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No. 95726-6

Court of Appeals No. 75978-7-I

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

MICHAEL FARIS,

Respondent,

v.

CHIHARU FARIS,

Petitioner.

PETITION FOR REVIEW

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INTRODUCTION

The parties' parenting plan includes multiple RCW 26.09.191(3) restrictions based on Respondent Mike Faris' significant mental illness and history of substance abuse. The plan included a provision allowing Petitioner Chiharu Faris to temporarily suspend visitation when Mike's decompensation poses a risk to the parties' physically, cognitively, and speech-delayed child, C.

Mike's mental illness causes an obsessive and irrational fear that C is being sexually assaulted. This has driven him to examine C's genitals before subjecting her to a sexual assault evaluation at Children's Hospital, where staff were so alarmed they called CPS on Mike. Mike continues to perseverate on these irrational fears.

Mike exhibited significant decompensation shorty after trial, insistent that then three-year-old C was simulating sex, so he needed to take action. Chiharu had to temporarily suspend visitation.

When Mike sought to enforce or clarify the parenting plan, the trial court *sua sponte* removed the provision allowing Chiharu to temporarily suspend visitation. No modification was pending, nor was one in C's best interest. Yet the appellate court affirmed, holding that this provision was a mere procedure, not a right, so no modification occurred. This Court should accept review and reverse.

ISSUES PRESENTED FOR REVIEW

1. Did the trial court modify the parenting plan by *sua sponte* removing a provision allowing Chiharu to temporarily suspend visitation and ask Mike to get a mental health evaluation when his decompensation places C at risk?

2. Do fit parents have the *right* to protect their children from harm, and if so, did the appellate court err in holding that allowing Chiharu to temporarily suspend visitation was not a right, but a mere procedure?

FACTS RELEVANT TO PETITION FOR REVIEW

A. Though a joy, the parties' young daughter is very difficult to parent given her profound physical, speech, and cognitive delays.

Petitioner Chiharu Faris became pregnant soon after she and Respondent Michael Faris began dating. CP 646. The parties quickly married, and their daughter C was born five months later in June 2010. CP 47, 85. The parties' marriage soon became strained, largely due to Mike's persistent marijuana use and accusatory behaviors (both associated with his Bipolar Disorder) and C's significant physical, speech, and cognitive delays. CP 646-50.

C was born with an extra digit and hip dysplasia. CP 647. When she was only two weeks old, C was admitted to the hospital

with Failure to Thrive Syndrome. *Id*. The parties then learned that C suffers from multiple diagnoses including Global Developmental Delay, affecting her speech, cognition, and physical development. CP 88, 648. C had several feeding difficulties requiring a feeding tube. CP 648. She developed cardiac problems when she was just three-months old, and later developed febrile seizures that may progress to epilepsy. CP 194, 648-49.

Cognitively, C behaves as if she were several years younger than her age. She has "very limited speech and verbal ability and is very difficult to understand." CP 691.

B. Parenting is particularly difficult for Mike, whose mental health and drug use at times pose a risk of harm to C.

Mike has Bipolar and Attention-Deficit Hyperactivity Disorders, for which he uses Lithium, Valium, Abilify, and Adderall. CP 51, 654, 749-50. He also has a long history of alcohol dependence and cannabis abuse. CP 51, 654, 736, 749-50. He uses marijuana daily. BR 4.

Caring for C was (and is) both difficult and exhausting. CP 647-49. The parties' understandable stress was compounded by Chiharu's disagreement with Mike's daily marijuana use, and Mike's persistent – and incorrect – accusations that Chiharu was cheating

on him. CP 646-50. The parties separated in July 2012, and Mike filed for dissolution in January 2014. CP 1-2.

Despite reasonable concerns about Mike's mental health and drug use, Chiharu was committed to preserving the father-daughter relationship, and the parties attempted shared parenting until May 2014. CP 1, 48, 369. At that point, however, Mike became convinced that C had been sexually assaulted while in Chiharu's care. CP 651-52. Mike acknowledges that he examined C's genital area twice, checking her hymen for signs of sexual assault. CP 41, 51, 183-84, 370, 651-53. Without contacting Chiharu or one of C's many doctors, Mike called CPS, who instructed him to take C to the ER. CP 651.

