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69920-2

No. 69920-2

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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In re the Marriage of:

THERESA IBRAHIM GOHAR,

Appellant,

v.

SAMIR GOHAR,

Respondent.

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APPEAL FROM THE SUPERIOR COURT  
FOR SNOHOMISH COUNTY  
THE HONORABLE RICHARD T. OKRENT

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BRIEF OF RESPONDENT

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## **I. INTRODUCTION**

In this appeal, the appellant wife challenges nearly every decision by the trial, but in particular its decision to designate the respondent as the primary residential parent for the parties' two children, ages 8 and 12. The trial court made this decision after determining that the wife's mental health issues and her abusive use of conflict, manifested in part by making false allegations of abuse against the husband, were harmful to the children. The wife's appeal is premised entirely on claims that the trial court found were not credible, and in fact resulted in no action against the husband by either Child Protective Services or the Snohomish County Sheriff after an investigation, which concluded after trial.

It is in the best interest of the family, and of the children in particular, for this litigation that has been ongoing for more than two years to end. This court should affirm.

## **II. RESTATEMENT OF FACTS**

### **A. Background.**

Respondent Samir Gohar, age 45, and appellant Theresa Gohar, age 35, were married on January 10, 1999. (CP 140, 145, 146) The parties have two children: a daughter, now age 12 (DOB 7/28/01) and a son, (DOB 8/8/2005), now age 8. (See CP 141)



Samir and Theresa separated on September 20, 2011. (CP 140; RP 38)<sup>1</sup> Samir filed a petition for legal separation on February 29, 2012, which was subsequently converted to a petition for dissolution. (CP 359, 538) During the early part of the litigation, Theresa resisted the action to separate or dissolve the parties' marriage, claiming that she still loved her husband and that a divorce was against the parties' religion (Christian Coptic Orthodox). (RP 106-07, 108) However, by the time of trial, Theresa agreed that the parties' marriage should be dissolved. (RP 107)

**B. When Samir and Theresa married in 1999, Samir owned a half interest in both a restaurant and home in Massachusetts. Samir used the proceeds from these assets to acquire a home and restaurant in Washington when the parties relocated here.**

By the time Samir married Theresa in 1999, he already owned a restaurant and duplex with his brother in Massachusetts, where the parties then lived. (RP 60) Samir sold his interest in both the restaurant and the duplex to his brother in 2007 for a total of \$282,500 after deciding to relocate to Washington to be closer to

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<sup>1</sup> References to the verbatim report of proceedings for the trial held on November 5, 6, and 8 will be "RP." References to the verbatim report of proceedings for any other hearing dates will be "RP" preceded by the date of the hearing.

Theresa's family, so that they can provide support to Theresa who suffered from mental health issues. (RP 60-63; Exs. 7, 8) A portion of those proceeds were used to pay off the vehicle that Theresa drove. (RP 63) The remaining proceeds were deposited into an investment account that Samir had prior to marriage. (RP 62)

**1. Don's Restaurant.**

When they first moved to Washington, Samir, who had the equivalent of a two-year college degree, worked at a gas station and later as a manager at a Jack-in-the-Box. (RP 63, 91) Meanwhile, Theresa, who is a high school graduate briefly worked at Walmart, but largely stayed home to care for the parties' children. (RP 109, 110) Before they married, Theresa had worked at Taco Bell as a cashier/cook. (RP 90, 109) When the parties separated in 2011, Theresa was unemployed. (RP 90)

In April 2008, Samir purchased a restaurant ("Don's Restaurant") in Marysville for \$1,015,000, for which Theresa apparently signed a quit claim deed. (RP 63-64, 66, 78-79) The purchase price included \$265,000 for the business and \$750,000 for the real property. (RP 63-64, 66) Samir paid \$200,000 from the proceeds from the sale of his Massachusetts business and house as the down payment, and took out a loan for the balance. (RP 64)

By the time of trial, the balance on the mortgage was \$771,057. (RP 64; Ex. 9)

The business is Samir's only source of income, and he is paid between \$10,000 and \$12,000 per month, which includes amounts paid by the business for community expenses. (RP 67-68; Ex. 12) While appellant claims that Samir's "true income" is \$1.536 million annually based on the parties' 2011 tax return (Assignment of Error 16), this is not true. The restaurant pays Samir rent, but that rental income is used entirely to pay the mortgage for the real property on which the business sits. (CP 212, 597) Further, 2011 was an anomaly, because Samir was gambling heavily during that year.<sup>2</sup> In 2011, Samir had both gambling winnings of \$1.294 million, which is reflected as income in his tax return (CP 597), and an equal amount of gambling losses, which were treated as a "deduction" from his income in the tax return. (CP 601) In other words, Samir's gambling was a "wash." That 2011 was an anomaly is evident from the parties' 2009 and 2010 tax returns, which do not show any

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<sup>2</sup> Samir described his brief but active foray into gambling as an "addiction," which he resolved after regularly attending Gamblers Anonymous meetings. (RP 39-40) However, the psychologist who evaluated Samir, described his gambling as less an addiction, but a way for him to avoid "confronting the failure of his marriage" by going to casinos – "the home for many who wish to avoid reality." (Ex. 2)

gambling winnings, and show total income, including rental income, of \$138,053 and \$173,350, respectively. (CP 711, 742)

In any event, during the dissolution action, Samir paid Theresa \$6,000 per month for both her and the children's support pursuant to the terms of a temporary order entered in May 2012. (RP 68; CP 424-26) Before the temporary order was entered, Samir paid between \$12,000 and \$15,000 towards the credit card debt incurred by Theresa after Samir moved out of the family residence in September 2011. (RP 68-69)

At trial, the undisputed value of the real property on which the restaurant sits was \$431,000. (RP 65-66; Ex. 10; CP 357) Samir's expert – a real estate broker - valued the business alone at \$432,530, while Theresa's expert – a certified accountant - valued the business at \$319,000. (RP 65, 66; Exs. 10, 11) Samir testified that he believed the business was worth only \$265,000 - the amount he purchased it for 4 years earlier - since the gross sales have not changed. (RP 66-67) The net value of the business and land was between negative \$75,057 and positive \$92,473 based on this evidence.

