

W4884-7

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 APR 16 PM 2:38

No. 6428471

COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

DIANA MAE BLOME,

Appellant,

v.

DOUGLAS R. BLOME,

Respondent.

RESPONDENT'S REPLY BRIEF

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Final Order Parenting PlanA-1

I. ASSIGNMENT OF ERROR

Assignment of Error Number 1. The court erred in giving Diana Blome joint decision making authority in the Parenting Plan.

Issues Relating to Assignment of Error Number 1:

1. Were the court's findings of fact insufficient to justify a modification of the parenting plan to give Diana joint decision-making?

2. Was the grant of joint decision making in the modified parenting plan inconsistent with the court's findings and conclusions, which had adopted the Guardian ad Litem's recommendation that Douglas Blome retain sole decision-making authority?

II. STATEMENT OF THE CASE

The original parenting plan in this matter was entered on August 20, 2002 and gave the parties shared residential custody of their son, Spencer, then nearly two years old.

Douglas Blome filed a Petition for Major Modification on December 28, 2005 when he became concerned Diana's drug abuse, emotional instability and neglect threatened serious harm to Spencer when he was in Diana's custody. The Family Court Services report ordered by the Court found:

The child's present environment is detrimental to the child's physical, mental or emotional health . . . the mother's potential for drug abuse as well as increasing incidents of inappropriate or bizarre behavior is detrimental to the child's physical, mental and emotional health. (CP 39)

The court determined a reduction or restriction in the contact between Spencer and his mother was appropriate: The court's reasons for this restriction were:

(1) the mother's neglect or substantial non-performance of parenting functions; (2) the mother's long term emotional or physical impairment, which interferes with her performance of parenting functions as defined by RCW 26.09.004; and (3) the mother's abusive use of conflict creates the danger of serious damage to the child's psychological development. (CP 39)

The court accordingly entered a revised Parenting Plan, restricting Diana to limited and supervised visitation twice a week. (CP 25-29)

The Parenting Plan also stated:

The mother should have an opportunity to demonstrate a substantial change in circumstances specifically related to the basis for limitation; to have those substantial changes corroborated by data independent of the mother or father, and to move for increased custodial time and/or removal of reductions or restrictions on her visitation with the child based on those substantial changes. (CP 36)

Judge Doyle suggested steps Diana might take to demonstrate those changed circumstances, including taking parenting classes and completing a 12-step program. (CP 36)

The parenting plan did not set a date on which the plan could or should be reviewed, nor did it suggest Diana would be entitled to have the original custodial arrangement restored if she followed the court's recommendations.

On July 29, 2008 Diana moved for a modification of the 2007 parenting plan. The court found Diana had failed to show cause for a major modification, but allowed her to proceed with a petition for a minor modification.

The court appointed Matthew Jolly as Guardian ad Litem for Spencer. The GAL's report recommended Diana's residential time with Spencer should increase gradually over a period of two years; that this increase in residential time occur in three stages; and the arrangement be carefully evaluated and monitored by the GAL at each stage. The GAL also recommended Diana be required to resume therapy, and that she comply with any treatment recommendations. (CP 90-94)

The court substantially adopted the GAL's recommendations as to a gradual increase in residential time, monitoring of Diana's

progress at each stage, continued therapy for Diana, and compliance with treatment recommendations. (CP 129-131)

Diana appeals from this Order, seemingly taking the position that, once she had shown a change in circumstances, she was somehow entitled to revert to the provisions of the original parenting plan which gave her shared custody. She reaches this conclusion by arguing she is entitled to seek not merely a minor modification under RCW 26.09.260(5), but a full blown review of the entire modified parenting plan. No case in Washington has authorized such a review under such circumstances. To approve it here would be to ignore the statutory system set up by the legislature to govern requests for modification.

Facts relating to cross appeal

Douglas Blome's cross-appeal seeks a reversal of the court's modification of the 2007 parenting plan to give Diana joint decision making authority.

The January 30, 2007 parenting plan provided:

Sole decision making shall be ordered to the father for the following reasons:

One parent is opposed to mutual decision making and such opposition is reasonable based on the following criteria:

- (a) The existence of a limitation under RCW 26.09.191;

- (b) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(4)(a);
- (c) Whether the parents have demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(4)(a);
- (d) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(CP 31-32)

The court in the instant petition for modification made no findings of fact or conclusions of law specifically as to decision-making authority. Of the four factors stated in the 2007 parenting plan as justifying sole decision making, the trial court here addressed only one factor: the existence of limitations under RCW 26.09.191.

