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NO. 73404-1-1

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

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In re the Marriage of Caylor

CAROLINE MARIA VAUGHAN, a/k/a CAROLINE CAYLOR,

Appellant,

v.

NATHANIEL CAYLOR,

Respondent

FILED  
APR 11 2011  
11:50  
CLERK OF COURT  
JANICE L. HARRIS

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

The Honorable Mary Roberts, Judge

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BRIEF OF RESPONDENT

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## **I. INTRODUCTION/SUMMARY OF ARGUMENT**

Nathanial Caylor and Caroline Vaughan had a short marriage that resulted in a daughter, Portia. Vaughan filed for dissolution and obtained an order of default that was ultimately set aside by the Honorable Palmer Robinson. The parties proceeded to trial in January of 2015 and the court found primarily in favor of the father, Nathanial Caylor. The court rejected many claims of the mother, Caroline Vaughan. The court also determined that the mother was not credible and that she had acted in bad faith on many of her claims. Based on the mother's bad faith actions and, in many instances, clearly false testimony, the court awarded Caylor \$30,000 in sanctions.

Vaughan appealed the court's rulings. Caylor opposes the appeal and seeks affirmation of the rulings of the trial court that were contained in Findings of Fact and Conclusions of Law (CP 436-448 the Decree of Dissolution (CP 462-469), the Parenting Plan (CP 449-461), the Order of Child Support (CP 418-435) and the Order Denying Reconsideration (CP 962-964). In her brief, Vaughan raises issues about the court's termination of a protection order on a revision motion heard by the trial judge although Vaughan did not appeal that ruling. CP 401-402. However, to the

extent it is determined that that issue is before the court on appeal, Caylor seeks affirmation of that ruling as well.

**II. ISSUES IN REPLY TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. Assignment of Error No. 1. In the Order of Child Support, the trial court properly ordered that the mother should not provide negative information about the father to the daycare provider.
2. Assignment of Error No. 2. In the Parenting Plan, the trial court properly ordered that the mother should not provide negative information about the father to the child's daycare providers, school personnel, or other parents associated with the child or child's friends.
3. Assignment of Error No. 3. In the Parenting Plan, the trial court properly determined a reasonable transfer location in Edmonds given that the mother lives in Redmond and the father lives in Port Townsend. The court's allocation of time with each parent is in the child's best interest under RCW 26.09.184(1) (g).
4. Assignment of Error No. 4. The trial court acted properly within its discretion when it included within the Parenting

Plan a week on/week off summer schedule for the child when the child starts school.

5. Assignment of Error No. 5. The trial court did not err when it did not include in the Parenting Plan, a vacation provision over and above the week on/off schedule during the summer.
6. Assignment of Error No. 6. The trial court acted within its discretion when, in the Parenting Plan, it required transport of the child at times during weekday hours.
7. Assignment of Error No. 7. The court did not err when it granted Caylor's motion for revision, determined that there was no basis for a protection order, and terminated the protection order issued by a pro-tem commissioner. The court properly determined that the father had not engaged in domestic violence.
8. Assignment of Error No. 8. The court did not err when it refused to admit a letter offered by the mother supposedly written by one of her health care providers.
9. Assignment of Error No. 9. The court properly awarded the father sanctions against the mother in the amount of \$30,000.

10. Assignment of Error No. 10. The trial court acted properly and within its discretion when it determined in the Findings of Fact and Conclusions of Law, Exhibit AF, that

- a. The mother's claims of domestic violence were false or greatly exaggerated,
- b. That her positions were not supported by the evidence
- c. That the mother provided inconsistent versions of events, with such descriptions getting more and more dramatic.
- d. That the wife came to court asked that the husband be evaluated, based on events in 2009, when such evaluations had already been completed.
- e. That the mother had provided information to the court and Family Court Services that was exaggerated, incomplete, deceptive and, at times, outright false and that many more hours of trial preparation and trial were necessitated by her statements.

- f. That the wife and her counsel have maintained positions in the trial that were not supported by the evidence and that she had engaged in a pattern of serious intransigence that required the father incur significant additional legal fees and costs.
- g. That the wife should pay \$30,000 to Nancy Hawkins, or reimbursed to the husband

11. Assignment of Error No. 11. Prior to trial, the court properly determined that the father had been unable to develop a relationship with the child due to the parties' relationship.

**III. REPLY TO APPELLANT'S ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

- 1. The trial court properly acted within its authority and narrowly drafted restraints on the mother's contact/communications with third parties which would, if not restrained, adversely affect the well-being of the child. Given the mother's history of false statements and exaggerations, the court's concerns were well-founded and should be upheld. (Assignments of Error 1, 2)

2. The amount of time that the child has to travel for her residential time with her father was reasonable and should be upheld. In fact, it will decrease over time as the father's individual residential time increase in length. (Assignments of Error 3).
3. Each parent has the opportunity for vacation with the child during normal week on/off time each summer. The court did take into account the distance between the parents when the residential schedule was determined. (Assignments of Error 4)
4. Each parent has the opportunity for vacation with the child during his/her residential time. (Assignment of Error 5).
5. The court took into account both the mother's employment schedule and the father's parenting obligations with regard to the minor child of a prior relationship that lives with him. The court's schedule of residential time puts a burden on each parent rather than placing the entire transportation burden on one parent. This was a reasonable determination, given the alternatives. (Assignment of Error 6).

6. The court properly granted a motion for revision and terminated a protection order entered by a pro tem commissioner given the determination that the incident as described by the mother did not occur and given the determination that the father's actions in 2009 did not pose a present threat to the wife or the child. (Assignments of Error 7 and 10(a) (b) (c) (e) (f)).
7. The court properly determined that the father had been unable to build a relationship with the child prior to trial due to the nature of the parties' relationship. (Assignment of Error 11).
8. The court properly excluded an unsigned letter supposedly written by her doctor 20 months after an alleged medical appointment when the doctor did not testify as to the appointment or the statements supposedly made by the mother during that appointment. (Assignment of Error 8 and 10(b) and (e)).
9. The court's assessment of sanctions in the amount of \$30,000 was appropriate given the numerous acts of bad faith committed by the wife. (Assignment of Error 9 and 10(g)).

**10.** The court properly rejected the wife's request for an alcohol and drug evaluation of the husband when her testimony as to his alleged use of alcohol and drugs was refuted by her own father, his mother and father and the voluminous medical records admitted into evidence. (Assignment of Error 10(d).)

#### **IV. COUNTER STATEMENT OF THE CASE**

##### **A. Procedural History**

Caroline Vaughan (Vaughan) filed a Petition for Dissolution against her husband, Nathaniel Caylor (Caylor) with King County Superior Court on February 28, 2013. CP 1-4, Ex. 101. She did not seek restraining orders or a protection order and affirmatively stated that domestic violence "*did not apply.*" CP 1-4, 11-14. Exhibit 15. Vaughan had clearly been planning to file for dissolution since she transferred \$12,000 to an undisclosed account in December of 2012 and then transferred \$20,000 from that account to a person she refused to identify. RP, January 27, 2015, 667-670. Ex. 134.

