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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 284875-III
Consolidated with
NO. 290794-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

BARBARA HOLLINGSHEAD, APPELLANT/PETITIONER

Vs.

ERNEST R. WILSON, RESPONDENT

APPEAL FROM YAKIMA COUNTY SUPERIOR COURT
Honorable Gayle Harthcock, Commissioner
Honorable Lani Kai Swanhart, Commissioner
Honorable James Schwab, Judge

ANSWERING BRIEF OF APPELLANT
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INTRODUCTION

Washington's marriage laws discriminate against citizens based on gender, this includes its children. This point is not in dispute. The main issue before this court is whether the State can justify this discrimination consistent with the Washington Constitution. The State cannot.

Washington's constitution requires that state-conferred privileges be made available to all Washington citizens on an equal basis, including its children. Washington's constitution provides protections against improper government interference in its citizens' private affairs and personal autonomy. Washington's constitution also requires that no Washington citizen be subject to different treatment on account of his or her sex. Consistent with these Constitutional requirements, the State cannot discriminate against a child based on his or her sex in its marriage laws.

Accordingly, the Appellant and her children, respectfully request that this Court end the discrimination against them, stop the harm that flows from that discrimination, and grant equal treatment for both minor children at issue in this appeal.

A. REPLY TO RESPONDENT'S "INTRODUCTION."

Wilson continues his tactic of slander and unsubstantiated accusations as a means to divert attention from the issues under appeal. Wilson does not properly answer the appellant's brief and the issues therein. Wilson has

continued to violate appellant rules of procedure without consequence. (RAP 3.3, 9.2, 9.6, 10.3, 10.7, 18.9, GR 14.1) There is verified evidence which has been presented to the court substantiating the abuse from the Respondent. (CP 1397-1412, 1456-1668, 1737-1749, 1751-1752) His allowance of these violations and misrepresentations to the court resulted in the belief of the impossibility for me and my children obtaining a fair and impartial ruling out of Yakima County. (RP 14, 17, 23) Regardless, judicial relief was sought in Yakima County after substantial new evidence was presented to confirm the abuse of the children by the respondent. (CP 1426-1427) It was on March 24, 2010 that the Yakima County court instructed my attorney to seek a change of venue to King County as all the experts involved with the children are located there and it would be in the best interests of the children to have the venue moved there. On April 7, 2010, the Yakima court granted the change of venue in the best interests of the children. (CP 1428-1429, RP 13) Under revision this was reversed, after which it was the Appeals Court that consolidated this issue along with the issue of equal treatment for the children.

B. REPLY TO RESPONDENT'S "STATEMENT OF THE CASE."

Wilson makes allegations and statements that are not relevant, hearsay, unsubstantiated, and slanderous in nature. As the evidence filed

in this appeal refute Wilson's statement of the case, I trust that this court will review the records to confirm that his statements are false. However, there are false and misrepresented statements made by him that will be addressed in this response.

Previous testimony of Wilson confirms that he not only reviewed the legal separation that was originally filed by the parties, but that he did sign the original parenting plan that was finalized in January of 2002.

Q You had a chance to look at all the final papers in the file; is that right?

A I did look at all of this.

Q Is your signature on those papers?

A Some of those are my signatures, and some of them is not.

Q Which one, on the [inaudible]?

A The one with my – the final paper of my right to –waiving my right to presentation.

Q So, on the – the Final Decree of Legal Separation?

A Yes.

Q How about this one?

A That one is my signature.

Q And that's the parenting plan." (RP 14-15)

"Mr. Lorello: But, he's got a parenting plan that he's apparently signed and acknowledged." (RP 32)

Further, the legal separation filed by the parties in 2001 and finalized in 2002, was an agreed filing. Contrary to his statements, Wilson discusses in emails the legal separation, his depositing his support into a bank account (contrary to his statement that I came and collected it each payday), the fact that he has the documents and is having the VA review them with his intention of having it modified (just 2 weeks after it was

finalized), and requested to have the separation converted to dissolution. (EX PE 131, 132, 133, 136) In addition, the original notarized agreements between us signed before the filing of the court action also confirm that Wilson admitted his addictions and abuse, and agreed to the stipulations in the agreements and court documents. (EX PE 95). The record confirms that Wilson is lying to this court in his brief.

