No. _____

Court of Appeals No. 75378-9-I

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

AMEENA AAMER,

Appellee/Respondent,

and

SHARIEF YOUSSEF,

Appellant/Petitioner.

PETITION FOR REVIEW

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INTRODUCTION

This Court has recently and repeatedly addressed the important role the judiciary must play in protecting parties against bias in all its forms. This is particularly true where bias is implicit, as it is harder to detect. It is also particularly true where the parties are minorities, so are especially vulnerable to judgments based on bias. Family law cases add the additional complexity that courts are tasked with regulating intimate aspects of the parties' lives, leaving them open to the arbitrary imposition of the court's preferences, rather than sound judicial decision-making.

Sharief Youssef is a Muslim man who immigrated to this Country from Egypt. When he received an unfavorable parenting evaluation, he presented testimony from two independent experts, agreeing that the parenting evaluator suffered from confirmation bias and failed to deal competently with the parties' religion and culture. The trial court did not mention, much less resolve this issue.

The appellate court dismissed this Court's recent precedent, if mentioned at all, holding that the bias alleged was not "affirmative." That misses the point. Bias is often more difficult to detect than it once was. That does not make the resulting discrimination any less pernicious. This Court should take review.

ISSUES PRESENTED FOR REVIEW

1. Must the judiciary be vigilant to guard against bias in all its forms, especially where the parties are minorities, so are particularly subject to decisions based on bias?

2. When a party presents evidence of bias and cultural and religious insensitivity, must the trial court at least address the issue to permit appellate review?

FACTS RELEVANT TO PETITION FOR REVIEW

A. The parties married shortly after meeting, having never been alone together.

Appellant and Petitioner Sharief Youssef was born in Cairo, Egypt, and moved to the U.S. in 1989, when he was 11 years old. CP 802. Respondent Ameena Aamer was born in the United States to an Egyptian father and an American mother. RP 555; CP 801. Both are devout Muslims. RP 195.

Aamer and her family met Youssef's parents in summer 2013, while stopping in Baltimore on their way to Ocean City, Maryland. *Id*. The Aamer family noticed that the women in Youssef's family were "also covered," so struck up a conversation. *Id*. Youssef's mother mentioned that Youssef, who was not present, was unmarried, and asked whether Aamer or her sister were also single. *Id*. Upon learning that they were, the families exchanged contact information,

and Youssef's mother later invited the Aamer family to come to their Maryland home. RP 195-96.

About one week after that initial meeting, Youssef visited the Aamer family in Pittsburgh. RP 196. Following this second meeting between the parties, their fathers agreed: "Okay, . . . we would like maybe to take this a step further. We have the intention of maybe proposing a relationship, marriage and engagement, for son and daughter to start a life together." *Id*. The parties then "made a verbal promise . . . to get to know each other before actually going into marriage." RP 197.

"[D]ue to [their] cultural and religious beliefs," the parties "couldn't be left alone." RP 197. They were not allowed to date, much less live together. *Id*. Although they began talking over the phone, they agreed that any in-person contact would be supervised by Aamer's parents. *Id*.

Over the next few months, the parties talked over the phone for a few hours each week. RP 197-98, 644. They became engaged after Thanksgiving, and picked out rings the next day, accompanied by Aamer's mother and sister. RP 198. They did not see each other again until the engagement party in late December. RP 199.

Following that, the parties saw each other only once or twice before marrying on June 14, 2014. RP 645; CP 2.

B. Soon after marrying, the parties learned Aamer was pregnant, and began arguing about finances.

Six weeks into the marriage, the parties learned that Aamer was pregnant. RP 524. Weeks later in August, they had their first argument about finances. RP 327-31, 651-55. Aamer went into the marriage believing that as a Middle Eastern and Muslim man, Youssef was financially responsible for all their expenses. RP 201. She felt that culturally and religiously, women are not expected to contribute unless there is a "desperate need." RP 202. Youssef did not share this understanding, and was surprised by Aamer's view. RP 651.

Aamer brought her father into the dispute. RP 652. Although she agreed to help cover the rent, she asked Youssef to pay her back. *Id*.

C. Three months into the marriage, Aamer left the state without notice, later seeking a divorce.

The parties argued about rent again the next month. RP 332-33, 651-55. Aamer alleges that she became "fearful" during this

argument, so went to Youssef's father, Sami.[1] RP 333. Sami was not surprised when Aamer called asking to spend the night, where it is typical in the "Arabic Tradition" for a married couple to have a close relationship with their parents. RP 573, 578-79.

The parties disagree about what transpired that evening. Aamer alleges that Youssef "grabbed" her hand, threatened to move the couple into his parents' basement, tried to force Aamer to talk in the middle of the night, and intentionally took her phone the next morning. RP 333-40. Youssef denies these things. RP 692-93. Sami did not see Youssef "grab" Aamer's hand or take her to the basement. RP 579. The family ate breakfast together the next morning, and Aamer agreed to have lunch with Sami. *Id*. She left purportedly to get something from the parties' apartment, but never returned. RP 579-80. Aamer then moved across the country to Washington without notice. RP 343.

Aamer refused to answer Youssef's calls, or even communicate about the pregnancy. RP 526-27. For six months, Youssef reached out to Aamer, hoping to repair their marriage. RP

[1] Some first names are used to avoid confusion. No disrespect is intended.

356-57, 656-57. But he learned through the "mediator" who married them that Aamer wanted a divorce and would not negotiate. RP 656.

D. The parties' daughter was born about one month after Aamer filed for dissolution.

H was born on March 10, 2015, about one month after Aamer petitioned for dissolution. RP 188; CP 1-6. Youssef flew to Seattle immediately upon learning that Aamer's labor would be induced. CP 20. For the next five-to-six weeks, Youssef had daily, sometimes twice daily visits with H before he had to return home for work. RP 528-29, 530-31, 532-34, 636, 713; CP 7-9, 20-21, 522. Although he rented an apartment in Seattle and flew in for weekly visits, Aamer denied Youssef visitation for nearly three weeks, forcing Youssef to obtain an emergency order to see H. RP 530, 532; CP 11, 15, 21-23. Youssef flew to Seattle every week for visitation before relocating in October 2015. RP 715-16.

Those other than Aamer had nothing but good to say about Youssef's parenting. RP 497, 500, 508, 588-90, 600-02; CP 518-19, 520-21, 522-23. This includes parenting evaluator Marsha Hedrick. RP 79-80; CP 805.

E. At trial, two experts opined on Youssef's behalf that the parenting evaluation strongly indicated confirmation bias and cultural insensitivity.

Hedrick, who recently spent two years living in a "Muslim village" in Africa with her dad and his three wives, opined as to "the relationships between . . . Muslim men and women," calling it a "patriarchal system," in which men are "very" dominant. RP 58, 107. She opined also that Muslim women are, and are "expected to be" "overtly" obedient to their husbands and fathers. RP 108.

Hedrick did not speak to any of Youssef's family, friends, co-workers, or any other adult with whom Youssef socialized. RP 36-37. She remarked that this matter was "notable" for the low level of conflict, stating "these parties were able to manage contact from very early on with one another . . .." CP 810. Yet despite having only good to say about his parenting, Hedrick opined that Youssef had "interpersonal difficulties" that could affect his parenting in the future. CP 812. Hedrick opined that Youssef needed multiple therapies to improve his "adult interpersonal interactions" before having overnight residential time. RP 45. Thus, she denied overnight visits for at least one year, and on the condition that Youssef complete "group therapy." *Id*.

