FILED
SUPREME COURT
STATE OF WASHINGTON
3/15/2018 12:02 PM
BY SUSAN L. CARLSON
CLERK

No. 95485-2

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN PATRICK OSMAN, Respondent

v.

TINA ANNELISE SCHMIDT, Appellant

OBJECTION TO MISSTATEMENTS OF THE RECORD CONTAINED IN RESPONDENT'S ANSWER TO PETITION FOR ACCEPTANCE OF REVIEW

H. Michael Finesilver (f/k/a Fields) Attorney for Appellant

207 E. Edgar Street Seattle, WA 98102 (206) 322-2060 W.S.B.A. #5495

I. Introduction

Petitioner, Tina Schmidt, hereby submits this objection and thereby requests that this court not consider a number of misstatements contained in the answer to the petition for review. This objection contains no counter-argument as petitioner is well aware of the prohibition against doing so in a reply to John Osman's answer since he has not sought relief from this court. See RAP 13.3.

However, counsel for petitioner is not aware of any vehicle through which misstatements of the record can be brought to the attention of this court without filing an objection to them being considered.

II. The Misstatements

A. The Extended Family Provision

The answer represents that Mr. Osman's petition for modification sought a proposed parenting plan order that would eliminate the extended family provision contained in the final Georgia parenting plan order (see pages 10, 11, and 13 of his answer). In fact, his petition for modification, incorporated by reference (see trial exhibit 24 page 2) a proposed parenting plan order that sought an extension of that provision, not an elimination of it.

At page 10 of that proposed plan, he made the following request for relief as it related to the extended family provision:

"3.13.11 In the event that the Father's family is in the Mother's city of residence, the Mother shall accommodate the Father's family so that they can see the Child so long as the Child is in town. If not otherwise agreed by the parents, the Child shall be made available to the Father's family no less than after-school and for dinner during the days the family is in town, and at least one (1) overnight if the family visit spans a weekend." (See, page 10 of the parenting plan in **Appendix A**).

Since Tina did not object to that proposed extension, she agreed to include it in the agreed order that included the stipulation as to adequate cause of his petition and her counter petition (see trial Ex. 27, page 2).

B. Substantial Change of Circumstances Related to Decision Making

The answer at page 7 cites RP 309-310 as being evidence of "clear scientific research that has established vaccinations and immunizations for children are safe and save children's lives." RP 309-310 contains no such evidence and in fact when Mr. Osman tried to elicit it, an objection was interposed as hearsay and the objection was sustained. (RP 39).

The answer also suggests at pages 6 and 8 that the court based its determination that Mr. Osman's relocation from Georgia to Seattle was a substantial change of circumstances implicating joint decision making

authority based upon the testimony of Dr. Wendy Hutchins-Cook (see pages 5-6 of the answer). In fact, Hutchins-Cook's testimony related to her opinion as to the best interests of the child and not whether a change of circumstances had occurred related to decision making authority.

DATED this 15 day of March, 2018.

Respectfully submitted,

Attorney for Appellant

(206) 322-2060

H. Michael Finesilver (a/k/a Fields) W.S.B.A. #5495 ANDERSON, FIELDS, DERMODY, & McILWAIN 207 E. Edgar Street Seattle, Washington 98102

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3 5 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY In re Parentage and Support of: 7 Ella Grace Schmidt, No. 15-3-07774-4 SEA Child, 9 **Proposed Parenting Plan** Final Order (PPP) John Patrick Osman, 10 Petitioner. and 11 12 Tina Anneliese Schmidt, Respondent. 13 14 This parenting plan is: 15 Proposed by John Osman, Petitioner/Father. 16 It Is Ordered, Adjudged and Decreed: 17 I. General Information 18 This parenting plan applies to the following children: 19 20 Name Age 21 Ella 4 22 II. Basis for Restrictions 23 2.1 Parental Conduct (RCW 26.09.191(1), (2)) 24 Does not apply. 25

Parenting Plan (PPP, PPT, PP) - Page 1

WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194

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III. Residential Schedule

3.1 Schedule for Children Under School Age

Prior to enrollment in school, the child shall reside with the respondent/mother, except for the following days and times when the child will reside with or be with the other parent:

