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Division III
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**Court of Appeals for the
STATE OF WASHINGTON
Division III**

Division III No. 372308

Jeanette Poindexter (fka Sirianni), Appellant

v.

Warren Sirianni, Respondent

REPLY BRIEF OF APPELLANT*

Craig Mason, WSBA#32962
Attorney for Appellant
W. 1707 Broadway
Spokane, WA 99201
509-443-3681
masonlawcraig@gmail.com

* An earlier Reply brief was filed before the Respondent's first brief was struck, as the Respondent was required to refile a RAP-compliant brief. This Reply is now the submission of Ms. Poindexter to the Respondent's brief of 6/16/20 that was accepted by the court on that date.

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I. INTRODUCTION to JEANETTE'S REPLY BRIEF

Jeanette's First Reply Brief began:

Upon review of Warren's Response Brief, Jeanette Sirianni is mainly relying upon her Opening Brief, and herein succinctly makes a few substantive responses, with a focus on Warren's failure to cite to the record. Jeanette presumes Warren does not cite the record because the record (the actual facts presented) does not support Warren's case.

Warren's first Response Brief was struck for failure to cite to the record, and Jeanette now files her second Reply Brief (as she had replied to the first Response). Warren still did not follow the font requirements, nor the margin requirements, of RAP 10.4(a); however, Jeanette is not moving to strike for Warren's continuing non-compliance, as she seeks to avoid further delay in decision.

Warren also violates the rules as he puts argument into his "procedural history," which appears to be a counter-statement of the case, and thus should not be argumentative under RAP 10.3(a)(5).

The situation remains that there is no substantial evidence to support Warren's claim in his introduction that he was a "coequal" parent, nor is there any other basis by which the 50/50 parenting plan ordered in this case is at all reasonable. This issues here are: (a) the lack of substantial evidence for the trial court's decisions -- and Warren's

repetition of conclusory statements are not evidence -- and (b) the trial court's application of the wrong legal standards.

II. REPLY TO WARREN'S RESTATEMENT OF THE CASE

Jeanette shall respond to Warren on a page-by-page basis, in the order of Warren's restatement of the case ("Procedural History"), which begins on page 5 of Warren's Response Brief, and which concludes on his page 11.

A. Page 5, "Procedural History" -- Information in Support of Parenting Plan and Ms. Costello (not) filing a DVP

Jeanette's consistent testimony has been, as cited in her Opening Brief: (a) that she tried to be nice to prevent Warren's animosity from increasing when she filed for dissolution on 8/14/18; (b) that after Warren was served on 8/23/18 his anger and threats increased; and (c) her then-attorney's office -- Gina Costello's office -- told Jeanette that a DVP had been filed on 8/29/18.

Finally, Jeanette saying that Warren was a good parent in her Information in Support of Parenting Plan, on 8/14/18, cannot sensibly distract from the fact that Jeanette was a stay-at-home mother by agreement for the early lives of the children, and then that Jeanette shaped her part-time work around the school schedule of the children once they started school.

B. Page 6, “Procedural History,” cont.

Warren proceeds to continue to quote from Jeanette’s 8/14/18 Information in Support of Parenting Plan, (a) which was written prior to Warren getting more aggressive after service of the divorce on 8/23/18, and (b) which shows Jeanette was clearly the primary parent. If just that document, the 8/14/18 Information in Support of Parenting Plan, is to be taken as the gospel in this case, then Jeanette is clearly the primary parent and a 50/50 parenting plan is a manifest abuse of discretion.

Warren proceeds throughout this page to partially use the 8/14/18 Information in Support of Parenting Plan, picking and choosing a few tidbits, ignoring Jeanette’s primary parenting in the document, and ignoring Warren’s increased aggression after 8/28/18.

Finally, the “your week[end]” text has been discussed in the record and at trial. ~~Jeanette has made clear she meant Warren’s “weekend,” not~~ full “week,” as Warren was still working his normal job every week day, and Jeanette shaped her life around caring for the children, during the week and on her weekends.

