No. 89093-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of

NEHA CHANDOLA NKA NEHA VYAS
Respondent

and

MANUL VARN CHANDOLA
Appellant

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

RESPONDENT'S ANSWER TO AMICUS DEORNELLAS

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A. IDENTITY OF RESPONDENT

Neha Vyas, formerly Neha Chandola, who was the petitioner in the Superior Court and the respondent in the Court of Appeals, makes this answer to the Amicus Brief of Brandy DeDeOrnellas.

B. RESTATEMENT OF ISSUES RAISED BY AMICUS

1. The trial court restricted the father's residential time as a means to limit grandparental involvement that was injurious to the child and to promote the father's efforts to remedy his parenting deficiencies. In doing so, the court acted within its authority.

2. This case involves real grandparents who acted in ways destructive of the child's bond with her mother. Consequently, speculative harms caused by restrictions on grandparental access in other cases are irrelevant.

3. This case does not present an issue requiring the court to decide whether or not the relationship between grandparents and grandchildren is an exceptional one in Indian culture. This issue of exceptionalism was not litigated at trial, is certainly disputable, and, in any case, is irrelevant here, where the grandparents' conduct was proven to be injurious to the child and to the mother.

C. RESTATEMENT OF THE CASE

This case does not involve a contest between Indian cultural tradition and some other tradition. Both parents are Indian. All the grandparents are Indian.

Nor does this case involve a limitation on grandparental access per se. The maternal grandparents posed no risk to the child, giving the court no reason to regulate their access. The restriction applies only to the paternal grandparents and only during the father's residential time.

Nor, really, does this case involve a direct limitation on the paternal grandparents. They are not parties. There is no limitation, for example, on time they might spend with the child during the mother's residential time, with the mother's permission, of course.

Rather, this case involves a restriction on the father's residential time, so that he must parent his child most of the time outside the presence of his parents. The court imposed this restriction to protect the daughter from the harm caused by the campaign against the mother being waged by the father and his parents, who had placed the child in an impossible position of choosing between her love for both parents. RP 200, 203-204. For example, the grandparents and the father would encourage the

child to choose her father over her mother and praise her when she did so. RP 129-132, 203-204, 377. They would countermand the mother's efforts to correct and care for the child. RP 104-107, 128, 645, 654. They would denigrate the mother for her religious practice, as well as personal choices regarding such things as food and music. RP 385-386. As the parenting evaluator explained, this behavior also harmed the child by communicating to her that the father and his family did not value the mother. RP 204-205. Likewise, the father's expert, Dr. Hedrick was "suspicious that [the paternal grandparents] and this father had made it very difficult for this mother to have a reasonable relationship with the child." RP 726 (affirming her deposition testimony). As the Court of Appeals held, this evidence warranted the trial court's restriction on the presence of the grandparents during the father's residential time. Slip. Op., at ¶¶ 48-54.

This cruelty was not the only problem with the paternal grandparents. In the absence of the mother, or her mother (Kuldeep), the paternal grandparents were also doing most of the primary caregiving, rather than the father doing it. As Dr. Hedrick put it, the father was "untested" as a functioning parent because "he

hadn't done a lot of parenting by himself ..." RP 724.[1] Amicus acknowledges the evidence in support of this factual finding. Br. DeDeOrnellas, at 5. Indeed, Varn did not really dispute that his parents were doing most of the parenting work. Opening Br. Appellant, at 32. Rather, he argued the court could not make him do that work. Id. Indeed, he agreed to the provision in the parenting plan that requires him to participate in individual parent training. CP 1, 44-45, 90.

Certainly, as Varn seems intent on proving, no one can make him parent his daughter. Still, the court structured the parenting plan so as to give him those opportunities, whether or not he takes them. CP 93-94. Requiring Varn to provide care for his child is not the same as prohibiting his parents from helping out. Moreover, as the father's residential time increases, assuming he can acquire the necessary skills, so will the potential for the grandparents to spend time with the child.

