IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

COURT OF APPEALS NO. 44484-4-II

92330-2

CLARK COUNTY SUPERIOR COURT NO. 11-3-00581-7

In re the Marriage of

BECKY DEVELLE,

Appellant,

v.

MARC DEVELLE,

Respondent.

PETITION FOR REVIEW

Becky Develle
5702 NE 64 ST
Vancouver WA 98661

Marc Develle
3412 SE 165 Ave
Vancouver WA 98683

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A. IDENTITY OF PETITIONER

Becky Develle, appellant below and mother of the children at issue in this case, asks this Court to accept review of the Court of Appeals' decision denying reconsider and terminating review. See Part B.

B. COURT OF APPEALS DECISION

Petitioner/appellant Becky Develle, seeks review of the Court of Appeals' complete decision of May 24, 2015 (reconsideration denied on September 2, 2015), which affirmed the trial court's decisions. The appellate court held: that custody could be removed from Becky, the parties' settlement to be valid, also that numerous other errors of the trial court (discussed infra) are upheld despite that that those decisions are violations of law. A copy of the decision is attached at appendix 2.

C. ISSUES PRESENTED FOR REVIEW

1. The trial court erred by denying Becky's motions to establish family support on September 12, 2012 , January 25, 2013, and February 8, and entering orders which restate a false stipulation to no maintenance, then reserving on the matter of maintenance.

2. The trial court erred on January 25, 2012, in denying Becky's motion to reconsider custody and in ordering terms for future ability to request increased visitation which are void for unconstitutional vagueness

3. The trial court erred in denying Becky's motion to reconsider contempt charges on January 25, 2012.

4. The trial court erred by coercing a settlement and keeping proceedings off of the record, thus establishing an invalid contract.

5. The trial court erred by acting in a manner that would cause a reasonable person to suspect bias and impropriety, and reflected reflect poorly upon the judiciary. Thus the court did abuse its discretion by ordering retroactive child support.

6. The trial court erred by ordering the parties' children into public school without due process or jurisdiction.

D. STATEMENT OF THE CASE

This appeal arises after the dissolution of a 26-year marriage with children during which time is well documented abuse by and addictions of Marc. The trial court's coercion of the settlement on August 21, 2012, caused numerous errors relating to maintenance, parenting, and later, contempt issues.

Marc and Becky Develle were married in 1986 and had eight healthy children together. Becky was a stay-at home mom. Becky also homeschooled all of the children. She was a dedicated mother who agreed with Marc to spend her time raising her own children all day.

Marc is a journeyman printer and has been at the same employment for over thirty years. While he always contributed to the family financially he did not participate much in the children's lives.

Sadly the parties divorced and the ensuing court process became a tangled, complicated mess, and a series of confusing and illegal court rulings. After the divorce, the trial court removed custody of Becky's children and removed her award of maintenance. Becky began teaching a 12 year old child, DJ, who has become part of the discussion in this case due to Marc's unfounded allegations that DJ is a sexual predator.

The psychologist who worked on the case deemed Marc to be an "inappropriate" parent. Due to Marc's negligence, one of the children, Joshua, was killed last winter. A short chronology is included in appendix 1 for clarification.

Becky is a nurturing and dedicated mother who completely lost custody of her children because of the abuse of discretion by the trial court. She was left destitute after the divorce and illegally penalized for contempt (for allegedly

damaging the family home). Becky now appeals to this Court for justice, equity, and to reverse the errors of the trial court.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The errors which occurred in the trial court, while many, have been condensed into six questions of law. The laws violated are Washington Supreme Court decisions, Washington appellate court rulings, U.S. Constitutional laws, and Washington State statues. These mistakes cover grave matters of substantial public interest as well.

The root question is, *what happened during off-the-record proceedings at trial court?* This Court is asked to investigate and consider carefully the parole evidence of that record which points to a coerced settlement. Coercions and other subsequent unconstitutional rulings point to judicial misconduct and violations of civil rights.

Abuse of discretion, secreting court proceedings in chambers, changing the record after rulings, denial of Due Process protections and Constitutional rights, all appear on the record of this case.

By all legal standards Becky's rights were violated in the loss of custody of her children. She was stripped of financial assets, had her civil rights violated, and she was denied protection under Washington law.

This case should be reversed for those reasons but also as an example for courts to more carefully follow the rules of this state and our nation ensuring justice for all.

There are a number of glaring court errors which justice demands be reversed. Wherefore Becky prays this Court will grant the relief requested and thus serve Justice.

E1. CONFLICTS OF SUPREME COURT RULINGS

There are two commanding sources of law which apply to the instant case: statute and Supreme Court decision. For case law, the Washington Supreme Court has ruled, in *DeRuwe v. DeRuwe*, 72 Wn. 2d 404 (1967):

> [I]t is the economic condition in which the decree will leave the parties that engenders the paramount concern in providing for child support and alimony and in making a property division. . . .
> In making its determination, the court should give consideration to the necessities of the wife . . . as well as the future earning prospects . . . *Id.*
> Abuse of Discretion. Although the Supreme Court will not substitute its judgment for that of the trial court in questions of child support, custody, alimony, and property division except where there has been a manifest abuse of discretion, **it will**, if shown some abuse of discretion, **correct** the decree to ameliorate or remove if possible the **inequities** fostered by it. *Id.* (Emphasis added.)

Becky is entitled to maintenance according to holdings of the Supreme Court of Washington. She requested it and this should be granted.

> *IN RE: the Marriage of Mary M. Wright*, No. 69133–3–I (December 16, 2013):
> Rather, if the spouses were in a long-term marriage of 25 years or more, the court's objective is to place the parties in roughly equal financial positions for the rest of their lives.

In a long marriage, ruling dicta is that both spouses be placed in roughly equal financial positions for the rest of their lives. In *Sullivan v. Sullivan*, 52 Wn. 160, 164 (1909), ". . . the ultimate duty of the court is to make a fair and equitable division under all of the circumstances." After a husband and wife have toiled on for upwards of a quarter of a century in accumulating property, what they may have had to start with is a matter of little concern.

