72927-6

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Case No. 72927-6-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

ELISIA MARIE DALLUGE EKLUND,

Appellant,

v.

BRUCE EKLUND,

Respondent.

BRIEF OF APPELLANT

ELISIA MARIE DALLUGE EKLUND
PRO SE

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INTRODUCTION

For the purposes of clarity, where there is a (CP) it just means Clerks Papers and the number(s) following is the page(s) the information can be found.

I am not an attorney and might not correctly state everything or realize there are other things to be presented, but at least I am trying my best so please take that into consideration.

After being a stay at home mother of 11 years and primary care provider of our 2 children, a trial court transferred primary residential care to the father, (CP12). It was his third attempt. At the time he originally won a large sum when suing the Seattle Municipal court after he got caught fixing his own parking tickets and was fired, so he hired an attorney and insisted on hiring his own private GAL despite our qualifications of a CASA. What can you do when there are good boys in the system? Because I was labeled abusive use of conflict, the trial court also granted him sole decision-making authority, and put the children and I on supervised visits, (CP12). It was very traumatic for the children at first, but the children have adjusted the best they can, (CP13). There was

conflict and mature people know that it takes two to tango. I can only take responsibility for my actions, but I guess its all my fault. I was baited out and having reactions where he was using our children and that caused me to go into naturally protective behaviors, (CP50). He uses the children to hurt me. There was past abuse but it has been covered up in the courts and I have been punished for speaking up about it. On my own initiative I engaged in the rehabilitative help so I could be a better person. The father never provided evidence on his part, just merely the trial courts opinion. He has a history of drugs/alcohol and because I brought it up, I had to take a 10-panel drug test; 100% clean. Originally he was suppose to take one to, but he refused and showed up to the trial court with his head shaved practically bald. The father never provided evidence on his part, just merely the trial courts opinion, (CP12). I have been accused of being crazy, so the trial court decided that I needed to take a psychological test; and there are no significant concerns, (CP8). The primary concern was that I was having a hard time accepting the loss of my children but the trial court went ahead and self interpreted the report. Again, the father

never provided evidence on his part, just merely the trial courts opinion, (CP44). He has never had to take a Domestic Violence Evaluation, a drug/alcohol test, or a psychological evaluation, (CP44). *A mere lack of evidence is an abuse of discretion.*

In 2013 the trial court decided to strip me of all my rights except the right to pay child support, (CP1-9), and issued a restraining order until January 30, 2022, (CP18,20-22). I no longer could even have supervised visits. Back when I was able to see my children it was supervised only. When I was able to call my children, the trial court gave the father the authority to record our phone calls. Everything has been in the presence of a supervisor or recorded phone calls. Somehow, during those times I was brainwashing my children to say bad things about their father, and clearly there is no evidence to support those accusations. The trial judge finds me to be largely not credible and the father to be credible, (CP16). There is no evidence that I have been dishonest, but the contrary. Interesting the trial judge even notes, "*The father testified that he owed no back due support. The mother provide some evidence that the father owed around $3,000 in back due*

support" (CP18). Since 2009 the children have been in an isolated and alienated environment so they can have a relationship with their father. During that time, they have went from loving me to now calling me weird, crazy, other demeaning names, and exhibiting disrespectful behaviors towards me as their mother, (CP38-39,58). Who does that to their own children? I guess that is all my fault. The trial judge originally said that the fathers basic responsibilities were to provide me names of the children's school, and at least every three months provide me pictures and examples of their school work, *per se,* (CP5,29-30). I had to file a contempt because that wasn't happening and he could not provide proof to the court, so again the trial judge just took his word v. evidence. The only proof he was able to provide to the court was a copy of the cards I sent our children during the holiday reassuring them I love them, so the trial judge fined me and if I recall correct mentioned jail, (CP23-28). Then the trial judge changed the order that if he doesn't participate in his basic duties once every three months then I have to accost him, (CP29-30). Again this happened, and after numerous attempts, I had to file another

