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Appeal from the Superior Court of Spokane  
Honorable Ellen Clark, Retired

Natalie Moore  
Petitioner/Respondent

And

David Leeson  
Respondent/Appellant

No. **363759**  
Spokane Superior Court #16-3-00857-5

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Reply Brief of Appellant

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Gary R Stenzel  
Attorney at Law  
WSBA #16974  
1304 W College Ave LL  
Spokane, WA 99201

(509) 327-2000  
(509) 327-5151 Fax  
[Stenz2193@comcast.net](mailto:Stenz2193@comcast.net)

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## Reply Fact Comments<sup>1</sup>

The Respondent in this matter has provided a responsive brief with several factual accretions, however, those facts are either obfuscated, changed, or literally retold in a fashion to mislead this court, in this writer's opinion. The issues regarding those facts are as follows:

### P. 1 Section I. B.

There was no "conflicting evidence". The court relied exclusively, and improperly, on CPS's unfounded determination. No discussion of *any* of the allegations in the Petition: bruising, doctor's records, collateral declarations, Partners in Family Living interview/exam, proof of prostitution (Online pics on stripper pole at the Bunny Ranch in Nevada with invitations to men), suspended license, contradictory statements, perjured statements, unemployment & non-payment of support, chronic homelessness, etc. CP 1119-1126.

### P. 1 Section III. A.

Again, the Court relied in its ruling exclusively on the CPS determination. There was no mention of "weighing" "balancing" or even "considering" anything BUT the CPS finding. (CP 1162-1189)

### P. 1 Section III. D.

The issues in this case are not moot. The mother continues, even in her most recent declaration, to argue that the CPS finding was correct, binding: Decl 6/6/19 "There has never been a founded finding against me by CPS despite many investigations." 6/6/19 Decl

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<sup>1</sup> It should be noted that none of the Respondent attorneys allegation, or at least the bulk of her argument is not supported by references to the record. Therefore, there is ostensibly no verification of the things she has said. Where possible the Petitioner/Appellant has referred to the record.

Pg 1 "After David's last Petition to modify the parenting plan was dismissed by Judge Clark. 6/6/19 Pg 2

**P. 2 Paragraph 1. Line 2.**

Mr. Leeson's counsel did not cancel the mediation on 8/19/18

**P. 2 P. 2 Paragraph 2 line 2.**

Allegation that Ms. Moore WAS NOT a prostitute. This is patently false and very misleading. There are declarations from her own mother that she has a drinking and/or drug problem. These concerns continue to this day with a Decl from Tyler Powell. The father filed a montage of pictures of suspicious bruising on the child. In March 2018, Ms. Moore stipulated to a change of custody with limitations and this language: "Father stipulated in the CR2A settlement he will not pursue findings of abuse, neglect, or parental alienation per RCW 26.09.191. The concerns of the Court in granting the September 2017 Restraining Order remain part of the record. As part of the settlement, Father's will drop Contempt #3 - filed on January 16, 2018 - but the mother acknowledges that the evidence of contempt is part of the record." CP 1143-1158

**P. 2 Paragraph 2 line 6-7**

Mr. Leeson made 1 CPS referral about the filthy conditions of Ms. Moore's home. All other CPS referrals were made by other 3<sup>rd</sup> parties, including her mother and step-father, step-brother, and a former boyfriend. CP 225-231, 240-243 & 349-351

**P. 2 Paragraph 2 line 13**

Ms. Riley's 2 declarations are not contradictory. They address different issues. The first declaration was in defense of Mr. Leeson against Ms. Moore's attacks on his parenting.

**P. 3 Paragraph 1 line 3**

It is noteworthy that what Ms. Moore refers to as Mr. Leeson's "supporters", includes Mr. Moore's mother, step-father, step-brother, and 2 boyfriends. See again CP 225-231, 240-243 & 349-351

**P. 3 Paragraph 2 lines 1-2**

Ms. Moore's attorney did not provide any evidence on the record that Ms. Moore provided random drug tests. CPS made her take a few. I don't recall if she filed any in the Court file.

**P. 3 paragraph 2 lines 3-4**

Ms. Moore was not evicted before the adequate cause was heard. It was contemporaneous and she didn't move until about a month after the adequate cause hearing.

**P. 3 Paragraph 2 lines 4-5**

Mr. Leeson requested a GAL in his Petition - Motion for ExParte Restraining Order, Pg. 7

**P. 3 Paragraph 3 lines 1-4**

Ms. Moore was ordered to have visits in public. This was a less restrictive alternative to supervision. However, she knowingly and voluntarily took the child to her temporary home (flop house where she was staying with a BF.) This was not "nearly impossible to comply." All she had to do was have her visit in the community.