C. Page 7, “Procedural History,” cont. – Judge Ellen Clark’s Revision Order

Next, Warren soft-pedals Judge Ellen Clark saying that there was “no evidence” to support a 50/50 parenting plan, while focusing on the

issue of whether Ms. Costello advised Jeanette to move out of the family farm, and of Ms. Costello reporting to Jeanette that a DVP had been filed. *This is the very topic from which Jeanette was precluded from testifying in her defense while herself under hearsay attack at trial*, and these trial court preclusions of Jeanette's testimony have been raised in Jeanette's Opening Brief both regarding trial court errors (a) as to attorney-client privilege and (b) as to ER 1101(c).

The 21 hours of "contempt" (in 3-hour increments on seven total days from January to March, 2019) were de minimus, as can be seen in the court's order on contempt which granted "21 hours" of make-up time. CP: 618-24. In other words, only one 24-hour day of make-up time was ordered as the contempt sanction. The 7 days of the 3-hour periods occurred between 1/3/19 and 3/24/19 when Jeanette was called for emergency coverage at her work. CP: 620.

Warren seeks to exaggerate 21 hours, total, over seven various Sundays from January through March, 2019, into a major event. The facts in the record do not support Warren's sweeping generalizations.

D. Pages 7-8, "Procedural History," cont., Jeanette's 8/14/18 Information in Support of Parenting Plan (again)

Warren again tries to confine the appellate court's consideration only to Jeanette's conciliatory statements in the 8/14/18 Information in

Support of Parenting Plan (hereinafter *Info in Support of PP*), when the court should consider (a) the entire document (that shows Jeanette's primary caregiving) and (b) the timing of the document, which was 8/14/18 when Jeanette hoped for peace, as opposed to after 8/23/18, at which point Warren got more hostile and threatening toward Jeanette.

As was noted above, that same document makes clear that Jeanette is the primary parent. And even if the legislature had changed the law (which it has not) to create a rebuttable presumption of a 50/50 parenting plan, that presumption would be rebutted by the very document Warren keeps emphasizing, and by the very document that Warren keeps trying to distort to his advantage.

E. Pages 8-10, "Procedural History," cont. – DVP at trial

As Jeanette presented in her Opening Brief, the trial court preserved the issue of DV (RCW 26.50 and 10.14) for trial. Jeanette's inability to present all her evidence on those issues at trial is herein on appeal.

On page 9 of the Response Brief Warren makes allegations that there are "many inconsistencies with Appellant's statement and actions," and yet Warren proceeds to present over 10 lines of allegations against Jeanette without citation to the record for the many claims that Warren is

making against Jeanette. Repetition of conclusory statements are not evidence.

At the top of page 10 of his Response Brief Warren implies that Jeanette simply made the claims to increase costs for Warren; however, Judge Fennessy made no such finding at any point in any proceeding, despite Warren's requests for such findings. Warren did not cross appeal on this issue. There is no finding of bad faith or intransigence against Jeanette for wanting to protect herself and her children.

The remainder of page 10 of Warren's Response Brief has already been addressed. Warren -- despite having his Response Brief returned to comply with the requirements of RAP 10.3 citations to the record -- still essentially refuses to comply with the requirements of the rule.

F. Pages "Procedural History," concludes at p. 11 – Warren's Violations of RAP 10.3(a)(5) and 10.3(b)

Warren concluded his restatement of the case with *more argument*, in violation of RAP 10.3(a)(5). Warren seeks to make up for the lack of evidence with vehemence and personal attacks. The point remains that no substantial evidence supports a 50/50 parenting plan in this case.

RAP 10.3(b) makes clear that Warren is either to accept Jeanette's Statement of the Case, or make his own statement of the case (emphasis added):

(b) Brief of Respondent. The brief of respondent should conform to section (a) and answer the brief of appellant or petitioner. A statement of the issues and a statement of the case need not be made if respondent is satisfied with the statement in the brief of appellant or petitioner. If a respondent is also seeking review, the brief of respondent must state the assignments of error and the issues pertaining to those assignments of error presented for review by respondent and include argument of those issues.

