

73404-1
NO. 723404-1-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CAROLINE MARIA VAUGHAN, a/k/a Caroline Caylor

Appellant,

v.

NATHANIEL CAYLOR,

Respondent.

COURT OF APPEALS
STATE OF WASHINGTON
2016 FEB - 1 AM 10:23

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

The Honorable Mary Roberts

REPLY BRIEF OF APPELLANT

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In addition to the issues and arguments presented in the Appellant's Opening Brief, Ms. Vaughan respectfully offers the following for the consideration of this Court.

A. INTRODUCTION

Mr. Caylor's 54 page brief contains more misstatements and misrepresentations than it is possible to individually rebut within the scope of a reply brief. Many of the misrepresentations do not relate to any particular issue raised in the Opening Brief and are simply attempts to throw mud at Ms. Vaughan and confuse this Court. Where the specific misrepresentations relate to a particular issue, they will be noted in argument presented on that issue.

Ms. Vaughan requests this Court keep in mind that while Mr. Caylor's arguments are presented in the context of his characterization of Ms. Vaughan as a pathological liar who does not do anything correctly and of himself as an innocent victim of police brutality who is heroically raising his son alone, the evidence shows that the truth is very different from this portrayal. Ms. Vaughan has never been arrested, did well in school, played pro golf for two years, and has worked full time while being solely responsible for raising the parties' daughter Portia. She has never been in trouble of any kind, files her tax returns, and has no substance or alcohol or mental health issues. She historically had no involvement with CPS, police, DSHS, the court system,

domestic violence, or any background that would give her any understanding of how these systems operate or what a textbook-perfect domestic violence victim would look like to Judge Roberts. Several judges have found her allegations of domestic violence by Mr. Caylor to be credible. CP 649, 834, She caretakes her mother, who has cancer.

Mr. Caylor, on the other hand, has multiple convictions beginning in his teen years, including disorderly conduct, a DUI at 16, and felony harassment in 2009. CP 841, 549. He stole money from his parents and ran away from home at 16 with an older woman with whom he eventually had a child - a son with whom he is prohibited by court order from residing. 1 RP 81. His work history has been spotty and he has been on L&I for several years. He has a history of using cocaine. CP 841. In 2009 he had a highly-publicized run-in with the police during which he screamed profanities at them during a welfare check and threatened a "blood bath" if they didn't leave. CP 695. The welfare check was necessitated by his aunt Caroline Stillabower's police report that he was currently drinking a great deal and suicidal after his girlfriend's death and his uncle's report that Mr. Caylor had told him he would kill himself. CP 696-7.

While Mr. Caylor was already on L&I disability and expected to never need to work again, the police incident

necessitated many surgeries. He has denied he was suicidal during his police run-in in 2009 despite his aunt's and uncle's accounts of his suicidal statements. The Family Court Services worker recommended that the trial court grant a DVPO, that Caylor participate in batterer's treatment, and that his residential time with Portia be supervised. CP 849. He was ordered to do these things on December 22, 2014, and never did them, choosing instead not to see the parties' daughter at all. CP 290. He has not worked for several years and lives with his parents. 3 RP 154.

B. ARGUMENT

1. THE PRIOR RESTRAINTS ON SPEECH TO THIRD PARTIES - NOT THE PARTIES' CHILD - IS UNCONSTITUTIONAL AND CAYLOR CITES NO CASE APPROVING SIMILAR RESTRAINTS

Mr. Caylor analogizes the restraint in this case to cases dealing with the normal restraints prohibiting parents from making disparaging remarks about the other parent to the parties' child. Brief of Respondent at 39-43. These cases do not apply to this case as the prior restraint objected to here restrains Ms. Vaughan from certain speech to caregivers, not to her child.

Mr. Caylor fails to succeed in distinguishing In re Marriage of Suggs, 152 Wn.2d 74, 93 P.3d 161 (2004). He claims that Suggs does not apply here "since the restraints are specifically in place with regard to statements to third parties associated with the child,

such as schools and day care providers." Brief of Respondent at 44. In Suggs, even an order restraining Suggs from making "invalid and unsubstantiated allegations or complaints to third parties ..." was determined to be too broad by our Supreme Court. 152 Wn.2d at 78. Here, the restraint is much broader, encompassing all "negative" information. As in Suggs, this order must be vacated as an unconstitutional prior restraint on speech.