**P. 4 Paragraph 3, line 5**

As for the "[u]nauthenticated photos"; the mother did not deny that the photos were accurate or authentic. She was represented by Ms. Brandon who also never disputed the authenticity of the photos or the bruises, nor did she either object or file a motion in limine. In fact, Ms. Moore acknowledged the bruises and admitted they happened on her watch by

trying to explain away their origin. See *Gourley v. Gourley*, 158 Wn.2d. 460, 145P.3d11835 (2006); See also ER 1101(c)(4) regarding the DV hearsay rule.

**P. 4 paragraph 3, line 8**

As for the “[u]nauthenticated medical report”; again, the mother did not object or file a motion in limine. In fact, the bruising was stipulated.

**p. 5 paragraph 1, line 2**

There are pictures of Ms. Moore at the Bunny Ranch in Nevada (the notorious brothel) on a stripper pole inviting men to visit her. Her own statements against interest make her repeated and ongoing denials, with these pictures illustrated her lack of credibility. Mr. Leeson did discuss the connection between her prostitution and the numerous men, including felons, and a sex offender, going through her home that pose threat to Sylvia, and her lack of care for the subject child in this case. CP 1119-1126

**P. 5 paragraph 2, line 2**

Again, Mr. Leeson did request a GAL in his ex parte motion. This is a false statement by the Respondent’s counsel. See Motion for ExParte Restraining Order (and Motion for Temporary Orders) Pg 7, Par 15.

**P. 5 paragraph 3, lines 1-3**

The Respondent argues that “Assertions have been investigated by independent third parties and no such findings against Ms. Moore have been made.” The alleged assertions and investigations provided by the Respondent and her counsel were not allowed by the court. The motion to strike mentioned herein earlier, and subsequent order striking these alleged investigation results were stricken by the court as contradictory statements, hearsay, incomplete investigation, and lack of ability to cross examine for the hearing. (The mother/respondent was conning the CPS workers. Her explanation for her child’s bruising to the CPS worker contradicted her statements submitted to the court. The CPS worker ended her investigation after talking with the mother’s attorney). Additionally, the judge did not

even speak to the granting of the motion to strike and made no ruling on that issue before making a global decision that adequate cause should not have been found because of the CPS decision to not pursue the case. Therefore, how could the revision be complete without addressing that issue, since one of the major things the commissioner did was strike the CPS records for not being complete.

**P. 6 Par 1, Ln 1**

Regarding the allegation in the Respondent’s fact section that the Appellant said Ms. Moore’s arrest was “imminent.” What was said is that charges were pending.

**P. 6 Par 2, Ln 1-2**

It was clear from the judge’s comments that she did not read the “entire file”. This was clear from the fact that she showed no knowledge of the parties or facts during the revision hearing. She relied entirely on the CPS decisions to not go forward with their investigation.

**P. 6 paragraph 3**

There was credible corroboration of the allegations against the mother, including 2 reports from “Partners in Family Living” that referred to 2018 where they found “facial bruising” that was “significant” while with the mother. See June 2019 Declaration.

**P. 7 paragraph 2 lines 11 – 14**

The failure to appoint a GAL is reversible error and abuse of discretion given the voluminous allegations that are corroborated and credible pursuant to RCW 26.44.053: There were declarations and reports from doctors, health providers, investigators, Respondent’s mother, her step father, her boyfriends, as well as a history of illegal activity in her home that included drug and prostitution issues, as well as a lack of employment, and lack of stable home. CPS is not the only entity involved in the investigation of the mother’s negligence and abuse.

**P. 7 paragraph 2 line 16**

The pleadings referred to by the Respondent do not present any established “theory” or “proof”. There was nothing done by the revision judge regarding the motion to strike the CPS information, therefore how could the court make a decision based on CPS’s position in the case. Until the revision court dealt with the motion to strike and subsequent order striking those records by the commissioner, those records were not in evidence and were technically before the Revision Court. Also, there was no review of those records identified, therefore the court’s reliance on untested and inadmissible records would also be error until the judge overturned the order striking those records, and that did not happen. CP1162-1189.