<u>Father has relocated to the state of WA</u>, the Father shall have parenting time as follows:

Week One. Since relocating to WA and in the spirit of co-parenting, the Father has proposed that beginning 2/5/16, and continuing each alternating week thereafter, Father shall have parenting time with the Child as follows:

On Tuesday at 5:00 p.m.through 7:30 p.m.; and On Wednesday at 5:00 p.m.through 7:30 p.m.; and On Friday at 5:00 p.m. through 5:00 p.m. on Sunday

<u>Week Two</u>. Since relocating to WA, the Father has proposed that beginning 2/19/16, and continuing each alternating week thereafter, Father shall have parenting time with the Child as follows:

On Tuesday at 5:00 p.m. through 7:30 p.m.; and On Wednesday at 5:00 p.m. through 10:00 a.m. on Thursday morning (or Father will drop-off at school Thursday a.m., if the child has school)

3.2 School Schedule

Upon enrollment in school, the child shall reside with the respondent/mother, except for the following days and times when the child will reside with or be with the other parent:

Parenting Plan (PPP, PPT, PP) - Page 2 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



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Also the "Week Two" exchanges shall take place at school whenever the child is in school at a designated exchange time.

3.3 Schedule for Winter Vacation

The child shall reside with the respondent/mother during winter vacation, except for the following days and times when the child will reside with or be with the other parent:

In 2016, and every even year thereafter, the Father shall have Ella from the time school is dismissed for the holiday until noon on December 28th and the Mother shall have these times in the odd years.

In 2017, and ever odd year thereafter, the Father shall have Ella from from noon on December 28th until 5 p.m. on the day before school reconvenes, and the Mother shall have these times in the even years.

The Father shall have the right to exercise his Christmas time with the Child in a city of his choosing.

3.4 Schedule for Other School Breaks

The child shall reside with the respondent/mother during other school breaks, except for the following days and times when the child will reside with or be with the other parent:

After Ella enters Kindergarten, in even years, Father shall have Ella from release of school for the break until 5:00pm the day prior to school resuming, and the Mother shall have these times in the odd years. Until Ella enters Kindergarten, the regular parenting schedule shall apply. Father shall have the right to exercise his Break time in a city of his choosing.

3.5 Summer Schedule

Parenting Plan (PPP, PPT, PP) - Page 3 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



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

Same as school year schedule, but see also 3.6, below.

3.6 **Vacation With Parents**

The schedule for vacation with parents is as follows:

Beginning the summer of 2016, each parent shall have the right to two (2), non-consecutive weeks (seven (7) days, six (6) overnights) with the minor Child.

Beginning the summer of 2018, each parent shall have the right to three (3) weeks of time in the summer, taken in two (2) periods of time with one period being 14 days (13 overnights) and the other period being seven (7) days (six (6) overnights). The mother's proposed vacation times shall have priority in odd-numbered years, and the father's proposed vacation times shall have priority in even-numbered years, in the event of a conflict or overlap in proposed vacation times.

The parents shall exchange their proposed periods of time/weeks that they each intend to exercise their vacation time no later than April 1st each year. Once Ella begins school, the parents shall not select the week before school resumes (unless by agreement of both parents).

3.7 **Schedule for Holidays**

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

	With Father	With Mother
New Year's Day Thanksgiving Day	See 3.3 Even	See 3.3 Odd
Christmas Eve/Day	See 3.3	See 3.3

Parenting Plan (PPP, PPT, PP) - Page 4 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



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Beginning in 2018 and every even year thereafter, the Father shall have Ella from the time school is dismissed for the holiday until 5:00 p.m. on the Sunday that immediately follows Thanksgiving Day, and the Mother shall have these times in 2019 and every odd year thereafter.

Beginning in 2016, the Father shall have the right to exercise his Thanksgiving time with the Child in a city of his choosing.

Labor Day: In even years, Father shall have Ella from release of school for the holiday until 5:00pm the day prior to school resuming. In odd years, Mother shall have these times. Father shall have the right to exercise his Labor Day break time in a city of his choosing.

