

Appellate Court No. 354989-III

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WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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PAUL CARDWELL,

Respondent

v.

REGAN CARDWELL,

Appellant

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Appeal from the Washington Superior Court  
County of Grant  
Case No. 10-3-00479-3  
Commissioner Harry E. Ries

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**BRIEF OF RESPONDENT**

Barbara J. Black  
Attorney for Respondent  
P.O. Box 1118  
Moses Lake, WA 98837  
WSBA #23686

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## STATEMENT OF THE ISSUES

1) Appellant's assignments of error:

Error #1 - Was it within the court's discretion to vacate the 02/03/17 finding of Adequate Cause - order entered 09/15/17 granting Respondent's CR 60(b)(11) motion to vacate? Yes.

1A Pertaining to Error No. 1 - Had Appellant met her threshold burden of adequate cause? Initially, by bringing the order under emergency circumstances and representing to the court her allegations of the immediate effects of an Idaho court's order on Respondent, yes. After time passed and it became clear that the order's effects on Respondent were NOT as represented to the court by Appellant, No. The finding by the court that adequate cause no longer existed was within the court's discretion, and dismissal of the matter was proper.

1B of Error No. 1 is stated as an error of law, however, it is actually on the inquiry regarding the court's broad discretion, not abused, wherein the court weighed the evidence and it found Regan Cardwell's allegations of "abusive behavior, violent [or] criminal acts [or] other actions detrimental to the children;" "bad behavior of the father indicative of substantial change" or "probative of her assertions of detriment in his home," nor any allegations of "detrimental interference with mother's

relationship with the children” did not support a major modification of the existing order such that there was any adequate cause to proceed to trial. Is the court within its discretion to find that these allegations are “Untenable on the facts?” Yes.

1B Pertaining to Error No. 1 - Did the court use the proper legal standard to vacate the adequate cause order? Yes. Was there an error of law? No.

Error #2 - Was it reasonable under the circumstances, not untenable, and fully within the court’s discretion not to appoint a GAL to this matter? Yes.

#### **STATEMENT OF THE CASE**

This case was brought by Appellant, Regan Cardwell (“mother”), on a major modification of the current parenting plan dated March 15, 2013, reflecting the Respondent, Paul Cardwell (“father”), as the primary custodian of the two children of this marriage. Although none occurred in the presence of the children, mother alleged a substantial change in circumstances of father based upon a wide variety of accusations, including him being cited for not possessing a valid fishing license, language from a years-old declaration in a restraining order case, and a recent Idaho arrest and charge for possession of marijuana, in an amount

which is legal for him to possess in Washington where he resides, but not in Idaho where he had traveled. CP 9-16. Under a plea deal on that charge, while he was sentenced to jail time in Idaho, the matter was transferred back to Washington state and sentence was converted for only a brief period of supervised probation. He has completed the required probation, done no jail time, and none is now imposed. CP 425-431.

In her petition, Regan Cardwell represented to the court that, based on statements in the Idaho Judgment and Order, Paul Cardwell would be immediately incarcerated and unavailable to parent the children such that it was necessary to “protect” the children and to remove them from their home and school and place them with their mother in a city over 100 miles away. CP 9-16, CP 31-32. In what has become typical from the mother, she flooded the courts with numerous declarations, hearsay allegations and other unsupported accusations and general cumulative complaints, none of which reached a level of adequate cause to modify the existing custody orders. Mother also brought up a number of much older allegations, such as using a declaration from an old girlfriend, and Mr. Cardwell’s past legal history, in her efforts to support her petition to change custody. CP 136-140, CP 33-35. None of these allegations involved or had anything to do with the children, nor was there any support for the contention that the

children were even aware of any of the history being submitted by their mother, or that there had been any detrimental affect on them in any way. The court weighed and considered all these documents and found that mother had not met her burden to proceed on that basis.

A telephonic hearing on adequate cause was held that was not recorded by the court, but it was recorded separately by both parties, and was actually transcribed by counsel for Regan Cardwell. Note: Although clearly available for that purpose, her recording and transcription of that hearing was not offered or submitted to the court or made available to it. The court commissioner, Harry E. Ries, heard oral argument on 12/7/16. He made it clear that he did not feel any of the old allegations and accusations and mother's punitive petty sniping aimed at Paul Cardwell had anything to do with the welfare of the children nor did they support the mother's petition to modify the existing plan. However, the court commissioner did find adequate cause to proceed on the single issue which was based upon his interpretation of the Idaho judgment and sentence that said Paul Cardwell was to be "immediately incarcerated" for up to 180 days in the state of Idaho. CP 461-465. He indicated that father's availability to the children was the basis for the adequate cause,

but he also made no changes to the existing parenting plan in anticipation of that.

