

FILED

MAR 28 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

No. 296539

Stevens County Superior Court Case No. 05-3-00011-4
The Honorable Judge Allen C. Nielson

In re the Marriage of:

LAURA LOUISE DE AGUERO (RULAND)
Respondent,

And

PARIS ANTHONY DE AGUERO
Appellant

BRIEF OF APPELLANT

Paris De Aguero in pro se
932 Silver Spring Court
Saint Augustine, FL 32092
(904) 217-0245

FILED

MAR 28 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

No. 296539

Stevens County Superior Court Case No. 05-3-00011-4
The Honorable Judge Allen C. Nielson

In re the Marriage of:

LAURA LOUISE DE AGUERO (RULAND)
Respondent,

And

PARIS ANTHONY DE AGUERO
Appellant

BRIEF OF APPELLANT

Paris De Aguero in pro se
932 Silver Spring Court
Saint Augustine, FL 32092
(904) 217-0245

TABLE OF CONTENTS

A. Assignments of Error.....1

Assignments of Error

No. 1
No. 2
No. 3
No. 4
No. 5
No. 6

Issues Pertaining to Assignments of Error

No. 1.....1
No. 2.....1
No. 3.....1
No. 4.....1
No. 5.....1
No. 6.....1
No. 7.....1
No. 8.....2
No. 9.....2
No. 10.....2
No. 11.....2
No. 12.....2
No. 13.....2
No. 14.....2
No. 15.....2
No. 16.....2

B. Statement of the Case.....2

C. Argument.....4

Part 1: Placement of the Child.....4
Part 2: Award of and Calculation of Current and Back
Spousal and Child Support.....38
Part 3: Motion to Reconsider.....45
Part 4: Judicial Bias.....47

D. Conclusion.....48

E. Appendix

A-1: Population of Northport, Washington;
[http://en.wikipedia.org/wiki/Northport,_ Washington](http://en.wikipedia.org/wiki/Northport,_Washington).....21

A-2: Timeline/Chart of spousal/child support.....45

A-3: *State of Washington v. David Hendershot*, not cited as an authority, COA Division III, Docket number 28878-1.....47

TABLE OF AUTHORITIES

Table of Cases

In re Marriage of Barnett, 63 Wn. App. 385, 388, 818 P.2d 1382 (1992)
.....38

In re Marriage of Kovacs, 121 Wn.2d 795, 854 P.2d 629 (1993).....5

In re Marriage of Littlefield, 133 Wn.2d 39 , 47, 940 P.2d 1362 (1997)...5

In re Marriage of Matthews, 70 Wn.App 116, 123, 853 P.2d 462 (1993)
.....39

In re Marriage of McDole, 122 Wn. 2d 605, 610, 859 P.2d 1239 (1993)
.....4

In re Marriage of Washburn,101 Wn.2d 168, 178, 677 P.2d 152 (1984)
.....38

In re Marriage of Rink, 13 Wn. App. 549, 552-53, 571 P.2d 210 (1977)
.....38

In re Marriage of Zahm, 138 Wn.2d 213, 226-27, 978 P.2.d 498 (1999)..38

State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997).....5

Statutes

RCW 26.09.187.....4

RCW 26.09.187 (3).....5

RCW 26.09.187 (3)(a).....	6, 34, 48
RCW 26.09.187 (3)(a)(i).....	7
RCW 26.09.187 (3)(a)(ii).....	17
RCW 26.09.187 (3)(a)(iii).....	18
RCW 26.09.187 (3)(a)(iv).....	29
RCW 26.09.187 (3)(a)(v).....	30
RCW 26.09.184.....	34, 48, 49
RCW 26.09.184 (1)(a).....	34
RCW 26.09.184 (1)(b).....	34
RCW 26.09.184 (1)(c).....	36
RCW 26.09.184 (3).....	36
RCW 26.09.080.....	39
RCW 26.09.090.....	39
RCW 26.19.071.....	44, 47
RCW 26.09.191.....	46
Senate Bill 5202, State of Washington, 62 nd Legislature (2011).....	45

Court Rules

Washington State Court Rules: Code of Judicial Conduct:

CJC Canon 2, Rule 2.8(A).....	47
CJC Canon 2, Rule 2.4(A).....	47
CJC Canon 1, Rule 1.2.....	47

Other Authorities

- American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision. Washington DC, American Psychiatric Association, 2000.
Cited within as “DSM-IV”.....34, 35
- Child Safe Tips, “Children Don’t Report Sexual Abuse,”
<http://childsafetips.abouttips.com>46
- Mart, Eric, Ph.D., “The Concise Approach to Child Custody Assessment,” 31 J. Psychiatry & L. 461 2003.....8, 9
- Physician’s Desk Reference, “PDRhealth”
<http://www.pdrhealth.com/drugs>.....35
- Washington State Department of Social and Health Services,
“Child Development Guide: 6-7 Years”
http://www.education.com/print/Ref_Child_Guide_Six/.....30

A. ASSIGNMENTS OF ERROR

No. 1: The trial court erred in granting primary custody of Dillon De Aguero to Ms. Ruland.

No. 2: The trial court erred in awarding Ms. Ruland spousal support and in the calculation of back spousal support owed by Mr. De Aguero.

No. 3: The trial court erred in the calculations of current and back child support owed to Ms. Ruland by Mr. De Aguero.

No. 4: The trial court erred on March 15, 2011 in failing to grant all relief requested in appellant's motion for reconsideration.

Issues Pertaining to Assignment of Error No. 1:

No. 1: Are the trial court's factual findings supported by the record?

No. 2: Does the evidence presented meet the requirements of the standard set forth in RCW 26.09.187(3)(a)(i-v), the "best interests" factors, for placement of the child with Ms. Ruland?

No. 3: Should the "best interests" factors of RCW 26.09.187(3) be based upon circumstances at the time of trial and if so, did the trial court use the circumstances at the time of trial in determining placement of the child?

No. 4: Did the trial court apply all evidence presented to each factor outlined in RCW 26.09.184(3)(a)(i-v)?

No. 5: Did the trial court place undue weight upon the unreliable data of psychologist Clark Ashworth, to the exclusion of other evidence, especially since his scope was intended to be limited to two specific issues not including custody?

No. 6: Does the parenting plan meet the objectives of RCW 26.09.184 Sections 1 and 3 relating to future parenting and the child's heritage?

No. 7: Should the trial court have taken into consideration that Ms. Ruland lied about Washington being the home state of the children when she filed for divorce in January 2005, in violation of the UCCJEA?

Issues Pertaining to Assignments of Error No. 2 and No. 3:

No. 8: Income from the couple's business was their sole source of income, so was the award to Ms. Ruland of both spousal maintenance and ½ of the couple's business proper application of RCW 26.09.090?

No. 9: Should the court use hindsight in determining the proper amounts of child and spousal support, or should the parties seeking support be required to file a motion to modify child or spousal support as any substantial changes in circumstances occur?

No. 10: Does the evidence support the conclusion that Mr. De Aguero did not support the children and Ms. Ruland during 2006 and 2007?

No. 11: Should back child support be calculated based upon incomes of the parties at the time the most recent motion to modify child support was filed, or more than two years later, at the time of trial?

No. 12: Can the court set current child support without financial documents supplied by each party as required by RCW 26.19.071 and in the absence of financial documents to substantiate current income, should current income be imputed?

No. 13: Should the trial court apply credits toward back support which were paid, promised by a court commissioner, or granted by DCS?

Issues Pertaining to Assignment of Error No. 4:

No. 14: Did the trial court err in leaving the minor child with Ms. Ruland despite sexual abuse reported by the two older sons?

No. 15: Was it proper for the trial court to interpret polygraph evidence when the examiner wrote a report to accompany the polygraph test results explaining the methodology and results?

B. STATEMENT OF THE CASE

Paris De Aguero (Mr. De Aguero) and Laura Ruland, f/k/a Laura De Aguero (Ms. Ruland), were married in 1987 and had four children: Cierra, Marseilles, Brandon, and Dillon. CP 210-21. They divorced in June 2005; the default decree granted custody of all four children to Ms. Ruland; \$1086/month child support; \$1500/month spousal support; one-half the family business known as "7DMI"; all possessions; and the family car. Mr. De Aguero was awarded one-half 7 DMI, assigned all

community debt and given no visitation schedule. CP 1-5; 6-12; 13-19.

Cierra ran away from Ms. Ruland's home in January 2005, RP1050; Brandon ran away in August 2008, RP709; Marseilles ran away in December 2008, RP1084. In May 2008, Mr. De Aguero filed motions to modify the parenting plan and child support and to terminate spousal support. CP 323-34, 350-53.

Dillon was removed from Ms. Ruland's home in February 2009 due to issues of neglect reported by court-appointed guardian ad litem Rebecca Albright (GAL), Ex125, and a temporary parenting plan was issued, CP61-71. Following a relocation hearing, Mr. De Aguero moved with the children to Florida in August 2009. CP194-206

Parties at the Time of Trial

Paris De Aguero/Respondant/Appellant: age 47; lives in St. Augustine, St. Johns County, Florida; unmarried, lives with Elaine Davis (Ms. Davis); income of \$2002/month. CP210-21.

Laura Ruland/Petitioner: age 46; lives in Colville, Stevens County, Washington; married to Wes Ruland (Mr. Ruland), CP210-21; income of \$370/month, RP1038.

Children of the Parties at Time of Trial

1. Cierra De Aguero: Age 21; lives with father in Florida; works full-time; high school graduate (Cierra). RP171-172.
2. Marseilles De Aguero: Age 19; lives 30 miles from father in Palatka, FL; full-time college student at St. Johns River State College; plays on

college basketball team. RP524. (Marseilles)

3. Brandon De Agüero: Age 17; lives with father; honor student at Nease High School; nominated to US Naval Academy. Ex127-pp 2-3. (Brandon)

4. Dillon De Agüero: Age 8; lives with father; 2nd grade student; involved in Cub Scouts, church, and sports. Ex127-p.12. (Dillon)

The issues to be decided were placement of Dillon and amount of back child and spousal support owed to Ms. Ruland by Mr. De Agüero. The trial was fragmented over seven days in November and December 2010. The GAL recommended placement of Dillon with Mr. De Agüero, RP112, while court-appointed psychologist Clark Ashworth, PhD (Dr. Ashworth) recommended that Dillon “stay” with Ms. Ruland, RP789. Because the original decree was by default, the trial court determined placement based upon factors outlined in RCW 26.09.187. RP1378.

Mr. De Agüero has appealed the trial court’s ruling as to placement of Dillon because the factual findings are not supported by the record and the facts do not meet the requirements of the correct standard. He also appeals the trial court’s award and calculation of spousal support and calculations of back and current child support. CP 207-209.

