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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 337171

IN THE COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

TIFFANY A. CLARK n/k/a ZAPHIA,

Appellant,

vs.

WALTER N. CLARK III,

Respondent.

BRIEF OF APPELLANT

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A. Assignments of Error

1. The trial courts of Chelan county exercised abuse of discretion by standards stated in RCW 26.09.260 in nearly every subsection of Modification of parenting plan or custody decree through the case by stating it was detrimental at mother's home to modify the parenting plan(CP29,45-46,106). (1) modifying plan without proof that a modification would be best for child(b)appellant asks for relief for son from the unsuitable place of care in 2014 (c) into father's care due to his circumstances being detrimental to care (CP52,106, 178), (d)appellant tried to hold father in contempt of residential parenting plan, relief from harm(CP29,53) was denied as "willful" Judge stated(CP96). They utilized (4) by making residential time restrictions with father, which he violated for over a year (CP184), (5)(a) lack of change of detrimental circumstances of fathers co-parenting and care (CP59) (b) child parent

school/work schedule conflicted with plan(c)mother ask for 14 hours' modification to the pickup time from father's mid-week day (7) evidence proved father's circumstances' effecting detriment of child(CP106). (8)(a), father voluntarily failed to exhibit residential time, and keeps child in third party's' care. To justify (10) (2) evidence provided recommendations provided to courts in 2013 (CP31) and in 2015 (CP134). Proof of fathers' behaviors (C29,106) and wrongly placed priorities (CP53,66,141) have negatively affected the child's education (CP67,150) and all around wellbeing, from the start of the dissolution (CP32) in 2012'through 2015'(CP184). Father had conducted acts that prohibited co-parenting due to not following (1)(f) of RCW 26.09.191, when conflict that caused harm to father to (CP52) child persisted (CP143).

2. Judge Nakata abused discretion under RCW 26.09.220, by consistently dis-regarding supporting medical(CP37,161), clinical

(CP35) evidence. Courts modified the orders 3.13 beyond the requested motion of the petitioner (CP31,179). Verbal agreement between mother and father pertaining to the desire to not require mother to share mental health screenings, (CP124,125 lines 5-11). Trial rulings made on October 24th 2013 (CP7-27), and July 31st 2015 (CP168,171) were abuse of courts discretion, because they were not supported by evidence. Judge unjustly stigmatizes mother in presence of the courts (CP32,175).

3. Judge Nakata was in error by not utilizing the Factors for Proper Determination a Parenting Plan according to due to criteria, in mothers care, not congruent with accusations made in reference to RCW 26.09.187(3) to residential schedule(a)stating it was for child's emotional harm at mothers home (CP171), despite evidence provided stability issues of fathers care(CP184), (I)parties disagreed that their circumstances were the one at fault for sons wellbeing being jeopardized(ii)courts exercised a Final parenting

plan on by use of assumptions of future capabilities(CP168) of the father (CP175) although; court noted skepticism of detriment of child (CP106) while in fathers' care (CP184,185),also Judge Nakata was in error according to RCW 26.09.187(iv) by limiting communication with parent and child without reasonable cause, the father was causing conflict(Exhibit 6); by requesting no phone communication (CP128), it was not assisting the attempts for quality co-parenting (CP165).(v) Child's behavior during circumstances was notably worse at school (CP150), home, and childcare, from; Feb 2014 (at time of moving to Oma's) through 2014', until the tail end of the school year. (vi)Wishes were not met by Judge, mother asked the courts to take into consideration if there was any conflict of interest. Which would with or without presence, not necessitate a ruling for a permanent parenting plan with respect to RCW 26.09.184 to have child be in father's favor, after careful attention to; objectives, contents, consideration,

dispute resolution, or decision making authority, let alone allow a major residential provisions of the child be set forth in a permanent plan.

