

NO. 63063-6

**COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON**

MICHELLE L. SAMODUROV, RESPONDENT

v.

BRENT JAMES SAMODUROV, APPELLANT

FILED
COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON
2009 JUL 10 PM 2:31

Appeal from the Superior Court of Snohomish County
The Honorable Richard J. Thorpe

No. 07-3-02227-1

BRIEF OF APPELLANT

By 
Todd R. DeVallance, WSBA #32286
Attorney for Appellant
Goldberg Jones, PLLC
1200 Westlake Ave. N., Suite 700
Seattle, WA 98109
(206) 448-1010

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. ASSIGNMENTS OF ERROR.....2

III. STATEMENT OF THE CASE.....3

IV. ARGUMENT.....9

A. **The trial court erred in finding that Appellant had engaged in physical, sexual, or a pattern of emotional abuse of a child and thereby limiting his residential time with his children under RCW 26.09.191(2)(a)(ii)**.....9

1. Findings of Fact 2.19.2 and 2.19.3 – The Court erred in finding that the father is an individual with sexual deviancy conduct in the recent past and has an attraction to pornography.....11

2. Findings of Fact 2.19.4, 2.19.5 and 2.19.6 – The Court erred in finding that the father did pull his penis out of his pocket and show it to his 5 year-old child and under RCW 26.09.191(2)(a)(ii) that the father’s residential time shall be restricted to supervised visitation.....16

B.	The trial court erred in finding the existence of a long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with Appellant’s performance of parenting function and thereby imposing restrictions on his residential time with his children under to RCW 26.09.191(3)(c.).	23
1.	Findings of Fact 2.19.2 and 2.19.16 – The Court erred in finding that the father has a recent history of severe alcohol problems.	23
V.	<u>CONCLUSION</u>	25
VI.	<u>APPENDIX</u>	26
VII.	<u>CERTIFICATE OF SERVICE</u>	26

TABLE OF AUTHORITIES

Washington Cases

Pope v. University of Washington, 121 Wash.2d 479, 490,
852 P.2d 1055 (1993).....10

Reynolds Metals Co. v. Electric Smith Constr. & Equip. Co.,
4 Wash.App. 695, 698, 483 P.2d 880 (1971).....10

In re Marriage of Watson, 132 Wn. App. 222,
130 P.3d 915 (Div. II 2006).....10

Washington Statutes

RCW 26.09.191(2)(a)(ii).....9

RCW 26.09.191(3)(c).....23

I. INTRODUCTION

Appellant, Brent Samodurov, and Respondent, Michelle Samodurov, have four minor children together, ages eight, five, four, and two. *Petition for Dissolution of Marriage*, CP 1230-1231 ¶ 1.3. Pursuant to a Petition for Dissolution of Marriage, a Guardian Ad Litem (GAL) was appointed on behalf of the four minor children. *Order Appointing Guardian Ad Litem*, CP 1129. On January 8, 2009, the trial court found that Mr. Samodurov's residential time with his four children should be restricted to 14 hours of professionally supervised visitation every two weeks under RCW 26.09.191(2)(a)(ii) and RCW 26.09.191(3)(c). *Final Parenting Plan*, CP 66-75 ¶¶ 3.1-3.2. The trial court further prohibited the Mr. Samodurov from filing a petition for modification until two years after the entry of the Final Parenting Plan. CP 70 ¶ 3.10. The trial court ordered that all major decisions regarding the children shall be made solely by the children's mother, Ms. Samodurov. CP 73 at ¶ 4.2.

Mr. Samodurov appeals the trial court's Findings of Facts and Conclusion of Law, as set forth in Paragraph 2.19, entitled Parenting Plan, and the restrictions placed upon his residential time and decision making authority, as set forth in Sections 2, 3, and 4 of the Final Parenting Plan. The primary assignments of error are that the evidence

submitted to the trial court does not support the findings that (1) Mr. Samodurov's residential time with his children should be restricted to supervised visitation under RCW 26.09.191(2)(a) and RCW 26.09.191(3)(c); and (2) Mr. Samodurov should be excluded from major decision making regarding the children's development.

Mr. Samodurov appeals the Findings of Facts and Conclusion of Law and the Final Parenting Plan and asks that the Court of Appeals vacate the trial court's ruling and remand this matter back to the trial court.

II. ASSIGNMENTS OF ERROR

A. The trial court erred in finding that Mr. Samodurov had engaged in physical, sexual, or a pattern of emotional abuse of a child and that his residential time with his children should be limited and joint decision making should not be required under RCW 26.09.191(2)(a)(ii).

1. May a court place restrictions on a parent's residential time with his children under RCW 26.09.191(2)(a)(ii) based upon allegations of sexual deviancy conduct and an attraction to pornography that are not supported by substantial evidence.
2. May a court place restrictions on a parent's residential time with his children under RCW 26.09.191(2)(a)(ii) based upon an allegation that he sexual exposed himself to one of children that that is not supported by substantial evidence.

B. The trial court erred in finding that Mr. Samodurov suffered from a long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions pursuant to RCW 26.09.191(3)(c).

1. May a court place restrictions on a parent's residential time with his children under RCW 26.09.191(3)(c) based on an allegation of severe alcohol problems that is not supported by substantial evidence.

III. STATEMENT OF THE CASE

Brent Samodurov and Michelle Samodurov were married on June 15, 1996 in King County, Washington. Mr. Samodurov and Ms. Samodurov have four children together: Madelyn, age 8; Brynn, age 5; Caleb, age 4; and Isabella, age 2. Prior to any of the children being born, Mr. Samodurov was charged with indecent exposure in 1997 in Seattle, Washington. RP Vol. I 38:15-25; 39:1-11. Mr. Samodurov entered into a deferred agreement with the City of Seattle, and upon the completion of a Sexual Deviancy Treatment program, the charges were dismissed with prejudice on or about August of 1999. *Id.* The parties separated on August 10, 2007.

On August 13, 2007, Ms. Samodurov filed a Petition for Dissolution of Marriage in Snohomish County Superior Court, cause number 07-3-02227-1. On August 27, 2007, Karin Ballantyne was

appointed as Guardian Ad Litem (GAL) on behalf of the parties' four children. *Order Appointing Guardian Ad Litem*, CP 1129. Also in August of 2007, Ms. Samodurov relocated to the Sacramento, California area with the parties' four children. RP Vol. I 17:16-25; 18:3-6. In order to be close to his children, Mr. Samodurov subsequently relocated to Rancho Cordova, California during the spring of 2008. *Id.*

The dissolution proceeding was highly contentious with numerous motions and temporary orders being entered prior to the trial date. During the course of the GAL's investigation, Mr. Samodurov completed a Sexual Deviancy Evaluation with Dr. John W. Lennon of Bellevue Community Services and a Drug and Alcohol Evaluation with Kent Lovitz of Associated Behavioral Health. On April 7, 2008, Dr. Lennon and his evaluation team issued a final recommendation and found no evidence of sexual compulsivity, sexual deviancy, violence, or predatory behavior. *Sexual Deviancy Evaluation*, CP 1442; RP Vol. IV 99:8-11; Ex 16. Mr. Lovitz concluded that Mr. Samodurov was compliant with a Drug and Alcohol Evaluation and determined that Mr. Samodurov needed out-patient treatment and minimal follow through. RP Vol. II 63:20-24. On June 17, 2008, the GAL issued her final recommendation for a residential schedule (filed on July 11, 2008). *Guardian Ad Litem Final Public Report*, CP 584-587. The GAL recommended that Mr.