The Guardian ad Litem recommended:

[t]he existing provisions regarding decision making in section 4.2 of the Parenting Plan should remain in place.
(CP 94)

In its conclusions of law, the court adopted the GAL's recommendations except as specifically rejected. The court did not strike out the GAL's recommendation that Douglas continue to be the sole decision maker. (CP 125-131)

Nevertheless, the actual parenting plan entered pursuant to this order inexplicably gave the parties joint decision making as to major decisions.¹

III. LEGAL ARGUMENT

A. DIANA IS NOT ENTITLED TO A REVIEW UNDER THE HOLDING IN *Marriage of Possinger*, 105 Wash.App. 326, 19 P.3d 1109 (2001).

The modification of a parenting plan is governed by the provisions of RCW 26.09.260.

The statute allows for major modification of the plan only upon a showing that, "the present environment is detrimental to the child's physical, mental or emotional health" or in other unusual circumstances.

RCW 26.09.260 subsection (5), however, allows the court to order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances if:

[t]he modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in a majority of the time and (a) does not exceed 24 full days in a calendar year and does not result in a schedule that exceeds 90 overnights per year in total [provided certain other conditions are met].

¹ Because the parenting plan was not filed until February 2, 2010, it was inadvertently omitted from Respondent's Designation of Clerk's Papers. The relevant section of that plan is attached to this brief. A supplemental Designation of Clerk's Papers has been filed.

The same statute also provides in subsection (7):

A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191(2) or (3) may not seek an expansion of residential time under [the minor modification provision] unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

Diana was subject to limitations under RCW 26.09.191 for an underlying emotional impairment which interfered with her parenting function and for the abusive use of conflict.

Diana does not appeal the court's determination that she failed to show grounds for a major modification.

Rather, Diana argues that, instead of proceeding under the minor modification provisions, the court should instead have used its inherent equitable powers as discussed in Marriage of Possinger to conduct a full review of the 2007 parenting plan and, in effect, grant Ms. Blome the major modification she plainly was not entitled to under the statute.

Diana made this argument to the trial court, which went to some lengths in its decision to distinguish the rulings in such cases as Possinger, supra, and In re Marriage of Adler, 131 Wash.App. 717, 129 P.3d 293 (2006) from the instant case.

All the cases cited by the Appellant in her brief involved situations in which the trial court essentially deferred entering a permanent parenting plan at the time of dissolution and set a specific later date on which a permanent plan would be entered. In each case there were highly unusual circumstances which justified entering only what amounted to a temporary plan at the time of dissolution.

In Possinger, supra, when the decree of dissolution was entered, the parents were in what the court described as a "transitional phase." The mother was planning to switch from an evening shift to a day shift in her job and the father was in law school and his future plans depended on whether or not he successfully completed his studies. The court found, given that the parents were in a transitional period, it was appropriate for the court to adopt what amounted to a temporary, rather than a permanent, parenting plan. The temporary plan specifically provided for a review of the plan after a year, at which time a permanent plan would be entered. The father objected to the plan which was entered after the one year review and which gave the wife primary residential custody. Mr. Possinger contended the court had exceeded its jurisdiction by postponing entry of a permanent residential schedule.

The Court of Appeals held the trial court had inherent power to defer long term parenting decisions for a reasonable period of time following an entry of a decree in the rare instance where the best interests of the children would be served by such a delay. The Court went on to state:

" . . . we anticipate that such authority would be exercised sparingly . . . there is a strong presumption favoring finality of parenting plans and residential continuity in a child's life."

In Adler, supra, the parties themselves agreed at the time the parenting plan was entered that either party could request a review of the plan within a year without a showing of a substantial change in circumstances.

The wife, unhappy with the results of the husband's request for review, claimed the court's review of the parenting plan under this agreed provision contravened public policy because it was contrary to statutory provisions governing modifications.

The Court of Appeals held it was not against public policy to allow the parties to waive the provisions of the statute which required a showing of a substantial change in circumstances, since those provisions were intended to protect the parties from harassment and frivolous filings. As in Possinger, supra, the Court emphasized the

overriding concern was the best interests of the child and that interest was adequately protected, even if the parents elected to waive a showing of changed circumstances.

