

FILED

No. 365816

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, Division III
OF THE STATE OF WASHINGTON

In re the Custody of:

Children:
E.E. and M.W.

Appellants:
Brandi Smithers, Cheri and Peter Johnson, and
Jana Johnson

and

Respondents:
Sarina Farhner-Pirkey and Michael D. Pirkey

AMENDED BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
A. INTRODUCTION	1
B. ASSIGNMENT OF ERROR	1
1. Assignment of Error	1
2. Issues Pertaining to Assignment of Error	1
C. STATEMENT OF THE CASE	2
D. ARGUMENT	7
1. Standard of Review.	7
2. Abuse of Discretion.	7
3. The trial court applied the wrong legal standard.	8
4. No reasonable judge would have reached the same conclusion considering the unrefuted evidence in this case.	12
E. CONCLUSION	25

TABLE OF AUTHORITIES

	Page(s)
<u>Cases</u>	
<i>Byerly v. Madsen</i> , 41 Wn.App. 495, 499, 704 P.2d 1236 (1985)	8
<i>In re Custody of Halls</i> , 126 Wn.App. 599, 606, 109 P.3d 15 (2005)	7
<i>In re Dependency of Schermer</i> , 161 Wn.2d. 927, 941, 169 P.3d 452 (2007)	24
<i>In re Marriage of Mangiola</i> , 46 Wn.App. 574,577, 732 P.2d 163 (1987)	13
<i>In re Marriage of Hoseth</i> , 115 Wash.App.563, 569, 63 P.3d 1280 (2001)	8, 9
<i>In re Marriage of Timmons</i> , 94 Wn.2d 594, 598-599, 617 P.2d 1032	10, 11
<i>In re Parentage of Jannot</i> , 149Wn.2d 123, 126-127, 128, 65 P.3d 664 (2003)	7, 12, 13
<i>Seattle-First Nat’l Bank v. Kawachi</i> , 91 Wn.2d 223, 225, 588 P.2d 725 (1978)	10
<i>State v. Rohrich</i> , 149 Wn.3d 647, 654, 71 P.3d 638 (2003)	8
<u>Statutes</u>	
RCW 9A.08.020	21
RCW 26.09.002	16
RCW 26.09.004	23
RCW 26.09.260	8, 9
RCW 26.09.270	1

A. INTRODUCTION

In this parenting plan modification case, the trial court inexplicably failed to find adequate cause as required by RCW 26.09.270. On appeal, the appellants are claiming that adequate cause was established by the declarations that were filed and that the trial court should have set a date for hearing on an order to show cause why their requested modification should not be granted. The appellants believe that the trial court's decision is contrary to law and that there is no evidence or reasonable inference from the evidence to justify the trial court's decision. Further, the appellants believe that substantial justice has not been done in their case.

B. ASSIGNMENT OF ERROR

Assignment of Error

The trial court abused its discretion by failing to find adequate cause for the parenting plan modification.

Issues Pertaining to Assignment of Error

1. The trial court applied the wrong legal standard.
2. No reasonable judge would have reached the same conclusion with the unrefuted evidence in this case.

C. STATEMENT OF THE CASE

The appellants, Cheri and Peter Johnson, husband and wife, and Jana Johnson, a single woman, are requesting that custody of the children, E.E., age 10, and M.W., age 8, be changed from the respondents, Sarina J. Fahrner-Pirkey and Michael D. Pirkey (Pirkeys), husband and wife, and awarded to them. Their Petition to Change a Parenting Plan was filed on November 8, 2018. CP 1-21.

They assert that the children's current living situation is harmful to their physical, mental or emotional health and that it would be better for the children to change the parenting/custody order. CP 1-21.

Their Petition to Change a Parenting Plan is supported by comprehensive declarations, CP 74-152, including the Declaration of Mary A. Dietzen, Ph.D. CP 40-64. Dr. Dietzen is a licensed psychologist from Spokane and has worked with adults, children, and families for more than 40 years. Dr. Dietzen has been qualified as an expert and appointed by courts in Washington to provide opinions, assessments, and evaluations regarding the creation or modification of parenting plans. CP 40-64, at 40.

