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No. 66277-5-I

COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

TAMMY J. TRIPLETT, Appellee,

v.

STEPHANIE L. CASE, Appellant

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
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REPLY BRIEF OF STEPHANIE L. CASE

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I. STATEMENT OF NAME AND DESIGNATION OF PERSON FILING.

Reply Brief is filed by Stephanie L. Case, Appellant, Pro Se

II. STATEMENT OF RELIEF SOUGHT

The Appellant seeks to reverse trial courts findings and remand for trial.

III. STATEMENT OF THE CASE

A statement of the case was provided in Appellant's opening brief and not repeated here as a convenience to the court.

IV. ARGUMENT

Ms. Case provided that Ms. Triplett has failed to comply with court orders and had denied the residential provisions of the parenting plan with full knowledge of doing so and in complete disregard of agreed mediation. Ms. Triplett, in addition placed conditions upon the parenting plan, created substantial conflict, engaged in intentional exclusion, concealment and custodial interference in complete defiance of agreed mediation without reason in bad faith. The statute directs that a contempt order be issued.<sup>1</sup>

Ms. Case argues that if the court must weigh the evidence in the traditional manner to determine if the burden of proof by a preponderance of the evidence was met;<sup>1</sup>

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<sup>1</sup> In re James 79 Wn. App. 436; RCW 26.09.160(4). The party seeking enforcement of a divorce decree by means of an order of contempt of court bears the burden of proof by a preponderance of the evidence. The party's initial burden is to present evidence that the other party acted in bad faith, engaged in intentional misconduct, or that prior-imposed sanctions have not secured compliance with the decree.

The trial court must then weigh the evidence in the traditional manner and determine of the burden of proof was met.

If, as we have held, findings are necessary in the ordinary case, they ought to be more useful and necessary in a case of this character where the defendant may not only be fined but imprisoned. This court ought to know upon what specific acts the trial court held appellant to be guilty of contempt.

The trial court will then weigh the evidence in the traditional manner and determine whether the moving party has met his or her burden. If so, the statute directs that a contempt order issue.

then the same should be true and error exists if the court denies such evidence supporting that a party had acted in bad faith and committed intentional misconduct.

The trial courts oral findings; transcript of proceedings p 27 lines 16-21 is error and not supported by the record.

“Ms. Case it is clear to me from the record that I have seen including Judge Matson’s order that you have strong concerns about your lack of access or lack access to the children about your involvement in decision making for them, your ability to spend time with them and your strong belief that, that Ms. Triplett has failed to comply with court orders”

The court further stated; transcript of proceedings p 30 lines 1-6 in error by attaching a prior ruling to the courts conclusion.

“but Ms. Case, in light of Judge Matson’s order where there was real concern that these issues have continued to be essentially raised again and again in court. I have to; I think balance all of this and come to a conclusion

Ms. Case has pointed out that “these issues” had not been heard until the motion of contempt. That Judge Matson’s orders had nothing at all to do with the parenting plan, custodial interference or parenting issues. Further, Judge Matson’s orders had nothing to do with the numerous allegations of concealment or an unpaid childcare debt.

The courts oral findings are not an incidental remark, observation or a passing comment (*obiter dictum*) as Ms. Triplett provides. The court’s context defines these two findings as *Ratio decidendi*<sup>2</sup> and *stare decisis*<sup>3</sup>. The courts oral findings were an essential element of the courts decision by stating “these issues” when “these issues” are not the same issues. Ms. Case’s argument centers on “key wording” the court used “it is clear to me from the record” AND “that these issues have continued to be essentially raised again and again in court.” Here, the record supports that parenting plan issues have not been addressed since 2005. Further, the record supports that Judge Matson’s

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<sup>2</sup> *Ratio decidendi* is a Latin phrase meaning "the reason" or "the rationale for the decision." The *ratio decidendi* is "the point in a case which determines the judgment" or "the principle which the case establishes."

<sup>3</sup> *Stare decisis* is a Latin term ("to stand by things decided") used in common law to express the notion that prior court decisions must be recognized.

orders are not “these issues” nor have “these issues” been essentially raised again and again in court.

Nonetheless, Ms. Triplett’s counsel stated at transcript of proceedings p 5, lines 18-19;

(She) “was not prepared with specific factual responses to the various, whatever these allegations are. And this business of these orders intending to be only temporary due to a temporary residential issue is new to me. Today is the first I have heard of it.” See CP 51-54, 140, 169-170, 237

Ms. Triplett not only had full knowledge of the issue relating to Ms. Case’s temporary residential situation, she acknowledged it well before mediation even took place. The courts written order to FCS equally described that situation. CP 51, 200, 237

On October 19, 2010 the court’s interpretation is completely different; transcript of proceedings p 28

“And the transfer was for the purpose of mediation and it says adjustment of the respondent’s for, to mediate essentially adjustment of respondent’s time with the children until the respondent has her own residence and is able to resume the regular schedule under the parenting plan or until the parenting plan is modified.”

The courts finding appears to say that mediation was merely designed to discuss only Ms. Case’s time until she has her own residence. The January 28, 2005 orders both written at the same time do not describe it in this manner and the record does not support the courts analysis. On January 28, 2005 the court noted the parenting plan at the time was unworkable and the record provides (1) Ms. Case did not have a residence; (2) Ms. Triplett’s consistent denial of the dispute resolution process, (3) Ms. Case at the time had potential out of state visitation concerns related to employment. CP 51-54, 200-201

Furthermore, if the court’s interpretation was supportable by this described finding; then Ms. Triplett should still be held to full non-compliant contempt of the parenting plan provisions because Ms. Triplett was fully aware that agreed mediation concluded Nov 2005 and Ms. Case established a residence Dec 2005. CP 391-392

In re Marriage of Wolk 65 Wn. App. 356, 828 P.2d 643:

The court ruled Carol Wolk was not in contempt and ordered the parties to engage in mediation through the Dispute Resolution Center.

