

FILED
Court of Appeals
Division III
State of Washington
11/20/2018 8:00 AM

No. 363007

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JOLENE S. MENEGAS, Petitioner,

v.

MICHAEL N. MENEGAS, Respondent/Appellant,

BRIEF OF MICHAEL N. MENEGAS, Appellant

Michael N. Menegas, pro se

3208 8th Street E

Lewiston, Idaho 83501

(208)305-1408

Mene0561@Vandals.uidaho.edu

TABLE OF CONTENTS

I. Introduction.....3

II. Assignments of Error4-5

Assignments of Error

No. 1-6 4

No. 7-12 5

Issues Pertaining to Assignments of Error 6

A. DID THE TRIAL COURT FAIL TO ENFORCE THE EXPRESS TERMS OF ITS ORDERS, WHICH COMPEL A CHANGE IN PRIMARY CUSTODIAN BASED UPON JOLENE MENEGAS’S REPEATED VIOLATIONS?

B. DID THE TRIAL COURT FAIL TO PROPERLY INTERPRET THE REVISED CODE OF WASHINGTON AND CITED CASE LAW REGARDING VISITATION RECOVERY, CIVIL PENALTIES, AND THE BEST INTERESTS OF THE CHILDREN?

III. Statement of the Case 6

IV. Summary of Argument 8

V. Argument 8-14

1) The Trial Court Holdings Violate Washington Statutory Law..... 8

2) Mr. Menegas Should be Named Primary Custodian.....11

VI. Conclusion14

VII. Appendix 16-22

Certificate of Service..... 23

TABLE OF AUTHORITIES

TABLE OF CASES

Am. Cont'l Ins. Co. v. Steen (2004), 151 Wash.2d 512, 518, 91 P.3d 864..... 9

Heather B. v. Daniel B. (2015), 125 A.D.3d 1157..... 12

In re Custody of Shields (2006), 157 Wash.2d 126, 140, 136 P.3d 117.... 8

In re Marriage of Wood (1983), 141 Cal. App. 3d 671.....12

State ex rel. M.M.G. v. Graham (2007), 159 Wash.2d 623, 632, 152 P.3d 1005..... 9

State v. Tili (1999), 139 Wash.2d 107, 115, 985 P.2d 365..... 9

State v. Watson (2002), 146 Wash.2d 947, 955, 51 P.3d 66..... 9

Wingert v. Yellow Freight Sys., Inc. (2002), 146 Wash.2d 841, 852, 50 P.3d 256.....9

STATUTES

RCW 26.09.002.....8, 11, 12

RCW 26.09.160(2)(b).....12

RCW 26.09.160(3)(a).....3, 10, 14

RCW 26.09.160(3)(b).....3, 10, 14

RCW 26.09.260(d).....3, 8, 9

I. Introduction

The Respondent, Mr. Menegas, is respectfully asking this Court to amend the Memorandum Opinion that was filed on March 22, 2018 [CP p. 7-9], and the order filed July 16, 2018 [CP p. 64-65] to grant Mr. Menegas statutorily directed relief and name Mr. Menegas as the primary custodian based upon trial court orders and cited finding of facts.

Mr. Menegas also respectfully asks that this Court remand this case back to the trial court to address all outstanding requested relief, including visitation recovery and statutorily required civil penalties that have not been addressed. Specifically, because Jolene Menegas has previously been held in contempt of court twice in three years for violations related to withholding the children, the requested relief in RCW § 26.09.160(3)(a), and, 26.09.160(3)(b), as well as 26.09.260(d) is commanded by statute under the Revised Code of Washington and is not discretionary by trial courts.

II. Assignments of Error

- [1] The trial court erred in the order filed June 05, 2017, which incorrectly ordered twenty-nine (29) days of lost visitation. [CP p. 2]
- [2] The trial court erred by failing to uphold the order of July 24, 2017, which expressly granted additional language regarding a change in primary custodian for failure to turn over children for visitation. [CP p. 4-6]
- [3] The trial court erred in the order filed on March 22, 2018, by denying that a change in primary residence was in the children's best interests. [CP p. 8]
- [4] The trial court erred by failing to uphold the additional language contained in the order filed March 22, 2018, which expressly states that any intentional violation of the parenting plan shall compel a change in the primary custodial parent. [CP p. 9]
- [5] The trial court erred in the Supplemental Memorandum Opinion RE Motion for Reconsideration, filed on May 03, 2018, by failing to properly administer the one hundred sixty-eight (168) days of visitation recovery due to Mr. Menegas. [CP p. 10-11]
- [6] The trial court erred in the Supplemental Memorandum Opinion RE Motion for Reconsideration, filed on May 03, 2018, by

denying the Respondent's Motion for Change of Primary Custodian. [CP p. 12]