While appellant complains that Samir's submitted valuation was a "personal valuation with a broker he knows" versus

appellant's "professional business evaluation," in fact the trial court adopted Theresa's expert's value. The trial court found that the "book value" of the business was negative \$21,000<sup>3</sup>, and that the business was Samir's separate property as he used the proceeds from his previous business and townhouse in Massachusetts to purchase it. (RP 180) While the trial court acknowledged that the business may have been "mingled with community property," it also recognized that all of the parties' community debts were paid through the business, which benefitted the community. (RP 180)

## **2. Family residence.**

In November 2008, Samir purchased the family residence for \$400,000 using \$80,000 from the remaining proceeds in his premarital investment account. (RP 69, 95) Samir took out a loan for the remaining purchase price, which was in his name only. (RP 70-71) At the time of trial, the balance on the loan was \$277,000. (RP 71) The assessed value was \$350,000 and a broker provided a market analysis valuing it at \$370,000. (RP 70; Exs. 13, 14) Although the wife had previously been awarded funds to assist her

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<sup>3</sup> Business at \$319,000 plus land at \$431,000, less the mortgage of \$771,057.

in obtaining any appraisals, she failed to obtain an appraisal for the family residence. (RP 70)

Despite the fact that the husband used his separate property for the down payment of the family residence, the trial court found that it was “primarily a community asset,” and gave Samir no credit for his separate property down payment. (RP 180) The trial court found that the net value of the home was \$92,007, based on the \$370,000 market analysis for the home. (RP 181)

### **3. Investment and retirement accounts.**

In addition to the restaurant and family residence, the parties had additional assets. In his name, Samir had a Roth IRA valued at \$35,000 and a traditional IRA valued at \$17,000. (RP 71; Exs. 15, 16) Theresa also had an IRA with value of \$35,000. (RP 72) Finally, the parties had funded a college account for the children valued at \$14,000 at the time of trial. (RP 72) This account previously held approximately \$29,000, but Samir withdrew \$15,000 to pay attorney fees to Theresa, because he did not have sufficient funds in the business account. (RP 73) Samir testified that it was his intention to replace those funds as he wanted the children to go to college. (RP 73-74) Although appellant complains that the trial court awarded the college funds

to Samir instead of to the children (Assignment of Error 15), the trial court acknowledged that while the account is designated for the children, it is in fact a community asset, which the parents have control over and could withdraw anytime. (RP 182)

Appellant also complains that Samir had other assets, which the trial court did not distribute. However, there was no evidence that any further assets existed at the time of trial.

**C. Samir left the family home after Theresa's paranoia and mental health issues made it difficult for them to live together. After filing for legal separation, Theresa's mental health issues became worse causing Samir to seek primary care of the children.**

During their marriage, the family lived in relative isolation due in large part to Theresa's paranoid and distrustful nature. (RP 34-36) Theresa's mental health issues were not new. (RP 51) Theresa took antidepressants in the past, but stopped taking them when the parties decided to have children and because Theresa did not think they were working. (RP 51, 130) When she was on medication, Theresa normally had only one bad day and ten good days. (RP 51-52) Now, without the medication, Theresa had only one good day and the rest were bad days. (RP 51-52) On the bad days, she slept most of the day, and her behavior was erratic. (RP 50-52) Samir called the police three times when Theresa acted out

by throwing things around the house and ripping down the curtains. (RP 51) Each time, Theresa calmed down by the time the police arrived and no report was taken. (RP 52)

Shortly before they separated, Theresa became increasingly paranoid that Samir was having affairs – which he adamantly denied. (RP 35) Theresa would not allow him to go to church, see his friends, or even speak to her sister, who Theresa thought was having an affair with Samir. (RP 35) Theresa insisted on driving Samir everywhere so that she knew where he was at all times, and even watched him on the surveillance cameras at the restaurant he owned. (RP 38)

Samir described fights with Theresa that lasted hours. (RP 35-36) Theresa refused to let him sleep and continued to badger him with accusations. (RP 35-36) Once, Samir left the home just so he could get sleep. (RP 36)

Theresa's paranoia and distrust extended to the children. In one incident, Samir brought their son to the dentist for an examination. (RP 37) After they returned home, Theresa found a red spot on the son's neck and accused Samir of not watching the son and allowing the dentist to put a needle in the son's neck, which was not true. (RP 37)



Another time, Theresa claimed that the son had been sexually assaulted during Sunday school. (RP 46) After dropping the children off at Sunday School, Samir and Theresa left to get coffee from a gas station. (RP 46) When they returned only 10 minutes later, they found the son crying inside the church. (RP 46) One of the mothers who found the son said that when she found the son he was crying and told her he had gotten lost when he left the classroom.<sup>4</sup> (RP 46) However, as soon as he saw his parents, the son immediately brightened, stopped crying, and told his parents that he was fine. (RP 46) Theresa accused Samir of purposely taking her away from the church to allow someone to hurt the son. (RP 46)

Later, Theresa claimed that the son privately disclosed to her that he had been sexually assaulted in the bathroom, which Samir did not believe since the son was smiling and happy once the parents found him. (RP 47) Samir also did not believe the son's alleged disclosure, because he had witnessed Theresa badgering the son, constantly asking him who hurt him, and did someone touch him, which the son denied. (RP 46) Theresa used this incident to

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<sup>4</sup> The son did not attend Sunday school as frequently as the parties' older daughter and was likely less familiar with the location. (RP 36)

refuse to allow Samir to return to the church with the children. (RP 47)

Samir felt oppressed by Theresa's never ending conspiracy theories and left the family home in February 2011. (RP 37) However, after three weeks he missed the children. (RP 37) Samir worried for them, because he was the parent that helped them with their homework, made sure that they ate properly, and got them to the school bus stop in the morning since Theresa normally slept most of the day. (RP 36)

However, even after returning home, things did not improve. At a joint session with Theresa's psychiatrist, the doctor cautioned Theresa that her paranoia was "choking" Samir. (RP 38) It was at that moment, Samir realized that he was "choked," felt like he was dying," and that he was "very depressed" and "isolated." (RP 35, 38) Samir decided he could no longer live like that and he did not want the children to see him broken down. (RP 35, 38) Samir left the home for good in September 2011. (RP 35, 38)

After Samir filed for legal separation, a temporary parenting plan was entered leaving the children in Theresa's primary care, and providing residential time with Samir on alternating weekends and two mid-week visits. (CP 417) Initially, Samir was hopeful that

if Theresa accepted the mental health help that she needed, she could be the “good mother I know she can be.” (CP 511; RP 57) Samir testified that he never intended to “take [the children] from their mother,” but he believed she needed help from a mental health professional. (RP 43) However, Theresa refused to get any help, and it became “worse and worse” for the children. (RP 43) Samir eventually realized that Theresa’s mental health was deteriorating. (RP 41-42, 90)