The professionals that the respondent addresses in his brief are under investigation by the state for unprofessional conduct and fraud in connection with my children. Previous testimony confirmed that they provided false testimony to the court and will be briefly addressed here.

a. Dr. Michael Olivero

Contrary to Mr. Olivero's testimony cited by Wilson, there was only one time that I met with him, which he eventually admitted under oath. "*Q Aside from that initial meeting with Ms. Hollingshead, when else did you meet with her? A I didn't. Q You never met with her again? A No.*" (RP 413) Wilson, in reference to Dr. Olivero, makes the statement in his brief, "He repeatedly witnessed Hollingshead make inappropriate comments about Wilson in front of the children." This is a lie. Dr. Olivero testified that he witnessed me on "several occasions" making derogatory comments about Wilson in front of the children. This is a lie. Dr. Olivero, as admitted and referenced above, never saw me,

with or without the children, after the one and only time we met for the intake appointment. Wilson admits in testimony that Dr. Olivero supervised only four times. (RP 135) Dr. Olivero confirms that he provided the service, “*Three to five.*” times. (RP 404) On May 20, 2003, after four weeks of supervising the visits, I issued him a letter informing him that he was being replaced as visitation supervisor. Wilson testified, “*You know, Mike Olivero was fired.*” (RP 95) Olivero reacted by sending me a note through the new supervisor refusing to provide the supervision due the next day. (EX PI 85) Over three years later he made false statements and testimony against me which he testified Wilson’s attorney’s secretary requested he write and for which he he would be paid. (RP 422)

b. June West, MS

West was hired to take over the role of visitation supervisor in June of 2003 and she continued in this roll until she emailed her termination in April of 2008. The only interaction I had with West was the “few seconds” it took to exchange the children for the visitations. (CP 356-439, 818-901) West became upset when the children’s primary care physician ordered that they not be exposed to “second hand smoke on clothing or via air – also no exposure to cologne. Pt has severe allergies and asthma and above can trigger both. (dated 6-17-05)” (CP 818-901) West’s reaction

was an immediate change in her demeanor toward me. She began sending emails that were incoherent and confusing (CP 818-901), as I had no idea what the basis of the personality change in West was. West continually reported negative reactions from the children in connection with having to visit with Wilson, yet in her reports she stated that "*The children have appeared to be comfortable during visitation.*" Wilson also states in his brief that "Ms. West testified she had never seen anything inappropriate by Wilson." Yet she testifies, "*I think in my statement of 2004 when there was a need to redirect Mr. Wilson.*" West goes on to testify of several times that she had to "redirect" Mr. Wilson. She also testifies, contrary to Wilson's brief, that he canceled numerous visitations and did not reschedule them. Wilson himself confirms that he cancelled visits at Safe Haven visitation center giving the excuse that he had something else he had to do. (RP 392-393, 663-664) The children's therapist, Dr. Newell, testified that West yelled at K.H. and called her a name. (CP 356-439, RP 341) Both children continued to report that West was not properly supervising. Guardian ad Litem Cheryl Raber reported that West was not providing safe and appropriate supervision. (CP 568-590)

My attorney informed the trial court of West's treatment of K.H., after which West began her unsubstantiated, negative comments about me. It was West who began to send confusing and hostile emails to me as early

as August 2005, not AFTER the “favorable” report written by her in October of that year. (CP356-439, 818-901)

c. Janice Burke, Guardian ad Litem

Ms. Burke was assigned as Guardian ad Litem (GAL) by the court. She testified that she had very limited experience as a family law GAL. (RP 221) She failed at the job in this case. She made indications of what her recommendations would be months before she even spoke to witnesses or reviewed all information. Regardless, at a settlement conference she indicated that she would recommend guideline visitations. This was without beginning her investigation. “*Q Okay. Now, you appeared at the settlement conference is that correct? A That’s correct, ma’am. Q Okay. And at that time had you had an opportunity to complete your investigation? A No, I hadn’t ma’am*” (RP 224) She continued to fail to conduct her investigation accurately and fairly. It was not until my attorney requested the court to replace her that she finally contacted anyone. (CP 213-234, 238-247, 276-324) Burke was not removed as GAL, but she was reprimanded and ordered to do a thorough investigation. She reacted defensively. Her testimony is in regard to her interaction with the attorney, not me. Her testimony confirms this. She testifies, “*Q do you think it’s fair to – that Ms. Hollingshead would have some concerns regarding recommendations or I guess the suggestion that*