The Supreme Court has stated, "The paramount concern in determining the size of a maintenance award is the post dissolution economic positions of each of the parties. Maintenance is a flexible tool by which the parties' standards of living can be equalized . . . ," *In re Marriage of Washburn*, 101 Wn. 2d 168 (1984). Other appellate courts have followed this doctrine. *In re Marriage of Rockwell,* 141 Wn. App. 235, 170 P.3d 572 (Div. 1 2007), which has been upheld in all three appellate divisions, states, "In a long-term marriage of 25 years or more, the trial court's objective is to place the parties in roughly equal positions for the rest of their lives."

Indeed, it has been held that when a marriage has been of many years duration, with one spouse having sacrificed employment to raise the children and to make

a home, a maintenance award of short duration is an abuse of discretion. "A three year maintenance award was held to be in error in a case involving a 30 year marriage with the recipient spouse having sacrificed employment to raise the family. *In re Marriage of Sheffer*, 60 Wn. App. 51, 802 P.2d 817 (1990).

The length of the marriage, parties' disparate incomes, and Becky's need, all compel spousal maintenance or family support for Becky. After a 26-year marriage it is an abuse of discretion for the court not to grant an equalizing amount of support. "It would be **manifestly unjust to leave the wife and children with a low and uncertain standard of living while the husband retains a much higher one.**" *Stacy v. Stacy*, 68 Wn. 2d at 576 (1966). (Emphasis added.)

Statute RCW 26.09.090 fully applies to the instant case regarding the financial resources of the parties, standard of living during the marriage, the duration of the marriage; as well as the age and condition of Becky; and Marc's ability to pay. In Becky's case clearly this should have ended with an order for regular and substantial maintenance.

A fair and equitable division of property would not leave Becky without maintenance. As noted throughout the trial, Becky had been a stay at home mom for over twenty five years. She has no work history and no credentials to obtain a decent paying job. Without maintenance Becky is living below the poverty level while Marc lives in an upper middle class home. Clearly this is an abuse of discretion.

It has long been the policy in this State, legislatively and judicially, that after a long term marriage it is not lawful to leave one party destitute while the other continues on in the familiar standard of living. The court erred in not granting Becky maintenance or "family support" which clearly should be reversed.

In addition to maintenance, the lower court's finding of contempt against Becky was unlawful and contrary to the rulings of this Supreme Court, and should therefore should be reversed.

If the court's finding of contempt hinges on credibility issues, it is preferable for the trial court to hear live testimony of the parties or other witnesses. This is especially true if live testimony is requested. *In re Marriage of Rideout*, 150 Wn.2d 337, (2003).

Becky requested and provided an expert witness who was not allowed to testify. Becky was thus denied an opportunity to provide a defense to allegations of damaging the home. Because the trial court erred this decision should be reversed and this Court has a duty to restore all rights of Due Process to Becky.

The instant case is unlawful in the order of a final divorce settlement. It is void for illusory promises as this Court has found previously. "An illusory promise is one that is so indefinite that it cannot be enforced, or by its terms makes performance optional or entirely discretionary on the part of the promisor." *King County v. Taxpayers of King County*, 133 Wn. 2d 584, 600, 949 P.2d 1260 (1997). Generally an agreement that reserves the right for one party to cancel at his or her pleasure will not be recognized as a contract. *Mithen v. Board of Trustees of Central Wash. State College*, 23 Wn. App. 925, 932, 599 P.2d 8 (1979). The instant case, in which the trial court changed the amounts of maintenance at will, gives to the settlement de facto an illusory promise.

And, alternatively, if Becky had actually agreed to the original terms of the settlement, promissory estoppel would have prevented future modifications on the court's initiative.

In either position, whether the settlement is valid and Becky is promised maintenance or the settlement is invalid and should be reversed, this Court should grant her maintenance.

Restricting Becky from receiving maintenance is contrary to the holdings of this Court. Finding of contempt without a party being allowed to present witnesses and a defense is unlawful according to this Court. And this Court has found illusory promises to invalidate contracts for the sake of justice. Clearly this case should be reversed for multiple violations of law and thus should be reversed to conform to the holdings of this Court.

E2. CONFLICTS OF APPELLATE COURT DECISIONS

Mandates for spousal maintenance in Washington appellate case law are also quite clear. After a lengthy marriage the parties should be left in equalized financial positions. The appellate court erred by not following its own decisions, beginning with *In Re Marriage of Rockwell,* 141 Wn. App. 235, 170 P.3d 572 (Div. 1 2007). "In dissolving a marriage of 25 years or more, the trial court **must put the parties in roughly equal financial positions** for the rest of their lives." (Emphasis added.) Rockwell sets the standard which Winsor explains:

> The income earner is at the peak of their earning ability . . . It is a sad but hard truth, that people over 50 generally do not start and build successful careers. Long term maintenance, sometimes permanent, is presumably likely to be used . . . so that a lopsided award of property would permit a balancing of the positions without (much) maintenance."

Winsor, Robert W., "Guidelines for the Exercise of Judicial Discretion in Marriage Dissolutions," *Washington State Bar News*, vol. 14, page 16 (Jan. 1982).

The situation in *Rockwell* is similar to, *In Re Marriage of Sheffer*, 60 Wn. App. 51, 802 P.2d 817 (1990):

> Maintenance should be used in this case as a flexible tool to more nearly equalize the post-dissolution standard of living of the parties where the marriage is long-term and the superior earning capacity of one spouse is one of the few assets of the community.
>
> The standard of living which the spouses maintained during the marriage is an important factor in reaching the ultimate decision of the court in entering its decree, which is the economic condition in which the parties are left by the final decree. *In re Marriage of Matthews*, 70 Wn. App. 116, 121, 853 P.2d 462, 466 (1993).

The court of appeals expressly upheld *Rockwell* in *In re Marriage of Urbana*, 147 Wn. App. 1, (Div. 2 2008):

> [I]f its dissolution "decree results in a patent disparity in the parties' economic circumstances," **we will reverse its decision** because the trial court will have committed **a manifest abuse of discretion**." (Emphasis added).

Marc had agreed on record that financial support would be provided to Becky. However, that part was reversed in the integration of the final settlement. The court of appeals ruled contrary to their own prior holdings in the instant case. That a maintenance award could be reserved and subsequently denied shows shocking unfairness.