The school contacted Samir and disclosed that their son, who was then age 6, had missed 18 days of school and was late on 16 days. (CP 514; RP 41, 90) Meanwhile, their daughter, who was then age 10, had missed 8 days of school and was late 13 days. (CP 514; RP 41, 90) Samir worried for the children, and feared they were being isolated by their mother at home. (RP 44) The children wore the same clothes all week, and the house was dirty. (RP 44, 90) Samir learned that Theresa was keeping the children up until 1:00 a.m. or 2:00 a.m. and they would not wake up until the afternoon. (RP 44) Theresa also started alienating the children from Samir, referring to him as a “bad father,” telling them that Samir was having an affair, and allowing her father to refer to Samir as the “devil” or “evil inside” in front of the children. (RP 41)

**D. The guardian ad litem recommended that the children reside primarily with Samir.**

On July 27, 2012, the trial court appointed Martha Wakenshaw as guardian ad litem (GAL) to investigate parenting issues, represent the children's best interests, and make recommendations based on her investigation. (CP 377) The court ordered the GAL to make a full and complete report by September 27, 2012 "and at least 60 days before trial provided that an extension may be granted by the court." (CP 377)

The GAL completed her report on October 1, 2012. (Ex. 3) The GAL reported that neither child reported abuse by either parent, and the daughter specifically denied any abuse. (Ex. 3 at 5) Theresa did not allege physical abuse of the children by Samir, but claimed that Samir's weakness as parent was that he "neglects [the children]'s feelings and doesn't understand them." (Ex. 3 at 4)

Samir also denied that Theresa physically abused the children,<sup>5</sup> but expressed concern that her mental illness prevented Theresa from adequately caring for the children. (Ex. 3 at 5) Samir worried for the children's "emotional and physical safety" if left alone with the mother. (Ex. 3 at 6) Samir also worried that the

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<sup>5</sup> However, Samir disclosed that Theresa had been physically abusive to him. (Ex. 3 at 5)

children only played computer games and had “no friends and no family and no church,” because of Theresa’s mistrust and paranoia. (Ex. 3 at 7)

The GAL described the son, then age 7, as obese, demonstrating low self-esteem and having a “sadness and despondency” to him. (Ex. 3 at 8; RP 19) The son reported that “he really doesn’t have any friends” and is often sent to his room by his mother, because she is “frustrated and nervous.” (Ex. 3 at 8) The son reported that the mother “yells a lot” and they go to a family counselor to “talk about how frustrating court is.” (Ex. 3 at 8) The son described liking his father’s home better because the mother’s home is dirty and the father does not send him to his room. (Ex. 3 at 9; RP 13)

The GAL described the daughter, then age 11, as “articulate, anxious, and depressed.” (Ex. 3 at 9; RP 19) The daughter reported that while her mother agreed that the daughter needed individual therapy, the mother would not allow it because “she doesn’t want it in our records.” (Ex. 3 at 9) The daughter named the father as the parent who helps with her school work. (Ex. 3 at 9) Although she missed a lot of school while under the care of her mother, the daughter described that her father helped her learn everything to

catch up and she “ended up the smartest person in fourth grade!” (Ex. 3 at 9)

The GAL described Theresa as “extremely mistrustful, shutdown, and depressed.” (Ex. 3 at 5) The GAL concurred with Samir’s concern that Theresa was involving the children in the court proceedings, which she described as “unconscionable.” (Ex. 3 at 10-11) The daughter reported: “my mom tells me most of everything about court – she doesn’t want me clueless.” (Ex. 3 at 9; RP 12) The daughter also stated: “I saw the court papers – mom let me. Dad said my mom is crazy and paranoid. I was mad at dad. Mom’s not crazy. She sometimes has a sad depression from being in the court thing.” (Ex. 3 at 10; RP 12) The daughter, whom the GAL described as “obviously distressed by the court case,” expressed concern that she and her brother would end up in foster care if the GAL thought both parents were “crazy.” (Ex. 3 at 10-11) The son, who also admitted that the mother discussed the court case with him, stated: “my mom’s judge is really mean.” (Ex. 3 at 9; RP 13) The GAL reported that the children were “victims of an extreme abusive use of conflict on the part of the mother,” due to her involvement of them in the court case. (Ex. 3 at 10-11; RP 12)

The GAL recommended that Samir be designated as the primary residential parent. (Ex. 3 at 11) The GAL recommended that both children participate in individual therapy. (Ex. 3 at 11) The GAL cautioned that if Theresa continues to engage in the abusive use of conflict that she would recommend that her residential time be professionally supervised. (Ex. 3 at 11)

**E. After the GAL issued her recommendation, Theresa unsuccessfully sought to remove the GAL. She then alleged that Samir sexually abused the daughter and obtained an *ex parte* protection order, which was dismissed.**

On October 9, 2012, Theresa asked the court to remove the GAL and appoint a new one. (CP 353) In her motion, Theresa complained about the GAL's recommendation while at the same time claiming that she had not received the GAL's report, even though the GAL had apparently emailed Theresa her report by October 8, 2012. (CP 330, 353-54) At the hearing on October 23, 2012, the trial court struck Theresa's motion after Theresa admitted that she failed to serve the GAL with her motion. (CP 317) In response to Theresa's request that the children be allowed to speak to someone other than the GAL, the trial court expressed concern that the children were already "too involved in this. And you pushing for somebody to talk to the kids is concerning, because it's

concerning that they have too much information and they are being pressured into saying things.” (10/23 RP 8)

Two days after failing to have the GAL removed, on October 25, 2012, Theresa alleged for the first time that Samir sexually abused their daughter, and filed a petition for a protection order under separate Snohomish County cause number 12-2-01194-1. (CP 2)<sup>6</sup> Theresa filed this petition, despite the fact that the daughter had less than a month earlier denied “any abuse of any kind from her father or mother” when interviewed by the GAL. (Ex. 3 at 5) Further, Theresa never previously reported any physical or sexual abuse by Samir. In fact, she told the GAL that she “was not currently afraid that her spouse will physically hurt her” and was only concerned about the children’s “emotional safety with the father.” (Ex. 3 at 6)

The credibility of Theresa’s allegations was also called into question, because the day after filing her petition for protection

