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DIVISION ONE

DEC 10 2012

No. 68925-8-I
IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION ONE
STATE OF WASHINGTON

In re the Marriage of:
Thomas Baicy, *Appellant*
and
Danelle Shay, *Respondent*

OPENING BRIEF

Thomas Baicy
Appellant, pro se
1231 W. James St. #4
Kent WA 98032
206-697 4086

ORIGINAL

A. Assignments of Error

Error # 1: - The trial court erred by vacating default of Appellant's parenting plan modification.

Error # 2: - The trial court commissioner erred by dismissing Appellant's contempt motion and granting Respondent's contempt motion.

Error # 3: - The trial court erred by denying Appellant's motion for revision.

Error # 4: - The trial court erred by denying Appellant's motion for reconsideration.

Error # 5: - The trial court erred by awarding attorney fees without opportunity to be heard.

Error # 6: - The trial court erred by refusing to hear a properly calendared motion to vacate.

B. Issues Pertaining to Assignments of Error

Issue # 1:

Does a right to counsel attach whenever a civil litigant is accused of contempt of court?

Must the court advise the alleged contemnor of his right to counsel and obtain an affirmative waiver prior to proceeding?

Issue # 2:

Must a party formally demonstrate adequate cause when moving for default? Is a lack of a formal finding in the record grounds for vacation of the default order/judgment?

Issue # 3:

When parents file contempt motions against each other in a custody matter regarding the same conduct, do the conflicting declarations themselves create a disputed issue of fact that requires an evidentiary hearing with testimony under oath to resolve? Does a failure to resolve the disputed facts via live testimony deny due process?

Issue # 4:

Does the right of equal access to the courts require that any limitation of that right be the least

restrictive? Does due process require notice and an opportunity to be heard prior to imposition of such restriction? Can a court summarily sanction a litigant for failing to obtain prior filing approval?

Issue # 5:

Does a parent have a right to abandon a legal and factual position taken in resistance to modification of a parenting plan and two months later adopt a contradictory position and obtain relief based on the latter position? In this situation, is a party estopped from seeking contradictory relief?

Issue # 6:

Does a court abuse its discretion by imposing a money judgment against a litigant without an examination of the basis of the billed attorney hours and/or a lodestar analysis?

Does a court have authority to impose a money sanction ex parte without notice and opportunity to be heard on both the propriety and amount of the sanction?

C. Statement of the Case

A modification of parenting plan was entered by default on 11/22/11 [CP 103]. When Respondent failed to follow the new transportation provisions, Appellant filed a contempt action against her [CP supp]. Respondent filed a contempt action against the father for failing to exercise his residential time [CP 184]. Respondent filed a motion to vacate the default orders [CP 144]. The two contempt motions were heard together with the motion to vacate but no action was taken other than vacation of the parenting plan [CP 13]. At the rescheduled hearing on the two contempt motions, the Commissioner found no adequate cause for modification, found no contempt against Respondent, and found contempt against Appellant [CP 20].

Appellant sought revision [CP 24] but was denied [CP 45]. Appellant sought reconsideration of the revision denial [CP 47] but was denied [CP 99]. Appellant filed a Notice of Appeal of all of the adverse rulings. Respondent filed a Notice of Intent to Relocate [CP supp]. Appellant did not answer or respond to the Notice and Respondent obtained an ex parte Order modifying the parenting plan [CP supp]. Appellant filed a supplemental Notice of Appeal.

Appellant filed a Motion to Vacate the Relocate Parenting Plan [CP supp]. The court set a hearing date and issued a Show Cause order. Respondent filed a motion to quash the hearing date order and obtained an ex parte order granting the motion [CP supp]. Appellant filed a second Supplemental Notice of Appeal.

D. Summary of Argument

There can be no disagreement - this case is acrimonious. That is not the biggest problem with it, however. The biggest problem with this case is that the trial court is improperly presuming Respondent to have sufficient credibility to provide evidence when the opposite is true.

Respondent mother has a criminal history of fraud, prevarication and deceit that is well-known to the trial court. There is no credible showing that her history should be ignored or minimized yet the trial court consistently does exactly that, to the extreme detriment of the Appellant father and the parties' minor child.