In Potter v. Potter, 46 Wn.2d 526, P.2d 1052 (1955), the court, in the initial dissolution proceeding, awarded temporary custody to the mother, subject to review in five months to determine her stability. Here too, the Court of Appeals, found it was within the court's power to briefly delay the entry of a permanent plan to evaluate the mother's fitness.

What these cases have in common is (a) they involved what amounted to temporary custody decisions made at the time of dissolution, prior to the entry of a permanent parenting plan; (2) they were subject to review at a specific future date; (3) they involved highly unusual circumstances - parental instability in Possinger and Potter, and an agreement by the parties that the plan could be revisited within a year, in Adler.

This case, by contrast, does not involve a temporary decision entered at the time of dissolution or unusual circumstances which made it desirable to postpone a permanent decision for a brief period of time. It does not involve a provision providing for review of a temporary plan at a definite time. The 2007 parenting plan at issue

here was nothing more or less than an ordinary post dissolution modified parenting plan subject to the provisions of RCW 26.09.260.

Possinger, et al. do not stand for the proposition that every parenting plan decision, whenever made and however phrased, may be subject to what amounts to a major modification despite the specific and strict statutory standards governing such modifications.

Diana argues Judge Doyle's suggestion of ways Diana might demonstrate changed circumstances - taking a parenting class, completing a 12-step program, getting psychotherapy etc. - implied that, once Diana had done so, the original 50/50 residential arrangement would be restored.

Such an interpretation makes no sense and would be contrary to the most basic principle of the Parenting Act - that all decisions should be based on the best interests of the child. That is, it is not Diana's actions, but Spencer's best interests, which determine when or if Diana can get increased residential time.

Here, the trial court's decision was based on its determination it was in Spencer's best interest to have a gradual reintroduction to his mother - a mother with a history of unstable behavior. There are no grounds for disturbing this decision on appeal.

The trial court has broad discretion in making residential child placement provisions. A trial court abuses its discretion in ruling on residential provisions in a parenting plan only if its decision is manifestly unreasonable or based on untenable grounds or for untenable reasons. In re Parentage of Schroeder, 106 Wash.App. 343, 22 P.3d 1280 (2001).

Here, the trial court adopted most of the GAL's recommendations, which provided for a gradual increase in Diana's residential time with Spencer; for periodic review of the success of this increased residential time; for Diana to continue in therapy, and to follow her therapist's recommendations. This was a prudent and reasonable decision, given Diana's long history of emotional problems, and tenuous recovery; given she had spent very little time with Spencer in the prior two years; and given Spencer was thriving in his current environment, and it could be detrimental to abruptly change the residential arrangement.

B. THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW DID NOT STATE ANY BASIS FOR RESTORING JOINT DECISION MAKING.

The allocation of decision making is governed by RCW 26.09.187(2) which provides:

- (b) The court shall order sole decision making authority to one parent when it finds that:
 - (i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;
 - (ii) Both parents are opposed to mutual decision making;
 - (iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

- (c) . . . the court shall consider the following criteria in allocating decision-making authority:
 - (i) The existence of a limitation under RCW 26.09.191;
 - (ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);
 - (iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and
 - (iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

Here, the court did not make findings which would justify the change in decision making based on the criteria of the statute. While the court found Diana was no longer subject to the limitations of RCW 26.09.191, the court made no findings and stated no conclusions as to any of the other statutory factors it must consider in allocating decision making authority. Nor did the court's findings address Judge Doyle's reasons for granting sole decision making to Douglas.

For purposes of appellate review of a trial court's decision concerning a final parenting plan, the trial court abuses its discretion when its decisions are based on untenable grounds or reasons, that is, where its factual findings are unsupported by the record, it has used an incorrect standard, or the facts do not meet the requirements of the correct standard. Mansour v. Mansour, 126 Wash.App. 1, 106 P.3d 768 (2004).

A court's failure to make findings regarding application of each relevant statutory factor in modifying a prior parenting plan is error. In re Marriage of Shryock, 76 Wash.App. 848, 888 P.2d 750 (2001).

Judge Doyle restated the statutory criteria as justification for giving Douglas sole decision making authority in the 2007 parenting plan. The guardian ad litem recommended that sole decision making authority remain with Douglas. Nothing in the court's findings of fact justified a change from sole to joint decision-making.