Mr. Wilson should have unrestricted visitation prior to your completing your investigation? Do you think it's fair to be concerned over that? A I would agree. Q Okay. Ms. Burke, have I ever been rude to you? Or have I simply indicated to you I guess where I disagreed? A Disagree. Q It—and I asked you whether or not it was fair to state that Ms. Hollingshead had made most of the visitation to which you responded, 'I believe that's true? A I believe that's true.' (RP 284-285) GAL Burke testifies that I had 'made the most of the visitation.' I had done everything I could to make the ordered visitations as positive for the children as possible. It was the supervisor who took offense at the request from doctors, therapists, etc. of her providing the children with a safe and healthy environment during the visitations.

Wilson is inaccurate when he mentions the report from Dr. Dougherty. Burke testifies that Dr. Dougherty's findings on Wilson were actually, "Q *Ms. Burke, do you recall what it was that Dr. Dougherty did conclude with regard to his psychological examination of Mr. Wilson? A He found that – that there has been historical alcohol and marijuana dependency and the axis is I. And Axis II is narcissistic personality traits.*" (RP 282-283)

Burke's report indicates that this is a family with a long history of domestic violence. She obtained this information from the children and

the witnesses that she contacted once she finally completed her investigation. Burke testifies, "*Q You categorize this household as having suffered years of domestic violence. Is it uncommon for allegations of domestic violence to surface after the abuser has left the household; is that uncommon? A No, it's not uncommon. It's very common.*" (RP 293-294) Wilson's brief is misrepresenting Burke's findings of domestic violence. She did find a history of domestic violence in this family, as did GAL Cheryl Raber and the court when she provided an order for protection in 2002 - 2010. (CP 568-590, PE 97-101)

d. Rachel Clark

Rachel historically has severe problems with drugs, alcohol, and mental health disorders to such a degree that her involvement in this litigation is certainly against her best interests. (EX PI 116, 117, 119, 120, PE 118, 121, CP 776-817) I tried getting her mental health and drug and alcohol treatment while she was still in my home. Unfortunately, due to state law, once she was over 13 years old she could refuse treatment (RCW 71.34), which she did.

During her testimony in this trial she stated:

A Yeah. I've written a lot of stuff. I was – as I said, I was disturbed before. I was a drug addict. And I – I can honestly say I don't remember a lot of what happened because of the drugs I've done. And anything that I've written might have come to different – in different situations, different scenarios, as they still do. But --

Q They still do? Do you still use drugs and alcohol?

A My memory, my mind has been affected by the drugs that I used to do. I agree that I wrote this, that this is my journal.

Q Did your mom take you to a counselor PRIOR to your dad leaving?

A Yes.

Q How old were you at that time?

A I was 14.

Q And did you refuse to go to counseling thereafter?

A I told her I did not want to go.

Q Is there a point in time when you just said, I'm not going anymore?

A Yes." (RP 625-627)

Following this testimony the court excused Rachel from having to complete her testimony. (RP 635) In a prior court hearing the court found that testimony from Rachel was not going to be relied on.

"Rachel is not – she has so many problems the Court really is not prepared to rely upon her. Next week she may be supporting her mother for all I know. She has various serious emotional problems and so I'm not going to use her as any kind of reliable witness in this case. I'm not saying those problems are her fault, but I think they're well documented enough and she's made contrary statements time and time again. She's made many negative statements with respect to her father, to therapists and so forth, so she's not going to be part of the basis upon which the court's going to make any decisions at this point." (CP 502-528)

Rachel has made no contact with me since May of 2009 when she was living in Texas. I do not know what Rachel's current situation is in regard

to her drug, alcohol and mental health issues, but have been told that she has lost her husband and children. I continue to be concerned about Rachel but know that there is still nothing I can do to help her.

