

FILED

No . (341445)

OCT 24 2016

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Joseph Jacob Huizar,
Appellant

V.

Teresa Ramos,
Respondent

Reply BRIEF OF APPELLANT

(Joseph J Huizar Pro se)
(Appellant)
(1911 Hoxie Ave Apt A
Richland, WA, 99354)

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I.Re Statement of Case

The injustice in this case has been taking place since January 27, 2011 in which a trial court Judge Honorable Michael McCarthy gained knowledge of (CP 38-39) declaration of probable cause. The Declaration of probable cause documents (CP 38-39) was part of a criminal case in the Yakima County Superior Court cause (10-1-01908-7). The January 27, 2011 bail reduction order and hearing which was in front of Honorable McCarthy would later develop into bias, prejudice, and unfairness in a later trial that happened on February 8, 2016 cause number (13-3-00276-3). The conflict of interest in these two cases created a snow ball effect that damaged appellant's due process rights and violated appellant's 14th amendment right to a fair trial in front of an impartial tribunal.

28 U.S.C. code (§) 455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (CP 39-39)

The first trial (original trial) and orders signed on 10-28-2014 in this case violated appellant's due process and was an abuse of discretion by the trial court (CP 07,08,09,10). At a minimum, **due process** requires **notice** and the **right to be heard** at a meaningful time and in a meaningful manner. There was no notice given to the appellant by the trial court or by the

other party. The other party in this case did not even attempt to serve notice of the first trial. However appellant filed a CR 60 motion in the trial court and vacated the order signed on 10-28-2014; CP 11.

The second trial; which was not the original trial in this case, happened on February 19, 2015 before Honorable Michael McCarthy which entered a Temporary Parenting Plan and made findings of fact. The appellant believed in the second trial that he was before an impartial judge and had no reason to ask the court to recuse itself. However, that was not the case, appellant did not remember that Judge McCarthy was involved with appellant's criminal case that happened years before. If Appellant knew or remembered that the trial court judge was part of appellant's criminal case years before, he would have asked the trial court to recuse itself then. Also the Judge has personal knowledge of disputed evidentiary facts concerning the proceeding; (CP 39-39).

Appellant's memories of Judge McCarthy triggered when comparing signatures and noticed that there was a match with the two cases (13-3-00276-3) / (10-1-01908-7). Appellant; after noticing a disqualification of justice had accrued, brought it to the trial court on a CR 60 motion and presented it to the trial court (CP 29-50). The second time appellant raised this issue was on a motion to recuse Judge McCarthy filed on January 22,2016. The evidence of prejudice is CP 38-39.

_RAP 2.5 (a) (3)

The trial court erred by not allowing appellant movement around the courtroom; which was solely, because the trial court judge was prejudice against appellant. The opposing party was able to move freely in the courtroom upon questioning witnesses. This act by the trial court judge was nothing but a showing of actual prejudice. Appellant is entitled to a fair trial.

(RP Page 82)

MR. HUIZAR: Well, I'd like to call Ms. Ramos.

THE COURT: Okay. Mr. Huizar, I'm going to have

you remain at the table. Okay. Sit down.

MR. HUIZAR: Okay.

TERESA RAMOS, witness herein, having been

duly sworn by the court

testified as follows:

THE COURT: Okay. Please have a seat.

MR. HUIZAR: Your Honor, why can't I exercise this

courtroom in terms of movement and not go beyond that point?

THE COURT: Because it's my courtroom and I get to

make the rules. Okay. I want you to sit at the table.

MR. HUIZAR: If I have a document which I want to give to Ms. Ramos, give it to the clerk and then hand it over?

THE COURT: You can give it to the clerk, and we'll hand it over.

MR. HUIZAR: Okay.

THE COURT: Sit down.

II. Argument In Reply

A. The trial court did abuse its discretion in denying Petitioner's motion to recuse itself.

RCW 4.12.050

Marine Power v. Department of Transp., 687 P. 2d 202 - Wash: Supreme Court 1984

"Under **RCW** 4.12. 040 and. 050, a party has the right to disqualify a trial judge without demonstrating actual prejudice, if the statutory requirements of **RCW 4.12. 050** are met."

