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Court of Appeals
Division III
State of Washington
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No. 356850

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Jenny Lynn Veca, Appellant
v.
Aaron Keyes Prichard, Respondent

ON REVIEW FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR BENTON COUNTY

REPLY BRIEF OF APPELLANT

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Table of Contents

Table of Authorities

- I. Introduction to Appellant’s Reply Brief 1
- II. Response to Respondent’s Spurious Arguments 1
 - 1. The Respondent Failed to Respond to the Court’s Abuse of Discretion in Failing to Implement .191 Restrictions..... 1
 - 1. Respondent Fails to Respond to the Need of .191 Restriction Given his Lifelong Daily Use of Marijuana..... 4
 - 2. The Respondent Concedes that he Has No Objection to Jewish Holidays5
 - 3. “Other” Provisions 5
 - A. Invasion of Medical Treatment is an Abuse of Discretion 5
 - B. A Parenting Plan Cannot Include a Presumption to Modify..... 7
 - 4. Other Provisions - Skype calls and the long term imposition on the children’s lives 8
 - 5. Travel Expenses Must be Shared Proportionately 9
 - 6. Reassigning the Case 9
- III. Irrelevant and Prejudicial Portions of Respondent’s Response Brief 10
- IV. Conclusion 11

Table of Authorities

Cases

In Marriage of Haseth, 115 Wn. App. 563, 569-70, 63 p.3d 164, *review denied*, 150 Wn.2d 1011 (2003). 8

In re Guardianship of Stamm, 121 Wn. App. 830; 91 P.3d 126 (2004). 4

In re Marriage of Jensen-Branch, 78 Wn. App. 482, 492, 899 P.2d 802 (1995)..... 5

In re Marriage of Magnuson, 141 Wash. App. 347, 350-51, 170 P.3d 65, 67 (2007)..... 3

In re Marriage of Tomsovic, 118 Wn. App. 96, 106, 74. P.3d 692 (2003). 8

In re Parentage of Schroeder, 106 Wn. App 343, 352, 22 P.3d 1280 (2001)..... 3

In re Welfare of R.S.G., 172 Wn .App. 320, 245, 289 P.3d 708, 714-15 (2012)..... 8

RCW 26.09.191 2

Statutes

45 C.F.R. § 164.508 7

RCW 26.05.010 2

RCW 26.09.260 8

Court Rules

RAP 10.7..... 11

I. Introduction to Appellant's Reply Brief

The Respondent's brief failed to respond and/or conceded to the issues appealed. Respondent's brief also refers to facts not in the record (and disputed by Appellant). In fact, the Respondent's response seems to believe that the purpose of this appeal is to "take away what little rights and time that the children do have with their father." That is not what this appeal has sought to do. This appeal has sought to ensure that there are appropriate constraints on the father's time with children related to the history of domestic violence and his admitted daily lifetime use of marijuana. The appeal has sought to ensure the residential schedule allows for Jewish holidays to be allocated, but the allocation of Jewish holidays does not necessarily require a decrease in residential time with the father. The Appeal also seeks to limit Judge Spanners invasion in to the private medical care of the parties, to prevent the improper imposition of an automatic modification provision, and to prevent Judge Spanner from further hearing this case because of the clear bias in his decision. None of those issues impact Aaron's residential time.

II. Response to Respondent's Spurious Arguments

1. The Respondent Failed to Respond to the Court's Abuse of Discretion in Failing to Implement .191 Restrictions.

RCW 26.09.191 states that permanent parenting plans shall not require mutual decision making if it is found that a parent has engaged in willful abandonment (RCW 26.09.191(1)(a)) or a history of domestic violence as defined by RCW 26.50.010(3).¹ RCW 26.09.191(3). Further the parent's residential time shall be limited if it is found that the parent engaged in willful abandonment (RCW 26.09.191(2)(a)(i)) or a history of acts of domestic violence (RCW 26.09.191(2)(a)(iii)).

Respondent did not respond to this argument. Instead the Respondent referred to the Family Court Investigator's ("FCI") opinion that there is no domestic violence between the parents. Aaron then states that ".191 restrictions are not appropriate."

Appellants position is that the existence of prior protection orders, no contact orders, and CPS findings meets the threshold of "a history of acts of domestic violence" and the court was required to impose .191 sanctions upon Aaron.

Further, it not only meets the threshold, but the trial court's decision that domestic violence was not at issue in this case, was an abuse of discretion because of the existence of prior orders. In determining that

¹ (3) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member. RCW 26.05.010(3).

Aaron did not have a history of domestic violence, the trial court essentially overruled the findings and orders of prior courts. Aaron made no effort to cite any authority for the court to do this, nor did Aaron seek to demonstrate that the court made any effort to meet, at minimum, the same threshold required of an appellate court – to make a finding that prior courts had abused their discretion.

