

FILED

DIVISION III COURT OF APPEALS
STATE OF WASHINGTON

JAN 24 2020

No. 369161

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

In Re:

MIRANDA GARRAHAN, APPELLANT/PETITIONER

V.

CODY NELSON, RESPONDENT

**On Appeal from Spokane County Superior Court
Case No. 18-3-01614-1, The Honorable John Cooney**

RESPONDENT'S BRIEF

**Pro Se:
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I. FACTS

A trial establishing a permanent parenting plan and residential schedule between Petitioner Miranda Garrahan and Respondent Cody Nelson in regards to Jaden Nelson, age 7, was held on April 4th, 2019 in Spokane Washington. Both parties appeared before the court pro se. The Petitioner proposed a relocation of the child to Medical Lake Washington in order for her to move in with her significant other, Adam Brant, as well as to enroll the child in Medical Lake School District. CP 24-25, 1-4. Both parties testified that the child was currently receiving counseling at Frontier Behavioral Health for his on-going problems with change. CP 19-20, 11-13. Both parties also testified that the child has spent the entirety of his life residing in Spokane Washington, and the entirety of his school life enrolled at Whitman Elementary. CP 8-13.

On April 11, 2019 both parties returned to court for the oral ruling on the trial that took place on April 4th, 2019. During trial the court did find that there had been conflict between both parties, but the conflict hadn't risen to the level of being abusive and, therefore, one parent shouldn't be precluded from engaging in decision-making authority. CP 19-23. During the oral ruling it was also stated that

if Ms. Garrahan chooses to move outside of Whitman elementary, which she's able to do, -- then Jaden will reside with Mr. Nelson during the week. CP 6-11. The imposition of a residential schedule time in the event of the petitioner relocating to Medical Lake was decided based off of the factors regarding RCW 26.09.184 and RCW 26.09.187 that cover all of the same factors within RCW 26.09.520. CP 10-25, 1-25, 1-25, 1-3.

On April 22, 2019 Petitioner Garrahan filed for a Motion of Reconsideration of the Courts decision entered April 11, 2019, however did not submit a Declaration in conjunction with her Motion of Reconsideration.. The respondent replied to this motion of reconsideration. The courts properly considered RCW 26.09.184 and RCW 26.09.187, and all equivalent factors within RCW 26.09.520 due to the petitioners requested relocation of the child. Petitioner in her motion seeks .191 restrictions on the respondent Mr Nelson, however, both parties were found to create conflict. CP 23-25.

II. RESPONSE TO PETITIONERS STATEMENT OF ERRORS

1. Petitioner states that a prospective modification of the Parenting Plan should

not be implemented based on the Petitioners sought relocation without considering the entirety of RCW 26.09.187. However, during the oral ruling the courts specifically state each section of code RCW 26.09.187 and how each section weighed on the decision made. Therefore, RCW 26.09.187 was entirely considered in the making of the final parenting plan

2. Petitioner states that giving all weekends and extended weekends during the school year to one parent prevents the other parent from any non school/work time with the child. However, during the school year each parent gets non school/work time equally during Memorial Day, Labor Day, Thanksgiving Break, Winter Break, Christmas, New Years, and Spring Break, and Petitioner on her birthday. Summer time is split evenly week on, week off for each party and therefore enables each parent plenty of non school time with the child for travel and vacation. CP 7-15, 9-12. There are several faculty school days on Mondays where there is no school in which the custodial parent would have non school time with the child because it is not considered a holiday. During trial the Petitioner also proposed a parenting plan in which the child resided with her on Mondays-Fridays and never once brought up any concerns about receiving non school time with the child during trial.

3. The petitioner states that the court should have entered .191 restrictions

against the respondent due to his history of abusive use of conflict. In this statement the petitioner is engaging in defamation of character by implying that the respondent has a history of abusive use of conflict. During trial the petitioner supplied text messages between herself and the defendant stating that she believed they were proof that the defendant was actively engaging in abusive use of conflict. During oral hearing, it was found that the discussions presented by both parties during trial were not severe enough to be considered abusive use of conflict, and merely showed conflict overall between the parties (CP 18-21, 19-23). The courts also stated in oral ruling and in the denial of the petitioners motion for reconsideration that both parties did not come to court with clean hands, therefore the claim of abusive use of conflict could not be pursued due to the clean hands doctrine. CP 23-25, 1-9.