contempt, (CP49-54). I had explained that when I said he wasn't keeping me abreast of anything, I made it clear I was referring to I had no idea what my children did all summer, but the trial judge just took my words out of context, distorted what I said, and ignored my explanation, (CP50). The trial judge thinks I do that and thinks I am not an honest person, so I guess she is teaching me a lesson; plus she reassured the father that she wouldn't let me have our children. There are multiple times in her written decision that she has not provided a "fair and accurate" record and it all seems to favor the father. I have already provided some examples. It is overwhelmingly full of infestations. There is nothing I can do about that. She is the judge. The record is infested with the trial judge, not being "fair and accurate." She is really mean to me and sometimes triggers trauma from past abuse. I get it she doesn't like me and I don't agree with her form of entertainment.

The children and I haven't seen each other since March 23, 2013, and because of the restraining order till January 30, 2022, I can' t contact them or the judge will put me in jail, (CP18.20-22). The children can call me though and in that dictated environment,

they call me 2 times a year. From an objective and subjective standard of those children, I just don't see how that is healthy. Nor do I see how any healthy minded person can do that or for anyone to just allow it.

In my training and volunteer work I was taught to speak up, and I am a mandated reporter, (CP15) and I am not the only person who had contacted CPS in the past. But in this case regarding my own children, I am being punished by the courts. I am being punished for being baited out into protective manners. This is not right.

I don't even get to see or talk to my children. The only right I have is the right to pay child support, (CP1-9). Yet I am the only one who has had to take drug tests, extensive psychological tests, mental health counseling, (CP8-9,12). This is not right. Why was the trial court more concerned about me having to clear my name and then ignoring the evidence when it didn't match up with her opinion of me then making sure my children's primary care provider isn't doing drugs/alcohol and or doesn't have any significant psychological issues? Since when does a trial judges

opinion of how amazing she thinks the father is, make up for lack of evidence when I had to provide evidence and I don't even get to see or talk to my babies? I thought this was suppose to be about best interest of children.

The children are boys. It is important for them to have a healthy relationship with me for nurturing and because it will shape their relationship and views of women in the future. Instead, they don't get to have a relationship with me. Who in their right mind would do that to their own children? And there is no evidence to support the father is not on drugs and/or what psychological problems he has, (CP44). Who does that to their own children, just because some rumored good boy networking trial judge lets him? Both of the fathers parent's are mental health professionals and his dad is an attorney with a lot of connections.

Yes, it is true I did call him a poor parent when it took him over a day to take our baby in for a broken wrist. When it took him over 3 months to take our baby in for a staph infection and the only reason why he did was because it finally spread onto his face. And when it took him over a month to make a dentist appointment

when our baby was crying and said it hurt to breathe. This was all occurring while I was on supervised visits and he wouldn't allow me to take our child in to the doctor. And yes, I did report it to CPS. There is no justifiable reason why he delayed taking our child to the doctor and/or dentist and some professionals consider that to be neglect. How am I not suppose to believe he is hurting those children to hurt me? Do I think he is always a poor parent? NO. There is nothing I can do when the trial judge wouldn't allow those supervised visit notes into evidence and she ignored the letter from two professionals that outlined these instances too.

I am not going to waste this courts time and expenditures nor mine trying to defend myself from all the trial judges inaccuracies and distortions about me, because it is suppose to be about the children and their best interests. I will gladly answer any questions you have. Thank you for understanding.

I filed a modification including a request for the restraining order be dropped and I did provide a temporary parenting plan. It was the original 2006 one. I explained to the trial judge my intention, but she just ignored me. I also asked for 2 months

uninterrupted time for the children and I to rebond, (CP55-64). I also asked for the father to also have to provide the courts with proof that he is not on drugs/alcohol, a Domestic Violence evaluation and a Psychological evaluation, (CP55-64). Instead, the trial judge decided her opinion trumps evidence. And despite her granting me permission to file a modification only after, at my cost I obtained a psychological evaluation, and gave her and the father a copy of the report, she just shut me down and now added that if I want to file a modification I have to now have pay $2,500 to the courts in advance, (CR8,46).

So instead of family reunification like promised, the trial judge just told the father not to worry she won't let me have our children, and further supported her assertion by adding monetary stipulations that are already established in case law by mature consideration, to be humiliating, (CR46).

