

65007-6

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NO. 650076

IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION I

In RE the Marriage of:

TRACY J. HATCH
Appellant

VS.

JOHN D. HATCH
Respondent

BRIEF OF APPELLANT TRACY J. HATCH

Tracy Hatch, *Pro Se*
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Introduction

The dissolution of marriage was the result of domestic violence perpetrated on Tracy by John on the morning of September 16, 2008. **(CP 81)** John was subsequently arrested and removed from the family home and a protection order was issued immediately and remained in effect for 15 months. John stated in his own words a verbatim account of the incident that in fact did match up precisely what the petitioner stated. **(CP 81)** The length of the marriage was one of over twenty years, the relationship was twenty three years total. John was nineteen and Tracy was twenty two at the time of marriage. The parties agreed after the birth of the second child in 1998 that Tracy would remain in the home caring for the children as a stay at home mom and homemaker. There were three more births in rapid succession. Tracy was a stay at home mother, forgoing a career in order to care for the children and her family. This agreement was entered into by both parties and remained in effect up until the dissolution. Currently Tracy is still a homemaker as her children are still very young and require much care and attention during their time of continued growth and social and academic development.

The trial court erred when it failed to make a just and equitable division of the parties' assets. The trial court failed to take into account the community and separate property as well as the value of assets and the duration of the marriage.

Tracy did forgo a career in order to stay at home and care for the 5 children they had together over the course of the marriage and any and all assets and monetary value she may have attained was not an avenue pursued. **(CP 42)**

The trial court erred in respect to Tracy's **6th Amendment** right to a fair trial due to the fact that the attorney for the petitioner withdrew less than forty five days prior to the trial date and her file was not delivered to her until twelve days before trial started along with the final G.A.L. report. Though the G.A.L. referenced Dr. Schau's CR-35 examine regarding John **(CP 91)** in an email dated December 11, 2009, **(CP 71)** it was assumed an error (typo) because Tracy was never made privy to the fact that John had undergone said exam until the morning of the trial. Mr. Sedell violated **CR 26 – 37** stipulating "the report shall be delivered within 45 days of the examination and in no event less than 30 days prior to trial" by not disclosing said exam to Tracy and by not disclosing his witness list until the morning of trial as well. It's inconceivable to

assume that a pro se individual could learn law, understand law, and prepare an entire case with no working knowledge of the legal system whatsoever in such a short amount of time. John's attorney took advantage of that fact and did abuse his legal authority in order to obtain a favorable outcome for his client, John Hatch.

The facts of this case are very concise and simple. The petitioner, Tracy Hatch, has prepared a spreadsheet on the Merits (CP 91) The spreadsheet clearly shows the misinterpretation of the facts based on the G.A.L. report (CP 71), the CR-35 examiner's report (CP 91), supporting documents and the testimony at trial.

Assignment of Error

1. The court erred in Designation of Custodian on the part of the Judge by allowing a joint custody, 50/50 split when clearly that is not what is in the best interest of the children. (CP 91) The Guardian Ad Litem stated in his final report that the children should be primarily in the care of the mother (CP 71)

"Because of the lack of trust between the parents and the mother's anxieties and fears of the father, it does not appear realistic to have a full co-parenting arrangement at this time"

and very openly stated that the father was too concerned with what the children were doing while in the mother's care and was involving them in the divorce. Unfortunately the recommendations of the G.A.L. were not taken into account at all by Judge Castleberry and were dismissed completely. It was also recognized by the G.A.L. and the judge that John submitted illegally proffered evidence into the record **(CP 81 & CP 97)**, admitting it was obtained through spyware, thus causing the judge to be tainted against Tracy as he did read one particular email in his oral findings twice in open court **(CP 80 page 9, line 18 – 19)**, and that ultimately resulted in manipulation of the legal system with the illegally proffered material. He made very grand statements on the stand that can ultimately be proven as false in regard to the children, the mother, the mother's friend and the entire domestic violence situation.

The fact that John's testimony and recollection at trial regarding the domestic violence incident do not comport to his own pen in the police report on September 16, 2008 is problematic in and of itself. Dr. Schau stated in his evaluation of John regarding the domestic violence "is perhaps the only incident in which he let his feelings be known". **(CP 91) page 8**

John cannot seem to keep simple facts and timelines straight. See CR-35 examiners report, G.A.L. report and trial testimony as well as the Merits **(CP 91)** that clearly define his inconsistencies.

John's attorney argued that the G.A.L. had to spend upwards of twenty eight hours investigating a case and that Tracy should be forced to pay fees when in fact a large portion of the G.A.L.'s reports hinged upon John, the life he had at his brother's house, testimony from people living there as well as the neighbors in the cul de sac where the mother lived and their feelings about the case. Ultimately the G.A.L. report was thrown to the wayside and ignored as it was not favorable to John and the fact that said report did reference the illegal materials obtained by John, most specifically after he was released from jail for the domestic violence incident and no longer living in the family home.