Nor does the other case cited by Mr. Caylor, In re Marriage of Meredith, 148 Wn. App. 201, P.3d 1056 (2009), support his argument. In Meredith, the unconstitutional restraint prohibited Meredith from contacting any agency regarding Ms. Muriel's immigration status. Id. at 892. Ms. Muriel defended the restraint, saying that it was a permissible postspeech restriction "after a showing of abuse" of the right to speak, but this court disagreed. Id. at 897. As in this case, the Meredith restraint went too far and "chills Meredith from giving a true factual account of his role in Muriel's immigration to the United States ..." Id. at 898. The same problem exists here; the prior restraint here chills Ms. Vaughan from providing true and factual information.

Mr. Caylor suggests that Meredith opens the door to the possibility that the trial court's finding that Ms. Vaughan was not credible and that her domestic violence allegations were false (although several other judges had found them to be credible)

amounts to a "showing of abuse" making this a permissible postspeech restriction. Brief of Respondent at 45. This claim is overblown. Ms. Vaughan has never been the subject of any antiharassment, domestic violence, or other restraint of any kind before this prior restraint was ordered; she has never been arrested for false reporting. She has, however, been repeatedly found to be a victim of domestic violence at Mr. Caylor's hands. There is no "showing of abuse" that would permit this prior restraint on speech.

Mr. Caylor claims, without authority, that the court "has greater authority to implement a prior restraint when it involves restraining parents from behavior that negatively affects children." There is no support for this blanket statement. The United States Supreme Court has noted that prior restraints are permitted in only "exceptional cases such as war, obscenity, and incitements to acts of violence and the overthrow by force of orderly government." Near v. Minnesota ex rel. Olson, 283 U.S. 697, 716, 51 S.Ct. 625, 75 L.Ed. 1357 (1931). Further, there has been no connection shown between providing negative information to a caregiver and any harm to Portia. At the time of trial Mr. Caylor had, by his own choice, absolutely no relationship whatsoever with his daughter Portia. Indeed, if Ms. Vaughan provides accurate negative information to a caregiver about Mr. Caylor, such as information

about new criminal or drug related behavior, such information would positively affect the child as it is better for caregivers to be accurately informed about current relevant family circumstances so as to better care for the child.

2. THE 10 HOURS OF TRAVEL TIME THAT THE PARENTING PLAN SUBJECTS THE CHILD TO EVERY WEEK IS NOT IN HER BEST INTERESTS

Mr. Caylor does not dispute that the parenting plan imposed by the trial court requires Portia to endure 10 hours of travel time every week. While Mr. Caylor suggests that Ms. Vaughan does not wish Portia to be transported for any residential time at all, the opposite is true. Brief of Respondent at 38. Ms. Vaughan's pleadings before entry of the final decree, on reconsideration, and in this Court have all focused on rearranging the visitation schedule so that it is less burdensome to their daughter Portia, does not involve any same-day round trips to and from Port Townsend (which involve 5 hours of travel in a single day), and does not involve weekday trips to Port Townsend. CP 475-6, 486-89. Moreover, it is simply not in Portia's best interests to spend 10 hours every week commuting. It is especially inappropriate to force Portia to travel 10 hours every week to facilitate visits with a father who had never attempted to visit her since the day after she was born, including completely ignoring his court-ordered visits from December 22, 2014 until after trial in

March, 2015. CP 293; 1 RP 140-41, 144, 7 RP 11 (oral ruling "I'm troubled by the fact that Mr. Caylor has not made more of an effort to be in contact with Portia."

If midweek visits are ordered, they should be in close proximity to Portia's home so as to minimize her travel time.

Mr. Caylor attempts to reframe the issue to mean that if the distance Portia must travel is less than the 630 miles at issue in In re Yeamans, 117 Wn. App. 593, 72 P.3d 775 (2003), the travel must not be "long distance" and is presumptively an acceptable distance for midweek visits and frequent exchanges. But the issue is not whether little Portia travels less than 630 miles per week. The issue is that the ordered travel time of 10 hours per week is simply too much time for a child to spent in transit every week.