In response, the Pirkeys filed the Declaration of Sarina Pirkey, a 2-page document, which does not refute any of the facts alleged by the appellants in their petition and declarations. CP 158-159.

Cheri Johnson (Cheri), Jana Johnson (Jana), and Sarina J. Fahrner Pirkey (Sarina) are sisters. Brandi Smithers is Sarina's daughter and E.E.'s mother. Sarah Wilshire is Jana's daughter and M.W.'s mother. CP 1-21, CP 74-98, CP 109-121.

The Pirkeys were given the nonparental custody of E.E. under an Agreed Order Re Nonparental Custody entered in Grant County on July 31, 2015. CP 13-16.

The Pirkeys were given the nonparental custody of M.W. under a Final Non-Parent Custody Order entered in Grant County on February 3, 2017. CP 17-21.

The appellants, Cheri and Peter Johnson, were never a party to either Grant County case. CP 185-186.

Brandi Smithers is asking that custody of her son, E.E., be changed. CP 1-21, CP 127-130. Sarah Wilshire is also asking that custody of her daughter, M.W., be changed. CP 1-21, CP 122-126.

The undisputed facts as alleged by the appellants in their petition, and supported by their declarations, are as follows:

1. The Pirkeys have repeatedly denied Brandi Smithers contact with her son, E.E., in violation of the current court order. CP 1-21, CP 127-130, CP 40-64.

2. The Pirkeys have intentionally acted to estrange E.E. from his mother, to damage E.E.'s opinion of his mother, and to impair the natural development of E.E.'s love and respect for his mother. CP 1-21, CP 127-130, CP 40-64.

3. The Pirkeys have failed to foster any affection between M.W. and her mother, Sarah Wilshire. CP 1-21, CP 122-126, CP 40-64.

4. The Pirkeys have failed to exercise appropriate judgment regarding the welfare of E.E. and M.W. CP 1-21, CP 74-98, 99-108, CP 109-121, CP 40-64.

5. The Pirkeys have failed to attend to the adequate education for E.E. and M.W. CP 1-21, CP 74-98, CP 99-108, CP 109-121, CP 40-64.

6. The Pirkeys have failed to assist E.E. and M.W. in developing and maintaining appropriate interpersonal relationships. CP 1-21, CP 74-98, CP 99-108, CP 109-121, CP 40-64.

7. The Pirkeys terminated E.E.'s contact with his aunts, Cheri Johnson and Jana Johnson, his uncle, Peter Johnson, his great grandparents, Harrison and Joy Fahrner, and his cousin Aviel Johnson. CP 1-21, CP 99-108, CP 40-64.

8. The Pirkeys terminated M.W.'s contact with her grandmother, Jana Johnson, her aunt, Cheri Johnson, her uncle, Peter Johnson, her great grandparents, Harrison and Joy Fahrner, and her brother Aviel Johnson. CP 1-21, CP 99-108, CP 109-121, CP 40-64.

9. Each family member mentioned above has a substantial and significant relationship with E.E. and M.W. CP 1-21, CP 74-98, CP 99-108, CP 109-121, CP 40-64.

10. These actions by the Pirkeys have caused and continue to cause irreparable damage to E.E. and M.W. These children are suffering in their present environment. CP 1-21, CP 74-98, CP 99-108, CP 40-64.

Dr. Dietzen in her declaration has concluded: “In summary, I believe that there are enough “red flags” in this case that the Court should intervene. Outside of cases involving children suffering from physical trauma, this is one of the most egregious cases that I have seen of children suffering from emotional trauma. And, if the information that I have been provided is determined to be valid, then I believe that there are sufficient grounds for a change of custody. I believe that the Court should find adequate cause and appoint a GAL to gather more information to assist the Court on what is in the best interest of [E.E.] and [M.W.]” CP 40-64, at 52.