Memorial Day: During odd years, Father shall have Ella from release of school for the holiday until 5:00pm the day prior to school resuming, and the Mother shall have these times in the even years. Father shall have the right to exercise his Memorial Day time in a city of his choosing.

Three-Day Weekends From School: Once Ella begins kindergarten, Father shall have the right to visitation on all three-day weekends. This shall include three-day weekends for President's Day, Labor Day, Memorial Day, Columbus Day, Martin Luther King Day and teacher planning days. Father shall have Ella from release of school for the long weekend until 5:00pm on the day prior to school resuming. Father shall have the right to exercise Three-Day Weekends from School time in a city of his choosing.

Hanukkah: Mother may have Ella each year from noon (or release of the first day of Hanukkah until the following morning at return to school or 9:00 a.m. If Hanukkah conflicts with Thanksgiving or Christmas, Thanksgiving or Christmas shall control over Hanukkah.

Yom Kippur: Mother may have Ella each year from sundown on the first night until sunrise the following day.

Parenting Plan (PPP, PPT, PP) - Page 5 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



Transportation Arrangements

WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194

Parenting Plan (PPP, PPT, PP) - Page 6

3.11

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24 25 Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child, between parents shall be as follows:

Except as provided herein, each parent shall be responsible for all transportation associated with exercising his/her residential time.

The parents shall exchange the child at the Seattle Ferry Dock at 801 Alaskan Way Pier 52, unless another Seattle location is agreed to by the parties in writing.

If either party is travelling with the child, outside of the State, that party shall provide the other with detailed itinerary and all other necessary travel information upon reserving same, but in no event later than fourteen (14) days prior to departure (including flight information if travelling by air).

Except as provided herein, each parent shall be responsible for all travel costs associated with their residential time.

The parties agree that the child shall not travel as an unaccompanied minor until she is 10 years old.

3.12 Designation of Custodian

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

3.13 Other

- 3.13.1 The parents have joint legal custody of the minor child, as awarded by the Georgia Superior Court. Exercise of joint legal custody shall be subject to a good faith duty to confer between the parties, and, in the event of an impasse, the allocation of final decision making authority shall be as detailed herein below in sections 4.2 and V.
- 3.13.2 Specifically, but without limitation, joint legal custody as contemplated by the parties shall include joint decision-making as to

Parenting Plan (PPP, PPT, PP) - Page 7 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



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24 25 matters of major significance affecting the upbringing and welfare of the Minor Child, including, but not limited to choice of schools and educational programs, the choice of doctors and medical and dental treatment, treatment and counseling for emotional and behavioral problems, career development and summer jobs, travel without a parent, religious training and extracurricular activities. Although each parent may make day-to-day decisions, as to discipline, rules and behavior in his and her respective home without interference from the other parent, in the event the Minor Child suffers from major discipline or behavior problems, then both parents will attempt to make mutual decisions as to such matters and maintain consistent rules in the two households for the best interests of the Minor Child. Neither party shall make major decisions affecting the upbringing and welfare of the Minor Child, including but not limited to medical decisions, educational decisions, decisions about religious training, and decisions about extracurricular activities, without first consulting with the other party and attempting in good faith to reach a mutual agreement with the other party consistent with the spirit of this joint legal custody arrangement. In the event the parties are unable to reach a mutual agreement, final decision making authority shall be as set forth below in sections 4.2 and V.

- 3.13.3 In order to keep one another apprised of the Child's overall health and well-being, the parties shall exchange emails if there are any issues that are not otherwise discussed during daily/regular video/phone calls.
- 3.13.4 The parties shall respect the custodial rights of each other as provided in this Order; neither party shall attempt to influence the Minor Child not to love, spend time with, communicate with, and respect the other parent and the other parent's extended family. Both parties shall carry out custody and visitation in a manner conducive to the best interests of the Minor Child.
- 3.13.5 Each party shall provide the other with reasonable notice, as it becomes available to that parent, of any special events at the Minor Child's school or at other extracurricular activities of any nature such as parent open houses, recitals, sports events, performances, parent-teacher conferences, or other similar events where parents normally observe or participate in the activities of their Child, so that each party may attend those activities.

