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No. 36766-5-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

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In re the Matter of:

TIFFANY CARPENTER,

Appellant,

and

CHRISTIAN CORREA,

Respondent.

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APPELLANT'S OPENING BRIEF

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## **A. ASSIGNMENT OF ERROR**

The trial court erred and abused its discretion by failing to grant the mother, Ms. Carpenter's request for sole decision making for school, healthcare, and extracurricular activities in a petition to modify a final parenting plan based on the evidence presented of continual conflict between the parties and the father, Mr. Correa's unwillingness to appropriately communicate about decision-making. Moreover, it is clear from the record that both parties requested limited decision making, and based on that mutual request it evidences that the parties do not want to share in joint decisions, and the court should thus order one parent to have such.

Furthermore, the only findings in the Court's oral ruling related to why joint decision making was ordered were the Judge's statement about his personal experience growing up in a divided religious home and how sole decision making there would not have worked. There were no further findings directly related.

## **B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR**

Did the trial court err and abuse its discretion by failing to grant Ms. Carpenter's request for sole decision making for school, healthcare, and extracurricular activities in a final parenting plan

despite the parties each requesting sole decision making and the substantial record and testimony in support of the history of decision making and willingness of each to participate jointly?

### **C. STANDARD OF REVIEW**

The appellate court reviews a final parenting plan resulting from a trial court's determination for an abuse of discretion, which "occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *Katare v. Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012) (citing *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)).

Upon reviewing the findings from the trial court, the appellate court must find that they are supported by substantial evidence. *Katare*, 175 Wn.2d at 35 (citing *Ferree v. Doric Co.*, 62 Wn.2d 561, 568, 383 P.2d 900 (1963)). Furthermore, "[s]ubstantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted." *Katare*, 175 Wn.2d at 35 (citing *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 142 Wn.2d 543, 561, 14 P.3d 133 (2000)).

### **D. STATEMENT OF THE CASE**

This appeal is from a Spokane County family law case, cause number 17-3-02565-6 involving the Petitioner/Appellant Ms.

Tiffany Carpenter and the Respondent Mr. Christian Correa. The parties have two daughters: M.E.C. aged 10 and A.I.C. aged 9 at the time of trial in April 2019. (RP at 9).

The parties were married in Texas and lived there through their divorce case. (RP at 9-10). A parenting plan modification was ordered in Texas in January 2017. (CP at 15-36; RP at 10). This parenting plan found Ms. Carpenter as the primary custodian and allotted Mr. Correa visitation every first, third, and fifth Friday at 6pm to Sunday at 6pm of each month if the parents live less than 100 miles apart, and one weekend a month if more than 100 miles. (CP at 20-21, 22). Thereafter, Ms. Carpenter moved to Spokane County, Washington and Mr. Correa followed thereafter in August 2017. (RP at 10).

Ms. Carpenter filed a petition for a minor parenting plan modification on November 9, 2017 regarding their two daughters, M.E.C. and A.I.C. (CP at 1-14). The parenting plan at issue was ordered from Bexar County Texas on January 31, 2017. (CP at 5, *see* CP at 15-36 for original order). The requested changes asked to limit decision making as to the father, Mr. Correa, and to change his visitation schedule. (CP at 6-8). The parenting plan proposed by Ms. Carpenter requested RCW 26.09.191 restrictions against

Mr. Correa for an (1) emotional or physical problem, arguing that he “has a long-term emotional or physical problem that gets in the way of his/her ability to parent”, (2) abusive use of conflict for “us[ing] conflict in a way that endangers or damages the psychological development of a child”, and (3) withholding the child “for a long time without a good reason”. (CP at 38, *see generally* CP at 37-54).

This plan further stated that he “[u]ses continual threats of withholding the children and removing them from the home state and taking them back to Texas as well as withholds the children from calling [Ms. Carpenter] whenever they want even though [she] has provided each child with their own cell phones for such communication. [Mr. Correa] refuses to transport and allow the children to participate in after-school extracurricular activities that they were enrolled in prior to his recent relocation to Spokane, WA.” (CP at 6-8, 39). Mr. Correa admitted to not taking the children to their scheduled activities believing it was his residential time and they should not do them. (CP at 89, 94, 123).

