

No. 65515-9-I

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

In re the Marriage of

TAMARA RODDEN
Respondent

and

JAMES RODDEN
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

AMENDED BRIEF OF RESPONDENT

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I. INTRODUCTION

After a guardian ad litem reported on the parties' respective problems with alcohol and anger, the parties reached a settlement regarding the parenting issues, including by providing for a 60/40 residential split (father/mother) and for mutual decision-making, despite cross allegations of domestic violence. The trial court felt duty bound to look behind the agreement with respect to the domestic violence allegations. Moreover, the parties went to trial, though neither party called the guardian ad litem to testify. Ultimately, the trial court ordered sole decision-making to the mother on two grounds. First, based on the father's deferred prosecutions for simple assault and violation of a no contact order, and based on the report of the guardian ad litem, the court found a history of domestic violence. It is unknown if the court also heard testimony on this history because the father has not provided a transcript of the trial. Second, based on the evidence before the court, including, presumably, testimony at trial, the court also found the parties to be unable to cooperate to make decisions jointly. For either or both reasons, and because the father entered into a settlement on the parenting issues and repeatedly waived objections to the evidence and proceedings below, and because he

does not provide a complete record of the proceedings to permit adequate review, the trial court's decision should be affirmed.

II. RESTATEMENT OF ISSUES

1. Is an appellant required to provide an adequate record for review, which record should include the trial testimony if the appeal involves disputed factual issues and discretionary decisions of the trial judge?

2. In the absence of a complete verbatim report of proceedings, including the testimony of the parties, are the trial court's findings verities on appeal?

3. Is a trial court's decision regarding allocation of decision-making in a parenting plan reviewed for an abuse of discretion?

4. Should the trial court's factual finding of domestic violence be affirmed where the parties agreed to be bound by the guardian's report and where the finding of domestic violence is supported by substantial evidence, in the form of two criminal charges resolved by deferred prosecution and the report of a guardian ad litem of the father's anger problems, including admissions by the father of "spanking" the daughter (resulting in bruising and CPS referrals by the daughter's therapist)?

5. Is a record from the Judicial Information Services admissible as evidence of a history of domestic violence?
6. Is the guardian ad litem report admissible as evidence of a history of domestic violence?
7. Did the father waive objections to the court's consideration of the JIS report and the guardian's report?
8. Where the court offered an alternative reason for allocating sole decision-making to the mother, and the father does not challenge that reason, should this Court affirm on that basis?
9. Were the father's constitutional rights protected?
10. Should the mother receive her attorney fees on appeal?

III. RESTATEMENT OF THE CASE

A. THE PARTIES WERE MARRIED AND HAVE ONE CHILD AND, AT DISSOLUTION, AGREED TO A PARENTING PLAN.

James and Tamara met and married in California and have one child, who is now 11 (DOB 09/19/99). CP 58, 60. Their marriage, marked by turmoil, ended acrimoniously amid allegations of domestic violence and alcohol abuse. CP 171, 179-180, 301-315. Cross petitions for orders of protection were voluntarily dismissed by the parties after a commissioner signaled he was

unwilling, without additional evidence, to grant either petition. CP 162, 164; see, also, CP 23 (finding parties failed to meet respective burdens). The commissioner appointed a guardian ad litem to investigate matters related to the parenting of the parties' child. CP 162. The court also prohibited corporal punishment of the child and required the parties to contact a professional regarding training in nonviolent communication. CP 114, 199.

After a guardian ad litem investigated and issued a report, the parties agreed to a parenting plan consistent with the guardian's report. RP (07/15/09) 5; Supp. CP 60A, 116 __ (GAL Report, Settlement Statement); CP 96-99.¹ The report included recommendations that the parenting plan prohibit the mother from using alcohol and require the father be evaluated for violence intervention and training and refrain from corporal punishment. CP 98-99.

The parties did not reach agreement on all matters and proceeded to trial, at which both parties testified. CP 266-271.

¹ Over the course of the litigation, the parties vacillated in their proposed parenting plans, with the mother's initial plan stating no basis for statutory restrictions (CP 181), with the mother's plan one month later reserving the issue of restrictions (CP 348), with the father's initial plan alleging domestic violence as a basis for restrictions against the mother (CP 171), with the father a year later alleging no basis for restrictions (CP 126-127), with the mother after trial alleging domestic violence against the father as a basis for restrictions on decision-making (CP 72).

Neither party called the guardian to testify. *Id.* The father earlier had acknowledged the court would have to make its own decisions. CP 117. None of the trial, except for the court's oral ruling, has been made part of the record on appeal.

At the conclusion of the testimony, the trial judge made an oral ruling, which addressed mainly the financial issues, including the parties' disparate financial circumstances. See, e.g., RP (07/15/09) 12 (husband's monthly income is \$7500; wife's is \$1696). However, of particular pertinence here, the court began its ruling by observing that both parties are working on personal "difficulties," specifically the mother has "drinking issues" and the father has "temper and domestic matters." RP (07/15/009) 3. In light of the father's difficulties, the court reserved ruling on the decision-making provision of the parenting plan out of concern for the constraints of RCW 26.09.191, which prohibits joint decision-making when there is a history of domestic violence. RP (07/15/09) 16. The court noted "[i]t appears that there has been a finding by a court to that effect with regards to Mr. Rodden." *Id.* Because the court is obligated to abide by the statute and to act "in the best interests of the child in this case," the court invited the parties to address the issue further. RP (07/15/09) 16, 17.

B. AT PRESENTATION, THE FATHER PROTESTED MAKING THE MOTHER THE SOLE DECISION-MAKER.

At the hearing on presentation of final orders, the court noted that it did not hear testimony on the parenting plan, because the parties had reached an agreement. RP (09/22/09) 3-4.

Accordingly, the court declined to resolve a dispute about residential provisions without further fact-finding. Id.²

The court then asked the parties to address the domestic violence issue, noting that the guardian ad litem report and the court file indicate the father had a deferred prosecution disposition of an assault charge. RP (09/22/09) 5. The court also said it had reviewed Judicial Information Services, as required by local court rule (WCSPR 94.08(o)).³ RP (09/22/09) 6.⁴ According to JIS, the assault charge was deferred and a violation of a protection order was similarly resolved. Id., at 7. The father framed the issue as whether “the existence of a deferred prosecution constitute[s] evidence sufficient to establish that ... the person should not be involved in decision-making.” RP (09/22/09) 6.

² Under CR 59(g), the court may reopen to take additional testimony.

³ This rule also requires the parties to submit JIS background checks.

⁴ The temporary parenting plans were entered only after the commissioner or judge had checked JIS. See, e.g., CP 139

The father also objected to the court considering the guardian ad litem report as substantive evidence of the events recited therein because the guardian did not testify. RP (09/22/09) 16. The father claimed that because the guardian was not available for cross-examination, there was no admissible evidence of domestic violence. Id., at 16-17. The father agreed to entry of a parenting plan consistent with the guardian's report. CP 272-276. The father did not subpoena the guardian for trial nor did he file a motion in limine seeking to exclude the guardian's testimony. The guardian was appointed in June, 2008, and charged with the obligation to investigate and report to the court. CP 331-335.

After consulting the statute, the court observed that even if prosecution for an assault charge is deferred, "it doesn't mean that there wasn't something that happened ---" RP (09/22/09) 7. The court observed further the difference in the burden of proof between a criminal setting and the family law setting and that a deferred prosecution allows the defendant to avoid a fact-finding and punishment in the criminal setting. Id., at 8-10. In the family law setting, the court felt duty bound by the statute to take more than "a cursory look" and "to actually take into account what is found." Id., at 17. In light of the record of the charges and the report of the

guardian ad litem, the court concluded there was sufficient evidence in the family law setting to make the mother the sole decision-maker. *Id.*, at 9, 11. To ignore this evidence, the court said, “would be shirking its obligation.” *Id.*, at 17. However, the court *again* invited the father to make a record if he disagreed. RP (09/22/09) 17.

C. THE FATHER MOVED FOR RECONSIDERATION, WHICH THE COURT DENIED.

In a motion for reconsideration, the father provided a copy of the mother’s petition for a protection order. CP 6-28. In it she alleged the father grabbed her and shook her while cursing her. CP 19-20. She also alleged the father had spanked and manhandled the daughter to the point of bruising her. *Id.* In an updated report, the guardian ad litem also described this incident, as well as older incidents and a more recent one where the father hit the child and left bruises. CP 97. The father did not deny “spanking” the child. *Id.* The guardian ad litem report included recommendations against the father’s use of corporal punishment and that the father undergo a batterer’s treatment evaluation. RP (10/27/09) 6; CP 99.

