

Washington State
Court of Appeals
Division III

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

David Leeson
Petitioner/Appellant

And

Natalie Moore
Respondent

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

Opening Brief of Appellant

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TABLE OF CONTENTS

I. **FACTS**
..... page 1

II. **Judicial Error** page 12

III. **Argument** page 13

 A. The standard in this state regarding abuse of children is to not solely rely on oft-times questionable CPS reports of founded or unfounded to make decisions about protecting children page 13

 B. Courts of Washington have said that CPS records that are not authenticated are hearsay and generally should not be used to determine custody issues in modifications page 14

 C. There was far more evidence than needed according to the law to the make a finding of Adequate Cause in a custody case using the preponderance of evidence standard..... page 16

 D. The Judge also failed to take into consideration the best evidence in the case and that was not the hearsay CPS, it was the declarations themselves and the physical evidence in the pictures..... page 18

IV. **Conclusion** page 19

CITATIONS TO AUTHORITY

Washington Supreme Court

Brown v. Spokane County Fire Prot. Dist. No. 1,
100 Wn.2d 188, 668 P.2d 571 (1983) p.16

Ferree v. Doric Co.,
62 Wn.2d 561, 383 P.2d 900 (1963) p.15

In re Custody of E.A. T.W.,
168 Wn.2d 335, 227 P.3d 1284 (2010) p.17

Tyner v. State Dept. of Social and Health Services, Child Protective Services, 141 Wn.2d 68, 1 P.3d 1148 (2000) pp. 13,14

Washington Court of Appeals

Grieco v. Wilson, 144 Wn.App. 865, 184 P.3d 668 (2008).....	p. 17
In re Dependency of D.C-M., 162 Wn.App. 149, 253 P.3d 112 (2011)	p. 13
In re Marriage of Fiorito, 112 Wn.App. 657, 50 P.3d 298 (2002)	pp. 15, 16
In re Marriage of Lemke, 120 Wn.App. 536, 85 P.3d 966 (2004)	p. 17
In re Marriage of Swaka, 179 Wn.App. 549, 319 P.3d 69 (2014)	p. 17
In re Marriage of Zigler, 154 Wn.App. 803, 226 P.3d 202 (2010)	pp. 15, 16
Link v. Link, 165 Wn.App. 268, 268 P.3d 963, (2011).....	p.19
Stiles v. Kearney, 168 Wn.App. 250, 277 P.3d 9 (2012).....	p.15

Statutes

RCW 2.24.050.....	pp. 2,10
RCW 9A.72.085.....	p. 19
RCW 26.09.170	p. 1
RCW 26.09.260/270.....	p. 11, 12, 14, 16, 18
RCW 26.44 et seq.....	pp. 11, 12, 18
RCW 26.44.050.....	p. 13
RCW 26.44.053.....	pp. 14, 16, 18

I. FACTS

David Leeson and Natalie Moore began a three-year relationship that produced Sylvia Leeson. Sylvia is now age five (5); Silvia has speech and cognitive delays that indicate a developmental age of three. CP 1124-1125. David and Natalie ended their relationship in August 2015. CP 717-719 & 457-467.

On April 24th, 2016, Natalie went to David's home, demanding early return of Sylvia. Natalie forced her way into David's home, allegedly kicked and scratched David in her attempt to take Silvia from his care. CP 52-73. Spokane Police found probable cause to arrest Natalie for this domestic violence and trespass on David. Ms. Moore agreed to an S.O.C. (Stipulated Order of Continuance) that stipulated to a guilty finding and a continuance for dismissal. CP 2-3 & 26-39.

The day following her arrest, Natalie filed a Petition for Residential schedule (4/25/2016) and served the same. See CP12-14. Both parties were pro se. The Court entered Temporary Orders making Natalie primary parent and giving David visitation. CP 77-83. David objected, indicating that he had been primary parent under RCW 26.09.170 because he had been laid off for the months preceding the Motion. David also argued that Natalie struggled to control her anger and that she lashed out in violence many times, including being arrested for domestic violence and trespass. CP 52-73. David suggested that Natalie was unstable because she struggled to maintain consistent employment, housing, and

relationships. Even so David's motion for revision to the Superior Court Judge was denied.