Mr. Correa has acted intentionally and inappropriately regarding communication with Ms. Carpenter, including profanities and unwillingness to civilly communicate, often

becoming irate and belittling. (CP at 121, 702). Mr. Correa has caused issues if Ms. Carpenter does not respond in a timely and quick manner to his messages. (CP at 702, 703). This behavior in its totality has in turn affected the children's behavior, causing them to become defiant, hostile, and aggressive at times towards their mother, especially after spending time with their father. (CP at 124, 702).

Ms. Carpenter asserts that Mr. Correa has always involved the children in court and adult matters inappropriately, even rising to the level of teachers and administrators noticing their behavior changes. (CP at 124-25, 539). Despite the issues between the parties, Ms. Carpenter was the only parent attempting to civilly co-parent and appropriately communicate, especially by the time of trial. (CP at 702).

As such, Ms. Carpenter requested that decision making be limited regarding school, healthcare, and after school activities. (CP at 40). The schedule proposed was the first, third, and fifth weekends of each month from Friday at 6pm to Sunday at 6pm, and every Thursday from 6pm to 8pm. (CP at 43). Although this schedule was later argued at trial as every other weekend instead of delineating which weekends. (RP at 11-12).

Mr. Correa responded to the petition on December 1, 2017 disagreeing that the parenting plan should be changed. (CP at 59-71). His proposed parenting plan alleged RCW 26.09.191 restrictions against Ms. Carpenter for an emotional or physical problem and abusive use of conflict and requested a mental health evaluation. (CP at 73-74, *see generally* 72-85 for parenting plan). However, this plan proposed joint decision making and the exact same schedule that Ms. Carpenter had proposed. (CP at 78).

Adequate cause to change the parenting plan was found on April 13, 2018. (426-28). The Honorable Commissioner Anthony Rugel entered Ms. Carpenter's proposed parenting plan but changed the schedule to Mr. Correa having every other weekend, reserved RCW 26.09.191 restrictions, reserved decision making, and reserved the summer and holiday schedules. (CP at 429-46).

The family wizard messages between the parties show the full extent of their communications with each other, both about the children and about related issues. (*See generally* CP at 169-425).

Ms. Carpenter was found to be in contempt on March 23, 2018 due to failing to facilitate electronic communication between the girls and Mr. Correa, but all other allegations of Mr. Correa regarding parenting time and extracurricular activities were denied

due to equitable defenses. (CP at 129-135). Mr. Correa again filed contempt against Ms. Carpenter for her alleged failure to facilitate electronic communications and for not giving his visitation time with the girls, but Ms. Carpenter was found to not be in contempt on August 24, 2018. (CP at 601-07).

The same allegations for contempt against Ms. Carpenter for parenting time were heard on October 5, 2018 and granted in part due to her non-appearance. (CP at 628-34). Again, Mr. Correa filed for contempt alleging the same but this finding against Ms. Carpenter was denied because Mr. Correa had already been receiving make up time for the dates he argued had been withheld from him. (CP at 706-12). Furthermore, Mr. Correa came to court with unclean hands by failing to follow court orders regarding using the Family Wizard program exclusively for communication. (CP at 712). No further motions were filed by either party until trial took place nearly 6 months later.

Decision making for both parties and child support were the two issues at trial as listed in the joint trial management report, although the parenting plan was ultimately the only thing argued. (CP at 718-21). Ms. Carpenter appeared at trial docket on April 1, 2019 with her attorney of record, Mr. Robert Cossey in front of the

Honorable Judge Timothy Fennessy. (CP at 736). That same day Mr. Correa never appeared for trial and was defaulted through pro forma testimony. (CP at 736, 738).

At trial Ms. Carpenter testified about the extensive conflict that existed between the parties. (RP at 13-15). This included verbal abuse by Mr. Correa, not communicating with Ms. Carpenter in an appropriate manner as evidenced in the Family Wizard messages and for failing to take the girls to their pre-planned extracurricular activities. (RP at 15, 17, 27-28).

