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IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

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STATE OF WASHINGTON,)	
)	
Respondent,)	NO. 85860-8
)	
vs.)	C/A NO. 28495-6-III
)	
JOSE R. VELIZ, JR.,)	
)	
Petitioner.)	

APPEAL FROM COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

SUPPLEMENTAL BRIEF OF PETITIONER

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STATE OF WASHINGTON
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ORIGINAL

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I. ISSUE PRESENTED FOR REVIEW:

Whether an Order of Protection containing a child visitation schedule is a "Court ordered Parenting Plan" under RCW 9A.40.060(2)?

II. SUPPLEMENTAL ARGUMENT

A. An Order of Protection containing a child visitation schedule is not a "Court Ordered Parenting Plan" under RCW 9A.40.060(2).

The appellant in this case, Jose R. Veliz, Jr. (hereinafter "Mr. Veliz") was charged on August 22, 2008, and subsequently convicted, of the crime of Custodial Interference in the First Degree, in violation of RCW 9A.40.060(2)(a). (CP 56-57). Prior to proceeding to trial, Mr. Veliz filed a Knapstad motion to dismiss arguing the State would be unable to prove a necessary element; a violation of a court ordered parenting plan. (CP 39-43).

In part, the State alleged that Mr. Veliz had the intent to deny a parent of the lawful right to their minor child pursuant to a court ordered parenting plan . . . (CP 56-57) (emphasis added).

The trial court denied the Knapstad motion. (RP 10-12). The court found that an order for protection qualified as a court ordered parenting plan. (RP 11); see Exhibit A and B. This holding

was despite the fact that the Veliz permanent parenting plan was not entered until January 2009, or, 5 months after Mr. Veliz was charged with a violation of RCW 9A.40.060(2)(a).

It is respectfully submitted that this Court should find that an Order of Protection is not a lawful custody order or court ordered parenting plan as contemplated by RCW 26.09 *et. seq.* To hold otherwise would permit the State to convict defendants on less proof than is required by RCW 9A.40.060(2)(a). Presumably, this would allow the State to prove all of the necessary elements by alleging that an Order of Protection is a lawful custody order or court ordered *temporary* parenting plan. *Id.*

Pursuant to RCW 26.50.060 the Order for Protection in this case is a mandatory form. (RP 37) In the case at bar, on page 3 of the protection order, item number 15, which pertains to visitation, was not even checked off. (RP 39); See Exhibit A. Moreover, items 12, 13, 14 and 15 dealt with custody and visitation and none of those were checked off. (RP 40); *Id.* Finally, the court did not check off the box that states Mr. Veliz could not take his child out of the State. Neither was the visitation schedule. (RP 99) As a result, it would have been impossible for Mr. Veliz or anyone else in similar position to believe he or she is prohibited from taking a minor child out of the State of Washington under a similar Order. (RP 99).

Unlike RCW 26.50.060, RCW 26.09 addresses dissolution proceedings. RCW 26.09.194 addresses, in part, the filing of a motion for a temporary parenting plan. It sets forth a multitude of requirements that shall be accompanied by affidavit or declaration. RCW 26.09.194 sets forth the requirements of a proper temporary parenting plan including:

- a schedule for the child's time with each parent when appropriate
- designation of a temporary residence for the child
- allocation of decision-making authority
- provisions for temporary support of the child
- restraining orders, if applicable. See generally, Exhibit B.

Other provisions of RCW Chapter 26.09 provide for the entry of a permanent parenting plan, which in this instance was not accomplished until January, 2009. It is clear that a protection order is significantly different than a court ordered parenting plan under RCW 9A.40.060(2). It would be fundamentally unfair to convict defendants on this type of lesser proof.

The term "court ordered parenting plan" is not a nebulous concept. It has been defined by our courts of appeals. For instance, in Davisson v. Davisson, 131 Wn.App. 220, 126 P.3d 76 (2006), the court dealt at length with issues pertaining to the interpretation of a

court ordered parenting plan entered pursuant to RCW Chapter 26.09, citing various provisions of RCW Chapter 26.09.

