

**FILED**

FEB 04 2019

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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

---

**IN RE:**

**BRIAN CONRADI  
Petitioner/Appellant**

**V.**

**TATUM WEBER  
Respondent**

**NO. 357074-III**

---

APPELLANT'S BRIEF

---

DAVID J. CROUSE  
Attorney for Appellant  
W. 422 Riverside, Suite 920  
Spokane, WA. 99201  
dcrouselaw@comcast.net  
(509) 624-1380  
WSBA #22978

## TABLE OF CONTENTS

Table of Authorities .....	Page 3
Assignments of Error.....	Page 4
Statement of Case .....	Page 5
Argument .....	Page 13
Conclusion .....	Page 27

**TABLE OF AUTHORITIES**

STATUTES AND COURT RULES

RCW 26.09.002.....20  
RCW 26.09.187.....18, 20  
RCW 26.19.080.....26

STATE CASES

Buckley v. Snapper Power Equip. Co., 61 Wn. App. 932 (1991).....14  
In re Firestorm 1991, 129 Wn.2d 130 (1996) .....13  
In re Welfare of H.Q., 182 Wn. App. 541 (2014)..... 17  
Johnson v. Johnson, 53 Wn.2d 107 (1958).....20  
Loudon v. Mhyreu, 110 Wn.2d 675 (2010).....13  
Marriage of Allen, 28 Wn. App. 637 (1981).....19  
Marriage of Schneider, 82 Wn. App. 471 (1996).....21  
Reddy v. Karr, 102 Wn. App. 741 (2000)..... 14  
Smith v. Orthopedics Int’l., Ltd., 170 Wn.2d 659 (2010).....14  
Smith v. Skagit County, 75 Wn.2d 715 (1969).....14  
State v. Cayetano-Jaimes, 190 Wn. App. 286 (2015).....16

ADDITIONAL AUTHORITY

The Community Property Law in Washington (Revised 1985), 61 Wash. L. Rev. 13, 56 (1986).....25  
Santosky v. Kramer 455 U.S. 745 (1982).....17  
Washington Family Deskbook, section 47.4(5).....19, 20

### **ASSIGNMENTS OF ERROR**

- I. The trial court erred by refusing to allow the father to obtain a parental evaluation/bonding assessment by a new provider where the prior court ordered evaluator was impermissibly tainted by inappropriate ex parte contacts by the mother's attorney, especially where the trial court then gave substantial weight to the tainted evaluator's testimony in its decision, thereby denying the father fundamental fairness in the presentation of his case.
- II. The trial court erred by determining that the mother should be awarded primary custody where the mother presented no witnesses other than the tainted parenting evaluator and where the father presented substantial testimony from key lay witnesses in addition to the testimony of his expert.
- III. The trial court erred in failing to order that all long distance transportation costs to be paid by each parent's percentage of income.

## STATEMENT OF THE CASE

The parties initially met in California and cohabited there. RP 656-660. The parties never married and the mother's pregnancy occurred very early in their dating relationship. RP 656-658 Ryland Conradi was born on February 6, 2012. RP 83. There is no dispute that the mother stayed at home for a number of months after the parties' son Ryland was born and provided quality care. RP 668-669. From there, the parties' claimed facts very substantially diverge. This substantial disagreement existed from the start of the case (initial declarations) through the completion of trial.

The father indicated that the mother phased back into work at a deli after a few months off and that she also resumed college. RP 662. The mother claimed very minimal work. RP 88. The father testified that the mother began pumping milk after a few months and that he was up many nights with Ryland feeding him and changed many diapers. RP 670-675. The mother claimed minimal involvement by the father in all of these areas. RP 86-88

The parties moved to Bellevue, Washington from California in October 2012 due to a job change by the father who worked as an energy trader. RP 663-667. The parties' relationship began failing after this move. RP 693-696. Their later move to a Kirkland home did not help. 697-698 The mother claimed that during this time in Washington, the father's

parental involvement, conduct and fitness were both minimal and inappropriate. RP 88-92 She claimed that the father's primary interests were hook-ups with women, baseball, and social activities. RP 91-92 She asserted that Ryland was a very low priority for the father. RP 92.