Vaughan obtained an order of default against Caylor without notice to him of a specific date for the hearing. CP 135-138. She submitted admittedly false "*evidence*" which resulted in a Decree of

Dissolution which ordered Caylor to pay her \$8,130.52, a substantial sum of money. CP 11-14, Ex. 104. At trial, Vaughan admitted that she lied to the court in order to get the judgment against Caylor. RP, January 13, 2015, 182-183. That judgment, the order of default and other orders were aside by the Honorable Palmer Robinson on May 16, 2014. CP 135-138, Ex. 105.

Vaughan claimed that Caylor threatened her in August of 2014. RP, January 12, 2015, at 142. She provided no proof of this allegation and took no action at the time consistent with such allegations. In fact, at this time Vaughan was resisting discovery and refusing to appear for her deposition or to answer interrogatories. CP 142-145, Ex. 109 and 129.

Vaughan claimed that Caylor threatened her on November 5, 2014. RP, January 12, 2015, at 144-45. She sought a protection order against him. This was during a time Vaughan was resisting discovery directed at her father. CP 155-186. Based on her claim, a temporary protection order was entered which provided for only supervised visitation by the father. The commissioner ordered that Family Court Services investigate whether the father had engaged in domestic violence or whether the mother was engaging in abusive use of conflict. Ex. 140. The father filed for

revision of the protection order. CP 313-323. The revision hearing took place in conjunction with the trial in January of 2015. As a result of the trial/revision hearing, the court revised the commissioner's ruling and vacated the protection order. CP 401-402, 403-404.

The dissolution trial began on January 12, 2015 and concluded on January 28, 2015. RP, January 12, 2015, January 13, 2015, January 14, 2015, January 15, 2015, January 27, 2015 and January 28, 2015. An oral decision was made to both parties and counsel. RP, January 29, 2015. Final orders were entered on March 17, 2015. CP 418-435, 436-448, 449-461, and 462-469. Vaughan filed a lengthy motion for reconsideration. CP 473-961. In support of this motion, she submitted a variety of documents that had been ruled inadmissible at trial. That motion for reconsideration was denied. CP 962-964.

**B. History of the Parties.**

Nathanial Caylor) and Caroline Vaughan met in mid-2012. She approached him first at his home. RP, January 15, 2015, at 375. Vaughan found him to very nice, charismatic and very charming. RP, January 12, 2015, at 66. He wrote her notes, helped with the dishes, did household duties and was good

company. RP, January 12, 2015, at 92. Caylor was candid with Vaughan and disclosed that he had been shot by the police in 2009. RP, January 12, 2015, at 67 and RP, January 15, 2015, at 377. The severity of his injuries were obvious when they met as he had an external fixator (metal brace) keeping his jaw together. RP, January 12, 2015, at 66 and RP, January 15, 2015, at 376.

The parties began dating, and very quickly decided to marry. Vaughan was pregnant, although Caylor did not initially know that. RP, January 12, 2015, at 74 and RP, January 15, 2015, at 378. Vaughan asked Caylor to marry her. RP, January 15, 2015, at 377.

The 2009 shooting was a topic at the trial in 2015. In that incident, Caylor was shot by the police without warning when he was in his apartment with his toddler son, Wyatt. Wyatt's mother had died suddenly only three weeks prior. On the day of the shooting, Caylor was planning a trip to the zoo with Wyatt and another family. RP, January 15, 2015, at 372-373. He was suddenly confronted by police at his door demanding to be let in. The officers' statements at the time of the shooting about the incident contradicted each other. RP, January 13, 2015, at 27. One of the officers on the scene in 2009 testified at the Caylor/Vaughan trial in 2015. Caylor's apartment was quiet when

the police arrived. RP, January 13, 2015, at 14. The child was not distressed. RP, January 13, 2015, at 34. In fact, the officer testified that the child was “cooing” just like his own children do when they are playing. RP, January 13, 2015, at 34. Nathaniel denied them entry. This was within his rights. RP, January 13, 2015, at 15. RP, January 13, 2015, at 32. RP, January 13, 2015, at 36-67. An officer mistakenly informed another that he heard the chambering of a shotgun. RP, January 13, 2015, at 18. The sound was actually one made by a toy top that the child was playing with. RP, January 13, 2015, at 38.

Caylor was not threatening his son and, in fact, warned the officers that if they broke down his door, their actions could hurt his son since that was where he was playing. RP, January 13, 2015, at 22 and RP, January 15, 2015, at 374-5. Caylor followed all of the officers’ instructions other than letting them into the apartment. RP, January 15, 2015, at 450. Nonetheless, without warning, Caylor was shot in the head by a police officer. RP, January 13, 2015, at 46. When the officers entered the apartment, they discovered that Caylor was not armed. RP, January 13, 2015, at 22. He was lying in a pool of blood with teeth on the ground, with pieces of his jaw bone visible, with two head wounds (entry and

exit) and, yet, despite his obvious wounds, he was handcuffed by the police and arrested as he was lying on the floor. RP, January 13, 2015, at 23. Wyatt was not “rescued” since he was not at risk; he was not tied to the door or held hostage. RP, January 13, 2015, at 24. He was standing by his injured father. Id.

Caylor was critically injured with a shattered jaw; he was ultimately hospitalized for weeks and was in a coma for a part of this time. Ex. 113.

Ultimately, Caylor made an Alford plea to harassment but stated that he was innocent of all charges. Ex. 143. Long before meeting Vaughan, Caylor completed all terms of his sentence. Ex. 142.

The officer who shot him without warning also falsely reported to DSHS that, at the time of the shooting, Caylor was armed, suicidal and had threatened to kill his son. Based on these false statements, a dependency action was filed. Caylor was required to undergo a psychological evaluation and did so. RP, January 15, 2015, at 436. He had therapy. Id. He fulfilled all conditions required by the State of Washington in the dependency. Id at 435-436. The dependency was dismissed and Wyatt was returned to his father’s care.

All of Caylor's legal issues with regard to the dependency were long resolved before Caylor and Vaughan met and married. Ex. 137.

Caylor had multiple surgeries from 2009 through early 2013. Ex. 112 and 113. He had parts of both hips removed to try and reconstruct his jaw. Id. These surgeries failed. Id. He had multiple infections. Id. When he met Vaughan, he was obviously injured since he had an external fixator holding his jaw together. RP, January 14, 2015, at 310 and Exhibit 130. He was also on disability due to a subsequent work-related back injury. RP, January 15, 2015, at 380. That injury also left him in constant pain. Id., at 541. Ex. 126.

When Caylor married Vaughan, they were both aware that he would be having a very difficult reconstruction surgery later in 2012 that would involve removing two of his ribs or one of his leg bones and making a new jaw out of it. RP, January 15, 2015, at 380. This surgery took place within the month after they married. RP, January 12, 2015, at 84 and RP, January 15, 2015, at 381. To care for Caylor's son Wyatt's care and to help with Caylor, his parents came from Idaho. RP, January 12, 2015, at 84 and RP, January 15, 2015, at 384-85.

