

FILED  
Court of Appeals  
Division III  
State of Washington  
5/29/2020 1:03 PM  
Nos. 37118-2

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

---

JANINE PRITT

and

G.A-K.K.

Appellants,

Vs.

MICHAEL KOONTZ, JR,

and

KYLA KOONTZ

Respondent.

The Honorable Joseph M. Burrowes, Presiding

---

BRIEF OF APPELLANTS

---

David W. Kitchell, WSBA #25817  
TSAI LAW COMPANY, PLLC  
2101 Fourth Avenue, Suite 2200  
Seattle, WA 98121  
206.728.8000  
Attorneys for Appellants

TABLE OF CONTENTS

INTRODUCTION.....1

ASSIGNMENT OF ERRORS.....2

STATEMENT OF THE CASE .....3

    A. In a third-party custody matter, the Court ordered supervised visitation in Seattle King County, WA, for the Respondent parents.....3

    B . Neither Respondent moved to have the Court amend its order from the March 15, 2019 hearing.....6

    C . Neither Respondent provided the Petitioner’s Counsel the time, date, place, and supervisor for the visitation.....6

    D . Neither Respondent went to the visitation facility at a time and date provided the Petitioner.....7

ARGUMENT.....7

    A. Standard for a finding of Contempt.....7

    B. Respondents failed to appear at the designated time, date, and place for the supervised visitation.....10

CONCLUSION.....10

## TABLE OF AUTHORITIES

<b>Cases:</b>	<b>Pages</b>
<u>Johnston v. Beneficial Management Corp.</u> , 96 Wn.2d 708, 713-14, 638 P.2d 1201 (1982).	8
<u>In re Marriage of Humphreys</u> , 79 Wn.App. 596, 599, 903 P.2d 1012 (1995).	8
<u>Johnston v. Beneficial Mgmt. Corp. of Am.</u> , 96 Wn.2d 708, 712-13, 638 P.2d 1201 (1982).	10
<b>Statutes:</b>	<b>Pages</b>
RCW 26.10.160	3
RCW 26.09.160	7, 8

## **INTRODUCTION**

On July 23, 2018, Benton County Superior Court Judge Joseph Burrowes, on behalf of Yakima County Superior Court, entered a temporary order establishing a residential schedule for G.K. in a Third-Party Custody matter. The temporary visitation order required either the Respondent mother or Respondent father to arrange supervised visitation in Seattle / King County with a professional visitation supervisor.

Counsel for the Respondent mother filed a motion with the Court to have the supervised visitation conducted by visitation supervisor in Snohomish County, Washington. That Motion was denied by the Court on March 15, 2019.

Subsequently, the Respondent mother sought a motion for contempt against the Petitioner for not bringing the child to the same visitation supervisor denied by the Court on March 15, 2019. The Motion for Contempt was granted on September 19, 2019.

The Petitioner maintains, neither the Respondent father, nor the Respondent mother, through her counsel provided the time, date, location, and supervisor for the supervised visitation per the Court's temporary residential schedule and that neither respondent showed up for the visitation they allegedly scheduled.

## **ASSIGNMENT OF ERRORS**

1. The Court erred in finding the Petitioner violated the July 23, 2018, temporary order establishing a residential schedule for G.K. on April 6, 2019 and April 20, 2019.
2. The Court erred in determining the Respondent mother through counsel arranged the visitation and communicated that to the Petitioner.
3. The Court erred in determining that Respondent mother through counsel had arranged visitation at a time certain.
4. The Court erred in determining that the Respondent mother through counsel had conveyed where visitation in a King County / Seattle facility would occur.
5. The Court erred in determining the Respondent father arranged the visitation and communicated that to the Petitioner.
6. The Court erred in determining that Respondent father had arranged visitation at a time certain.
7. The Court erred in determining that the Respondent father had conveyed where visitation in a King County / Seattle facility would occur.

8. The Court erred in finding the Petitioner acted in bad faith when neither the Respondent father nor the Respondent mother appeared at the alleged visitation facility at the designated time for a visitation on either April 6, 2019 or April 20, 2019.
9. The Court erred in denying Petitioner's motion for a continuance of the Respondent's Motion for Contempt to allow a lawfully executed subpoena for a deposition and the subpoena of documents served on Brandon Moore from being enforced.

#### **STATEMENT OF THE CASE**

**A. In a third-party custody matter, the Court ordered supervised visitation in Seattle King County, WA, for the Respondent parents.**

On July 23, 2018, visiting Benton County Superior Court Judge Joseph Burrowes, on behalf of Yakima County Superior Court, entered a temporary order establishing a residential schedule for G.K. in a Third-Party Custody matter. CP38-51. In that temporary residential schedule, Judge Burrowes determined there was a basis for limiting a parent's visitation (under RCW 26.10.160), because the Respondent, mother, had the following problem: "Neglect – s/he substantially refused to perform his/her parenting duties for a child listed in 2." CP 39. Judge Burrowes also determined Respondent, father, had the following problem: "Neglect

– s/he substantially refused to perform his/her parenting duties for a child listed in 2.” CP 39.