4. Judge made erroneous rulings on Re; modification of parenting plan (CP168), stating that no homework was not being returned, and that mother was fully responsible for the medical decisions for son. Firstly, homework sheets were sent home every Monday, those are fathers designated visitation days, the sheets were lost on arrival to fathers' house. With or without the piece of paper to initial, they still studied at moms' house. Here is an example (Exhibit 3) of at home studying that occurred at mothers' home in June 2015. Next, Mondays are designated fathers' visitation days, sons Hematology appointments are set for only Mondays (Exhibit1), how can mother be held 100 percent responsible of decisions, when 50/50 plan was in action, with no restrictions on decision, making on either party.

5. Judge Nakata abused courts discretion and did not allow the appellant her right to a fair trial, and limiting her testimony and her ability to present her statement to the court. The record contains erroneous or libelous statements that were typed out in the clerks' minutes throughout the case (CP31,33,126,128,184,185).
Rendering appellant unable to provide the courts with current evidence, pertaining to; substantial non-performance of parental functions of parties, (CP45,52,96,106,141,184) which was causing harm to the parent child relationship(CP143).

6. Court was at fault by not creating keeping proper record of the filings and actions of the case throughout the cases entirety (CP18, 34). Verbal response to allegations of was not allowed or taken with severity of the information in which was being provided at trail hearings, courts didn't provide a transcript of the trail

proceedings, report or recording of the proceedings. Also, Court dates were assigned not within due process time (CP120 & 121).

B. Issues pertaining to

1. Wouldn't it be a supported action of the courts; under the authority of RCW 26.09.260, and outlined in RCW 26.09.184(c)(g) and RCW 26.09.004, and modified for the permanent parenting plan in favor of the parent who has provided educated decisions pertaining to ADHD pharmaceuticals, and proactive on emotional care of the child?
2. Can prima facie allegations VIA libelous statements legally stigmatize a parent and predict, by mere possibility of danger in other's circumstances, and outweigh proof in particular case in which the evidence states?
3. When a Judge receives evidence in support of violations that are outlined in RCW 26.09.191 & RCW 26.09.260 (8)(a) repeatedly

for a year or longer should the judge assist to make a stable permanent parenting plan, in favor of the party not in contempt of not providing substantial care for the child?

4. If a 50/50 parenting plan designates every Mondays are to be to the fathers' residential visitation day, without restrictions, and the child's Hemoc (non-emergency) doctor's appointments, and school homework days are set for Mondays, then is mother responsible for fathers' decisions of care as well as care at her residence?
5. Are courts, did not keep proper record and run the risk of question of breach of rights listed under U.S constitutional provisions V & VXI, held to the standards, they entitles a fair trial to all of their parents who are legal citizens right to protect themselves in the court of law, with a right to a defence as well as protect and care for their children and be allowed to do so; Is less than one month a common timeline given for a GAL investigation of this magnitude to allow due diligence for courts to receive

copies of evidence in support, of the Appellant who has provided care with educational and emotional needs, with efficiency?

6. Are courts under the same strict rules of the law in which they hold their citizens to, which would allow for fair treatment and equal rights to each person in society free from stigmatization, and allowed the same time frame for proper trial hearings?

C. Argument of case

1. *Show for irreparable harm must be adequately provided Re: Modification of custody decree/residential schedule/ parenting plan.*

By justifying a modification of residential schedule, to in full custody to the father on July 31st 2015, in lieu of substantial evidence of detriment in fathers' care, was abuse of discretion.

There was adequate cause to show, harmful environment while in fathers' care to child's wellbeing, not only provided to courts by the appellant, but was noted as "detrimental" on (CP106) to the health of the child at all of the hearings held in 2014', by standards of RCW 26.09.260(1)(d)(6). Hence the restriction on overnights at father's tent, by judge Nakata. As seen in In re: Custody of Halls, 126, Wn. App. 599, 607, 109, P .3d 15 (2005) Father and child's arrangements, (CP92 line 14); the circumstances were current over a year later, as noted in GAL report, in July 2015' (CP141 line 5). There is reason to believe that the courts acted in a way in which put the child in harm's way, which was noted in clerks' minutes that "father did not have a suitable place for the child" (CP184). Court used abuse of its digression by ignoring evidence as seen In re: of Shyrock, 76, Wn. App. 848, 850, 888, P. 2d 750 (1995). From 2013 throughout this entire case, mothers care is not seen as

a risk to detriment, or speculated by any respected member of society that are in our lives; teacher, doctor, daycare providers or councilors; as re-stated in GAL report in 2015' (CP138 line 18). Thus allowing erroneous statements blaming mother of a violation of RCW 20.09.260 (c) which led to unprecedented effects that are well known in (c) in further pulling child from a quality parent child relationship and detriment, due to separation, from the one who is attentive to his needs, and always acts on his behalf in a genuine caring manner as seen through the case(CP2,52,138).