On 2/13/17, the parties entered a mediated Final Parenting Plan that shared placement of Sylvia 50-50, with Joint Decision-making. CP 140-141. However, almost immediately after entry of that Parenting Plan, disputes arose over suitable daycare, medical treatment for Sylvia's cognitive delays and asthma, even so, the mother refused to go to medication to resolve this problem. According to Mr. Lesson, Ms. Moore "forgot" to properly care for Sylvia on several occasions. CP140-163. In addition to this, Ms. Moore placed Sylvia at the Vanessa Behan Crisis Nursery without David's consent, despite being provided nine other options. Id. She had also left Sylvia with two individuals who had histories of serious mental illness, a Kaitlyn and Evelyn, without his knowledge and permission. CP 244-279. Natalie was eventually found in contempt of court in June 2017 for failing to comply with joint decision-making, and mandatory mediation. CP 188-194. Natalie sought a revision under RCW 2.24.050. The Court denied her revision request. CP 206.

Natalie has had six known residences during the two modification Petition periods (2016-2018): Craig Road, Paradise Rd, N Perry, Upriver Drive, Homeless/transient residing with friends, and Buckeye. Natalie has also had numerous jobs between 2016 and 2018. CP 307-308 (as to at least 4 of these referrals). However, even though the child support orders require complete disclosure of all changes of employment to the other

parent, she never disclosed any jobs. Ms. Moore is once again unemployed as of the time of the last hearing in this matter. CP 953-954. She is also not current on her child support. CP 1119-1126¹. She made one payment on the eve of the recent Adequate Cause hearing (which is the subject of this appeal) and one on the eve of the Revision of that order. Id. Her last payment was in December 2018. She has paid only \$20 toward medical expenses. Id.

Between the filing of this action and 2018 there have been approximately five CPS referrals against Natalie, regarding alleged abuse and neglect of Sylvia. There is also one CPS referral on Natalie pertaining to Ivy, Natalie's older child. Four of the five referrals were made by third parties not associated with Mr. Lesson. CP 1085-1088. If accurate, and the hearsay does not preclude it, Natalie parenting is and has been in serious question since the first pro se parenting plan. Each time CPS became involved, Natalie shifted the focus of the CPS investigations from her unstable lifestyle and possible abuse, to her unsubstantiated allegations of domestic violence by the Appellant. In those statements, she either omits or minimizes her own criminal DV charge and redirects the focus onto Mr. Lesson. CP 815-1080.

In September 2017, Natalie misrepresented to CPS the basis for the Court's concerns in the first Petition for Modification. She indicated

¹ This declaration is designated in the Praecepte as Declaration of David Leeson contempt#2 Reply. Instead this simply should have been a Declaration of David Leeson 8/20/18.

mention concerns about her involvement in prostitution, child abuse, failure to treat a child, witness tampering by threatening the witness with protective orders, misdemeanor vandalism, admitted mental health issues, and substance abuse. CP 1085-1088, see also 815-1080. CPS records indicates that they never investigated these concerns. See *Id.* & CP 1085-1088.

One of the things of great importance is that when the father/appellant would pick up his handicapped daughter Sylvia, she would often show up with frequent and suspicious bruises. *Id.* However, David felt powerless to act without concrete evidence. There are pictures of bruises on the inner part of Sylvia's upper arms, her ankle, her flanks, and her shoulders. CP 733-772. And the father had already expressed initial concern about the mother's anger problems in the beginning of the case. CP 52-73. There is a medical record from their pediatrician stating that he "could not rule out abuse." *Id.* & see CP 283-287. Natalie would also not let David into her home and was cautious to block any view of the interior of her home whenever he came to pick up Sylvia. CP 244-279. David testified that he was concerned by Natalie's secrecy but had no right to question her. All this time, because of her handicap, Sylvia was still delayed and could not fend well for herself, which in so many ways exacerbated the abuse concerns beyond what is necessary for normal children without handicaps. See CP 733-772.

