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No. 6428471

COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

DIANA MAE BLOME,

Appellant,

v.

DOUGLAS R. BLOME,

Respondent.

**RESPONDENT'S RESPONSE TO
APPELLANT'S REPLY BRIEF**

2010 APR 25 PM 1:08
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

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I. LEGAL ARGUMENT

A. THE COURT'S LETTER TO COUNSEL IS NOT A FINDING OF FACT, AND CANNOT BE A BASIS FOR APPELLATE REVIEW.

Diana refers to the Court's letter to counsel as a "finding" that, "were it not for the limitations imposed by a minor modification, the residential schedule should eventually be relatively equal between the parents;" and this in turn is an "implied finding" that there should be joint decision-making.

The Court's letter is not a Finding of Fact and cannot provide any grounds for review.

The entry of Findings of Fact and Conclusions of Law is governed by CR 52, which provides for notice to opposing counsel of the proposed Findings, presentation of the Findings, for an opportunity to object, and for other procedural protections. It is only when the requirements of CR 52 are met that a Judge's expressions of opinion can be characterized as either a Finding of Fact or a Conclusion of Law. A casual letter to counsel expressing the Court's thinking on an issue not before the Court is not a finding.

A formal Finding is of great significance in determining the scope of Appellate review. The Court's stray remarks should not be considered in determining the issue before this Court.

Even if the letter were properly part of the record on review, it would have no bearing on the issue of whether the Court's Findings justify its Order granting Diana joint decision-making. At most, the Court's letter indicates at the end of the three-year transition period, it might have considered a relatively equal residential schedule were it not for the limitations imposed by the statute governing minor modifications. This does not imply there should be joint decision-making during the transitional period.

B. THE COURT'S FINDING THAT DIANA SHOULD NO LONGER BE SUBJECT TO LIMITATIONS UNDER RCW 26.09.191 IS NOT SUFFICIENT IN ITSELF TO JUSTIFY MODIFYING THE PARENTING PLAN TO GIVE DIANA JOINT DECISION-MAKING.

Diana argues the Court's Finding that she was no longer subject to limitations under RCW 26.09.191 is equivalent to a Finding that she was immediately capable of performing all parenting functions, including making major decisions.

However, the Court's Finding represents nothing more than a determination of Diana's condition at the moment of the hearing on the modification. Given Diana's long history of emotional instability

and poor parenting, the Court prudently provided for a carefully monitored three-year long transitional period to gauge her continuing fitness as a parent and to gradually reintroduce her to Spencer, and Spencer to her. It would be no more appropriate to give Diana immediate joint decision-making without a trial period than to have given her a substantial increase in residential time without a trial period.

Diana had had very limited contact with Spencer during the two years preceding the modification and had been an indifferent and inadequate parent prior to that. Her decision making ability as to major aspects of Spencer's life has yet to be tested.

C. THE COURT'S ORDER CONFLICTS WITH ITS FINDINGS AND CONCLUSIONS.

Diana correctly states the Court is not obligated to adopt the recommendations of the Guardian ad Litem. The problem here is the Court did, in fact, adopt the Guardian ad Litem's recommendation that sole decision-making authority remain with Douglas Blome. The Court's order, however, is inconsistent with that Finding and Conclusion.

II. CONCLUSION

Since the Court's Order giving Diana Blome joint decision-making was neither supported by its Findings of Fact nor its Conclusions, it should be reversed.

RESPECTFULLY submitted this 25th day of May 2010.

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