71018-4

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No. 71018-4

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

VIKAS LUTHRA,

Appellant,

vs.

ARADHNA FORREST (fka ARADHNA LUTHRA),

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE DEBORAH D. FLECK (Retired)

BRIEF OF APPELLANT

PRO SE

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2. The trial court erred in determining that the father was agreeing to a stipulation through counsel, allowing modification of the Parenting Plan dated July 8th, 2010. (CP 328)

3. The trial court erred in imposing 26.09.191(3) restrictions in the amended Parenting Plan entered on 9/9/2013 on the Father's contact with the child relying on RCW 26.09.004 as a basis. (CP 334)

4. The trial court erred by unilaterally modifying the language of Section 3.2 (School Schedule) of the Parenting Plan, related to reinstatement of mid-week visits of father with child, by introducing a new requirement of "*court approves the start of midweek visits*" when no such requirement existed in the original Parenting Plan Final Order from 7/8/2010 (CP 35, 334)

5. The trial court erred in modifying the language in Section 4.2 (Major Decisions) of the Parenting Plan Final Order (PP) Amended on 9/9/2013, which restrained the father from

attending to non-emergency health care needs of the child, when no such restriction existed in the original Parenting Plan Final Order from 7/8/2010. (CP 40, 340)

6. The trial court erred in unilaterally modifying the language of Section 4.2 (Major Decisions) of the Parenting Plan Final Order (PP) Amended on 9/9/2013 to specifically restrain the father from having contact with the Child's Therapist, when no such restriction was in place in the original Parenting Plan Final Order (PP) from 7/8/2010. (CP 340)

7. The trial court erred in awarding attorney fees of $5,985 to Petitioner in response to Petitioners Motion for Fees and Costs. (CP 294-295)

8. The trial court erred in issuing its oral findings stating that the therapists engaged by the father for the treatment of his OCD were unqualified because they lacked initials after their names, and could have obtained their license from the state (to practice as Licensed Mental Health Counselor) by sending in a form and paying some money. (CP 327, VRP at 19 (June 5th, 2013))

9. The trial court erred in modifying the language of Section 6.2 (Telephone Access) of the Parenting Plan Final Order (PP) Amended on 9/9/2013 by restricting the father from communication with the child through "other media, including but not limited to e-mail, Facetime, chat rooms, and other web based communication", when no such restrictions existed in the original Parenting Plan Final Order dated 7/8/2010. (CP 41, 342)

10. The trial court erred in entering its order on Motion for Reconsideration on October 21st, 2013, which introduced ADR through Arbitration as a provision for Dispute Resolution without seeking permission from the Appellate Court per RAP 7.2 (e) (CP 349-351)

II. STATEMENT OF ISSUES

1. A MOTION TO REINSTATE MID-WEEK VISITATION AND FOR ORDER ALLOWING VACATION was scheduled before the Trial Court for a hearing on Jun 5th, 2013. At the hearing, during oral arguments, matters needing clarification were brought up for consideration by Honorable Judge Deborah

Fleck (Retired.) Did the trial court err by finding that the parties to the action were by acquiescence agreeing to modification of the entire Parenting Plan?

2. Can an individual not physically present at a hearing, nor telephonically consulted during the course of the hearing (the scope of which is to Reinstate Mid-Week Visitation and allow Vacation), assent to a Stipulation to Modify the Parenting Plan as defined in CR 2 (A). Further, did the trial court err in assuming the previously scheduled hearing for a Motion to Reinstate Mid-Week Visitation and to Allow Vacation also satisfactorily met the burden of being designated as an adequate cause hearing (required per provisions of LFLR 13 (d)(2)) for modification of the Final Parenting Plan?