In August 2017, Natalie's mother and Step-father approached David with concerns that Natalie was unable to care for her children; Sylvia, in particular. CP 225-231, 240-243 & 349-351. Natalie's parents provided declarations documenting Natalie's filthy home, explosive anger, substance abuse, petty vandalism, chronic lying, and a string of men in the home. CP 307-348. Several of the men going in and out of Natalie's home were felons and one was a sex offender, and the other reported her abuse to CPS ironically. CP 225-231. Natalie's parents also provided video evidence that showed Ms. Moore's home full of garbage, animal feces, dirty dishes, a hotplate on the floor, and no bed for Sylvia. Id. The video indicated Sylvia slept in the same room as her mother and the various men coming in and out of her life for various undisclosed reasons. This was especially bothersome because of Natalie's past involvement in prostitution. Id.

In September 2017, David brought his first Petition to Modify the Parenting Plan alleging neglect and abuse based on Natalie's parent's testimony and all the allegations outlined herein. CP 213-221. David alleged that Natalie had concealed her lifestyle and possible mistreatment of Sylvia from he, her family, the court, medical personnel, and CPS. Id. The court entered an ExParte Restraining Order and later temporary orders after having found ample evidence of neglect and mistreatment. CP 280-283. The assigned Court Commissioner was concerned that Natalie appeared to have barricaded the premises with garbage and a wood pallet

and that the things that were happening in her home were not in the best interests of this little handicapped girl. CP 457-471. Sylvia was placed primarily with David and Natalie's visits were restricted to day-time visits only. Id.

Before going to hearing on the father's Petition for Modification, on September 28, 2017, Ms. Moore stipulated to adequate cause. CP 359-361. Then, just before the actual custody trial in the month of February 2018, Natalie settled with a written settlement that was "read into the record", and then signed by the court. CP 1143-1158. At the settlement Exparte court hearing, the Commissioner asked Natalie if she understood and agreed to it and she said she agreed voluntarily. CP Id. The settlement was then incorporated into final orders and entered by the court. CP693-702. In summary, the settlement was that Sylvia would primarily reside with Mr. Lesson and Natalie had alternate weekends. Id. She also agreed to several restrictions in the new Parenting Plan. Id. It was also agreed and ordered that David would have sole-decision-making authority, and further he was also authorized to inspect Natalie's home from time to time for inspection. Id.

As part of the February 2018 settlement (Modification #1) the parties agree to not incorporate any findings of abuse or neglect by the mother. CP1143-1158 & 693-702. The father also dismissed his pending 2nd contempt [Id.], but preserved the evidence pursuant to the "*Timmons*

rule”², that the mother had taken the child to her filthy home in violation of the Court’s September 2017 Restraining Order.

In June 2018, only four months after finalizing Modification #1, their handicapped child Sylvia returned home from a visit with her mother with five or six quarter-sized bruises on the right side of her face; more specifically her forehead, temple, cheek, and jaw. David took Sylvia to Urgent Care for medical care. CP 773-780 & 808-814. As best she could, Sylvia reported to the Doctor that her mother had repeatedly hit her in the face with a metal spoon. Id. Armed with this new information, the Urgent Care department made another CPS referral against the mother. Id. Sylvia was seen the next day by Dr. Grubb for follow up care and he also made a CPS referral. Id. Sylvia was then interviewed by CPS where she Sylvia consistently reported the same story. CP 1985-1088. Around the same time, David discovered conclusive proof, including statements against interest, that Natalie had been, and was still, engaged in the sex-trade/prostitution, indicating that Ms. Moore’s prior denials about prostitution were likely perjured. CP 1119-1126.

Following this incident and the disclosure of the new information about still being involved in the sex trade, as indicated in Mr. Leeson’s second Petition for Major Modification of Parenting Plan (Modification

² In re Marriage of Timmons at 94 Wn.2d 594 (1980) stands for the proposition that if a parenting plan or custody order is entered by agreement without trial, the circumstances have never been litigated therefore, they may be brought up in any subsequent hearings or trial on custody and/or visitation issues (parenting plan issues).

there were concerns of abuse and neglect in the first Petition, the final orders did not include them as a reason for their entry, and the recent bruises on Sylvia's face were new evidence of continuing abuse and endangerment. These subsequent new negligent and abusive conducts, clearly constituted another substantial change in circumstances, which were the very reason for the restriction in Modification #1, and were of course not contemplated with modification #1. With his new 2nd Petition David's counsel approached the Ex parte court with an emergency motion and they granted another Ex Parte Restraining Order against Mom. CP 781-783.