Samodurov's residential time with his children and decision making authority should be, in part, as follows:

- 3) The children shall continue to reside with the mother. The father shall have residential time as follows:

The father's residential time shall be increased to alternate weekend visits on Saturdays and Sundays from 9 AM to 7 PM for the next four months. A non-professional supervisor shall monitor the father's residential time for four hours each day. If the father's work schedule permits, he shall have a mid-week visit from after work until 8 PM on Wednesday or Thursday evenings.

If there are no significant issues of concern reported by the mother or the supervisors, the children shall reside with their father on alternate weekends as follows: Saturday at 9 AM to Sunday at 7 PM for the next four months. A non-professional supervisor shall monitor the visits for two hours on either Saturday or Sunday.

Beginning March 2009, the father's residential time shall be expanded to include Friday night after work or 6 PM until Sunday at 7 PM.

- 5) Decision making shall be joint....

CP 585-586.

Pursuant to the recommendation made by the GAL, Mr.

Samodurov's first partially unmonitored visitation occurred on Saturday,

September 27, 2008 and Sunday, September 28, 2008. RP Vol. I 104:22-25; 105:12-17. The children were returned to Ms. Samodurov on the evening of September 28, 2008. *Id.* On October 1, 2008, Ms. Samodurov notified the GAL that Brynn (age 5) had disclosed that Mr. Samodurov had showed Brynn his penis. *Id.* at 109:1-17. The GAL notified Sacramento Child Protective Services of the alleged disclosure and instructed Ms. Samodurov to call the police and to file a report. RP Vol. II 98:6-8, 12-25; 99:1-4. Ms. Samodurov filed a police report with the Sacramento County Sheriff's Office on October 1, 2008. RP Vol. I 107:2-15.

Mr. Samodurov denied the allegation. RP Vol. III 163:8-10. When interviewed by the Sacramento Sheriff's Office on September 28, 2008 at 1:05 p.m., Brynn stated that during her visit with her father "he showed the thing he pees with to my sister Madelyn and my brother [C]aleb." Ex 54; RP Vol. I 109:13-17. Caleb and Madelyn were subsequently interviewed by the Sacramento Sheriff's Office and both children denied that allegation that Mr. Samodurov exposed his penis to them. Ex 54. Madelyn (age 8) stated that her father has never shown her his penis. *Id.* Caleb (age 4) stated that he was not present when his father showed Brynn his penis. *Id.* On November 4, 2008 at 10:10 a.m. Brynn was interviewed by the Sacramento Sheriff's Office Special Assault

Forensic Evaluation Center (SAFE) and during that interview Brynn did not disclose ever seeing her father's penis. Ex 54.

After an investigation, Sacramento Child Protective Service concluded that the allegation that Mr. Samodurov exposed himself to Brynn was unfounded. Ex 91. On October 22, 2008, the Sacramento County Sheriff's Office closed the case after making a determination of no likelihood of prosecution. Ex 54. Also relevant to the issues on appeal is the fact that the children's paternal grandparents filed a Petition for Guardianship on or about November 4, 2008 in the State of California.

The parties appeared for trial on December 18, 2008 in Snohomish County, Washington. Mr. Samodurov appeared *pro se* and Ms. Samodurov was represented by Ms. Christine Mayoue. Despite Mr. Samodurov's denial of the allegation, the findings of Sacramento CPS, the investigation by the Sacramento Sheriff's Office Special Assault Forensic Evaluation Center, and the suspicious timing of Ms. Samodurov's allegation, the GAL changed her previous recommendation for a residential schedule and recommended "that the father have visitation every other weekend, two days each of those weekends, eight hours a day." RP Vol. II 125:11-13. The GAL further recommended that the father's visitation be professionally supervised. *Id.* at 16-17. On

cross examination, the GAL offered that the two main reasons for changing her recommendation was (1) the CPS investigation, which was determined to be unfounded; and (2) Mr. Samodurov's reaction (or lack thereof) to his parents filing a guardianship action in California. RP Vol. III 21:8-25; 22:1-17.

On January 8, 2009, Judge Richard J. Thorpe issued his oral ruling and made the following findings:

The Court is also persuaded that B[rynn] said to Caleb "Yours is going to be as big as daddy's some day." She confirmed that statement to the police and Caleb confirmed to the police that she had done so as well. Not even Cecil B. DeMille could have come up with a more credible scenario and taught a 5 and 4 year old to pull it off....

RP Vol. VI 3:4-11. Judge Thorpe also found that Mr. Samodurov to be a narcissistic, sexual deviant, with a severe alcohol problem. *Id.* at 2:14-18.

On January 29, 2009, the Findings of Fact and Conclusion of Law and Final Parenting Plan were entered with the Snohomish County Superior Court. Mr. Samodurov seeks review of the findings as set forth in paragraphs 2.19.2, 2.19.3, 2.19.4, 2.19.5, 2.19.6, and 2.19.16 of the Findings of Fact and Conclusion of Law. *Findings of Fact and Conclusion of Law*, CP 53-56. Mr. Samodurov also seeks review of the restrictions placed upon his residential time and decision making authority, as set forth in Sections 2, 3, and 4 of the Final Parenting Plan

dated January 29, 2009. *Final Parenting Plan*, CP 67-73 ¶¶ 2.1-3.2, 3.10, 4.2. A copy of the Findings of Fact and Conclusion of Law and Final Parenting Plan are attached hereto.

IV. ARGUMENT

The Revised Code of Washington 26.09.191(2)(a)(ii) provides that a “parent’s residential time with the child shall be limited if it is found that the parent has engaged in physical, sexual, or a pattern of emotional abuse of a child.” Restrictions on a parent’s residential time with their children under RCW 26.09.191 must be supported by substantial evidence. *In re Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (Div. II 2006). The trial court’s findings that Mr. Samodurov engaged in behavior that subjected him to limitations in his ability to parent his children was not supported by substantial evidence. As such the trial court’s findings should be vacated.

A. The trial court erred in finding that Appellant had engaged in physical, sexual, or a pattern of emotional abuse of a child and thereby limiting his residential time with his children under RCW 26.09.191(2)(a)(ii).

The trial court’s findings that Mr. Samodurov engaged in physical, sexual, or a pattern of emotional abuse of a child is not supported by substantial evidence.

Findings of fact are reviewed under the substantial evidence standard. *Pope v. University of Washington*, 121 Wash.2d 479, 490, 852 P.2d 1055 (1993). Substantial evidence exists when the record contains evidence of sufficient quantity to persuade a fair-minded, rational person that the declared premise is true. *Reynolds Metals Co. v. Electric Smith Constr. & Equip. Co.*, 4 Wash.App. 695, 698, 483 P.2d 880 (1971).