If the importance of presence of the father to agree to a modification in open court was marginalized by the presence of his attorney during the hearing, did the trial court err in modifying any portion of the language of the Parenting Plan Final Order which were not specifically agreed to by the parties during the course of that hearing as detailed in the record? (CP 328)

3. A "Modification of the Parenting Plan" is held to a *de novo* review. Did the trial court abuse it's discretion in relying on its previous findings from 7/8/2010, which were now unsubstantiated and contradicted when reviewed through the prism of a de novo standard during the current hearings? Did the trial court further err by introducing new restrictions when entering the Parenting Plan Final Order (PP) Amended on 9/9/2013 & 10/21/2013 based in its findings from 7/8/2010? (CP 45-50, CP 296-307, CP 349-351)

4. No requirement for seeking court approval to begin mid-week visitation was dictated in the Original Parenting Plan Final Order from 7/8/2010 (CP 35). Did the trial court err by modifying the Section 3.2 (School Schedule) of the Parenting Plan Final Order (PP) Amended on 9/9/13 (CP 297) by introducing a requirement that the father must seek approval from the trial court ("and the court approves midweek visits") to begin mid-week visitation after his therapist for OCD treatment reports to counsel and the court that affirmatively reports on the father's commitment to and progress in treatment? (CP 35, 297)

5. The qualifications of LMHC in Washington State Credentialing Requirements (Chapter 18.225 RCW, 246-809 WAC)

require a master's or doctoral degree in mental health counseling or a behavioral science master's or doctoral degree in a field relating to mental health and further minimum of 36 months of fulltime counseling or 3000 hours of postgraduate mental health counseling. Did the trial court abuse its discretion in discounting the qualifications and capabilities of LMHC Rhonda Griffin, LMHC Nancy Eveleth and Psychiatrist Dr. Triet Nguyen, in assuming that they lacked the capability to adequately treat Mr. Luthra's OCD?

6. Did the trial court abuse its discretion in determining that Mr. Luthra's MOTION TO REINSTATE MIDWEEK VISITATION AND ORDER ALLOWING VACATION was intransigent, when in contrast it was reliant on medical opinions of qualified, (Washington State Department of Health Licensed) Medical Professionals each of whom specialized in providing Mental Health Care. (CP 331, 332)

7. The trial court erred in awarding attorney fees of $5,985 to Ms. Forrest in response to Petitioners Motion for Fees and Costs, even though initially the Counsel for Ms. Forrest had stated in open court on 6/5/2013 that her fees amounted to $2000. (CP 165, CP 331-332, VRP at 13 (June 5th, 2013.))

8. In the Original "Parenting Plan Final Order" dated 7/8/2013 (CP 41), in the interest of maintaining a healthy level of contact between the parent's and the child, no restrictions were placed on the parent's ability to communicate with their child. Considering the young age of the child when the Parenting Plan was entered on 7/8/2010 (5 years old) a minimal level of phone contact was ordered to be facilitated by the residential parent. Did the trial court abuse its discretion when it altered these provisions on 9/9/13 specifically barring FaceTime, email and chat communication between the child and the father? (CP 41, 304)

9. WA RAP 7.2 (e) defines the authority of the Trial Court in Post-Judgment Motions and Actions to Modify Decisions on a matter under review in the Appellate Court. Since a Notice of Appeal to the Court of Appeals, Division I was filed on 10/8/2013 by Mr. Luthra, did the trial court violate the provisions of WA RAP 7.2 (e) when it failed to seek permission of the Appellate Court when entering its orders on 10/21/13 appointing an Arbitrator for ADR in that order? (CP 322, CP 349-351)

III. STATEMENT OF FACTS

1. A Parenting Plan Final Order was entered on 7/8/2010 by Honorable Judge Deborah Fleck in Superior Court of Washington, County of King in a dissolution matter under Cause # 09-3-04289-0 KNT. (CP 34-43)

2. Findings of Fact and Conclusions of Law (Marriage) was also entered on 7/8/2010 in Cause # 09-3-04289-0 (CP 45-50)

3. A Motion to Reinstate Midweek Visitation and for Order Allowing Vacation was filed on 5/22/13. (CP 24-30)

4. A hearing on Motion to Reinstate Midweek Visitation and Allow Vacation was held on 6/5/2013 (CP 165, VRP 1-33 (June 5th, 2013.))