Initially, Ms. Moore did not deny the abuse in a conference call with the father and his attorney. CP 1119-1126. However, after retaining counsel, the mother denied abuse but failed to plausibly explain the child's injuries. CP 815-108. The mother also continued to deny prostitution and involvement in the sex trade despite overwhelming evidence to the contrary. Id. The father's counsel then found that the mother new counsel submitted altered and incomplete CPS records for the adequate cause hearing. David filed a motion to strike the alleged CPS records, as clearly hearsay. CP 10889-1090. The Commissioner indicated that the CPS reports were not necessarily binding on her, especially when there was an issue of credibility of the one who was being investigated, and instead did not give those reports and finding much weight in her decision. CP 1130-1140. She indicated that this was primarily due to Ms. Moore's credibility

problems as to most of the issues in the case, and especially because of her lies about her alleged non-involvement in the sex-trade at the “Love Ranch”. Id.

More specifically, regarding CPS, the Court Commissioner indicated that a finding of “unfounded” by CPS can mean one of two things, that they completely investigated the case and found no basis to conclude that the parent was abusive, or that they could not get enough information to determine whether the abuse happened or not. Id. She concluded CPS was missing the information they needed to conclude that there was abuse from their investigation. Id. Again this was because of Ms. Moore’s lack of complete credibility. She said,

“And again, the bruising on the child and the CPS coming up with an unfounded doesn’t tell me it didn’t happen, it just means that they couldn’t figure out whether or not Ms. Moore abused the child; and that’s a pretty significant finding not something that is done lightly.” Id.

The Commissioner, then made a finding of Adequate Cause and said, articulating the adequate cause standard that if these facts are found at trial would that that would result in a modification; she said,

“So, for those reasons I am granting adequate cause. I think adequate cause to revisit this parenting plan is necessary. The previous case had these similar facts and allegations that this case now has. The problem wasn’t solved last time, but we still have that same pattern developing here. We need to figure out how to stop the pattern from moving forward. . . . this is an adequate cause and I need prima facie evidence so if that is true would that result in a modification of the parenting plan; and the answer to that question is yep, it certainly would.” Id.

Ms. Moore' and her counsel moved to revise the Commissioner's adequate cause finding under RCW 2.24.050. CP 1117-1118. The case was set to be heard by Judge Ellen Clark of Spokane Superior Court, now retired.

At the revision hearing Ms. Moore's counsel (herein after referred to as Attorney Brandon) started off her revision request with many misstatements of facts, some of which are as follows: 1). There were three [3] motions for adequate cause, trying to make it appear that the father was litigating the case too much, when in fact there were only two and those were virtually about the same problems that do not seem to stop; CP1162-1189. 2). That her client had successfully co-parented with another child of hers and the father successfully, when there are no facts to show that was true; Id. 3). That although there were allegations of "trespass" charges against Ms. Moore, it was not a part of the hearing by the commissioner, when in fact it was brought up in the file and was a domestic violence trespass not just a simply trespass; Id. 4). That there was no history of allegations of mistreatment of their child until recently, when in fact the file is replete with them along with contempt charges. See e.g. CP 23, 27, 65, 68, 75, 77, 81, 89, 92, and 93. 5). Attorney Brandon also miss-quoted the CPS history, fails to tell the judge that Ms. Moore lied to CPS and the commissioner, and failed to tell the revision judge that it was her own mother who made the initial allegations of abuse regarding Sylvia (Id.), and that there is also a CPS report as to her 11-year-old daughter. 6). And

of seeming most importance fails to emphasize that it was her client's credibility that was the main reason for the Commissioner's reduction in the weight of the CPS reports, and that the father's counsel moved to disregard the CPS reports. Id.

Attorney Brandon then went on in the revision hearing to primarily focus on the CPS report and the findings of "unfounded". She stressed that CPS are professionals that can be relied on, and completely avoided talking about why the Commissioner made the finding of Adequate Cause, and the standards under RCW 26.09.260/270. Id. However, of seeming importance is the fact that at the revision hearing, both counsel reiterated the requirements of RCW 26.44 et seq that a GAL be appointed to ferret this out alleged abuse. Id.