The only logical inference is that Warren was not “satisfied” with Jeanette’s Statement of the Case, and so he provided his own under the title of “Procedural History.” However, Warren over-filled his “Procedural History” with argument, and under-filled it with citations to the record.

It is rational to infer that the trial court’s decision lacked sufficient evidence to which Warren could cite.

After Warren’s very argumentative restatement of the case, his formal “Argument” begins on page 11 of the Response Brief.

III. JEANETTE’S REPLY TO WARREN’S ARGUMENT

Warren’s argument section runs from page 11 to his conclusion on page 28 of his Response Brief. Again, Jeanette replies to his arguments in the order presented by Warren.

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A. 50/50 Parenting Plan Issues (Warren's pages 11-17)

1. Standard of Review

Jeanette agrees with Warren that the standard of review is abuse of discretion. However, Warren omits that the grounds for reversal include a lack of substantial evidence or an error of law.

2. Judge Ellen Clark's Revision of 10/11/18

Next, Warren turns to Judge Ellen Clark's revision, of a 50/50 plan ordered by the commissioner, to every other weekend visits for Warren.

Judge Ellen Clark's written order on revision – the Revision Order of 10/11/18 at CP:222 -- specifically found “no evidence” to support a 50/50 parenting plan. While Warren wanders into the transcript of the ruling, written orders trump oral rulings. Court's may only use the trial court's oral rulings to interpret any ambiguous written order. *State v. Hescocck*, 98 Wn.App. 600, 605–06, 989 P.2d 1251 (1999). Nothing was ambiguous. More importantly, there is no evidence to support a 50/50 plan as a matter of fact, not just as a matter of formality.

Jeanette's point on this appeal is that there was no substantial evidence to support a 50/50 plan presented at trial, under the proper legal standard.

Warren states, on his page 13, that “Judge Clark's findings in the record support Mr. Sirianni.” In fact, the *Info in Support of PP* of 8/14/18

tracks Judge Clark's decision. Warren deserves every other weekend as a father against whom no limitations have yet been found, but Jeanette is clearly the primary parent.

3. Trial Evidence of Warren's Absences and Work Schedule

Warren turns to the trial evidence on page 13 of his Response Brief; however, that is the very issue for Division III to decide: Given Warren's testimony about his extensive work hours, and given Jeanette's time with the children and her shaping her life around her care for them, does substantial evidence support a 50/50 parenting plan? No, it does not.

As was cited in the Opening Brief, Warren left for work before the kids got up, and had at most two hours with them in the evening, if he was not working late. Those are the facts. Those facts are not substantial evidence to upend the children's lives with a 50/50 parenting plan under existing law.

4. Jeanette Took the Kids with Her on Her Jobs

On his page 14 of his Response Brief, Warren misrepresents the testimony about Jeanette leaving the children with Warren when she worked on weekends, as Jeanette said she had them half the time or so.

On her own page 14 of her Opening Brief, for example, Jerry Ford showed that Jeanette took the children with her:

Jerry met Jeanette five years before trial, and she saw Jeanette off and on after that. RP:215-16.

Jeanette had her children with her every time Jerry saw her, except for two times. RP:216-17. Jerry said that Jeanette was a very caring mother, who was very patient with her children. RP:217. Jeanette's discipline style was very calm, and Jerry said, "I've never seen her raise her voice to her children." RP:217. Jerry also indicated that Jeanette and the children were deeply bonded to each other. RP:217-18.

And Jeanette's testimony in this regard was referenced on page 17 of her Opening Brief:

Jeanette continued to be a stay-at-home mother, who did all the cooking, cleaning, and childcare (RP:254). This was the same in 2016 (RP:255-56), and it was the same in 2017 (RP:256-57), except she would leave the children with Warren about half the time when he was home. *Id.* This pattern continued into 2018. RP:257. The children's bedtime remained 7p.m.

Warren's references to his relatives, the Babinsky couple, on his page 14, omits the fact that the Babinskiys had almost no personal knowledge of Warren's parenting, except on rare visits, and their opinions had little foundation.