Similarly, the parties in the present case were instructed by order dated January 28, 2005 with Family Court Dept., the court in addition modified the parenting plan by means of a contempt motion. However, since the court did not record the matter to ascertain exactly what took place in proceedings, both written orders must be read conjoined to understand the courts direction and implied meaning. The court provided Ms. Case with a temporary overtime adjustment to a third weekend residential schedule because Ms. Case did not have a home at that time. On January 28, 2005 the courts unmistakable requirements were “pending an agreement in mediation” OR “a modification of the parenting plan”. The 2005 orders by the court understood the children's "best interests" standard and the provisions stated in the parenting act that specifically provides such interests are ordinarily served when existing patterns of interaction are maintained. RCW 26.09.002 In maintaining this standard, the court additionally added “+ other times the parties may agree.” Regardless, Ms. Triplett consistently denied even this provision.

The instructions to FCS further provided that the parties would be returning to the original parenting plan subsequent of “agreed mediation” OR “a modification of the parenting plan,” just as noted in part one of the first order that provides the temporarily adjustment. The court then provided in part two a continuation of instructions that state, “Once Ms. Case establishes a permanent residence to resume the regular residential schedule under parenting plan Sec 3 OR modification of the parenting plan.” There is nothing ambiguous about “OR”. The court did not establish a “must or shall” modify to resume a residential schedule. In either order the courts emphasis of “OR” is well

established; either agree in mediation and resume the residential schedule of the original parenting plan OR modify the original parenting plan. Regardless of the plain language in these orders, there is nothing remotely depictive that the court had placed a restriction of access or a limitation of any kind upon Ms. Case. Further, these orders then self-terminated upon agreement in mediation leaving the original parenting plan in tact without modification or change. Despite Ms. Triplett's full acknowledgment of agreed mediation, she continued to deny Ms. Case the return to the original residential schedule. In addition Ms. Triplett continued to violate numerous other sections of the original parenting plan that were never altered or modified by either parts of the 2005 temporary self-terminated court orders and did so without reason in bad faith.<sup>4</sup>

On October 19, 2010 the court first agreed the January 28, 2005 orders were temporary; transcript of proceedings p 5 lines 13-15, p 6 lines 9-15, 23-24. The court then changed that direction by describing the self-terminated orders as "floating out there for several years without perhaps clarity." Transcript of proceedings p 6 line 16 As a result, Ms. Triplett's counsel stated; "Well, correct. And contempt requires clarity." This requirement is not found in reviewing case law nor is this requirement noted by statute, including RCW 29.09.160. The herein provided case law and statute defines this requirement as "by a preponderance of the evidence" which Ms. Case had provided. However, regardless of the evidence that Ms. Triplett had acknowledged a clear and completely understanding, she continued to act in bad faith subsequent of agreed

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<sup>4</sup> RCW 26.09.160(1) states in part:

to refuse to perform the duties provided in the parenting plan, or to hinder the performance by the other parent of duties provided in the parenting plan, shall be deemed bad faith and shall be punished by the court by holding the party in contempt of court and by awarding to the aggrieved party reasonable attorneys' fees and costs incidental in bringing a motion for contempt of court.

mediation in all areas of the parenting plan, including continued denial of residential provisions in complete disregard of agreed mediation to cause harm.

The FCS dismissal states; “Mediation: The parties reached agreement on all issues referred to KCFCS.” CP 392 This dismissal establishes that mediation was agreed by both parties and acknowledges Ms. Triplett had a clear and complete understanding. Ms. Triplett filed no petition for modification of the original parenting plan. Ms. Case after establishing a home wanted to resume the residential schedule. CP 202 Ms. Triplett continued to deny in bad faith. CP 201 However, on October 19, 2010, the court in error denied that Ms. Triplett did anything wrong.

Ms. Triplett did not just act in bad faith since agreed mediation; she has clearly acted out custodial parent interference by limiting visitation through conflict. Ms. Triplett in addition concealed extremely relevant medical, educational and childcare concerns and intentionally excluded Ms. Case’s parental involvement and authority in numerous areas of the children’s lives to cause harm.<sup>5</sup>

In proceeding transcript p 7 lines 17-22 Ms. Case pointed out there were other provisions that were never modified or changed in the original parenting plan. The court still did not address contempt on these other provisions Ms. Case brought in violation of the parenting plan. In transcript of proceedings p 36, lines 10-18, Ms. Case again asked the court what about the other issues. The court acknowledged the question, and then completely ignored addressing Ms. Case’s concerns entirely.<sup>6</sup>

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<sup>5</sup> Marriage of Velickoff 95 Wn. App. 346; the court noted: it is the clear policy of the Washington Legislature to foster post-dissolution relationships between a child and each parent. RCW 26.09.002. Interference with such relationship is detrimental to the child's best interests. McDole, 122 Wn.2d 604. Here, there is ample evidence of Klink's concerted efforts to destroy Velickoff's parental relationship with their daughter, to the child's detriment.

<sup>6</sup> In re Marriage of Williams. 156 Wn. App. 22

In another example the court noted that Ms. Triplett had not provided Ms Case as prompt notice as she should. Transcript of proceedings p 30 lines 1-3 Ms. Case has been intentionally excluded from involvement, denied joint parental decision making authority and fully denied general duties as a parent. This is not merely just a prompt notification issue at all. It is custodial parent interference and intentionally exercised exclusion, in addition to various issues of concealment.

Ms. Triplett had already been warned 2002, 2005 and now 2010 to follow the parenting plan provisions. Regardless, Ms Case's concerns continue to be ignored. CP 210-235 Ms. Triplett's behavior remains unchanged since the contempt hearing. Ms. Case asks the court to request this additional evidence of conflict and child harm.

**In re Marriage of Myers 123 Wn, App. 889:**

Under RCW 26.09.160 (4), a parent who is subject to a judgment or order specifying a child's residential schedule is deemed to have the ability to comply with the residential provisions of the judgment or order and, if there is noncompliance by the parent, the parent has the burden of establishing, by a preponderance of the evidence, that he or she lacked the ability to comply or had a reasonable excuse for noncompliance.

Under RCW 26.09.160 (1), a parent who refuses to perform duties imposed by a parenting plan is per se acting in bad faith.