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<sup>6</sup> Appellant filed the pleadings related to the protection order in the dissolution action after filing her Notice of Appeal solely for purposes of making it part of the record on appeal. This court previously dismissed her appeal of the order dismissing the protection order and ruled that while the appellant could “reference” the protection order in this appeal, she could not include “extensive argument about or challenge” the protection order in this appeal. (Oct. 2, 2013 Comm. Neel Ruling) This ruling was upheld by both a panel of this Court and the Clerk of the Supreme Court.



order, Theresa brought the daughter to the emergency room for a sore throat (the first time she took her daughter to the hospital after the allegation surfaced) but never reported any abuse of the daughter to the treating physician. (RP 146; Ex. 21) Instead the mother waited nearly a week later to bring the daughter to a doctor to examine her for any injuries due to the alleged sexual abuse. (RP 146)

Samir adamantly denied the mother's allegations. (CP 17-20) At trial for the dissolution action, Samir presented, without objection, the results of a polygraph test that confirmed that "no deception indicated" when he denied any abuse of his daughter. (Ex. 5; RP 57) (*See* Assignment of Error No. 14)<sup>7</sup>

The parties appeared before Snohomish County Commissioner Susan C. Gaer on October 30, 2012 on an order shortening time to hear Samir's motion to dismiss. Commissioner Gaer directed the GAL, who appeared for the hearing, to interview the daughter, who Theresa had brought to court, but left in the car outside. (10/30 RP 11) The GAL interviewed the daughter, but

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<sup>7</sup> Although the polygraph test was admitted, it is not clear that the trial court relied on it to make a credibility determination. Instead, the trial court stated it judged the parties' credibility by observing their "demeanor and presentation" on the stand. (1/9 RP 12)

described it as not an “ideal circumstance,” because Theresa and her family attempted to interfere with the interview. (10/30 RP 12) After Theresa’s mother was removed from the interview room, Theresa and her family remained immediately outside the room loudly calling the GAL a “liar.” (10/30 RP 12, 14)

The GAL reported that the daughter’s report of the alleged abuse was not consistent with Theresa’s description, and that Theresa had asked the daughter leading questions to attempt to get the daughter to fabricate sexual abuse. (10/30 RP 13-14) For instance, the daughter reported that after she and her mother discussed the daughter having her period, the mother asked the daughter whether the father ever “touched her.” (10/30 RP 13) The daughter then reported that she told the mother that the father touched her between the legs over her clothes for “no more than three seconds.” (10/30 RP 13)

The commissioner expressed concern about the timing of the allegations, specifically because it came immediately after Theresa learned she was at risk of losing primary care of the children. (10/30 RP 16-17) The commissioner found that there was not “sufficient evidence of the domestic violence by a preponderance of the evidence,” and dismissed the petition for protection order

“without prejudice, if more clear-cut information were to arise.”<sup>8</sup>  
(10/30 RP 17; CP 41) The commissioner also noted that “this matter can be addressed in the family law case.” (10/30 RP 17)

**F. After denying Theresa’s belated requests for continuance, the parties participated in a 2-day trial.**

The parties’ original trial date was August 10, 2012, but the parties had stipulated to a continuance to “a new date to be set as soon as possible.” (CP 988) Accordingly, the trial court set trial in this matter for November 5, 2012 before Snohomish County Superior Court Judge Richard Okrent.

On October 9, 2012, Theresa filed a motion to continue the trial date asserting that she needed additional time to obtain an appraisal of the business and the family residence. (CP 357-58) Samir resisted the motion, asserting that the wife already received all of the information required to complete any appraisals since May 2012, plus weekly updates. (Supp. CP 990-95) Samir also pointed out that Theresa was provided \$20,000 from which to pay attorney fees and the cost of any appraisals. (Supp. CP 990-95)

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<sup>8</sup> Both CPS and the Snohomish County Sheriff’s Office investigated the allegations and determined that they were unfounded and declined to file charges. (See Jan. 6, 2014 Dec. of Samir Gohar filed in this action, Exs. 1, 2)

Samir also expressed concern that further delay of the trial was not in the children's best interests. (Supp. CP 990-95) The trial court agreed, and on October 19, 2012, denied Theresa's requested continuance as "it is in the children's best interest to proceed." (CP 318)

On November 1, 2012 – two days after the commissioner dismissed the protection order against Samir – Theresa, through her fourth attorney, sought another continuance. (CP 281-82) This time, she claimed that the continuance was necessary to allow CPS to complete its investigation of Theresa's allegations against Samir. (CP 281-82) Both the GAL and the father resisted the continuance, asserting that the children needed the stability of a final resolution. (11/5 RP 6-7) The trial court denied the motion, noting that the trial should proceed so that the parties can put forth their evidence and be subject to the fact finding of the court. (CP 228; 11/5 RP 10)

**G. The trial court divided the marital estate equally, awarded Theresa maintenance, and designated Samir as the primary residential parent.**

Trial in this matter was heard on November 5 and 6, 2012. With regard to property, the trial court awarded to Samir the restaurant and the family residence. (CP 164-65; RP 181, 182) The trial court also awarded the children's college accounts to Samir.

(CP 165; RP 182) The trial court awarded all of the parties' retirement accounts to Theresa. (CP 65-66; RP 181) Each party was also awarded the vehicle that they drove. (CP 65) The trial court found that this left Samir with assets valued at \$109,929, and Theresa with assets valued at \$102,540. (RP 182) The trial court found that this distribution was fair and equitable in light of a previous pre-distribution of community assets to Theresa and the fact that Samir has been paying spousal maintenance to Theresa while the dissolution action was pending. (RP 182) Further, the trial court recognized that it was making Samir responsible for any existing community debts. (RP 182) Finally, the trial court awarded an additional 2 ½ years of maintenance to Theresa in the amount of \$2,500 for six months; \$2,000 for six months; \$1,500 for six months; \$1,000 for six months; and \$500 for six months. (CP 65)

With regard to the parenting plan, the trial court agreed with the GAL, who it found credible, that the children had been victims of "extreme abuse of conflict on the part of the mother." (RP 185) The trial court expressed concern that the mother used the children as "pawns" by discussing the court case with the children, allowing her family to discuss the court case with the children, and treating

them as “confidants.” (RP 185) The trial court found that the mother was trying to “gain advantage” by involving the children. (RP 185) The trial court found that the fact that the mother allowed the daughter to read court documents was “classic abusive use of conflict.” (RP 186)

