a pseudo default hearing, with no evidence other than one parent’s wishes. Rather, it conducted a three-day trial, heard from over a dozen witnesses, including testimony from experts and professionals, and reviewed 100 exhibits to determine what was in the children’s best interest. It acknowledged during its oral ruling and in its written findings that considered all the mandatory statutory factors in reaching that decision. There is no basis to upend the trial court’s final, informed decision that is in the children’s best interest.

(b) The Parenting Plan Is Not Reversible Because the Trial Court Sided with One Expert Over Another

Aside from misrepresenting the record to argue that the trial court did not consider the statutory factors, Connie wrongfully argues that the trial court “abdicated” its role as a fact finder by deferring to the expert recommendations of Dr. Johnson. She points to her own expert, Dr. Poppleton, who contended that Dr. Johnson’s report was incomplete or flawed. Appellant’s br. at 21-24. In other words, she assigns error to the trial court’s decision to believe the court-appointed expert over her own.

The Court should reject this improper argument because an appellate court has no power to reweigh the evidence on appeal.

An appellate court does not reweigh competing expert testimony, rather, “once...expert testimony is admitted into evidence, its weight and credibility is like all other evidence to be considered by the [factfinder].” *Larson v. Georgia Pac. Corp.*, 11 Wn. App. 557, 560, 524 P.2d 251 (1974) (holding that it is reversible error for a court to order new trial due to its own weighing of the evidence and conclusion that one party’s experts were more credible or proficient than another’s). Appellate courts routinely reject requests from an appellant to revisit conflicting expert testimony. *See, e.g., Eagleview Techs., Inc. v. Pikover*, 192 Wn. App. 299, 311, 365 P.3d 1264 (2015), *review denied*, 185 Wn.2d 1038 (2016) (an appellate court cannot “reweigh evidence on appeal” where the trial court “adopt[ed]” the opinion of one expert after hearing from experts on both sides).¹⁵ As this Court has explained, this fundamental principle is no different in dissolution proceedings – where the evidence is “in conflict,” an appellate court cannot reweigh the evidence to second guess the

¹⁵ *See also, e.g., Brotherton v. Kralman Steel Structures, Inc.*, 165 Wn. App. 727, 736, 269 P.3d 307 (2011), *review denied*, 173 Wn.2d 1036 (2012) (appellate court would not reweigh conflicting evidence where a trial court adopted one expert’s opinion); *Porter v. Seattle Sch. Dist. No. 1*, 160 Wn. App. 872, 880, 248 P.3d 1111 (2011) (“[I]t is not the role of a reviewing court to weigh the credibility of experts.”); *Stevenson v. State, Dep’t of Health, Nursing Care Quality Assur. Comm’n*, 187 Wn. App. 1037, 2015 WL 3422170 at *5 (2015), *review denied*, 184 Wn.2d 1037 (2015) (holding that findings are not unsupported just because the factfinder rejected one expert’s competing opinion).

decision of the trial court. *Greene v. Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999).

Division I recently applied this principle in a strikingly similar case in *Matter of Marriage of Aamer & Youssef*, 199 Wn. App. 1035, 2017 WL 2635323 (2017). There, a father challenged a parenting plan issued by a trial court after a dissolution hearing. “Pointing to his experts’ criticisms of the [parenting] report” the father challenged the trial “court’s finding that the report was complete and reliable and contends the court’s reliance on the report was an abuse of discretion.” *Id.* at *7. The court disagreed, noting that such challenges to an expert’s opinion is not “within the scope of [an appellate court’s] review.” *Id.* Rather, the court reiterated that it must “defer to the trial court’s decision regarding the weight and persuasiveness of conflicting expert testimony.” *Id.* at *10.

Here, too, the weight and persuasiveness of Dr. Johnson and Dr. Poppleton’s expert reports are not “within the scope” of this Court’s review. This Court should reject Connie’s request to revisit these factual determinations on appeal.

(c) The Trial Court Did Not Abuse Its Discretion by Adopting Dr. Johnson’s Recommendations

Faced with this reality that her challenges are not within the scope of a proper appeal, Connie claims that the trial court “abdicated” its

factfinding role because it mentioned during its oral ruling that it was declining to “Monday morning...quarterback” Dr. Johnson’s report and would “sustain” its recommendations for the parenting plan. Appellant’s br. at 25-26. This argument is pure hyperbole. *At worst*, the trial court used a strained metaphor during its lengthy oral ruling, but this does not warrant vacating a parenting plan entered with thoughtful care after considering extensive evidence from witnesses, experts, and exhibits.

The trial court conducted a thorough trial, hearing from over a dozen witnesses and considering 100 exhibits, exhibits that Connie did not even provide for this Court to review. It considered Dr. Poppleton’s criticisms of Dr. Johnson’s report, as it stated in its oral ruling. CP 371 (“I listened very carefully to the evidence and the critique of Dr. Johnson’s report.”). Both experts testified and faced cross examination. As discussed above, the trial court’s decision to assign greater persuasiveness and weight to Dr. Johnson’s report is not within the scope of this Court’s review.

Try as she might to claim that the trial court “viewed its role as a one akin to an appellate court,” appellant’s br. at 23, in truth, the trial court served its function as a fact finder dutifully. It properly weighed the evidence to craft a parenting plan that is in the children’s best interest. And it carefully refined its decision, even at the presentation hearing,

where it made specific rulings that it determined were in the family's best interest. See CP 404-74 (transcript of the presentation hearing), 512-21 (parenting plan with handwritten alterations).