III. RESPONSE TO PETITIONERS LAW AND ARGUMENT

A. Motion of Reconsideration was not appropriate as there were no legal errors made by the court or evidence there of.

CR 59 allows the court to modify a final parenting plan if deemed

necessary with proper evidence. Petitioner did not submit a declaration in conjunction with her motion of reconsideration, and therefore did not give proper reasoning or evidence that a motion for reconsideration was necessary. Since there were no issues within declaration filed in conjunction with petitioners motion of reconsideration , any input on these supposed matters was voided thus deemed a motion of reconsideration unnecessary..

B. A prospective modification of the parenting plan based on relocation was necessary after the courts reviewed RCW 26.09.187 and RCW 26.09.520 and does not require .191 findings.

Petitioner states that a change of residential schedule should not take place in the event of the petitioners relocation unless there have been .191 factors. However, the proposed residential schedule change was put into place because of the factors within RCW 26.09.187 specifically weighing in on sections IV and V. The courts must find “by a preponderance of evidence” that the relocation should be denied. *In re Marriage of Horner*, 151 Wn.2d 884,895. Through testimony given by both parties, it was found that with the child's on-going problems with change it would be detrimental to change the school that he has always attended

and therefore would be in the best interest of the child for the relocation to be denied. It was also through testimony proven that the child has significant relationships in Spokane Washington that would be damaged if he were to be relocated. It was found that the child's most important relationship outside of that with his parents was with his grandmother, Tammy with whom he has resided with for the entirety of his life. It was also specified that another important ongoing relationship that the child has established is with his step-mother, Kathleen Kearney. Petitioner highlights relationships that the child has with her significant other and his children, however those were found to be more superficial. Furthermore, petitioner states that it was the respondent's duty to provide sufficient evidence that a relocation of the child would not be in the child's best interest. The respondent sufficiently covered this criteria during trial by stating that the child was receiving counseling for his problems with change, and that he has many deep relationships already founded at his current location. Because of this information that the respondent testified to, and the information that the petitioner testified as well about the child's problems with change, it was found to be in the child's best interest to reside in the Whitman school area. Petitioner states that the rebuttable presumption that relocation would be permitted was not covered during trial, however the court furthermore commented on this factor by stating in

response that during trial it was found that the detrimental effect of the relocation outweighs the benefit of the change to the child and relocating person. Petitioner also states that when the child did stay overnight in Medical lake that he did not miss school, however it was provided in evidence through the attendance record that the child was frequently tardy to school when he resided with the petitioner in Medical Lake. Petitioner claims that if she were to lose her job that she may not be able to afford housing within the Whitman area thus forcing the change in residential schedule unfairly. However, both parties are required to live within the Whitman area thus making the requirements equal to each party. The petitioner states that the requirement that the child live within the Whitman area is already unfair, stating that the respondent does not live within the Whitman area. The respondent lives one block outside of the proper Whitman School border, however is close enough that the child is still considered by the school to be within the border. This current location is regardless, still within the same district as Whitman elementary, and merely only .08 miles from Whitman elementary itself. Furthermore, the respondent will be relocating to a home even closer to Whitman elementary at the end of May, 2020. The child and the petitioner have resided with the child's grandmother, Tammy Wood, for the entirety of the child's life within the Whitman area with no problem even before the petitioner was employed. The

courts found that the petitioner chooses to be underemployed, thus if the petitioner sought fulltime employment there would be no issue finding sufficient housing within the Whitman area. This was testified to by both parties during trial. It is the responsibility of both parties to ensure that the child live within the Whitman school area for the best interest of the child.

The courts are not restricting the petitioners time with the child by imposing the change of parenting plan in the event of relocation absent .191 restrictions, rather are merely following the provisions of RCW 29.09.002 and RCW 26.09.187. To state that changing the petitioners time with the child is restrictive implies that the current schedule is restrictive to the respondent even though both parties are absent of .191 restrictions, making this argument by the petitioner void.

C. Imposing .191 restrictions would not be appropriate due to conflict not being severe and each party not coming to court with clean hands.