2. Needed for a full testimonial cross examination, resulted in erroneous findings against the appellant through the case.

Full testimonial hearing on the merits, to both parties, at a trial hearing is a right. Court exercised RCW26.09.260 relying on issues, (CP171) that were not outlined by the GAL, in his

investigation. It was a breach of the constitutional rights, of the child and the mother (in defense of her sons wellbeing), as also seen in the following case; In Marriage of Rideout, 150 Wn .2d 337, 352 (2003). Failing to allow appellant a full testimony was a side swipe maneuver, that disabled the appellants' testimony. Due process was set forth to safe guard the rights to defend oneself from unsupported/ libelous statements, such as, mother being unable to provide on a "mental level" to care for herself and her child. Yet, professional opinion had opposed such a judgment (CP37). Appellant was held responsible for effects on her child(CP168,184), the effect in which, (CP 65-67) she had attempted to elevate, since 2014'(CP115), by means of supported evidence(CP29,52). As seen In: re Marriage of Mansour, 126, Wn. App. 1, 11, 106 P. 3d 768 (2004) due to appellants partial statements going dismissed, or not allowed at hearings and trial; the courts are responsible, due to the continuing jurisdiction over

the matters in this family law case, for holding the relationship of the appellant and her son in an area of harm, by allowing abusive use of conflict by respondent thus, he continued to manipulate the child's delicate psyche(CP143), and caused undue hardship(Exhibit 5) Due to the hearsay of the courts and the respondent as unlawfully noted libelous statements, attention of the courts were deflected as seen; In re: Marriage of Eklund, 143 Wn.App.207, 214-16, 177 P 3.d 189. (2008). The respondent substantially did not provide parental responsibilities since in early 2014'(CP65). Contempt of judges orders (CP106) by not allowing mother to choose if it was suitable (Exhibit 2) went unchanged for over a year.

3. *Standard of proof (not personal opinion) required when a child parent relationship is involved.*

These orders impact substantial liberty interests' including (a) the right to care for ones' child; (b) freedom of movement; and (c) freedom against social stigma.

(a) Such as holding one parent as detrimental to child's health for choosing to not use pharmaceutical drugs to treat ADHD, was an unprecedented, irresponsible ruling, an abuse of digression of court under the correct jurisdiction would have required a medical professional at trial to rule in such a way. Appellant provides for her son's physical care, like most genuinely caring parent would(CP35,54,55). Due to her son's specific needs, she makes educated decisions that are in accordance to her child's best interest (CP57). Appellant has a Pharmacy assistance license

(Exhibit 4); although It has been a long established fact that all parents have a fundamental liberty of interest for their children, no matter their background. Father allowed child live with unsuitable environment(s)(CP52), in a tent or otherwise harmful, that was damaging to the wellbeing of the child(CP150). As in the *Welfare of A.B.*, 168 Wn. 2d 908, 232 P.3d 1104 (2010); RCW 13.34. 180. When a request to modify the plan was set forth it was not intended to separate the child from herself, which would change the parent child relationship, by restraining mother from contacting her child at other father's residence VIA phone, it is in violation of her liberty interests.