This Court recently rejected Connie's challenges in another strikingly similar opinion in *Matter of Marriage of Reichert*, 2 Wn. App. 2d 1063, 2018 WL 1393794 (2018). There, a guardian ad litem ["GAL"] made recommendations at a hearing on a parenting plan, testifying that one parent's time should be restricted. "After hearing all the evidence, the trial court adopted the GAL's recommendations." *Id.* at *6. This Court held that even though the appellant "arguably raise[d] some valid concerns about the GAL's investigation and objectivity," those concerns go to "weight and credibility" and would not be revisited on appeal. *Id.* Thus, this Court upheld the trial court's decision to adopt the GAL's recommended parenting plan.

Here, too, the trial court properly weighed the evidence, including Connie's criticisms of Dr. Johnson's report, but ultimately decided to adopt his recommendations. That was not an abuse of its discretion or an abdication of its role as the fact finder. *Reichert; Youssef, supra; see also, e.g., Eagleview Techs., Inc.* 192 Wn. App. at 311 (finding no error where the factfinder "adopt[ed]" an expert's report). As in *Reichert*, the court made its informed decision only after hearing "all the evidence," including

testimony from both experts, both parents, along with numerous other witnesses, and after considering many exhibits. This Court should not indulge Connie's improper request to re-weigh that evidence on appeal.

The authority Connie provides to support her hyperbolic argument only shows how misguided it is. First, she cites *Marriage of Swanson*, 88 Wn. App. 128, 944 P.2d 6 (1997), for the notion that a trial court cannot blindly accept a parent evaluator's report. Appellant's br. at 22. *Swanson* is nothing like this case. It is an atypical case about assigning a GAL in a paternity action where the State intervened and asked that an attorney be appointed as GAL to comment on "legal issues and not social issues" involving the child's paternity. *Id.* at 133. After being appointed, the GAL commented on the viability of certain legal defenses, even though the GAL admitted that "he had not yet investigated or analyzed [the child's] best interests" in any way. This Court held this was error; once a GAL is appointed, he or she must investigate what is in the child's interest, and a trial court cannot rely on a wholly uninformed GAL opinion. *Id.* at 140-41.

This case is vastly different. Dr. Johnson presented a thorough report, crafted over 15 months, and based on interviews with every family member, psychological testing, and contacts with other professionals and teachers who interacted with the family. CP 531. Dr. Johnson also

reviewed many court filings, declarations, and other exhibits to guide his review. CP 531-32. His report was informed, as was the trial court's decision.¹⁶

Next, Connie cites *In re Smith-Bartlett*, 95 Wn. App. 633, 976 P.2d 173 (1999), for the proposition that the "ultimate responsibility over parenting decisions remains with the court." Appellant's br. at 23 (internal quotation omitted). *Smith-Bartlett* is also off point. There, the trial court ordered that the parties' resolve a visitation dispute through arbitration, but then refused to review the arbitrator's decision *de novo*. Division III reversed because the dissolution statute and the statutes and rules on mandatory superior court arbitration required *de novo* review of an arbitrator's decision in superior court. *Id.* at 641.

Again, this case is nothing like *Smith-Bartlett*. The trial court conducted a trial; it did not delegate the decision to an arbiter. Nor did it ignore any statutory command or procedure. To the contrary, the court conducted an extensive hearing, with many witnesses and exhibits, weighing the evidence as it saw fit. An appeal is not a proper venue to challenge those findings of fact, rather, the family, and particularly the

¹⁶ The veracity of Dr. Johnson's report has only been later confirmed by other professionals, like the parenting coordinator, Lisa Yenney. She reported that Connie "lacks insight," possesses an "inability to change," and "will not acknowledge her role in this family system dynamic." CP 755. She also personally witnessed Connie's false accusations, such as Connie's claim that Yenney "blocked her emails" which she did not. CP 755.

children, will benefit from the finality the trial court's order provided. This Court should affirm.

(d) The Parenting Plan Is Supported by Substantial Evidence

Connie also directly attacks the parenting plan, claiming that because the trial court rejected Dr. Poppleton's criticisms of Dr. Johnson's report, the parenting plan not supported by sufficient evidence. Appellant's br. at 29-40. Put another way, Connie argues that the findings are insufficient because the trial court did not rule in her favor. For all the reasons stated above and below, the Court should reject Connie's arguments.

At the outset, the Court should note that when an appellant challenges the sufficiency of the evidence, this Court "look[s] at the evidence and reasonable inferences therefrom in the light most favorable to the respondent," in this case, the father. *In re Marriage of Zigler & Sidwell*, 154 Wn. App. 803, 812, 226 P.3d 202 (2010) *review denied*, 169 Wn.2d 1015 (2010); *In re Marriage of Heslip*, 190 Wn. App. 1012, 2015 WL 5566229 at *3 (2015). This court will uphold a finding of fact if "substantial evidence exists in the record to support it." *Burrill v. Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *review denied*, 149 Wn.2d 1007 (2003). "Substantial evidence is that which is sufficient to persuade

a fair-minded person of the truth of the matter asserted.” *Katane*, 175 Wn.2d at 35. Here, there is ample evidence to support the court’s findings, and Connie’s challenges merely boil down to her contention that this Court should reweigh the evidence in her favor. Again, this is improper on appeal.

Connie argues that the court’s findings are unsupported because that Dr. Johnson failed to investigate her allegations of domestic violence or physical abuse. Appellant’s br. at 30-33. This is simply not true. Dr. Johnson investigated these allegations over the course of his 15-month evaluation and testified that he found her allegations of abuse to be “not credible.” RP 32-33; *see also*, CP 547 (“Connie raises issue of various types of abuse by Roger. The examiner found no evidence to support her allegations in this regard.”). This was not some uninformed hunch, rather his conclusions based on his review of the case and his observations and multiple interviews of the entire family, not to mention the lack of any corroborating evidence of violence.