E. Argument

Respondent lacked standing to move to vacate without first obtaining leave of court to plead after default and the motion to vacate should have been denied on that basis. Moreover, the legal views used by the commissioner were in error and the trial judge erred by adopting them.

By the time that trial court commissioner Curry conducted the hearing on 23 February 2012, there were multiple motions before the court: a contempt motion by Appellant father; a contempt motion by Respondent mother; and a motion to determine if adequate cause existed to allow Appellant father's petition for parenting plan modification to go forward. Additionally, there was a motion for adequate cause finding based on a petition for modification of child support filed by Appellant father but which has since been voluntarily dismissed by Appellant and is therefore not before this court.

The motions were originally heard before trial court commissioner Canada-Thurston on 30 January 2012. [CP 13, Appendix 3]. The commissioner apparently refused to hear the contempt matters. The record is silent regarding why Commissioner Canada-Thurston refused to determine the contempt actions. Nevertheless, her ruling vacating the default parenting plan was clear error based on a misunderstanding of the law on default.

CR 55(a) states, in pertinent part:

(2) Pleading After Default. . . . If the party has not appeared before the motion is filed he may not respond to the pleading nor otherwise defend without leave of court. . . .

It is obvious that once a party has been properly served and proof

of service is on file, a default motion “may” be made. Once having been made, it should be granted. In this case, it was. More importantly, notice of the default order was promptly made to Respondent after its entry and she agreed to comply with its terms regarding the new transfer location.

The commissioner’s order contains much dicta but the essential basis for vacating the default was that it did not contain a finding of adequate cause. But such a finding is unnecessary if the opposing party has defaulted (a fact which is undisputed). The real question before the commissioner on the motion to vacate the default order was whether there was good cause to vacate the motion. Good cause has been generally taken as a procedural irregularity and the standard is whether vacating the order would prejudice the other party. A viable defense must also be shown.¹

Commissioner Canada-Thurston made numerous errors in her ruling and one glaring (albeit immaterial) example is as follows:

3 Also problematic with father’s final orders is that they were entered on the ex parte calendar not family law, . . .

CP 13

This is directly opposite to what LFLR 5(c)(9)(A) states.

Commissioner Canada-Thurston engaged in an analysis of filing dates of a pending appeal and the filing date of the modification petition in the trial court. She came to the conclusion that the timeline of the actions

¹ It is worth noting that the default entered ex parte by Appellant was reviewed by the ex parte judicial officer prior to entry. Absent a showing that salient facts were concealed or misrepresented in the ex parte activity, there is no basis to presume anything other than that judicial officer had full command of the necessary facts in order to sign the orders. Anything else insults that officer’s competence.

taken by Appellant was a misuse of the Civil Rules and the authority of the appellate court. Her analysis was premised on an incorrect view of the law regarding appellate authority and concurrent superior court authority. While she lacked authority to conduct an analysis pursuant to CR 55(a)(2), Appellant wishes to demonstrate that the analysis itself was erroneous.

The courts of appeal and the superior court are generally described as having (or not having) authority to act. Formerly, under CAROA, there was considered to be a transfer of jurisdiction from one court to the other and all authority was moved when the transfer was made. Today, the Rules of Appellate Procedure govern which court has authority to determine certain matters which may arise after a notice of appeal is made.

RAP 7.2(e) is the main rule which specifies how the courts work:

Postjudgment Motions and Action to Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion. . . .

Respondent essentially argued that the timing of Appellant's various acts constituted a pattern of irregularity that warranted vacation. The commissioner stated, after reciting the steps taken by Appellant, that:

. . . (Father filed his motion to dismiss his appeal 11-18-11, and Appellate Court did not file its

ruling terminating review until 12-1-11, furthermore the Appellate Court did not file its mandate until 1-27-12), therefore this court did not have jurisdiction to default the mother and modify Judge Fleck's 5-25-11 orders, and the orders entered 11-22-11 are void; . . .

According to RAP 7.2(e), none of the above language is relevant. It is likely that the entry of the default order without first obtaining appellate court approval was a technical violation of the rule. It should be noted that the parenting plan that was obtained via default only changed the transfer point for the parents to exchange the minor child. It is hard to envision how that omission could be construed as a change sufficiently substantive to offend the intent of the notification requirements of the rule. Nonetheless, there is nothing in RAP 7.2(e) which can be stretched to be read as depriving jurisdiction to the trial court. Certainly there is no language which establishes a violation as grounds for trial court vacation.

