No. 90753-6

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

KARLA MAIA
(fka Karla Maia-Hanson),
Petitioner,

v.

BRADLEY HANSON,
Respondent

Requesting Review From No. 70249-1-I
On Appeal From King County Superior Court

PETITION FOR REVIEW

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TABLE OF CONTENTS

Page

APPENDICES

TABLE OF AUTHORITIES

Page(s)

Washington Cases

Page(s)

Federal Cases

Court Rules, Statutes, and Constitutional Provisions

Other Authorities

I. IDENTITY OF PETITIONER

Petitioner Karla Maia asks this Court to accept review of the decision terminating review filed June 30, 2014, designated in Part II ("Slip Op"), a copy of which is Appendix A, and the associated fee award, which is Appendix D.

II. COURT OF APPEALS DECISION

The unpublished panel decision dismissed Karla Maia's ("Karla") appeal from underlying contempt proceedings generated by enforcement of the portion of a 2011 parenting plan which prohibited Karla or her then-11-year-old twin sons from contacting a mandatory reporter or CPS about potential abuse of her boys without first informing and getting permission from a court-appointed "case manager." *Slip Op.,* pp. 2 - 7. Karla was first held in contempt for alleged reporting by her sons - not by her[1] - to mandatory reporters when no case manager had been retained or was available to serve the function specified in the parenting plan,[2] then held in "continuing contempt" in order to insure no reports occurred in the future.[3]

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[1] The first alleged report occurred on June 8, 2011 when AH told his school nurse that he injured his neck when Brad shoved him. AH then saw his school counselor, who then reported the claim to CPS. *See* CP 117; 1106-1183; 1184-1188, as discussed in the Opening Brief at 11-12. The second alleged report occurred on September 27, 2011 based on information told by AH to Dr. Greenberg at his regularly scheduled appointment while on Karla's residential schedule. *See* CP 1189-1268, 1271-72, discussed in the Opening Brief at 14-15.

[2] *See* RP (11/4/11) pp. 6:3-4, 32:8-11, discussed in the Opening Brief at 12-13. The case manager was never retained during this period (RP (211/4/11) p. 6:3-4); even though it was Brad's responsibility to pay for the case manager (CP 1065-1066), he failed to make the payment (RP (11/4/11) p. 16:1-4) and it is

(Footnote continued next page)

The panel decision declined to address the appeal on the merits. Instead, it ruled that Karla's appeal from the contempt review hearing and order on reconsideration were moot and that her appeal from the order appointing a case manager and the contempt order was untimely. *Slip Op.*, at 7. The decision did not address Karla's argument the contempt orders were not valid, but concluded by awarding Respondent Bradley Hanson ("Brad") his attorney's fees on appeal. *Slip Op.*, pp. 10-11. The fee award was not premised on need or ability to pay, nor on intransigence, but on the underlying contempt proceedings. *Slip Op.*, pp. 10-11.[4]

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undisputed, and acknowledged by the trial court prior to finding Karla in contempt (RP (11/4/11) p. 32:8-11) that no case manager was available for Karla to contact at the times she was allegedly in contempt and for which she was in fact initially held in contempt in November, 2012 (CP 123), then held in "continuing contempt" in May, 2012 (CP 62) , despite the fact that there were not even any allegations that a new violation of the court order had occurred (CP 62, discussed in Reply Brief at 14-17). Indeed the trial court explicitly stated that the purpose of the "continuing contempt" was to control Karla's future behavior (CP 62-63), even though her past behavior did not indicate any violations, and despite the fact there was no legal basis for such a probation-like status under contempt law. *See* ***Int'l Union, United Mine Workers v. Bagwell***, 512 U.S. 821, 114 S.Ct. 2552, 129 L.Ed.2d 642 (1994) and Opening Brief at pp. 27-37 and Reply Brief at pp. 14-17.

[3] See CP 62-63, discussed in the Opening Brief at 16-17.

[4] The panel decision also ignored the fact that Karla was not able to appeal the 2012 order holding her in continuing contempt because it was not formally entered until the trial court held that Karla had "purged" the contempt a year later in March, 2013, incorporating the 2012 ruling into the 2013 ruling. Karla timely appealed the 2012 ruling once it was entered as part of the 2013 order, and it is on the basis of that timely appeal that she challenged the contempt proceedings as void based on the underlying prior restraint provision, which was void. *See* ***Marriage of Maxfield***, 47 Wn. App. 699, 702-04, 737 P.2d 671 (1987) ("Void orders . . . may be vacated irrespective of lapse of time," citing cases to 1938).

Karla filed for reconsideration to make sure the panel understood that such an award was unlawful, even on appeal. App. B. Reconsideration was denied, App. C, and a specific fee award was ultimately entered in Brad's favor, App. D.[5] The fee award also relied on the underlying contempt proceedings as part of its award of costs, specifically citing the general contempt statute (RCW 7.21.030(3)) and the contempt provisions under the dissolution statutes, RCW 26.09.160(2)(b)(ii), as the only basis for some of the clerks papers costs, since the costs at issue were not authorized under Division I's interpretation of RAP 14.3(a).

Karla seeks review of all issues she raised at the Court of Appeals. In that context, the panel decision raises three basic issues.

III. ISSUES PRESENTED FOR REVIEW

1. The trial court's orders holding Karla in continuing contempt for allegedly allowing her teen-age sons to speak privately to a mandatory reporter regarding potential abuse are void *ab initio* as unconstitutional prior restraints under ***Marriage of Suggs***, 154 Wn.2d 74, 93 P.3d 161 (2004) and ***Marriage of Meredith***, 148 Wn. App. 887, 201 P. 3d 1056 (2009), meriting review under RAP 13.4 (b)(3),(4).

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[5] Karla raises the issues presented by the August 14, 2014, fee award *in lieu* of a motion to modify to the panel. To the extent there is any arguable irregularity in this procedure under the appellate rules, Karla requests they be waived per RAP 1.2(a) in the interest of addressing the matters the most simply and to further judicial economy.

2. Should review be granted to address the "common practice" of including a void prior restraint provision in parenting plans as an issue of continuing and substantial public interest, even if the appeal is deemed substantively moot? RAP 13.4 (b)(3),(4).

3. Should review be granted to vacate the Court of Appeals order awarding fees to Respondent Bradley Hanson since it is based on the underlying void contempt orders and void orders cannot support any subsequent order, including a fee award, so that the fee award conflicts with settled Washington and federal constitutional law, including ***State v. Coe***, 101 Wn.2d 364, 69, 372 P.2d 353 (1984), ***State ex rel. Superior Court v. Sperry***, 79 Wn.2d 69, 74, 483 P.2d 608, *certiorari. denied*, 404 U.S. 939 (1971), and ***Bradley v. Fisher***, 80 U.S. 335, 343-44, 20 L. Ed. 646 (1871).