Again, the allegations by the appellants and the declarations filed by the appellants supporting their allegations were never refuted by the Pirkeys. Regardless, the trial court failed to find adequate cause in this case and entered its Decision of the Court on Adequate Cause on December 20, 2018, and denied reconsideration and entered its Order on Reconsideration on January 25, 2019. CP 160-166, CP 187.

The appellants filed their Notice of Appeal to Court of Appeals Division III on February 6, 2019. CP 188-197.

D. ARGUMENT

1. Standard of review.

The trial court's determination of adequate cause is reviewed for an abuse of discretion even though the trial court's determination is decided entirely on written submissions.

Because adequate cause determinations often involve disputed facts, our Supreme Court has decided that a trial judge, who decides factual domestic relations questions on a regular basis, is in a better position than an appellate court to make this determination. *In re Parentage of Jannot*, 149 Wn.2d 123, 126-127, 65 P.3d 664 (2003). The facts in this case, however, are undisputed.

2. Abuse of discretion.

A trial court abuses its discretion when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. A decision is manifestly unreasonable if the decision is outside the range of acceptable choices based on the facts and applicable legal standard. *In re Custody of Halls*, 126 Wn.App. 599, 606, 109 P.3d 15 (2005). A decision is based on untenable grounds or is made for untenable reasons if the court

applied the wrong legal standard or relied on unsupported facts.

State v. Rohrich, 149 Wn3d 647, 654, 71 P.3d 638 (2003).

Also, a trial court abuses its discretion when no reasonable judge would have reached the same conclusion. *Byerly v. Madsen*, 41 Wash.App. 495, 499, 704 P.2d 1236, review denied, 104 Wash.2d 1021 (1985).

3. The trial court applied the wrong legal standard.

In this case, the trial court abused its discretion by applying the wrong legal standard. In its decision, the trial court ruled: “This Court, excluding those issues that either were known or should have been known by the Trial Court in the Grant County matters, finds little or no evidence sufficient to provide adequate cause for the present hearing.” CP 160-166, at 163. By applying a legal standard of “should have been known” to the evidence in this case, the trial court eliminated the consideration of all pre-decree facts. This is not the correct legal standard in a parenting plan modification case.

RCW 26.09.260 sets forth the procedures and criteria to modify a custody decree or parenting plan. These procedures and criteria limit a trial court’s range of discretion. *In re Marriage of*

Hoseth, 115 Wash.App. 563, 569, 63 P.3d 1280 (2001) (citing *In re Marriage of Shryock*, 76 Wash.App. 848, 852, 888 P.2d 750 (1995)), review denied, 150 Wash.2d 1011, 79 P.3d 445 (2003). Accordingly, a trial court abuses its discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria. *Hoseth*, 115 Wash.App. at 569.

Under RCW 26.09.260, the trial court may modify a prior custody decree or parenting plan based on “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.” RCW 26.09.260(1). The statute, however, does not give the modifying court the discretion to exclude facts that it believes “should have been known” to the court at the time of the prior custody decree or plan. With that said, the trial court in this case abused its discretion by failing to follow the statutory procedures and criteria in reaching its decision.

The trial court was also incorrect in stating: “[T]he case involves custody that was agreed to by the parties or ordered by the Court in Grant County proceedings.” CP 160-166, at 160-161. The appellants, Cheri and Peter Johnson, were never a party to

either Grant County case. CP 185-186. And, they did not agree to anything. While they may have filed declarations in the prior Grant County proceedings, this does not change the fact that they were not parties to the litigation and therefore, they are not bound by any of the findings or conclusions in those Grant County cases. The principle of res judicata does not apply to them. Res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made. *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 225, 588 P.2d 725 (1978). Again, the appellants, Cheri and Peter Johnson, were never a party to either Grant County case involving E.E. and M.W. CP 185-186.