E. ARGUMENTS

Part 1: Child Placement

Decisions dealing with the welfare of children are reviewed for abuse of discretion. *In re Marriage of McDole*, 122 Wn. 2d 605, 610, 859 P.2d 1239 (1993). Abuse of discretion occurs “when the trial court’s

decision is manifestly unreasonable or based upon untenable grounds or reasons.” *State v. Brown*, 132 Wn.2d 529, 572, 940 P.2d 546 (1997). A decision is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

Here, the trial court’s decision was based upon both untenable grounds *and* untenable reasons because the evidence does not support the trial court’s findings of fact and the facts do not meet the requirements of the correct standard for placing the minor child with Ms. Ruland.

Although the court is given broad discretion in developing and ordering a permanent parenting plan, that discretion must be exercised according to the guidelines set forth in RCW 26.09.187(3). *In re: Marriage of Kovacs*, 121 Wn.2d at 801, 854 P.2d 629 (1993). Furthermore, the structuring of the residential schedule contained in a parenting plan must be based upon the statutory factors and the circumstances of the parties as they exist at the time of trial. *In re: Marriage of Littlefield* 133 Wn.2d 39, 940 P.2d 1362 (1997).

At the time of trial, placement of Dillon with Ms. Ruland does not adhere to the standard set forth in RCW 26.09.187 (3)(a) as follows:

RCW 26.09.187 (3)(a): The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with

the child's developmental level and the family's social and economic circumstances.

At the time of trial, Dillon had been residing with Mr. De Agüero for 22 months, and this placement was proven to be accommodating for each parent to maintain a loving, stable, nurturing relationship with Dillon, which included regular telephonic contact and visitation with Ms. Ruland during school holiday periods. Ex126-p.1, Ex127- p.5.

The court did not place Dillon in an environment consistent with his family's social and economic circumstances. His father's environment has very different social and economic circumstances than those of Ms. Ruland. Dillon was living in a highly social, upper middle class, ethnically diverse suburban environment, where he had access to a wide variety of activities and playmates. Ex117,118,127-pp.3,12. Ms. Ruland lives in an extremely isolated rural area with a homogeneous population where he does not have access to similar activities or to children his own age and ethnicity. Ex 29; RP852,1227; A-1.

The factors outlined in RCW 26.09.187(3)(a), i – vi, are conjunctives and the language of the statute gives the affirmative command of “The court *shall* consider the following factors.” Therefore, each factor *must* be thoroughly analyzed in order for the best interests of the child to be properly determined. Judge Nielson did not consider all of the factors and he did not apply all available evidence to each factor. He did not consider the circumstances of the parties at the time of trial, and

his findings of fact are either incomplete or incorrect with regard to each factor (i-vi) as follows:

RCW 187.09.187(3)(a)(i): The relative strength, nature, and stability of the child's relationship with each parent;

The trial court discussed two aspects to this factor:

- 1) The strength of the bond between each parent and Dillon and
- 2) Whether the bond will continue based upon Dillon's placement.

1) In his analysis of the strength of the bond between each parent and Dillon, Judge Nielson concluded that Ms. Ruland has the stronger bond. CP210-21. This conclusion is not supported by the evidence.

Dr. Ashworth could not say which parent had the stronger bond:

Q: At this time had you done any type of assessment as to which parent Dillon was more connected to, more attached to, in terms of a primary parent?...

A: I – I don't know that I have any data ultimately about which parent Dillon is ultimately – or is attached to more. He's attached to both his parents. RP771, lines 16-23

Judge Nielson only considered a bonding assessment and questionnaires completed *15 full months prior to trial*. Ex24. At that time, Dillon was reestablishing a relationship with his father after having been denied contact for a substantial period of time, Ex125-p.38 . These assessments did not accurately reflect circumstances at the time of trial. Ms. Ruland was characterized as a "gifted mother," RP1384 because Dr. Ashworth said she had a very "interesting positive interaction," RP 782, ignoring that he also said Dillon had a "petulant" tantrum wherein he lay down on the floor, RP783. Judge Nielson was also impressed with a

questionnaire indicating that Ms. Ruland was more observant of his moods. RP 1383. According to Ms. Ruland, Dillon exhibits anxiety, depression, and many somatic complaints when he's in her care, RP 764, Ex125-p.39. He does not *experience* those symptoms while in Mr. De Agüero's care, Ex125-pp.16,39; Ex127-p.4 and Dr. Ashworth did not notice these symptoms, either, RP771,826; Ex24.

Experts in the field of psychology and psychiatry have deemed psychological testing and bonding assessments to be unreliable because they are not supported by scientific evidence.

A "formidable" body of scientific literature indicates that clinical judgment is often unreliable and experience does not validate a clinician's conclusions which are based upon current methods of psychological testing and bonding assessments. In his article "The Concise Approach to Child Custody Assessment," Journal of Psychiatry and Law, 31 J. Psychiatry & L. 461 2003, forensic psychologist Eric G. Mart, PhD, states: "Child custody evaluation is one of the most poorly researched and developed specialties of forensic psychology." Because scientific evidence does not validate psychological testing and parent-child observations, he recommends that under APA ethical standards, psychologists should disclose in direct examination that *they have no known reliability* and that there are limitations in the data obtained by psychological testing. (Emphasis added.) The trial court relied heavily upon Dr. Ashworth's opinion in evaluating factor (i), but there is no

research that has examined conclusions based upon observations of parent-child interaction and surveys in custody assessments and outcomes of children involved. They have an unknown probability of being correct.

Mart concludes:

It is of concern that an assessment technique so widely utilized by professionals in contributing to custody decisions should rest on what is at best extremely tenuous methodological ground. Similar problems exist with virtually all techniques utilized in custody assessment. Id.

Dr. Ashworth was appointed to determine whether visitation with Ms. Ruland should occur and to evaluate parental fitness in a written report to the court. He was not appointed to evaluate Dillon's best interests, nor was he in a position to do so. CP 99,107-113. Cmmr. Monasmith did not want him to circumvent the GAL; however, this is what happened because Judge Nielson placed undue weight upon his bonding assessment and questionnaires, even though Dr. Ashworth did not make a conclusion as to which parent would be a better custodial parent:

"I believe that both these individuals can be and probably are good parents...I haven't seen anything which suggests any great level of risk to Dillon no matter what the final decision is." RP 790, lines 7-12.

The GAL did a complete investigation and she *was* able to make a definitive recommendation, but her opinion was ignored. RP198,110.

The GAL reports, Ex 125,126,127; the GAL testimony, RP34-346; and the photo journals, Ex 116,117,118 should also have been considered in the analysis of the bonding factor. Dr. Mart states that the GAL is in the "best position to determine best interests of the child."

Extensive photographic evidence proved that at the time of trial the

father had an especially strong bond with the Dillon. He was actively involved in Dillon's activities including school, sports, Cub Scouts, and church. Ex116,117,118. On the other hand, Ms. Ruland provided no evidence of her circumstances at the time of trial relating to her bond.

Dillon's room mother reported that the father took an active role and was always at school functions. Ex126-pp.3-4. Brandon said, "Since Dillon has got back with Dad, they are like two peas in a pod – inseparable." Ex127-p.4. The GAL was the only person who observed Dillon interact with Ms. Ruland in their home, Ex125, whereas Dr. Ashworth observed them in the structured confines of his office. Ex24. She also observed Ms. Ruland interact with Marseilles and Brandon while Dr. Ashworth did not observe any of the other children with their mother. RP753;CP72-83.

Based upon all evidence available, Dillon had a stable bond with both parents but Mr. De Aguero is the more actively involved parent and had the stronger bond at the time of trial.

2. The primary reason that Dillon was placed with Ms. Ruland is that Judge Nielson thought Mr. De Aguero was entirely responsible for the alienation of Ms. Ruland from the older boys, RP1383, and that he showed "poor judgment" in maintaining Dillon's relationship with his mother. CP210-21. The evidence does not support these conclusions, but there is substantial evidence that Ms. Ruland's behavior and that of her family are the reasons for her poor relationship with the three older children.

Dr. Ashworth's testimony was incorrectly paraphrased: He did *not* conclude that Mr. De Aguero alienated the boys from their mother. He said the parental alienation issue would be relevant only if it was caused by the other parent, but he did not know whether that was true here, RP776; he specified that he does not have direct evidence of parental alienation. RP790. The fact is that both parents were witnessed making negative remarks about the other parent in front of the boys: His secretary overheard Mr. De Aguero make negative remarks about Ms. Ruland but he did not know what the negative remarks were. Ex23. He listened to a recorded telephone conversation between Ms. Ruland and Brandon, and he stated that Ms. Ruland "fails" in restraining from making negative comments about Mr. De Aguero. Ex23. Dr. Ashworth advised that "Both parents need to restrain from putting their sons in the middle of conflicts beyond the coping ability of these children." Ex 23. He would not conclude that Dillon would be alienated from his mother, saying that he thought it was possible for the "parents to pull together and for the children to be okay." RP794

One of the reasons Dr. Ashworth recommends that Dillon remain with Ms. Ruland is that she has a "benign" perspective, Ex24, which contradicts his statements that Ms. Ruland has "strong reactions" to the situation and that she provided him with entirely negative "extensive additional materials," and allegation forms. Ex23; RP795,1321.

School superintendent Patsy Guglielmino (Ms. Guglielmino) said the parents “work to put the kids in the middle,” RP45; Cierra reported that both parents talk the “same way” about each other, Ex 125-p14; Brandon concurred, Ex125-p.21. The GAL testified that “both parents had engaged in behaviors that had emotionally damaged the kids, but the mother and her family’s actions had so damaged the relationship with the three older kids that it may be beyond repair.” RP 110; Ex 125-p.45

In circumstances where both parents makes disparaging remarks about the other parent, the court must look to each parent’s own behavior to ascertain the cause of any alienation. In this case, Ms. Ruland’s behavior was responsible for the damaged relationships between herself and her children. All three older children submitted declarations and described to the GAL many incidents of Ms. Ruland’s behavior that alienated them from her, including but not limited to: She isolated them from their father RP84; Ex127-p.12; she broke promises/would not make good decisions for their future, Ex125-p.23; she blocked their phone numbers from her phone, Ex125-pp.6,14,21; she told them they are “dead” to her, Ex125-p.30; she threatened to call law enforcement if they stepped onto her property, Ex125-p.27; she refuses to return their possessions, Ex125-p.27; she did not notify them of her heart attack/surgery Ex125-p.5; she eloped without notice to marry Mr. Ruland, Ex125-p.2; and she had not attempted to contact them, 127-p.12. All of these incidents are found

in multiple sources throughout the case file and record. The GAL concluded:

The mother chose to make life decisions which had a negative impact on the well-being of her own children. The mother is refusing to acknowledge her responsibility for the current situation between herself and her children. Instead the mother and her family are engaging in behaviors aimed at punishing the children because they did not agree with the mother's choices and decisions. RP109;Ex125-pp.44-45

Ms. Ruland called Dillon regularly but did not try to talk to Brandon. RP169. The GAL was concerned about the mother's "lack of interest" in Brandon, CP 103-06. She saw Ms. Ruland walk past Marseilles and Brandon without acknowledging them. CP84-91.