5. An Order Denying Respondents Midweek Visitation was entered on June 5th, 2013 (CP 167-169)

6. An Order Denying Respondent Vacation with Child during Summer 2013 was entered on June 5th, 2013 (CP 170-171)

7. An Order of Petitioner's Motion for Fees was signed on 8/16/2013, but entered into record on 9/9/2013. (CP 294-295)

8. A Parenting Plan Final Order (PP) Amended on 9/9/13 was entered on 9/9/2013 (CP 296-307)

9. A Motion for Reconsideration and for Correction of the Amended Final Parenting Plan was filed by Petitioner on 9/19/2013 (CP 308-309)

10. A Notice of Appeal to Court of Appeals, Division I was filed on the Order on Respondent's Motion to Reinstate Midweek Visitation and for Order Allowing Vacation entered on 6/5/13, Order on Petitioner's Motion for Fees entered on 8/16/13 and the continuing Petitioner's Submission Re. Parenting Plan Clarification/Modification and the Subsequent Parenting Plan Final Order Amended of 9/9/2013 was filed on 10/8/2013 by Mr. Luthra. (CP 322-325)

11. An Order on Motion for Reconsideration was entered on 10/21/2013 appointing an Arbitrator for ADR, and striking language in Paragraph 6.12 in the Parenting Plan Final Order (PP) Amended on 9/9/2013. (CP 349-351)

12. An Amended Notice of Appeal to Court of Appeals, Division 1 was filed on 11/20/2013 by Luthra incorporating the Order on Motion for Reconsideration entered on 10/21/13.

IV. ARGUMENTS

A. A Trial Court Cannot Modify a Parenting Plan Unless it Complies with the requirements of RCW 26.09.260

"After a trial court enters a final parenting plan, and neither party appeals it, the plan can be modified only under RCW 26.09.260." ***Marriage of Coy***, __ Wn. App. __, ¶ 13, 248 P.3d 1101 (March 22, 2011). This statute "sets forth the criteria and procedures for modifying a parenting plan and contains varying standards depending on the parties' circumstances and the kind of modification requested. These criteria and procedures limit a court's range of discretion. Thus, a court abuses its discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria." ***Marriage of Watson***, 132 Wn. App. 222, 230, ¶ 21, 130 P.3d 915 (2006) (*citations omitted*); *see also* ***Marriage of Tomsovic***, 118 Wn. App. 96, 103, 74 P.3d 692 (2003) ("Compliance with the statute is mandatory").

Procedurally, a modification action is generally commenced by the filing of a summons and petition. *See* 20 Kenneth W.

Weber, *Washington Practice, Family and Community Property Law,* § 33.38 n.1 (noting the mandatory petition form; WPF DRPSCU 07.0100). A modification action is a new proceeding, which is generally assigned a new judge. *See* ***State ex rel. Mauerman v. Superior Court for Thurston County***, 44 Wn.2d 828, 830, 271 P.2d 435 (1954). To be entitled to a full hearing on a petition to modify, the party seeking modification must first demonstrate that adequate cause for a modification exists. ***Tomsovic***, 118 Wn. App. at 104; RCW 26.09.270. Thus, before a parenting plan can be modified, a threshold hearing must be held and adequate cause established. RCW 26.09.270.

A hearing on Motion to Reinstate Midweek Visitation and to Allow Vacation on Cause # 09-3-04289-0 KNT was noted originally by Respondent to be held on May 30th, 2013. Due to Court's Scheduling Conflicts, a hearing on the matter was held instead on June 5th, 2013. Ms. Aradhna Forrest, Petitioner was present at the hearing with her Counsel Ms. Janet Helson. Respondent Mr. Luthra was unable to attend the hearing due to a previously scheduled business related commitment, but was represented at the Court by

his Counsel – Ms. Andrea Seymoure. During course of the hearing other disputed issues were brought up by Counsel's for both parties.

