

**FILED**  
**Court of Appeals**  
**Division III**  
**State of Washington**  
**11/1/2019 1:29 PM**

**NO. 36834-3**

---

**COURT OF APPEALS**  
**STATE OF WASHINGTON**  
**DIVISION III**

---

**KATHERINE NARAVANE**  
**YASHODHAN NARAVANE,**

Petitioners/Appellants,

v.

**MICHAEL VINTHER,**

Respondent.

---

**BRIEF OF RESPONDENT**

---

**KERRY L. SUMMERS**  
**WSBA #36755**  
Counsel for Respondent  
Northwest Justice Project  
132 W. 1<sup>st</sup> Avenue  
Colville, WA 99114  
(509) 684-7652

## TABLE OF CONTENTS

	Page(s)
I. INTRODUCTION .....	1
II. COUNTER STATEMENT OF ISSUES .....	1
III. STATEMENT OF THE CASE.....	2
IV. ARGUMENT .....	6
A. THE STANDARD OF REVIEW IS ABUSE OF DISCRETION.....	6
B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DISMISSED THE NARAVANES' PETITION FOR VISITS .....	7
1. Parents Have a Fundamental Right to Make Decisions Concerning the Care, Custody and Control of Their Children .....	7
2. The Naravanes Did Not meet the Burden of Proof Necessary to Seek Non Parent Visitation as Set Forth in RCW 26.11 .....	8
3. The Naravanes Failed to Meet Their Burden of Proof as it was Not More Likely than Not that the Petition Would be Granted .....	10
a. <u>The Naravanes did not have an ongoing and substantial relationship with the children</u> .....	11
b. <u>There is no harm to the children if visits are denied, as they are thriving with their father</u> .....	12

4.	The Trial Court Did Not Abuse Its Discretion and Entered Appropriate Findings as Required by RCW 26.11 When It Dismissed the Petition .....	12
5.	Michael Vinther is Entitled to Attorney Fees Under RCW 26.11.050 and RAP 18.1 .....	13
V.	CONCLUSION .....	13

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

*In re Custody of E.A.T.W.*,  
168 Wn.2d 335, 227 P.3d 1284 (2010).....8

*Matter of Custody of L.M.S.*,  
187 Wn.2d 567, 387 P.3d 707 (2017).....7

*In re Custody of Smith*,  
137 Wn.2d 1, 969 P.2d 21 (1998).....7

*Dalton v. State*,  
130 Wn. App. 653, 124 P.3d 305 (2005).....11

*Duke v. Boyd*,  
133 Wn.2d 80, 942 P.2d 351 (1997).....8, 9

*In re Marriage of Littlefield*,  
133 Wn.2d 39, 940 P.2d 1362 (1997).....7

*State Farm Fire & Cas. Co. v. Huynh*,  
92 Wn. App. 454, 962 P.2d 854 (1998).....11

*State v. K.L.B.*,  
180 Wn.2d 735, 328 P.3d 886 (2014).....9

*Troxel v. Granville*,  
530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).....8

**STATUTES**

RAP 18.1 .....1, 13

RAP 18.1(a) .....13

RCW 26.11 ..... *passim*

RCW 26.11.020 .....9, 10

RCW 26.11.030(8).....	9, 10, 13, 14
RCW 26.11.040(2).....	10
RCW 26.11.040(3).....	10
RCW 26.11.050 .....	13

**SESSION LAWS**

Laws of 2018, Ch. 183 .....	7
-----------------------------	---

**OTHER AUTHORITIES**

KARL B. TEGLAND, 5 WASH. PRAC.; EVIDENCE LAW AND PRACTICE § 301.3 (6th ed. 2016).....	11
--	----

## **I. INTRODUCTION**

This appeal involves Washington State's Nonparent Child Visitation statute, RCW 26.11, which allows nonparent relatives who meet specific criteria to petition the court for visitation with a child. The trial court did not abuse its discretion when it dismissed the Naravanes' Petition for Visits, as they had failed to show that it was more likely than not, that visitation would be granted. The trial court also did not abuse its discretion by entering written findings substantiating its ruling.

Parents have a fundamental constitutional right to the care, custody, and control of their children. Nonparent visitation with children infringes on that constitutional right and, therefore, must comply with procedural safeguards designed to ensure that such nonparent visitation does not improperly interfere with a biological parent's rights to the care, custody, and control of their children. Respondent Michael Vinther asks this Court to affirm the trial court's dismissal order and award him costs and fees under RAP 18.1.