Further, the Grant County case involving E.E. was resolved by the entry of the Agreed Order re Nonparental Custody. CP 1-21, at 13-16. In *In re Marriage of Timmons*, 94 Wn.2d 594, 617 P.2d 1032 (1980), the Washington Supreme Court held that when a custody order is uncontested, i.e., an agreed order, the court

in a modification proceeding may consider both pre-decree and post-decree facts. In *Timmons*, the Court adopted the *Rankin* rule: “Thus, a default custody decree could be modified without a showing of changed circumstances and the court could consider facts which existed at the time the original decree was entered. *Rankin*, at 537-38, 458 P.2d 176; see *White v. White*, supra.” *Timmons*, 94 Wn.2d at 598. Also, “We conclude that, because of the continuing paramount concern for the best interests of the child, that the rationale for the *Rankin* rule equally applies when the parties join in a petition.” *Timmons*, 94 Wn.2d at 598. And finally, “The *Rankin* rule assures true judicial consideration of all relevant facts concerning the welfare of the children.” *Timmons*, 94 Wn.2d at 599.

Finally, what actually happened in Grant County is that the Court did not consider anything other than the agreement of E.E.’s mother in the one case and the conduct of M.W.’s mother in the other case. The Pirkeys had a lawyer. Neither mother was represented. No witnesses were called in E.E.’s case and only the Pirkeys with their lawyer and M.W.’s mother were present in M.W.’s case. In the end, it would be unrealistic to assume that the

Court in Grant County had knowledge of all the existing facts and circumstances regarding the children or the Pirkeys.

CP 13-16, CP 17-21.

In summary, the trial court abused its discretion by applying the wrong legal standard to the evidence in this case. And, by applying the wrong legal standard, the trial court failed to undertake a true judicial consideration of all relevant facts concerning the welfare of E.E. and M.W.

4. No reasonable judge would have reached the same conclusion considering the unrefuted evidence in this case.

Again, the Pirkeys never refuted any of the factual allegations made by the appellants in their petition or declarations. And, with all due respect to the trial court, the appellants contend that no reasonable judge would have reached the same conclusion as the trial court considering the unrefuted evidence in this case.

Dr. Dietzen's declaration, CP 40-64, cannot be ignored or disregarded. The fact that Dr. Dietzen has not met the children or the Pirkeys is irrelevant to the threshold issue of adequate cause. It does not make what Dr. Dietzen said in her declaration any less legitimate or compelling. Moreover, as Justice Sanders pointed out in his dissent in *In re Parentage of Jannot*, 149 Wn.2d 123, 128,

65 P.3d 664 (2003), “RCW 26.09.270 does not permit a trial court to weigh facts or consider facts not set forth in the affidavits. It requires the trial court to determine whether “adequate cause for hearing the motion is established by the affidavits.” RCW 26.09.270.” Further, the Pirkeys did not offer any evidence that the counseling notes or the other information provided to Dr. Dietzen were not credible or trustworthy or could not be relied upon by Dr. Dietzen. And finally, Terri Greer, E.E.’s and M.W.’s counselor, did not file a declaration disputing anything that Dr. Dietzen said in her declaration. In fact, no one has disputed any of the facts and conclusions set forth by Dr. Dietzen in her declaration.

At this stage of the proceedings, the appellants are not required to prove their case by a preponderance of the evidence. This is a threshold hearing and a party is only required to put forward “something more than prima facie allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change.” *In re Marriage of Mangiola*, 46 Wn.App. 574, 577, 732 P.2d 163 (1987) (quoting *In Re Marriage of Roorda*, 25 Wn.App. 849, 851, 611 P.2d 794 (1980)).

Thus, the appellants submit that Dr. Dietzen's declaration is alone sufficient to support a finding of adequate cause in this case. CP 40-64. Again, no one has disputed any of the facts and conclusions set forth by Dr. Dietzen in her declaration.