Connie also got the chance to testify and present her evidence at trial, where the father also testified and denied any domestic violence or abuse. RP 106. The trial court properly weighed the testimony and credibility of the parties and found no evidence of domestic violence or abuse. CP 512. And those findings have only been bolstered by other

professionals who have engaged with the family since. The parenting coordinator also investigated Connie's allegations of domestic violence and abuse and found no corroborating evidence. CP 750-55 (noting, *e.g.*, that the girls could give any "example of abuse" by the father). The trial court's factual determinations should not be overturned on appeal. *E.g.*, *Murray, supra*.

It is also worth noting that Roger also alleged violence on Connie's part, testifying that she spanked the triplets excessively, and even slapped one of the boys across the face when he was 18 months old. RP 104. As the trial court stated, it did its best to resolve this "messy" situation, CP 370, and this Court should not upend its highly fact-intensive determinations on appeal.

Next, Connie argues that the findings are unsupported because Dr. Johnson's report is flawed for relying on the "questionable 'parental alienation' paradigm" or the "friendly parent doctrine." Appellant's br. at 35-40. This, too, is simply another attempt to relitigate the testimony of the expert witnesses at trial.

Connie claims that Dr. Johnson did not consider recent scholarship on the concept of parental alienation. Appellant's br. at 35-40 (citing Dr. Poppleton's testimony and academic literature). But she fails to mention that this topic was discussed extensively at trial. Dr. Johnson recognized

that new scholarship has “emerged” reformulating the traditional concept of parental alienation. RP 35-36. He considered this scholarship, and still concluded that by stoking conflict and alienating the girls from their father, Connie endangered their psychological development. RP 36-40.

Dr. Johnson noted that by “using conflict abusively,” Connie projected her “hostility and anger at Roger” onto the girls and exerted “unhealthy alignment or influence” over them. CP 545-47. He elaborated at trial about the damage such alienation can inflict:

Well, [children exposed to a parent’s alienating behavior] lose their relationship with one parent and become[] trapped in the conflict between parents. You may have children who have sort of long-term anxiety and some related depression as they age and become more aware of sort of what’s happening to them and their own contribution to the problem. There’s nothing good that comes of it...Possible effects can be low self-esteem, self-hatred, lack of trust, depression, and substance abuse...Every child has a fundamental right and need for an unthreatened and loving relationship with both parents. To be denied that right of one parent without sufficient justification is a form of child abuse.

RP 36-40. This, along with all the other evidence of alienation, is more than sufficient evidence to sustain the court’s findings in this case.¹⁷

¹⁷ The parenting coordinator also confirmed the danger to the girls’ psychological development, which has been ongoing since the trial court entered its decision due to Connie’s behavior. CP 755 (“Currently there is such an extended period of hostility by the girls towards their father here is concern for their well-being...Children who are able to maintain a quality relationship with both parents often have better outcomes and are lower risk for unhealthy relationships, at risk behaviors, and mental health issues than children who do not have contact with both parents.”). This corroborates the testimony at

Again, a verdict is not reversible simply because a factfinder relied on the testimony of one expert who was criticized at trial by another. Such cases present “a classic battle of the experts, a battle in which the [factfinder] must decide the victor.” *Intalco Aluminum v. Dep’t of Labor & Indus.*, 66 Wn. App. 644, 662, 833 P.2d 390 (1992), *review denied*, 120 Wn.2d 1031 (1993) (emphasis added; quotation omitted); *Youssef, supra*, (refusing to overturn a parenting plan *even if* there might be “valid concerns” about an expert’s recommendations because the trial court is in the best position to evaluate an expert’s testimony).

Here, the trial court reviewed the experts and considered all sides of this dispute, including the “critique[s] of Dr. Johnson’s report.” CP 371. Only after reviewing the evidence “very carefully,” particularly Connie’s “critique of Dr. Johnson’s report,” did the court enter the parenting plan, which it described as a “very, very difficult task.” RP 371. That is precisely the role of the trial court, and its findings should not be disturbed by this Court on appeal. Rather, the family, and especially the children, are best served by the “finality” the parenting plan provided. *In re Marriage of Kim, supra*. This Court should affirm because its findings are supported by substantial evidence.

trial and reinforces the trial court’s findings.

(3) The Trial Court Did Not Abuse Its Discretion by Finding Connie in Contempt

Connie argues that “the trial court’s contempt order is the inevitable result of a flawed parenting plan.” Appellant’s br. at 40. This is a veiled way of admitting that because she disagreed with the parenting plan, Connie never intended to follow it. The trial court did not abuse its wide discretion by holding her in contempt for refusing to follow the court’s order.

“A parent who refuses to comply with duties imposed by a parenting plan is considered to have acted in ‘bad faith.’” *In re Marriage of Rideout*, 150 Wn.2d 337, 352, 77 P.3d 1174 (2003) (quoting RCW 26.09.160(1)). “Parents are deemed to have the ability to comply with orders establishing residential provisions and the burden is on a noncomplying parent to establish by a preponderance of the evidence that he or she lacked the ability to comply with the residential provisions of a court-ordered parenting plan or had a reasonable excuse for noncompliance.” *Id.* at 352–53. This Court reviews a decision in a contempt proceeding for an abuse of discretion, and, again, it does not reweigh credibility determinations on appeal. *In re Marriage of Eklund*, 143 Wn. App. 207, 212, 177 P.3d 189 (2008).