The father again argued the evidence was insufficient to support a finding of domestic violence and argued the denial of the

protection order had a collateral estoppel effect on any further fact-finding by the court presiding over the parenting plan issues. RP (10/27/09) 4-7.

The mother pointed out that the facts supporting the restrictions on the mother's residential time, related to her alcohol abuse, were also contained in the guardian's report and that the father was relying on those in negotiating a parenting plan that made him the primary residential parent, though it was undisputed the mother had performed most of the day-to-day parenting functions. RP (10/27/10) 6-7; see, also, CP 168. The father could not tell the court to credit some facts from the guardian's report and discard others. RP (10/27/10) 6-7. The mother also noted that there was an independent basis in the form of the records in the Judicial Information Service. *Id.*, at 7.

Finally, the mother offered an alternative basis for sole decision-making. After listening to the parties testify, her attorney noted, the court could see there is "certainly animosity." *Id.* Indeed, mother's attorney argued, "the idea that there is joint decision making is a fantasy ..." *Id.*

The court denied the father's motion for reconsideration after noting that the father had to agree to some restrictions in order to

get a deferred prosecution and, thereby, to avoid a trial. RP (10/27/09) 9. The court also expressed concern about the referrals to CPS based on the father hitting the child. Id. Along with the information on JIS, “all of this indicates to the Court that there’s an anger issue of some sort, at the very least, ...” RP (10/27/09) 10. The court agreed it could not cherry pick facts from the guardian’s report, in particular, ignore facts about the anger problem. Id. At the same time, the court noted the guardian, who recommended joint decision-making, was not bound by the statute, as the court is. RP (10/27/09) 10. Nor is the court bound by the parties’ agreement, but has an independent statutory duty. RP (10/27/09) 11. Again, the court found the evidence was sufficient to support a finding of domestic violence. RP (10/27/09) 12-13.

Finally, the court agreed that “it’s pretty clear that these parties can’t make joint decisions very effectively, because they are at each other’s throats, so to speak, about everything ...” RP (10/27/09) 13. The litigation history in the court file, and the guardian ad litem report, demonstrate “that these parties can’t get along,” and it would be error to order joint decision-making on that

basis. RP (10/27/09) 13. Accordingly, the court denied the father reconsideration. CP 4-5. The father appealed.⁵

IV. ARGUMENT IN RESPONSE

A. THE STANDARD OF REVIEW.

A trial court has broad discretion when fashioning the provisions of a parenting plan. *In re Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993). It exercises that discretion guided by the best interests of the children and upon consideration of the factors listed in RCW 26.09.184(5), RCW 26.09.187(3). *See, also*, RCW 26.09.002 (best interests is standard for court's parenting decisions). Such decisions are reviewed by this Court for an abuse of discretion. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). Furthermore, this Court may affirm the trial court on any grounds established by the pleadings and supported by the record. *In re Marriage of Rideout*, 150 Wn.2d 337, 358, 77 P.3d 1174 (2003).

B. THE FATHER DOES NOT CHALLENGE THE COURT'S ALTERNATIVE BASIS FOR ORDERING SOLE DECISION-MAKING.

Before embarking on a response to the father's challenge to the court's domestic violence finding, efficiency is well served by

⁵ The father has not designated the Notice of Appeal, as required by RAP 9.6(b)(1)(A).

noting that the trial court offered an alternative basis for ordering sole decision-making, which the father does not challenge. Under RCW 26.09.184(5), the trial court is required to allocate decision-making. Under RCW 26.09.187(2)(b), the court is required to order sole decision-making 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.

Furthermore, the court is required to consider the following factors when deciding whether to order mutual decision-making:

- (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.

RCW 26.09.187(2)(c) (emphasis added).

Here the court found it was “pretty clear that these parties can’t make joint decisions very effectively, because they are at each other’s throats, so to speak, about everything.” RP (10/27/09) 13. This finding is amply supported by the marital history and the litigation history. CP 301-315. The parties’ history includes numerous engagements with police and other state authorities, including referrals of the father to CPS for striking and bruising the child. *Id.* In this proceeding, the parties accused each other of domestic violence. The guardian ad litem found the father to have a problem managing his anger, both in his dealings with the mother and with the child. CP 97, 99. The pretrial and post-trial docket is packed with allegations and cross-allegations on parenting and financial issues. See Appendix (docket).

In short, the parents do not have “a demonstrated ability and desire to cooperate with one another in decision-making ...” RCW 26.09.187(2)(c)(iii). To require mutual decision-making in these circumstances is a recipe for more litigation and conflict over the child, which is clearly not in her best interests.

Interestingly, the father himself asked for this relief early in the proceedings. His proposed temporary parenting plan included provision for him to be sole decision-maker based on all four of the

criteria in RCW 26.09.187(2). CP 175. He should not be heard to complain now that the court agreed with him that mutual decision-making is not viable.

Finally, the court also has the discretion under RCW 26.09.191(3)(g) to limit decision-making, as it has here. See *Katare v. Katare*, 125 Wn. App. 813, 105 P.3d 44 (2004) (court could impose travel restriction under statute). And this Court has the authority to affirm the trial court on any basis supported by the pleadings and the evidence. *Marriage of Rideout*, 150 Wn.2d at 358.

C. THE TRIAL COURT WAS REQUIRED TO ACT IN THE CHILD'S BEST INTERESTS IN RESPECT OF THE DECISION-MAKING PROVISION.

- 1) The court is required to act in the best interests of the child regardless of the parties' agreement.

Parents may make an agreed parenting plan. RCW 26.09.181. See, e.g., *In re Marriage of Wilson*, 117 Wn. App. 40, 68 P.3d 1121 (2003). Guardians ad litem may make recommendations. RCW 26.09.220. However, only the court has the authority to enter a parenting plan. See *Dugger v. Lopez*, 142 Wn. App. 110, 121, 173 P.3d 967 (2007) (obligation to make parenting plan decisions is court's alone); *In re Marriage of Swanson*, 88 Wn. App. 128, 138, 944 P.2d 6 (1997) (guardian's

report not binding on court); *Clarke v. Clarke*, 49 Wn.2d 509, 511, 304 P.2d 673 (1956) (parties' agreement subject to court determination of child's best interests). The parties' agreement is merely a factor for the court to consider in making residential provisions, RCW 26.09.187(3)(a)(ii), and it is secondary to the "relative strength, nature, and stability of the child's relationship with each parent." RCW 26.09.187(3)(a)(i). Likewise, the allocation of decision-making responsibility is governed by factors other than the parties' agreement. RCW 26.09.187(2).

2) The court was required to inquire into the subject of domestic violence.

As part of the court's duty to enter a parenting plan in the children's best interests, the court must inquire into any facts bearing on the children's best interests. See *Bonn v. Bonn*, 12 Wn. App. 312, 317-318, 529 P.2d 851 (1974) ("because of the paramount concern for the welfare of the children it is inappropriate and erroneous to withhold an inquiry into the best interests of the children as a penal remedy" for failing to comply with a court order). The legislature has made clear that domestic violence is an issue bearing on the child's best interests. See *Danny v. Laidlaw Transit Services, Inc.*, 165 Wn.2d 200, 214, 193 P.3d 128 (2008) (domestic

violence is a problem of “immense proportions” with “devastating effects for individual victims, their children, and their communities”) (internal citations omitted). Indeed, the Legislature enacted a Domestic Violence Prevention Act (chapter 26.50 RCW) and has mandated specific consideration of domestic violence in the creation of a parenting plan, including in the allocation of decision-making responsibility. RCW 26.09.187(2). The trial court correctly understood it was not at liberty to ignore the domestic violence in the present case.

3) Where domestic violence is found, the court cannot order mutual decision-making.

Under RCW 26.09.191(1), the court may not require joint decision-making or non-judicial decision-making mechanisms if it finds certain, specific conduct has occurred (e.g., abuse, abandonment, domestic violence).⁶ Domestic violence is defined, in pertinent part, as “physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members...” RCW 26.50.010(1)(1).

This Court defers to a trial court’s finding if supported by substantial evidence. *Thompson v. Hanson*, 142 Wn. App. 53, 60,

⁶ Similarly, under Section 2, the court must limit a parent’s residential time if it finds any of this same kind of conduct.

174 P.3d 120 (2007), *aff'd*, 167 Wn.2d 414, 219 P.3d 659 (2009) (appellate court defers to the trier of fact on issues involving conflicting testimony, the credibility of the witnesses, and the persuasiveness of the evidence); *Marriage of Rideout*, 150 Wn.2d at 351-352 (same standard of review for trial court determinations based on documentary evidence). "Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person that the premise is true." *Id.*, citing *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000).