The trial court rejected the mother’s attempt at the “11<sup>th</sup> hour” to raise the “specter of sexual abuse.” (RP 188) The trial court found that the mother was avoiding answering questions on cross-examination and “was faking her responses by indicating to the court that she could not remember or she was confused or she was frustrated. That is the language of deception.” (RP 188) Based on the evidence presented to it, the trial court determined that the sexual abuse allegations were entirely false and manufactured by the mother, who it found “not credible”:

Finally, at the 11<sup>th</sup> hour, Ms. Gohar decided to raise the specter of sexual abuse. In reviewing Ms. Gohar’s testimony, particularly her cross examination, which I found very interesting, it was clear that she was avoiding the answers. It was clear that she was faking her responses by indicating to the court that she could not remember or she was confused or she was frustrated. That is the language of deception. That is not the language of truth.... I find the mother is not credible. I find the mother suffers from depression, anxiety, and OCD as defined by counselor. I find that she is in need of psychological services. I find that she has attempted to falsely accuse the father of sexual

abuse, and I reiterate that I incorporate by reference the findings of the court commissioner

(RP 188, 191-92) The trial court found that the mother's attempt to interfere with the GAL's interview with the child was "a manipulative act designed to make the guardian ad litem look not credible and designed to send a message to the child that she needs to do whatever momma has told her to do." (RP 191)

The trial court entered its parenting plan on December 3, 2012. (CP 159) The trial court limited the mother's residential time with the children after finding that the mother's "involvement or conduct may have an adverse effect on the children's best interests" based on the following RCW 26.09.191 factors:

Neglect or substantial non-performance of parenting functions

A long-term emotional or physical impairment, which interferes with the performance of parenting functions

The abusive use of conflict by the parent, which creates the danger of serious damage to the children's psychological development.

(CP 160)

The trial court ordered the mother to undergo a psychiatric evaluation within 30 days of November 8, 2012. (CP 160) The trial court ordered that until the mother completes any treatment

recommendations arising from the evaluation, and pending further order of the court, the mother shall have supervised visitation with the children twice a week for four hours each visit. (CP 160) The trial court ruled that the father would choose the supervisor. (CP 958) The trial court excluded the mother's family members from participating in the supervised visitation. (CP 161; RP 192) The trial court restrained the mother from discussing the court case or the father with the children during her visitation with the children. (CP 162) The trial court ordered that if it appears that the mother is attempting to manipulate the children during her visitation, "the visitations will be suspended and they cannot be renewed except on the family law motions calendar." (CP 162) Once the mother has completed the evaluation and treatment recommendation, the mother could pursue unsupervised visitation. (CP 161)

Based on the guardian ad litem's recommendation, the trial court also ordered that the children be placed into individual therapy. (CP 163) Finally, the trial court designated the husband as the sole decision-maker on all major decisions. (CP 164)

For purposes of child support, the trial court found the father's gross monthly income to be \$10,430. (CP 154) Despite the fact that the mother was voluntarily unemployed, the trial court



based the mother's income on her receipt of spousal maintenance only. (See CP 154) The trial court did not, as the appellant claims, impute income to her at an "amplified" wage. (Assignment of Error 21) The standard calculation for support for the two children was \$545.62, but the trial court deviated down and ordered the mother to pay child support of \$300 only, since "she will be living primarily off the maintenance obligation so as to maximize her ability to create a new household." (CP 147)

Theresa, through her *fifth* attorney, moved for reconsideration and a new trial. The trial court denied her motion in part, and granted her request that maintenance be modifiable, rather than non-modifiable as initially ordered. (*Compare* CP 65 with CP 137)

Theresa appealed the trial court's final dissolution orders. (CP 58) Theresa also later sought to appeal the commissioner's order dismissing the temporary order of protection, but this Court dismissed that appeal as untimely.

### III. ARGUMENT

**A. The trial court did not abuse its discretion in designating the father as the primary residential parent for the parties' children after considering the testimony of the parties, and the recommendation of the guardian ad litem.** (Response to Assignments of Error 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 18, 19, 23)

**1. Standard of review.**

In matters dealing with the welfare of children, trial courts are given broad discretion. *Schuster v. Schuster*, 90 Wn.2d 626, 585 P.2d 130 (1978). “Trial courts must necessarily be allowed broad discretion in custody matters, because so many of the factors to be considered can be more accurately evaluated by the trial judge, who has the distinct advantage of seeing and hearing witnesses, and is in a better position to determine their credibility.” *Chatwood v. Chatwood*, 44 Wn.2d 233, 240, 266 P.2d 782, 786 (1954). Trial courts, unlike appellate courts, have the unique opportunity to observe the parties to determine their credibility and to sort out conflicting evidence. *See Marriage of Woffinden*, 33 Wn. App. 326, 330, 654 P.2d 1219 (1982), *rev. denied*, 99 Wn.2d 1001 (1983).

“[P]arenting plans are individualized decisions that depend upon a wide variety of factors, including ‘culture, family history, the

emotional stability of the parents and children, finances, and any of the other factors that could bear upon the best interests of the children.” *Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003). As such, appellate courts defer to the trial courts in making these decisions, *Jannot*, 149 Wn.2d at 127, and are “extremely reluctant” to disturb child placement decisions. *Parentage of Schroeder*, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001).

**2. The trial court properly designated the father as primary residential parent after finding that there were RCW 26.09.191 factors that warranted limiting the mother’s residential time.**

After a 2-day trial during which the trial court heard the testimony of both the parties and the guardian ad litem, who was appointed to investigate parenting issues, the trial court properly designated the father as the primary residential parent, and ordered supervised visitation for the mother until she completed a psychological evaluation and completed the recommended treatment recommendations.

RCW 26.09.191 gives the trial court discretion to limit a parent’s residential time if it finds that factors exist under RCW 26.09.191(3). In this case, the trial court found that the mother’s residential time should be limited under RCW 26.09.191(3)(a), (b)

and (e) because the mother suffers from “a long-term emotional or physical impairment which interferes with the parent’s performance of parenting functions as defined in RCW 26.09.004,” has engaged in “the abusive use of conflict ... which creates the danger of serious damage to the child’s psychological development,” and neglected or substantially not performed parenting functions. (CP 160) Under the RCW 26.09.191, the trial court has authority to impose restrictions on a parent’s residential time in order to “protect the child[ren] from physical, mental, or emotional harm.” *Marriage of Chandola*, \_\_ Wn.2d \_\_, \_\_ P.3d \_\_ (2014) (June 19, 2014).