ARGUMENTS

1. THE TRIAL COURT ENGAGED IN AN ABUSE OF DISCRETION BY LACK OF EVIDENCE.

In serving the best interest of children it is imperative that evidence concludes the primary care provider is not engaging in abusive behaviors that can be remedied by a proper domestic violence evaluation because there is help available. It is also imperative that the primary care provider is not abusing drugs/alcohol where evidence can also conclude the truth because again there is help available. Lastly, it is imperative that the primary care provider provide proof regarding any psychological problems whereas again there is help available.

The rationale is substantiated with the question: Just because the trial court allows for one to do whatever they want who in their right mind really does that to their own children?

I am sorry if I am a bit redundant but there is nothing I can do if the trial judge decides to not allow favorable evidence in, ignore the evidence provided to her, and is not fairly and accurately depicting the record; wherein it all coincidently favors the father.

Because the trial judge only relies on her opinion, for abuse, drugs/alcohol and psychological problems regarding the father, the law substantiates facts where there is case law that finds

the mere lack of evidence is an abusive use of discretion.

Indeed, the trial judge even admits to relying on her own opinion v. evidence, when she states, "*There is nothing on the record to indicate the father has any psychological problems or current substance abuse problems.*" (CR46). Again, I will ask who in their right mind would do that to their own children? It is drugs? It is a learned behavior from his childhood? It is an undiagnosed psychological problem?

Abusive use of discretion is generally defined as discretion manifestly unreasonable or exercised on untenable grounds, or for untenable reasons. State ex rel. Carroll v. Junker,79 Wn2d 12, 482 P.2d 775 (1971). See also *Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527, 538, 151 P.3d 976 (2007).

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. State v. Rundquist,

79 Wn. App. 786, 793, 905 P.2d 922 (1995).

Thus if a trial judge acts irrationally or irresponsibly, his actions can not be condoned. Illinois v. Sommerville, 410 U.S, at 469.

2. THE TRIAL COURT VIOLATED SUPREME LAWS WHEN ISSUING AN INAPPROPRIATE PROTECTION ORDER.

On 12/5/13 the trial judge issued a restraining order until January 30, 2022. *"An order of protection is not appropriate... a restraining order is necessary so that the mother clearly understands that she may not contact the children directly or indirectly, in violation of the parenting plan,"* (CP18). The purpose was set out of her concern of my mental health; furthermore including conditions for family reunification, (CP8). All request have been complete. An order was issued attempting to get the parties to agree to alterations of the restraining order, (CP47-48). Because the father was given whatever he wanted so he is refusing to consider the children's best interest, (CP8).

This unusual and perceivably cruel restraining order violates the courts own intention of family reunification in serving the children's best interest, and furthermore is a direct violation of our United States Constitution 8th Amendment clause of *"cruel and unusual punishment;"* whereas the Washington State Constitution adopts and establishes the United States Constitution as the Supreme Law. The United States Supreme Court also established a rule regarding the 8th Amendment, in Trop v. Dulles, *356 U.S. 86 (1958).* Trop prevailed in establishing the *"evolving standards of decency"* whereas it is frequently cited precedent in the courts interpretation of the 8th Amendment's prohibition on *"cruel and unusual punishment."*

The inappropriate restraining order issued for an unusually long time, Janaury 30, 2022, does not serve in the children's best interest and is in violation of our Supreme Law that has been adopted by our Washington State Constitution. *Thus if a trial judge acts irrationally or irresponsibly, his actions can not be condoned.* Illinois v. Sommerville, 410 U.S, at 469.

3. THE TRIAL COURT VIOLATED SUPREME LAWS WHEN ISSUING AN INAPPROPRIATE BOND.

The trial court then decided instead of family reunification that *"the mother must file a bond in the sum of $2,500 in addition to any required filing fees. This bond will be used to defray the father's costs or pay sanctions..."* (CP46) This order also includes commentary whereas Judge Middaugh notes my indigent status, (CP42). Again, this violates the courts own intention of family reunification in serving the children's best interest (CP8).