**P. 8 paragraph 1**

The bulk of Mr. Leeson’s affidavits were by third parties. The records were not hearsay as they were submitted for purposes of medical care and no objection or ruling was made at any time regarding those records, by the Respondent. But she also redirected everything back on the father, never taking responsibility for her own actions, which is and was the most telling problem the mother had. See CP 815-1080

**P. 8 paragraph 2 line 8**

The case before the commissioner and revision judge was not based on “inferences”; To make such a statement the Respondent and her counsel would have to support such a statement. The commissioner made her ruling on substantial evidence, that was in some cases even supported by the Respondent’s own acknowledgement of the abuse allegation and the involvement of medical personnel and CPS. CP See entire record on appeal.

**P. 9 paragraph 2**

There was no “weighing” of the evidence by the revision judge, even though there was a myriad of evidence to support a finding of adequate cause and/or a detrimental change in circumstances. Then, to make things more confusing the judge’s entire ruling

was to give great “deference” to the allegation by the Respondent’s counsel in her argument that CPS did not pursue the matter, therefore, the allegations of abuse and negligence must not be true; ipso facto there should not be adequate cause. Again, the test for adequate cause was not even mentioned by the revision judge. She never once articulated any part of that test from any case on that issue such as *In re Marriage of Roorda*, 25 Wn.App. 849, 611 P.2d 794 (1980). The Judge simply concluded that if CPS said the mother was okay, then there must not be adequate cause. This analysis is insufficient. To say there was no adequate cause in this matter because of CPS on is to ignore all the negligence and abuse evidence that was both substantiated by medical professionals and other witnesses, and to completely ignore the mountains of corroborated evidence in this case. Such a failure to at least address that mountain of evidence is error and should be overturned as an abuse of discretion. See e.g. *In re Marriage of MacLaren*, 440 P.3d 1055, (Div. 1 2019).

**P. 10 paragraph 2, lines 6-10**

Counsel for the Respondent has indicated that the Motion to Strike the CPS records was not noted. This is a complete misrepresentation of the facts. See CP 1089-0190. The Motion to Strike was delivered to the Commissioner who found adequate cause, both counsel, and the Judge for the revision. The transcript of Commissioner Chavez’ ruling on adequate cause clearly shows at CP 1130-1140, that she ruled on that motion. (It was also in the file for the revision judge, the court filing was a clerical error that counsel for the mother is embellishing and misapplying in this matter.)

**P. 11 paragraph 2**

The Respondent’s “hearsay” argument in their brief flies in the face of their argument to allow the CPS records in. The “law of the case” doctrine basically indicates that if one party wants certain pieces of evidence to come in then all such evidence of

similar makeup should also come in. See e.g. O'Brien v. Artz, 74 Wash.2d 558, 445 P.2d 632 (1968). However, the large difference in this case is that the Respondent mother did not move to strike the medical records, the Petitioner did move to strike the CPS records. CP 1130-1140

**P. 11 paragraph 3**

Although stricken by the commissioner and not addressed by the Judge, the CPS letter does not “summarize” the CPS investigation.

**II. Law and Argument**

A. The Petitioner/father provided sufficient facts about the mother’s inappropriate and even dangerous parenting to meet the threshold adequate cause standard and his burden of proof, regardless of what conclusions CPS made about the mother’s parenting.

The father provided substantial evidence that the mother’s parenting time should be modified given her illegal activity as a prostitute, failure to protect their child such influences as well as presumptively allowing intimacy with men in the child’s presence, when there was substantial bruising on the child while in the mother’s care, when she used drugs while parenting the child, and her overall negligence of their child. Each one of the allegations that were supplied by the father in declaration form, with exhibits were sufficient to meet the Adequate Cause threshold of evidence needed for a adequate cause finding under RCW 26.09.260 & 270. Unfortunately, the Revision Judge focused on only one aspect of the case and did not weigh all the facts provided by the father in her decision. This was made even more troublesome because to only use the CPS position in this matter, meant

a failure to weigh all the evidence in the case, especially evidence that was stricken by the commissioner over evidence that was not stricken.

The Judge's failure to weigh all the evidence provided by the father and simply taking a black and white position that if CPS did not find abuse or neglect that that mandated a finding of no adequate cause, was unfortunate for several reasons. First, it clearly showed that she did not deal with the Commissioner's order striking the CPS records, but instead completely ignored that issue. This also meant that the judge never revised the commissioner for striking those records, and then to make things worse, she used CPS's position to decide to revise the commissioner's order on adequate cause. By failing to weigh all the evidence provided by the father of the mother's bad parenting, the judge ostensibly failed to follow the purpose of the Adequate Cause statutes. And then, by only using the stricken CPS position argued by the mother's attorney, and not even addressing the myriad of other bad parenting facts provided by the father about the mother, the judge abused her discretion by not properly following the expected process of looking at all the facts provided and basically allowing CPS to be the guiding finder of facts in such cases.

