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NO. 301605

IN RE:

In re Marriage of:

NORMAN D. LESLIE,

Respondent,

vs.

JANELLE L. LESLIE,

Appellant.

BRIEF OF APPELLANT JANELLE L. LESLIE

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A. ASSIGNMENTS OF ERROR

1. The Superior Court of Pend Oreille, State of Washington, (hereafter Superior Court) erred in entering paragraph "2.19 Parenting Plan" of its "Findings of Fact and Conclusions of Law" of July 21, 2011, filed July 28, 2011 wherein the court stated "[t]he parenting plan signed by the Court on this date is approved and incorporated as part of these findings." [CP 14].

2. The Superior Court further erred in entering that part of paragraph "3.4 Disposition" of its "Findings of Fact and Conclusions of Law" of July 21, 2011, filed July 28, 2011 relating to it "mak[ing] provision for a parenting plan for any minor children of the marriage," in light of the foregoing error identified in assignment of error no. 1. [CP 15].

3. The Superior Court also erred in entering that part of paragraph "3.11 Parenting Plan" of its "Declaration Concerning Validity" of July 21, 2011, filed July 28, 2011 wherein the Court stated "[t]he parties shall comply with the Parenting Plan signed by the court on this date . . . [which plan] . . . is approved and incorporated as part of this decree." [CP 23].

4. The Superior Court further erred in entering that part of

paragraph "2.2 Other Factors (RCW 26.09.191(3))" of the "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011 wherein the Court stated:

The mother's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow:

A long-term and persistent pattern of dishonesty, fraudulent actions, financial exploitation and other such misconduct which not only operates as a poor parental example but which has also endangered this child's health on at least one occasion. Specifically, the mother fraudulently held herself out as a registered nurse when she had not completed even high school and when the child suffered a fractured skull she removed the child from the hospital, representing that she could monitor his recovery, when she had neither the experience or the knowledge of what to observe. Additionally, the mother married the father when she had a prior undissolved marriage. She financially exploited both of these husbands. She has fabricated medical problems to get attention and sympathy. She has an ability to make a very "personable" first impression which is used, however, to manipulate others and get what she wants, without regard to whether it would be in the best interests of the child. [CP 26].

5. The Superior Court further erred in entering paragraph "3.10 Restrictions" of its "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011 wherein the Court stated:

The mother shall not travel out of Stevens, Pend

Oreille and Spokane Counties in Washington, except to Bonner or Kootenai County, Idaho, for day trips (no overnights [sic] allowed in Idaho), without advance written permission from the father. No such travel shall ever be permitted by the father without prepaid, round trip plane tickets, round-the-clock telephone contact capability with the father having unlimited phone contact throughout, and a physical address provided for each day and night of the trip. [CP 29]

6. The Superior Court also erred in entering paragraph "3.12 Designation of Custodian" of its "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011, wherein the Court stated:

The child named in this parenting plan are [sic] scheduled to reside the majority of the time with the father. This parent is designated the custodian of the child solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan. [CP 29].

7. The Superior Court also erred in entering that part of paragraph "3.13 Other" of its "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011 wherein the Court stated:

The mother has been chronically late for return of the child to the father. Thus, any deviation from the established dates and times for the exchange time of the child requires at least 24 hours' [sic] advance notice. If the mother deviates from the specified time on any given day without this prior notice, then there shall be a penalty to her for make-up times at the next

scheduled contact time. That penalty will be the same amount of time that elapsed from the established time on any given day and will be subtracted from the beginning time of the next contact by the mother. [CP 29].

8. The Superior Court also erred in entering that part of paragraph "4.2 Major Decisions" of its "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011, wherein the Court ruled Mr. Leslie shall have the sole authority for making major decisions for the child including:

- Education decisions
- Non-emergency health care
- Religious upbringing
- Medication usage
- Tattoos or piercing before age 18
- Military service before age 18
- Marriage before age 18

And stated "SPECIAL NOTE: . . . Mother is not to make any health care decisions without the father's permission during a medical emergency." [CP 31].

9. The Superior Court also erred in entering that part of paragraph "4.3 Restrictions in Decision Making" of its "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011 wherein the Court ruled:

Sole decision making shall be order to the father for the following reasons:

One parent is opposed to mutual decision making,

and such opposition is reasonably based on the following criteria.

(a) The existence of a limitation under RCW 26.09.191 (see para. 2.2);

(b) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a) here, mother has abused her unilateral decision-making in the past, endangering the child);

(c) Whether the parents have demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a) the father cannot trust the mother to make decisions that are based upon the child's best interests because of her inability to be honest with him and others). [CP 31].

