

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

ANNE GIROUX,

Appellant,

v.

DANIEL KULMAN,

Respondent.

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

The Honorable Diana L. Kiesel, Commissioner

REPLY BRIEF

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WASHINGTON APPELLATE PROJECT
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A. ARGUMENT

1. THE “ONE DAY” DESIGNATION ON THE DECEMBER 10TH ORDER RENDERED THE CONTEMPT SANCTION A DETERMINATE SENTENCE, RATHER THAN AN INDETERMINATE ONE.

A remedial or coercive contempt sanction must provide regular intervals or opportunities for the contemnor to purge the contempt and to obtain release from incarceration. In re King, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988). Due process will not permit a court to rely on its inherent contempt authority to impose a criminal or punitive contempt sanction absent a criminal trial. In re the Interests of M.B., et al, 101 Wn. App. 425, 453, 3 P.3d 780 (2000), rev. denied, 142 Wn.2d 1027 (2001) (citing King, 110 Wn.2d at 800).

A contempt sanction is only considered civil when “it is conditional and indeterminate, i.e., where the contemnor carries the keys of the prison door in his own pocket and can let himself out by simply obeying the court order.” King, 110 Wn.2d at 800 (emphasis added); In re Marriage of Didier, 134 Wn. App. 490, 501-02, 140 P.3d 607 (2006) (finding contempt order punitive).

In Didier, the trial court held the father in contempt for failure to comply with the court’s child support order. 134 Wn. App. at 500. On

appeal, this Court closely examined the language of the purge condition in the lower court's contempt order, distinguishing between terms meant to coerce compliance with a court order, and terms that are strictly punitive. Id. at 503. This Court noted in Didier, that "the use of the term 'sentenced' suggests the court's punitive thinking here." Id.

Respondent argues that Ms. Giroux's term of incarceration was for an "indeterminate period." Brief of Respondent at 23 (citing CP 269). He thus attempts to distinguish Didier, claiming that defendant's term of incarceration was determinate, and this, indeterminate. Id.

Respondent seems to cite from the Order on Show Cause dated November 21, 2013, however, which is not the order on which Ms. Giroux was incarcerated. CP 269. When Ms. Giroux appeared in court on November 21st, the case was continued until December 5th, and then continued again until December 10th. On December 10th, Commissioner Kiesel signed an order, stating that Ms. Giroux was to be incarcerated "for one day." CP 286. "One day" is indisputably a determinate, fixed period of time.¹

¹ Determinate sentence: a jail or prison sentence that is definite and not subject to review by a parole board or other agency. (<http://www.law.cornell.edu/wex>) (last accessed: Oct. 14, 2014).

On December 10th, the trial court sentenced Ms. Giroux to “one day” incarceration – there was no further opportunity to purge the contempt, and no other option other than to pay bail, “cash only.” CP 286. The trial court failed to include in its order the classic language which might have rendered its order truly coercive, as this Court helpfully suggested in Didier. 134 Wn. App. at 505 (noting the court could have ordered the defendant to remain in jail until a date certain, or until he complied with the court’s order, whichever occurs first.) (emphasis added).

In this case, because Ms. Giroux did not have the ability to avoid the finding of contempt and the one-day sentence, the contempt order was criminal in nature, entitling her to the due process protections accorded in criminal matters. The court’s order set bail (“\$1000, cash only”), and set forth no alternative method in which Ms. Giroux could comply with the court’s orders, other than serving a jail sentence. Id.

The trial court seems to have sentenced Ms. Giroux to “one day” in jail, in order to punish her for past non-compliance –a punitive measure apparently taken by the court in frustration, following a lengthy course of litigation.

Respondent boldly argues that Ms. Giroux’s “**appeal fails because the incarceration ordered in this case was coercive.**” Brief of Respondent at 20 (emphasis in original). Simply arguing in boldface fails to engender support for respondent’s argument, for which there is no authority. Respondent claims the children’s [] [sic] with Daniel Kulman was strained, and that this state of affairs was caused by the mother’s “abusive use of conflict.” Brief of Respondent at 20. Citing the father’s own declarations does not make this statement more persuasive. Nor does Respondent’s assertion that Ms. Giroux’s allegations of domestic violence are false help his cause; it was conceded years ago that Mr. Kulman admitted his history of domestic violence pursuant to RCW 26.09.191 pursuant to the parenting plan.²

Because the contempt sanction was punitive, compliance with due process protections was required.

2. SINCE RESPONDENT HAS NOT ADDRESSED MOOTNESS, MS. GIROUX RESPECTFULLY REQUESTS THIS COURT REACH THE MERITS OF HER CASE.

In general, a case is moot when the court can no longer provide meaningful relief. Sorenson v. City of Bellingham, 80 Wn.2d 547, 558,

²The Decree of Dissolution, Parenting Plan, Order of Child Support, and Child Support Worksheet from the 2006 divorce in Lincoln County are attached as an Appendix (No. 06-3-01198-2).

496 P.2d 512 (1972). Cases presenting moot issues on appeal are generally dismissed. In re Eaton, 110 Wn.2d 892, 895, 757 P.2d 961 (1988) (quoting Sorenson, 80 Wn.2d at 558); Seattle v. Johnson, 58 Wn. App. 64, 66-67, 791 P.2d 266 (1990). However, an appellate court has the discretion to retain and decide a moot case when ““matters of continuing and substantial public interest are involved.”” Eaton, 110 Wn.2d at 895 (quoting Sorenson, 80 Wn.2d at 558).

Even if this Court finds, *arguendo*, that the issues presented in this case are technically moot, this Court should render a decision because of the public’s need to address the issues raised by this case, as well as their likelihood to recur.