Dr. Edward Schau the CR-35 examiner stated that there are to be no restrictions against the mother **(CP 42)** due to the fact that she suffers social anxiety, however, the father is said to have a difficult time seeing the children as individuals and mustering up the energy for day to day life. **(CP 91)** John even agreed to Dr. Schau's conclusions and stated on under oath:

"I feel they're accurate and align well with how I live my day-to-day life". (VR 72)

It has been stated time and again that Tracy excels at the fundamentals of caring for the children and there is no doubt the mother loves her children and if that is the case, why has that been taken away? There is no argument that the children are safe, well rested, fed properly, cared for appropriately, and loved greatly when in the mother's care so it is unclear why after being a stay at home mother for 10 years to rip the children from her care half the time. John admitted on the stand (VR 241)

"I make sure they eat"

That statement alone is problematic because it is evident that he does not cook or care them himself and relies too heavily on others to do it for him. The children have stated that their father force feeds and he does not cook and it's very apparent the he relies on everyone else to do what he should be doing for his own children. His own testimony clears up any error that may have made him appear to be a doting father. His youngest child ended up with pneumonia, another son got a concussion due to negligence, and

lastly this past June his oldest son broke both bones in his leg and required surgery. **(CP 91)** All of these injuries happened while in the care of John during his residential time. The fact that John allowed his oldest son to ride his bike the first day back in his care after his boot removal is problematic because Seattle Children's Hospital clearly stated a recommendation of "no physical activities for 2 months". **(CP 91)** John shows complete lack of common sense or care for that matter when it comes to his children

The children deserve consistency. Tracy deserves some form of compensation for devoting over twenty years of her life to someone who according to testimony and test results does not have the emotional capacity to care for anyone but himself. If someone simply lives by "fulfilling his duty" as Dr Schau stated, how can one assess that as healthy and not be detrimental to the four young children? How can this person clearly take care of anyone when it is stated that he can "barely muster the energy for day to day life"; and

"I just don't see sense of positive emotion; I don't see a sense of enthusiasm" and "I don't think he lights up most of his life" in **(VR 323)**

In the report of John, it's obvious that he has very little recollection of even his own life as his 'personal' experiences do not even coincide with the statements he made to the G.A.L. or even reality for that matter. Example where he states to having 'four step-brothers' when he reality is he has three stepbrothers and one step sister and he doesn't have memories of his parents and yet he fondly recalls his grandmother who actually lived in Mexico for his entire life.

His recollection of his own past is sketchy and his current emotional and mental state is apparently slipping as evident in the email exchanges. (CP 81+)

From: John Hatch
Sent: Tuesday, May 11, 2010 10:05 AM
To: Tracy Hatch
Cc: justin@mckinleyirvin.com
Subject: RE: CALEB'S GAME TONIGHT

yes, I missed him and i was also looking for you and your van and did not see him (and I was looking for his helmet). It was my mistake. I am glad he was there and had a good time.

From: Tracy Hatch
To: John Hatch
CC: justin@mckinleyirvin.com
Subject: RE: CALEB'S GAME TONIGHT
Date: Mon, 10 May 2010 21:23:49 -0700

What's going on?

Interesting enough, I sent you a text and an email from Caleb's game as you will note the time you received them with 2 different pictures of Caleb at his game tonight. He was there at 5:30pm, Forsgren, field 1. Caleb hit 3 times while I was there. Played 2nd base and outfield. I took a couple pictures. I managed my life, my schedule, and the boys' activities just fine and will do the same on Wednesday. It's what I do and I do a damn good job. I'm proud of myself. It's apparent you cannot identify each child as their own individual because if you could you would know what Caleb's jersey number is and what color batting helmet he wears and know that he was in fact at his game as were all the boys. He was there and he had a great time. Feel free to email the coach if you need verification or any of the other parents for that matter. As for Wednesday. It will all get done as it always does. Thank you for your concern though.

Tracy

From: John Hatch

Sent: Monday, May 10, 2010 7:26 PM

To: Tracy Hatch

Cc: justin@mckinleyirvin.com; John Hatch

Subject: RE: CALEB'S CLEATS and things

so what is going on today. I go to Caleb's game and he is NOT there. its unfortunate that you find it acceptable to rant and rave about making sure Caleb's cleats, yet you don't even take him to his game. Instead, you opt to take Jonah to his martial arts practice. Is that how you attempt to handle conflicting schedules? on top of this, you can't even inform me of what you are going to do so I go to the game looking for Caleb and he's not there. You deny one boy his activity because you are too selfish and proud to ask me to help. You even said you might need help sometimes yet today your choice? Deny one boy his game. what's going to happen on Wednesday? Ethan has Track and field from 4-5:30, Jonah has martial arts from 5:30 - 6:30 and Caleb has practice from 6 - 7. Which activity are you going to pick on Wednesday?

Whether it is a health related issue or not, John appears to have two entirely separate personalities in his communications over

the last half dozen months. He is inconsistent, forgetful and hostile. It appears at times that he is losing touch with reality and he only treats Tracy with any kind of decency when he wants or needs something from her. **(CP 81+)** An example of that is his current attempt to regain the control he has lost in respect to the family home. His lack of concern has put the children's livelihood in jeopardy and the house is going up for a foreclosure trustee sale on December 3, 2010. **(CP 100)** This situation could have been rectified months ago but has not been, either due to neglect or ignorance. Regardless, it is a lost cause.

The "hearsay" letter from Tracy's therapist did not paint a picture of a mentally or emotionally unstable person therefore it was not submitted into evidence. **(CP 42)** This in fact did bias the judge as he was not afforded the opportunity to gain a full perspective of Tracy. The judge was only able to see what was presented by John's attorney.

John told numerous stories at different times that kept him above reproach. Prime example of that being the testimony at trial, matching those up against actual events, and the recollection of those events that were told to the G.A.L., the police report, and the mass email used to sway prosecution against the restraining order

violation. **(CP vs. VR)** Each instance has a different version of events, whether brought about by the respondent, his brother, or his own daughter. Each brings forth a new set of 'facts' that can be disputed on their validity.