Here, the trial court acted within its discretion to sanction Connie for refusing to follow the court order based on its evaluation of the evidence and credibility of the parties. Connie's main argument is that the trial court erred by "accepting Roger's narrative" over hers. Appellant's br. at 41. As discussed above, that is precisely the type of credibly determination that this Court must not revisit on appeal. The trial court exercised its role as factfinder, and considered all the evidence before it, including reports from professionals. This Court does not revisit such determinations on appeal.

Connie also accuses the parenting coordinator, Lisa Yenney, of being "tainted" because she also considered Dr. Johnson's report. Appellant's br. at 42. As discussed above, Dr. Johnson's report was sound. Connie's continued refusal to accept criticism falls in line with her well-documented delusional tendencies causing her to think that every dissenting voice is out to get her. As Yenney also noted in her report:

Part of mother's inability to participate in this process is her belief that unless the involved professional agrees with her, then somehow father has placed himself in a position for the professional to align with him rather than her.

CP 755. With every argument, Connie lends more credibility to Dr. Johnson and Yenney's conclusions that he has and will not cooperate with

orders from the court or recommendations of professionals assigned to help the family.

The court's decision is sound, where the father and the court-appointed parenting coordinator extensively documented Connie's continued intransigence, resistance to help, and refusal to direct the girls to attend their scheduled residential time with the father as ordered in the parenting plan. She missed pick-ups, severely disappointing their sons, allowed the girls to stay with their adult siblings during Roger's time, refused to sign paperwork so they could attend therapy, and otherwise failed to cooperate with the parenting plan mandating that she "affirmatively direct [the girls] to attend all scheduled residential time with their father." CP 513.

Connie claims that there is insufficient evidence of these violations because the father supported his motion with what she describes as "self-serving and purely speculative emails." Appellant's br. at 49. But this ignores the parenting coordinator's report, extensively documenting Connie's ongoing failures. CP 749-56. That report stemmed from Yenny's experience working with the family for six months after the final parenting plan was entered. Like Dr. Johnson, she interviewed the children and parents many times, and contacted other professionals, like Dr. Dudley and Connie's therapist. *Id.* She found no evidence to support

Connie's allegations of abuse after further investigation, visited the father's home, and tried in vain to coordinate additional services, in which Connie refused to participate. *Id.* The court made its decision after considering the report, along with the declarations and other submissions from the parties. It was well informed and based on more than speculation.

Indeed, before its ruling on the contempt motion, the trial court explained that it was "very familiar" with the parties and issues, given the long and litigious nature of the case. RP (4/20/20) 6. Sufficient evidence supports those findings and the court's highly discretionary contempt decision, especially when viewed in the light most favorable to the father, as this Court must do on appeal. *Zigler*, 154 Wn. App. at 812. This Court should affirm.

(4) The Court Did Not Abuse Its Discretion in Imputing Income Where Connie Worked but Never Provided a Full Accounting of Her Income

Connie does not challenge the financial aspects of the dissolution,¹⁸ but she does argue that the trial court erred in imputing income to her for child support purposes. She is wrong. The trial court did not err by imputing modest income, that of a minimal wage, where

¹⁸ Connie received significant assets, including a valuable, multiunit rental property that will provide her significant income going forward. RP 375-76.

Connie testified that she was not only employable at the time of trial but had held several jobs without reporting her income to the court.

This Court reviews child support orders for an abuse of discretion. *In re Marriage of Pollard*, 99 Wn. App. 48, 52, 991 P.2d 1201 (2000). A trial court's discretion is narrowed only by the statutory requirement to use the child support schedule and corresponding worksheet. RCW 26.19.035(3).

A parent may not avoid or reduce his or her child support obligation by refusing to work or by being intentionally underemployed. *Lambert v. Lambert*, 66 Wn.2d 503, 509-10, 403 P.2d 664 (1965). When a parent is intentionally underemployed or unemployed, the court must impute income. RCW 26.19.071(6). The court determines whether a parent is voluntarily underemployed or unemployed based on the "parent's work history, education, health, and age, or any other relevant factors" to determine the level of employment a parent is capable and qualified to perform. RCW 26.19.071(6); *In re Marriage of Sacco*, 114 Wn.2d 1, 4, 784 P.2d 1266 (1990). Once the court determines that a parent is intentionally underemployed or unemployed, the court determines the amount of income to be imputed. RCW 26.19.071(6).

Here, the trial court did not abuse its discretion in imputing minimum wage income based on Connie's intentional unemployment.

The court imputed income because Connie admitted she had held several jobs since her separation from the father, but she never offered a complete accounting of her income for the court to factor into the child support calculation. CP 429. The court set a “very modest imputed income level under the circumstances – a minimum wage.” *Id.* This was consistent from the very beginning of the case, where the court ordered in the temporary parenting plan, back in 2017, that she should immediately seek employment or job training since the girls were school age and the boys were living with the father. CP 30, 33. It was not an abuse of discretion to impute income to her where she worked several jobs in the years since without giving the court an accounting of those wages.¹⁹

Connie cites *Matter of Marriage of Kaplan*, 4 Wn. App. 2d 466, 421 P.3d 1046, *review denied sub nom. Kaplan v. Kaplan*, 191 Wn.2d 1025 (2018), but that case is distinguishable. There, a wife remained home to care for minor children and did not work “at the time of trial.” *Id.* at 472. And she offered evidence, supported by testimony from a vocational counselor, that she was “unemployable” and “required training

¹⁹ To the extent that Connie argues the trial court should have required an accurate accounting of her wages rather than imputing income, it would be invited error where she failed to provide those figures even though this matter was discussed extensively below. CP 425-31. In fact, this was a windfall to the mother. The Court recognized that based on the testimony, its “equitable ruling to use imputed minimum [wage]” income was “fairly advantageous” to Connie who likely earned more than minimum wage for her recent employment. CP 430. That discretionary, equitable decision should not be overturned on appeal.

to secure marketable skills.” *Id.* In that case, Division I determined that it was error to impute income, \$2,714 per month, to the non-working wife. *Id.* at 484-87.