Aaron's reliance on a comment by the FCI does not respond to the legal argument.² In addition, the responsibility of the court to make a determination about the parenting plan cannot be delegated to an investigator. *In re Parentage of Schroeder*, 106 Wn. App 343, 352, 22 P.3d 1280 (2001). Trial courts are not bound by an investigator's recommendation. *In re Marriage of Magnuson*, 141 Wash. App. 347, 350-51, 170 P.3d 65, 67 (2007) (citing *In re Marriage of Swanson*, 88 Wn. App. 128, 138, 944 P.2d 6 (1997); and *Fernando v. Nieswandt*, 87 Wn. App. 103, 107, 940 P.2d 1380 (1997)). In fact, overstating or overemphasizing the role of the guardian ad litem or family court investigator has been grounds for sustaining an appeal. *In re Guardianship of Stamm*, 121 Wn. App. 830; 91 P.3d 126 (2004).

² Note the Response improperly implies this record was not provided to the court. In fact, the entire Report was included at CP 271 through 368, as well as all the attachments, which are CP 369-873

The court was required to find that there was history of domestic violence because of the history of prior orders regarding domestic violence. Once there was a finding that there was a history of domestic violence, the trial court had no discretion to do anything other than issue .191 restrictions against Aaron.

1. Respondent Fails to Respond to the Need of .191 Restriction Given his Lifelong Daily Use of Marijuana

The Response does not dispute that the record demonstrated Aaron has admitted that he uses marijuana daily. He does not dispute that there was nothing in the FCI report, nor in the court's inquiry as to what actions Aaron took to ensure the children would be safe given his lifetime daily drug abuse habit.

Instead, Aaron responds by referencing the possibility that Jenny used drugs in 2012, based on a possibly false positive testing and Aaron's own statement that marijuana created a volatile situation in their family. CP 022 and 294.

It was an abuse of discretion for the court (and the family court investigator) to fail to take Aaron's admitted drug problem seriously and to ensure the children were not negatively impaired. Per Aaron's own statement in 2012, he believed that his parenting was impacted by his marijuana use. CP 294. The impact of marijuana also lingers in the system in such a way that it presumptively interferes with parenting functions if it

is consumed during or within 24 hours of residential time. As such, when a parent admits to daily drug use, the court has a duty to inquire about protections for the children, and if there are not sufficient protections to impose the protections via .191 restrictions.

2. The Respondent Concedes that he Has No Objection to Jewish Holidays

The Respondent stated, “I never made a fuss one way or the other about Jewish holidays.” The only person who objected to Jewish holidays being allocated was Judge Spanner. This is not only an abuse of discretion, but also violates the mother’s constitutional right to practice her religion and include her children in her religion. *See, In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 492, 899 P.2d 802 (1995). *Jensen-Branch*, held that there parents have a right to raise their child in their faith, even if there is a disagreement between the parents, a disagreement which is not present in this case.

3. “Other” Provisions

A. Invasion of Medical Treatment is an Abuse of Discretion

The Respondent limits his response to the issue of reporting medical information, substantial change of circumstances to “My best guess would be that [Judge Spanner] was trying to avoid having to deal with these very same issues again in the future.” This answer is not based in law, nor does it provide any support from the record. There is also no evidence in the

records that complying with treatment was at issue in this case. There was no allegation that either party had a provider that recommended a treatment that they did not comply with to the detriment of their parenting. As such, this portion of the order is not supported by substantial evidence.

Appellant reiterates her position that the trial court abused its discretion in requiring both parties to provide his opinion about their case to their mental health providers. Despite Aaron's lack of objection, Appellant believes that neither party should be required to submit the September 25, 2017 transcript to all their providers. Nor should the court be allowed to dictate the terms of their health care by requiring the parents to "engage in and remain in full compliance with all treatment recommendations of all present and future mental health providers and counsellors."

This is a radical invasion of the parties' private medical information and treatment. It creates an incredible opportunity for abuse, and given the history of domestic violence, this is particularly concerning. The court is essentially allowing either party and the court to invade the parties' right to privacy embodied in the doctor-patient privilege and the privacy protections outlined in the Health Insurance Portability and Accountability Act (*HIPAA*). 45 C.F.R. § 164.508. The court abused its discretion in believing

that its opinion somehow was more important than the core principals of privacy involved in the doctor-client relationship.

B. A Parenting Plan Cannot Include a Presumption to Modify

Again, Respondent's response to the argument in the appellant's brief was "My best guess would be that [Judge Spanner] was trying to avoid having to deal with these very same issues again in the future." The Respondent made no effort to identify anything in the record that would support this belief.

The Respondent failed to identify any statute or case that would support that there could be a legitimate reason to overrule the statute and the case law that parenting plans are meant to be permanent and stable. Modification are only allowed when there has been a substantial change of circumstances in the life of the nonmoving party or the child that was unknown at the time of trial. *See* RCW 26.09.260(1), *In re Marriage of Tomsovic*, 118 Wn. App. 96, 106, 74. P.3d 692 (2003), *In Marriage of Haseth*, 115 Wn. App. 563, 569-70, 63 p.3d 164, *review denied*, 150 Wn.2d 1011 (2003). *In re Welfare of R.S.G.*, 172 Wn. App. 320, 245, 289 P.3d 708, 714-15 (2012). (There is a strong presumption in favor of custodial continuity and against modification.)