If in fact John was giving a full perspective on facts, the police report would not have been written to state that John was within the 100 yard (exactly 210 feet) during the violation of the protection order **(CP 28)** and the prosecuting attorney would not have gone ahead with the order to show cause and intent. There has to be a level of suspicion on the fact that two other people, his brother and his daughter, were brought into this equation who lived under his roof and the police who did in fact take their statements but chose not to move forward. Again, it was dismissed without prejudice and shows bad faith tactics on the part of John who used illegally obtained material to taint the prosecution as well as his own daughter's hearsay email that paints a picture of lies and fallacies.

(CP 28)

Judge Castleberry erred vocally and very prominently in his oral finding of fact. He stated that Tracy has no desire to work when in fact he accepted into evidence Exhibit 33 of her work plan.

It would have been highly offensive to anyone who observed this trial to see that the Judge sat facing the window, with his head down and his eyes closed, and spinning in his chair during most of the testimony of the witnesses. His verbiage was even hostile at times and yet when he gave his final findings, he even ended up having to do cross outs where he even realized he needed to be more "careful" in his comments or findings rather.

The case has continued to unfold in the court system long after the divorce was completed. John was awarded use of the family home only to have it go into foreclosure. He sent many hearsay documents to the lender that state, **(CP 100 & CP 102)** as he stated at trial, that with his 'stable' job he was confident that he could continue paying the mortgage's on the family home and yet they have not been paid since February 2010 and the foreclosure sale, trustee sale, is set for December 3, 2010. The latest Notice of Trustee's Sale I received is dated October 29, 2010 from attorney's Bishop, White, Marshall & Weibel, P.S. **(CP 100)** and filed officially as Snohomish County Recorder's / Auditor's Number's 200501055126, 200802220401, and 201007300334. The truth again is not being applied to the correct people in respect to the respondent's actual activity.

Custody of the four minor children has been split 50/50 when that **was not the intent** of the G.A.L. and the CR-35 examiner said 'in an ideal situation' it would be feasible and yet the children are pushed and pulled week by week. Only to find out recently that DSHS was investigating John for neglect and abuse therefore it is very obvious that taking care of the boys for a full week at a time is not something he can handle alone and is openly hostile toward anyone and everyone when the children are around.

The father is rarely with the children during the week as he works full time and does not work from home as stated on the stand that he could easily do 2-3 days a week **(VR 163)**

“so I could work from home two days a week essentially of my choice” and “again, my schedule is fully pretty much driven on what I can do”.

When he is with them is either easily frustrated or pawns them off to their friends for someone else to occupy their time or takes them to grandma's house for help on the weekends. It has also been brought the attention of the mother that every day after school while the children are with their father during his residential time they are being cared for by their grandmother, their second cousin, other family members, their sister or home alone as the oldest son has

recently admitted he is alone some days for almost an hour at a time until someone arrives to take care of him (and enters the home through an side door left unlocked for him) when they could and should be with their mother because the father in fact does not come early or work from home. John's own mother needs to sleep over during the week in order to help care for the boys, feeding, bathing them (which the children have admitted to only ONE bath per week), getting them ready for school, making meals, doing homework, as John cannot care for the boys on his own and doesn't take an active role in their lives.

In the first 30 pages of the trial transcript, the manipulation of the legal system is evident. Mr. Sedell clearly stated that a continuance would prejudice his client. Even though he was asked by Tracy for a continuance in November 2009 prior to trial due to the fact that the petitioner's own attorney withdrew due to lack of funds just a month and a half before trial and there was a debate over evidence and relevant facts to the case, he chose to push forward and use his clout to sway the judge in favor of his client. He clearly acted in bad faith by trying to get the couple's own daughter to testify against her mother (**VR 197**). That should have

been a clue to the court that Mr. Sedell or John for that matter was not acting above reproach.

John's attorney acted in bad faith by not disclosing the witness list until the morning of trial and by not admitting that his client had undergone a CR-35 prior to the morning of trial. Not disclosing the results of said exam and not being 100% truthful about his own 'evidence' most of which has been proven to negate actual facts did not afford Tracy a proper opportunity to make or present her case. Mr. Sedell's own words trip him up in respect to John 'never being late on maintenance payments'. If that were truthful, would there have been so many emails back and forth through attorneys regarding this fact? Would there be so much physical evidence to dispute this fact? **(CP 34)**

Tracy is not vindictive in any way. The children want their mother back in the family home and to be with her full time and all we are asking of the court is to restore this unity. They have specifically stated they do not want to be with their father and they are afraid of him. Prime example; Saturday November 6, 2010 the mother received a call from Aidan, her 5 year old, crying and begging to come home to be with his mom only to hear the father in the background when asked if he could see mommy, "NO, you

have to stay until tomorrow". Sadly, John still to this day is attempting to purchase the children's love and win them over by allowing them to indulge in inappropriate activities (page 6, Dr. Schau's report, learning to say "no"). One example that stands out very visibly is the fact that the oldest son Jonah is permitted to eat whatever he pleases. (CP 91) A concern even the mother has addressed with her son's therapist. Since the 50/50 split, he has gained a significant amount of weight and upon rereading the transcripts and John's testimony, it is apparent that he has a weight issue himself as well other health issues that are associated with being overweight, i.e., high blood pressure, high cholesterol, family history of diabetes and a very high BMI. The reckless behavior of John is putting his son's health in jeopardy and could affect the other boys as well in the long run.

One has to ask why the Judge did nothing in respect to paying attention to the final G.A.L. report (CP 71) or take the recommendations of when finalizing the parenting plan.