The father testimony in regard to his parental involvement was similarly opposite to the mother's claims. The father indicated that he worked 28 of 70 days when not called in during his "on-call week" and that he worked a maximum of 31 of 70 days if he was called in during the "on-call week". RP 675. He testified that his work schedule has been static through all his work in Seattle (and his later employment in Spokane). RP 675-676, 685. He testified that he was highly available to Ryland and took a very substantial, and at times primary, role in caring for Ryland. CP 244-248.

The mother testified that after the move from California to Bellevue, she did not return to full time work until September 2013. RP 1131-1132. The father testified that she returned to work full time by February 2013 at the latest (after the October 2012 move from California). RP 1222-1223. There was agreement that during this time, the mother began her junior year in college at Arizona State online. RP 1222. She attended college full time, in addition to working full time. RP 699. She also completed two internships. RP 1223.

The parties moved to Spokane in October 2014. RP 757. The father

was immediately employed full time (working the same above-described shift) and the mother began working full time at the Spokane Aids Network shortly thereafter. RP 757-763. The parties disagreed on which parent was more available given their respective work schedules. RP 763, 1152 The mother worked the standard Monday through Friday shift. RP 763. Thus, in a 70 day period (10 weeks), she would work 50 days. The father worked either 28 or 31 days in this same 70 day period.

The parties also substantially differed in their respective claims of involvement in Ryland's day to day care. RP 763-766, 1150-1156 The mother testified that she provided the substantial majority of such care. RP 1155-1157. The father testified that he appeared for every immunization and medical appointment. 679-680. He testified that his competency in their child's medical issues spared the child an unnecessary surgery. P34. The child's dental records were also provided. P56, which showed that the parties attended one cleaning together and that the father attended the other alone. Speech therapy records also show substantial involvement by both parents. P18, P23, P40.

After the parties' move to Spokane in October 2014, their relationship remained turbulent. RP 1152-1157 Things changed very dramatically in August 2015. The mother departed from Spokane to California on August 9, 2015, taking Ryland with her. RP 1161-1164. The mother claimed that she carefully planned the move to California 30 days in

advance. RP 1163-1165. The father and other witnesses disagreed, indicating that the mother moved to California to begin a relationship with an individual Stephen Bautista that she met in South Lake Tahoe weeks earlier. RP 788-791 Mr. Conradi testified that he received two days notice that a moving truck was coming, that Ms. Weber was loading her belongings, and that she was leaving. RP 778-780. He had time to schedule only an emergency counseling session the next day. RP 792-93, 1060-61. The mother ultimately made several moves while in California. RP 31-36.

This parenting action ultimately followed on November 13, 2015. CP 1-10. The matter duly came before the Spokane County Superior Court for a temporary parenting plan determination. CP 311-313. The assigned court commissioner, Tami Chavez, heard the temporary orders hearing. Commissioner Chavez described the moves by the mother as not “child friendly, child-focused, or child centered. That was a parent centered decision based on a new relationship. It had nothing to do with what was in the best interests of Ryland” The Commissioner described the move as “willy-nilly”, without a plan, without a job, without a home other than with her parents.” CP 251, P27 page 4 through page 8.

The Court Commissioner ruled that Mr. Conradi was the more stable parent and should have primary placement. CP 251-259. Superior Court Judge Julie McKay revised this determination on June 16, 2016 and ordered a 50/50 parenting plan between the parties. CP 274-275. Judge

McKay indicated that she could not determine which parent was the primary parent. CP 274-275. Because of the very substantial differences in the claims of the parties, Judge McKay ordered that the parties would complete a bonding and attachment assessment with a Spokane therapist agreed between counsel. CP 274-275.

The mother and her attorney subsequently filed a motion to instead “appoint a person to investigate and report to the court about what is in the child’s best interests” and requested that a “psychologist employed at Neuroeducation Spokane. Spokane Therapist, or Rockwood Behavioral Health Center” complete this evaluation. CP 288-293. The father opposed this requested change to a “parenting assessment” from the bonding and attachment assessment ordered by Judge McKay. CP 305-310. Commissioner Chavez found that the parenting assessment was “not appropriate for this case” and denied the motion. CP 311-313. The mother moved to revise this decision. CP 321-323. Judge McKay denied this motion to revise, indicating that the court’s prior order as to a bonding assessment “has not changed”. CP 395.