C. REPLY TO RESPONDENT'S "ARGUMENT."

On August 17, 2010, this court found "Ms. Hollingshead again fails to cite authority concerning the trial court retaining jurisdiction. Accordingly, we need not consider this assignment of error" in connection to the change of venue issue addressed in a previous appeal. Venue is not proper in Yakima County. Contrary to Wilson's statement, none of the witnesses for these children reside in Yakima County. I have never made any false allegations against Wilson. Violations of the protection order have been filed as they have occurred. He has been found in contempt for them on several occasions. (EX PE 47-48) He continues to violate the protection orders, and has plea bargained out of charges. Jurisdiction is best placed in King County where the children reside. RCW 26.09.280 allows for a party to file for modification proceedings to take place in the county where the party and children reside. This is King County, where the children are, where all the witnesses are. King County is where it is in their best interests.

Wilson continues to misquote records in an attempt to draw the attention of the court away from his own shortcomings as a parent and his

history of drugs, alcohol and mental health issues, as well as his history of abusing these children. Not only does state law allow for jurisdiction to be in the county where the children reside, but there are many legal authorities that agree with this. Further, and most important, jurisdiction in the county where the children live is in the best interests of the children so that their professional witnesses can provide complete and accurate information to the court that makes such major decisions in their lives.

Wilson misleads the court when he states that protection orders were obtained in King County to avoid complying with the Yakima County parenting plan. Protection orders were initially obtained in Yakima County and were then transferred to King County when the children and I moved there in 2004. (PE 97-101) Support modification of a final order was sought in compliance with RCW 26.09.280 in the county where the children reside. There were no relocation or modification proceedings pending in Yakima County at that time and the child support order was a final order that was modifiable in the county where we reside.

Wilson misstates the issues when he says that my “complaints were dealt with in her prior appeals.” The issue of judicial equal treatment of the children regardless of their gender was never addressed in this court and it is this issue that was brought to this court in the fall of 2009 when

the trial court failed to ensure equal treatment of the children and allow discrimination due to the gender of the child.

Wilson is not entitled to attorney fees in connection with this appeal. The issue of equality was never before this court previously and there were numerous "new facts" before the Superior Court when it ordered a change of venue in April of 2010. Wilson is purposely attempting to deceive this court by hiding the "new facts" that have been before the trial court recently, of which the Appeals Court was not aware of when they issued its August 2010 decision. (CP 1127-1412, 1456-1668, 1696, 1708, 1721-1725, 1736-1752) The state Attorney General's office, along with Child Protection Services, filed a dependency action against Wilson due to the abuse the children were subjected to at his hands. The children's medical providers, counselors, and advocates all filed numerous statements and requests for assistance in protecting these children from Wilson. The Attorney General stated that at the very least the court should order that my son should be allowed the opportunity to choose if he had to visit with Wilson. There were reports from counselors along with drawings made by my son in which he showed himself in a web crying for help, bound, gagged and chained, and even being sexually mutilated in response to his visits with his father. Counselors, CPS, doctors, attorneys, advocates, family/friends all pleaded with the court to

provide my son with the protection that he so obviously needed from Wilson. It was in November of 2010 that the Yakima court finally intervened. (CP 1718-1720) My son needs permanent protection from further exposure to the abuse he was subjected to by Wilson. He needs to know that he is finally safe and is being granted the same rights and protection that his sister was afforded in July 2009.

ARGUMENT

Wilson has totally ignored the issue of equality for my son. He has not properly answered the Appellant's brief even though we was afforded six extensions to do so. (RAP 10.3) He appears to hope that the court will not be aware of the abuse he has subjected my son to and they will render a decision without the knowledge that the major issue before this court is the equal treatment for my son and the need for protection from Wilson for the children. However, it is clearly a case of sex discrimination for my son not to be afforded the same privileges and treatment as my daughter. RCW 46.90.030 states: "Freedom from discrimination – declaration of civil rights. (1) The right to be free from discrimination because of race, credd, color, national origin, sex... is recognized as and declared to be a civil right." The Equal Rights Amendment adopted by the people of the State of Washington in 1972 (Const. art. 31, 1) "absolutely forbids any