However, with that said, the appellants did file more than just the declaration of Dr. Dietzen. CP 74-152. (Again, with no real rebuttal from the Pirkeys.) And, the appellants believe that through their declarations, they have expressed their concern for E.E. and M.W. and shown that the children are truly suffering in their current living situation and that the Pirkeys are not suitable custodians for the children. While the appellants invite the Court to review all of the declarations, CP 40-64 and CP 74-152, the appellants wish to highlight the following:

1. The Pirkeys have relocated the children, without notice, from Grant County to Douglas County. CP 1-21.

2. The Pirkeys have refused to allow E.E.'s mother to have any contact with her son and have intentionally tried to destroy E.E.'s relationship with his mother. CP 49-64, at 41-44.

And, the Pirkeys are in contempt of the current court order. CP 13-16. Dr. Dietzen states: "If the non-parent custodians have

prevented [E.E.'s] mother from having contact with her son, this would appear to be in violation of the current court order, and, in my opinion, such conduct would clearly be detrimental to [E.E.'s] mental and emotional health. From what I have reviewed, it appears that [E.E.] wanted and needed to have contact with his mother and his mother wanted to have contact with him. Moreover, a case could be made that the non-parent custodians have intentionally acted to estrange [E.E.] from his mother, to damage [E.E.'s] opinion of his mother, and to impair the natural development of [E.E.'s] love and respect for his mother ... [S]uch conduct by the non-parent custodians would clearly be detrimental to [E.E.'s] mental and emotional health, past, present, and future.” CP 40-64, at 44. Brandi Smithers, E.E.'s mother, states: “When I heard [E.E.] call Sarina “mom” I had words with her and told her that I was his mom, not her. She told me that [E.E.] had to understand that she was now his mom and that he would not be coming back to live with me. They [Sarina and Mike] told me to quit trying to contact [E.E.] because they were not going to let me have any contact with him.” CP 127-130 at 129. She goes on and states: “As of now, my mom and Mike have acted like the judge

and jury and have deprived me of any opportunity to see or visit my son or have any relationship with him. When I hear that he has told a counselor that he misses me and doesn't understand why I have abandoned him my heart is broken. It is apparent to me that my mom has not told him that I have been trying to call and talk to him ... I do not believe that their approach to me will ever change.” CP 127-130, at 130.

3. Our state has explicitly recognized the fundamental importance of the parent-child relationship to the welfare of the child. RCW 26.09.002. This statement applies to both E.E. and M.W. With regard to M.W., the Pirkeys have done nothing to foster and encourage the relationship between M.W. and her mother. Dr. Dietzen has stated: “I understand that [M.W.’s] mother, Sarah Wilshire, has no visitation rights under the current court order. However, how the non-parent custodians address [M.W.’s] feelings and questions regarding her mother are important to her mental and emotional development. According to Terri Greer’s counseling notes, [M.W.] has a diagnosis of “Reactive attachment disorder of childhood.” Reactive attachment disorder is a rare but serious condition in which an infant or young

child doesn't establish healthy attachments with parents or caregivers. And, it results in an inability for the child to form normal, healthy relationships with others." CP 40-64, at 44.

On this issue, Dr. Dietzen concludes: "It is obvious that [M.W.] has some serious issues. And, if [M.W.] has reactive attachment disorder, then the inquiry and treatment must focus not only on the child but also the child's primary caregivers. Because, if the primary caregivers cannot encourage the child's development by being nurturing, responsive, and caring and provide a positive, stimulating, and interactive environment for the child, then there may be a need to change the caregivers." CP 40-64, at 45-46.

4. The children are not attending school. CP 99-108, at 107. On this issue, Dr. Dietzen states: "I am also very concerned about the decision by the non-parent custodians to homeschool [E.E.] and [M.W.]. At this time, I am not sure that the non-parent custodians have met all the statutory requirements for homeschooling. Chapter 28A.200 RCW. However, more importantly, I believe that isolating [E.E.] and [M.W.] will be severely detrimental to their social development." CP 40-64, at 49.