In *In re Marriage of Watson*, the issue before the court was a modification of a parenting plan based on allegations of sexual abuse. 132 Wn. App. 222, 130 P.3d 915 (Div. II 2006). Following a full evidentiary hearing, the court denied the modification petition but ordered an amended temporary parenting plan restricting Mr. Watson's residential time to two hours of supervised visitation every other week under RCW 26.09.191. The trial court in *Watson* found that the allegations of sexual abuse were unproven but ruled that Watson's visitation should be limited due to "an absence or substantial impairment of emotional ties between the parent and child" under RCW 26.09.191(3)(d). The Court of Appeals (Div. II) found that the trial court erred when it applied RCW 26.09.191(3)(d) because the modification petition was based on the allegation of sexual abuse under RCW 26.191(2)(a)(ii) and not RCW 26.09.191(3)(d). But even had the issue been properly raised in the petition, substantial evidence did not support

the trial court's decision to restrict visitation under RCW 26.09.191(3)(d). *Id.* at 223. The Court of Appeals concluded that the trial court abused its discretion because "the visitation restrictions appear to be based on the court's lingering suspicion that Watson sexually abused the child even though insufficient evidence shows that he did so." *Id.* at 236. The Court further held that the unproven allegation of sexual abuse did not provide substantial evidence in support of visitation restrictions and that Watson's failure to disprove the sexual abuse allegation was not substantial evidence that his involvement or conduct would adversely affect the child. *Id.* at 233-234.

1. Findings of Fact and Conclusion of Law 2.19.2 and 2.19.3 – The Court erred in finding that the father is an individual with sexual deviancy conduct in the recent past and has an attraction to pornography.

The GAL testified that in the course of her investigation that she spoke a number of times with Dr. John W. Lennon, a sexual deviancy evaluator who is well regarded in the community. RP Vol. II 61:14-16. The GAL stated that Dr. Lennon conducted an extensive report on Mr. Samodurov in March or April of 2008 and, "He did not see any data to show that Mr. Samodurov would be a danger to his children." *Id.* at 64:1-8.

Mr. Samodurov called Dr. Lennon as a witness on his behalf at trial.

The following is excerpt from Mr. Samodurov's direct examination of

Dr. Lennon:

Q: Dr. Lennon, will you state your name and spell it for the Court?

A: It's John W. Lennon, L-E-N-N-O-N.

Q: Thank you. And what is your occupation?

A: I am the clinical director and owner of a marriage child and family practice in Bellevue, Washington. And it's been there since 1974. I became the owner and partner in that practice in 1983 and we specialize in compulsive sexual behavior issues.

Q: Do you have any state certifications?

A: I'm a marriage child and family therapist, licensed... mental health counselor. I'm nationally a certified sex addiction therapist and I am a state certified sex offender treatment provider.

Q: And did you conduct a sexual deviancy evaluation... of me earlier this year?

A: Yes, I did.

Q: Okay. This is...Exhibit 16. This has been admitted.... Would you please summarize for the Court the process of a sexual deviancy evaluation...?

A: We actually spend, when we do a time study, about 21 hours of assessment, we do psychological testing and we include a full sexual history polygraph. We have several clinical interviews, and we take information from ancillary contacts, review files, in this case, the court files, and come up with conclusions that we are looking for.

RP Vol. IV 86:15-25; 87:1-10, 20-24; 88:2-8.

Q: Now, I'm turning to page 43, which is the recommendations page. Can you - - will you please summarize those recommendations for the Court?

A: I think - - although you have in front of you, our evaluation team did not find evidence of sexual compulsivity, deviancy, violence, or predatory behavior....

RP Vol. IV at 99:5-11.

As part of the Sexual Deviancy Evaluation of Mr. Samodurov, the polygraph examiner found the following:

In the opinion of this examiner, based on computer analysis of the relevant questions, the subject was not attempting deception to the following: Number one, "Did you state to Michelle that you had planned to rape a woman?" Answer, "No." Number two, "Have you had sexual contact with any of your children?" Answer, "No." Number three, "Have you had sexual contact with any minor under the age of 14 since you were 18?" Answer, "No." Number four, "Other than what you have reported to me today, have you exposed your genitals in public?" Answer, "No."

RP Vol. III 16:13-24; Ex 16.

Ms. Samodurov made numerous allegations during the course of these proceedings. As a result, a GAL was appointed on behalf of the four minor children. Ms. Samodurov made allegations that Mr. Samodurov was addicted to pornography and that he told her that he was

going to Costco with the intent to rape a woman. RP Vol. I 51:18-19; 54:21-22; 55:1-10. Mr. Samodurov acknowledged that he was charged with indecent exposure in 1997, prior to the parties having any children – but after the date of his marriage to Ms. Samodurov. Mr. Samodurov completed a Sexual Deviancy Treatment Program and the charges were dismissed in 1999. Mr. Samodurov further denied he ever told Ms. Samodurov that he was going to Costco with the intent to commit rape. Mr. Samodurov’s denial was corroborated by a polygraph examination under the directive of Dr. Lennon. Finally, there was no evidence submitted to the trial court that Mr. Samodurov was addicted to pornography or that such impacted his ability to parent. All of these allegations were brought to the GAL’s attention prior to her making a final recommendation on a residential schedule

To refute the allegations of sexual deviancy and pornography addiction, Mr. Samodurov agreed to a Sexual Deviancy Evaluation with Dr. Lennon. The evaluation included approximately 21 hours of assessment, psychological testing, a full sexual history polygraph, several clinical interviews, and information from ancillary contacts. During the course of the Sexual Deviancy Evaluation, Dr. Lennon requested that Mr. Samodurov not have contact with his children – which is a policy of Dr. Lennon’s during the evaluation process. RP Vol. II 184:8-18. Upon the

request of the GAL, Mr. Samodurov was permitted supervised visitation with children pending the completion of the evaluation. *Id.* at 1-24.

Dr. Lennon is highly regarded in the community, an expert in his field in work, and a professional source that the GAL consulted with during the course of her investigations. Dr. Lennon concluded that Mr. Samodurov did not meet the profile of a sexual deviant and that he posed no danger to his children. The GAL concurred and in her final report, dated June 17, 2008, she recommended a phased-in visitation schedule with limited non-professional monitoring and joint decision making. The GAL did not change her recommendation until after Ms. Samodurov alleged that Mr. Samodurov exposed himself to his children after his first partially unsupervised visitation on September 27, 2008 and September 28, 2008. Thus, the only new allegation of sexual deviancy was the allegation raised by Ms. Samodurov after the GAL's June 17, 2008 recommendation. As a result of the September 28, 2008 allegation, the GAL changed her recommendation at trial.

The September 28, 2008 allegation was refuted by Mr. Samodurov and subsequently proven to be unfounded. For these reasons and the reasons set forth below, the evidence does not support a finding that Mr. Samodurov is a sexual deviant or addicted to pornography.

2. Findings of Fact 2.19.4, 2.19.5 and 2.19.6 – The Court erred in finding that the father did pull his penis out of his pocket and show it to his 5 year-old child and under RCW 26.09.191(2)(a)(ii) that the father’s residential time shall be restricted to supervised visitation.

On June 17, 2008, the GAL issued her final recommendation for a residential schedule (filed with the court on July 11, 2008). *Guardian Ad Litem Final Public Report*, CP 584-587. The GAL recommended that Mr. Samodurov’s residential time with his four children increase to Saturdays and Sundays from 9:00 a.m. to 7:00 p.m. CP 585. Mr. Samodurov was also permitted a mid-week visit if his work schedule permitted. CP 586. The visits were to be partially monitored by a non-professional supervisor for four hours each day. *Id.* Mr. Samodurov did not have his first weekend visitation under the terms of the GAL’s June 17, 2008 recommendation until September 27, 2008 and September 28, 2008. Provided there were no concerns reported by the mother (or the supervisor), Mr. Samodurov’s residential time with his children would increase after four months. After Mr. Samodurov’s first weekend of partially unsupervised visitation, Ms. Samodurov reported to the GAL that Mr. Samodurov showed Brynn his penis. RP Vol. I 104:22-24; 105:20-23.