- [7] The trial court erred by entering an order on May 24, 2018, which appointed a Guardian Ad Litem. [CP p. 57-60]
- [8] The trial court erred by entering an order on May 24, 2018, which set an adequate cause hearing. [CP p. 61]
- [9] The trial court erred in the order entered on July 16, 2018, by denying that adequate cause exists for a hearing for a change of custody. [CP p. 64-65]
- [10] The trial court erred in the order entered on July 16, 2018, by stating that Mr. Menegas has not submitted sufficient declarations for the court to find Jolene Menegas in contempt of court. [CP p. 64]
- [11] The trial court erred in the order entered on July 16, 2018, by stating that the issue of make-up visitation was previously litigated. [CP p. 64]
- [12] The trial court erred in the order entered on July 16, 2018, by stating that it finds the Guardian Ad Litem report to be thorough and its recommendations are in the best interests of the children. [CP p. 65]

Issues Pertaining to Assignments of Error

- A. **DID THE TRIAL COURT FAIL TO ENFORCE THE EXPRESS TERMS OF ITS ORDERS, WHICH COMPEL A CHANGE IN PRIMARY CUSTODIAN BASED UPON JOLENE MENEGAS’S REPEATED VIOLATIONS?**
(Assignment of Error 2; 4; 6; 7; 8; 9; 10)
- B. **DID THE TRIAL COURT FAIL TO PROPERLY INTERPRET THE REVISED CODE OF WASHINGTON AND CITED CASE LAW REGARDING VISITATION RECOVERY, CIVIL PENALTIES, AND THE BEST INTERESTS OF THE CHILDREN?**
(Assignment of Error 1; 3; 5; 11; 12)

III. STATEMENT OF THE CASE

Jolene Menegas was arrested and convicted of felony assault in Spokane County in 2018 for attacking Mr. Menegas with a weapon in front of the children during a scheduled visitation pick-up. [CP p. 73] In addition, the trial court has held Jolene Menegas in contempt of court twice within the past three years for withholding the children in violation of the court’s order and has failed to issue a disposition for an additional twenty-three (23) counts of contempt where the children were withheld from Mr. Menegas during his scheduled visitation.

On May 10, 2018, an Ex Parte Restraining Order and Writ of Habeas Corpus were issued by the trial court which authorized Mr. Menegas to immediately relocate the children into the Lewiston School District and naming Mr. Menegas the temporary primary custodian of the

two children in this case. This was outlined in pleadings filed by Mr. Menegas on May 08, 2018 [CP p. 26-52] and based upon the youngest child (A.D.M., age 13) being disenrolled from his Spokane school due to truancy and disciplinary issues. There was a review hearing on May 24, 2018, which extended Mr. Menegas being the primary custodian and issued an order for a guardian ad litem (GAL) appointment. [CP p. 57-60; p. 62-63]

The assigned GAL left that job position within 30 days of the trial court appointment. Accordingly, the investigation did not have sufficient time to interview school officials nor make any inquiry into why both children had twenty-plus unexcused absences in each of the previous two school years. The report did not investigate the children's Lewiston school, or issue any findings as to why Jolene Menegas has not faced sanctions for not complying with mandatory school attendance under Washington State law.

The trial court held that the GAL findings were complete, and the children's best interests would be served by remaining in the care of Jolene Menegas. The trial court judge followed the GAL recommendations and ordered that the children be allowed to unenroll in the Lewiston School District and relocate to their Spokane school,

removing them from Mr. Menegas's home and naming Jolene Menegas as the primary custodian [CP p. 64-65].

IV. SUMMARY OF ARGUMENT

Under RCW § 26.09.002, 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. Also under RCW § 26.09.002, 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.

Adequate cause exists to a primary custodian modification and has been previously found in this case under RCW § 26.09.260(d), which states that a modification to a primary custodian designation and parenting plan is allowable if the court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan.

