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NO. 63228-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

In Re the Marriage of

TRACIE LINN LANG,

Respondent,

v.

BROOK WESTER LANG,

Appellant.

APPELLANT'S OPENING BRIEF
(AMENDED)

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ASSIGNMENTS OF ERROR

Brook Lang, the Respondent in the trial court and the Appellant before this Court, makes the following assignments of error:

1. The trial court erred when it partially denied Respondent's Motion to Allow Late Witness Designation and to Allow Testimony, by refusing to allow Brook Lang to add two expert witnesses who would have addressed the methodology and conclusions of Parenting Evaluator Lynn Tuttle. *See* CP 1038 to 1040 (Order Partially Granting Motion to Allow Late Witness Designation and to Allow Testimony) (copy of order attached as App. A).

2. The trial court erred in making inconsistent findings on whether Brook Lang committed domestic violence. *See* CP 923 (Agreed Transcript of December 3, 2008 Court Ruling) (finding a "clear domestic violence relationship") (copy of transcript attached as App. B); CP 954 (Final Parenting Plan) (finding RCW 26.09.191(1) and (2) "does [sic] not apply") (copy of plan attached as App. C); CP 980, 986-987 (Findings of Fact and Conclusions of Law) (FOF 2.18(8) and COL 3.6) (substantially reiterating finding of domestic violence set forth in post-trial oral rulings) (copy attached as App. D); CP 1024 (Order Denying Motion for Reconsideration) (copy attached as App. F).

3. The trial court erred in entering a parenting plan with RCW 26.09.191(3)(g) restrictions. *See* CP 953-963 (Final Parenting Plan).

4. The trial court erred in ordering Brook Lang to complete domestic violence treatment. *See* CP 953-66 (Parenting Plan); CP 980,

986-987 (Findings of Fact and Conclusions of Law); *see also* CP 934 (Decree of Dissolution, § 3.10) (directing the parties to comply with the final parenting plan) (copy of decree attached as App. E).

5. The trial court erred in severely restricting Brook Lang's decisionmaking and residential time with, his children. *See* CP 953–66 (Parenting Plan).

6. The trial court erred in entering that portion of the Decree of Dissolution directing compliance with the final Parenting Plan, to the extent the trial court erred in any portion of that Parenting Plan as more fully identified in Brook Lang's other assignments of error. CP 934.

7. The trial court erred in entering the following Findings of Fact and Conclusions of Law: FOF 2.18, and COL 3.6. *See* CP 979-981, 986-987.¹

8. The trial court erred by denying Brook Lang's Motion for Reconsideration or New Trial. *See* CP 1024.

STATEMENT OF ISSUES

The following issues pertain to the assignments of error:

1. **RCW 26.09.191(3)(g) Restrictions.** Should the trial court's RCW 26.09.191(3)(g) restrictions be vacated, when the trial court failed to specify the factors warranting those restrictions as required by the statute and entered inconsistent findings in support of the restrictions? (Assignments of Error Nos. 2, 3, 5, 6, 7, and 8.)

¹Brook has elected to comply with the requirement of RAP 10.4(c) by attaching a copy of the trial court's Findings and Conclusions as an appendix to this brief (App. D).

2. Finding of Domestic Violence. Did the trial court abuse its discretion in finding that Brook Lang committed domestic violence, when (1) the trial court expressly refused to give any weight to the only alleged incident of domestic violence which conceivably met the controlling statutory standard set forth in RCW 26.50.010(1) (because the trial court found the evidence concerning that incident to be hopelessly in conflict); and (2) the trial court then used a legally improper standard to determine that other matters that did not meet the statutory standard constituted domestic violence? (Assignments of Error Nos. 3, 4, 5, 6, 7 and 8.)

3. Refusal to Allow Expert Witnesses to Rebut Parenting Evaluator's Conclusions Regarding Domestic Violence. Did the trial court err in refusing to allow Brook Lang to amend his witness list to add expert witnesses who would challenge the methodology and conclusions of parenting evaluator Lynn Tuttle, when (1) the witnesses were needed to give Brook a fair opportunity to rebut a claim of domestic violence interjected by Ms. Tuttle's report, (2) Brook had been told through filings and statements in open court that his wife would not be making a claim of domestic violence, and therefore had not designated an expert to address the issue when he filed his designation of witnesses in compliance with the case scheduling order, and (3) any resulting prejudice to Tracie could have been cured by continuing the trial date to allow her to prepare to meet the testimony of these new witnesses? (Assignment of Error No. 1.)

4. Remand to a New Trial Judge. Should this case be remanded to a different trial judge where a reasonable and prudent

observer would conclude that the trial judge has a demonstrable bias against Brook Lang? (Assignments of Error Nos. 1-8.)

I. SUMMARY INTRODUCTION

In this marital dissolution appeal, the father, Brook Lang, challenges a final Parenting Plan that abrogated his right to participate in major decisions and placed draconian limitations on his residential time with his three young daughters.²

Brook and Tracie Lang had a difficult marriage. They met in 1999, and married the following year. Over the next five years they had three daughters. When the parties married, Brook was CEO of a tech start-up. Tracie had worked as an administrative assistant at American Airlines, but after marriage became a full-time homemaker. The collapse of the dotcom bubble forced Brook to work many more hours to try and provide for the family's financial needs. The marriage became increasingly strained, and ultimately collapsed after an incident in 2007 in which Brook and Tracie accused each other of domestic violence.

Only Tracie went to the police, and Brook ended up under arrest and charged with domestic violence. Brook agreed to take a Life Skills class, successfully completed the program, and the charges were dismissed.

In the meantime, Tracie filed for divorce. A Temporary Parenting Plan was entered, in support of which Tracie declared under oath that there were no issues of domestic violence, and the restrictions on

²The parties will be referred to individually by their first names, Brook and Tracie, and collectively simply as "the parties."

decisionmaking and residential time provided for under RCW 26.09.191(1) and (2) therefore did not apply. When the Temporary Parenting Plan was amended a few months later, Tracie reaffirmed (through counsel) that there were no issues of domestic violence. A few months after that, during a pre-trial conference, Tracie *again* reaffirmed (through counsel) that she was not making a claim of domestic violence against Brook, and the trial court duly indicated that it therefore was striking any such issue for trial.

Brook had a lawyer at the outset, but that lawyer withdrew when Brooke became unable to pay the lawyer's fee. For a period of several months, Brook represented himself *pro se*, and his relationship with Judge Douglass North, the judge assigned to hear the case, became increasingly strained. Judge North expressed the view that Brook was the party causing trouble in the case. Judge North went so far as to caution Brook that, even though domestic violence was not an issue, Brook might still find his residential time with his daughters substantially limited because the court might very well conclude that it was not in the children's interest "to spend a lot of time with you."

Brook was able to retain attorney Camden Hall before the case was set to go to trial at the end of July 2008. The trial date was continued to October 27, 2008, to allow time for a parenting evaluation, to be conducted by Ms. Lynn Tuttle. Her report, disclosed to the parties on September 1, 2008, radically altered the landscape of the case. Ms. Tuttle concluded that Brook had committed domestic violence against Tracie.

Using a much broader definition of domestic violence than the one set forth in RCW 26.50.010 (which governs whether restrictions and limitations on decisionmaking and residential time should be imposed under 26.09.191(1) and (2)), Ms. Tuttle concluded that Brook should be ordered to undergo treatment for domestic violence, and that his decisionmaking and residential time should be severely curtailed. Moreover, review of Ms. Tuttle's report disclosed that Tracie -- contrary to her representations that she was not making a claim of domestic violence -- had, during her interview with Ms. Tuttle, accused Brook of domestic violence, including providing Tuttle with Tracie's version of the 2007 incident that caused the breakup of the marriage.

Faced with Ms. Tuttle's interjection of the issue of domestic violence, and Tracie's apparent determination to do an about-face and pursue a claim of domestic violence based on Tuttle's opinion, Brook moved to add two experts to his witness list who could challenge Tuttle's methodology and conclusions. Judge North denied the motion. Judge North found that Tracie could not adequately prepare to meet the testimony of such experts in time for a trial scheduled to start on October 27, and Judge North was determined to keep to that date. Accordingly, Brook had no experts with which to challenge Tuttle when she testified at trial that domestic violence means "trying to...exert power and control," and that Brook had committed domestic violence because he had wrongfully attempted to exercise such power and control over Tracie.

Judge North embraced Tuttle's definition of domestic violence, and found Brook had committed domestic violence based on that definition. The trial court castigated Brook as "one of the most controlling people I've ever seen," a "bully" who is "impossible...for anybody to live with." The trial court, however, gave no weight to Tracie's claims about the April 2007 incident in making his finding of domestic violence (finding the testimony on the point to be hopelessly in conflict), and Tracie offered no evidence of any other incident that met the statutory definition of domestic violence set forth in RCW 26.50.010. The trial court stripped Brook of all major decisionmaking concerning his daughters, and limited his residential time with them to *one night every two weeks*.

This Court should reverse:

- First, the trial court grounded the imposition of these draconian restrictions on RCW 26.09.191(3)(g). Section 191(3) authorizes the imposition of exceptional limitations on decisionmaking and residential time for several reasons other than domestic violence, specified in subsections (a) through (f). Subsection (g) authorizes a court to impose such limitations for factors or conduct other than the specified reasons set forth in subsections (1) through (f), if the trial court makes express findings that the other factor or conduct in question is adverse to the best interests of the child.

Judge North, however, failed to specify *what* other factor or conduct justified the limitations he had presumed to impose on Brook's

decisionmaking and residential time, instead referring only generally to his other findings and conclusions. Moreover, although his other findings did contain a finding of domestic violence, that finding was contradicted by yet *another* finding that neither RCW 26.09.191(1) or (2) restrictions applied -- even though those subsections *must* be applied in cases involving domestic violence. Under this Court's decision in *In re Marriage of Katare*, 125 Wn. App. 813, 105 P.3d 44 (2004), *rev. denied*, 155 Wn. 2d 1005 (2005), the trial court's failure to make an express finding specifically identifying the factor or conduct, as well as the inconsistency of the trial court's findings on the issue of domestic violence, mandate vacation of the trial court's § 191(3)(g) determinations and a remand for further proceedings.

- Second, the trial court abused its discretion in finding Brook committed domestic violence. To begin, the trial court used an impermissible legal standard in finding domestic violence when the court embraced Ms. Tuttle's definition of domestic violence as encompassing "attempts to control." Under the plain language of the governing statutory standard set forth in RCW 26.50.010, "attempts to control" simply do not constitute *domestic violence*. Domestic violence is clearly and unequivocally defined in the statute, and none of the incidents to which Tracie testified met that standard -- save the 2007 incident that triggered the breakup of the parties' marriage, and which the trial court expressly ruled was *not* a basis for its finding of domestic violence.

- Third, the trial court erred when it did not allow Brook to add experts who could challenge Ms. Tuttle’s methodology and conclusions concerning domestic violence. Brook had every reason to believe that domestic violence would not be an issue at trial until Ms. Tuttle released her evaluation, and he promptly responded by moving to add two experts qualified to deconstruct her analysis. The trial court’s refusal to allow these experts deprived Brook of a fair trial on the issue of domestic violence, and this error fatally taints the trial court’s finding of domestic violence and all determinations based on that finding.

In sum, this Court should reverse the trial court’s domestic violence finding and the court’s § 191(3)(g) determinations, and remand for a redetermination of the Parenting Plan. And in doing so, this Court should remand to a different judge. The record reflects that Judge North has formed so definite and adverse an opinion of Brook Lang that any reasonably prudent observer would conclude that the fundamental requirement of an appearance of fairness could not be satisfied in a remand proceeding presided over by Judge North.

II. STATEMENT OF THE CASE

A. The Parties’ Marriage and Its Breakup.

Tracie and Brook Lang met in September of 1999, and became engaged in January of 2000. *See* I VRP 51–52.³ Tracie initially worked

³ Verbatim reports of the trial, which was in session intermittently from October 27, 2008, through December 3, 2008, will be cited consistent with the volume number on the cover page (e.g., “I VRP,” “II VRP,” etc.). Verbatim reports of pre- and post-trial hearings will be cited by date and subject matter (e.g., the verbatim report May 30, 2008 pre-trial conference will be cited as “May 30, 2008 Pre-Trial Conference VRP”).

as an administrative assistant at Alaska Airlines, but terminated her employment there soon after the couple became engaged. *See* I VRP 53–54. Brook worked as the CEO of Biospin, a wireless technology startup. IV VRP 541. Tracie and Brook were married on May 13, 2000. I VRP 49. During the marriage they had three daughters: AL, born March 25, 2001; GL, born January 1, 2003; and CL, born January 6, 2005. *See* I VRP 49–50.

Brook and Tracie’s marriage proved difficult. The technology bubble burst soon after they wed, and Brook had to work long hours to ensure the couple’s financial well-being. After the birth of their first child, AL, Tracie settled into the role of stay-at-home mother. Brook continued to be the provider, working on new business ventures and trying to secure the family’s long-term financial stability. Brook and Tracie eventually became estranged, and they differ as to why this happened. Tracie believes Brook worked an excessive amount of hours, did not spend enough time with her or their children, and was alternately controlling and neglectful. Brook, on the other hand, believes that Tracie was not understanding either of their financial situation, or of the amount of work required to secure their financial well-being in the wake of the collapse of the dotcom bubble.

The tension in the marriage eventually came to a head on April 17, 2007. The parties provide conflicting testimony of what occurred that night, but agree that they were physically fighting over possession of a dildo. Tracie alleges that Brook scratched her arms while trying to grab it, II VRP

174; Brook alleges that Tracie hit him in the face, giving him a black-eye. VII VRP 839. Brook left the house, and the couple separated. II VRP 175.

The next day Tracie went to the Issaquah police station, filed a report of her version of the incident, and obtained a temporary protection order against Brook. II VRP 182-83. The Issaquah police later arrested Brook based on Tracie's report and charged him with "Domestic Violence – Fourth Degree Assault." Brook agreed to a Stipulated Order of Continuance ("SOC"). Trial Exhibit 12. Pursuant to the terms of the SOC, Brook completed a Life Skills counseling program and the charges were eventually dismissed. Trial Exhibit 497.

B. Pre-Trial Proceedings.

1. Tracie Petitions for Dissolution, Then Agrees to a Temporary Parenting Plan In Support of Which She Affirms That She is Making No Claim of Domestic Violence Against Brook -- A Position She Expressly Reaffirms Upon the Entry of a Modified Parenting Plan and *Again* During the Parties' Pre-Trial Conference.

Tracie filed her petition for dissolution on July 3, 2007. CP 1-7.⁴ The case was transferred to Judge Douglas North in November of 2007. CP 1025 (Order for Change of Judge).

Early in the dissolution process, the parties entered into an agreed temporary parenting plan. CP 63-70 (Agreed Temporary Parenting Plan,

⁴ This was actually Tracie's second petition; an earlier petition had been filed on April 23, 2007, and assigned King County Superior Court Cause No. 07-3-03124-7, but that petition was dismissed and succeeded by the petition filed on July 3, 2007, out of which the present appeal arises.

entered into May 18, 2007).⁵ Part II of the plan stated there were no bases for restrictions on residential time or decision making under RCW 26.09.191:

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

Does not apply.

2.2 OTHER FACTORS (RCW 26.09.191(3))

Does not apply.

CP 64. In support of the proposed plan, Tracie and Brook both made the following declaration under oath:

I declare under penalty of perjury under the laws of the State of Washington that this plan has been proposed in good faith and that *the statements in Part II of this Plan [i.e., no basis for restrictions under § 191] are true and correct.*

CP 69 (emphasis added). Brook received substantial residential time (including regular weekend and midweek overnights), and the parties agreed to share jointly in major decisionmaking. CP 64-65 (residential schedule), CP 67-68 (decisionmaking).

The parties became embroiled in a dispute over several issues arising under the plan, and a modified plan was eventually entered on September 11, 2007. CP 1054-1060 (Second Temporary Parenting Plan). But no substantial change was made in either the residential time or decisionmaking provisions, and the parties again affirmed -- Tracie through the signature of her counsel -- that there were no grounds for imposing

⁵ The plan was actually entered into shortly after the filing of Tracie's first petition, but formed the basis for the parties' subsequent temporary parenting plan entered after the second petition was filed.

restrictions under either RCW 26.09.191(1) or (2). CP 1055-1056, 1058 (Second Temporary Parenting Plan at §§ 3.1-3.2, 3.10, and 4.2, regarding Residential Schedule, Restrictions, and Major Decisions).

The Case Schedule Order issued when Tracie filed her petition set a trial date of June 2, 2008, which Judge North first continued to June 30, 2008 (by an order amending the case schedule issued on April 17, 2008). See CP 1085-1088, 1089-1090 (original case schedule, and order amending case schedule). At a pre-trial conference held on May 30, 2008, Tracie's attorney, Ted Billbe, again reiterated that there was not a basis for § 191 restrictions on Brook's residential time with his daughters. 1 VRP 49 ("We're not seeking to restrict [Brook's] residential time based on the 191 allegations."). Mr. Billbe said Tracie would be requesting sole decision-making based on "abusive use of conflict" *but not for domestic violence*, and in response the trial court struck domestic violence as an issue for trial:

MR. BILLBE: We do have issues of restrictions in decision-making. My client will seek sole decision-making.

THE COURT: Is that due to abusive use of conflict or what – or anything?

MR. BILLBE: Yes. Abusive use of conflict.

THE COURT: Okay.

MR. BILLBE: *There is a history of domestic violence. There was a conviction or at least a plea at the beginning of the case.*

THE COURT: Okay.

MR. BILLBE: *But we're not – at least at this time, I'll say to Mr. Lang and to you, we're not seeking to restrict his time with*

the children because of that, because I -- we believe it's principally an interaction between him and his wife in terms of an inability to cooperate or work stuff out.

THE COURT: *Okay. So I'm going to cross out the restrictions in residential time, though, but just indicate there may be restrictions on decision-making authority and dispute resolution process.*

MR. BILLBE: *That's exactly what we're seeking.*

May 30, 2008 Pre-Trial Conference (“5/30/08”) VRP 36 (emphasis added).⁶

As will be shown, Tracie did not request that Brook's residential time with his three daughters be restricted because of domestic violence until after Ms. Lynn Tuttle submitted a Parenting Evaluation Report that concluded Brook was “controlling” and therefore, in her view, guilty of domestic violence.