Ms. Samodurov testified at trial that on October 1, 2008, she was getting Brynn (age 5) and Caleb (age 4) ready for bed when Brynn walked over to Caleb and told him to pull his pants down. Brynn then pointed to Caleb's penis and said "When you grow up, that's going to be very big, just like daddy's is." RP Vol. I 103:21-25; 104:1-3. Ms. Samodurov then put Caleb to bed and talked to Brynn in the other room. *Id.* at 104:8-13. Ms. Samodurov testified that Brynn then told her "Daddy showed me his privates and pulled it out of his pocket." *Id.* Ms. Samodurov then asked Brynn "Are you sure?" Brynn replied, "Daddy pulled it out of his pocket, and showed it to me." *Id.*

When interviewed by the Sacramento Sheriff's Office on October 1, 2008 at 1:05 p.m., Brynn stated that during her last visit with her father he showed his penis to her, Caleb, and Madelyn. Ex 54; RP Vol. I 109:3-5, 13-16. Caleb and Madelyn were subsequently interviewed by the Sacramento Sheriff's Office and both children denied the allegation that Mr. Samodurov exposed his penis to them. *Id.* at 111:24-25; 112:1-14. Madelyn (age 8) stated that her father has never shown his penis to her. Caleb (age 4) stated that he was not present when his father allegedly showed Brynn his penis. *Id.* Both children contradicted Brynn's statement. On November 4, 2008 at 10:10 a.m. Brynn was interviewed a second time by the Sacramento Sheriff's Office Special Assault Forensic

Evaluation Center (SAFE) and during that interview she denied ever seeing her father's penis. Ex 54. The SAFE interview was digitally recorded onto a DVD and booked into evidence with the Sacramento Sheriff's Office. *Id.*

Sometime after the conclusion of the Sexual Deviancy Evaluation, the GAL followed up with Dr. Lennon and informed him of the CPS report and that CPS concluded that the allegation was unfounded. RP Vol. II 64:13-21. The GAL stated that she was advised by Dr. Lennon to base her recommendations on her "belief" about what the child said and not the evidence. *Id.* The GAL further testified that because "the police haven't proceeded with the case and haven't made recommendations at this point in time," she was advised by Dr. Lennon, "to go with what your beliefs are." *Id.* At the time of trial, however, the Sacramento Sheriff's Office had completed their investigation and elected not to file charges against Mr. Samodurov. Ex 54. The GAL was fully aware that Brynn was interviewed by the Special Assault Forensic Evaluation Center on November 4, 2008 and denied seeing Mr. Samodurov's penis. RP Vol. II 162:2-11.

On cross examination, Mr. Samodurov engaged in the following dialogue with the GAL:

Q: Do you – having been through this process for a year and half, from your perspective, is it fair to say that I have been under enormous amount of stress?

A: Yes, which is why I have been worried.

Q: Setting aside the September 30 [2008] and beyond, which is the question between the beginning of this case, or your involvement in the case and the 30th of September, is it fair to say that there were no significant issues even alleged of concern, safety to the children in regards to my caring for - -

A: Only that pushed around visitation, but other than that, there have been no incidents of concern.

Q: These boundaries you are talking about around visitation --

A: Back that up, let me back that up. The area of concern have been the My Space postings.

Q: Is that related to my children?

A: Yes, because it has to with your attitude, your demeanor, you are angry at their mother....

Like I said before, in the main, I think you are a very wonderful dad, I think you love your children, I think you know how to parent well, I think you have good skills with them. I think the context of the litigation with Michele has been really difficult for you. I have seen fine attributes in yourself, again, you are very resilient, you are energetic, you are forward moving, but the bitterness that comes from you and some of it is frustration because, you know, you don't agree with what Michele is doing and maybe I don't agree with her either, you know, so maybe its righteous indignation and I have been watchful of that, and maybe that the stress would lead you to act in a inappropriate way.

Q: Has that happened?

A: Well, I don't know if the thing with Brynn has happened or not. In my mind it's an

open question. I haven't shut the door on that one way or another.

Q: So between your involvement in... the case and September 30th of this year, was there anything that happened that rose to that level?

A: Right, there were no serious problems for the children.

Q: Not even alleged, correct, during that --

A: Of a serious nature, no natures of you... getting drunk, of you having pornography in the house, of the major concerns we have, there have not been any of those incidents, you are correct.

Q: And all visitation up until the middle of February 2008 was unsupervised, correct?

A: Yes.

Q: And is it accurate to say that supervision was instituted because that is the default policy of [Bellevue Community Service], when someone is going through a sexual deviancy evaluation?

A: I think – Dr. Lennon didn't want you to have any contact. I was the one who was pressing him to release you from that, because there hadn't been incidents to that point. This was a preventive measure, in my estimation, in terms of getting the evaluation. It is his policy that you should have no contact with your children during the whole course of his evaluation.

Q: Which took about three and half months, is that fair?

A: Yes.

Q: Is the evaluation... complete?

A: Yes.

RP Vol. II 181:8-25; 182:23-25; 183:1-25; 184:1-20.

There was no evidence presented at trial that Mr. Samodurov engaged in physical, sexual, or a pattern of emotion abuse of a child. In fact, the GAL testified that her recommendation to restrict the father's

residential time with his children was based on a “belief” and not evidence. RP Vol. II 64:15-21. Yet, the GAL also stated that she considered Mr. Samodurov as being a “hands on father and having good relations with his children” and that she “had no problem with parenting skill concept in either of these parents.” RP Vol. II 69:3-4, 9-11.

The fact that the trial court was persuaded by Ms. Samodurov’s testimony that she heard her five year old child say to her four year old child, “yours is going to be as big as daddy’s some day” and “he showed the thing he pees with to my sister Madelyn and my brother [C]aleb” does not constitute substantial evidence. From an evidentiary standpoint, the testimony would have been inadmissible, had Mr. Samodurov objected. Washington State’s Rules of Evidence address hearsay as follows: “Hearsay is not admissible except as provided by these rules, by other court rules, or by statute.” ER 802. There are very limited court rules and statutes which permit the admission of minor child hearsay in this state and none of the exceptions apply here. Nonetheless, the weight of the child’s hearsay statement, which she later recanted, does not constitute substantial evidence. The record is replete with evidence that Mr. Samodurov did not intentionally expose himself to his children on or about September 28, 2008. Mr. Samodurov adamantly denied the allegation and brought to the court’s attention the suspicious timing of Ms.

Samodurov's assertions. The Sexual Deviancy Evaluation concluded that Mr. Samodurov was not a danger to his children and that there was no evidence of sexual compulsivity, sexual deviancy, violence, or predatory behavior. The polygraph examination found that Mr. Samodurov was being truthful in his statement that he never told Ms. Samodurov that he had planned to rape a woman at Costco. Prior to the September 2008 allegation, the GAL made a final recommendation for a phased-in visitation schedule that included unsupervised visitation and joint decision making authority. After the September 2008 allegation, Both Madelyn and Caleb gave statements to the Sacramento Sheriff's Office that contradicted Brynn's statement that Mr. Samodurov showed his penis to Brynn, Madelyn, and Caleb during the weekend of September 28, 2008. When subsequently interviewed by the Sacramento Sheriff's Office Assault Forensic Evaluation Center, Brynn did not disclose seeing Mr. Samodurov's penis while at his home. After a thorough investigation, the Sacramento Sheriff's Office elected not to file charges against Mr. Samodurov. Sacramento Child Protective Services also conducted an investigation and found the allegation to be unfounded.