## **II. COUNTER STATEMENT OF ISSUES**

- A. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION BY DISMISSING THE PETITION FOR VISITS WHEN THE NARAVANES FAILED TO MEET THEIR BURDEN OF PROOF.
- B. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION AND DISMISSED THE PETITION WHEN IT

ENTERED FINDINGS THAT THE NARAVANES FAILED TO SHOW THAT IT WAS MORE LIKELY THAN NOT THAT THE PETITION WOULD BE GRANTED.

### III. STATEMENT OF THE CASE

Michael and Angela Vinther<sup>1</sup> were married for 15 years and they are the parents of four children. CP 30. Throughout their marriage, Michael was an active duty airman in the United States Air Force and had many different duty stations outside the state of Washington. CP 148, 149. In 2015, Michael was stationed in Las Vegas, Nevada and lived there with Angela and their children. CP 30, 149. Michael and Angela raised and parented their children together until July 2015. CP 30, 162, 166.

Michael and Angela's relationship was tumultuous due to Michael's use of alcohol due to PTSD and Angela's mental health issues and use of drugs and alcohol. CP 39, 166, 168. In July 2015, Angela took the children and moved to the State of Washington. CP 14, 15, 30. In November 2015, Angela moved to the State of Oregon with the children. CP 30. At some point after separating from Michael, Angela entered into an abusive and violent relationship with another man. CP 30, 32, 39, 162, 166. Michael remained at his duty station in Las Vegas, Nevada and engaged in mental health services and alcohol treatment, utilizing the resources available to

---

<sup>1</sup> Use of first names is for clarity. No disrespect is intended.

him through his military service. CP 166. Michael filed a dissolution of marriage action in the state of Oregon in June 2016. CP 162, 171.

Michael, while addressing his own issues and fulfilling his duties to the Air Force, attempted to keep open communication with Angela and Katherine Naravane. Unfortunately, they kept Michael uninformed and misinformed as to what was occurring with Angela and his children, which in turn, prevented Michael from communicating with his children. CP 34, 40-41, 162, 163, 166. Unbeknownst to Michael, Angela sent the children to be with the Mr. and Mrs. Naravane sometime in August 2016. CP 86. On October 26, 2016, Angela committed suicide. CP 30. After Angela's suicide, Michael spent time consoling and caring for his children, but he was required to return to his military duty in Nevada in order to begin the process of transferring to Washington. CP 162.

While Michael was processing the death of his partner of 15 years and the mother of his children, and arranging all necessary plans for him and his children's future, the children remained in the Naravanes' home. CP 16, 31, 162, 163. On November 4, 2016, the Naravanes filed a Non-Parent Custody (NPC) Petition in Walla Walla County, and obtained a Temporary Restraining Order (TRO) against Michael, because he would not agree to allow his children to reside with the Naravanes. CP 39. Approximately two weeks after Angela's death, Michael was in the

Naravanes' home visiting his children when they told him they wanted keep the children. CP 34. Michael was not in agreement with their demand. CP 34. The Naravanes then had Michael personally served with the NPC petition and TRO in front of his already traumatized children. CP 31, 86. Michael was upset that the Naravanes took this step in front of his children. The Naravanes then claimed his reaction to being served—and facing the potential and indefinite loss of his children—was further evidence of his instability and inability to parent. CP 31, 164. While the TRO was in place, Michael was prohibited from attending Angela's funeral with his children. CP 163. For approximately two months after the children lost their mother, and until the NPC case was dismissed, Michael was not allowed to be with, or contact, unless court ordered. CP 163. Prior to the dismissal of the NPC, Michael obtained a duty station transfer to the State of Washington. CP 40.

The allegations made by the Naravanes in their NPC petition regarding Michael's inability to parent were refuted, and the NPC case was dismissed December 22, 2016. CP 43. The trial court ordered Michael's children be returned to him. CP 18, 31, 38–44. The children were returned to Michael's care, custody and control December 25, 2016. CP 11, 46. The children lived in the Naravanes' home for only four months before Michael prevailed in the NPC. CP 14, 17. Other than this four-month period, the Naravanes' relationship with Michael's children over the years had been

primarily phone calls, visits, and ordinary interactions by extended family members who live physically distant from each other. CP 13, 32, 33, 162.