Due to Ms. Giroux’s stated belief that “the court system is not protecting her children or acknowledging her children’s wishes,” CP 267, Ms. Giroux will likely be subject to further contempt actions as a result, including the disbursement of attorneys’ fees and civil penalties.

Because this Court can provide effective relief, the matter is not moot. Sorenson, 80 Wn.2d at 558.

Additionally, this case involves a matter of continuing and substantial public interest which requires this Court's determination. In re M.B., 101 Wn. App. at 432-33 (finding the distinction between civil

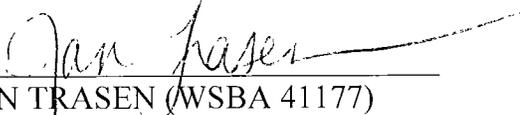
and criminal contempt to be issue of substantial and continuing public interest, and granting review, despite technical mootness). In determining whether a matter is of continuing and substantial public interest, this Court looks to three factors: (1) whether the issue is of public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. Id. at 432-33. Ms. Giroux's case satisfies these criteria.

Therefore, even if the Court deems this issue moot, it should reach the merits of this claim.

B. CONCLUSION

For the reasons set forth above, as well as the reasons set forth in her opening brief, Ms. Giroux respectfully asks this Court to vacate the order of contempt and remand the case for compliance with statutory and constitutional protections.

Respectfully submitted this 15th day of October, 2014.



JAN TRASEN (WSBA 41177)
Washington Appellate Project - 91052
Attorneys for Appellant

APPENDIX

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FILED

JUL 24 2006

PEGGY A. SEMPRIMOZNIK
LINCOLN COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
COUNTY OF LINCOLN**

In re the marriage of

Anne Setsuko Kulman,

 Petitioner

and

Daniel Lance Kulman,

 Respondent.

No. 06-3-01198-2

DECREE OF DISSOLUTION
(DCD)

Clerk's Action
Paragraph 3.8

I. JUDGMENT/ORDER SUMMARIES

1.1 Restraining Order Summary:

Does not apply.

**VIOLATION OF A RESTRAINING ORDER IN PARAGRAPH 3.8 BELOW WITH
ACTUAL KNOWLEDGE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER
CHAPTER 26.50 RCW, AND WILL SUBJECT THE VIOLATOR TO ARREST. RCW
26.09.060**

1.2 Real Property Judgment Summary:

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 2400000070

1.3 Money Judgment Summary.

7

1 [x] Judgment summary does not apply.

2 *END OF SUMMARIES*

3 II. BASIS

4 Findings of Fact and Conclusions of Law have been entered in this case.

5 III. DECREE

6 IT IS DECREED that:

7 3.1 STATUS OF THE MARRIAGE.

8 [x] The marriage of the parties is dissolved.

9 3.2 PROPERTY TO BE AWARDED TO THE HUSBAND.

10 [x] The husband is awarded as his separate property the following property:

11 Community property awarded to the husband:

- 12 1. The personal property now in his possession.
- 13 2. Master bedroom set of 2 dressers, 2 night stands with 2 matching lamps, 14" TV, Coffee table, 2 matching end tables, living room lamp, tall standing tool box on wheels, his clothing and entertainment desk.
- 14 3. All bank accounts and certificates of deposit in his name.
- 15 4. 1993 Mercury, license #274TCI.
- 16 5. All insurance policies on his life.
- 17 6. All retirement benefits in his name through Multicare Health Systems.
- 17 7. One-half of any income tax refund due either party for income taxes paid during 2005.

18 Separate property awarded to the husband:

19 None

20 3.3 PROPERTY TO BE AWARDED TO THE WIFE.

21 [x] The wife is awarded as her separate property the following property:

22 Community property awarded to the wife:

- 23 1. The personal property now in her possession.
- 24 2. Children's beds, dressers, clothes, toys, computer and printer, kitchen table with chairs, couch, love seat, gifts, exercise bike, video camera and camera.
- 25 3. All bank accounts and certificates of deposit in her name.
- 26 4. 2000 Nissan, license #387LAL.
- 26 5. All insurance policies on her life.
- 26 6. One-half of any income tax refund due either party for income taxes paid during 2005.
- 27 7. Real property and any buildings on it located at 3214 Crystal Springs Road West,

1 University Place, Washington and described as Lot 7, Block 1, Belfoy-Smith Addition,
2 according to Plat recorded in Book 17 of Plats, Page 85, in Pierce County, Washington.

3 Separate property awarded to the wife:
4 None

5 3.4 LIABILITIES TO BE PAID BY THE HUSBAND.

6 [x] The husband shall pay the following community or separate liabilities:

7 Community liabilities to be paid by the husband:

8 Tapco Loan (\$2,333.50)
9 Capital One VISA (\$720.62)
10 GE Money Bank (\$254.29)

11 Separate liabilities to be paid by the husband:

12 All obligations incurred by him prior to the marriage of the parties or after the separation of
13 the parties

14 3.5 LIABILITIES TO BE PAID BY THE WIFE.

15 [x] The wife shall pay the following community or separate liabilities:

16 Community liabilities to be paid by the wife:

17 National City Mortgage (\$100,267.17)
18 Capital One Mastercard (\$5,063.69)
19 Old Navy (\$891.09)
20 Dr. Chad W. Smart (Kevins Orthodontics)(\$1,025)
21 Lakewood Music Center (Kara's Instrument)(\$465.08)

22 Separate liabilities to be paid by the wife:

23 All obligations incurred by her prior to the marriage of the parties or after the separation of
24 the parties

25 3.6 HOLD HARMLESS PROVISION.