Likewise, the finding of contempt against Becky should be reversed according to the rulings of the appellate court. Generally, if the issue is merely one of enforcing property settlements or property divisions, contempt is unavailable. *In re Marriage of Young*, 26 Wn. App. 843, 615 P.2d 508 (1980). The court of appeals is in agreement with the Supreme Court. Thus the lower court erred in finding contempt on an issue of property settlement so this should be reversed.

Courts ". . . will not give effect to interpretations that would render contract obligations illusory." *Taylor v. Shigaki*, 84 Wn. App. 723, 730 (Div. 1 1997). This definition clearly contemplates contracts, and by extension, settlement agreements. And it contained language allowing for indeterminate changes in the future. Becky could not knowingly enter into a contract when the future terms of the settlement were to be determined later by the court.

The appellate court stated in *In re Marriage of Ferree*, 71 Wash. App 37 (1993), ". . . the party moving to have the agreement enforced must prove there is no genuine dispute over either the existence of the agreement or a material term thereof, unless relieved of that burden by discussion that occurred in open court." In the instant case an oral agreement on record was reduced to a writing that was not a mirror image; it contained multiple changes. Marc must prove that there was no genuine dispute over the settlement, yet he gives no argument to the many

points on the record in which Becky objected and the parole evidence to support her claim of duress. The record clearly shows that the court said that there would be some maintenance for Becky. RP 59 line 15. Because of such dispute on the record, before, during and after, the law of the appellate court is that this decision must be reversed.

In *Ferree,* counsel on both sides supplied evidence to the agreement of the settlement. Becky's attorney provided evidence to support the claims in dispute. A dditional negotiations between the parties after the original recording of the terms of settlement. RP 85-145.

Therefore, according to rulings of the appellate court, the final settlement should also be reversed. As a contract it is void for several reasons. It is void for illusory promises which the court of appeals should have found in favor of Becky. "An illusory promise is one that is so indefinite that it cannot be enforced, or by its terms makes performance optional or entirely discretionary on the part of the promisor. *King County v. Taxpayers of King County*, 133 Wn. 2d 584, 600, 949 P.2d 1260 (1997). Generally an agreement that reserves the right for one party to cancel at his or her pleasure will not be recognized as a contract. *Mithen v. Board of Trustees of Central Wash. State College*, 23 Wn. App. 925, 932, 599 P.2d 8 (1979). The settlement allowed a court to cancel the maintenance at will.

E3. VIOLATIONS OF UNITED STATES AND WASHINGTON LAWS

The divorce settlement in the instant case contains many violations of Becky's U.S. Constitutional and Civil Rights as well as violations of Washington state law. That Becky had custody of her children removed without proving by an evidentiary standard that she had violated a law necessitating such a change is most assuredly unconstitutional.

This type of control by review as ordered by the lower court which exerted such sweeping power was ruled against in *Troxel v. Granville*, 530 U.S. 57 (2000):

> We have recognized on numerous occasions that the relationship between parent and child is Constitutionally protected. . . .

> It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a 'better' decision.

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without Due Process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U.S. 702 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Glucksberg* at 720. The liberty interest at issue in this case - the interest of parents in the care, custody, and control of their children - is perhaps the oldest of the fundamental liberty interest recognized by this court. More than 75 years ago, in *Meyer v. Nebraska,* 262 U.S. 390 (1923) . . . we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and to "to control the education of their own."

The law in *Troxel* was not upheld for Becky. The lower court and appellate court failed to protect Becky's relationship with her children. Due Process prohibits removing children from a parent because of religious and personal beliefs or because of alleged statements inquiring of the children's day. Those are violations of Becky's First Amendment rights under the U.S. Constitution. This was a violation of Due Process, and her rights under the Fifth and Fourteenth Amendments. The court based its decision on mere allegations of the other party and hearsay. Becky's Sixth and Seventh Amendment rights which entitle her to face her accusers were denied.

The trial court erred by removing custody from Becky and then by denying Becky's motion to reconsider custody. This was done first by ordering terms for future ability to request increased visitation which are void for unconstitutional vagueness and second by removing custody without procedural jurisdiction. No crime by Becky has been proven in court. Due Process was denied to Becky

which is a manifest abuse of discretion. Justice and U.S. law mandate that the current custody and parenting plan be set aside.

State law is also being violated in the instant case. RCW 26.09.187 (3)(a) provides, "The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. . . ." Becky has been denied this type of relationship with her children since custody was unlawfully restricted.

In RCW 26.09.002: "The child's best interests are best served by a full and regular pattern of contact with both parents." Becky and her children have been denied a full and regular pattern of contact. Thus the case should be reversed to comply with state law.

Finding Becky in contempt should likewise be reversed as it is unlawful. This is a violation of the Washington and U.S. Constitutions. Becky is entitled to a jury trial for criminal contempt. To not be allowed to present a defense to a criminal contempt is a violation of Due Process laws. Additionally, when Becky was found in contempt on January 25, 2013, she had no legal counsel, which she should have been provided.

Parts of the instant case are unconstitutional for vagueness. The trial court claimed that by teaching a child – who is not a party in this case – that Becky is not complying with court orders. The trial court had no jurisdiction in a matter with outside parties. RP 168 The court had not listed what constituted "not cooperating with their education." The parenting plan specifically stated that the children are to be "supervised" around DJ, not that there is to be "no contact". CP 141. Later, the court has changed its position to one in which Becky should not have allowed any contact between DJ and her children. That is not in the orders. It is vague at best, bias and retroactive ruling.

More ambiguity is found in the Parenting Plan filed, CP 165, states the conditions under which Becky may request increased visitation:

1. Provide proof of a safe and secure home;

2. Develop and show proof of ability to have appropriate parenting skills;
3. Develop a responsible attitude towards her children;

Each of these items is unconstitutional on the grounds of vagueness, which again, shows bias.

Becky's past homeschooling was used as a reason to take custody from her. Becky committed no crime by homeschooling and that cannot be used as lawful grounds to change custody. The trial court stated, "As we indicated previously, there were some concerns about your home schooling. You failed to provide adequate education to those children to the level that they would enter the public school in an average or above standard." RP 346 This statement is in clear opposition of Washington's homeschool laws in RCW 28A.225.010(4)(c) which allows parents the right to a different set of grade level standards than the public schools provide. "The state board of education **shall not require** these [homeschooled] children **to meet the student learning goals**, . . . If, as a result of the annual test or assessment, it is determined that the child is not making reasonable progress consistent with his or her age or stage of development, the parent shall make a good faith effort to remedy any deficiency." (Emphasis added.) The trial court held a standard against Becky which is unlawful.