Judge Nielson blamed the kids for the poor relationship, RP1387, but during the joint GAL interview with Brandon and his mother, Brandon told her that he wanted to have a relationship with her, Ex125-p.21; Brandon and Marseilles expressed love and concern for her. RP45,327; CP 20-21, 22, 33-38; Marseilles felt hurt, puzzled, and distraught, RP540; Ex125-p.5,20. Dillon confirmed Ms. Ruland's negative attitude toward Brandon, stating that Brandon was "not in the family any more." RP81; Ex 125-p.38. Ms. Ruland's negative attitude toward her children was quite apparent at trial, as she did not prevent Mr. Geissler's character assassination of her own children. The GAL defended them and objected to his "mischaracterization" of them. RP190,301,307,326-327,540.

According to Ms. Ruland's own statements, all three older children ran away from her home. CP188-93. The trial court could not then conclude that Mr. De Aguero alienated the children from their mother. He

wasn't living with them in 2005 and 2008 and Ms. Ruland denied contact with them, so this type of influence would not have been possible.

Ms. Ruland's family members also damaged her relationship with the children. Several incidents were described, but just one sums it all up: Ms. Ruland's mother "flipped off" Marseilles in the school parking lot and told him not to call her house any more. RP74; Ex125-p.32.

Finally, Dr. Ashworth listened to recorded telephone conversations between Ms. Ruland and Brandon and concluded, "Certainly the angry, profane, and conflicted communications I have heard cannot contribute to positive relationships with her son." Ex 23. Judge Nielson blamed the children for the poor relationship, saying that they should contact her and be more forgiving, but Dr. Ashworth said it was Ms. Ruland's responsibility to mend the relationship. In fact, he saw this as a lack of parental collaboration and a "bad predictor for the future." RP813.

The trial court found that Mr. De Aguero and Ms. Davis showed "poor judgment" in maintaining Dillon's relationship with his mother. CP 220-21. Evidence also contradicts this finding. They prepared a detailed scrapbook journal of Dillon's activities each month and sent it to Ms. Ruland in order to keep her connected with him. RP144; Ex 116, 117, 118. According to Dr. Ashworth, this is an example of collaborative parenting. RP813. Ms. Ruland called two times per week for 22 months; Dillon's room mother told the GAL "they make a conscious effort to get Dillon upstairs to wait for Laura's phone call." RP143. Dillon visited his

mother during every school holiday period, paid for entirely by Mr. De Aguero and Ms. Davis. Ex126-p.1.

Both parents are the primary source of negative information about the other parent, but Ms. Ruland has engaged in an aggressive campaign to terminate the relationship between the children and their father. The entire case file and record is rife with reports and testimony from the children, GAL, Mr. De Aguero, and Ms. Davis that her pattern is to isolate the children from their father. This began in 2004, when she misled Mr. De Aguero into believing she was going to visit her parents in Northport, WA and did not return. RP1047;CP103-6. She then denied contact between the boys and Mr. De Aguero for the entire year of 2005. CP188-193. This trend endangers them because it creates desperation to the point that they will run away to see him. RP84. Mr. Geissler argued there was no isolation because Mr. De Aguero did not file any motions for contempt, RP326, but the default parenting plan did not include a visitation schedule. Ms. Ruland admitted that he had to hire an attorney to secure a visit and her choice of words defines her attitude toward visitation and supports what Dr. Ashworth said about her negative reaction to visits: "...and the next thing I knew I was *having* to give him a Christmas visit." RP1051

All *four* children reported to the GAL that their mother isolated the them from their father and that she continues to isolate Dillon from his father and siblings whenever he is in his mother's care: no one can reach Dillon when at his mother's house Ex127-p.12; she would not allow

Marseilles to see Dillon. RP71. Despite unanimous reports of this isolation and no phone bills submitted by Ms. Ruland, the judge inexplicably found that Dillon talked to his father. CP210-21.

Compelling evidence that Ms. Ruland isolated the children from their father are Dillon's statements to the GAL on February 26, 2009. As of that date, his mother had not allowed any contact between Dillon and Mr. De Agüero since November 1, 2008:

"Dillon states that his mother won't let him call his dad because the judge won't. Dillon stated that he wants to see his dad 'all the time' and his mother won't let him because the judge said. Dillon states that he feels sad. Dillon states that his mother doesn't like his father because he 'took' Brandon." Quote from Ex 125-p.39; testimony at RP 81-83.

Mr. De Agüero had explicit telephone and visitation rights, CP 416-18, and Brandon ran away from her home. CP 188-93.

Ms. Ruland expressed concern that Mr. De Agüero discussed court issues with the *older* children whose reports were the impetus for the modification, RP1090, but Dillon's statements to the GAL indicate that she was discussing court matters with 6-year old Dillon that were far beyond his ability to comprehend. All school personnel in Northport, WA, knew of the custody battle. RP1006,1014. In contrast, school personnel in St. Augustine, FL, were not aware of the court case until contacted by the GAL. Mr. De Agüero did not discuss the case with Dillon, so he did not have anything to discuss regarding the case. RP201 Marseilles reported that his mother accused Mr. De Agüero of lying so he went to court on his own and discovered that his mother had been lying to

them about everything. Ex125-p.23. Dillon's comments provide more examples of Ms. Ruland's disparaging remarks about Mr. De Aguero.

While there is substantial evidence that Mr. De Aguero was exemplary in keeping Ms. Ruland connected to her son, there was absolutely *no evidence of any kind* that Mr. De Aguero compromised the bond between Dillon and his mother. Dillon indicated to Dr. Ashworth in April 2010 that he would like to live in "Florida and Washington," and he still had a "positive attachment to both parents." CP 210-21. Cierra said Mr. De Aguero did not isolate the children from her mother. Ex125-p.15

There is substantial evidence to refute the trial court's findings that Mr. De Aguero alienated the mother from her three older children, and that her own behavior was the cause; that Mr. De Aguero actively participated in keeping Ms. Ruland connected with Dillon; and that Ms. Ruland's pattern of behavior is to isolate the children from their father.

With a more complete analysis of all the evidence, the trial court should have weighed this factor more heavily in favor of Mr. De Aguero, based upon his active participation in Dillon's life; Ms. Ruland's own behavior which caused her alienation from the three older children; Ms. Ruland's pattern of isolating the children from Mr. De Aguero; and Mr. De Aguero's record of keeping Ms. Ruland connected to Dillon.

RCW 187.09.187(3)(a)(ii): The agreements of the parties, provided they were entered into knowingly and voluntarily;

Commr. Monasmith asked Ms. Ruland to note the matter for trial in July 2008, CP 416-18, but she waited for more than a year to comply,

and thus gave her implied consent to allow Dillon to fully integrate into Mr. De Agüero's family. Then, based upon *her* motion, the trial was postponed until November 2010. This is an unreasonable period of time to elapse, considering the young age of the child and more than two years after Cmmr. Monasmith requested the matter to be set for trial.

RCW 187.09.187(3)(a)(iii): Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

Judge Nielson cited various aspects of parenting functions including physical care, housing, and education. CP 210-21

In his findings of fact, Judge Nielson arbitrarily stated that Ms. Ruland performed all of the daily needs of Dillon until he was 6 years old. CP 210-21, but the couple did not divorce until Dillon was almost 30 months old and were reconciled from March 2006 to March 2008. RP1027; CP20-21, 39-46, 72-83.

All three older children reported that their mother did not take care of Dillon to the point of neglect. They were articulate, consistent, and detailed in providing many anecdotes and examples of her neglect, including but not limited to: they had to "fend for themselves," Ex125-p.36; he did not bathe regularly; his clothes were dirty; he had inadequate supervision; he was exposed to second-hand smoke. RP 49,51,61,62,68, 70,80, 95. His medical and dental records from Northport are a testament to her neglect. CP 434-86. The GAL vehemently stated and reiterated in her testimony and reports that the older children were objective, they were

making good choices in their lives, and they all loved their mother, but they were deeply concerned about Dillon's health, safety, and welfare. Ex125-p.2, She filed reports with the court in August 2009 and April 2010. Ex125,126,127. She testified in person on February 27, 2009, November 22-23, 2010, and by telephone on March 15, 2011. RP Volumes I, IIA, and IIB generally; CP 72-83, RP3/15/11.

The entire testimony, investigation, conclusions, and recommendations of the GAL were reduced to one footnote in the trial court's findings of fact, in which Judge Nielson dismissed the GAL investigation that he refers to as "exhaustive." RP1380. She interviewed Brandon and Dillon with their mother and separately, Marseilles, Cierra, Ms. Ruland, Mr. Ruland, Ms. Davis, Mr. De Agüero, Dr. Ashworth, Dillon's teachers and principals in Northport and in Saint Augustine, and Dillon's doctor, dentist, and orthodontist. In all, she interviewed 22 people and examined medical records, newspaper articles, declarations, and photos, Ex125-p.2-3;Ex126-p.2;Ex127-p.1, and yet Judge Nielson reduced the entire investigation to a mere footnote that, "the children ...in particular Dillon, were well cared for by their mother." CP 210-21.

In making this finding, Judge Nielson cites only medical records from Northport that indicate Ms. Ruland is the one who took Dillon to the doctor and dentist. CP 210-21. The problem is that he didn't actually read the content of the reports. It is obvious that Judge Nielson didn't read the reports because he writes that the danger from second hand smoke was

“overstated.” CP 210-21. Nearly *every single doctor visit was the result of exposure to secondhand smoke*. The reports consistently advised Ms. Ruland to avoid exposing him to secondhand smoke and many diagnoses were attributed to tobacco exposure. Dillon was diagnosed with “failure to thrive” and he was frequently ill, necessitating frequent doctor visits and nebulizer treatments. She was asked to bring him back for weight checks but failed to do so. In five visits, Ms. Ruland was advised that she was not cleaning his penis properly, resulting in adhesions. The reports noted several times that he was in need of dental care but by the time he was taken, he had to have all four top front teeth extracted due to bottle rot and he required a silver crown on a fifth tooth. RP111-12; CP 434-86.

The medical records are conclusive evidence of Ms. Ruland’s neglect of Dillon. Judge Nielson did not examine the content of the records, just the fact that Ms. Ruland was the one who had taken him. She should not be commended for causing the child to become ill and then taking him to the doctor because of it. The evidence provided to the trial court indicated that Ms. Ruland was not adequately taking care of Dillon.

Judge Nielson also concluded that Ms. Ruland was the primary caregiver because she attended Dillon’s conferences and helped in his preschool class. Mr. De Agüero was precluded from participating in Northport conferences because the default decree included a restraining order, even though Ms. Ruland and the three older children told the GAL there was no history of domestic violence. CP 1-5, 72-83; Ex125-p.5.