After Michael's children were returned to him on December 25, 2016, the Naravanes' contact with the children was limited to phone or online contact until that contact became upsetting and harmful to the children. CP 32, 47. The Naravanes repeatedly disregarded Michael's desire to discontinue any relationship with them. CP 11, 12, 13, 30–37. In early 2017, Michael married Cheyenne Reynolds and they now have a child in common. CP 45. The Naravanes only in-person contact with Michael's children was limited to Christmas Eve 2017, when the Naravanes took advantage of Michael and Cheyenne's children's recognition of them, and gained entry into their home knowing they were unwelcome and uninvited. CP 34, 47, 82, 83, 167, 173.

Despite the traumatic events the children have endured, Michael's children are doing remarkably well, in all aspects. CP 33, 34, 48, 167-168, 173–175. MV, now age 13, is excelling in school. CP 33. Michael's children have developed strong bonds with their stepmother Cheyenne, their stepsiblings and their half-sister. CP 46, 49, 166, 173, 175.

Two years after the NPC was dismissed and the children were returned to Michael, the Naravanes filed a Petition for Visits pursuant to RCW 26.11. CP 1-6. After having almost no contact with Michael and his

children for two years, the Naravanes questioned Michael's sobriety, mental stability, parental judgement, and authority. CP 11, 12, 13, 87, 88, 165, 167. The Naravanes disputed the diagnosis<sup>2</sup> given by medical professionals and specialists for MV age four, even though they had almost no contact with the child for two years. CP 85. The Naravanes continued to assert they had superior knowledge and expertise as to what was best for Michael's children. CP 16, 82, 83, 167.

Michael responded and asked the trial court to deny the Naravanes' Petition for Visits. CP 22–28. The Naravanes filed a request for court review on May 1, 2019. CP 188–189. The trial court conducted a review of the pleadings in the case and entered findings that the court had jurisdiction over the case, all parties were served, and that the, "Petitioner has not shown that it is more likely than not that the Petition for Visits will be granted. The Petition for Visits should be dismissed." and dismissed the Petition. CP 190–194. The Naravanes filed an appeal of the order. CP 195–201.

#### **IV. ARGUMENT**

##### **A. THE STANDARD OF REVIEW IS ABUSE OF DISCRETION**

The issues raised by the Naravanes, are reviewed for abuse of

---

<sup>2</sup> Medical specialists diagnosed MV age 4 with fetal alcohol syndrome and oppositional defiance disorder. CP 43.

discretion. Although there are no cases interpreting RCW 26.11<sup>3</sup>—the statute at issue in this case—when an appeal involves child custody, a trial court’s ruling is reviewed for abuse of discretion. *Matter of Custody of L.M.S.*, 187 Wn.2d 567, 574, 387 P.3d 707 (2017). “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *In re Marriage of Littlefield*, 133 Wn.2d 39, 46–47, 940 P.2d 1362 (1997). The trial court did not abuse its discretion in this case. The trial court’s dismissal of this case was made after it determined, following a thorough review of the pleadings, that the Naravanes were unable to meet their burden of proof.

**B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION WHEN IT DISMISSED THE NARAVANES’ PETITION FOR VISITS**

**1. Parents Have a Fundamental Right to Make Decisions Concerning the Care, Custody, and Control of Their Children**

A fit parent has great latitude in deciding whether to allow visitation. Parents have a, “fundamental right to autonomy in child rearing decisions.” *In re Custody of Smith*, 137 Wn.2d 1, 13, 969 P.2d 21 (1998). This, “constitutionally protected right . . . has been recognized as a fundamental ‘liberty’ interest protected by the Fourteenth Amendment.” *Id.* at 15. The

---

<sup>3</sup> The statute came into effect in June 7, 2018. Laws of 2018, Ch. 183.

state cannot interfere with the liberty interest of parents except in extreme circumstances; in the nonparent custody context, a parent must be unfit, or custody with that parent would result in actual detriment to the child's development, before a court will intervene on behalf of a nonparent. *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 338, 227 P.3d 1284 (2010).

As long as a parent is fit, and adequately cares for their children, there will be no reason for the, "State to inject itself into the private realm of the family" to further question whether a parent's decisions are in the best interests of their children. *Troxel v. Granville*, 530 U.S. 57, 68–69, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). A parent has a fundamental constitutional right to make decisions concerning the care, custody and control of his or her own children. *Id.* at 72.