V. ARGUMENT

1) The Trial Court Holdings Violate Washington Statutory Law.

The meaning of a statute is a question of law and is reviewed de novo. *In re Custody of Shields*, 157 Wash.2d 126, 140, 136 P.3d 117

(2006). The primary goal in construing a statute is to determine and give effect to the intent of the legislature, *State ex rel. M.M.G. v. Graham*, 159 Wash.2d 623, 632, 152 P.3d 1005 (2007), keeping in mind that the legislature's powers are limited by boundaries imposed by state and the federal constitutions. Courts shall begin their analysis by examining the text of the statute. *Id.* If the text is clear and unambiguous on its face, they do not resort to statutory construction principles, such as legislative history, even if they believe the legislature intended something else but did not adequately express it. *Am. Cont'l Ins. Co. v. Steen*, 151 Wash.2d 512, 518, 91 P.3d 864 (2004) (citing *State v. Watson*, 146 Wash.2d 947, 955, 51 P.3d 66 (2002)).

If a statute is susceptible to more than one reasonable interpretation, it is considered ambiguous. *Wingert v. Yellow Freight Sys., Inc.*, 146 Wash.2d 841, 852, 50 P.3d 256 (2002). However, a statute is not ambiguous merely because courts may conceive of different interpretations. *State v. Tili*, 139 Wash.2d 107, 115, 985 P.2d 365 (1999).

In this case, RCW 26.09.260(d) is not ambiguous, and compels that adequate cause exists in this action. Thus, the trial court's ruling that adequate cause does not exist contradicts this statutory language and contradicts its previous holdings, which found adequate cause exists to modify the parenting plan and primary custodian designation.

The trial court previously recognized it has incorrectly held that the sanctions contained in RCW § 26.09.160(3)(a), and, 26.09.160(3)(b) are discretionary [CP p. 10]. Upon a finding of contempt for a second time within three years, the statute mandates that Mr. Menegas is to have his 84 days of lost visitation doubled to 168 days. Also applicable is the reimbursement of costs and a mandatory \$250 civil penalty.

Because Mr. Menegas is statutorily entitled to 168 days of visitation recovery, the suggested visitation days to be made up in the now-controlling parenting plan [CP p. 13-25] is significantly lower than that and makes it wholly inadequate as a possible solution. That plan allows for a maximum recovery of ten days per month during the summer schedule based upon the previous week-on-week-off rotation. Instead, it simply orders that the children reside with Mr. Menegas for the entire summer. Mr. Menegas argues that it is not in the children's best interests to go six or eight weeks without seeing the other parent.

Also, the current order for visitation recovery extends beyond the trial court's jurisdiction based upon the oldest child turning eighteen in 2021 [CP p. 11]. The current order also does not specify or differentiate make-up visitation as to how or when the complete amount of lost days are recovered.

Mr. Menegas suffered harm because Judge Marinella recused himself against the wishes of the parties and Judge Libey did not follow the previous orders of the trial court, which compelled naming Mr. Menegas as primary custodian with Jolene Menegas's numerous contempt violations. Mr. Menegas has filed independent sworn statements and declarations which detail repeated actions of contempt. The trial court wrongly held that there is insufficient evidence of contempt despite cited police reports and witness statements sworn under penalty of perjury.

Judge Libey incorrectly held that adequate cause was not established. The trial court has previously held that adequate cause is established in accordance with the Revised Code of Washington for Jolene Menegas being held in contempt twice in three years.

Judge Libey failed to rule correctly on the outstanding contempt, as well as fines and penalties- relief that is statutorily commanded in this cause as well as failing to facilitate judicial continuity in the trial court's holdings.

2) Mr. Menegas Should be Named Primary Custodian.

The "best interests of the child" is the standard Washington State courts use in determining primary custodian designations. Under RCW § 26.09.002, the best interests of the child(ren) are served by a parenting arrangement that best maintains a child's emotional growth, health and

stability, and physical care. Also, under RCW § 26.09.002, 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.

Appellate courts have held that evidence that the custodial parent intentionally interfered with the noncustodial parent's relationship with the child is so inconsistent with the best interests of the child as to, per se, raise a strong probability that the offending party is unfit to act as custodial parent. *Heather B. v. Daniel B.*, 125 A.D.3d 1157 (2015).