What transpired after that point is reflected by a review of the Grant County Superior Court Case Summary of this matter which reflects not less than 109 documents were filed after the petition to modify, prior to the first Notice of Appeal. Between the dates of Nov. 2016 and the present, Regan Cardwell proceeded to file several motions, declarations, reconsideration or motion for revision on every decision, new briefs and declarations including personal (hearsay) observations and accusations of counsel for Regan Cardwell, Craig Mason, in efforts to promote his client's case moving forward. CP 668-678, CP 752-757, CP 776-781, CP 795-799. It is clear that Appellant is using the wrong standard and is seeking a *de novo* review of this matter, because they have included all of those documents in the Designation of Clerk's Papers for this appeal, hoping to have them all reviewed and re-weighed or reconsidered *de novo* by this Court. Some of Paul Cardwell's responsive documents explaining the plea stipulation and change in circumstances on his Idaho charges being converted into probation by Washington state were not designated by Appellant in this appeal. However, the facts are undisputed that Regan Cardwell's initial allegations that Paul Cardwell would be incarcerated,

which were set forth to support her petition, did not actually occur and did not thereafter meet or support the adequate cause threshold burden. Mr. Cardwell has not supplemented the record, believing it is not necessary to do so, because this court is not asked to review the trial court's credibility determinations.

During the pendency of this action, Regan Cardwell filed another motion to appoint a GAL, which had not been ordered by the court in the initial finding of adequate cause. CP 466-493. Once that motion was denied by the commissioner as being unnecessary, CP 539-542, Ms. Cardwell moved for revision before Judge Antosz, CP 559-565, who, on *de novo* review, also denied the motion. CP 620-621. She then moved for reconsideration of that judge's denial on revision of the GAL appointment, CP 622-630, which was also denied. CP 631-632. This resulted in a total of three (3) hearings to appoint a GAL in this case, all of which were denied.

As further examples of the over-litigation of this matter by Appellant, during the pendency of the matter after the finding of adequate cause, Appellant attempted to conduct a full-on discovery effort, and requested Respondent be subjected to a CR 35 psychological examination, CP 467, and provide property value information, which was not before the

court. Via interrogatories, Appellant also demanded that the Respondent provide answers to irrelevant and inappropriate discovery questions which forced Petitioner to seek an order of protection from that discovery. An example of those harassing questions contained in the interrogatories to which Petitioner objected were:

#A-3/A-4 Describe the history of your relationship with your father/mother in terms of the history of emotional closeness and/or estrangement over the years since age 5.

#H-53: Do you intend to always live at your parents' address?

#H-54: While residing in your parents' home, what household chores/maintenance do you assist with?

#H-59: Describe every act, habit, or character trait of yourself that you consider to be contrary to the acts, habits or character traits that you would hope to instill in, or teach to the children.

CP 633-665. This "discovery" resulted in Paul Cardwell responding with a motion for protective orders against the inappropriate discovery demands, including preventing the psychological exam, which protection was granted by the court. CP 782-784.

Twice Craig Mason, counsel for Regan Cardwell, filed new declarations with the court on the same day immediately AFTER a hearing had been held, in obvious anticipation of him moving to revise the

court's decision of that day. He then attempted to get his newly-filed declaration(s) included in the revision process by identifying and including them to review, as if they had been timely filed with the original motion, knowing the civil rules prevented this. CP 440-441, CP 568-573. This behavior resulted in additional action and expense necessary by Respondent, who had to point this out to the court and specifically object to the court's consideration of the newly-filed documents and the efforts to bring additional information before the court that he had not timely filed. Also included in these efforts were Mr. Mason's overly exaggerated impressions of his own allegations of years-old incidents and interactions between the parties, having nothing whatsoever to do with the children or their welfare, many including hearsay and pure speculation not based or founded in any objective facts. The court commissioner did not find any of these allegations to be credible or compelling, and found they exceeded the scope of the litigation. After complaints by Mr. Cardwell that it had become very clear that the case was being severely over-litigated by Regan Cardwell, Commissioner Ries opined in a decision letter on vacating the adequate cause order (CP 793-794) that the court had specifically found that **adequate cause only initially existed because of the expected**

**impending incarceration of the father, affecting his availability to the children.** Because that did not, in fact, occur, the court recognized that the case no longer had the necessary adequate cause to proceed and, based on Mr. Cardwell's CR 60(b) motion, he reasonably granted that motion, vacated that finding and dismissed the action. CP 808-811.

Because the original hearing was telephonic and had not been recorded by the court, but both parties had their own recordings of that hearing, counsel for Mr. Cardwell offered Commissioner Ries their recorded copy of the hearing in support of their motion to vacate. In any event, it is clear that in vacating the original order, the commissioner clearly recollected his sole basis for a finding of adequate cause from the first hearing, and used his discretion to determine that based on the facts, there was no adequate cause to continue the case any longer.