Here, Connie held several jobs after she separated from the father. She managed a blueberry field, she catered, she worked in food service at the local amphitheater, and she had a “design/décor job in North Carolina,” which she completed. RP 716-17. On top of this actual work history, she testified that she had several options for future employment, including “a life coaching certificate,” potential real estate ventures, and work in any of her other fields of expertise like photography or design. RP 815-16. It was not an abuse of discretion to impute some very modest income (minimum wage) where she admitted she had worked and was employable.

Indeed, Connie testified that her main impediment to committing to finding work was her full-time attention to “doing court things” related to the dissolution trial. RP 816-17. With a final decision reached and the children out of her house, either in the father’s care or in school, she was free to pursue one of her “several options” for employment, as she was ordered to do several years prior in the temporary parenting plan. The court should affirm the trial court’s discretionary decision to input a modest income for her intentional underemployment.

(5) The Court Should Award the Father His Attorney Fees on Appeal

This Court should grant the father his attorney fees for having to respond to this meritless appeal. RCW 26.09.140 provides that “Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys’ fees in addition to statutory costs.” An appellate court must consider the parties’ relative ability to pay as well as “the arguable merit of the issues raised on appeal.” *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *review denied*, 137 Wn.2d 1003 (1999). Meritless appeals that merely ask the court to reweigh the evidence on appeal warrant fees. *See, e.g., Youssef*, 199 Wn. App. 1035 at *13 (awarding partial fees to the respondent where the appellant argued that the trial court was wrong to adopt one expert’s opinion over another’s for a parenting plan).

For the reasons discussed above, this appeal never had any merit. Connie merely challenges discretionary decisions and the trial court’s evaluation of the evidence and witness credibility. Her challenges are largely, *if not entirely*, outside the scope of this Court’s review. Rather than preserving the parties’ financial resources and ending this already drawn out dissolution, Connie chose to pursue this appeal. The father has been forced to expend great resources to respond to her meritless

arguments, not to mention his expenses for responding to her intransigence and sanctionable conduct in the trial court since the original parenting plan was entered. Fees on appeal are appropriate.

E. CONCLUSION

This Court should affirm the highly discretionary decisions of the trial court to craft a parenting plan which is in the children's best interests. This appeal is not a proper avenue to relitigate the disputed issues of fact or reweigh the evidence already considered below. The Court should award the father his fees and costs on appeal for having to respond to these meritless arguments.

DATED this 21st day of September, 2020.

Respectfully submitted,

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APPENDIX

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FILED
JUN 29 2020

Scott G. Weber, Clerk, Clark Co.

11:26

Superior Court of Washington, County of Clark

In re:

Petitioner:

ROGER WILLIAM CHRISTOPHER

And Respondent:

CONNIE SUE CHRISTOPHER

No. 17 3 01535 8

Order on Adequate Cause to Change a
Parenting/Custody Order

(ORRACG / ORRACD / ORH: see 6)

**Order on Adequate Cause to Change a
Parenting/Custody Order**

- 1.** The Petitioner made a *Motion for Adequate Cause Decision* and the court finds there is reason to approve this order:

An adequate cause hearing was held.

The Court Finds:

2. Jurisdiction

This court has jurisdiction over this case.

The parenting/custody order was made by a Washington court, and the court still has authority to make orders for the children.

3. Timing of Adequate Cause Decision

The court can decide adequate cause because:

the deadline for filing a *Response* to the *Petition* has passed.

4. Adequate Cause

There is adequate cause to hold a full hearing or trial about the *Petition regarding all of the children except for Noelle Christopher*.

5. Other Findings:

Ruling: Adequate Cause based on a finding of contempt more than once in three years is denied.

Findings: RCW 26.09.260 states,

(1) . . .the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan . . .

(2)(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan . . .

Reading both sections together indicates that the legislative intent is for a parent to be found in Contempt at least two times after a Final Parenting Plan is entered with the court. Ms. Christopher was only found in Contempt one time after the Final Parenting Plan was entered and prior to the Petition for Modification of Parenting Plan was filed. Therefore, based on 26.09.260 2(d) the criteria for adequate cause has not been established.

Ruling: Adequate Cause is denied as to Noelle Christopher.

Findings: Noelle will be 18 years of age in October of 2020. The current parenting plan applies to her, but in three months she can decide who and where she wants to live and with whom she wants to associate.

Ruling: Adequate Cause is established for a major modification regarding Angeline, age 13, Lindee, age 10 and the triplets, Boe, Dray and Zane, age 8.

Findings:

- a- Ms. Christopher continues to engage in parental alienation and is obstructing the relationship between the father and his daughters.
- b- Ms. Christopher continues to intentionally fail to follow the Final Parenting Plan regarding residential time, transportation arrangements and positive co-parenting. She was recently held in contempt by Judge Gregerson regarding this same course of conduct.

- c- Ms. Christopher appears to have no insight, concern or acknowledgement regarding the damage she is doing to the relationship between the father and his daughters.
- d- Ms. Christopher appears to have no ability to disengage in actively poisoning the relationship between the father and his daughters and his sons.
- e- Ms. Christopher appears to have deliberately and methodically obstructed the reconciliation process for the father and his daughters with Dr. Dudley.
- f- Ms. Christopher appears to have deliberately and methodically obstructed the parenting coordinator's ability to resolve cooperation/coordination issues regarding visitation and other activities between all parties.
- g- Ms. Christopher appears to be unsupportive of Mr. Christopher having any relationship with his daughters other than financial.
- h- Although Dr. Johnson supported the mother and father each having unsupervised time with the children (Liberty #154), he also included a caveat on page 17 stating,

"If Connie attempts to in any way poison this change in schedule, it may be necessary to actually reduce her contact with the children to some level of supervision."