C. THE PARENTING PLAN IS INCONSISTENT WITH THE COURT'S FINDINGS.

The court, in its findings, adopted the recommendations of the Guardian ad Litem, except as specifically modified. The Guardian ad Litem's recommendation number 14 was that major decision making

remain with Mr. Blome. By failing to strike out this recommendation, the court adopted it.

Nevertheless the court, in its final parenting plan, gave the parties joint decision making.

This is analogous to a conclusion of law which is inconsistent with findings of fact. Where a conclusion of law is inconsistent with the findings of fact, the findings control. Mell v. Winslow, 49 Wash.2d 738, 306 P.2d 751 (1957).

D. THE RESPONDENT IS ENTITLED TO ATTORNEYS' FEES.

RCW 26.09.140 provides:

Upon any appeal the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys fees in addition to statutory costs.

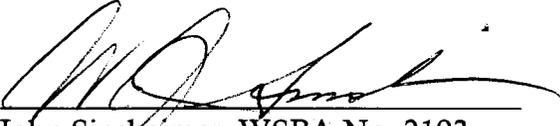
In exercising discretion under statute allowing parties to dissolution to request reasonable attorney fees, the Court of Appeals will consider the arguable merit of the issues on appeal, and the financial resources of the respective parties. Johnson v. Johnson, 107 Wash.App. 500, 27 P.3d 654 (2001).

IV. CONCLUSION

The trial court's decision should be reversed in so far as it had the effect of modifying the parenting plan to give the parties joint decision-making as to major decisions.

RESPECTFULLY submitted this 16th day of April, 2010.

SINSHEIMER & MELTZER, INC., P.S.

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

In re the Marriage of:

DOUGLAS RICHARD BLOME

Petitioner,

and

DIANA MAE BLOME

Respondent.

NO. 02-3-01955-6 SEA

FINAL ORDER PARENTING PLAN

This parenting plan is the final parenting plan signed by the court pursuant to an order signed by the court dated September 11, 2009, which modifies a previous parenting plan or custody decree.

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Spencer Blome	9 (DOB 10/17/00)

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II. Basis for Restrictions

2.1 Parental Conduct (RCW 26.09.191(1), (2))

Does not apply.

2.2 Other Factors (RCW 26.09.191(3))

Does not apply.

III. Residential Schedule

3.1 Schedule for Children Under School Age

There are no children under school age.

3.2 School Schedule

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

3.2.1 Commencing October 1, 2009, visitation shall be:

Every Wednesday from 3:00 p.m. until 6:00 p.m.

Every Saturday from 9:00 a.m. to 6:00 p.m.

If Mother's work schedule changes such that she has Sunday's off from work, the Saturday residential time may be moved to Sunday at mother's request.

3.2.2 Commencing April 1, 2010, there shall be a short review of the residential schedule. Provided that Diana has complied with the recommendations contained herein, is in good standing with her treating psychologist and compliant with any treatment recommendations and there are no other substantial problems, the residential time shall be expanded to:

Every Wednesday from 3:00 p.m. to 7:00 p.m.

Every other weekend from Saturday at 9:00 a.m. to Sunday at 6:00 p.m.

In addition, mother shall be entitled to schedule up to two (2), non-contiguous blocks of residential time with Spencer of no more than four (4) overnights (including any included weekend residential time). Said residential time shall be scheduled on 30 days written notice to Doug and shall not conflict with school (i.e. these small vacations should take place during the summer or school breaks).

1 3.2.3 Commencing April 1, 2011, there shall be a second short review of the residential
2 schedule. Provided that Diana has complied with the recommendations contained in the
3 GAL Report dated March 24, 2009, is in good standing with her treating psychologist and
4 compliant with any treatment recommendations and there are no other substantial
5 problems, the residential time shall be expanded to:

6 Every Wednesday from 3:00 p.m. to 7:00 p.m.

7 Every other weekend from Friday at 4:30 p.m. to Sunday at 6:00 p.m.

8 **3.3 Schedule for Winter Break (Christmas/New Years)**

9 3.3.1 Upon entry of this parenting plan, mother shall have the following visitation during
10 Winter Break:

11 For December 2009 / January 2010 Winter Break mother shall have the following
12 visitation: Christmas Day from 12:00 noon until 9:00 p.m., and on New Years Day from
13 11:00 a.m. until 8:00 p.m.

14 For December 2010 / January 2011 Winter Break mother shall have the following
15 visitation: Christmas Eve from 12:00 noon until 12:00 noon Christmas Day and on New
16 Years Eve from 3:00 p.m. until 10:00 a.m. New Years Day.

