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S.Ct. No. 89093-5
COA No. 68424-8-1

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of

NEHA CHANDOLA NKA NEHA VYAS
Respondent

and

MANUL VARN CHANDOLA
Appellant

FILED

JUL 19 2013

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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

RESPONDENT'S ANSWER
TO PETITION FOR REVIEW

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 ORIGINAL

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A. IDENTITY OF RESPONDENT

The respondent is Neha Vyas, formerly Neha Chandola, who was the petitioner in the Superior Court and the respondent in the Court of Appeals.

B. RESTATEMENT OF ISSUES ON WHICH REVIEW IS SOUGHT

1. The trial court found the father to be causing the child harm, not merely to be “doting but ineffective.” The finding of harm justifies the parenting plan residential schedule and restrictions. In any case, the trial court’s residential schedule would be justified under RCW 26.09.187, even without consideration of the necessity for restrictions.

2. The trial court was not influenced by “unfounded allegations” of sexual abuse, and, in any case, the mother did not make unfounded allegations; she raised concerns to which the father reacted with an exaggerated defensiveness.

3. The trial court properly considered the beneficial effects on the child of being under her mother’s primary care after separation, but, in any case, the court relied primarily on the family’s history before separation.

4. The main impediment to an improved relationship between father and child is the father, who persistently resists

acknowledging and acting on the child's needs instead of his own. In any case, the trial court has the present ability to restore relationships between parent and children where they have been unnecessarily disrupted and where such restoration will not be adverse to the child. No additional rule is necessary.

C. RESTATEMENT OF THE CASE

This case is not about “unfounded sexual allegations” or about cultural biases or about parenting styles. Rather, this case involves a straightforward exercise of discretion by the trial court based upon substantial evidence that the father's conduct harmed the parties' child. Indeed, what most distinguishes this case is not an issue of legal consequence so much as the fact of the father being so utterly isolated in his view of the world and so utterly insulated from any perspectives inconsistent with his view. He cannot or will not listen to his wife (now ex-wife), his friends, the pediatrician, or the psychologists. Worst of all, he cannot or will not listen to his daughter, a parenting impairment corroborated by both psychologists, including his own expert. It is the father's persistent elevation of his own needs over those of his daughter that is essentially the reason for the parenting plan.

An elaboration of the facts supporting the court's decision, with record citations, can be found in the mother's briefs and in the opinion of the Court of Appeals. See Br. Respondent, at 3-14; Respondent's Answer to Amicus, at 1-5; Slip Op. at 4-9.

D. ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED.

1. THE COURT FOUND THE FATHER'S CONDUCT HARMFUL TO THE CHILD, NOT MERELY "DOTING BUT INEFFECTIVE."

The father's effort to make his case into a cause célèbre gets badly mired in the actual facts. He argues the statute, RCW 26.09.191(3)(g), is vague because it allowed the trial court to restrict the father's residential time just because he was "doting but ineffective." Petition, at 1. Actually, the statute is a model of clarity as compared to the father's rendition of the facts.

The court found the father to be "doting but ineffective," but also, reflecting the testimony of the mother, friends, and the experts, expressly found the father's conduct "adverse to the best interests of the child." CP 92. In particular, as the trial court found, the father "lacked, in concerning degree, objectivity with respect to [the child's] healthy development." CP 92. He was "unwilling or unable to establish boundaries, routines, schedules, and structure. He discouraged exploration and independence." Id. Not only was

the father an ineffective parent, he “actively undermined the mother’s efforts to provide these essential parenting components, resulting in an imbalance that appears to have had adverse consequences for the child.” CP 92.

Both psychologists, numerous friends, the mother and her mother all testified to the harm done to the child because the father could not attend to the child’s needs over his own. See, e.g., I RP 110-111 (P.R.C. clingy, fearful, prone to tantrums); I RP 246 (P.R.C. cranky, somber, tired, “a stressed little girl”); II RP 354-355 (P.R.C. “a tired little girl”); III RP 410 (P.R.C. cranky); IV RP 567-568 (cranky); IV RP 651 (P.R.C. “really closed in”; really fussy and cranky; never got any sleep; seemed fearful, held apart from other children, suspicious).

At trial, no one, not even the father, claimed his conduct was merely a matter of style, with a neutral impact on the child. For example, it is not that the child’s bedtime/daytime schedule was merely different from most; rather, it is that the child’s schedule did not permit her to get the sleep or nutrition she needed to be happy and healthy. See, e.g., I RP 128; II RP 345; III RP 381, 399-400, 408. Likewise, the father continued to feed the child milk by bottle at night, contrary to medical advice, because of his adherence to an

“attachment parenting” philosophy; rather, he exposed her to the risks of dental problems and nutritional deficiencies because he was not able to say “no” to the child. II RP 190-191; III RP 412; V RP 930. In short, his conduct was affecting her physical and mental health and her healthy development.

Significantly, the harmful effects of the father’s parenting largely remediated during the year between separation and trial, when the child resided almost entirely with the mother. CP 92-93. P.R.C. was a “changed child,” who went from being timid and withdrawn, fussy and clingy, to happy, outgoing, social, and curious. Id. The trial court’s parenting plan sought to preserve these improvements, and the child’s health and happiness, while reintegrating the father into the child’s life as he demonstrated whether or not he could improve his parenting.