The 15-hour reconstruction surgery was extensive and involved removing most of his fibula and using it to create a jaw as well as removing the hardware that was then present and the infected tissue in his face. Ex. 113, RP, January 15, 2015, at 388. He was quite ill, pale and in pain. Id. At 491. Caylor came home from the hospital in August of 2012. Vaughan picked him up from the hospital 4-5 hours late. Id., at 504-5.

Prior to marriage, Vaughan was aware that Caylor was taking medication for pain. RP, January 12, 2015, at 77. During his recovery from his surgeries, Caylor was prescribed a number of medications. RP, January 14, 2015, at 353-358. He had a number of serious infections. Id, at 508. He took his medications according to instruction and each time he was on pain medication, he was properly weaned off such medication. Ex. 113 and 114. The drugs were kept in a locked box to protect Wyatt. RP, January 14, 2015, at 356. In late 2013, Caylor was weak and still in pain from his surgeries. RP, January 15, 2015, at 466. He could not eat solid food or any food through his mouth and for a time his parents helped him fill gel capsules with food so that he could swallow them and get nutrients. RP, January 15, 2015, at 470, 501-4. Vaughan

was not helping with Caylor's care and his father and mother did so instead. Id., at 469-70, 493.

Vaughan wanted Caylor to send his son away from their home on multiple occasions; she was cold and unloving to Wyatt. RP, January 15, 2015 at 385-386, 469, and 496. In response to Wyatt trying to hug her goodbye one morning, she even told the boy not to touch her and that she didn't like him. RP, January 15, 2015, at 387 and 524. She was erratic and demonstrated mood swings and other odd behaviors. Id. 492, 495-6. She didn't want his parents to remain in Seattle helping care for Caylor or Wyatt and ordered them gone. Id, at 474 and 492.

In September of 2013, early in her pregnancy, Vaughan had a miscarriage. RP, January 12, 2015, at 94. Vaughan falsely described this as "major surgery." RP, January 12, 2015, at 95.

Caylor and Vaughan had a disagreement in December of 2012 when she refused to drive him to the doctor. Vaughan consistently refused to take him to the doctor. RP, January 12, 2015, at 112 and RP, January 15, 2015, at 509-10. Contrary to her later claim, he did not, however, assault her in any way during this disagreement in December of 2012. RP, January 15, 2015, at 523-524.

In January of 2013, Caylor had another surgery. RP, January 12, 2015, at 113. Before and after this surgery, he had a PICC line for antibiotics that ran from his arm to his heart. RP, January 12, 2015, at 113-114. He had been on strong antibiotics for months. Id. At 509. There was a specific incident in January of 2013 when Vaughan was mad at Caylor and tried to assault him by charging and pushing him. RP, January 15, 2015, at 525. Caylor wanted to leave the house but he was not allowed to drive. He took up her phone to call the police for help. RP, January 12, 2015, at 112. Using his cane, he limped outside through the back door. RP, January 12, 2015, at 112. He got to the car and started backing out of the driveway. Vaughan came outside and came at him through the car window and tried to grab his arm with its PICC line and repeatedly struck his surgically repaired and vulnerable jaw. Id., at 525-527. She was holding the inside car handle and broke it off and in doing so, she fell back and away from the car; Caylor was then able to drive away. Id., at 526-7. At the time of this incident, Caylor was weak and physically impaired. Exhibit 113. Vaughan was a strong woman, with a long history of playing college and professional golf. RP, January 12, 2015, at 62.

Nonetheless, Vaughan claimed that Caylor had assaulted her in this incident.

After this incident, Vaughan did not call the police or call 911; she called her father and made arrangements to go to coffee. RP, January 12, 2015 at 120.

Caylor managed to drive a couple of blocks and called the law office representing him in his suit against the City of Seattle, arising out of the shooting in 2009; this was his only nearby resource. RP, January 15, 2015, at 528. His parents lived in Idaho at that time. His lawyers sent out one of the partners, who happened to have the day free after a trial of his was cancelled. RP, January 15, 2015, at 394-5. Attorney Melton Crawford came and found Caylor physically shaking, trembling, sad, tearful, and weak. RP, January 15, 2015, at 396. He was walking with a cane. Id. He walked like an elderly man and grimaced with pain when he moved. RP, January 15, 2015, at 404. He was pale. RP, January 15, 2015, at 399. Crawford observed that Caylor had a PICC line through which he was taking intravenous antibiotics and pain medication. RP, January 15, 2015, at 397. He drove Caylor back to his home and found the medicine at the bottom of a garbage can on the curb. Id. The medicine had been in the refrigerator (as

required) prior to Caylor leaving the house. *Id.*, at 528-9. Mr. Crawford located a motel room for Caylor and Wyatt and paid for it. *RP*, January 15, 2015, at 398. Caylor saw his parents a couple of days later and, at that time, he was still weak, thin, and pale and had a PICC line. *Id.*, at 488.

On February 12, 2013, just two weeks or so after this alleged assault upon her, Vaughan gave a deposition in Caylor's civil suit. Mary Gaudio, her dissolution attorney was present. *Ex. 122*. Vaughan did not claim that Caylor was violent, and instead claimed their relationship problems were financial and medical. *Ex. 122*. She described him as needing assistance to walk, not being able to eat without pain and disabled. She also described him as an attentive father to Wyatt. *Id.*

On February 28, 2013, Vaughan filed for divorce. *CP 1-4*. At the time of filing, Vaughan was pregnant again with the baby due in August of 2013. *Id.* Vaughan did not include any allegations arising from the 2009 incident or the January 2013 incident in her dissolution pleadings. *Id.* She did not seek a protection order or restraining order and said domestic violence "does not apply." *Id.* *CP 1-4*.

In August of 2013, Caylor contacted Vaughan and asked to be present for the child's birth. RP, January 12, 2015 at 136. She refused. Id. She contacted him after the birth and invited him to the hospital. Id. He came and met Portia and took a lot of pictures.

Vaughan obtained a Decree of Dissolution in January of 2014 by default. She did not provide proper notice to Caylor. CP 134-138. She admittedly lied in her statements to the court in support of those default orders. Among other things, she falsely claimed that she had paid rent to their landlord who was actually her best friend's father and a former relative (by marriage). RP, January 15, 2015, at 379. Subsequently, Judge Palmer Robinson set aside the bulk of the January 2014 orders and set a new trial date. Ex. 105.

