

FILED

MAR 09 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
B1

No. 284875-III

No. 290794-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

In re the Marriage of
Barbara S. Hollingshead

Appellant,

v.

Ernest R. Wilson

Respondent.

BRIEF OF RESPONDENT

Blaine T. Connaughton, WSBA 19766
Connaughton Law Office
514B 1st Street
Yakima, WA 98091
509.249.0080
connlawoffice@gmail.com
Attorney for Respondent

FILED

MAR 09 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 284875-III
No. 290794-III

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

In re the Marriage of
Barbara S. Hollingshead
Appellant,
v.
Ernest R. Wilson
Respondent.

BRIEF OF RESPONDENT

Blaine T. Connaughton, WSBA 19766
Connaughton Law Office
514B 1st Street
Yakima, WA 98091
509.249.0080
connlawoffice@gmail.com
Attorney for Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
I. INTRODUCTION	1
II. STATEMENT OF THE CASE.....	1
A. Dr. Michael Olivero	4
B. June West, MS.....	6
C. Janice Burke, Guardian ad Litem.....	8
D. Rachel Clark.....	12
III. ARGUMENT.....	15
1. The Court Properly Retained Jurisdiction in Yakima County	15
2. Respondent Requests and is Entitled to Attorney Fees on Appeal	17
IV. CONCLUSION.....	18

TABLE OF AUTHORITIES

Table of Cases

<u>State v. Caughlan</u> , 40 Wn.2d 729, 732, 246 P.2d 485 (1952)	15
<u>Marriage of Adler</u> , 131 Wn.App. 717,725, 129 P.3d 293 (2006) and .. 158 Wn.2d 1026 (2007)	15
<u>Marriage of Possinger</u> , 105 Wn.App. 326, 19 P.3d 1109 and	15
145 Wn.2d 1008 (2001)	15
<u>Marriage of Little</u> , 96 Wn.2d 183, 194, 634 P.2d 498 (1981)	15
<u>Marriage of True</u> , 104 Wn.App. 291, 298, 16 P.3d 656 (2000)	16
<u>Marriage of Ochsner</u> , 47 Wn.App. 520, 527, 736 P.2d 292 and.....	16
108 Wn.2d 1027 (1987)	16
<u>Yurtis v. Phipps</u> , 143 Wn.App. 680, 693, 181 P.3d 849 and.....	17
164 Wn.2d 1037 (2008)	17
<u>Marriage of Giordano</u> , 57 Wn.App. 74, 78, 787 P.2d 51 (1990).....	17
<u>Marriage of Greenlee</u> , 65 Wn.App. 703, 708 829 P.2d 1120 (1992)....	17
<u>Marriage of R.E.</u> , 144 Wn.App. 393, 83 P.3d 339 (2008).....	17

Statutes

RCW 26.09.280(6).....	15
RCW 26.09.170	16
RCW 2.28.010(3).....	17

I. INTRODUCTION

The appellant/petitioner, in her latest attempt to revise the facts of this case and to manipulate the judicial system, asserts four assignments of error. The assignments are largely without legal or factual bases, cite cases and authority out of context, mis-cite the record, and otherwise follow the same course of conduct Ms. Hollingshead has followed for years. This well-documented behavior has resulted in detriment to the children, extensive fees for Mr. Wilson, as well as for Ms. Hollingshead. However, Ms. Hollingshead conveniently bankrupted out of attorney fees she incurred in excess of \$55,000. In her latest attack, she attempts to relitigate that which has already been denied in her prior appeal.

The issue of change of venue was the subject of a prior appeal by Hollingshead¹. This court, in its decision issued August 17, 2010, by unpublished opinion, confirmed the denial of the change of venue.

II. STATEMENT OF THE CASE

Ms. Hollingshead (hereinafter Hollingshead) initiated a legal separation action against Mr. Wilson in Yakima County on August 30, 2001².

¹ Hollingshead vs. Wilson, Court of Appeals No. 26593-5-III

² Hollingshead vs. Wilson, Yakima County Superior Court No. 01-3-00772-9

At the time the legal separation action was filed and later finalized, Mr. Wilson (hereinafter Wilson) was living and working in King County. He had lost his job in early 2001. He had then been delivered to or “dropped off” in King County by his wife with a bicycle, a backpack with some clothes, and with instructions from his wife to look for work. *RTP*³ 171 After Wilson found employment, Hollingshead would come over and collect money from his paycheck each payday.

