

FILED

JAN 21 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 316009

COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

In re the Marriage of:

DARRYL ROBINSON, Appellant

and

SHEA ROBINSON, Respondent

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE JUDGE PRICE

REPLY BRIEF

Robert Cossey
Attorney for Respondent
Robert Cossey & Associates, P.S.
902 N. Monroe
Spokane, WA 99201
(509) 327-5563

TABLE OF CONTENTS

	<u>Page</u>
I. ARGUMENT	1
II. REQUEST FOR ATTORNEY FEES	3
III. CONCLUSION	4

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Marriage of Caven</u> , 136 Wn.2d 800, 966 P.2d 1247 (1998)	2
<u>Marriage of Katare</u> , 175 Wn.2d 23, 283 P.3d 546 (2012).....	2
<u>Marriage of Watson</u> , 132 Wn.App. 222, 130 P.3d 915 (2006)	2
<u>Statutes</u>	<u>Page</u>
RCW 26.09.191.....	1-3

I
ARGUMENT

Ms. Robinson argues that the trial court did make a finding of a “history of acts of domestic violence” as required by RCW 26.09.191 for imposition of restrictions against a parent. However, although the trial judge referenced in his oral ruling that “there have been allegations of domestic violence in this relationship,” he did not make an oral or written finding that the allegations were credible or used as a basis to support a history of acts of domestic violence. (RP 322). Instead, his reference to “allegations of domestic violence” supported his preclusion of a “shared parenting plan,” not imposition of limitations against the father. (RP 322-323).

Furthermore, Ms. Robinson asserts in her response that the Guardian ad Litem (GAL) investigation “resulted in a conclusion that Mr. Robinson had engaged in a history of domestic violence.” (Response Brief 13). She cites no support for this conclusion in her brief and in fact, this conclusion is untrue. Judge Price specifically referenced in his oral ruling that the GAL “didn’t provide a clear recommendation one way or the other” as to RCW 26.09.191 restrictions. (RP 324). Judge Price also never stated in written or oral findings that he found Ms. Robinson’s

testimony regarding allegations of domestic violence more credible such that her allegations supported a finding of a “history of acts of domestic violence” under RCW 26.09.191. Instead, the only incident of alleged domestic violence used to support the RCW 26.09.191 restrictions was that of the conviction of the No Contact Order Violation DV. (RP 324-325). Even if Judge Price arguably used Ms. Robinson’s allegations as a basis to deny a shared parenting plan, he did not reference them to support RCW 26.09.191 restrictions.

In Marriage of Watson, 132 Wn.App. 222, 233, 130 P.3d 915 (2006), the Court of Appeals found that an unproven allegation of sexual abuse did not provide substantial evidence in support of the visitation restrictions ordered under RCW 26.09.191. Similarly, the Supreme Court in Marriage of Katare upheld RCW 26.09.191 restrictions *because* the allegations were actually corroborated by other witnesses. 175 Wn.2d 23, 37, 283 P.3d 546 (2012). The Supreme Court has also affirmatively held that, “[m]ere accusations, without proof, are not sufficient to invoke the restrictions under the statute.” Marriage of Caven, 136 Wn.2d 800, 809, 966 P.2d 1247 (1998). Judge Price made no findings that the allegations of Ms. Robinson as to behavior by the father amounting to

domestic violence as defined by statute were credible or otherwise corroborated. The only incident that was referenced by Judge Price in determining RCW 26.09.191 restrictions was the conviction for No Contact Order Violation (RP 324-325) which does not meet the statutory definition of domestic violence for purposes of imposing restrictions.

Regarding substantial evidence, the trial judge based his refusal to implement a shared parenting plan on “allegations of domestic violence” by stating that “this fact would clearly show for one thing that there’s no history of cooperation that can exist.” (RP 322-323). At no point did Judge Price find that implementation of a shared parenting plan would not be in the children’s best interest. This court cannot adequately review on appeal whether the trial court’s decisions as to denial of a shared parenting plan was based on substantial evidence because the trial court did not provide any support for his implementation of Ms. Robinson’s restrictive proposed parenting plan.

REQUEST FOR ATTORNEY’S FEES

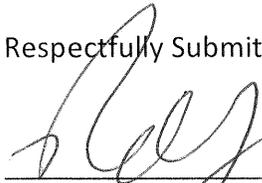
Ms. Robinson has provided no supporting information for her request for attorney fees. Mr. Robinson does not have the ability to pay for Ms. Robinson’s fees on appeal and there is no argument by her that

his appeal is frivolous or made in bad faith. It is respectfully requested that she be required to contribute to his attorney fees. There is no basis to award attorney fees to Ms. Robinson.

**III
CONCLUSION**

It is respectfully requested that this court reverse the challenged decisions of the trial court and remand for further consideration.

Respectfully Submitted,



ROBERT COSSEY
WSBA # 16481
Attorney for Appellant

FILED

JAN 21 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

In re:

DARRYL ROBINSON

Appellant

and

SHEA ROBINSON

Respondent

NO. 316009

**CERTIFICATE OF SERVICE &
AFFIDAVIT OF MAILING**

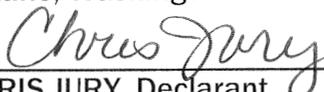
I, Chris Jury, under penalty of perjury under the laws of the State of Washington, declare that on January 21, 2014, I delivered a copy of the Brief of Appellant to the individuals listed in this Affidavit at the below last known addresses:

Shea A. Robinson
C/O Jason Nelson
Attorney at Law
2222 N Monroe
Spokane WA 99205

The following party listed below was served by U.S. Mail on January 21, 2014.

Darryl Robinson
5411 N Hawthorne
Spokane WA 99205

Dated this 21st day of January, 2014, at Spokane, Washington.


CHRIS JURY, Declarant