Caroline Vaughan refused to comply or fully comply with discovery requests throughout 2014. Ex. 109 and 129. She failed to answer interrogatories and failed to appear for her own deposition. Id. She was ordered to answer and subsequently ordered to appear for deposition. Id. In obvious retaliation, Caroline Vaughan sought a protection order claiming that Caylor had threatened her. The commissioner entered a temporary order but ordered an investigation as to whether there was domestic

violence by him or whether this was an abusive use of conflict by her. Despite this order, Family Court Services did nothing to investigate the accuracy of Vaughan's statements. The social worker had only been with Family Court Services for 14 months. RP, January 14, 2015, at 220. She reported that Caylor had been convicted of a felony but did not take into account that he had submitted an Alford plea and denied the allegations made. RP, January 14, 2015, at 236. She admitted that she did not understand criminal law. Id. She reported the allegations made by the prosecutor but not the denial by Caylor. RP, January 14, 2015, at 236-7. She reported that a shotgun had been recovered from his home in 2009 but not that Caylor was not armed and had not even touched the weapon on that day. RP, January 14, 2015, at 238. She did not report that Caylor was in a relative's apartment at the time. RP, January 14, 2015, 240. She admitted that she did not review the many statements by police officers that contradicted the probable cause statement by the prosecutor. RP, January 14, 2015, at 242. She reported allegations made to CPS but admitted she had not read the CPS or dependency file in which the court determined that Caylor's son should be returned to him and that there was no basis for the allegations made against him. RP,

January 14, 2015, at 246. She admitted the mother's allegations were, at times, inconsistent. RP, January 14, 2015, at 255. She did not read Caylor's medical records. RP, January 14, 2015, at 267 and 275. She admitted that Caylor seemed to have taken his post-surgery medications properly. RP, January 14, 2015, at 275. She admitted that Vaughan exaggerated her allegations. RP, January 14, 2015, at 277. She admitted that Vaughan had lied to her, including lies about her use of anti-depressants and other medications. RP, January 14, 2015, 294-295. The trial court appropriately rejected the social worker's recommendations.

Vaughan falsely claimed that Caylor was suicidal in 2009 and thereafter. In fact, Caylor specifically rejected suicide as a choice after the death of his son Wyatt's mother. RP, January 15, 2015, 371-2. Caylor testified about his positive experiences with therapy, and that he remained in therapy even after all court requirements arising from the 2009 incident were completed. *Id.*, at 436-443. He testified that he learned from his experience in 2009. *Id.*, at 449.

At trial, Caylor testified at length about his excellent parenting of Wyatt, his now 8 year old son. RP, January 14, 2015, at 313-327. His good parenting was confirmed by his father and his

mother. RP, January 15, 2015, 462 and 487-8. Caylor described caring for Wyatt as a baby, including bathing and diapering. RP, January 15, 2015, at 369. He described how he provided daily meals, morning routine, evening routine, and homework help, all in detail. RP, January 14, 2015, at 313-327. He testified about appropriate discipline for Wyatt. RP, January 15, 2015, 368-69. Caylor testified that there are no guns in his home, not even toy guns. RP, January 14, 2015, at 327-328. He testified about helping Wyatt through difficult times caused by Vaughan's false charges against him which resulted in his sudden arrest in November of 2014. RP, January 15, 2015, 367-8.

Caylor testified about his return to work following the shooting and his work as a high rise window washer until 2011 when he was injured in a fall at work. RP, January 14, 2015, 331-336. He was still on L & I Disability at the time of trial.<sup>1</sup> RP, January 14, 2015, 337-338.

Vaughan repeatedly lied throughout her dissolution proceedings, including while under oath during trial. She failed to disclose that her mother was living with her and failed to disclose

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<sup>1</sup> Appellant claims in her brief that Nathaniel testified that he was taking morphine at the time of trial. This is false. No such testimony occurred. He had actually been off morphine since shortly after his major 2012 surgery. See Exhibit 113.

her mother's income. RP, January 13, 2015, at 89-90. She asked to be awarded her American Express savings account but then claimed that it had all been spent prior to marriage. RP, January 13, 2015, at 92. She claimed that she had no cash, no money in the bank and no stocks or bonds. RP, January 13, 2015, at 91. She claimed that she did not make the decision to file for divorce until January of 2013, but under cross examination admitted that she withdrew \$20,000 from the bank in December of 2012. RP, January 13, 2015, at 93. She claimed she didn't recall why she removed the funds and where the funds were deposited. RP, January 13, 2015, at 94.

Vaughan claimed she filed for divorce "*as a domestic violence filing*" but her petition for dissolution provided that domestic violence "*did not apply.*" CP 1-4, RP, January 13, 2015, at 96.

Vaughan lied to the court and claimed that CPS came out to her home several times during her marriage to Caylor with regard to Wyatt. RP, January 15, 2015, at 455.

Vaughan has a history of lying to get what she wants. She lied in her job application, falsifying references. RP, January 13, 2015, at 97-103.

Vaughan claimed to the Division of Child Support and in her deposition that her daycare was \$2,000 per month and paid in cash. RP, January 13, 2015, at 66. She admitted that she didn't tell DCS when her daycare costs were reduced. RP, January 13, 2015, at 108. She claimed that she paid her father \$2,000 per month for several months but then testified at trial that she paid him for one week. Her father testified that he cared for his granddaughter once per week during that time. RP, January 15, 2015, at 407. He testified that Vaughan never paid him. Id, at 408. She claimed daycare costs for several months in fall of 2014 at \$75 per day. RP, January 13, 2015, at 74. She then admitted daycare was only \$1,553 per month while at the Goddard School. RP, January 13, 2015, at 76.

Vaughan has a history of filing IRS returns that were clearly false. Ex. 124 and 149. She claimed significant dividend and interest income in 2012 but would not disclose the accounts which generated that income. RP, January 13, 2015, at 114. For 2013, her income was \$57,979. RP, January 13, 2015, at 117. Yet, Vaughan claimed that during that year she had incurred medical and dental expenses of \$20,440, employee expenses of \$14,118, vehicle expenses of \$8,918, parking \$1,000, overnight business

expenses of \$2,000, business expenses of \$1,700 RP, January 13, 2015, at 121-126. Vaughan refused to explain other deductions claimed in her return such as a credit for trusts and estates in the amount of \$16,481. RP, January 13, 2015, at 124. Similar, clearly false claims were made by her in her 2014 return. RP, January 13, 2015, at 129.

Vaughan called Christie Thompson (Thompson), the mother of Caylor's oldest child, as a witness to testify about supposed issues during their relationship many years ago. Thompson testified that she was 22 when she began a relationship with Caylor, who was then 15. RP, January 14, 2015, 187-188. She convinced him to steal from his own parents to fund their road trip to California. She purchased drugs and alcohol for their mutual use. She became pregnant and gave birth to their son, Augustus, now 12. RP, January 14, 2015, 191. She frequently blacked out from her excessive use of alcohol during their relationship. RP, January 14, 2015, 213-214, 361. She tried to climb out of moving vehicles when drunk. RP, January 14, 2015, 361. She would get naked in public. RP, January 14, 2015, 362. Ultimately, Caylor escaped this abusive relationship, but over the years, he and his family remained involved with both his son from that relationship

but also Christie's daughter from another relationship. RP, January 15, 2015, at 464.

Vaughan fabricated threats to her safety in multiple settings. She filed an unsuccessful complaint with the Washington State Bar Association against her husband's attorney. RP, January 27, 2015, 652. She requested police protection in the courthouse from her husband's attorney during routine appearance in the clerk's office; such assistance was denied by the police as unnecessary. *Id.*, at 654. She threatened bar complaints against her husband's civil attorneys. *Id.*, at 657-8.