The basic freedoms guaranteed by the U.S. Constitution apply to parents who elect to home school their children. The Ninth Amendment states, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people." In addition, First, Fourth, and Ninth Amendments guarantee a "right" to educate a child at home. Additionally a child has a Fourteenth Amendment right to a hearing before being forced into public education. Ordering the children into public school and using homeschooling against Becky is unlawful by both U.S. and Washington Constitutions and thus this case should be reversed.

In the instant case, Becky is denied First and Fourteenth Amendment rights. To not be allowed to take her children to a homeschool church, to gather in a

homeschool meeting, etc. restricts freedom of religion, freedom of assembly, and freedom of speech, all protected under the U.S. Constitution. Restricting Becky's activities and ability to volunteer and spend her time in her children's school is likewise unconstitutional. The trial court ordered that Becky not volunteer at the children's school nor join the PTA. This is unnecessary intrusion and is unconstitutional. The U.S. Supreme Court has consistently upheld the liberty of parents to direct the upbringing of their children. This is part of the free exercise of religion. The U.S. Supreme Court has upheld the right to recognize and prepare children for additional obligations and was also upheld in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) and again in *Wisconsin v. Yoder*, 406 U.S. 205 (1972). Clearly this case should be reversed for many violations of the Constitution.

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Even if Becky were guilty of damaging the family home, or leaving moldy food in the refrigerator or leaving the house untidy, removing her children is not a just punishment. This is an abuse of the discretion of the court. Denying a mother the basic rights of raising her children - in the absence of any crimes committed - constitutes cruel and unusual punishment as well as excessive fines. Thus it is unconstitutional.

The Fifth Amendment states, "No person shall be . . . deprived of life, liberty, or property, without due process of law." Becky was not allowed to present a defense yet she was deprived of her children based solely upon allegations from Marc. This is a clear violation of her Constitutional rights and federal law.

The Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, . . . to be confronted with the witnesses against him; to have **compulsory process for obtaining witnesses in his favor**, and to **have the assistance of counsel for his defense."**

(Emphasis added.) Becky's contempt charge for a past civil allegation – not a future order with which to comply - equals a criminal contempt. Thus Constitutional protections are required. But this right was also denied unlawfully to Becky.

To satisfy the Due Process Clause of the Fifth Amendment, individuals are entitled to understand the scope and nature of statutes which might subject them to criminal penalties or in this case, loss of custody. "[A] penal statute must define the criminal offense (1) with sufficient definiteness that ordinary people can understand what conduct is prohibited and (2) in a manner that does not encourage arbitrary and discriminatory enforcement." In the instant case the court found that Becky had not followed its orders without specific elements being identified in said orders.

Under the U.S. Constitution Becky has a right to movement, to assembly, and to raise her children according to her beliefs. Ruling on outings with her children, and on what and how she teaches them outside of school hours is unconstitutional under the Fourteenth Amendment which according to the U.S Supreme Court, ". . . embodies the rights of the First Amendment."

The Order on Review cites Becky's belief that DJ was not a threat to her daughter as a reason for removing custody. CP 151. This court ruling is an abuse of discretion when belief was not listed as a term for custody changes. Belief has never been held to be actionable in any court and the idea is unconstitutional. This is arbitrary discretion of the court which is too vague to be lawful.

The trial court arbitrarily ruled to reserve and later not award maintenance to Becky after initially stating that it would be offered. This contradicts state law; RCW 26.09.090(1)(a), requiring the court to consider "[t]he financial resources of the party seeking maintenance, including separate or community property apportioned to [her], and [her] ability to meet [her] needs independently." That

the trial court refused to consider the financial needs of Becky constitutes an unlawful settlement.

Another law violated in the contested settlement, Wash. Super. Ct. Civ. R. 2A, provides that no disputed agreement will be regarded by the court unless it was assented to in open court on the record, or unless the evidence is in writing and subscribed by the attorneys denying the same. Coercion voids a contract, thus the settlement in the instant case. If no coercion is found then the terms as recited on the record in open court should be held. In either case the result is the same: maintenance will be awarded to Becky.

The ruling of the trial court in this matter is a violation of federal, state, and civil rights and must be reversed.

E4. ISSUES OF SUBSTANTIAL PUBLIC CONCERN

There are numerous substantial issues of public concern in the instant case which call for this Court to consider and accept review. Public confidence in the judiciary is one glaring concern. Equality and fairness in divorce settlements under contract theory is another vast issue.

Parole evidence must be viewed in this case to understand the time frame of rulings and to show that Becky was never in agreement to the terms of the divorce settlement. This was actually a coerced settlement prompting public concern and confidence in the judiciary.

Parole evidence reveals that sua sponte in the middle of testimony, the trial court halted proceedings. A settlement was coerced between the parties from the judge's chambers and off-the-record. The record does however refer to such negotiations.

This issue necessitates a careful reading of the transcript, as well as notice that there was a two and one half hours off the record proceeding prior to the court's oral record of the "settlement".

The court commented on record that it had nothing to do with the terms of settlement. Yet in other places on record the court mentioned how it had directed. This is bad faith on the part of the court. It shows bias and abuse of discretion, and certainly, honesty.

At the end of the trial, the court asked the parties if they agreed. Becky shook her head, NO, initially, and said inaudibly, "No." To which the court then said, "I know you don't agree . . ." This is evidence admitted to by the court that the settlement was coerced and that Becky was not in actual agreement. RP 61

That is why the court had to ask for agreement a second time. RP 61. Under duress, Becky then answered "Yes." At each succeeding hearing, Becky continued to protest the terms of settlement. RP 145. A coerced settlement is de facto a ruling, not a contract and makes contract formation void.

In regards to the formation of the settlement, the trial court later stated, "I was not a part of your settlement," when clearly the transcript shows the court directed it. RP 388. This is dishonest. This makes a prima facie case that the court designed the settlement and not the parties and certainly that Becky did not give assent. The court directed that some terms be kept off the record: RP 39, lines 7-8. Numerous other times the court dictated terms: RP 39, 15-16; RP 43, lines 9-19; RP 5; RP 54, lines 9-10.