In the physical absence of Mr. Luthra at the hearing, and without prior notice to him that the arguments presented at the hearing would amount to adequate cause to modify the parenting plan, the Trial Court proceeded to note that the parties to the action were agreeing to a Stipulation allowing modification of the Parenting Plan in the matter. A Stipulation in per CR 2A of Superior Court of WA mandates that "no agreement or consent between the parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed will be regarded by the court unless the same shall have been made and assented to in open court on the record" Without providing Mr. Luthra an opportunity to assent or dissent to the Proposed Stipulation, the trial court proceeded to take upon itself the onus to Modify portions of the Parenting Plan that were disputed (VRP at 23 (June 5th, 2013))

In the hearing on June 5th, 2013, Judge Fleck stated: "Well, as to changes, I think I need to have the agreement of both sides for a change. For example Dr. Oderberg versus arbitration versus return to court would be something that I think I need to have an agreement. It's not simply clarification, I guess, is what I am saying." (VRP 23, June 5th 2013)

The record confirms, that Mr. Luthra was not afforded the opportunity to assent to the Stipulation to Modify the Parenting Plan imposed by Judge Deborah Fleck. The trial court improperly modified the final parenting plan without a pending petition for modification, an adequate cause hearing, or adequate consideration of the statutory criteria under RCW 26.09.260.

CR 2A provides parties with an opportunity to enter into stipulated agreements that can be enforced if they are "made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same." The purpose of CR 2A is to "avoid . . . disputes and to give certainty and finality to settlements and

compromises, if they are made." *Eddleman v. McGhan*, 45 Wn.2d 430, 432, 275 P.2d 729 (1954).

B. The Trial Court Erred By Modifying The Parenting Plan and Imposing restrictions pursuant to 26.09.191 (3) by relying on RCW 26.09.004 as a basis and further restricting the Father's contact with the Child's Therapist, restricting Facetime, email and other electronic means of communication, modifying the Joint Decision Making Provision for Major Decisions and also removing the fathers right to provide non-emergency medical care to the child.

Assuming the trial court had authority under 26.09.260 to modify the party's parenting plan, the de novo standard of review is a requisite for such a modification.

Even in situations such as here, where the nonresidential parent has RCW 26.09.191 restrictions, the trial court may only modify the parenting plan to further reduce contact between the child and the parent if it specifically "finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191." RCW 26.09.260(4). "Failure by the trial court to make findings that reflect the application of each relevant factor [of RCW 26.09.260] is error." ***Marriage of Stern***, 57

Wn. App. 707, 711, 789 P.2d 807, *rev. denied*, 115 Wn.2d 1013 (1990).

Using the de novo standard of review, in the process of modification, the trial court did not make specific findings based on evidence that the father's contact with the Child's therapist would negatively impact the Child's best interest. The trial court also did not find that the father was incapable of performing his parental duties as defined under 26.09.004 (2). No evidence was presented to the Court asserting that the father had failed to perform his parental duties or lacked mental acumen to make decisions and perform functions necessary for the care and growth of the Child. To the contrary, Mr. Luthra is not only a capable parent to Akshay, but has also repeatedly demonstrated the ability to be a person of sound logic and reputation. Mr. Luthra was on the PTA Board of the Child's School for the School Year 2011-2012, and also 2012-2013.