17 3.3.2 Commencing in December 2011, Winter Break (as defined by Lake Washington School
18 District) visitation will be as follows:

19 The father shall have the child from the beginning of Winter break until
20 Christmas Day at 12:00 p.m. and the mother shall have the child from Christmas
21 Day at 12:00 p.m. through the last day of Winter Break. The following year, the
22 mother shall have the child from the beginning of Winter Break until Christmas
23 Day at 12:00 p.m. and the fathershall have the child from Christmas Day at 12:00
24 p.m. through the last day of Winter Break. Visitation for the Winter Break shall
25 alternate, as above, from year to year.

26 **3.4 Schedule for Mid-Winter Break**

27 Commencing April 1, 2011, the parties shall alternate visitation for Mid-Winter Break (as defined
28 by Lake Washington School District). Mother shall have the child for the entire break in even
years and father shall have the child for the entire break in odd years.

3.5 Schedule for Spring Break

Commencing April 1, 2011, the parties shall alternate visitation for Spring Break (as defined by
Lake Washington School District). Mother shall have the child for the entire break in odd years
and father shall have the child for the entire break in even years.

1 **3.6 Summer Schedule**

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

4 Same as school year schedule.

5 **3.7 Vacation With Parents**

6 The schedule for vacation with parents is as follows:

7 3.7.1 Commencing April 1, 2010:

8 Subject to review by the GAL, Mother shall be entitled to schedule up to two (2),
9 non-contiguous blocks of residential time with Spencer of no more than four (4)
10 overnights (including any included weekend residential time). Said residential
11 time shall be scheduled on 30 days written notice to Doug and shall not conflict
12 with school (i.e. these small vacations should take place during the summer or
school breaks) The notice will include the dates of travel, a phone number where
the child can be reached, travel destination and an itinerary.

13 3.7.2 Commencing April 1, 2011:

14 Subject to review by the GAL, Mother shall be entitled to schedule up to an
15 additional 2 weeks (14 days) of contiguous residential time in the summer for
16 purposes of vacation. The notice requirements of paragraph 1 above shall also
apply.

17 3.7.3 Prior to April 1, 2010 the father shall have the ability to select up to four (4) weekends
18 per year when there shall be no scheduled residential time between Spencer and his
19 mother. The purpose of this provision is to allow the father to have some weekends of
20 his own with Spencer for Vacations or to accommodate such events as Adventure Guide
21 Camps. Doug shall provide a minimum of 30 days written (email) notice if he intends to
exercise this option. Father shall not otherwise have the ability to cancel any scheduled
residential time absent agreement of the parties or an emergency situation. After April
2010 the parties begin alternating weekends and father can schedule vacations during his
own weekends.

22 3.7.4 The father is entitled to two (2) weeks of vacation with the child, provided that he give a
23 minimum of 30 days advance written notice to the mother. The notice will include the
24 dates of travel, a phone number where the child can be reached, travel destination and an
25 itinerary. Father's vacation shall not conflict with school. If father and mother's
26 vacation times conflict, the mother shall have priority in odd numbered years and the
27 father shall have priority in even numbered years.
28

1 **3.8 Schedule for Holidays**

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

	With MOTHER (Specify Year <u>Odd/Even/Every</u>)	With FATHER (Specify Year <u>Odd/Even/Every</u>)
3 New Year's Day	See paragraph 3.3	
4 Easter	See below	
5 Memorial Day	Even	Odd
6 Labor Day	Odd	Even
7 Halloween	Even	Odd
8 Thanksgiving Day	Odd	Even
9 Christmas Eve	See paragraph 3.3	
10 Christmas Day	See paragraph 3.3	

11 For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

12 Easter will begin at 9:00 a.m. and end at 8:00 p.m. Easter Sunday.

13 Memorial Day and Labor Day will begin at 9:00 a.m. and end at 8:00 p.m. on Memorial
14 Day and Labor Day, respectfully, provided that beginning April 2011, if the party having
15 one of these holidays has the immediately preceding weekend, then that party shall have
16 the entire weekend through 8:00 p.m. the day of the holiday.

17 Halloween will begin at 3:30 p.m. and end at 9:00 a.m. or the start of school November 1,
18 whichever is earlier.

19 Thanksgiving will begin at 12:00 noon and end at 8:00 p.m. on Thanksgiving Thursday
20 until 2011 when Thanksgiving shall commence at 4:00 p.m. the day before Thanksgiving
21 and end at 8:00 p.m. the following Sunday.