Ms. Triplett's accretion that she had a reasonable excuse is absolute nonsense. Ms. Triplett has known 100% exactly what she has been doing all along and had a clear and complete understanding residential visitation was to resume subsequent of agreed mediation. Ms. Triplett has, in addition violated ever provision of the parenting plan,

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"It is well within the trial court's discretion to hold that, when an initial petition alleges separate violations of a single court order, the incidents constitute a pattern of conduct that merges into a single finding of contempt when these acts are simultaneously declared to violate the order." *In re Marriage of Eklund*, 143 Wn. App. 207, 213, 177 P.3d 189 (2008).

A parent seeking a contempt order to compel another parent to comply with a parenting plan must establish the contemnors bad faith by a preponderance of the evidence. *James*, 79 Wn. App. at 442. In a contempt case the trial court balances competing documentary evidence, resolves conflicts, weighs credibility, and ultimately makes determinations regarding bad faith. *In re Marriage of Rideout*, 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003). We review the court's findings to determine whether they were supported by substantial evidence in the record. *Id.* at 352.

including unauthorized removal during visitation that includes showing conflict confrontations in front of the children establishing that Ms. Case's authority was meaningless to follow. Ms. Triplett has concealed several relevant measures to protect her own children from emotional harm; then kept those measures from Ms. Case's knowledge to cause irreparable harm. Ms. Triplett ignored Ms. Case's attempts to protect the children at the school and childcare levels. Ms. Triplet further ignored and concealed the recommendations by the child's primary physician for counseling from Ms. Case's knowledge. AOB Exhibit 4 pp 1-4 Ms. Triplett ignored and concealed the same recommendation she herself stated to a school nurse in stating she would like to get counseling for her son. CP 329 Ms. Triplett then kept these concerns concealed from Ms. Case's knowledge to cause further harm and never followed through with either recommendation to protect her own children's mental health from emotional harm; including the concerns provided to her by Deb Landis the school counselor for several years, well before any purported hospitalization was pursued or needed.

Response brief p 15, Ms. Triplett states the trial court relied heavily on the report of Dr Reiter. That the child had an emotional, violent breakdown at school, expressing homicidal thoughts, for which he was expelled from school and subsequently hospitalized. Additionally, the trial court noted:

"Shawn is doing somewhat better, that he is starting to do better in school, that he is starting to emotionally stabilize..... I am very concerned with anything that would begin to upset that process." Transcript of Proceedings, p 29, lines 17-22.

The courts statement "I am very concerned with anything that would begin to upset that process" includes manifestly denying Ms. Case's parental rights by means of a contempt motion filed to enforce the parenting plan provisions that Ms. Triplett had intentionally denied without reason and in bad faith.

The issue of the child having had an emotional, violent breakdown at school is not compelling. It should also be noted here the child has a documented history of defiant uncontrolled behavior. CP 160-166, 314-344 On May 19, 2009 the child became angry only because he was going to be expelled from school. CP 340 He obtusely expressed homicidal thoughts during a conversation with Deb Landis the school counselor after the fact in an attempt to establish this blame on Ms. Case's differences as cause rather than on himself for his own actions. Additionally, Deb Landis is the same school counselor that stated the child had no intention of homicidal ideations and the same school counselor that stated hospitalization was not needed. CP 326

Ms. Triplett's comment "for which he was expelled from school and subsequently hospitalized" is completely inaccurate. His outrage of anger followed by threats was the reason for his expulsion. His subsequent hospitalization was not an emergency; it was a non-emergency decision made exclusively by Ms. Triplett's concealed efforts without Ms. Case's entire involvement.

Ms. Triplett continued to exclude Ms. Case's involvement in several non-emergency medical decisions from May thru September 2009 and continued to conceal these events. CP 368-370, 372 This fact is provided by Ms. Triplett herself when she disclosed several other appointments October 1, 2009 of medical need, but concealed the mental health concerns conversed with the primary physician. CP 256

Further, the continued implication that Ms. Case has had involvement in numerous meetings is equally inaccurate. At transcript of proceedings p 8 line 16 counsel stated Ms. Case was at numerous meetings held at the school. This is a false statement of fact and substantially not possible when there was only one meeting. CP 325-326

The implication that Ms. Case had involvement with Fairfax hospital counseling officials is also inaccurate; there are no hospitalization documents to support this fact.

Ms. Case was asked to attend a meeting held on May 21, 2009 by the school, not Ms. Triplett. This meeting was designed to create educational tutoring and work packets while the parties son was out of school. CP 326 Although nothing was ever created or followed through. The school officials went over the manifestation determination regarding the events of May 19, 2009 as shown by the May 21, 2009 meeting minutes. CP 325-326 Additionally, the meeting minutes specifically noted a 30-minute phone conversation the day after the event between the school counselor Deb Landis and what appears to be a self-styled insert to reference "Dr Milo". CP 325 Ms. Case pointed out in her declarations and transcript of proceedings p 9 that Ms. Milo was not a Doctor or a Psychiatrist. Ms. Milo is merely a psychotherapist counselor limited to conversational counseling. It was this therapist's comment made exclusively by phone with the school counselor that created the entire illusion of a psychotic break. Notwithstanding, Ms. Milo recommended an evaluation not hospitalization, in addition she felt the child should not be around a specific teacher, but never spoke of any concern being around Ms. Case. CP 325 However, the surprised motions incorporated into the contempt proceeding involved entirely Dr Reiter's declaration. Furthermore, although Ms. Milo is mentioned within the body of evidence, there is nothing in the record that provides a clear understanding or the full ramifications and results of counseling from April to July 2009 with counselor Elizabeth (Zanny) Milo. Additionally, Ms. Case was equally denied in the decision making appointing even this counselor.