5. RCW 26.09.002 – Existing Pattern of Interaction

Jeanette would again like to point out that her 8/14/18 *Info Support of PP* is treated as the touchstone of truth about Warren, and yet that same document shows that Jeanette clearly is the primary parent. The partial and one-sided references to this pre-8/23/18 document is fundamentally inconsistent and unjust. The best interests of the children still lie in living

with their primary parent, Jeanette, and the undistorted facts support this outcome.

Warren, on pages 15 and 16, tries to keep repeating arguments without facts. Jeanette worked a few emergency shifts on 7 Sundays in early 2019 (January to March, as quoted above), and that brief period of work-demands were long past by the time of the 5/24/19 contempt hearing, at which court only gave Warren 21 hours of make-up time (CP:620), that Jeanette agreed to be a 24-hour period (CP:623) of make-up time in the order.

Warren attempts to turn less than a 24-hour deprivation of visitation, under some brief calls of Jeanette to work, into a major issue shows the lack of other evidence to which Warren can point.

On pages 16 to 17 of his Response Brief, for the third time, Warren goes back to re-presenting the standard of review, instead of discussing the lack of substantial evidence for the trial court's decision, or the legal standard at issue and the relevant legislative history (see next section).

6. Court's Recognize Legislative History, Including Legislatures Rejecting Statutes

Warren does not address the fact that the Washington State Legislature has repeatedly rejected 50/50 parenting plan bills, most recently Senate Bill 6023, in 2019.

Cited under GR 14.1 as an unpublished case for such persuasive authority as the court gives it, the 2020 *Buche* court said, in footnote 2:

After *Bradshaw*, our legislature rejected an effort to amend the drug possession statute to require the State to prove knowing possession. See H.B. 1695, 61st Leg., Reg. Sess. (Wash. 2009).

State v. Buche, No. 36437-2-III, 2020 WL 1281739, at *1 (Wash. Ct. App. Mar. 17, 2020).

In 2019 the State Supreme Court referred to the legislative history in *Taylor v. Burlington N. R.R. Holdings, Inc.*:

We decided that this definition was unworkable in reasonable accommodation cases, *Pulcino*, 141 Wash.2d at 641, 9 P.3d 787, and dismissed it entirely in *McClarty*, 157 Wash.2d at 228, 137 P.3d 844. However, the legislature rejected the *McClarty* decision's new definition and neither the legislature nor the HRC defined "condition" differently for disparate treatment cases despite knowing this history.

Taylor v. Burlington N. R.R. Holdings, Inc., 193 Wash. 2d 611, 626, 444 P.3d 606, 614 (2019) (Footnote 7, emphasis added).

And in a 2018 marijuana licensing case, the Division II court wrote:

The legislature has failed to amend the statute in response to this regulation, indicating apparent legislative acquiescence.¹⁷ In fact, the legislature rejected a proposed I-502 amendment containing explicit zoning preemption language. H.B. 2322, 63d Leg., Reg. Sess. (Wash. 2014).

Emerald Enterprises, LLC v. Clark Cty., 413 P.3d 92, 104–05 (Wash. Ct. App.), *review denied*, 190 Wash. 2d 1030, 421 P.3d 445 (2018).

As a final example from many cases saying that legislative rejection of statutes matters in judicial interpretation, is the 2017 State Supreme Court decision in *State ex rel. Banks v. Drummond*:

While S.B. 3151 sought “to unfetter a legislative authority's ability to hire attorneys related to all aspects of civil matters,” this bill was ultimately rejected. Br. of Amicus Curiae Wash. State Ass'n of Counties (WSAC) at 12; 1 Senate Journal, 48th Leg., Reg. Sess., at 554-55 (Wash. 1983). As passed, Substitute S.B. 3151 included only modest changes to the original RCW 36.32.200 statute.⁴ *Id.* Respondents Board and Ms. Drummond urge us to read into RCW 36,32.200, as reenacted, an affirmative grant of authority for boards of commissioners to hire outside counsel—authority that the legislature rejected when it rejected S.B. 3151.⁵

It is this court's duty to discern and give effect to the intent of the legislature. *Hama Hama Co.*, 85 Wash.2d at 445, 536 P.2d 157. The legislature specifically declined to grant boards the affirmative authority to hire outside counsel. Instead, the legislature reenacted a statute that, by its plain language, limits rather than grants commissioners' ability to hire.