Here, the trial court found domestic violence expressly based on a charge of simple assault and a violation of a protection order, both resulting in deferred prosecutions, and on events described in the guardian ad litem reports, including events involving the spanking and manhandling of the child. It is not clear whether the mother also testified to these and other events at the trial because the father has not provided a complete report of the proceedings.⁷ However, the father's counsel stated, with respect to

⁷ The trial court mentioned it had not heard testimony on the parenting plan *per se*, but did not seem to include in that description the issue of domestic violence, since it addressed it separately. RP (09/22/09) 3-5. Significantly, the court did not feel it could resolve a dispute regarding the residential provisions without additional testimony, but did feel it had sufficient evidence to address the domestic violence issue. *Id.* Moreover, the court seemed to have the domestic

the deferred prosecution, “[w]e had testimony regarding that.” RP (10/27/09) 9.

Clearly, the court had to make some credibility determinations to resolve other issues, which left the father looking not especially credible. See, e.g., RP (07/15/09) 7 (finding the father’s testimony “extremely nonspecific”); 13 (questioning whether the father’s rental agreement with his parents is “an arm’s length transaction”); 15 (testimony casts “a little bit of doubt in this Court’s mind on Mr. Rodden’s willingness to come before the Court and to be open and honest with the Court and with the opposing party and counsel”). Especially in light of these findings, the father should be subject to the general principle that failure to provide a verbatim report of proceedings renders the trial court’s findings verities on appeal. *Morris v. Woodside*, 101 Wn.2d 812, 814, 682 P.2d 905 (1984); see, also, *In re Marriage of Haugh*, 58 Wn. App. 1, 6, 790 P.2d 1266 (1990) (appellant has burden to perfect record so court has before it all the evidence relevant to an issue). For that reason alone, his challenge to the court’s finding of domestic violence should fail.

violence and alcohol issues on its mind after hearing the trial testimony, since it addressed those subjects immediately. RP (07/15/09) 3.

- 4) Domestic violence was proved by a preponderance of the evidence and any defects in the procedure were waived by the father.

The father complains there is insufficient evidence to support the trial court's finding of a history of domestic violence. In fact, the evidence is sufficient. First, the father never explains why the court should not have viewed the parties' agreement as a stipulation to the facts contained in the guardian's reports. CP 272-276. See CR 2A; *In re Marriage of Ferree*, 71 Wn. App. 35, 41, 856 P.2d 706 (1993) ("the purpose of CR 2A is to insure that negotiations undertaken to avert or simplify trial do not propagate additional disputes that then must be tried along with the original one."). In negotiating an agreement based on the guardian's report, and avoiding a trial on the parenting issues, the father chose not to dispute that report.

Moreover, to the extent the father complains of what evidence there is, he repeatedly declined opportunities to support his challenge to the evidence. He did not move in limine to exclude the guardian's report or the JIS report. He did not call the guardian to testify. He did not produce either the guardian or other evidence to counter the facts as contained in both reports. The father has some obligation to make a record on his objection. See, e.g.,

Lamon v. McDonnell Douglas Corp., 91 Wn.2d 345, 352, 588 P.2d 1346 (1979) (failure to move to strike affidavit in support of summary judgment waived any objection to deficiencies, if any); *State v. Robinson*, 120 Wn. App. 294, 300, 85 P.3d 376 (2004). Essentially, the father both failed to undermine the reliability of the reports and waived any objection to the admissibility and sufficiency of the evidence.⁸

- a) The JIS record is an official court record and sufficient evidence to prove the existence of the deferred prosecutions by a preponderance.

Indeed, this lack of action on the father's part seems calculated to evade the particularized factual inquiry the court properly made. For example, the father never actually denies that he entered into a deferred prosecution for both the assault charge and the charge of violating the no contact order. Rather, he tries both split hairs and play the artful dodger. He told the trial judge that a deferred prosecution does not require an admission of guilt,

⁸ The father argues the court used no evidentiary standard. Br. Appellant, at 20-21. The father misreads the court by taking one sentence out of context in a repetitious colloquy that extended over three hearings. The court repeatedly made the point that the standard of proof in the family law setting was not the same as in a criminal setting. The court also observed that the domestic violence did not need to be in the form of a criminal conviction. Here, the court had more than sufficient evidence to satisfy the appropriate standard of proof, of which the experienced trial judge was no doubt aware.

RP (09/22/09) 8, which is technically true, but it does require an admission that the admissible evidence is sufficient to establish guilt. He argues on appeal that the trial court could not solve the mystery of whether his criminal record includes deferred prosecutions (as the JIS and the guardian ad litem and the mother all reported) or whether “the prosecutor simply dropped the charges.” Br. Appellant, at 26.⁹ This coyness is unavailing.

In fact, the JIS record alone is sufficient to establish the deferred prosecutions, since it is an official government record comparable to a certified judgment. *In re Matter of Adolph*, - Wn.2d -, 243 P.3d 540 (2010); *see, also*, ER 902(d) (certified copy of public record is self-authenticated). In *Adolph*, the JIS record of a DUI was sufficient evidence to support sentence enhancement for vehicular homicide (by a preponderance standard). *Id.*, at ¶¶ 24 and 25. *See, also*, *State v. Cross*, 156 Wn. App. 568, 588, 234 P.3d 288 (2010) (JIS generated report is “official court record” and a “reliable source providing sufficient proof to meet the State's

⁹ The father also argues the charges were possibly deferred under CrRLJ 6.1.2. Br. Appellant, at 26. Undersigned counsel can find no such local rule in Whatcom County. In any case, “[b]ecause deferred prosecution is a creature of statute, the District Court's authority with regard to the imposition of conditions of deferred prosecution must be measured by statutory law.” *Abad v. Cozza*, 128 Wn.2d 575, 911 P.2d 376 (1996) (internal citation omitted).

burden of proving by a preponderance of the evidence” defendant’s misdemeanor assault convictions). The JIS report was sufficient proof of the deferred prosecutions.

Moreover, the court is required to check the statute. RCW 26.09.182. Furthermore, contrary to the father’s arguments, these deferred prosecutions are significant. Though the father seems to equate a deferred prosecution with an acquittal, a deferred prosecution actually is evidence of wrongful conduct. *State v. Drum*, 143 Wn. App. 608, 616, 181 P.3d 18 (2008), *review granted* 164 Wn.2d 1024, *affirmed on other grounds* 168 Wn.2d 23, 225 P.3d 237 (“Deferred prosecution under chapter 10.05 RCW is designed to encourage treatment of *culpable* people whose *wrongful* conduct is caused by a treatable condition, such as alcoholism.”) (emphasis added). That is, a deferred prosecution is a statutorily-created “*sentencing* alternative of preconviction probation, to be added to the traditional choices of imprisonment, fine, and postconviction probation.” *State ex rel. Schillberg v. Cascade Dist. Court*, 94 Wn.2d 772, 779, 621 P.2d 115 (1980) (emphasis added); *see, also*, RCW 10.05.010. To qualify for this alternative, the defendant must stipulate to “the admissibility and sufficiency of the facts contained in the written police report,” and

acknowledge that the statement containing this stipulation “will be entered and used to support a finding of guilty if the court finds cause to revoke the order granting deferred prosecution.” RCW 10.05.020(3)(c) and (d).

“In a deferred prosecution program, the defendant's referral for treatment results in the postponement of trial and the eventual removal of records relating to the charges.” *State v. Ashue*, 145 Wn. App. 492, 188 P.3d 522 (2008). However, even when the probation period is successfully concluded, and the prosecution is dismissed, the fact that it occurred still counts for a lot. For example, a deferred prosecution for an alcohol related driving offense qualifies as a “prior offense” for purposes of elevating a DUI to felony status. See, e.g., former RCW 46.61.5055(13)(a)(vii). Dismissal after a deferred prosecution is not like a washed-out conviction and may be properly considered in later sentencing. *City of Kent v. Jenkins*, 99 Wn. App. 287, 992 P.2d 1045 (2000).

The main point, of course, is that a deferred prosecution is a *sentencing* alternative, and certainly does connote wrongful conduct, as the trial judge here understood. And the deferred prosecution was proved by the JIS report. Though the trial court specifically offered to review criminal court records, if the father

produced them to dispute the JIS report, RP (09/22/09) 9, the father did not produce them.¹⁰ The trial court properly considered and weighed the JIS report.

- b) The father did not call the guardian to testify and the guardian's report was admissible.

Neither party called the guardian as a witness at trial.