26 [X] Each party shall hold the other party harmless from any collection action relating to separate or
27 community liabilities set forth above, including reasonable attorney's fees and costs incurred in
28 defending against any attempts to collect any obligation of the other party.

3.7 SPOUSAL MAINTENANCE.

[x] Does not apply.

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3.8 CONTINUING RESTRAINING ORDER.
 Does not apply.

3.9 JURISDICTION OVER THE CHILDREN.
 The court has jurisdiction over the children as set forth in the Findings of Fact and Conclusions of Law.

3.10 PARENTING PLAN.
 The parties shall comply with the Parenting Plan filed herewith and signed by the court on this date. Said parenting plan is approved and incorporated as part of this decree.

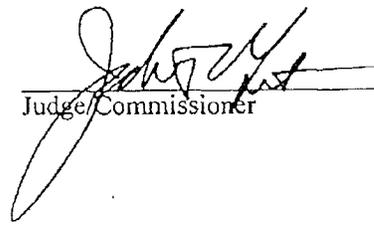
3.11 CHILD SUPPORT.
 Child support shall be paid in accordance with the order of child support filed herewith and signed by the court on this date. Said child support order is incorporated as part of this decree.

3.12 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES, AND COSTS.
 Attorney's fees, other professional fees and costs shall be paid as follows:
The respondent is ordered to pay the petitioner \$500 representing the petitioner's attorney's fees and costs herein

3.13 NAME CHANGES.
 The wife's name is changed to Anne Setsuko Giroux.

3.14 SEPARATE PROPERTY AGREEMENT.
 Does Not Apply.

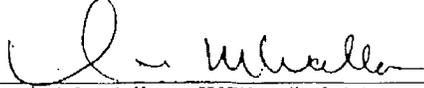
Dated: 7/24, 2006.



Judge/Commissioner

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Presented by:



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kul36059

STATE OF WASHINGTON)
County of Lincoln) SS
I hereby certify that the foregoing instrument, is a true
and correct copy of the original on file in the
office of the undersigned Clerk of the Superior Court
of the State of Washington for Lincoln County.
Dated this 31st day of July, 2006
Peggy A. Semprumoznik
Clerk of Superior Court
By Julia Jacob
Deputy Clerk

FILED

JUL 24 2006

PEGGY A. SEMPRIMCZNIK
LINCOLN COUNTY CLERK

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**SUPERIOR COURT OF WASHINGTON
COUNTY OF LINCOLN**

In re the marriage of

Anne Setsuko Kulman,

 Petitioner

and

Daniel Lance Kulman,

 Respondent.

No. 06-3-01198-2

PARENTING PLAN
 PROPOSED (PPP)
 TEMPORARY (PPT)
 FINAL ORDER (PP)

This parenting plan is:

the final parenting plan signed by the court pursuant to a decree of dissolution entered on this date.

IT IS HEREBY ORDERED, JUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Kira Setsuko Kulman	13
Kevin Daniel Kulman	9
Christin Kimiko Kulman	6

II. BASIS FOR RESTRICTIONS

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child(ren) and the right to make decisions for the child(ren).

3

1 2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

2 [x] The father's residential time with the children shall be limited or restrained completely,
3 and mutual decision-making and designation of a dispute resolution process other than
4 court action shall not be required because, this parent has engaged in the conduct which
5 follows.

6 [x] A history of acts of domestic violence as defined in RCW 26.50.010 or an assault
7 or sexual assault which causes grievous bodily harm or the fear of such harm.

8 2.2 OTHER FACTORS (RCW 26.09.191(3)).

9 [x] Does not Apply.

10 III. RESIDENTIAL SCHEDULE

11 These provisions set forth where the children shall reside each day of the year and what contact the
12 children shall have with each parent.

13 3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.

14 [x] There are no children under school age.

15 3.2 SCHOOL SCHEDULE.

16 Upon enrollment in school, the children shall reside with the mother, except for the following
17 days and times when the children will reside with or be with the other parent:

18 The second and fourth full weekends of each month beginning at 6:00 p.m. on Friday and
19 ending at 6:00 p.m. on Sunday.

20 [x] The school schedule will start when each child begins kindergarten. For purposes of this
21 parenting plan, the school year shall begin on the Monday before the first day of school
22 and shall end on the Saturday following the last day of school.

23 3.3 SCHEDULE FOR WINTER VACATION.

24 The children shall reside with the mother during winter vacation, except for the following days
25 and times when the children will reside with or be with the other parent:

26 The first half of the vacation each year.

27 3.4 SCHEDULE FOR SPRING VACATION.

28 The children shall reside with the mother during spring vacation, except for the following days

1 and times when the children will reside with or be with the other parent:

2 Beginning at 9:00 on Monday and ending at 7:00 p.m. the following Tuesday.

3 3.5 SUMMER SCHEDULE.

4 Upon completion of the school year, the children shall reside with the mother, except for the
5 following days and times when the children will reside with or be with the other parent:

6 The second and fourth full weekends of each month beginning at 6:00 p.m. on Friday and
7 ending at 6:00 p.m. on Sunday.

8 3.6 VACATION WITH PARENTS.

9 [x] Does not apply.

10 3.7 SCHEDULE FOR HOLIDAYS.

11 The residential schedule for the children for the holidays listed below is as follows:

	Mother Every Year	Father Every Year	Mother-Even Yrs Father-Odd Yrs	Father-Even Yrs Mother-Odd Yrs
14 New Year's Day	___	___	__x__	___
15 ML King Day	___	___	__x__	___
16 Presidents Day	___	___	__x__	___
17 Memorial Day	___	___	__x__	___
18 Fourth of July	___	___	__x__	___
19 Labor Day	___	___	__x__	___
20 Veterans Day	___	___	__x__	___
21 Thanksgiving Day	___	___	__x__	___
22 Christmas Eve	___	___	__x__	___
23 Christmas Day	___	___	__x__	___

24 [x] For purposes of this parenting plan, a holiday shall begin at 9:00 a.m. on the day of the
25 holiday and end at 9:00 a.m. on the following day.