In similar jurisprudence, the Ninth Circuit has held that proof that a change of circumstances has occurred and that a transfer of custody would be in the child's best interest are not necessarily absolute prerequisites where a transfer of custody is sought because of the custodial parent's interference with visitation rights. *In re Marriage of Wood*, 141 Cal. App. 3d 671 (1983).

In its Memorandum Opinion filed March 22, 2018, the trial court made the following findings of fact: [CP p. 7-9]

- [i] The Petitioner has continually and intentionally failed to comply with a lawful order of the Court, in violation of RCW 26.09.160(2)(b). Those actions have caused

Respondent to miss considerable residential time with the children.

- [ii] The Petitioner places the children in an untenable position of “choosing” visitation and refuses to enforce visitation.
- [iii] The Petitioner speaks derogatorily about the Respondent while the children are present.
- [iv] The Petitioner’s behavior has necessitated intervention with law enforcement.

In this case, based upon statutory provisions and recognized case law, it is appropriate to name Mr. Menegas as the primary custodian because he best maintains the children’s emotional growth, health and stability, and physical care. Also, a change in custodial designation is necessary to protect the children from continued physical, mental, and emotional harm.

The trial court findings of fact when coupled with the detailed and exhaustive evidence of Jolene Menegas’s non-compliance contained in the record would lead a reasonable factfinder to hold that the children’s best interests are NOT being served with Jolene Menegas as the primary custodian. Also evident is that Jolene Menegas’s actions have caused the children tremendous emotional harm because of her continuing to act with constant hostility, physically assaulting Mr. Menegas on several occasions

in front of the children, shouting obscenities during most visitation exchanges, by speaking poorly about Mr. Menegas to the children, and by wrongly withholding them from their father.

VI. CONCLUSION

Mr. Menegas respectfully asks for the following relief:

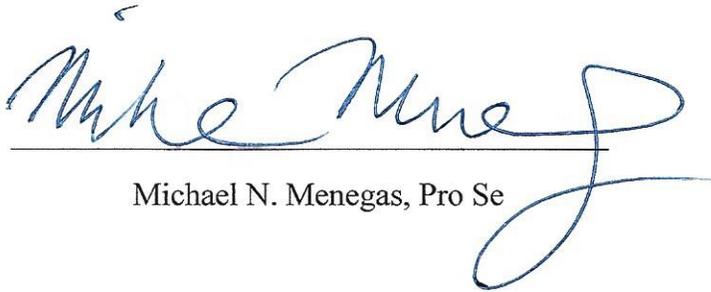
- [1] This Court should remand this case back to the trial court where an order naming Mr. Menegas as the primary custodian can be established based upon previous orders and to further the best interests of the children.
- [2] Under RCW § 26.09.160(3)(b), a trial court MUST grant Mr. Menegas reimbursement for costs and reasonable expenses incurred, totaling \$750. This Court should remand so that the trial court can enter a monetary judgment against Jolene Menegas.
- [3] Under RCW § 26.09.160(3)(b), a trial court MUST grant Mr. Menegas a two hundred fifty dollar (\$250) civil penalty, to be assessed against Jolene Menegas. This Court should remand so that the trial court can enter an appropriate monetary judgment.

[4] Under RCW § 26.09.160(3)(a), a trial court MUST grant Mr. Menegas twice the amount of time missed with the children due to the other parent's non-compliance for a second time in three years. This total is now **180 days** of visitation recovery. This Court should remand so that the trial court can enter an appropriate recovery order.

The Appellant, Michael N. Menegas, hereby swears under a penalty of perjury that all facts and statements contained herein are true and accurate.

Dated this 19th day of November 2018.

Respectfully submitted,



Michael N. Menegas, Pro Se

VII. APPENDIX

RCW 26.09.002

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. 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 26.09.160

Failure to comply with decree or temporary injunction—Obligation to make support or maintenance payments or permit contact with children not suspended—Penalties.

(1) The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit contact with children is not suspended. An attempt by a parent, in either the negotiation or the performance of a parenting plan, to condition one aspect of the parenting plan upon another, to condition payment of child support upon an aspect of the parenting plan, to refuse to pay ordered child support, to refuse to perform the duties provided in the parenting plan, or to hinder the performance by the other parent of duties provided in the parenting plan, shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by awarding to the aggrieved party reasonable attorneys' fees and costs incidental in bringing a motion for contempt of court.