The trial court erred in finding there was "strong evidence" that Mr. Samodurov exposed himself to Brynn. The evidence overwhelmingly contradicts the findings of the trial court. At best, the allegation is

unproven. As the Court held in the *Watson* case, an unproven allegation of sexual abuse does not provide substantial evidence in support of visitation restrictions. 132 Wn. App. at 233-234. Further, the failure to disprove the sexual abuse allegation is not substantial evidence that a parent's involvement or conduct would adversely affect the children. *Id.*

B. The trial court erred in finding the existence of a long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with Appellant's performance of parenting function and thereby imposing restrictions on his residential time with his children under RCW 26.09.191(3)(c).

Revised Code of Washington 26.09.191(3)(c) provides: "A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist: A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions."

1. Findings of Fact 2.19.2 and 2.19.16 – The Court erred in finding that the father has a recent history of severe alcohol problems.

There was no evidence submitted to the trial court that Mr. Samodurov suffered from a long-term impairment resulting from drug,

alcohol, or other substance abuse that interferes with the performance of parenting function.

The Verbatim Report of Proceedings does not reveal any evidence or testimony regarding a long-term impairment from drug, alcohol, or other substance abuse. So it is unclear as to why the trial court made these findings. Despite Ms. Samodurov's assertions that Mr. Samodurov's use of alcohol impaired his ability to parent the children, the GAL provided the following testimony at trial:

“I know I had to filter out the issues about alcohol. And as the father informed me – to Ms. Samodurov having a bottle of wine in the house was terrifying and out of line, so he thought that she was extreme in her expectations of him. So I did not hear that he was an alcoholic in the sense of habitual use, frequenting bars.”

RP Vol. II 70:3-9.

The GAL further testified that she talked with collateral sources during the course of her investigation. RP Vol. II 62:15-19. One professional source was Kent Lovitz of Associated Behavioral Health. *Id.* Mr. Lovitz concluded that Mr. Samodurov was compliant with a drug and alcohol evaluation and determined that Mr. Samodurov “just needed out-patient treatment and minimal follow through.” *Id.* at 63:21-22. The GAL recommendation to the trial court was that Mr. Samodurov not consume alcohol within 24 hours of having visitation with his children.

Id. at 71:15-18. Mr. Samodurov further testified that alcohol has “not been a problem in relation to the kids, don’t drink around the kids, haven’t drank around the kids, don’t ever intend to drink around the kids.” RP Vol. IV 154:16-18.

There was no evidence presented at trial that Mr. Samodurov’s parenting skills were impaired from alcohol use. As such, the trial court’s erred in it’s findings that Mr. Samodurov had severe alcohol problems in the recent past and placing restrictions on his residential time under RCW 26.09.191(3)(c).

V. CONCLUSION

For the foregoing reasons the court should vacate the Findings of Facts and Conclusion of Law and Final Parenting Plan entered in Snohomish County Superior Court on January 29, 2009 and remand this matter back to the trial court.

Dated this 10th Day of July, 2009



Todd R. DeVallance, WSBA #32286
Attorney for Appellant

VI. APPENDIX

Attached hereto is a copy of the Findings of Fact and Conclusion of Law and Final Parenting Plan entered with Snohomish County Superior Court on January 29, 2009.

VII. CERTIFICATION OF SERVICE

This is to certify that on July 10, 2009, I, Todd R. DeVallance, delivered a copy of this brief along with the original Verbatim Report of Proceedings via ABC Legal Messenger Service upon Respondent's attorneys, Christine Mayoue and Jerome Scowcroft, at the Law Office of Michael Bugni.



Todd R. DeVallance, WSBA #32286
Attorney for Appellant

FILED
COURT OF APPEALS OF THE
STATE OF WASHINGTON
2009 JUL 10 PM 2:31

Findings of Fact and Conclusion of Law

RECEIVED
 JAN 9 2009
 CLERK OF SUPERIOR COURT
 SNOHOMISH COUNTY
 1000 UNIVERSITY BLVD
 SEATTLE, WA 98108

IN THE SUPERIOR COURT OF WASHINGTON
 IN AND FOR SNOHOMISH COUNTY

In re the marriage of:)	
)	
MICHELE L. SAMODUROV,)	NO. 07-3-02227-1
)	
Petitioner,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
and)	(Marriage)
)	
BRENT JAMES SAMODUROV,)	<i>Clerk's Action Required -</i>
)	
Respondent.)	<i>Page 5, section 2.18</i>

I. BASIS FOR FINDINGS

The Findings are based on a trial on December 16, 17, 18, 19, 2008 and January 6, 8, 2009 over which the Honorable Richard J. Thorpe presided. The following people attended: Petitioner, Petitioner's Lawyer; Respondent. The following witnesses testified: the Petitioner, the Respondent, Karin Ballantyne (GAL), Dr. William Lennon, Ms. Kathi Riggs Owili, Walter Samodurov, Alice Samodurov, Mr. Scott Kendall, Olivia Eagle. The trial transcript is incorporated herein by reference.

II. FINDINGS OF FACT

Upon the basis of the court record, the Court *Finds*:

2.1 RESIDENCY OF PETITIONER.

The Petitioner is not a resident of the State of Washington but was a resident when the petition for dissolution was filed.

ORIGINAL
COPY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2.2 NOTICE TO THE RESPONDENT.

The Respondent appeared, responded or joined in the Petition.

2.3 BASIS OF JURISDICTION OVER THE RESPONDENT.

The facts below establish personal jurisdiction over the Respondent.

Respondent consents to Washington jurisdiction.

The parties may have conceived a child while within Washington.

Both parties lived in Washington during the marriage and at the time the petition was filed.

2.4 DATE AND PLACE OF MARRIAGE.

The parties were married on June 15, 1996 at King County, Washington.

2.5 STATUS OF THE PARTIES:

The Husband and Wife separated on August 10, 2007.

2.6 STATUS OF THE MARRIAGE.

The marriage is irretrievably broken and at least 90 days have elapsed since the date the Petition was filed and since the date the Summons was served or the Respondent joined.

2.7 PROPERTY SETTLEMENT AGREEMENT/PRENUPTIAL AGREEMENT.

There is no written Property Settlement Agreement/Prenuptial Agreement.

2.8 COMMUNITY PROPERTY.

The parties have real or personal community property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these Findings.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2.9 SEPARATE PROPERTY.

The Husband has real or personal community property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these Findings.

The Wife has real or personal community property as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these Findings.

2.10 COMMUNITY LIABILITIES.

The parties have incurred community liabilities as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these Findings.

2.11 SEPARATE LIABILITIES.

The Husband has incurred separate liabilities as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these Findings.

The Wife has incurred separate liabilities as set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of these Findings.

2.12 MAINTENANCE.

Maintenance should be ordered because the husband has the ability to pay and the wife has a great need for maintenance. The court finds the mother's plan to get credentialed to teach in California at the private school across the street, where hopefully the children will also attend, reasonable.