While Washington state caselaw offers very little guidance on this issue, other states have addressed it and a review of their holdings is instructive. The states that have addressed this issue have found that travel times similar to or far less lengthy than Portia's are too burdensome for children.

In a case remarkably like this one, California held in In re Anthony T., 208 Cal. App.4th 19019, ___ Cal.Rptr.3d ___ (2012), that it was detrimental to the well-being of a one year old child to have him spend 10 hours per week in transit between parents. 208 Cal.App.4th 1031.

North Carolina held in Tricebock v. Krentz, 761 S.E.2d 754 (N.C.App. 2014) that travel time of one hour was considered too long for shared custody as such travel time was found to be too long for a five year old to frequently endure.

New York held in Jin C. v. Juliana L., 39 Misc.3d 1201(a), 969 N.Y.S.2d 803(A), that travel time of over an hour and fifteen minutes which took place twice per week was too long for a child. This travel schedule was a factor supporting sole custody wherein such travel would not take place.

An Ohio appellate court overturned as unreasonable and an abuse of discretion an Ohio trial court's approval of a schedule for a nine year old child that involved nine hours of travel every other weekend. Martin v. Martin, 903 N.E.2d 1243, 179 Ohio App.3d 805, 2008-Ohio-6336 (Ohio App. 2 Dist. 2008).

When viewed in light of these cases, it is evident that the reasonable view is that a weekly ten hour commute is not in a child's best interests.

Mr. Caylor's contention that Portia's ten hour weekly commute is acceptable because it is possible to take breaks in a car, and because of "the scenery and excitement of a ferry boat ride" is unreasonable and unrealistic. In her Motion For Reconsideration asking the trial court to reduce Portia's weekly travel time, Ms. Vaughan presented a letter from Portia's

obstetrician stating a concern that the travel time will "decrease time that has been shown to [sic] beneficial to child development. Specifically, time that is spent in social interaction and physical activity." CP 506 (Att. C to Motion to Reconsider). Mr. Caylor is chronically unemployable and has no occupational responsibilities that would limit his ability to travel to see Portia near her home, or to adjust to a new schedule.

This Court should vacate the residential schedule and remand with instructions to greatly reduce Portia's travel time.

3. THE SCHOOL AGE WEEK ON/WEEK OFF SUMMER SCHEDULE WILL BE UNWORKABLE AS THE CHILD GROWS OLDER AND BEGINS WANTING TO PARTICIPATE IN ACTIVITIES LIKE SPORTS, PERFORMANCE ARTS, OR SUMMER CAMPS

Other than generally asserting that all the residential provisions are in the child's best interest, Mr. Caylor does not appear to have offered a specific response to Ms. Vaughan's argument that the school age summer week on/week off schedule will prevent Portia from participating in normal childhood activities. Brief of Respondent at 29. This Court should hold that the trial court failed to protect Portia's involvement with such activities as required by RCW 26.09.187(3)(a)(v), failed to provide for Portia's changing needs as she grows and matures, pursuant to RCW 26.09.184(a)(c), and should vacate the summer schedule and

remand with instructions that the summer schedule be the same as the school age schedule.

4. THE TRIAL COURT FAILED TO PROVIDE FOR THE CHILD TO HAVE ANY VACATION WITH HER PARENTS, CONTRARY TO THE EXPRESS DIRECTION OF RCW 26.09.184(6)

Mr. Caylor's contention – that the summer week on/week off schedule that begins at school age obviates the need for the parenting plan to provide for a vacation with each parent – is unreasonable and unrealistic. For one thing, since the week on/week off summers do not begin until after Portia's first year of school, that means that under this plan Portia cannot have even a week's vacation with either parent until she reaches school age. Such an arrangement does not satisfy the RCW 26.09.184(6)'s requirement that the trial court's parenting plan provide for vacations.

Further, it is not feasible to limit the child's vacations to only those residential weeks she is with each parent, as this deprives the child and each parent of the ability to vacation at any time other than during that parent's week, or to vacation for a week that does not exactly correspond to that parent's week "on." And of course, many parents and children take vacations of more than one week at a time; but under this parenting plan Portia can never do that.

This Court should vacate the vacation schedule and remand with instructions that the trial court provide Portia a normal vacation schedule.