26 3.8 SCHEDULE FOR SPECIAL OCCASIONS.

27 The residential schedule for the children for the following special occasions is as follows (for
28 example, birthdays):

	Mother Every Year	Father Every Year	Mother-Even Yrs Father-Odd Yrs	Father-Even Yrs Mother-Odd Yrs
1				
2				
3	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
4	<u> </u>	<u> x </u>	<u> </u>	<u> </u>
5	<u> x </u>	<u> </u>	<u> </u>	<u> </u>
6	<u> </u>	<u> x </u>	<u> </u>	<u> </u>
6	<u> </u>	<u> </u>	<u> x </u>	<u> </u>

7 3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

8 [x] If the residential schedule, paragraphs 3.1 - 3.8, results in a conflict in which the children
 9 are scheduled to be with both parents at the same time, the conflict shall be resolved by
 priority being given as follows:

10 [x] Other: Parent's vacations have priority over holidays. Holidays have priority over
 11 other special occasions. Special occasions have priority over school vacations.

12 3.10 RESTRICTIONS.

13 [x] Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

14 3.11 TRANSPORTATION ARRANGEMENTS.

15 Transportation costs are included in the Child Support Worksheets and/or the Order of Child
 16 Support and should not be included here.

17 Transportation arrangements for the children between parents shall be as follows:

18 The father shall pick the children up at the mother's residence at the beginning of visitation and
 19 deliver them to the mother's residence at the end of visitation.

20 3.12 DESIGNATION OF CUSTODIAN.

21 The children named in this parenting plan are to reside the majority of the time with the
 22 mother. This parent is designated the custodian of the children solely for purposes of all other
 23 state and federal statutes which require a designation or determination of custody. This
 designation shall not affect either parent's right and responsibilities under this parenting plan.

24 3.13 Other: N/A

25 3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A CHILD.

26 This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

1 If the person with whom the child resides a majority of the time plans to move, that person
2 shall give notice to every person entitled to court ordered time with the child.

3 If the move is outside the child's school district, the relocating person must give notice by
4 personal service or by mail requiring a return receipt. This notice must be at least 60 days
5 before the intended move. If the relocating person could not have known about the move in
6 time to give 60 days notice, that person must give notice within 5 days after learning of the
7 move. The notice must contain the information required in RCW 26.09.440. See also
8 DRPSCU 07.0500 (Notice of Intended Relocation of A Child.).

9 If the move is within the same school district, the relocating person must provide actual notice
10 by any reasonable means. A person entitled to time with the child may not object to the move
11 but may ask for modification under RCW 26.09.260.

12 Notice may be delayed for 21 days if the relocating person is entering a domestic violence
13 shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

14 If information is protected under a court order or the address confidentiality program, it may
15 be withheld from the notice.

16 A relocating person may ask the court to waive any notice requirements that may put the health
17 and safety of a person or a child at risk.

18 Failure to give the required notice may be grounds for sanctions, including contempt.

19 **If no objection is filed within 30 days after service of the notice of intended relocation,**
20 **the relocation will be permitted and the proposed revised residential schedule may be**
21 **confirmed.**

22 A person entitled to time with a child under a court order can file an objection to the child's
23 relocation whether or not he or she received proper notice.

24 An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,
25 (Objection to Relocation/Motion for Modification of Custody Decree/Parenting
26 Plan/Residential Schedule (Relocation)). The objection must be served on all persons entitled
27 to time with the child.

28 The relocating person shall not move the child during the time for objection unless: (a) the
29 delayed notice provisions apply; or (b) a court order allows the move.

30 If the objecting person schedules a hearing for a date within 15 days of timely service of the
31 objection, the relocating person shall not move the child before the hearing unless there is a
32 clear, immediate and unreasonable risk to the health or safety of a person or a child.

1 IV. DECISION MAKING

2 4.1 DAY TO DAY DECISIONS.

3 Each parent shall make decisions regarding the day-to-day care and control of each child while
4 the child is residing with that parent. Regardless of the allocation of decision making in this
5 parenting plan, either parent may make emergency decisions affecting the health or safety of
6 the children.

6 4.2. MAJOR DECISIONS.

7 Major decisions regarding each child shall be made as follows:

8 Education decisions	<input checked="" type="checkbox"/> mother	<input type="checkbox"/> father	<input type="checkbox"/> joint
9 Non-emergency health care	<input checked="" type="checkbox"/> mother	<input type="checkbox"/> father	<input type="checkbox"/> joint
10 Religious upbringing	<input type="checkbox"/> mother	<input type="checkbox"/> father	<input checked="" type="checkbox"/> joint

11 4.3 RESTRICTIONS.

12 Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above
13 which require restrictions on decision making.

14 V. DISPUTE RESOLUTION

15 *The purpose of this dispute resolution process is to resolve disagreements about carrying out this*
16 *parenting plan. This dispute resolution process may, and under some local court rules or the*
17 *provisions of this plan must, be used before filing a petition to modify the plan or a motion for*
18 *contempt for failing to follow the plan.*

17 No dispute resolution process except court action is ordered.

19 VI. OTHER PROVISIONS

20 There are no other provisions:

21 VII. DECLARATION FOR PROPOSED PARENTING PLAN

22 Does not apply.

23 VIII. ORDER BY THE COURT

24 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved
25 as an order of this court.