The parties were unable to agree on a therapist to provide a bonding and attachment assessment. The mother filed a motion for an ex parte order and a revision motion seeking a immediate bonding assessment. CP 403-422, CP 435-436. The father’s counsel provided a brief and declaration

outlining the bonding assessment issues. CP 457-458; CP 459-479. Judge McKay mandated compliance with the prior bonding assessment order and ordered that either Amanda Clemons or Renee Brecht provide the assessment. CP 480. Amanda Clemons was chosen by the parties.

On February 21, 2017, the father through counsel, filed a motion to strike the February 11, 2017 bonding assessment of Amanda Clemons, to order a bonding assessment with an alternate provider, direct the mother's attorney to provide the new bonding assessment provider with collateral information that had been signed under penalty of perjury and filed with the court, and to require the mother's attorney to provide the father with the declarations that he secretly provided to Ms. Amanda Clemons during the assessment process. CP 484-486. In sum, Brian Conradi and Tatum Weber participated in a bonding assessment with Amanda Clemons on or about January 23, 2017, and January 30, 2017, respectively. Ms. Clemons issued a "Parent Child Assessment" dated February 11, 2017. The report was mailed to the parties, with Mr. Conradi receiving his report on February 16, 2017. CP 484-486. See also the Amanda Clemons report, R156.

According to Ms. Clemons' report, she relied on declarations that had been filed with the court and served on counsel. R156. However, her report also reflected that she reviewed the declarations of Devion Basham,

APPELLANT'S BRIEF - 10

Baylee Weber, Sharon Weber, Laney Weber, and Laura Weber as well as the DCS final order, daycare records from 2016, Mr. Conradi's work schedule, and therapy records. R156. CP 484-486. None of these *declarations* were ever provided to the court or counsel. Mr. Conradi had no opportunity to review or respond to any allegations they may contain. Further, none of these third-party declaration from the mother were ever filed in the court file. Instead, the mother through counsel chose to secretly provide these declarations to the court-ordered bonding assessment provider. CP 484-486. The father would never have even known about these declarations but for the counselor mentioning them in her report. CP 484-486.

Further, per her report, Ms. Clemons also relied upon the DCS support order provided by Ms. Weber. Ms. Clemons also reviewed "Conradi work schedule" that was provided by Ms. Weber. She also reviewed "therapy records", and while it was unclear what "therapy records" are referred to, they were not provided to Mr. Conradi nor filed with the court in conjunction with this assessment. Mr. Conradi had no opportunity to provide any form of response as he was completely unaware that such materials were being provided. R156. CP 167.

The mother's attorney filed a declaration arguing that these secretly provided declarations and materials, which were never filed with the court,

APPELLANT'S BRIEF - 11

did not constitute an inappropriate bias. CP 505-512. Mother's counsel also filed a memorandum on this issue. CP 497-502. The father's attorney filed a reply declaration objecting to the mother's attempt to inappropriately bias Ms. Clemons. CP 523-525.

Commissioner Chavez found that the declarations at issue had not been provided to father's counsel or the court, and that to the date of the hearing they still had not been provided. CP 526-527. Commissioner Chavez denied the motion to strike, indicating that the trial court would "decide what weight shall be given to it once all information is known". CP 526-527. However, she ordered that a new bonding assessment would be performed with no collateral information provided. She also ordered the mother's counsel to provide the secret declarations by March 16, 2017. CP 526-527.

Mother's counsel then filed a motion to revise this order for a new bonding assessment. CP 540-541. Judge McKay granted the motion to revise and ordered that no new bonding assessment would occur. CP 548-550. She then relied substantially on the testimony of Ms. Clemons at trial.

## ARGUMENT

I. THE TRIAL COURT ERRED BY REFUSING TO ALLOW THE FATHER TO OBTAIN A BONDING AND ATTACHMENT ASSESSMENT BY A NEW PROVIDER WHERE THE PRIOR COURT ORDERED EVALUATOR WAS IMPERMISSIBLY TAINTED BY INAPPROPRIATE EX PARTE CONTACTS BY THE MOTHER'S ATTORNEY, ESPECIALLY WHERE THE TRIAL COURT THEN GAVE SUBSTANTIAL WEIGHT TO THE TAINTED EVALUATOR'S TESTIMONY IN ITS DECISION THEREBY DENYING THE FATHER FUNDAMENTAL FAIRNESS IN THE PRESENTATION OF HIS CASE.