Amicus also seems unaware that the court-appointed parenting evaluator did recommend restrictions and did so on the basis of abusive use of conflict. See, e.g., RP 194-201, 305-306,

[1] Varn seemed to struggle with basic parenting tasks, above and beyond his inability or unwillingness to establish healthy routines. See, e.g., RP 45-46, 93-94, 455-456, 754-756, 803-805, 830.

326, *contra* Br. DeOrnellas, at 5 (¶ 2). The father's parenting evaluator agreed with the recommendation for limited residential time (but allowing for one overnight per week). RP 502-503.

Finally, it is true that the mother did not request this restriction. However, she also did not object to it, as suggested by Amicus when she argues the restriction was entered "in contravention of parental wishes and in violation of their right to autonomy in parental decision-making...." Br. DeOrnellas, at 10.

D. ARGUMENT IN RESPONSE TO AMICUS DEORNELLAS.

1. THE COURT HAS THE AUTHORITY TO RESTRICT THE FATHER'S RESIDENTIAL TIME SO AS TO PROTECT THE CHILD'S BEST INTERESTS.

Amicus argues the court must have a compelling interest to restrict the grandparental access as it did and that the court failed to identify such an interest. Br. DeOrnellas, at 10. Again, it is the father's residential time that is restricted. The grandparents are not parties to this proceeding. They did not seek and were not denied visitation in this case. Therefore, the considerable space Amicus devotes to a discussion of "grandparents' rights" is inapposite.

Moreover, the court's authority to restrict the father's residential time is well-settled. *See, In re Marriage of Kovacs,* 121 Wn.2d 795, 801, 854 P.2d 629 (1993); *accord, In re Marriage of*

Katare, 175 Wn.2d 23, 283 P.3d 546 (2012) (upholding restrictions based on conduct "adverse to the best interests of the child" per RCW 26.09.191(3)(g)). The trial court expressly made a finding of harm here with respect to Varn's conduct. CP 92. As the Court of Appeals held, the finding was based on substantial evidence. Slip Op., at ¶ 56. Based on this evidence and this finding, the court is authorized by statute to limit "any provisions of the parenting plan." RCW 26.09.191(3)(g). Indeed, the court has an independent duty to structure the parenting plan so as to protect the child against harm. Thus, it is irrelevant whether the mother requested this protection or not.

2. THIS CASE DOES NOT INVOLVE HYPOTHETICAL INJURIES ARISING FROM HYPOTHETICAL DISRUPTIONS IN HYPOTHETICAL GRANDPARENT-GRANDCHILD RELATIONSHIPS.

Amicus shares a substantial amount of information and opinion regarding grandparent caregivers. It is from no disrespect to those grandparents that Neha observes, again, that the paternal grandparents in this case are not parties. Nor are they primary caregivers. The mother is.

Thus, Amicus veers off-target when she discusses the harms that can flow from "remov[ing] a child from the care of a

loving grandparent ..." Br. DeOrnellas, at 11. That is not what happened here. In the first place, the primary caregiver relationship between mother and child remains intact. Second, there is simply no evidence the child was harmed by spending more limited time with her grandparents. Rather, the child has prospered. This is a problem for the argument Amicus makes. For example, the mother does not dispute "a child benefits from consistency in caregiving..." Br. DeOrnellas, at 12. That is what the child now has, thanks to the parenting plan, including that aspect of the plan that spares the child from the corrosive effects of the paternal grandparents' apparent animosity for the mother and their efforts, combined with the father's, to obstruct the mother in her nurturing of the child. CP 92. Raising children with the support of an extended family is one thing, and a far different thing than raising children in an atmosphere where multiple adults fight over the child's bedtime. In short, the paternal grandparents in this case are not part of the solution; they are part of the problem, as even the father's parenting expert, Dr. Hedrick, recognized. RP 493.