Experts Daniel Rybicki and Gary Wieder independently concluded that Hedrick's report strongly indicates cultural insensitivity and "confirmatory bias," the tendency to search for and select information that supports premature conclusions about a party. RP 237, 409. One primary example is Hedrick's perception that Youssef had "three very short marriages and . . . the problems that arose in those marriages." RP 29-32, 100, 114-17, 238; CP 810-11. Hedrick's opinion on this point is based almost exclusively on collateral contact with Imam Shaker Alsayad who met with Youssef and his first wife "less than a handful of times" over ten years before Hedrick's report. RP 38, 702; CP 801. Shaker never met or spoke to the woman Hedrick refers to as Youssef's second "wife." RP 38-40. Under Islam, Youssef's second wife was Aamer. RP 574-75, 700-01. Although Youssef and his second "wife" entered a marriage contract, they never had a Muslim wedding and never consummated the marriage. RP 700-01. Thus, under Islam, no marriage occurred. *Id*.

Shaker was uninvolved in the parties' marriage. RP 86-87, 671. Hedrick did not contact either Imam who was involved in the parties' marriage, having "missed" that there were "other Imams." RP 85-86, 656, 671.

Rybicki and Weider agreed that Hedrick misunderstood these "marriages" and that the conclusions she drew from them ignored cultural and religious context. RP 237-38, 260, 698-99. As just one example, Hedrick seemed unaware that Youssef's first wife asked him to return to Egypt with her and that the marriage resolved amicably when he declined. RP 699-700. She failed to consider that the parties' marriage may have failed largely because it was arranged. RP 238. Hedrick's failure to even consider these alternative explanations indicates she "may have been biased." *Id*.

Additional examples of bias include that Hedrick refused to contact any of Youssef's friends, family, or anyone "who would have been sources of information about [Youssef's] interpersonal skills." RP 226. Hedrick admitted that these people could have contradicted her theory that Youssef lacks the interpersonal skills to form quality adult relationships. RP 101.

In another "example of bias," Hedrick interpreted Youssef's "normal" psychological test scores to support her conclusion that he had interpersonal deficits. RP 234-35. Hedrick's dissimilar treatment of Aamer's test scores also indicates bias. RP 234-35, 438-39. For Youssef, normal test scores "somehow" support Hedrick's theory that he has interpersonal skill deficits, but for Aamer, "significant

clinic elevations" measuring suicidal thinking and mistrust were dismissed without any consideration of how they might affect co-parenting. RP 234-35. There are additional examples, too. BA 35-39.

F. The trial court adopted the parenting evaluator's report nearly verbatim, failing to even mention, much less resolve, the bias and cultural insensitivity alleged.

The vast majority of Youssef's case was that the parenting evaluation suffered from confirmation bias and failed to deal competently with the parties' religion and culture. Two experts agreed. Testimony on this point spanned two days of the five-day trial. RP 219-90, 387-457. Yet the trial court adopted nearly all of Hedrick's recommendations, failing to even mention these issues. This Court should accept review and reverse.

REASONS THIS COURT SHOULD TAKE REVIEW

A. The appellate decision conflicts with this Court's decision in *State v. Saintcalle*, cautioning against implicit bias in judicial decision-making. RAP 13.4(b)(1) and (4).

This Court first addressed implicit bias in the context of jury selection, and particularly ***Batson*** challenges, in ***State v. Saintcalle***, 178 Wn.2d 34, 45-49, 309 P.3d 326 (2013). There, the Court began its careful analysis with the caution that "Discrimination 'mars the integrity of the judicial system and prevents the idea of a democratic government from becoming a reality.'" ***Saintcalle***, 178 Wn.2d at 41

(quoting ***Edmonson v. Leesville Concrete Co.***, 500 U.S. 614, 628, 111 S. Ct. 2077, 114 L. Ed. 2d 660 (1991)). The Court explained that implicit bias is unconscious discrimination resulting from ordinary cognitive processes. 178 Wn.2d at 47-49.

These processes occur because the human brain must categorize information to process and store it, leading to stereotypes. *Id*. at 48. Even if consciously rejected, stereotypes influence the way humans perceive, store, use, and remember information. *Id*. "'Discrimination, understood as biased decision-making, then flows from the resulting distorted or unobjective information.'" *Id*. (quoting Antony Page, *Batson's Blind-Spot: Unconscious Stereotyping and The Peremptory Challenge*, 85 B.U. L. Rev. 155 at 160-61 (2005)).

Implicit-bias is compounded over time, as each generation passes its stereotypes down to the next:

> [S]tereotypes about ethnic groups appear as a part of the social heritage of society. They are transmitted across generations as a component of the accumulated knowledge of society. They are as true as tradition, and as pervasive as folklore. No person can grow up in a society without having learned the stereotypes assigned to the major ethnic groups.

Saintcalle, 178 Wn.2d at 48 (quoting Ehrlich, *The Social Psychology of Prejudice* 35 (1973)). These stereotypes become ingrained in the unconscious mind, so "endure despite our best efforts to eliminate

them." 178 Wn.2d at 46 (discussing Page, *supra*; Ehrlich, *supra*). The Court cautioned that the reality that people are often unaware of their biases, does not make discrimination "any less pernicious." *Id*. at 49.

Two experts opined repeatedly and at length that Hedrick's parenting evaluation was rife with confirmation bias. Facts Relevant to Petition § E. In their view, Hedrick interpreted the data to support negative views about Youssef and positive views about Aamer, rather than considering an alternate hypothesis. *Id*. This biased approach was intertwined with Hedrick's failure to deal competently with the parties' culture and religion. *Id*.

The trial court's failure to even address this issue, much less resolve it, is at odds with the concerns this Court expressed in ***Saintcalle***. Assuming Hedrick's bias was implicit, it would affect her decision-making even if consciously rejected. ***Saintcalle***, 178 Wn.2d at 46. The fact that she may have been unaware of her biases, does not make the discrimination "any less pernicious." 178 Wn.2d at 49. This is not to fault Hedrick – "To put it simply, good people often discriminate, and they often discriminate without being aware of it." *Id*. at 48 (quoting Page, *supra*). Rather, the point is that the trial court must resolve these issues when brought to its attention.

And the appellate court missed the mark in affirming the trial court's decision on the basis that Hedrick addressed the bias asserted. Slip Op. (attached) at 22. Implicit biases are unconscious, and "endure despite our best efforts to eliminate them." ***Saintecalle***, 178 Wn.2d at 46. Simply asking Hedrick to address her bias would do little to remedy the effect of unconscious stereotyping on her report and recommendations.

In sum, four years ago this Court took the important step of addressing how implicit bias can affect one aspect of the judicial process. Unfortunately, the trial and appellate courts failed to heed that warning. Thus, review is warranted under RAP 13.4(b)(1).

Further, this matter presents another opportunity to make clear that our judicial system must be vigilant to guard against implicit bias that threatens the administration of justice as much as any other form of discrimination. Indeed, as ***Saintcalle*** recognizes, bias used to be easier to detect – the fact that people are often unaware of their biases does not make them "any less pernicious." 178 Wn.2d at 49. This issue is just as important here as it was in ***Saintcalle***. And this Court's decision there demonstrates the need for this Court to address this issue again. Thus, this Court should also take review under RAP 13.4(b)(4).

B. The appellate decision conflicts with this Court's decisions in *Chandola* and *Black*, cautioning against bias, particularly in the family law context. RAP 13.4(b)(1).

As this Court recently recognized, it is particularly important to guard against bias in the family law context, where trial courts are "empowered to regulate intimate aspects of the parties' lives." ***Marriage of Chandola***, 180 Wn.2d 632, 655, 327 P.3d 644 (2014) Thus, trial courts must proceed cautiously, and document the reasons for their decisions, especially when the parties before them are minorities "particularly 'vulnerable to judgments based on cultural or class bias[es].'" ***Chandola***, 180 Wn.2d at 655 (quoting ***Santosky v. Kramer***, 455 U.S. 745, 762-63, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)). Here, the trial court entirely failed to address the bias alleged, much less the parties' religion and culture, at odds with this Court's decisions in ***Chandola*** and ***Black***, *infra*. The appellate court did not mention ***Chandola***, and dealt inadequately with ***Black***. This Court should accept review and reverse. RAP 13.4(b)(1).