This appeal followed.

#### **STANDARD OF REVIEW**

Threshold determinations for modifications of parenting plans (adequate cause) are reviewed under an abuse of discretion standard.

#### **ARGUMENT**

- I. This court does not review the trial court's credibility determinations or weigh credibility.**

Given the strong interest in the finality of marriage dissolution proceedings, we defer to the trial court and will affirm ‘unless no reasonable judge would have reached the same conclusion.’ *In re Marriage of Rostrum*, 184 Wn.App. 744, 339 P.3d 185 (2014). This court does not review the trial court’s credibility determinations. When Commissioner Ries determines that there is no basis on the declarations to proceed, and dismisses the case, this court defers to him and does not review that decision.

Trial court decisions in a dissolution action will seldom be changed upon appeal. The spouse who challenges such decisions bears the heavy burden of **showing a manifest abuse of discretion** on the part of the trial court. *In re Marriage of Bowen*, 168 Wn.App. 581, 279 P.3d 885 (2012). (Emphasis added.) That heavy burden has not been met by Regan Cardwell, who cannot show any manifest abuse of discretion by the trial court.

Trial court findings of fact that are supported by substantial evidence will be upheld. *In re Marriage of Thomas*, 63 Wn.App. 658, 821 P.2d 1227 (1991). Evidence is substantial if it persuades a fair minded, rational person of the truth of the finding. *In re Marriage of Spreen*, 107 Wn.App. 341, 346, 28 P.3d 769 (2001). There is substantial evidence in

this file to support the fact that the father remains the primary custodial parent and has had no substantial changes in any circumstances of him or the children which affect his ability to parent his children. It is quite a stretch and an exaggeration to include a fishing license violation as an allegation of “regular criminal activity” which would somehow affect Paul Cardwell’s ability to parent his children. The only change which may have temporarily affected this ability was the possibility of his incarceration via an Idaho conviction, but it is undisputed that, since this matter was brought by Regan Cardwell, no jail sentence was required to be served by Paul Cardwell and he has remained fully available to his children. Under these circumstances, this satisfies the substantial evidence that it would persuade a fair minded, rational person of the truth of the finding.

When the Superior Court denies a motion for revision, it adopts the commissioner’s findings, conclusions and rulings as its own. RCW 2.24.050, *State ex rel. J.V.G. v. Van Gilder*, 137 Wn.App. 417, 423, 154 P.3d 243 (2007). The commissioner’s decisions on revision to vacate the finding of adequate cause and not to appoint a GAL have been upheld by the Superior Court. There is no evidence that the trial courts’ decisions were untenable or were an abuse of discretion.

**II. Threshold determinations for modifications of parenting plans are reviewed under an abuse of discretion standard, not de novo.**

The determination of whether adequate cause exists to proceed in the matter is reviewed under the standard of whether the court commissioner committed an abuse of discretion. If he did not, his determination is not changed. *In re Parentage of Jannot*, 149 Wn.2d 123, 65 P.3d 664 (2003). There is no allegation of just how the commissioner abused his discretion, as it is not enough to simply disagree with the court's decision and then to submit declarations asserting your own opinion as being more accurate than that of the court. The court has not abused its discretion, and this court does not conduct a *de novo* review.

A court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *Thomas* at 660. The court commissioner reasonably based his discretion on the facts contained in a Judgment and Sentencing and the facts contained in the subsequent motion and declaration(s) submitted by Paul Cardwell regarding his changed status on probation. This makes the court's decision fully supportable on tenable grounds and for reasonable

bases. His decision is not reviewed *de novo* and should not be changed on appeal.

### **ATTORNEY FEES**

Pursuant to RAP 18.1, Mr. Cardwell moves for an award of his fees and costs in maintaining this appeal. Based upon all the unnecessary responses and objections to wrongly or inappropriately filed documents and discovery demands, Mr. Cardwell believes the entire litigation was brought in bad faith and amounts to intransigence, and was deliberately and systematically over-litigated in an effort to harass Respondent and drive up his costs and wear him down in his efforts to maintain his defense of Regan Cardwell's constant attacks. The appeal is not supported in any basis of facts and there is no error of law or abuse of discretion on the part of the court commissioner or judges.

### **CONCLUSION**

For the foregoing reasons, the appeal of the court's discretionary decision to vacate an initial finding of adequate cause should be denied, and the court's decision affirmed, with no findings of any abuse of discretion. The court should award Mr. Cardwell his costs and fees for having to defend this appeal.

Respectfully submitted this 30<sup>th</sup> day of January, 2018.

Attorney for Respondent  
Paul Cardwell

Handwritten signature of Barbara J. Black in cursive script.

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BARBARA J. BLACK  
WSBA #23686

**LAW OFFICE OF BARBARA J. BLACK**

**January 31, 2018 - 12:06 PM**

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