A contract can be set aside if it has been entered into under duress. Coercing a settlement is illegitimate pressure on the part of the court and thus necessitates that this case should be reversed.

Along with coercion, the instant case has so many other violations that judicial bias seems clear. When Becky attempted to provide several pieces of evidence in her defense and to state that the other side was lying, the court cut her off and wouldn't let her speak. The court simply stated, "There is no evidence that the photos were falsified". RP 362. No opportunity to a defense was given. This is

a violation of the Fourteenth Amendment, Due Process, and the Equal Protection Clause. Bias is clear when a court violates so many laws.

Further proof of judicial bias is that Becky entered the settlement under duress. Any court that coerces a settlement upon a party weakens the confidence in the judiciary. This settlement as a contract is not enforceable and cannot hold up to legal scrutiny. It is invalid for illusory promises, for promissory estoppel and for vagueness. The settlement is abuse of discretion and must be overturned.

The court stated on the record that because Becky allegedly asked her children if they had had a bad day at school, because she left the house in a bad state, because she was homeschooling another child, and because her children had contact with another child, and because of her testimony that she didn't consider DJ a threat, the court denied her custody. RP 167-169. Even if true, these allegations are so frivolous as to be an outrage. Certainly they are not a legal basis to change custody but an abuse of discretion. And it demonstrates bias of the court.

It is bias to accept allegations unilaterally only. Evidence to deficiencies in Marc's parenting abilities was ignored by the trial court. Proof of Marc's abusive past and addictions was disregarded while unfounded allegations against Becky were considered. Indeed, at one point, "The court also warned against Becky further undermining her credibility by raising allegations against Marc." BOR 8. When Marc made allegations against Becky the lower court accepted it as fact, without question, and then ruled against Becky. But when Becky suggested Marc was not behaving appropriately the court stated that her credibility with the court was diminished by her doing so. Then the court stated that there are no allegations against Marc. When Becky denied false allegations the court stated that she is guilty of minimizing everything. When Marc denied allegations brought by Becky the court accepted his denial at face value. RP 305, 161-162. When Becky alleged that the children need to be protected from Marc the court

suggested that Becky was not credible. When Marc alleged that the children need to be protected from DJ, a child, the court chastised Becky. This is the very essence of bias.

Marc made allegations against DJ which have seemingly been accepted as judicial notice. Even when Counsel, Ms. Hoke, said, "The allegation is about one line. We have no idea what the actual allegation is. It's very vague, there's no backup facts, no data, no quotes from Hanna, no nothing." RP 155. That this was used to remove custody from Becky demonstrates judicial bias.

Therefore, the settlement which provided the basis for the court's continuing review and unconditional authority over the parties is invalid due to duress, illegality and shocking unfairness. It is an abuse of discretion and judicial bias for a trial court to make such sweeping changes in a family without just cause. Therefore this case should be accepted for review and reversed.

According to the Cannon of Judicial Conduct, Rule 1.2 Promoting Confidence in the Judiciary, "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." The decisions in this case demote the public confidence in the judiciary, and are a matter of grave public concern.

In rule 5, "Actual improprieties include violations of law, court rules, or provisions of this Code." Judicial misconduct in the instant case includes violations of multiple laws.

Rule 2.6 Ensuring the Right to Be Heard. "(B) Consistent with controlling court rules, a judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but should not act in a manner that coerces any party into settlement." Coercion of a settlement is clear evidence of abuse of discretion and is not consistent with the Code.

For reasons of serious public concern as well as for those of judicial bias, coercion and improper use of legal authority, justice and fairness, this case must be reversed.

The errors in the instant case are numerous: Washington Supreme Court decisions, Washington appellate court rulings, U.S. Constitutional laws, and Washington State statues. The litigation has been long and likely will continue as long as there is no equitable remedy provided this Court. The violations of rights under the laws of this nation and this state necessitate that this Court grant review and consider the case de novo. Substantial public interest is at stake in the appearance of –if not actual – bias.

Looking carefully to off-the-record proceedings at trial court to search for the truth will reveal two sets of proceedings; that which was purported to be a settlement and that which was hidden in chambers as a coerced settlement. All are violations of laws at multiple levels.

By all legal standards Becky's rights were violated in the loss of custody of her children, she was stripped of financial assets, had her civil rights violated, and she was denied protection under Washington law.

This case should be reversed for those reasons but also as an example for courts to more carefully follow the rules of this state and our nation ensuring justice for all.

There are a number of glaring court errors which justice demands be reversed. Wherefore Becky prays this Court will grant the relief requested and thus serve Justice.

F. CONCLUSION

For each of the foregoing reasons, Becky requests that this Court grant review and find that the trial court abused its discretion by denying Becky's motions to establish family support and by ordering retroactive child support; that the trial court erred in denying Becky's motion to reconsider custody and ordering terms

for future ability to request increased visitation which are void for unconstitutional vagueness; that the trial court erred in denying Becky's motion to reconsider contempt charges; that the trial court erred by coercing a settlement thus establishing an invalid contract; that the trial court erred by acting in a manner that would cause a reasonable person to suspect bias and impropriety, and reflect poorly upon the judiciary; that the trial court erred by allowing Becky to proceed without adequate representation; and that the trial court erred by ordering the parties' children into public school without due process and without jurisdiction. She respectfully asks this Court to reverse the settlement and strike the original judge from this case permanently, and to reverse the contempt charge. Finally, Becky requests that this Court vacate the current parenting plan and child support order from February 2013 forward, and return her children to the pretrial custody arrangement; and to award $2,000 per month in family support to comply with state law.

Respectfully submitted this 2nd day of October, 2015.

Becky Develle

Becky Develle

APPENDIX 1

TIMELINE OF THE CASE

August 2012: Dissolution Trial

Settlement was coerced during two hours of off the record court proceedings. RP 35

The court acknowledged that Becky is not in agreement with the settlement. RP 61

"Maintenance" was put into settlement. RP 59

The court stated on the record that Becky should retain custody and that there are not limiting factors, RP 64, lines 5-7, 10-12.