One year after issuing its decision in ***Saintcalle***, this Court addressed the effect of cultural bias on trial courts entering parenting plans. ***Chandola***, 180 Wn.2d at 653-56. At issue there was an RCW 26.09.191(3)(g) restriction limiting the amount of time the father's parents could be present during his residential time. 180 Wn.2d at

655-56. This Court held that this .191 restriction was based on the trial court's "opinion that a father—an 'only child'" of Indian 'cultural . . . history'—relies too much on "extended family" to help him raise his child." *Id*. at 654-55. That "opinion," was insufficient to support the .191 restriction, where it was not a finding of physical, mental, or emotional harm. *Id*. at 655 Rather, the restriction seemed motivated to increase the father's independence, not to protect the child. *Id*. This Court thus reversed, holding that "[a]ny other conclusion leaves families vulnerable to a trial court's biases." *Id*.

This Court held that trial courts must identify specific reasons for entering .191 restrictions to prevent them from arbitrarily imposing their preferences. *Id*. "That is particularly important in the family law context, where the trial court is empowered to regulate intimate aspects of the parties' lives." *Id*. (citing ***Santosky***, 455 U.S. at 762-63). This is especially true for "minority groups [who] are particularly 'vulnerable to judgments based on cultural or class bias[es].'" *Id*.

Importantly, this Court stated "[w]e do not mean to imply that the trial court here was motivated by bias or cultural insensitivity." *Id*. The issue requiring reversal was not whether the Court was intentionally biased. Rather, the issue was that the Court's failure to

properly justify its .191 restrictions gave no assurance that its decision was free from bias or cultural insensitivity, conscious or not.

It is equally true here that Youssef, a cultural, ethnic, and religious minority, is "particularly 'vulnerable to judgments based on cultural or class bias[es].'" *Id*. (quoting ***Santosky***, 455 U.S. at 762-63). Indeed, in today's climate it is difficult to imagine a minority group more vulnerable to bias than Muslim men who have immigrated to this Country from the middle east.

Yet the trial and appellate court decisions fail to abide by the teachings of ***Chandola***. Despite considerable evidence that Hedrick failed to deal competently with the parties' religion and culture, the trial court failed to even mention these important issues. Thus, it is impossible to tell whether the trial court's decision resulted from cultural or religious preferences, even if unconscious. The appellate court failed to address ***Chandola*** at all.

This Court again announced the importance of protecting families "'vulnerable to a trial court's biases'" in April 2017, holding that "[o]ne purpose of the dissolution statutes is to prevent 'arbitrary imposition of the court's preferences.'" ***Marriage of Black***, 188 Wn.2d 114, 135, 392 P.3d 1041 (2017) (quoting ***Chandola***, 180 Wn.2d at 655). There, this Court reversed a parenting plan placing

the children with the father a majority of the time, holding that the trial court impermissibly considered the mother's sexual orientation. ***Black***, 188 Wn.2d at 117. That holding is based in large part on the trial court's "heavy" reliance on the GAL's report, recommendations, and testimony that evinced an impermissible bias. 188 Wn.2d at 126-127. Thus, the court reversed and remanded to a different judge, holding that "[t]he evidence of bias casts doubt on the trial court's entire ruling." *Id*. at 137.

The trial and appellate court decisions conflict with ***Black***, *supra*. There, it was precisely "[b]ecause the trial court relied heavily on [the GAL, that her] bias permeated its ruling and casts doubt on the entire parenting plan." *Id*. at 127, 132. The same is true here. The trial court adopted Hedrick's recommendations nearly in whole. CP 714. Thus, as in ***Black***, bias permeated the parenting plan. 188 Wn.2d at 124.

And here too, the trial court was confronted with the allegations of bias. Indeed, the trial court here heard considerable expert testimony, absent in ***Black***, that the recommendations resulted from bias. Again, the court failed to address the issue.

The appellate court incorrectly distinguished ***Black***, holding that "nothing in this case shows the type of affirmative bias the court

encountered in ***Black***." Slip Op. at 23. It does not matter whether the bias is "affirmative" – implicit bias is no less pernicious. ***Saintcalle***, 178 Wn.2d at 49.

The appellate court was equally incorrect in stating that "[t]here is no evidence that Dr. Hedrick was biased against Youssef because of his religion or culture." Slip Op. at 23. There was copious expert testimony spanning two days that Hedrick' report suffered from confirmation bias, and cultural and religious insensitivity. *Supra*, Facts Relevant to Petition § E. It was the trial court's job to weigh that evidence, but its findings give no assurance that it did so.

In short, ***Chandola*** and ***Black*** teach that trial courts must be on guard for bias in all forms, particularly for those who are most vulnerable. Both the trial and appellate court decisions conflict with these cases. This Court should accept review and reverse. RAP 13.4(b)(1).

C. The appellate decision conflicts with cases from this Court and the appellate courts requiring trial courts to adequately document their decision-making process. RAP 13.4(b)(1) and (2).

Numerous decisions from this Court and the appellate court have addressed the importance of requiring trial courts to make adequate findings so that appellate courts can provide a "check" on

the trial court's broad discretion. ***Pet. of LaBelle***, 107 Wn.2d 196, 218-19, 728 P.2d 138 (1986); ***Lawrence v. Lawrence***, 105 Wn. App. 683, 686, 20 P.3d 972 (2001). Adequate findings allow the courts – and the parties – to ensure that the trial judge has "dealt fully and properly with all the issues in the case." ***LaBelle***, 107 Wn.2d at 218-19 (internal quotations omitted, citing ***State v. Agee***, 89 Wn.2d 416, 421, 573 P.2d 355 (1977) (quoting ***Roberts v. Ross***, 344 F.2d 747, 751 (3d Cir. 1965))). Here, where the "issue" is implicit bias, the importance of knowing that the trial court "dealt fully and properly with all the issues in the case" cannot be overstated. ***LaBelle***, 107 Wn.2d at 218-19.

The court gave no oral ruling, and its single, cursory finding that Hedrick's report is "complete and reliable" does not begin to address Youssef's principal contention that Hedrick's report suffered from confirmation bias and failed to deal competently with the parties' religion and culture. The trial court did not deal "fully" with these issues – it did not address them at all. 107 Wn.2d at 218-19.

Moreover, the court's failure to document it's decision-making deprives the appellate courts of any meaningful opportunity for review. ***LaBelle***, 107 Wn.2d at 218; ***Lawrence***, 105 Wn. App. at 686. As this Court noted in ***Saintcalle***, implicit bias is difficult to detect.

Saintcalle, 178 Wn.2d at 46-49. Ferreting it out cannot be made even more difficult by condoning a trial court's failure to address the problem. Nor can the appellate court resolve the issue, when the trial court failed to do so. ***Bale v. Allison***, 173 Wn. App. 435, 458, 249 P.3d 789 (2013) (quoting ***Quinn v. Cherry Lane Auto Plaza, Inc.***, 153 Wn. App. 710, 717, 225 P.3d 266 (2009)).

In sum, numerous appellate decisions state the importance of trial courts adequately documenting their decision-making to permit meaningful appellate review. This is especially important in cases such as this, where minorities are particularly vulnerable to judgments based on bias. ***Chandola***, 180 Wn.2d at 656. Thus, this Court should accept review and reverse. RAP 13.4(b)(1) and (2).

CONCLUSION

For the reasons state above, this Court should take review.

RESPECTFULLY SUBMITTED 22nd day of September, 2017.

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CERTIFICATE OF SERVICE

I certify that I caused to be mailed, postage prepaid, via U.S. mail, and/or emailed, a copy of the foregoing **PETITION FOR REVIEW** postage prepaid, via U.S. mail on the 22nd day of September 2017, to the following counsel of record at the following addresses:

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APPENDIX A

***Marriage of Aamer and Youssef*,**

Court of Appeals No. 75378-9-I, Slip Opinion (2017)

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

In the Matter of the Marriage of AMEENA AAMER, Respondent, and SHARIEF YOUSSEF, Appellant.	)	No. 75378-9-I UNPUBLISHED OPINION FILED: June 19, 2017

VERELLEN, C.J. — Sharief Youssef appeals the parenting plan entered in proceedings dissolving his marriage to Ameena Aamer. He contends the court abused its discretion in adopting a court-appointed expert's recommendations because other experts testified that the expert's underlying report was unreliable, incomplete, and culturally biased. Because we defer to the trial court on matters relating to the weight and persuasiveness of expert testimony and because the court did not abuse its discretion in any event, we affirm.