RTP 173

Wilson testified he was never served with the legal separation documents, nor did he sign any legal separation documents. What he did sign was what he understood to be a power of attorney. *RTP 175* Wilson testified he did not become aware of the legal separation and divorce paperwork until after the decree of legal separation was entered. *RTP 175* He did not review and sign the parenting plan. Rather, that was something that was prepared and imposed upon him by Hollingshead after she entered it with the Court without his knowledge. *RTP 175*

In the parenting plan that Hollingshead entered were restrictions placed on Wilson’s contact with his two minor children, which was not something litigated nor agreed to. Interestingly, the decree had

³ RTP – Report of Trial Proceedings (July 10, 11, 12, 13, 2007)

Hollingshead receiving all of the community property, including 100% of Wilson's substantial pension benefits accrued during the marriage.

Wilson testified that during the marriage, his wife repeatedly threatened him that if he were to leave or get a divorce, he would never see his children again. *RTP 170*

Prior to moving to King County, Wilson had worked eight hours a day, seven days a week for the prior six years. *RTP 165* This was to pay for his stepdaughter to go to college at a private institution. *RTP 165*

The parties had two children after they were married in 1979, with Rachel, the younger of the two being born in 1984 or 1985. *RTP 163* Wilson then had a vasectomy. *RTP 164* However, at the insistence of Hollingshead, he had the procedure reversed prior to his daughter's birth in 1995. *RTP 163-164* His son Joseph was born a couple of years later. These were planned pregnancies, according to Hollingshead. *RTP 509*

Several professional witnesses testified at trial. Two of these witnesses had been hired by Hollingshead to be visitation supervisors:

A. James Michael Olivero, Ph.D.

Dr. Michael Olivero is a professor at Central Washington University Department of Law and Justice. He also works as a guardian

ad litem and is the clinical director of EPIC Youth Services. He has a domestic-violence counseling agency, as well. *RTP 401*

Dr. Olivero has a Ph.D. in sociology from Southern Illinois University. He has a master's in social work from Eastern Washington University and a master's in criminal justice sciences from Illinois State University. He has a bachelor's in sociology from San Francisco State University and a bachelor's in fine arts from San Francisco State University. *RTP 402*

Dr. Olivero is a licensed and registered mental health counselor in the state of Washington, having been licensed for approximately eight years at the time of trial. *RTP 402*

Dr. Olivero became the visitation supervisor through EPIC Youth Services. He had contact with Hollingshead prior to the first supervision. *RTP 403* Dr. Olivero testified that he supervised three to five visitations. *RTP 404* He testified he had interactions with Hollingshead over the period of time he provided this supervision. *RTP 404* When asked to describe his interaction with Hollingshead, he testified as follows:

“I felt that she was obsessed with Mr. Wilson and obsessed with finding something wrong with the visitation.” *RTP 404*

Dr. Olivero testified that Hollingshead had nothing positive to say about Wilson. He repeatedly witnessed Hollingshead make inappropriate

comments about Wilson in front of the children. *RTP 405* Dr. Olivero testified that it was clear that Hollingshead was attempting to alienate the children from their father. *RTP 405* The negative impact on the children was obvious to Dr. Olivero:

“I believe the kids were torn between their parents and would perform... I specifically saw the – the daughter hugging on her dad and enjoying his company and vying for his attention, and having a good time. And when the grandmother walked in the room, she pushed off and started talking – and began to, don’t touch me, and I don’t want to be close, and these are the rules, and things like that.” *RTP 406*

The grandmother referenced is Hollingshead’s mother, with whom she resided. *RTP 406* Dr. Olivero was asked to describe for the Court what parental alienation was. He responded as follows:

“Attempting to belittle the – the father or mother in the eyes of the children, assuming that there’s something horribly wrong with the other parent, denigrating the other parent. Creating such a problem for the other parent, the other parent doesn’t want to have visitation. Not allowing the – not wanting the kids to bond with the other parent, those kinds of things.” *RTP 407*

When asked for his opinion, based upon what he witnessed, and having spoken to Hollingshead, Dr. Olivero responded as follows:

“I believe Ms. Wils – Hollingshead exhibits classic symptoms of parental alienation.” *RTP 407*

That is what this case is about and accurately describes what has gone on through repeated court hearings, trial, and subsequent to trial for over nine years.