Nonetheless, the record still does not support Ms. Triplett's portrayal of events. On May 19, 2009 the child became angry by slamming his fist on the table and cursing

while in the vice-principals office because he was getting suspended from school and then threatens to come back in a rage if he is suspended. CP 340 Granted he said he was having blackouts and could not recall things, but he appears to be in control of his thoughts through action and verbal threats. Further, there has never been any sign of memory loss or blackout issues in the previous eight years at the school or childcare levels. The child's medical record does not contain any concern of memory loss or blackout issues until after this event and the court record contains no factual indication or occurrences of this issue. Despite these facts, there have been no further episodes or events of memory loss or blackouts since this event. Although Ms. Triplett concealed several medical appointments from Ms. Case's knowledge; Ms. Triplett never did follow through with medical recommendations under plan of care numbers 4 or 7 to rule out mal seizures. CP 367, 369, see also CP 256

The parties son did not display nor speak of these issues during events or outings while in Ms. Case's care. The childcare director Carol Livingston; that cared for these children from Dec 2001 to June 2009 mentions that defiant behavior was an issue, but stated these other issues were not present within the previous eight years of childcare. In fact, Ms. Livingston states exactly the opposite; that Ms. Case's differences were not the issue or responsible for their son's defiant behavior and inferred that Ms. Triplett simply did nothing to discipline. CP 160-166, see also AOB Exhibit 9

On October 19, 2010 transcript of proceedings pp. 10-11 the court was presented that this entire event was an emergency and the decision was taken by the school. It is true the expulsion May 19, 2009 was taken by the school for breeching school policy. The events following and involving an emergency decision for hospitalization was not.

Ms. Triplett never disclosed nor provided for Ms. Case's involvement in appointments with the primary physician from May thru September 2009. CP 368-370, 372 Ms. Triplett never disclosed nor provided for Ms. Case's involvement in any attempts for hospitalization or psychiatric treatment with Dr Reiter, including continued counseling with George Heatherington. CP 245, 247-250 However, Ms. Triplett without authority to do so dictated that Ms. Case would be required to do further counseling before seeing her son. CP 208 Additionally, Ms. Triplett misrepresented by declaration that Ms. Case had agreed to stay away from the child since June 2009. CP 380 Ms. Case pointed out that this was a blatant misrepresented statement of fact and provided this court with factual evidence to sustain this loss. AOB Exhibit 8, see also CP 155-156, 245

Furthermore, Ms. Case was completely excluded from the next and only known subsequent meeting held at school on Jan 26, 2010 because Ms. Triplett concealed every aspect of the meeting scheduled. CP 317 This meeting furthered the illusion of a psychotic break by establishing that this diagnosis was made by a psychiatrist when it clearly was not. CP 318

However, the court stated, "Shawn is doing somewhat better in school." Ms. Case argues from where does the record support the courts finding. There is nothing in Dr Reiter's declaration to support this finding and Ms. Triplett did not provide any documentation to support this fact. In fact, Ms. Triplett never supplied any documentation of any kind in opposition to the numerous violations raised.

Ms. Case had provided documentation of the child's report cards to support her position that he is not doing any better in school and is currently failing the needed credits to graduate. CP 321-322, AOB Exhibit 4 p. 9. Ms. Case in addition had provided another outburst of negative behavior on March 4, 2010. The described circumstances in

this event from what the child was doing are disturbing, however the behavior displayed was simple disrespect for a teacher's authority. The child noted to a school counselor his medication was not working and wanted to return to Fairfax to get help. Here, he again obtusely adds that he sometimes thinks of hurting himself, but has no plans. Although now, he states that he can black out when he gets mad and thinks about hurting others. CP 315-316 However, on January 21, 2010 during the only meeting with Dr. Reiter the child told Ms. Case that he was forced to go to Fairfax, but Dr Reiter does not mention this fact in his declaration. Nonetheless, it should be noted here that Ms. Case had not had visitation with her son for almost a year prior to this event. Regardless, the behavior and disrespect for authority is the same and remains unchallenged even without Ms. Case's differences to blame.

Ms. Case has been denied parental involvement and argues from a parental perspective. This behavior appears to suggest a pattern of one story after another and appears to continue in context of Dr Reiter's declaration. Additionally, to support a pattern of story telling behavior Ms Case includes a concealed notice provided to Ms Triplett from the childcare. Exhibit A, see also CP 160-166 questions 9-12, 16, 22, 28, 29

Ms. Triplett states "Dr. Reiter's report explains the child's history." Ms. Case contends that Dr. Reiter's declaration falls short on the child's history. Dr. Reiter leaves out extremely crucial mental health concerns that Ms. Triplett had in fact concealed measures provided to her to protect her own child's mental health and emotional growth. Nonetheless Dr. Reiter obtrusively withheld this crucial information from his declaration. Dr. Reiter was fully aware of these concealed measures because Ms. Case had included those medical reports and several email correspondences of conflict with the letter dated

Dec 12, 2009, including the conflict of Ms. Triplett denouncing Ms. Case's authority in front of the children. AOB Exhibit 5

Dr Reiter's declaration went on to say "He wrote what he referred to as a "psychotic paper," developed rage, and subsequently blacked out at school which greatly concerned the school personnel." CP 399 This statement is not supportive of the factual documentation provided by the school on the day this event took place, further the child was not even in class. CP 340

Dr Reiter spoke of medical record reports in that as a young child he experienced ongoing problems with encopresis and enuresis. CP 399 However, Dr Reiter fails to report that on the exact date regarding this concern, that Ms. Triplett had provided the child's primary physician false allegations that the child was sexually abused by his older brother, regardless of the child's denial that these events had not occurred in multiple discussions with the physician in private. These false allegations and events are noted in the child's medical record without foundation and Ms. Triplett withheld this significant information from Ms. Case's knowledge. AOB Exhibit 4 p 5-8 The child also describes a denied conversation by his sister that she was not sexually abused by his older brother, yet he expresses sincere remorse and emotional harm because he was not able to see his brother for two years. CP 399-400

Dr Reiter also noted, "as the child grew he believed that his father was not there for him and that he really didn't know who his father was." Frankly, it is not hard to comprehend as the record provides; that it was Ms. Triplett's concealment and intentional exclusion of Ms. Case's parental involvement and authority that eluded and destroyed any possible relationship between the child and Ms. Case.