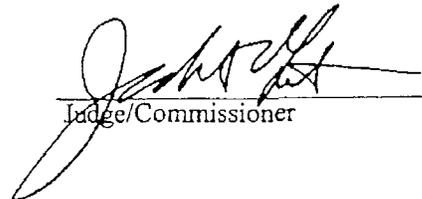
26 WARNING: Violation of residential provisions of this order with actual knowledge of its terms is
27 punishable by contempt of court and may be a criminal offense under RCW 9A.040.060(2) or

1 9A.40.070(2). Violation of this order may subject a violator to arrest.

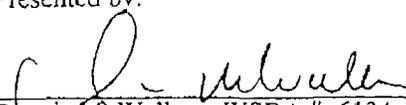
2 When mutual decision making is designated but cannot be achieved, the parties shall make a good
3 faith effort to resolve the issue through the dispute resolution process.

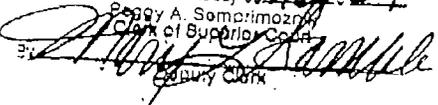
4 If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan
5 are not affected.

6 Dated: 7/24, 2006.



Judge/Commissioner

7 Presented by:
8 
9 _____
10 Dennis M. Wallace, WSBA #: 6134
11 Attorney for Petitioner
12 535 Tacoma Mall Office Bldg
13 Tacoma, WA 98409
14 (253) 472-4448
15 kul36059

STATE OF WASHINGTON }
County of Lincoln } SS
I hereby certify that the foregoing instrument is a full
true and correct copy of the original on file in the
office of the undersigned Clerk of the Superior Court
of the State of Washington for Lincoln County.
Date this 1st day of May 2007
Peggy A. Somersmoor
Clerk of Superior Court
By: 
Clerk

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FILED

JUL 24 2006

PEGGY A. SEMPRIMOZNIK
LINCOLN COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON
COUNTY OF LINCOLN**

In re the marriage of
Anne Setsuko Kulman,
Petitioner
and
Daniel Lance Kulman,
Respondent.

No. 06-3-01198-2
ORDER OF CHILD SUPPORT
[x] Final Order (ORS)
Clerk's Action Required

I. JUDGMENT SUMMARY

[x] Does not apply because no attorney's fees or back support has been ordered.

II. BASIS

2.1 TYPE OF PROCEEDING.

This order is entered pursuant to a decree of dissolution, legal separation, or a declaration of invalidity.

2.2 CHILD SUPPORT WORKSHEET.

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

2.3 OTHER: Does not apply.

III. FINDINGS AND ORDER

IT IS ORDERED that:

ORDER OF CHILD SUPPORT (ORS) - Page 1
WPF DR 01.0500 (6/2004) - RCW 26.09.175; 26.26.132

Dennis M. Wallace
535 Tacoma Mall Office Bldg
Tacoma, WA 98409
(253) 472-4418

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1 3.1 CHILDREN FOR WHOM SUPPORT IS REQUIRED:

2	<u>Name</u>	<u>Age</u>
3	Kira Setsuko Kulman	13
4	Kevin Daniel Kulman	9
4	Christin Kimiko Kulman	6

5 3.2 PERSON PAYING SUPPORT (OBLIGOR):

6 Name: Daniel Lance Kulman
7 Birth Date: 03/26/69
8 Service Address [You may list an address that is not your residence address at which you agree
to accept legal documents]:
9 6318 47th St. Ct. W.
University Place, WA 98466

10 THE OBLIGOR PARENT MUST IMMEDIATELY FILE WITH THE COURT AND THE
11 WASHINGTON STATE CHILD SUPPORT REGISTRY AND UPDATE, AS NECESSARY,
THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW 26.23.050.

12 THE OBLIGOR PARENT SHALL UPDATE THE INFORMATION BY PARAGRAPH 3.2
13 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE DUTY TO UPDATE
14 THE INFORMATION CONTINUES AS LONG AS ANY MONTHLY SUPPORT REMAINS
DUE OR AN UNPAID SUPPORT DEBT REMAINS DUE UNDER THIS ORDER.

15 Monthly Net Income: \$3,826.00

16 3.3 PERSON RECEIVING SUPPORT (OBLIGEE):

17 Name: Anne Setsuko Kulman
18 Birth Date: 11/17/69
19 Service Address [You may list an address that is not your residence address at which you agree
to accept legal documents]:
20 3214 Crystal Springs Rd. W.
University Place, WA 98466

21 THE OBLIGEE PARENT MUST IMMEDIATELY FILE WITH THE COURT AND THE
22 WASHINGTON STATE CHILD SUPPORT REGISTRY AND UPDATE, AS NECESSARY,
THE CONFIDENTIAL INFORMATION FORM REQUIRED BY RCW 26.23.050.

23 THE OBLIGEE PARENT SHALL UPDATE THE INFORMATION BY PARAGRAPH 3.2
24 PROMPTLY AFTER ANY CHANGE IN THE INFORMATION. THE DUTY TO UPDATE
25 THE INFORMATION CONTINUES AS LONG AS ANY MONTHLY SUPPORT REMAINS
DUE OR AN UNPAID SUPPORT DEBT REMAINS DUE UNDER THIS ORDER.

26 Monthly Net Income: \$1,280.00

1 The obligor may be able to seek reimbursement for day care or special child rearing expenses
2 not actually incurred. RCW 26.19.080.

3 3.4 SERVICE OF PROCESS.