The medical records from C's sexual assault evaluation at Seattle Children's Hospital reveal that there were no indications of sexual assault. CP 652-53. Mike nonetheless remained "very convinced that [C] was abused," perseverating on her "hymen and the appearance of her GU exam." *Id*. He "project[ed] inappropriate sexual behaviors into [C's] normal behavior," such as perceiving hand gestures "like she was sucking on a penis." CP 651. Children's staff were so concerned about Mike's behavior that they reported him to CPS. CP 690.

C. Presiding over a motion to clarify or enforce the parenting plan, the trial court *sua sponte* amended it to remove a provision that allowed Chiharu to temporarily suspend visitation when Mike's mental health poses a risk to C.

Before trial, the parties settled all issues other than the parenting plan, a complex matter given C's physical and developmental delays, and Mike's significant mental health issues. CP 48. Judge Richard Eadie heard considerable testimony from multiple witnesses establishing that Mike is the only person who thought C was being abused. CP 125-26, 129, 131, 691. In short, Mike's beliefs and fears about C are "irrational." CP 691. Mike sexualizes "very normal childhood behaviors . . . creating an atmosphere of fear when he is caring for" C. CP 691. His paranoia had a "significant" impact on C. CP 768. His perseverations prevent him from seeing "that his own mental health problems and lack of parenting skills are the real issue." CP 691.

The trial court found that Mike "disregarded" the mental health evaluation the Commissioner ordered before trial. CP 89, 210. Mike's perseverations continued – he remained hyper focused on Chiharu and her household, continued to believe Chiharu was dating someone who was assaulting C, continued sexualizing C's benign

words and actions, and continued to suffer from paranoia and "suspicious anxiety." CP 88-90.

Despite finding that Mike's mental health "much improved" when he stopped using marijuana, the court declined to restrict Mike's use absent a full evaluation on the impact of marijuana. CP 88-90, 207. The court entered RCW 26.09.191(3) restrictions based on Mike's long-term impairment resulting from substance abuse, and long-term emotional or physical impairment that interferes with the performance of parenting functions. CP 75-77, 88. The court designated Chiharu the primary residential parent, awarded her sole decision-making, and conditioned Mike's visitation on his participation and compliance in psychiatric care. CP 79, 88.

The parenting plan gave Chiharu the right to "temporarily suspend visitation with the father and request that he obtain a mental health evaluation" if "at any point" Mike behaved "erratically," or otherwise exhibited "objective evidence of decompensation or elevated paranoia":

> If at any point, the father is acting erratically or there is objective evidence of decompensation or elevated paranoia, the mother may temporarily suspend visitation with the father and request that he obtain a mental health evaluation from a neutral medical provider/psychiatrist with collateral contact with the mother. Make up time shall be given for any time missed (capped at 8 overnights) and residential time shall

> resume when the father has a letter from the doctor approving him for overnights. Mother shall file affidavit/declaration with the court setting forth grounds for interrupting father's residential time within 3 business days of the incident.

CP 76, ¶ 3.10. If Chiharu needed to use paragraph 3.10, she was required under the parenting plan to file a declaration within three days of the "incident," "setting forth grounds for interrupting father's residential time." CP 76. Other than filing a declaration, there was no court involvement. *Id*. To resume visitation, Mike had to obtain a mental health evaluation from a "neutral medical provider/psychiatrist with collateral contact with the mother," approving him for overnights. *Id*.

Right around the time Judge Eadie ruled, Mike began telling Chiharu that speech-delayed C was saying "crazy daddy," refusing to believe that she was trying to say "C's daddy." CP 82, 240. Within days of the ruling, Mike began emailing Chiharu, alleging that C was making sexual statements. CP 767. He then called Chiharu sounding "desperate," reporting that C "was moving her hips in a sexual way like she was having sex with somebody." CP 216, 767. Mike perseverated on these allegedly sexual behaviors, repeatedly renewing requests to take C to a psychologist and telling Chiharu that "he needed to make an action." CP 167, 216, 243, 767.

Mike's behavior paralleled that which he exhibited immediately before examining C's genitals and unnecessarily subjecting her to a sexual-assault evaluation. CP 167, 252. Thus, in August 2015, Chiharu exercised paragraph 3.10, allowing her to "temporarily suspend visitation with the father and request that he obtain a mental health evaluation . . .." CP 76, 214-19.