B. June West, MS

June West, who is employed as a therapist in private practice, was hired by Hollingshead to be a visitation supervisor after Dr. Olivero withdrew. *RTP 374*

Ms. West has a bachelor's degree in social work and a master's degree in social work. Both of her degrees are from Eastern Washington University. *RTP 374* She received her bachelor's degree in 1990 and her master's degree in 1997. *RTP 374* She also testified she had additional training in family mediation, and family group conferencing. She is a certified child mental health specialist and she has had 90 hours of training in Child Protective Services. *RTP 374* In addition to her private practice, she has worked as a child welfare social worker for the state of Washington Children Services and she has done that for 16 years. *RTP 374* Ms. West testified that her current primary practice at time of trial involved family counseling and therapy, and she works with children and families. She also does some adoption home studies as part of her practice. *RTP 375*

Ms. West was initially hired by Hollingshead to supervise the visitation between the children and their father. *RTP 375* Her employment commenced in 2003 and she was still supervising visitations at the time of trial in 2007. *RTP 375*

Ms. West testified that the visits between Wilson and his kids go well and that the children and Wilson interact well together. *RTP 377-378* When questioned as to whether there was any reason for continued supervision of these visits, Ms. West testified as follows:

“I have not observed anxiety or fear with these children during visitations during the – since I’ve been supervising.”
RTP 380

Ms. West testified the children don’t demonstrate anything that would cause her concern with their interaction with their father.

Ms. West testified that her relationship with Hollingshead changed after she wrote a favorable report concerning what she had witnessed with regard to the visitations with Wilson. *RTP 380-381* The result of that report was a personal and professional attack by Hollingshead, something she has consistently done throughout this litigation when anyone was brazen enough to cross her:

“Q So, as I understand it, you wrote a report that was largely favorable to Mr. Wilson and his relationship with the children; is that accurate?

A Yes, it is.

Q Did – were you subsequently, from your perspective, personally and professionally attacked by Ms. Hollingshead?

A Yes.

Q Do you believe that –that she lied in – in what she said about you and your communications?

A Yes, I did.

Q I think you – in your submission to the Court you stated that you believe what she stated was – was clear falsehood and libelous –

A Yes, I did.” *RTP 381*

Ms. West testified that Wilson was consistent and showed up on time for his visitations and that he was motivated to visit with the kids.

RTP 382 Ms. West testified she had never seen anything inappropriate by Wilson. *RTP 383*

C. Guardian ad Litem, Janice Burke

Janice Burke has a master’s degree in math and science and teaching certifications. *RTP 220* She was appointed on March 28, 2006 as the guardian ad litem in this action. *RTP 222*

There was a settlement conference as required by local rule in July of 2006. In attendance were counsel for Hollingshead and Wilson, as well as the guardian ad litem. At the time of that settlement conference, the guardian ad litem stated that her recommendation was that she didn’t

think there was any basis for anything other than regular guideline visitation for Wilson. *RTP 254* Ms. Burke had been appointed three months prior to that settlement conference. *RTP 254-255* Again, as soon as Hollingshead got news of the recommendation by the guardian, her response was to immediately personally and professionally attack the guardian:

“Q Now, subsequent to your recommendation at the settlement conference in July, you were personally and professionally attacked by Ms. Ashley; were you not?

A In court?

Q In court, in letters, statements submitted to the Court.

A She’s very assertive, yes, but attacked? It’s – it was difficult for me I would have to say, yes.

Q Basically it was alleged that you weren’t doing your job, you were incompetent, and that you should be removed.

A That’s right.

Q Okay. Has that been a consistent, if you will, issue in this case, that people who side, if you will, with Mr. Wilson or don’t agree with the position of Ms. Hollingshead, are then personally and professionally attacked?

A There appears to be a pattern.” *RTP 258*

Ms. Burke testified there was a psychological evaluation performed by psychologist Roland Dougherty on Wilson, subsequent to her recommendation. She testified that Dr. Dougherty did not believe that Wilson represented any threat to the children. *RTP 257-258* Ms. Burke also testified that Dr. Dougherty did not believe there was any basis for Wilson to have anything other than regular visitation, normal visitation with his children. *RTP 258*

Ms. Burke was questioned about the allegations/fabrications of domestic violence made by Hollingshead. Ms. Burke's investigation could find no evidence of any domestic violence of any kind during the marriage. Ms. Burke testified that basically all of the negative allegations about Wilson arose **after** the separation in May of 2001. *RTP 267:*

“Q So, that was a red flag to you; was it not?