22 **3.9 Schedule for Special Occasions**

23 The residential schedule for the child for the following special occasions (for example, birthdays)
24 is as follows:

	With MOTHER (Specify Year <u>Odd/Even/Every</u>)	With FATHER (Specify Year <u>Odd/Even/Every</u>)
25 Mother's Day	Every (see below)	
26 Father's Day		Every
27 Mother's Birthday	Every (see below)	
28 Father's Birthday		Every
Spencer's Birthday	See below	

For purposes of this parenting plan, a special occasion shall begin and end as follows (set forth times):

Mother's Day/Father's Day will begin on Sunday at 10:00 a.m. and end that same day at 6:00 p.m.

1 Birthdays will be for a four (4) hour period starting when the child's school day adjourns if the
2 birthday falls on a school day, and on the actual birthday from 10:00 a.m. until 8:00 p.m. if the
3 birthday falls on the weekend or non-school day unless otherwise mutually agreed between the
4 parents.

5 **3.10 Priorities Under the Residential Schedule**

6 Paragraphs 3.3 - 3.9, have priority over paragraphs 3.1 and 3.2, in the following order:

7 Rank the order of priority, with 1 being given the highest priority:

- 8 1 – Holidays (3.8)
- 9 2 – Special Occasions (3.9)
- 10 3 – Winter Break (3.3)
- 11 4 – Mid-Winter Break (3.4)
- 12 5 – Spring Break (3.5)
- 13 6 – Summer Schedule (3.6)
- 14 7 – Vacation with Parents (3.7)
- 15 8 – School Schedule (3.2)

16 **3.11 Restrictions**

17 Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

18 **3.12 Transportation Arrangements**

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

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

22 Residential exchanges shall be provided by the receiving parent. Both parents must have
23 a valid driver's license and insurance as required by state law in order to transport the
24 child.

25 **3.13 Designation of Custodian**

26 The children named in this parenting plan are scheduled to reside the majority of the time with
27 the father. This parent is designated the custodian of the child solely for purposes of all other
28 state and federal statutes which require a designation or determination of custody. This
designa- tion shall not affect either parent's rights and responsibilities under this parenting plan.

29 **3.14 Other**

30 3.14.1 Best Interests of Child. The parents acknowledge that they have a primary responsibility
31 to act in the best interests of their son and pledge to one another to support one another in
32 parenting their child until he reaches adulthood.

1 3.14.2 Avoidance of Conflict. The parents agree not to indulge in conflict with each other in the
2 child's presence. Each parent will refrain from expressing remarks or opinions that might
3 cause the child to look upon the other with anything less than love and respect.

4 3.14.3 Method of Communication. Each parent will have a working email address within
5 his/her household to provide for immediate transmission of information regarding the
6 child, and to ensure that there is a written record of such transmission.

7 3.14.4 Telephone Contact. Each parent is permitted to call the child at the other parent's
8 residence up to three (3) times each week, with each call being limited to five (5) minutes
9 or less. The child may initiate calls to the other parent at will.

10 3.14.5 Drug and Alcohol Use. Both parents agree that it is inappropriate for a parent who is the
11 sole adult in custody of the child to use alcohol or any illicit drug.

12 **3.15 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

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

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

16 If the move is outside the child's school district, the relocating person must give notice by
17 personal service or by mail requiring a return receipt. This notice must be at least 60 days before
18 the intended move. If the relocating person could not have known about the move in time to give
19 60 days' notice, that person must give notice within 5 days after learning of the move. The notice
20 must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500,
21 (Notice of Intended Relocation of A Child).

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

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

27 If information is protected under a court order or the address confidentiality program, it may be
28 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.

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

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

6 **IV. Decision Making**

7 **4.1 Day-to-Day Decisions**

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

12 **4.2 Major Decisions**

13 Major decisions regarding each child shall be made as follows:

14 Education decisions Joint

15 Non-emergency health care, non-routine, healthcare: Joint

16 4.2.1 Child's Schedule and Activities. The father will provide the mother with a written
17 summary of the child's school schedule along with any extra-curricular activities in
18 which the child is involved and will use his best efforts to provide an updated version at
19 any time that the child's schedule and/or activities change. The mother will facilitate the
20 child's participation in the activities listed on the schedule provided by the father when
21 the child is with her.