(c)Court addresses that freedom from social stigma' is noted, yet fails to address its purpose, due to Judge Nakata's libelous statements made, In October 2013', referring to Appellants capabilities on a "mental level", (CP32) despite provider statements of parenting abilities not affected (CP37). The

appellant's liberty interests are at risk of infringement. Judge Nakata seemingly Ignored the character declarations of any and all involved with the Appellants defense, mental healthcare providers (CP35,37). Given the nature and extended period of time in which the relief sought; it was, by standard abuse of discretion of the courts to grant father rights of appalments medical records, by definition of RCW 26.09.191(e) & RCW 26.09. 220, states that one in sound mind, has full rights to their medical records unless threat of harm is an issue, more than prima facie allegation. Another evaluation was done two years later, in July 2015' stated that appellant physiological symptoms (CP16) had been diagnosed with an "anxiety disorder", which can be treated with antidepressants. Childs placement should not have been done by a Judge who had been abusing discretion of courts, the courts should have read the word psychotherapy as what is, therapy of the mind. Appellant has counseling along with about 45% of the female

population in the United states; there should be no shame or stigma on the act of self-care, or being proactive while caring for one's child. Appellant is by professional opinion, "not a danger to herself, or her son", and seen as responsible for her own mental health care, she "would seek out services", due to the fact that the appellant "takes therapy suggestions involving parenting seriously". As opposed to the Respondent, whose mentally unsound actions, for an extended period of time which have caused harm to our son(CP106) for an extended period of time. Evidence provided to courts were not utilized, and decisions were made without proper supporting evidence.

- 4. Permanent placement into Father's care/ third party was abuse of courts discretion, by legal authority, and standards of procedure.***

Father was repeatedly in obvious violation of 26.09.184(1)(a) refusing to address bodily harm and repeating the actions for an extended period of time (CP53,106). Judge refused to hold Father in contempt as situation worsens (Exhibit 1), rulings are incongruent with fathers' visitation (Exhibit 2). Appellant brought attention to the courts, and situation is postponed by courts due to due process to father, and Judge wasn't comfortable with hearing the case (CP59), after repeated attempts to co-parent, verbally, by phone and lastly, VIA e-mail (Exhibit 6 attached). (b)Failing to address emotional harm (CP32&150) and ignore child's unique needs. (c)Putting child's needs after his own monetary/ lifestyle goals (CP92,184). (d)Placing his child in 3rd party's care, as opposed to providing substantial parental abilities and actions to himself(CP143). Third party's interest was not entered into the case at any time, yet Judge had recommended that child stay at grandmother's house, unaware of the conditions, including third

party schedule conflicts, which occurred through the trial, with no clear outline for parties to attain to. Being that Judge allowed a restriction on phone calls to be made between parties, email was the go to communication, co-parenting efforts by appellant were seen as null and void (Exhibit 6). Thus causing conflict in residential schedule(CP165). Due to evidence provided establishing Father was in default of providing for child went un fixed for a year or longer, and there was no evidence that mother was in default of her parental capabilities', despite her mental disorder of anxiety, which appellant is proactive of treating, as with other important responsibilities that she has.

5. *Appellants due process rights were infringed upon by Chelan County Courts, in accordance to RCW 20.09.187(a) & RCW 4.2*

There was a lack proper docket recordings, starting from the first trial hearing (CP34-38). Yet they were certified mailings by direction of the Chelan county clerk's office. There was no official report of the proceedings, verbatim statements, or (after reading the copies) or any 100% correct clerks minutes. Secondly, the lack of correct procedure according to RCW 4, have led to over paying and, the filing of unnecessary documents, and loss of correct filings and supporting evidence. Appellant made and paid for an appointment with the Chelan county clerk VIA phone. It was set for April 30th to file the 2nd order holding Mr. Clark in contempt of the parenting plan, and request for a stop to the cycle and request for a new permanent parenting plan, by the judge on Aug 7th. The request was inquired in detail of the procedures of filing prior to the appellant's arrival over 300 miles from her home. Upon arrival to Wenatchee on April 30th 2015, appellant had appropriate documents complete; besides dating and signatures, which she had