Judge Nielson explained his reason for dismissing the GAL reports in that he had a “fuller picture” than the GAL. CP210-21. This contention is not possible. First, the GAL observed the mother’s home as well as Dillon in the home. She was in a much better position to objectively evaluate Dillon’s environment and his attitude while in his mother’s home. EX125-p.37-40; RP1324-1325. She interviewed adults in private. This is important when considering that Northport is a town with a population of less than 300. AP-1. In a situation such as this, people will say different things in a confidential, private setting versus a public setting where the milieu is a microcosm in which gossip and information is disseminated quickly through the population. This is exactly what happened here, as Ms. Guglielmino quickly retracted the comments she made in confidence to the GAL, but the GAL stood by her report which the children also verified. RP271;CP 72-83, 84-91, 92-96, 194-206.

On March 15, 2011, Judge Nielson accused the GAL of “falling prey” to Mr. De Aguero and he accused her of bias. RP 3/15/11-p.48. Mr. De Aguero’s interview with her was brief and he reported what the older children told him. Ex125-p.44. Judge Nielson thought the GAL relied too heavily upon the children, but she was justified in her reliance on their reports because they were objective by all accounts and she thought that the truth would be revealed through them in this extraordinarily high-conflict case. RP302,307. Ms. Guglielmino confirmed that the boys were very objective and “mature” RP 42,1014. Furthermore, even though the

three children were not living together at the time they were interviewed, their stories “meshed.” RP308. From the beginning, Ms. Ruland was “angry” and uncooperative with her. RP52; CP 84-91,92-96. Also, the GAL thought the children were in the best position to observe what goes on in the home, as parents are usually on their “best behavior” in public. CP 92-96. On August 28, 2009, Commr. Monasmith noted:

“The court also had a pretty significant record from two older boys about what had been going on, what had been the lifestyle, what had been the choices made in that home and the court placed a great deal of reliance on what those boys said and I really haven’t heard anything yet that would put the lie to what those children said.” CP107-13.

The GAL is an expert who has investigated 50 prior Title 26 cases. RP36,108. She has no record of unethical behavior with the WSBA. Ms. Ruland attempted to replace the GAL but this was denied by both Commr. Monasmith and Judge Nielson. CP 114. Judge Nielson made these accusations although nothing improper had occurred or was alleged between the revision and the trial.

Judge Nielson concluded that the children use the same language as the father and therefore they were influenced by him, CP 210-21; however, the children – *including Dillon* – repeated the same information throughout the case record. The boys denied being manipulated by their father, saying they were not young enough to be influenced by their father in that way. Ex125-pp.28-29;RP67; CP 47-49. Commr. Monasmith noted that the boys were consistent over a period of many months in what they were saying. CP 194-206.

At the time Cierra was interviewed by the GAL, she was an adult, age 20, living on her own in Denver, CO and she had not lived with her father for more than one year. RP47;Ex125-p.41. When Marseilles was interviewed by the GAL in February 2009, he had not lived with his father for almost one year. In April 2010, Marseilles was an adult living on his own in Spokane, and he had not lived with his father for more than two years. Ex 126-p.2. Mr. De Aguero would not have been able to manipulate either one of these independent adults.

The evidence that directly refutes Judge Nielson's contention that Mr. De Aguero manipulated the children is Dillon's own statements to the GAL on February 26, 2009, in which he independently confirmed and mirrored the reports of all three older children to the GAL:

"Dillon stated that his grandmother has him a lot and that he stays the night there sometimes." Ex125-p.38

"Dillon states that he doesn't eat breakfast at home." Ex125-p.40

"Dillon states that his mother doesn't want to take care of him 'every second.'" Ex125-p.40

"Dillon states that his mother smokes cigarettes. Dillon states that when he was four years old, he picked up his mother's cigarette and smoked it."

"Dillon states that Wes always smokes cigarettes and that his mother and Wes spend a lot of time alone in their bedroom. Dillon states that 'everybody' takes care of him." Quotes: Ex125-p.40; also, RP 82-84

At the time of trial, Mr. De Aguero was the primary caregiver, and he had been the primary caregiver for 22 months. Mr. De Aguero took exemplary care of him and he performed all parenting functions relating to the daily needs of Dillon: He was actively involved in Dillon's school, church, scouts, and sports activities and provided proof of his involvement in the form of a photo album which was corroborated by reports from

Marseilles, Brandon, and Dillon's principal, teachers, and room mother. He recognized Dillon's future need for orthodontics and took him to see an orthodontist. He was taken to the dentist every 6 months and he did not develop any new cavities while in Mr. De Agüero's care. Dillon had regular medical check-ups and he did not experience any symptoms requiring the use of nebulizer treatments and his chronic cough and sinusitis disappeared completely. The children stated that Dillon was healthier and happier. Ex116-118;Ex125-p.16;Ex126-p.1,3,4;Ex127,p-3-4,9,12,13;Ex128.

In preparation for trial, the GAL conducted follow-up interviews in April 2010, RP135-200; Ex126-7, and again in November 2010, RP201-207, with Dillon's teachers, principal, medical/dental staff, and the older children who all stated that Dillon was well taken care of by his father, he was doing well in school, involved in many activities, and that his health had noticeably improved. Ex126,127,128. She also verified that Ms. Davis had purchased a home in Florida and reviewed newspaper articles, school records, and health care reports. The GAL's report from November 2010 was the *only* report describing Dillon's circumstances at the time of trial, RP 136-150,152-156;160-211, and she strongly recommended his continued placement with his father.

Judge Nielson regarded the homes of Ms. Ruland and Mr. De Agüero as "comparable." CP 210-21. The evidence does not support this conclusion. Mr. Ruland began building the home in 1996. RP 1209. In

September 2009 – 13 years later – Ms. Ruland hired a CASA worker to inspect the home, who described it as being in the “middle phase” of construction. Ex29. Mr. Ruland testified that the staircase was never without both handrails, RP1235, but the CASA worker reported that there was one handrail on the stairs, Ex29, and the GAL noted that the staircase was unattached, RP226. With Dillon residing there, seven people would be using one bathroom. CP 39-46, 72-83.

On the other hand, Mr. De Aguero provided photographic evidence and an appraisal report of Dillon’s home in Florida: built in 2006, with 5 bedrooms, 3 bathrooms, 3460 square feet. The community has a luxurious amenity center with pools and a sports complex. Ex126-photos attached.

Judge Nielson defended Ms. Ruland’s home by comparing it to other homes in Northeastern Washington. CP 210-21. This is not the correct standard, as the best interests test is a balancing test between the two parents. Mr. De Aguero does not live in Northeastern Washington and so Ms. Ruland’s home should not have been compared to other homes in that area. He should have compared the two choices available to Dillon: the house where he was living or Ms. Ruland’s house. The homes are not comparable regarding completion, safety, facilities, or location.

As far as the cleanliness of the homes, all three older children reported that the Ruland home is filthy and unsanitary. CP 33-38, 39-46, 47-49, 72-83. Marseilles stated and Mr. Ruland also testified that water is taken from the creek, stored in cisterns located in Dillon’s room and

outside the house, and plumbed to the house with hoses. RP1219; Ex 29,125-p.11. Cierra, Marseilles, and Brandon also described animal feces littering the house, piles of laundry, and dirty dishes. Ex125-pp.11,12,25,39,40; CP 39-46, 47-49, 72-83.

Mr. Geissler thought that the older children were all lying. He didn't provide a reason as to what would motivate Brandon or Cierra to do so, but he thought Marseilles wanted to live with his girlfriend; however, Marseilles was allowed to sleep with his girlfriend in his mother's home while in Victoria's home, he had to sleep in a separate room. RP577. Mr. Geissler repeatedly asserted that the children dislike their mother, hate their mother, were angry with their mother, but the GAL became upset with these statements:

Q: Isolation. You're concerned that the father and all of these siblings that may or may not dislike the mother can't see this child if he's with Mom?

A: They love their mother, and they're very hurt and distraught over what's happened...They told me they do....I won't let you mischaracterize the children and their feelings towards their mother.

Q: You know what the children have told you. You don't know what their feelings really are, do you?

A: I know what they've told me, and I've seen the expression, and I've seen their tears. RP326-327

While Judge Nielson did not believe anything the older children reported to the GAL because Mr. De Agüero was supposedly influencing them, again Dillon confirmed the mess in the home:

"Dillon stated that he had dog 'poo poo' on his jacket that his dad gave him...Dillon states that his mother's house is 'messy.' Dillon states that there are lots of things out downstairs and upstairs. Dillon states that if the dog poops in his bedroom, Weston tells him to clean it up and it smells

bad. Dillon stated that a dog pooped on his toy and he got the poop out with a paper towel.” Quote from Ex125-p.40; testimony at RP 83.

The crucial aspect of “future” parenting is the ability to guide the children as they are preparing to enter the adult world. Judge Nielson failed to recognize the pattern established by the three older De Agüero children in that they all ran away from Ms. Ruland’s home. CP 188-193, 194-206. With Cierra and Brandon, this occurred at the particular age of 15 years old. RP 57,1050. This pattern shows that Ms. Ruland has not been able to fulfill the needs of the children as they reach adolescence.

The GAL concluded that Ms. Ruland employs the “friendship style” of parenting. Ex125-p.45. Cierra said that Ms. Ruland was like a “best friend” Ex 125-p.16. All three older children gave examples of this, such as: Ms. Ruland introduced Cierra to smoking pot, Ex127-p.6; she smoked pot RP 75; she took them with her to get a tattoo, Ex125-pp.16-17; she discussed and compared Mr. De Agüero’s penis size and sexual ability to that of other men, Ex125-pp.16,17,36; she does not do “mature” things, Ex125; Dillon said that he “takes care” of her. RP82. She has demonstrated reckless judgment, as when she asked Marseilles to drive her to the liquor store when he was 12 years old because she was too intoxicated. Ex125-p.4,32. Commr. Monasmith, Ms. Guglielmino, Marseilles, and the GAL discussed Ms. Ruland’s propensity to parentify the children. CP 39-46, 72-83, 84-91, 92-96, 194-206. Ms. Guglielmino characterized the older boys as “pseudo-parents” to Dillon. RP42,44;

CP92-96. Brandon stated that his mother won't make the decisions that are best for him so he must make the decisions for himself. CP22

Dr. Ashworth concluded that Ms. Ruland has a low average IQ, she is dependent, has difficulty distinguishing reality from fantasy, has issues with denial, and displays "unconventional orientation." Ex 24; RP760-61. These traits have led to Ms. Ruland's parentification of the children; they are not conducive to parenting adolescents who are trying to cope with reality and who must adapt to and integrate into the real world.