FACTS

Ameena Aamer and Youssef married in June 2014 and separated three months later. They have a daughter, H.Y., born in March 2015. Aamer and Youssef are both practicing Muslims.

and submit a written report to the court. The order described the report's requirements as follows:

> The parenting evaluator shall investigate and report factual information to the court concerning parenting arrangements for the child. The parenting evaluator may make recommendations based upon an independent investigation regarding the best interests of the child.
>
> The parenting evaluator shall make a full and complete written report to the court . . . . This report shall include recommendations and bases for those recommendations.
>
> Issues ordered to investigate and report:
>
> > All issues relating to development of a parenting plan
> > A recommended (final) parenting schedule [1]

On March 14, 2016, Dr. Hedrick issued her report, which the court later admitted at trial. The report stated that Dr. Hedrick interviewed Aamer and Youssef for roughly 3.5 hours apiece and observed each of them with H.Y. for one hour. She spoke with Youssef's former therapist, Salma Albugidieri, H.Y.'s physician, Dobrina Okorn, and Shaker Alsayed, an imam who consulted with Youssef regarding several of his marriages. Dr. Hedrick also administered psychological tests and questionnaires to Youssef and Aamer.

The report summarized the parties' brief marriage and their versions of what took place during the marriage. Dr. Hedrick quoted Aamer's recollection of the wedding, honeymoon, and early days of the marriage:

> After the ceremony he said, "I haven't booked your honeymoon ticket." He had only booked his. . . . We went to Turkey and there were no hotel reservations. He would videotape people while he was dealing with them. . . . Something didn't feel right. Sex didn't seem genuine—it was like he was reading from a manual. . . . In Maryland, he didn't seem interested. . . . I got the sense he was forced to marry me. I thought

[1] Clerk's Papers (CP) at 526.

> something was wrong with me. He wouldn't go forward with sex unless I initiated it. . . . It was as if he was obligated. . . . He would blame me for the pregnancy. . . . He signed up to take four courses on random things. There was no time to do anything because he wouldn't get home until 9-9:30 p.m. He was doing it to stay away.[2]

Youssef remembered the honeymoon more idyllically and described the early relationship as a "happy relationship with only two arguments."[3]

The report recounted an incident during which the couple argued over rent money and Aamer decided to go stay with her parents. According to Aamer, Youssef called her after the argument and said, "I need a detailed email of what you've done, what you've said."[4] Youssef then went to Aamer's parents' house and demanded that Aamer leave with him. Aamer said, "No."[5] When Youssef persisted, her father threatened to call the police.

Shortly after this incident, Aamer went to Youssef's parents and talked to his father. Youssef's father then talked to Youssef in private. According to Aamer, Youssef

> came out furious. He took me to the basement, pulled me by the hand. He was forcing a kiss on me and said, "Let's pray." Then he said, "Who did you talk to today[?] [Y]ou're a liar." I reached for my phone and he took it away. He called his father and said, "I hugged her like you said." His dad came and they had an argument. . . . I didn't feel safe spending the night. His father told him "[Y]ou have no right to control her money in any way.". . . I didn't feel safe and didn't know who I was dealing with. I was scared. I decided to go to Pittsburgh.[6]

Youssef denied grabbing Aamer and said he took her phone accidentally. He claimed she had agreed to share rent and to not include family in their financial discussions.

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[2] CP at 804.

[3] Id.

[4] Id.

[5] Id.

[6] CP at 804-05.

After the rent incident, Aamer, who was pregnant with H.Y., left with her parents for Seattle. According to Youssef, Aamer refused to answer his calls or communicate with him about the pregnancy. Three months later, Aamer filed for divorce. A few months after that, she gave birth to H.Y.

Youssef immediately received access to H.Y., starting with two hours a day and expanding to three eight-hour visits per week after he moved to Seattle.

In summarizing her interviews and observations, Dr. Hedrick stated that both parents demonstrated positive interactions with H.Y. She described Aamer as "cheerful," "warm and likeable."[7] She described Youssef as "somewhat socially awkward, deferential, and guarded. He appeared to routinely minimize information that he perceived would reflect badly on him."[8] His "[a]ffect was contained" and he sometimes answered questions with "tedious detail" and "evasiveness."[9]

The parents' psychological test results were mostly near the norm. Youssef exhibited some defensiveness, shyness, and social avoidance while Aamer exhibited some suspiciousness, alienation, and preoccupation with death or suicide. Dr. Hedrick noted that Aamer's preoccupation with death or suicide appeared to arise from her Muslim beliefs about the afterlife, and her suspiciousness and alienation "appeared to be strictly related to issues around her divorce."[10]

The report also summarized Dr. Hedrick's interviews with collateral contacts. Salma Abugideiri, Youssef's therapist, said Youssef came to see her in 2014 "after two

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[7] CP at 806.

[8] Id.

[9] Id.

[10] CP at 807.

previous marriages. . . . There had been two bad break ups and he had been suffering previously from depression characterized by negative cognitions."[11] Youssef "was taking classes and working but he was focused on negative cognitions. . . . He tended to catastrophize and had paranoid thoughts arising out of trust issues related to the divorces."[12] Youssef described his first wife as "immature and dependent. He felt they didn't connect intellectually."[13] Youssef subsequently received treatment for depression in 2007 and 2008. He called off his second marriage in 2009, and the bride's parents sued him. He suffered depression again and took antidepressants.

Youssef told Abugideiri that Aamer "tended to shut down" and that he reached out to her after the cell phone incident "but there was no communication."[14] After they separated, Youssef was "terrified that he was going to lose this child. Because of his fear and because he had no parenting skills and minimal relationship skills, he started taking classes."[15] Youssef was committed to treatment and "open to feedback and to working on himself."[16]

H.Y.'s physician, Dr. Okorn, told Dr. Hedrick she had no concerns about either parent. She noted, however, that Youssef had "a reputation for being pushy about getting records."[17]

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[11] CP at 808.

[12] Id.

[13] Id.

[14] Id.

[15] Id.

[16] CP at 809.

[17] Id.

Imam Shaker Alsayed counseled Youssef and his first wife for 10 months. Youssef's wife complained that he "was not treating her well, that he was not kind. There were heavy expectations."[18] The imam said Youssef was not independent from and was hampered by his father. His father "treated him like a child."[19]

The imam told Dr. Hedrick that when Aamer left Youssef, [t]here were money issues again and oppressive pressure on him to help his father financially."[20] Youssef "was more motivated by protecting his assets than his marriage. He looks at a wife as a financial burden. Money and character are underpinning issues that make his father speak for him."[21]

The imam also stated that, following his interview with Dr. Hedrick, Youssef called and asked

> about what [Dr. Hedrick] had asked and what I had said. I told him it was not up to me to discuss. He put his father on the phone and his father began threatening me . . . . Then his father came to my office and barged in without an appointment. I refused to see him. . . . His father has ruined [Youssef's] married life by being over-protective and over-involved.[22]

Dr. Hedrick opened the discussion portion of her report by stating that the evaluation "was notable for issues surrounding the difficulties inherent in evaluating across significant cultural and religious lines."[23] As the evaluation progressed, "it became apparent that [Aamer] had significant concerns about [Youssef]," particularly

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[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] CP at 810.