Both parties were found to create conflict. To state that the courts should have entered .191 restrictions is to state that both parties should have received .191 restrictions. Thus, the clean hands doctrine takes effect which is a rule of law

that states that “a person coming to court with a lawsuit or petition for a court order must be free from unfair conduct in regard to the subject matter of his/her claim.”. The conflict that was involved between the parties was not severe enough to be considered abusive use of conflict. The child was never involved with or witness to any conflict between the parties, rather both parties disagreed on the parenting styles of the other which was discussed via text messages. With these disputes taking place through text messages, there is no way that the child would be witness to them, or that they would damage the child's psychological development at all or cause any danger to the child. The courts will uphold a finding of fact if “substantial evidence exists in the record to support it” *Burrill v. Burrill*, 113 Wn.App. 863, 56 P.3d 993 (2002). Here, there was not substantial enough evidence to prove that there was any conflict severe enough to be considered abusive use of conflict by either party.

The courts also cannot consider events that may have occurred post trial, and even if they could there was no abusive use of conflict post trial either. If events post trial were observable, it should be noted that the petitioner immediately broke the parenting plan by allowing the child to spend a school night in Medical Lake, although it was found to not be out of bad faith. Such is proof that neither party is completely free of faults. Furthermore, the petitioner is

engaging in defamation of character by stating that the child is now receiving counseling due to the respondents supposed actions post trial. It was testified during trial that the child had already been enrolled in counseling for several months before trial due to his problems with change and behavioral outbursts.

D. The Holiday schedule is equal for both parties, as is the weekend time the child spends with the respondent vs. weekday time spent with the petitioner.

During trial the petitioner requested that the respondent receive all weekends with the child, and that she receive all week days with the child. To now state that it was unfair of the courts to grant this exact wish is in bad faith and not in the interest of judicial economy. For the petitioner to state that it is inequitable to give all school weekend time to one parent is equivalent to saying that it is inequitable to give all school weekday time to one parent.

The petitioner states that is unfair that the respondent receive all weekends and extended weekends with the child as this does not give the petitioner any non school days with the child. It is untrue to state that the petitioner does not receive any non extended weekends during the school year with the child as there are several specified holiday weekends during the school year that are equally split

between each party such as Memorial Day and Labor Day. It was also noted that the petitioners birthday falls during the school year and is also a day that the child spends with her, which will occasionally fall on weekends as it did this last year. The holidays throughout the year such as Thanksgiving, Winter Break, and Spring Break, are also equally split up between each party which consist of more non school time that each parent receives with the child.

The summers are evenly split 50/50, week on, week off, between both parties which give each party plenty of uninterrupted non school time with the child for vacation and travel. With this equal split, in no way does it appear that the petitioner does not receive any non school time with the child, and thus she is not being denied non school time or holiday residential time with the child. The respondent during trial requested that the child reside with him during the week days and with the petitioner during the weekends, and if non school time was truly what the petitioner wished for it would have been plentifully available to her in this requested schedule if it had been agreed upon.

Even after receiving the majority of the time with the child during the school week as she requested, it appears that the petitioner demands even more time with the child. To take more of the child's time with the respondent away during the school year would be detrimental to their relationship, thus why the

current residential schedule is set up the way that it is, and as fairly as possible for the child under these particular circumstances.

III. CONCLUSION

It was appropriate that the courts denied CR 59 and the proposed changes to the parenting plan. The courts thoroughly reviewed the case at hand for an additional 7 days before coming to a final decision in order to make sure that every basis was covered. The final parenting plan currently in place follows all necessary requirements and circumstances which are put into place specifically in the best interest of the child and his particular needs. The current parenting plan allows the Petitioner to relocate at any time, however also takes into consideration the necessity to consider the child's resistance to change. The child was enrolled into counseling several months before trial due to his resistance to change and which is shown through his behavioral outbursts. Conflict between the parties was not severe enough to be abusive use of conflict, and neither party came to court with clean hands. Both parents have been active and involved in the child's life since birth, along with the child's grandmother Tammy whom resides in Spokane Washington. The child has several other important relationships established in the Spokane area as well. Every aspect of the trial was considered by RCW

26.09.520, RCW 26.09.187, and RCW 26.09.184. Therefore, CR 59 motion of reconsideration was unnecessary and there is no reason for the current appeal to be accepted or have any cause to send these parties to go back to trial.

11/24/20

Respectfully Submitted,

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JAN 29 2020

CERTIFICATE OF SERVICE

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

By _____

I certify that I mailed a copy of the foregoing Respondents Brief
to Shannon M. Deonier, Attorney for Miranda Garrahan,
at 112 N. University, Suite 102 Spokane WA, postage prepaid, on
[date] 01/27/2020. 99206

Cody Nelson
(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

01/27/2020
(Date and Place)

Cody Nelson
(Signature)

(S)