State ex rel. Banks v. Drummond, 187 Wash. 2d 157, 173–74, 385 P.3d 769, 778–79 (2016), *as amended* (Feb. 8, 2017) (emphasis added, footnotes omitted).

7. Conclusion: No Substantial Evidence Supports a 50/50

Parenting Plan under the Proper Legal Standard

There is no substantial evidence presented at trial that could support a 50/50 parenting plan.

Even if the trial court adopted the wrong legal standard of a rebuttable presumption of a 50/50 parenting plan, the facts in this case would have rebutted that presumption.

Reversal of the trial court and adoption of Jeanette's parenting plan is requested.

B. Domestic Violence Protection Order (& RCW 10.14)

Once again, Warren wants to emphasize Jeanette's 8/14/18 Information in Support of Parenting Plan (that clearly showed she was the primary parent) and diminishes the fact that Warren became more aggressive after being served on 8/23/18, and overlooks that Gina Costello told Jeanette that a DVP had been filed on 8/29/18. The trial court appears to have missed this pre-and-post 8/23/18 difference, as well.

Jeanette has little to add to her Opening Brief on this issue, as she now turns to the related ER 1101(c)(4) appellate issue, and how she was precluded from defending herself regarding the distortions flowing from the mis-use of her 8/14/18 Information in Support of Parenting Plan.

C. ER 1101(c)(4) and Waiver of Rules of Evidence in DVP Hearings

Jeanette was left at a manifestly unreasonable disadvantage when her 8/14/18 Information in Support of Parenting Plan was (a) ignored as to her primary parenting, but (b) was used as a bludgeon to minimize her DV concerns that intensified after 8/23/18, and then (c) Jeanette was precluded

from discussing all of her DV concerns relayed to her then-attorney, Gina Costello, who told Jeanette that a DVP had been filed on 8/29/18. (See Section D, below, for a re-citation to the record.)

While the application of ER 1101(c) is discretionary, in this situation it was an abuse of discretion not to allow Jeanette's hearsay testimony, especially when Warren had opened the door to the hearsay by Warren's own implied hearsay that Ms. Costello had not seen any problems worthy of the DVP. Since Warren opened that door with his implied hearsay argument, Jeanette should have been able to defend herself on the same terms. See, e.g., *State v. Hartzell*, 156 Wash. App. 918, 926, 237 P.3d 928, 933 (2010) (a misleading or incomplete hearsay version of events opens the door to hearsay rebuttal).

Warren argues that any ER 1101(c)(4) error was harmless (Response Brief at p.22). Jeanette believes that not allowing her to rebut Warren's false assertions that she had no issues with Warren's DV early in the case was highly and prejudicial to her, directly and substantively, and the narrative of a late-blooming fear of Warren was used to harm Jeanette's credibility throughout the subsequent proceedings and at trial.

The trial court's ruling that Jeanette's discussing Gina Costello's advice would waive her privilege with her subsequent attorney, Craig A. Mason, ties directly in to this issue, and is addressed in the next section.

D. Related DVP Issue of Attorney-Client Privilege

There is simply no legal authority available to defend the trial judge's ruling that if Jeanette wished to discuss Gina Costello's DVP advice she not only entirely waived her communication privilege with Ms. Costello, but that Jeanette also waived entirely her attorney-client privilege with her subsequent attorney, Mr. Mason.

The Declaration of Evidence Expert, Professor Robert Aronson (CP:760-76), and authorities cited therein, show that the trial court committed legal error.

At CP:737-39 are emails of August 29, 2018, from Gina Costello's office saying that the DVP had been filed, and Jeanette asks them to wait one day to serve him for safety reasons. (CP:737-39 are Exhibit B to a larger declaration of Jeanette's at CP:721-39.) Jeanette moved out of the family home on 8/30/18. CP:43. This is the day after Ms. Costello's office had told her the DVPO would be served on Warren.