Vaughan made a false claim that Nathaniel called her in August 2014 and threatened her. RP, January 15, 2015, at 457. No calls to her number were on his cell phone records. *Id.* She later claimed to the police that he had threatened her again and, with that claim, had Caylor arrested. RP, January 15, 2015, at 367. Charges were ultimately dropped but he spent three days in jail. *Id.* Her ability to make a false complaint and get him arrested has left Caylor fearful of her future actions. *Id.*, at 439. She even taunted him about this by standing next to police officers at the courthouse before when she knew he was afraid of them. *Id.*, at 439.

Ultimately, the trial court determined that Vaughan was not credible in her claims against Caylor on multiple issues, including domestic violence. RP, January 29, 2015.

## **V. ARGUMENT**

### **A. Standard of Review.**

The determination of a parenting plan must be in the best interest of the child and based on the statutory criteria set forth in RCW 26.09.184 and 187. The trial court has wide discretion and latitude in making this determination. Marriage of Kovacs, 121, Wn.2d 795, 854 P.2d 629 (1993). A trial court's decision will be reversed only for abuse of this discretion.

A trial court's abuses its discretion if the decision is manifestly unreasonable or based on untenable grounds or reasons. West v. Department of Licensing, 182 Wn. App. 500, 516, 331 P.3d 72 (2014). A trial court's decision is manifestly unreasonable if it is "*outside the range of acceptable choices, given the facts and the applicable legal standard...*" and it is based on untenable grounds if "*the factual findings are unsupported by the record.*" *Id.*, at 516-17.

Most importantly, though, given “*the trial court’s unique opportunity to personally observe the parties,*” a trial court’s custody disposition is not disturbed on appeal absent a manifest abuse of discretion. In Re Custody of Stell, 56 Wn. App. 356, 366, 783 P.2d 615 (1989). Furthermore, the appellate court will not review a trial court’s credibility determinations or reweigh the evidence. West, at 517, and In Re Welfare of C.B., 134 Wn. App. 942, 953, 143 P. 3d 846 (2006).

The trial court’s Parenting Plan in this case is in the best interest of the child and should be upheld as a proper exercise of the court’s discretion.

**B. The Trial Court Properly Applied RCW 26.09.184 and RCW 26.09.187.**

The court determined that the child should reside with the mother and provided for increasing residential time with the father. RCW 26.09.184 and .187 set forth the law the Court must apply when determining a Permanent Parenting Plan.

RCW 26.09.184 describes the objectives and terms that must be set forth in a permanent parenting plan. It provides in pertinent part as follows:

*(1) OBJECTIVES. The objectives of the permanent parenting plan are to:*

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;
- (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and
- (g) To otherwise protect the best interests of the child consistent with RCW 26.09.002

**(3) RESIDENTIAL PROVISIONS.**

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

...

(iii) Each parent's past and potential for future performance of parenting functions

*as defined in \*RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;*

*(iv) The emotional needs and developmental level of the child;*

*(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;*

...

RCW 26.09.187.

The court properly applied the relevant statutes to the facts of this case. The child had lived with Vaughan since her birth but Caylor had been prevented from having a relationship with the child for the first year of her life by the mother's actions. Caylor had a history of providing excellent care to his son, Wyatt, as shown by significant testimony about his care for Wyatt on a daily basis. The parenting plan's schedule of increasing time between Caylor and the child was well-thought out and designed to familiarize the child with the father and then increase the time in reasonable increments.

The trial court may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191. Any limitations or restrictions imposed must be

reasonably calculated to address the identified harm. Marriage of Katare, 125 Wn. App. 813, 826, 105 P.3d 44 (2004). The court carefully went through all of the mother's requests for restrictions and rejected them as not being supported by the evidence.

**C. The Trial Court Properly Denied Admission of a Letter From One of Vaughn's Health Care Providers.**

At trial, Vaughan claimed that Caylor had engaged in domestic violence against her and sought to convince the court to grant her a domestic violence protection order. The court rejected that claim and made contrary findings in its Order Terminating Order for Protection entered on March 16, 2015. CP 403-404. This Order was not appealed by the mother as it was not attached to her Notice of Appeal. CP 965-1023.

Although it was not properly made part of the appeal, Vaughan addressed this issue in her brief and, as such, a response is warranted.

To try and establish her allegation of domestic violence, the mother sought admission of an unsigned and unsworn letter from her doctor. Her doctor was not called to testify. The letter was supposedly written on August 26, 2014 about a medical appointment twenty months earlier in January of 2013. It did not

include any supposed quotes from the mother but only vague summaries about such supposed statements. The unsigned document was offered at trial in January of 2015 (two years after some statements were supposedly made by Vaughan to her doctor). Vaughan argued that it was admissible under either ER 803(a)(4)(hearsay statement made for the purpose of medical diagnosis or treatment; or under 803(a)(3) (statements relating to then existing mental emotional or physical conditions). Alternatively, it was offered to prove that she saw her doctor on a particular day. RP, January 12, 2015 at 123-24. Judge Roberts properly ruled that the letter was inadmissible hearsay.

Vaughan now challenges the court's ruling claiming that the letter falls within a hearsay objection. She is incorrect. There is a hearsay exception for statements made for the purpose of medical treatment but this exception does not apply to the document that Vaughan sought to admit. She sought to admit a letter about statements, not the statements themselves.

Vaughan failed to establish the foundation for the exception that her own brief describes. Vaughan did not testify as to the statements she supposedly made to her doctor and did not testify that she made such statements in the course of procuring medical

services. Furthermore, no testimony was offered that the statement she purports to have made was one that would have been reasonably relied upon by a doctor in treatment or diagnosis. Both of these requirements were described by Vaughan in her brief as the basis for her attempted use of the hearsay exception but she does not cite to the record of the trial that she provided any such testimony.

With the right foundation and with a competent witness, ER 803(a)(4) may have allowed the introduction of evidence of Vaughan's statements but the evidence itself needed to be competent and admissible. A letter about such supposed statements is not evidence of the statements themselves. A witness to the actual statements, such as her doctor, could have testified as to Vaughan's statements to her (or at least some of them) but Vaughan did not call her doctor as a witness nor did she call anyone else who supposedly heard her statements. She did not present testimony from the author of the letter as to the basis of the letter.

Vaughan improperly relies upon several cases: State v. Woods, 143 Wn.2d 561, 23 P.3d 1046 (2001); State v. Redmond, 150 Wn.2d 489, 78 P.3d 1001 (2003) and State v. Moses, 129 Wn.

App 718, 119 P.3d 906 (2005). While each case dealt with statements to health care providers by an alleged crime victim, in each of her cited cases, a witness appeared at trial to testify under oath and specifically state what statements the witness heard the then unavailable crime victim make. State v. Woods, 143 Wn.2d 561, 576, 23 P.3<sup>rd</sup> 1046 (2001). State v. Moses, 129 Wn. App 718, 728-729 (2003).

Furthermore, in Redmond, the court ruled that statements beyond those for medical care such as statements which described the cause of injuries, were inadmissible and should have been redacted. Redmond, 150 Wn.2d at 497.