2.13 CONTINUING RESTRAINING ORDER.

Cam

MS

1/29/09

~~A court finds there is a basis for a continuing restraining order against the Husband based on the Husband's anger, the Husband's narcissism, the Husband's MySpace, and the Husband's violation of court orders.~~

2.14 PROTECTION ORDER.

Does not apply.

2.15 FEES AND COSTS.

Both parties have incurred attorney's fees. The court finds that a good deal of the wife's attorney's fees were incurred because of the conduct of the Husband and his

1 violating of court orders, which includes the Husband having been found in contempt
2 twice. The court finds that the Husband's defense that he was "only" found in
3 contempt two out of 16 times hardly admirable. The court therefore is persuaded that
4 the husband acted intransigently and it orders the payment of \$8,000 of the Wife's
5 attorney's fees, with the Wife having a judgment for same. The Husband may defer
6 executing of judgment by monthly payments of not less than \$250 per month to be
7 received not later than the last day of each month. Attorney's fees shall bear interest
8 at rate of 12% per annum.

9 **2.16 PREGNANCY.**

10 The Wife is not pregnant.

11 **2.17 DEPENDENT CHILDREN.**

12 The children listed below are dependent upon either or both spouses:

Name of Child	Age	Mother's Name	Father's Name
Madelyn Faith Samodurov	8	Michele L. Samodurov	Brent James Samodurov
Brynn Alexandra Samodurov	5	Michele L. Samodurov	Brent James Samodurov
<i>WJ</i> Caleb James Brent Samodurov	4	Michele L. Samodurov	Brent James Samodurov
Isabella Michele Samodurov	1	Michele L. Samodurov	Brent James Samodurov

13 **2.18 JURISDICTION OVER THE CHILDREN.**

14 This Court has exclusive continuing jurisdiction. The Court has previously made a
15 child custody, parenting plan, residential schedule, or visitation determination in this
16 matter and retains jurisdiction under RCW 26.27.211.

17 This state is the home state of the children because:

18 the children lived in Washington with a parent or a person acting as a parent
19 for at least six consecutive months immediately preceding the commencement
20 of this proceeding.

21 The children and the parents or the children and at least one parent, or person
22 acting as a parent, have significant connection with the state other than mere
23
24
25

LAW OFFICES

WJ
11/29/09

1 physical presence; and substantial evidence is available in this state concerning
2 the children's care, protection, training and personal relationships and the
3 children have no home state elsewhere.

4 The court finds that both parties now reside in California. The court finds that
5 pursuant to Section 26.27 *et seq* of the UCCJEA, Sacramento County in
6 California is now the more convenient forum for this case. Upon entry of the
7 final documents dissolving this marriage, the Snohomish County Superior
8 Court releases Washington's jurisdiction and finds that jurisdiction should
9 transfer to the State of California, Sacramento County Superior Court.

10 The court finds that pursuant to UCCJEA 26.27.441, the Clerk of the
11 Snohomish County Superior Court can assist in facilitating said jurisdictional
12 transfer by forwarding to the Clerk of the Superior Court of Sacramento
13 County, State of California, a true and correct copy of the following
14 documents: (1) this decree of dissolution of marriage; (2) the findings of fact
15 and conclusions of law in this matter; (3) the final order of child support in this
16 matter; and (4) the final parenting plan in this matter, so that this matter may
17 be enforced in California.

18 2.19 PARENTING PLAN.

19 The Parenting Plan signed by the Court on this date is approved and incorporated as
20 part of these Findings.

21 The court specifically finds that:

22 2.19.1 The mother/Wife, Michele Samodurov is very anxious and probably over
23 protective.

24 2.19.2 The father/Husband, Brent Samodurov, is very angry. The court finds that the
25 father is a narcissistic individual with sexual deviancy conduct in the recent
past, severe alcohol problems in the recent past and attraction to pornography,
which continues.

2.19.3 Although the court finds that Wife tends to exaggerate and overreact, the court
is persuaded by the major aspects of the Wife's testimony, such as: (1) the
Husband's lying to her about the indecent exposure charge; (2) the Husband's
telling the Wife of his addiction to pornography, (3) the Husband's telling the
Wife about the Husband's going to Costco with the expressed intent to rape a
woman, and (4) the Husband's telling the Wife what warning signs to look out

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for in his conduct. The court is persuaded that the Husband told these things to the Wife.

2.19.4 The court is persuaded that the parties' 5 year-old child, Brynn, stated to the parties' 4 year-old child, Caleb, that "Yours is going to be as big as daddy's some day." The court finds that Brynn confirmed the statement to the police and that Caleb confirmed to the police that she had done so as well.

2.19.5 The court finds that it is highly unlikely that anybody could have come up with a more credible scenario and taught a 5 and 4 year old to make this up, as the Father *argued* in his testimony. The court does not find that the mother is imaginative enough to come up with it either.

[Handwritten signature]
2/2/09

2.19.6 The court finds that the Father denies Brynn's statement to the police that "Yours is going to be as big as daddy's some day," just as the Father has denied unpleasant things in the past. However, the court is persuaded and finds that Brynn did say this and that having said it, it is strong evidence that the Father, Brent James Samodurov, did pull his penis out of his "pocket" and show it to Brynn as Brynn described. Thus the court finds under RCW 26.09.191(2)(a)(ii) that the father's time shall be restricted and the court orders supervised visitation for the father and adopts the guardian ad litem's recommendations. The court finds under RCW 26.09.187(2)(b) and RCW 26.09.191(1), that sole decision-making is appropriately given and ordered to the mother. The court further finds under RCW 26.09.191(3)(e) that the father has engaged in abusive use of conflict

2.19.7 The court considers the relative strength, nature, and stability of the child's relationship with each parent under RCW 26.09.187(3)(a)(i), and finds that it is clear that the children have a very strong and health and stable relationship with their mother. The court finds the children have a strong affection for their father.

2.19.8 The court considers the agreement of the parties under RCW 26.09.187(3)(a)(ii) and finds there is no agreement and so this is inapplicable.

2.19.9 The court considers RCW 26.09.187(3)(a)(iii), "each parent's past and potential for future parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child," and with regard to "parenting functions" the court finds:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

As to RCW 26.09.004(3)(a) “maintaining a loving and stable, consistent and nurturing relationship with the child”: that both parents have a loving and consistent relationship with the children, however, the Mother’s is far greater and is more stable and is more consistent and nurturing.

As to RCW 26.09.004(3)(b) “attending to the daily needs of the child”: that the mother has done far more than the father.

As to RCW 26.09.004(3)(c) “attending to adequate education of the child, including remedial or other education essential to the best interest of the child”: that the mother has done this exclusively, including recently home schooling the two older children.

As to RCW 26.09.004(3)(d) “assisting the child in developing and maintaining appropriate interpersonal relationships”: that both have done this to some extent; the mother more than the father. While the court finds that the father’s testimony indicates he seems to feel that the mother is not developing appropriate interpersonal relationships among the children because of the nature of the religion that she is exercising and the nature of the home schooling that she is providing, the court does not find that what the mother is doing is inappropriate.

As to RCW 26.09.004(3)(e) “exercising appropriate judgment regarding the child’s welfare consistent with the child’s developmental level”: that the mother has done this, although she has been a little slower than she should have been in getting a fence around the pool.

As to RCW 26.09.004(3)(f) “providing for the financial support of the child”: the father has done this.

2.19.10 In considering RCW 26.09.187(3)(iv), “the emotional needs and developmental level of the child,” the court finds that these children are of the age and developmental level that they need their mother.