Neither party objected to the admissibility of the report pretrial.

Both parties agreed to the parenting plan "consistent" with the guardian's report and recommendations. RP (10/27/09) 6-8. Only after the trial court expressed concerns about the evidence of domestic violence in the record, did the father complain that he was unable to cross-examine the guardian and complains on appeal that the guardian's report, contained in the court file, was not admissible as evidence. The problem with these complaints is that the father had every opportunity to correct for them. He was not prevented from calling the guardian to testify, had he wished to challenge the recitation of facts contained in the guardian's report. Indeed, he had an affirmative right to call the guardian and any of the people contacted by the guardian. RCW 26.09.220(3) ("Any party to the proceeding may call the investigator and any person

¹⁰ The arguments of father's counsel are not evidence. *Jones v. Hogan*, 56 Wn.2d 23, 32, 351 P.2d 153 (1960).

whom the investigator has consulted for cross-examination.”).

Thus, the father was not “unable” to cross-examine the guardian, as he claims; rather, he chose not to do so. That is a big difference.

Likewise, the father’s complaints about the guardian’s report miss the mark. See, e.g., Br. Appellant, at 30-31. The father does not claim he never saw the report, or that his requests for review of the guardian’s file was denied, which might be bases for objecting to admission of the report. RCW 26.09.220(3). Indeed, the parties hammered out an agreed parenting plan based on the guardian’s report and explicitly endorsed it in their agreement. CP 272-276. The father cannot have it both ways, or lie in the grass with his objections until after the court has made its determination based on the record before it. The court ordered the report to be made. The parties agreed to a parenting plan based on the report. The court properly considered the report when fulfilling its duty to enter a parenting plan.

Ultimately, the father’s complaints about the process ring hollow and are symptomatic, perhaps, of a larger problem. He took advantage of the deferred prosecution alternative, thereby avoiding a criminal conviction, but he wants also to evade all responsibility,

which is certainly at odds with the philosophy behind a deferred prosecution (i.e, the promise of rehabilitation).¹¹ He reached a settlement in reliance on the guardian's report, including in regard to the mother's struggles with alcohol, which is the predicate for making the father the primary residential caregiver, but he wants the court to ignore the guardian's report on his own misconduct. Fortunately, the court saw its duty to the child and did it.

Finally, the father provides no record of the trial testimony, so this court cannot know if the mother testified to the domestic violence or, more generally, to the parties' conflict and/or ability to cooperate in decision-making. In sum, not only did the trial court have before it substantial evidence to support the domestic violence finding, the lack of an adequate record negates the father's contention to the contrary.

D. DECISION-MAKING DOES NOT NEED TO BE IN THE PRIMARY RESIDENTIAL CAREGIVER.

The father seems to argue that decision-making authority must reside in the primary residential caregiver. See, e.g., Br. Appellant, at 1, 28-29. First, the father overstates his position when he seems to declare himself the only parent "responsible for the

¹¹ Notably, the mother has actively pursued treatment and rehabilitation. See, e.g., CP 52 (finding mother "actively pursuing sobriety").

day-to-day care of his daughter ...” Br. Appellant, at 1. The parenting plan allocates residential time 60/40, meaning that for approximately 12 of every 30 days, the child lives with the mother. CP 49-51. Indeed, some of the father’s argument seems to arise from a misapprehension of Washington’s policy on parenting, which views both parents as equal and equally necessary to the child’s well-being. Accordingly, Washington law does not speak of “custody” or “visitation,” but of residential time. *In re Marriage of Kovacs*, 121 Wn.2d 795, 800-801, 854 P.2d 629 (1993) (parenting act replaced the terms “custody” and “visitation” with concepts such as “parenting plans” and “parental functions”).

Accordingly, and contrary to the father’s arguments, he does not have “custody” and the mother “visitation.” He has 60% of the residential overnights with the child and the mother has 40%. Moreover, this arrangement derives from the mother’s history of alcohol abuse, which she is found to be addressing, not from the father having performed the majority of parenting functions. See CP 52 (mother actively pursuing sobriety). Indeed, the mother was a stay at home parent and, according to the record available here, took the initiative in addressing the child’s particular medical and

health needs. CP 301-315. She, not the father, is most likely to be in tune with the child's basic needs.

In short, these realities demonstrate the flaw in the father's argument that the present allocation of decision-making is somehow impracticable. The facts and the law support the court's finding that the mother, who has been the primary caretaker, can ably handle the major decision-making and that making her sole decision-maker is in the child's best interests.

E. THE COURT'S FAILURE TO ORDER ADDITIONAL RESTRICTIONS IS NOT A BASIS TO VACATE THE ALLOCATION OF DECISION-MAKING AUTHORITY.

Finally, the father complains that the trial court's allocation of decision-making based on domestic violence is inconsistent with its approval of the residential schedule and dispute resolution provisions. Br. Appellant, at 26-27. His point is well-taken, insofar as the statute prohibits the designation of a dispute resolution process and requires residential restrictions on a finding of domestic violence. RCW 26.09.191(1) and (2).

However, the remedy is not as the father suggests. If you try to warm soup on the stove and the burner is inoperative, you do not throw out the soup; you try another burner. Here, the court reached the right result and that result can be affirmed on the alternative

grounds identified by the court (inability to cooperate), which the father does not challenge. Alternatively, the court can locate the statutory basis for the decision-making allocation in RCW 26.09.191(3)(g) and the factual basis as being the father's anger and inability to control that anger. See RP (10/27/09) 10 ("all of this indicates to the Court that there's an anger issue of some sort, at the very least, ..."). As a final alternative, the matter could be remanded for the court to restrict the father's residential time and to strike the dispute resolution provision.

In short, the remedy is not to short circuit the court's exercise of discretion, especially where that exercise is so plainly sensible. Here, the court reached the right result and stated two bases for that result, both sufficient in law and fact. The court should be affirmed.

F. THE FATHER'S CONSTITUTIONAL RIGHTS WERE FULLY PROTECTED.

The father also raises a variety of constitutional issues. Br. Appellant, at 35-41. For the reasons discussed above, these constitutional claims simply are not well-founded. The father was not deprived of any process he was due, nor were his constitutional parental rights infringed upon. Moreover, this Court will not reach constitutional claims if the case may be decided on other grounds,

as is the case here. *City of Kirkland v. Steen*, 68 Wn.2d 804, 809-810, 416 P.2d 80 (1960).

V. MOTION FOR ATTORNEY FEES

Because of the disparity in financial resources, the mother seeks attorney fees on the authority of RAP 18.1 and RCW 26.09.140. The statute provides that:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection there with, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

The parties' financial circumstances, including their very disparate earning capacities, are described briefly in the Statement of Facts above. The father earns \$7500 monthly and the mother earns \$1696. Based on the mother's need, she is receiving maintenance for three years, while she pursues a nursing degree, and she received her attorney fees at trial. She cannot afford to defend against the appeal of a decision-making provision that the father himself requested (though with him as sole decision-maker). Respectfully, she asks that he pay her fees on appeal.

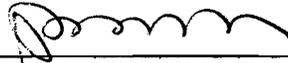
VI. CONCLUSION

For the foregoing reasons, the trial court's order regarding decision-making should be affirmed and this appeal dismissed.

Moreover, Tamara asks for her attorney fees on appeal.

Dated this 7th day of February 2011.

RESPECTFULLY SUBMITTED,



PATRICIA NOVOTNY #13604
Attorney for Respondent

APPENDIX: RELEVANT STATUTES

RCW 26.09.002. Policy

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests.

Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

RCW 26.09.184. Permanent parenting plan

(1) OBJECTIVES. The objectives of the permanent parenting plan are to:

- (a) Provide for the child's physical care;
- (b) Maintain the child's emotional stability;
- (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;
- (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191;
- (e) Minimize the child's exposure to harmful parental conflict;

(f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

(2) CONTENTS OF THE PERMANENT PARENTING PLAN. The permanent parenting plan shall contain provisions for resolution of future disputes between the parents, allocation of decision-making authority, and residential provisions for the child.

(3) CONSIDERATION IN ESTABLISHING THE PERMANENT PARENTING PLAN. In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

(4) DISPUTE RESOLUTION. A process for resolving disputes, other than court action, shall be provided unless precluded or limited by RCW 26.09.187 or 26.09.191. A dispute resolution process may include counseling, mediation, or arbitration by a specified individual or agency, or court action. In the dispute resolution process:

(a) Preference shall be given to carrying out the parenting plan;

(b) The parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support, unless an emergency exists;

(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party;

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the prevailing parent;

(e) The parties have the right of review from the dispute resolution process to the superior court; and

(f) The provisions of (a) through (e) of this subsection shall be set forth in the decree.