Additionally, Dr. Reiter specifically points out that Ms. Triplett did not adversely influence the child. However, the child provides an influenced false statement “his father often makes plans and doesn’t follow through on them.” CP 400 Ms. Case provided that Ms. Triplett had had a substantial influence over this child. In fact Ms. Triplett refused to discuss the conflict driven statement she made that is identical in context to the child’s influenced false statement. CP 299

The mere concept of conveniently using Ms. Case’s differences is an excuse to cloak and cover to hide his own bad disruptive defiant behavior. Ms. Case’s Dec 12, 2009 letter merely provided an alternative that her son simply did not like Ms. Case’s authority and firm parental accountability rather than her differences; provided that the child’s dislike of authority was not merely limited to Ms. Case alone and provided that Ms. Triplett had excluded Ms. Case from visitation, joint decisions and parental involvement. Nonetheless, Ms. Triplett continued to create custodial conflict and parental interference by consistently refusing to follow the dispute resolution process. CP 280-281, 302-303, see also CP 225-228 In spite of this, Ms. Triplett systematically seemed to encourage this behavior without discipline just as much as Ms. Triplett is responsible for her own bad faith behavior. The damage inflicted by Ms. Triplett’s parental influence, conflict, concealment and custodial interference is the direct result of destruction to Ms. Case’s parent-child relationship. Regardless, Ms. Case is manifestly denied due process to pursue RCW 4.56.250(b).<sup>7</sup>

Response brief p 15, Ms. Triplett stated Ms. Case was given the opportunity for another hearing in regard to Dr Reiter’s declaration and declined a continuance. Ms.

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<sup>7</sup> RCW 4.56.250 (b) "Noneconomic damages" means subjective, nonmonetary losses, including, but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

Case did not decline; she disagreed with the court and stated that these parent-child issues were preventable. The court then stated “And you want to take that up in your civil lawsuit then?” Ms. Case agreed to that question and the court used that alone to move forward. Counsel has taking this out of context as presented in proceedings p 30 line 7-16

In re Marriage of Kovacs 67 Wn. App. 727, 840 P.2n 214 the court noted:

The court in reviewing the record, found no evidence Mrs. Kovacs personality or parenting style had a negative impact on the children.

In reviewing the record in the present matter before the court the same is true. There is no evidence that Ms. Case’s transgender status or parenting style had a negative impact on the children. The affidavit by Carol Livingston, who cared for these children for eight years additionally supports this argument. CP 160-166, see also AOB Exhibit 9

The declaration provided by Dr. Reiter stated there is no abuse and confirms only one single appointment; nonetheless nine months after the fact. Further, Ms. Case has had no other meetings, tests, consultations or an imputed voice as a parent with Dr. Reiter and counselor George Heatherington refused to respond to Ms. Case’s letter. AOB Exhibit 5

Ms. Triplett’s response brief repeatedly states the court had substantial evidence. However, a one line reference in Dr. Reiter’s declaration that states; “I am concerned that forcing him to see his father would reactivate that situation” is not considered substantial; it is speculation. CP 401 Since the court “must” reflect actual circumstances supporting such findings, not just an expert’s predication.<sup>8</sup> Dr. Reiter’s declaration should be treated

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<sup>8</sup> In re Marriage of Kovacs 67 Wn. App. 727, 840 P.2n 214  
The court further stated that the children's "best interests" are of primary concern in placement decisions. But the parenting act specifically provides that such interests are ordinarily served when existing patterns of interaction are maintained. RCW 26.09.002. The court held the record must reflect actual circumstances supporting a change, not just an expert's prediction of benefit. Otherwise, placement decisions are based on speculation, not evidence. The evidence relied on by the trial court was insufficient to support the court's findings. Since the findings relate to the factor which is to be given the "greatest weight" in determining residence, see RCW 26.09.187(3)(a), the matter was reversed and remanded for trial.

as speculation and dismissed. There is nothing in the record to support the courts findings.

In every matter shown below, the abuse of discretion standard involved orders by a trial court's ruling based on untenable grounds when the factual findings in support of the ruling were unsupported by the record. A trial court's ruling was made for untenable reasons if it is based on an incorrect legal standard or facts of the case did not satisfy the requirements of the standard.

Should the case law depictions also mean that when findings are supported by a preponderance of evidence in the record that sustains the burden was met, yet denied by inaccurate trial court findings when those findings are inconsistent and unsupported by the record?

In re Parentage of Jannot 110 Wn. App. 16 the court noted:<sup>9</sup>

The abuse of discretion standard is much more consistent with the nature of a custody action. Custody, and the purpose of requiring this threshold determination to limit disruptive and potentially harmful custody litigation, is better served by application of the abuse of discretion standard. See Landry, 103 Wn.2d at 809-10.

The abuse of discretion standard is not, of course, unbridled discretion. Through case law, appellate courts set parameters for the exercise of the judge's discretion. At one end of the spectrum the trial judge abuses his or her discretion if the decision is completely unworkable, factually. On the other end of the spectrum, the trial judge abuses his or her discretion if the discretionary decision is contrary to the applicable law.

In re Marriage of Thomas 63 Wn. App. 658, 827 P.2d 1227<sup>10</sup>

The law is well established that factual issues will not be retried on appeal. The court's findings of fact will be accepted as verities on appeal as long as they are supported by substantial evidence in the record. In re Marriage of Nicholson, 17 Wn. App. 110, 114, 561 P.2d 1116 (1977).

In re Marriage of Littlefield 133 Wn.2d 39, 46, 940 P.2d 1362 the court noted:

Courts-Judicial Discretion-Abuse-What Constitutes-In General. For the purposes of the abuse of discretion standard of review, a trial court's ruling is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard. A trial court's ruling is based on untenable grounds if the factual findings in support of the ruling are unsupported by

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<sup>9</sup> In re Marriage of Maughan 113 Wn. App. 301 the court upheld relatively the same as Jannot

<sup>10</sup> In re Marriage of Thomas 63 Wn. App. 658, 827 P.2d 1227.