Similarly, In re Custody of Halls, 126 Wn.App. 599, 109 P.3d 15 (2005), the court of appeals reversed modification actions taken by the trial court, interpreting parenting plan modifications pursuant to RCW Chapter 26.09, and ruled that the trial court had failed to follow the procedures of RCW 26.09.260. Both Davisson, supra and Halls, supra, are prime examples that show "court ordered parenting plans" are highly specific court orders not to be confused with an Order of Protection entered pursuant to RCW Chapter 26.50. Compare Exhibits A & B.

In contrast, RCW 26.50.060 serves as the statutory basis for the Order of Protection. In fact, this is noted on the form itself – Order of Protection. RCW 26.50.060(1)(d) goes as far as to state that:

... parenting plans as specified in chapter 26.09 shall not be required under this chapter.

More so, even though RCW 26.50.060 allows for the entry of residential provisions with regard to minor children, it also makes a distinction between such actions and parenting plans as specified in Chapter 26.09, which it states "shall not be required under this chapter."

In situations such as this, where the statute does not define "court ordered parenting plan" and the issue is subject to varying interpretations, the court should consider application of the "rule of lenity" as was done by this Court in City of Seattle v. Winebrenner, 167 Wn.2d 451, 219 P.3d 686 (2009). In Winebrenner, supra, this Court concluded RCW 46.61.5055 was subject to more than one reasonable interpretation so the statute was ambiguous. This Court held:

If, after applying rules of statutory construction, we conclude that a status is ambiguous "the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary." (citations omitted).

Alternatively, a statute that is silent as to the definition of a court ordered parenting plan, is ambiguous as it is subject to more than one reasonable interpretation. Thus, application of the rule of lenity requires that the interpretation be in favor of defendants in the absence of a legislative intent to the contrary.

1. **The purpose and policies underlying the Parenting Plan scheme in Washington State differ from those underlying the statutes governing Protection Orders.**

The purpose of the Parenting Plan Scheme is to further the policy of protecting the best interest of the child. As stated in RCW 26.09.002:

In any proceeding between parents under this chapter, the **best interests** of the child shall be the **standard** by which the court determines and allocates the parties' parental responsibilities.

In essence, it is clear our State policy is to ensure each child's best interests are met in implementing a parenting plan between parents. It does not deal with domestic violence.

The purpose of Orders for Protection is to further the policy of protection against domestic violence. The purpose of our State's domestic violence statute is to "recognize the importance of domestic violence as a serious crime against society and to assure the victim of domestic violence the maximum protection from abuse which the law and those who enforce the law can provide. The legislature finds that the existing criminal statutes are adequate to provide protection for victims of domestic violence . . ." RCW 10.99.010.

Overall, there should be no doubt the Parenting Plan scheme in Washington State differs substantially from the policies underlying our State statutes governing Protection Orders.

2. **An Order for Protection under RCW 26.50.060 draws a distinction between any Order under its provisions and a court ordered Parenting Plan under RCW 26.09.**

RCW 26.50.060 is the statutory basis for the Order of Protection specifically states:

... parenting plans as specified in chapter 26.09 shall not be required under this chapter.

Thus, the statute under which the Order for Protection was issued itself draws a distinction between any order under its provisions and a court ordered parenting plan entered pursuant to the provisions of RCW 26.09.

In situations such as this, where the statute at issue does not define "court ordered parenting plan" and the issue is subject to varying interpretations, the court should consider application of the "rule of lenity" as was recently done by this Court in City of Seattle v. Winebrenner, 167 Wn.2d 451, 219 P.3d 686 (2009) Court concludes RCW 46.61.5055 subject to more than one reasonable interpretation so the statute was ambiguous. It stated:

If, after applying rules of statutory construction, we conclude that a statute is ambiguous "the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary." (citations omitted).

Similarly, herein, alternatively, one could argue that the statute, which is silent as to what is a court ordered parenting plan, is ambiguous as it is subject to more than one reasonable interpretation. Thus, application of the rule of lenity requires that

the interpretation be in favor of the defendant in the absence of a legislative intent to the contrary.

III. CONCLUSION

Herein, the State relied upon the Order of Protection which was entered on May 5, 2008 (CP 35-38), as the predicate "court ordered parenting plan" to support its charge against Mr. Veliz. The Order of Protection is not a court ordered parenting plan, as set forth in Chapter 26.09, and, as a matter of law, should be found not to constitute a court ordered parenting plan. Mr. Veliz respectfully requests this honorable court reverse the decision of the Court of Appeals and dismiss his conviction for custodial interference in the first degree.