(5) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) The plan shall allocate decision-making authority to one or both parties regarding the children's education, health care, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in RCW 26.09.187 and 26.09.191. Regardless of the allocation of decision-making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child.

(b) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent.

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

(6) RESIDENTIAL PROVISIONS FOR THE CHILD. The plan shall include a residential schedule which designates in which parent's home each minor child shall reside on given days of the year, including provision for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria in RCW 26.09.187 and 26.09.191.

(7) PARENTS' OBLIGATION UNAFFECTED. If a parent fails to comply with a provision of a parenting plan or a child support order, the other parent's obligations under the parenting plan or the child support order are not affected. Failure to comply with a provision in a parenting plan or a child support order may result in a finding of contempt of court, under RCW 26.09.160.

(8) PROVISIONS TO BE SET FORTH IN PERMANENT PARENTING PLAN. The permanent parenting plan shall set forth the provisions of subsections (4)(a) through (c), (5)(b) and (c), and (7) of this section.

RCW 26.09.187. Criteria for establishing permanent parenting plan

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that

any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making 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) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, 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.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

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

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

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

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

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

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

(vii) Each parent's employment schedule, and shall make

accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

RCW 26.09.191 (the most pertinent sections are in bold)

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child; (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or

sexual assault which causes grievous bodily harm or the fear of such harm; or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct: (i) Physical, sexual, or a pattern of emotional abuse of a child; (ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has

been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

- (ii) RCW 9A.44.073;
 - (iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;
 - (iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;
 - (v) RCW 9A.44.083;
 - (vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;
 - (vii) RCW 9A.44.100;
 - (viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;
 - (ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.
- (f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:
- (i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or
 - (ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the

child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the

supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44

RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants

unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds

based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

- (a) A parent's neglect or substantial nonperformance of parenting functions;
- (b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;
- (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- (d) The absence or substantial impairment of emotional ties between the parent and the child;
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section, a parent's child means that parent's natural child, adopted child, or stepchild.



Superior Court Case Summary

Court: Whatcom Co Superior
Case Number: 08-3-00254-3

Sub	Docket Date	Docket Code	Docket Description	Misc Info
102	04-09-2000	MOTION AND AFFIDAVIT/DECLARATION	Motion And Declaration To Amend Temporary Order	
	04-02-2008	FILING FEE RECEIVED	Filing Fee Received	250.00
1	04-02-2008	CONFIDENTIAL INFORMATION FORM	Confidential Information Form	
2	04-02-2008	SUMMONS & PET FOR DISSOLUTION	Summons & Pet For Dissolution Of Marriage	
3	04-02-2008	TEMP RESTRAINING ORDER COM0003	Temp Restraining Order Commissioner David M. Thorn	
4	04-02-2008	PROPOSED PARENTING PLAN	Proposed Parenting Plan	
5	05-02-2008	RESPONSE	Response To Petition	
6	05-05-2008	SEALED PRSNL HEALTH RCDS CVR SHEET	Sealed Prsnl Health Rcds Cvr Sheet	
6A	05-05-2008	SEALED PRSNL HEALTH RCDS CVR SHEET	Sealed Prsnl Health Rcds	
7	05-05-2008	FINANCIAL DECLARATION OF RESP	Financial Declaration Of Resp	
8	05-05-2008	CHILD SUPPORT WORKSHEET	Child Support Worksheet	
9	05-05-2008	MOTION AND AFFIDAVIT/DECLARATION	Motion And Affidavit/declaration For Temporary Order	
10	05-05-2008	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For Temporary Orders	05-16-2008D
11	05-05-2008	PROPOSED PARENTING PLAN	Proposed Temporary Parenting Plan	
12	05-08-2008	ACCEPTANCE OF SERVICE	Acceptance Of Service	
13	05-08-2008	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)/cover	
13A	05-08-2008	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
14	05-12-2008	DECLARATION	Responsive Declaration Of Tamara Rodden	
15	05-12-2008	TRANSCRIPT	Transcription Of	

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			Protection Order Hearing Rodden V Rodden 4-14-08	
16	05-12-2008	DECLARATION	Declaration Of Leslie Brooks-foppe	
17	05-12-2008	PROPOSED PARENTING PLAN	Temporary Parenting Plan/proposed	
18	05-12-2008	FINANCIAL DECLARATION OF PET	Financial Declaration Of Pet	
19	05-12-2008	CHILD SUPPORT WORKSHEET	Child Support Worksheet Proposed Advisory	
20	05-12-2008	CHILD SUPPORT WORKSHEET	Child Support Worksheet Proposed Extrapolated	
21	05-12-2008	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)cover	
21A	05-12-2008	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
22	05-12-2008	PROPOSED ORDER/FINDINGS	Proposed Temporary Order	
23	05-13-2008	DECLARATION	Declaration Of Dana Otto	
24	05-13-2008	DECLARATION	Declaration Of C Anthony Gargano, Md	
25	05-13-2008	DECLARATION	Declaration Of Sylvia Woodbury, Cdp, Ma	
26	05-13-2008	DECLARATION	Declaration Of Leigh Wirth	
27	05-14-2008	DECLARATION	Declaration Cover Sheet James F Rodden In Reply	
28	05-14-2008	PARENTING PLAN - TEMPORARY COM0007	Parenting Plan - Temporary Commissioner Alfred L. Heydrich	
29	05-14-2008	TEMPORARY ORDER COM0007	Temporary Order Commissioner Alfred L. Heydrich	
30	05-16-2008	CANCELLED: PLAINTIFF/PROS REQUESTED COM0003	Cancelled: Plaintiff/pros Requested Commissioner David M. Thorn	
31	05-20-2008	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For Temporary Orders	05-29- 2008DT
32	05-30-2008	MOTION	Motion For Order Shortening Time And Dclr In Support	
33	05-30-2008	ORDER SHORTENING TIME ACTION COM0007	Order Shortening Time Motion For Temporary Order Commissioner Alfred L. Heydrich	06-04- 2008D
34	06-02-2008	NOTICE OF APPEARANCE ATR0001	Notice Of Appearance Hunter, David Blakely	
35	06-04-2008	MOTION HEARING	Motion Hearing	

		COM0007	Commissioner Alfred L. Heydrich	
	06-04-2008	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc08-106	
36	06-13-2008	ORDER APPOINTING GUARDIAN AD LITEM GAL0001	Order Appointing Guardian Ad Litem Henderson, Penny R Commissioner	
		COM0007	Commissioner Alfred L. Heydrich	
37	06-24-2008	STATEMENT	Statement Of Qualifications	
38	06-25-2008	PROPOSED ORDER/FINDINGS	Proposed Temporary Order/findings	
39	06-25-2008	NOTE FOR MOTION DOCKET ACTION	Note For Entry Of Temporary Order	07-08-2008D
40	07-08-2008	MOTION HEARING COM0007	Motion Hearing Commissioner Alfred L. Heydrich	
	07-08-2008	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc08-129	
41	07-08-2008	TEMP ORDER OF CHILD SUPPORT COM0007	Temp Order Of Child Support Commissioner Alfred L. Heydrich	
42	07-08-2008	TEMPORARY ORDER COM0007	Temporary Order Commissioner Alfred L. Heydrich	
43	07-18-2008	MOTION FOR REVISION	Motion For Revision	
44	07-23-2008	ORDER APPOINTING GUARDIAN AD LITEM COM0003	Order Appointing Guardian Ad Litem Commissioner David M. Thorn	
45	08-07-2008	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion On Revision	08-15-2008S
46	08-08-2008	MOTION	Motion For Order Shortening Time	
47	08-08-2008	ORDER SHORTENING TIME ACTION	Order Shortening Time Motion For Order Re Foreclosure	08-12-2008D
		COM0007	Commissioner Alfred L. Heydrich	
48	08-08-2008	MOTION	Motion For Order Re Foreclosure	
49	08-12-2008	MOTION HEARING COM0003	Motion Hearing Commissioner David M. Thorn	
	08-12-2008	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc08-154	
50	08-12-2008	ORDER DENYING MOTION/PETITION	Order Denying Motion (to Avoid Foreclosure)	
		COM0003	Commissioner David M. Thorn	
51	08-15-2008	MOTION HEARING JDG0003	Motion Hearing Judge Charles R. Snyder, Dept. 3	