As result of Respondents neglect of G.K. (the factors in 3a and 3b of the residential schedule) both parents’ visitation with G.K. was to be supervised, any costs of the supervision was to be paid by the parents. CP 40-41. “The Supervisor shall be: X a professional supervisor (name): Seattle / King County Area.” “Dates and times of the supervised contact will be: X as follows (specify): Mother shall have 2 supervised visitations, per month, for 4 hours each, on the first and third Saturday of each month. Visitation shall occur in Seattle/King County area at a supervised facility. CP 40. Mother shall be responsible for making arraignments. CP 40. This visitation schedule shall remain in effect until further Order of the Court.” CP 40. Likewise, the Court provided the same language for the Respondent father’s visitation provisions with G.K.. CP 41-42.

In a motion heard by the Court on March 15, 2019, Respondent mother’s counsel asked the Court to name Brandon Moore, who has a visitation facility in Snohomish County, as the visitation facility. Verbatim Transcript, pp 1-55. Judge Burrowes ruled, “With respect to a location change, if you provide the Court today the location and time you

would like to do it, I'll amend the order." (transcript page 13 , ln 19-21). Respondent Mother's Counsel said, "So if the Court is asking me right now to name a facility that is available, I can't." (transcript page 17, ln 2-4). Counsel for Respondent Mother went on to say, "There aren't any specific times, and I think it should stay that way. I don't think that the Court should narrow it any more because there's so many variables to take into account that we – what if we can't do it at ten o'clock for God knows whatever reason?" (transcript pp 17-18, ln 21-25 & 1). Counsel went on to say, "And I guess maybe the Court can – what does the Court mean by a facility? What does the Court mean by that? What is a facility? Does it have to – can it be, like, the YMCA? Could it be a church? Community Hall? What?" (transcript page 19, ln 11-15).

Judge Burrowes stated, "So with respect to the motion, I'm going to deny the motion." (transcript page 24, ln 8-9). The Court went on to say, "If you would like to speak with your client...and figure out a location you would like to go and a specific time at that location, I will reserve you (inaudible) to amend the order." (transcript page 27, ln 9-18). "I am reserving you to bring it up again. I'm denying the motion as presented." (transcript page 28, ln 5-6).

The Court went on to clarify, “Okay. The Court will continue the hearing to March 22<sup>nd</sup> at 9:00 a.m. for presentation and argument....I just renoted it for you. Next Friday, 9:00 a.m. So for the record, comply with my order.” (transcript pages 28-29, ln 25 & 1-9). The Court added, “Please provide the order or the -- or the – what you’re going to present the Court to Mr. Kitchell by Wednesday noon”. (transcript page 29, ln 23-25).

**B . Neither Respondent moved to have the Court amend its order from the March 15, 2019 hearing.**

Although the Court provided the Respondents the opportunity to amend their motion, Respondent mother’s counsel never provided any additional proposed orders to Counsel for the Petitioner. The hearing on March 22, 2019, never happened. No new or additional orders with respect to temporary residential visitation between the Respondents and G.K. were issued by the Court.

**C . Neither Respondent provided the Petitioner’s Counsel the time, date, place, and supervisor for the visitation.**

Counsel for the Respondent mother says she provided the specifics for the visitation on April 6, 2019 but does not evidence that she has in fact done that, there is no time , date, location and supervisor discussed in her communications with Petitioner’s Counsel. CP 100. Likewise,

Respondent mother's counsel does not provide any evidence she provided the time, place, location, and supervisor for the visit on April 20, 2019. CP 102.

Neither Counsel for the Respondent mother, nor the pro se, Respondent father confirmed the time, date, location, and visitation supervisor for the visitation with Counsel for the Petitioner.

**D . Neither Respondent went to the visitation facility at a time and date provided the Petitioner.**

Neither the Respondent mother, nor the Respondent father, showed up at the time, date, location with a visitation supervisor of the supervised visit for G.K.

**ARGUMENT**

**A. Standard for a finding of Contempt.**

The Revised Code of Washington RCW 26.09.160 states:

Failure to comply with decree or temporary injunction—  
Obligation to make support or maintenance payments or permit  
contact with children not suspended—Penalties.

(1) The performance of parental functions and the duty to provide child support are distinct responsibilities in the care of a child. If a party fails to comply with a provision of a decree or temporary order of injunction, the obligation of the other party to make payments for support or maintenance or to permit contact with children is not suspended...

(2)(a) A motion may be filed to initiate a contempt action to coerce a parent to comply with an order establishing residential provisions for a child. If the court finds there is reasonable cause to believe the parent has not complied with the order, the court may issue an order to show cause why the relief requested should not be granted.