4 **SERVICE OF PROCESS ON THE OBLIGOR AT THE ADDRESS REQUIRED BY**
5 **PARAGRAPH 3.2 OR ANY UPDATED ADDRESS, OR ON THE OBLIGEE AT THE**
6 **ADDRESS REQUIRED BY PARAGRAPH 3.3 OR ANY UPDATED ADDRESS, MAY**
7 **BE ALLOWED OR ACCEPTED AS ADEQUATE IN ANY PROCEEDING TO**
8 **ESTABLISH, ENFORCE OR MODIFY A CHILD SUPPORT ORDER BETWEEN THE**
9 **PARTIES BY DELIVERY OF WRITTEN NOTICE TO THE OBLIGOR OR OBLIGEE**
10 **AT THE LAST ADDRESS PROVIDED.**

11 3.5 TRANSFER PAYMENT:

12 [x] The obligor parent shall pay the following amounts per month for the following children:

13	<u>Name</u>	<u>Amount</u>
14	Kira Setsuko Kulman	\$569.36
15	Kevin Daniel Kulman	\$569.36
16	Christin Kimiko Kulman	\$569.36
17	TOTAL MONTHLY AMOUNT	\$1,708.09

18 **THE OBLIGOR PARENT'S PRIVILEGES TO OBTAIN OR MAINTAIN A LICENSE,**
19 **CERTIFICATE, REGISTRATION, PERMIT, APPROVAL, OR OTHER SIMILAR**
20 **DOCUMENT ISSUED BY A LICENSING ENTITY EVIDENCING ADMISSION TO**
21 **OR GRANTING AUTHORITY TO ENGAGE IN A PROFESSION, OCCUPATION,**
22 **BUSINESS, INDUSTRY, RECREATIONAL PURSUIT, OR THE OPERATION OF A**
23 **MOTOR VEHICLE, MAY BE DENIED, OR MAY BE SUSPENDED IF THE**
24 **OBLIGOR PARENT IS NOT IN COMPLIANCE WITH THIS SUPPORT ORDER AS**
25 **PROVIDED IN CHAPTER 74.20A REVISED CODE OF WASHINGTON.**

26 3.6 STANDARD CALCULATION:

27 \$1,708.09 per month. (See Worksheet, line 15)

28 3.7 REASONS FOR DEVIATION FROM STANDARD CALCULATION:

[x] The child support amount ordered in paragraph 3.4 does not deviate from the standard calculation.

3.8 REASONS WHY REQUEST FOR DEVIATION WAS DENIED.

[x] A deviation was not requested.

1 3.9 STARTING DATE AND DAY TO BE PAID:

2 Starting Date: The fifth day of the month following the entry of this Order
3 Day of the month support is due: The fifth day of each month

4 3.10 INCREMENTAL PAYMENTS.

5 [x] Does not apply.

6 3.11 HOW SUPPORT PAYMENTS SHALL BE MADE:

7 [x] Enforcement and collection: The Division of Child Support (DCS) provides support
8 enforcement services for this case because this is a case in which a parent has requested
9 services from DCS. Support payments shall be made to:

10 Washington State Support Registry
11 P.O. Box 45868
12 Olympia, WA 98504
13 Phone: 1-800-922-4306 or
14 1-800-442-5437

15 A party required to make payments to the Washington State Support Registry will not receive
16 credit for a payment made to any other party or entity. The obligor parent shall keep the
17 registry informed whether he or she has access to health insurance coverage at reasonable cost
18 and, if so, the health insurance policy information.

19 3.12 WAGE WITHHOLDING ACTION

20 Withholding action may be taken against wages, earnings, assets, or benefits, and liens
21 enforced against real and personal property under the child support statutes of this or any other
22 state, without further notice to the obligor parent at any time after entry of this order unless an
23 alternative provision is made below:

24 [If the court orders immediate wage withholding in a case where Division of Child Support
25 does not provide support enforcement services, a mandatory wage assignment under Chap.
26 26.18 RCW must be entered and support payments must be made to the Support Registry.]

27 3.13 TERMINATION OF SUPPORT:

28 [x] Support shall be paid until the child reaches the age of eighteen (provided that the child
support shall continue as long as the child remains in high school if the child is enrolled
in high school upon reaching age eighteen) or until the child is otherwise emancipated,
except as otherwise provided below.

3.14 POST SECONDARY EDUCATIONAL SUPPORT:

[x] No post secondary educational support shall be required.

1 3.15 PAYMENT FOR EXPENSES NOT INCLUDED IN THE TRANSFER PAYMENT.

2 [x] Does not apply because all payments, except medical, are included in the transfer
3 payment.

4 3.16 PERIODIC ADJUSTMENT.

5 [x] Does not apply.

6 3.17 INCOME TAX EXEMPTIONS:

7 [x] Tax exemptions for the children shall be allocated as follows:

8
9 The respondent is awarded the right to claim Kira Setsuko Kulman, Kevin Daniel
10 Kulman, and Christin Kimiko Kulman as deductions for income tax purposes for tax year
11 2006 and tax year 2007. The petitioner is awarded the right to claim Kira Setsuko
12 Kulman, Kevin Daniel Kulman, and Christin Kimiko Kulman as deductions for income
13 tax purposes for tax year 2008. Beginning with the tax year 2009 each party shall
14 alternate the right to claim Kira Setsuko Kulman, Kevin Daniel Kulman, and Christin
15 Kimiko Kulman with the petitioner claiming each even numbered tax year and the
16 respondent each odd numbered tax year.

17 [x] The parents shall sign any necessary federal income tax dependency exemption waivers.