One obvious issue that was ignored is the testimony and supporting documents of trial witness Rachel Thomas. She claims under oath to have 'become friends' with the family shortly after they moved into the home in 2007, then states she is 'only an

acquaintance' when all documented proof show that she was simply an informant to John. **(CP 32)** The problem lies in her inconsistency and her conflicting statements aside from the fact that the day of the incident she knowingly and willingly held my then three year old son all day in her home in an attempt to keep him from me at the request of my daughter and did not tell me he was there. I had assumed he was with his sister and not being held from me. Rachel must have been contacted by Kirstin just after the incident as she did take Aidan out of the home but did not disclose to me where she or he were going. After school Kirstin then proceeded to attempt to take the other three boys to Rachel's as well in an order keep them from me also but thankfully my oldest son Jonah came home first and I was able to get the story from him as to what Kirstin and Rachel's intent were. A direct violation of **(RCW 9A.40.060)** and based on Rachel's emails to John, his brother Jim, and Kirstin she was fully aware of what had happened the morning of the incident, September 16, 2008. **(CP 32)** Rachel even admitted on stand to having the kids that particular day

"and then I also knew that John had gotten arrested because my neighbor witnessed it and then I had the kids that day". **(VR 170)**

She states again that she had the kids with her in her house.

“I saw her run away down to - - down the block, and I had the kids in the house with me”. **(VR 180)**

Rachel appears to be playing the part of ‘two faces of eve’ in that she pretends to be friendly with me only to turn around and be informing John and his brother of every detail of my life. She also stated ‘other neighbors’ who would back up what she’s saying **(VR 182)**, however when I asked the G.A.L. in my second interview with him if he had followed up on the comments by the neighbors because they seemed too similar to Rachel’s statements, his response was “no” but that he would. It has to be noted that in the final G.A.L. report there were no declaration or comments by any of the neighbors other than Rachel which can only be concluded that these ‘concerns’ by neighbors were just Rachel and not the entire neighborhood.

The G.A.L. states these as fact and the Judge based his entire decision (according to opposing counsel in court) on the fact that the petitioner is ‘gay’ and he stated so on the record in court on June 29, 2010. What is the relevance of the petitioner’s social or

love life to any court proceeding or determination of the parenting plan? Judge even made statements that it's irrelevant.

John clearly admitted that he had no desire to listen to Tracy, that he knew she feared him, and he did nothing to try to rectify that fact. John used his physical presence as a tool to keep order in his home. He so much as admitted to that during cross examination on the stand. He admits to the fact that he was not emotionally available and yet he is the one who claims he 'won' at trial. John has continued to berate and bully Tracy at every turn
(CP 81+)

From: John Hatch

Sent: Friday, October 01, 2010 1:01 PM

To: 'Tracy Hatch'

"Your selfish and reckless behavior won't be tolerated and I have the support necessary to pursue all available legal action to stop you.

However, when asked to explain his accusations he could not and did not respond. Being that he is currently at risk of losing the family home due to foreclosure and has had a CPS investigation launched upon him, one has to question who is being selfish and reckless. John is putting his priority into retaining his attorney, filling the family home with new furniture, buying

televisions, painting the home, buying the boys' love, and is not providing a home environment where the boys can feel safe and loved let alone keeping a roof over their head. With regard to the family home, 9 months after the fact and now at risk of losing the home forever, John has turned to Tracy for help and at the 11th hour and has done a 360 with regard to how he communicates to her as a way of getting what 'he wants' and feels 'he needs'. (CP 100)

From: John Hatch [mailto:johnhat@hotmail.com]

Sent: Thursday, October 21, 2010 9:48 AM

To: Tracy Hatch

Cc: John Hatch; justin@mckinleyirvin.com

Subject: Loan Modification

Tracy,

I am in the process of getting a loan modification for the house. It is something that needs to be done and I need your assistance. Even though I am the only one on the loan, you are on the title. What I am asking is that if I can get the loan modified, will you sign the papers on the new loan? If you are not willing to sign the papers and therefore I can't get the loan modified, there is risk that the house could be lost.

John

Not the behavior of a stellar parent but rather the behavior of someone who needs to be guided through each and every situation in life with assistance as evident by the fact that he still retains his attorney who speaks for him and is money that should be spent

paying the mortgages and ensuring a roof over his children's head and providing him the ability to care for their needs.

John has acted in bad faith for a number of years, whether it be by spying on Tracy, soliciting statements from neighbors, coaching witnesses or outright perjuring himself on the stand. It's time that the record is looked at more thoughtfully and carefully to the facts and merits of the case and not simply on what the Judge decided. The spreadsheet is the **Merits (CP 91)** of the case and speaks for itself. It clearly outlines all of the inconsistencies and where the supporting documentation can be viewed. The reviewing of the material will show how Tracy was wronged not only by opposing counsel but by the judge as well. Just because the state is attempting to right the 'Rights of Father's in America' does not mean that in this particular case that is what's best for the children.

John should be forced to rectify the mortgages on the family home and make the loans current and Tracy should be permitted to return to the home where the children can be with her 100% of the time where they want to be. John should be permitted visitation only, and only after he has proven beyond a reasonable doubt that he is capable of parenting and not just being a presence in the children's life.

The downward modification of child support needs to be adjusted in order for Tracy to have full residential time and meet the needs of her children. John needs to prove that he is in fact a good influence and that he is healthy enough to maintain relationships with the four young children. John needs to realize the damage he has caused each of these children by his abuse and neglect. Tracy asks that the children be protected from the negative and harmful influence of their father.

As proven time and again in testimony as well as reports, John is distrustful and does not have positive feelings about anyone other than those he has 'control' of. That cannot be viewed as good parenting and certainly is not good character in general.