Marseilles did not run away from home until the age of 17. RP540;CP 39-46. This is because Mr. De Agüero was living in the home when Marseilles was 15-16 years of age. During the years from March 2006 to March 2008, the parents were reconciled so Mr. De Agüero was able to provide a mature state of mind to Marseilles. RP1027.

"Future" parenting also involves education. In this regard, Mr. De Agüero is in a substantially better position to parent Dillon. Ms. Davis has two post-graduate degrees and was a school teacher for 18 years. She has a record of improving the performance of the children. For example, Cierra earned no credit and was expelled from high school after three semesters. With Ms. Davis's help, Cierra made up credits while earning a GPA of 3.9. CP 50-57. In his father's home, Brandon earned a GPA of 4.0 while also taking honors courses. CP 33-38. Marseilles reported that he was going to college only through the efforts of Ms. Davis and his reason for running away from Ms. Ruland is that he "needed to be in an

environment that was more focused on getting into college.” RP45; Ex125-p.23;72-83. Ms. Guglielmino thought his decision was “wise.” RP 1011. Brandon described his father’s house as a more “inspiring environment.” CP 20-21. In Mr. De Aguero’s home, Dillon’s reading, math and language skills improved dramatically. CP134-158.

On the other hand, education is not valued in the Ruland home. Mr. Ruland testified that his daughter Lavette, 16, is “doing better” since moving out of his house. RP1207. Marseilles reported that Lavanna Ruland complained about performing many adult responsibilities in the Ruland home because she was behind in school, but Mr. Ruland did not relieve her of her duties. EX 125-p.25. None of Mr. Ruland’s adult children attend college; he *claims* that two are in the reserves and one is in a “transition” phase. RP1204-1205. The opportunities available in the Ruland home are very limited compared to the opportunities available in the De Aguero-Davis home. CP 33-38, 39-46.

Mr. De Aguero pursued Dillon’s interest and proclivity toward athletics. While living with Mr. De Aguero, Dillon was involved in year-round sports and Mr. De Aguero was the coach of Dillon’s little league baseball team. RP465-466. The Rulands are both suffering from physical ailments that will preclude them from helping Dillon achieve his athletic potential. RP762,860,1237.

RCW 187.09.187(3)(a)(iv): The emotional needs and developmental level of the child;

As with all children, Dillon's emotional needs are that he must have a relationship with both parents. This was occurring for the entire 22 months he lived with Mr. De Agüero. This did not occur the entire time any of the children lived with Ms. Ruland alone, in 2005 and 2008. RP406-407; 441-443;724;CP 188-193.

According to the Washington State Department of Social and Health Services, "Child Development Guide: 6-7 Years" available at <http://www.education.com>, beginning at the developmental level of 6-7 years old, male children identify strongly with their father. This is consistent with Dillon's behavior, evidenced by the wide range of male-bonding activities they engaged in together as father and son. Ex116-118. Their close bond prompted Brandon's remark that they are "like two peas in a pod-inseparable." EX127-p.4. By placing Dillon with his mother, his innate need to be with his prominent male role model was denied. Dr. Ashworth noted that Mr. De Agüero had a "much more masculine approach" with Dillon, RP786, and stated that "he was obviously a father playing with his son, not a mother." RP809

RCW 26.09.187 (3)(a)(v): The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

Judge Nielson minimized the importance of Dillon's relationship with his siblings, implying that the difference in their ages meant the relationships were less important. He wrote that Cierra does not have a bond with Dillon, CP 210-21; however, both Cierra and Marseilles moved

to Florida for the sole purpose of living with Dillon. RP176,551. Mr. De Agüero provided pictorial evidence and testimony confirmed that the relationships among all four siblings was solid. Ex116-18; RP604-609.

Dillon's history with them was ignored: Cierra lived with Dillon from birth – January 2005; March 2006 – December 2008; August 2009 – time of trial. Marseilles lived with Dillon from birth – December 2008; June 2010 – time of trial. Brandon lived with Dillon from birth – June 2008; and February 2009 – time of trial. He grew up with his siblings and lived with one or more of them his entire life – more time than with either parent. Commr. Monasmith noted that the siblings are “significant, stabilizing influences in his life.” CP 194-206. Dr. Ashworth verified that the sibling relationships were very important to Dillon. RP 816-817,831.

In his findings, Judge Nielson stated that Ms. Ruland has a large extended family in the area, CP 210-21, and that her cousins will be more beneficial to Dillon in the future than his own siblings will be. CP 210-21. The siblings are too old to have a meaningful relationship with Dillon, but Ms. Ruland's cousins will have a more meaningful relationship with him?

Another omission in Judge Nielson's analysis is Dillon's extraordinarily strong bond with Ms. Davis. A substantial amount of evidence illustrated the bond that had developed between them. Commr. Monasmith cited her “compelling” anecdotal record of Dillon's statements, actions, and behaviors she observed between February and

August 2009. CP 134-58. He noted that Ms. Ruland did not deny any of the observations in Ms. Davis's declaration:

“This woman has spent a great deal of time with Dillon and by the stories of all three children, Cierra, Marseilles, and Brandon, has been a very positive and steadying influence in what has otherwise been a very chaotic family situation for some number of years.” CP 194-206.

This “steadying influence” included providing Dillon with a structured environment. Ex123. The photo album illustrates the dedication and commitment of Ms. Davis, but Judge Nielson was dismissive of the relationship, saying that Ms. Davis has her “own four children to take care of” and that the De Agüero children are there “at her sufferance.” CP 210-21. These conclusions do not accurately reflect the record, in which Ms. Davis repeatedly states that she loves the De Agüero children and they will “always” have a home with her, supported by her pattern of behavior in taking care of them. Ex125-p.43. All of the children, including Ms. Davis's and Mr. De Agüero's children, are exceptionally well taken care of and all have high expectations to succeed academically. CP 33-38, 39-46, 50-57, 72-83. These are the reports made to the GAL by the three older De Agüero children and corroborated by the photo album and academic records. Ex 116-118; 123; Ex126-p.2-4; Ex127-p.12-13;.

At the time of trial, Dillon's intense involvement in his physical surroundings, including his school and many significant activities was an integral part of his life and an overwhelming amount of evidence proved this to be true. He had school pride, many friends, and he was actively involved in his church, Cub scouts, and sports. This is a child who was

integrated into the community and involved in an active lifestyle, which is indisputable based upon photographic evidence. Ex116,117,118; 127-p.12.

On the other hand, Ms. De Agüero provided no evidence of Dillon's attachment to his physical surroundings in Northport/Colville, or of any activities in which he participated in her home, other than school attendance. Mr. Ruland testified that the only sport Dillon was involved in was playing at recess. RP1227.

Mr. Ruland stated that even his own child, Lavette, wanted a "change of environment" and since moving out of his home, she is "doing better." RP1206-1207. Mr. Ruland has six children and yet the only two who do not live in the home were the only two who testified. Lavannah, 20; Isaiah, 19; Levi, 17; Israel, 14 all lived in the Ruland home but did not testify. RP 1203-1207. The only Ruland children who testified were Lavette, who was "doing better now" after leaving the Ruland home, and Weston, who was visiting. RP930.

Despite Mr. Ruland's testimony that four of his children live in his home, Judge Nielson found that Dillon would be the only child in the Ruland home. CP 210-21. He stated that Ms. Davis has her "own four children to take care of." CP 210-21. The fact is that both Mr. Ruland and Ms. Davis have their own four children to take care of, but Ms. Davis has proven that she can do so admirably, CP 33-38; 39-46; 72-83; 134-158, while Mr. Ruland's children are not doing well in school, RP 1207,

and Lavette is “doing better now,” after leaving his home.

RCW 26.09.187 (3)(a): Factor (i) shall be given the greatest weight.

Mr. De Agüero clearly had the stronger bond at the time of trial and placement with him provided Dillon with the opportunity to have a stable, strong bond with both parents. Ex127-p.12.

The factors set forth in RCW 26.09.187(3)(a), i – vi are used to determine the best interests of the child; however, they must be considered in conjunction with RCW 26.09.184, RCW 26.09.002, and RCW 26.09.191. In this case, the objectives stated in RCW 26.09.184, Section 1, parts a, b, c, and e and Section 3 cannot be satisfied with placement of Dillon with Ms. Ruland as follows:

RCW 26.09.184 (1)(a): Provide for the child’s physical care;

See above at pages 18 – 29.

RCW 26.09.184 (1)(b) Maintain the child’s emotional stability;

Objective (b) simply cannot be met in the Ruland home. Mr. Ruland testified that he is on disability for bipolar disorder, RP1237-1238, a mental illness characterized by difficulty in maintaining emotional stability. DSM-IV, pp. 382-395. He is dependent upon the psychotropic drugs lithium, for bipolar disorder, and lorazepam, for “panic attacks.” In addition, he is dependent upon the use of the narcotic hydrocodone. RP1237. Mr. Ruland was asked whether his medication impaired his ability to parent, and he answered, “No.” RP 1238-1239. Based upon this single question, the trial court found that his mental illness is “under

control,” CP210-21, but this is contradictory to Mr. Ruland’s statement that he is on disability for bipolar disorder. The question regarding medication was asked because it was clear from his demeanor that Mr. Ruland was under the influence. There are many side effects to his various medications, including dizziness, weakness, and sedation. PDR, available at <http://www.pdrhealth.com/>.

It was reckless for the trial court to fail to probe more deeply into the extent and nature of this serious mental illness for which Mr. Ruland is on disability and is drug-dependent. According to the DSM-IV, bipolar disorder has two forms: Bipolar I Disorder is diagnosed with the occurrence of Manic Episodes, during which *child abuse, spouse abuse, and other violent behavior may occur*, DSM-IV, pp 382-92; Bipolar II Disorder involves Major Depressive and Hypomanic Episodes and this form is associated with a chronic pattern of unpredictable mood episodes and fluctuating unreliable interpersonal or occupational functioning, DSM-IV, pp 392-95. This is all the more disturbing when considering that Mr. Ruland keeps loaded weapons in the home. Ex 125-p.27. Problems associated with both forms of bipolar disorder include alcohol and other substance abuse, divorce, occupational failure and the interval between episodes tends to decrease as the individual ages. DSM-IV, pp 384, 386, 394. On average, Mr. Ruland will have four or more mood episodes within a given year, so Dillon will be subjected to erratic changes in his behavior about every three months. Medication does not eradicate the

symptoms. Mr. Ruland has a disabling mental illness characterized by difficulty in maintaining his own emotional stability; he cannot help maintain the emotional stability of Dillon.

No evidence addressed their relationship, but Judge Nielson concluded that the Rulands have a close, stable relationship. Mr. Ruland testified that he was “stable enough” to court Ms. Ruland beginning in December 2007 and asked her to marry him in March 2008, after only 3 months. RP1211,1213. They eloped without notifying the children. Ex 125-pp.2,11,22,25.