The analysis begins with the transmission of declarations to Amanda Clemons by the mother's attorney that were never been filed with the court or served on father's counsel. These documents, as described in the statement of facts were entirely secret.

“Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing.” State v. Perala, 132 Wn. App. 98, 112-13 (2006). Washington case law is replete with examples of prohibited contact that extends well beyond the judge. The Washington Supreme Court in In re the Matter of Firestorm 1991, 129 Wn.2d 130 (1996) held that ex parte contact with an expert

witness employed by opposing counsel was prohibited where an expert was loosely retained by a power company to conduct an investigation regarding a firestorm. In her concurring opinion, Chief Justice Durham states, “Washington has a strong policy against ex parte contact between counsel and the experts of opposing parties. . .” Firestorm, 129 Wn.2d at 149. See also Loudon v. Mhyre, 110 Wash.2d 675 (1988) (holding that defense counsels contact with a party’s treating physician in a medical malpractice case is prohibited ex parte contact); Smith v. Orthopedics Int’l., Ltd., 170 Wn.2d 659 (2010) (holding ex parte communication between defense counsel and treating physician is improper); Buckley v. Snapper Power Equip. Co., 61 Wn. App. 932 (1991) (holding improper ex parte communication where a GAL passed a settlement offer from a judge to defense counsel but not plaintiff); Smith v. Skagit County, 75 Wn.2d 715 (1969) (holding improper ex parte communication where county commissioners permitted ex parte communications from proponents of a zoning decision while excluding communication from opponents of the decision).

The Court of Appeals in Reddy v. Karr, 102 Wn. App. 741 (2000), discusses these instances in great detail and is almost directly on point to the facts of the instant case. In Reddy, the mother of a child moved from

APPELLANT’S BRIEF - 14

Washington to Florida with the child and told the father that she would not be returning to Washington. The father immediately filed a petition for dissolution. The Superior Court ordered that an expert be assigned to the case in order to conduct a parenting evaluation in regards to the parties' ability to parent the child. As the father was the only party residing in Washington, the parental evaluation expert conducted interviews with the father alone. However, among other things, the father provided a taped phone conversation between the mother and the parties' son, *without the mother's knowledge*, that purported to show the mother's emotionally abusive tendencies. The expert transcribed the conversation and took it under consideration.

The Court in Reddy, held that the court appointed expert functioned in a quasi judicial role, and therefore the ex parte contact between the father and the expert was improper because a court-appointed expert functions as an arm of the Court. In explaining the holding, the Court of Appeals states, "The work of the court includes the full jurisdiction and responsibility to make temporary and permanent orders regarding parenting plans." Reddy, 102 Wn. App. 749 (citing RCW 26.12.190(1)). In assessing the needs of the family law court, the Court in Reddy states:

Family court investigators and evaluators assist the court to develop such orders as the court deems necessary to resolve parenting controversies. . . . These investigators and

evaluators are appointed by and serve at the pleasure of the court. When performing court-ordered functions, these investigators and evaluators act as an arm of the court. Courts have the grave obligation to serve the best interests of minor children. . . with respect to where the child shall primarily reside and other issues of great importance to the child, its parents and society as a whole. Courts do not ordinarily perform independent investigations; rather the adversary system of justice ordinarily requires that parties to litigation investigate and present evidence from which the court finds facts and applies legal principles in order to resolve controversies. But the unique obligation of the courts to serve the best interests of minor children. . . often requires independent investigations of allegations between warring parents, professional evaluation of parenting abilities, *determination of the degree of bonding between children and each parent* – not to mention the wisdom of Solomon when the most expedient solution might appear to ‘saw the baby in half. . . accordingly a surrogate is necessary. Family court investigators and evaluators performing court-ordered services do so as surrogates for the court. Reddy, 102 Wn. App. 749-50 (citing RCW 26.12.190(1),(2); 26.12.050(3)) (emphasis added).

Finally, the right to call one’s witness has long been recognized as essential to due process. State v. Cayetano Jaimes, 190 Wn. App. 286, 296 (2015).