22 4.2.2 Religious Observance. Each parent is permitted to involve the child in his/her religious
23 beliefs and/or observances, provided that such observances are not directly harmful to the
24 child's safety or health.

25 **V. Dispute Resolution**

26 Disputes between the parties, other than child support disputes, shall be submitted to (list person
27 or agency): Mediation by Lynn Pollock or Howard Bartlett.

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

50% petitioner and 50% respondent.

The dispute resolution process shall be commenced by notifying the other party by written
request.

In the dispute resolution process:

(a) Preference shall be given to carrying out this Parenting Plan.

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

VI. Other Provisions

7.1 Permanent Restraining Order

A permanent restraining order shall enter as follows:

Both parents are restrained from making negative comments about the other or the other parent's significant other in front of or in the hearing of the child

Both parents are restrained from showing any legal documents to the child. Neither parent shall allow the child to see the GAL Report dated March 24, 2009 or discuss its content with the child. Neither parent shall request that the child provide a declaration for court.

7.2 Recommendations of GAL

7.2.1 Diana shall, within 30 days, resume therapy with Dr. Capetillo or another qualified psychologist approved by the GAL and shall continue in therapy at a minimum frequency of bi-weekly until otherwise recommended by her psychologist. As part of her therapy, Diana should focus on shielding Spencer from parental conflict or other inappropriate involvement in parental disputes. Diana shall comply with all treatment recommendations of her treating psychologist. Diana shall sign a release to permit the GAL/Case Monitor to check periodically with her treating psychologist.

7.2.2 Diana shall, within 30 days, upon recommendation of her psychologist, re-establish contact with Dr. Ballard or another psychiatrist approved by her psychologist. Diana shall sign a release to permit the GAL/Case Monitor to check periodically with her treating psychiatrist.

7.2.3 Both parents shall be permitted to attend practices, games, school events, and other significant events for Spencer regardless of whether said events occur on the mother's or father's residential time. Both parents shall inform the other immediately of any such activities that they become aware of by email. Both parents shall be listed on the coaches and teacher's email lists so that both receive information directly regarding practice schedules, teacher conferences, etc. Neither parent shall include the coaches, teachers or other parents in their emails or other communications to each other. In the event that either parent needs to communicate with a coach or teacher, such communication shall be limited to those issues specifically related to that person's role with Spencer, shall not be copied to other parents of other children, and shall not include that individual in parental conflict.

1 7.2.4 Matthew Jolly shall be the ongoing GAL or Case Monitor managing the periodic reviews
2 and to be the resource in the event of any unexpected developments. The on-going cost
3 of the GAL/Case Monitor shall be borne equally by the parents.

4 7.2.5 Both parents shall refrain from all use of illegal drugs or the use of prescription drugs
5 without a prescription.

6 7.2.6 In the event that the mother relapses by use of illegal drugs and/or engages in substance
7 abuse or falls out of compliance with the treatment requirements of her psychologist or
8 psychiatrist (if applicable), then the residential schedule may be returned to paragraph
9 3.2.1 and the process may resume from the beginning, and/or the requirement of
10 supervision may be reinstated by the court.

11 **VIII. Order by the Court**

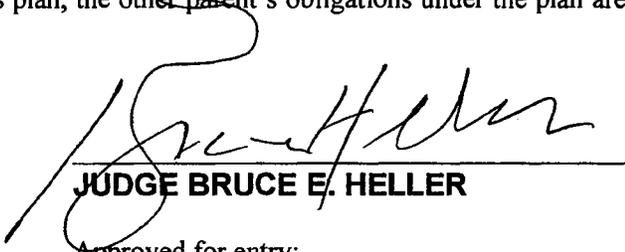
12 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an
13 order of this court.

14 **WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is
15 punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or
16 9A.40.070(2). Violation of this order may subject a violator to arrest.

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

19 If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are
20 not affected.

21 Dated: February 2, 2010



JUDGE BRUCE E. HELLER

22 Presented by:
23 **SINSHEIMER & MELTZER, INC., P.S.**

24 Approved for entry:
25 **ELLIS LI & MCKINSTRY, PLLC**

26 _____
27 W. John Sinsheimer
28 Attorney for Petitioner/Father
WSBA No. 2193

Gregory D. Esau
Attorney for Respondent/Mother
WSBA No. 22404

Douglas R. Blome, Petitioner/Father

Diana Mae Blome, Respondent/Mother