2. Brook's Representation of Himself *Pro Se*, and his Deteriorating Relationship with Judge North.

Lisa Sharpe first represented Brook in the proceedings until Brook experienced financial difficulties and could no longer afford his attorney's fees. Ms. Sharpe filed a notice of withdrawal effective January 17, 2008, and also filed a notice of attorneys' lien with the trial court. CP 1026-

⁶ At the same time as the trial court acknowledged that Tracie was not seeking restrictions on residential time due to domestic violence, in a foreboding moment, the trial court indicated that it was already considering alternate bases for restricting Brook's residential time with his daughters:

THE COURT: Mr. Billbe is indicating that he does believe that there are things that would require restrictions on decision-making and on dispute resolution, but he's not saying there are such things that would place limitations on your time with the children.

There may, however, be other factors. It may -- just may not be in the children's best interest to spend a lot of time with you.

5/30/08 VRP 50 (emphasis added).

1028, 1029 (Notice of Withdrawal, Notice of Attorney's Claim of Lien). Brook was unable to secure new counsel until June of 2008, and represented himself *pro se* for the intervening months.

Brook was still representing himself *pro se* when Judge North conducted a pre-trial conference on May 30, 2008, for what was then to be a June 30, 2008 trial. A major issue at the conference was whether the opinion of a parenting evaluator was necessary prior to trial. The parenting evaluator initially appointed by the trial court for the children had recently withdrawn from the matter,⁷ and Brook requested a continuance so that another parenting evaluator could be found. 5/30/08 VRP 3-5. The trial court felt it was more important to move forward with the trial than obtain a parenting evaluation:

BROOK: How -- just how -- I could not even begin to be prepared to protect my three daughters, to be prepared in any time in that sense. And I just -- being *pro se*, I'm just asking, how would we go to trial without a parenting evaluation when we seem to be so far apart on what we --

THE COURT: I've done lots of trials without parenting evaluations. You know, I just hear from the parties. You testify, your wife testifies. I mean, bring in the kids' teachers, their doctor, counselor, or anybody else like that to testify, neighbors, and we make a decision.

I mean, yeah, I'd like to have a parenting evaluation, but I've done lots of them without. We don't have to have a parenting evaluation. So it can be done without it.

You know, you present what evidence you have and we make the best decision we can make and move on.

⁷ The parties disagreed on the reason the first parenting evaluator withdrew. Tracie's attorney, Ted Billbe, contended that Brook refused to cooperate with the parenting evaluator. 5/30/08 VRP 10. Brook contended that the evaluator withdrew because of miscommunication regarding scheduling issues. 5/30/08 VRP 6-9.

5/30/08 VRP 13-14. Rather than appoint a parenting evaluator to speak for the children's best interests, the trial court believed it was best to "make the best decision we can make and move on."

During the course of the pre-trial conference, Judge North displayed great frustration with Brook, generally. At one point, Tracie's counsel, Ted D. Billbe, launched into a scathing attack on Brook for his conduct in representing himself pro se in the proceedings, stating: "He doesn't cooperate with anyone or anything. He doesn't communicate clearly on anything. He is a [sic] expert in creating confusion and trying to make it seem like only he is right." 5/30/08 VRP 10. Judge North's frustration with Brook is evident from statements made in response to Mr. Billbe's attack:

TED BILLBE: [H]im talking about all this advice that he gets, advice, advice, advice, why doesn't he just get a lawyer so we can get this case over with? You're talking about a case that's going to be pushed out now into early -- into early next year. I think we should go ahead with this trial.

BROOK: I'm frankly disappointed in the personal attacks.

JUDGE NORTH: *Well, I think that there's real merit to that, Mr. Lang.* I think, obviously, you have a point of view that's different than that. But I can certainly see that's [sic] there's support for Mr. Billbe's point of view. It's not like he's just making this stuff up. There's a long history of you go[ing] around and around with people and there being all kinds of miscommunication and things being delayed.

And maybe it's just that they're not understanding you, but it's -- *there's pretty good evidence that there's something weird with the way you're communicating with people* -- ...because it's not coming together.

5/30/08 VRP 11 (emphasis added).

Mr. Billbe then stated that his only concern in rescheduling the trial was that Judge North might not be available to preside over it:

TED BILLBE: My only concern would be -- What I think would be bad is if we set it that week and then we get brokered out [to another judge].

5/30/08 VRP 20. Mr. Billbe and Judge North then discussed how to ensure that the case was not “brokered out” to another judge:

TED BILLBE: Can you hold a case even if you held it over to the next week, then?

JUDGE NORTH: Well it is possible to do that.

5/30/08 VRP 21.

Brook did not understand the dialogue between Mr. Billbe and Judge North, and asked what “brokered out” meant and “why [a different judge] would make a difference” at trial. 5/30/08 VRP 22-23. Judge North responded that the pre-trial judge “*gets to know the parties and knows what’s going on ... and who’s been responsive to the other side and who’s been causing problems* and all that sort of thing.” 5/30/08 VRP 23-24 (emphasis added). Judge North then scheduled the trial to begin July 29th, a Tuesday rather than Monday, because scheduling the trial to start on Tuesday “gives a better chance that I would ... be here to try it.” 5/30/08VRP 24; *see* CP 1091-1092 (order entered on May 30, 2008, amending case schedule to set trial date of July 29, 2008).

3. The Parenting Evaluator, Ms. Lynn Tuttle, Concludes Brook Has Committed Domestic Violence, And Recommends Severe Limits Be Placed On Brook's Decisionmaking and Residential Time.

Despite Judge North's desire to proceed without a parenting evaluator, he ultimately was persuaded to enter an order appointing Ms. Lynn Tuttle to conduct an evaluation. CP 869-73 (Order Appointing Parenting Evaluator). The trial date was then continued to October 27, 2008. CP 1093 (order amending case schedule to set trial date of October 27, 2008).

In her interview with Ms. Tuttle, Tracie -- notwithstanding her repeated assurances that domestic violence would not be an issue -- accused Brook of domestic violence. She gave her version of the April 17th incident in which she and Brook fought over the dildo, again accusing Brook of grabbing her and clawing at her hands to get her to release the dildo. Trial Exhibit No. 518 (Tuttle Evaluation) at 7. In his interview with Ms. Tuttle, Brook declined to discuss the April 17th incident, citing confidentiality concerns raised by his attorney representing him in the Issaquah Municipal Court proceeding. *Id.* at 11. Ms. Tuttle also reviewed a Modified No Contact Order that the municipal court entered based on Tracie's allegations regarding the April 17th incident, as well as a Stipulated Order of Continuance that Brook agreed to with regards to the April 17th incident. *Id.* at 2.

Following some additional interviews, Ms. Tuttle prepared her report and submitted it to the parties, on September 1, 2008. Ms. Tuttle charged Brook with "[e]xhibit[ing] a pattern of abusive and controlling

behaviors towards Ms. Lang that are consistent with those of domestic violence perpetrators.” *Id.* at 22. This conclusion was based on several factors, including:

- Tracie’s version of the April 17th incident (in which Brook “may have been engaging in an unwanted sexual advance”), which Tuttle judged to be “credible”;
- Brook’s subsequent arrest for domestic violence;
- The domestic violence charge filed against Brook arising out of his arrest;
- Additional allegations by Tracie of “abusive behavior” by Brook, including reckless driving, shutting off the electricity to the house, and attempts to exercise “financial control” over Tracie.

Id. at 21-22. Ms. Tuttle recommended that Brook’s decisionmaking and residential time be severely restricted, and that he be ordered to complete a domestic violence treatment program. *Id.* at 25.

4. The Trial Court Refuses to Allow Brook to Add Expert Witnesses to Challenge Ms. Tuttle’s Evaluation, Even Though Tuttle Has Interjected the Issue of Domestic Violence Into the Case After Tracie Had Taken It Off the Table.

By now, Brook was represented by Mr. Camden Hall. *See* CP 1030 (Notice of Appearance of Camden Hall). After deposing Ms. Tuttle on September 12, 2008, Mr. Hall determined it would be necessary to present testimony from witnesses who could discredit Ms. Tuttle’s conclusion that Brook had committed domestic violence. The deadline for designating witnesses having passed,⁸ Mr. Hall moved on Brook’s behalf

⁸ The initial Case Schedule Order set a due date for disclosure of primary witnesses of March 3, 2008, and for possible additional witnesses of March 31, 2008, subsequently (*Footnote is continued on next page.*)

to add several witnesses not listed on Brook's designation (1) Scott and Kim Harang, as fact witnesses to testify about their observations of the Langs' parenting; (2) Brook's therapist, Charlotte Svenson; and (3) two expert witnesses, Dr. Wendy Hutchins-Cook and Dr. John Dunn. CP 1035-1037 (Motion to Allow Late Witness Designations). Drs. Hutchins-Cook and Dunn were to "testify about the procedure utilized by Ms. Tuttle and why it was defective and prejudicial to Mr. Lang," and about the importance of a father's presence to a daughter's growth and development. CP 1033-1034 (Declaration of Camden Hall supporting motion).

The trial court allowed the addition of the Harangs and Ms. Svenson, but denied the request to add the experts, Drs. Hutchins-Cook and Dunn. CP 1038-1040 (Order Potentially Granting Motion to Allow Late Witness Designations and to Allow Testimony). The trial court's stated reason for refusing to allow testimony from Drs. Hutchins-Cook and Dunn was that doing so "prejudices Ms. Lang's ability to prepare for trial." *Id.* at 2, CP 1039. The trial court's order did not state why this prejudice could not be cured by continuing the trial date to allow Tracie sufficient time to prepare to address what these two new experts might have to say. The trial court's order also did not address how Brook could be expected to effectively rebut Ms. Tuttle's opinions and recommendations, without testimony from experts qualified to critique Tuttle's methodology and conclusions.

modified for possible additional witnesses to April 28, 2008. *See* CP 1086-1089 (scheduling order provisions pertaining to witness designations).

C. Trial Proceedings.

1. Tracie, Repudiating Her Prior Representations That She Would Not Accuse Brook of Domestic Violence, Now Embraces Ms. Tuttle's Finding of Domestic Violence By Brook and Testifies to Several Incidents She Asserts Prove That Brook Committed Domestic Violence.

Despite her repeated representations that there were no bases for § 191 restrictions on Brook's residential time with his daughters, and the subsequent statement of her counsel that Tracie was not alleging that Brook committed domestic violence, Tracie now sought § 191 restrictions based on Ms. Tuttle's conclusion that Brook *had* committed domestic violence. *See, e.g.*, CP 909-11 (Petitioner's Trial Brief at 7-9).

Tracie's testimony at trial echoed the allegations she had previously made against Brook in the parenting evaluation interview. Besides reiterating her version of the April 17, 2007 incident, Tracie testified to several other incidents purporting to show Brook committed domestic violence:

- **Driving Altercation.** Brook was driving their car with Tracie in the passenger seat. Another motorist cut in front of Brook aggressively. In response, Brook sped up and cut him off. After both cars had stopped, Brook got out of his car and yelled at the man. According to Tracie, Brook yelled "No one's going to, you know, affront me in front of my wife." I VRP 57-58.

- **Dispute with Neighbors.** A property dispute developed between Brook and their neighbors. The nature of the dispute is not disclosed, but the neighbors told Tracie "[we] wish he [Brook] was dead"

and painted “Keep out Brook” on wood boards. The Langs’ eventually sold the house because of the dispute. I VRP 63.

- **Lights Turned Off.** Tracie testified that, in February of 2007, in response to an argument she and Brook were having, Brook turned off the electrical power to portions of the house. I VRP 169-170.

- **CL’s Conception.** Prior to trial, Tracie told the parenting evaluator, Ms. Tuttle, that Brook “forced her” to have sex when CL was conceived. Trial Exhibit 518 at 6. Before CL was conceived, Brook and Tracie had discussed whether to have another child. Brook was in favor of having a third child, but Tracie said she was not ready given the deteriorating state of their marriage. II VRP 156. Tracie testified that Brook compelled her to conceive CL through “verbal pressure”:

He would pace at me and yell at me. It could go on for three or four hours. I could be in the kitchen making dinner or doing dishes, and his verbal, verbal pressure. “You promised, Tracie. You told me, you said every two years.” The repetition’s like brainwashing over and over and over again. And you just want to tell him, ‘Just leave me alone. Shut up. Stop it.’

II VRP 157. Tracie testified she eventually caved in to Brook’s “verbal pressure” and became pregnant:

MR. BILLBE: But you became pregnant.

TRACIE: *It was the verbal pressure.*

II VRP 158 (emphasis added).

On cross-examination, Tracie admitted she consented to sex in order to conceive CL in the hope this would end sexual relations with Brook:

MR. HALL: When you decided to conceive a third child, you basically caved in to Brook's wishes on that point.

TRACIE: I caved in to his demands to shut him up and so he would leave me alone for another couple of years.

IV VRP 544. And despite her testimony regarding these various incidents, under cross-examination Tracie also admitted that, in fact, she did not claim any physical assault by Brook other than the April 17, 2007 incident:

MR. HALL: It's true, isn't it, that there was no physical assault by Mr. Lang on you before April 17th [2007]?

TRACIE: Yeah. We didn't have a physical relationship on any level, really. Well, I mean, except for the [CL] incident . . .

IV VRP 543.⁹

Except for the parties (conflicting) testimony regarding the April 17th incident, there was no testimony or other evidence offered to show Brook ever physically harmed Tracie, or threatened to harm her (e.g., in order to compel her to do what Brook wanted done). Nor was there any evidence that Brook ever physically harmed, or threatened to harm, any of his daughters. Finally, there was no evidence that any of the children were present during any portion of the April 17th incident, or were ever aware of the allegations made by Trace and Brook regarding that incident.

⁹ Tracie's brother, Todd Wilhelm, provided testimony as to Brook's aggressive personality. Mr. Wilhelm testified that Brook yelled at a ticket agent on a business trip, drove aggressively, and yelled at Todd during a telephone call. I VRP 82-84. But Mr. Wilhelm provided no evidence of Brook assaulting or physically threatening Tracie.

2. The Trial Court Again Denies Brook's Request to Present Expert Witness Testimony Rebutting Ms. Tuttle's Domestic Violence Conclusions and Parenting Recommendations.

Before Ms. Tuttle was called as a witness by Tracie, Mr. Hall again requested that Drs. Hutchins-Cook and Dunn be allowed to testify to rebut Ms. Tuttle's report. III VRP 233-34. The trial court denied the request because:

[t]o do so would require a continuance of this trial in order to allow Ms. Lang to respond, to take their depositions, to do whatever discovery was going to be involved in dealing with them[.]

III VRP 236-37. The trial court instead suggested that testimony from Drs. Hutchins-Cook and Dunn was not necessary because Mr. Hall supposedly could use their theories himself, during his cross-examination of Ms. Tuttle:

THE COURT: Certainly Mr. Hall can use the ideas that he's gotten, undoubtedly, from conferring with [Drs. Hutchins-Cook and Dunn] in cross-examining Ms. Tuttle and may be able to use it almost as effectively that way as if he had them testify, because he can ask [her], "Well, what about this theory?" and "Don't other experts think this?" and so on and raise those issues on cross-examination.

III VRP 237. The trial court did not explain how Mr. Hall asserting the existence of theories contrary to Ms. Tuttle's, in the questions he posed to her on cross-examination, could constitute admissible evidence in support of those theories, or how such assertions could carry the same weight as having Dr. Hutchins-Cook and Dunn testify in support of those theories, during their deconstruction on the stand of Ms. Tuttle's methodology and conclusions.

3. The Trial Court Adopts Ms. Tuttle’s Definition of Domestic Violence as A Question of “Power and Control” Rather Than Of Physical Harm or Threats Of Physical Harm.

Ms. Tuttle testified at trial that her conclusions and recommendations regarding domestic violence were based on her perception that domestic violence is “trying to . . . exert power and control,” regardless of whether there are threats of physical violence. III VRP 331. On direct examination, Mr. Billbe asked Ms. Tuttle why she recommended that Brook complete domestic violence treatment. She responded that there was one incident of physical violence, the April 17th incident, but that otherwise “[t]here weren’t a lot of physical incidents between the parents, but there were other aspects such as some intimidation.” III VRP 280-81. The “other aspects” of “intimidation” Ms. Tuttle referred to were: (1) Tracie being in a room with Brook and having him “talk and talk for a very long time, sometimes hours,” III VRP at 281; (2) Brook flicking the lights on and off, and one time turning the power off, *id.*, and (3) Brook having some “financial-control issues” and “control issues” regarding his daughters’ doctor. *Id.* Ms. Tuttle ultimately concluded that domestic violence was an issue because:

There was an element of control and ... it seemed that Miss Lang felt that she had to follow with his decisions.

III VRP at 281-82.

Ms. Tuttle confirmed that her recommendations regarding domestic violence were based on controlling behavior rather than violent behavior, when asked about whether she was recommending there be restrictions imposed on Brook under either RCW 26.09.191(1) or (2):

MR. BILLBE: Did you . . . reach any conclusion or opinion as to whether there should be Section 191 restrictions in the final parenting plan?

MS. TUTTLE: I considered whether there should be 191 restrictions for domestic violence, and frankly I was -- frankly I was just a bit on the fence about it. I --there had not been --other than this one physical incident [on April 17th], there weren't really physical incidents described, although there was this other controlling behavior.

III VRP at 283. Thus, according to Ms. Tuttle, there were no incidents of violence except for the April 17th incident but there was “this other controlling behavior,” and Ms. Tuttle considered this other behavior sufficient to justify placing severe restrictions on Brook’s decisionmaking and residential time.

The trial court substantially agreed with and adopted Ms. Tuttle’s definition of domestic violence:

THE COURT: Well, certainly my understanding, Mr. Hall, of domestic violence is that *power and control is really what’s at issue here*. I mean, I’ve had cases where there was in fact no actual physical violence between the parties, but because there were threats and intimidation used for purposes of power and control, I found that there was domestic violence in the relationship even though nobody had ever actually hit anybody.

III VRP at 331-332 (emphasis added). In all of the discussions of domestic violence throughout the trial, Judge North did not once refer to the statutory definition of domestic violence.

D. Adopting Ms. Tuttle’s Recommendations, The Trial Court Strips Brook of Any Role in Major Decisions And Places Severe Limits on His Residential Time.