IV. STATEMENT OF THE CASE

Karla seeks vacation of the contempt orders and to have stricken as void *ab initio* those portions of the final and other associated orders which contain prior restraints against her making reports to CPS to protect her sons, either directly or indirectly. As prior restraints on her freedom of speech, the provisions are contrary to settled federal and state constitutional law, as articulated by ***Marriage of Suggs***, 154 Wn.2d 74, 93 P.3d 161 (2004) and ***Marriage of Meredith***, 148 Wn. App. 887, 201 P.3d 1056 (2009).

Even though the Court of Appeals determined that Karla's appeal is now substantively moot, *Slip Op.,* p. 7, the

unconstitutionality of these prior restraints presents an issue of continuing and substantial public interest. This Court's review is necessary to remind the lower courts that even though parenting plans which contain illegal prior restraints may be " quite common" and convenient, they violate both the federal and state constitution. This is particularly important in family law and parenting plan cases, where many, if not most, parents do not have the resources to challenge the trial court's order, even when unconstitutional. Finally, as the illegal provisions and the contempt orders based on them are void *ab initio,* and it is reported that such orders are "common," the lower courts need to be instructed that ***Suggs*** does apply to parenting plan cases, that such prior restraint provisions may not be included in parenting plans, and also may not serve as a basis for any coercive or punitive orders under the contempt statutes, including attorneys' fees and costs.

V. REASONS WHY REVIEW SHOULD BE ACCEPTED

A. The Order Underlying the Contempt Proceedings Is An Illegal Prior Restraint Under This Court's Decision In *Marriage of Suggs* and is Unenforceable. The Panel's Dismissal of Karla's Appeal conflicts with *Suggs and Marriage of Meredith* and Effectively Holds that *Suggs* and *Meredith* do not Apply to Parenting Plans.

The First Amendment to the U.S. Constitution prohibits the government from interfering with a person's "freedom of speech" and "right...to petition the Government for a redress of grievances." *See also* U.S. Const. amend. 14 § 1 (making First Amendment

applicable to states). This precludes prior restraints in most cases, which carry "a heavy presumption of unconstitutionality." ***Marriage of Suggs***, 152 Wn.2d 74, 81, 93 P.3d 161 (2004) (*citing* ***Bantam Books, Inc. v. Sullivan***, 372 U.S. 58, 70, 83 S.Ct. 631 (1963).

The trial court's orders underlying the contempt proceedings prohibits Karla herself from reporting (or allowing her children to report) an allegation of abuse to a government agency or mandated reporter without first reporting that allegation to the court-appointed case manager. In *Suggs*, this Court vacated an antiharassment order as an illegal prior restraint because

> it forbids Suggs' speech before it occurs...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 [the ex-husband] and for no lawful purpose."

Suggs, *supra,* 152 Wn.2d at 81. The trial court's orders in this case contain the same type of prior restraint as was prohibited in *Suggs* and is a clear prior restraint on Karla's First Amendment and state constitutional rights[6] to free speech and to petition the government for a redress of grievances. *See* Opening Brief, at Section B, Reply Brief at Section A, Motion for Reconsideration at Section A.

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[6] Since the Washington Constitution provides, at a minimum, no less protection of speech as the First Amendment, and that level as applied in state decisions is ample to protect Karla's rights, a separate state analysis is not necessary. *See* ***Marriage of Suggs***, 152 Wn.2d 74, 80-81 & n. 4, 93 P.3d 161 (2004).

B. As An Illegal Prior Restraint on Karla, The Void Order Cannot Support the Contempt Proceedings, or The Court of Appeals' Fee Award, or the Remand Decision, Regardless of Timeliness and Mootness.

1. The void order leaves the later orders without legitimate legal foundation and requires they be vacated.

The law is long settled that an unconstitutional prior restraint is void on its face, or void *ab initio*, and therefore cannot lawfully support a later order based on it, whether through enforcement or punishment via contempt proceedings, and whether with fines, an award of attorney's fees, or otherwise, and that such void orders are peculiarly subject to collateral attack. *See, e.g.,* ***State v. Coe***, 101 Wn.2d 364, 69-372 (collateral bar issue), 374-381 (prior restraint as void under state and federal constitutions), 679 P.2d 353 (1984) ("Under Washington law, if the order in this case was patently invalid or 'void' as outside the court's power, the contempt judgment must be reversed...For the foregoing reasons the order is annulled, as being beyond the power of the court to make") (also holding that a contemnor may collaterally attack an unconstitutional prior restraint); ***State ex rel. Superior Court v. Sperry***, *supra,* 79 Wn.2d 69, 74 (per McGovern, J.) ("We have held in a number of cases that a void order or decree, as distinguished from one that is merely erroneous, may be attacked in a collateral proceeding...The violation of an order patently in excess of the jurisdiction of the issuing court cannot produce a valid judgment of contempt...")

(reversing the trial court and holding that a contemnor may collaterally attack an unconstitutional prior restraint)(internal citations omitted).[7]

The fundamental principle that an order which is void *ab initio* has no legal effect in collateral proceedings is long settled law, dating back to the very beginning of our country's jurisprudence. *See* ***Kempe's Lessee v. Kennedy***, 5 Cranch 173, 179, 9 U.S. 173 (1809) ("But if the proceedings are void *ab initio*, there has been no judgment..."); ***Bradley v. Fisher***, 80 U.S. 335, 343-44, 20 L.Ed. 646 (1871)(a judgment which is void *ab initio* may be disregarded in any collateral proceeding). As such, the validity of such judgments may be challenged even when an appeal is otherwise untimely. *See* ***Cabazon Band of Mission Indians v. City of Indio***, 694 F.2d 634, 638 (1982) ("Indio's attempted annexation was void *ab initio*. Thus, the Cabazon Band was not required to take action within any prescribed statutory time to establish invalidity").

2. The commissioner's fee award at the Court of Appeals illustrates the problem with allowing the void order to be used for later enforcement.

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[7] *Accord*, ***O'Day v. King County***, 109 Wn.2d 796, 803, 749 P.2d 142 (1988)("If the County's regulations impermissibly burden protected expression, respondents have standing to challenge regulations' overbreadth even though their activity is within the permissible scope of the ordinance and even if such constitutional overbreadth can be considered 'harmless error' as applied to them.")(internal citations omitted) (emphasis added).

Although the panel decision provided the legal basis for the fee award so that Division I's commissioner was only charged with determining the reasonableness of the fees, an issue was raised as to the scope of allowable costs, which the commissioner had to decide in the first instance.

Based on a prior ruling in a different case by a panel at Division I, Karla objected to the clerk's papers costs being awarded for Brad's own set in addition to the cost for the court. As seen by the order awarding fees and costs, Commissioner Kanazawa erroneously found legal authority for the fee award in the general and the dissolution contempt statutes. It is erroneous for the same reason that the fee award is erroneous – costs cannot be premised on a void order any more than can fees, fines, or other any monetary sanction.

C. The Lower Courts "Common" Enforcement of Parenting Plans Which Contain Illegal Prior Restraints Presents an Issue of Continuing and Substantial Public Interest.