Respectfully submitted this 10th day of August 2011.

TREJO LAW OFFICES

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/s/ George Paul Trejo, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2011, I have emailed/mailed by United States Postal Service of such filing to the following:

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Maureen R. Lorincz
Prosecuting Attorneys
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Jose R. Veliz, Jr.
PO BOX 7039
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DATED this 10th day of August, 2011, in Yakima, Washington.

THE TREJO LAW FIRM

/s/ George Paul Trejo, Jr.
George P. Trejo Jr.
Attorney at Law

EXHIBIT A

08-54086

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2008 MAY -5 P 3:34

MICHAEL J. KILLIAN

BY *[Signature]* DEPUTY

Court of Washington Order for Protection

for _____
 No. 08 2 50477 ?
 Court Address _____
 Telephone Number: () _____
 (Clerk's Action Required) (ORPRT)

Lorina Velasco DeVeliz 9-19-77
 Petitioner (First, Middle, Last Name) DOB

v. Jose IX Veliz 10-19-1960
 Respondent (First, Middle, Last Name) DOB

Names of Minors: No Minors Involved

First	Middle	Last	Age
Arianna	Montigano		10
Fidel	Montigano		8
Nicole	Veliz		4

Respondent Identifiers

Sex	Race	Hair
M	HISPANIC	Gray
Height	Weight	Eyes
5'9	220	Light Brown

Respondent's Distinguishing Features:

Caution: Access to weapons: yes no unknown

The Court Finds Based Upon the Court Record:

The court has jurisdiction over the parties, the minors, and the subject matter and respondent has been provided with reasonable notice and an opportunity to be heard. Notice of this hearing was served on the respondent by: personal service service by mail pursuant to court order service by publication pursuant to court order other _____

This order is issued in accordance with the Full Faith and Credit provisions of VAWA: 18 U.S.C. § 2265.

Respondent's relationship to the petitioner is:

- spouse or former spouse current or former dating relationship in-law parent or child
- parent of a common child stepparent or stepchild blood relation other than parent or child
- current or former cohabitant as intimate partner current or former cohabitant as roommate

Respondent committed domestic violence as defined in RCW 26.50.010 and represents a credible threat to the physical safety of petitioner; the court concludes as a matter of law the relief below shall be granted.

Court Order Summary:

- Respondent is restrained from committing acts of abuse as listed in restraint provision 1, on page 2.
- No-contact provisions apply as set forth on the following pages.
- Additional provisions are listed on the following pages.

The terms of this order shall be effective immediately and for one year from today's date, unless stated otherwise here (date):

MAY 5 2009

Order for Protection (ORPRT) - Page 1 of 4
WPF DV-3.015 Mandatory (7/2007) - RCW 26.50.060

It is Ordered:

1. Respondent is **Restrained** from causing physical harm, bodily injury, assault, including sexual assault, and from molesting, harassing, threatening, or stalking petitioner the minors named in the table above these minors only:

(If the respondent's relationship to the petitioner is that of spouse or former spouse, parent of a common child, or former or current cohabitant as intimate partner, then effective immediately, and continuing as long as this protection order is in effect, the respondent may not possess a firearm or ammunition. 18 U.S.C. § 922(g)(8). A violation of this federal firearms law carries a maximum possible penalty of 10 years in prison and a \$250,000 fine. An exception exists for law enforcement officers and military personnel when carrying department/government-issued firearms. 18 U.S.C. § 925(a)(1).)

2. Respondent is **Restrained** from coming near and from having any contact whatsoever, in person or through others, by phone, mail, or any means, directly or indirectly, except for mailing or service of process of court documents by a 3rd party or contact by Respondent's lawyer(s) with petitioner the minors named in the table above these minors only:

If both parties are in the same location, respondent shall leave.

3. Respondent is **Excluded** from petitioner's residence workplace school; the day care or school of the minors named in the table above these minors only:

Other

Petitioner's address is confidential. Petitioner waives confidentiality of the address which is:

4. Petitioner shall have exclusive right to the residence that petitioner and respondent share. The respondent shall immediately **Vacate** the residence. The respondent may take respondent's personal clothing and tools of trade from the residence while a law enforcement officer is present.