5. THIS COURT SHOULD REMAND FOR ENTRY OF A PARENTING PLAN THAT ACCOMMODATES MS. VAUGHAN'S EMPLOYMENT SCHEDULE AND DOES NOT REQUIRE THE MOTHER TO TRANSPORT THE CHILD DURING NORMAL DAYTIME WORKING HOURS

RCW 26.09.187(3)(a)(vii) explicitly requires that each parent "shall make accommodations consistent with [each parent's employment] schedules." (Emphasis added.) In this case, only one parent worked so there was only one employment schedule to accommodate, as Mr. Caylor had been on L&I disability since 2011. Brief of Respondent at 23. Yet here, the trial court completely failed to accommodate Ms. Vaughan's employment schedule, instead scheduling the parties' child to be driven from Redmond to Edmonds on Wednesday mornings, during normal work hours, and back again later on the same day. The total distance she must travel during this work day to transport the child for visits is 140 miles. CP 477. She must also transport Portia to Edmonds on Fridays during work hours, a distance of 70 miles. The trial court was fully aware of these facts. CP 477.

Mr. Caylor's Brief of Respondent does not dispute the applicability of RCW 26.09.187(3)(a)(vii), or the accuracy of any

of the above facts. Instead, Mr. Caylor attempts to mislead this Court into believing that the trial court merely had an obligation to "consider" Ms. Vaughan's employment schedule. Brief of Respondent at 47. But the plain language of the statute is mandatory: it says the trial court "**shall make accommodations consistent with [each parent's employment] schedules.**" (Emphasis added.) This means the trial court was required to do more than merely "consider" Ms. Vaughan's employment schedule, it was required to accommodate it. Mr. Caylor had no employment and told the trial court that he did not expect to work again. 3 RP 154. Therefore, in accordance with the statute, the parenting plan must accommodate Ms. Vaughan's schedule. This means not ordering her to transport the child long distances multiple times during the week during her work hours. This Court should vacate the residential schedule and remand with instructions to impose residential provisions that accommodate Ms. Vaughan's employment schedule and do not require her to transport Portia during normal working hours.

6. THIS COURT SHOULD REVERSE THE TRIAL COURT'S TERMINATION OF THE DOMESTIC VIOLENCE PROTECTION ORDER AND REMAND FOR A SEPARATE DOMESTIC VIOLENCE PROTECTION ORDER HEARING AT WHICH THE RULES OF EVIDENCE DO NOT APPLY

The dissolution trial in this case was combined with a review of the domestic violence order of protection issued on December 22, 2014 protecting Ms. Vaughan and their daughter from Mr. Caylor. CP 288-293. While the rules of evidence apply at trial, they do not apply at domestic violence protection order hearings. ER 1101(c)(4) provides "When rules Need Not Be Applied: The rules (other than with respect to privileges) need not be applied in the following situations: ... (4) Applications for Domestic Violence Protection. Protection Order proceedings under RCW 7.90, 7.92, 10.14, 26.50 and 74.34."

This Court has held that the use of hearsay evidence in domestic violence protection order proceedings is proper. Hecker v. Cortinas, 110 Wn.App. 865, 870, 43 P.3d 50 (2002). This Court has also held that "competent evidence sufficient to support the trial court's decision to grant or deny a petition for a domestic violence protection order may contain hearsay or be wholly documentary." Blackmon v. Blackmon, 155 Wn.App. 715, 722, 230 P.3d 233 (2010). This means that the rules of evidence do not provide a basis for excluding a letter from a doctor containing what would ordinarily be considered hearsay. Pursuant to ER 1101(c)(4), Hecker and Blackmon, the trial court should not have excluded the letter from Dr. Karen Bar Joseph as hearsay since the

rules of evidence should not have been applied to that portion of the proceedings. 1 RP 125.

Mr. Caylor argues that another basis for rejecting the letter is the lack of testimony by the writer of the letter, Dr. Bar Joseph. Brief of Respondent at 34. yet Blackmon has held that evidence relating to a domestic violence protection order may be "wholly documentary." Therefore, the foundation and witness arguments raised by Mr. Caylor do not apply, nor do they form an alternate basis for affirming the trial court's exclusion of the letter.