10. Based upon the above, the Superior Court also erred in entering paragraphs 3.1; 3.2; 3.3; 3.4; and 3.5 of the "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011 wherein the Court states "the child shall reside with the father." [CP 26-27]

11. The Superior Court also erred in entering that part of "VIII. Order by the Court" of its "Parenting Plan Final Order" of July 21, 2011, filed July 28, 2011 wherein the court stated "[i]t is ordered, adjudged and decreed the parenting plan set forth above is adopted and approved as an order of this Court." [CP 32].

12. Based upon the above, the Superior Court also erred in entering paragraph "3.1 Person Paying Support (Obligor)" and Paragraph "3.3 Person receiving Support (Obligee)" and paragraph "3.5 (Transfer Payment)" of the Order of Child Support Final Order of July 21, 2011, filed July 28, 2011 wherein the Court states "the person paying support is Janelle L. Leslie"; "the person receiving support is Norman D. Leslie" and "the transfer payment is \$269.00." [CP 40;41;43]

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the Superior Court committed reversible error when, in terms of paragraph "2.2 Other Factors (RCW 26.09.191 (3))" of its "Parenting Plan Final Order," the Court failed to identify how Ms. Leslie's alleged conduct provided any nexus to support the equivocal conclusion such parental conduct "may" adversely affect the "best interests of the child" in terms of his physical, mental or emotion health and well-being in this case? [Assignments of Error Nos. 1 through 11].

2. Whether the Superior Court committed further reversible error when it failed to examine and make specific findings of fact as to each statutory factor specified in RCW 26.09.187 as the factors

relate to the needs of the child? [Assignments of Error Nos. 1 through 11].

3. Whether the Superior Court, based upon the above, committed further reversible error when it declared Janelle Leslie to be an obligor for child support and Norman Leslie a recipient of child support setting the transfer payment at \$269.00. [Assignments of Error Nos. 1-12]

C. STATEMENT OF THE CASE

1. Factual Background. This appeal concerns a controversy over the primary residential placement of Duane Leslie with his father Norman Leslie, as well as other parenting matters and considerations, concerning the care and rearing of the child. [CP 7-16]. This appeal also concerns the obligation and payment of child support [CP 38-54] should the Superior Court's erroneous final parenting plan be reversed. [CP 38-54]

Appellant, Janelle Leslie, [now Belton], and her former husband, respondent, Norman Leslie, were married September 23, 2008, in Deer Park, Washington. [CP 8]. During the marriage, they had a son, Duane, who was born February 15, 2010. [CP 2].

Thereafter, on July 28, 2010, Mr. and Mrs. Leslie separated.

[CP 8]. Mr. Leslie then, as petitioner, filed suit seeking entry of a decree of invalidity under cause no. 10-3-00047-0, declaring the marriage invalid claiming Ms. Leslie was at the time of the parties' marriage, allegedly married to another man. [CP 8].

Thereafter, on August 10, 2010, attorney Rebecca M. Coufal was appointed Guardian ad litem for Duane. [CP 1]. Subsequently, on November 16, 2010, Ms. Coufal filed her "initial" report, (dated November 14), [CP 1-6], wherein Ms. Coufal noted prior to the parties separation Ms. Leslie had been the child's "primary caretaker." [CP 3]. Ms. Coufal had also been advised by Ms. Leslie's other children "[Ms. Leslie] is a caring parent who will do anything for her children." [CP 4]. Nevertheless, Ms. Coufal noted in her report, her view, "[t]his case is complicated by the mother's history of misrepresentation . . . [and she] . . . does not appear to have a good money sense [about her]. [CP 3, 6].

In turn, Ms. Coufal observed Mr. Leslie himself was not without fault or reproach. Some of Ms. Coufal's contacts reported Mr. Leslie was "arrogant," and was also said "to have a drinking problem." In addition, Ms. Leslie had informed Ms. Coufal of three incidents which, if true, "would qualify" as domestic violence.[CP 4].

Ultimately, however, Ms. Coufal recommended Mr. Leslie be given "primary custody of the child" along with certain caveats including sole "authority over the child's health care" and restriction on where Ms. Leslie could take the child. [CP 6]. Otherwise, Ms. Coufal recommended the establishment of "a fairly standard parenting plan."