Mike moved to enforce and clarify the parenting plan on November 6, 2015, based on a mental health evaluation recommending supervised visits for 60 days. CP 134-40. The court denied Mike's request to accept that evaluation, ordering him to obtain a "full mental health evaluation to address [his] current diagnosis, his perseveration on sexualizing [C's] actions, analyze the current medication for his diagnosis and address whether marijuana is appropriate to use based on how it interacts with [Mike's] mental health and current prescriptions." CP 317-18. The commissioner later adopted that evaluator's conclusion that Mike should have a clean UA before resuming the residential schedule. CP 469, 813. But on revision, Judge Eadie reinstated unsupervised overnight visits based on the evaluation from Mike's psychiatrist, who opined that marijuana was not causing his "obsessional or para-psychotic thoughts," but did not address overnights. RP 36, 42.

Though the underlying motion was to clarify or enforce, Judge Eadie announced that he would "change" the parenting plan, which gave Chiharu too "broad" an ability to "interven[e]." RP 43. The court later amended the parenting plan to remove paragraph 3.10 and replace it with a provision that strips Chiharu of her right to temporarily suspend visits, forcing her into court:

> If the mother feels that the father is exhibiting decompensation in a way that would be against the best interest of the child, Mother is to bring a motion before the Family Law Motions Calendar to address the issue and the court can determine if it is prudent to suspend unsupervised visits for the child.

CP 630. The court denied Chiharu's request to appoint a post-dissolution GAL to mitigate this *sua sponte* change. CP 611. Chiharu timely appealed. CP 633-36.

D. The appellate court affirmed, holding that the provision allowing Chiharu to temporarily suspend visitation afforded her only procedure, not a substantive right.

Chiharu argued on appeal "that the trial court improperly modified the parenting plan under the guise of a clarification." Op. at 4. Mike conceded "that if the trial court's change to the parenting plan was a modification, it was invalid." *Id.*

The appellate court remarked that while parties "always have the ability to disregard a court order," they risk contempt by doing so, and that to "avoid such a risk, a parent would normally seek a

temporary order from the court before disregarding it." *Id.* at 7. But the "trial court appreciated that Michael's mental health could at times pose a risk to [C and] wanted Chiharu to have an alternative procedure for immediate, temporary suspension of Michael's contact with" C. *Id.*

The appellate court held that in striking paragraph 3.10 from the parenting plan, the trial court "removed the alternative procedure." *Id.* at 7. In replacing it with a provision forcing Chiharu "to resort to the family law motions calendar to suspend the residential schedule," the trial court effectively "returned to the default procedures of the statute authorizing temporary orders, RCW 26.09.060, and applicable civil rules." *Id.* at 7-8. This change, according to the appellate court, did not alter Chiharu's substantive rights, so was merely a clarification, not a modification. *Id.* at 8.

REASONS THIS COURT SHOULD ACCEPT REVIEW

A. The appellate court's decision that the trial court merely clarified the parenting plan by removing the provision allowing Chiharu to temporarily suspend visitation conflicts with decisions from this Court and the appellate courts holding that a modification extends or reduces a right conferred in the parenting plan.

Sua sponte removing from the parenting plan Chiharu's right to temporarily suspend visitation is a modification, where it reduced Chiharu's right to protect C when Mike's mental illness places C at

risk. The appellate decision affirming the trial court conflicts with numerous decisions from this Court and the appellate courts. This Court should take review and reverse. RAP 13.4(b)1 & 2.

In ***Rivard v. Rivard***, this Court's first decision "squarely" addressing the "distinction between a modification and a clarification with regard to visitation rights," this Court held that a modification extends or reduces visitation rights while a clarification "merely" defines the rights already given:

> A modification of visitation rights occurs where the visitation rights given to one of the parties is either extended beyond the scope originally intended or where those rights are reduced, giving the party less rights than those he originally received. A clarification, on the other hand, is merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary.

75 Wn.2d 415, 416, 418, 451 P.2d 677 (1969) (affirming the "clarification" setting forth a specific visitation schedule, where the parties disagreed on the decree's meaning of "reasonable visitation rights").[1] As an example of a modification, this Court cited ***Edwards v. Superior Court***, in which the decree awarded the mother "custody" and gave the father "reasonable visitation rights." ***Rivard***,

[1] A modification requires a substantial change in circumstances. ***Marriage of Holmes***, 128 Wn. App. 727, 734, 117 P.3d 370 (2005); RCW 26.09.260. Modifying a parenting plan outside this statutory framework is an abuse of discretion. ***Marriage of Christel***, 101 Wn. App. 13, 22, 1 P.3d 600 (2000).