Please take the time to read and cross reference the Merits. **(CP 91)** It shows a very different picture of what the trial court saw as it is concise and non-inflammatory. It shows clear examples of inconsistencies as well as the prejudice that Mr. Sedell brought to the courtroom. It also clearly shows the fact that there was illegally proffered materials from the date of the domestic violence incident while John was in jail as well as witness tampering and perjury.

Judge Castleberry erred in his finding as he was not justified in his own findings and proved as much when he did his own cross

outs. He allowed the respondent and his attorney to dictate the entire case which is unjust in itself being that Tracy Hatch initiated the dissolution due to the domestic violence and was in fact the petitioner.

2. The court erred in the disposition of Property (**RCW 26.09.080**) and (**RCW 26.09.090**). The trial court abused its discretion when it ordered a division of property without having knowledge of the value of a substantial part of it. Regarding the extent of the community and separate property, the duration of the marriage was not considered and left Tracy with only the clothes on her back after the final papers were drafted by John's attorney. John was permitted to enter a spreadsheet into the paperwork that awarded him virtually everything that was attained by the family over the course of the marriage as well as assets that were in a way, phantom assets as their true value was not identified by John honestly and fairly and when Tracy attempted to bring this to light in court, it was dismissed as hearsay. There was upwards of \$200,000 but no less than \$100,000 in assets that were purposefully ignored and hidden by John. This was the sale of his

deceased grandparents home that was not an inheritance as John time and time again claimed. **(CP 71)**

The grandmother's will states Disposition of Property as follows:

b. the remainder of my estate is to be divided in the following manner:

- (1) 50% to my grandson, John D. Hatch
- (2) 50% to my grandson, Jim Hatch

Nowhere does it state the home is gifted to John or Jim Hatch. Fact is the home was in probate for 6 months **(CP 71)** in order to get the title transferred to both John and Jim Hatch therefore not making it an inheritance or a gift but rather community property to both marriages.

Another question that should have been raised is the checking account that John has with his brother and the monthly deposits that were withdrawn from the couple's joint account that ranged from \$500 - \$750 per month into Bank of America, John and Jim's joint account, or the bonuses John receives each year along with the stock awards/options. The bonus John received in September 2009 in the amount of \$8,662 was to be held in a trust account and disbursed equally, according to both attorneys at the time, at trial **(CP 34)** however it was awarded solely to John. One also has to question the \$8000 withdrawal that occurred the

morning of September 16, 2008 by John after the DV incident that was to be used to pay for the children's education tuition. No question or explanation of the missing funds was ever offered. The yearly tax returns are another issue that should have been addressed. John was not the primary caregiver for the previous year, 2009, and yet the trial court abused its discretion and overrode legal authority in awarding the previous year's tax return for 2009 to John solely when the children spent maximum two months collectively, if even, the entire year with their father. This was an upward amount of approximately \$10,000 based on past years returns.

The broad discretion the court used in order to allocate maintenance was flawed. Two major factors to consider are the current economic condition that Tracy was left in and the fact that the income of Tracy's friend was entered into Tracy's financials when John financials were based solely only his own despite his living arrangements. By trial witness admissions, John lived with his brother, his sister in law, his adult daughter, and two minors at the time. Their income was not factored anywhere into John's declarations or financials. Again, this proves an abuse of discretion on the part of opposing counsel and the judge who allowed said

financials to be entered as evidence but did not take Tracy's actual financials (**CP 14**) which were last updated in February 2009, therefore were not current at the time of trial. John was allowed to enter incomplete and subsequently falsify documentation as fact.

3. The court erred in that despite the length of the marriage, Tracy was not awarded any compensation (**RCW 26.09.090**) and was in a way penalized for not participating in a daily work related environment for roughly a decade. **Case Number 63066-1 - In re the Marriage of: Rebecca Stewart v. Jerry Stewart** This was a marriage of twenty years but a twenty three year relationship altogether which in hindsight put Tracy in a subservient role to John who admittedly berated and bullied Tracy through the years in order to establish his role in the family. John admits to the G.A.L. and to Dr. Schau to being emotionally detached from the situation in order to live his own life and admits that he has only become an active participant in his four son's lives since the separation of the parties however this can be disputed due to his working full-time and not being available to them after school to help care for them, for homework, be there for respective activities, etc.. That is a situation that has not changed. In John's own words, he works 50-60 hours a week.

John also has not participated in the children's well checks with the doctor's, other doctor's visits, dental exams, field trips, and other day to day activities, all of which can be further verified through the **VR** and in the **CP** of the G.A.L. (**CP 71**) and Dr. Schau's report of John (**CP 91**). Tracy was admittedly unhappy for years, had expressed as much to John and was held at arm's length in order to keep order in his life and in hopes that Tracy would just 'go along with it'. Tracy suffered countless years of emotional abandonment at the hands of John.

Page 4 of Dr. Schau's report: "John believes that Tracy felt frightened of him, that she couldn't talk to him because he would get upset"

Page 7 of Dr. Schau's report: "John does acknowledge that he wasn't there for her, referring to Tracy. He lost touch with her emotional needs as he took care of his father and grandparents. It can be argued that having four young boys obviously requires a lot of parenting. It would appear that John left most of this to Tracy. His dependence of others acted as a tool of avoidance..."

John admitted so on the stand when cross examined (**VR 243**)

Tracy: "do you recall a conversation Friday night prior to separation"

John: "yes I recall some of the conversation, yes"

Tracy: "do you recall that I ever stated that I was intimidated by you?"

John: "yes you had stated that yes"

Tracy: “do I ever tell you that I didn’t feel comfortable talking to you about personal things?”