During Ms. Brewer's argument, she was making the point that the CPS records that were provided to the court were altered by the Respondent and that they themselves lacked credibility as to why they made an unfounded finding. Id. Nevertheless, Judge Clark found that the CPS records and the fact that the prosecutor did not file a criminal case against Ms. Moore was sufficient to say there was not a basis for the finding of adequate cause to tighten up the parenting plan from modification #1. Nor did she say she was going to keep the finding of adequate cause, leave the plan #1 in place and require a GAL to be appointed under RCW 26.44 to check out the credibility issues and why CPS did not make a "founded" finding. Id. The judge even used new

evidence not before the Commissioner about CPS new findings. Id. Instead she dismissed the entire Modification #2, not even addressing the issue of weight, hearsay or anything else about the CPS reports, nor the credibility issues. Id. Nor did the judge say anything about the fact that hundreds, if not thousands of adequate cause findings have been made without CPS ever being involved, nor the type of remedy the Commissioner felt was important, and that was to shore up the Plan #1 with clearer and more thorough restrictions to insure this handicapped child's well-being. Id. Finally, nothing was even mentioned by the judge about the mother's lies about being involved in the sex trade, no matter what kind of sex trade it was, and that fact that that issue was not dealt with in Plan #1 because of her lies. Id.

II. Judicial Error

Judge Clark committed error in the following manner:

1. She failed to rule on whether the CPS reports were hearsay or not;
2. She failed to consider the issue of credibility of the mother and why the Commissioner found Adequate Cause using the facts and the mother's questionable testimony on the incident;
3. She failed follow the law at RCW 26.44 et seq and leave the case viable and appoint a GAL to get to the bottom of what was clearly abuse of a child by someone, or possibly negligence;
4. She placed too much credence on the hearsay CPS finding of "unfounded", in making her decision, which.
5. She failed to follow RCW 26.09.270 and balance the importance of the affidavits/declarations to determine Adequate Cause primarily, versus hearsay CPS records.

III. Argument

- A. The standard in this state regarding abuse of children is to not solely rely on oft-times questionable CPS reports of founded or unfounded to make decisions about protecting children.

In the case of *In re Dependency of D.C-M.*, 162 Wn.App. 149, 253 P.3d 112 (2011), Division 2 indicated that a finding of “unfounded” had no bearing on whether the court could go further in a dependency case and require psychosexual testing on family members who were custodians of the children. They said, that given the fact that three children independently reporting sexual assaults by their parents was sufficient grounds for the court to order psycho-sexual evaluations, whether CPS made a finding of unfounded, or whether they were charged criminally with any related crimes. In dicta, involving a third-party custody case that was dismissed by the court, it was said that regardless of whether CPS makes a finding of “unfounded” or not, the courts have plenary discretion and “can still consider the facts that led to the abuse allegations being made” such as the children’s complaints themselves and the physical evidence. *Id.*

Negligent DSHS/CPS investigations occur often enough that there are several law suits by parents and/or children themselves to take notice of the problem. As they said in the case of *Tyner v. State Dept. of Social and Health Services, Child Protective Services*, 141 Wn.2d 68, 1 P.3d 1148, (2000), regardless of whether a CPS report turns out to be founded, unfounded or inconclusive, “RCW 26.44.050 creates a duty to a child

victim when investigating allegations of child abuse” to properly investigate the facts. However, the *Tyner* case itself shows that that does not always happen. It is the court’s duty, under this statute to make sure children are protected, regardless of any CPS findings. Especially if there are allegations of abuse, RCW 26.44.053 indicates a mandatory duty that the court “shall” appoint a Guardian Ad Litem to investigate such allegations. Interestingly, such a GAL investigation cannot occur in a modification case unless RCW 26.09.260/270 Adequate Cause is found.

With regard to a GAL appointment, ironically, both counsel stipulated to a GAL in the revision hearing but that was ignored by the judge, who said nothing about that important requirement in our law. It begs the question of how hard would it have been for the court to simply appoint someone to be a GAL and look into this and report back whether or not to keep the Adequate Cause finding in place. Balanced against the harm that could be perpetrated, versus the process it would have been much more appropriate to protect the child and follow the statute.

- B. Courts of Washington have said that CPS records that are not authenticated are hearsay and generally should not be used to determine custody issues in modifications.