Ms. Ruland is dependent, in denial, anxious, and depressed and Mr. Ruland has bipolar disorder and panic disorder. Neither Mr. Ruland nor Ms. Ruland can adequately maintain his or her own emotional stability and therefore cannot be expected to maintain Dillon’s emotional stability.

RCW 26.09.184 (1)(c): Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

See above at pages 27-30.

(e) Minimize the child's exposure to harmful parental conflict;

Dillon had a relationship with both parents for 22 months; Ms. Ruland has a pattern of behavior of isolating the children.

RCW 26.09.184 (3): CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

The De Agüero children are ¼ Taos Pueblo Indian and ¼ Mexican. Ex125-p.35. This cultural heritage is degraded and disregarded in Ms.

Ruland's home. Mr. Ruland is a white racist supremacist who makes derogatory remarks about people of color. Being exposed to these remarks influenced Dillon to the point that he approached a black man in Walmart and called him a "nigger." Ex 125-p.34. Ms. Ruland enrolls Dillon at school as "white," and refuses to acknowledge his ethnicity and cultural heritage. Ex 27. He will attend a school and live in a neighborhood in which he will not see other children of color.

Mr. De Agüero is Catholic and Dillon attended both church and catechism regularly while in his care. Ex127-p.2.

UCCJEA issue: The children reported that their mother lies to the court. Ex125-pp.13,23,26,30. Mr. De Agüero has always contended that Washington was not the home state at the time Ms. Ruland filed for divorce. RP406. Ms. Ruland admitted during her testimony that she had, in fact, lied about their date of separation and the family's intent to remain in Washington. RP1047-1048,1050,1114-1116 This is a violation of the UCCJEA and she should not be rewarded for her calculated strategy to file the case in her family's territory. (below at p. 47)

With each declaration, report to the GAL, and her testimony, she changes her stories regarding child support, RP1296-1297; Mr. De Agüero's visitation with the children and her relationship with him, RP1303-1304; the children, RP1326; and her car, RP1149-1151. She said that her breast augmentation was a spur-of-the-moment procedure with no prior consultation. RP1130-1131. It's difficult to keep up with the stories.

Part 2: Support

Spousal maintenance is reviewed for an abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999). The original support order awarded Ms. Ruland \$1500/month for spousal support, but she was also awarded ½ of the couple's business. CP 1-5. Mr. De Agüero's income, reported as \$3000/month was derived solely from the couple's business so in effect, she was awarded his entire income. In addition, he had to pay \$1080 for child support. CP 6-12. This made it impossible for Mr. De Agüero to meet his needs and financial obligations. The division of property must be considered when determining maintenance. *In re Marriage of Rink*, 13 Wn. App. 549, 552-53, 571 P.2d 210 (1977). The parties' post-dissolution economic positions are of utmost importance. *In re Marriage of Washburn*, 101 W.2d 168, 178, 677 P.2d 152 (1984). Here, the parties' asset of 7 DMI was sufficient to equalize their post-dissolution economic positions by its equal apportionment, as profits represented their total income. *In re Marriage of Barnett*, 63 Wn. App. 385, 388, 818 P.2d 1382 (1992).

Mr. De Agüero was assigned all of the couple's debts, including "more than \$100,000" owed to Ms. Davis. CP1-5. On the other hand, Ms. Ruland was given the couple's only vehicle and all of the couple's belongings in her possession, which amounted to everything the couple owned. CP 1-5; RP1118-1119. Even though the divorce decree is by

default, this does not justify such a lopsided distribution of property, per RCW 26.09.080, which requires a just and equitable distribution.

Judge Nielson stated that he could fix this anomaly of justice; however, he reasoned that because Mr. De Agüero made a substantial income in 2006 and 2007, the initial amounts should stand. RP 3/15/11, pp 60-61. The court was essentially acting as counsel to Ms. Ruland because it was *her* duty to enforce payment for her share of the business. Or, it was also Ms. Ruland's responsibility to file a motion to modify child/spousal support at the time Mr. De Agüero's earnings increased in 2006. It is not the duty of Judge Nielson to be a watchdog and use hindsight to award Ms. Ruland with a substantial judgment. The court failed to analyze the factors for awarding maintenance as outlined in RCW 26.09.090. With failure to make fair consideration of the statutory factors, reversal is proper. *Marriage of Matthews*, 70 Wn.App 116, 123, 853 P.2d 462 (1993). Neither of the parties have education, skills, or a substantial work history and during the marriage, they moved frequently so that Mr. De Agüero could find work. The 2006-2007 incomes quoted by the judge were a vast departure from the typical earnings during the marriage, and ½ of the income during those years was Ms. Ruland's, based upon her award of ½ the business. RP 3/15/11, p 61.

The reason Ms. Ruland did not enforce payment of her share of 7 DMI and child/spousal support or file a motion to modify support is that the couple was reconciled during the years 2006 and 2007. Judge Nielson

wrote that Mr. De Aguero did not prove that he lived with or supported Ms. Ruland, despite the fact that Marseilles RP530; Brandon RP703; Ms. Guglielmino RP1027; Ms. Davis, RP587-588; and even Ms. Ruland herself admitted that the couple reconciled in March 2006, RP1123. The children have repeatedly stated that he spent the majority of the time in the family home in Northport, WA from March 2006 – March 2008 and that he paid for everything. CP20-21, 39-46, 72-83, 298-303. Cmmr. Monasmith noted that he didn't believe Ms. Ruland when she denied that Mr. De Aguero lived in the family home. CP 416-418. Although she denies a reconciliation, she testified that their relationship was "exclusive" and that they were "intimate" during the time period Mr. De Aguero says they were reconciled. RP1063

A compelling timeline which supports their reconciliation is the record of documents filed for this case. From January 2005 – January 2006, many documents were filed. From March 2006 – March 2008, the period of time Mr. De Aguero and the children claim the couple were reconciled, not one single court document was filed. Immediately after Mr. De Aguero left the family home at the end of February 2008, CP50-57, the incessant filing of documents commenced.

First, Ms. Ruland filed a claim for all support from June 2005, an amount exceeding \$90,000. After investigation by DCS, it was determined that Ms. Ruland closed the case in September 2006, stating that it was "paid in full", and this amount was reduced. RP1132-1134; CP

210-21. Based upon her bad faith reporting in March 2008, it is obvious that she is not being truthful about the amounts she received and she should not be taken at her word in this matter.

Judge Nielson would not apply laches because he said Mr. De Aguero did not prove that her failure to enforce was a detriment to him, but \$90,000 is an insurmountable detriment to an unemployed person. If he were not paying, she should have reinstated enforcement of the order, as a reasonable person would do. When she ceased collection of the \$2586 per month, she stated that he was "paid in full." RP1132-1134. If he had stopped paying as soon as she closed the case, it would have been reckless and unreasonable for her to fail to immediately re-open the case with DCS, considering that she had four children to support. Because of her pattern of enforcing the order, it was misleading and detrimental that she ceased enforcement.

When she closed the case in August 2006, she stated that they were trying to work things out but then recanted this statement when it suited her, in March 2008. RP1132. If Mr. De Aguero thought she closed the case in bad faith, he could have kept receipts as proof of payments to her. Her actions in resuming a relationship with a distinctive marital character, RP535,705,1063, coupled with her failure to reinstate enforcement were directly responsible for his justifiable and reasonable belief that his expenditures on the children and Ms. Ruland were acceptable to her as child and spousal support.

During 2006, all of Mr. De Aguero's paychecks were sent to Ms. Ruland's address. She was aware that his salary had increased substantially and yet she did not enforce payment of her ½ share of the business and she did not file a motion to modify the child/spousal support. The reason for this is obvious: they were reconciled and she was already receiving the benefit of his hefty salary. RP411-416; 534-537.

In addition to statements from the children and school superintendent, Mr. De Aguero submitted numerous utility bills in his name for services to the family's Northport address. An auto insurance bill from May 2007 names Mr. De Aguero as "Primary Insured" with his address in Northport and Ms. Ruland is a rated driver in his household. Judge Nielson incorrectly stated that the bill was for Ms. Ruland's car, but her vehicle is a Montero, CP 220-21, and the bill is for a 2000 BMW 4-door sedan – Mr. De Aguero's car at that time. Ex110

Ms. Ruland stopped enforcement of the child support order in August 2006. Judge Nielson found that Mr. De Aguero wholly paid for Ms. Ruland's plastic surgery in October 2006 but then didn't believe they reconciled. CP 39-46, 210-21. Ms. Ruland spent time alone and as a family with Mr. De Aguero in California. Dillon's medical record dated 9/28/06 states that Ms. Ruland was in California with Mr. De Aguero on October 2, 2006 and she was still in California on November 14, 2006. CP 434-86. The family stayed in California for the entire summer of 2007

and Mr. De Aguero paid for everything, including the rent for the Northport home. RP1067-1068; CP 20-21.

Judge Nielson cited the FTC financial statements of both parties to determine that Mr. De Aguero did not live with Ms. Ruland because they listed different addresses, but they did name each other as “spouse/live-in companion.” Ex 101,102. During the marriage, Mr. De Aguero worked away from the home for extended periods of time. On her document, Ms. Ruland states that she was receiving \$2000/month and on his document, Mr. De Aguero corroborates that he was giving her \$2000/month. EX 101,102. Judge Nielson did not give credit for the \$2000 per month both parties declared Mr. De Aguero was paying.

Judge Nielson did not apply credits which were previously promised or given, including credits for: the children as they began to live with Mr. De Aguero; payments to Dr. Ashworth and the GAL, travel expenses CP 97; 107-113; 188-193; payments made through ORS Utah, CP 50-57; and adjustments made by Washington DCS after review of the claim of back child support.

The most recent motion to modify the child support was filed on May 27, 2008, CP350-53. Commr. Monasmith wanted to wait until trial to calculate child support amounts. CP 194-206. No other motion was filed between May 2008 and the time of trial, so child support should have been calculated based upon their incomes as of May 2008. These amounts should have been used to calculate child support due to or from each party

between May 2008 and December 2010, but Judge Nielson did not do this. He used Ms. Ruland's income at the time of trial, which was \$370 per month and applied that retroactively to May 2008 to determine the amount Mr. De Aguero owed between May 2008 and November 2010. If Mr. De Aguero were making \$370 at time of trial, would Judge Nielson then have retroactively reduced *his* child support to \$50/month/child from August 2006 – November 2010?

There are many increments in time, with the children and incomes shifting so this is a convoluted situation, but it must be done in an orderly fashion rather than figuring amounts on the spur of the moment the way this was decided. Judge Nielson mixed up dates, incomes, number of children in the household: it was all disorganized. CP 220-21; RP 3/15/11 pp 60-64.