[23] Id.

his "interpersonal functioning and his ability to manage conflict appropriately."[24] Aamer "described with credible detail the events that led to her decision to leave him and which included behavior that was disrespectful and dominating."[25]

Dr. Hedrick stated that the imam's statements to her "strongly suggested that [Aamer's] concerns regarding [Youssef] were apt to constitute a pattern that existed in his other two marriages as well."[26] All of the marriages had "prominent difficulties around money," and their short duration "suggests that these difficulties were not merely situational in nature, or the result of cultural issues around legal versus religious marriages."[27] In addition, the imam's observations showed that Youssef's marriages also suffered from his father's undue interference.

Dr. Hedrick concluded that Youssef was not forthcoming about his mental health history and an arrest for sexual solicitation in 2006. This behavior, together with inaccuracies or minimizations in Youssef's statements to her raised "significant doubts about Youssef's credibility."[28] According to Dr. Hedrick, "[t]he pattern that emerges from these concerns appears to revolve around significant difficulties in [Youssef's] interpersonal skills, including deficits in his ability to deal maturely with conflict."[29] She noted "some confirmation of this in the MMPI-2 RF test results that indicated mild elevations around social avoidance, shyness, and interpersonal passivity."[30] She

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[24] Id.

[25] Id.

[26] Id.

[27] Id.

[28] CP at 811.

[29] Id.

[30] Id.

concluded "[Youssef's] minimization of difficulties is also apt to interfere with co-parenting in that [Aamer] perceives him as potentially not being straightforward with her about [H.Y.]."[31] Without focused work on his tendency to hide or distort information, Youssef "will likely create a situation in which there is more and more distrust with [Aamer], making parenting more difficult for both of them."[32]

Dr. Hedrick also saw "an obsessive quality [in Youssef's] view of himself in the father role."[33] His decision "to get a degree in early childhood education in addition to numerous classes and baby groups underscore[d] [Aamer's] observation that during their marriage [Youssef] signed up for numerous 'random' courses in order to 'stay away' from her."[34] Dr. Hedrick stated that "[t]he extent to which his apartment is populated by 'Baby Einstein' toys and the way in which he discusses [H.Y.'s] interest in them in terms of developmental tasks is unsettling. [Youssef] appears to avoid areas that require affective skills (empathy, for example) in favor of intellectual activities."[35] Dr. Hedrick concluded there was

> a need to look ahead and identify potential trouble spots. Given [Youssef's] interpersonal difficulties and his intense focus on [H.Y.'s] development, there is a concern that he will remain hyper-focused on her in a way that eventually interferes with her interaction with the larger world. Unless [Youssef] develops better skills for adult interactions, he is apt to look solely to [H.Y.] for gratifying his needs for social interaction.
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> . . . .

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[31] CP at 812.

[32] Id.

[33] Id.

[34] CP at 811.

[35] Id.

> Research indicates that the wellbeing of children whose parents have divorced is best correlated with quality of parenting and frequency of contact rather than the absolute number of hours in each parent's physical custody. This suggests that [H.Y]'s needs are apt to best be met by improving her father's interpersonal functioning and his ability to relate empathically to her needs before commencing overnight contact.[36]

The report recommended that Youssef enroll in group therapy to improve "his interactional skills with adults."[37] This would not only "improve his ability to communicate with [Aamer] but [would] also . . . improve the likelihood that [H.Y.] will not become the sole source meeting his interactional needs."[38] After a year of weekly group therapy, Youssef could begin having overnights with H.Y. Youssef's residential time would expand when H.Y. turned three and would be rearranged when she entered kindergarten.

At trial, Dr. Hedrick reiterated the concerns expressed in her report, stating,

> [W]hen I looked at all the data [I had] concerns about [Youssef's] functioning in the interpersonal arena, because three very short marriages and the information that I collected from elsewhere about some of the problems that arose in those marriages left me with concerns. Both about his ability to interact in a reciprocal empathic way with a partner, but also his ability to handle conflict. And a tendency to . . . be disrespectful and at times dominating in a way that created problems . . . . And potentially could create problems in terms of parenting a child, both in terms of the interaction with the other parent, but also in terms of what he modeled for the child about interpersonal male-female relationships.[39]

Dr. Hedrick was particularly concerned with Youssef's ability to handle high conflict situations. She testified that such situations had resulted in Youssef blaming Aamer for the pregnancy, taking her phone, and grabbing her and forcing a kiss on her.

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[36] CP at 812-13.

[37] CP at 813.

[38] Id.

[39] Report of Proceedings (RP) (Apr. 20, 2016) at 29.

With respect to Youssef's hyper-focus on H.Y., Dr. Hedrick testified that this trait

> was very likely to be problematic in the long run. . . [Youssef] can get very focused on issues in a compulsive, kind of obsessive way. And for this child, my concern was that that would be experienced as very limiting. And that she would have difficulty meeting his social needs and that that would in some ways warp their relationship and place undue burdens on her as she got older.[40]
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> . . . .
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> And . . . this very obsessive focus would get directed at [H.Y.]'s development in a way that would keep him from seeing her as autonomous from him. Like she's a project.[41]

Dr. Hedrick testified that Youssef's obsession with taking classes went "well beyond" anything she'd seen in her 30-year career.[42]

Two experts testified for Youssef. Dr. Gary Wieder, a clinical and forensic psychologist, testified that he had conducted several hundred parenting evaluations. He found several flaws in Dr. Hedrick's report and methodologies. He testified that there is no scientific link between parenting deficits and the interpersonal skills and/or hyper focus alluded to in Dr. Hedrick's report. He also testified that Dr. Hedrick's recommendation to postpone overnights for Youssef was "inconsistent with best practice models."[43] Dr. Weider criticized the report for failing to consider contradictory evidence, potentially contradictory collateral sources, and parenting inventories, failing to treat data and information about the parents equally, failing to address alternative hypotheses, and misinterpreting or distorting test results. In Dr. Weider's view,

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[40] Id. at 37.

[41] Id. at 53.

[42] Id.

[43] RP (Apr. 25, 2016) at 247.

Dr. Hedrick's use of only three collateral sources was unusually low for an evaluation. Many of these flaws he claimed created an appearance of "confirmatory bias."[44]

Dr. Daniel Rybicki, a psychologist specializing in psychological and parenting evaluations, echoed many of Dr. Wieder's criticisms of the report. He testified that the 15-page report was the shortest he had seen in 30 years and that a typical parenting evaluation report would run 60 to 70 pages in length. He said the report failed consider plausible rival hypotheses, ignored contradictory data, flew in the face of research evidence, and was "actually one of the most skewed reports I've seen over the course of my professional career."[45] The report was also "deficient in the logical nexus from the data to the findings, deficient in terms of making steps to guard against confirmatory bias," deficient in accounting for cultural explanations for behavior and test results, and selective in its attention to data in a way that suggests confirmatory bias.[46] He defined "confirmatory bias" as "the tendency to . . . selectively hear and attend the information that fits a previously held hypothesis."[47]

Aamer testified and corroborated the statements Dr. Hedrick attributed to her. She also testified to Youssef's obsession with making video recordings of his interactions with people. On their honeymoon, he recorded the paperwork process at a car rental company with his phone camera. He also recorded their exchanges of H.Y. using cameras set up in his minivan.

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[44] Id. at 237.

[45] RP (Apr. 26, 2016) at 399.

[46] Id. at 400.

[47] Id. at 409.

Aamer said Youssef sent her highly detailed e-mails of his activities with H.Y. and expected her to do the same. She noted

> all the logs he has created, and visitation logs and schedules that he asked me to also put in my time [and] what I did with [H.Y.] parenting, what time I changed her diaper, what time she slept, what time she ate, and to me this just showed me how he's just focused on actually observing and scheduling and writing down about his daughter more than actually just enjoying the time with his daughter.[48]

Youssef's father testified and disagreed with Aamer's descriptions of certain incidents and Youssef's behavior.