This address is confidential. Petitioner waives confidentiality of this address which is:

5. Respondent is **Prohibited** from knowingly coming within, or knowingly remaining within 100ft (distance) of: petitioner's residence workplace school; the day care or school of the minors named in the table on page one these minors only:

Other:

6. Petitioner shall have possession of essential personal belongings, including the following:

Home #21 Campain LA, and all possessions in it and Vehicle Toyota Camry 2007 and my former work/furniture order of the Court.

7. Petitioner is granted use of the following vehicle:

Year, Make & Model Toyota Camry 2007 License No. VE17U 2280R

8. Other:

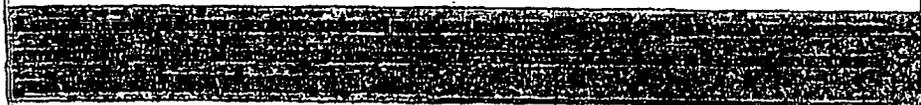
9. Respondent shall participate in treatment and counseling as follows:
 domestic violence perpetrator treatment program approved under RCW 26.50.150 or counseling at: _____
 parenting classes at: _____
 drug/alcohol treatment at: _____
 other: _____

RCS

10. Petitioner is granted judgment against respondent for \$10,000.00 for costs weekly costs.

RCS

11. Parties shall return to court on _____, at _____ m. for review



12. Petitioner is Granted the temporary care, custody, and control of the minors named in the table above these minors only;

13. Respondent is Restrained from interfering with petitioner's physical or legal custody of the minors named in the table above these minors only;

14. Respondent is Restrained from removing from the state the minors named in the table above these minors only;

15. The respondent will be allowed visitations as follows: Weekends Saturdays & Sundays, or in accordance with a court approved parenting plan Sat + Sunday 10AM to Sunday at 6 PM.

RCS

Petitioner may request modification of visitation if respondent fails to comply with treatment or counseling as ordered by the court.

If the person with whom the child resides a majority of the time plans to relocate the child, that person must comply with the notice requirements of the Child Relocation Act. Persons entitled to time with the child under a court order may object to the proposed relocation. See RCW 26.09, RCW 26.10 or RCW 26.26 for more information.

Warnings to the Respondent: A violation of provisions 1 through 5 of this order with actual notice of its terms is a criminal offense under chapter 26.50 RCW and will subject you to arrest. If the violation of the protection order involves travel across a state line or the boundary of a tribal jurisdiction, or involves conduct within the special maritime and territorial jurisdiction of the United States, which includes tribal lands, you may be subject to criminal prosecution in federal court under 18 U.S.C. §§ 2261, 2261A, or 2262.

A violation of provisions 1 through 5 of this order is a gross misdemeanor unless one of the following conditions apply: Any assault that is a violation of this order and that does not amount to assault in the first degree or second-degree under RCW 9A.36.011 or 9A.36.021 is a class C felony. Any conduct in violation of this order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony. Also, a violation of this order is a class C felony if you have at least two previous convictions for violating a protection order issued under Titles 7, 10, 26 or 74 RCW.

If you are convicted of an offense of domestic violence, you will be forbidden for life from possessing a firearm or ammunition. 18 U.S.C. § 922(g)(9); RCW 9A1.040.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

It is further ordered that the clerk of the court shall forward a copy of this order on or before the next judicial day to Pasco, Wa County Sheriff's Office Police Department **Where Petitioner Lives** which shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

Service

- The clerk of the court shall also forward a copy of this order on or before the next judicial day to Pasco, Wa County Sheriff's Office Police Department **Where Respondent Lives** which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.
- Petitioner shall serve this order by mail publication.
- Petitioner shall make private arrangements for service of this order.
- Respondent appeared and was informed of the order by the court; further service is not required.

- Law enforcement shall assist petitioner in obtaining:
 - Possession of petitioner's residence personal belongings located at: the shared residence respondent's residence other: _____
 - Custody of the above-named minors, including taking physical custody for delivery to petitioner.
 - Possession of the vehicle designated in paragraph 7, above.
 - Other: _____
- Other: _____

This Order is in Effect Until the Expiration Date on Page One.