This Court may review a moot case if it "presents issues of continuing and substantial public interest." *Marriage of Horner*, 151 Wn.2d 884, 891, 93 P.3d 124 (2004) (citing *Westerman v. Cary*, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994)). This Court recently stated the five factors used to determine if a case presents issues of continuing and substantial public interest:

> Three factors in particular are determinative: (1) whether the issue is of a public or private nature; (2) whether an

> authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. A fourth factor may also play a role: the level of genuine adverseness and the quality of the advocacy of the issues. Lastly, the court may consider the likelihood that the issue will escape review because the facts of the controversy are short-lived.

Horner, 151 Wn.2d at 286-87. All these factors are met here.

1. The Issue in This Case Is of a Public Nature.

The enforcement of a trial court order in a family law matter which contains an illegal prior restraint is an issue of a public nature, even though it involves the rights of an individual. The lower courts are constantly put to the task of devising remedies to address the ever-changing dynamics of domestic relations. It is important that both the courts and the public be made aware of what types of remedies the courts have authority to fashion, and those that are not allowed under the law. *In re Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) ("The question of a judicial officer's authority is certainly public in nature.").

2. This Court's Authoritative Determination is Necessary to Provide Guidance to the Lower Courts.

As evidenced by opposing counsel's statements in oral arguments, the practice of incorporating the prior restraint provision in the parenting plan prohibiting direct contact with CPS or mandatory reports "is actually quite common" and is not a one-time

occurrence.[8] *See* Oral Argument audio. The fact that this practice is "common," which is in disregard of this Court's holding in *Suggs*, shows that the lower courts and counsel need guidance in addressing their concerns regarding abuse allegations without violating the state and federal constitutions. *See, e.g.* ***In re Dependency of A.K.***, 162 Wn.2d 632, 644, 174 P.3d 11 (2007) (granting review in a moot case because "[a] determination of how the courts' inherent power interacts with the statutory contempt scheme will provide useful guidance to judges").

3. Inclusion of Prior Restraints in Parenting Plans is Both "Common" and an Issue Capable of Repetition in the Family Law Context but Likely to Evade Review.

As the practice of incorporating the prior restraint provision like the one at issue here "is actually quite common," and occurs with some frequency, it is a given that a similar situation will arise in the future. However, it is likely to evade review simply because a significant portion of parents cannot afford to hire an attorney for

[8] Brad's counsel on appeal is a well-known family law practitioner who recently claimed to this Court she "is an attorney with an extensive appellate practice, and a special interest in domestic relations appeals" who "was counsel of record in over half of the Washington family law cases cited in the Court's opinion" in *Marriage of Chandola*, 180 Wn.2d 632, 327 P.3d 644 (2014). Her apparent knowledge was acknowledged by this Court's acceptance of her request to file an amicus brief on her own behalf in the *Chandola* case. *See* Letter to counsel from Commissioner Pierce dated July 11, 2014, App. E hereto. Counsel's representations in open court to the judges in Division I in this case that such provisions in parenting plans are "common" must be taken at face value and given credence based on her claimed expertise.

their initial dissolution action, much less the legal services necessary to appeal an unconstitutional contempt order. *See* ***King v. King***, 162 Wn. 2d 378, 403-404, 174 P.3d 659 (2007) (Madsen, J., dissenting) ("Ms. King's struggle to represent herself in this case demonstrates the legal hurdles that arise every day in courtrooms across Washington, showing the importance of counsel to a parent in a dissolution proceeding").[9]

These families are already at a disadvantage when navigating the "complicated legal procedures" and "complex set of state statutes governing their dissolution," even when this Court's precedent is followed by the trial court. *Id.* at 403. Review is further unlikely given the fact that most parents will simply suffer through the imposition of an unconstitutional prior restraint instead of risking time spent with their children by challenging the trial court judge who will retain continuing jurisdiction over the parenting plan in the event an appeal fails.[10]

VI. CONCLUSION

Petitioner Karla Maia respectfully requests the Court grant review on all issues raised in the Court of Appeals (including the need to remand to a different judge) and schedule the matter for

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[9] *See also* Task Force on Civil Equal Justice Funding, *Washington State Civil Legal Needs Study*, Wa. State Supreme Court, September, 2003, available at http://www.courts.wa.gov/newsinfo/content/taskforce/civillegalneeds.pdf.

[10] *See* RCW 26.12.010.

consideration at the earliest opportunity. Alternatively, Karla requests the Court grant review and, *per curiam*, reverse the Court of Appeals and remand to a different trial court to vacate the contempt orders and the offensive portions of the parenting plan pursuant to *Marriage of Suggs* and the other cited authorities, with the clear statement that this Court's holding in *Suggs* was not an aberration but applies to all manner of cases and orders, including parenting plans, and such prior restraints are void.

Dated this 4th day of September, 2014.

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APPENDICES

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of KARLA MAIA-HANSON, Appellant, and BRADLEY HANSON, Respondent.	)	No. 70249-1-I DIVISION ONE UNPUBLISHED OPINION FILED: June 30, 2014

TRICKEY, J. — This appeal arises from a dissolution action between Karla Maia-Hanson and Bradley Hanson.[1] Karla seeks review of four posttrial orders, which include and pertain to the trial court's order holding Karla in contempt. But because Karla is no longer in contempt of court, the issues she presents as to two orders on appeal are moot. The remaining orders from which Karla seeks review were not timely appealed. Accordingly, we dismiss this appeal.

FACTS

Bradley and Karla were married in 1999 and have two sons, A.H. and P.H.[2] On October 30, 2009, Karla filed a petition to dissolve the marriage.[3] On November 19, 2009, the parties agreed to a temporary parenting plan.[4]

Throughout the dissolution action, Karla instigated several unsubstantiated allegations of domestic abuse against Bradley.[5] On June 18, 2010, Child Protective Services (CPS) received a report alleging that Bradley had

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[1] For clarity, this opinion refers to both parties by their first names. No disrespect is intended.
[2] Clerk's Papers (CP) at 1-2.
[3] CP at 1.
[4] CP at 6.
[5] See CP at 875-86, 949, 951.

abused his sons by kneeing, hitting, and squeezing them.[6] CPS later concluded that the information did not warrant an investigation.[7] On July 6, 2010, CPS received a report from a psychologist who met with Karla and one of her sons.[8] The son claimed that Bradley had sexually abused him.[9] The police and CPS once again concluded that the allegations were unfounded.[10]

On August 3, 2010, Dr. Jennifer Wheeler, the court-appointed parenting evaluator, issued an addendum to a parenting evaluation report she had previously issued on June 16, 2010.[11] Dr. Wheeler determined that Karla's strong belief that Bradley was abusive would result in psychological harm to A.H. and P.H.[12] Dr. Wheeler expressed concern that Karla would raise new allegations of abuse by Bradley to CPS or a mandated reporter, which would disrupt Bradley's residential contact with his sons and expose them to further psychological harm.[13]

August 2010 Order

Bradley moved to modify the parenting plan by adopting Dr. Wheeler's recommendations.[14] On August 19, 2010, a court commissioner entered an order denying the motion, but ordered, "If either parent has a concern that the other parent is abusing the boys, it shall be reported only to the case manager

