

No. 68424-8-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Marriage of

NEHA CHANDOLA NKA NEHA VYAS  
Respondent

and

MANUL VARN CHANDOLA  
Appellant

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ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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BRIEF OF RESPONDENT  
IN ANSWER TO AMICUS CURIAE

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FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 FEB 13 PM 1:31

TABLE OF CONTENTS

I. RESPONSE TO STATEMENT OF ISSUES ..... 1

II. ARGUMENT IN ANSWER TO AMICUS ..... 1

    A. AMICUS MISREADS AND/OR MISREPRESENTS THE  
    RECORD ..... 1

    B. WHETHER OR NOT THE FATHER'S CONDUCT CAN BE  
    CALLED A PARENTING "STYLE," IT IS STILL HARMFUL TO  
    THE CHILD. .... 5

    C. THE PROPOSED REMEDY IS NOT NEEDED HERE AND IS  
    BETTER DIRECTED TO THE LEGISLATURE..... 10

III. CONCLUSION ..... 12

TABLE OF AUTHORITIES

**Washington Cases**

*In re Marriage of Kovacs*, 121 Wn.2d 795, 854 P.2d 629 (1993)..... 11, 12  
.....

*State ex rel. M.M.G. v. Graham*, 159 Wn.2d 623, 152 P.3d 1005  
(2007)..... 6

**Statutes, Rules, & Other Authorities**

RCW 26.09.187(3)(a)..... 7

RCW 26.09.187(3)(b)..... 6

## I. RESPONSE TO STATEMENT OF ISSUES

1. This case does not involve “unsupported abuse allegations.”
2. The trial court expressly did not base its ruling on concerns reported by the mother regarding the child’s behavior or on the father’s reaction to those concerns. Consequently, there is no need for a remedy.
3. Even if this case did involve “unsupported abuse allegations” and a trial court affected by those allegations, the proposed adoption of rules mandating how trial courts structure parenting plans should be directed to the legislature.

## II. ARGUMENT IN ANSWER TO AMICUS

### A. AMICUS MISREADS AND/OR MISREPRESENTS THE RECORD.

Whatever the merits of the remedy proposed by amicus, those merits might be better addressed in a case where the facts actually involve a trial court influenced by “unsupported abuse allegations.” This is not that case.

First, the mother did not make allegations; she presented concerns about the daughter’s behavior. This is a “meaningful distinction,” the parenting evaluator testified, not, mere semantics. RP 287. Most observers would agree, but the parenting evaluator

was particularly well-equipped to make this distinction, with her training and experience in this area, as noted by the father's own psychological expert. RP 525-528.

Here, amicus ignores this distinction, just as the father has. In fact, it was the father who injected "abuse allegations" into this case when he exaggerated the mother's conduct to a degree, frequency, and intensity unsupported by the facts. RP 206, 277. By contrast, the mother was reluctant to raise the concerns, unwilling to believe anything improper was happening, and eager to have the concerns allayed. RP 205-206, 271. She acted to protect her daughter, but also acted cautiously and with care to resolve the matter privately. RP 206, 802-803. It is hard to imagine a more responsible approach. As the father's expert noted, because the mother did not persist after her concerns were addressed, any issues related to the mother's conduct were "remediable." RP 519.

Yet, here, as at the trial level, the father insists on characterizing the mother's action as an allegation of sexual abuse, a mischaracterization echoed by amicus. Their refusal to deal with the reality of the situation led the father to insist on intrusive evaluations of the daughter and to declare his intention to tell the daughter about the incident. RP 728-729. Both parenting experts

saw the father's reactive conduct as much more threatening to the child than the mother's conduct (i.e., responsibly raising appropriate concerns), even considering how the mother's anxiety played a role. RP 519-529, 723-25. And rightly so, since the parents' reactions demonstrate the fundamental difference in their focus: the mother was concerned about the child; the father was concerned about himself.

The trial court expressly recognized that the mother's reported concerns were not grounded in any kind of abuse. Rather, the court placed the mother's concerns and the father's reactions in context, noting that the mother "may have needed to precipitate a crisis" to leave the marriage. CP 94. The court did not fault the mother for "false reporting," as amicus does (Br. Amicus, at 10), but described how the mother's "documented over-reactive tendencies played a part." CP 94. For this reason, the court found it would be unfair to hold against the father his reaction and his imprudent proposals for medical evaluations of the daughter, etc. *Id.*

No one disputed the facts underlying the mother's concerns. See, e.g., RP 513-14 (father's expert). Indeed, the father and others witnessed some of the concerning conduct. RP 678-681, 823-825, 947-960, 974-975. Neither the evaluators nor the court

found the mother's motivation to be anything but concern for the child, heightened by the parents' conflict and the mother's anxious nature. RP 519 (father's expert). The mother's report led to an evaluation by a psychologist, which concluded there was likely no reason for concern about inappropriate touching. The mother was relieved and the matter was dropped. In short, no one but the father thought the mother made "false accusations."