2.19.11 In considering RCW 26.09.187(3)(v), “the child’s relationship with siblings and with other significant adults,” the court finds that the children have a close relationship among themselves and are developing a close relationship with respect to the members of their church and of their family.

LAW OFFICES

MICHAEL W. BUGNI & ASSOC., PLLC
11320 ROOSEVELT WAY NORTHEAST
SEATTLE, WA 98125
(206) 365-5500 • FACSIMILE (206) 363-8067

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

2.19.12 In considering RCW 26.09.187(3)(vi), "the wishes of the parents...": not applicable because there is no agreement.

2.19.13 In considering RCW 26.09.187(3)(vii), "As to "each parents employment schedule and shall make accommodations consistent with those schedules": the visitation shall be such that is apt not to conflict particularly with the father's work schedule.

2.19.14 In giving RCW 26.09.187(3)(a)(i) the greatest weight, the court finds that the strength, nature, and stability of the children's relationship with the mother is far greater than that with the father and that the children should therefore reside primarily with the mother.

2.19.15 The court finds under RCW 26.09.191(3)(e) that (1) the father's MySpace pages which the father testified were directed toward the mother, (2) the father's intransigent behavior in violating court orders resulting in the father's having been found in contempt twice, amounts to abusive use of conflict and therefore restricts the father's time.

2.19.16 The court finds under RCW 26.09.191(3)(c) that the father has recent history of severe alcohol problems.

2.20 CHILD SUPPORT.

There are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Order of Child Support signed by the Court on this date and the child support worksheets, are hereby approved by the Court and are incorporated by reference into these Findings.

2.21 OTHER.

There are other no provisions.

III. CONCLUSIONS OF LAW

The Court makes the following Conclusions of Law from the foregoing Findings of Fact:

3.1 JURISDICTION.

The Court has jurisdiction to enter a Decree in this matter.

Handwritten notes:
Clerk
RJ
1/29/08

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3.2 GRANTING OF A DECREE.

The parties should be granted a Decree.

3.3 PREGNANCY.

Does not apply.

3.4 DISPOSITION.

The Court should determine the marital status of the parties, make provision for a Parenting Plan for any minor children of the marriage, make provision for the support of any minor child of the marriage entitled to support, consider or approve provision for maintenance of the Wife, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, and make provision for any necessary continuing restraining orders. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 CONTINUING RESTRAINING ORDER.

Does not apply.

Handwritten initials and date: 1/29/09
(Cam)
Handwritten signature

3.6 PROTECTION ORDER.

Does not apply.

3.7 ATTORNEY'S FEES AND COSTS.

Attorney's fees, other professional fees and costs should be paid as set forth in the Decree of Dissolution. Said Decree is incorporated by reference into these Findings of Fact as if set forth fully herein.

3.8 OTHER.

The court finds that the mother did go to California in August, 2007 for vacation and that she therefore did not relocate in bad faith.

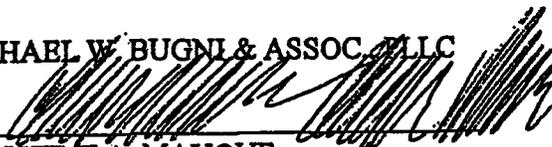
Dated: Jan 29, 2009

Signature of Richard J. Thorpe
RICHARD J. THORPE,
SUPERIOR COURT JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Presented by:

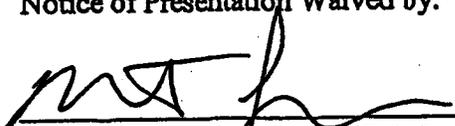
MICHAEL W. BUGNI & ASSOC., PLLC


CHRISTINE A. MAYOUE

Attorney for Petitioner

Date: 1/25/09

Copy Received, Approved for Entry and
Notice of Presentation Waived by:


BRENT JAMES SAMODUROV, *pro se*

Respondent

Date: 1/29/09

LAW OFFICES

MICHAEL W. BUGNI & ASSOC., PLLC
11320 ROOSEVELT WAY NORTHEAST
SEATTLE, WA 98125
(206) 385-5500 • FACSIMILE (206) 383-8087

Final Parenting Plan

FILED

JAN 14 2009

COURT OF SUPERIOR JUDGES
SNOHOMISH COUNTY

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

In re the marriage of:)	
)	
MICHELE L. SAMODUROV,)	NO. 07-3-02227-1
)	
Petitioner,)	FINAL PARENTING PLAN
and)	
)	
BRENT JAMES SAMODUROV,)	
)	
Respondent.)	

This parenting plan is based on a trial on December 16, 17, 18, 19, 2008 and January 6, 8, 2009 over which the Honorable Richard J. Thorpe presided. The following people attended: Petitioner; Petitioner's Lawyer; Respondent. The following witnesses testified: the Petitioner, the Respondent, Karin Ballantyne (GAL), Dr. William Lennon, Ms. Kathi Riggs Owili, Walter Samodurov, Alice Samodurov, Mr. Scott Kendall, Olivia Eagle. The trial transcript is incorporated herein by reference.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

GENERAL INFORMATION

This Parenting Plan applies to the following children:

Name (First/Last)	Age
MADELYN F. SAMODUROV	8
BRYNN A. SAMODUROV	5
CALEB B. SAMODUROV	4
ISABELLA M. SAMODUROV	1

COPY ORIGINAL

1 **BASIS FOR RESTRICTIONS**

2 2.1 **PARENTAL CONDUCT (RCW 26.09.191(1), (2)).**

3 The Father's residential time with the children shall be limited or restrained
4 completely, and mutual decision making and designation of a dispute resolution
5 process other than court action shall not be required because this parent has
6 engaged in the conduct which follows:

7 Physical, sexual or a pattern of emotional abuse of a child.

8 2.2 **OTHER FACTORS (RCW 26.09.191(3)).**

9 The Father's involvement or conduct may have an adverse effect on the children's
10 best interests because of the existence of the following factors:

11 A long-term impairment resulting from drug, alcohol, or other substance abuse
12 that interferes with the performance of parenting functions.

13 The abusive use of conflict by the parent which creates the danger of serious
14 damage to the children's psychological development.

15 **RESIDENTIAL SCHEDULE**

16 3.1 **SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.**

17 Prior to enrollment in school, MADELYN FAITH SAMODUROV, BRYNN
18 ALEXANDRA SAMODUROV, CALEB BRENT SAMODUROV, ISABELLA
19 MICHELE SAMODUROV, shall reside primarily with the Mother, except for the
20 following days and times when the children shall reside with or be with the other
21 parent:

22 Professionally supervised visitation every other weekend:
23 8 hours on Saturday, from 10:00 AM until 6:00 PM
24 6 hours on Sunday, from 12:00 PM until 6:00 PM Sunday from 12:00 PM
25 until 6:00 PM (per the GAL recommendations, the children shall attend
one church activity. On Sundays when the children have choir, visitation
shall end at 5:30 to allow children to attend church choir practice).
Children shall be allowed to attend their activities, such as lessons and at
least one church activity, whether or not this is during father's visitation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

3.2 SCHOOL SCHEDULE.

Upon enrollment in school, MADELYN FAITH SAMODUROV, BRYNN ALEXANDRA SAMODUROV, CALEB BRENT SAMODUROV, ISABELLA MICHELE SAMODUROV shall reside primarily with the Mother, except for the following days and times when the children shall reside with or be with the other parent:

Professionally supervised visitation every other weekend:

Saturday from 10:00 AM until 6:00 PM
Sunday from 12:00 PM until 6:00 PM (per the GAL recommendations, the children shall attend one church activity. On Sundays when the children have choir, visitation shall end at 5:30 to allow children to attend church choir practice). Children shall be allowed to attend their activities, such as lessons and at least one church activity, whether or not this is during father's visitation.