Ms. Virginia Turner, the Principal of the School attended by the party's child – stated in her sworn affidavit on 12/8/2010 "I am aware of Mr. Luthra's OCD diagnosis. Mr. Luthra proactively

explained his OCD to me in a private meeting. I have interacted with, and seen Mr. Luthra on numerous occasions subsequent to this disclosure and see absolutely no reason to limit his ability to volunteer at Lafayette Elementary." She also stated "Mr. Luthra appears to me as a normal, successful professional, ..." (CP 2)

Ms. Stacy Chung, the teacher of the classroom attended to by the party's child in 2010-2011 school year stated in a sworn affidavit to the court that "Since October 2010, Mr. Luthra has routinely volunteered in my classroom to help the kids with reading, or writing, and playground activity..." She further stated "During my numerous interactions with Mr. Luthra on these occasions, I have never observed anything that would cause me to be concerned about the appropriateness of him being around Akshay or any of the other kids in the school." (CP 5)

Mr. Ernest Seevers, Principal of Sanisilo Elementary School (which the party's son attended in 1st grade) stated in a sworn affidavit to the court on 12/9/2010 that "Mr. Luthra volunteered in the classroom of Ms. Ayoubi, one of our first grade teachers. He

spent his time helping the children in the class with their reading and math skills. His assistance was appreciated and encouraged by Ms. Ayoubi. He also accompanied the class on field trips, attended classroom parties and otherwise was an active and helpful participant at the school." (CP 8)

Mr. Andy Robblee, the immediate next door neighbor of Mr. Luthra since 1998 in his sworn declaration to the court on March 28, 2011 stated amongst other positive observations of Mr. Luthra that "I have never witnessed Vikas say or do anything that we as parents found objectionable of inappropriate." (CP 19)

Ms. Rhonda Griffin, LMHC who specifically worked with Mr. Luthra in treating his OCD per the orders of the Court stated in her sworn declaration to the court on 4/15/2013 that "Mr. Luthra has made good progress and strides in managing his OCD, and I believe he has developed a good handle on stress triggers and an ability to deploy alternative methods to manage the related anxiety," She further goes on to report to the court that "I find no reason for concern with regard to reinstatement of Mr. Luthra's Wednesday

Visitations with his son. Mr. Luthra is committed to managing his OCD symptoms and I expect that he will continue to be compliant with the recommendations of his mental health providers." (CP 64, 65)

Nancy Eveleth, LMHC and the manager of Psychiatry and Counselling Clinic at Valley Medical Center in Renton, Washington, in her sworn affidavit to the court on 4/15/2013 stated "I have been Mr. Luthra's psychotherapist for over eleven years. I have extensive knowledge of his OCD behaviors and manifestations as well as the impact his OCD has had on his life...I have been working with Mr. Luthra in coordination with his Psychiatrist Dr. Triet Nguyen, and his OCD therapist, Rhonda Griffin, LMHC." She goes on to state "I feel confident stating that Mr. Luthra's OCD behaviors have been reduced as a result of her OCD treatment. This progress is evident in his involvement as a PTA Board member at his son's school, his mentoring of high school students, and his service on the TYE board. All these commitments require time management, flexibility, and dedication. Mr. Luthra has demonstrated a strong commitment to his psychotherapy and OCD treatment while balancing these

roles and managing his own business in India." She further recommends "I recommend that the restrictions on Mr. Luthra's visitation with his son, especially the mid-week Wednesday visit, be removed as soon as possible. I believe Mr. Luthra is a very capable parent who is dedicated to his son's wellbeing and to providing him the best possible upbringing." (CP 67-68)

Dr. Triet Nguyen, a Board Certified Osteopathic Physician & Surgeon licensed by the WA State Department of Health, in his sworn declaration to the court on 4/16/2013 sated "Mr. Luthra has been my patient since January of 2008...Mr. Luthra has been very committed to obtaining the treatment ordered by the court. Based on my personal observations and on consultations with Nancy Eveleth and Rhonda Griffin, Mr. Luthra has made and continues to make sustained progress in managing his OCD symptoms since my last report to the court in October of 2011." He also stated that "I have no reservations in recommending the court allow Mr. Luthra his Wednesday evening visitations with his son. In fact, I further recommend that previously entered restrictions on his interactions with his son be also removed...This court should allow him to

strengthen his bond with his son in an effort to help him develop good social and family-relationship management skills." (CP 71-73)