The trial court's considerable discretion in making a property division will not be disturbed on appeal absent a manifest abuse of that discretion. A manifest abuse of discretion is a decision manifestly unreasonable or exercised on untenable grounds or for untenable reasons.

the record. A trial court's ruling is made for untenable reasons if it is based on an incorrect legal standard or facts of the case do not satisfy the requirements of the standard.

In re Marriage of Kovacs 67 Wn. App. 727, 840 P.2n 214 the court noted:

Divorce-Custody of Children—Review—Standard of Review. A trial court's child custody decision in a marriage dissolution action is reviewed under the abuse of discretion standard. A trial court abuses its discretion by making findings that are not supported by the record.

On October 19, 2010, the court's written findings are generalized and vague, Order on

Show Cause at 2.7; filed with Appeal motion.

"the petitioner has complied, and is presently willing to comply, with the courts orders dated 2/28/2000 (parenting plan) as modified by the order on civil motions signed by Judge Middaugh on 1/28/2005 to the extent it modified the parenting plan."

The court did not make a specific finding to support the ruling and the findings are not supported by the record when attached to prior rulings in error or when based on self-terminated orders. Especially when those self-terminated orders allowed for an "either or" content that nonetheless was already satisfied by agreement in mediation.

Further, the trial court permanently modified the terms of the original parenting plan by means of a contempt motion outside of statutory requirements and court rules. RCW 26.09.002, RCW 26.09.160, RCW 26.09.184, RCW 26.09.187, RCW 26.09.191, RCW 26.09.260, RCW 26.06.270, LFLR 13

In Brin v. Stutzman 89 Wn. App. 809 the court noted:

[8] Appeal-Findings of Fact-Review-Conclusions of Law. A trial court's findings of fact entered in support of a civil judgment are reviewed to determine if they (1) are supported by substantial evidence in the record and (2) support the court's conclusions of law. Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.

[9] Appeal-Findings of Fact-Review-Burden of Proof. A party challenging a finding of fact has the burden of demonstrating that it is not supported by substantial evidence in the record. Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.

[14] Appeal-Frivolous Appeal-What Constitutes-In General. For purposes of awarding attorney fees on appeal under RAP 18.9(a), an appeal is frivolous only when, after considering the record in its entirety and resolving all doubts (i.e., the appeal is so devoid of merit that no reasonable possibility of reversal exists).

The court also noted:

An appeal is not frivolous merely because the reviewing court rejects the appellant's arguments.

In *Brin v. Stutzman* the court also noted:

[15] Appeal-Review-Issues not Raised in Trial Court-Issue Affecting Right of Action. An appellate court may consider an issue raised for the first time on appeal if it affects a party's right to maintain an action.

The contention here is the point Ms. Case is arguing (1) the falsely deprived civil complaint seeking damages<sup>6</sup> in light of manifest constitutional ramifications of denied due process. The prevailing case law *In re Strode v. Gleason* 9 Wn. App. 13 supports this argument.<sup>11</sup> (2) That issue preclusion (*Res Judicata*) is improperly used and is not supported by the record.

In *Brin v. Stutzman* the court also noted:

[16] Appeal-Review-Issues not Raised in Trial Court-Discretion of Appellate Court. An appellate court may consider an issue raised for the first time on appeal if resolution of an issue is necessary to the court's ability to render a proper decision in the case.

The contention here is the point Ms. Case is arguing (1) the courts improper use of orders that self-terminated upon the conclusion of agreed mediation (2) the requests to vacate prior orders, basis detrimental reliance (3) that Ms. Triplett was fully aware with a clear and complete understanding of every issue and had the ability to follow the parenting plan, yet refused to follow in bad faith by creating substantial custodial interference and parent-child conflict in addition to concealment to cause harm.

Furthermore, Ms. Triplett's counsel had misrepresented several other relevant facts. Response brief p 7, that Ms. Case sought to vacate the decree of dissolution in

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<sup>11</sup> *In re Strode v. Gleason* 9 Wn. App. 13

[1] Torts-Remedies-New or Unique Cause of Action. The common law is sufficiently adaptable to provide a remedy for one injured by the conduct of another even though the asserted right is novel and there is no precedent for such an action.

[2] Parent and Child-Alienation of Affection-Parent's Right to Action. A parent may bring an action for damages based on the malicious alienation of the affections of a minor child. [Sec Ann. 12 A.L.R.2d 1178, 1181; 59 Am. Jur 2d, Parent and Child 107.]

[3] Parent and Child-Alienation of Affection-Elements-Malice. In order to establish a cause of action for alienation of a child's affection a parent must show malice in the form of an unjustifiable interference with the parent-child relationship.

[4] Torts-Alienation of Affection-Accrual of Action. An action for alienation of affection accrues when the loss of affection is sustained, i.e., when some overt act takes place indicating a lack of affection and making the parent aware that a hurt is suffered.

2008; she did not. Response brief p 8, that Ms. Case became dissatisfied with the dwindled relationship after her son was hospitalized, to which Ms. Case was said to have initially agreed; she did not. Ms. Case reluctantly agreed to a one time visitation request by Ms. Triplett, this was not intended elimination or participation as portrayed. CP 245, AOB Exhibit 8 Ms. Case was said to have been involved in these decisions; she was not.

Ms. Case has repeatedly tried without success since the conclusion of agreed mediation and provided Ms. Triplett's continued conflict and arguing in excess of denying Ms. Case the return to the residential schedule. This fact is shown by countless email correspondences and there remain additional facts to support this argument.

Ms. Triplett's counsel provides the list from Ms. Case's civil complaint that was inappropriately dismissed November 19, 2010. Additionally, on December 8, 2010 Ms. Case was denied notification of a court initiated motion of judge transfer. The motion notice was addressed to Ms. Case and in error mailed to Ms. Triplett's residence. Ms. Triplett and counsel both remained silent; did not forward this notice to Ms. Case or notify the court of this error. AOB Exhibit 11 p 13

Further, Ms. Triplett successfully increased child support another \$250.00 per month amidst the contempt motion with a tacked on motion to adjust support, thus Ms. Case was forced by economics to choose only one appeal over another.