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[6] CP at 949.
[7] CP at 949.
[8] CP at 949.
[9] See CP at 949.
[10] CP at 949, 951.
[11] CP at 948.
[12] CP at 949.
[13] CP at 949.
[14] CP at 1065.

who shall determine if it rises to the level that should be reported to CPS."[15] The commissioner appointed a case manager "for the purpose of addressing the urgent concern identified & argued by the father of CPS reports."[16]

May 2011 Oral Rulings

On May 31, 2011, following trial, the trial court made an oral ruling regarding the parenting plan.[17] The trial court rejected Karla's request for RCW 26.09.191 limitations on the parenting plan after finding that no evidence supported her allegations of abuse by Bradley.[18] The court did not find Karla's allegations credible.[19]

The trial court also reaffirmed its appointment of the case manager for the narrow purpose of "deal[ing] with referrals to law enforcement or CPS."[20] The court directed "that any referral to CPS or a law enforcement, whether made by the mother, the therapists or by teachers, go through the case manager."[21] The case manager was charged with determining "whether or not there's a basis to make a report at all to CPS or law enforcement."[22]

Order Appointing a Case Manager

On June 24, 2011, the trial court entered several written orders, including a final parenting plan, an order appointing a parenting communications coach, a

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[15] CP at 1066.
[16] CP at 1066.
[17] CP at 874-940.
[18] See CP at 875-89.
[19] See CP at 880-82.
[20] CP at 896.
[21] CP at 896-97.
[22] CP at 897.

decree of dissolution, and findings of facts and conclusions of law.[23] The trial court also filed an order appointing a case manager, "entered pursuant to the [f]inal [p]arenting [p]lan."[24] The court appointed a case manager "to avoid false allegations being reported to CPS or law enforcement and the children being interviewed unnecessarily by the above agencies."[25]

In the order appointing a case manager, the trial court found that

> [i]f the mother should become aware of information related to new allegations of abuse by the father, she should immediately report this information to the Case Manager. The Case Manager shall investigate and, if the Case Manager determines that there is a basis to make a report to CPS or to law enforcement, the Case Manager shall make the report. The mother is not permitted to make independent referrals to CPS or law enforcement, either directly or through mandated reporters, independent of the parenting coach and Case Manager.[26]

The order appointed the case manager "for at least six months," stating that the case manager "may remain involved for up to two years following the implementation of the [f]inal [p]arenting [p]lan."[27]

Contempt Order

On September 28, 2011, Bradley filed a motion for an order to show cause why an order should not be entered finding Karla in contempt.[28] This motion was predicated on an incident that occurred on June 8, 2011.[29] According to Bradley's declaration in support of his motion, while A.H. and Karla were visiting

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[23] CP 14, 43, 49, 1067
[24] CP at 36, 1067.
[25] CP at 38-39.
[26] CP at 37.
[27] CP at 37.
[28] CP at 1085.
[29] CP at 959, 1106.

the school nurse together, A.H. reported to the nurse that Bradley had shoved him.[30] The school counselor contacted CPS to report the alleged abuse.[31] Karla did not contact the case manager.[32] CPS later determined that the allegation was unfounded.[33]

On November 4, 2011, the trial court entered a contempt order holding Karla in contempt of court.[34] The trial court found that Karla "intentionally failed to comply with" the August 2010 order and the court's May 2011 oral ruling, which prohibited Karla from contacting CPS or a mandatory reporter without first contacting the case manager.[35] The trial court also found that Karla "knowingly, intentionally, and willfully" violated the trial court's rulings.[36]

The contempt order contained a purge clause, whereby Karla could purge her contempt by complying with the order appointing a case manager and the parenting communication coach order, and by "first report[ing] any allegation she is aware of to the case manager before she takes the children to a mandatory report [sic]."[37]

The contempt order additionally included sanctions for committing contempt of court. The court ordered Karla to pay Bradley's attorney fees in the

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[30] CP at 1107-09.
[31] CP at 959, 1106.
[32] CP at 1110.
[33] CP at 959, 1110.
[34] CP at 116.
[35] CP at 117; see also CP at 37, 897.
[36] CP at 118.
[37] CP at 119.

amount of $3,000.[38] The court also directed Karla to comply with "this court's order."[39]

Review Hearing Order

A review hearing took place on May 31, 2012 to determine whether Karla had purged her contempt.[40] This hearing was not recorded or reported. In his response declaration submitted to the trial court, Bradley claimed that there was a pending CPS referral—the sixth allegation of abuse by Bradley, filed on September 26, 2011—and he had not yet received a letter confirming it was unfounded.[41]

The trial court did not enter a written order on the May 2012 review hearing until March 29, 2013, following a presentation hearing that day.[42] At the presentation hearing, the court granted Karla's motion to purge the contempt order.[43] The March 2013 review hearing order stated, in relevant part:

> **As of the review hearing on 05.31.2012**: . . . The Court finds that Petitioner is working towards compliance with the Court orders, but due to the findings above and the yet outstanding referral to Child Protection Services, it is appropriate that the Court give Petitioner more time to purge the contempt order. Petitioner may ask for another review hearing in one year to purge her contempt. **As of 03.29.2013**; the court finds the contempt is now purged. [44]

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[38] CP at 116.
[39] CP at 123.
[40] See CP at 850.
[41] CP at 1442-43.
[42] CP at 850.
[43] Verbatim Report of Proceedings (VRP) (March 29, 2013) at 3.
[44] CP at 854 (emphasis added).

Order on Reconsideration

The trial court denied Karla's motion for reconsideration in an order entered on April 22, 2013.[45] Among other things, the court denied Karla's request to file her counsel's notes from the May 2012 review hearing as a narrative report.[46] The court also awarded attorney fees to Bradley in the amount of $951.50.

ANALYSIS

On appeal, Karla seeks review of the review hearing order, the order on reconsideration, the contempt order, and the order appointing a case manager.[47] The issues she raises as to the review hearing order and the order on reconsideration are moot. Furthermore, Karla failed to timely appeal the contempt order and order appointing a case manager. Accordingly, we dismiss this appeal.

Review Hearing Order and Order on Reconsideration

"Only an aggrieved party may seek review by the appellate court." RAP 3.1. "A case is moot if a court can no longer provide effective relief." Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). This court may nevertheless review a moot case if it presents an issue of continuing and substantial public interest. In re Marriage of Horner, 151 Wn.2d 884, 891, 93 P.3d 124 (2004) (citing Westerman v. Cary, 125 Wn.2d 277, 286, 892 P.2d 1067 (1994)).

[45] CP at 858.
[46] CP at 858-59.
[47] CP 860.