Dr. Johnson further stated in his June 12, 2019 letter of clarification attached to Mr. Christopher's declaration (Liberty #184), that he was concerned about Ms. Christopher's "ability to manage her conduct and understand her contribution to the conflict." In addition, he was also "concerned that Ms. Christopher may act, consciously or not, to alienate the boys from their father."

It appears that Dr. Johnson's concerns were warranted. Ms. Christopher has not been able to moderate her behavior, and this has resulted in a deterioration of the relationship between the father and his daughters and is starting to impact the relationship between the father and his sons.

- i- It appears that all three experts, Dr. Johnson, Dr. Dudley, and Ms. Yenney have concluded that Ms. Christopher is the primary reason there is conflict between the father and his daughters.
- j- The daughters' current living situation with their mother is harmful to their mental and emotional health.
- k- The sons' unsupervised visitation with their mother is harmful to their mental and emotional health.

➤ **The Court Orders:**

6. Decision

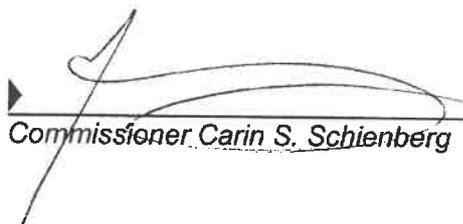
Adequate Cause Found –

The *Petition to Change a Parenting Plan, Residential Schedule or Custody Order* will move on to a full hearing or trial. The hearing or trial will take place at a later date to be set by the court.

7. Other orders: N/A

Ordered.

6-29-20
Date


Commissioner Carin S. Schienberg

FILED

AUG 10 2020

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Scott G. Weber, Clerk, Clark Co.

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Superior Court of Washington, County Clark

In re:

Petitioner:

ROGER WILLIAM CHRISTOPHER

And Respondent:

CONNIE SUE CHRISTOPHER

No. 17-3-01535-8

Parenting Plan (Proposed)
(PPP / PPT / PP)

[X] Clerk's action required: 1.

STATE REGISTRY

Parenting Plan

- 1. This parenting plan is a Court Order signed by a judge or commissioner. This is a Temporary order (PPT).

This Order shall take effect starting 8/6/2020 for Boe Dray and Zane who are currently residing with father.

This order shall take effect starting 8/9/2020 at 6pm for Noelle Angeline and Lindee who were residing with their mother at the time of the hearing.

- 2. Children - This parenting plan is for the following children:

	Child's name	Age
1.	Noelle A. Christopher	17
2.	Angeline R. Christopher	13
3.	Lindee S. Christopher	10
4.	Boe W. Christopher	8
5.	Dray W. Christopher	8

RCW 26.09.016, .181, .187, .194
Mandatory Form (07/2017)
FL All Family 140

Parenting Plan

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1 keep the children away from parental conflict. Therapy will be with Dr. Hartinger until
2 she, in her professional judgement, terminates it.

3 Provide a copy of the evaluation and compliance reports to Father's attorney every
4 three months.

5 If this parent does not follow the evaluation or treatment requirements above, then:

6 Her contact and visitation with the children shall continue to be limited and supervised.

7 5. Decision-making

8 When the children are with you, you are responsible for them. You can make day-to-day
9 decisions for the children when they are with you, including decisions about safety and
10 emergency health care. Major decisions must be made as follows.

11 a. Who can make major decisions about the children?

Type of Major Decision	Joint (parents make these decisions together)	Limited (only the parent named below has authority to make these decisions)
School / Educational		Roger Christopher
Health care (not emergency)		Roger Christopher

12 b. Reasons for limits on major decision-making, if any:

13 Major decision-making **should** be limited because:

14 One of the parents does not want to share decisions-making and this is
15 reasonable because of problems as described in 3.b. above.

16 6. Dispute Resolution - If you and the other parent disagree:

17 From time to time, the parents may have disagreements about shared decisions or about
18 what parts of this parenting plan mean. To solve disagreements about this parenting plan,
19 the parents will go to a dispute resolution provider or court. The court may only require a
20 dispute resolution provider if there are no limitations in 3a.

21 The parents will go to court (without having to go to mediation, arbitration, or counseling).

22 7. Custodian

23 The custodian is Roger Christopher solely for the purpose of all state and federal statutes
24 which require a designation of determination of custody. Even though one parent is called
the custodian, this does not change the parenting rights and responsibilities described in



1 this plan.

2 *(Washington law generally refers to parenting time and decision-making, rather than*
3 *custody. However, some state and federal laws require that one person be named the*
4 *custodian. The custodian is the person with whom the children are scheduled to reside a*
5 *majority of their time.)*

6 **Parenting Time Schedule (Residential Provisions)**

7 **Complete the parenting time schedule in sections 8 - 11.**

8 **8. School Schedule**

9 **a. Children under School-Age**

10 Does not apply. All children are school-age.

11 **b. School-Age Children**

12 The children are scheduled to live with Roger Christopher except when they are
13 scheduled for supervised visitation with Connie Christopher once per week according to
14 the parties' schedules.