Nonetheless, this does not change nor affect the manifest loss of denied constitutional due process or the misrepresented facts counsel provided to the court during the November 19, 2010 hearing; (1) that Ms. Case brought an action of contempt before Judge Matson, she did not. (2) that Judge Matson had enjoined Ms. Case ability to file proceedings because there had been a history of frivolous filings, when Judge Matson specifically stated otherwise. Despite the fact that Ms. Case has provided evidence that

Ms. Triplett had concealed extremely relevant information of debt from the 2007 support modification and the 2008 vacate proceedings. CP 345-360 Additionally, (3) counsel inappropriately stated that Judge Middaugh's temporary 2005 self-terminated orders had imposed a restriction of access upon Ms. Case; and (4) counsel continued to purport issue preclusion (*Res Judicata*) when these arguments have never been heard. The continued implication and use of issue preclusion (*Res Judicata*) is in error.

Ms. Case had detrimentally relied on the fact daycare tuition was being paid timely. However, the ensuing \$6300.00 old daycare debt shown by the evidence confirms Ms. Case was forced by deception into paying additional fees, interest and late penalties for years due to Ms. Triplett's concealment. CP 345-360, see also CP 283-290, 293-294 Ms. Triplett continued to conceal a \$6300.00 childcare tuition expense debt Ms. Case had already paid. Despite 2008 vacate proceedings that caused Ms. Case to incur \$5500.00 in fees that included Judge Matson's enjoining order and despite additional 2009 letters for production of expenses. CP 278-281, AOB Exhibit 2, AOB Exhibit 11 p 36-38 This also is despite information requests for disclosure 2007 support modification and despite Ms. Triplett's own promise she made in open court May 24, 2007. Transcript of Proceedings p13 lines11-19, AOB Exhibit 1 p 12 lines 3-7, see AOB Exhibit 1 pp 10-34, see also CP 264, 292-295 The doctrine of Promissory Estoppel<sup>12</sup> should apply.

However, on motion to affirm p 5 and response brief p 18 Ms. Triplett's counsel states that Ms. Case did not raise this issue regarding the old daycare expense during proceedings, plus stated that Ms. Case orally requested the additional \$735. On motion to

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<sup>12</sup> The doctrine of Promissory Estoppel states in part;  
\* A promise was made \* Relying on the promise was reasonable or foreseeable \* There was actual and reasonable reliance on the promise \* The reliance was detrimental \* If the promise is not enforced, injustice will result.

affirm p 7 and response brief p 18, Ms. Triplett's counsel stated that Ms. Case requested for the first time during the contempt motion the additional \$735, see CP 312, 359-360

Ms. Case initiated the argument of both issues in her opening and response declarations on contempt CP 141, 177-179 The old childcare debt issue was raised in addition to Ms. Triplett's custodial conflict and parental interference. This issue was first attempted in proceedings p 25 line 12, and then raised again during proceedings at p 26. However, the court immediately snubbed Ms. Case's distress by forcing the issue of arrears between these parents. Ms. Case has repeatedly questioned the issue of arrears, especially in light of Ms. Triplett's concealed childcare payment history and promises; the prevailing debt supports this argument. CP 345-360, AOB Exhibit 11 p 36-38

The court left Ms. Case vulnerable to financial damage because the debt is held by a private third party and much more than a debt merely between these parents. Nonetheless, this third party has already caused damage to Ms. Case, regardless of the fact Ms. Case had already paid this debt in a support transfer payment. CP 141-142, AOB Exhibit 11 p 36-38

Additionally, Ms. Case just learned Ms. Triplett has again deceived the court in reporting 2010 employer related furlough days used to reduce her income in the tacked on motion to adjust support and withheld information that this was a one time cost saving measure for the City of Seattle, Ms. Triplett's employer.

The City of Seattle 2011 Adopted & 2012 Endorsed Budget Report (954pages):

At page I-5 states in part:

On November 22, 2010, the Seattle City Council passed unanimously the 2011 Adopted Budget and the 2012 Endorsed Budget. <> While including a number of notable changes, the budget adopted by the Council largely reflects the themes and changes that were originally proposed by Mayor Mike McGinn when he transmitted his recommended budget to the Council on September 27, 2010.

At page I-16 states in part:

Because on-going salary savings are captured from the changes described above, and because furloughs only generate one-time savings, the 2011-2012 Proposed Budget does not rely on widespread furloughs. Most departments and employees will not furlough in 2011.

Ms. Case has supplied a caption in part of the 2011 Adopted & 2012 Endorsed Budget Report, pp I-5, I-16 as a convenience to the court. Exhibit B The entire report is available on the City of Seattle web site.

Ms. Case did not apply error to Ms. Triplett's tacked on support adjustment because Ms. Case detrimentally relied on the same evidence the court did. However, on October 19, 2010 amidst the contempt proceedings Ms. Triplett successfully increased child support that transcends into the next three years to Ms. Case's detriment based on a false reduced income in connection with those furlough days that existed only for 2010. Transcript of proceedings pp 13-16, 22-23. In fact Ms. Triplett's income did not reduce at all, but rather increased substantially without further furlough reductions. Ms. Triplett is a member of the union coalition that collectively bargained with the Seattle City Mayor's office prior to September 27, 2010 that effectively eliminated furlough requirements from the 2011 Adopted & 2012 Endorsed Budget. Ms. Triplett had this knowledge, remained silent and failed to provide this information. As a result, Ms. Case is now asking the court to consider vacating the tacked on motion to adjust support based on this misrepresentation and remand for trial.

Furthermore, Ms. Triplett does not address nor provide any argument relating to the allegations of concealment she withheld from the court during the 2007 support modification or the 2008 vacate proceeding. Ms. Case did not appeal the decisions in 2007 or 2008(9) because there was nothing to appeal. Ms. Case was unaware and detrimentally relied on the same information provided during these proceedings as much



discretion, the prevailing party on appeal must make a showing of need and of the other's ability to pay fees in order to prevail. *Konzen v. Konzen*, 103 Wn.2d 470, 693 P.2d 97.