The Court found that joint decision making was warranted and ordered such in the final parenting plan. (RP 28-29; CP at 726-35). The Judge focused on how sole decision making was supposed to reduce conflict between the parties and found it would not in his opinion. (RP at 27-28). This was in part because the Court found the conflict existed between the parents, and not the parents and children. (RP at 27). This finding was made despite testimony from Ms. Carpenter that Mr. Correa had involved the children in conflict. (RP at 15, 19).

Thereafter the Judge related this point to an example about his own personal upbringing in a divided religious home, as is the case for Ms. Carpenter and Mr. Correa, and discussed how sole

decision making in his case “would be a problem.” (RP at 24, 28-29). This is the only discussion in the ruling of why decision making was ordered to be joint in nature.

Thereafter, a notice of appeal was filed by Ms. Carpenter on April 22, 2019 requesting review of the joint decision making that was court ordered. (CP at 742-43).

## **E. ARGUMENT**

### **a. Washington Law Regarding Final Parenting Plans and Decision-Making Allocation between Parents.**

Trial courts in Washington State have wide discretion to determine what a final parenting plan will look like dependent on the unique facts and circumstances of each case. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). However,

[t]he court’s discretion must be guided by several provisions of the Parenting Act of 1987, namely RCW 26.09.187(3) (enumerating factors to be considered when constructing a parenting plan), RCW 26.09.184 (setting forth the objectives of the permanent parenting plan and the required provisions), RCW 26.09.002 (declaring the policy of the Parenting Act of 1987), and RCW 26.09.191 (setting forth factors which require or permit limitations upon a parent’s involvement with the child).

*Katare v. Katare*, 175 Wn.2d 23, 35-36, 283 P.3d 546 (2012).

When a final parenting plan is crafted, decision making for the child or children is either going to be delegated to one parent or given in equal power to both parents. Decision making is controlled by various statutes within Chapter 26.09 of the Revised Code of Washington:

(5) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

(c) When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

RCW 26.09.184. This statute gives the court the jurisdiction to enter provisions in parenting plans regarding which of the parents is granted the authority to make decisions for their children.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of

the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;

(ii) Both parents are opposed to mutual decision making;

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(i) The existence of a limitation under RCW 26.09.191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

RCW 26.09.187. This statute above is related to the case at hand specifically regarding section (2)(b)(ii) and (iii).

**b. This Court Must Find the Trial Court Abused its Discretion in Ordering Joint Decision Making Where the Record Shows Substantial Evidence that the Parties Both did not Want to Participate in Joint Decision-Making, Sole Decision Making was Warranted, and no Specific Findings were Made about Why this Request was Denied.**

It is clear from the record that substantial evidence exists which shows that the extensive conflict between the parties here and the effect it had on parenting. The source of this conflict stemmed from Mr. Correa's unwillingness to effectively communicate with Ms. Carpenter and his intentional actions to frustrate the parenting process.

Both parents here are opposed to joint decision making as evidenced in their initially proposed parenting plans. (CP 40, 75). Although Mr. Correa lists joint decision making, directly underneath it he checks boxes that state that decision making should be limited based on his requested RCW 26.09.191 restrictions. (CP at 75). If both parents do not want to share in joint decision making, then the court shall order sole decision making in accordance with RCW 26.09.187(2)(b)(ii).

This notion is supported by a recent case from the Washington State Court of Appeals for Division II: "At trial, each parent requested sole decision-making authority for Aubrey.

Because of the parties' contrary positions, RCW 26.09.187(2)(b)(ii) required that the trial court order sole decision-making." *In re Parentage and Support of Johnson*, 48414-5-II (Div. II, July 25, 2017) (persuasive authority cited in accordance with GR 14.1) (unpublished). This subsection alone means that the trial court here should have ordered sole decision making in favor of Ms. Carpenter since the record and testimony at trial supports that the parties were unwilling to engage in joint decision making.

Ms. Carpenter explained at length in the file and at trial why she was opposed to joint decision making and this request is reasonable based on the circumstances of this case. Even Mr. Correa himself responded to the petition requesting limited decision making. This is not the only section of the statute that supports this finding.

The history of each parent's participation in decision making and the "demonstrated ability and desire to cooperate with one another in decision making" in this case supports the finding that limited decision making in favor of Ms. Carpenter is warranted and should have been ordered here.