	08-15-2008	COURT REPORTER NOTES CTR00	Court Reporter Notes Court Reporter Watts	
52	08-22-2008	MOTION AND AFFIDAVIT/DECLARATION	Motion And Affidavit/declaration To Divide Tax Refunds And For Reimbursement Of Past Due Maintenance And Child Support And For Attorneys Fees	
53	08-22-2008	NOTE FOR MOTION DOCKET ACTION ACTION ACTION	Note For Motion Docket To Divide Tax Refunds And For Reimbursement Of Past Due Maintenance And Child Support And For Attorneys Fees	09-12- 2008D
54	09-02-2008	CONFIRMATION OF PARENTING CLASS	Coversheet For Respondents Certificate Of Completion Of Parenting Plan Seminar	
55	09-05-2008	CONFIRMATION OF PARENTING CLASS	Cover Sheet For Completion Of Parenting Certificate By Mother	
56	09-08-2008	DECLARATION	Declaration Cover Sheet For James F Rodden In Response	
57	09-09-2008	DECLARATION	Reply Declaration Of Tamara Rodden	
58	09-12-2008	MOTION HEARING COM0003	Motion Hearing Commissioner David M. Thorn	
	09-12-2008	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc08- 176	
59	09-12-2008	TEMPORARY ORDER COM0003	Temporary Order Commissioner David M. Thorn	
60	10-24-2008	SEALED CONFIDENTIAL RPTS CVR SHEET	Sealed Confidential Rpts Cvr Sheet	
60A	10-24-2008	REPORT	***sealed*** Report Of Guardian Ad Litem	
61	12-08-2008	REQUEST	Dshs Copy Request/sent 12-17- 08	
62	12-31-2008	CHILD SUPPORT WORKSHEET	Proposed Child Support Worksheet	
63	12-31-2008	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s) Cover Sheet	
63A	12-31-2008	SEALED FINANCIAL DOCUMENT(S)	**sealed Financial Document(s)	

64	12-31-2008	MOTION AND AFFIDAVIT/DECLARATION	Motion And Declaration To Amend Temporary Order	
65	12-31-2008	NOTE FOR MOTION DOCKET ACTION	Note For Motion Motion For Temporary Orders	01-14-2009D
66	01-08-2009	DECLARATION	Responsive Declaration Of Tamara Rodden	
67	01-08-2009	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s) Cover Sheet	
67A	01-08-2009	SEALED FINANCIAL DOCUMENT(S)	**sealed Financial Document(s)	
68	01-08-2009	CHILD SUPPORT WORKSHEET	Proposed Child Support Worksheet By Mother	
69	01-09-2009	SEALED CONFIDENTIAL RPTS CVR SHEET	Sealed Correspondence Cvr Sheet	
69A	01-09-2009	SEALED CONFIDENTIAL RPTS CVR SHEET	**sealed Correspondence	
70	01-12-2009	DECLARATION	Declaration Cover Sheet For Jim Rodden In Reply	
71	01-13-2009	SEALED CONFIDENTIAL RPTS CVR SHEET	Sealed Correspondence Cover Sheet	
71A	01-13-2009	SEALED CONFIDENTIAL RPTS CVR SHEET	**sealed Correspondence	
72	01-14-2009	MOTION HEARING COM0007	Motion Hearing Commissioner Alfred L. Heydrich	
	01-14-2009	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc09-9	
73	01-27-2009	PROPOSED ORDER/FINDINGS	Proposed Order/findings Or Child Support	
74	01-27-2009	PROPOSED ORDER/FINDINGS	Proposed Temporary Order	
75	01-27-2009	NOTE FOR MOTION DOCKET ACTION	Note For Entry Entry Of Temporary Orders	02-10-2009D
76	02-04-2009	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document Cover	
76A	02-04-2009	SEALED FINANCIAL DOCUMENT(S)	**sealed Financial Document(s)	
77	02-04-2009	DECLARATION	Responsive Declaration Of Tamara Rodden To Temorary Order Proposed For Entry By Respondent	
78	02-04-2009	MOTION AND AFFIDAVIT/DECLARATION	Motion And Declaration For An Order To Divide 2006 Tax Refunds Pay Daycare Expenses And Provide	

			Childs Belongings	
79	02-04-2009	PROPOSED ORDER/FINDINGS	Proposed Temporary Order	
80	02-04-2009	CHILD SUPPORT WORKSHEET	Proposed Child Support Worksheet By Mother	
81	02-04-2009	PROPOSED ORDER/FINDINGS	Proposed Order Of Child Support	
82	02-04-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Order To Divide 2006 Tax Refunds, Pay Daycare Expenses And Provide	02-19-2009DT
		ACTION	Child's Belongings	
83	02-04-2009	NOTE FOR TRIAL DOCKET	Note For Trial Docket And For Settlement Conference Date	02-20-2009T
		ACTION	One Day	
84	02-10-2009	MOTION HEARING COM0007	Motion Hearing Commissioner Alfred L. Heydrich	
	02-10-2009	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc09-27	
85	02-10-2009	TEMP ORDER OF CHILD SUPPORT COM0007	Temp Order Of Child Support Commissioner Alfred L. Heydrich	
86	02-10-2009	TEMPORARY ORDER COM0007	Temporary Order Commissioner Alfred L. Heydrich	
87	02-13-2009	DECLARATION	Declaration Cover Sheet For James F Rodden In Response	
88	02-17-2009	DECLARATION	Reply Declaration Of Tamara Rodden	
89	02-17-2009	PROPOSED ORDER/FINDINGS	Proposed Order On Motion To Divide 2006 Tax Refunds, Pay Daycare Expenses And Provide Child's Belonging	
90	02-19-2009	HEARING STRICKEN: IN COURT OTHER	Hearing Stricken: In Court Other	
91	02-20-2009	MOTION	Motion For Reconsideration	
92	02-20-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For Reconsideration	03-10-2009D
93	02-20-2009	TRIAL CLERK'S SETTING	Trial Clerk's Setting	
94	02-20-2009	ORDER SETTING TRIAL DATE COM0003	Order Setting Trial Date Commissioner David M. Thorn	07-15-2009
95	02-20-2009	ORDER COMPELLING DISCOVERY COM0003	Order Compelling Discovery Commissioner David M. Thorn	

96	02-20-2009	MOTION FOR RECONSIDERATION	Motion For Reconsideration	
97	02-20-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For Reconsideration (heydrich)	03-10-2009D
98	02-23-2009	ORDER COM0007	Order On Motion To Divide 2006 Tax Refunds, Pay Daycare Expenses, And Provide Childs Belongings Commissioner Alfred L. Heydrich	
99	02-23-2009	LETTER	Letter From Cal Clk To Attys Re Settlement Conf 6/30/09 At 10 Am	
	03-10-2009	CONTINUED: PLAINTIFF/PROS REQUESTED	Continued: Plaintiff/pros Requested	
100	03-11-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Reconsideration	04-02-2009DT
101	04-09-2009	PROPOSED PARENTING PLAN	Proposed Temporary Parenting Plan	
103	04-09-2009	NOTE FOR MOTION DOCKET	Note For Motion & Entry Of Temporary Parenting Plan	04-21-2009D
		ACTION	Entry Of Temporary Parenting Plan	
104	04-13-2009	MOTION TO COMPEL	Motion And Declaration For Order Compelling Answers To Interrogatories And/or Requests For Production Of Documents And For Reasonable Attorneys Fees	
105	04-13-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For Order Compelling	04-24-2009D
		ACTION	Answers To Interrogatories &/or	
		ACTION	Requests For Production Of	
		ACTION	Documents & Reasonable Atty Fees	
106	04-13-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For Temporary Order & Entry	04-24-2009D
		ACTION	Of Temporary Parenting Plan	
107	04-20-2009	DECLARATION	Responsive	