Yet, amicus claims the court gave the mother a "pass" for making "unsupported allegations." Br. Amicus, at 10. In fact, the trial court properly focused on the child and on the evidence, including from both parenting experts, that the mother's ability to parent the child was unimpaired. See, e.g., RP 520-524 (Dr. Hedrick). This is the salient issue: parenting ability, not a parent's conduct or personality per se. Here, substantial evidence supported the nexus between the father's conduct and the adverse impact on the child.

Instead of dealing with the facts of this case, the amicus and the appellant construct a fictional case, one where the restrictions on the father's residential time "appear to be the result of the unsubstantiated allegations." Br. Amicus, at 16. This presents a number of difficulties. First, this Court would have to believe the

trial court lied when it expressed the view that the mother's concerns were heightened by the situation. And, this Court would have to believe the trial court secretly found abuse had occurred despite that none of the witnesses, including the mother, believed that it had. Finally, this Court would have to ignore the many, substantiated ways in which the father's conduct was adverse to the best interests of his daughter, on which conduct the court expressly predicated the parenting plan. This is not one big leap, but three.

**B. WHETHER OR NOT THE FATHER'S CONDUCT CAN BE CALLED A PARENTING "STYLE," IT IS STILL HARMFUL TO THE CHILD.**

The amicus also persists in describing this case as one that involves nothing more than a trial court's preference as between "parenting styles." See, e.g., Br. Amicus, at 17-18. This ignores the trial court's finding, supported by the evidence, including the view of both parenting experts, that the father's conduct was adverse to the child's best interests. If the amicus wants to defend sleep deprivation and malnourishment as style choices, so be it. See, e.g., Br. Amicus, at 17-18. But amicus cannot ignore that Washington law authorizes a trial court, when called upon to settle a dispute between parents, to take into account any conduct

adverse to a child's best interests. RCW 26.09.191(3)(g). This authority is not limited to cases of domestic violence, substance abuse, or sexual abuse, as amicus implies. Br. Amicus, at 17-18.

Notably, amicus operates from a presumption not embraced by Washington law or policy: that a court should order equally shared residential arrangements, as if it was a kind of "default" parenting plan. Br. Amicus, at 3. Though such arrangements are permitted in Washington, our legislature has been of the opinion that children prosper best when residing primarily in one parent's household. See RCW 26.09.187(3)(b) (permitting frequent alternation between residents when in child's best interests).<sup>1</sup>

While Washington law no longer impedes equally shared residential arrangements, when such arrangements are appropriate, it certainly does not require them. This matters here because amicus seems to think that such an arrangement would have been the outcome in this case if the trial court had not been secretly influenced by the "abuse allegations." Br. Amicus, at 3-4, 5. In fact, notwithstanding the many reasons to restrict the father's

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<sup>1</sup> Washington's child support statutes do not even explicitly contemplate equally shared residential arrangements. See *State ex rel. M.M.G. v. Graham*, 159 Wn.2d 623, 627, 152 P.3d 1005 (2007) (addressing alternative formulations for child support in such arrangements).

residential time, there is absolutely nothing about Washington law that would require the court to place the child here in both parents' homes equally. Certainly, this case does not present an argument for equally shared parenting, given the parental conflict and communication difficulties and given the father's lack of history of meeting the child's basic needs day-to-day.

Rather, again notwithstanding the father's problematic conduct, the evidence here overwhelmingly supported placing the child primarily in the residential care of the mother, as the parent who had done most of the childrearing and who was best positioned to provide a primary residence for the child. RCW 26.09.187(3)(a).<sup>2</sup> In other words, before even getting to the father's parenting defects, the trial court had no reason to order an equally shared residential arrangement.

Amicus's position also includes an additional unstated and unsupported presumption: that disproportionate residential arrangements prevent children from maintaining and nurturing bonds with both parents. As most working parents will attest, a parent-child bond is not a matter of quantitative measurement, but

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<sup>2</sup> Amicus again distorts the record when it declares: "Mr. Chandola was the primary parent for their daughter" after the mother returned to work. Br. Amicus, at 6. See Br. Respondent, at 11. Even the father's parenting expert noted the data did not support this claim. V RP 722-723; see, also, Exhibit 1, at 26.

qualitative. The amount of time a parent spends with a child matters less than how the time together is spent. Sadly, nothing illustrates that fact better than the father in this case, whose parenting is impaired by an inability to see the daughter as an autonomous entity with needs distinct from his own.

This is the flaw in the claims that the pre-trial supervised visitation and the parenting plan adopted by the court caused a “total disruption” of the relationship between father and daughter and “marginalize” the father. Br. Amicus, at 10. In the first place, these claims are predicated on the false premise that the father spent a lot of unsupervised time with the child prior to separation. In fact, during the marriage, the father was rarely alone with the child and rarely performed the routine tasks of parenting. Another family member almost always was present and almost always was taking care of the child’s needs. When the father did attempt to parent alone, for several months when his parents were out of town and the mother was at work, it was a disaster. In short, the father marginalized himself, not only by impeding the child’s development, but by letting everyone else do the parenting.