The facts in this case are not the same as those in the cited cases. The supposed victim (Vaughan) was available to testify and did testify. She was available to testify as to the dates of any supposed medical treatment and she could testify as to any specific statement she made to a health care provider, if it was deemed relevant. More significantly, her health care provider could have been called as a witness to relate the exact statements made at the time in question. In fact, Vaughan did not call her doctor as a witness to describe her medical condition on the day of this supposed medical appointment or to report the statements

supposedly made to the doctor. She didn't even call her neighbor who supposedly saw her immediately following this incident.

Under the above circumstances, the court properly excluded an unsigned letter written 20 months after the alleged incident. However, even without that supposed letter, the court thoroughly considered the claim of domestic violence made by Vaughan. The court simply determined that in this he said/she said situation and in combination with the totality of the evidence, that Caylor was the more credible witness.

**D. The Trial Court's Parenting Plan Determinations Properly Considered and Applied the Statutorily Required Factors and Circumstances.**

The mother complains that the court's parenting plan schedule included an estimated 10 hours of travel for the child each week. On appeal, she suggests that the court should disallow residential time for the father in Port Townsend unless it involves two overnights. This suggestion was not made to the trial court. Issues not raised at trial cannot be made for the first time on appeal.

In determining a schedule of time with each parent, the trial court considered the residential location of each parent. The parents lived in different areas of Puget Sound, the mother in

Redmond and the father in Port Townsend. To get from one location to the other, the most direct route involves the Edmonds/Kingston Ferry. By choosing a transfer location that was by the Edmonds Ferry Terminal, the mother or her designee would drive from Redmond to Edmonds and the father or his designee would drive from Port Townsend to Kingston, walk on the ferry, pick up the child and walk back on the ferry.

The arrangement determined by the court allowed for breaks in travel, not all of it in a car seat in a car, and the scenery and excitement of a ferry boat ride. Absent requiring a parent to move closer to the other, this was the best situation.

Certainly the Caylor/Vaughan parenting plan required travel time for the child. Vaughan claimed in her brief that the travel time was excessive and "*long distance*," with the inference that it would not be in the child's best interest if it was "*long distance*." Vaughn relies on In re Yeamans, 117 Wash. App. 593, 72 P.3d 775 (2003), in support of her argument that the travel time in this parenting plan is excessive. Her reliance on Yeamans is mistaken; Yeamans simply does not apply to the facts of this case. In Yeamans, the mother lived in Snohomish and the father lived in Pullman, a distance of 630 miles, including a mountain pass. *Id.* At 598. The

parents had been transporting the child via automobile and meeting in Vantage (a mid-point) for transfers of the child. In a modification action, the court determined that the child should be flown for transfers instead of driven and that the father should pay 100% of the costs. On appeal, Division One determined that the airfare was a “*long distance travel expense*” and, by law, had to be divided pro-rata between the parents and so ordered. The Yeamans case dealt only with the allocation of the travel costs between the parents. Yeamans did not state, even in dicta, that a child should not be transported between parents for each parent’s residential time, even if the distance between the parents is 630 miles. In this case, there was no testimony given, nor could there be, that the distance between Redmond and Port Townsend exceeds 630 miles.

**E. The Trial Court Properly Restrained the Mother From Making Negative Statements About the Father to Day Care Providers, School, and Others Associated with the Child.**

The mother complains about restraints upon her with regard to negative statements about the father to certain individuals who are associated with the child. The restraints imposed in this case are reasonable and sufficiently limited in scope. Vaughan’s brief itself provides a basis for the limitation. She states a page 1 of that

brief that the orders prohibit her from informing third parties information about the father and claims that he has “*an extensive criminal, drug and alcohol abuse history, and was involved in a drug-fueled 2009 hostile standoff with police that resulted in the police shooting him in the face.*” She states at page 26 of her brief that the restraint would prevent her from informing a daycare provider if Caylor “*engaged in another armed standoff with the police*” or “*had once again succumbed to illegal drug use.*” This was her position at trial but the evidence at trial did not support this exaggerated and one-sided and inaccurate view of the father. It is exactly that exaggeration and inaccuracies that the court obviously sought to restrain. In fact, Caylor never engaged in an armed standoff with the police. He was unarmed when he was shot in 2009. Similarly, he is not involved in illegal drug use. It is just this kind of slanderous talk that poses a significant risk of harm to Caylor’s relationship with the schools, daycare and other parents involved with his daughter.

Washington courts allow some restraints on a parents’ speech where needed to protect children. In re Marriage of Olson, 69 Wn. App. 621, 850 P.2d 527 (1993). In Olson the trial court had approved final orders that included restraining orders forbidding

father from “making any disparaging remarks concerning the Petitioner/Wife to the children of the parties. . . Olson upheld this restraint on father’s speech, to a limited extent, as a means of preserving the welfare of the children:

No one denies here that Mr. Olson is presumed to have a First Amendment right to speak his mind freely. Counterbalancing Mr. Olson's loss of First Amendment rights is the State's and Mrs. Olson's interest in preserving and fostering healthy relationships between parents and their children.

Although the welfare of children is the State's paramount concern in dissolutions, restraining speech merely on the basis of content presumptively violates the First Amendment. Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986). Because freedom of speech is a paramount constitutional right, we interpret the trial court's prohibition against “disparaging remarks” to be those which are defamatory of his former wife. So interpreted, we find no First Amendment violation.

*Id.* at 630.

In finding authority to protect children through speech restrictions, Olson relied heavily on an earlier case upholding a speech prohibition on a parent in a post-dissolution setting. Dickson v. Dickson, 12 Wn. App. 183, 529 P.2d 476 (1974). In Dickson the trial court had prohibited the husband from harassing his wife, including claiming he and she were really still married (for religious reasons the husband denied the possibility of divorce):

(I)t is ORDERED, ADJUDGED AND DECREED that the defendant be and he is hereby temporarily restrained from harassing the plaintiff in any way whatsoever, from writing her letters, from going upon the premises that she may occupy wherever that might be, from cursing plaintiff in public or private, from accusing her of being insane, from taking delivery of mail in her name at his address or anywhere else, from representing that plaintiff is defendant's wife, or from any way harassing, contacting, speaking to or communicating with the plaintiff or otherwise interfering with her freedom and personal enjoyment, . . .

Dickson v. Dickson, 12 Wn. App. at 185 (Emphasis added).

The appellate court upheld this restraint, after narrowing its scope:

Clearly, then, the trial court had jurisdiction to impose an injunction to protect the welfare of the minor children. However, because the court no longer has jurisdiction to affect the rights of the parties once the children reach majority, the injunction must be modified to terminate when the youngest child reaches majority.<sup>2</sup> Hughes v. Hughes, 11 Wn .App. 454, 524 P.2d 472 (1974). Any injunctive relief to which Mrs. Dickson may be entitled after that time is not before us and must be sought in an independent action on the basis of the circumstances existing at that time.