5. With respect to social development, the Pirkeys are failing E.E. and M.W. For whatever reason, the Pirkeys have chosen to isolate E.E. and M.W. from family members, other children, and from the outside world. Besides taking them out of school, they won't let E.E. and M.W. go to other children's homes or let other children come to their home. E.E. and M.W. have no friends. They are both lonely, sad, and depressed. E.E. feels like an "outcast." He feels "empty" inside. He has considered running away from home. He has thought about suicide. M.W. has created "imaginary friends." She reports 50 of them. CP 40-64, at 44-47. Dr. Dietzen states: "[A]fter reviewing Terri Greer's counseling records for [E.E.] and [M.W.], I am concerned with what I understand to be an apparent attempt by the non-parent custodians to try and "isolate" the children." CP 40-64, at 47. Dr. Dietzen continues: "I believe that isolating [E.E.] and [M.W.] will be severely detrimental to their social development. Social behavior includes how an individual's thoughts, feelings and behavior influences, and is influenced by, other people. Experiencing social behavior, and engaging in social interaction, is vital during childhood development." CP 40-64, at 49. Finally, Dr. Dietzen

concludes: “[I]t is my opinion that isolating [E.E.] and [M.W.] from family and friends is detrimental to their emotional and social development and growth.” CP 40-64, at 50.

6. The Pirkeys have been psychologically abusing E.E. and M.W. The Pirkeys insist that E.E. and M.W. “accept us as [their] parents. CP 99-108, at 106. They make E.E. and M.W. call them “Mom” and “Dad.” CP 99-108, at 106. Dr. Dietzen has stated: “[T]heir acts of isolating the children and telling them how they should feel is a form of psychological control. They are asking the children to feel something they don’t. Or worse, they are telling the children that they are bad if they don’t.” CP 40-64, at 51. Dr. Dietzen, quoting Nancy Darling, Ph.D., continues: “The core of psychological control is that it assaults the child’s self.” CP 40-64, at 51. And, “Parents who are high in psychological control have kids who tend to be depressed, have low self-esteem, be anxious and lonely. They are also more likely to be involved in anti-social behavior and delinquency.” CP 40-64, at 51.

7. The children are clearly suffering in their present living situation. E.E. is 10 years old. He has anger issues and has

meltdowns over insignificant things, like his pencil not having an eraser. He gets into fights with other kids. He doesn't have any friends. He is lonely and feels "empty" inside. He reports that he is an "outcast." He is jealous of girls and wishes he could be a girl. He feels that he has to act out to get any attention from the Pirkeys. He has thoughts of running away and he has suicidal thoughts. He doesn't go to school but he wishes he could go to school year-round. CP 40-64, at 46-47. Dr. Dietzen states: "Thoughts of suicide and running away from home, confusion with gender identity, feelings of loneliness because of an inability to make friends, and non-parent custodians who are too busy, too rigid, or don't care or don't know how to meet a child's needs are all very concerning. One could easily argue that [E.E.'s] current living situation is harmful to his mental and emotional health." CP 40-64, at 47. M.W. is 8 years old. She lies and steals. She has physically hurt the family pets. She has no remorse. She is manipulative and does not have a conscience. She wants friends but doesn't have any friends. She is lonely and sad. She has created imaginary friends. She reports 50 of them. She also reports that she has trance-like states, and things happening that

she doesn't remember. CP 40-64, at 44-45. Dr. Dietzen states; "[M.W.] has been through a very rough time in her 8 years of life. She is acting out due to the lack of emotional attachment and bonding with someone. It is also very possible that there is a history of physical abuse and neglect, sexual abuse, and psychological abuse." CP 40-64, at 45.

8. Sarina Pirkey has a long history of emotional instability beginning as a young child. CP 74-98, CP 109-121. Her younger sister has described her as a "sociopath." CP 109-121, at 120. She facilitated the rape of her younger sister. CP 109-121, at 114. Under RCW 9A.08.020, she would be considered a sex offender. She has been married 5 times. CP 74-98, at 81. She neglected and abandoned her own 4 children while they were still minors. CP 74-98, CP 109-121, CP 127-130. She allowed her own children to sexually abuse each other. CP 127-130. She recently faked her own pregnancy. She told E.E. and M.W. that she was going to have a child named "Daniel" and another child named "Ruth" and that they would be coming to live with them soon. She went so far as wearing a fake belly. She established a "Baby Registry" on Amazon under the name of "Sarina Pirkey