Here, the review hearing order found that as of May 2012, Karla had not purged her contempt. However, it also found that as of March 2013, when the order was entered, Karla had purged her contempt. In this appeal, Karla's challenges to this order pertain to the former finding—that as of May 2012, Karla had not yet purged the contempt. Specifically, she claims that this finding is not supported by substantial evidence because it was predicated on an allegation of abuse that predated the original contempt finding. With regard to the order on reconsideration, Karla contends that the court erred by rejecting her counsel's notes from the May 2012 review hearing as a narrative report. These contentions are moot because as of March 2013, Karla is no longer in contempt of court. See In re Interest of M.B., 101 Wn. App. 425, 432, 3 P.3d 780 (2000) (issues raised on appeal were moot because at the time of appeal, the juveniles had either purged or served the imposed detention term). Therefore, we cannot provide effective relief.

Karla asserts that the contempt order and the "underlying illegal restraint"[48] are not moot and she was aggrieved because the contempt order ordered her to pay attorney fees in the amount of $3,000 and because the order on reconsideration ordered her to pay attorney fees in the amount of $951.50. But we do not dismiss this case on the basis that the contempt order raises moot issues. Rather, as will be discussed, this court will not review the contempt order because it was not timely appealed. In addition, the $951.50 attorney fees award

[48] Br. of Appellant's Reply at 12.

has no relation to her contention raised on appeal regarding the court's rejection of counsel's narrative report.[49]

Nevertheless, in her reply brief, Karla cites to several cases in which a Washington court addressed a moot case because it presented an issue of continuing and substantial public interest. However, she does not explain how the review hearing order and order on reconsideration meet this exception.

The review hearing order purged Karla of her contempt and she is no longer aggrieved. Because Karla fails to demonstrate that this court can grant effective relief or that the issues raised on appeal qualify for review under the criteria for review of moot issues, we dismiss this appeal as moot.

Contempt Order and Order Appointing a Case Manager

A party is allowed 30 days from the entry of judgment to file a notice of appeal. RAP 5.2(a). Karla assigns errors to the contempt order and the order appointing a case manager.[50] She did not expressly designate these orders in the notice of appeal. Rather, the notice of appeal states that Karla seeks review of "all other orders upon which [the review hearing order and the order on reconsideration] depend or prejudicially affect."[51] The contempt order was entered on November 4, 2011, and the order appointing a case manager was

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[49] See CP at 859.

[50] Specifically, Karla argues that these orders—which prohibited Karla from reporting allegations of abuse to CPS and law enforcement without first contacting the case manager—amount to an unconstitutional prior restraint on her right to free speech and right to petition the government for a redress of grievances. Karla also asserts several assignments of error regarding the contempt order. But because the contempt order and order appointing a case manager were not timely appealed, we do not address the merits of these contentions.

[51] CP at 860.

entered on June 24, 2011. Karla did not appeal these orders within 30 days following entry of judgment.

However, under RAP 2.4(b), an appellate court "will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review." Because we dismiss the issues raised in the review hearing order and order on reconsideration as moot, we need not determine whether the contempt order and order appointing a case manager prejudicially affected those decisions.[52]

We decline to review the validity of the contempt order and order appointing a case manager. Karla failed to file a notice of appeal within 30 days of entry of these decisions and therefore waived her right to challenge their terms.

Attorney Fees on Appeal

Bradley requests attorney fees on appeal pursuant to RAP 18.9(a) or, in the alternative, pursuant to RCW 26.09.160 and RCW 7.21.030.

We decline to order sanctions pursuant RAP 18.9(a). However, we grant Bradley's request for attorney fees on appeal under RCW 26.09.160 and RCW

[52] We also note that under RAP 18.8(a), an appellate court may "enlarge . . . the time within which an act must be done in a particular case in order to serve the ends of justice." Karla makes no request to excuse her failure to timely appeal under this rule. Nevertheless, such request would fail because the circumstances are not "extraordinary," as required for an extension of time to file a notice of appeal. RAP 18.8(b).

7.21.030, subject to compliance with RAP 18.1. See In re Marriage of Rideout, 150 Wn.2d 337, 359, 77 P.3d 1174 (2003) ("[A] party is entitled to an award of attorney fees on appeal to the extent the fees relate to the issue of contempt.").

Dismissed.

Trickey, J

WE CONCUR:

Leach, J.

Cox, J.

APPENDIX B

No. 70249-1-I

WASHINGTON STATE COURT OF APPEALS, DIVISION I

In re the Marriage of:

KARLA MAIA
(fka Karla Maia-Hanson),
Appellant,

v.

BRADLEY HANSON,
Respondent.

ON APPEAL FROM KING COUNTY SUPERIOR COURT

KARLA MAIA'S MOTION FOR RECONSIDERATION

Gregory M. Miller, WSBA No. 14459
Melissa J. Cunningham, WSBA No. 46537

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Attorneys for Appellant Karla Maia

TABLE OF CONTENTS

INDEX TO EXHIBITS

I. IDENTITY OF MOVING PARTY

Appellant Karla Maia (Karla) seeks the relief in II below.

II. STATEMENT OF RELIEF REQUESTED

Pursuant to RAP 12.4(c), Karla respectfully requests the panel reconsider its Decision filed June 30, 2014, because it overlooked or misapprehended material parts of the record and of Karla's arguments, and the requirements of associated case law, particularly as to void orders.

The Decision failed to address two requests for relief which are **not** affected by holding the substantive appeal of the underlying contempt order was moot. This Court: 1) cannot award fees to Brad based on a void order or contempt statutes invoked by the void order; and 2) must address the remand issue and should remand to a different trial judge to insure the appearance of fairness based on the trial judge's actions, including finding contempt: a) based on a void order; and b) in disregard of the facts as recognized by the trial court. A moot substantive appeal does not absolve the problems with the trial court's rulings for purposes of the remand issue. The

facts supporting the substantive appeal **also** support Karla's remand arguments, which were properly raised and should be addressed.

III. REASONS WHY RELIEF SHOULD BE GRANTED

A. The Part of the Order Underlying The Contempt Proceedings, This Court's Fee Award, and the Remand Decision is Void *Ab Initio* Because it is an Illegal Prior Restraint on Karla and Cannot Support an Award of Attorney's Fees, Including on This Appeal Regardless of Any Mootness. Nor Can Such Orders be Permitted in Future Proceedings in This or Other Cases.