Parenting Plan (PPP, PPT, PP) - Page 8
WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



3.13.6 Each party shall have the right to obtain from the Minor Child's school copies of all report cards, event schedules, as well as copies of any and all other documents and reports concerning the performance of the Minor Child, which documents are prepared and provided by the school. Both parties shall have the right to visit the Minor Child at her school, and to consult with her teachers, or other school personnel. In the event necessary, Mother and Father shall sign any appropriate documents necessary to allow and permit the Minor Child's school to provide and release any documents, reports, and/or other information directly to the other party. Both parties' names and contact information shall be provided to the Child's school and the Child's teachers, such that each party shall receive notice of school events, the Child's report card, the Child's progress reports, and such other information directly from the Child's school.

3.13.7 Each parent shall be entitled to complete, detailed information directly from any teacher, coach, counselor, pediatrician, general physician, dentist, consultant or specialist attending the Minor Child for any reason whatsoever and to be furnished with copies of any reports, photos or other information given, created or made available by any of them to either party. Each parent shall be entitled to consult with all such care providers. Both parties' names and contact information shall be provided to the Child's coach and health care providers, such that each party shall receive notice of the Child's events, activities, health care reports and such other information directly from the coach, team, health care provider, etc.

3.13.8 Mother and Father shall exert every reasonable effort to maintain free access and unhampered contact between the Minor Child and each of the parties, and to foster a feeling of affection between the Minor Child and the other party. Neither party shall do anything which may estrange the Minor Child from the other party or injure the Minor Child's opinions as to Mother or Father, or which may hamper the free and natural development of the Minor Child's love and respect for the other party. Each party shall restrain himself or herself from prejudicing the Minor Child against the other party, or his or her custodial and visitation time, as the case may be.

3.13.9 Each party may have phone, email, text, Skype, or any other form of communication desired with the Minor Child a minimum of every-other-day when the Minor Child is with the other party when

Parenting Plan (PPP, PPT, PP) - Page 9 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



requested by either party. Neither parent will interfere with the other parent's attempts to communicate with the Minor Child or the Minor Child's attempts to communicate with the other parent. Both parties shall make all reasonable efforts to make the child available to communicate with the other parent via facetime/skype or otherwise minimum of every-other-day when the Minor Child is with the other party. If the time that the non-custodial parent choses for the communication is not convenient, the custodial parent shall provide at least two alternate times for the communication for the non-custodial parent to choose from on the day requested, or the following day.

- 3.13.10 The parties shall each provide the other with their respective addresses, email addresses, residential telephone numbers, and cell phone numbers for so long as the Minor Child is a Minor.
- 3.13.11 In the event that the Father's family is in the Mother's city of residence, the Mother shall accommodate the Father's family so that they can see the Child so long as the Child is in town. If not otherwise agreed by the parents, the Child shall be made available to the Father's family no less than after-school and for dinner during the days the family is in town, and at least one (1) overnight if the family visit spans a weekend.

3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

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

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

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

Parenting Plan (PPP, PPT, PP) - Page 10 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



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4.1 Day-to-Day Decisions

Parenting Plan (PPP, PPT, PP) - Page 11 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194

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

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

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

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

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

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

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

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

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

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

IV. Decision Making

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

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

If the parties are unable to agree upon a major decision affecting the Minor Child (such major decisions shall include those as to education, non-emergency healthcare (specifically vaccinations), extracurricular activities, and religious upbringing), then there shall be an obligation to confer and consult in good faith. Said "good faith conferral" shall be evidenced by one party sending an e-mail including an alert within the subject line such as "Medical Issue", "Religious Issue", "Extracurricular Issue" or "Educational Issue" as appropriate, about the particular disputed issue to the other party's primary e-mail address.

The party in receipt of the e-mail shall then have forty-eight (48) hours to respond. If he or she fails to respond within forty- eight (48) hours, then he or she shall be deemed to have consented to the position and/or proposal.

The parties acknowledge and agree that a "good faith conferral" does not require that the parties reach a consensus, but rather that they communication procedure described herein is effectuated. The parties agree that their communication with regard to consulting on the child's major issues shall (a) be via email only, except in the case of emergencies; (b) not be used to harass the other party (i.e. shall be related to a legitimate issue regarding the child and not used to denounce the other parent); (c) not include derogatory or condescending language; (d) not include profanity; (e) be prompt (responding as soon as reasonably able); and (f) not exceed a reasonable exchange (in most cases 2-3 emails from each parent). If a party violates any of the provisions provided within subparagraphs (a) through (e) herein, then the other party can discontinue communication on that particular issue.