Finally, while Amicus might have unconditional love for all grandparents, Varn does not. He discouraged the child from having a positive relationship with her maternal grandmother, such

that after spending time with her father the child would call the grandmother "bad" and say a crocodile was going to eat her. RP 111-112; see, also, RP 135 (prohibiting the grandmother from taking child to visit neighbor). In short, Varn does not object to limits on grandparents; he just wants to choose which grandparents.

3. THE ISSUE OF INDIAN CULTURAL EXCEPTIONALISM IS NOT PRESENTED HERE.

The assertion of cultural bias in this case is perplexing, given that the entire family is Indian and given there simply is no evidence of bias on the part of anyone, including the court. Slip Op., at ¶ 70. The court was not anti-grandparents or anti-cosleeping. Rather, as the Court of Appeals described, it was Varn's "approach to these two practices [that] were adverse" to the child's best interests. Id. Likewise, when the grandparents allied themselves with the father's harmful behaviors, they exacerbated the harm. See, e.g., RP 128-130 (not adhering to routine, etc.), 360 (encouraging child to choose father over mother), 408 (participating in activities keeping child awake late over mother's efforts to put child to bed), 645 (paternal grandmother chasing child with food), 647 (paternal grandparents not setting boundaries for child). Whether or not

Indian grandparents are exceptional, these grandparents engaged in problematic behavior.

Moreover, this trial did not address the exceptional nature of Indian grandparents. This issue simply was not adjudicated. Nor was there any dispute about how wonderful it can be to have extended family support and grandparental involvement in children's lives. Whatever the merit of these propositions offered by Amicus, this case simply does not present them. The problem here is much more specific, i.e., that the involvement of the paternal grandparents was not altogether wonderful, but was harmful in some particulars. Surely, Amicus cannot mean to suggest that Indian grandparents can commit no wrong. In any case, that is a proposition not adjudicated in this case and, therefore, simply not before the court.

Likewise, Neha sees no point in addressing the generalizations offered by Amicus about "Indian culture," except to observe that the many Indians who testified in this trial differed in their opinions (including their opinions about Indian culture) and that, in any case, family law cases must be decided on their particular facts, not by resort to stereotypes or other generalities, as Amicus seems to concede. Br. DeOrnellas, at 17 n.31. *See In re*

Marriage of Cabalquinto, 100 Wn.2d 325, 329, 669 P.2d 886 (1983) ("homosexuality in and of itself is not a bar to custody or to reasonable rights of visitation"); *see, also, In re Marriage of Taddeo-Smith and Smith,* 127 Wn. App. 400, 110 P.3d 1192 (2005) (same re physical disability); *Tucker v. Tucker,* 14 Wn. App. 454, 456, 542 P.2d 789 (1975) (race). In short, the Washington courts have long enforced an approach to the best interests test that guards against bias of any kind and, instead, focuses on the relationship between a specific parent and child.

Finally, even if the "mother-child relationships in Indian culture are uniquely close," as Amicus argues (Br. DeOrnellas, at 17), perhaps the father and his parents might spend more effort trying to protect that relationship, instead of trying to undermine it.

E. MOTION FOR ATTORNEY FEES

The mother restates her request for attorney fees. The father's extraordinary effort to manufacture a cause célèbre unfairly burdens the mother, costing her time, worry, and money better spent in other ways. The father should pay. Accordingly, the mother hereby incorporates the argument in support of her request for attorney fees as made in her Answer to Petition for Review.

F. CONCLUSION

For the foregoing reasons, Neha Vyas respectfully asks this Court to deny review of Varn Chandola's petition and to award her fees.

Dated this 15th day of October 2013.

RESPECTFULLY SUBMITTED,

/s/ Patricia Novotny

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Attached for filing in pdf format is the Respondent's Answer to Amici NPO & SAVE Services, Answer to Amici DeOrnellas, Answer to Amici McKenna & Binford, and Declaration of Service in Marriage of Chandola, COA No. 68424-8-I. The person submitting these pleadings is Patricia Novotny, WSBA No. 13604, whose email address is novotnylaw@comcast.net.

Thank you.

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