Ignoring the evidence detailed above, made in form of sworn affidavits by a teacher, 2 school Principals, a close neighbor, and 3 highly qualified, licensed Medical Professionals who specialize in Mental Health Care, the Trial Court abused its discretionary power in imposing restrictions on Mr. Luthra's contact with his Son, and further removing his previously granted right as a Parent to have equal say in the Child's Medical care related matters. The overwhelming evidence on record before the court would have dictated that any restrictions be removed, rather than new additional restrictions be imposed on the father's contact with his Son as defined under RCW 26.09.004 (2).

The Court of Appeals held restrictions entered in a parenting plan pursuant to RCW 26.09.191(3) must be supported by an express finding that the parent's conduct is adverse to the best interest of the child. *In re Marriage of Katare*, 125 Wash.App. 813, 826, 105 P.3d 44 (2004) (*Katare* I)

C. The Trial Court Erred By adding language in the Parenting Plan Final Order (PP) Amended on 9/9/2013 that the "court approves the start of mid-week visits" when no agreement was made on modifying this language in the Stipulation list of items to be modified in the Parenting Plan, purportedly assumed by court to have been entered to between the parties.

Even if the Trial Court was correct in its assumption that the parties to the parenting plan were agreeing per CR 2 (A) to a Stipulation allowing modification of selected portions of the Parenting Plan, the court erred by adding language which created an additional burden on the father to comply with to reinstate his midweek visitation with the child after making progress in his OCD treatment. The list of items agreed to purportedly be modified in the Parenting Plan was very specific in its scope. (CP 169) The Trial Court violated the scope of the supposed Stipulation by modifying portions of the Parenting Plan which were not agreed to modification by stipulation of the parties.

D. The Trial erred in awarding attorney's fees to Ms. Forrest in the amount of $5,895 because of its findings that the father's Motion for Reinstatement of Midweek Visitation and for Order Allowing Vacation was intransigent

The Trial Court Judge assumed that Licensed Medical Health Care professionals supervising the Respondent, were lacking credentials to treat the father's OCD. although the Washington State Credentialing Requirements (Chapter 18.225 RCW, 246-809 WAC) clearly outlines stringent and specific higher educational degrees such as Masters and practical experience requirements (of the extent of a minimum of 36 months, or 3000 hours), to qualify for such a License to operate. The Father had good reason to rely on the Medical Opinions of LMHC Rhonda Griffin, Nancy Eveleth, and Dr. Triet Nguyen in petitioning the court to reinstate his midweek visitation. No factual evidence discounting the credentials of the Medical Professionals was presented in the court, and the court was wrong in finding the fathers motion brought 2 years after entry of original Parenting Plan Final Order (PP) dated 7/8/2010 was brought in bad faith.

In re Marriage of Littlefield, 133 Wash.2d 39, 46, 940 P.2d 1362 (1997). An abuse of discretion occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Id.* at 46-47, 940 P.2d 1362. The trial court's findings of fact will be accepted as verities by the reviewing court so long as they are supported by substantial evidence. *Ferree v. Doric Co.*, 62 Wash.2d 561, 568, 383 P.2d 900 (1963). Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted.

Furthermore, the evidence presented to the court in form of oral arguments on June 5th, 2013 indicated that Ms. Helson had expended $2000 worth of legal services in responding to Mr. Luthra's motion before the court. The award of $5895 was not supported by reliable evidence before the court. (CP 165, VRP at 19 (June 5h, 2013)

E. Trial Court erred in issuing its oral findings stating that the therapists engaged by the father for the treatment of his OCD were unqualified.