Current, substantiated incomes should be used in calculating post-trial child support for Brandon and Dillon, but Ms. Ruland provided no evidence of her current income other than a pay stub dated February 2010, EX 2, despite a motion to compel this information which was ordered in April 2010. CP 184-85. Even though she failed to submit the required documentation, her income was not imputed. According to RCW 26.19.071, both parties *shall* submit evidence of income before child support determinations can be made.

The child/spousal support issue is convoluted with many comings and goings of the children and of Mr. De Aguero, so a chart showing a

timeline of the amounts due is necessary. A-2. If it is determined that spousal support was not proper, then the amounts he paid would need to be deducted from any amount he owes for child support.

Part 3: Motion to Reconsider

Brandon reported to Ms. Davis that he and Marseilles were sexually molested by Ms. Ruland's cousin and that his mother knew about it. Marseilles confirmed that Ms. Ruland was present during the incident. CP281-84, 285-88, 295-97. Mr. De Agüero submitted polygraph evidence to the court with a Motion to Reconsider. CP 241-80.

The polygraph tests indicated that the boys were "absolutely" telling the truth. The deception for Marseilles was 4% and for Brandon, less than 1%, CP 241-80, but Judge Nielson interpreted the tests himself and said they were "weak." RP 3/15/11, p 46,49. The polygrapher is an experienced major case detective specializing in sex crimes who described his methodology and confirmed the boys' reports. CP 241-80. Polygraph tests are considered "routinely relied on evidence." Senate Bill 5202, State of WA, 62nd Legis. (2011)

The boys' reports are credible because they fit Ms. Ruland's permissive pattern of ignoring sexual abuse of the children: Ms. Ruland said that Cierra informed her of being sexually molested by Ms. Ruland's stepfather Bill Harris in 2003 – *before* any sign of divorce between the parents, RP1107. Thus, Cierra was not being manipulated by Mr. De Agüero and she had no ulterior motive in reporting the molestation and

yet, Ms. Ruland disregarded the report as a lie and continued to expose the children to Mr. Harris. She moved in with her parents and let Mr. Harris rip the bath towels off Brandon and Marseilles. RP59. When the son of Ms. Ruland's friend sexually assaulted Marseilles, she protected the person who committed the act. Ex125-p.33. Brandon shaved his mother's legs for her; she invited the boys into the bathroom while she was naked in the bathtub. Ex125-pp.17,34. It is even more likely that she participated in the abuse because she was sexually abused as a child; Dr. Ashworth noted post-traumatic anxiety as a result. RP760. Mr. Geissler argued that their story was unlikely because they did not tell the GAL or Dr. Ashworth. This is an ignorant assertion, because statistics show that: most children never tell even if asked; young victims do not recognize the sexual abuse or don't realize the act was wrong; fabrication of sex abuse is extremely rare at only 1/2%. <http://childsafetips.abouttips.com>. Participation in sexual abuse precludes placement of Dillon with Ms. Ruland. RCW26.09.191. Judge Nielson was suspicious about the timing of the report, but Brandon did not report it for its wrongfulness – he mentioned it as an anecdote of Ms. Ruland's cousin Joanne King. Even at the age of 17, he still did not realize the act was wrongful.

Judge Nielson applied Ms. Ruland's income at time of trial retroactively for all the months the children were in Mr. De Agüero's care, making her obligation a mere \$70/month. Her income as of the most

recent motion to modify child support was \$1200/month. She did not supply the documentation as to her income required by RCW 26.19.071.

Part 4: Judicial Bias

Judge Nielson works with three of Ms. Ruland's cousins: Esther Keenan of the Court clerk's office; Kelly King, former assistant to SAAG Pruitt-Hamm; and Michael Gilmore, a Stevens Co. Sheriff detective who has testified in his courtroom. AP-3. These people and several others were in the courtroom and they were allowed to intimidate the GAL with continuous remarks, faces, outbursts, and gesturing. Judge Nielson did not maintain decorum in his courtroom per CJC Rule 2.8(A) and it is likely he was influenced by this family he knows well and works with, a violation of CJC, Canon 2, Rule 2.4 (A) and CJC, Canon 1, Rule 1.2.

On March 15, 2011, Judge Nielson made many inappropriate or non sequitur comments such as: Mr. De Aguero is a "peacock" and a racketeer; Ms. Davis helps with "fraudulent FTC activities" (Ms. Ruland profited from 7DMI and was named in the lawsuit-not Ms. Davis, CP 354-414.); Ms. Davis is a "writer" who "concocted" the sexual abuse reports (Ms. Davis was a teacher, CP 210-21.); the boys are "errant sons" (They have impeccable academic and social records.); Mr. De Aguero is selling a "miracle drug," (He was selling a book about "healthy diets," CP 210-21.). It was a bizarre claim to say that Mr. De Aguero's witnesses were "huddled in the hallway on cell phones" devising a plan because the only day Mr. De Aguero had family present was on November 30 and *not one*

single person in Mr. De Aguero's family owned a cell phone on that date! RP3/15/11 pp. 47, 50 He displayed and voiced strong, negative personal feelings for Mr. De Aguero. These remarks revealed that he had difficulty in separating his disapproval of Mr. De Aguero's business from the issues of the case and this adversely affected his objectivity. Judge Nielson said Dillon will not be going "home," because he obviously knows that Dillon's rightful home is with his father in Florida.

E. CONCLUSIONS

Initially, Mr. De Aguero had the burden of proving that Ms. Ruland's home is a detrimental environment, but Judge Nielson changed the standard for placement of Dillon to the "best interests of the child" standard. Ms. Ruland failed to provide *any* evidence to support a conclusion that Dillon's best interests were to reside with her. The focus of her case was that her home is not a detrimental environment. On the other hand, Mr. De Aguero did submit irrefutable evidence that at the time of trial, the best interests of Dillon were to remain in his care.

The Parenting Plan Act anticipates that the court will determine the child's residential schedule based on the best interests of the child as they can be determined at time of trial, after considering the factors set forth in RCW 26.09.187(3)(a), in conjunction with RCW 26.09.184. All of these factors can only satisfied with Dillon's continued placement with his father. Ms. Ruland was not honest with the court from the onset of this case, as she falsely stated the children were residents of Washington.

Judge Nielson was greatly impressed by the bonding assessment conducted by Dr. Ashworth, but fast forward 10 years: Ms. Ruland's telephone conversation with her son Brandon was characterized by Dr. Ashworth as "angry, conflicted, and profane." Based upon her pattern of behavior and the pattern of all three older children running away from her home, this is likely to occur with Dillon as well. The objectives outlined in RCW 26.09.184 also overwhelmingly favor continued placement of Dillon with his father who will respect his heritage.

Spousal support dating from June 2005 was incorrectly awarded. Child support from May 2008 to December 2010 should have been calculated using incomes at the time of the most recent motion to modify support, dated May 2008. Credits promised to and amounts paid by Mr. De Aguero should be applied. To determine current support, Ms. Ruland's income should have been imputed, because she did not submit the required financial documents. Finally, spousal and child support from August 2006 when Ms. Ruland closed the DCS case, through March 2008 when Ms. Ruland re-opened the DCS case are not owed because they were reconciled during this time period and Mr. De Aguero paid for the support of Ms. Ruland and their children and her failure to enforce was to his detriment.

The relief requested in Mr. De Aguero's motion to reconsider should have been granted because Ms. Ruland participated in the sexual abuse of Marseilles and Brandon. The initial award of maintenance was

not proper, and back and present child support was not calculated correctly.

The core issues were parenting and support, but Judge Nielson made it clear with his acrid tangential statements that he could not separate his personal negative feelings about Mr. De Aguero and concentrate on these issues alone.

Mr. De Aguero respectfully requests that:

- 1) Dillon De Aguero is immediately placed back into Mr. De Aguero's home, where Dillon's best interests are met;
- 2) Spousal support is retroactively eradicated with credits for its payment given toward any back child support that may be due;
- 3) All support arrears and current support order are calculated separately for each time period, based upon the most recent modification filed, considering substantiated incomes of both parties and children in each household during each increment of time, and that previously given or promised credits and payments are applied.
- 4) Ms. Ruland pays for all costs associated with this appeal, the amount to be determined at a later time, when all costs have been incurred.

Respectfully Submitted this 26st day of March, 2012.



Paris De Aguero, in pro se

Northport, Washington

From Wikipedia, the free encyclopedia

Coordinates: 48°54′52″N 117°46′56″W﻿ / ﻿﻿ / ﻿

Northport is a town in Stevens County, Washington, United States. The population was 295 at the 2010 census.

Contents

- 1 History
- 2 Geography
- 3 Demographics
- 4 References

History

Northport was given its name since it was once the northernmost town on the Spokane Falls and Northern Railway.^[3] It was officially incorporated on June 1, 1898 but has a history stretching back to the 1880s when it was a port and shipbuilding center for steamboat services running northwards into British Columbia during construction of the Canadian Pacific Railway, related to its location at a stretch of the Columbia known as the Little Dalles, a rapids and narrows that was a barrier to navigation and which also was an alternate name for Northport itself.^{[4][5][6]}

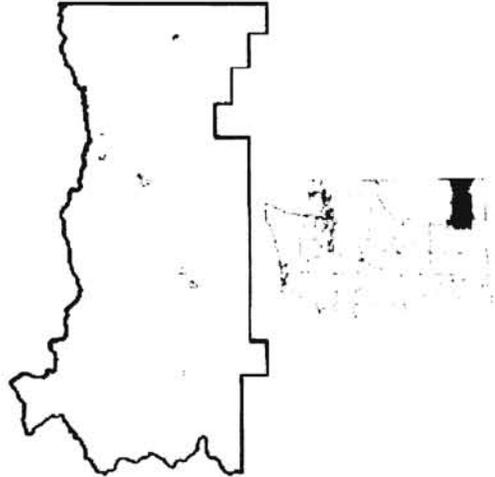
Geography

Northport is located at 48°54′52″N 117°46′56″W﻿ / ﻿48.914460, -117.782331﻿ / 48.914460; -117.782331﻿ (48.914460, -117.782331)^[7]

According to the United States Census Bureau, the town has a total area of 0.6 square miles (1.5 km²), all of it land.