**2. The Naravanes Did Not Meet the Burden of Proof Necessary to Seek Non Parent Visitation as Set Forth in RCW 26.11**

Given what is at stake for parents in nonparent visitation proceedings, strict compliance with RCW 26.11 is not a mere technicality, but an important procedural safeguard. RCW 26.11 sets forth the criteria, that a person who is not the parent of the child must meet, in order to petition for visitation with that child. When the words in a statute are clear and unequivocal, the court is required to assume the Legislature meant exactly what it said, and apply the statute as written. *Duke v. Boyd*, 133 Wn.2d 80,

87-88, 942 P.2d 351 (1997). The court may not interpret a statute in a way that renders a portion of the statute meaningless or superfluous. *State v. K.L.B.*, 180 Wn.2d 735, 742, 328 P.3d 886 (2014). Under RCW 26.11.020,

(1) A person who is not the parent of the child may petition for visitation with the child if:

- (a) The petitioner has an ongoing and substantial relationship with the child;
- (b) The petitioner is a relative of the child or a parent of the child; and
- (c) The child is likely to suffer harm or a substantial risk of harm if visitation is denied.

(2) A person has established an ongoing and substantial relationship with a child if the person and the child have had a relationship formed and sustained through interaction, companionship, and mutuality of interest and affection, without expectation of financial compensation, with substantial continuity for at least two years unless the child is under the age of two years, in which case there must be substantial continuity for at least half of the child's life, and with a shared expectation of and desire for an ongoing relationship.

RCW 26.11.020.

RCW 26.11.030(8) states, “[i]f, based on the Petition and affidavits, the court finds that it is more likely than not that visitation will be granted, the court shall hold a hearing.” A court holds a hearing only if the court finds it is more likely than not that visitation will be granted. However, if a court, after reviewing the pleadings in the case, finds that it is not more likely than not that visitation will be granted, the statute does not require a

hearing be held before the petition is dismissed. In this case, the trial court found that the Naravanes failed to meet their burden, did not meet the criteria for visitation, and dismissed the petition without a hearing. The meaning of RCW 26.11.030(8) is clear when analyzed in the context of related issues.

RCW 26.11 respects the constitutional liberty interest parents have in the upbringing of their children. It contains a presumption that, “a fit parent’s decision to deny visitation is in the best interest of the child and does not create a likelihood of harm or a substantial risk of harm to the child.” RCW 26.11.040(2). A petitioner is required to rebut this presumption and prove, “by clear and convincing evidence that the child would likely suffer harm or the substantial risk of harm if visitation between the petitioner and the child were not granted.” RCW 26.11.040(3).

**3. The Naravanes Failed to Meet Their Burden of Proof as it was Not More Likely than Not that the Petition Would be Granted**

The Naravanes were unable to demonstrate to the trial court that they had, or could, meet their burden. They could not show more likely than not that visits would be granted should the trial court hold a hearing. Therefore, the trial court properly dismissed the Petition.

In order to prevail in this case, the Naravanes were required to meet the criteria in RCW 26.11.020, rebut the presumption in favor of a fit

parent’s decision by clear and convincing evidence and, if successful, show that visitation is in the child’s best interests by clear and convincing evidence—proof that an occurrence is “highly probable.”<sup>4</sup> The Naravanes could not meet this high evidentiary burden of proof.

a. The Naravanes did not have an ongoing and substantial relationship with the children

The Naravanes did not have a substantial or ongoing relationship with Michael’s children. The Naravanes contact with the children prior to Angela’s death amounted to phone calls or Skype contact, and visits to Michael’s various duty stations. CP 13, 32, 33, 162. The children resided in the Naravanes’ home for approximately four months in 2016. CP 14, 17. Approximately two months because Angela appeared to be in crisis, and the last two months because of the pending NPC action. CP 86, 167. The Naravanes had minimal contact with the children in the two years before they filed the petition that is the subject of this appeal. What contact they did have was harmful to the children. CP 32–34, 167. The trial court properly considered the facts and evidence before it and found substantial evidence that the Naravanes had not met their burden.

---

<sup>4</sup> See, e.g., *Dalton v. State*, 130 Wn. App. 653, 666, 124 P.3d 305 (2005); *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 465–66, 962 P.2d 854 (1998); see generally; KARL B. TEGLAND, 5 WASH. PRAC.; EVIDENCE LAW AND PRACTICE § 301.3 (6th ed. 2016)

- b. There is no harm to the children if visits are denied, as they are thriving with their father

Michael's children are doing remarkably well in all aspects. CP 33, 34, 167-168, 173- 175. MV age 13 is excelling in school. CP 33. All three of Michael's sons have graduated from counseling. CP 33, 34. Specialists in the medical field had diagnosed MV at age four with fetal alcohol syndrome and oppositional defiance disorder. Michael ensures she receives the special care she requires. CP 34, 48. Michael's children have developed strong bonds with Cheyenne, and their stepsiblings and half brother. CP 46, 48, 49, 166, 173, 176.