September 7, 2012: Entry of Orders

Becky's attorney submitted final orders which were denied by the court. CP 136

Subsequently a special set hearing was scheduled for September 12, 2012.

September 12, 2012: Entry of Orders

Final orders entered differently from terms stated at trial. CP 139-142

> Marc had a new set of final decrees drawn by his attorney and signed by the court. Ipso facto the terms that Becky and her counsel both understood to be that of the "settlement" were changed by opposing counsel and the lower court allowed.

Additional negotiations to the settlement added to the record. RP 82-148

Becky openly objects to terms on the record, refuses to sign. RP 151

Custody of the children was ordered 60% to mother, 40% to father.

October 12, 2012: Review Hearing

Custody removed from Becky. CP 150

> The court stated that because Becky asked her children if they had had a bad day at school; that she had left the house in a bad state (upon move out); that because she is homeschooling another child (not a party); and

that because of her children having contact with DJ, that the court would change custody. RP 167-169

The court order states that custody would change based on, " . . . mother's testimony that mother does not consider DJ a threat." CP 150

November 2012: Support payment to Becky

Becky received maintenance payment.

One month of "family support" or maintenance was ordered for Becky for November after she no longer had custody. RP 200

December 2012: Trial

Becky's visitation with children restricted.

No evidence was offered that the children's needs of the children were in any way not met.

Court declines to hear contempt issue.

Parties ordered to work it out. RP 317 Expert witness denied from testifying on contempt. RP 318

January 25, 2013: Show Cause hearing

Becky found in contempt.

No argument allowed from Becky. RP 362

Arguments from prior to trial, August 2012, were held against Becky to deny reconsideration of custody. RP 344 lines 11-15, 345 lines 3-8, 346 lines 19-23, 347 lines 1-4

The court does not review expert and supplemental witnesses for Becky who testified at trial, only for Marc. RP 344-347

Becky was denied counsel and trial for contempt.

Maintenance was reserved. RP 352, 379, 383

June 2013: Motion Hearing

Visitation schedule changed.

New visitation schedule to be worked out between the parties. De facto, Becky may have visitation any time that Marc allows. No set times established. No restrictions on Becky. (No record of this latest development provided for this appeal.)

OFFICE RECEPTIONIST, CLERK

To: Becky Develle
Subject: RE: petition for discretionary review

Received on 10-02-2015. Please resend attached document "In re the Marr of Develle – Order" in pdf format. I am unable to open it.

Thank you.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Becky Develle [mailto:rubies31@ymail.com]
Sent: Friday, October 02, 2015 4:46 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Subject: petition for discretionary review

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of BECKY C. DEVELLE, Appellant, and MARC G. DEVELLE, Respondent.	No. 44484-4-II Consolidated with No. 44614-6-II UNPUBLISHED OPINION

JOHANSON, C.J. — Becky Develle appeals several superior court orders entered in connection with the dissolution of her marriage to her former husband, Marc Develle. We hold that the parties' settlement agreement was valid, the trial court properly relied on the parties' agreement regarding spousal maintenance, the trial court properly amended the parenting plan, and the trial court lawfully found Becky[1] in contempt. In addition, the trial court did not err by ordering the Develle children to attend public school. Accordingly, we affirm.

[1] We refer to Becky and Marc by their first names for clarity, intending no disrespect.

FACTS

Marc and Becky were married in June 1986. Becky filed for legal separation in March 2011. Marc and Becky had eight children together, five of whom were dependents at the time of trial. Throughout the marriage, Becky was a homemaker who also homeschooled the children.

Dr. Landon Poppleton, a clinical psychologist, conducted a custody evaluation for the Develle family. The efficacy of Becky's teaching methods were central to the resolution of the parenting plan. Dr. Poppleton found that, notwithstanding intelligence quotients in the normal ranges, each of the children scored unacceptably low in various domains of their academic achievement. Citing complaints from the children, Dr. Poppleton noted serious concerns regarding Becky's ability to provide a healthy, supportive home routine including adequate nutrition. Dr. Poppleton also had concerns about Becky's live-in boyfriend's son (D.J.) who had propositioned one of Becky's young daughters for sex.

The trial court appointed Erin Wasley as guardian ad litem to serve as a liaison between the court and the Develle children. Wasley's subsequent investigations corroborated many of Dr. Poppleton's concerns.

The parties proceeded to trial in August 2012. On the second day of trial, the parties announced on the record that they had reached "a global agreement on all of the issues at this time." 2 Report of Proceedings (RP) at 35. The parties agreed that the two youngest children, H.D. and B.D., would remain primarily with Becky while Marc would retain custody over the remaining three dependent children. The trial court adopted the parties' agreement including a review hearing 45 days after entry of the order to determine whether the parenting schedule proved successful for the family and also to reexamine the custody arrangement if necessary. The

agreement provided that Marc would pay Becky $1,000 per month in child support, but the trial court made it clear that this amount was subject to review at a later date.

The agreement further specified that Marc had sole decision-making rights relating to the children's education and that Becky could no longer homeschool the children. Moreover, the parties agreed that D.J. would not have unsupervised contact with H.D. or B.D.

The parties agreed that Marc would receive the family home. The trial court ordered Becky to vacate the home and to leave it in a clean and habitable condition. The trial court permitted Becky to take some of the personal property from the home provided she made a list of those items and left the children's possessions there. The court specifically warned Becky not to leave the home empty of furnishings.

The trial court discussed each agreement provision, asking Becky and Marc separately whether they agreed. Becky answered in the affirmative to each question, including the maintenance and child support issue (with the associated review period) as well as the custody arrangement. Becky also answered affirmatively when the trial court asked her whether she "firmly believed" that she and Marc had an agreement. 2 RP at 60. The terms of the agreement were accurately memorialized in a decree of dissolution, parenting plan, and order of child support.

The trial court instructed Wasley to monitor the children's progress to determine whether the parenting schedule and custody arrangement was working for the family. Before the first review hearing, Marc filed a motion for contempt based in part on reports that there had been a second incident involving D.J. making inappropriate sexual remarks to H.D. Marc alleged that Becky continued to fail to protect H.D. from D.J. contrary to the court's previous order. Marc also

complained that the home was in disarray when Becky left and that she took the children's personal property.