John: “yes you did”

Tracy was left with nothing at the finalization of trial. The standard of living established during the length of the marriage was not taken into consideration in the Finding of Facts and it was virtually ignored that Tracy gave her life, 100% to the children (**CP 42**) and to John who did not appreciate that fact or her for that matter and took every opportunity possible to use that against her.

4. The court erred in not recognizing Illegal activity was evident (**CP 81 & CP 97**), and not following (**RCW 19.270.020 (2)**) as John’s attorney used emails obtained by him while he was still in jail for the domestic violence assault and was no longer living in the family home. One particular email used as evidence by opposing counsel because of the fact that it did not have a date or time stamp on it therefore they knew it would be easier to sway the judge’s opinion of it as he would not have known when it was actually retrieved or originally written. In the (**CP 81 & CP 97**) you can find the original email as well as the version that was submitted by opposing counsel. Judge Castleberry read said email in open

court twice and then had to correct himself and stated in his oral finding of facts

“Prior to the separation Ms. Mastandrea wrote a disturbing email to Ms. Hatch - - it was actually I guess, the day after the separation”
(VR 354)

The G.A.L. stated on the stand **(VR 116 – 117)** that the email was in fact retrieved remotely after the incident on September 16, 2008 and while John was no longer living in the family home.

“I was told that Mr. Hatch accessed the emails on your system”

John admitted on the stand as well to getting into my personal emails. A violation of **(RCW 19.270.020 (2))**, **(18 U.S.C. § 2701 – 2712)**, **(18 U.S.C.A. § 2510)** and **(18 U.S.C.A. § 2511)**. This was not our joint email account we shared through Comcast which did not require a password as it was run through Outlook but rather my own personal Yahoo email account that was password protected. The **(CP 81)** clearly shows several screen shots of my computer and desktop activity as well one email I was writing my then attorney that John has accessed due to the nature of the spyware's accessibility of retrieving the reports remotely. That is

how did in fact access the one particular email that had no date or time stamp that was used at trial as evidence even though he himself and opposing counsel were aware that it was obtained illegally. John stated under oath (**RCW 9A.72.010**) when cross examined by me (**VR 246**)

Tracy: "have you ever been in my personal email account?"

John: "there was an incident where I did get into it yes"

Tracy: "and how did you have access to my personal emails accounts?"

John: "after I had determined that you felt you were cheating on me, I got into the email in one incident"

Tracy: "how?"

John: "using software that allows you to do that"

Tracy: "keystroke software, spyware?"

John: "it's not spyware but yeah".

In (**CP 81 & CP 97**) you will find all the information regarding what software John used specifically to access my personal emails illegally and use them as evidence at trial as a means of disparaging my character and coloring the judge's opinion of me. Softactivity Keylogger Spyware' <http://www.softactivity.com/spy-software.asp> It is in fact spyware as their website clearly outlines how to use it and for what purposes. John is claiming that he only accessed my personal email one time after he felt I was cheating on him which according to his recollection would have occurred

prior to separation. The email in question is dated the night of the DV incident upon which John was in jail and no longer living in the family home therefore he had no reason to even attempt accessing my computer or my personal emails but in fact did and did so remotely from his brother's home. This is all clearly defined in **(CP 81 and CP 97)**. Under **(18 U.S.C. 2701 – 2712)**, **(18 U.S.C.A. § 2510)**, **(18 U.S.C.A. § 2511)**, **(RCW 19.270.020)** and ***Potter v. Havlicek Case# 3:06-CV-211 of Utah***, it is illegal for John 'spy' on others regardless of who they are what their relationship is to him. It is illegal for his attorney to willingly use known illegally proffered material and documents as means of defense and to allow his client to use said material especially knowing how it was obtained, remotely after John was in jail and no longer living in the family home. The court must recognize that prior to separation John admitted in his declarations that he ran a credit check on me, he 'found out' about my WAMU accounts, and knew exactly how much I had in my WAMU bank account. This was my sole account that he was not a part of and the only way he could have accessed this information was to use a female as my voice and giving her my social security number and then calling the bank for information only after the credit check was run and obtained the bank account

number. During the dissolution there was concern by my then attorney too about John stalking behavior (**CP 34**) as he apparently had been keeping tabs on my online use and found me through Ebay. This coincides with the DV incident, John's installation of the spyware on September 14, 2008 (**CP 81**), accessing my personal emails, his need to control, and his inability to let go, or move on. Dr. Schau even stated in his report of John (**CP 91**) page 6, "however, he is not likely to be moralistic".

5. The court erred in not recognizing that there were numerous counts of perjury on part of the respondent as well as many trial witnesses that in fact do not add up to original interrogatories, statements, and declarations made or even the reports that were sworn under penalty of perjury (**RCW 9A.72.010**).

John perjured himself on the stand with regard to the events of the restraining order violation (**CP 28**), maintenance payments being timely (**CP 34**), the 'inheritance' of the grandmother's home (**CP 71**), relating to law (**RCW 9A.72.010**), his recollection of his own children's lives, and his solicitation of information for the G.A.L. through the neighbor Rachel.

The neighbor Rachel Thomas perjured herself **(RCW 9A.72.010)** stating many inconsistencies regarding her 'friendship' with Tracy, her testimony and declaration about her fear of Tracy, her lack of knowledge of social anxiety **(VR 184)** though being an RN and has been for 11 years, and stating on the stand she's never threatened to call CPS on Tracy **(VR 183)** when her email states otherwise and her willingness to do so. **(CP 32)**

The one statement relied upon by almost every witness that attorney Mr. Sedell called to testify was simply "I don't recall" when in fact is, if the testimony was so rock solid as it appeared in the declarations and negative regarding any and all situations testified about, the answers would have been clearer and not "I don't recall".