to wait for, due to, appropriate procedure laws, she was denied her contempt filing. The contempt packet was completed, along with a new proposed parenting plan parenting with declarations in support of the new plan, which stated fathers' circumstances are unchanged, and he is in contempt still. Clerk asked for the Judges chamber for the open schedule dates for the hearing, and the judge on duty, approved May 20th, in light of judges knowledge of due process laws(CP121). Appellant immediately mailed off the motion to the respondent on May 1st 2015. Turns out, what was actually filed by the clerk's office was; an amended parenting plan, but it was filed without any other attached documents of with the amended proposed parenting plan motion(CP10-119). Effective date of new order allowing child to be out of detrimental circumstances, according to evidence, and done with unneeded strife; assuming courts would follow due process laws upon scheduling the hearing, and follow appropriate standards according

to supreme court family law, at the hearings, the residential schedule and parenting plan would have been official before the summer schedule had occurred before more conflict(CP165).

D. Conclusion

Quality of judicial system of the County of Chelan was placed in jeopardy by the actions; or lack thereof; of Judge Nakata in this family law case. Litigation of custody on both final hearings, the presiding Judge utilized libelous statements to enforce RCW 26.09.260, proper digression of the courts was ignored, by not requiring evidence to carry out such a major modification in the favor of the party in contempt. Respondent refused to uphold the superior court restriction on his residence, and filed for a major

modification that would grant him full custody. Adequate cause proof and history of actions that were detrimental to the child health were not directed to the correct party, schemes to perpetuate the conflict with the appellant through his son with manipulation was upheld by the courts, yet there was no evidence to support his allegations. Appellant would like to move the Appeal court to strike the Final Parenting Plan, Dissolution and Residential schedule which were ordered on July 31st 2015; based on merits. If not, only on the basis to correct judicial errors made in both final orders, that, in turn allowed a child to sustain living environment to become, by no fault of the child or the mother, systematically worsened and detrimental to the health and wellbeing of the child for an extended period of time, without any true relief of the

courts, despite her valid attempts. Appellant moves to request that all legal fees and processing fees of; the appeal and cost of clerical proceedings, and cost of the hearings held due to contempt, to be paid by Walter Clark III. She in turn, moves the appellate courts to order the plan designated to the plan in which the GAL had recommended, Into child's "mother's" care (CP134,140). awarding the respondent, four days of visitation every third week of every month. Summer schedule with father would be for the entire third week of every month, from Sunday evening to Sunday evening, the child would be in fathers' care. The child would continue to attend third grade at his current school, and will continue to receive counseling, medical, and dental care, with more efficiency while in mothers' full time care. Despite vexatious claims, Appellants son,

Walter, has not and will not suddenly be deprived of familial
visitation.

Respectively submitted,

A handwritten signature in black ink, appearing to read "Jeffrey D. Hines". The signature is written in a cursive style with a horizontal line underneath the main body of the text.

Appellant

CERTIFICATE OF SERVICE

I hereby certify that under penalty of perjury of the law of the State of Washington that on the

8th Day of December, I filed the forgoing document; Brief of Appellant, as follows; VIA

Certified mail to the following;

Division III Court of Appeals

Clerk/ Administrator

Renee S. Townsley

500 N Cedar St

Spokane W.A 99201

Sent VIA E-mail to the following;

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Guardian Ad Litem

Thomas E. Janisch

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Dated this 8th Day of December, 2015'.

A handwritten signature in black ink, appearing to read 'J. Appellant', is written over a solid horizontal line.

Appellant

CERTIFICATE OF SERVICE

I Nicholas Chapman hereby certify that under penalty of perjury of the law that I am over the age of 18 and am competent to be a witness. On the 8th Day of December, I caused a true and correct copy of the forgoing document, Brief of Appellant; to be delivered to the following;

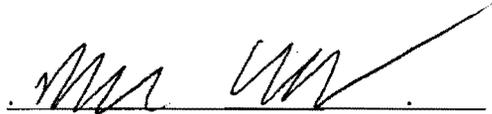
VIA U.S Mail.

Respondent

Walter N. Clark III

7621 Westlund Rd Arlington W.A 98223

Dated this 8th Day of December of 2015'.

A handwritten signature in black ink, consisting of several loops and a long diagonal stroke, is written over a horizontal line.

Serving party