Jan Burnham, the instructor for a class that Youssef and H.Y. attended, described Youssef as a shy but active participant in the class. He socialized well with the mostly female adults in the class. When asked if Youssef seemed "hyperfocused on his child as compared to other parents," Burnham said, "Not at all."[49]

Debbie McBrayer testified that she supervised Youssef's student "service learning" in early childhood classrooms over a three-month period.[50] She described his interactions with children as "enthusiastic" and "very positive."[51]

Youssef testified that Dr. Hedrick's report did not treat him and Aamer equally. He believed the inequality was a result of Dr. Hedrick's refusal to contact collateral sources that would have contradicted Aamer's versions of events. He admitted recording the exchanges of H.Y. but said he did so on the advice of counsel. He denied recording the rental car employee on his honeymoon and denied most of Aamer's

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[48] Id. at 362.

[49] RP (Apr. 27, 2016) at 602.

[50] Id. at 619.

[51] Id. at 620.

allegations, including the allegation that he forcefully grabbed her and forced a kiss on her. He also disagreed with Dr. Hedrick's descriptions and interpretations of his marriages. He conceded sending Aamer detailed post-visit emails about H.Y.'s diaper changes, feedings, etcetera, but said they were a response to Aamer's complaints that he wasn't changing H.Y. enough.

In closing argument, Youssef's counsel argued that "overmagnification of minor issues in the father and undermagnification of issues with the mother demonstrates bias and failure to consider contradictory evidence."[52] Counsel proposed a parenting plan with a brief transition period to overnights and 50/50 parenting.

The court found Dr. Hedrick's report "complete and reliable" and incorporated most of her recommendations in its parenting plan.[53] The plan required Youssef to obtain an evaluation and six months of counseling. The court intended the evaluation and counseling "to assist the father to develop long-term methods, expectations and attitudes that will lead to positive cooperation with the mother concerning the child and to develop similarly positive means in his own parenting."[54] The court rejected Dr. Hedrick's recommended one-year delay on Youssef's overnights with H.Y., ruling instead that overnights could begin after as little as three months of counseling.[55]

Youssef appeals.

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[52] RP (Apr. 28, 2016) at 827.

[53] CP at 787.

[54] Id.

[55] Under the court's ruling, the three- and six-month counseling periods could be shorter or longer depending on the counselor's recommendation.

ANALYSIS

Trial courts have broad discretion in adopting parenting plans and their decisions will not be disturbed absent an abuse of that discretion.[56] Appellate courts "are reluctant to disturb a child custody disposition because of the trial court's unique opportunity to personally observe the parties."[57] "The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court."[58] We review findings of fact for substantial evidence.[59] We review conclusions of law to determine whether the findings of fact support the conclusions.[60]

Dr. Hedrick's Report

Youssef first challenges the court's reliance on Dr. Hedrick's report. Pointing to his experts' criticisms of the report, Youssef challenges the court's finding that the report was complete and reliable and contends the court's reliance on the report was an abuse of discretion. For the reasons set forth below, we disagree.

Trial courts have wide latitude in determining the weight to give expert opinions.[61] A court may "reject expert testimony in whole or in part in accordance with its views as

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[56] In re Marriage of Littlefield, 133 Wn.2d 39, 46, 51-52, 940 P.2d 1362 (1997); In re Marriage of Katare, 175 Wn.2d 23, 35, 283 P.3d 546 (2012).

[57] In re Marriage of Murray, 28 Wn. App. 187, 189, 622 P.2d 1288 (1981).

[58] In re Marriage of Kim, 179 Wn. App. 232, 240, 317 P.3d 555 (2014).

[59] In re Marriage of McDole, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

[60] In re Marriage of Myers, 123 Wn. App. 889, 893, 99 P.3d 398 (2004).

[61] In re Marriage of Sedlock, 69 Wn. App. 484, 491, 849 P.2d 1243 (1993).

to the persuasive character of that evidence."[62] Appellate courts defer to the trial court's determination of the weight and persuasiveness of conflicting expert opinions,[63] and we will sustain the court's findings if they are within the range of the expert testimony.[64] Challenges to the reliability or adequacy of an expert opinion generally go to the weight or, in some cases, the admissibility of the opinion.[65]

In this case, Youssef does not contend Dr. Hedrick's report was inadmissible. Rather, he principally argues that, contrary to the court's finding, the report was incomplete and/or unreliable. As noted above, however, such challenges go to the weight of Dr. Hedrick's opinion. Because we defer to the trial court's assessment of the weight to give that opinion, Youssef's challenges to the reliability and completeness of

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[62] Brewer v. Copeland, 86 Wn.2d 58, 74, 542 P.2d 445 (1975); Grp. Health Co-op. of Puget Sound, Inc. v. State Through Dep't of Revenue, 106 Wn. 2d 391, 399, 722 P.2d 787 (1986).

[63] State v. Monaghan, 166 Wn. App. 521, 534, 270 P.3d 616, 622 (2012), as amended Feb. 28, 2012.

[64] See In re Marriage of Harrington, 85 Wn. App. 613, 637, 935 P.2d 1357 (1997); Sedlock, 69 Wn. App. at 490.

[65] Cf. Katare, 175 Wn.2d at 39 (fact that expert did not conduct personal evaluation of the subject went to the weight of his testimony, not its admissibility); Raum v. City of Bellevue, 171 Wn. App. 124, 154, 286 P.3d 695 (2012) (fact that expert never physically examined subject went to weight of expert's testimony); Colley v. Peacehealth, 177 Wn. App. 717, 731, 312 P.3d 989 (2013) (expert testimony need not be flawless to be admissible; objections to expert's methods and use of certain data went to weight of his testimony); State v. Copeland, 130 Wn.2d 244, 270-77, 922 P.2d 1304 (1996) (whether DNA lab failed to follow standards and controls and whether its studies were valid went to weight of evidence); State v. Gentry, 125 Wn.2d 570, 588, 888 P.2d 1105 (1995) ("whether the proper procedures were carried out, whether the lab notes were adequate, whether the number of amplifications conformed to the laboratory protocol, are questions regarding whether this particular test was properly conducted and hence go to the issue of weight, not admissibility."); State v. Leuluaialii, 118 Wn. App. 780, 788, 77 P.3d 1192 (2003) ("a dispute over the validity of particular procedures generally goes to the weight of the evidence"); State v. Peterson, 100 Wn.2d 788, 792, 674 P.2d 1251 (1984) ("any challenge to the reliability of the Breathalyzer reading goes to its weight").

the report fail. In any event, even if those challenges were within the scope of our review, they would not demonstrate an abuse of discretion.

In support of his claim that Dr. Hedrick's report is neither complete nor reliable, Youssef lists a number of alleged flaws in the report. He first contends, and one of his experts opined, that the report is too short by professional standards. Aamer correctly points out, however, that the court's order appointing Dr. Hedrick did not require a report of any particular length.[66] Nor does Youssef cite any authority to that effect. The court was thus free to reject or discount Youssef's experts' opinion regarding the length of the report.

Youssef next claims Dr. Hedrick declined to review relevant information or interview collateral contacts who witnessed his parenting and interactions with other adults. Dr. Hedrick explained, however, that she had "a lot of information . . . about [Youssef's] parenting in the documentation that he provided" and "saw no reason to jack up the costs of the evaluation" by considering additional collateral sources or information.[67] She testified that there is no minimum number of collaterals that an evaluator should contact, that she does not interview collaterals who have submitted extensive writings, and that some of the collateral sources in this case would have provided information about superficial relationships, as opposed to intimate, high-conflict relationships that would shed light on Youssef's ability to co-parent. Dr. Hedrick added that she "virtually never contact[s] the parents or close relations of the parties . . .

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[66] The order appointing Dr. Hedrick required a report containing "factual information . . . concerning parenting arrangements for the child," "[a]ll issues relating to development of a parenting plan," and "recommendations and bases for those recommendations." Dr. Hedrick's report met these requirements.

[67] RP (Apr. 20, 2016) at 82.

because there's clearly an issue of bias."[68] When asked why she did not contact other imams or read other e-mails allegedly suggested by Youssef, Dr. Hedrick said she did not recall any reference to additional imams and would have read any e-mails Youssef provided.