Snarr v Commonwealth 131 Va. 814, 109 S.E. 590 (1921), is a case where a judge required a $1,500.00 bond. The Appellate Court reviewed the case and said that, *"it's first impression was that it should be held to be harmless error, but upon mature consideration it deemed the error injurious."* This court further found, *"the bond required was an unnecessary humiliation and not in contemplation of the General Assembly and reversed the decision."*

Again the United States Supreme Court 8th Amendment and In re Trop applications therein apply. If in 1921 upon *"mature*

consideration" the higher courts found the lower courts decision to be "*an in injurious error...*" and "*unnecessary humiliation,*" under the "*evolving standards of decency*" application it is so apparent that no further comment is necessary.

The United States Constitution, 8th Amendment requires, "*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment.*"

The United States Supreme Court also established a rule regarding the 8th Amendment, in Trop v. Dulles, *356 U.S. 86 (1958).* Trop prevailed in establishing the "*evolving standards of decency*" whereas it is frequently cited precedent in the courts interpretation of the 8th Amendment's prohibition on "*cruel and unusual punishment.*"

Judges are suppose to avoid even the appearance of improprieties and that can also be considered as factors when determining an abuse use of discretion. The fact that the trial judge is more concerned about the father then the children does exist on record. Whether it was intentional or not it was still irresponsible.

The record doesn't show a monetary inconvenience for the

father, but exactly the opposite, it has been me footing the bill for all the costs; whereas the trial judge even knows I had to finally drain our children's college funds, that only I had saved up for them, just to pay for costs she ordered being the supervised visits, the GAL, and the psychological evaluation (CR9).

This trial courts decision does not serve in the children's best interest and is in violation of our Supreme Law that has been adopted by our Washington State Constitution. *Thus if a trial judge acts irrationally or irresponsibly, his actions can not be condoned.* Illinois v. Sommerville, 410 U.S, at 469.

4. THE TRIAL COURT VIOLATED SUPREME LAWS WHEN ALLOWING THE MOTHERS DUE PROCESS RIGHTS TO BE DISREGARDED.

Our United States Constitution outlines the Rights of every individual and it is the duty of the courts to protect them. On November 21, 2014, trial judge issued an Order re Adequate Cause, whereas it is stated, "*...The court did consider the father/petitioner's additional papers filed under docket no. 482*

because, even though they were not served upon the mother/respondent on time, the mother agreed that the court may consider them (when asked the mother said that the court could consider the father's papers. After the court told the father that had she not agreed the court would not have considered his response since the date by which the father had to have the papers filed and served was quite clear, the mother a few minutes later said she changed her mind. The court did not accept the mother's change of mind.)" (CR36-37).

According to the Wex Legal Dictionary, the term, Substantive Due Process is "*A doctrine holding that the 5th and 14th Amendments require all governmental intrusions into fundamental rights and liberties be fair and reasonable and in furtherance of a legitimate governmental interest. The U.S. Supreme Court during the middle of the 20th Century used substantive due process to give added force to the 4th, 5th, and 6th Amendments of the United States Constitution by constraining certain actions by law enforcement, prosecutors, and judges" Cornell University Law School.*

When a person openly waives their Rights the courts must ensure they are fully aware, they completely understand and they are in agreement. When a person pleas guilty and waives their 5th Amendment Right, it is the courts duty under law and ethics, to protect the Rights of the Individual, the laws, and the dignity and integrity of the courts. The courts require a signed agreement and provide lengthy commentary on record to ensure that the Rights are being protected. *"The mother a few minutes later..."* should suffice in reason why no further comment is necessary.

For some reason the trial judge was very stern about not wanting me to discuss the father getting fired from the Seattle Municipal court when he got caught fixing his own parking tickets or him not being honest about his educational status to gain employment and getting caught. His dad is an attorney and always gets him out of trouble and or sues or threatens people with his connections. Him and his dad, always threatened to take my babies from me, after a while it was just a matter of time. The father sued the City of Seattle for allegedly violating his due process in during his termination. While I commend him for his attempts to change

the law, in good conscience I could not support his conspiracy, attacks on people who were just doing their job, and openly bragging about his connections and dishonesty. At that time I promised Booth, I would never be like those kinds of people. The higher courts ultimately took focus on and outlined the good boy networking when reversing the lower courts favor of the father. I have had to live with his revenge and attacks from his good boy networking since.