The trial court set these matters over for a review hearing the following week. There, informed initially by Wasley's report, the trial court heard testimony from Becky regarding her efforts to supervise her children around D.J. amidst allegations that there had been further unseemly conduct. Becky conceded that she had left H.D. alone with D.J. for a short time on one occasion. Becky also admitted that she allowed B.D. and D.J. to sleep in the same bedroom, asserting ignorance as to that particular prohibition in the parenting plan.

The trial court awarded temporary custody of H.D. and B.D. to Marc pending an evidentiary hearing. Wasley testified at the evidentiary hearing and recommended that Becky be denied overnight visits from that point forward. Wasley's recommendation was based on her ongoing investigation and her interviews with the Develle children. Wasley noted that Becky actively minimized the risk D.J. posed and that the children strongly preferred the current schedule with Marc as the primary parent. Wasley also doubted whether Becky was willing to enforce the court's restrictions.

The trial court examined the factors contained in RCW 26.09.187(3) and concluded that Marc was best suited for primary custody of all the dependent children. The court expressed several concerns, not the least of which was its uncertainty that Becky could provide a loving, stable, and consistent relationship with each of the children. The trial court also noted that, in its view, Becky had overlooked the emotional and developmental needs of the children and that, unlike Marc's home, there were allegations of recent emotional and physical abuse in Becky's home. The court awarded primary custody to Marc on a permanent basis.

Becky moved for reconsideration, claiming that the children had been coached to lie. The court denied Becky's motion, ruling that she had not established her burden under either CR 59 or CR 60. The trial court then found Becky in contempt for failing to leave the family home in a clean and habitable condition and because she defied the same order by taking the vast majority of the parties' personal property, including the children's personal property. The trial court allowed her to purge the contempt finding by returning specific items belonging to the children. Becky appeals.

ANALYSIS

I. VALID SETTLEMENT AGREEMENT

Becky argues that the parties' settlement agreement was invalid because (1) she agreed under duress, (2) the agreement is void for vagueness, and (3) the agreement creates an illusory contract. We hold that these claims fail.

A. DURESS

A party asserting duress must produce evidence that the other party's wrongful or oppressive conduct deprived her of her free will at the time she entered into the agreement. *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944-45, 640 P.2d 1051 (1982). But Becky alleges no duress caused directly by Marc. Instead, she claims that she felt coerced to agree to the settlement because her attorney told her off the record that the court was displeased with her for continuing to run homeschool classes. But as Becky acknowledges, there is no proof of such a conversation, and even assuming the truth of her allegation, it would not establish that Becky agreed under duress because animosity alone does not constitute wrongful

or oppressive conduct sufficient to deprive Becky of her free will.[2] *Retail Clerks*, 96 Wn.2d at 944-45.

After the parties finalized the terms of their agreement, the trial court discussed each provision, asking Becky and Marc separately whether they agreed. Becky answered in the affirmative to each question, including the maintenance and child support issue, with the associated review period, as well as the custody arrangement. Becky answered affirmatively when the trial court asked her whether she "firmly believed" that she and Marc had an agreement. 2 RP at 60. In light of these facts, Becky's claim of duress must fail.

B. VAGUENESS

Becky's void-for-vagueness claims also fail because she misapprehends the nature of such a challenge. A void-for-vagueness claim involves legislation that either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess as to its meaning and differ as to its application. *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn.2d 570, 612, 192 P.3d 306 (2008). Here, Becky's argument relates to a provision in a marriage settlement agreement and she cites to no authority that the void-for-vagueness doctrine applies here.[3] We reject this claim.

[2] Becky also argues that she agreed in part due to fear of losing her children. But her fear does not prove duress because her fear is not the product of a wrongful act of another.

[3] Becky also argues that the trial judge violated the appearance of fairness doctrine and one or more of the codes of judicial conduct. But what she cites as examples of alleged misconduct or bias are run-of-the-mill rulings or credibility determinations that are not favorable to her. This argument lacks merit.

C. ILLUSORY CONTRACT

Becky's contention that the settlement agreement constitutes an illusory contract is equally unavailing. A contract is illusory when its provisions make performance optional or discretionary. *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 317, 103 P.3d 753 (2004). Here, the parties' settlement agreement was memorialized as a court order. Nothing in the agreement made performance optional or discretionary. Accordingly, the trial court properly enforced its provisions. Rejecting Becky's arguments, we hold that the settlement agreement was valid.

II. SPOUSAL MAINTENANCE

Becky argues that she is entitled to maintenance because of the marriage's length and the disparity in income between herself and Marc. But because Becky agreed to forego spousal maintenance, there is no error.

We review a trial court's maintenance award for an abuse of discretion. *In re Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997). The trial court abuses that discretion if it bases a denial of maintenance on untenable grounds or for untenable reasons. *In re Marriage of Foley*, 84 Wn. App. 839, 845, 930 P.2d 929 (1997).

Becky voluntarily agreed to forego an award of maintenance when she entered into the settlement agreement with the understanding that she would receive $1,000 in child support. At the time the parties reached their agreement, Becky had custody of the two younger children, H.D. and B.D. The agreement included an award of $1,000 monthly child support pending a review

hearing where Becky's employment efforts and the residential schedule would be considered.[4] The following exchange occurred on the record:

> THE COURT: And do you agree on the child support number of 1,000, whether we call it maintenance or child support, it's a number that we're going to put in place today. It will not be fixed; that we'll continue to review that number *based upon the residential schedule of the children*?
> [BECKY]: Yes.
> . . . .
> THE COURT: And you firmly believe that we do have an agreement?
> [BECKY]: Yes.

2 RP at 59-60.

Later, Becky's attorney said that she "probably shouldn't have forfeited maintenance on a 25-year marriage. She did it with the thought that she was getting the 1,000 in child support." 3 RP at 119. The trial court's unchallenged findings of fact state that maintenance should not be ordered "[p]er the agreement of the parties." Clerk's Papers (CP) at 8. Furthermore, the agreed decree of dissolution states that maintenance "[d]oes not apply." CP at 17.

Becky agreed to forego maintenance in lieu of a variable child support award. We hold that the trial court did not abuse its discretion by entering orders consistent with the parties' agreement.