75 Wn.2d at 417-18 (discussing 37 Wn.2d 8, 221 P.2d 518 (1950)). The father later remarried, moved to Montana, and sought to exercise visitation for six weeks every summer in Montana. 75 Wn.2d at 417. The mother filed a writ of prohibition, seeking to restrain the superior court from assuming jurisdiction, and arguing that the father's request would amount to a modification of the decree. *Id.* This Court held that the father's request to take the children outside the jurisdiction for six weeks "went further than a mere interpretation of the visitation privilege and the proceeding," so would require a "modification of the decree." *Id.*

As an example of a clarification, this Court cited ***Paulson v. Paulson***, in which the decree awarded "custody" to the father, and awarded the mother "reasonable visitation during vacation and holiday periods." *Id.* at 418 (discussing 37 Wn.2d 555, 225 P.2d 206 (1950). The mother later asked the trial court to order the father to surrender the children for visitation for the entire summer. *Id.* The trial court denied that motion, ordering visitation every other weekend and for two weeks in the summer. *Id.* This Court affirmed, holding that the trial court's order clarified, but did not modify, the decree. *Id.* at 419.

This Court has not substantively revisited ***Rivard***. Thirty years later, the appellate court reiterated ***Rivard***'s holding that a modification extends or reduces rights conferred in the decree, while a clarification merely defines rights already given that are not completely spelled out. ***Christel***, 101 Wn. App. at 22. The appellate court explained, a "court may clarify a decree by defining the parties' respective rights and obligations, if the parties cannot agree on the meaning of a particular provision." 101 Wn. App at 22.

There, the parenting plan required the parties to consult and jointly decide school placement, and to live within a "reasonable travel area." *Id*. at 16-17. The trial court impermissibly modified the parenting plan by requiring the parties to submit to dispute resolution, stating that failing to do so would waive the right to seek to change school placement. *Id*. at 19-20. The court impermissibly modified the plan again by changing it to provide that if the mother moved beyond the "reasonable travel area," then the residential schedule would reverse pending completion of the dispute resolution process. *Id*. at 20. These changes went beyond explaining the parenting plan, or filling in procedural details. *Id*. at 23-24. The same is true here.

Following ***Christel***, the appellate court has repeatedly reiterated that a "'modification' occurs 'when a party's rights are

either extended beyond or reduced from those originally intended'" and that a "'clarification' is 'merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary.'" ***Holmes***, 128 Wn. App. at 734-35 (quoting ***Christel***, 101 Wn. App. at 22 (quoting ***Rivard***, 75 Wn.2d at 418)); *see also* ***Marriage of Michael***, 145 Wn. App. 854, 859, 188 P.3d 529 (2008); ***Marriage of Thompson***, 97 Wn. App. 873, 879, 988 P.2d 499, (1999); ***Marriage of Jarvis***, 58 Wn. App. 342, 346-47, 792 P.2d 1259 (1990).

1. The *sua sponte* change is a modification.

The straightforward question posed by these cases is this: did the trial court's *sua sponte* "change" extend or reduce a right Chiharu possessed under the parenting plan? ***Rivard***, ***Christel***, ***Holmes***, *supra*. The answer is plainly yes. The parenting plan conferred upon Chiharu the right to "temporarily suspend visitation with the father and request that he obtain a mental health evaluation." CP 76. The only "procedure" was that *after* temporarily suspending visitation, Chiharu had to file a declaration within three days, stating her reasons for the suspension. *Id.* All other "procedure" related to the steps Mike had to take to resume visitation. *Id.*

In short, the new parenting plan "on its face imposes new limits on the rights of the parents." ***Christel***, 101 Wn. App. at 23. Chiharu's right to temporarily suspend visitation to protect C is gone.

2. It is not a mere clarification.

Equally plainly, Judge Eadie's *sua sponte* "change" is not a clarification – a definition of rights given that are not completely spelled out. ***Rivard***, ***Christel***, ***Holmes***, *supra*. The quintessential clarification occurs when the trial court uses a term like "reasonable visitation" to "leave considerable latitude in the matter of visitation privileges," but when the parties cannot agree, the court must "define the privilege so minutely that there can be no opportunity for misunderstanding." ***Rivard***, 75 Wn.2d at 417-18 (quoting ***Paulson***, 37 Wn.2d at 560).

There can be no clarification here, where the parenting plan did not fail to spell out the parties' rights or define terms. ***Rivard***, ***Christel***, ***Holmes***, *supra*. Rather, the parenting plan plainly gave Chiharu the right to temporarily suspend visitation and to ask Mike to get a mental health evaluation. CP 76. The parties did not disagree on the meaning of that provision. ***Christel***, 101 Wn. App at 22.