15 **9. Summer Schedule**

16 Summer begins and ends according to the school calendar.

17 The Summer Schedule is the **same** as the School Schedule *(Skip to 10.)*

18 **10. Holiday Schedule (includes school breaks)**

19 The Holiday Schedule is the **same** as the School and Summer Schedules above for all
20 holidays and school breaks.

21 **11. Conflicts in Scheduling**

22 Does not apply.

23 **12. Transportation Arrangements**

24 The children will be exchanged for parenting time (picked up and dropped off) at the
location of the professional supervisor.

Other details: Father shall drop the children off and pick up from supervised visits.

13. Moving with the Children (Relocation)



1 If the person with whom the children are scheduled to reside a majority of their time plans
2 to move (relocating person), s/he **must notify** every person who has court-ordered time
with the children.

3 ***Move to a different school district***

4 If the move is to a different school district, the relocating person must complete the form
5 *Notice of Intent to Move with Children* (FL Relocate 701) and deliver it at least **60 days**
before the intended move.

6 ***Exceptions:***

- 7
- 8 • If the relocating person could not reasonably have known enough information to
complete the form in time to give 60 days' notice, s/he must give notice within **5**
9 **days** after learning the information.
 - 10 • If the relocating person is relocating to a domestic violence shelter or moving to
avoid a clear, immediate and unreasonable risk to health or safety, notice may be
11 delayed **21 days**.
 - 12 • If information is protected under a court order or the address confidentiality
program, it may be withheld from the notice.
 - 13 • A relocating person who believes that giving notice would put her/himself or a child
at unreasonable risk of harm, may ask the court for permission to leave things out
14 of the notice or to be allowed to move without giving notice. Use form *Motion to*
Limit Notice of Intent to Move with Children (Ex Parte) (FL Relocate 702).

14 The *Notice of Intent to Move with Children* can be delivered by having someone
personally serve the other party or by any form of mail that requires a return receipt.

15 If the relocating person wants to change the *Parenting Plan* because of the move, s/he
16 must deliver a proposed *Parenting Plan* together with the *Notice*.

17 ***Move within the same school district***

18 If the move is within the *same* school district, the relocating person still has to let the
other parent know. However, the notice does not have to be served personally or by
19 mail with a return receipt. Notice to the other party can be made in any reasonable
way. No specific form is required.

20 ***Warning! If you do not notify...***

21 A relocating person who does not give the required notice may be found in contempt
of court. If that happens the court can impose sanctions. Sanctions can include
22 requiring the relocating person to bring the children back if the move has already
happened, and ordering the relocating person to pay the other side's costs and
23 lawyer's fees.

24 ***Right to object***

1 A person who has court-ordered time with the children can object to a move to a
2 different school district and/or to the relocating person's proposed *Parenting Plan*. If
3 the move is within the same school district, the other party doesn't have the right to
4 object to the move but s/he may ask to change the *Parenting Plan* if there are
5 adequate reasons under the modification law (RCW 26.09.260).

6 An objection is made by filing the *Objection about Moving with children and Petition
7 about Changing a Parenting/Custody Order (Relocation)* (form FL Relocate 721). File
8 your *Objection* with the court and serve a copy on the relocating person and anyone
9 else who has court-ordered time with the children. Service of the *Objection* must be by
10 personal service or by mailing a copy to each person by any form of mail that requires
11 a return receipt. The *Objection* must be filed and served no later than **30 days** after
12 the *Notice of intent to Move with Children* was received.

13 ***Right to move***

14 During the 30 days after the *Notice* was served, the relocating person may not move
15 to a different school district with the children unless s/he has a court order allowing the
16 move.

17 After the 30 days, if no *Objection* is filed, the relocating person may move with the
18 children without getting a court order allowing the move.

19 After the 30 days, if an *Objection* has been filed, the relocating person may move with
20 the children **pending** the final hearing on the *Objection* **unless**:

- 21 • The other party gets a court order saying the children cannot move, or
- 22 • The other party has scheduled a hearing to take place no more than 15 days after
23 the date the *Objection* was served on the relocating person. (However, the
24 relocating person may ask the court for an order allowing the move even though a
hearing is pending if the relocating person believes that s/he or a child is at
unreasonable risk of harm.)
- the court may make a different decision about the move at a final hearing on the
Objection.

25 ***Parenting Plan after move***

26 If the relocating person served a proposed *Parenting Plan* with the *Notice*, and if no
27 *Objection* is filed within 30 days after the *Notice* was served (or if the parties agree):

- 28 • Both parties may follow that proposed plan without being held in contempt of the
29 *Parenting Plan* that was in place before the move. However, the proposed plan
30 cannot be enforced by contempt unless it has been approved by a court.
- 31 • Either party may ask the court to approve the proposed plan. Use form *Ex Parte
32 Motion for Final Order Changing Parenting Plan – No Objection to Moving with
33 Children* (FL Relocate 706).

34 ***Forms***

RCW 26.09.016, .181, .187, .194
Mandatory Form (07/2017)
FL All Family 140

Parenting Plan

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1 You can find forms about moving with children at:

- 2
- 3 •The Washington State Courts' website: www.courts.wa.gov/forms,
 - 4 •The Administrative Office of the Courts - call: (360) 705-5328,
 - 5 •Washington LawHelp: www.washingtonlawhelp.org, or
 - 6 •The Superior Court Clerk's office or county law library (for a fee).

7
8 *(This is a summary of the law. The complete law is in RCW 26.09.430 through*
9 *26.09.480.)*

10
11 **14. Other**

12 **COUNSELING:**

13 Roger Christopher will participate in therapy with his daughters. Connie Christopher shall
14 cooperate with the process and make the girls available for counseling during her week.
15 Dr. Dudley is appointed to be the counselor. Scheduling issues shall be at Dr. Dudley's
16 discretion to minimize school disruption.