III. PARENTING PLAN

Becky appeals the trial court's adjustment to the parenting plan contending that the court erred by altering the custody arrangement without following the parenting plan modification

[4] On the record before us, there is no review hearing specifically regarding Becky's employment status.

statute. We hold that the trial court properly reserved a final decision on the residential schedule and adjusted, rather than modified, the parenting plan.

Generally, we review a trial court's rulings about the provisions of a parenting plan for abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). Similarly, a trial court exercises its discretion in ruling on a motion for reconsideration and this court will only overturn such a ruling for an abuse of discretion. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

Under the Parenting Act of 1987, ch. 26.09 RCW, the best interests of the child continues to be the standard by which the trial court determines and allocates parenting responsibilities. RCW 26.09.002; *In re Marriage of Possinger*, 105 Wn. App. 326, 335, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001). Accordingly, our courts have held that

> the trial court is not precluded by the Parenting Act from exercising its traditional equitable power derived from common law to defer permanent decisionmaking with respect to parenting issues for a specified period of time following entry of the decree of dissolution of marriage.[5]

Possinger, 105 Wn. App. at 336-37.

Here, the trial court accepted the parties' settlement agreement that conditioned a joint custody arrangement on its ability to pass muster under two scheduled review periods. The nature of the review was to "detail if the parenting schedule is working for the children and the family, including a review of custody if necessary." CP at 27. Upon review, the trial court determined that the arrangement was not functioning in the best interests of the children, so it applied the

[5] Our Supreme Court has endorsed the reasoning in *Possinger*, but it has declined to do so when the period for review is completely open ended. *See In re Parentage of C.M.F*, 179 Wn.2d 411, 427, 314 P.3d 1109 (2013).

standards in RCW 26.09.187(3) and altered the parenting plan accordingly. Thus, we conclude that Becky's claim that the court failed to follow the procedures necessary to modify a parenting plan fails.[6] We hold that the trial court did not abuse its discretion by denying Becky's motion for reconsideration.

IV. CONTEMPT

Becky argues that the trial court unlawfully found her in contempt, in part by failing to afford her the constitutional safeguards extended to criminal defendants. Because the court found Becky in civil contempt and included an opportunity to purge the contempt finding, Becky is not entitled to the constitutional safeguards extended to criminal contempt defendants. Accordingly, we hold that Becky's claim fails.

Contempt can either be civil or criminal with the latter requiring the constitutional safeguards extended to other criminal defendants. *In re Marriage of Didier*, 134 Wn. App. 490, 500, 140 P.3d 607 (2006), *review denied*, 160 Wn.2d 1012 (2007). Our current statutes distinguish between punitive and remedial sanctions for contempt. RCW 7.21.010, .030, .040. A "punitive sanction" is "a sanction imposed to punish a past contempt of court for the purpose of upholding the authority of the court." RCW 7.21.010(2). A "remedial sanction" is "a sanction imposed for the purpose of coercing performance when the contempt consists of the omission or refusal to perform an act that is yet in the person's power to perform." RCW 7.21.010(3).

[6] Becky also disputes the trial court's conclusions regarding several factors our courts are required to consider under RCW 26.09.187(3). Despite Becky's claims that these factors weigh in her favor, the trial court considered each of them thoroughly on the record and came to a different conclusion. Becky makes additional policy-based arguments that children should be with their mothers generally. The trial court's findings are supported by the record and the court did not abuse its discretion.

A court has civil contempt power in order to coerce a party to comply with its lawful order or judgment. RCW 7.21.020. "Contempt of court" includes an intentional "[d]isobedience of any lawful judgment, decree, order, or process of the court." RCW 7.21.010(1)(b). "'An order of remedial civil contempt must contain a purge clause under which a contemnor has the ability to avoid a finding of contempt and/or incarceration for non-compliance.'" *In re Interest of Rebecca K.*, 101 Wn. App. 309, 314, 2 P.3d 501 (2000) (quoting *State ex rel. Shafer v. Bloomer*, 94 Wn. App. 246, 253, 973 P.2d 1062 (1999)).

Here, the trial court found Becky in contempt based on her disregard of the court's order to leave the family home in a clean, habitable manner and on her decision to take a significant amount of personal property from the home contrary to the court's instruction. Marc requested she return the children's musical instruments and copies of the family photos. The trial court explained to Becky that she could purge the finding of contempt and avoid further civil penalty by returning the requested items before a court-imposed deadline.

Accordingly, each of Becky's arguments are unavailing because the nature of the trial court's order was remedial civil contempt. The sanction here was remedial because the trial court imposed it for the purpose of coercing performance that was yet in Becky's power to perform; that is, to return the items she had in her possession. Therefore, Becky is not entitled to the constitutional safeguards that would be available to a criminal defendant and her claims necessarily fail.

V. COMPULSORY EDUCATION

Becky argues that the trial court's ruling restricted her right to raise her children according to her beliefs, that B.D. was "not under the court's jurisdiction," that she complied with all state

homeschooling laws, and that "[a] person cannot be found guilty of following a statute" without denial of due process. Br. of Appellant at 48-49. But Becky agreed that Marc would have sole control of every decision relating to the children's education and that she was no longer entitled to conduct homeschooling. Marc opted to enroll the children in public education. Because Becky agreed to allow Marc to make education decisions, we hold that no trial court error occurred.

VI. ATTORNEY FEES

Marc requests attorney fees pursuant to RAP 18.1 and RAP 18.9. But Marc presents no legal authority to support his claim for attorney fees when he appeared pro se on appeal. In addition, although we do not find Becky's arguments persuasive, we also do not find her appeal to be frivolous. Therefore, we deny Marc's attorney fee request.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Worswick, J.
WORSWICK, J.

Melnick, J.
MELNICK, J.

SUPREME COURT OF THE STATE OF WASHINGTON

Becky Develle,	)	92330-2
Appellant,	)	Appeals No. 44484-4-II
	)	
v.	)	Declaration of Appellant
	)	
Marc Develle,	)	
Respondent.	)	

I, Becky Develle, pro se, swear or affirm:

1. That I am the Appellant in this case.

2. That on October 2, 2015 I caused to be served upon the respondent, Marc Develle, a copy of the petition for discretionary review.

October 2, 2015

Respectfully submitted,
Becky Develle
Becky Develle
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360-892-4212
Rubies31@comcast.net