(b) If, based on all the facts and circumstances, the court finds after hearing that the parent, in bad faith, has not complied with the order establishing residential provisions for the child, the court shall find the parent in contempt of court.

“ In determining whether the facts support a finding of contempt, the court must strictly construe the order alleged to have been violated, and the facts must constitute a plain violation of the order. *Johnston v. Beneficial Management Corp.*, 96 Wn.2d 708, 713-14, 638 P.2d 1201 (1982)”. In re Marriage of Humphreys, 79 Wn.App. 596, 599, 903 P.2d 1012 (1995). In the present matter the facts do not support the Petitioner has plainly violated the Court’s order because the Respondents never designated 1) date of the visit, 2) time of the visit, 3) place for the visit in a supervision facility set up for supervised visit, and 4) the supervisor for the professionally supervised visitation for Gracelyn in a facility in Seattle/ King County. The Respondent Kyla Koontz, through her attorney of record Ellen McLaughlin, did try to have the court allow a facility to in Snohomish County be used, but that request was denied by Court. Ms. McLaughlin never communicated the date, time, location, and supervisor for the visit to the Petitioner through her counsel.

The temporary residential schedule ordered by the Court required the Respondents to arrange the visitation, and presumably to communicate that to the Petitioner. The when and how those arrangements were to be communicated was not specified in the order, but neither Respondent communicated those arrangements to the Petitioner's counsel.

Counsel for the Respondent Mother had sought to designate a specific person as the visitation supervisor, at a specific place, but that was denied by the Court. The Court even provided for Respondent mother's counsel to amend her request if she elected to do so. She never did. Respondent mother did not avail herself of the opportunity presented by the Court to amend the request to designate the person and location for the supervised visitation.

Respondent mother's counsel declined to establish the time for the visitation when that was specifically argued at the March 15, 2019 hearing.

The Petitioner never got the time, date, location, and visitation supervisor from either Respondent, because the respondents failed to communicate this information to the Petitioner's counsel. It was the Respondents' responsibility to arrange these details and to communicate them to the Petitioner. "In contempt proceedings, an order will not be

expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought.’ Johnston v. Beneficial Mgmt. Corp. of Am., 96 Wn.2d 708, 712-13, 638 P.2d 1201 (1982).” The Court’s order obligated the Respondents’ to arrange the visitation, this was not the obligation of the Petitioner.

**B. Respondents failed to appear at the designated time, date, and place for the supervised visitation.**

While the Respondents were specifically obligated in the Court ordered residential schedule to arrange the supervised visitation in the a facility in Seattle/King County, the Petitioner was not ordered to confirm she would bring the child to the supervised visitation facility at a designated time., date, and place. That neither Respondent showed up at the time, date, and place of the visitation precludes an intentional violation of the Court’s order by the Petitioner.

**CONCLUSION**

The facts at the hearing and reasonable inferences from those facts support the findings that the Appellant Aunt did not act in bad faith with respect to the July 23, 2018, temporary order establishing a residential

schedule for G.K and alleged missed visitation on April 6, 2019 and April 20, 2019.

RESPECTFULLY SUBMITTED this 29<sup>th</sup> day of May, 2020.



---

David W. Kitchell, WSBA #25817  
Attorneys for the Appellant Aunt  
Tsai Law Company PLLC  
2101 Fourth Avenue, Suite 2200  
Seattle, WA 98121  
206.728.8000

**DECLARATION OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on May 29, 2020, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals-Division III	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email/efile
Respondent Father Jr. 902 Crystal Avenue Moxee, WA 98936 sunseekermk@yahoo.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
Ellen M. McLaughlin Attorney for Respondent Mother 32 N 3 <sup>rd</sup> Street, Suite 441 Yakima, WA 98901-2730 ellen@emcloughlinlaw.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email

Dated at Seattle, Washington this 29<sup>th</sup> day of May, 2020



Kim Lovstrom  
2101 4<sup>th</sup> Avenue #2200  
Seattle, WA 98121  
(206) 728-8000

**TSAI LAW CO.**

**May 29, 2020 - 1:03 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 37118-2  
**Appellate Court Case Title:** Janine Cindy Pritt v. Kyla Koontz, et al  
**Superior Court Case Number:** 16-3-00114-1

**The following documents have been uploaded:**

- 371182\_Briefs\_20200529130148D3350586\_0659.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Brief of Appellants.pdf*

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

- ellen@emclaughlinlaw.com
- ijohnson@emclaughlinlaw.com
- production@capitolpacificreporting.com
- sunseekermk@yahoo.com

**Comments:**

---

Sender Name: Philip Tsai - Email: phil@tlclawco.com

**Filing on Behalf of:** David Webster Kitchell - Email: Dave@TLClawco.com (Alternate Email: )

Address:  
2101 4th Ave. Ste. 2200  
Seattle, WA, 98121  
Phone: (206) 728-8000

**Note: The Filing Id is 20200529130148D3350586**