The Washington State Court of Appeals for Division Two held in an unpublished opinion that:

RCW 26.09.187(2) does not expressly require a written finding before allocating sole decision-making authority. Further, generally under RCW 26.09.187, we may look to the trial court's oral ruling where it did not enter written factual findings.

*In re Parenting and Support of E.L.C.*, 49112-5-II (Mar. 20, 2018) (persuasive authority cited in accordance with GR 14.1) (internal citation omitted). The ruling here for why the request for sole decision making was denied is relatively vague and unclear.

In the case at hand, Judge Fennessy references something about parents with different churches and how sole decision making would be a problem in those circumstances if the court allowed only one parent decision making. (RP at 24, 28-29). There was absolutely no reference to the parties' history and issues with communication that existed between them.

“Although RCW 26.09.187(2)(b) includes neither a disjunctive nor coordinating conjunction between its subsections, the only logical reading of this statute is that each of the subsections can independently support sole decision-making authority.” *In re Marriage of VanDerlinden*, 77836-6-I (Div. III, July 22, 2019) (persuasive authority cited in accordance with GR 14.1) (unpublished opinion).

Ms. Carpenter has been the sole custodian and primary parent to both of the girls for years prior to the trial taking place in April 2019. This is not disputed by either party here. As such, she has carried more of the burden for not only daily tasks but also decision making. In turn, it is clear from Mr. Correa's actions that he had no intention of cooperating or appropriately communicating regarding decision making for the children.

He on multiple occasions refused to take the girls to their extracurricular activities simply because they were scheduled during his parenting time. (CP at 89, 94, 123). At times the communication between the parents was so bad that the court ordered an application called Family Wizard to be used, although Mr. Correa defied court orders to do so and continued his harassment and contact with Ms. Carpenter through other channels. (CP at 121, 124, 702, 703, 712).

The record and pro forma testimony support the notion that sole decision making for the children at issue here should have been ordered with substantial evidence. The trial court failed to make oral findings related to the decision-making issue beyond essentially stating that it would not work. (CP at 24, 28-29). It appears almost as if the court would only find sole decision

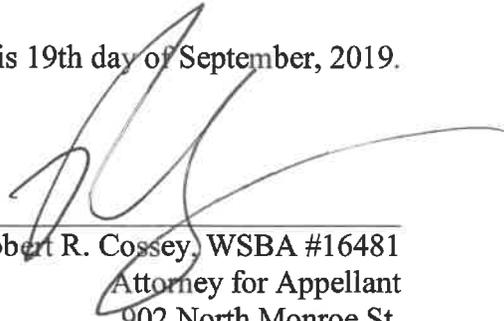
making when mandated according to RCW 26.09.191 restrictions. Although the court has wide discretion in crafting parenting plans, it cannot be the intent of the statute for a judge to never order sole decision making unless required by law.

#### **F. CONCLUSION**

Based on the above discussed facts and law it is clear that an abuse of the trial court's discretion occurred when joint decision making was ordered in the parties' final parenting plan without any findings related to the parties' conflict and past decision making, without consideration of the fact that both parties did not want to share in decision making, and the record supports the request.

Furthermore, substantial evidence exists in the court file and was argued in the pro forma trial showing that sole decision making was appropriate based on the history of the parties in contributing to decision making and willingness to do so together, thus this Honorable Court should find an abuse of discretion occurred and remand the case accordingly.

Respectfully submitted this 19th day of September, 2019.

A handwritten signature in black ink, appearing to read 'R. Cossey', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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**AFFIDAVIT OF SERVICE**

I, BRIANA GIERI, upon penalty of perjury under the laws of the State of Washington, declare that on the 19th day of September, 2019, I served by email a copy of the Appellant's Opening Brief to the following person at the address below:

Mr. Christian Correa  
Pro Se Respondent  
Christian@ChristianCorrea.us

DATED this 19th day of September, 2019.

A handwritten signature in cursive script, appearing to read "Briana Gieri", written in black ink.

BRIANA GIERI  
Declarant

**ROBERT COSSEY & ASSOCIATES**

**September 19, 2019 - 4:46 PM**

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