The perjury is clearly outlined through the designation of clerk's papers, the verbatim report as well as the spreadsheet on Merits.

6. The court erred in awarding attorney fees and contempt fees against Tracy when clearly there was no merit on either contempt hearings that took place:

- a. The first contempt hearing, ORTSC, **(CP 100 & 102)** was brought before a commissioner in my attempt to keep a

roof over the boys' head by simply asking the court make John accountable for the mortgages and bring them current which he could clearly afford due the length of his employment at Microsoft and his current salary and per Judge Castleberry's order to do so. The intent was to ensure the boys continue to live in their family home, one they have resided in for the last three and a half years, and one that should be afforded to them for years to come. This was a normal response and the reason for filing the ORTSC was reactionary due to fear after receiving the foreclosure notice tacked to the front of the home. My name was on the letter as well and I hold 50% entitlement to the deed of the home and I want my boys to be able to continue to live in the home they love and have enjoyed for many years. .

- b. The second ORSTC was due my delay in moving out of the family but **ONLY** because my plans were altered due to my oldest son's hospitalization for a broken leg (fibula and tibia) while with his father during John's residential time. Malicious intent occurred by taking money out of Tracy's pocket in order to pay fees to the attorney and

contempt charges to the court when the mortgages are still not being paid. Mr. Sedell 's intent was malicious in stating that the court action was 'unnecessary' when in fact it was and still is necessary as the situation still has not been rectified and this goes back to February 2010. Mr. Sedell acted unethically by stating into the record and to the commissioner that the Judge based his decision at trial on the fact that I was gay which is not relevant to the mortgage or my moving out of the family home and subsequent fees I'm being forced to pay. I was forced to pay of pocket a total of \$4000 and is a significant reduction of which takes food out of my kids' mouth each month and makes it harder to makes ends meet.

Statement of Facts

Most of the statement of facts are addressed in the assignments of error and in the designation of clerks papers as they are clearly defined but will be addressed here in a summarization.

Fact remains Tracy was not awarded any monetary compensation or a means to get a whole new life started. To assume one could start anew with nothing in their pocket is unrealistic. Judge Castleberry stated **(CP 80 page 4. Line 13 – 16)**

“I’m aware of household expenses, the food, the transportation, clothing, medical costs, etc. that accompany typical living of an individual with four children”

Unfortunately that could not be further from the truth when at the time Tracy’s financials were not current and hadn’t been updated since February 2009 and the judge did not accept updated financials at trial into exhibits. **(CP 14)** Had the judge allowed them to be submitted a clearer picture would have been painted as to how hard Tracy was struggling to makes ends meet while John had virtually no bills due to his living rent free with brother. It was unfair and unrealistic in assuming that \$2000 per month would be enough to pay bills, utilities on the home, food, all child related expenses, **and** start a new life outside the family home. **(RCW 26.09.090)**

Tracy was not awarded any of the proceeds of the sale of the grandmother’s house that was a community asset, which may have been in the upwards amount of \$187,000. John claims it was inheritance and one only needs to read the will in order to see that

no where does it state the home was gifted to him in any manner.

(CP 71)

The designation of custodian should have been to given to Tracy as she has been the primary care taker of her children since their daughter was born 21 years ago and has been a stay at home mom for now 10 years. The G.A.L. stated Tracy should be the primary parent **(CP 71)** and Dr. Schau stated 'no restriction against the mother' **(CP 42)** and it is apparent in **(CP 42)** that Tracy has always taken a very active role in all her children's lives. If it were not for Tracy her children would not have been able to participate in all of the activities they been in such as martial arts, soccer, baseball, basketball, chess club, math club, track and field, and cross country. Tracy has also been participatory in their field trips as well as their education and keeps the lines of communication open with all their teachers and the principal **(CP 91)** and even has a declaration from one of her son's teachers. **(CP 42)** Tracy is one who makes sure they are on time with well checks, immunizations, and dental visits. The boys' life is scheduled and managed by Tracy and solely by Tracy and that should have been taken into account when considering custody. John's participation was minimal and admits to a long and hectic work week and having put more time

and effort into his 'other family' rather than his wife and children.

Page 4 of Dr. Schau's report **(CP 91)** John states:

"it was tough for her... I created a lot of tension for her... I wasn't there for her".

John's priorities did not lie at home but rather outside the home.

Page 4 of Dr. Schau's report **(CP 91)**

John noted of himself that he takes responsibility for problems in the marriage. He acknowledged being away from Tracy a lot "it was difficult for her to deal with that". For 3 or 4 years, he was not home very much. "I was at work and then taking care of my relatives."

This is a pattern of behavior that persists as he continues to place more importance on his extended family rather than his immediate family.

For Dr. Schau to say that John views his children as a collective and not as individuals and to go on to say on page 6 of his report of him, "on one hand, John has positive feelings about himself" is a problem in itself. **(CP 91)**

"it may be much easier for John to view them as a collective. Recognizing and encouraging the individuality of each of his sons will require a great deal of energy and attention, qualities which do not come easy for him".

The boys are not one unit but rather separate individuals that need to be encouraged as such for their own uniqueness and special qualities that they possess and for what they each can contribute to life. Dr. Schau sums it all up in his report of John **(CP 91)**

Page 5: “John does not exude much energy, as if he is having difficulty mustering the necessary resources for dealing with day-to-day life”.