Mr. DiNenna’s efforts in his declaration to argue that there is no proof that the non-filed/non-served declarations improperly influence Ms. Clemmons are unsupportable under any circumstance. CP 505-512. This was a clear attempt to unfairly bias the bonding assessment process by

providing materials that have never been seen by the father nor that could be responded to. It is an entirely inappropriate ex parte communication with a court-ordered provider.

This information that was secretly passed to the assessment provider was never discovered until after the bonding assessment had been completed. Had the provider not mentioned these materials in her report, they would have never been known. The report was thoroughly tainted and there was no way to “un-ring the bell”. Worse, the secret declarations provided by the mother’s counsel were not even signed under penalty of perjury, much less filed with the court. There was absolutely no assurance that the secret information provided was even truthful.

It is an incredible breach of the doctrine of fundamental fairness to prevent the father from obtaining a new bonding assessment under these circumstances. The assigned court commissioner granted the motion to allow the father to obtain a new bonding assessment. CP 526-527.

“It is well settled that parents have a fundamental liberty interest in the care, custody, and management of their children, which is protected by the Fourteenth Amendment.” In re Matter of the Welfare of H.Q., 182 Wn.App. 541, 550 (2014) citing Troxel v. Granville, 530 U.S. 57, 65-66, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000) (“The liberty interest at issue in this APPELLANT’S BRIEF - 17

case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court." ); Santosky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982).

The father had a right to obtain and present this critical information through a new bonding assessment given what had occurred through the impermissible ex parte contacts. Under the above-cited case law, there cannot be good cause shown for Judge Mckay to deny, on revision, the father's request to obtain a bonding assessment that was not tainted by impermissible ex parte contacts. This is particularly true where the Court relied substantially on this bonding in arriving at its decision. Due process and fundamental fairness was not provided to the father by this denial.

II. THE TRIAL COURT ERRED BY DETERMINING THAT THE MOTHER SHOULD BE AWARDED PRIMARY CUSTODY WHERE THE MOTHER PRESENTED NO WITNESSES OTHER THAN THE TAINTED PARENTING EVALUATOR AND WHERE THE FATHER PRESENTED SUBSTANTIAL TESTIMONY FROM KEY LAY WITNESSES IN ADDITION TO THE TESTIMONY OF HIS EXPERT.

RCW 26.09.187(3) sets forth the factors the court must consider in making residential placement provisions in a permanent parenting plan.

These factors are:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreement of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for further performance of parenting functions as defined in \*RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and development level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parent and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule;
- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

The court must evaluate the factors, listed in RCW 26.09.187(3), keeping in mind the "best interest of the child." The best interest of the child is the standard test for all parenting determinations between parents. Washington Family Law Deskbook, section 47.4(5), page 47-27. The court in Marriage of Allen, 28 Wn.App. 637, 648 (1981), described the test as follows:

"The 'best interests of the child' test compares the parents' competing home environments and awards custody, by a preponderance of the evidence, for the better

environment.”

“The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.” RCW 26.09.002.

RCW 26.09.187(3)(a)(i) makes the most important factor; “the relative strength, nature, and stability of the child’s relationship with each parent.” Assessment of the relationship between the child and each parent is nearly always at the heart of any parenting litigation. Washington Family Law Deskbook, section 47.4(2)(c)(ii), page 47-22. Recent cases stress the importance of a parenting award to the parent who has provided more significantly for the needs of the child and who, therefore, can provide the continuity necessary for the child’s physical and emotional well-being. Id.

Assessment of the child’s relationship with each parent has always been a significant factor addressed by the court. Johnson v. Johnson, 53 Wn.2d 107 (1958). In Johnson, permanent custody was awarded to the father. The trial court noted that there was a much “closer bond of affection” between the child and his father than between the child and his mother. The Supreme Court upheld the award of custody to the father and specifically noted that the child was happy in his surroundings (temporary

custody had been with the father) and had developed a “close affection” for his father. Id. at 112.

This analysis leads directly back to the denied bonding assessment. The Court relied on a tainted bonding assessment in evaluating these factors. Credibility issues in this case are huge given the substantial disparities in the facts alleged by each parent. The father has been rendered unable to present a complete case to the court.