At the trial’s conclusion, Judge North ruled, as he described it, “largely on Ms. Lang’s side of things.” CP 922-28 at 922 (Agreed Trans-

cript of December 3, 2008 Court Ruling). In doing so Judge North expressed a very critical opinion of Brook, using highly pejorative language:

Clearly, Mr. Lang is very driven, very strong in getting his own way on things—will work his position any which way he can to get what he wants. That may be an admirable quality in business -- it's hell at home, though. I mean it's just an impossible way for anybody to live with somebody else.

CP 922. Judge North later added:

Mr. Lang is one of the most controlling people I've ever seen.... He is clearly using his ability to bully people to drive his personal relationships here.... [T]hat might be perfectly fine behavior in the business world where you are trying to drive the best deal you can with a business adversary, but it's not an appropriate way of behaving with people who are your family.... That's not an appropriate way to behave in a personal relationship.

CP 923.

Judge North reiterated his adoption of Ms. Tuttle's definition of domestic violence. CP 923 (“[D]omestic violence is based on intimidation and control.”). Based on that definition, Judge North found that the parties' marriage was a “clear domestic violence relationship” -- although he expressly ruled out giving any weight to the April 17th incident, finding the testimony hopelessly in conflict. CP 923. Judge North ordered Brook to undergo domestic violence treatment. CP 923. Judge North also stated that the residential schedule recommended by Ms. Tuttle, which placed severe restrictions on Brook's time with his daughters, would be the permanent residential schedule for the children under the final Parenting Plan entered by the court. CP 925.

Judge North's adoption of Ms. Tuttle's definition of domestic violence was echoed in the decree of dissolution, final parenting plan, and

findings of fact and conclusions of law entered on January 22, 2009. Judge North reiterated that the testimony regarding the April 17th incident was hopelessly conflicting, and that the incident therefore was not material to his conclusions, CP 980 (FOF 2.18(7)); the court nonetheless found that Brook had committed domestic violence, and ordered him to complete domestic violence treatment. CP 980 (FOF 2.18(8)), CP 986-987 (COL 3.6) (domestic violence findings¹⁰); CP 953-966, 980, 986-87 (references to directive in various final orders). This finding and directive were based on what the trial court found to be Brook's controlling personality and his "ability to bully people to drive his personal relationships." CP 987. But no specific incidents of domestic violence were identified in support of the court's finding of domestic violence.

Despite the finding of domestic violence, the trial court also found in the final Parenting Plan that neither RCW 26.09.191(1) nor (2) applied. CP 954. Judge North did not offer any way to reconcile his finding that the parties' marriage was a "clear domestic violence relationship" with his determinations that §191(1) and § 191(2) did not apply. Judge North did find that § 191(3)(g) applied, but did not identify *what* factor or conduct justified imposing restrictions under this provision of the statute, choosing instead simply to refer the parties and any reviewing court to his "findings of fact and conclusions of law filed herewith." CP 954. Pursuant to his § 191(3)(g) determination, Judge North gave sole decisionmaking for major

¹⁰ Although labeled a conclusion of law, in pertinent part Conclusion of Law 3.6 is clearly a finding of fact on the issue of domestic violence.

decisions to Tracie, and limited Brook's residential time with his daughters to just one night every two weeks. CP 953-966 (Parenting Plan provisions).

Brook moved for reconsideration or a new trial, contending (*inter alia*) that the trial court had wrongfully punished him for domestic violence when he was not guilty of domestic violence. CP 1006, 1009-1010, 1012-1013 (Motion for Reconsideration at 1, 4-5, 7-8). Judge North denied the motion and reaffirmed his finding of domestic violence, this time referring to the statutory definition of domestic violence:

Ms. Lang testified at trial to several incidents between the parties that meet the statutory definition of Domestic Violence as set forth in RCW 26.50.010(1): "assault or the infliction of fear of imminent physical harm, bodily injury or assault"

CP 1024 (Order Denying Motion for Reconsideration). But Judge North did not identify *which* specific incidents to which Tracie testified met, in the court's view, the statutory definition of domestic violence.¹¹

III. STANDARD OF REVIEW

Statutory interpretation is a legal issue, reviewed *de novo*. *Advanced Silicon Materials, L.L.C. v. Grant County*, 156 Wn.2d 84, 89, 124 P.3d 294 (2005) (citation omitted) Conclusions of law must be supported by findings of fact, and the findings in turn must be supported

¹¹ Several months after Brook initiated this appeal, Tracie petitioned for modification of the parenting plan, requesting that Brook be limited to supervised visitation and denied any residential time with his children, for his "failure" to enroll in domestic violence treatment. CP 1041-1046 (Petition/Declaration for an Order to Show Cause re Contempt and Other Relief (Modification of Parenting Plan)). This new proceeding has been assigned to be heard by Judge Dean Lum. CP 1047-1053 (Scheduling Order).

by substantial evidence. *In re Marriage of Rideout*, 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003); *In re Disciplinary Proceedings Against Poole*, 156 Wn.2d 196, 209, n.2, 152 P.3d 954 (2006).

The provisions of a parenting plan are reviewed for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997); *In re Marriage of Katare*, 125 Wn. App. 813, 822, 105 P.3d 44 (2004), *rev. den.*, 155 Wn.2d 1005 (2005). A discretionary ruling must be founded on principle and reason, grounded in both the correct legal rules and the facts of the case before it, or it is an abuse of discretion. *Coggle v. Snow*, 56 Wn. App. 499, 505-07, 784 P.2d 554 (1990). A court abuses its discretion when it issues a manifestly unreasonable decision or bases its decision on untenable grounds or untenable reasons. *In re Marriage of Littlefield*, 133 Wn.2d at 46-47.

The trial court must also be sufficiently specific in its ruling to permit review. In *Katare*, this Court remanded for clarification because the written findings in the parenting plan were inconsistent and contradictory, precluding review. *In re Marriage of Katare*, 125 Wn. App. at 816; *see also, Marriage of Horner*, 151 Wn.2d 884, 893-95, 93 P.3d 124 (2004) (necessary findings must be articulated; “conclusory” findings are inadequate to sustain a decision).

IV. ARGUMENT

A. Under this Court's Decision in MARRIAGE OF KATARE, Restrictions on Parental Visitation Imposed Under RCW 26.09.191(3)(g) Must Be Supported by Express Findings of Adverse Conduct or Factors, and Those Findings Cannot Be Inconsistent With The Balance of the Trial Court's Findings. Here, the Trial Court Failed to Support Its 191(3)(g) Restrictions with Express Findings, and Made Inconsistent Findings on The Issue of Domestic Violence. Each of These Errors Independently Mandates Vacating the Trial Court's 191(3)(g) Determinations.

RCW 26.09.191 governs restrictions on decisionmaking and residential time in temporary and permanent parenting plans. Subsections (1) and (2) are mandatory provisions of the Parenting Act which require the trial court to substantially restrict a parent's involvement with a child if domestic violence has been found. *In re Marriage of Katare*, 125 Wn. App. at 825. Subsection (3) is a discretionary provision that permits a trial court to place substantial restrictions on a parent's involvement where certain factors are found to be present. *In re Marriage of Littlefield*, 133 Wn.2d at 54-55; *In re Marriage of Katare*, 125 Wn. App. at 825-26.

The first six factors listed under § 191(3)(a) through (f) are expressly identified (parental neglect, emotional impairment, substance abuse, absence of emotional ties, abusive use of conflict, and withholding access to the child without good cause). The final § 191(3) factor, subsection (g), states:

(3) 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:

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

RCW 26.09.191(3)(g). Thus, under the plain and unambiguous language of § 191(3)(g), the trial court may not impose limitations and restrictions under this final subsection of the statute without making “express...” findings that there are specific “factors or conduct” present “adverse to the best interests of the child” and warranting the imposition of such limitations and restrictions.

In *Katare*, this Court held that the plain language of § 191(3)(g) means just what it says, and restrictions under RCW 26.09.191 not supported by express findings are legal error and will be vacated. *In re Marriage of Katare*, 125 Wn. App. at 826 (holding that the trial court “may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191.”). Moreover, this Court further held that an inconsistency between a trial court’s findings under § 191(3)(g) and its other findings prevents effective appellate review, and constitutes an independent ground for vacating a trial court’s 191(3)(g) determinations. 125 Wn. App. at 829-831. Here, the trial court’s § 191(3)(g) determinations fail on both grounds.

1. The Trial Court Failed to Make Express Findings of the Adverse Conditions or Factors Supporting Its § 191(3)(g) Restrictions.

Judge North imposed restrictions in the parenting plan under § 191(3)(g) without specifying what “factors or conduct” “adverse to the best interests” of the children were present. Paragraph 2.2 of the Parenting Plans instead states:

2.2 OTHER FACTORS (RCW 26.09.191(3)(g)).

Father's residential time set forth below in this parenting plan is conditioned on his satisfactory participation in and completion of the treatment set forth in Section 3.13.

Refer to the Court's findings of fact and conclusions of law filed herewith.

CP 954 (emphasis added). This general reference to "[t]he court's findings of fact and conclusions of law filed herewith" fails to satisfy the mandate of § 191(3)(g), as construed by this Court in *Katare*, that the trial court make express findings. They instead require Brook's counsel and this Court to search through the trial court's findings and make a "best guess" as to which the trial court thought constituted the kind of adverse condition or factor that warranted its imposition of § 191(3)(g) restrictions. As *Katare* makes clear, faced with having to conduct such a jurisprudential "treasure hunt," the appellate court shall vacate the trial court's § 191(3)(g) determinations and remand for further proceedings.

2. The Trial Court Made Inconsistent Determinations on the Central Issue of Domestic Violence.

To be sure, a hunt through Judge North's other findings and conclusions will eventually uncover its finding of domestic violence. This finding, however, should also support the imposition of restrictions and limitations under § 191(1) and § 191(2). Yet the trial court declined to impose restrictions and limitations under either section, expressly finding neither subsection to be inapplicable. CP 954. If the § 191(3)(g) restrictions were based on domestic violence, they should also have mandated restrictions under subsections (1) and (2) -- indeed, restrictions under (1) and (2) would have obviated altogether the need for restrictions

under (3)(g). (And if the restrictions are based on factors or conduct other than domestic violence, the trial court has plainly failed to specify just what those factors or conduct are.)

The resulting inconsistency is substantively indistinguishable from *Katare*. There, the trial court found risk of flight as the reason for imposing restrictions under § 191(3)(g), only to turn around and find *no* such risk in the court's general findings and conclusions. *Katare*, 125 Wn. App. at 829-31. This inconsistency mandated the vacation of the court's § 191(3)(g) determinations in *Katare*, and the same result should follow here from the trial court's equally inconsistent treatment of the issue of domestic violence.

B. The Trial Court Abused Its Discretion in Finding that Brook Lang Committed Domestic Violence.

The consequences of making a finding of domestic violence in a dissolution proceeding are severe, including not only substantial restrictions on the party stamped with the label of "domestic violence perpetrator" in the parenting plan that emerges from the dissolution proceeding, but also a detrimental effect on that's parent's rights in any future custody and visitation determinations that may arise. A finding of domestic violence precludes joint decision-making and requires substantial visitation restrictions pursuant to RCW 26.09.191(1) and (2). The significance of a finding of domestic violence is reflected in RCW 26.09.191(6), which states: "In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure." A finding of domestic violence is not

to be lightly or easily imposed, and must be based on genuine facts that are proven properly and constitute actual proof of domestic violence in accordance with the statutory definition of domestic violence. Here, the trial court abused its discretion in finding that Brook had committed acts of domestic violence, because the court based its finding on an improper legal standard and without substantial evidence to support a finding under the proper legal standard.

1. The Trial Court Used an Incorrect Legal Test for “Domestic Violence,” In Making Its Initial Finding of Domestic Violence.

The Parenting Act uses the term “domestic violence” as it is defined at RCW 26.50.010(1). *See, e.g.*, RCW 26.09.003 (“[T]he legislature finds that the identification of domestic violence as defined in RCW 26.50.010 [is] necessary to improve outcomes for children.”); RCW 26.09.050(1) ([T]he court shall . . . make provision for the issuance within this action of the restraint provisions of a domestic violence protection order under chapter 26.50 RCW”); RCW 26.09.191 (“The permanent parenting plan shall not require mutual decision-making . . . if it is found that a parent has engaged in . . . (c) history of acts of domestic violence as defined in RCW 26.50.010(1)”). RCW 26.050.010 defines domestic violence as:

(a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

RCW 26.50.010(1).

In this case, however, the trial court adopted the standard for domestic violence used by the parenting evaluator, Ms. Tuttle. Ms. Tuttle testified that, to her, domestic violence means “trying to, as I said, exert power and control.” III VRP 331. Judge North spoke approvingly of this standard during the course of the trial:

Well, certainly my understanding, Mr. Hall, of domestic violence is that power and control is really what’s at issue here. I mean, I’ve had cases where there was in fact no physical violence between the parties, but because there were threats and intimidation used for purposes of power and control, I found there was domestic violence in the relationship even though nobody had ever actually hit anybody.

III VRP 331-32. In turn, his conclusions of law (specifically, Conclusion of Law 3.6) reflect his adoption of that standard:

The court concludes that DV [domestic violence] treatment is absolutely required for Mr. Lang. Completely casting aside the events of April, 2007, this case presents a clear domestic violence relationship. *Domestic violence is based on intimidation and control and Mr. Lang is one of the most controlling people this court has ever observed.* This conclusion is not based on the events of April of 2007 that led to Mr. Lang’s arrest for DV [domestic violence]. Rather, Mr. Lang clearly used his ability to bully people to drive his personal relationships. . . . [H]e needs to get some insight into his behavior, behavior that may be perfectly fine in the business world, where you are trying to drive the best deal you can with a business adversary, but it is not an appropriate way of behaving with people who are your family.

CP 987 (emphasis added).

The standard used by the trial court, that domestic violence is based on “intimidation and control,” impermissibly broadens the scope of the statutory basis for imposing restrictions under RCW 26.09.191, by defining as domestic violence acts that do not qualify as domestic violence under the language of the statute. “[U]sing” an “ability to bully people” to

“drive personal relationships” (in other words, to “intimidat[e]...and control”) is undeniably objectionable, but by no stretch of any ordinary definition of terms can it be equated to (1) physically harming or causing bodily injury to a family or household member, (2) inflicting fear of imminent physical harm or bodily injury on a family or household member, (3) sexual assault on a family or household member, *or* (4) stalking a family or household member. And since using the ability to bully to drive one’s personal relationships is none of those four things, it does not constitute a legally valid basis for a finding of domestic violence. The trial court used an incorrect standard, and a finding based on an incorrect standard constitutes an abuse of discretion and should be vacated. *E.g., In re Marriage of Littlefield*, 133 Wn.2d at 47 (citations omitted) (“A court abuses its discretion if its decision is based on untenable reasons....[I]t is based on untenable reasons if it [is]... based on an incorrect standard[.]”).

2. The Trial Court’s Reconsideration Finding of Domestic Violence Under the Statutory Standard Is Not Supported by Substantial Evidence.

In denying Brook’s motion for reconsideration, the trial court seemed to alter its rationale, and try to ground its domestic violence finding in the statutory standard, as well as under Ms. Tuttle’s more expansive -- and legally invalid -- notions. Yet except for the events of April 17, 2007, which the trial court disregarded due to conflicting testimony, *see* CP 980, no evidence of domestic violence that could meet the statutory standard was introduced at trial.

Tracie testified at trial to several incidents showing Brook to have a controlling or aggressive personality, but none of these constitute domestic violence as defined by the statute. The events concerning the other driver, the neighbors, or even her brother Todd do not meet the standard, both because they do not involve family or household members and because they do not constitute any of the four things previously discussed which qualify as domestic violence under the plain language of the statute.

Nor do the remaining incidents involving Tracie herself fall within the scope of the statutory definition. Tracie testified that Brook yelled at her, but yelling alone is not one of the four things that constitutes domestic violence under the language of the statute. Tracie testified that Brook “forced her” to have sex at the time the parties conceived CL, but her entire testimony on this point makes clear that what Brook did was subject Tracie to verbal pressure to have sex in order to conceive a third child, and that she “caved in to his demands to shut him up” so that “he would leave me alone for another couple of years.” IV VRP 544. Verbally pressuring someone to have sex in order to conceive a third child, however otherwise inappropriate, does not meet the statutory test for domestic violence. Finally, while turning off power to portions of the house after an argument certainly is not a mature method for resolving marital difficulties, it also does not equate to any of the four things that constitute domestic violence under the statute.

If Tracie’s version of the events of April 17, 2007, were taken as true, they *would* constitute an incident of domestic violence. But the trial

court's findings of fact and conclusions of law expressly state that it did not try to resolve the parties' conflicting testimony about that incident, and that the court's conclusion regarding domestic violence therefore was not based on the events of April of 2007. CP 987. Yet absent the events of April 2007, the trial court lacked substantial evidence to support its finding on reconsideration that Brook committed acts that met the statutory test for domestic violence. The trial court's finding of domestic violence therefore cannot be salvaged by the court's belated attempt on reconsideration to bring it under the protective aegis of the statutory definition.

C. Brook Was Denied a Fair Trial On The Issue of Domestic Violence, When The Trial Court Refused to Allow Brook to Add Experts to Rebut Ms. Tuttle's Finding of Domestic Violence and Her Recommendation that Brook's Decisionmaking and Residential Time Accordingly Be Severely Limited.

The trial court committed reversible error when it denied Brook the opportunity to present expert testimony challenging Ms. Tuttle's methodology and conclusions. To be sure, Brook did not list either Dr. Hutchins-Cook or Dr. Dunn in the designation of witnesses he submitted to comply with the deadline for that designation, established by the governing case schedule order. But Brook had no reason to designate any expert in domestic violence matters *because he had been repeatedly told that domestic violence would not be an issue at trial*. First, Tracie swore in a declaration submitted in support of the parties' initial Temporary Parenting Plan (May 2007) that she was not making an allegation of domestic violence. Second, Tracie repeated that representation (through counsel), upon the entry of the parties' second Temporary Parenting Plan

(September 2007). Third, Tracie's counsel, Ted Billbe, stated at the pretrial conference (May 2008) that Tracie would not be making a domestic violence claim. And finally, Judge North himself confirmed domestic violence would not be an issue at trial. Under these circumstances, Brook had no reason whatsoever to think that domestic violence would be an issue at trial.