The law is long settled that an unconstitutional prior restraint is void on its face, or void *ab initio,* and therefore cannot lawfully support a later order based on it, whether through enforcement or punishment via contempt proceedings, and whether with fines, an award of attorney's fees, or otherwise, and that such void orders are peculiarly subject to collateral attack. *See, e.g.,* ***State v. Coe***, 101 Wn.2d 364, 369-372 (collateral bar issue), 374-381 (prior restraint as void under state and federal constitutions), 679 P.2d 353 (1984) ("Under Washington law, if the order in this case was patently invalid or 'void' as outside the court's power, the contempt judgment...must be reversed . . . For the foregoing reasons the order is annulled, as being beyond the power of the court to make") (also holding that a contemnor may collaterally attack an unconstitutional

prior restraint); ***In re Marriage of Suggs***, 152 Wn.2d 74, 80-84, 93 P.3d 161 (2004) (vacating antiharassment order as an illegal prior restraint because, as with the prior restraint against Karla, "it forbids Suggs' speech before it occurs . . 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 [the ex-husband] and for no lawful purpose'"); ***State ex rel. Superior Court v. Sperry***, 79 Wn.2d 69, 74, 483 P.2d 608, *cert. denied*, 404 U.S. 939, 92 (1971) (per McGovern, J.) ("We have held in a number of cases that a void order or decree, as distinguished from one that is merely erroneous, may be attacked in a collateral proceeding. . . The violation of an order patently in excess of the jurisdiction of the issuing court cannot produce a valid judgment of contempt...") (reversing the trial court and holding that a contemnor may collaterally attack an unconstitutional prior restraint) (internal citations omitted).[1]

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[1] *Accord,* ***O'Day v. King County***, 109 Wn.2d 796, 803, 749 P.2d 142 (1988) ("If the County's regulations impermissibly burden protected expression, respondents have standing to challenge the regulations' overbreadth even though their activity is within the permissible scope of the ordinance **and even if such constitutional overbreadth can be considered 'harmless error' as applied to them.**") (internal citations omitted) (emphasis added).

Given these settled principles, at least two issues raised by Karla's appeal still need to be addressed, even assuming a moot appeal of the underlying contempt finding: the panel's fee award, which necessarily depends on the validity of the underlying order and contempt proceedings; and her request for the case to be remanded to a different judge, which also depends on the nature and validity of the underlying order and contempt proceedings.

Brad's oral argument raised a third issue, which also should be addressed given the panel's decision that the appeal would be dismissed as moot: that the prior restraint provision in the parenting plan prohibiting direct contact with CPS or mandatory reporters "is actually quite common" in the trial courts. *See* Oral Argument audio. To the extent that is true, trial courts, counsel, and parties need to be instructed that such prior restraints, even if well-intended, are unconstitutional and void, and may not be used.

B. Prior Restraints That are Void *Ab Initio* Cannot Provide a Lawful Basis for Contempts, Punishments, or Fee Awards to the Void Order's Benefitted Party.

1. RCW 26.09.160 and RCW 7.21.030 cannot support an award of attorney's fees on appeal to the benefitted party where the underlying order is void.

The Court should reconsider its decision to award Brad's appellate attorney fees under RCW 26.09.160 and RCW 7.21.030. As in *In re Marriage of Suggs*, the part of the parenting plan underlying the finding of contempt is an invalid prior restraint which, as Karla pointed out in her Opening Brief, is void *ab initio*.

> The trial court's orders in this case contain the same unconstitutional prior restraint on Karla's First Amendment and Washington Constitutional rights to free speech and to petition the government as was prohibited in *Suggs* and applicable federal law. **They therefore must be stricken as *void*, all associated past penalties vacated, and such provisions stricken from any future application**.

Karla's Opening Brief at 23 (emphasis added).[2] Such orders cannot be lawfully enforced by trial courts, as demonstrated by *Suggs, Coe, Sperry*, among numerous other decisions. Logically, neither may

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[2] The panel asked in argument whether Karla had agreed to the case manager prior restraint provision after the trial. Brad argued that fact was unknown because there was no trial transcript, implying that Karla had waived the issue; Brad did not argue waiver in his briefing. There was no waiver.

So that the panel has an accurate record for purposes of deciding the case on the merits (RAP 1.2), and because this issue did not arise until oral argument so that parts of the record addressing that were not necessary until then, Karla is submitting a separate Motion to Supplement the Record to add Karla's and Brad's proposed parenting plans which addressed appointment of a case manager. Copies of the relevant pages for each are attached as appendices A and B hereto. Karla's proposal did not contain the prior restraints, while Brad's did, and it was his request which is reflected in the final orders. Because per local practice the proposed orders were served on counsel and provided to the trial court but not filed, full copies will be filed in superior court by Karla's trial counsel so they may be properly transmitted to the Court by the clerk's office.

this Court enforce or rely on a void order as a basis for fees (of for contempt), any more than the trial court could. *See* Karla's Opening Brief, § IV.B; Karla's Reply Brief, § II.A.[3]

Even if the appeal is substantively moot, a void order which cannot be enforced logically cannot provide the basis for a fee award to the proponent of the void order who also obtained relief under that order. It would be the height of irony, and undermine respect for the rule of law by the courts, for the proponent of a void order who has already received the benefit of the unlawful order until it was vacated, to also receive a fee award, a classic addition of insult to injury. That is no less true in this case and is likely a consideration the panel overlooked in reaching it decision. This is ample reason to reconsider the issue.

In addition, neither RCW 26.09.160 (the Dissolution Act's contempt statute) nor RCW 7.21.030 speak directly to attorney fees on appeal, much less an appeal which attacks the validity of the

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[3] *See also Davidson Serles & Assoc., v. Central Puget Sound Growth Management Hearings Board*, 159 Wn.App. 148, 161 n. 10, 344 P.3d 1003 (2010) (Appeal not moot where ordinance being challenged is void); *Sparkman & McLean Co., v. Govan InvestMent Trust*, 78 Wn.2d 584, 587, 478 P.2d 232 (1970)("The case is therefore moot *unless it be determined that the statute is unconstitutional.*")(emphasis added).

underlying order as void. As a result, this case is distinguished from those used to justify an award of contempt-related attorney fees on appeal. *See In re Marriage of Rideout*, 150 Wn.2d 337, 348, 77 P.3d 1174 (2003) *citing In re Parentage of Schroeder*, 106 Wn.Ap. 343, 353-54, 22 P.3d 1280 (2001). The *Rideout* Court, relying on *Schroeder*, found that a party is entitled to an award of attorney fees on appeal to the extent the fees relate to the issue of contempt. *Rideout*, 150 Wn.2d at 359. However, both *Rideout* and *Schroeder* involved appeals of a contempt order resulting from the party's violation of the parenting plan visitation schedule. Although the appellants in both *Rideout* and *Schroeder* appealed the trial court's discretion in finding them in contempt, neither challenged the validity of the underlying parenting plan visitation schedule.

Unlike the order in *Rideout* and *Schroeder*, the underlying validity of which were never contested, the contempt order here resulted from an alleged (but factually unsupported) violation of an unconstitutional parenting plan provision which was void at the time it was issued. This takes it out of the scope of the contempt statutes, which only provide for the award of attorney fees as a sanction for a

party's failure to comply with a ***valid*** court order. *See* RCW 7.21.030(3); 26.09.160(2) (b) (ii).

The panel should reconsider its award of fees to Brad since the Decision's asserted basis for the award is not lawful.

2. As the trial court determined that Karla was not in contempt, there is no basis for a fee award under RCW 26.09.160 and RCW 7.21.030.