The case law is very clear that the trial court is vested with broad great discretion in its parenting determinations and that such determinations will not be reversed unless there is an abuse of this discretion. Marriage of Schneider, 82 Wn.App. 471(1996). This trial court never heard from any witnesses on behalf of the mother, other than the bonding assessment provider Ms. Clemons who was called by both parties. Ms. Weber’s husband did not appear at trial and the court had no chance to assess him or his relationship with Ryland. Yet, the court relied on statements by the mother that they had a good relationship and that Ryland was close to her husband. There were no pictures of their house. There was no information as to whether the home is rented or owned. She provided no information from the daycare provider whether by live testimony or documentary. Not a single parent corroborated a friendship between their child and Ryland. She could not get any friend to testify. Even her mother chose not to testify. This is a stunning omission.

The father hired an expert, Bert Johnson, to testify about his bond with Ryland given that the trial court refused to allow a new bonding assessment. Obviously, this “force” of this expert is diminished by the fact that he did not get the opportunity to see the mother with Ryland. Still, he was able to provide insight on the use of the bonding and attachment assessment. He testified that where a child has been in a 50/50 schedule for so long, attachment theory really has no further application where both parents are securely bonded, as was the case here. He opined that in such a situation the Court should decide which current environment best serves the needs/interests of the child.

Ms. Clemons even offered similar guidance. She testified that a primary attachment always forms in favor of a stay-at-home parent unless they provide inappropriate care. She testified that the real issue is “Are both parents secure?” Here, she found very secure bonds with both parents (which further contradicts the mother’s parenting claims as to Mr. Conradi). She unambiguously testified that her report is just one factor of many to be considered in making a custody determination. She testified that the trauma of a move without pre-planning (she suggested that counseling would even be helpful before such a move) and the trauma of disparagement were very significant concerns.

Evidence showed that there was no comparison between the environments each parent offers to Ryland. Unlike the mother, the father’s

assertions were all backed by independent witnesses.

We know from the testimony of Elizabeth Quear, that Ryland's best friend Henry (her son) lives here. She testified that Mr. Conradi does an excellent job of getting the boys together. She testified that Mr. Conradi is an excellent father, adding that she would not have come to court to testify if this was not the case. She attests as to his strong bond with Ryland and his overall thoughtfulness. The Court heard about birthday parties, about regularly scheduled play-dates, and about the bond that exists between Ryland and Henry.

We know from the testimony of Annette Clark that Ryland has a very close bond with his cousins, who live locally and many which are of the same general age. We know that he has a close bond with his paternal grandparents who live in Post Falls. We know that get-togethers were scheduled every two weeks that Ryland was here. These were done at the grandparents' house and Ryland played with all of the cousins. We know that Ryland comes to his older cousins' football and baseball games and that they attend Spokane Indians games together.

Mr. Clark provided insight on the parents prior to separation. She testified at these get-togethers, happening several times per month prior to separation, that it was the father that she observed playing on the floor with Ryland. She observed the father take Ryland across the street to the park. She observed the father primarily providing care. She also observed in the

last few months prior to separation that Ms. Weber seemed to have phased herself out and was away for weekends at a time.

We know from Lauren Banghart that Ryland has a close relationship with his father and with the father's girlfriend Alyshah Gamble and her son Liam. Ms. Banghart discussed the close bonds she personally observed at the home, social outings, and at church. Ms. Banghart also testified as to the bond that existed between Ryland and Mr. Conradi's mother (who regularly flew to Spokane from California). As a co-worker, she also verified Mr. Conradi's work schedule and availability.

The pre-school pastor Kari Papst testified that Mr. Conradi regularly brought Ryland to kids' church, usually two weekends per month (which is all he had). She observed a great bond between the father and Ryland. She also noted that Liam came to kids church as well. She verified for this Court that she also saw a close bond between Ryland and Liam. She noted that Ryland and Liam had a great time at church. This is yet another independent, neutral observation. The church attendance also shows consistency with Ryland's schedule prior to separation, whereas the mother provides zero information. It shows yet another activity that Ryland truly enjoys and that is beneficial to him.

The Court was able to see and evaluate Alyshah Gamble, Mr. Conradi's significant other who resided with him. She testified about the engagement counseling and their plans to marry. She testified as to the

very slow process of getting to know each other and the slow introduction of the children. She testified about the extremely close relationship between her son Liam and Ryland. To the contrary, the trial court knew literally nothing about the mother's husband Mr. Bautista, whose complete absence was conspicuous.