The *MacLaren* case is very helpful in this case because it discusses the process that should be followed in an adequate cause hearing, the purpose of an adequate cause finding, along with the burden of proof for such a finding. In that case, the court overturned a superior judge's denial of adequate cause because the judge seemed to ignore the father's list of substantial facts supporting his modification request, and instead looked at statute as a type of summary judgment

formula that if it was not met, the Petition should be dismissed. The appeals court said that although the judge seemed to use the proper analysis for an adequate cause determination, his finding that the father had not met his burden of proof was error; and his reliance on generalizations was inappropriate. Although the father showed that there was a clear change in the circumstances of the child, with regard to his autism, the judge indicated that the child's school could resolve those problems therefore, the purpose of the adequate cause statute that it was for the eventual best interests of the child would not be met by allowing the case to go to trial. As is the case here, the judge relied on the notion from the child's school that he would be okay with their help, and that all the problems and facts that he brought up showing a problem with his care was not important.

In overturning the trial judge's ruling that there was not adequate cause, the *MacLaren* court indicated the following: "The record does not support the trial court's decision. [The father] presented specific facts and evidence that would support finding a substantial change in circumstances and a present environment that is detrimental to the physical, mental, or emotional health of the children", regardless of what the school said they could do with and for the child's problems. *MacLaren* further clarified that an adequate cause hearing is not intended as a hearing for the entire case (like a CR 56 motion) and whether the Petitioner would "win" at trial or not. Gross generalizations such as the school can take care of the problem, or since CPS did not find a criminal problem should not be used in the determination of the adequate cause threshold. Especially if the Petitioner has substantial facts showing a clear change in circumstances and a detriment to the

child. In this case, much like the MacLaren case, Mr. Leeson provided substantial evidence that the finding of adequate cause should have been upheld and not revised.

B. The issue of mootness is not relevant to whether there was adequate cause based on the mother's problems outlined by the father.

The Respondent argues that since this appeal was filed they have agreed to adequate cause therefore this appeal is moot. However, that second adequate cause finding is for a different problem in the life of the mother. To be moot the trial court must have agreed to a complete finalization of a change in custody since the first allegations in this appeal are different from the newest allegations. This matter is not moot because these first allegations are important because they are different. The too need to stand the test of a trial and it may be that both adequate cause facts will both be found to be valid by a trial court, thereby adding several different issues to the limitations section of their new parenting plan (if the father wins at trial).

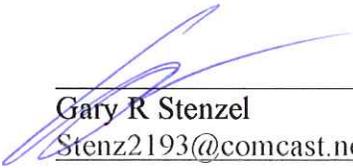
An appeal is only moot if it is the same issues, or there is no public policy issues of continuing and substantial public interest See *Washington Public Trust Advocates v. City of Spokane*, 120 Wn.App. 892, 86 P.3d 835, (Div. 3 2004). In this case, the issues in this case as to who should be awarded custody and that there is another petition for modification of the parties parenting plan , however, the issues are different in the new case where the Respondent agreed to adequate cause, and this case. There are different limitation issues in this appeal as compared to the new agreed custody modification case. If this case is not allowed to go to a final decision, the father would be precluded from using the detrimental things that he

found in the first adequate cause motion, for the new parenting plan. Additionally, there are substantial public policy issues in this case and the court's input would help in future adequate cause hearings since it is hoped that this court will ratify the MacLaren ruling removing gross generalizations about the best interests of children in custody modifications cases.

### III. Conclusion

The Respondent provided several assertions that are not founded on any of the records. In addition, the case of *MacLaren* clearly indicated that gross generalizations like "CPS did not find a problem with the mother" or "the school will take care of the children's problems" are not the basis for adequate cause, especially where there is a substantial record of harm to the child showing a clear indication of a substantial change in circumstances. Additionally, this particular part of this case is necessary to show how inappropriate the mother has been. It is not the same case; therefore, it is not moot.

Dated: 9-17-19

  
\_\_\_\_\_  
Gary R Stenzel  
[Stenz2193@comcast.net](mailto:Stenz2193@comcast.net)

**STENZEL LAW OFFICE**

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**Comments:**

Cover sheet amendment and removal of motion since it was not needed, and such motions are not allowed to filed with the brief. Most important is that the brief was not late.

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Sender Name: Gary Stenzel - Email: stenz2193@comcast.net  
Address:  
1325 W MALLON AVE  
SPOKANE, WA, 99201-2038  
Phone: 509-327-2000

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