This is the challenge to the father: not to change the trial court’s decision, but to change himself for the benefit of his daughter and their relationship.

2. THE MOTHER DID NOT MAKE UNSUPPORTED ABUSE ALLEGATIONS.

Nothing better illustrates the father’s narrow and self-directed regard than his historical and continued handling of the

"abuse allegations" issue. In the opinion of his own expert, the father's reaction to this incident (not the incident itself) raised concerns about his ability to empathize and to put aside his own agenda even for the sake of the child. RP 728-729. Certainly, the father's agenda includes misrepresenting the facts.

First, the mother did not make allegations; she presented concerns about the daughter's behavior. She 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. Upon assurance from a psychologist, the mother immediately reacted with relief. 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.

The difference between what the mother actually did and what the father calls "abuse allegations" is a "meaningful distinction," as 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.

Yet, the father completely ignores this distinction as he pursues his own agenda. Indeed, it was he 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. That is, rather than address the concerns as the mother did, so as to assuage them, he inflamed them, illustrating again his abusive use of conflict. RP 305-306.

3. THIS COURT DOES NOT NEED TO ADOPT ANY RULE.

From the false premise that the "unfounded abuse allegations," and/or the supervised visitation that followed, influenced the trial court in some way, the father proceeds to propose a rule. The father argues the trial court based its parenting plan on the improvement in the child during the nine months during which the father's visitation was supervised. That is, he argues, the father lacked an opportunity to demonstrate his parenting skills.

In fact, of course, the trial court looked at the entire history of the family and relied primarily on the substantial evidence from friends and family that the father lacked parenting skills.

Interestingly, before separation, the father was rarely alone with the child, since extended family members were usually present and, along with the mother, performing most of the routine parenting tasks. The father had ample opportunity to demonstrate his parenting skills and chose, instead, to let others do most of the work. Indeed, during the short period of time when his parents were gone and the family tried to manage with the father as the child's primary caregiver he simply could not do it. III RP 409-411. Moreover, and ironically, it was and is within the father's power to restore his relationship with his daughter. The father has the opportunity to work with the case manager to increase residential time and to work with the coach on meeting his child's needs. CP 89; Exhibit 5. Certainly, he has more control over his relationship with his daughter than the trial court.

In short, there is no error in this case for which a new rule is needed.

As to the merits of the father's proposed remedy more generally, the legislature is better positioned to address whether trial courts should be constrained in the ways the father 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. The father simply fails to persuade that interim plans should be mandatory, particularly in light of the strong countervailing interests in finality in family law proceedings. *In re Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003). 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 the father's proposal that trial courts ignore a statutory factor in "false allegation" cases.

Basically, the father 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.

E. MOTION FOR ATTORNEY FEES

The mother in this case has had to shoulder the expense of this litigation without any assistance. The father has his affluent family to support him. This would be bad enough if there was some debatable issue here, but there is not. The father repeatedly distorts the facts in an effort to create the illusion of a debatable issue, but the illusion is easily dispelled by resort to the record. In short, this petition is frivolous and Neha should be granted her fees for this answer under RAP 18.9(a) and (c)(2). See *Tiffany Family Trust Corp. v. City of Kent*, 155 Wn.2d 224, 241, 119 P.3d 325 (2005) (appeal frivolous if, considering whole record, it presents no debatable issues and is so devoid of merit that there is no possibility of reversal). Moreover, the mother simply does not have the ability to fund this ongoing litigation, while the father obviously does. Accordingly, the mother also requests attorney fees on the basis of RCW 26.09.140 and RAP 18.1, based on the disparity in the parties' financial circumstances. The statute authorizes the court to make one party pay the fees of the other party "after

considering the financial resources of both parties” RCW 26.09.140. RAP 18.1(a) makes this provision applicable to appeals. While the father has had difficulties maintaining employment, he has the complete financial backing of his family, which has meant this litigation costs him nothing. In financial terms and otherwise, it costs the mother a lot. She is facing foreclosure and otherwise struggles to make ends meet. The father should pay for the costs the mother incurs litigating in this matter.

F. CONCLUSION

For the foregoing reasons, Neha Vyas respectfully asks this Court to deny review of Varn Chandola’s petition and to award her fees.

Dated this 11th day of July 2013.

RESPECTFULLY SUBMITTED,

/s/ Patricia Novotny

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OFFICE RECEPTIONIST, CLERK

To: Pat Novotny
Cc: David Zuckerman; Janet M. Helson; Greg Miller
Subject: RE: Chandola, COA No. 68424-8-I

Received 7/11/2013

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Subject: Chandola, COA No. 68424-8-I

Attached for filing in pdf format is the Respondent's Answer to Petition for Review, Declaration of Neha Vyas, and Declaration of Service in Marriage of Chandola, COA No. 68424-8-I. The person submitting these pleadings is Patricia Novotny, WSBA No. 13604, whose email address is novotnylaw@comcast.net.

Thank you