2. Procedural history. Trial commenced May 31, 2011. [May 31, 2011 RP 1, et seq.] It was once again pointed out the child's first months of life were under Ms. Leslie's maternal care as the primary parent, and the guardian ad litem had not expressed any concerns directly associated with Ms. Leslie's daily care of the child. [June 23, 2011 RP 413]. Thereafter, on July 28, 2011, the Superior Court entered and filed findings of fact and conclusions of law, dated July 21, 2011, [CP 7-16], a decree declaring the marriage of the parties' invalid, dated July 21, 2011, [CP 17-24], a final parenting plan, dated July 21, [CP 25-32], and a final order of child support, dated July 21, 2011. [CP 38-54].

This appeal follows. [CP 55-104]. Additional facts are set forth below as the facts relate to argument on the issues at hand.

D. STANDARD OF REVIEW

The appellate court reviews decisions associated with fashioning a permanent parenting plan for abuse of discretion. In re Kovacs, 121 Wn. 2d 795, 801, 854 P. 2d 629 (1993); In re Marriage of Wicklund, 84 Wn. App. 763, 770, 932 P. 2d 652 (1996); In re Jensen-Branch, 78 Wn. App. 482, 490, 899 P. 2d 803 (1995). The trial court abuses its discretion if its decision is based on untenable grounds or reasons or is manifestly unreasonable. Id. The trial court acts on untenable grounds if factual findings are unsupported by the record; the Court acts for untenable reasons if an incorrect standard is used, or the facts do not meet the requirements of the correct standard; and the trial Court acts unreasonably if the decision is outside the range of acceptable choices given the facts and the legal standard. State v. Rundquist, 79 Wn. App. 786, 793, 905 P. 2d 922 (1995), review denied, 129 Wn. 2d 1003 (1996); State v. Robinson, 79 Wn. App. 386, 902 P. 2d 652 (1995); see also, In re Marriage of Tang, 57 Wn. App. 648, 654, 789 P. 2d 118 (1990).

And, a trial Court abuses its discretion if the Court orders a

parental restriction without having "expressly [found]" the parent's conduct adverse to the best interests of the child." See, RCW 26.09.191(3)(g); see also, Wicklund, at 770-71. Moreover, even in the face of such a ruling, there must, in fact, be a clear nexus between a Court's finding and the conduct in issue. Wicklund, at 770-71. The lack of evidence of harm resulting from either parent's conduct renders any restriction particularly inappropriate and constitutes a manifest abuse of discretion. Id.

E. ARGUMENT

1. The Superior Court committed reversible error when, in terms of paragraph "2.2 Other Factors (RCW 26.09.191(3))" of its "Parenting Plan Final Order," the Court failed to identify how Ms. Leslie's alleged conduct provided any nexus to support the equivocal conclusion such parental conduct "may" adversely affect the "best interests of the child" in terms of the child's physical, mental or emotional health and well-being. [Issue No. 1].

As pointed out above, the Superior Court opined in paragraph "2.2 Other Factors (RCW 26.09.191(3))" of its "Parenting Plan Final Order" on July 21, 2011, filed July 28, 2011:

The mother's involvement or conduct may have an

adverse effect on the child's best interests because of the existence of the factors which follow:

A long-term and persistent pattern of dishonesty, fraudulent actions, financial exploitation and other such misconduct which not only operates as a poor parental example but which has also endangered this child's health on at least one occasion. Specifically, the mother fraudulently held herself out as a registered nurse when she had not completed even high school and when the child suffered a fractured skull she removed the child from the hospital, representing that she could monitor his recovery, when she had neither the experience or the knowledge of what to observe. Additionally, the mother married the father when she had a prior undissolved marriage. She financially exploited both of these husbands. She has fabricated medical problems to get attention and sympathy. She has an ability to make a very "personable" first impression which is used, however, to manipulate others and get what she wants, without regard to whether it would be in the best interests of the child. [CP 26].

At a minimum, this expression of the Superior Court fails to provide any proof of nexus between Ms. Leslie's "conduct" and the possibility of any adverse effect on Duane. Furthermore, the foregoing suggestion of adversity is equivocal at best, by way of the Superior Court's use of the word "may" with respect to "an adverse effect" and does not, therefore, amount to the required "express" finding Ms. Leslie's conduct is, in fact, "adverse to the best interests

of the child" for any parental restriction thereon as contemplated under RCW 26.09.191(3)(g). See also, In re Marriage of Wicklund, 84 Wn. App. 763, 770-72, 932 P. 2d 652 (1996). Consequently, without the requisite "expressed" finding of adversity, the Superior Court clearly abused its discretion on untenable grounds or reasons, and any restrictions on Ms. Leslie associated with the residential provisions as well as Ms. Leslie's decision making authority was manifestly unreasonable. [See, Assignments of Error Nos. 1 through 10]. In re Kovacs, 121 Wn. 2d 795, 801, 854 P. 2d 629 (1993); In re Marriage of Wicklund, 84 Wn. App. 763, 770, 932 P. 2d 652 (1996); In re Jensen-Branch, 78 Wn. App. 482, 490, 899 P.2d 803 (1995).