Indeed, Judge Eadie did not "change" the parenting plan because it was left open or unclear, but because: (1) he did not recall

requiring a doctor to approve Mike for overnights; and (2) paragraph 3.10 was not used as he intended. RP 42-43. The old parenting plan stated that "residential time shall resume when the father has a letter from the doctor approving him for overnights." CP 76. Removing that term and allowing a commissioner to decide when visitation resumes (and is suspended) modifies the parenting plan, regardless of whether the court remembered this term. The court's second rationale fairs no better. Judge Eadie could have offered guidance on how he intended paragraph 3.10 to operate, but removing it entirely modified the parenting plan. It is irrelevant that the court may have "viewed its new provisions . . . as a solution to the underlying conflict between the parties." ***Christel***, 101 Wn. App. at 23.

3. The appellate decision leaves Chiharu unable to protect C when Mike's mental illness poses a risk of harm.

The appellate court states that "[p]arents nonetheless always have the ability to disregard a court order. Doing so, they risk being held in contempt of court." Op. at 7. This is exactly what Chiharu faces under the new plan. Under the old plan, she had the right to suspend visits to protect C. Under the new plan, she does not.

The court continued, to "avoid such a risk, a parent would normally seek a temporary order from the court before disregarding

it." *Id.* While that might be the "default" it is not what the parenting plan provided. *Id.* at 8. Chiharu previously had the right to temporarily suspend visits herself when Mike put C at risk. CP 76. The law presumes that Chiharu acts in C's best interest. ***Troxel v. Granville***, 530 U.S. 57, 68, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

The appellate court states, the parenting plan "did not confer on Chiharu the right to change the substantive parenting plan." Op. at 7. Chiharu did not "change" the parenting plan – she followed it exactly, temporarily suspending visitation and documenting her reasons in a declaration. CP 317-18.

Finally, the appellate court rationalized: the "new order required Chiharu to resort to the family law motions calendar to suspend the residential schedule. In effect, the trial court returned to the default procedures . . .." Op. 7-8. The new parenting plan replaces Chiharu's right to temporarily suspend visitation with nothing but "default procedures." The right is gone – the "default procedures" do not work.

In the past (and present) Mike suffers paranoid delusions, such as that people are breaking into his apartment. CP 691, 765-68. He calls Chiharu, desperately stating his obsessive – and mistaken – beliefs that C is being sexually abused and his requests

for a psychological examination, threatening to take action. CP 41, 51, 183-84, 370, 651-53, 690-91, 765-68. He exhibits concerning behaviors to care providers who report their concerns to Chiharu. CP 125-26. He seeks C's medical records from Children's Hospital, which Chiharu learns about only by happenstance. CP 575-76, 591. He places C in an "atmosphere of fear," and may harm her again himself. CP 41, 51, 183-84, 370, 691.

Then Chiharu is faced with a decision that is both urgent and entirely predictable: what to do on a Thursday afternoon when her young, developmentally delayed child is supposed to have overnight visitation with Mike, whose level of decompensation places C at risk. Bringing a motion on the family law motions calendar takes at least one week, even if the court shortens time. That does nothing for Chiharu (or C) on Thursday afternoon, hours before a visit. That afternoon, Chiharu has two choices – violate the parenting plan and risk contempt, or send C into a potentially harmful situation.

In sum, C is a special child with special needs, who does not have the ability to protect herself, or to speak about the events in her mentally-ill father's home. C needs and deserves a parenting plan that allows time with her father, but protects her as well. Taking away Chiharu's right to temporarily suspend visitation to protect C plainly

reduced her rights under the parenting plan. This Court should accept review and reverse this improper modification.

B. The appellate decision conflicts with numerous decisions from this Court and the appellate courts that parents have a fundamental right to the care of their children.

"The United States and Washington Supreme Courts have long recognized parents' fundamental rights to the care and custody of their children. The 'rights to conceive and to raise one's children have been deemed 'essential,' 'basic civil rights of man' . . .." ***Custody of T.L.***, 165 Wn. App. 268, 280, 268 P.3d 963 (2011) (collecting cases). The right to the "care" of one's child assumes a *right* to protect her from an adult whose mental illness places her at risk. The appellate court's holding that the ability to temporarily suspend visitation to protect C is not a right, but a mere procedure, offends this basic tenant of the law, and presents a question of constitutional magnitude. Op. at 7-8; RAP 13.4(b)1-3.