I didn't want my children to learn to be dishonest just to get their way, but I guess the trial court thinks it is in the children's best interest to be like that. I don't understand why I get in trouble with the trial court for speaking up about it. Then I get treated like I must be on drugs, crazy, and not credible.

5. THE TRIAL COURT DIDN'T KEEP THEIR WORD FOR FAMILY REUNIFICATION AFTER ALL REQUIREMENTS WERE MET AND THERE IS NO REASON WHY.

The purpose of the courts intervening in family business is to ensure the children's best interest, and ensure fairness and

equality for all.

Unfortunately, the courts are not perfect, and because they are governed by humans, to error is only natural, to pick favorites is sometimes blatantly obvious, etc. But an abuse of discretion doesn't require passion or prejudice. A mere lack of evidence will suffice. Untenable grounds also is reason. The err doesn't even have to be intentional.

The trial court gave me opportunity to file for a Modification after I cleared my name and proved I am not crazy. I did everything the courts asked of me. There is reason for a Major Modification. The trial court composed the 12/4/13 Parenting Plan and Restraining Order all in favor for the father, (CP1-9,20-22). The trial court demanded me to do something that I could not do in good conscience. The trial judge just wanted me to shut up, and only consider a minor modification. I am not going to deter from the best interest of the children, nor will I just play pretend, or bash on my family and lie just to get my way. I will not jump off a bridge to appease anybody either.

In analogy there is a case In the Interest of R.J.T. a minor Appeal of R.T. (natural mother), No. 18 WAP 9A.3d 1179 (2010),

that provides perfect rationale for this case regarding a mother and her child and an abuse of discretion.

In re: R.J.T. the focus was also family reunification. The trial court stayed focused on the children's best interest and family reunification whereas they determined, "*reunification is best suited...*" noted the Mother being adamant in their, "*pursuit to regain custody,*" and further noted, "*the best interest and permanent welfare of the Child at this time... for the goal to remain reunification.*" It was appealed and the Superior Court, slammed the mother, and violated the essence of family reunification. The Appeal Courts found the Superior Court, to be in err and reversed the Superior Court. They further found that, "*The Superior court "ignored why reunification was best suited for Child...*" "*the Superior Court was improperly focused...erred in reevaluating the evidence... misconstrued the requirements...*" and other statements about being concerned about the Superior Court overlooking the obvious positive and the Superior Court extensively digging for negativity.

6. ACCORDING TO GIDEON I SHOULD HAVE BEEN GIVEN AN ATTORNEY AND OTHER COSTS AT PUBLIC EXPENSE.

This issue was already denied by the Washington Supreme Court. It is only appropriate for the Federal Courts to decide.

In brevity, Gideon v. Wainwright 372 US 335 (1963), was established as a right based on the premise of the possibility of jail time in the standard of the possibility of *"liberty interest at stake."*

In a dissolution of marriage a restraining order is an option, being a criminal charge in a civil matter that brings forth the possibility of *"liberty interest at stake."* In a contempt, at least in the State of Washington, again the option of jail time is presented; whereas again the possibility of *"liberty interest at stake,"* is there. Because of those identical standards already established in Gideon all family law matters are entitled to the Right to counsel and other costs at public expense.

The only premise argued In re Marriage of King, 77978-4 SC (2006), was a spin off of Gideons *"liberty interest at stake"* standard and it focused on the parent and child relationship for good cause.

Gideon was established through case precedence, but the Washington State Supreme court only suggested this matter In re King to go before Legislation for statute; whereas they had the authority to decide under precedence, and they also had the authority to mandate Legislation to enact into statute like the McCleary case. Because In Re King could have presented identical rationale in their argument and only presented a similar analogy an error was made and because the Supremes did not enact their leadership authority another error was made.