The trial court abused its discretion in finding that the therapists engaged by the father (Ms. Rhonda Griffin & Ms. Nancy Eveleth) lacked educational qualifications to be considered competent in their ability to provide intensive OCD treatment to the father. Ms. Rhonda Griffin holds a Masters in Applied Behavioral Science and Bachelors of Science Degree and was licensed as LMHC by the Washington State Department of Health since 2001. Issuance of LMHC (Licensed Mental Health Counselor) credentials is governed by the stringent requirement of WA RCW 18.225.090 (b) Licensed mental health counselor:

(i) Graduation from a master's or doctoral level educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards;

(ii) Successful completion of an approved examination;

(iii) Successful completion of a supervised experience requirement. *The experience requirement consists of a minimum of thirty-six months full-time counseling or three thousand hours of*

postgraduate mental health counseling under the supervision of a qualified licensed mental health counselor or equally qualified licensed mental health practitioner, in an approved setting. The three thousand hours of required experience includes a minimum of one hundred hours spent in immediate supervision with the qualified licensed mental health counselor, and includes a minimum of one thousand two hundred hours of direct counseling with individuals, couples, families, or groups; and

(iv) Successful completion of continuing education requirements of thirty-six hours, with six in professional ethics.

Without any evidence challenging the qualifications and abilities of Ms. Griffin and Ms. Eveleth, the trial court abused its discretion in negating their capabilities to provide adequate medical care and counselling to Mr. Luthra in treatment of his OCD.

Similarly, Dr. Triet Nguyen is a WA State DOH licensed Psychiatrist, and the trial court erred in discounting the evidentiary value of Dr. Nguyen's ability to assess, treat and give expert

opinion about Mr. Luthra's level of disability resulting from his OCD diagnosis.

F. Even If The Trial Court had authority to "modify" The Parenting Plan, by Imposing New Restrictions On The Father mode of communication with the child was in error, because there is no Nexus Between These New Restrictions And The Father's Obsessive Compulsive Disorder.

The reasons for the restrictions on the father's mid-week residential time with the child simply do not carry over as a basis to impose a restriction on the father's ability to communicate with the child on the phone. The trial court's findings after the dissolution trial in support of its RCW 26.09.191 limitations on the father's residential time largely addressed the trial court's concerns with the father's "abnormal behavior" in having "cleansing rituals" inside his home due to his OCD. However, they are not a basis for the trial court to restrain the father from communicating with the child only through a specific means – such as an audio phone call. This is especially true when it is evident that the father is no real risk to the child as the father is allowed liberal overnight visitation with the child during school breaks, two weeks of vacation during the

summer, and is provided with full alternative weekends with the child during the school year.

"[A]ny limitations or restrictions imposed [under RCW 26.09.191] must be reasonably calculated to address the identified harm." ***Katare v. Katare***, 125 Wn. App. 813, 826, 105 P.3d 44 (2004). Any limitation or restriction placed on a parent's conduct or contact with their child must be "specifically tailored to the presenting problem." 20 Kenneth W. Weber, Washington Practice: Family and Community Property Law § 33.25, at 100 (Pocket Part, 2010). Here, there was no basis to impose a restraint on the father's phone, email, facetime, chat or other contact with his child because of the father's OCD.

It appears that the trial court imposed these new restrictions on the father's communication method with the child as a means to "punish" the father for allegedly not yet making "progress in the intensive therapy" that the trial court believed he needs. (*VRP at 15 (June 5th, 2013)*) But "custody and visitation privileges are not to be used to penalize or reward parents for their conduct." ***Marriage***

of Cabalquinto, 100 Wn. 2d 325, 329, 669 P.2d 886 (1983). It is the best interests of the child, not the conduct of the parents, which is the "paramount" consideration in making decisions relating to parenting. ***Calbaquinto,*** 100 Wn.2d at 329; *see also* ***Malfait v. Malfait,*** 54 Wn.2d 413, 416, 418, 341 P.2d 154 (1959) (reversing trial court decision limiting father's visitation rights as a punishment based on the trial court's determination that the father was "arrogant and selfish"). When, as here, there is no evidence that the father's phone contact via facetime or email etc. was adverse to the child, the trial court abused its discretion by imposing restrictions on the father's ability to continue to volunteer at the child's school.