If, after the good faith conferral requirement has been satisfied, the parties are still unable to agree upon a major decision affecting the Minor Child, then final decision-making authority with respect to same

Parenting Plan (PPP, PPT, PP) - Page 12 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



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shall be allocated jointly, as follows, and the V. Dispute Resolution provision, below shall be implemented:

Education decisions joint

Non-emergency health care joint

Religious upbringing each parent shall have the right to take

the Child to a church of their choosing

when the child is with them

Extracurricular activities joint

Emergency healthcare. With respect to emergency healthcare decisions, irrespective of who is assigned decision making authority for non-emergency care herein below, life sustaining medical treatment and/or procedures for the Minor Child shall be implemented and continued until such time that both parties agree otherwise.

4.3 Restrictions in Decision Making

Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

V. Dispute Resolution

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

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

mediation by Larry Besk or other agreed mediator.

The cost of this process shall be allocated between the parties as follows:

50% petitioner 50% respondent.

Parenting Plan (PPP, PPT, PP) - Page 13 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



The dispute resolution process shall be commenced by notifying the other party by written request (email constitutes a written request).

In the dispute resolution process:

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- (a) Preference shall be given to carrying out this Parenting Plan.
- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.
- (e) The parties have the right of review from the dispute resolution process to the superior court.

VI. Other Provisions

There are the following other provisions:

- Each parent shall be entitled to complete and full information regarding 6.1 the Minor Child from any of the Minor Child's teachers, coaches, instructors, or activity instructors, as well as any and all doctors, pediatricians, dentists, psychologists, psychiatrists, consultants, or specialists attending or examining the Minor Child, and to have copies of any reports given by any of these individuals to either parent. Each party shall have direct access to report cards, school pictures, and any and all other similar documents and records regarding the Minor Child's education. Each party shall have the right to contact and communicate directly with teachers, doctors, or other professionals providing any service of any kind for the Minor Child. This paragraph shall act as a full release to said third parties to provide both parties with any and all records concerning any of the Minor Child, including, but not limited to, school records, extracurricular records, medical reports, and any and all calendars reflecting activities in which the Minor Child participates.
- 6.2 The parties may, by mutual agreement, vary their custodial time with the Minor Child; however, such agreement shall not be a binding court order, nor shall it constitute a defense for contempt unless agreed upon

Parenting Plan (PPP, PPT, PP) - Page 14 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194



The parties may, by mutual agreement, vary their custodial time with the Minor Child; however, such agreement shall not be a binding court order, nor shall it constitute a defense for contempt unless agreed upon in writing. Custody shall only be modified by court order. Should the parents disagree about this parenting plan or wish to modify it, they must make a good faith effort to resolve the issues between them.

Neither parent shall smoke or consume marijuana while the child is in their care, or within 12 hours prior to having the child in their care.

VII. Declaration for Proposed Parenting Plan

I declare under penalty of perjury under the laws of the state of Washington that this plan has been proposed in good faith and that the statements in Part II of this Plan are true and correct.

12/24/2015, Seattle, WA Date and Place of Signature

VIII. Order by the Court

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

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may

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

If a parent fails to comply with a provision of this plan, the other parent's

Judge/Commissioner

Parenting Plan (PPP, PPT, PP) - Page 15 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194

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Presented by:

Helsell Fetterman LLP

Approved for entry:

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Lisa M. Gilmore, WSBA# 24899 Attorneys for Petitioner/Father

H. Michael Finesilver, WSBA# 5495 Attorney for Respondent/Mother

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Parenting Plan (PPP, PPT, PP) - Page 16 WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.016, .181; .187; .194

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March 15, 2018 - 12:02 PM

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: 95485-2

Appellate Court Case Title: In the Matter of the parentage and Support of Ella Schmidt

Superior Court Case Number: 15-3-07774-4

The following documents have been uploaded:

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Answer/Reply - Objection

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