			Declaration Of Tamara Rodden To Motion To Amend Temporary Order
108	04-23-2009	DECLARATION	Declaration Cover Sheet James F Rodden In Reply
109	04-24-2009	PARENTING PLAN - TEMPORARY COM0007	Parenting Plan - Temporary Commissioner Alfred L. Heydrich
110	04-24-2009	TEMPORARY ORDER COM0007	Temporary Order Commissioner Alfred L. Heydrich
111	04-24-2009	ORDER COMPEL ANSWER INTERROGATORIES COM0007	Order Compel Answer Interrogatories And/or Request For Production Reasonable Attorneys Fees Commissioner Alfred L. Heydrich
112	04-24-2009	MOTION HEARING COM0007	Motion Hearing Commissioner Alfred L. Heydrich
	04-24-2009	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc09-76
113	06-16-2009	PARENTING PLAN - TEMPORARY COM0002	Parenting Plan - Temporary Commissioner Thomas L. Verge
114	06-18-2009	SEALED CONFIDENTIAL RPTS CVR SHEET	Sealed Confidential Rpts Cvr Sheet
114A	06-18-2009	SEALED CONFIDENTIAL RPTS CVR SHEET	**sealed Confidential Rpts Cvr Revised Recommendations Of The Guardian Ad Litem
115	06-30-2009	AGREEMENT COM0007	Settlement Conference Confidentiality Agreement Commissioner Alfred L. Heydrich
116	06-30-2009	SETTLEMENT CONFERENCE STATEMENT COM0007	Settlement Conference Statement Commissioner Alfred L. Heydrich
117	07-15-2009	TRIAL MEMORANDUM	Trial Memorandum Of Petitioner
118	07-15-2009	NON-JURY TRIAL JDG0003	Non-jury Trial Judge Charles R. Snyder, Dept. 3
	07-15-2009	COURT REPORTER NOTES CTR0003	Court Reporter Notes Court Reporter Rhonda Jensen
119	07-15-2009	EXHIBIT LIST	Exhibit List P1-request For

			Production #2--- adm	
			P2-child Support Worksheets ---adm	
			P3-debt Calculation - -----adm	
			P4-e*trade Securities, Llc - Mr Rodden ----- -----adm	
			P5-e*trade Securities, Llc - Mrs Rodden ----- -----adm	
07-15-2009	COMMENT ENTRY		P6-request For Production #7--- adm	
			P7-request For Production #13-- adm	
			P8-request For Production #3--- adm	
			P9-letter Dated 11- 29-07-----adm	
			P10-e-mails ----- -----ipo--adm	
			P11-request For Production #14-- adm	
			P12-rental Lease Agreement-----adm	
			P13-letter Dated 1- 13-09 -----adm	
07-15-2009	COMMENT ENTRY		P14-investments Summary ----- adm	
			P15-delta Dental Wa Dental Services ----- -----adm	
			R16-pay Stubs Of Mr Rodden -----adm	
			R17-bank Statements Of Mr. Rodden's Father & Mr. Rodden----- adm	
			R18-apply 401(k) Plan-----adm	
			P19-fax Re Ch 13 Bankruptcy ----adm	
120	07-15-2009	STIP&OR RET EXHBTS UNOPND DEPOSTNS JDG0003	Stipv Ret Exhbts Unopnd Depostns Judge Charles R. Snyder, Dept. 3	
121	07-29-2009	NOTE FOR MOTION DOCKET	Note For Motion Docket / 8:45 A.m. Special Set/8:45 Am/dept 3 Entry Of Final Orders	08-12- 2009

122	08-11-2009	MOTION AND AFFIDAVIT/DECLARATION	Motion And Affidavit/declaration To Strike Hearing For Entry	
123	08-12-2009	HEARING CANCELLED: UNKNOWN PARTY JDG0003	Hearing Cancelled: Unknown Party Judge Charles R. Snyder, Dept. 3	
124	08-13-2009	COVER SHEET FOR BACKGROUND CHECK	Cover Sheet For Background Check	
124A	08-13-2009	COVER SHEET FOR BACKGROUND CHECK	**sealed** Jis Background Check ***for Judicial Eyes Only***	
125	08-21-2009	PROPOSED PARENTING PLAN	Proposed Amended Parenting Plan	
126	08-21-2009	NOTE FOR MOTION DOCKET	Note For Motion Docket Entry Of Final Orders	09-08-2009
127	08-31-2009	NOTE FOR MOTION DOCKET	Re-note For Motion Docket Special Set/9-22-09/dept 3 Entry Of Final Orders/ja Approved	09-22-2009
128	09-18-2009	RESPONSE	Respondent's Response To Proposed Final Orders	
129	09-22-2009	RESIDENTIAL TIME SUMMARY REPORT	Residential Time Summary Report	
130	09-22-2009	MOTION HEARING JDG0003	Motion Hearing Judge Charles R. Snyder, Dept. 3	
	09-22-2009	COURT REPORTER NOTES CTR0003	Court Reporter Notes Court Reporter Rhonda Jensen	
131	09-22-2009	FINDINGS OF FACT&CONCLUSIONS OF LAW JDG0003	Findings Of Fact&conclusions Of Law Judge Charles R. Snyder, Dept. 3	
132	09-22-2009	PARENTING PLAN (FINAL ORDER) JDG0003	Parenting Plan (final Order) Judge Charles R. Snyder, Dept. 3	
133	09-22-2009	ORDER FOR SUPPORT JDG0003	Order Of Child Support Judge Charles R. Snyder, Dept. 3	
134	09-22-2009	DECREE OF DISSOLUTION JDG0003	Decree Of Dissolution Judge Charles R. Snyder, Dept. 3	
135	09-25-2009	NOTE FOR MOTION DOCKET	Note For Motion Docket / 8:30 A.m. Entry Of Qualified Domestic Relations Order Oct 8, 2009 8:30 Am	10-08-2009
135A	10-02-2009	MOTION FOR REVISION	Motion For Reconsideration	

			And Memorandum In Support	
135B	10-02-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket / 8:30 A.m. Reconsideration/dept 3/special Set	10-27-2009
136	10-08-2009	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)/cover	
136A	10-08-2009	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
137	10-08-2009	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)/cover	
137A	10-08-2009	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
138	10-23-2009	MOTION FOR ORDER TO SHOW CAUSE	Motion / Declaration For An Order To Show Cause Re Contempt	
139	10-23-2009	PROPOSED ORDER/FINDINGS	Proposed Order On Show Cause Re Contempt/judgment	
140	10-23-2009	ORDER TO SHOW CAUSE ACTION	Order To Show Cause Show Cause Re Contempt	11-05-2009
		COM0007	Commissioner Alfred L. Heydrich	
141	10-23-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Order On Show Cause Re Contempt	11-05-2009DT
142	10-27-2009	MOTION HEARING JDG0003	Motion Hearing Judge Charles R. Snyder, Dept. 3	
	10-27-2009	COURT REPORTER NOTES CTR0003	Court Reporter Notes Court Reporter Rhonda Jensen	
143	11-05-2009	MOTION HEARING COM0007	Motion Hearing Commissioner Alfred L. Heydrich	
	11-05-2009	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc09-205	
144	11-19-2009	MOTION AND AFFIDAVIT/DECLARATION	Motion And Declaration For An Order To Sign Tax Refund Check, For Disbursal Of Tax Refund And For Attorneys Fees	
145	11-19-2009	MOTION	Motion For Entry Of Order On Show Cause Re Contempt/judgment	
146	11-19-2009	PROPOSED ORDER/FINDINGS	Proposed Order To Sign Tax Refund Check For Disbursal Of Tax Refund And For Attorneys Fees	
147	11-19-2009	PROPOSED ORDER/FINDINGS	Proposed Order On Show Cause Re	

148	11-19-2009	NOTE FOR MOTION DOCKET ACTION	Contempt/judgment Note For Motion Docket Entry Of Order On Show Cause Re	12-04- 2009D
		ACTION	Contempt/judgment; An Order To	
		ACTION	Sign Tax Refund Check, For	
		ACTION	Disbursal Of Tax Refund And For	
		ACTION	Attorney's Fees	
149	12-01-2009	RESPONSE	Petitioner's Response To Respondent's Motion And Declaration	
150	12-04-2009	MOTION HEARING COM0007	Motion Hearing Commissioner Alfred L. Heydrich	
	12-04-2009	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc09- 222	
151	12-04-2009	DECLARATION	Declaration W/coversheet For Rita Blair	
152	12-04-2009	ORDER ON SHOW CAUSE COM0007	Order On Show Cause Re Contempt/jdugment Commissioner Alfred L. Heydrich	
153	12-14-2009	TRANSCRIPT	Transcript Of Hearing November 5, 2009	
154	12-14-2009	MOTION FOR REVISION	Motion And Declaration For An Order To Revise Commissioner's Ruling, To Clarify Decree, And To Release Financial Records	
155	12-14-2009	PROPOSED ORDER/FINDINGS	Proposed Order To Revise Commissioner's Ruling, To Clarify Decree, And To Release Financial Records	
156	12-14-2009	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Motion For An Order To Revise	01-08- 2010C3
		ACTION	Commissioner's Ruling, To Clarify	
		ACTION	Decree, And To Release Financial	
		ACTION	Information	
157	12-18-2009	SEALED MEDICAL AND HEALTH INFO	Sealed Medical And Health Info Cvr	