Then Lynn Tuttle submitted her parenting evaluation report. Tracie -- notwithstanding her repeated representations that she would make no claim of domestic violence against Brook -- had accused Brook of just that, when Ms. Tuttle interviewed her. And Tuttle, using a concept of what constitutes domestic violence far broader than the governing statutory standard, found Brook had committed domestic violence and recommended severe restrictions on his decisionmaking and residential time.

By any definition, this was a classic case of "blind-siding." In response, Brook moved to add Drs. Hutchins-Cook and Dunn as experts who would critique Tuttle's methodology and conclusions. Yet Judge North refused to allow Brook to add these witnesses. Judge North found that Tracie would not have sufficient time to prepare to meet the testimony of these witnesses for a trial scheduled to begin on October 27, 2008. But the obvious solution to this problem was to *continue the trial date*. Tracie had brought this situation on herself, by claiming to Ms. Tuttle that Brook had committed domestic violence when she and her counsel had repeatedly assured Brook (and the court) that Tracie would make no such claim. Now that Tracie was prepared to openly repudiate her prior

representations, and make a claim of domestic violence at trial based on Ms. Tuttle's opinion, the only reasonable course was to allow Brook to add the expert witnesses required for him to have a fair chance to meet Ms. Tuttle's evidence on equal terms.¹²

Yet Judge North refused Brook's request, making clear that his priority was to get the case tried on the schedule he had set that July. This decision is untenable under a sound application of case management jurisprudence. In *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1987), our Supreme Court reversed a trial court's decision to strike an expert witness essential for a medical malpractice plaintiff to establish a negligent credentialing claim against a hospital defendant. The court held it was error to strike the witness merely because the witness was named after the deadline for naming the expert had passed. *Burnet*, 131 Wn.2d at 498 ("While we are not unmindful of the need for efficiency in the administration of justice, our overriding responsibility is to interpret the rules in a way that advances the underlying purpose of the rules, which is to reach a just determination in every action").

¹² When Cam Hall renewed the motion to add the experts at trial, Judge North suggested that Hall did not need the experts as witnesses -- he need only take what he had been told by the experts and formulate questions around those points, to use in his cross-examination of Tuttle. III RP 237. It is remarkable that a trial judge would suggest that a counsel's employment of assertions in his cross-examination of an opposing expert, lacking foundation in the evidentiary record precisely because counsel has been barred from calling the witnesses required to establish such a foundation, could somehow equate to having the expert testify to those points and thereby transform mere assertion in a cross-examination question into actual evidence in support of the point counsel is trying to make.

The situation in the present case is most analogous to case management disputes in which a party (whether plaintiff or defendant) attempts to add an expert witness after the deadline for designation of experts has passed, who will testify to a new theory of liability or defense to liability. For example, in *Campbell v. Keystone Aerial Surveys, Inc.*, 138 F.3d 996 (5th Cir. 1998), a wrongful death action involving a small plane crash, the defendant was allowed to add an accident reconstructionist after the deadline for designating experts had passed. *Campbell*, 138 F.3d at 1000. Up until the designation of this expert, the defendant had not designated a liability expert and the plaintiffs had “prepared their case on the assumption that theirs would be the only liability expert[.]” *Id.* The designation of the new expert after the deadline had passed “left the Campbells [plaintiffs] with an inadequate opportunity to adapt the presentation of their case in light of his testimony, by, for example, obtaining and developing the testimony of their own accident reconstruction expert and preparing to cross-examine Wandell [the new expert].” *Id.* at 1000-1001 (citation omitted). The Fifth Circuit criticized the trial court for “fail[ing] to consider whether the potential prejudice to the Campbells could be cured by a continuance[.]” noting that a continuance “is the preferred means of dealing with a party’s attempt to designate a witness out of time[.]” *Id.* at 1001 (internal quotations and citation omitted). The Fifth Circuit concluded that the trial court had abused its discretion by allowing the new expert “without allowing the Campbells an opportunity to obtain their own expert accident recon-

structionist and time to prepare to cross-examine Wandell” (*id.*), vacated the judgment in favor of the defendant and remanded for a new trial.

Here, the new expert, Ms. Tuttle, was added by operation of the parenting evaluation process rather than at Tracie’s behest. But in every other respect the situation is the same. The plaintiffs in *Campbell* relied on the failure of the defendant to name a liability expert at the required time, and prepared their case on the assumption they would not have to rebut an adverse liability expert. Brook relied on Tracie’s repeated representations that she would not make a domestic violence claim against him, and did not designate a domestic violence expert. The defendant in *Campbell* added an accident reconstructionist after the deadline. Tracie seized upon Ms. Tuttle’s conclusion that Brook had committed domestic violence -- a conclusion Tracie had encouraged Tuttle to draw, during her interview by Tuttle -- and added a domestic violence claim against Brook. The trial court in *Campbell* failed to consider continuing the trial date so the plaintiffs could prepare to respond to the defendant’s new expert court (e.g., by designating their own accident reconstructionist). Judge North refused to continue the trial date so that Tracie could prepare to respond to the experts sought to be added by Brook to respond to Tuttle, and then used Tracie’s resulting inability to respond as an excuse to refuse to add Brook’s proposed experts -- leaving Tracie free to pursue a domestic violence claim supported by the *only* expert who would address the subject at trial.

A charge of domestic violence made against a parent in a dissolution proceeding radically transforms the nature of that proceeding, because a finding of domestic violence will compel the trial court as a matter of law to impose drastic limitations on the decisionmaking and residential time of a parent found to have committed domestic violence. When, as here, the question of domestic violence has been taken off the issue table by one parent, and then that parent does an about-face and seizes upon a finding of domestic violence made against the other parent in a parenting evaluation to start pursuing a late claim of domestic violence, the fact that the trial will have to be delayed to allow the now-accusing parent sufficient time to meet the testimony of the expert the other parent must now call to be able to respond to the claim, should be given *no* weight in deciding whether to allow the now-accused parent to add that expert to his or her list of witnesses. The only fair course is to continue the trial, and allow the now-accused parent to add the expert.¹³

Judge North did not follow that course. He denied Brook permission to add Drs. Hitchens-Cook and Dunn. Brook therefore could not effectively deconstruct Ms. Tuttle's methodology and conclusions, because this could only be done through the testimony of qualified experts

¹³ The one possible exception would be where issues have arisen under the temporary parenting plan, indicating that it is essential for the protection of the children that the trial be delayed no further. Here, however, there was no such issue, nor did the trial court make any finding along those lines in refusing permission to Brook to add the experts in question.

such as Drs. Hitchens-Cook and Dunn.¹⁴ And the trial court's statements at trial and its findings and conclusions leave no doubt that the court gave *great* weight to Tuttle's conclusions, in finding that Brook had committed domestic violence. As Judge North put it at the close of the trial, "I think that Lynn Tuttle *largely got it right.*" CP 922 (Agreed Transcript of Dec. 3, 2008) (emphasis added).

As a result, a father of three young girls has been entirely excluded from playing any role in the major parenting decisions that will shape their lives. And those girls may now reside with their father *only one night every two weeks* -- a limitation that represents literally *years* of their young lives that they are now forbidden to spend with their father. All this is the result of a manifestly unfair trial, caused by the trial court's unwillingness to continue the start of that trial for as little as *30 days*, which would have allowed Brook to present expert testimony deconstructing Ms. Tuttle's methodology and conclusions, and Tracie to prepare whatever response she could to that evidence.¹⁵ Instead, Brook was compelled to respond to Ms. Tuttle's evidence on manifestly uneven terms. This Court should

¹⁴ Cam Hall did his level best on his own to undermine Ms. Tuttle's conclusions. A written summary of that critique was submitted to the trial court at the close of the evidence. See CP 1076-1084 ("Respondent's Closing Memorandum on Some Legal Issues"). In that summary, Mr. Hall pointed out (among other things) that Ms. Tuttle's evaluation failed to comply with the Washington Administrative Code and the American Psychological Association Ethics Code. CP 1077 (Memorandum at 2). But without experts to *prove* these points through testimony, this submission could be nothing more than "Cam Hall on Proper Parenting Evaluations."

¹⁵ Judge North's unwillingness to continue the trial date for such a period becomes virtually inexplicable when one considers that he had already *twice* continued the trial date for almost *exactly* that amount of time, CP 1089-1090, 1091-1092 (orders amending case schedule entered in April and May 2008), and once for *three times* that amount. CP 1093 (order amending case schedule entered in July).

remand for a redetermination of the Parenting Plan in a proceeding in which Brook and Tracie will have a full and *equal* opportunity to make their cases.

D. Remand to A New Judge Is Necessary to Preserve An Appearance of Fairness.

In its decision in *Chicago, Milwaukee, St. Paul & Pacific Railroad Co. v. Washington State Human Rights Commission*, 87 Wn.2d 802, 557 P.2d 307 (1977), our state Supreme Court declared that “[i]t is fundamental to our system of justice that judges be fair and unbiased”:

The principle of impartiality, disinterestedness, and fairness on the part of the judge is as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular acknowledgement of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals.

Id. at 807-808 (citing and quoting in part *State ex rel. Barnard v. Bd. of Educ.*, 19 Wash. 8, 17-18, 52 P. 317 (1898)). Moreover, the court continued:

Our system of jurisprudence also demands that in addition to impartiality, disinterestedness, and fairness on the part of the judge, *there must be no question or suspicion as to the integrity and fairness of the system, [i].e., “justice must satisfy the appearance of justice.”*

87 Wn.2d at 808 (emphasis added) (citing *Offutt v. United States*, 348 U.S. 11, 14, 75 S. Ct. 11, 13, 99 L. Ed. 11 (1954)). To determine whether the appearance of fairness is satisfied, Washington courts consider whether proceedings would appear impartial to “a reasonably prudent and disinterested person.” *Chicago, Milwaukee, St. Paul & Pac. R.R. Co. v. Washington Human Rights Common*, 87 Wn.2d at 810.

Brook respectfully submits that a reasonably prudent and disinterested person would conclude that remand to a new judge is necessary in this case to assure the appearance of impartiality. To begin, Judge North appeared to have made up his mind before trial that Brook was at fault in the dissolution of the Lang's marriage, and that his faults as a person likely warranted substantial restrictions on his role in making decisions for his children and his time with them. When queried on the rationale for maintaining the same judge for pre-trial and trial proceedings, Judge North stated that the pre-trial judge "gets to know the parties" and knows "who's been causing problems." 5/30/08 VRP 23-24. And Judge North appeared to have decided that Brook was the one "causing problems" in the Lang dissolution. In response to Mr. Billbe's derisive attack on Brook's competence in representing himself pro se, Judge North stated that Mr. Billbe's position had "real merit," adding "[t]here's a long history of you [Brook] go[ing] around and around with people and there being all kinds of miscommunication and things being delayed." 5/30/08 VRP 11. Judge North even went so far as to volunteer that he doubted Brook's suitability as a parent, stating "[t]here may, however, be other factors [beside § 191 factors]. It may -- just not be in the children's best interest to spend a lot of time with you." 5/30/08 VRP 50.

Judge North then took steps to ensure that the Lang dissolution would not be assigned to another judge for trial. But when taken in combination with Judge North's comment about it being an advantage that a judge comes into trial knowing who has been "causing the problems,"

his endorsement of Mr. Billbe's criticisms of Brook's actions in representing himself pro se (indicating Judge North had already decided that Brook was "causing the problems" in the case), *and* his volunteering that he was already considering that it might not be in the children's' best interests to "spend a lot of time" with their father, the objective observer confronts a disturbing picture of a judge who wanted to make sure he presided over the trial, to avoid the risk that another judge who lacked Judge North's appreciation of the parties might be taken in by Brook and award him a share in major decisionmaking and substantial residential time with his daughters.

Moreover, Judge North's scathing comments about Brook at the conclusion of that trial should persuade the objective observer that Judge North retains no ability to preside fairly over any retrial ordered by this Court. Judge North expressed what can only be described as a strong, personal dislike of Brook Lang:

Clearly, Mr. Lang is very driven, very strong in getting his own way on things -- will work his position any which way he can to get what he wants. That may be an admirable quality in business -- it's hell at home, though. I mean it's just an impossible way for anybody to live with somebody else.

Mr. Lang is one of the most controlling people I've ever seen....He is clearly using his ability to bully people to drive his personal relationships here. . . . [T]hat might be perfectly fine behavior in the business world, where you are trying to drive the best deal you can with a business adversary, but it's not an appropriate way of behaving with people who are your family.... That's not an appropriate way to behave in a personal relationship.

CP 922-23.

In *In re Custody of R.*, 88 Wn. App. 746, 947 P.2d 745 (1997), a Filipino Muslim mother left the Philippines with her young son, after a Shari'a court granted the father custody of the son as part of an Islamic law divorce proceeding. *See* 88 Wn. App. at 749-52. The mother and son settled in Washington State; the father located them and initiated proceedings in the Washington courts to compel a transfer of custody, under the putative authority of the Shari'a divorce decree. *Id.* at 752-53. During the Washington trial court proceedings, the court questioned the mother, and when the mother asked the judge whether he was "mad at" her, the court responded: "*I don't like what you did. You took his son with the intent of never telling him where he was. We don't like that as judges.*" *Id.* at 754-55 (emphasis added). Denying the mother's request for a continuance of a hearing for which she and her attorney had less than one day's notice (*id.* at 757-59), and refusing to admit evidence offered by the mother challenging the jurisdiction of the Shari'a court (*id.* at 755-59), the court granted the husband's petition (*id.* at 755).

The Court of Appeals reversed, holding that the trial court erred in denying the continuance request and in refusing to consider the evidence proffered to challenge the jurisdiction of the Shari'a court. *See id.* at 756-59. The mother also asked for the matter to be remanded to another judge, and the Court of Appeals agreed that a new judge should be assigned to assure the appearance of fairness:

[W]e assume no actual bias. Nonetheless, justice must satisfy the appearance of impartiality. . . . Based on th[e] dialogue [between the mother and the court], coupled with the trial court's denial of

[the mother's] requested continuance, we remand for a hearing before a different judge to promote the appearance of fairness.

Id. at 763-64 (citations omitted). Here, the record reveals a judge who didn't like what Brook had done during the course of the case and who didn't like who Brook was by its end. Brook respectfully submits that any reasonably prudent and disinterested person would conclude that Judge North's actions and statements disqualify him from presiding over a retrial of the Parenting Plan ordered by this Court.

V. CONCLUSION

This Court Ex. should vacate the trial court's domestic violence finding, its § 191(3)(g) finding and related determinations, and remand to a new judge for a new trial on Parenting Plan issues.

RESPECTFULLY SUBMITTED this 3rd day of November, 2009.

CARNEY BADLEY SPELLMAN, P.S.

By 
Michael B. King, WSBA #14405
Leonard W. Juhnke, WSBA #39793
Of Attorneys for Appellant Brook W. Lang

INDEX TO APPENDICES (AMENDED)

<i>APPENDICES</i>	<i>DOCUMENT</i>
Appendix A	10/27/08 Order re Late Witness Designation (CP 1038-1040)
Appendix B	1/22/09 Agreed Transcript of December 3, 2008 Court Ruling (CP 922-928)
Appendix C	1/22/09 Final Parenting Plan (Final Order) (CP 953-966)
Appendix D	1/22/09 Findings of Fact & Conclusions of Law (CP 967-989)
Appendix E	1/22/09 Decree of Dissolution (CP 929-937)
Appendix F	3/3/09 Order Deny Mtn. Fr Reconsideration (CP 1024)

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STATE OF WASHINGTON

APPENDIX A

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SUPERIOR COURT OF WASHINGTON COUNTY OF KING

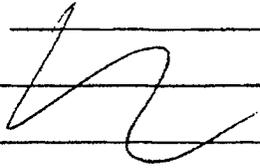
In re the Marriage of:
TRACIE LINN LANG,
and
BROOK WESTER LANG,
Respondent.

The Honorable Douglass A. North
No. 07-3-04818-2 SEA
PARTIALLY
ORDER GRANTING MOTION TO
ALLOW LATE WITNESS
DESIGNATION AND TO ALLOW
TESTIMONY

This matter was heard on October 24, 2008, pursuant to respondent's Motion to Allow Late Witness Designation to Allow Testimony. Respondent was represented by Camden M. Hall of Camden Hall, PLLC. Petitioner was represented by Ted D. Billbe of the Law Office of Ted D. Billbe, PLLC. The Court reviewed respondent's Motion to Allow Late Witness Disgnation Designation and to Allow Testimony, the Supporting Declaration of Camden M. Hall; responsive papers submitted by petitioner, as follows:

Response Declaration of Tracie Lang and Reply of Brook Lang

reply papers submitted by respondent as follows:



ORDER GRANTING MOTION TO ALLOW LATE WITNESS DESIGNATIONS, ETC. - 1

CAMDEN HALL, PLLC
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SEATTLE, WASHINGTON 98154 • 206-749-0200

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10/8/2008 10:36 AM

Handwritten notes:
K. Hall
EMAIL



1 Therefore the Court FINDS:

2 Scott Harang, Kim Harang, Dr. Wendy Hutchins-Cook, Dr. John Dunn and Charlotte
3 Svenson were not earlier, timely designated by respondent because it was not known until the
4 September 1 parenting evaluation report in this matter that Mr. Lang would require witnesses to
5 rebut the report and it has taken until now to identify and retain those witnesses.

6 Two of the witnesses (Dr. Dunn and Ms. Svenson) will be out of the state during the
7 week of October 27 but will return the following week. Therefore, the trial should commence
8 as scheduled on October 27, the parties should be able to present the testimony of these
9 witnesses during that week, except that the evidence should be left open so that Dr. Dunn and
10 Ms. Svenson can testify during the week of November 4.

11
12 *The court will allow the Harangs and Ms Svenson*
13 *to testify. Allowing late designation of expert*
14 *witnesses prejudices Ms. Lang's ability to prepare*
15 *for trial. The court will not hold the case open*
16 *until the following week; the court will consider*
17 *a request to take Ms Svenson's testimony by phone.*

18 Based upon the above:

19 It is ORDERED as follows:

20 1. Respondent's Motion to Allow Late Designation of Witnesses and For Their Trial
21 Testimony on or After November 4, 2008 is ^{partially} GRANTED.