In understanding this is an issue that is presented in multiple states, and Gideon was established through the Supreme Court of the United States of America, in leadership for all families in this nation, it is necessary to present the Family Law Gideon, In Re Dalluge, before the Federal Courts. One Nation Under God, Indivisible, with Liberty and Justice for All.

CONCLUSION

State v. Gleaton 172 SCC 309, 311, 174, SE 12, 14 (1934). states, *"The reason for reversal is so apparent that no further cmment is necessary, and it is also perfectly clear utterance to the*

opinion upon which appellant here relies."

It is of my conclusion that the trial judge is more focused on catering to and protecting the father then serving in the best interest of the children. This case is very one sided and in error for the trial court to only rely on their opinion. Again there is nothing I can do if the trial court refused to accept evidence, ignores evidence and is not fairly and accurately preserving the record. There is something really not right about this case. There is an evil influence and I pray someone good will have eyes on this.

I have but a mustard seed of faith left in this system. Either you get it or you don't. Either you are going to allow for this type of evil influence to prevail or you are going to do right. Either you are one of those kinds of good boy net workers or you are good. Like I realized with the trial court, you are going to do whatever you want anyways.

I didn't ask for anything unreasonable in my Modification. I asked for something rationale, (CP55-64). This has been a very one sided case.

The reason for reversal is so apparent that no comment is necessary and it is also perfectly clear utterance to the opinion

upon which appellant here relies. State v. Gleaton 172 SCC 309, 311, 174, SE 12, 14 (1934).

The Appeal court should please correct the errors. The Appeal court should also reverse and remand with strict instructions for the trial court to proceed to trial, unless both parents can agree on something, and in the meantime grant the only parent who has provided the trial court evidence, (of counseling, domestic violence assessments, drug/alcohol tests, and psychological evaluation temporary custody until in fairness and accuracy of the record the trial courts have evidence from both parties) grant me temporary custody with 2 months of uninterrupted time to rebond and to adopt the temporary parenting plan that was already given to the trial judge, being the 2006 original parenting plan that both parents agreed on.

This will not only provide fairness but also provide accuracy for the record. Most importantly this is serving in the children's best interest that the trial court apparently lost focus on.

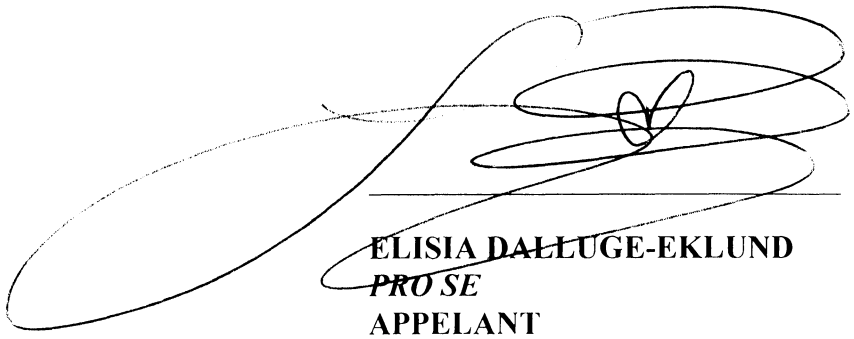
I am also requesting this matter be handled immediately in this court under fast track and upon remand while immediately is

not to be considered for safety purposes, given the harm accrued, immediate is necessary. Do what you want, you are going to anyway.

Nothing can make up for the time and memories lost between the children and I nor the harm in them learning to hate me but this Appeal court can remedy the errors, ensure fairness and justice for all and serve in the best interest of the children where the trial judge lost focus. Please and thank you.

We agree... The loss of a parent's presence and contribution at each stage of a child's development cannot be compensated for after a modification of custody. Molloy v. Molloy, 247 Mich. App. 348, 637 N.W.2d 803, 806 (2001).

Respectfully Submitted this 27th day of June 2015.



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CERTIFICATE OF SERVICE

I certify that on June 29, 2015, I caused a true and correct copy of the foregoing Appellants Trial Brief to be served, via First Class mail on the following parties:

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+ an extra copy for working papers. Thank you!

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I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

Executed at Moses Lake, Washington this 29 day of June 2015.

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