Hearsay in a case is not admissible to prove the viability of someone’s claim or argument pursuant to ER 802. In addition, police reports and CPS reports are not admissible unless authenticated. See ER 901 & 902. Looking at the court’s orders and findings, it clearly appears that she incorporated her oral ruling in her findings; therefore, they can be

reviewed to see if she allowed hearsay to influence her decision. In this case, the “[o]ral ruling [was] incorporated” in the revision order, therefore, the transcript may be reviewed as part of the order. See *Stiles v. Kearney*, 168 Wn.App. 250, 258, 277 P.3d 9 (2012) (quoting *Ferree v. Doric Co.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963)).

The court’s transcript clearly shows that the primary basis of this revision of the Court Commissioner’s ruling on Adequate Cause was based primarily on the CPS reports of the abuse being unfounded, and that no criminal charges were filed. CP _____. The court made it clear by not only the oral ruling, but by her questions to the father’s counsel, that she gave great deference to the finding by CPS of being unfounded, which were never authenticated and in fact were argued to be redacted and even “altered”. Further in reading the Commissioner’s ruling it’s clear that she did not use the CPS reports in total, and only considered them for their weight, which did not seem like much given the mother’s extreme lack of credibility. CP_____.

Reviewing courts review a judge's decision to modify a parenting plan for abuse of discretion. *In re Marriage of Zigler*, 154 Wn.App. 803, 808, 226 P.3d 202 (2010). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Zigler*, 154 Wn.App. at 808-09 (quoting *In re Marriage of Fiorito*, 112 Wn.App. 657, 664, 50 P.3d 298 (2002)). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices

given the facts and the applicable legal standard. *Id.* It is based on untenable grounds if the factual findings are unsupported by the record, and it is based on untenable reasons if it is based on an incorrect standard, or the facts do not support the legal conclusions. Fiorito, 112 Wn.App. at 664. The admission of inadmissible evidence can also be a ground for finding error, but only if the error affects the outcome of the case or is prejudicial to the case. See *Brown v. Spokane County Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 196, 668 P.2d 571 (1983).

In this case, the reliance by the court on the CPS reports as unfounded was error and was objected to by the father's counsel. In fact, it can be said that the judge did not rely on anything else but the CPS unfounded findings and did not care if the record was changed. There was also no reliance on the issue of credibility, the fact that the mother lied about her involvement in the sex-trade, and more importantly the fact that not even the mother herself or her counsel disputed that the child was abused by someone. Take away the unfounded findings of CPS hearsay reports, which in fact was used to prove the matters asserted by the mother, and you are left with an abused child, in the custody of the mother. Why RCW 26.09.260 and RCW 26.44.053 were passed. It clearly was error for the judge to conclude the way she did in this case, and it is clear she did so and based it on the hearsay from CPS.

C. There was far more evidence than needed according to the law to the make a finding of Adequate Cause in a custody case using the preponderance of evidence standard.

The principle of Adequate Cause was clearly announced by the Family Court Commissioner when she stated in sum, that there was sufficient evidence of Adequate Cause to show that if the facts were proven at trial, the parenting plan orders would change. CP ____ As they said in the case of *In re Marriage of Swaka*, 179 Wn.App. 549, 319 P.3d 69, (Div. 2 2014), if there are prima facie allegations that would support “inferences that would establish grounds to modify the parenting plan,” adequate cause should be found. *Grieco v. Wilson*, 144 Wn.App. 865, 875, 184 P.3d 668 (2008), *aff’d sub nom. In re Custody of E.A.T.W.*, 168 Wn.2d 335, 227 P.3d 1284 (2010). If it can be proven at a minimum that the evidence is sufficient to support a finding on each fact the moving party must prove to modify the parenting plan, adequate cause should be found. *In re Marriage of Lemke*, 120 Wn.App. 536, 540, 85 P.3d 966 (2004).

In this case, if the trial court could find that the mother caused these bruises either directly or indirectly by her negligence, then the Commissioner was correct in finding adequate cause. On the other hand, since the entire basis for the revision judge’s ruling was the CPS reports, then she was obviously saying there was no further reason to go forward; however, as indicated earlier in this brief, CPS should not be controlling on the issues of custody. They make mistakes all the time, and to make that decision on what was clearly hearsay means that in terms of policy, any abusive parent who can fake or talk their way through a CPS

investigation and get a unfounded finding, can beat the Adequate Cause test. This would leave room for a lot of harm and also potentially violates RCW 26.44.053 et seq. which was passed to weed out abuse of children in this state. In the long run, credibility is critical for a trial judge, how can a judge say that even the CPS findings are valid if the mother, who had custody of the child when these marks happened continuously lies about her life style and bad choices. Finally, at least keep the case alive and appoint a RCW 26.44 GAL to investigate the alleged abuse as is required, and if their report exonerates the mother so be it, but if it does not and she has some culpability in the injuries to this child the Commissioner was absolutely right. It prevents more harm to this very vulnerable child.