A Yes.” *RTP 267*

Ms. Burke testified that there had not been any other issues with regard to Wilson prior to 2001, other than he worked all the time to support his family. *RTP 267:*

“Q So, there wasn't allegations that he was using drugs or coming home drunk or not going to work or engaging in domestic violence prior to basically their separation; is that accurate?

A That's right.” *RTP 267-268*

The evidence indicated that Wilson smoked some marijuana in approximately May of 2001 through 2002. *RTP 267-268*

Wilson was subsequently married in 2004 and the guardian interviewed his wife and her children. *RTP 268* There were no reports or evidence of substance abuse or domestic violence in his current marriage. *RTP 268*

Ms. Burke had access to Wilson's employment records at Irwin Research where he had been working for approximately five years at the time of trial. *RTP 269* His records and evaluations indicate he got excellent evaluations. He was reliable and a good worker. *RTP 269* There were no problems whatsoever with regard to his employment. *RTP 269*

Ms. Burke testified there was nothing in Wilson's present environment that would cause her concern about the children being with him on a guideline visitation schedule every other weekend and extended time in the summer. *RTP 270*

Ms. Burke testified that she believed that Wilson was motivated to have a good relationship with his children. *RTP 275* She testified her observations with the father and the children would indicate a healthy, interactive relationship with a child and parent. *RTP 276*

Ms. Burke expressed concern that mother might interfere with or violate the parenting plan to the detriment of the children and the father. If Hollingshead did so, it was Ms. Burke's recommendation that the children be transferred to father:

“Q You state that, ‘If she,’ meaning Ms. Hollingshead, ‘for any reason does not comply with these visitations, then the children will be given custody to Mr. Wilson;’ is that right?”

A That's right.

Q Okay. Was the fact that she was previously held in contempt for willful bad-faith violation of the parenting plan, was that a factor in that recommendation?”

A It was, yes.” *RTP 281-282*

D. Rachel Clark

Rachel Clark was the then 21-year-old daughter of Hollingshead and Wilson. She was living with Wilson and his wife at the time of trial. *RTP 589* Rachel Clark confirmed that after the parties separated, Hollingshead would obsessively talk derogatorily about Wilson in front of the children and anyone else:

“She just would constantly talk bad about my father to me. And, uh, pretty much anybody just about anybody that would listen to her, she would, uh, talk bad about my father.” *RTP 593*

Rachel also gave some revealing testimony strongly supporting the obsessive and sociopathic behaviors of Hollingshead. Specifically,

Hollingshead attempting to manufacture false allegations of sexual abuse

by Wilson to his daughter:

“Q Okay. Now, was there some accusations made by you of sexual abuse by your father?”

A There were, yes.

Q Would you give us some background information about the allegations and how they came about?

A My ___ (*sic*) brought them up to me when, uhm, I was living with her. Uh, we were having – she was having some problems with me. I was extremely rebellious when – after my dad left. Uhm, she told me, well, don't you remember that when you were younger your dad touched you? And I was, I don't think I remember that. And she would – she just kept on to me about it. And that's usually what she did with me is, well, don't you remember this; don't you remember that?

Q So, did you suddenly decide that you were going to remember these things she wanted you to remember?

A Usually she would put things into my head until I believed them, yes.

Q Did you take it – or did she take it to the police?

A She did.

Q And did you go and meet with the detective?

A Yes, I did.

Q And what happened there?

A She didn't believe a word of it.

Q Do you know why? ...

Q So, the detective didn't believe you, as I understand; is that correct?

A No, she did not.

Q Okay. Thought it was made up?

A Yes, she did.” *RTP 594-595*

Rachel testified she hadn't spoken with her mother in two and a half years. *RTP 596* During trial, she waited out in the hall and had been out in the hall for three days. *RTP 596* In spite of seeing her mother at trial on a daily basis, her mother made absolutely no attempt to say hello to Rachel. *RTP 597* This, in spite of the fact that Rachel did nothing to try and keep her away or put her off. *RTP 597* Rachel testified this is a “characteristic” of her mother. *RTP 597*

Rachel testified she never knew Wilson to be abusive to her or to the other kids. *RTP 598* Rachel testified that after her mother and father separated, mother continued to be obsessed with Wilson:

“Q During the time that you continued to live with your mother, did she seem very focused on your father?