This schedule shall begin if the children begin attending either public or private school (other than being homeschooled).

3.3 SCHEDULE FOR WINTER VACATION.

The children shall reside with the Mother during winter vacation, except for the following days and times when the children shall reside with or be with the other parent:

Same as paragraphs 3.1, 3.2.

3.4 SCHEDULE FOR OTHER SCHOOL BREAKS.

Does not apply.

3.5 SUMMER SCHEDULE.

The children shall reside with the Mother during the summer, except for the following days and times when the children shall reside with or be with the other parent:

1 Same as paragraphs 3.1, 3.2.

2 3.6 VACATION WITH PARENTS.

3 Does not apply as to father.

4 The mother shall have two weeks' uninterrupted vacation time with the children
5 each year. Father does not receive makeup time for mother's vacation. Mother to
6 provide 30 days' notice to father of her intent to exercise vacation.

7 3.7 SCHEDULE FOR HOLIDAYS.

8 The residential schedule for the children for the holidays listed below is as
9 follows:

	With Mother	With Father
Easter Sunday	Every	
Saturday, the day before Easter		Every, from 10:00 AM to 6:00 PM
July 4th	Odd	Even
Thanksgiving Day	Even	Odd
Christmas Eve		Every, from 10:00 AM to 6:00 PM
Christmas Day	Every	

16 July 4 shall be on July 4th from 10:00 AM until 6:00 PM.

17 Thanksgiving Day shall be from 10:00 AM until 6:00 PM.

18 3.8 SCHEDULE FOR SPECIAL OCCASIONS.

19 The residential schedule for the children for the following special occasions is as
20 follows:

	With Mother	With Father
Mother's Day	Every	
Father's Day		Every

24 Special occasions shall be from 10:00 AM until 6:00 PM.

25

1 3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

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

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

3	Winter Vacation (3.3)	2	Holidays (3.7)
4	School Breaks (3.4)	1	Special Occasions (3.8)
6	Summer Schedule (3.5)	5	Vacation with parents (3.6)

5
6
7
8 3.10 RESTRICTIONS.

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

12 All of the Father's visitation shall be professionally supervised at his sole
13 expense. Parties shall select a mutually agreeable professional supervisor.
14 Mother shall provide supervisor and supervisor's agency with copy of
15 GAL report, final parenting plan, findings of fact & conclusions of law,
16 and decree.

17 The mother shall have sole decision-making.

18
19
20
21
22
23
24
25
OS
1/29/09

26 The father shall continue with his therapist, KATHY GELEIN, as recommended by the therapist.
27 phone number 914 804-6471, as recommended by the therapist. Two areas of focus during therapy shall be (1) appropriate boundaries with
28 women and (2) pro-social coping skills when the father is feeling stressed,
29 restricted, or anxious. Father shall provide therapist at his next visit a
30 copy of all court orders entered in this matter and the GAL
31 report/recommendation. After two years from the date of this order, the
32 father may request a review hearing on the issue of whether visits should
33 remain supervised.

AD
Camm
MS

34 The father shall abstain from alcohol 24 hours prior to the time when he
35 has parenting time with the children and during his time with the children.

36 The father shall not view or possess pornography or otherwise engage in
37 sexually deviant behavior.

1 The father shall have one weekly phone contact with the children on
2 Wednesdays from 6:00 PM to 6:30 PM (except when the mother is on
3 vacation) which is monitored or recorded. If it is monitored, it shall be by
4 a neutral party and if the father makes any blaming or negative statements
5 about the mother, or if father makes any inappropriate remarks, then the
6 phone monitor shall intervene, and all phone contact shall be terminated
7 until further order of the court. If the recorded phone records show that the
8 father has made blaming or negative statements about the mother, or if the
9 father makes any inappropriate remarks, all phone contact shall likewise
10 be terminated until further order of the court.

11 The father is not to have any contact with the mother except by email and
12 such contact must specifically relate to immediate visitation issues.

*- or other
Written
Communication*
2/9/07
[Handwritten initials and signature]

13 3.11 TRANSPORTATION ARRANGEMENTS.

14 Mother or her designee shall provide transportation to and from the supervised
15 visitation site.

16 3.12 DESIGNATION OF CUSTODIAN.

17 MADELYN FAITH SAMODUROV, BRYNN ALEXANDRA SAMODUROV,
18 CALEB BRENT SAMODUROV, and ISABELLA MICHELE SAMODUROV
19 are scheduled to reside the majority of the time with the Mother. The Mother is
20 designated the custodian of the children solely for purposes of all other state and
21 federal statutes which require a designation or determination of custody. This
22 designation shall not affect either parent's rights and responsibilities under this
23 Parenting Plan.

24 3.13 OTHER.

25 Does not apply.

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.

1
2 If the person with whom the child resides a majority of the time plans to move,
3 that person shall give notice to every person entitled to court ordered time with
4 the child.

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

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

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

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

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

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

24 If no objection is filed within 30 days after service of the notice of intended
25 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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

DECISION MAKING

4.1 DAY TO DAY DECISIONS.

Each parent shall make decisions regarding the day-to-day care and control of the children when the children are in that parent's care.

4.2 MAJOR DECISIONS.

All decision-making shall be made by the mother.

4.3 RESTRICTIONS IN DECISION MAKING.

Sole decision making shall be ordered to the Mother 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.).

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) The parents have demonstrated *lack of* ~~stability~~ and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a).

Cam
Car

DISPUTE RESOLUTION

No dispute resolution process, except court action is ordered in the Superior Court of Sacramento County, California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OTHER PROVISIONS

Does not apply.

DECLARATION FOR PROPOSED PARENTING PLAN

Does not apply.

ORDER BY THE COURT

It is hereby 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.

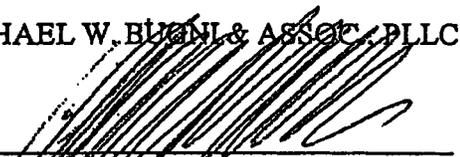
If a parent fails to comply with a provision of this Plan, the other parent's obligations under the Plan are not affected.

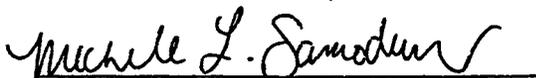
Date Jan 29, 2009


RICHARD J. THORPE
SUPERIOR COURT JUDGE

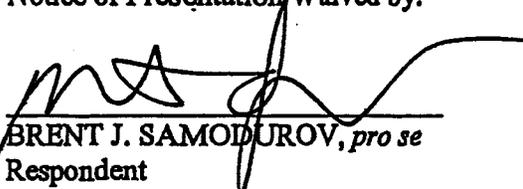
Presented by:

MICHAEL W. BUGNI & ASSOC. PLLC


CHRISTINE A. MAYOUE, WSBA 32948
Attorney for Petitioner


MICHELE L. SAMODUROV
Petitioner

1 Copy Received, Approved for Entry and
2 Notice of Presentation Waived by:

3 
4 BRENT J. SAMODUROV, *pro se*
5 Respondent

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25