22 2. Respondent is authorized to call Scott Harang, Kim Harang, ~~Dr. Wendy~~
23 ~~Hutchins-Cook, Dr. John Dunn~~ and Charlotte Svenson as witnesses in this matter.

24 3. ~~The trial shall commence as scheduled on October 27, 2008. The parties shall~~
25 ~~present their evidence during that week. Evidence, however, shall be left open until the week of~~
26 ~~November 4, so that Dr. Dunn and Ms. Svenson may testify on respondent's behalf.~~

ORDER GRANTING MOTION TO ALLOW LATE
WITNESS DESIGNATIONS, ETC. - 2

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APPENDIX B

FILED

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SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Marriage of

TRACIE LINN LANG,

and

BROOK WESTER LANG,

Petitioner,

Respondent.

The Honorable Douglass A. North

NO. 07-3-04818-2 SEA

AGREED TRANSCRIPT OF
DECEMBER 3, 2008 COURT
RULING

[tape begins] I am ruling largely on Ms. Lang's side of thing.

I think that Lynn Tuttle largely got it right. I recognize the criticism that Mr. Hall has levied on Ms. Hedrick's evaluation and I think that's valid, but I'm not considering Ms. Hedrick's assessment and it doesn't appear that Ms. Tuttle considered it a great deal either because she testified that it played little part in her decision.

Clearly, Mr. Lang is very driven, very strong in getting his own way on things—will work his position any which way he can to get to what he wants. That may be an admirable quality in business—it's hell at home, though. I mean it's just an impossible way for anybody to live with somebody else. And there's no way that I would order joint decision making in this case because you people would be litigating for the next how or whenever the youngest to eighteen because it would just go on forever.

There's no one because—Mr. Lang is not capable of agreeing with anybody else about anything unless they simply agree to whatever his position is. That's the only result that can be arrived at. So I'm going to give Ms. Lang sole decision making with relating to the children.

That said, I do think that it is worth placing some bounds on her decision making because I do think that it was improper to move the kids to school down in Tacoma—that just is—there's just no basis to need to do that. So, they can stay there for this academic year, but starting next academic year they need to be in a school which is no farther away from Mr. Lang's home than whatever the local public school that they would have to go to based on where Ms. Lang's living—they went to whatever their local elementary school is or whatever. You just measure out that distance from Mr. Lang's home to that school and you draw an arc on a map and she's got to choose a school that's within that distance of his home.

AGREED TRANSCRIPT OF DECEMBER 3, 2008 COURT
RULING - I

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Page 922

1 She can't go—there are lots of situations where this kind of a rule wouldn't work, but given
2 where these folks live there are dozens of schools that they could choose that are within that
3 range.

4 Similarly, she has sole decision making with regard to doctors—and I think that the provision in
5 the Temporary Order should be in the permanent Order, but she should again choose doctors
6 that are no farther away from Mr. Lang's home than her home. There's no reason given where
7 these people live and all of the professionals [unintelligible]—that encompasses all of Seattle,
8 all of the Eastside, most of the south end of King County—you have an incredible number of
9 choices—there's no reason to be running off to the far ends of the earth to find a doctor for
10 these kids to see or a school for them to go to.

11 So, with those caveats, I adopt what Ms. Tuttle suggested. I think that she's got an appropriate
12 Parenting Plan. I think that the DV treatment is absolutely required for Mr. Lang—completely
13 casting aside the events of April 2007 you've got clear domestic violence relationship here
14 with—domestic violence is based upon intimidation and control. And Mr. Lang is one of the
15 most controlling people I've ever seen. It doesn't really matter what happened in April 2007.
16 He is clearly using his ability to bully people to drive his personal relationships here. And while
17 Ms. Lang doesn't have to deal with him anymore except, you know, occasionally over with the
18 kids, those girls are going to have to deal with him. And if he's going to be a good dad to the
19 girls he needs to get some insight into his behavior. But that might be perfectly fine behavior in
20 the business world where you are trying to drive the best deal you can with a business
21 adversary, but it's not an appropriate way of behaving with people who are your family. You
22 don't go and see how hard a bargain you can drive with your wife or your kids. That's not an
23 appropriate way to behave in a personal relationship.

24 With regard with the financial issues, clearly the Montavo stock is the only thing that has any
25 significant value here. It's clearly community property. The value was developed during the
26 marriage. Mr. Lang's testimony that at the time of separation the stock had no value simply has
no credibility at all. He obviously doesn't really believe that himself because at about that same
time he gave up a job with Airbignity that was paying him more than \$10,000 a month to take
a—to work for Montavo for \$6,000 to \$7,000 a month—he obviously thought that there was a
lot of value with Montavo there—that was the reason why he was willing to do that.

So I would ordinarily give Ms. Lang 50 percent of that—I'm going to up it to 55 percent
because I'm—instead of giving her an award of attorney's fees, I'm going to give her more of
the stock. It's the only thing she's going to be able to realize anything out of. She's not—we're
not—you can't get blood out of a turnip and the only thing we are going to get any money out
of here is going to be the Montavo stock.

Now, what I want to do is to give Mr. Lang some incentive to see that that stock gets to her and
that she realizes something on it as rapidly as possible.

So what I'm going to do is order him to pay her \$3,000 a month maintenance and the
maintenance basically lasts as long as it takes to get the money out of Montavo to her. If you
get ten—figure out the shares—I mean there's 1,911,000 shares. She gets 55 percent of that. I
haven't done all the math, but it comes out to somewhere around 900,000 shares. If he gets the
value—the cash for 90,000 shares to her—that's ten percent of what she's supposed to get—he
can reduce his maintenance payment by ten percent at that point. So his maintenance payment
then drops from \$3,000 a month to \$2,700 a month.

1 As soon as he gets all of it to her then he can stop paying her maintenance all together. It's just
2 a question as to how soon he can get all of that to her. And it has to be something that she can
3 actually realize upon. So the point at which the maintenance payment goes down is when she
4 actually has cash in her hands. Not just stock transferred to her that she can't sell for two years
5 because it has some kind of limitations on it. If it—I don't know what the things are, but you've
6 got two very good counsel here—you folks can figure out what's the fastest way to put actual
7 cash in her hands. And at the point that she—whenever she has cash in her hands it reduces the
8 maintenance by whatever proportion that is of the total amount that she is suppose to get.

9 Child support should be according to the schedule. I do think that probably—there may need to
10 be some limitation on the degree to which Ms. Lang, who has sole decision making, can
11 obligate Mr. Lang to additional child support by virtue of choosing an educational option or
12 something or other that is—I guess my thought would be if she makes any choice of education
13 that would cause Mr. Lang's obligation for child support to increase by more than \$200 a month
14 then, at that point he needs to agree to it. Now, he's indicated he wants them to go to Catholic
15 school so he may be willing to agree to it if it's a Catholic school. But otherwise you know—I
16 don't want her in a position to be able to unilaterally increase his child support obligation by a
17 significant amount when she's got sole decision making authority.

18 I guess—are there other things I need to address counsel in order to—I think Mr. Billbe I'd ask
19 you to draw up some papers here and, Ava, what kind of dates have we got available for
20 presentation at the end of this month or the beginning of next month?

21 **Ava:** Monday, December 29 or Tuesday, December 30 at 8:30.

22 **Billbe:** Either of those work for me.

23 **Judge:** Okay, because obviously you need to get the papers to Mr. Hall at least a week, well,
24 probably more than a week given the Christmas holiday before that. What's that?

25 **Hall:** I'm not available.

26 **Judge:** You're not available that week? Okay, what about the following week of January 5—
are you around then?

Hall: I think I'm available. I think I'm available.

Judge: Okay, do we have something the week of January 5?

Billbe: I'm wide open in January, trust me.

Ava: We can do January 5 at 8:30.

Judge: January 5 at 8:30 then. Does that work? Okay

Hall: I would like to ask a question.

Judge: Sure

1 **Hall:** I understand what you're doing is that you're adopting the residential schedule that Ms.
Tuttle recommended.

2 **Judge:** Right.

3 **Hall:** That being the schedule for the rest of the children's life.

4 **Judge:** Right.

5 **Hall:** Which is less than the present schedule.

6 **Judge:** Well, I—what Ms. Tuttle has is a schedule that initially may be less, but that it expands
7 to be more once he finishes the DV treatment. It gives him some incentive to get the DV
treatment done.

8 **Hall:** And then on the stock, he doesn't have the 911,000 shares and the testimony was that
9 increment is the result of his work since separation. He had 1,081,000 shares at the time of
separation and anything that has come after that is a result of work post separation.

10 **Judge:** No, he was contractually in a—as a result of his contractual negotiations which resulted
11 in the agreement of May 7, 2008 he had a right to the additional shares that increased him to
1,911,000 upon the happening of certain events—and those events came true and he's now got
12 those. I mean—it all relates back to the contract that he signed on May 7, 2008 and I find that...

13 **Hall:** May 7, 2008...

14 **Judge:** Right.

15 **Hall:** Was many months, almost a year after separation.

16 **Judge:** Right. But it all—it all relates to what he had been doing prior to separation.

17 **Hall:** Well, that is not what the testimony was.

18 **Judge:** Well, I specifically found some of his testimony was incredible.

19 **Hall:** I understand that. Incredible in a lot of ways I suppose.

20 **Judge:** Yes.

21 **Hall:** But on this point there was no—the testimony was quite clear that this contract right
22 proved as a result of work that was done after separation and the contract agreement itself that
gave him the right was 13 months after separation. And, but for that contract, he wouldn't have
23 had that extra stock.

24 **Judge:** I realize that was what he testified to. I don't believe a good part of that testimony.

25 **Hall:** And what about Montreux and all of these other odds and ends?

26 **Judge:** Well, I'll award Montreux to Mr. Lang. I think that that's been unfortunately an
enormous disaster from obviously what should have been done way back in the beginning is

1 that we should have had Ms. Lang and the children living in the Tam O'Shanter house and we
2 should have sold the Montreux house. You people probably wouldn't even be here if that
3 happened because she would have been living on the eastside, she wouldn't have been taking
4 the kids off to Tacoma and everything else, but that didn't happen. And it didn't happen
5 because Mr. Lang insisted on how they were doing this—that he had to have the Montreux
6 house. And he can have it—but, you know, unfortunately I can't eliminate Ms. Lang's liability
7 for it because she may very well be on the documents obligating it for that, but he can have it.

8 **Hall:** Are you finding that it is a community asset awarded to Mr. Lang?

9 **Judge:** Right.

10 **Hall:** And I assume that there is no issue with regard to the vehicles...

11 **Judge:** That's my understanding is that Mr. Lang gets the vehicles.

12 **Hall:** What about the exhibits that we posted that Mr. Lang owes Ms. Lang \$49,000?

13 **Judge:** I don't believe any of that. I find that to be incredible.

14 **Hall:** And I assume there's no issue as to whoever has the best medical and dental will provide
15 the insurance.

16 **Judge:** Right, I think that that makes sense.

17 **Hall:** And I assume you are not requiring private schooling.

18 **Judge:** No, I'm not requiring private schooling. That's—if Ms. Lang can get it for something
19 that does not increase Mr. Lang's child support obligation by more than \$200 a month she can
20 unilaterally decide on this. If it goes over \$200 a month then he's got to agree to what it is that
21 she's doing.

22 **Hall:** What about IRS deductions?

23 **Judge:** I think that Mr. Lang should get two of them and Ms. Lang should get one of them
24 given their relative incomes.

25 **Hall:** And viacord?

26 **Judge:** I guess I'm—this is something potentially available to treat the girls medically or
something? Otherwise I'm not quite understanding what...

Hall: I think so—it's sort of stem cell...

Judge: Right and I would award that to Ms. Lang because she's got the sole decision making
with regard to the girls.

Hall: What about the payments to Mr. Perron and Ms. Svenson?

1 **Judge:** I don't see that's it's my responsibility to all...to determine who pays these debts. I
2 mean, I guess I think it's Mr. Lang's responsibility—he's the one who entered into these
relationships with these people.

3 **Hall:** What about the form of tax returns?

4 **Judge:** I'm not going to dictate anything with regard to the form of the tax returns. I think that
5 I can very well understand why Ms. Lang doesn't want to sign on a tax return that Mr. Lang has
6 prepared. She doesn't have any idea what the heck he's been up to. So I think they can each
file their own tax returns.

7 **Hall:** What about the Internal Revenue Service tax debt?

8 **Judge:** I think that's Mr. Lang's responsibility.

9 **Hall:** Because?

10 **Judge:** Because he was in control of everything. He was the one that determined whether they
11 were going to make any estimated payments, how they were going to file, when they were
going to file, what their income was, everything.

12 **Hall:** What about the outstanding attorney fees and all of that?

13 **Judge:** Each of them are responsible for their own attorney fees. I've taken it into account in
14 awarding Ms. Lang 55 percent of the stock. Otherwise I would have give—if I were able to
award her attorney fees I might not have given her so much stock. But there's isn't any way to
do...

15 **Hall:** But I assume that once she gets the stock the judge would be satisfied [unintelligible]...

16 **Judge:** Both, yeah, the existing judgments are satisfied once she gets the stock.

17 **Hall:** What about continuing to accrue 12 percent interest?

18 **Judge:** Well, I mean I guess they accrue interest because they are judgments, but she can—he
19 can satisfy them by getting to her all the stock that she's awarded. So once he gets all that stock
to her then they should file a satisfaction of judgment for those judgments.

20 **Hall:** So once he gets all of the stock to her the principle and interest is all paid.

21 **Judge:** Right.

22 **Hall:** And then they can be satisfied.

23 **Judge:** Right.

24 **Billbe:** She does need a vehicle until we get this case concluded—can she hold onto the Yukon
25 until at least January 5?
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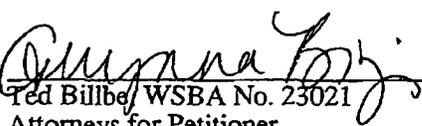
Judge: Well, yeah, I guess that makes sense. She can hang onto the Yukon until January 5 and at that point—but yeah she needs to at that point buy something or rent something or do something at that point.

Judge: Thank you. I'll see you on January 5.

Dated: January ²²16, 2009.

AGREED:

AGREED:



Ted Billbe, WSBA No. 23021
Attorneys for Petitioner
1/21/09



Camden M. Hall, WSBA No. 146
Attorneys for Respondent

APPENDIX C

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II. BASIS FOR RESTRICTIONS

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

Does not apply.

2.2 OTHER FACTORS (RCW 26.09.191(3)(g)).

Father's residential time set forth below in this parenting plan is conditioned on his satisfactory participation in and completion of the treatment set forth in Section 3.13.

Refer to the Court's findings of fact and conclusions of law filed herewith.

III. RESIDENTIAL SCHEDULE

These provisions set forth where the children shall reside each day of the year and what contact the children shall have with each parent.

3.1 PRE-SCHOOL SCHEDULE.

Same as Section 3.2

3.2 SCHOOL SCHEDULE.

The children shall reside or be with mother except for the following times when the children shall reside or be with father.

Until father provided proof that he has successfully completed all treatment programs set forth in Section 3.13:

- a. Every other weekend, beginning January 24, 2008, from Saturday at 10:00 a.m. until Sunday at 6:00 p.m. and
- b. The other Sunday from 12:00 noon until 6:00 p.m.

After the father has provided proof that he has successfully completed all treatment programs set forth in Section 3.13:

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- a. Every other weekend from Friday pick-up from school, or 4:00 p.m. if there is no school, until Sunday at 6:00 p.m. and
- b. The alternating Monday from pick up from school, or 4:00 p.m. if there is no school, until the following morning return to school, or 9:00 a.m. if there is no school.

3.3 SCHEDULE FOR WINTER VACATION.

The children shall reside or be with mother except:

- a. In even-numbered years, the children shall reside or be with father from 6:00 p.m. on December 19th until 7:00 p.m. on December 24th.
- b. In odd-numbered years, the children shall reside or be with father from 7:00 p.m. on December 24th until 6:00 p.m. on December 28th.

3.4 SCHEDULE FOR MID-WINTER AND SPRING VACATIONS.

For the week-long breaks from school, if any, the children shall equally reside or be with each parent for half the vacation, with Wednesday at 12:00 p.m. as the division.

In even-numbered years, the children shall reside with the father for first half of mid-winter vacation and the second half of spring vacation and with the mother for the other half of each such school vacation. The mid-point exchange shall be Wednesday at noon.

In odd-numbered years the schedule shall flip. These school vacations shall begin upon dismissal from school and end with return to school. The mid-point exchange shall be Wednesday at noon.

Presidents Day and Easter Day shall not interrupt these vacations.

3.5 SUMMER SCHEDULE.

Same as Section 3.2.

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3.6 SUMMER VACATION WITH PARENTS.

Until father provided proof that he has successfully completed all treatment programs set forth in Section 3.13:

The father shall be entitled to two nonconsecutive five-day blocks of time beginning on the Saturday of his alternating weekend at 10:00 a.m., ending Wednesday at 6:00 p.m. The mother shall have vacation time with the children as stated below.

After the father has father provided proof that he has successfully completed all treatment programs set forth in Section 3.13:

Each parent shall be entitled to up to twenty-one days of vacation in the summer. The summer vacation weeks shall be taken in nonconsecutive blocks of seven days. Summer Vacation shall start at 4:00 p.m. Friday of a weekend that the children would otherwise reside with the vacationing parent under the provisions of this parenting plan and shall end at 8:00 p.m. Friday one week later. There shall be no tacking of vacation days to regularly scheduled residential time.

Following a summer vacation the alternating weekend of the Regular Schedule shall, if necessary, adjust so that for the first weekend the children are with the other parent than whom they spent Summer Vacation.

Each parent shall propose a written vacation schedule to the other parent by May 1st each year. A parent shall not unreasonably refuse consent to a vacation schedule proposed by the other parent. If the parents' choice of vacation dates conflict, and if the parents are unable to reach a compromise, Mother's choice shall prevail in odd-numbered years and Father's choice shall prevail in even-numbered years.

If a parent plans to travel with the children for more than three consecutive days, the traveling parent shall notify the other parent of the travel plans at least five days in advance of the travel plans, and provide the dates of travel, the travel destination(s), and telephone numbers where the children may be

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contacted during the trip. This requirement is not for purposes of control, but rather to prevent any unnecessary concern.