Jeanette continues to suffer from the court's ruling that prohibits Jeanette from showing her DV concerns that existed at the outset of her case. Warren proceeds with his argument as if Jeanette had not presented her fears of Warren in documented ways every step of the way. Jeanette's inability to tell her side of this story is not harmless error.

The entire argument of Opening Brief, its legal authority, will not be repeated here. But the error is a clear error of law, and that error of law was clearly harmful on the same terms as listed regarding ER 1101(c)(4), above, in Section C.

E. Child Support Deviation for the Residential Schedule

Even where there are 50/50 parenting plans the standard calculation is ordered without deviation. For example, in *Marriage of Schnurman*, the appellate court upheld a full standard calculation child support payment, without deviation, despite a 50/50 parenting plan.

We hold that the standard calculation and residential schedule deviation in the child support schedule apply when parents share equal residential time like here. Therefore, the trial court did not err in ordering a transfer payment from Seth to Lalida based on the standard calculation.

In re Marriage of Schnurman, 178 Wash. App. 634, 643, 316 P.3d 514, 519 (2013).

Only after making the standard calculation does the court have the discretion to deviate child support downward, including for the residential schedule. A court may not deviate if doing so will result in insufficient funds to meet the basic needs of the child in the household receiving the child support. RCW 26.19.075(1)(d).

Warren accurately summarizes the trial court's off-hand and conclusory "finding" of the trial court, done at presentment, on page 25 of

his Response Brief (and the issue was detailed in the Opening Brief, as well).

However, child support deviations are not to be casually granted. A child support deviation “remains the exception to the rule and should be used only where it would be inequitable not to do so.” *In re Marriage of Burch*, 81 Wn. App. 756, 760, 916 P.2d 443 (1996).

In short, the standard calculation is the norm, and deviation is the exception to issue only with careful findings.

... a trial court is required to enter written findings of fact supported by the evidence when it enters an amount for support which deviates from the standard calculation. RCW 26.19.035(2); *In re Marriage of Sacco*, 114 Wash.2d 1, 4, 784 P.2d 1266 (1990). The failure to enter findings is an abuse of discretion and subject to reversal. *In re Marriage of Glass*, 67 Wash.App. 378, 384, 835 P.2d 1054 (1992).

State on Behalf of Sigler v. Sigler, 85 Wash. App. 329, 338, 932 P.2d 710, 714 (1997). And see: “The statute also unequivocally requires written findings of fact to support any deviation and a consideration of the total circumstances of both households.” *In re Marriage of Choate*, 143 Wn. App. 235, 242, 177 P.3d 175 (2008) (citing RCW 26.19.075; *In re Marriage of McCausland*, 159 Wn.2d 607, 620, 152 P.3d 1013 (2007).

There are no findings sufficient to support a deviation. And if Division III adopts Jeanette’s parenting plan, then the basis for a deviation evaporates.

F. Intruding Upon Jeanette's Daycare Decisions

Jeanette's parents are both employed, certified teachers, obviously fit to *continue* to care for the children. To impose the paid daycare when competent family is available is manifestly unreasonable.

If trial courts began requiring paid daycare in lieu of competent family members on the other parent's time, financial catastrophes would befall many, many working parents. Warren's belief that Jeanette's parents do not like him is not a sufficient basis to impose these costs on the children and on Jeanette. Such a punitive decision is manifestly unreasonable.

G. Request for Fees

If only the DVP evidentiary issues stood alone, Professor Robert Aronson's declaration, contrary to Judge Fennessy's rulings, are sufficient to show "debatable" issues. If issues are "debatable," then an appeal is not frivolous. *In re Marriage of Zier*, 136 Wash. App. 40, 49, 147 P.3d 624, 629 (2006), citing *Streater v. White*, 26 Wash.App. 430, 435, 613 P.2d 187 (1980). In this case, the substantial controversies range across all of the issues raised. Warren's fee request should be denied.