157A	12-18-2009	SEALED MEDICAL AND HEALTH INFO	Sealed Medical And Health Info	
158	01-04-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)cover	
158A	01-04-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
159	01-05-2010	DECLARATION	Declaration (cover) For James F Rodden	
160	01-05-2010	DECLARATION	Declaration Of Shari L Coble	
161	01-06-2010	DECLARATION	Declaration Of David Vis	
162	01-06-2010	DECLARATION	Reply Declaration Of Tamara Rodden	
163	01-08-2010	MOTION HEARING JDG0003	Motion Hearing Judge Charles R. Snyder, Dept. 3	
	01-08-2010	COURT REPORTER NOTES CTR0003	Court Reporter Notes Court Reporter Rhonda Jensen	
164	01-08-2010	ORDER OF RELEASE JDG0003	Order For Release Of Financial Records By Fidelity Investments Judge Charles R. Snyder, Dept. 3	
165	01-22-2010	MOTION FOR ORDER TO SHOW CAUSE	Motion/declaration For An Order To Show Cause Re Contempt	
166	01-22-2010	ORDER TO SHOW CAUSE ACTION JDG0003	Order To Show Cause Re Contempt Judge Charles R. Snyder, Dept. 3	02-04-2010DT
167	02-02-2010	MEMORANDUM	Memorandum To The Court Re Contempt Motion And Mediation	
168	02-03-2010	DECLARATION	Declaration For James F Rodden In Reply	
169	02-04-2010	MOTION HEARING COM0002	Motion Hearing Commissioner Thomas L. Verge	
	02-04-2010	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc10-22	
170	02-24-2010	NOTICE OF INTENT TO WITHDRAW WTP0001	Notice Of Intent To Withdraw Mccandlis, Paula L	
171	05-04-2010	PROPOSED ORDER/FINDINGS	Proposed Order Denying Motion For Reconsideration	
172	05-04-2010	NOTE FOR MOTION DOCKET	Note For Entry Order Denying Motion/ Motion For Revision Special Set/dept 3	05-17-2010
173	05-17-2010	MOTION HEARING JDG0003	Motion Hearing Judge Charles R. Snyder, Dept. 3	

	05-17-2010	COURT REPORTER NOTES CTR0003	Court Reporter Notes Court Reporter Rhonda Jensen	
174	05-17-2010	ORDER DENYING MOTION/PETITION JDG0003	Order Denying Motion/petition For Reconsideration Judge Charles R. Snyder, Dept. 3	
175	06-02-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)cover	
175A	06-02-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
176	06-02-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)cover	
176A	06-02-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
177	06-02-2010	MOTION FOR ORDER TO SHOW CAUSE	Motion/declaration For Order To Show Cause Re Contempt	
178	06-02-2010	ORDER TO SHOW CAUSE COM0003	Order To Show Cause Re Contempt Commissioner David M. Thorn	06-16- 2010D
179	06-07-2010	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal (\$280.00 Paid)	
180	06-08-2010	DECLARATION OF MAILING	Declaration Of Mailing Notice Of Appeal	
181	06-09-2010	RETURN OF SERVICE	Return Of Service	
182	06-11-2010	LETTER	Letter From Court Of Appeals To Counsel - Coa# 65515-9-i	
183	06-18-2010	DECLARATION	Declaration Cover Sheet For James F Rodden In Response	
184	06-28-2010	DECLARATION	Declaration (w/coversheet) For Tamara M Rodden In Response	
185	06-30-2010	ORDER OF CONTINUANCE ACTION COM0005	Agreed Order Of Continuance Order To Show Cause Re Contempt Commissioner Martha V Gross	07-16- 2010D
186	07-07-2010	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers	
187	07-14-2010	INDEX	Index To Clerk's Papers	
188	07-14-2010	COMMENT ENTRY	Cover Sheet - Sealed Documents With Clerks Papers	
189	07-19-2010	RECEIPT(S)	Receipt From Court Of Appeals (1 Vol Cp W/1 Envelope Sealed)	
1A	07-20-2010	CONFIDENTIAL INFORMATION FORM	Confidential Information Form	
	07-20-2010	FILING FEE RECEIVED	Filing Fee Received	56.00

190	07-20-2010	SUMMONS & PETITION	Summons & Petition Modification Adjustment Of Custody Decree/parenting Plan	
191	07-20-2010	MOTION FOR ORDER TO SHOW CAUSE	Motion/declaration For Ex Parte Restraining Order And For Order To Show Cause	
192	07-20-2010	NOTICE OF HEARING ACTION	Petitioners Notice Of Hearing Adequate Cause Determination	08-03- 2010D
193	07-20-2010	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Contempt Of Court	08-04- 2010D
194	07-21-2010	TEMP REST ORD & ORD TO SHO CAUS ACTION COM0005	Ex Parte Restraining Order/order To Show Cause Show Cause/restraining Order Commissioner Martha V Gross	08-03- 2010D
195	07-28-2010	DECLARATION	Declaration Of Tamara Rodden	
196	07-28-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document Cover	
196A	07-28-2010	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
197	07-29-2010	NOTICE OF APPEARANCE ATP0002	Notice Of Appearance Brinson, Betsy	
198	07-29-2010	DECLARATION	Declaration Of Irene Willeman	
199	07-29-2010	DECLARATION	Cover Sheet For Declaration Of Christine Brown Previously Filed In Bellingham Municipal Court	
200	07-29-2010	DECLARATION	Cover Sheet For Declaration Of Selma Peterson Previously Filed In Bellingham Municipal Court	
201	07-29-2010	DECLARATION	Cover Sheet For Declaration Of Michelle Bennett Previously Filed In Bellingham Municipal Court	
202	08-03-2010	TEMP REST ORD & ORD TO SHO CAUS ACTION COM0002	Ex Parte Restraining Order/order To Show Cause Show Cause/restraints Commissioner Thomas L. Verge	08-04- 2010D
203	08-03-2010	NOTICE OF HEARING	Petitioner's Notice Of	08-04-

			Hearing For Adequate Cause Determination	2010D
204	08-03-2010	DECLARATION	Declaration Cover For James F Rodden In Reply	
205	08-04-2010	MOTION HEARING COM0002	Motion Hearing Commissioner Thomas L. Verge	
	08-04-2010	CD RECORD OF PROCEEDINGS	Cd Record Of Proceedings Cc10-139	
206	08-17-2010	NOTE FOR MOTION DOCKET ACTION ACTION	Re Note For Motion Docket Child Support Motion/contempt For Non Payment Of	09-08-2010D
	09-07-2010	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings (hrg 7/15/09)	
	09-07-2010	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings (hrg 9/22/09)	
	09-07-2010	VERBATIM REPORT OF PROCEEDINGS	Verbatim Report Of Proceedings (hrg 10/27/09)	
207	09-08-2010	CANCELLED: PLAINTIFF/PROS REQUESTED	Cancelled: Plaintiff/pros Requested	
208	09-20-2010	RECEIPT(S)	Receipt From Court Of Appeals (3 Vols Vr)	
209	11-08-2010	DESIGNATION OF CLERK'S PAPERS	Supplemental Designation Of Clerk's Papers	
211	11-08-2010	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Entry Of Adequate Cause Order	12-03-2010D
210	11-09-2010	INDEX	Supplemental Index To Clerks Papers	
212	11-29-2010	RECEIPT(S)	Receipt From Court Of Appeals (1 Vol Supp Cp)	
213	12-03-2010	HEARING STRICKEN: IN COURT OTHER	Hearing Stricken: In Court Other	
214	12-03-2010	ORDER RE ADEQUATE CAUSE - DENIED COM0005	Order Re Adequate Cause - Denied Commissioner Martha V Gross	

2011 FEB 19 AM 11:03
CLERK OF COURT
STATE OF WASHINGTON

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

In re the Marriage of)	
)	
TAMARA RODDEN,)	No. 65515-9-1
Respondent)	
)	DECLARATION
and)	OF SERVICE
)	
JAMES F. RODDEN,)	
Appellant,)	
_____)	

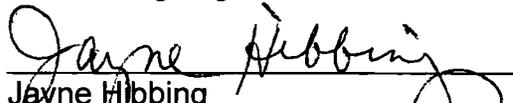
Jayne Hibbing certifies as follows:

On February 17, 2011, I served upon the following true and correct copies of the Amended Brief of Respondent, Letter to Clerk and this Declaration, by:

- depositing same with the United States Postal Service, postage paid
- arranging for delivery by legal messenger.

Katherine George
Harrison Benis & Spence LLP
2101 4th Ave Ste 1900
Seattle WA 98121-2315

I certify under penalty of perjury that the foregoing is true and correct.


 Jayne Hibbing
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 Seattle, WA 98115
 206-781-2570