In finding that "the issues raised in the review hearing order and order on reconsideration" are moot, this Court relied on the fact that Karla's contempt was ultimately purged on March 29, 2013. *See In Re Marriage of Maia-Hanson,* Slip Op., p. 8. Using this logic, Karla's appeal should not be subject to an award of fees under RCW 26.09.160 and RCW 7.21.030. Both statutes contemplate an award of attorney's fees as a remedial sanction for actions resulting in a finding of contempt, **not for actions taken after the contempt has been purged**. Furthermore, Karla has already been sanctioned and charged with Brad's attorney's fees resulting from her contempt. *See* Karla's Reply Brief Section II.B.1.

C. The Court Should Recognize This Provision as Void, Even if the Substantive Appeal is Moot, to Prevent the Continued Issuance of Such "Common" Illegal Prior Restraints in This and Other Cases.

It is very important to the proper application of the law in the trial courts in family law matters that the Court expressly recognize that the parenting plan provision underlying the trial court's contempt orders was void *ab initio* as an unconstitutional prior restraint, even if the substantive case is deemed "moot" and publish at least that portion of the decision.

In this case, the trial judge showed she is willing to issue orders which constitute prior restraints and apparently needs to be instructed that such orders are prohibited under *Suggs*, even if it was not a family law case. The record shows the trial court will not listen to such statements from Karla, particularly in the face of Brad's position who seems to believe *Suggs* either is *sui generis* (much like *Bush v. Gore*, 531 U.S. 98, 121 S. Ct. 525 (2000)) or does not apply because it arose under the antiharassment statutes, not in the family law context, even though it also involved post-divorce contempt between ex-spouses. This Court should explicitly hold the prior restraint provision in the parenting plan is void to reinforce the

very important fact (sometimes overlooked by some trial courts) that the constitutions and settled law apply to family law cases no less than any other class of cases.

Addressing this issue is even more important if, as Brad claimed at oral arguments, such broad prior restraint provisions are "actually quite common," effectively done all the time. Assuming *arguendo*, that this assertion (which appears to have impacted the panel given the experienced counsel who made it) is in fact the case (which it likely is),[4] and that such orders are regularly imposed by some judges; and also assuming that Karla's substantive appeal on vacating the contempt order is moot, this issue nevertheless needs to be addressed and that portion of the revised opinion published for the benefit of the Bench and Bar and public so that such void orders do not continue to commonly be entered. To do otherwise would

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[4] The panel is reminded to be careful in accepting factual representations from Brad as to this case without conclusive documentation. His filings have strayed from the facts. For example, his financial declaration and Karla's Answer, which may well not have been examined carefully by the panel given the nature of the decision, give a clear example of just how far from the facts Brad has sometimes moved in this case. *See* Karla Maia's Answer to Respondent's Financial Declaration (attached for the Court's convenience), esp. p. 3, *detailing inexcusable factual inaccuracies in Brad's submission*, from the nature and extent of his assets to his more than doubling of the time for trial, to his inaccurate arguments as to the number of attorneys Karla had in order to try to impugn her as unstable, even though she had the same number as he did.

result in this Court's implicit approval of a practice held unconstitutional under *Suggs*. Addressing it here would remove any argument the principles stated in *Suggs* do not apply to family law cases.

Addressing the issue here is particularly appropriate since, as this case shows, such orders are peculiarly immune from appellate review given all the dynamics of parenting plan cases, including the continuing authority of the trial courts over the parents and children and the need for parents to be able to maintain their relationships with their children despite clearly illegal rulings by a trial judge and, thus, their fear in challenging those orders. Taking counsel's allegation in argument at face value, there is necessarily a great need for trial courts to be instructed that such provisions are illegal and void since, according to Brad, such orders are "quite common." [5]

[5] See *In re Marriage of Horner*, 151 Wn.2d 884, 892-93, 93 P.3d 124 (2004) (Court will review otherwise moot case where there is an issue of public importance which is likely to recur in the future); *In re Dependency of A.K.*, 162 Wn.2d 632, 643-44, 174 P.3d 11 (2007) (Court reviewed otherwise moot case in part because " [a] determination of how the courts' inherent power interacts with the statutory contempt scheme will prove useful guidance to judges.").

D. Regardless of the mootness of the underlying contempt issue, this case should be remanded to a different trial judge to maintain the appearance of fairness and prevent the likely possibility of future bias against Karla.

Remand to a different judge is a form of relief that is not moot here even if the underlying contempt issue may be. This issue was specifically raised and argued by Karla in her opening and reply briefs and has not been resolved in any fashion by the Court's determination that the substantive appeal is moot. *See* Appellant's Opening Brief at § IV.F and Appellant's Reply Brief at § II.D.

The panel should recognize that the trial court here had no difficulty imposing and enforcing a void order which also lacked evidentiary support. *See* Opening Brief, pp, 12-13, 37-38 (no evidentiary support for the November 4, 2011 contempt order, which was entered in disregard of the actual facts as recognized by the trial court).[6] The trial court discounted Karla's credibility, including when that discounting was contrary to the actual evidence, and engaged in a consistent pattern of inappropriate micro-management

[6] Moreover, "[a] trial court's obligation to follow the law remains the same regardless of the arguments raised by the parties before it." *Optimer Intern., Inc. v. RP Bellevue, LLC*, 151 Wn. App. 954, 962, 214 P.3d 954 (2009) (quoting *State v. Quismundo*, 164 Wn.2d 499, 505-06, 192 P.3d 342 (2008)). No trial court should enforce a void order that contains an illegal prior restraint, especially not after *Suggs*.

and control over the case and the parties. *See* Appellant's Opening Brief, § IV.F and Appellant's Reply Brief, § II.D.

As noted in the briefing, such disregard of the facts imperils the confidence of a disinterested observer that the trial court would rule evenhandedly. Opening Brief pp 46 - 48; Reply Brief, pp. 20 - 22. Even assuming the substantive merits of the trial court's abuse of discretion on the contempt findings may not be appealed for purpose of vacating the orders, these judicial practices still require remand to a different judge for the reasons stated in sections IV.F and II.D of the opening brief and the reply. And because this is meaningful relief for the continuing parenting plan case, this part of the appeal is not moot for those purposes.

Although appellate courts have traditionally been hesitant to reassign a case to a different trial judge on remand, they have increasingly provided this relief when necessary to maintain the appearance of fairness, perhaps in part due to the increased number of judges available.[7]

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[7] *See, e.g., GMAC v. Everett Chevrolet*, 179 Wn. App. 126, 153-54, 317 P.3d 1074 (2014) (remanded to a different trial judge); *State v. Finch*,_ Wn. App. _, 2014 WL 2095073 (No. 44637-5-II, filed May 20, 2014) (remanded to different

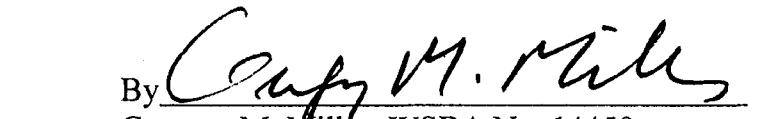
(Footnote continued next page)

IV. CONCLUSION

Appellant Karla Maia respectfully requests the panel to reconsider its decision filed on June 30, 2014, because it overlooked or misapprehended Karla's arguments and certain authorities contained therein, as set out *supra.* Karla requests the panel enter a new decision which, at minimum: 1) does not award fees to Brad; 2) declares in a published portion that parenting plans cannot contain prior restraints as was imposed here; and 3) which remands the case to a different trial judge for future parenting plan proceedings.