C. The appellate decision conflicts with numerous cases and statutes designed to protect children in the parenting-plan context.

The point of RCW 26.09.191(3) restrictions is to "protect the child from physical, mental, or emotional harm." ***Marriage of Chandola***, 180 Wn.2d 632, 648, 327 P.3d 644 (2014). The *sua sponte* change to "default procedures" is no restriction at all. Nor is it

in C's best interest. In this regard, the appellate decision conflicts with ***Chandola*** (and others) and also with RCW 26.09.260 and cases holding that modifications must be in the child's best interest. *E.g.* ***Custody of Halls***, 126 Wn. App. 599, 606-07, 109 P.3d 15 (2005).

D. This matter presents an issue of substantial public interest.

Motions to clarify or modify family law orders are common. There is a substantial public interest in furthering the development of the governing law, which this Court has not substantively revisited since ***Rivard***. And unfortunately, this families' situation is not uncommon. Many people need affordable and effective ways to protect a child while fostering residential time with a mentally ill parent. Thus, review is also appropriate under RAP 13.4(b)(4).

CONCLUSION

This Court should accept review and reverse.

RESPECTFULLY SUBMITTED this 13th day of April 2018.

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APPENDIX

1. ***Faris v. Faris***, No. 75978-7-I, Unpub. Op. (February 20, 2018)

2. ***Faris v. Faris***, No. 75978-7-I, Order Denying Motion for Reconsideration (March 14, 2018)

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of MICHAEL ANTHONY FARIS Respondent, and CHIHARU NAKANO FARIS, Appellant.	)	No. 75978-7-I DIVISION ONE UNPUBLISHED OPINION FILED: February 20, 2018

APPELWICK, J. — The trial court purported to clarify a parenting plan. The mother claims that the action was an improper modification, rather than a clarification. We affirm.

FACTS

Michael Faris and Chiharu Faris were married. They had a child together. Then, they dissolved their marriage.

Michael[1] had a history of excessive marijuana use, mental health problems, and erratic behavior, including obsessing over the child being sexually abused. To address this, section 3.10 in the parenting plan allowed Chiharu to suspend his visitation rights:

> If at any point, the father is acting erratically or there is objective evidence of decompensation or elevated paranoia, the mother may temporarily suspend visitation with the father and request that he

[1] We use first names for clarity. We intend no disrespect.

> obtain a mental health evaluation from a neutral medical provider/psychiatrist with collateral contract with the mother. Make up time shall be given for any time missed (capped at 8 overnights) and residential time shall resume when the father has a letter from the doctor approving him for overnights. Mother shall file affidavit/declaration with the court setting forth grounds for interrupting father's residential time within 3 business days of the incident.

The parenting plan was entered on July 27, 2015.

Chiharu invoked section 3.10 one week after the parenting plan was entered. She alleged that Michael was again showing signs that he was obsessing over their daughter being sexually abused.

Michael sought to regain his visitation rights, and underwent a psychological examination. But, Chiharu did not reinstate his visitation, because she did not believe that the evaluation was sufficient.

Michael moved for enforcement and clarification of the parenting plan. Specifically, he asked that the trial court reinstate his time with his child, award make up time, and clarify that he had satisfied the psychological evaluation requirement.

On August 26, 2016, over one year after Michael's visitation had been suspended, the trial court issued an order in Michael's favor.[2] That preliminary order provided that a final order be entered at a later date. And, the accompanying

[2] A commissioner had previously ruled on Michael's motion. Both parties moved for revision. The trial court's order was on the parties' respective motions for revision of the commissioner's order.

oral ruling stated that section 3.10 had been used by Chiharu in a way that the trial court had not intended:

> But I do think that that paragraph was used in a way that was not the intent of this Court. I'm a little concerned that it was taken up so quickly, one week after, when we were dealing with -- I didn't see anything in here where there was an abrupt change of circumstances. But nevertheless, there should be a way, in terms of intervening, when there is troubling contact by the father. I agree, there should be a way of intervening. But I think that this way of intervening was too broad.
>
> . . . .
>
> And I think, in the Court's view, at the time we were doing that, if there was some event or occurrence or situation where Dad was kind of -- disturbing conduct, you know, and something that would cause somebody to be uneasy, that that would be treated, and that we would go back to.
>
> . . . .
>
> I don't know what happened with it regarding acting erratically, but I am surprised that, right within a week or so after we're through trial, that this is revoked and had the consequences that it did. I think that the eight days make-up wasn't with the idea in mind that it was something that would be addressed very quickly. It was kind of a transitory condition or something like that that was happening.