The Appellant never move The trial court under RCW 4.12.050 Affidavit of prejudice. The trial court judge already made rulings on this case. Appellant did have knowledge of the facts that there was a conflict of interest until after the judge made rulings in this case.

Stone v Powell, 428 US 465,483 n. 35,96 S. Ct. 3037, 49 L. Ed. 2d 1067 (1976).

"State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."

In re Murchison., 349 US 133 -Supreme Court 1955

"Not only is a biased decision maker constitutionally unacceptable but 'our system of law has always endeavored to prevent even the probability of unfairness'"

State v. Carter, 888 P. 2d 1230- Wash: Court of Appeals, 3rd Div. 1995

"The appearance of fairness doctrine seeks to insure public confidence by preventing a biased or potentially interested judge from ruling on a case."

CP 57-58 Memorandum in Support of motion was not even address by the trial court judge. The trial court judge said he was tempted to recuse himself but was not going to do so. If the trial court judge was tempted to recuse himself then recuse tips in favor of appellant.

The recusal statute is meant to shield litigants from biased and prejudice judges. CP 80 no reasonable fair-minded person would have come to the conclusion to deny appellant motion to recuse the trail court after knowing all the facts. The trial court judge has a constitution obligation to protected litigant's constitution right and not gamble with them.

- B. There is no substantial evidence in the record to support the trial court's findings that at the time Huizar filed his Petition for Residential Schedule the child did not have any personal relationship with him.

The trial court's challenged findings are reviewed for substantial evidence. In re Marriage of Rockwell, 170 P.3d 572 (2007). Substantial evidence is defined as "a sufficient quantity of evidence to persuade a fair-minded, rational person that the finding is true." Id. at 242.

The trial court judge was not a fair-minded person because his impartiality can be reasonable question there for there is no substantial evidence to persuade a rational person that the findings are true. This argument is for all findings of facts made by the trial court judge.

- C. There is no substantial evidence in the record to support the trial court's findings that Huizar's Domestic Violence Perpetrator's Treatment Classes were not benefiting Him.

Domestic violence perpetrator treatment program standards are clearly outline in Chapter 388-60 WAC which is design to help Participants of domestic violence treatment by certified counselors. The trial court erred by providing an erroneous view as to whether domestic violence treatment classes were not benefiting petitioner.

WAC 388-60-0285 Must a treatment program have policies regarding any re-offenses during treatment?

A treatment program must establish and implement written policies that include consequences if a perpetrator reoffends during treatment or does not comply with program requirements.

D. There is no substantial evidence in the record to support the trial court's finding that between march 2015 and October 30, 2015 Huizar had missed a total of 14 weekly visits without a reasonable excuse.

The maximum amount of visits that appellant could allegedly miss is a total of 6 visits at the most.

Under paragraph 3.13 of the temporary Parenting Plan in the court order,

If father misses more than one visits in a given month or more than five visits throughout the 52 weeks, his visits shall be automatically suspended until further court order. Father allegedly missed more than 5 visits throughout the 52 weeks therefore any visits after that don't count because visitation is automatically suspended. Therefore, the number of visits missed stops counting. It's common sense that the maximum amount of visits that could have been missed is 6. How could appellant miss more than 6 visits when visitation is automatically suspended?

RCW 2.24.050

Revision by court.

All of the acts and proceedings of court commissioners hereunder shall be subject to revision by the superior court. Any party in interest may have such revision upon demand made by written motion, filed with the clerk of the superior court, within ten days after the entry of any order or judgment of the court commissioner. Such revision shall be upon the records of

the case, and the findings of fact and conclusions of law entered by the court commissioner, and unless a demand for revision is made within ten days from the entry of the order or judgment of the court commissioner, the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

In the early proceeding in front of Honorable Commissioner Kevin Naught CP 24 there was no findings of facts that appellant violated the temporary parenting plan paragraph 3.13 or missed visits without a reasonable excuse. Respondent in this case did not seek revision of the Commissioner ruling on CP 24 therefore the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

Again in the early proceeding in front of Honorable Commissioner Kevin Naught CP 26 there was no findings of facts that appellant violated the temporary parenting plan paragraph 3.13 or missed visits without a reasonable excuse. Respondent in this case did not seek revision of the Commissioner ruling on CP 26 therefore the orders and judgments shall be and become the orders and judgments of the superior court, and appellate review thereof may be sought in the same fashion as review of like orders and judgments entered by the judge.