and Michael Pirkey” soliciting baby gifts with an expected “arrival date of March 15, 2016.” She was 58 years old at the time. She kept this fraud going for almost 14 months. CP 74-98, at 87. And, not unexpected considering her past history, she recently abandoned the children. Terri Greer, in her counseling notes, reported: “[I]t appears a significant event of trauma occurred in April [2018] when [Sarina] chose to live in another area and not come home to live with [E.E.] and parent him.” CP 40-64, at 46. For all of these reasons, there is a real issue as to whether Sarina Pirkey is a suitable custodian for E.E. and M.W.

9. Michael Pirkey has no parenting experience with young children or helping children who have been exposed to trauma. CP 74-98, at 85. He punishes the children by spanking them and having them write lines/sentences. CP 40-64, at 45. He punished E.E., after E.E. had an accident, by making him clean the carpet under his bed with a toothbrush. He took a picture and sent it to the appellants. CP 74-98, at 85-88. He punished M.W. for bringing home a comic book from school. CP 40-64, at 45. He requires E.E. and M.W. to work at his isolated property outside of Waterville. CP 109-121, at 120. A place where he intends to

move with the children one day. CP 74-98, at 86. In the end, if Sarina Pirkey is not a suitable custodian for E.E. and M.W., then neither is Michael Pirkey, her husband.

The preceding paragraphs, numbered 1 through 9, represent some of the factual allegations that the appellants have made in support of their request for a change of custody for E.E. and M.W. And, it is clear that the Pirkeys are not meeting the needs of E.E. and M.W. They are not performing the parenting functions necessary for their care and growth. “Parenting functions” are defined in RCW 26.09.004 to include: maintaining a loving, stable, consistent, and nurturing relationship with the child; attending to adequate education for the child; assisting the child in developing and maintaining appropriate interpersonal relationships; and exercising appropriate judgment regarding the child’s welfare. It is also clear that as a result of their failure, E.E. and M.W. are suffering.

Parents have a fundamental liberty interest in the care and welfare of their minor children. But the Pirkeys are not E.E.’s parents or M.W.’s parents. On the other hand, the State has an equally compelling *parens patriae* interest in protecting

the physical, mental and emotional health of children in this State. *In re Dependency of Schermer*, 161 Wn.2d 927, 941, 169 P.3d 452 (2007). In this case, the appellants are trying to do what they can for E.E. and M.W. before something bad happens to them. The appellants need some assistance from the Court.

Dr. Dietzen's conclusion is a warning: "I believe there are enough "red flags" in this case that the Court should intervene. Outside of cases involving children suffering from physical trauma, this is one of the most egregious cases that I have seen of children suffering from emotional trauma." CP 40-64, at 52.

In summary, with regard to the trial court's decision regarding adequate cause, the appellants believe that no reasonable judge would have reached the same decision after considering all the unrefuted evidence in this case. However, in fairness to the trial court, the appellants also believe that the trial court would have found adequate cause in this case if it had applied the correct legal standard.

Finally, the appellants are requesting oral argument and believe that it may be helpful in this case.

E. CONCLUSION

The trial court abused its discretion in failing to find adequate cause in this case. The trial court's decision regarding adequate cause should be reversed and the case remanded to the trial court for a full evidentiary hearing on the petition for modification.

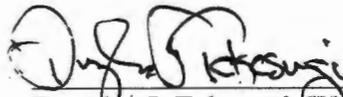
Respectfully Submitted this 15th day of April, 2019.



Douglas J. Takasugi, WSBA #12139
Attorney for Appellants

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 15th day of April, 2019, a copy of the Amended Brief of Appellants was taken to the United States Postal Service in Wenatchee, Washington, and mailed to Justin T. Collier, the Respondents' attorney, at the following address: 18 S. Mission Street, Suite 102, Wenatchee, Washington 98801-2203.



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