The final written order entered on October 20 stated,

> The parenting Plan is clarified in the following way:
>
> o If the mother feels that the father is exhibiting decompensation in a way that would be against the best interests of the child, Mother is to bring a motion before the Family Law Motions Calendar to address the issue and the court can determine if it is prudent to suspend unsupervised visits for the child.
>
> o The motion must be supported by evidence brought by the mother.

- The Family Law Motions Calendar will, to the best of their ability, craft a remedy that will serve the aim of reinstating the Parenting Plan upon adequate assurances of restored stability of the father.

- The father's treating therapists must provide quarterly reports to the Wife and Husband shall sign a release for the same. The reports should provide treatment records that may redact any notes that are not relevant as to the mother, Chiharu Faris, the daughter, . . . and that are not related to or relevant to any perseveration on actions or behavior of the daughter.

Chiharu appeals.

DISCUSSION

Chiharu argues that the trial court improperly modified the parenting plan under the guise of a clarification.[3] Both parties concede that if the trial court's change to the parenting plan was a modification, it was invalid.

"Generally, a trial court's rulings dealing with the provisions of a parenting plan are reviewed for abuse of discretion."[4] In re Marriage of Christel, 101 Wn.

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[3] Michael argues that this appeal should be dismissed as untimely, because the notice of appeal was not filed within 30 days of the final order below. Michael contends that the August 26 order, and the September 21 denial of reconsideration of that order, constituted the final judgment. We disagree. Notably, the September 21 order that denied Chiharu's motion for reconsideration stated that "[t]he final order required by the 8/26/16 handwritten order . . . to be presented by 8/30/16, shall be submitted, in the same manner as a motion without oral argument, within 10 days of this order." (Emphasis added.) That order had not been submitted prior to the motion for reconsideration. The order being appealed, which contains the specific clarification at issue, was signed by the trial court on October 18, and filed on October 20. Chiharu filed her notice of appeal on October 27. This appeal was timely.

[4] Chiharu argues that the trial court's review of a parenting plan clarification is de novo, but review of a modification is for abuse of discretion. She cites Stokes v. Polley, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001). But, there the court reviewed de novo a summary judgment order that was based purely on interpretation of a dissolution decree. Id. It did not squarely address the validity of a clarification to

App. 13, 20-21, 1 P.3d 600 (2000). And, if the trial court was modifying the parenting plan under the guise of a clarification, that would amount to an abuse of discretion because it would be an error of law. State v. Tobin, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007).

A "clarification" of a parenting plan is merely a definition of the rights that have already been given and those rights may be completely spelled out if necessary. In re Marriage of Holmes, 128 Wn. App. 727, 734-35, 117 P.3d 370 (2005). A court may clarify a decree by defining the parties' respective rights and obligations, if the parties cannot agree on the meaning of a particular provision. Christel, 101 Wn. App. at 22. Permissible clarifications include "explaining the provisions of the existing plan," and "filling in procedural details" of the existing plan. See id. at 23.

By contrast, a modification occurs when a party's rights are either extended beyond or reduced from those originally intended, or where those rights are reduced, giving the party less rights than those that he or she originally received. Rivard v. Rivard, 75 Wn.2d 415, 418, 451 P.2d 677 (1969).

Chiharu relies on Christel to conclude the court modified the decree here. In Christel, the original parenting plan required the parents to consult with each other and jointly make a decision regarding where to enroll the child in school. 101 Wn. App. at 1617. But, the trial court revised the school enrollment provision to

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a parenting plan. See id. Christel is the clearest authority as to the proper standard of review.

require the parties to submit to dispute resolution. Id. at 19-20. And, it stated that failure to adhere to the dispute resolution provisions constituted an outright waiver of the right to seek a change in the child's school enrollment. Id. The original parenting plan also required each parent to live within a "reasonable travel area," which it defined as within "approximately" one-half hour of the other. Id. at 16-17. But, the trial court also altered this provision so that if the mother moved beyond the reasonable travel area, the residential schedule would be flipped. Id. at 20. The mother and father would assume the other's prior residential schedule pending completion of a dispute resolution process. Id.

The mother appealed, arguing that the trial court modified the parenting plan, rather than merely clarifying it. Id. at 22. This court agreed:

> This language goes beyond explaining the provisions of the existing parenting plan. The language goes beyond filling in procedural details. The order on its face imposes new limits on the rights of the parents. It is not a clarification of the existing parenting plan.