3.7 SCHEDULE FOR HOLIDAYS.

Martin Luther King Day, Presidents Day, Memorial Day, and Labor Day: For each of these Monday holidays, the holiday shall include the prior Saturday and Sunday from Friday pick-up from school, or 4:00 p.m. when there is no school, until Tuesday morning return to school, or 9:00 a.m. when there is no school. This section applies to the father only after the father has completed all treatment programs required in Section 3.13

The children shall reside or be with each parent in the numbered years as follows:

	FATHER	MOTHER
MLK DAY	Odd	Even
Presidents Day	Even	Odd
Memorial Day	Odd	Even
Labor Day	Even	Odd

Following the holiday, the alternating weekend of the regular schedule shall, if necessary, adjust so that for the first weekend the children are with the other parent than whom they spent the holiday.

Easter Sunday: The children shall reside or be with Mother for Easter Sunday from 9:00 a.m. to 6:00 p.m. in odd-numbered years and with Father in even-numbered years.

Fourth of July: The children shall reside with Father for Fourth of July in odd-numbered years and with Mother in even-numbered years. "Fourth of July" is defined as beginning each July 4th at 9:00 a.m. and ending the following morning, July 5th, at 9:00 a.m.

Thanksgiving: The children shall reside with each parent in alternating years, with Mother in even-numbered years and with Father in odd-numbered years. "Thanksgiving" shall be from Thursday at 10:00 a.m. until Sunday at 6:00 p.m. Following Thanksgiving, the alternating weekend of the Regular

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Schedule shall, if necessary, adjust so that for the first weekend the children are with the other parent than whom they spent Thanksgiving.

Christmas Eve: As set forth in Section 3.3 "Winter Vacation."

Christmas Day: As set forth in Section 3.3 "Winter Vacation."

New Year's Eve and New Year's Day: Same as Section 3.2.

3.8 SCHEDULE FOR SPECIAL OCCASIONS.

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

Child's Birthday. Each child's birthday may be celebrated, if so desired, during each parent's scheduled time with the child as set forth in this parenting plan.

Each Parent's Birthday. The children shall reside or be with each parent on his or her respective birthday from 9:00 a.m. until 7:30 p.m.

Mother's Day and Father's Day. The children shall be with Mother for Mother's Day and with Father for Father's Day. Mother's Day and Father's Day shall each begin on Sunday at 9:00 a.m. and end at 7:30 p.m. such that the alternating weekends under the Regular Schedule are not altered.

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

For purposes of this Parenting Plan the following days shall have priority:

1. Spring and Mid-Winter Vacations (3.4)
2. Holidays (3.7)
3. Special Occasions (3.8)
4. Winter Vacation (3.3)
5. Summer Vacations (3.6)
6. Regular Schedule (3.1 and 3.2)

3.10 RESTRICTIONS.

See Section 3.13.3.

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3.11 TRANSPORTATION ARRANGEMENTS.

Transportation costs, if any, are included in the Child Support Worksheets and/or Order of Child Support and should not be included here.

The parent whose residential time is beginning shall provide transportation unless the residential time begins with pick up from school.

3.12 DESIGNATION OF CUSTODIAN.

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

3.13 OTHER:

1. The father shall not exercise his residential time with the children at the Montroux home so long as the father has any non-family member roommates residing in the home.
2. The father shall within 10 days of entry of this parenting plan enroll in and then complete a domestic violence treatment program recommended by Lynn Tuttle. The father shall sign such releases as are necessary to authorize the treatment provider to release information to the mother and her attorney to confirm the father's enrollment, attendance, progress, and completion of the treatment program.
3. The father shall within 10 days of entry of this parenting plan enroll in and then complete the DV Dads Class at Family Services, KCSC. The father shall sign such releases as are necessary to authorize the treatment provider to release information to the mother and her attorney to confirm the father's enrollment, attendance, progress, and completion of the treatment program.

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- 4. The mother shall within 10 days of entry of this parenting plan engage a Masters-level therapist of her own choosing for therapy at least twice each month for at least six months.
- 5. The parents shall provide each of the treatment providers specified in Paragraphs 2 though 4 of this Section 3.13 with a copy of this parenting plan and the Parenting Evaluation of Lynn C. Tuttle dated September 1, 2008.
- 6. Judge Douglass North shall retain jurisdiction over this case.

3.14 SUMMARY OF RCW 26.09.430 – .480 REGARDING RELOCATION OF A CHILD:

This is a summary only. For the full text, refer to RCW 26.09.430-.480.

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

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

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

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

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

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

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

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

A person entitled to time with the children under a court order can file an objection to the children'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 children.

The relocating person shall not move the children 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 fifteen (15) days of timely service of the objection, the relocating person shall not move the children before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

IV. DECISION MAKING

4.1 DAY-TO-DAY DECISIONS.

The mother shall schedule all routine medical and dental appointments for the children including all dental, counseling, therapy, and other health care appointments. The mother shall notify the father by email within 48 hours of

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scheduling an appointment and she shall advise the father of any significant information after each medical or dental visit. The father shall not cancel any medical or dental appointments. The father shall not interfere with the appointments, the doctors, or the treatment for the children. The mother shall not take any action to interfere or impede the father's ability to contact the provider and obtain information.

Except as set forth above, each parent shall make decisions regarding the day-to-day care and control of the children while they are residing with that parent.

4.2 MAJOR DECISIONS.

Major decisions regarding the children shall be made as follows:

Education	Mother*
Counseling/therapy	Mother*
Sensory integration therapy	Mother*
Non-emergency Healthcare	Mother*
Childcare	Mother
Religious Upbringing	Mother
Extracurricular	Mother
All other major decisions	Mother

*The mother's sole decision-making shall be subject to the following:

School Choice

The mother shall choose the children's schools, but her choices are limited to schools within a geographical area, the boundary for which is determined by drawing a circle, with the father's parents' address as the center and the public school closest to the mother as the perimeter of the circle. The mother may enroll the children in any school within the circle, but without the father's agreement of selection of a private school, the mother may not seek more than \$200 per month from the father for his private school obligation.

Medical and Counseling Providers

The mother shall choose all healthcare providers for the children, but her choices are limited to a geographical area, the boundary for which is

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2 determined by drawing a circle, with the father's parents' address as the
3 center, and the mother's home address as the perimeter of the circle.
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5 **4.3 RESTRICTIONS IN DECISION MAKING.**
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7 Sole decision making shall be ordered to the mother for the following reasons:
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9 The mother is opposed to mutual decision making, and such opposition is
10 reasonably based on the following criteria:
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- 12
- 13 a. The history of participation of each parent in decision making in
14 each of the areas in RCW 26.09.184(4)(a).
15
 - 16 b. The father has not demonstrated ability and desire to cooperate
17 with the mother in decision-making in each of the areas in RCW
18 26.09.184(4)(a).
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21 Refer to the court's Findings of Fact and Conclusions of Law signed by the
22 Court on even date herewith.
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25 **V. DISPUTE RESOLUTION**
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27 Disputes between the parties, other than child support disputes, shall be
28 submitted to mediation by the first-available of Margo Waldrup or Karen Ballantyne,
29 or by any other mutually acceptable private mediator.
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32 The mediator's fees shall be allocated between the parties in proportion to net
33 income as set forth on the applicable child support worksheets, unless determined
34 otherwise in the dispute resolution process.
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37 The dispute resolution process shall be commenced by notifying the other
38 party by certified mail. The mediation shall be set for the earliest practical date, but
39 not less than ten days or more than forty-five days after the initial certified notice was
40 sent. In the dispute resolution process:
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- 43 (a) Preference shall be given to carrying out this parenting plan.
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- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the superior court.

This dispute provision does not apply to motions involving emergency matters affecting the child or to motions regarding compliance with this Parenting Plan.

VI. OTHER PROVISIONS

1. Each parent may attend the children's school and extracurricular activities regardless of the residential schedule. Each parent is responsible to keep him or herself informed on the children's school activities and conferences. Neither parent shall exclude the children's extended family members from either side of the family from the children's school and extracurricular activities.
2. Each parent shall refrain from discussing the residential arrangements with the children except for plans that are set forth in this Parenting Plan or agreed upon by both parents. Each parent shall refrain from asking or suggesting that a child make or request changes in the schedule. Neither parent shall quiz the children with respect to their time spent with the other parent.
3. Each parent shall have reasonable, unmonitored telephone access with the children when they are with the other parent; however, the nonresidential parent shall be limited to initiating one call to the children per day and the

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residential parent shall make best efforts to have the children return said call within six (6) hours.

- 4. Each parent shall inform the other as soon as possible of any serious illness or accidental injury to a child.
- 5. Each parent shall have equal access to a child's educational, medical, childcare, and other records.
- 6. Each parent shall keep the other informed of his or her address and telephone number and update such information promptly if it changes.
- 7. Each parent shall list the other as "emergency contact" on all school and medical documents.

VII. DECLARATION

Does not apply.

VIII. ORDER BY THE COURT

IT IS ORDERED, ADJUDGED, AND DECREED that this 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.040.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision-making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

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

Dated: January 22, 2009

Douglas A. North
JUDGE/COMMISSIONER

LAW OFFICE OF TED D. BILLBE, PLLC

By Ted D. Billbe, WSBA #23021
Gwynna E. Biggers, WSBA #38017
Attorneys for Petitioner

Copy received by: Camden M. Hall

CAMDEN M. HALL, PLLC

By Camden M. Hall
Camden Hall, WSBA #146
Attorney for Respondent

APPENDIX D

FILED

2009 JAN 22 AM 10:41

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SEATTLE, WA.

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

In re the Marriage of:

NO. 07-3-04818-2 SEA

TRACIE L. LANG,

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
(FNFCL)**

Petitioner,

and

BROOK W. LANG,

Respondent.

I. BASIS FOR FINDINGS

The findings are based on trial. The following people attended:

- Petitioner Tracie L. Lang
- Petitioner's Attorneys Ted D. Billbe and Gwynna E. Biggers
- Respondent Brook W. Lang
- Respondent's Attorney Camden Hall
- Lynn Tuttle, Parenting Evaluator
- Other: Dr. Alan Rothblatt
- Emmanuelle Wilhelm
- Sharon Wilhelm

FINDINGS OF FACT AND CONCLUSIONS OF LAW
Page 1

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Todd Wilhelm
Scott Harang
Kim Harang
Charles Merrin
Charlotte Svensson

II. FINDINGS OF FACT

Upon the basis of the court record, the court FINDS:

2.1 RESIDENCY OF PETITIONER.

The petitioner is a resident of the State of Washington.

2.2 NOTICE TO THE RESPONDENT.

The respondent appeared and responded to the petition.

2.3 BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT.

The following facts below establish personal jurisdiction over the respondent.

The respondent is presently residing in Washington. The parties lived in Washington during their marriage and the petitioner continues to reside in this state. The parties may have conceived a child while within Washington.

2.4 DATE AND PLACE OF MARRIAGE.

The parties were married on May 13, 2000 at Seattle, Washington.

2.5 STATUS OF THE PARTIES.

Husband and Wife separated April 17, 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

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the respondent joined.

2.7 SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT.

There is no written separation contract or prenuptial agreement.

2.8 COMMUNITY PROPERTY.

The parties have the following real or personal community property:

- 1. The residence and real property located at 5206 Isola Place, Issaquah, Washington 98027 (the "Montreux residence").

The Montreux residence was acquired during the marriage on or about April 27, 2005. It was acquired for the purchase price of \$950,000 which was paid with \$950,000 of funds borrowed by way of two loans secured by a first and second deed of trust. The home was titled in Mr. Lang's name only which the court finds was for the purpose of protecting Mrs. Lang from any collection matters. The court finds Mrs. Lang's testimony credible that there was never any discussion or mutual intention of the parties that the Montreux home was Mr. Lang's separate property. Mr. Lang produced no documentary evidence at trial that he used separate funds from any source to acquire the home. The court accepted Mr. Lang's testimony that the home has a fair market value of \$1,168,000 which is equal to the amount owed on the home loans secured by the property.

- 2. The 1,911,397 shares of stock of Montavo, Inc., a Delaware corporation (formerly known as North Coast Partner's Inc.) hereinafter referred to as "Montavo Delaware." Montavo Delaware has its offices at 4957 Lakemont Blvd. SE, C-4 Suite #239, Bellevue, Washington 98006.
 - a. Shares of Montavo Delaware are publicly traded on the Over the Counter exchange under the symbol "MTVO." Mr. Lang is the Chief Executive Officer of Montavo Delaware. The 1,911,397 Montavo Delaware shares, or the right thereto as

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explained below, are held in the name of Mr. Lang and were received by Mr. Lang in connection with a merger of Montavo Delaware and Montavo, Inc., a Washington Corporation ("Montavo Washington"). In connection with the merger, Mr. Lang exchanged his 1,000,000 shares of Montavo Washington and certain other rights to payment from Montavo Washington for 1,081,932 shares of Montavo Delaware and a conditional right, as explained below, to receive an additional 829,465 shares of Montavo Delaware. The merger agreement between Montavo Delaware and Montavo Washington was signed on May 7, 2008. The merger transaction was completed on August 29, 2008.

- b. Mr. Lang formed Montavo Washington on about December 23, 2004. On December 23, 2004, the corporation issued 1,000,000 founders shares to Mr. Lang. He was from the outset, and at all times thereafter, the President and Chief Executive Officer. The 1,000,000 shares were received during the parties' marriage. Mr. Lang provided no credible evidence that separate funds or property from any source were contributed to Montavo Washington during the parties' marriage.

- c. After he formed Montavo Washington and until the parties separated on April 17, 2007, Mr. Lang continued to devote his energy and efforts to develop Montavo Washington. On April 11, 2005, Mr. Lang and Montavo Washington entered into an Employment Agreement under which Montavo Washington was to pay Mr. Lang a base salary of \$168,000 per year. Montavo Washington did not pay Mr. Lang all of the salary that was owed to him under the employment agreement. According to SEC filings made by Montavo Delaware, Montavo Washington owed Mr. Lang \$140,801 for management services he provided during 2006 and \$142,512 for management services he provided during 2007.

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- d. In 2005 and 2006, Mr. Lang made interest bearing, unsecured loans to Montavo Washington totaling \$6,000 and \$14,000, respectively. The loans were extended during the parties' marriage. No evidence was provided at trial as to any separate property source of funds used to make the loans. The loans are presumed to have been made with community funds and the right to repayment and, therefore, are a community asset.
- e. On about May 15, 2006 Montavo Washington and Mr. Lang executed a Convertible Note Purchase Agreement, as amended, pursuant to which Mr. Lang purchased a convertible promissory note in the principal amount of \$10,000 and 1,000 shares of common stock from Montavo Washington. No evidence was provided at trial as to any separate property source of funds used to fund this transaction.
- f. On May 7, 2008, Montavo Washington entered into a Merger Agreement whereby Montavo Washington merged with North Coast Partners, Inc, a Delaware corporation, and the predecessor to Montavo Delaware. Mr. Lang negotiated the merger agreement on behalf of Montavo Washington. The merger between Montavo Washington and Montavo Delaware was completed on August 29, 2008. Pursuant to the terms of the merger agreement, Mr. Lang received 1,081,932 shares of MTVO in exchange for his 1,000,000 founders shares of Montavo Washington and, according to Mr. Lang's testimony, in exchange for (a) release of the amounts that Montavo Washington owed Mr. Lang for management services he provided during 2006 and 2007, (b) release of the amounts that Montavo Washington owed Mr. Lang for loans he made to the company during 2005 and 2006, and (c) release of the rights Mr. Lang had under the April 11, 2005 employment agreement.
- g. In addition to the 1,081,932 shares of MTVO, the Montavo merger agreement also conferred upon Mr. Lang the right to

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receive an additional 829,465 shares of MTVO stock if Montavo Delaware did not consummate a merger with any other company within 90 days of the closing of the merger agreement. The 90-day period elapsed on November 29, 2008; Montavo Delaware did not consummate a merger. As a result, Mr. Lang has a vested and unconditional right under the merger agreement to receive an additional 829,465 shares of MTVO stock.

h. The 1,000,000 shares of Montavo Washington were acquired in December of 2004 during the parties' marriage. The court finds that the shares were community property. By the May 7, 2008 merger agreement, which Mr. Lang negotiated, Mr. Lang exchanged the 1,000,000 Montavo Washington shares and other rights to payment from Montavo Washington for certain rights to acquire shares of Montavo Delaware, specifically the initial 1,081,932 shares and an additional 829,465 shares. The court concludes that the change in form from shares of Montavo Washington to shares of Montavo Delaware shares did not change the character of the underlying asset. Thus, the Montavo Delaware shares are community property. Mr. Lang provided no credible evidence to the contrary.

i. As of trial, the stock of Montavo Delaware shares was trading on the OTC BBB exchange in the range of \$0.60 to \$0.80 cents per share. Mr. Lang testified, however, that there are certain practical and legal realities that bear upon the market price/value of the MTVO shares and restrict his ability to trade his shares. Mr. Lang testified that the volume of trading for MTVO has been low, averaging less than 20,000 shares per day, and that if a large number of shares were to be offered on the OTC exchange, it likely would negatively impact the price. Moreover, Mr. Lang testified that because of his executive position for Montavo Delaware, certain SEC regulations restrict his ability to sell his MTVO shares.

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- 3. The 2000 GMC Yukon vehicle, Washington license number 593WPK acquired during the marriage.
- 4. A refundable deposit in the amount of \$3,045 held by Emerald Heights Academy.
- 5. The sum of \$666.63 on deposit in the IOLTA account of the petitioner's attorney. Said funds are what remain of funds borrowed by the parties from the refinance of the Montreux home pursuant to the Stipulation and Agreed Order re Temporary Financial Matters signed by the parties and counsel on about June 5, 2007 and filed with the court on August 20, 2007.
- 6. The sum of \$67.81 in the blocked account at Bank of America. The funds are what remain of the proceeds from the sale of a rental residence referred to as the Tam O'Shanter home. The Tam O'Shanter home was sold pursuant to the Stipulation and Agreed Order re Temporary Financial Matters.
- 7. Household furniture and furnishings in the petitioner's possession.
- 8. Household furniture and furnishings in the respondent's possession.
- 9. Cord blood of the parties' children banked at Viacord.
- 10. Family digital pictures and videos, including wedding photo negatives from the time period 1999 - 2007.
- 11. The Washington Mutual Account in Alessandria Lang's name.
- 12. The Washington Mutual Account in Giavanna Lang's name.
- 13. The Washington Mutual Account in Caprielle Lang's name.
- 14. The Washington Mutual Account held in both parties' names.