18 3.18 MEDICAL INSURANCE FOR THE CHILDREN LISTED IN PARAGRAPH 3.1

19 Father's basic child support obligation: \$1,180.92 x 25% = \$295.23

20 Mother's basic child support obligation: \$395.08 x 25% = \$98.77

21 Total basic support obligation: \$1,576.00 x 5% = \$78.80

22 Unless one or more of the alternatives below are checked, each parent shall maintain or
23 provide health insurance coverage if:24 (a) Coverage that can be extended to cover the children is or becomes available to that parent
25 through employment or is union related; and26 (b) The cost of such coverage for the mother does not exceed \$98.77 (25 percent of mother's
27 basic child support obligation on Worksheet Line 7), and the cost of such coverage for the
28 father does not exceed \$295.23 (25 percent of father's basic child support obligation on
Worksheet Line 7).[x] Alternative 1: The parent below shall maintain or provide health insurance coverage if
coverage that can be extended to cover the children is or becomes available to that parent
through employment or is union related and the cost of such coverage does not exceed \$98.77
(25 percent of that parent's basic child support obligation. See Worksheet Line 7.)

1 Mother
2 Father

3 **Alternative 2:** Does not apply.

4 **Alternative 3:** The parent below is not obligated to provide health insurance coverage:

5 Mother
6 Father

7 This parent is not obligated to provide health insurance coverage because:

8 The other parent provides insurance coverage

9 The parent(s) shall maintain health insurance coverage, if available for the children listed in
10 paragraph 3.1, until further order of the court or until health insurance is no longer available
11 through the parents' employer or union and no conversion privileges exist to continue coverage
12 following termination of employment.

13 A parent who is required under this order to provide health insurance coverage is liable for any
14 covered health care costs for which that parent receives direct payment from an insurer.

15 A parent who is required under this order to provide health insurance coverage shall provide
16 proof that such coverage is available or not available within twenty days of the entry of this
17 order to the physical custodian or the Washington State Support Registry if the parent has been
18 notified or ordered to make payments to the Washington State Support Registry.

19 If proof that such health insurance coverage is available or not available is not provided within
20 twenty days, the obligee or the Department of Social and Health Services may seek direct
21 enforcement of the coverage through the obligor's employer or union without further notice to
22 the obligor as provided under chapter 26.18 RCW.

23 3.19 EXTRAORDINARY HEALTH CARE EXPENSES:

24 The OBLIGOR shall pay 75% of extraordinary health care expenses (the obligor's proportional
25 share of the income from Child Support Schedule Worksheet, line 6) if monthly medical
26 expenses exceed \$78.80 per child (5% of the basic support obligation from Worksheet, line 5).

27 3.20 BACK CHILD SUPPORT

28 No back child support is owed at this time.

29 3.21 BACK INTEREST.

30 No back interest is owed at this time.

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3.22 DENTAL EXPENSES

The mother shall pay all uninsured dental expenses on the minor children.

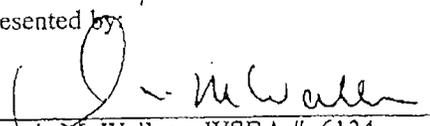
3.23 LIFE INSURANCE

The father is ordered to maintain in force life insurance policies on the life of the father in the amount of \$50,000.00 per child, without loans against said policies, for the purpose of meeting the support obligations herein. The father is ordered to name the children as beneficiary on said policies until the support obligations hereunder are terminated.

Dated: 7/24, 2006.

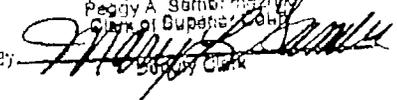


Judge/Commissioner

Presented by


Dennis M. Wallace, WSBA #: 6134
Attorney for petitioner
535 Tacoma Mall Office Bldg
Tacoma, WA 98409
(253) 472-4448

kul36059

STATE OF WASHINGTON } ss
County of Lincoln }
I hereby certify that the foregoing instrument is a full
true and correct copy of the original as filed in the
office of the undersigned Clerk of the Superior Court
of the State of Washington for Lincoln County.
Date this 1st day of May 2007
Peggy A. Serrino
Clerk of Superior Court
By: 
Clerk

FILED

JUL 24 2006

PEGGY A. SEMPRIMOZNIK
LINCOLN COUNTY CLERK

Washington State Child Support Schedule

Worksheets (CSW)

Mother: Anne Kulman
County LincolnFather: Daniel Kulman
Superior Court Case Number 06-3-01198-2

Children and Ages: Kira, age 13; Kevin, age 9; Christin, age 6		
Part I: Basic Child Support Obligation (See Instructions, Page 5)		
1. Gross Monthly Income	Father	Mother
a. Wages and Salaries	\$3,953.00	\$1,600.00
b. Interest and Dividend Income	\$0.00	\$0.00
c. Business Income	\$0.00	\$0.00
d. Spousal Maintenance Received	\$0.00	\$0.00
e. Other Income	\$0.00	\$0.00
f. Total Gross Monthly Income (add lines 1a through 1e)	\$3,953.00	\$1,600.00
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State)	\$127.00	\$320.00
b. FICA (Soc. Sec. - Medicare)/Self-Employment Taxes	\$0.00	\$0.00
c. State Industrial Insurance Deductions	\$0.00	\$0.00
d. Mandatory Union/Professional Dues	\$0.00	\$0.00
e. Pension Plan Payments	\$0.00	\$0.00
f. Spousal Maintenance Paid	\$0.00	\$0.00
g. Normal Business Expenses	\$0.00	\$0.00
h. Total Deductions from Gross Income (add lines 2a through 2g)	\$127.00	\$320.00
3. Monthly Net Income (Line 1f minus line 2h)	\$3,826.00	\$1,280.00
4. Combined Monthly Net Income (add father's and mother's monthly net incomes from line 3) (If combined monthly net income is less than \$600, skip to line 7.)		\$5,106.00
5. Basic Child Support Obligation (enter total amount in box -->) Child #1 602 Child #3 487 Child #5 Child #2 487 Child #4 Child #6		\$1,576.00