Here, there was evidence that the mother’s engagement in the abusive use of conflict by over involving the children in the court case, alienating the children from the father, and raising false allegations of sexual abuse against the father was harming the children. The GAL described the children as depressed, stressed, anxious, and “shutdown.” (RP 14, 19; Ex. 3) The GAL reported that the mother had the children so concerned about the court proceedings that the daughter feared that she and her brother would be sent to foster care. (Ex. 3) The father also described that due to the mother’s mental health issues, the children were late for

or missing school, were often up all night and sleeping during the day, they lived in a dirty home with the mother, and wore the same clothes all week. (RP 44, 90) This evidence supports the trial court's decision to limit the mother's residential time and require professional supervision until she has completed a psychological evaluation and completed any treatment recommendations.

It does not matter that the mother denies the allegations made by the father, and challenges the trial court's findings. "So long as substantial evidence supports the finding, it does not matter that other evidence may contradict it." *Burrill v. Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003). "Substantial evidence is the quantum of evidence sufficient to persuade a rational, fair-minded person the premise is true. In determining the sufficiency of evidence, an appellate court need only consider evidence favorable to the prevailing party. In evaluating the persuasiveness of the evidence and the credibility of witnesses, [the court] must defer to the trier of fact." *Marriage of Akon*, 160 Wn. App. 48, 57, ¶ 26, 248 P.3d 94 (2011) (citations omitted).

The mother apparently takes issue with the trial court's decision designating the father as the primary residential parent,

based on her historical role of the children's primary caregiver. But there is no presumption in favor of the historic primary caregiver when determining a final parenting plan. *See Marriage of Kovacs*, 121 Wn.2d 795, 800, 854 P.2d 629 (1993). The trial court must consider each parent's past *and potential* for future performance of parenting functions in fashioning its parenting plan. RCW 26.09.187(3)(a)(iii). In *Kovacs*, for instance, the trial court properly took into account the mother's behavior during the parties' separation, and a clinical psychologist's finding that the mother suffered from a personality disorder that would "inevitably affect parenting," in ordering that the children should reside primarily with the father. 121 Wn.2d at 798-99.

In this case, the trial court found that the mother "suffers from depressions, anxiety, and OCD" that affected her future performance of parenting functions. (RP 191) Meanwhile, the trial court found that any depression of the father was "situational," and that he is "pretty good dad," and that placement of the children with him was best for the children's "emotional stability, economic stability, and educational stability." (RP 183, 186, 187)

The mother denies having any mental health issues, but relies solely on a declaration from her therapist (CP 263-65) and a

post-trial psychological evaluation. (CP 543-51) But neither was presented to the trial court and cannot be a basis for reversal on appeal. (See RP 172) This is particularly true when the mother had ample opportunity to present this or similar evidence to the trial court, but did not do so. For instance, the wife declined to allow the GAL to speak to her therapist, and did not call her therapist as a witness at trial. (See Ex. 3 at 11; see also 1/9 RP 8: “At the hearing appointing the guardian ad litem, [the mother’s] counsel [ ] refused to sign the waiver allowing the guardian ad litem access to her mental health records”)<sup>9</sup> Further, even though the GAL recommended that the mother undergo a psychological evaluation, she refused to do so until ordered under the final parenting plan. (See Ex. 3 at 11)

The mother also challenges the trial court’s designation of the father as the primary residential parent, because of her claims that he sexually abused the daughter. But the trial court found the mother’s claims not credible, and found the fact that she raised them was evidence of her abusive use of conflict that creates the danger of serious damage to the children’s psychological

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<sup>9</sup> Apparently, the therapist submitted a letter to the GAL, but Theresa would not otherwise allow the GAL to speak to the therapist. (See Ex. 3 at 5, 11)

development. (CP 160) This was an appropriate basis for the trial court's designation of the father as the primary residential parent. *See Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003).

In *Burrill*, as here, the mother accused the father of sexually abusing the parties' daughter. The trial court found that the sexual abuse allegations were unfounded and concluded that the appellant mother's residential time should be limited under RCW 26.09.191(3)(e) because she had engaged in the abusive use of conflict. 113 Wn. App. at 871. This Court affirmed the trial court's decision, holding that evidence of the mother's frustration of contact between the child and the father was sufficient to support a finding that the mother's conduct "created a danger of serious psychological damage to the children" as required to impose limitations under RCW 26.09.191(3)(e). 113 Wn. App. at 871-72.

**3. The mother waived her challenge to the guardian ad litem report by agreeing to its admission at trial.**

On appeal, the mother challenges the trial court's consideration of the GAL's report, based on her claim that the report was not timely filed under RCW 26.12.175, because it was filed on the first day of trial. First, regardless of when the report



was filed, there is evidence that the mother received the report as early as October 8, 2012 – approximately one month before the trial date. (See CP 330)

Second, the mother waived her challenge when her counsel at trial agreed to its admission during trial. (See RP 22-23) To preserve her challenge to the GAL's report, the mother was required to timely object to its admission under ER 103(a)(1). *City of Seattle v. Harclon*, 56 Wn.2d 596, 597, 354 P.2d 928 (1960). The mother cannot object to the trial court's consideration of the report, when she agreed to admit it at trial. ) Under the doctrine of invited error, a party cannot complain about an alleged error at trial that she set up herself. *Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995).

Finally, there was no prejudice to the mother in the trial court's consideration of the GAL report, the mother was given the opportunity to cross-examine the GAL during trial and to present evidence – if any existed – to contradict the facts set forth in the GAL's report to challenge the GAL's recommendation. The mother's actual complaint is that the trial court found the GAL more credible than the mother. But credibility determinations are left to the trial court and are not subject to review. *Burrill*, 113 Wn. App. at 868.

In any event, because the mother was given the opportunity to challenge the GAL, her report, and her recommendations, there is no harm from the fact that the report was not filed earlier. “Error without prejudice [ ] is not grounds for reversal.” *Welfare of Ferguson*, 41 Wn. App. 1, 5, 701 P.2d 513, *rev. denied*, 104 Wn.2d 1008 (1985); *Ford v. Chaplin*, 61 Wn. App. 896, 899, 812 P.2d 532 (1991) (appellant must show that her case was materially prejudiced by a claimed error. Absent such proof, the error is harmless), *rev. denied*, 117 Wn.2d 1026.

**4. This Court previously dismissed the mother’s appeal of the commissioner’s ruling dismissing the order of protection, and the mother cannot challenge that ruling in this appeal.**

In this appeal, the mother challenges the superior court commissioner’s ruling allowing the GAL to interview the daughter and dismissing the protection order. (*See* Assignments of Error 1, 2, 6, 7, 8, 9, 10) This Court must disregard those challenges, because it already ruled that the mother’s Notice of Appeal as to that order was untimely and ruled that “extensive argument about or challenge to the protection order matter will not be allowed.”