Page6: “He may have difficulty perceiving the emotional needs of his boys, especially on an individual basis”. “I don’t believe that John has much energy for pushing his sons very hard.” “John will be happy with their successes, but seems far removed from active support. I don’t see John as a permissive parent. A challenge for him will be one of seeing the individuality of each of his sons. It may be much easier for John to view them as a collective. Recognizing and encouraging the individuality of each of his son’s will require a great deal of energy and attention, qualities which do not come easily for John”.

Page 8: “John says the right things about how to hug, discipline, and spend time with the boys. Given a script, he will follow it, but presence is more than simply being with them....”

Unfortunately John still requires a script in order to succeed in his children’s lives **(CP 91)** and Dr. Schau states very clearly on **page 5** of his report “John relies upon his brother, Jim, for help with the boys” as well as other family members however, life isn’t always about following a script or a schedule and how will John handle it

when life deviates from the 'script' or if family isn't available to help him through day-to-day grind?

Tracy is being penalized by the court system for being a homemaker, for being available to her children 24/7, and for being pro-active in their lives, that's a positive thing that is being ignored. Tracy has put her life on hold to ensure her children are happy and know they are loved and grow into successful adults, something she is proud and honored to do.

Pursuant to **RCW 19.270.020** and Federal Laws **18 U.S.C. 2701 2712** and **18 U.S.C.A. § 2510** it is unlawful to access another person's computer without authorization and John knowingly installed spyware on Tracy's computer without her knowledge two days prior to the DV incident so as to use keylogger software what would retrieve her passwords to aid him in accessing her private and personal email for his own benefit and gain prior to separation as well as after separation. **(CP 81 & CP 97)** It is illegal and the judge allowed these proffered material to be used as evidence.

RCW 19.270.020 (2) Collects, through intentionally deceptive means, personally identifiable information through the use of a keystroke-logging function or through extracting the information from the owner or operator's hard drive;

By allowing the illegally proffered material to be used as evidence by opposing counsel, respondent's statement of evidence #18 (**CP 81 & CP 97**), not only does it negate John's testimony of accessing Tracy's email "one time", but also it skewed the judge's opinion of the case as clearly defined when the judge read the email in his oral findings in open court more than once despite Washington being a no fault state. (**CP 80, page 13, line 18 – 23**)

"Ms. Mastandrea indicated that she had moved to this area from Arizona for the weather. All you have to do is read the emails and find out that is wasn't anything to do with the weather. It had to with the fact that she wanted to be with Ms. Hatch".

The emails had no relevance to the dissolution and the parenting plan, or the financials for that matter, and the judge was unjustified in brining the matter up in the first place. Fact remains, Ms. Mastandrea's intentions were to move to Washington so as to afford a better life for her son and to obtain better health care for him as well and the move was in place for months. (**CP 97**) John 'thoughtfully' picked and chose emails he thought would be the most damaging and if he claims that he only entered my email account one time, then why did Mr. Sedell have emails dating back

from August 2009 that he used for his exhibits at trial? **(CP 97)** His recollections again are completely contradictory.

Perjury was evident in multiple instances and the facts are stated in the assignment of errors number 5 and are clearly defined.

Conclusion

Tracy is not arguing the validity of the Dissolution as she was the one who filed the initial paperwork after the domestic violence incident. Tracy is arguing that the trial court erred in the Designation of Custodian as it went against all documentation presented by the expert witnesses, the G.A.L. and the CR-35 examiner. Tracy is seeking a modification of the parenting plan in respect to custodial designation where the children should be returned to her full time as primary caretaker.

The trial court did not make a just and equitable division of assets because it failed to value the community and separate properties. Tracy should have her monthly maintenance increased in order to be able meet the standards of life that were established

during the duration of the marriage (**RCW 26.09.090**). Tracy should be awarded the entire amount of costs that were incurred in this dissolution to include any and all finances that were disbursed to her attorney as well as the contempt fines that were accrued due to John bringing her to court regarding the family home.

Tracy should be permitted back into the family home. John needs to reconcile the mortgage issue as he stated under oath that he could in fact pay those mortgages and the bills associated with it. He has proven in a few short months that he is not an appropriate caregiver and is harmful to the children. With a CPS investigation under his belt it is apparent others are concerned about the safety and well being of the children while in his care as well.

Tracy also should be awarded one half of the proceeds of John's portion of the sale of the Grandmother's home. This was a community asset acquired during the marriage. Lastly Tracy should be awarded the home, its contents, as well as the custody of the children as the last year has been an obvious lesson into John's ineptitude as a parent, a father, and an honest person.

And it must be noted because the most prominent words that came from Judge Castleberry and continues to be mimicked from

John as well is the suggestion that I have wreaked havoc on John's life when nothing is further from the truth. By all the evidence presented one must question who has wreaked havoc on whose life?

Dated this 29th day of November, 2010

A handwritten signature in black ink, reading "Tracy J. Hatch", is written over a horizontal line. The signature is cursive and fluid.

By Tracy J. Hatch

Pro Se – Appellant

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

Tracy Jo Hatch
Appellant

Appeal Case No. 650076

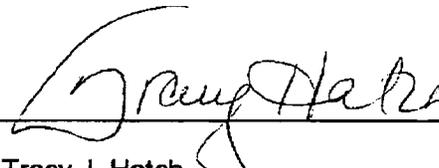
v.
John David Hatch
Respondent

PROOF OF SERVICE

I the petitioner, Tracy Hatch, declare under penalty of perjury that opposing counsel, Justin Sedell, has been provided the Appellant's Brief as it was hand delivered to his office today.

A copy of the brief was also provided electronically (via email) to associated counsel Catherine Smith and Valerie Villacin.

Date: 11/29/10

Appellant: 
Tracy J. Hatch
Bothell, WA 98021