Northport, Washington

— Town —



Location of Northport, Washington

Coordinates: 48°54′52″N 117°46′56″W﻿ / ﻿﻿ / ﻿

Country	United States
State	Washington
County	Stevens
Area	
 - Total	0.6 sq mi (1.5 km ²)
 - Land	0.6 sq mi (1.5 km ²)
 - Water	0.0 sq mi (0.0 km ²)
Elevation	1,365 ft (416 m)
Population (2010)	
 - Total	295
 - Density	491.7/sq mi (196.7/km ²)
Time zone	Pacific (PST) (UTC-8)
 - Summer (DST)	PDT (UTC-7)
ZIP code	99157
Area code	509
FIPS code	53-50045 ^[1]
GNIS feature ID	1523920 ^[2]

CHILD SUPPORT CHART FOR MONTHS AUGUST 2006 – JUNE 2008

Month/Year	Spousal Support	Child Support – Father	Payments/Credits Father	Balance for month	Total amount
August 2006	\$1500	\$1086	\$2000 cash/FTC \$1497 to DCS	(+\$911)	(+\$911)
Sept 2006	\$1500	\$1086	\$2000 cash/FTC \$787 money gram	(+201)	(+\$1112)
October 2006	\$1500	\$1086	\$10,000 surgery \$2000 cash/FTC	(+9414)	(+\$10,526)
Nov 2006	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$9940)
December 2006	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$9354)
January 2007	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$8768)
February 2007	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$8182)
March 2007	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$7596)
April 2007	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$7010)
May 2007	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$6424)
June 2007	\$1500	\$1086	\$2000 cash/FTC	\$586	(+\$5838)
July 2007	\$1500	\$1086 *Cierra 18 on 7/25, \$300/mo. drops off	PIF per Mother's declaration – incl \$2000 cash/FTC \$600 per DCS	0	
August 2007	\$1500	\$786	PIF per Mother's declaration – incl \$2000 cash/FTC \$600 per DCS	0	
Sept 2007	\$1500	\$786	\$600 per DCS \$2000 cash/FTC	(+314)	(+\$6152)
October 2007	\$1500	\$786	\$2200 per DCS	\$86	(+\$6066)
Nov. 2007	\$1500	\$786 *loss of biz – UE	\$1733 per DCS	\$553	(+\$5513)
December 2007	\$1500	\$786	\$1733 per DCS	\$553	(+\$4960)
January 2008	\$1500	\$786	\$1733 per DCS	\$553	(+\$4407)
February 2008	\$1500	\$786	\$1733 per DCS	\$553	(+\$3854)
March 2008	\$1500	\$786	0	\$2286	(+\$1568)
April 2008	\$1500	\$786	0	\$2286	\$718
May 2008	\$1500 *termination filed 5/22/08	\$786 *modification filed 5/27/08	0	\$2286	\$3004
June 2008	0	\$757 = modified amount *Brandon runs away; lives with father 6/18 - present	\$750 travel costs awarded for cont. w/out notice; \$80 = 40% travel Bran & Mars	(+\$73)	\$2931

Child support Modification Worksheets filed 5/27/08:

1) Total child support obligation, both parents: \$1262
Marseilles, total: \$449
Brandon, total: \$449
Dillon, total: \$364

2) Mother's obligation: $40\% = \$504.80 = \505
Marseilles = $\$179.60 = \180
Brandon = $\$179.60 = \179 (rounded down)
Dillon = $\$145.60 = \146

3) Father's obligation: $60\% = \$757.20 = \757
Marseilles = $\$269.40 = \269
Brandon = $\$269.40 = \270 (rounded up)
Dillon = $\$218.40 = \218

July 2008

1) Brandon lived with father beginning June 18, 2008.
2) Beginning July 2008, father's obligation reduced as follows:
Step One: Father's support for Marseilles and Dillon
 $\$269 + 218 = \487
Step Two: Subtract difference between Mother and Father's support of Brandon:
Father's support for Brandon – Mother's support for Brandon
 $\$270 - \$179 = \$91$
Step Three: Deduct this amount from amount owed for Marseilles and Dillon:
 $\$487 - \$91 = \$396$ obligation of Father for Marseilles and Dillon

Notes:

- 1) Monasmith stated that CS/SS modification/termination would be retroactive to date of filing.
- 2) Monasmith ruled repeatedly that travel, Ashworth, and GAL will be apportioned, so Mother pays 40% of these expenses and Father pays 60%.
- 3) Monasmith repeatedly stated that the expenses already paid by father would be credited to back child support owed, if any.

CHILD SUPPORT CHART FOR MONTHS JULY 2008 – FEBRUARY 2009

Month/Year	Child Support – Father	Payments/Credits – Father	Balance for Month	Total owed
July 2008	\$396	\$40 = 40% travel Mars to Spokane	\$356	\$3287
August 2008	\$396	\$80 = 40% travel Bran & Mars, bus tickets to Spokane	\$316	\$3603
September 2008	\$396	0	\$396	\$3999
October 2008	\$396	0	\$396	\$4395
November 2008	\$396	\$100 check ORS/UT	\$296	\$4691
December 2008	\$396 *Marseilles leaves home 12/08	\$100 check ORS/UT \$118 = 40% travel Marseilles & Dillon \$70 = 40% travel Marseilles bus	\$108	\$4799
January 2009	\$38	\$200 check ORS/ UT	(+\$162)	\$4637
February 2009	\$38 *Father temp. custody 2/27/09	\$748 = 40% GAL fee	(+\$710)	\$3927

December 2008

1) Marseilles leaves home and does not return after Christmas Vacation. He filed a CHINS petition and DeAgüero supported Marseilles until age of majority by making monthly support payments directly to the family he was living with.

2) Father's support obligation is reduced as follows:

Step 1: Obligation for Dillon = \$218

Step 2: Difference between Father and Mother's obligation for Marseilles and Brandon
 $\$539 - \$359 = \$180$

Step 3: Subtracted from support of Dillon

$\$218 - \$180 = \$38$

March 2009 – June 2009

1) Father given custody 2/27/09

Mother's support obligation is as follows:

Marseilles + Brandon + Dillon = \$505

2) Marseilles reaches 18 on 6/3

July 2009 – December 2010

Mother's support obligation is Brandon + Dillon:

$\$179 + \$146 = \$325$

CHILD SUPPORT CHART FOR MONTHS MARCH 2009 – DECEMBER 2010

Month/Year	Child Support - Mother	Payments/ Credits – Mother	Balance for Month - Mother	Credits for Father	TOTAL BALANCE - Father
March 2009	\$505	0	\$505	\$505 (Mother's unpaid support=MUS)	\$3422
April 2009	\$505	\$120 = 60% travel Dillon	\$385	\$385 MUS	\$3037
May 2009	\$505	0	\$505	\$505 MUS	\$3542
June 2009	\$505 *Marseilles 18 in 6/09	0	\$505	\$505 MUS	\$3037
July 2009	\$325	0	\$325	\$325 MUS \$299 = 40% travel D & B – Ashworthappt \$600 = 40% Ashworth fee	\$1813
August 2009	\$179 Brandon Dillon with Mother	0	\$179	\$179 MUS \$100 = 40% travel Dillon \$440 = 40% Ashworth fee \$48 = 40% travel Dillon	\$1046
September 2009	\$325	0	\$325	\$325 MUS	\$721
October 2009	\$325	0	\$325	\$325 MUS	\$396
November 2009	\$325	0	\$325	\$325 MUS	\$71
December 2009	\$325	0	\$325	\$325 MUS \$405 = 40% travel Dillon	(+659)
January 2010	\$325	0	\$325	\$325 MUS	(+\$984)
February 2010	\$325	0	\$325	\$325 MUS	(+\$1319)
March 2010	\$325	0	\$325	\$325 MUS \$720 = 40% GAL fee \$160 = 40% travel Dillon	(+\$2524)
April 2010	\$325	0	\$325	\$325 MUS	(+\$2849)
May 2010	\$325	0	\$325	\$325 MUS	(+\$3174)
June 2010	\$325	0	\$325	\$325 MUS	(+\$3499)
July 2010	\$325	0	\$325	\$325 MUS	(+\$3824)
August 2010	\$179 – Brandon	0	\$179	\$279 MUS	(+\$4003)

	Dillon w/Mother				
September 2010	\$325	0	\$325	\$325 MUS	(+\$4328)
October 2010	\$325	0	\$325	\$325 MUS	(+\$4653)
November 2010	\$325	0	\$325	\$325 MUS \$160 = 40% GAL	(+\$5138)
December 2010	\$325	\$207 travel (\$300 - 92)	\$118	\$118 MUS	(+\$5256)

Final calculation as of December 30, 2010:

Mother owes Father \$5256.

If Spousal Maintenance not proper, paid amounts need to be calculated and refunded.



Courts Home | Opinions



Search | Site Map | eService Center

Opinion in PDF Format

DO NOT CITE. SEE RAP GR 14.1(a).

Court of Appeals Division III
State of Washington

Opinion Information Sheet

Docket Number: 28878-1
Title of Case: State of Washington v. David Hendershot
File Date: 08/16/2011

SOURCE OF APPEAL

Appeal from Stevens Superior Court
Docket No: 09-1-00008-0
Judgment or order under review
Date filed: 02/23/2010
Judge signing: Honorable Allen C Nielson

JUDGES

Authored by Laurel H. Siddoway
Concurring: Kevin M. Korsmo
Teresa C. Kulik

COUNSEL OF RECORD

Counsel for Appellant(s)
Janet G. Gemberling
Gemberling & Dooris PS
Po Box 9166
Spokane, WA, 99209-9166

Counsel for Respondent(s)
Timothy Rasmussen
Stevens County Prosecutor
215 S Oak St
Colville, WA, 99114-2862

Shadan Kapri
Stevens County Prosecuting Attorney
298 S Main St Ste 204
Colville, WA, 99114-2416

AP-3

View the Opinion in PDF Format

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	No. 28878-1-III
)	
Respondent,)	Division Three
)	
v.)	
)	
DAVID HENDERSHOT,)	UNPUBLISHED OPINION
)	
Appellant.)	
)	

Siddoway, J. -- The Washington State Medical Use of Marijuana Act provides a qualified patient with a defense to crimes involving marijuana. RCW 69.51A.005. To be eligible for the defense, a person must (among other requirements) present valid documentation when questioned by law enforcement officers. David Hendershot challenges the trial court's entry of a pretrial order in limine barring him from offering evidence that he received physician authorization for medical marijuana use a month after law enforcement officers seized marijuana plants from his home but before the State filed the information charging him with controlled substance crimes. Because Mr. Hendershot failed to make an offer of proof identifying evidence supporting required elements of the

No. 28878-1-III
 State v. Hendershot

medical marijuana defense, the trial court did not abuse its discretion in granting the State's motion. We affirm.

FACTS AND PROCEDURAL BACKGROUND

On August 13, 2008, Detectives Michael Gilmore and Brad Manke obtained a search warrant for David Hendershot's home and property, based on aerial observation of marijuana plants outside the home. During the search, officers discovered and seized 181 marijuana plants. Mr. Hendershot did not present, or even possess, valid documentation of physician authorization for his medical use of marijuana at the time. A month later, Mr. Hendershot obtained a medical authorization to possess marijuana for medical purposes from Dr. Thomas Orvald. The document identified Dr. Orvald as a physician treating Mr. Hendershot for a debilitating condition, stated that he had advised Mr. Hendershot of the risks and benefits of the medical use of marijuana, and expressed the doctor's medical opinion that the potential benefits of the medical use of marijuana would likely outweigh the health risks. Clerk's Papers at 10. The State does not contest the