D. The Judge also failed to take into consideration the best evidence in the case and that was not the hearsay CPS, it was the declarations themselves and the physical evidence in the pictures.

RCW 26.09.270 has been the same for many years, and clearly articulates the standard of how adequate cause is to be found. It states that,

A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted. (Emphasis added)

This statute could not be clearer, the obvious emphasis is on affidavits/declarations, and says little or nothing about police reports, CPS reports, or unauthenticated doctor reports. RCW 9A.72.085 also makes it clear that when we are talking about evidentiary or legal matters, statements under oath and/certified under penalty of perjury are the process that is used in this state to prove the factual allegations. The Adequate Cause decision is to be made by a review of “affidavits or declarations” under oath, not hearsay or conjecture about what went on with the DSHS investigation process, especially when there is a substantial credibility issue and severe harm to a handicapped child’s head.

It also seems to be a statutory violation in and of itself to use hearsay to completely decide Adequate Cause, since it violates the entire purpose of the statute, that is the use of statements under oath to determine this threshold issue. See e.g. *Link v. Link*, 165 Wn.App. 268, 268 P.3d 963, (2011). Once the court starts to forget this principle we are moving to simply allowing any statement that has little or no credibility to drastically affect children’s lives.

IV. Conclusion

The Appellant in this case is the father of a very young handicapped little girl. The mother, is a person with a history of involvement in the sex trade, prostitution, and the child has been injured several times in her care. There have been two final parenting plans that ended up giving the father

primary custody. That plan included restrictions on the mother, however, after a few months those restrictions did not seem to be doing any good. She continued to have substantial problems with her care of their daughter. The father filed an even more restricted Parenting plan modification Petition because of some pretty menacing head bruises which occurred on Mom's watch.

The father filed a request for Adequate Cause under RCW 26.09.260/270 and the mother filed CPS records which were objected to by the father's counsel as hearsay and incomplete. The assigned court commissioner did not give the CPS records much weight because of some clear credibility problems in the Mother's testimony about her past criminal behavior, especially in the sex trade, and found adequate cause. Besides the restraining orders the father requested the mother had several restrictions on her time. Both parents stipulated in argument that a GAL should be appointed to get to the bottom of the abuse.

The commissioner's orders were appealed to the presiding family law Judge in Spokane County. Judge Clark relied on CPs records that came out after the commissioner's hearing that said the findings were unfounded and overturned the Petitioner and Adequate Cause. She did this in spite of a stipulation to a GAL under what appeared to be RCW 26.44.053 that makes a GAL mandatory if there are any abuse allegations.

The Judge erred by accepting hearsay CPS reports without complete certified reports why it was unfounded, and accepted paperwork from DSHS that was not a declaration which is required under RCW 26.09.270 for any finding of adequate cause. The revision order should be overturned in the Appellant's opinion.

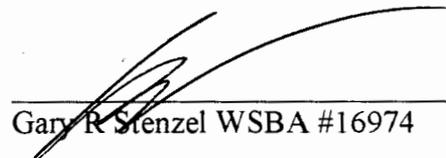
Respectfully submitted this 1st day of April, 2019 by,



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Affidavit of Service by Mail

On April 1, 2019, I did personally deposit a true and correct copy of the Motion for Extension of Time to file opening brief to Lisa Brewer Co-counsel at Lisa Elaine Brewer, Law Office of Lisa Brewer, 104 S Freya St Ste 226B, Turquoise Flag Bldg., Spokane, WA 99202 – 4887 and Sarah Lynn Brandon at 221 N Wall St Ste 624. Spokane, WA 99201-0826 in this matter by depositing said copy in and with the US Postal Service on this date. I make this statement under penalty of perjury under the laws of the State of Washington, on this 1st day of April 2019 at Spokane, WA.



Gary R Stenzel WSBA #16974