(2)(a) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(b) If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court. Upon a finding of contempt, the court shall order:

(i) The noncomplying parent to provide the moving party additional time with the child. The additional time shall be equal to the time missed with the child, due to the parent's noncompliance;

(ii) The parent to pay, to the moving party, all court costs and reasonable attorneys' fees incurred as a result of the noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(iii) The parent to pay, to the moving party, a civil penalty, not less than the sum of one hundred dollars.

The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order, but in no event for more than one hundred eighty days.

(3) On a second failure within three years to comply with a residential provision of a court-ordered parenting plan, a motion may be filed to initiate contempt of court proceedings according to the procedure set forth in subsection (2)(a) and (b) of this section. On a finding of contempt under this subsection, the court shall order:

(a) The noncomplying parent to provide the other parent or party additional time with the child. The additional time shall be twice the amount of the time missed with the child, due to the parent's noncompliance;

(b) The noncomplying parent to pay, to the other parent or party, all court costs and reasonable attorneys' fees incurred as a result of the

noncompliance, and any reasonable expenses incurred in locating or returning a child; and

(c) The noncomplying parent to pay, to the moving party, a civil penalty of not less than two hundred fifty dollars.

The court may also order the parent to be imprisoned in the county jail, if the parent is presently able to comply with the provisions of the court-ordered parenting plan and is presently unwilling to comply. The parent may be imprisoned until he or she agrees to comply with the order but in no event for more than one hundred eighty days.

(4) For purposes of subsections (1), (2), and (3) of this section, the parent shall be deemed to have the present ability to comply with the order establishing residential provisions unless he or she establishes otherwise by a preponderance of the evidence. The parent shall establish a reasonable excuse for failure to comply with the residential provision of a court-ordered parenting plan by a preponderance of the evidence.

(5) Any monetary award ordered under subsections (1), (2), and (3) of this section may be enforced, by the party to whom it is awarded, in the same manner as a civil judgment.

(6) Subsections (1), (2), and (3) of this section authorize the exercise of the court's power to impose remedial sanctions for contempt of court and is in addition to any other contempt power the court may possess.

(7) Upon motion for contempt of court under subsections (1) through (3) of this section, if the court finds the motion was brought without reasonable basis, the court shall order the moving party to pay to the nonmoving party, all costs, reasonable attorneys' fees, and a civil penalty of not less than one hundred dollars.

RCW 26.09.260

Modification of parenting plan or custody decree.

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the

circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent

demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm

to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of November 2018, I caused a copy of the above document to be served upon the following individual in the manner indicated below:

JOLENE MENEGAS

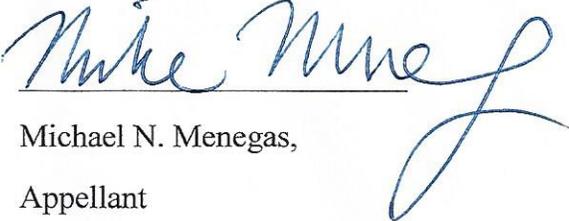
204 E. GARLAND AVE
SPOKANE, WA 99207

USPS Mail

Court Clerk

Electronic Filing

Court of Appeals, Division III


Michael N. Menegas,
Appellant

MICHAEL MENEGAS - FILING PRO SE

November 19, 2018 - 7:27 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 36300-7
Appellate Court Case Title: In re the Marriage of: Jolene Menegas & Michael Menegas
Superior Court Case Number: 06-3-00049-7

The following documents have been uploaded:

- 363007_Briefs_20181119192533D3741217_9834.pdf
This File Contains:
Briefs - Appellants
The Original File Name was MENEGAS APPELLANT BRIEF.pdf

A copy of the uploaded files will be sent to:

- jomenegas@yahoo.com

Comments:

Brief of Appellant, Michael N. Menegas

Sender Name: Michael Menegas - Email: Mene0561@vandals.uidaho.edu
Address:
3208 8th Street E
Lewiston, ID, 83501
Phone: (208) 305-1408

Note: The Filing Id is 20181119192533D3741217