17 **PARENTING COORDINATOR:**

18 Lisa Yenney shall remain the Court appointed Parenting Coordinator.

19 **PARTICIPATION IN EVENTS:**

20 Both parents shall be allowed to participate in school activities for the children, such as
21 open house, attendance at athletic events, etc. Both parents will provide all extracurricular
22 activity calendars to the other parent for all children.

23 **ACCESS TO RECORDS:**

24 Both parents shall be listed as emergency contacts on medical and school records. Each
parent shall have access to all medical, psychological, hospital, dental, etc. records of their
minor children. Further, each parent shall have access to all educational records of the
minor children, including but not limited to progress reports, PTA notices, etc. Each party
is hereby required to sign any documents that may be necessary to effectuate this
provision.

SCHOOL ACTIVITIES:

Each parent shall have the right and responsibility to ensure that the children attend school
and other scheduled activities while in that parent's care. Activities shall not be scheduled
to unreasonably interfere with the other parent's residential time with the children.

Each parent shall be responsible for keeping himself/herself advised of athletic and social
events in which the children participate. Both parents may participate in school activities
for the children regardless of the residential schedule.

ADDRESS:

RCW 26.09.016, .181, .187, .194
Mandatory Form (07/2017)
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1 Each parent shall provide the other with the address and phone number of his/her
2 residence and update such information promptly whenever it changes.

3 **DRUG AND ALCOHOL USE:**

4 Neither parent shall use illegal drugs, nor use alcohol to excess, while in the presence of
5 the children, nor in the twelve hours immediately preceding residential time.

6 Neither parent shall operate a motor vehicle under the influence of intoxicants with the
7 children present, nor shall they consume alcoholic beverages in any on-or off-road vehicle
8 while the children are passengers. If either parent, or a child, has a good-faith belief that
9 these terms are being violated, the children shall be allowed alternate transportation without
10 recrimination.

11 **COOPERATION AND RESPECT:**

12 Neither parent shall discuss the dissolution of marriage or the court proceeding regarding
13 the parenting plan with the children. Neither parent shall ask the children to make decisions
14 or requests involving the residential schedule. Neither parent shall discuss the residential
15 schedule with the children except for plans which have already been agreed upon by both
16 parents or ordered by the Court.

17 Each parent agrees to refrain from words or conduct, and further agrees to discourage
18 other persons from uttering words or engaging in conduct, which would have a tendency to
19 estrange the children from the other parent, to damage the opinion of the children as to the
20 other parent, or which would impair the natural development of the children's love and
21 respect for the other parent.

22 Neither parent shall encourage the children to change their primary residence or encourage
23 the children to believe it is their choice to do so. This is a choice to be made by the parents
24 or, if they cannot agree, by the courts. Neither parent shall use the children, directly or
indirectly, to gather information about the other parent.

Neither parent shall make derogatory comments about the other parent or allow anyone
else to do the same in the children's presence. Neither parent shall allow or encourage the
children to make derogatory comments about the other parent.

Each parent agrees to encourage and foster relationships between siblings in the family.

21 **NOTICE:**

22 Each parent shall provide the other parent promptly with receipt of any significant
23 information regarding the welfare of the children, including physical and mental health,
24 performance in school, extracurricular activities, etc.

Each parent shall inform the other when that parent plans to be away from his or her
residence with the children for more than two nights. The information to be provided shall



1 include duration of the period, the destinations and telephone numbers.

2 **15. Proposal**

3 Does not apply. This is a court order.

4 **16. Court Order**

5 This is a court order (if signed by a judge or commissioner below).

6 **Findings of Fact** - Based on the pleadings and any other evidence considered:

7 The Court adopts the statements in section 3. (Reasons for putting limitations on a
8 parent) as its findings.

9 **Conclusions of Law** - This *Parenting Plan* is in the best interest of the children.

10 **Order** - The parties must follow this *Parenting Plan*.

11
12 8-10-20 
13 Date Judge or Commissioner

14 **Warning!** If you don't follow this *Parenting Plan*, the court may find you in contempt
15 (RCW 26.09.160). You still have to follow this *Parenting Plan* even if the other parent
16 doesn't.
17 Violation of **residential** provisions of this order with actual knowledge of its terms is
18 punishable by contempt of court and may be a criminal offense under RCW
19 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

20 **If this is a court order, the parties and/or their lawyers (and any GAL) sign below.**

21 This order:
22 Is presented by me.

23 This order:
24 May be signed by the court without notice to me.

25 _____
26 Jordan Taylor, WSBA #46082
27 Attorney for Petitioner

28 _____
29 Josephine Townsend, WSBA #31965
30 Attorney for Respondent

DECLARATION OF SERVICE

On said day below, I electronically served a true and accurate copy of the ***Brief of Respondent*** in Court of Appeals, Division II Cause No. 54208-1-II to the following parties:

Christopher R. Sundstrom
Chris R. Sundstrom Law Firm
1612 Columbia Street
Vancouver, WA 98660-2938

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900 Washington Street, Suite 1010
Vancouver, WA 98660

Original e-filed with:

Court of Appeals, Division II
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: September 21, 2020, at Seattle, Washington.

/s/ Frankie Wylde
Frankie Wylde, Legal Assistant
Talmadge/Fitzpatrick

TALMADGE/FITZPATRICK

September 21, 2020 - 3:08 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 54208-1
Appellate Court Case Title: Marriage of Roger Christopher, Respondent v. Connie Christopher, Appellant
Superior Court Case Number: 17-3-01535-8

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Comments:

Notice of Second Supplemental Designation of Clerks Papers Brief of Respondent

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