What amicus ignores is the potential for improvement in the father-daughter relationship. When a child is protected from a

parent's parenting defects, and the parent is helped to correct those defects, the relationship can only improve. Indeed, actually reading the record in this case makes clear that the court and the experts and the mother were all committed to helping the father become a better parent and grow his relationship with his daughter.

Likewise, amicus misrepresents the court's concern with the paternal grandparents as reflecting a prejudice against the involvement of extended families. Br. Amicus, at 19. Nothing in the record supports this accusation. Both parents involved their own parents in their family life. For example, the court had no problem with the maternal grandparents' involvement.

The problem with the father's parents is that they were doing the parenting, not him, and they were allying with him against the mother, casting the child into a conflict between her parents. As the expert put it, the combined anti-maternal campaign of the father and his parents signaled how little they valued the mother and signaled to the child she was not free to love both parents equally. II RP 200, 203-204. It is not the involvement of extended family that is the problem. It is the destructive involvement.

Ironically and inaccurately, amicus complains the court's ruling marginalizes the father; in fact, what evidence exists in this

case of a parent being marginalized is the evidence of the father and the grandparents conspiring to marginalize the mother. Exhibit 1, at 25. The father's failure to appreciate this harm merely underscores his broader inability to take his daughter's needs into account, including her need to love both her parents. Amicus may call this a style choice, but the trial court properly saw this as harm.

**C. THE PROPOSED REMEDY IS NOT NEEDED HERE AND IS BETTER DIRECTED TO THE LEGISLATURE.**

Amicus proposes a variety of rules for this Court to adopt in "false allegation" cases, with a focus on "expeditiously" restoring the parent-child relationship disrupted by the allegations. As noted above, not a single of these premises is accurate. There was no false allegation. The father's time with the child was disrupted, not by abuse allegations, but by his conduct and by the fact of the divorce, which disrupted the entire family. And his time now includes residential time, vacations, etc., with anticipated enlargement depending on his ability to address the conduct adversely affecting the child. Moreover, the parties agreed to use of a case manager, who can help the father realize the goals set out in the parenting plan. CP 89; Exhibit 5. Further, indicative perhaps of at least episodic insight, the father also agreed to use a parenting coach, go to therapy, and allow the mother to make major

decisions for the child (i.e., health care and education). CP 87-90; Exhibit 5.

As to the merits of the proposed remedy more generally, the legislature is better positioned to address whether trial courts should be constrained in the ways amicus suggests. Already, parents are protected under Washington law against being prejudiced by temporary orders. *In re Marriage of Kovacs*, 121 Wn.2d 795, 809, 854 P.2d 629 (1993). Certainly, that did not happen here, since most of the trial focused on the pre-separation family life.

Nor is there any need, here or elsewhere, to mandate interim parenting plans, instead of permanent plans. Courts are free to order such plans, and do so within their discretion, as amicus points out. But amicus simply fails to persuade that interim plans should be mandatory, particularly in light of the strong countervailing interests in finality in family law proceedings. Br. Amicus, at 12. Certainly, before adopting such a rule, the rule-maker would want to consider a host of other factors, including whether continued litigation is preferable to built-in parenting plan adjustments. Similarly, this Court is not positioned to adopt amicus's proposal that trial courts ignore a statutory factor in "false allegation" cases.

Br. Amicus, at 15 (proposing to set aside a factor from RCW 26.09.187 until “there is sufficient data”).

Basically, amicus asks this Court to substitute a one-size-fits-all rule for the trial court’s discretion. This radical revision of the family law is best addressed to the legislature. Notably, the Washington legislature has consistently rejected such approaches in favor of one that requires the trial court to consider certain factors without mandating particular results, thus allowing the court to focus on a child’s best interests on a case-by-case basis. *Marriage of Kovacs*, at 810 (statutory factors give guidance and permit flexibility). That is precisely what the court did here.

### III. CONCLUSION

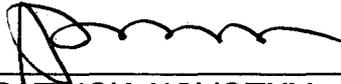
Amicus echoes the father’s effort to displace onto others responsibility for the effects of his conduct. This resistance, or what the trial court described as the father’s difficulty integrating data inconsistent with his view of reality, is the main obstacle in the path of a stronger father-daughter relationship. No matter how much time the father spends with the daughter, if he is unable to see her for herself or to place her needs above his own, the relationship will always be limited. The means of achieving a different outcome, a

deeper and more loving relationship, lie with the father, not the court.

For the reasons above, and those in the respondent's brief, Neha Vyas respectfully asks this Court to affirm the trial court's parenting plan.

Dated this 12th day of February 2013.

RESPECTFULLY SUBMITTED,



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