Returning to Bert Johnson, he is a long term social worker who has a long background in therapy. I did not want the trial court to hear about the relationship between Mr. Conradi and Ms. Gamble on self-serving claims. I did not want the information on Ryland and Liam's friendship to be based on self-serving claims. That is why I also asked Mr. Johnson to observe interactions between them. Again, to the contrary, the trial court received nothing but self-serving and totally unsupported claims from the mother.

The trial court heard about Mr. Conradi's excellent work with Harvard park daycare. P53. The Court saw the high scholastic achievement offered by Northwest Christian School which the father exclusively pays for after doing research on the best Spokane private schools. P51. The Court saw the evidence on the low ratings for the mother's proposed school and the crime in the area. P52.

The totality of the evidence presented by the father makes it even more clear that the trial court relied on the testimony of the mother supported only by the bonding assessment of Amanda Clemons. The denial of the father's request for a new bonding assessment, and the

disregard of all of the evidence provided by him, is an abuse of discretion. Had the father been able to produce a bonding assessment that was not tainted, the result would have been very different especially given the strong support provided by neutral witnesses.

III. THE TRIAL COURT ERRED IN FAILING TO ORDER THAT ALL LONG DISTANCE TRANSPORTATION COSTS TO BE PAID BY EACH PARENT'S PERCENTAGE OF INCOME.

In the final parenting plan, the father receives only one visit per month in Spokane under the section 8(b) school schedule. He is allowed to have optional visits with his son in California under this same section. CP 597-605. However, in the final order of child support, at section 21, the father is ordered to pay for 100% of his trips to see his son in California. CP 611-617.

This is a direct violation of the applicable statute, RCW 26.19.080(3) which provides:

**(3) Daycare and special child rearing expenses, such as tuition and long distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation.**

Pursuant to the child support worksheets, the proportion of income was found to be 67% Appellant, 33% Respondent. CP 611-617 (section 21); CP 606-610. The trial court erred by not ordering long distance transportation expenses to be paid pursuant to these percentages.

#### IV. CONCLUSION

As with many parenting cases, this case is about evidence and credibility. Self-serving testimony of a party is never helpful unless supported by the testimony of independent witnesses. In this case, *nobody* supported the mother's version of facts at trial. To the contrary, the father's facts were consistently supported by multiple witnesses, his own expert, and admitted documents.

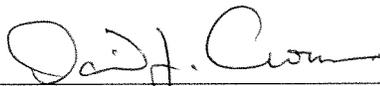
It is clear that this case turned on the bonding and attachment report and testimony of the court-appointed expert Amanda Clemons. Yet, there is no debate that Ms. Clemons received secret, ex parte declarations that were considered by her in arriving at her conclusions. The court commissioner ordered the Mr. Conradi be allowed to seek a new bonding assessment. Judge McKay reversed this order on revision and denied Mr. Conradi the ability to get this new bonding assessment. There was no good cause shown to deny this requested new assessment, especially in light of the circumstances that took place. Mr. Conradi was denied the ability to

APPELLANT'S BRIEF - 27

fair and appropriately present his case.

Petitioner requests that primary custody be awarded to him, or in the alternative, that the matter be remanded to a new trial judge for a new trial on the issue of custody/parenting plan with other relief as the appellate court may deem appropriate given the use of the tainted bonding assessment. This would include either striking the tainted assessment from consideration or giving the father the ability to seek a new assessment. Petitioner also requests that all long distance transportation costs be paid by each parent's designated percentage of income.

Respectfully submitted,



David J. Crouse, WSBA #22978  
Attorney for Brian Conradi, Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is a person of such age and discretion to be competent to serve papers. That on the 4<sup>th</sup> day of February, 2019, he personally served a copy of the Appellant's brief to the persons hereinafter named at the places of address stated below which is the last known address.

ATTORNEY FOR RESPONDENT

Mr. Paul DiNenna  
7 S. Howard, Ste. 425  
Spokane, WA 99201



DAVID J. CROUSE

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of February, 2019.



NOTARY PUBLIC in and for the State of Washington, residing in Spokane.  
My Commission Expires: 8/29/20