*Id.* at\_190-91 (Emphasis added). The court's reasoning focused on its power to protect children, and the actual record of harassment conducted by father and its effect on the minor children involved:

There was sufficient evidence that Mr. Dickson's conduct interfered with the welfare of his minor children, Michelle and Philip. At one time, he was

receiving mail in Mrs. Dickson's name at his office. This conduct seems to have ceased after the issuance of the temporary restraining order. At trial, Mrs. Dickson recounted several occasions when his conduct was harassing and embarrassing. He has told several persons that she is insane and sick, that she needs his help, and that if the laws were changed and he could get her back, he would help her. These statements were made to several persons, including employees of a railroad company where Mr. Dickson and several of Mrs. Dickson's relatives work. The envelopes in which he sends support checks carry a stamp advocating the abolition of divorce, and on the checks themselves, he indicates that the divorce is null and void because he has started a lawsuit. More than once he has come to her house, and when she went inside, he shouted loud enough for the neighbors to hear that she was insane and needed him. In a letter he sent to her, he said that he had written to her employer. One of the most harassing acts has been his insistence to several persons that Mrs. Dickson is still his wife.

Many of the things he did were naturally very upsetting to Mrs. Dickson and threatened her emotional health. It would be naive to assume that Mrs. Dickson's unhappiness did not have a harmful effect upon Michelle and Philip and on Mrs. Dickson's ability to raise them. The effect upon their mother could not help but embitter the children toward their father.

Moreover, much of Mr. Dickson's conduct directly threatened their welfare. He has stated to several persons that the children, as well as Mrs. Dickson, need help and that if she would marry him again, he could help them. On one occasion he passed out literature at their church, at which several persons laughed. This occurrence was related to a couple of Mrs. Dickson's older children. These incidents could not have escaped the younger children's attention.

The disparaging remarks about or reflecting on them could very well make them think badly of themselves and their family. They have undoubtedly heard of Mr. Dickson's statements that Mrs. Dickson is still his wife. In Michelle's mind especially, remarks about her mother's health and relationship with her ex-husband, at the least, would create much confusion. More likely, it may lead to questioning of her mother's judgment and her mother's conduct, such as seeing other men. The statements could easily discourage possible suitors for Mrs. Dickson. Moreover, by saying that she is still his wife, Mr. Dickson is falsely implying that he still has some right to custody and control of the minor children other than visitation rights.

That Michelle has or will become aware of this conduct is shown by the fact that both of her siblings still at home, Pamela and Philip, have become involved. Pamela testified that people were aware of Mr. Dickson's conduct and associated her with him at church, school and social functions. Philip testified that his friends all knew of his father's activities through their parents, though none of the information involved him directly.

Clearly, then, the trial court had jurisdiction to impose an injunction to protect the welfare of the minor children.

Dickson at 188-90.

Thus both Olson and Dickson upheld speech restraints to protect children, but both modified the underlying orders to the extent necessary to protect First Amendment rights.

More protective of free speech are two other recent post dissolution cases , though where the issue was not protecting

children from harm, but spouses from harassment. In re Marriage of Meredith, 148 Wn. App. 887, 201 P.3d 1056 (2009) and In re Marriage of Suggs, 152 Wn. 2d 74, 93 P.3d 161 (2004).

In Marriage of Suggs, five years after a dissolution, a husband complained the wife had been harassing him, including making unfounded accusations to his employer and to police. The trial court permanently restrained Suggs from

...knowingly and willfully making invalid and unsubstantiated allegations or complaints to third parties which are designed for the purpose of annoying, harassing, vexing, or otherwise harming Andrew O. Hamilton and for no lawful purpose.

152 Wn. 2d at 78-79. The court noted that some types of unprotected speech, such as the libelous, may be unprotected and subject to a restraining order.

The Suggs case, cited by the mother, does not apply in this case 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.

In Meredith, the trial court found the husband guilty of domestic violence. It entered a protection order that restrained husband from:

...contacting *any* agency regarding Ms. Muriel's immigration status, including but not limited to the Department of Homeland Security (Citizenship and Immigration Services, Immigration and Customs Enforcement or Customs and Border Protection), the Executive Office of Immigration Review (the immigration court system), or the Department of State. Any contact that Mr. Meredith believes to be necessary must first be approved by this court through the undersigned judge/department.

In re Marriage of Meredith, 148 Wn. App. at 895 (emphasis in original). While the court found that this language was an unconstitutional prior restraint on speech, the court also said that the court had not found that Meredith previously abused his right to speak. The court did say that Meredith's false police report of abuse may support such a conclusion, but that issue is not now before this court. In re Marriage of Meredith, 148 Wn. App. at 897. Thus, the court left open at least some possibility that an order specifically directed at correcting past abuse might be acceptable. This is relevant to this case in which the trial court found that the mother had exaggerated or falsely claimed abuse by the father.

Meredith and Suggs are post-dissolution harassment cases, not parenting cases. A court has greater authority to implement a prior restraint when it involves restraining parents from behavior that negatively affects children. Here, the prohibitions in the order

are directed only at those third parties who will be in close contact with the children, i.e. child care providers or teachers.

**F. The Parenting Plan Does Provide for Each Parent to Have Summer Time with the Child.**

The parenting plan provides for the parents to share residential time in the summer with weekly transfers. This “*week on/week off*” schedule clearly allows for summer “*vacations.*” The mother claims that the court erred in not providing specific vacation time but, in fact, each parent can vacation for an entire week with the child, subject only to the travel notice requirements of the parenting plan. She cites RCW 26.09.184 and 26.09.187 for the proposition that the court shall specify specific vacation time but her reliance on those statutes is misguided. The statutes require that the Parenting Plan shall specify which parent the child should be with each day of the year; this plan does so.

**G. The Trial Court Did Not Err When It Set Certain Transfer Times during Daytime Hours.**

The child was less than two years old at the time of trial. The transfer times were appropriately set taking into account the child’s best interest, not just the conveniences of the parents. In fact, the transfer times took into account the child’s need to be in a

parent's home in time for a reasonable bed time as well as avoiding rush hour traffic for some of the transfer times.

While the court was required to "*consider*" the parties' employment schedules, this was only one of a number of factors. Also, a consideration of an employment schedule is not a requirement that it be the determining factor. In this instance, while the mother had employment responsibilities, the father also had parenting responsibilities for his son. He was responsible for getting his son up in the morning, getting him ready for school and getting him to school as well as caring for him after school and on weekends. The parenting plan schedule for the child of this action also had to "*consider*" the father's schedule.

**H. The Court Properly Awarded \$30,000 in Sanctions Against the Wife in Favor of the Husband.**

The court awarded \$30,000 in attorney fees to Mr. Caylor due to Ms. Vaughan's actions in this litigation and, in particular, at trial. Awarding fees as a sanction is well-established in Washington State.

Bad faith is a basis for awarding sanctions. Hsu Ying Li v. Tang, 87 Wn. 2d 796, 798, 557 P.2d 342 (1976); Seals v. Seals, 22 Wn. App. 652, 658, 590 P.2d 1301 (1979); Snyder v. Tompkins, 20

Wn. App. 167, 174, 579 P.2d 994 (1978). They can be awarded for pursuing meritless claims advanced for harassment, delay, nuisance or spite. Skimming v. Boxer, 119 Wn. App 748, 756, 82 P.3d 707 (2004). Bad faith can be conduct involving ill will, fraud or frivolousness. In re Impoundment of Chevrolet Truck, 148 Wn.2d 145, 160, 60 P.2d 53 (2002); In re Recall of Pearsall-Stipek, 141 Wn.2d 756, 783, 10 P.3d 1034 (2000); In re Estate of Mumby, 97 Wn. App 385, 394, 982 P.2d 1219 (1999); Rogerson Hiller Corp. v. Port of Port Angeles, 96 Wn. App 918, 928, 982 P.2d 131 (1999) (rev. denied, 140 Wn.2d 1010 (2000)).