The court is asked to consider awarding fees for Jeanette having to file two reply briefs, as the direct result of Warren filing a non-conforming Response Brief.

IV. CONCLUSION AND RELIEF REQUESTED

A trial court abuses its discretion if the decision is manifestly unreasonable or based on untenable grounds.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wash.App. 786, 793, 905 P.2d 922 (1995) (citing Washington State Bar Ass'n, Washington Appellate Practice Deskbook § 18.5 (2d ed.1993)), *review denied*, 129 Wash.2d 1003, 914 P.2d 66 (1996).

In re Marriage of Littlefield, 133 Wash. 2d 39, 47, 940 P.2d 1362, 1366 (1997). See also *In re Marriage of Mansour*, 126 Wn. App. 1, 8, 106 P.3d 768 (2004).

There is no substantial evidence that would support a 50/50 plan in this case. The substantial evidence standard is:

... 'substantial evidence' means evidence in sufficient quantum to persuade a fair-minded, rational person of the truth of a declared premise. *Ruff v. Fruit Delivery Co.*, 22 Wash.2d 708, 157 P.2d 730.

Helman v. Sacred Heart Hosp., 62 Wash. 2d 136, 147, 381 P.2d 605, 612 (1963).

As the Opening Brief points out, a decision made without substantial evidence or on the wrong legal standard is an abuse of

discretion. *Snyder v. Haynes*, 152 Wn.App. 774, 779, 217 P.3d 787 (2009) (“Substantial evidence is evidence that is sufficient to persuade a fair-minded person of the truth of the asserted premise”), and see *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Warren’s Response Brief did not address the trial record, simply because there is no evidence to support his position on a proper legal standard, and there is certainly not sufficient evidence if a proper legal standard is applied to the facts in that record. Reversal is appropriate.

Based upon the foregoing, the appellate court is asked:

- (1) to reverse the trial court on the parenting plan and to adopt Jeanette’s parenting plan as the only reasonable plan given the testimony at trial;
- (2) to reverse the trial court’s ruling on waiver of attorney-client privilege, to reverse the trial court on ER 1101(c)(4) and allow hearsay testimony, especially in defense of Warren’s accounts, and remand the DVP and RCW 10.14 Petition for a new trial with a new judge; and
- (3) to reverse the deviation of child support, and modify the requirement that all daycare be paid professional daycare.

Jeanette asks the court to disregard Warren’s claims not cited to the record, to deny his requests for fees (and consider hers), and Jeanette otherwise rests upon her Opening Brief.

Respectfully submitted,

7/13/20



Craig A. Mason, WSBA#32962

Attorney for Appellant, Jeanette Poindexter (fka Sirianni)

W. 1707 Broadway, Spokane, WA 99201

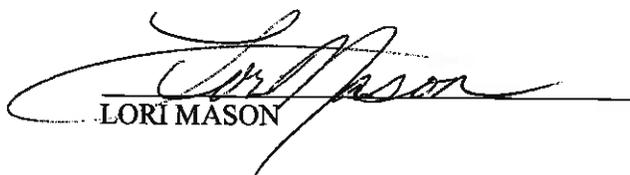
509-443-3681/ masonlawcraig@gmail.com

DECLARATION OF SERVICE

I, Lori Mason, declare under penalty of perjury under the laws of the State of Washington, that on July 13, 2020, I caused a true and correct copy of Appellant's Reply Brief to be served upon the following, via the eFiling Portal for the Washington State Appellate Courts:

Douglas Robert Hughes:

Doug@HughesNelsonLaw.com;lisa@hughesnelsonlaw.com


LORI MASON

MASON LAW
Craig Mason
1707 W. Broadway
Spokane, WA 99201
(509) 443-3681

MASON LAW

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Filing on Behalf of: Craig A Mason - Email: masonlawcraig@gmail.com (Alternate Email: masonlawlori@gmail.com)

Address:
W. 1707 Broadway Ave.
SPOKANE, WA, 99201
Phone: (509) 443-3681

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