**4. The Trial Court Did Not Abuse Its Discretion and Entered Appropriate Findings as Required by RCW 26.11 When It Dismissed the Petition**

The trial court provided clear written findings in the, "Order After Review of Petition for Visits." CP 190-194. The trial court found that it had jurisdiction over the case, all parties were served with the request for review and a response was filed. CP 191. The trial court also found that, "Petitioner has not shown that it is more likely than not that the *Petition for Visits* will be granted. The *Petition for Visits* should be dismissed." CP 191. There is no requirement in the statute or in case law that the trial court enter additional findings.

If the legislature intended for the trial court to provide specific or

additional written findings, the statute would have said so. As there is no provision in any section of RCW 26.11 that requires the trial court provide **specific** written findings, it is reasonable to conclude that the Legislature intentionally omitted such language. Regardless, the trial court did provide specific findings when it found that the Naravanes failed to meet their burden, based on the Petition and affidavits, that more likely than not visitations would be granted, therefore, properly dismissing the Petition. To require anything more from the trial court renders RCW 26.11.030(8) meaningless.

**5. Michael Vinther is Entitled to Attorney Fees Under RCW 26.11.050 and RAP 18.1.**

Pursuant to RAP 18.1(a), Michael requests an award of attorney fees and costs in connection with this appeal. RCW 26.11.050 authorizes the trial court, upon motion of the respondent, to consider the financial resources of all parties and order payment of advance reasonable costs and attorney fees, unless the court finds it would be unjust to do so. Michael, as the respondent, filed a Motion for Advance Payment of Attorney fees and that motion was granted CP 50–53, 155–156.

**V. CONCLUSION**

The trial court reviewed the evidence provided in the Petition and affidavits submitted by both parties. The Naravanes failed to meet their

burden of establishing to the court that they had a substantial and ongoing relationship with the children, that the children would likely suffer harm or a substantial risk of harm if visitation were denied, and that more likely than not visits would be granted at a hearing. The trial court entered written findings in accordance with RCW 26.11.030(8), based on substantial evidence. Therefore, Respondent Michael Vinther respectfully requests this Court affirm the decision of the trial court and award him attorney fees and costs.

RESPECTFULLY SUBMITTED this 1st day of November 2019.

NORTHWEST JUSTICE PROJECT



---

KERRY L. SUMMERS, WSBA #36755

Attorney for Respondent

[kerrys@nwjustice.org](mailto:kerrys@nwjustice.org)

132 W. 1<sup>st</sup> Ave.

Colville, WA 99114

(509) 684-7652

**CERTIFICATE OF SERVICE ON ALL PARTIES**

I certify under penalty of perjury under the laws of the State of Washington that on the 1<sup>st</sup> day of November 2019, I caused the foregoing document to be filed with the Court of Appeals, Division III, and to be served on the Attorneys of Record, via the Washington State Appellate Courts' Portal.

DATED this 1<sup>st</sup> day of November 2019, at Spokane, WA.

NORTHWEST JUSTICE PROJECT

*s/ Shakeira Adina*

---

Shakeira Adina, Legal Assistant  
132 W. 1<sup>st</sup> Ave.  
Colville, WA 99114  
Ph: (509) 684-7652  
Email: [shakeira.adina@nwjustice.org](mailto:shakeira.adina@nwjustice.org)

# NORTHWEST JUSTICE PROJECT-COLVILLE OFFICE

November 01, 2019 - 1:29 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36834-3  
**Appellate Court Case Title:** Katherine Naravane, et al v. Michael Vinther  
**Superior Court Case Number:** 18-3-00072-6

### The following documents have been uploaded:

- 368343\_Briefs\_20191101132800D3523598\_6432.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Brief of Respondent.pdf*

### A copy of the uploaded files will be sent to:

- hodgsonlawoffices@hotmail.com

### Comments:

---

Sender Name: Shakeira Adina - Email: shakeira.adina@nwjustice.org

**Filing on Behalf of:** Kerry L Summers - Email: kerrys@nwjustice.org (Alternate Email: )

Address:  
132 West First Avenue  
Colville, WA, 99114  
Phone: (509) 684-7652

**Note: The Filing Id is 20191101132800D3523598**