(Oct. 2, 2013 Commr. Neel Ruling)<sup>10</sup> On March 3, 2014, a panel of judges of this Court denied the mother's motion to modify the commissioner's ruling. (March 3, 2014 Ruling) The mother filed an untimely motion for discretionary review of this Court's ruling denying the motion to modify, which was rejected by the Supreme Court. Accordingly, this Court should not consider her assignments of error related to the superior court commissioner's order.

Nevertheless, in order to bolster her claim that the superior court erred in dismissing the protection order, the mother submits evidence to this Court that was neither presented to the superior court commissioner at the protection order hearing or to the dissolution trial court. For instance, after the mother filed her notice of appeal on February 7, 2013, she filed various "pleadings" in the trial court attaching documents that were never before the trial court or the superior court commissioner, including the preliminary police reports related to the false allegations of sexual abuse against the father. (See CP 774-829, 974-87) This Court previously struck those pleadings when the mother sought to attach them as appendices to her brief, ruling that "absent a motion to

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<sup>10</sup> This ruling and the ruling denying the motion to modify was filed both under this cause number and cause no. 70594-6-I.

supplement the record on appeal under RAP 9.11, any appendices are limited to documents that were part of the trial record.” (Oct. 2, 2013 Commr. Neel Ruling) This Court should disregard them to the extent that she relies on these pleadings as a basis to challenge both the trial court’s dissolution orders and the superior court commissioner’s order dismissing the protection order.

Finally, this court should not consider the mother’s challenge to the order dismissing the protection order “without prejudice,” because it not an appealable order. *Dependency of A.G.*, 127 Wn. App. 801, 808, ¶ 10, 112 P.3d 588 (2005), *rev. denied*, 156 Wn.2d 1013 (2006). The order of dismissal without prejudice is not a “final judgment” and “does not determine the action” under RAP 2.2, thus the mother is not entitled to an appeal as a matter of right. *Dependency of A.G.*, 127 Wn. App. at 808, ¶ 10. The superior court commissioner specifically noted that if the mother had more “clear cut information” regarding her allegations □ which is unlikely since CPS has investigated and determined it was unfounded and Snohomish County Sheriff’s Office declined to prosecute □ that the mother could renew her petition for a protection order. (See Jan. 6, 2014 Dec. of Samir Gohar filed in this action, Exs. 1, 2) Because the

order dismissing the protection order is not a final appealable order, the mother's appeal was properly dismissed.

**B. The trial court's maintenance and property distribution orders were well within its discretion and supported by substantial evidence.** (Response to Assignments of Error 15, 16, 21, 22)

**1. Standard of review.**

The trial court has "wide" discretion in awarding spousal maintenance. *Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). The trial court is also given "broad discretion" in dividing property, "because it is in the best position to determine what is fair, just, and equitable." *Marriage of Wallace*, 111 Wn. App. 697, 707, 45 P.3d 1131 (2002), *rev. denied*, 148 Wn.2d 1011 (2003). "Appellate courts should not encourage appeals by tinkering with [marital dissolution decisions]." *Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985). "The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court." *Landry*, 103 Wn.2d at 809. As a consequence, "trial court decisions in marital dissolution proceedings are rarely

changed on appeal.” *Marriage of Buchanan*, 150 Wn. App. 730, 735, ¶ 7, 207 P.3d 478 (2009) (citations omitted).

Here, the trial court’s decision awarding the wife an additional 2 ½ years of maintenance and approximately one-half of the community property was well within its discretion, supported by substantial evidence, and should be affirmed.

**2. The trial court properly divided the marital estate nearly equally between the parties, and awarded the husband the restaurant that he alone manages and the family home where he and the children reside.**

On appeal, the wife claims that the trial court should have equally divided the marital estate between the parties. However, the trial court did in fact award each party a nearly equal share of the marital estate. The husband was awarded the restaurant business, which the trial court found had a negative balance because its debts outweighed its value, the family residence, with a net value of \$92,007, the children’s college accounts valued at \$14,000, and his vehicle valued at \$3,775. Leaving the restaurant at a zero value rather than a negative, the husband was awarded \$109,782. Meanwhile, the wife was awarded all of the retirement accounts valued at \$90,018 and her vehicle valued at \$12,522, for a total award of \$102,540. While the husband was awarded slightly

more assets (\$7,242 more), the trial court acknowledged that it was nonetheless fair, because the wife previously received a pre-distribution from the community assets of \$15,000 during the dissolution action as well as temporary maintenance.

The wife claims that the trial court “approved all Samir’s requests.” But that is not true. At trial, Samir asserted that both the restaurant and family residence were his separate property because they were acquired with premarital funds. Therefore, he asked the court to award him those assets, plus the retirement accounts in his name. (RP 71) However, the trial court found the family residence to be community property, and awarded the retirement accounts to the wife. (RP 181; CP 65-66)

The wife is mistaken when she claims that the husband was awarded assets valued at \$1,415,000. The wife makes this claim based on the purchase price of the restaurant and family residence in 2008 when they were acquired. However, she ignores that there were debts associated with the acquisition of these assets that need to be considered when valuing it. *See* RCW 26.09.080 (“the court shall, without regard to marital misconduct, make such disposition of the property *and the liabilities* of the parties... as shall appear just and equitable”) (emphasis added). Including the current value

of the assets and their associated liabilities, the trial court properly found that the restaurant had a negative value and the family residence had a net value of \$92,500.

There was also substantial evidence to support the trial court's valuation of both the business and family residence. Both parties presented valuations of the business, and the trial court adopted the wife's valuation. Further, the values of the real property associated with the business and the family residence were undisputed. A trial court does not abuse its discretion by assigning values to property within the scope of the evidence. *See Marriage of Soriano*, 31 Wn. App 432, 435, 643 P.2d 450 (1982).

The trial court properly awarded the restaurant business to the husband in light of the fact that he managed the business, and also acquired it with his separate property funds. Despite the fact that the wife claims on appeal that she should have been awarded the business, there was no evidence that she ever participated in its management or could maintain the business on her own. In declining to award the business to the wife, the trial court properly acknowledged that the wife's trial counsel conceded that the wife did not wish to take on the debts associated with the business if it were awarded to her. (RP 167, 180)



Finally, the trial court properly awarded the family residence to the husband in light of the fact that the children were designated to reside primarily with the father. RCW 26.09.080(4) provides that in dividing the marital estate between the parties, the trial court may consider the “desirability of awarding the family home [ ] to a spouse with whom the children reside the majority of the time.”