A Extremely so.

Q To the point of obsession?

A I would – I would say so.”

III. ARGUMENT

1. The Court Properly Retained Jurisdiction in Yakima County

In this court's unpublished opinion dated August 17, 2010, at page 14, the court issued its analysis and opinion on Hollingshead's appeal of the Superior Court's refusal to change venue. She now appeals again this same issue. The court's prior analysis applies:

“...[e]very action or proceeding to change, modify ... any final order . . . regarding the parenting plan or child support for the minor children of the marriage . . . may be brought in the county where the minor children are then residing, or in the court in which the final order . . . was entered.” RCW 26.09.280 (emphasis added).

Venue is proper in Yakima County.

A particular judge cannot retain jurisdiction over a case because a county's superior court judges each have identical authority. *See State v. Caughlan*, 40 Wn.2d 729, 732, 246 P.2d 485 (1952). But, especially in family law cases, judges routinely retain responsibility for subsequent matters that arise between the parties. *See In re Marriage of Adler*, 131 Wn. App. 717, 725, 129 P.3d 293 (2006), *review denied*, 158 Wn.2d 1026 (2007); *In re Marriage of Possinger*, 105 Wn. App. 326, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001); *In re Marriage of Little*, 96 Wn.2d 183, 194, 634 P.2d 498 (1981). This promotes judicial economy for the court

and continuity for the parties. While a trial judge may not retain exclusive jurisdiction over parties, a court does not err by expressing a desire to maintain responsibility for subsequent matters. *Id.*

The record clearly establishes that the trial court retained jurisdiction in Yakima County because the parties were engaged in contentious long-term litigation over the parenting plan.

Hollingshead had consistently abused the process by seeking protective orders from King County to avoid complying with the Yakima County orders and concurrently filing petitions for child support in King County while the relocation and modification proceedings were pending in Yakima County. It was clear the trial court retained jurisdiction in Yakima County to not only review the efficacy of its decision, but to maintain judicial economy and to control the abuses of the judicial process evident in Hollingshead's manipulation of the legal system. *See In re Marriage of True*, 104 Wn. App. 291, 298, 16 P.3d 646 (2000); *In re Marriage of Ochsner*, 47 Wn. App. 520, 527, 736 P.2d 292, *review denied*, 108 Wn.2d 1027 (1987). Nothing in the modification statute, RCW 26.09.170, precludes this sort of procedure.

Additionally, our courts have the “inherent power to control the conduct of litigants who impede the orderly conduct of proceedings.” *Yurtis v. Phipps*, 143 Wn. App. 680, 693, 181 P.3d 849, review denied, 164 Wn.2d 1037 (2008); see also RCW 2.28.010(3). A court therefore has discretion to place reasonable restrictions on any party who abuses the judicial process. *In re Marriage of Giordano*, 57 Wn. App. 74, 78, 787 P.2d 51 (1990). It was reasonable for Yakima County to retain jurisdiction over this matter.

The balance of Hollingshead’s “arguments” are largely unintelligible. It seems to be a “general appeal” of all decisions related to the case without specifying precisely what she is contesting. It seems all of Hollingshead’s complaints were dealt with in her prior appeals. She cites to the trial record and to case law that is inapposite, at best.

2. Respondent Requests and is Entitled to Attorney Fees on Appeal.

Pursuant to RAP 18.1, the respondent requests attorney fees and costs. The respondent requests fees based on petitioner’s bad faith and intransigence. *Marriage of Greenlee*, 65 Wn.App. 703, 708 829 P.2d 1120 (1992) Respondent requests fees pursuant to CR 11, *In Re Marriage of R.E.*, 144 Wn.App 393, 83 P.3d 339 (2008), as the one

apparent issue on appeal, change of venue was already addressed by this Court in August, 2010, and there were no new facts before the Superior Court when it was again denied Hollingshead's motion.

CONCLUSION

The decision of the Superior Court should be affirmed in its entirety.

DATED: March 7, 2011

~~Connaughton Law Office~~

Blaine T. Connaughton, WSBA #1976
Attorney for Respondent