Youssef and his experts criticize Dr. Hedrick's use and interpretation of certain psychological test results. They assert that the MMPI-RF and PAI tests she used have limited utility and that she failed to acknowledge their limits. Dr. Hedrick addressed most of those criticisms in her testimony. For example, she testified that, contrary to Dr. Rybicki's assertions, the PAI is an increasingly accepted test for custody evaluations. She responded similarly to Dr. Rybicki's criticism of the MMPI-2-RF test. Quoting an article about the test, she testified that it "remains a very useful instrument" and provides results that are useful "in determining custody and visitation issues."[69] Dr. Hedrick supported her opinions on the tests with "published, peer-reviewed articles."[70] Furthermore, she made the limitations of the test results clear in both her testimony and her report.[71]

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[68] Id. at 84.

[69] Id. at 57.

[70] Id. at 66.

[71] For example, her report acknowledged that the "[p]sychological test results presented below are only hypotheses and should not be used by the reader of this report in isolation from other information in this matter. The interpretive statements are primarily computer generated, actuarial predictions based on the results of the tests. Personality test results reflect characteristics of persons who have provided test response patterns that are similar to those of the current individuals. Although the test results are presented in an affirmative manner, they are probabilistic in nature. Further, the reader should interpret these findings cautiously in that it is impossible to tell, from test results alone, if these personality patterns and deficits pre-existed the events in question or are the results or sequelae of the events. Therefore the reader should examine the test interpretation for general trends and put limited weight on any one

Dr. Hedrick also disagreed with the experts' opinion that she overreached or overpathologized in her analysis of Youssef's test results, stating, "I said that there were mild elevations on a couple of scales that were consistent with concerns I had about his interpersonal functioning. That is not overpathologizing."[72] She also explained why she reached different conclusions regarding Youssef's and Aamer's elevated test scores. Dr. Hedrick determined that Youssef's elevated test results were generally consistent with observations that she and others had made about him, while Aamer's results were generally contradicted by other evidence and observations.

Youssef next contends Dr. "Hedrick's recommendations omit data and lack any logical connection to the data."[73] Relying on his experts' opinions, he argues that delaying overnights is "unrelated to the data" and inconsistent with "current best practice models."[74] He claims "[p]ostponing overnights can dilute attachment and bonding" and argues "that the goal should be to balance the detriment to attachment, which can result from no overnights, with the need for stability, which can decrease with overnights."[75] He also contends Dr. Hedrick relied on outdated and debunked authority to support her recommendation to delay overnights.

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specific statement. In the integration and presentation of the test data, where results were unclear or in conflict, I used my clinical judgment to select the most likely hypotheses for presentation here. The reader's task is to keep in mind the information available regarding these parties and utilize that to test whether these hypotheses are confirmed or dis-confirmed." CP at 807.

[72] RP (Apr. 20, 2016) at 67.

[73] App. Br. at 30-33.

[74] Id. at 31.

[75] Id. at 32.

Dr. Hedrick testified, however, that she was familiar with the latest research in the area of overnights and young children and that the issue involved "competing concerns" and was highly controversial.[76] She acknowledged that in the most recent research, there are "some concerns about that youngest group with overnights" and that it essentially comes down to a detriment/benefit analysis.[77] She testified that "what the research says is that beyond a certain level of contact, there is no correlation between absolute time or overnights. It's the quality of the parenting. So he has way over the amount [of contact] that you would be concerned about there being detriment to."[78] She also testified that the "[r]esearch is really clear that the amount of time that either parent spends with the child is not as important as the quality of their interaction with that child."[79] Dr. Hedrick maintained that a benefit-detriment analysis in this case weighed in favor of delaying Youssef's overnights.

Youssef also maintains that Dr. Hedrick should have included parenting inventories in her report. Dr. Wieder testified he could not "see any valid argument for eliminating or omitting those kinds of inventories based on the child's age."[80] But Dr. Hedrick simply disagreed, stating, "there are no really good parenting inventories, particularly when the child is this age. They just, you will do far better to get collateral

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[76] RP (Apr. 20, 2016) at 131.

[77] Id.

[78] Id. at 128.

[79] Id. at 68.

[80] RP (Apr. 25, 2016) at 284.

information about parent functioning and observe the child and the parent themselves, than to use inventories for that."[81]

Youssef contends Dr. Hedrick's report on her home visits was inadequate. Pointing to Dr. Rybicki's testimony, he contends her "brief observation of each party" and "three short paragraphs about each party's parenting" were insufficient to support "an opinion relative to parenting plan restrictions or limitations."[82] Dr. Rybicki conceded, however, that he had no "trouble with the one-hour visit" Dr. Hedrick had while observing each parent's interactions with H.Y.[83] And though he criticized the length of the report's discussion of those visits, he acknowledged that the descriptions of the parents' interactions were both positive and "relatively equivalent."[84] Furthermore, the home visits were barely mentioned in the discussion portion of Dr. Hedrick's report and thus played a de minimis role in her recommendation.

Youssef and his experts criticize Dr. Hedrick's reliance on his credibility as a basis for her recommendations. They assert that a parent's credibility during evaluations does not necessarily mean the parent will not be a competent and effective parent. Dr. Hedrick, however, did not purport to draw any definitive link between the two and grounded her credibility concern in the co-parent's experience. She stated that "Youssef's minimization . . . is *apt* to interfere with co-parenting in that [Aamer] perceives him as potentially not being straightforward with her about [H.Y.]."[85] She

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[81] RP (Apr. 20, 2016) at 66.

[82] Appellant's Br. at 29-30.

[83] RP (Apr. 26, 2016) at 420.

[84] Id.

[85] CP at 812 (emphasis added).

raises a concern that he will not tell her relevant information if he believes it *reflects badly on him or on his time* with [H.Y.]."[86] Dr. Hedrick concluded that, barring some work on his minimizing, Youssef would "*likely* create a situation in where there is more and more distrust with [Aamer.]"[87]

Youssef claims that Dr. Hedrick failed to consider how both parents' cultural background could affect their self-reporting on psychological testing and how his cultural background could affect his presentation during interviews or observations. But as noted above, the report expressly acknowledged "the difficulties in evaluating across significant cultural and religious lines."[88] Dr. Hedrick also testified that she "careful[ly] considered cultural issues."[89] Significantly, Dr. Hedrick relied heavily on the observations of a person who shared the parents' cultural perspective, Imam Shaker Alsayed. She testified that the imam "had the best insight" into the cultural/religious aspects of Youssef's relationships with adult women.[90] Dr. Hedrick also expressly interpreted Aamer's test results in light of her Muslim beliefs and Dr. Hedrick's experience living for two years in a Muslim village in Africa.

In response to questions suggesting that Youssef's parenting deficiencies could simply be a manifestation of cultural differences, Dr. Hedrick stated that a person

> may choose to follow what's handed down traditionally . . . . [T]hat's their choice . . . . But that's not really the issue. The issue is that it's still having those skills, those interactional skills, the ability to empathize with someone else's position, to understand that, to resolve conflict, all of those

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[86] Id. (emphasis added).

[87] Id. (emphasis added).

[88] CP at 810.

[89] RP (Apr. 20, 2016) at 58.

[90] Id. at 134.

> skills come in without, it doesn't have to be just around dating. And it certainly plays into the co-parenting arrangement. And it certainly plays into any future marriages down the way.[91]
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> I don't think what [group marriage counselors are] modeling as a way of interacting would run counter to [Youssef's] religious directives. I think it's about skills and skills acquisition. And again, those are important in any context.[92]

When Youssef's counsel suggested that his failed marriages were not surprising or significant given the Muslim prohibition on dating, Dr. Hedrick said, "Well, not all Muslim men go through three divorces after very short marriages."[93] The record demonstrates Dr. Hedrick's awareness of and sensitivity to cultural issues in this case.