On 12-28-2016 a hearing was held before Judge Doug Federspiel CP 54 finding of fact (and more than 5 over the 52 week period) Judge Federspiel had no authority to overrule orders

and judgements entered by the Commissioner Kevin Naught because his orders become the orders and judgement of the superior court. The Respondent in this case never sought appellate review. The only allegedly violation of the temporary parenting plan that was in front of Judge Doug Federspiel was paragraph 3.13 **If father misses more than one visit in a given month.** The petitioner allegedly missed visits on October 9th and October 30th were the only finding of facts that could have been revised/revision under RCW 2.24.050.

- E. There is no substantial evidence in the record to support the trial court's finding that between march 2015 and October 30, 2015 Huizar had missed a total of 14 weekly visits without a reasonable excuse. This finding of fact was an abuse of discretion by the trial court and was based on untenable grounds.

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

"A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it 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."

Altered Findings of facts

- F. There is no substantial evidence which supports the trial court's findings that Peggy Mosshart tried to have an adult conversation with Huizar outside the presence of the child, but Huizar refused to the detriment of the child.

This finding of fact is not the original finding of fact by the trial court. It has been altered by respondent counsel to persuade this trial court that the findings of facts are true. Of course the finding of facts supports the trial court when the findings of facts are being altered by opposing counsel on Appeals.

Original Findings of facts

Peggy Mosshart tried to have an adult conversation with petitioner outside the presence of the child, petitioner refused and proceeded to have the conversation in the child's presence to the detriment of the child.

Findings of facts that was removed

(petitioner refused and proceeded to have the conversation)

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Q. In response to the guidelines, are we supposed to have these discussions in front of your child, in front of the child?

A. Mr. Huizar, I asked you to step away and talk to me briefly and you refused. You said this was your time with your child, and you would not interrupt the visit to talk to me.

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So it was impossible for me to have a conversation with you at any other time because we left right after the visits. I had to return Aaliyah to her daycare, and you had places to be. There were no places for us to talk except for a few minutes there, and you were uncooperative. And I let it lie.

This portion of the finding of fact was removed because there is no substantial evidence in the record to support this finding of fact. (petitioner refused and proceeded to have the conversation) If the conversation never happens and I did not proceed to have this conversation; how was it to the detriment of the child?

The trial court abused its discretion when making this finding of fact and it is based on untenable grounds.

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

“A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it 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.”

G. The trial court did abuse its discretion by entering a judgement against Huizar for Peggy Mosshart's bill.

There is no substantial evidence to support the trial court money judgment issued to Peggy Mosshart. What expert knowledge does this witness have in this case? What expert opinion did this witness give in this case? This witness was subpoena by the appellant in this case to testify as a lay witness. Peggy Mosshart was not a guardian ad litem in this case and does

not have expert knowledge. Witness fees will not be allowed to any witness after the day on which the witness' testimony is given; except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact. The trial court clearly abused its discretion when issuing a money judgement to a lay witness.

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

"A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it 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."

H. The trial court did abuse its discretion in entering its final residential schedule herein.

The trial court's challenged findings are reviewed for substantial evidence. In re Marriage of Rockwell, 170 P.3d 572 (2007). Substantial evidence is defined as "a sufficient quantity of evidence to persuade a fair-minded, rational person that the finding is true." Id. at 242.

The trial court judge was not a fair-minded person because his impartially can be reasonable question there for there is no substantial evidence to persuade a rational person that the findings are true.

RCW 26.09.184

Permanent parenting plan

- (1) Objective (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;
- The final parenting plan does not address the permanent parenting plan objective (c).

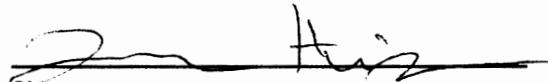
III. Conclusion

It is therefore respectfully requested that this Court of Appeals Division III

Reverse and Remand.

10-21-2016

Respectfully submitted,


Signature

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Appellant
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Certificate of service

I certify under the penalty of perjury under the laws of the State of Washington that on the 21 day of October, 2016, I caused a true and correct copy of this Appellant Reply Brief to be served on the following in the manner indicated below:

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Dated at Richland, Washington, This 21 day of October, 2016

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