If the duration of this order exceeds one year, the court finds that an order of one year or less will be insufficient to prevent further acts of domestic violence.

Dated: MAY 5th 2008 at 3:22 pm am./p.m.

Robert Fush
Judge/Commissioner

Presented by:

I acknowledge receipt of a copy of this Order:

Lorana Wilson 05.05.08
Petitioner Date

[Signature] 5/5/08
Respondent Date

A Law Enforcement Information Sheet (LEIS) must be completed.

Order for Protection (ORPRT) - Page 4 of 4
WPF DV-3.015 Mandatory (7/2007) - RCW 26.50.060

EXHIBIT B

**Superior Court of Washington
County of**

In re the Parenting and Support of:

Child(ren)
and
Petitioner
Respondent.

No.

Parenting Plan
 Proposed (PPP)
 Temporary (PPT)
 Final Order (PP)

This parenting plan is:

- the final parenting plan signed by the court pursuant to a judgment and order establishing Residential Schedule/Parenting Plan/Child Support signed by the court on this date or dated _____.
- the final parenting plan signed by the court pursuant to an order signed by the court on this date or dated _____, which modifies a previous parenting plan or custody decree.
- a temporary parenting plan signed by the court.
- proposed by (name) _____.

It is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

Name

Age

II. Bases for Restrictions

Parenting Plan (PPP, PPT, PP) - Page 1 of 10

WPF PS 15.0600 Mandatory (6/2008) - RCW 26.26.375, 26.09.016, .181; .187; .194

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child(ren) and the right to make decisions for the child(ren).

2.1 Parental Conduct (RCW 26.09.191(1), (2))

- Does not apply.
- The mother's father's residential time with the child(ren) shall be limited or restrained completely, and mutual decision-making and designation of a dispute resolution process other than court action shall not be required because this parent a person residing with this parent has engaged in the conduct which follows:
 - Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions (this applies only to parents, not to a person who resides with a parent).
 - Physical, sexual or a pattern of emotional abuse of a child.
 - A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

2.2 Other Factors (RCW 26.09.191(3))

- Does not apply.
- The mother's father's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow:
 - Neglect or substantial nonperformance of parenting functions.
 - A long-term emotional or physical impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004.
 - A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.
 - The absence or substantial impairment of emotional ties between the parent and child.
 - The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development.
 - A parent has withheld from the other parent access to the child for a protracted period without good cause.
 - Other:

III. Residential Schedule

The residential schedule must set forth where the child(ren) shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child(ren) shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child(ren) and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children Under School age.

- There are no children under school age.
- Prior to enrollment in school, the child(ren) shall reside with the mother father, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (day and time) _____ to (day and time) _____
 every week every other week the first and third week of the month the second and fourth week of the month other:

from (day and time) _____ to (day and time) _____
 every week every other week the first and third week of the month the second and fourth week of the month other:

3.2 School Schedule

Upon enrollment in school, the child(ren) shall reside with the mother father, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (day and time) _____ to (day and time) _____
 every week every other week the first and third week of the month the second and fourth week of the month other:

from (day and time) _____ to (day and time) _____
 every week every other week the first and third week of the month
 the second and fourth week of the month other:

- The school schedule will start when each child begins kindergarten first grade other:

3.3 Schedule for Winter Vacation

The child(ren) shall reside with the mother father during winter vacation, except for the following days and times when the child(ren) will reside with or be with the other parent:

3.4 Schedule for Other School Breaks

The child(ren) shall reside with the mother father during other school breaks, except for the following days and times when the child(ren) will reside with or be with the other parent:

3.5 Summer Schedule

Upon completion of the school year, the child(ren) shall reside with the mother father, except for the following days and times when the child(ren) will reside with or be with the other parent:

- Same as school year schedule.
- Other:

3.6 Vacation With Parents

- Does not apply.
- The schedule for vacation with parents is as follows:

3.7 Schedule for Holidays

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u>)	With Father (Specify Year <u>Odd/Even/Every</u>)
New Year's Day	_____	_____
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Memorial Day	_____	_____
July 4th	_____	_____
Labor Day	_____	_____
Veterans' Day	_____	_____
Thanksgiving Day	_____	_____
Christmas Eve	_____	_____

Christmas Day _____

For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

Other:

3.8 Schedule for Special Occasions

The residential schedule for the child(ren) for the following special occasions (for example, birthdays) is as follows:

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)
<u>Mother's Day</u> _____	_____	_____
<u>Father's Day</u> _____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other:

3.9 Priorities Under the Residential Schedule

Does not apply because one parent has no visitation or restricted visitation.