Youssef next contends the report suffers from "confirmatory bias," which his expert defined as "the tendency to . . . selectively hear and attend the information that fits a previously held hypotheses."[94] Youssef points to the other alleged deficiencies in Dr. Hedrick's report, discussed above, as evidence of her failure to guard against confirmatory bias. But as previously noted, Dr. Hedrick addressed most, if not all, of the alleged deficiencies in her testimony and explained why she took or did not take various actions in preparing her report. We defer to the trial court's decision regarding the weight and persuasiveness of conflicting expert testimony.

Citing In re Marriage of Black,[95] Youssef also argues that Dr. Hedrick's report and testimony demonstrate cultural bias and that he is entitled to a new parenting plan

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[91] Id. at 109.

[92] Id. at 110.

[93] Id. at 115.

[94] RP (Apr. 26, 2016) at 409.

[95] __ Wn.2d __ 392 P.3d 1041 (2017)

entered by a different judge. Although this claim does not go to the weight or persuasiveness of the evidence, it also lacks merit because Black is inapposite.

In Black, the trial court impermissibly considered a parent's sexual orientation and relied on a report exhibiting bias based on sexual orientation in developing its parenting plan. The Black court held that bias "permeated the proceedings" and cast "doubt on the trial court's entire ruling."[96] Contrary to Youssef's assertions, nothing in this case shows the type of affirmative bias the court encountered in Black. There is no evidence that Dr. Hedrick was biased against Youssef because of his religion or culture. Her alleged omission of possible religious or cultural explanations for certain behaviors or data, or Youssef's claims that that she "failed to deal competently with cultural and religious issues" do not demonstrate bias.[97] This is especially true given the previously-mentioned evidence showing her awareness and consideration of the cultural issues in the case.[98] In addition, Dr. Hedrick's alleged failure to guard against confirmatory bias in her methodology is simply not the type of bias at issue in Black.

Viewing Dr. Hedrick's report in the context of her testimony and the entire record, we cannot say the court abused its broad discretion in implicitly rejecting the experts' challenges to the reliability and completeness of Dr. Hedrick's report and in adopting, in

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[96] Black, slip op at 26.

[97] Appellant's Reply Br. at 12.

[98] For the same reasons, and because Youssef raises the issue for the first time in his reply brief, we reject his claim that the trial court violated the appearance of fairness doctrine.

part, the report's recommendations.[99] In reaching that conclusion, we bear in mind our State Supreme Court's admonition that

> parenting plans are individualized decisions that depend upon a wide variety of factors . . . . *The combination of relevant factors and their comparative weight are certain to be different in every case, and no rule of general applicability could be effectively constructed. The very nature of a trial court makes it better suited than an appellate court to weigh these varied factors on a case-by-case basis.*[100]

Failure to Address RCW 26.09.187

Youssef argues alternatively that the parenting plan must be reversed because the record fails to demonstrate that the trial court considered the factors listed in RCW 26.09.187(3). That statute provides in part that a court ordering a parenting plan "shall consider" the factors listed in the statute.[101] The court need not enter specific

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[99] We note that the court significantly reduced Dr. Hedrick's recommended delay for Youssef's overnights from one year to three months.

[100] (Emphasis added); Parentage of Jannot, 149 Wn.2d 123, 127, 65 P.3d 664 (2003), as amended Apr. 30, 2003.

[101] RCW 26.09.187(3) provides in pertinent part:

(a) . . . Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

findings on the factors, however, so long as "the record indicates substantial evidence was presented on the statutory factors thus making them available for consideration by the trial court and for review by an appellate court."[102] "In the absence of evidence to the contrary, we assume the trial court discharged its duty and considered all evidence before it."[103]

Here, the only statutory factors in serious dispute were "each parent's past and potential for future performance of parenting functions" and the "emotional needs and developmental level of the child."[104] The record contains substantial evidence relating to these factors, and counsel brought the statutory factors to the court's attention in a trial brief and closing argument. The record sufficiently demonstrates the court's consideration of the statutory factors.[105]

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

[102] In re Marriage of Croley, 91 Wn.2d 288, 291-92, 588 P.2d 738 (1978).

[103] Id. at 291.

[104] RCW 26.09.187(3)(a)(iii),(iv). The other factors were essentially undisputed. Both parents acknowledged H.Y.'s strong relationship with each parent; there was no evidence as to any other significant adults in her life; the parents each expressed their parenting plan preferences and testified to the flexibility of their respective employment schedules.

[105] See Marriage of Shui & Rose, 132 Wn. App. 568, 591, 125 P.3d 180 (2005) ("While the trial court did not explicitly address every factor set forth in RCW 26.09.187(3)(a) in its findings of fact and conclusion of law, a review of Waldroup's report reveals that it encompasses the relevant factors; furthermore, it is evident that both Waldroup and the trial court gave the most weight to the first statutory factor, as is required by the statute.")

Parenting Plan Provisions

Youssef contends the parenting plan "is untenable" and an abuse of discretion for several reasons.[106] First, he argues there is no logical connection between any parenting deficiencies found by the court and delaying his overnights with H.Y. Because Youssef is now receiving overnights, this issue appears to be moot. In any case, considering Dr. Hedrick's concerns with Youssef's hyperfocused, project-oriented approach to H.Y. and the effect of that behavior on his interactions with H.Y., the court could tenably conclude that Youssef needed to improve "his ability to relate empathically to her needs before commencing overnight contact."[107]

Youssef also argues that the parenting plan appears to switch to a 'school schedule'" when H.Y. turns three, at which point H.Y. "will go for a week without [visitation]."[108] But it is clear from the court's repeated use of the words "school" and "school age," and Aamer appears to concede, that the "school schedule" begins when H.Y. is enrolled in kindergarten, not when she turns three.

Youssef also claims that the parenting plan fails to address moving toward a 50/50 schedule as Youssef proposed and fails to explain why the court awarded Aamer sole decision-making on school and healthcare, allocated Muslim holidays according to who has H.Y. on those days under the residential schedule, and decided to require judicial dispute resolution instead of mediation. Youssef cites no authority requiring the court to explain why it rejected Youssef's request or why it made the decisions it did

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[106] Appellant's Reply Br. at 22.

[107] CP at 813.

[108] Appellant's Br. at 47.

regarding sole decision making, holidays, and dispute resolution. Youssef fails to demonstrate that these decisions were beyond the court's broad discretion.

Last, Youssef contends the court "erred in requiring written consent from the other parent to travel outside the state with H.[Y.]" because "parents enjoy a fundamental right to travel interstate."[109] He argues that "[t]he trial court cannot limit this fundamental right absent a showing of harm" and that "[t]here is none."[110] But contrary to Youssef's assertions, *his* right to travel is not restricted; rather, the restriction is on either parent removing H.Y. from the state of Washington.[111] "The constitutional rights of children may be treated differently than those of adults because of the peculiar vulnerability of children, their inability to make informed, mature, and critical decisions, and the importance of the parental role in child rearing."[112] Youssef fails to demonstrate an abuse of discretion.

Attorney's Fees On Appeal

Aamer requests attorney's fees on appeal under RCW 26.09.140. That statute authorizes an award of fees based on the relative resources of the parties and the merits of their positions on appeal.[113] Having reviewed the parties' financial affidavits and the merits of the appeal and considering the trial court's award of roughly half of her

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[109] Appellant's Br. at 48.

[110] Appellant's Br. at 48-49.

[111] The parenting plan states, "Neither father nor mother shall not remove the child from the [s]tate of Washington without the other parent's written consent." CP at 793.

[112] Momb v. Ragone, 132 Wn. App. 70, 82, 130 P.3d 406 (2006).

[113] In re Marriage of Leslie, 90 Wn. App. 796, 807, 954 P.2d 330 (1998).

fees and costs below, we award Aamer half of her reasonable attorney's fees and all of her costs on appeal, subject to her compliance with RAP 18.1.

Affirmed.

WE CONCUR:

MASTERS LAW GROUP PLLC

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Transmittal Information

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