2.9 SEPARATE PROPERTY.

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The petitioner has the following separate property:

1. The box of her pre-marriage photo albums left in the Montreux home.
2. Personal items acquired since date of separation.
3. Bank accounts in her name.

The respondent has the following separate property:

1. 1995 GMC Jimmy vehicle.
2. Personal items acquired since date of separation.
3. Bank accounts in his name.

2.10 COMMUNITY LIABILITIES.

The parties have the following community liabilities:

1. The two loans secured by the Montreux residence, specifically a first mortgage held through EMC mortgage with an outstanding principal balance of \$1,000,000 and a second mortgage held through EMC mortgage with an outstanding principal balance of approximately \$168,000.
2. The car loan secured by the GMC Yukon.
3. Mr. Lang contended at trial that the parties owed his parents the sum of \$35,638 for loans Mr. Lang alleged the parties took during their marriage. Mrs. Lang provided credible testimony that she had no knowledge of any loans taken by the parties from Mr. Lang's parents. Mr. Lang provided no documentary evidence to establish the existence of any loan from his parents to him or to him and his wife during the parties' marriage.

2.11 SEPARATE LIABILITIES.

4. The debt owing to CPA RON PEYERON IN THE AMOUNT OF \$2000 FOR PREPARATION OF 2006 AND 2007 TAX RETURNS.

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The petitioner has incurred the following separate liabilities:

1. Loans payable to her parents, Mark and Sharon Wilhelm, in the amount of \$62,471 for attorney's fees and costs incurred in this action.
2. Remaining attorneys fees owing to Ted D. Billbe.

The respondent has incurred the following separate liabilities:

1. Any amount he borrowed from his parents prior to marriage to Tracie Lang. Mr. Lang contends that he owes his parents approximately \$125,000 for such pre-marriage debts. Mr. Lang provided no documentation at trial of any such debts.
2. Any amount he borrowed from his parents after he and Tracie Lang separated. Mr. Lang contends that he owes his parents approximately \$50,000 for such post-separation debts. Again, Mr. Lang provided no documentation at trial of any such debts.
3. Attorneys fees owing to Lisa Sharpe and the Lasher Holzapefel firm in an alleged amount of \$21,000. Mr. Lang provided no documentation at trial of this alleged debt.
4. Attorneys fees owing to Camden Hall in an amount not stated or documented at trial. Mr. Lang provided no documentation at trial of the amount he owes Mr. Hall or the terms or conditions of his engagement of Mr. Hall.
5. Debt owing to CPA Ron Perron in the amount of \$2,000 that Mr. Lang incurred after the parties separated for preparation of 2006 and 2007 tax returns.
6. Debt owing to Charlotte Svensson for counseling and other services provided for or at Mr. Lang's request after the parties separated.

D.A.N.

2.12 SPOUSAL SUPPORT.

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The court concludes that Mr. Lang should pay spousal support for Mrs. Lang as set forth in the Decree of Dissolution signed by the court on even date herewith. The court's conclusion is based on the following findings:

1. Mrs. Lang has an associate of arts degree in general studies. When the parties met in 1999, Mrs. Lang was employed by Alaska Airlines as a marketing assistant earning approximately \$2,000 gross per month. After the parties became engaged to marry, they agreed that Mrs. Lang would be a homemaker and not work outside the home during their marriage. They agreed that she should quit her job at Alaska Airlines, which she did in about February of 2000. Mrs. Lang did not work outside the home during the parties' marriage.
2. Mr. Lang has a Bachelor of Arts degree in business from the University of Washington. He has an extensive executive experience in high-tech companies where he has held positions in sales, marketing, operations and business development. Mr. Lang has held positions where his responsibilities included marketing, financing, strategic alliances, engineering, R&D, profit and loss/financial and operations. His industry experience spans national retailers, consumer packaged goods, wired and wireless telecom (voice and data), and wireless data applications.
3. Mr. Lang also became the CEO of Montavo Washington when the company was formed. Mr. Lang signed an employment agreement with Montavo, Inc. whereby the company agreed to pay Mr. Lang \$168,000 per year. In August of 2007, after the parties separated, Mr. Lang obtained a position at Airbiquity, Inc. where he started at a base salary of \$125,000 per year annually. In February of 2008 Mr. Lang chose to quit his position at Airbiquity Inc. to work solely for Montavo Washington. By the time of trial Mr. Lang was working full-time for Montavo Delaware where he reported to be earning \$8,085 per month (approximately \$2,300 less per month than his position at Airbiquity).
4. Considering Mr. Lang's and Mrs. Lang's relative financial resources and abilities to meet his/her needs independently, Mr. Lang has the

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ability to meet his reasonable needs and also pay Mrs. Lang spousal maintenance, and Mrs. Lang has the demonstrated need. Mrs. Lang testified that given her current lack of skills and training, she will need several years of further education to best position herself for full-time employment in order to adequately contribute to her own future support. Mr. Lang expressed support for Mrs. Lang's educational goal. Mr. Lang should pay spousal support as set forth in the Decree of Dissolution signed by the court on even date herewith.

5. Pursuant to an order of this court dated October 17, 2008, Mr. Lang was required to pay Mrs. Lang family support in the amount of \$3,750 per month effective July 1, 2008. Mr. Lang paid only \$2,500 per month for the months of July, August, September and October of 2008. He is in arrears in the principal amount of \$1,250 for each month, for a total of \$5,000. ~~Mrs. Lang should have a money judgment in the principal amount of \$5,000, with interest of \$262.50 which should bear post judgment interest at the rate of 12 percent per annum.~~ THIS AMOUNT MAY BE PAID OR SATISFIED AS SET FORTH IN THE DECREE, SECTION 3.7. The court finds that Mr. Lang has failed to pay Mrs. Lang spousal maintenance in the past that was court ordered. The court finds it prudent to require Mr. Lang to pay spousal support through DCS.

D.A.N. 6.

2.13 CONTINUING RESTRAINING ORDER.

Does not apply.

2.14 FEES AND COSTS.

Each party is responsible to pay his or her own attorney's fees and costs, except that Mr. Lang is responsible to pay or satisfy the money judgments of record in favor of Mrs. Lang for attorney's fees and costs, as follows:

- 1. On May 9, 2008, the court granted Mrs. Lang's motion to compel Mr. Lang to participate with the PETP parenting evaluation and further ordered Mr. Lang to pay her attorney's fees in the amount of \$600.00. Mr. Lang has not paid said fees.

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- 2. On June 25, 2008, the court granted Mrs. Lang's motion to compel Mr. Lang to answer discovery and further ordered Mr. Lang to pay her attorneys fees in the amount of \$815. Mr. Lang has not paid said fees.
- 3. On June 26, 2008, the court granted Mrs. Lang's motion for temporary attorney and expert fees and costs and ordered Mr. Lang to pay her attorneys fees and costs in the amount of \$21,940. Mr. Lang has not paid said fees.

Mr. Lang may pay or satisfy the foregoing money judgments by way of transfer to Mrs. Lang all of the MTVO shares awarded to her by the Decree of Dissolution signed by the court on even date herewith. Until such time as the judgments are paid or satisfied, the judgments remain of record and shall accrue interest at 12 percent per annum.

2.15 PREGNANCY.

Wife is not pregnant.

2.16 DEPENDENT CHILDREN.

The children listed below are dependent upon either or both spouse:

<u>Name of child</u>	<u>Age</u>	<u>Mother</u>	<u>Father</u>
Alessandria Lang	Age 7	Tracie Lang	Brook Lang
Giavanna Lang	Age 5	Tracie Lang	Brook Lang
Caprielle Lang	Age 3	Tracie Lang	Brook Lang

2.17 JURISDICTION OVER THE CHILDREN.

This court has jurisdiction over the children for the reasons set forth below.

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

This state is the home state of the children because the children lived in

1 Washington with a parent or a person acting as a parent for at least six
2 consecutive months immediately preceding the commencement of this
3 proceeding.
4

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6 **2.18 PARENTING PLAN.**
7

8 The parenting plan signed by the court on even date herewith is approved and
9 incorporated as part of these findings. The court concludes that it is in the best
10 interests of the children to approve the residential and non-residential
11 recommendations of the court-appointed parenting evaluator, Lynn Tuttle.
12

- 13
14 1. On January 17, 2008 the court approved the parties' agreement to
15 appoint Andrew Benjamin and the PETP Program to provide a
16 parenting evaluation. Although Mr. Lang agreed to the appointment of
17 PETP, he subsequently declined to participate with the PETP evaluation
18 because he did not agree with the PETP evaluation process.
19
20 2. On May 9, 2008 the court granted the Mrs. Lang's motion and ordered
21 Mr. Lang to cooperate with the PETP evaluation. Mr. Lang declined to
22 do so and PETP would not agree to provide a one-parent evaluation.
23
24 3. On June 16, 2008 the court granted Mr. Lang's motion and appointed
25 Lynn Tuttle to provide a parenting investigation and report. Mrs. Tuttle
26 was appointed to replace PETP. The appointment of Mrs. Tuttle
27 necessitated delay of the trial date.
28
29 4. Mrs. Tuttle conducted a parenting evaluation during which she
30 contacted 15 collateral witnesses which included various healthcare
31 and mental health providers. Mrs. Tuttle spent 5.7 hours meeting with
32 Mr. Lang, she spent 2.5 hours visiting his home and an additional 1.6
33 hours in a telephone conference with Mr. Lang. Mrs. Tuttle prepared
34 an evaluation report dated September 1, 2008.
35
36 5. The Court finds that it is in the children's best interests for the children
37 to reside primarily with their mother. Mrs. Lang has been the
38 children's primary caretaker their entire lives. The children are
39 strongly bonded to Mrs. Lang and their relationship is stable. Mrs.
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Lang performed virtually all of the past parenting functions for the children. The children are young and of a developmental age in which it is best to continue to reside primarily with their primary caretaker.

- 6. Mr. Lang focused his daily tasks and responsibilities on business and forming his company, Montavo. The relative strength of the children's relationship with Mr. Lang has been compromised in the past by the time and energy that Mr. Lang spent developing Montavo and his career aspirations. Mr. Lang is now the CEO of a company and has a demanding employment schedule that includes responsibilities to travel internationally. It would not be in the children's best interests for them to reside primarily with Mr. Lang.
- 7. Mrs. Lang and Mr. Lang both testified regarding the events of the night of April 17, 2007 that ultimately resulted in the parties' physical separation and Mr. Lang's arrest for alleged domestic violence. The testimony was conflicting. The events of April 17, 2007 were not material to the Court's conclusions regarding the residential provisions of the final parenting plan signed by the court on even date herewith.
- 8. The court adopts the recommendation by the parenting evaluator that Mr. Lang should enroll and complete a state-certified domestic violence perpetrator program. Mr. Lang engaged in a pattern of intimidation and control of his wife during their marriage that the court finds was abusive. The court concludes that it is in the best interests of the children for Mr. Lang to obtain domestic violence treatment to hopefully help him gain insight into his behavior and to learn how to behave appropriately with his family members, most importantly his three daughters. Mr. Lang used his ability to bully and control Mrs. Lang and others to drive his personal relationships.
- 9. Mr. Lang contended at trial that he was unable to discuss with Mrs. Tuttle the events of the evening of April 17, 2007 because there was no protective order in place to protect his words from being used against him in the criminal context. Mr. Lang testified that he and Mrs. Tuttle reached an agreement that Mrs. Tuttle would contact Mrs.

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Lang's attorney (Ted Billbe) to obtain a protective order. There was no credible evidence that there was ever any request for such a protective order and certainly no agreement by the parent evaluator that she would obtain such an order. The parties' counsel were negotiating the terms of a protective order relating to production of Mr. Lang's financial documents in response to discovery, but that was unrelated entirely to the events of April 17, 2007.

- 10. The Court adopts Mrs. Tuttle's recommendation that Mr. Lang's time with the children be reduced initially and then increase upon his successful completion of all DV treatment recommendations.
- 11. The Court awards sole-decision-making to the mother. The Court finds that Mrs. Lang is opposed to mutual decision making, and such opposition is reasonably based on the history of Mr. Lang not being capable of agreeing with Mrs. Lang regarding the children unless Mrs. Lang agrees to Mr. Lang's position. There is no demonstrated ability or desire for Mr. Lang to cooperate with Mrs. Lang in decision-making. Mrs. Lang's decision-making authority should be constrained as set forth in the conclusions herein.
- 12. Mr. Lang currently rents out the rooms in the Montreux residence to non-family members. It is not in the children's best interests to be around the Montreux home so long as Mr. Lang is renting it to non-family members.

2.19 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 even date herewith and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

- 1. For child support purposes, Mr. Lang's income is the gross monthly wage he earned (\$10,416) while employed at Airbiquity, Inc. from August 2007 until February of 2008. Mr. Lang voluntarily left his

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position at Airbiquity Inc. in February of 2008 to work solely for Montavo Inc. where he reported to be earning \$8,085 per month at the time of trial (approximately \$2,300 less per month than his position at Airbiquity). Child support shall be based on Mr. Lang's gross monthly earnings at Airbiquity.

2. Mr. Lang receives \$2,550 per month in rental income associated with the Montreux home. This income should be included on the child support worksheets.
3. Mrs. Lang has not worked outside the home for eight years. For child support purposes, Mrs. Lang's income is comprised solely of the \$3,000 per month in maintenance from Mr. Lang.

2.20 OTHER:

1. During this marriage Mr. Lang handled all income tax matters, including working with the tax preparer to have returns prepared. Mrs. Lang had little to no contact with the CPA Ron Perron other than to sign joint tax returns prepared at the husband's direction. Mr. Lang was the party who managed the business Montavo and who made decisions regarding payment of debts, including income and self-employment taxes. Mrs. Lang did not have access to or control of information and decisions relating to payment of income taxes.
2. When they separated on April 17, 2007, the parties had not filed federal income tax return(s) for tax year 2006. After they separated, Mr. Lang filed a "joint" federal income tax return for 2006. He did not obtain Mrs. Lang's consent to the joint filing. Mr. Lang did not put into evidence a complete copy of the "joint" tax return. The incomplete "joint" return provided by Mr. Lang indicates an additional tax owing to the IRS (income tax and self-employment tax) in the amount of \$22,637, before any interest and penalties. At least three \$1,000 payments have been paid toward the 2006 tax owing.

Sometime in 2006 Mr. Lang sold stock he owned in CallVision. The stock sale resulted in a taxable capital gain in the amount of \$43,784.

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Mrs. Lang was unaware of the stock sale. Mr. Lang did not pay to the IRS any estimated income taxes associated with the stock sale. Mr. Lang was unable at trial to provide any credible justification for not paying estimated income taxes.

In 2006 Mr. Lang reported taxable business income in the amount of \$100,640. Because this business income resulted from self-employment, there was no withholding for income taxes, social security or Medicare. Mr. Lang did not pay to the IRS any estimated income taxes associated with the business income. He was unable at trial to provide any credible justification for not paying estimated income taxes.

The only income taxes paid to the IRS during 2006 was \$836 that was withheld from Mr. Lang's employment earnings from Futurewei Technologies.

The additional taxes owing to the IRS for 2006 income result from Mr. Lang's failure to pay any estimated income taxes on the stock sale and self-employment business income. The court concludes that Mr. Lang's intentional failure to not pay estimated income taxes was fiscally improvident and resulted in the needless incurring of tax debts, including interest and penalties.

Mrs. Lang testified because she did not have access to 2006 income and deduction records, she was unwilling to file a joint federal income tax for 2006 and thereby incur joint liability for the entire 2006 income taxes owing, including interest and penalties.

Mr. Lang should be responsible to pay any and all amounts owing to the IRS on account of his 2006 income and capital gains. Mrs. Lang shall not be required to sign a joint federal income tax return. Mr. Lang should be responsible to amend the "joint" 2006 federal income tax return and file "married filing separately." He shall include on his return 100 percent of his income reflected on the "joint" return he previously filed. He may claim 100 percent of the allowable itemized deductions and is awarded the dependent exemptions for all three of the

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parties' minor children for tax year 2006. Mr. Lang shall be responsible to pay all taxes, interest and penalties owing.

3. After the parties separated Mr. Lang likewise filed a "joint" federal income tax return for 2007. Again, Mr. Lang did not obtain Mrs. Lang's consent to a joint filing. The "joint" income tax return indicated income taxes owing in the amount of \$38,239, before interest and penalties.

The "joint" tax return indicates that Mr. Lang had wages of \$50,780 earned from Airbiquity. Mr. Lang testified that he instructed his employer to withhold no income taxes from his Airbiquity wages. All of Mr. Lang's Airbiquity wages were earned by Mr. Lang after the parties separated. As such, he should be responsible to pay any income taxes, interest and penalties associated with his Airbiquity income.

The "joint" 2007 tax return indicates that in 2007 Mr. Lang reported taxable business income in the amount of \$14,657. There was no clear evidence at trial as to whether the \$14,657 of business income was earned by Mr. Lang before the parties separated or after. As with 2006, Mr. Lang did not pay to the IRS any estimated income taxes associated with the business income. He was unable at trial to provide any credible justification for not paying estimated income taxes. The court concludes under the circumstances, Mr. Lang should be responsible to pay any income taxes, self-employment taxes, interest and penalties associated with the \$14,657.

The "joint" 2007 income tax return reflects a taxable capital gain of \$354,082 incurred in connection with the August 13, 2007 sale of the Tam O'Shanter residence. The evidence established that Mr. Lang acquired the Tam O'Shanter residence prior to the parties' marriage. After the parties separated Mr. Lang refused Mrs. Lang's requests for her and the children to reside in the Tam O'Shanter residence. Mr. Lang imposed, instead, that the Tam O'Shanter residence be sold. The sale resulted in a taxable capital gain. Mr. Lang declined to consider that if Mrs. Lang resided in the property for two years, a substantial

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portion of the taxable gain may have been sheltered under current tax provisions.

Mr. Lang should be responsible to pay any and all amounts owing to the IRS on account of his 2007 wages, self-employment income and the Tam O' Shanter capital gain. Mrs. Lang shall not be required to sign a joint federal income tax return. Mr. Lang should be responsible to amend the "joint" 2007 federal income tax return and file "married filing separately." He shall include on his return 100 percent of his income reflected on the "joint" return he previously filed. He may claim 100 percent of the allowable itemized deductions and is awarded the dependent exemptions for two of the parties' children, Ava and Lola, for tax year 2007. Mr. Lang shall be responsible to pay all taxes, interest and penalties owing on his separate tax return. Mrs. Lang may claim the child Gia on her separate 2007 income tax return.