A more reasonable view of the rule is that it is one of procedure, not substantive. The appellate court is the court best situated to determine matters of appellate procedure. If prejudice is claimed by the non-moving party due to a RAP 7.2(e) violation, it is an issue to be presented to the appellate court using the same motion procedure as should have been used prior to formal entry. Commissioner Canada-Thurston cited no authority to justify her conclusions regarding jurisdiction and voidness.

In any event, Respondent failed to show that she should not be bound by the following precedent:

The standard under which we must review wife's allegations is familiar. A motion to vacate a default judgment is addressed to the discretion of the trial

court, and its decision will not be disturbed absent abuse of that discretion. [cite omitted]. An abuse of discretion is "discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." [cite omitted]. We must determine if the trial court abused its discretion in refusing to set aside the default judgment.

The rule is established in Washington that a party to a lawsuit may voluntarily default and in so doing rely on the relief requested in the pleadings. A defaulting party should expect that the relief granted will not exceed or substantially differ from that sought in the complaint. [emphasis added]

Marriage of Thompson, 32 Wn. App. 179, 183, 646 P.2d 163 (1982).

Nothing presented to commissioner Canada-Thurston shows a deviation from the pleadings that were voluntarily defaulted by Respondent, which is essentially an implied agreement to the terms within. She had a full opportunity to present (and preserve) any defenses she may have had prior to the default being taken. Yet she chose to default only to later decide to mount those defenses. Further, and perhaps most critical is that the burden of proof and persuasion is on the moving party (Respondent). It is *not* on the party who obtained the default, as shown by the following:

When deciding a motion to vacate a default judgment, the court must consider two primary and two secondary factors that must be shown by the moving party. [cite omitted]. As a result, in order to convince the trial court to set aside the default judgment, Mr. Brown first had to show: (1) the existence of substantial evidence to support at least a prima facie defense to the claim that the damages were excessive; and (2) his failure to timely appear was the result of mistake, inadvertence, surprise or excusable neglect. Next, he had to show that he exercised diligence in seeking relief after notice of the default judgment and that the effect on Mr. Norton would not be prejudicial if the judgment was vacated.

These factors are interdependent; thus, the requisite proof that needs to be shown on any one factor depends on the degree of proof made on each of the other factors. [cite omitted].

The trial court did find that Mr. Brown presented a prima facie defense that the damage award was excessive. However, it did not find that the failure of Mr. Brown to appear was caused by mistake, inadvertence or excusable neglect. The court made no finding regarding Mr. Brown's diligence in seeking relief or whether or not Mr. Norton would be prejudiced if the judgment was vacated. This was an abuse of discretion.

Norton v. Brown, 99 Wn. App. 118, 123-124, 992 P.2d 1019 (1999).

In the instant case, contrary to the Norton standards, the burden of proof & persuasion was impermissibly flipped -- Appellant was expected to justify the default that a judicial officer had already granted to him while Respondent was relieved of her burden to explain why she opted to allow the default. Obviously, she did not move with diligence if she knew of the default (and even complied with it, to a degree per her own admission in her declaration) yet she waited to challenge it. Equally important is that she failed to show why she allowed a default in the first place if she had valid reasons why Appellant should not get the relief he was seeking.

Commissioner Canada-Thurston abused her discretion and her improper decision prejudicially affected Appellant in the contempt actions by creating a distracting and unnecessary adequate cause discussion to be mixed in with the later contempt actions before commissioner Curry.

Contempt of court actions directly jeopardize the alleged contemnor's freedom and property which can trigger constitutional protections including the right to counsel. The method of conducting a hearing may also be unfair if conducted without legal representation by counsel.

The Washington Supreme Court determined the parameters of the right to counsel in civil contempt actions over 35 years ago:

The right of indigents to have counsel appointed to represent them in judicial proceedings has several constitutional sources. Where criminal charges punishable by loss of liberty are involved, the sixth amendment to the United States Constitution applies and requires that defendants who cannot afford to hire an attorney be provided one by the state. [cites omitted]. The same requirement inheres in Const. art. 1, §22 (amendment 10) and is implemented by several sections of our code (RCW 10.01.110, 10.40.030, 10.46.050) and court rules (CrR 3.1, JCrR 2.11). [cite omitted].