Further, the trial court's imposition of what amounts to a restraining order against the child in communicating with this father is especially egregious as there was no basis for such a restraint at the end of the parties' dissolution trial – which is why one was not entered – and there is no basis for such a restraint now. RCW 26.09.002 provides that "the best interest of the child is ordinarily served when the existing pattern of interaction between a parent

and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm." There were no verifiable evidence to support the imposition of such communication restrictions between the father and the child. Such a restriction is not in the child's best interests, nor did the trial court find it so.

The trial court erred in improperly modifying the parenting plan and imposing new limitations on the father's rights and the child's rights.

G. The Trial Court exceeded its remand by entering Orders Modifying the Final Parenting Plan (PP) Amended on 9/9/2013 in its order on 10/21/2013 because the matter was already accepted for review by WA COA, Division 1.

The The scope of the Trial Court's remand in a matter brought before it is not restricted because the matter is already been filed for Appellate Review. However, per WA RAP 7.2(e) – when the court's determination modifies the matter under consideration at the Appellate Court, the trial court must obtain permission from the Appellate Court before entering its orders. Judge Deborah Fleck (Retired) and also neither party in this matter

approached the Appellate Court for permission to enter its decision from 10/21/2013 into order. The modification order entered into record on 10/21/2013 therefore did not comply with the provisions of WA RAP 7.2 (e) and therefore is not enforceable.

Superior Court Civil Rule (CR) 58 (ENTRY OF JUDGMENT) states: "When. Unless the court otherwise directs and subject to the provisions of rule 54 (beer), all judgments shall be entered immediately after they are signed by the judge. (beer) Effective Time. Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing, unless the judge earlier permits the judgment to be filed with him as authorized by rule 5 (e)."

In State ex rel. Shafer v. Bloomer, 973 P.2d 1062, 94 Wash. App. 246 (Ct. App. 1999):

"RAP 7.2 (e) applies to the authority of the trial court to modify a judgment or motion after an appellate court accepts review. The rule states in part: "If the trial court determination will change a decision then being reviewed by the appellate court, the

permission of the appellate court must be obtained prior to the formal entry of the trial court decision. RAP 7.2 (e) (emphasis added).

In order to determine whether the trial court complied with the requirements set forth in RAP 7.2 (e) we must determine whether its dismissal of the contempt order was a determination that affected the outcome of a decision under review. We conclude it did. In a prior hearing in this matter, an appellate court commissioner dismissed Mr. Bloomer's appeal as moot based on the trial court's decision to dismiss the order of contempt. The State should have moved this court for permission to enter the trial court's dismissal prior to formal entry of the order to dismiss Mr. Bloomer's contempt action. As such, the order of dismissal is vacated."

V. CONCLUSION

This court should reverse the trial court's order as it improperly modifies the Parenting Plan.

Dated this 21th day of April, 2014.

By:_____

Vikas Luthra (Appellant Pro Se)
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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 ___April 21st_____, 2014, I arranged for service of the foregoing Appellants Brief to the court and to the parties to this action as follows:

Office of Clerk King County Superior Court Kent Regional Justice Center 401 4th Avenue No., Room 2C Kent, WA 98032	_X_ E-Filed ___ Messenger ___ U.S. Mail ___ Hand Delivered
WA Court of Appeals – Div 1 600 University St One Union Square Seattle, WA 98101-1176 Fax: 206-464-7750	___ Facsimile ___ Messenger _X__ U.S. Mail ___ Hand Delivered
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DATED at NewCastle, Washington this 21st day of April, 2014

Vikas Luthra (Pro Se)