classification of persons based on sex.” DARRIN v. GOULD, 85 Wn.2d 859, 540 P.2d 882 (1975). The ERA states, “**Section 1.** Equality of Rights under the law shall not be denied or abridged by the United States or any state on account of sex.” “...it also goes without saying that, regardless of the historical discrimination against women that was the catalyst for the ERA, it protects both men and women from discrimination based on gender.” *Guard v. Jackson* , 132 Wn.2d 660 , 666, 940 P.2d 642 (1997) (holding wrongful death statute, as applied, discriminated against a man). In MARQUEZ v. UW, 32 Wn. App. 302, 309, 648 P.2d 94 (1982), CERT. DENIED, 460 U.S. 1013, 75 L. Ed. 2d 482, 103 S. Ct. 1253 (1983), we stated the following principle: Before a violation of this state's Law Against Discrimination can be established, the aggrieved party must show "practices of discrimination AGAINST any of its inhabitants . . ." (Italics ours.) RCW 49.60.010; SEE ELLINGSON v. SPOKANE MORTGAGE CO., 19 Wn. App. 48, 54-55, 573 P.2d 389 (1978). SEE GENERALLY CHADWICK v. NORTHWEST AIRLINES, INC., 100 Wn.2d 221, 667 P.2d 1104 (1983).

Further, the trial court did justly decide that venue is not proper in Yakima County, granted the venue change (but under revision reversed the change). They became aware of the need to move this case to King County due to the witnesses for the children all being there and it would

be in the best interests of the children to have the case moved where their advocates are located. The court specifically instructed my attorney to file for a change of venue, which he did, and they approved the change. It was unfortunate that this order was then changed under revision as it resulted in the continued disservice to the children. It was the Appeals Court who then consolidated the issues of venue with the issue of equality for my son. As such, venue is being presented for the court's review along with the new information that was not available to them when it rendered its August 17, 2010 decision. "We are of the opinion that the trial court erred in denying realtors' motion for a change of venue to King county. The convenience of witnesses and the ends of justice will certainly be forwarded by the change." The State of Washington, on the relation of Married Nielsen et al., Plaintiffs, v. The Superior Court for Thurston County, John M. Wilson, Judge, Respondent, 7 Wn.2d 562. "After a consideration of this entire records, we are convinced that the refusal of the trial court to grant a change of venue was not based on reasonable grounds. We are further convinced that the convenience of witnesses and the ends of justice will be best served by changing the venue of this case to Grant County, and that the trial court manifested an arbitrary abuse of the discretion vested in it, refusing to grant the motion for a change of venue. The order under review is reversed, and the cause remanded to the

superior court with directions to grant the motion for change of venue.”

The State of Washington, on the relation of Ida A. Fleischman Bartels, Plaintiff, v. Calvin S. Hall, as Judge of the Superior Court for King county, et al., Respondents 11 Wn.2d 58 No 28537 Dept 2 Supreme Cuort (1941) RCW 4.12.030 and code 1881 s 51 read “the court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof: (3) that the convenience of witnesses or the ends of justice would be forwarded by the change.” 28 1404 states in part: “For the convenience of parties and witnesses, in the interest of justice, a court may transfer any civil action to any other district or division where it might have been brought.” “Here after every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered in any dissolution or legal separation or declaration concerning the validity of a marriage, whether under this chapter or prior law, in relation to care, custody, control, or support of the minor children of the marriage may be brought in the county where said minor children are then residing.” Gladys B. Schroeder, Respondent, v. John W. Schroder, Petitioner, 74 Wn.2d 853 No 40344 Supreme Court (1968) It was manifestly unjust to deny the change of venue and this should be reversed and granted so the children can obtain the judicial support they are afforded by constitutional right.

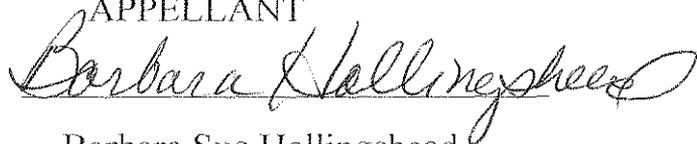
CONCLUSION

The order of the court should be revised to allow for equal treatment of the male child compared with that of the female child. The order of the court should be revised to allow for a change of venue to King as this is where the children reside and all their witnesses are there. This is not only as is allowed by law and constitution, but is in the best interests of the children.

Respectfully submitted,

DATED THIS 22nd day of June 2011.

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CERTIFICATE OF TRANSMITTAL

I certify that on this date a true and complete copy of this brief was sent to the attorney of record for the Respondent by pre-paid US Mail to 514B North 1st St, Yakima, WA 98901.

DATED June 22, 2011



BARBARA HOLLINGSHEAD