The trial court's erroneous application of the evidence rules contributed significantly to the trial court's conclusion that Ms. Vaughan's behavior after the claimed assault was not "consistent with the requirements necessary to prove domestic violence" because she "did not call the police at that time and did not even call 911; she called her father ..." CP 460.

Mr. Caylor complains that Ms. Vaughan did not testify in detail in corroboration of the statements in the letter, but to the extent that Ms. Vaughan's testimony on this subject was limited, it was because Mr. Caylor vigorously objected to testimony on this subject and the court sustained Mr. Caylor's objections. 1 RP 125-26. The trial court did permit Ms. Vaughan to testify that she was worried about her baby so she sought an emergency same-day visit

with her obstetrician Dr. Karen Bar-Joseph and that the baby was "okay." 1 RP 121-22.

Immediately after seeing her obstetrician for an emergency visit within hours of the assault, Ms. Vaughan also saw a social worker in the clinic. 1 RP 126. Ms. Vaughan decided not to call the police because she was concerned about protecting Mr. Caylor and she was afraid of retribution. 1 RP 126. "I knew that if I called the police it would hurt his (civil case against the Seattle Police). I didn't know if Mr. Caylor would retaliate. And I -- I was scared and didn't know what to do basically. " 1 RP 127. It is astonishing that the trial court views this behavior as not being consistent with domestic violence. It is a textbook response to being victimized by domestic violence. Ms. Vaughan testified that she called her father because after Mr. Caylor assaulted her and drove away with her cell phone, she was very upset and went to her neighbor's house to use their cell phone and the only number she had memorized was her father's number. 1RP 119. This is entirely consistent with being the frightened victim of a domestic violence assault.

Because the trial court erroneously applied the rules of evidence, it excluded an important piece of evidence showing what Ms. Vaughan did as a result of being assaulted by Mr. Caylor; she immediately sought medical help and discussed the assault with her obstetrician. The excluded letter showed that she made a

contemporaneous report of the assault for purposes of medical treatment. This letter adds significant weight to Ms. Vaughan's account of the assault since it mirrors Ms. Vaughan's testimony - testimony the trial court decided was false. It also lends credence to the reasonableness of her fear of harm, a fear the trial court found did not exist.

As the Family Court Services domestic violence assessment verified, Ms. Vaughan entered the Eastside Domestic Violence program, Lifewire, within 5 days of the incident and had continued to attend through the time of trial. CP 529, 843, 848; 1RP 137. The trial court gave no weight to this undisputed fact as well as the undisputed fact that Ms. Vaughan visited with a social worker to discuss the assault on the same day as the assault. There was no doubt about the truth and accuracy of these facts, and no credibility to be resolved regarding these pieces of evidence. Both these facts were unchallenged and had been verified by the Family Court Services investigation. Yet the trial court found that Ms. Vaughan's behavior after the claimed assault was not "consistent with the requirements necessary to prove domestic violence" because she "did not call the police at that time and did not even call 911; she called her father ..." CP 460.

The issue here is not simply that the trial court weighed all the evidence and wrongly decided what to believe. The issue is that the trial court completely failed to include two undisputed,

relevant, material pieces of evidence in its weighing of whether the domestic violence assault occurred, and wrongfully excluded another material piece of evidence, the obstetrician's letter. These failures to include several pieces of evidence in its calculus directly culminated in the trial court's erroneous ruling that Ms. Vaughan's behavior after the assault was "not consistent iwth the requirements necessary to prove domestic violence."

The combination of these three serious errors, taken together with the surrounding facts and circumstances, demonstrate an abuse of discretion. This Court should vacate the trial court's order terminating the domestic violence protection order and remand for a separate hearing on the domestic violence protection order issue at which the rules of evidence will not apply. The protection order hearing should be remanded to a judge other than Judge Roberts who can hear the facts with a fresh ear, untainted by Judge Roberts' mistaken conclusions.