Outside the purely criminal area, the right to legal representation is somewhat less broad and well defined. Absent special statutory guarantees, the appointment of counsel is constitutionally required only when procedural fairness demands it. In proceedings civil in form but criminal in nature - such as juvenile delinquency or mental commitment hearings - representation is clearly part of due process. [cites omitted]. But in cases where the individual's right to remain unconditionally at liberty is not at issue - such as child neglect or parole revocation hearings - the right to counsel turns on the particular nature of the proceedings and questions involved. [cites omitted].

Tetro v. Tetro, 86 Wn.2d 252, 253-254, 544 P.2d 17 (1975).

While it might be barely arguable whether Appellant was categorically entitled to appointed counsel to defend against the contempt, what is beyond argument is that the 2/23/12 proceeding before commissioner Curry was conducted in an extremely unfair manner (*See VRP of 2/23/12*)

and that it likely would not have happened that way if Appellant had been represented by counsel.

Here, one party was represented by an attorney while the accused contemnor was *pro se*. Not only does this facially appear to be unfair but commissioner Curry failed to maintain his impartiality, opting instead to directly question Appellant without acting the same way with Respondent.

The issue presented here is whether the commissioner went beyond merely questioning the accused contemnor so as to clarify testimonial answers that were ambiguous in some material way. Not only was Appellant ***not under oath*** but an objective reading of the VRP shows that the questions that commissioner Curry asked were an effort to procure incriminating admissions to be used against Appellant. In essence, commissioner Curry acted as co-counsel for Respondent by supplementing the contempt pleadings on the fly. While this situation does not lend itself to a sharp line demarcation between permissible and impermissible, it is clearly dangerous to the notion of fairness to the accused contemnor.

Because Respondent was not subjected to the same process, there was no balance in the proceeding. Also, there was no adherence to the factors underlying a Supreme Court decision which held that the review standard for contempt actions is abuse of discretion, not *de novo*:

The contempt proceeding in this case was considered by the superior court commissioner and the reviewing superior court judge solely on written submissions, including declarations and affidavits. Neither Sara nor Christopher objected to this procedure. Preliminarily at issue is what is the proper standard of review under such circumstances. In

conducting its review, the Court of Appeals determined that the standard of review is whether the trial court's findings of fact were supported by "substantial evidence" and "whether the findings support the conclusions of law." [cite omitted]. In determining that the findings of fact were to be reviewed for "substantial evidence," the court rejected Sara's contention that it review the record de novo.

Sara correctly observes that there are cases that stand for the proposition that appellate courts are in as good a position as trial courts to review written submissions and, thus, may generally review de novo decisions of trial courts that were based on affidavits and other documentary evidence. [cites omitted]. The aforementioned cases differ from the instant in that they did not require a determination of the credibility of a party. *Here, credibility is very much at issue.* [emphasis added].

We agree with the Court of Appeals that no Washington appellate court reviewing documentary records has weighed credibility. Indeed, the general rule relating to de novo review applies only when the trial court has not *seen* or heard testimony requiring it to assess the credibility of the witnesses. [italics original].

...

We hold here that the Court of Appeals correctly concluded that the substantial evidence standard of review should be applied here where competing documentary evidence had to be weighed and conflicts resolved. The application of the substantial evidence standard in cases such as this is a narrow exception to the general rule that where a trial court considers only documents, such as parties' declarations, in reaching its decision, the appellate court may review such cases de novo because that court is in the same position as trial courts to review written submissions. [cite omitted].

Although an argument can and indeed has been advanced that the appellate court is in as good a position to judge credibility of witnesses when the record is entirely documentary, we reject that argument. As we noted in Jannot, 149 Wn.2d 123, trial judges and court commissioners routinely

hear family law matters. In our view, they are better equipped to make credibility determinations. Having said that, we recognize that where an outcome determinative credibility issue is before the court in a contempt proceeding, it may often be preferable for the superior court judge or commissioner to hear live testimony of the parties or other witnesses, particularly where the presentation of live testimony is requested. In that respect, we agree with the amicus WSTLAF that issues of credibility are ordinarily better resolved in the "crucible of the courtroom, where a party or witness' fact contentions are tested by cross-examination, and weighed by a court in light of its observations of demeanor and related factors." [emphasis added]

Marriage of Rideout, 150 Wn.2d 337, 349-352, (2003).