Id. at 23. The trial court's order was therefore vacated. Id. at 24.

In contrast to the modification found in Christel, Rivard is an example of a clarification. 75 Wn.2d 419. There, the divorce decree provided the father with "reasonable visitation rights."[5] Id. The parties disagreed as to what amounted to

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[5] Rivard was decided prior to adoption of the 1973 dissolution of marriage act, ch. 26.09 RCW. See Childers v. Childers, 89 Wn.2d 592, 595, 575 P.2d 201 (1978) (referring to the 1973 adoption of the dissolution act). Prior to that act, the primary statute governing divorce in Washington was the Divorce Act of 1949. See 20 SCOTT. J. HORNSTEIN, WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW § 43:2, at 688 (2d ed. 2015).

reasonable visitation rights. Id. The trial court ordered that the father would be entitled to visitation on alternate weekends and one weekday evening per week. Id. This, according to our Supreme Court, merely clarified the procedural gaps left by the "reasonable visitation rights" ambiguity. See id.

Only the court has the authority to modify an order. Parents do not. Parents nonetheless always have the ability to disregard a court order. Doing so, they risk being held in contempt of court.[6] To avoid such a risk, a parent would normally seek a temporary order from the court before disregarding it. Here, it is apparent the trial court appreciated that Michael's mental health could at times pose a risk to his daughter. It is also apparent the trial court wanted Chiharu to have an alternative procedure for immediate, temporary suspension of Michael's contact with his daughter. The procedure required documentation of the basis for suspending contact within three business days of doing so. It also required make up of residential time. This procedure, if properly followed, likely would have insulated Chiharu from the risk of a contempt finding. But, it did not confer on Chiharu the right to change the substantive parenting plan.

The trial court was persuaded the alternative procedure was not used as intended and, in the order challenged here, removed the alternative procedure. The new order required Chiharu to resort to the family law motions calendar to

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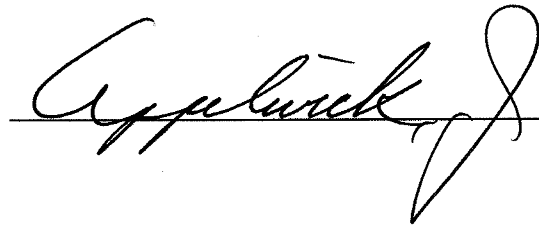
[6] "In any kind of case, a party who disregards a court order may be subject to contempt sanctions." Bellevue Sch. Dist. v. E.S., 148 Wn. App. 205, 213, 199 P.3d 1010 (2009), rev'd on other grounds, 171 Wn.2d 695, 257 P.3d 570 (2011).

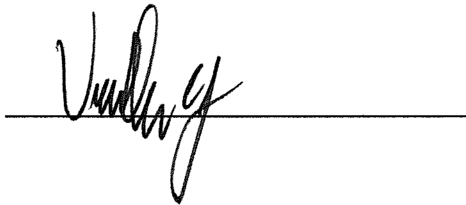
suspend the residential schedule. In effect, the trial court returned to the default procedures of the statute authorizing temporary orders, RCW 26.09.060, and applicable civil rules.

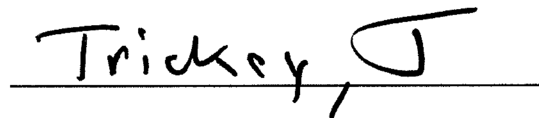
The alternative procedure may well have been an easier, quicker and less expensive means of intervention, but that is a description of the ancillary benefits of the procedure, not of substantive rights. The elimination of the alternative procedure was not a change in the substantive rights of the parties. This change was a clarification, not a modification of the parenting plan. The trial court did not abuse its discretion in ordering this clarification.

We affirm.



WE CONCUR:





FILED
3/14/2018
Court of Appeals
Division I
State of Washington

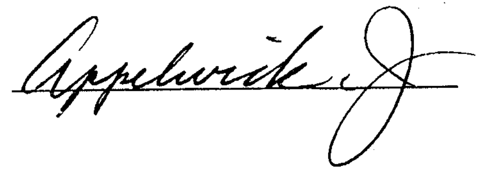
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of MICHAEL ANTHONY FARIS, Respondent, and CHIHARU NAKANO FARIS, Appellant.	No. 75978-7-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Chiharu Faris, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:



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