7. THIS COURT SHOULD REVERSE THE TRIAL COURT'S AWARD OF \$30,000 IN ATTORNEY'S FEES TO MR. CAYLOR

Mr. Caylor requested and the trial court granted attorney's fees based on bad faith and intransigence and Ms. Vaughan's defense of the domestic violence protection order. CP 370, 447. Specifically, Ms. Vaughan was held responsible for making "unsubstantiated, false and exaggerated allegations against the

other parent ..." Brief of Respondent at 49. But as the above discussion of the domestic violence protection order shows, Ms. Vaughan's claims of domestic violence were not unsubstantiated, false, or exaggerated. She should not be punished for bringing her domestic violence claims before the court, especially where a domestic violence order of protection had previously been granted by another court, was still in effect, and was being challenged by Mr. Caylor.

Indeed, Ms. Vaughan did not wish to include the year-long protection order, issued December 22, 2014, in the dissolution trial at all; it was Mr. Caylor who insisted that the visitation provisions be specifically termed "reviewable at trial," thus forcing Ms. Vaughan to defend at the trial a year long order that she had already successfully obtained six months ago. Ms. Vaughan was within her rights to obtain a domestic violence protection order six months before trial; this is evident from the fact that a superior court judge was convinced that a year long order was appropriate. It was Mr. Caylor who insisted that the protection order, which had approximately six months left to run, be completely re-litigated at trial, necessitating extra expense and forcing Ms. Vaughan into the position of defending a protection order she had already proven the need for to the satisfaction of a superior court judge.

It is unreasonable to expect that Ms. Vaughan would fail to assert her desire for the protection order to run the full year long course previously ordered by another superior court judge, and to provide her reasons for wishing the order to continue. Punishing Ms. Vaughan for defending the pre-existing protection order and requesting that it be allowed to run its course is an abuse of discretion, especially in light of the trial court's cavalier disregard of Ms. Vaughan's evidence showing contemporaneous disclosure of the assault and prompt outreach for help from Lifewire.

As far as Mr. Caylor's claim of great extra expense necessitated by Ms. Vaughan's recalcitrant approach to financial discovery, this claim is greatly exaggerated. While the financial resources of the sanctioned litigant are irrelevant, the reasonableness of the alleged fees expended and the need for such fees to be expended is highly relevant. Here, there was absolutely no need for the claimed amount of fees to be expended while litigating a 6 month marriage in which, in the court's own words, "there is really almost no property to divide." It is simply not reasonable to expend a great deal of fees chasing financial details in a case such as this.

Further, while Mr. Caylor goes to great lengths to unfairly portray Ms. Vaughan as virtually a pathological liar who refused to cooperate with anything, the reality is that while Ms. Vaughan's

discovery disclosure was incomplete, so was Mr. Caylor's. He did not provide bank statements or income statements to Ms. Vaughan. 5 RP 634-35. But Ms. Vaughan used common sense and did *not* expend a great deal of fruitless legal fees chasing down Mr. Caylor's missing financial information, issuing subpoenas, or preparing and conducting excruciatingly lengthy and probing financial examination of Mr. Caylor at trial. While Mr. Caylor disclosed even less complete financial information than did Ms. Vaughan, Ms. Vaughan did not waste fees by focusing on Mr. Caylor's finances, since there was really almost no property to divide and maintenance was not an issue.

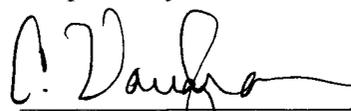
Mr. Caylor should not be rewarded for abusing the legal system by racking up pointless legal fees to create a tempest in a teapot. Mr. Caylor should have used common sense and limited his fee expenditure to that which was warranted by the scope of the matters in dispute. This Court should reverse the \$30,000 award.

C. CONCLUSION

This Court should vacate the Parenting Plan, Decree, and Findings & Conclusions and remand before a different judge.

DATED this 31th day of January, 2016.

Respectfully submitted:



Carolyn Maria Vaughan
pro se

CERTIFICATION OF SERVICE

I, Caroline Vaughan, certify that on the 31
day of January, 2016, I caused a true and correct copy of **Reply Brief Of**
Appellant to be served on:

Nancy Hawkins
6814 Greenwood Avenue North
Seattle, WA, 98103

Mail delivery Certified
VIA ~~PERSONAL DELIVERY~~

SIGNED in Redmond, Washington, this 31 day of
January, 2016.

C. Vaughan (Signature)
Caroline Vaughan (Print Name)