Ms. Case had made a showing that Ms. Triplett's income is substantially greater, too Ms. Triplett successfully increase support to Ms. Case's detriment.

Respectfully, Ms. Case requests applicable interpretation of self-terminated 2005 orders and the request to vacate orders base on concealment and misrepresentation.

Citing, *In re Brin v. Stutzman* 89 Wn. App. 809 note 16 on page 19 of this reply.

Ms. Case respectfully requests "examination" of manifestly denied constitutional due process of her civil complaint because of the substantial errors in both proceedings.

The questions being raised for the first time on appeal is appropriate considering the extensive damages Ms. Case has sustained. The request should equally hold footing within this appeal regardless of how unconventional the request may be. The parties are the same and the issues are relative. The only differences between them; one contains the acts and the other requests for damages caused by those acts.<sup>6</sup>

Ms. Case is asking the court to waive the rules taking into consideration RAP 2.5(a)(3), citing, *In re Brin v. Stutzman* 89 Wn. App. 809 note 15 on page 18 of this reply and the case law established *In re Strode v. Gleason* 9 Wn. App. 13 that supports the argument.<sup>10</sup> Thus should be consolidated for remand to trial to meet the ends of justice.

I declare under the laws of the State of Washington that the forgoing is true and correct.

Signed at Kent, WA on June 23, 2011

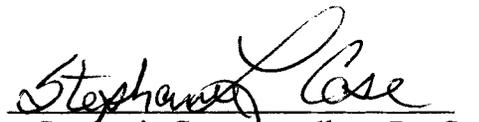
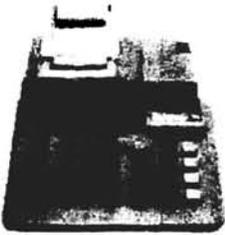
  
Stephanie Case, Appellant, Pro Se

Exhibit A



## KidKare SchoolHouse inc.

832-21 st. S.E. Auburn, Wa 98002

253-939-4550

Name Sammy

Date 8.8.07

Sammy,

Wanted to let you know Shawn is

trying to get stuff from other kids,

last week he tried to trade his "b4" for  
another D.S. mactendo, when I saw it with  
him I gave it to parent & explained to  
him No trades @ daycare! Again today

he came with a different student's  
crystal necklace in trade for his "b4" I  
explained again, he told me & the other  
teacher different stories, he said he traded  
in parking lot w/ kids w/o no permission  
and then in parking lot when child said  
his mom said ok! The "trade" happened

in room #5 - I'm having to tell a lot of  
lies, to continue. Not good! We've also been  
having complaints from other parents as well  
as students about this hygiene this needs to  
be addressed! Call me if you have questions.  
I've talked w/ Carol about this!

Thanks

Lisa

**Exhibit B**

## Overview of Proposed Budget

On November 22, 2010, the Seattle City Council passed unanimously the 2011 Adopted Budget and the 2012 Endorsed Budget. The purpose of this summary is to document the significant changes the Council made to the 2011-2012 Proposed Budget. This summary is intended to complement and provide an update to the 2011-2012 Proposed Budget Overview, which describes the major themes and trends for the 2011-2012 budget. While including a number of notable changes, the budget adopted by the Council largely reflects the themes and changes that were originally proposed by Mayor Mike McGinn when he transmitted his recommended budget to the Council on September 27, 2010.

### 2011 Adopted and 2012 Endorsed Budget

I-5

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**Capturing Savings in Labor Costs:** City employees have historically shown a willingness to make sacrifices in order to save the City money and to preserve direct services. In 2010, a majority of the City's employees agreed to furlough. In addition, the City's Labor Management Healthcare Committee continues to identify opportunities for savings in the City's healthcare costs through adjustments to health insurance plan design, specifically in those areas that help manage plan utilization. The 2011-2012 Proposed Budget reflects this continued commitment on the part of City employees to make changes in their compensation to save the City money. First, the 2011-2012 Proposed Budget assumes that incumbents in all discretionary pay bands (including strategic advisors, managers, executives, and information technology professionals) will receive no market rate salary increase for 2011 (effectively a salary freeze). Depending on the specific employee group, this represents the second or third year that many of these employees will not receive market rate salary adjustments. For 2011, this decision will save the City's General Fund \$700,000 and the City's non-General Funds \$1.5 million.

Second, the Mayor and City Council are engaged in talks with the Coalition of City Labor Unions (Coalition) to identify mechanisms for reducing labor costs. Under a tentative agreement reached with the Coalition, the current 2% cost of living increase floor would be reduced to 0% through 2013 and cost of living increases would be tied to actual inflation as measured by the Consumer Price Index (CPI). For 2011, the CPI rate is 0.6%, or 1.4% lower than the existing 2% floor. If the tentative agreement is approved by the Coalition of City Union membership, this new arrangement will allow the City to save \$2.3 million in the General Fund and \$3.4 million in the non-General Funds. The agreement affects 6,000 City employees. If the agreement is not successfully ratified by the second week in October, the Mayor will submit additional budget reductions to the City Council in order to balance the budget.

Because on-going salary savings are captured from the changes described above, and because furloughs only generate one-time savings, the 2011-2012 Proposed Budget does not rely on widespread furloughs. Most departments and employees will not furlough in 2011. However, staff in the Executive Offices will participate in limited furloughs to generate additional one-time savings in addition to the market rate adjustment salary changes described above. The Law Department also plans on furloughing employees in 2011. In total, these furloughs will save the City nearly \$742,000 in 2011.

### 2011 Adopted and 2012 Endorsed Budget

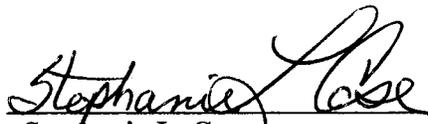
I-16

CERTIFICATE OF MAILING

I, Stephanie L. Case, on the 23<sup>th</sup> day of June 2011, did mail copies via U.S. Mail postage prepaid of this Reply Brief of Appellant to the following parties:

Court of Appeals, Division I  
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Seattle, WA 98101

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Stephanie L. Case