Paragraphs 3.3 - 3.8 have priority over paragraphs 3.1 and 3.2 in the following order:

Rank the order of priority, with 1 being given the highest priority:

- | | |
|---------------------------|---------------------------------|
| ___ winter vacation (3.3) | ___ holidays (3.7) |
| ___ school breaks (3.4) | ___ special occasions (3.8) |
| ___ summer schedule (3.5) | ___ vacation with parents (3.6) |

Other:

3.10 Restrictions

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

The mother's father's residential time with the children shall be limited because there are limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when the children spend time with this parent:

There are limiting factors in paragraph 2.2, but there are no restrictions on the
 mother's father's residential time with the children for the following reasons:

3.11 Transportation Arrangements

Transportation costs are included in the Child Support Worksheets and/or the Order for Child Support and should not be included here.

Transportation arrangements for the child(ren) between parents shall be as follows:

3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside the majority of the time with the mother father. This parent is designated the custodian of the child(ren) solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 Other

3.14 Summary of RCW 26.09.430 - 480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of a Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

IV. Decision Making

4.1 Day to Day Decisions

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

Education decisions	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
Non-emergency health care	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
Religious upbringing	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
_____	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
_____	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
_____	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
_____	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
_____	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint
_____	<input type="checkbox"/>	mother	<input type="checkbox"/>	father	<input type="checkbox"/>	joint

4.3 Restrictions in Decision Making

- Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.
- Sole decision making shall be ordered to the mother father for the following reasons:
 - A limitation on the other parent's decision making authority is mandated by RCW 26.09.191 (See paragraph 2.1).
 - Both parents are opposed to mutual decision making.
 - One parent is opposed to mutual decision making, and such opposition is reasonably based on the following criteria:
 - (a) The existence of a limitation under RCW 26.09.191;
 - (b) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a);
 - (c) Whether the parents have demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a); and
 - (d) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.
- There are limiting factors in paragraph 2.2, but there are no restrictions on mutual decision making for the following reasons:

V. Dispute Resolution

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must, be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

counseling by _____, or

mediation by _____, if this box is checked and issues of domestic violence or child abuse are present, then the court finds that the victim requested mediation, that mediation is appropriate and that the victim is permitted to have a supporting person present during the mediation proceedings. or

arbitration by _____.

The cost of this process shall be allocated between the parties as follows:

_____% mother _____% father.

based on each party's proportional share of income from line 6 of the child support worksheets.

as determined in the dispute resolution process.

The dispute resolution process shall be commenced by notifying the other party by written request certified mail other:

In the dispute resolution process:

- (a) Preference shall be given to carrying out this Parenting Plan.
- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorney's fees and financial sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the superior court.

No dispute resolution process, except court action is ordered.

VI. Other Provisions

There are no other provisions.

There are the following other provisions:

VII. Declaration for Proposed Parenting Plan

- Does not apply.
- (Only sign if this is a proposed parenting plan.) I declare under penalty of perjury under the laws of the state of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

Mother	Date and Place (City and State) of Signature
Father	Date and Place (City and State) of Signature

VIII. Order by the Court

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

Warning: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

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.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: _____	Judge/Commissioner
Presented by: _____	Approved for entry: _____
Signature of Party or Lawyer/WSBA No.	Signature of Party or Lawyer/WSBA No.
Print Name	Print Name

OFFICE RECEPTIONIST, CLERK

To: Maria
Subject: RE: Jose R. Veliz, Jr.; Court NO: 85860-8

All received.

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Maria [<mailto:maria@thetrejolawfirm.com>]
Sent: Wednesday, August 10, 2011 12:31 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: mlorincz@co.franklin.wa.us; dcorkrum@co.franklin.wa.us; gptrejo@thetrejolawfirm.com; julian2907@comcast.net
Subject: Jose R. Veliz, Jr.; Court NO: 85860-8

Please file the attached Petitioner's Supplemental Memorandum.