2. The Superior Court also abused its discretion, and committed further reversible error by failing to examine and make specific findings of fact as to all statutory factors specified in RCW 26.09.187 as the factors relate to the needs of the child. [Issue no. 2].

Such error associated with RCW 26.09.191(3)(g) was further compounded by the Superior Court's failure to enter specific findings of fact independent of the equivocal reference to that statute and as further required under the related provisions of RCW

26.09.187(2) and (3). This omission constitutes a manifest abuse of discretion. In re Kovacs, 121 Wn. 2d 795, 801, 854 P. 2d 629 (1993); In re Marriage of Wicklund, 84 Wn. App. 763, 770-72, 932 P. 2d 652 (1996); In re Jensen-Branch, 78 Wn. App. 482, 490, 899 P. 2d 803 (1995).

Here, by the Court's express terms, the restrictions on Ms. Leslie's decision making authority are clearly tied to the Court's equivocal and improper creation of a restriction under RCW 26.09.191. [CP 26, 31]. This abuse is reversible error itself under RCW 26.09.187(2)(b)(i). Indeed, no facts support the Superior court's opinion Ms. Leslie "abused her unilateral decision making in the past," or that Ms. Leslie "failed to demonstrate her ability or desire to cooperate in the decision-making process" with Mr. Leslie. Consequently, the record fails to support RCW 26.09.187(2)(b)(ii) and (iii) and the Court's "findings", even though made under these grounds, constitute a manifest abuse of discretion. State v. Rundquist, 79 Wn. App. 786, 793, 905 P.2d 922 (1995), review denied, 129 Wn. 2d 1003 (1996); Wicklund, at 770.

Similarly, the Superior Court committed further and egregious error associated with entry of all residential provisions of

the "Parenting Plan Final Order" [CP 25-32] failing, even in the first instance, to enter any express findings of fact as statutorily required under the considerations listed in RCW 26.09.187(3). This fundamental failure, itself, constitutes a manifest abuse of discretion amounting to reversible error. See, In re Marriage of Horner, 151 Wn. 2d 884, 894-95, 93 P. 3d 124 (2004). As our Supreme Court aptly reiterated and acknowledged as a time honored function of appellate review:

Findings of fact play a pivotal role upon review: "[t]he purpose of findings on ultimate and decisive issues is to enable an appellate court to intelligently review relevant questions upon appeal, and only when it clearly appears what questions were decided by the trial court, and manner in which they were decided, are the requirements met." Schoonover v. Carpet World, Inc., 91 Wn. 2d 173, 177, 588 P. 2d 729 (1978).Horner, at 895-96; see also, In re Rheam of Indiana, Inc., 133 B. R. 325, 338 (E.D. Pa. 1991); see also, United States v. Costa, 356 F. Supp. 606, 608 (D.D.C.), aff'd, 479 F.2d 921 (D.C. Cir.1973); In re Orfa Corp. of Philadelphia, 170 B. R. 257, 271 (E.D. Pa. 1994).

Simply put, the Superior Court failed to provide this Court the necessary record and findings for proper review regarding the parenting plan. Id. Accordingly, reversal and remand is warranted.

RAP 12.2.

3. The Superior Court also abused its discretion and committed reversible error when it wrongfully issued the final order of child support based upon the erroneous determinations and manifest abuse of discretion exercised concerning the final parenting plan as argued above. [Issue No. 3]

Lastly, as the parenting plan was wrongfully issued and decided due to a manifest abuse of discretion by the Superior Court, the Final Order of Child Support based thereon [CP 38-54] must also be reversed as the order is based upon reversible error in the premises. In re: Marriage of Holmes, 128 Wn. App. 727, 738-740, 117 P. 3d 370, 375-376 (2005)

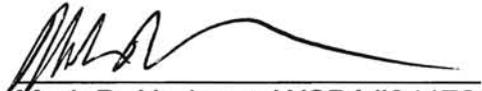
F. CONCLUSION

Based upon the above, Janelle Leslie, respectfully requests the challenged decisions of the Superior Court concerning residential placement and decision making associated with the parties' minor son, Duane Leslie, be reversed and this matter remanded for further proceedings consistent with this Court's decision concerning residential issues and the decision making

process associated with the care of the minor child, as addressed
by this Court on this appeal.

DATED this 2nd day of March, 2012.

Respectfully submitted:


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