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.

3.2 GRANTING OF A DECREE.

The parties should be granted a decree.

3.3 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 the maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any

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necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.4 CONTINUING RESTRAINING ORDER.

Does not apply.

3.5 ATTORNEY'S FEES AND COSTS.

Each party shall pay his or her own attorney's fees and costs.

3.6 OTHER:

The court concludes as follows:

Mr. Lang is very driven and very strong in getting his own way on things. He will work his position any way he can to get to what he wants. That may be an admirable quality in business; it is does not work in a family situation. Based on the evidence, the court concludes that Mr. Lang is not capable of agreeing with anybody else about anything unless they simply agree to whatever his position is. Mrs. Lang's request for sole decision-making for the children is reasonable and is in the best interests of the children. The court does, however, conclude that there should be some geographic bounds on the mother's decision-making with respect to selection of schools and selection of healthcare providers.

The children may remain in their current school for the remainder of the current academic year, but starting next academic year, they need to be in a school which is no farther away from Mr. Lang's home than whatever the local public school they would attend based on Mrs. Lang's residence.

Similarly, the mother has sole decision-making with regard to healthcare providers. The provision from the temporary order regarding scheduling of routine appointments should be in the permanent order. But, Mrs. Lang should choose healthcare providers that are no further away from Mr. Lang's home than Mrs. Lang's home is from his home.

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With the foregoing caveats, the court adopts the recommendations of the parenting evaluator Lynn Tuttle. The court concludes that Mrs. Tuttle recommended an appropriate parenting plan that is based on the statutory factors. The court concludes that DV treatment is absolutely required for Mr. Lang. Completely casting aside the events of April, 2007, this case presents a clear domestic violence relationship. Domestic violence is based on intimidation and control and Mr. Lang is one of the most controlling people this court has ever observed. This conclusion is not based on the events of April of 2007 that led to Mr. Lang's arrest for DV. Rather, Mr. Lang clearly used his ability to bully people to drive his personal relationships. While Mrs. Lang does not have to reside with Mr. Lang in the future, the children are going to have to deal with him and if he is going to be a good dad to the girls, he needs to get some insight into his behavior, behavior that that may be perfectly fine in the business world, where you are trying to drive the best deal you can with a business adversary, but it is not an appropriate way of behaving with people who are your family.

With regard to the financial issues, clearly the Montavo Delaware stock is the only thing that has any significant value. It is clearly community property. The value was developed during marriage. Mr. Lang's testimony that at the time of separation the stock had no value simply has no credibility at all. He obviously doesn't really believe that himself because about that same time he gave up a job with Airbiquity which was paying him more than \$10,000 a month to work for Montavo at less per month.

The court would ordinarily give Mrs. Lang 50 percent of the Montavo shares, but the court is increasing that amount to 55 percent because, instead of giving Mrs. Lang an award of attorney's fees, the court is awarding her more of the stock because it is the only thing from which she is going to be able to realize anything.

The court concludes that the award should be structured to give Mr. Lang an incentive to see that that stock gets to Mrs. Lang and that she realizes something on the shares as rapidly as possible. The court is requiring that Mr. Lang pay spousal support of \$3,000 per month starting January 1, 2009. Spousal support shall last as long as it takes for Mrs. Lang to realize the

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money out of Montavo shares awarded to her. As Mrs. Lang gets the value – the cash – from the shares awarded to her, Mr. Lang’s obligation to pay spousal support will be proportionally reduced. For example, when Mrs. Lang has received 10% of what she’s supposed to realize from the Montavo shares, Mr. Lang can reduce his maintenance payment by 10%, so his maintenance payment drops from \$3,000 per month to \$2,700 per month. As soon as Mr. Lang gets all of the stock proceeds to her, Mr. Lang can stop paying her maintenance all together. It is just a question of how soon can he get all of the proceeds to her. And it has to be something she can actually realize upon. The point at which the maintenance payment goes down is when Mrs. Lang actually has cash in her hands, not just stock transferred to her that she cannot sell for another two years because it has some kind of limitations on it. Whenever she has cash in her hands it reduces the maintenance by whatever proportion that is of the total amount she is supposed to receive.

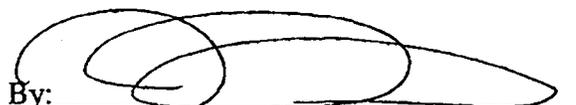
Child support should be according to the schedule. The court does conclude that there should be a limitation on the degree to which Mrs. Lang with sole decision-making can obligate Mr. Lang to additional child support by virtue of choosing an educational option. If Mrs. Lang makes any choice of education that would cause Mr. Lang’s obligation for child support to increase by more than \$200 per month, she needs his consent to the decision if she intends for him to pay over the extra \$200 per month.

Dated: January 22, 2009.

Douglas A. North
Judge/Commissioner

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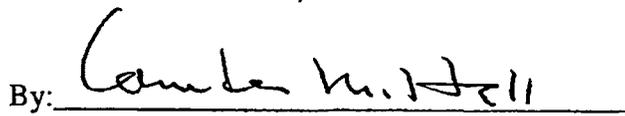
LAW OFFICE OF TED D. BILLBE, PLLC

By: 

Ted D. Billbe, WSBA #23021
Gwynna E. Biggers, WSBA #38017
Attorneys for Petitioner



CAMDEN M. HALL, PLLC

By: 

Camden Hall, WSBA #146
Attorney for Respondent

APPENDIX E

FILED

2009 JAN 22 AM 10: 08

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY**

In re the Marriage of:

TRACIE LINN LANG

Petitioner,

and

BROOK WESTER LANG,

Respondent.

No. 07-3-04818-2 SEA

**DECREE OF DISSOLUTION
(DCD)**

Clerk's Action Required

I. JUDGMENT SUMMARY

1.1 RESTRAINING ORDER SUMMARY:

Does not apply.

1.2 REAL PROPERTY JUDGMENT SUMMARY:

Real Property Judgment Summary is set forth below:

King County Assessor's Parcel No. 5608000260

DECREE

Page 1

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LAW OFFICE OF TED D. BILLBE, PLLC

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1.3 MONEY JUDGMENT SUMMARY:

Judgment Summary is set forth below:

A.	Judgment creditor	TRACIE L. LANG
B.	Judgment debtor	BROOK W. LANG
C.	Principal judgment amount	\$5,000.00
	Back spousal support 7/1/08 – 10/31/08	
D.	Interest to through 12.31.08	\$262.50
E.	Principal amount shall bear interest at 12% per annum	
F.	Attorney for judgment creditor	Ted D. Billbe
G.	Attorney for judgment debtor	Camden Hall

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END OF SUMMARIES

II. BASIS

Findings of Fact and Conclusions of Law have been entered in this case.

III. DECREE

IT IS DECREED that:

3.1 STATUS OF THE MARRIAGE.

The marriage of the parties is dissolved.

3.2 PROPERTY TO BE AWARDED THE HUSBAND.

Husband is awarded as his separate property the property set forth below.

1. 1995 GMC Jimmy vehicle.
2. Personal items acquired since date of separation.
3. Bank accounts in his name.
4. The residence and real property located at 5206 Isola Place, Issaquah, Washington 98027, King County Assessor's Parcel

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No. 5608000260, subject to the existing secured debt.

5. 45% of the 1,911,397 shares of stock of Montavo Inc., a Delaware corporation, held in the name of Brook Lang.
6. The 2000 GMC Yukon vehicle, Washington license number 593WPK.
7. Household furniture and furnishings in his possession.
8. The Washington Mutual Account in both parties names. Mr. Lang shall remove Mrs. Lang from this account.

3.3 PROPERTY TO BE AWARDED TO THE WIFE.

Wife is awarded as her separate property the property set forth below.

1. The box of her pre-marriage photo albums left in the Montreux home.
2. Personal items acquired since date of separation.
3. Bank accounts in her name.
4. 55% of the 1,911,397 shares of stock of Montavo Inc., a Delaware corporation, held in the name of Brook Lang. Said shares shall be transferred as soon as possible.
5. A refundable deposit in the amount of \$3,045 held by Emerald Heights Academy.
6. The sum of \$666.63 on deposit in the IOLTA account of her attorney.
7. The sum of \$67.81 in the blocked account at Bank of America.
8. The cord blood of the parties' children banked at Viacord.
9. Household furniture and furnishings in her possession.

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10. A copy of each digital video and photograph of the children in the father's possession from the years 1999-2007. The digital files shall be burned onto cd's and delivered to petitioner's attorney within 30 days of entry of the decree.

3.4 LIABILITIES TO BE PAID BY THE HUSBAND.

The husband shall pay the following liabilities:

1. The two loans secured by the residence and real property awarded to husband, King County Assessor's Parcel No. 5608000260, specifically a first mortgage held through EMC mortgage with an outstanding principal balance of \$1,000,000 and a second mortgage held through EMC mortgage with an outstanding principal balance of approximately \$168,000.
2. The car loan secured by the GMC Yukon.
3. Any and all amounts owing to his parents.
4. Any and all debts and obligations on property awarded to him.
5. Any and all obligation owing on credit cards in his name.
6. All debt and liabilities he has acquired since the parties separated on April 17, 2007.
7. Debt owing to CPA Ron Perron in the amount of \$2,000.
8. Debt owing to Charlotte Svensson for counseling and other services provided for or at Mr. Lang's request after the parties separated.
9. Income taxes for 2006 and 2007 as set forth in Section 3.14.

3.5 LIABILITIES TO BE PAID BY THE WIFE.

The wife shall pay the following liabilities:

1. Any obligation owing on credit cards in her name.

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2. And all debts and obligations on property awarded to her.
3. Any and all debt and liabilities she has acquired since the parties separated on April 17, 2008.
4. Loans payable to her parents, Mark and Sharon Wilhelm, for attorneys fees and costs incurred in this action.

3.6 HOLD HARMLESS PROVISION.

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

3.7 SPOUSAL MAINTENANCE.

1. Mr. Lang shall pay maintenance to Mrs. Lang in the amount of \$3,000 per month effective January 1, 2009. Maintenance shall be payable on the first of each month. Maintenance shall continue until Mrs. Lang has received 100% the monies resulting from the sale of 1,051,268 shares of Montavo Inc. (representing her award of 55% of the shares of the 1,911,397 in Montavo stock held by Mr. Lang).
2. As Mr. Lang is able to sell and then provide the resulting monies to Mrs. Lang from the 1,051,268 shares of Montavo, Inc. awarded to her, he may reduce his monthly spousal support payment by the percentage of the total stock award he is able to cash out for Mrs. Lang. The percentage of spousal support reduced in a particular month shall be calculated on the last day of the month prior by using the number of shares liquidated as the numerator and 1,051,268 as the denominator to calculate the reduction percentage. For example, if on the last day of the month prior to the spousal support payment Mr. Lang liquidates 105,126.8 shares and provided the resulting funds to Mrs. Lang, then Mr. Lang may reduce his spousal support payment by 10% (calculated as follows: $105,126.8/1,051,268 = 10\%$). Mr. Lang would then owe Ms. Lang \$2,700 instead of \$3,000 per month until he is able to provide her with additional funds from liquidated funds.

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3. As soon as Mr. Lang transfers to Ms. Lang 100% of the cash resulting from the liquidation of the 1,051,268 shares of Montavo awarded to her, Mr. Lang's spousal maintenance obligation shall terminate.

4. Mr. Lang shall pay spousal support through the Washington State Support Registry.

5. Pursuant to an order of this court dated October 17, 2008, Mr. Lang was ordered to pay Mrs. Lang family support in the amount of \$3,750 per month effective July 1, 2008. Mr. Lang paid only \$2,500 per month for the months of July, August, September and October of 2008. He is in arrears in the principal amount of \$1,250 for each month, for a total

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~~of \$5,000. Mrs. Lang should have a money judgment in the principal amount of \$5,000, with interest of \$262.50 which should bear post judgment interest at the rate of 12 percent per annum. Mr. LANG'S OBLIGATION TO PAY THE \$5,000.00 MAY BE PAID OR~~

3.8 RESTRAINING ORDER/PROTECTION ORDER.

Does not apply.

SATISFIED BY THE TRANSFER TO MRS LANG OF ALL OF THE VALUE OF THE MONTAVO SHARES AWARDED TO HER.

3.9 JURISDICTION OVER THE CHILDREN.

The Court has jurisdiction over the children as set forth in the Findings of Fact and Conclusions of Law.

3.10 PARENTING PLAN.

The parties shall comply with the final parenting plan signed by the Court on even date herewith and approved and incorporated as part of this Decree.

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3.11 CHILD SUPPORT.

Child support shall be paid in accordance with the Order of Child Support signed by the Court on even date herewith and incorporated as part of this Decree.

3.12 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

Each party is responsible to pay his or her own attorney's fees and costs, except that Mr. Lang is responsible to pay or satisfy the money judgments of record in favor of Mrs. Lang for attorney's fees and costs, as follows:

1. On May 9, 2008, the court granted Mrs. Lang's motion to compel Mr. Lang to participate with the PETP parenting evaluation and further ordered Mr. Lang to pay her attorney's fees in the amount of \$600.00. Mr. Lang has not paid said fees.
2. On June 25, 2008, the court granted Mrs. Lang's motion to compel Mr. Lang to answer discovery and further ordered Mr. Lang to pay her attorneys fees in the amount of \$815. Mr. Lang has not paid said fees.
3. On June 26, 2008, the court granted Mrs. Lang's motion for temporary attorney and expert fees and costs and ordered Mr. Lang to pay her attorneys fees and costs in the amount of \$21,940. Mr. Lang has not paid said fees.

Mr. Lang may pay or satisfy the foregoing money judgments by way of transfer to Mrs. Lang all of the MTVO shares awarded to her by the Decree of Dissolution signed by the court on even date herewith. Until such time as the judgments are paid or satisfied, the judgments remain of record and shall accrue interest at 12 percent per annum.

3.13 NAME CHANGES.

None.

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3.14 OTHER.

2006 Income Taxes:

Mr. Lang should be responsible to pay any and all amounts owing to the IRS on account of his 2006 income and capital gains. Mrs. Lang shall not be required to sign a joint federal income tax return. Mr. Lang should be responsible to amend the "joint" 2006 federal income tax return and file "married filing separately." He shall include on his return 100 percent of his income reflected on the "joint" return he previously filed. He may claim 100 percent of the allowable itemized deductions and is awarded the dependent exemptions for all three of the parties' minor children for tax year 2006. Mr. Lang shall be responsible to pay all taxes, interest and penalties owing.

2007 Income Taxes:

Mr. Lang should be responsible to pay any and all amounts owing to the IRS on account of his 2007 wages, self-employment income and the Tam O'Shanter capital gain. Mrs. Lang shall not be required to sign a joint federal income tax return. Mr. Lang should be responsible to amend the "joint" 2007 federal income tax return and file "married filing separately." He shall include on his return 100 percent of his income reflected on the "joint" return he previously filed. He may claim 100 percent of the allowable itemized deductions and is awarded the dependent exemptions for two of the parties' children, Ava and Lola, for tax year 2007. Mr. Lang shall be responsible to pay all taxes, interest and penalties owing on his separate tax return. Mrs. Lang may claim the child Gia on her separate 2007 income tax return.

Children's Accounts:

The three Washington Mutual accounts held for the benefit of the parties three children, Alessandria, Giavanna, and Caprielle, respectively, shall be gifted to the children and each shall be held jointly with the mother so she may manage the accounts.

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Wedding Negatives:

The husband shall deliver to wife's attorney all of the wedding negatives from the parties' wedding photos within 30 days of entry of the decree. The wife will make copies or prints and return the negatives to the husband's attorney within 60 days.

DONE IN OPEN COURT this January 22, 2009

Douglas A. Nord
JUDGE/COMMISSIONER

Presented by:

LAW OFFICE OF TED D. BILLBE, PLLC

By: [Signature]
Ted D. Billbe, WSBA #23021
Attorney for Petitioner

Copy Received; Approved for Entry;
Notice of Presentation Waived by:

Copy received by:
CAMDEN M. HALL, PLLC

By: [Signature]
Camden Hall, WSBA #146
Attorney for Respondent

APPENDIX F

MAR 03 2009

SUPERIOR COURT CLERK
BY ANNIE JOHNSON
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

Tracie Lynn Lang)

~~Plaintiff~~ Petitioner,)

vs.)

Brook Wester Lang)

~~Defendant~~ Respondent.)

NO. 07-3-04818-2 SEA

^{Denying}
~~ORDER ON CIVIL~~ MOTION

for Reconsideration

The above entitled court having heard a motion by Respondent Brook Lang for Reconsideration of its decision on the final Findings & Conclusions, Decree, Parenting Plan and Order of Child Support entered in this cause,

IT IS HEREBY ORDERED that the Motion for Reconsideration is denied. Ms. Lang testified at trial to several incidents between the parties that meet the statutory definition of Domestic Violence as set forth in RCW 26.50.010 (1): "... assault or the infliction of fear of imminent physical harm, bodily injury or assault, ..."

DATED: March 2, 2009

Douglas A. North

Presented by:

LW

2009 NOV -4 AM 12:59

NO. 63228-1-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

In Re the Marriage of

TRACIE LINN LANG,

Respondent,

v.

BROOK WESTER LANG,

Appellant.

CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury, hereby declares as follows:

1. I am employed by the law firm of Carney Badley Spellman, P.S. My business and mailing address is 701 Fifth Avenue, Suite 3600, Seattle WA 98104.

2. On November 4, 2009, I served by US Mail, one copy of the following documents on:

Patricia A. Novotny
3418 NE 65th Street Suite A
Seattle WA 98115-7397

entitled exactly:

**APPENDICES (AMENDED) TO APPELLANT'S OPENING BRIEF
(AMENDED)**

DATED: November 4, 2009



Claire Fox
Paralegal to Michael B. King
Carney Badley Spellman
701 Fifth Avenue, Suite 3600
Seattle, WA 98104
Tel: 206-622-8020
Fax: 206-607-4175
Email: Fox@carneylaw.com

CERTIFICATE OF SERVICE - 2