It was an abuse of discretion to include an automatic trigger for modification in the parenting plan. The record does not substantiate any

need to overturn statute and case law. In fact, the record makes it clear that this kind of instability is more likely to increase the conflict and encourage Aaron to file contempt motions or modifications.³

4. Other Provisions - Skype calls and the long term imposition on the children's lives

Again, Aaron made no effort to respond to argument regarding the Skype calls with anything based on the record or based in law. He made several opinion statements alleging facts not in the record and that would be disputed by Appellant if declaration were appropriate in an appeal. He made no effort to address the issue of how the children's lives may be negatively impacted by the requirement to be at home on Tuesdays, Thursdays and Sundays at 5:00 p.m. until they reach the age of majority. *CP 959.*

Despite going outside the record and essentially making a declaration, Respondent made no effort to explain why he believes the draconian requirements of timing and location are required. He made no effort to rebut Appellant's argument that this provision will work as a detriment to the children (and likely their relationship with Respondent as they grow up and

³ This court could take judicial notice that this is in fact what Respondent has done by looking at the Odyssey System and seeing that Respondent has already filed a motion to modify (before someone other than Judge Spanner).

miss important opportunities and experiences to comply with this provision).

This provision is an abuse of discretion and should be overturned. If Skype calls are going to be a form of residential time, they need to be included in the residential provision and not the “other” provision.

5. Travel Expenses Must be Shared Proportionately

Respondent again fails to respond to this issue with any facts in the record or legal argument. There is no attempt to argue that the court provided any reason to deviate from the statute. There is no effort to argue that there is any case law precedent that would apply to require Jenny to pay for travel expenses as a form of punishment for moving the children. As no briefing was provided on this issue, this brief will not provide further discussion on this point, and simply refer the court to pages 30-32 of Appellant’s Brief for Appellant’s argument.

6. Reassigning the Case

The court should take judicial notice of Respondent’s filing in Benton County before a Judge other than Judge Spanner and reject Respondent’s objection to Judge Spanner would create an “easily exploitable situation” unless that is exactly what Aaron is attempting to do with his filing.

In addition, this Respondent's argument failed to respond to the legal arguments made on pages 32 through 36 of Appellant's Opening Brief. He made no effort to refute the record and the number instances that the court disparaged Jenny for her health and hearing impairment. Nor did the Respondent make any effort to cite a reason other than bias for refusing to provide Jenny with any religious holidays.

Judge Spanner's bias against Jenny impaired his ability to follow the law on numerous fronts. It would be inappropriate to send this case back to Judge Spanner to exercise the same discretion on remand.

III. Irrelevant and Prejudicial Portions of Respondent's Response Brief

Appellant had requested that, pursuant to RAP 10, that Respondent's Reply Brief be stricken in its entirety, or at minimum strike the portions of Respondent's brief that were merely self-serving declaratory statements not supported by the record and outside the scope of order under appeal.

In addition to making unsupported statements, Respondent attempted to make it seem as if Appellant excluded relevant information through many character assaults and the implication that the record under appeal had excluded the August 3, 2017 Family Court Investigator Report. The report was a part of the Appellant's original designation of clerk's

papers and is available at CP 271 through 368, along with the attachments, which are available at CP 369-873.

In the motion to strike, Appellant also pointed out that Respondent did not cite any legal authority to support his unsupported not-in-the record statements, as such his brief failed to respond to issues under appeal. Appellant is confident that, as the Commissioner ruling noted, this court can easily identify the many violations in Respondent's brief.

IV. Conclusion

Appellant respectfully requests this court to overrule the trial court's order as both the facts and the law do not support the support the court's findings based on substantial evidence. The court abused its discretion with its failure to follow the law and its efforts to invade the privacy of the parties. The court's effort to invade the family must be overturned and this case should be assigned to a neutral arbiter who will not rely on bias and opinion over fact and law.

Respectfully submitted on October 15, 2018.



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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

Marriage of Veca and Prichard

JENNY LYNN VECA,

Appellant,

And

AARON KEYES PRICHARD

Respondent,

NO. 356850

Declaration of Service –Reply Brief of
Appellant

Jill Mullins certifies as follows:

On Monday, October 15, 2018, I served upon the following true and correct copies of the
REPLY BRIEF OF APPELLANT to be sent by U.S. mail, postage prepaid, to Respondent at:

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And via Court Online Submission to prichard.webdesign@gmail.com

And via Email to: prichard.webdesign@gmail.com

I certify under penalty of perjury that the foregoing is true and correct.



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Per the court's direction, uploaded is Appellant's Reply Brief. this reply brief references the Motion to Strike, but does not include it as a motion within the brief.

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