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6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	Father	Mother
	0.75	0.25
7. Each Parent's Basic Child Support Obligation (multiply each number on line 6 by line 5) (if combined net monthly income on line 4 is less than 600, enter each parent's support obligation of \$25 per child. Number of Children: 3 (Skip to line 15a & enter this amount)	\$1,180.92	\$395.08
Part II: Health Care, Day Care, and Special Child Rearing Expenses (See Instructions, Page 7)		
8. Health Care Expenses		
a. Monthly Health Insurance Premiums Paid for Child(ren)	\$274.00	\$274.00
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	\$0.00	\$50.00
c. Total Monthly Health Care Expenses (line 8a plus line 8b)	\$274.00	\$324.00
d. Combined Monthly Health Care Expenses (add father's and mother's totals from line 8c)		\$598.00
e. Maximum Ordinary Monthly Health Care (line 5 times .05)		\$78.80
f. Extraordinary Monthly Health Care Expenses (line 8d minus line 8e, if "0" or negative, enter "0")		\$519.20
9. Day Care and Special Early Child Rearing Expenses		
a. Day Care Expenses	\$0.00	\$500.00
b. Education Expenses	\$0.00	\$50.00
c. Long Distance Transportation Expenses	\$0.00	\$0.00
d. Other Special Expenses (describe)	\$	\$
	\$0.00	\$0.00
	\$0.00	\$0.00
e. Total Day Care and Special Expense (add lines 9a through 9d)	\$0.00	\$550.00
10. Combined Monthly Total of Day Care and Special Expenses (add father's and mother's total day care and special expenses from line 9e)		\$550.00
11. Total Extraordinary Health Care, Day Care, and Special Expenses (line 8f plus line 10)		\$1,069.20
12. Each Parent's Obligation for Extraordinary Health Care, Day Care and Special Expenses (multiply each number on line 6 by line 11)	\$801.17	\$268.03
Part III: Gross Child Support Obligation		
13. Gross Child Support Obligation (line 7 plus line 12)	\$1,982.09	\$663.11
Part IV: Child Support Credits (See Instructions, Page 7)		
14. Child Support Credits		
a. Monthly Health Care Expenses Credit	\$274.00	\$324.00
b. Day Care and Special Expenses Credit	\$0.00	\$550.00
c. Other Ordinary Expense Credit (describe) (See line 9d)	\$0.00	\$0.00
d. Total Support Credits (add lines 14a through 14c)	\$274.00	\$874.00

Part V: Standard Calculation/Presumptive Transfer Payment (See Instructions, Page 8)		
15. Standard Calculation	Father	Mother
A. Amount from line 7 if line 4 is below \$600. Skip to Part VI	\$0.00	\$0.00
b. Line 13 Minus line 14d, if line 4 is over \$600 (see below if appl.)	\$1,708.09	(\$210.89)
Limitation standards adjustments		
c. Amount on line 15b adjusted to meet 45% net income limitation	\$1,721.70	\$576.00
d. Amount on line 15b adjusted to meet need standard limitation	\$3,029.00	\$483.00
e. Enter the lowest amount of lines 15b, 15c, or 15d:	\$1,708.09	\$75.00
Part VI: Additional Factors for Consideration (See Instructions, Page 8)		
16. Household Assets (List the estimated present value of all major household Assets)	Father's Household	Mother's Household
a. Real Estate	\$	\$
b. Stocks and Bonds	\$	\$
c. Vehicles	\$	\$
d. Boats	\$	\$
e. Pensions/IRAs/Bank Accounts	\$	\$
f. Cash	\$	\$
g. Insurance Plans	\$	\$
h. Other (describe)	\$	\$
17. Household Debt (List liens against household assets, extraordinary debt.)		
	\$	\$
	\$	\$
	\$	\$
	\$	\$
18. Other Household Income		
a. Income Of Current Spouse (if not the other parent in this action)		
Name _____	\$	\$
Name _____	\$	\$
b. Income Of Other Adults in Household		
Name _____	\$	\$
Name _____	\$	\$
c. Income Children (if considered extraordinary)		
Name _____	\$	\$
Name _____	\$	\$
d. Income From Child Support		
Name _____	\$	\$
Name _____	\$	\$

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO**

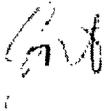
DANIEL KULMAN,)	
)	
Respondent,)	
)	
v.)	NO. 45722-9-II
)	
ANNE GIROUX,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 15TH DAY OF OCTOBER, 2014, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION TWO** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] DANIEL COOK, DPA	()	U.S. MAIL
[dcook@fjr-law.com]	()	HAND DELIVERY
FAUBION REEDER FRALEY & COOK PS	(X)	E-MAIL BY AGREEMENT
5920 100 TH ST SW STE 25		OF PARTIES
LAKEWOOD, WA 98499		

SIGNED IN SEATTLE, WASHINGTON THIS 15TH DAY OF OCTOBER, 2014.



X _____

Washington Appellate Project
701 Melbourne Tower
1511 Third Avenue
Seattle, WA 98101
Phone (206) 587-2711
Fax (206) 587-2710

WASHINGTON APPELLATE PROJECT

October 15, 2014 - 4:14 PM

Transmittal Letter

Document Uploaded: 457229-Reply Brief.pdf

Case Name: DANIEL KULMAN V. ANNE GIROUX

Court of Appeals Case Number: 45722-9

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

No Comments were entered.

Sender Name: Maria A Riley - Email: maria@washapp.org

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dcook@fjr-law.com