The court can consider whether Vaughan's intransigence caused Caylor to incur more legal fees. In re Marriage of Wallace, 111 Wn. App. 697, 708, 45 P.3d 1131 (2002), rev. denied, 148 Wn.2d 1011 (2003); Schumacher v. Watson, 100 Wn. App. 208, 212, 997 P.2d 399 (2000); In re Marriage of Crosetto, 82 Wn. App. 545, 563, 918 P.2d 954 (1996). Where a party's bad acts permeate the entire proceedings, the court need not segregate which fees were incurred due to the intransigence and which were not. In re Marriage of Burrill, 113 Wn. App. 863, 873, 56 P.3d 993 (2002), rev. denied, 149 Wn.2d 1007 (2003); In re Marriage of Sievers, 78 Wn. App 287, 312, 897 P.2d 388 (1995). Intransigence can include

making trial difficult and unnecessarily increasing legal costs. In re Marriage of Morrow, 53 Wn. App 579, 770 P.2d 197 (1989). Intransigence includes willful concealment of property. Seals v. Seals, 22 Wn. App. 652, 658, 590 P.2d 1301 (1979), This is exactly what Vaughan did in this case. She moved a substantial sum of money just before filing for divorce and failed to disclose the location of those funds even upon direct questions at trial. CP 448. RP, January 29, 2015, at 8.

Intransigence includes making unsubstantiated, false and exaggerated allegations against the other parent concerning his fitness as a parent, which caused him to incur unnecessary and significant attorney fees. In Re Marriage of Burrill, 113 Wn. App. 863, 873, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007 (2003); this exactly what the court found that Vaughan had done in this case.

Vaughan claims that the community property is small in this matter so sanctions were inappropriate. Her resources are irrelevant. In Re Marriage of Bobbitt, 135 Wn. App. 8, 30, 144 P.3d 306 (2006); In Re Marriage of Crosetto, 82 Wn. App. 545, 564, 918 P.2d 954 (1996).

In this case, Vaughan failed to answer interrogatories until ordered to do so. CP 446. Vaughan failed to disclose the location of \$20,000 removed from a bank account just before filing for dissolution in her answers to interrogatories and when she was asked at trial. She failed to disclose medications prescribed to her for depression and other mental health issues.

Vaughan failed to appear for a deposition until ordered to do so. CP 446.

Vaughan failed to provide proper addresses and contact information for a number of her witnesses. CP 446.

Vaughan refused to disclose information about her daycare providers, even while she sought reimbursement for payments to such providers. Vaughan claimed amounts paid to her father for daycare that he, himself, under oath denied receiving. She was not credible with her testimony regarding her daycare expenses. CP 430, 446. RP, January 29, 2015, at 7-8

Vaughan admitted, under cross-examination, lying to the court about supposed rent payments but then perpetuated the false information later in the trial. CP 446. RP, January 29, 2015, at 9.

Vaughan claimed payments on Caylor's medical bills and the child's medical bills, but repeatedly included payments made by the

insurance company and adjustments downward made by the health care provider in the amounts she supposedly paid. CP 446.

Vaughan submitted IRS returns which included exorbitant tax deductions that she could not explain or verify. RP, January 29, 2015, at 7. Her financial declaration was false. RP, January 29, 2015, at 9.

Vaughan repeatedly minimized the extent of Caylor's medical disability at the time of the marriage or throughout the marriage while claiming she went to his medical appointments with him and while claiming she visited him in the hospital on a nearly daily basis. She denied knowing that he was on L & I disability at the time of the marriage despite renting a home that relied upon those funds for their combined budget.

Vaughan made false or greatly exaggerated claims of domestic violence. RP, January 29, 2015, at 6-7. CP 459-461. Vaughan repeatedly exaggerated her description of the events of January of 2013. Vaughan made extraordinary claims that Caylor leapt across a room to attack her when he was barely able to walk, missing one of his lower leg bones and was still recovering from extensive surgery.

Vaughan claimed that Caylor's four year old son repeatedly physically attacked her on a daily basis intentionally inflicting injury upon her. She showed disrespect for Wyatt. RP, January 29, 2015, at 13.

Vaughan claimed that CPS visited their home repeatedly during the marriage when CPS never visited their home during the marriage.

Vaughan sought a court order for evaluations and treatment that Caylor had already successfully completed in 2009. CP 447.

Vaughan repeatedly raised issues from Caylor's childhood that occurred approximately twenty years ago. CP 447.

Vaughan repeated raised issues from the 2009 incident even though she dated and married Caylor and got pregnant twice with him knowing all of this information. CP 447.

The financial issues examined through discovery and at trial went far beyond the issues of community/separate property. In fact, the primary focus was on debts falsely claimed by the wife, claims for "*reimbursement*" of sums she falsely claimed she had paid and on daycare expenses that she falsely claimed she had incurred.

Vaughan was not “*punished*” for “*bringing a reasonable claim of domestic violence.*” She was sanctioned for bringing a number of false claims to the court on variety of subjects. With regard to her claim of domestic violence, she exaggerated and/or falsified her claims as determined by the court.

**I. Any Remand Should Go Back to the Trial Judge.**

Vaughan has not established any personal bias on the part of the trial judge. Judge Roberts assessed the credibility of the witnesses, including Vaughan. This is part of her function as trial judge; it is not a reflection of personal bias.

The trial judge did not castigate Vaughan for not reporting domestic violence. Instead, based on the totality of the evidence, the trial judge rightly determined that Vaughan exaggerated her version of the incident by adding supposed actions of Mr. Caylor that were not consistent with his medical condition or her own earlier descriptions of the event. Since Vaughan had admittedly lied to the court on a number of issues, it was reasonable for the court to determine that Vaughan may well have lied in this instance or, at best, exaggerated the incident. In light of the timing of Vaughan’s allegations overall, often occurring when she is involved

in a discovery dispute or wishes some other legal advantage, these circumstances were also appropriately considered by the trial court.

The trial judge had a substantial basis for her determinations; this does not mean a personal bias.

## **VI. CONCLUSION**

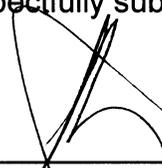
The trial court properly considered all of the evidence.

The Parenting Plan entered by the court was supported by substantial evidence, and was not an abuse of discretion. Substantial justice was done. The trial court decisions should be upheld.

This appeal is frivolous. The husband should be awarded attorney fees and costs on appeal as allowed by and RAP 18.1. due to the continued bad faith exhibited by this appeal.

Dated: December 30, 2015.

Respectfully submitted,



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