Respectfully submitted this 21st day of July, 2014.

CARNEY BADLEY SPELLMAN, P.S.

By 
Gregory M. Miller, WSBA No. 14459
Melissa J. Cunningham, WSBA No. 46537
Attorneys for Appellant Karla Maia

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trial judge); *State v. Harrison*, 148 Wn.2d 550, 559, 61 P.3d 1104 (2003) (remanded to a different judge); *State v. M.L.*, 134 Wn.2d 657, 660-61, 952 P.2d 187 (1998) (remanded to a different trial judge); *State v. Sledge*, 133 Wn.2d 828, 846,947 P.2d 1199 (1997) (remanded to different trial judge); *In re Custody of R.*, 88 Wn. App. 746,763, 947 P.2d 745 (1997) (remanded to a different trial judge); *Tatham v. Rogers,* 170 Wn. App. 76, 283 P.3d 583 (2012) (remanding to different judge).

WASHINGTON STATE COURT OF APPEALS, DIVISION I

In re the Marriage of: KARLA MAIA-HANSON, Appellant, vs. BRADLEY HANSON, Respondent.	NO. 70249-1-I CERTIFICATE OF SERVICE

I declare under penalty of perjury that I caused copies of Karla Maia's Motion for Reconsideration, and this Certificate of Service to be served upon counsel of record on July 21, 2014, as follows:

Teresa Carroll McNally The Law Office of Teresa C. McNally PLLC 1424 4th Ave., Ste. 1002 Seattle, WA 98101-4604 Phone: 206-374-8558 Fax: 206-441-1869 Email: teresa@mcnallylegal.com	☐ U.S. Mail, postage prepaid ☒ Messenger ☐ Fax ☒ email ☐ Other
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Court of Appeals-Division I 600 University Street Seattle, WA 98101-4170 P: 206-464-7750 F: 206-389-2613	☐ U.S. Mail, postage prepaid ☒ Messenger (orig plus 2) ☐ Fax ☐ email ☐ Other

DATED this 21st day of July, 2014.

Catherine A. Norgaard, Legal Assistant

INDEX TO EXHIBITS

APPENDIX C

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

In the Matter of the Marriage of KARLA MAIA-HANSON, Appellant, and BRADLEY HANSON, Respondent.	)	No. 70249-1-I ORDER DENYING MOTIONS

The appellant, Karla Maia-Hanson, has filed a motion for reconsideration and a motion to designate additional clerk's papers. The respondent, Bradley Hanson, has filed a response requesting fees be awarded for having to respond. The court has taken the matters under consideration and has determined that the motions and fees request should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied; and, it is further

ORDERED that the motion to designate additional clerk's papers is denied; and, it is further

ORDERED that the respondent's request for fees is denied.

Done this 4th day of August, 2014.

FOR THE COURT:

Trickey, J

APPENDIX D

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

In the Matter of the Marriage of KARLA MAIA-HANSON, Appellant, and BRADLEY HANSON, Respondent.	No. 70249-1-I COMMISSIONER'S RULING AWARDING ATTORNEY FEES AND COSTS

This is a dissolution case. On June 30, 2014, this Court issued an unpublished opinion dismissing the appeal because Karla Maia-Hanson's appeal raised moot issues and was untimely on other issues. This Court granted respondent Bradley Hanson attorney fees under RCW 26.09.160 and 7.21.030.

Bradley filed a declaration of counsel and a cost bill, requesting attorney fees of $21,517.50 and costs of $381.50 in the total amount of $21,899. Karla filed an objection to the fees and costs. As to the fees, she argues that she is challenging the fee award in her motion for reconsideration. This Court has denied reconsideration. As to the costs, Karla argues that the requested costs for Bradley to obtain his copy of the clerk's papers (requested and paid to the trial court by Karla) are not costs for "copies of the clerk's papers" allowed under RAP 14.3(a)(2). Bradley counters that his copy of the clerk's papers was

reasonably necessary to prepare his brief and should be allowed. Bradley requests additional fees of $250 incurred in responding to Karla's objection.

RAP 14.3(a) lists allowable costs, including "copies of clerk's papers." Although a contrary interpretation is possible, this Court has in recent years applied this rule to allow recovery only for the cost of clerk's papers paid to the trial court.[1] However, RCW 26.09.160(2)(b)(ii) authorizes "all court costs and reasonable attorneys' fees incurred as a result of the noncompliance," and the Supreme Court has interpreted the statute as authorizing attorney fees and costs on appeal.[2] Also, RCW 7.21.030(3), under which this Court awarded attorney fees, provides for "any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees." In light of the statutory cost provisions, I allow the contested costs for copies of the clerk's papers ($262).

The requested attorney fees are reasonable and are allowed. The costs of $381.50 (for copies of clerk's papers, clerk's reproduction charges, and preparation of documents) are also allowed. Therefore, it is

ORDERED that attorney fees of $21,767.50 ($21,517.50 + $250) and costs of $381.50 in the total amount of $22,149 are awarded to respondent Bradley Hanson. Appellant Karla Maia-Hanson shall pay the fees and the costs.

Done this 14th day of August, 2014.

Masako Hanagawa
Court Commissioner

[1] In a different case, I awarded the cost for additional copies of clerk's papers. However, consistent with a panel's interpretation of RAP 14.3(a)(2) in a different case and this Court's recent applications of the rule, I have since then awarded only the copies of the clerk's papers prepared by the trial court for transmission to this Court.

[2] See In re Marriage of Rideout, 150 Wn.2d 337, 359, 77 P.3d 1174 (2003).

APPENDIX E

NARDA PIERCE
COMMISSIONER

WALTER M. BURTON
DEPUTY
COMMISSIONER

THE SUPREME COURT

STATE OF WASHINGTON

TEMPLE OF JUSTICE
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July 11, 2014

Catherine W. Smith
Smith Goodfriend PS
1619 8th Avenue North
Seattle, WA 98109-3007

RE: *In re Marriage of Chandola*, Cause No. 89093-5

Dear Ms. Smith:

The Chief Justice has granted your motion to file an amicus curiae memorandum in this case in support of the motion for reconsideration. Your memorandum has therefore been filed. By copy of this letter, counsel for the parties are informed that they should not file answers to this amicus memorandum unless requested to do so by the court. *See* RAP 12.4(i).

Yours very truly,

Narda Pierce

Narda Pierce
Commissioner

NP:hl

cc: James D. Pirtle, Esq.
Gwen C. Mathewson
David J. Ward
Joseph A. Shaub
Michelle Q.C. Pham
Gregory M. Miller
Henry E. Lippek
David B. Zuckerman
Maya T. Ringe
Patricia S. Novotny
Janet M. Helson
Clerk