**3. The trial court’s award of maintenance for 2 ½ years to the wife, plus the temporary support she received for the year that the parties were separated, after the parties’ 12-year marriage was wholly appropriate.**

“The purpose of spousal maintenance is to support a spouse, typically the wife, until she is able to support earn her own living or otherwise become self-supporting.” *Marriage of Luckey*, 73 Wn. App. 201, 209, 868, P.2d 189 (1994). In this case, an award of more than 3 years of maintenance, including temporary maintenance, in declining amounts is more than adequate for the wife to become self-supporting after the parties’ 12-year marriage. The wife can either immediately seek employment if she so chooses, or she can use this period of maintenance to obtain additional education to provide her with higher paying jobs than those she worked prior to marriage.

The wife is wrong when she complains that the trial court made the maintenance award “non-modifiable.” The trial court granted the wife’s motion for reconsideration, and in fact ruled that maintenance could be modified if reasons warranted modification under RCW 26.09.070. (CP 65)

Finally, the wife claims that the trial court erred in finding the husband’s monthly income to be \$10,430. But there was substantial evidence to support the trial court’s finding, including the husband’s testimony and the Statement of Revenue and Earnings for the business, which was admitted without objection at trial. Although she relies on the parties’ 2011 tax return to claim higher income, this income was an anomaly because it included gambling winnings (and losses) that would have in any event been excluded as income for purposes of child support. RCW 26.19.071(4) (excluding “prizes” from income). The 2011 tax return also included rental income, which is used to pay the mortgage for the business. Deducting the mortgage from the rental income would reduce the husband’s income and result in a wash. RCW 26.19.071(5) (net income is determined by deducing normal business expenses from gross income).

**C. The trial court did not abuse its discretion in denying the appellant's requested continuance of the trial date.** (Response to Assignment of Error 12)

“Whether to grant or deny a continuance is a question addressed to the sound discretion of the court, and the exercise of that discretion will be set aside only for a manifest abuse thereof.” *Tucker v. Tucker*, 14 Wn. App. 454, 455, 542 P.2d 789 (1975) (citations omitted). “A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons.” *Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

The trial court did not abuse its discretion in denying the wife's motion for continuance when she claimed that she needed additional time to complete the appraisal of the restaurant business and the family residence.<sup>11</sup> As the husband pointed out, the wife had all of the information available to her since May 2012 and she was awarded \$15,000 from which she could use to pay for any appraisals. In fact, the wife was able to provide her expert's report on the value of the business in time for trial, which the trial court

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<sup>11</sup> Although appellant makes much over the fact that the GAL report was not filed 60 days before trial (Assignments of Error 4, 13), she never raised this as a basis for a continuance in either of her two motions for continuance.

adopted. The trial court properly found that it was not in the children's best interests to further delay final resolution of the case.

And for this same reason, the trial court properly denied the wife's second continuance, which she based on the false allegations of sexual abuse by the father. As the trial court found, it would consider these allegations as part of the dissolution trial. Further, even though the investigations were completed after trial, if it were determined that there was any veracity in the mother's allegations against the husband, the mother could move to modify the parenting plan to address this new evidence. But in fact, the investigations concluded with CPS concluding that the allegations were "unfounded" and the Sheriff's Office declining to prosecute the father. (See Jan. 6, 2014 Dec. of Samir Gohar filed in this action, Exs. 1, 2)

Finally, on appeal, the wife appears to claim that the late filing of the GAL report was a basis for a continuance. But the mother never raised this as a reason for a continuance. Instead, she raised it for the first time in her motion for reconsideration. And in any event, the wife received the report nearly a month before trial and had the opportunity to challenge the GAL's report at trial.

The trial court did not abuse its discretion in denying the wife's requests to further delay resolution of the dissolution action.

**D. The trial court did not abuse its discretion in denying the wife's motion for reconsideration or a new trial.** (Response to Assignment of Error 20)

A trial court's decision denying a motion for reconsideration or new trial will not be reversed on appeal absent a manifest abuse of discretion. *Marriage of Tomsovic*, 118 Wn. App. 96, 108, 74 P.3d 692 (2003); *Collings v. City First Mortgage Servs., LLC*, 177 Wn. App. 908, 918, 317 P.3d 1047 (2013) *rev. denied*, 179 Wn.2d 1028, 320 P.3d 718 (2014). Here, the trial court's decision was well within its discretion, particularly since the entire premise of the motion was the wife's claim that her *fourth* attorney did not adequately represent her at trial. As the trial court properly acknowledged, in seeking a new trial the wife was asking it to "make a finding that there is a civil idea of ineffective assistance of counsel, and I cannot make that finding." (1/9 RP 11) "Generally, a plaintiff in a civil case has no right to effective assistance of counsel. This rule is based on the presumption that, unless the indigent litigant may lose his physical liberty if he loses the litigation, there is generally no right to counsel in a civil case." *Nicholson v. Rushen*, 767 F.2d 1426, 1427 (9<sup>th</sup> Cir., 1985). Thus, even if there was ineffective

assistance of counsel, this would not warrant a reversal of the trial court's rulings.

Further, the trial court found that there was no "irregularity in proceedings" to warrant a new trial. (1/9 RP 12) The trial acknowledged that "there was a full trial with evidentiary hearings, with witnesses, with cross examination, with a full ability of Ms. Gohar to provide her case to the court and cross-examine witnesses." (1/9 RP 12) The trial court found that it had the "opportunity to see Mr. Gohar and Mrs. Gohar on the stand and to adjudge their demeanor and presentation and their ability to recollect and present all of those things that are also important in a trial." (1/9 RP 12) Under these circumstances, the trial court did not abuse its discretion in denying the wife a new trial.

#### **IV. CONCLUSION**

It has been nearly 3 years since the parties separated, and the children have now been residing primarily with the father for the past 1 1/2 years. The family, and the children in particular, are entitled to finality. This court should affirm the trial court's decision in its entirety.

Dated this 15th day of July, 2014.

SMITH GOODFRIEND, P.S.

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 15, 2014, I arranged for service of the foregoing Brief of Respondent, to the Court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
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**DATED** at Seattle, Washington this 15<sup>th</sup> day of July, 2014.

  
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Victoria K. Vigoren