The procedure used by commissioner Curry in the instant case could not meet the standards expected under **Rideout**. Not only was Appellant not afforded the same luxury of being shielded from direct judicial questioning as Respondent was, **nobody was under oath**. This means that Respondent's attorney was able to "testify" via hearsay while Appellant's answers could be (and were) treated as admissions against interest. This is not only unfair and prejudicial, it is not a process designed (or able) to provide justice.

This type of evidentiary quandary has happened before. The opinion in which it arose states in pertinent part:

When a motion to set aside a default judgment is supported by affidavits asserting lack of personal service, and the plaintiff files controverting affidavits, a triable issue of fact is presented. . . . A court may abuse its discretion by failing to hold an evidentiary hearing when affidavits present an issue of fact whose resolution requires a determination of witness credibility.

...

The affidavits in this case present an issue of fact which can only be resolved by determining the credibility of the witnesses. The matter must be remanded for an evidentiary hearing to resolve this fact issue.

Woodruff v. Spence, 76 Wn. App. 207, 210, 883 P.2d 936 (1994).

Rideout stands for the proposition that all parties before the court are equally available for credibility inferences by the judicial officer in a civil contempt action. Critically important to this proposition is that the parties be similarly situated and treated similarly. In the instant case, that did not happen. **Woodruff** stands for the proposition that a judicial officer must conduct an evidentiary hearing when credibility is at issue.²

With all due respect for the trial court, it is difficult to fathom how commissioner Curry failed to immediately appreciate the need for sworn testimony when he was confronted with dueling contempt actions concerning the same set of facts. More to the point, it is impossible to see how either one of the contempt actions facially appear to be made in bad faith.³ Appellant might be excused for not appreciating the nuances of CR 11 and RCW 26.09.160 but what is Respondent's excuse? She was represented by counsel, who is expected to know the legal standards.

² Ironically, the evidentiary hearing proved to be the appellant's undoing. See *Woodruff v Spence*, 88 Wn.App. 565, 945 P.2d 745 (1997).

³ Arguably, both were severe first steps to solve a problem. It seems in retrospect that mediation would have been a more appropriate method to use.

The revision motion should have been granted because Appellant made a sufficient showing of commissioner errors to warrant relief.

Revision is both a state constitutional right and a statutory right. One of its purposes is to protect the parties from commissioners who may be biased in some manner. *See e.g., LCR 53.2(f); RCW 2.24.050.* On the revision hearing, the appellate opinion which is most instructive states:

In *State ex rel. Biddinger v. Griffiths*, 137 Wash. 448, 451, 242 P. 969 (1926), this court interpreted the language "revision shall be upon the records of the case," in an essentially identical statute, to mean that an elected superior court judge should review the entire proceeding that was before the commissioner and has a right to order a transcript of the evidence taken. The *Biddinger* court also interpreted "revision" to be the equivalent of "review." [cite omitted]. In so holding, this court required the trial court judge to "undertake an appellate court review of the certified record. The supreme court held the superior court to the same standards of review to which it held itself under the statutes then currently in effect." [cite omitted].

We recognize that the Court of Appeals' opinion in *In re Welfare of Smith*, 8 Wn. App. 285, 505 P.2d 1295 (1973), is somewhat unclear in that it could be interpreted to allow a superior court judge to conduct whatever additional proceedings the judge believed necessary to resolve the case on review. [cites omitted]. We do not read *Smith* so broadly. The statute limits review to the record of the case and the findings of fact and conclusions of law entered by the court commissioner. RCW 2.24.050. In an appropriate case, the superior court judge may determine that remand to the commissioner for further proceedings is necessary. Generally, a superior court judge's review of a court commissioner's ruling, pursuant to a motion for revision, is limited to the evidence and issues presented to the commissioner. In cases such as this one, where the evidence before the commissioner did not include

live testimony, then the superior court judge's review of the record is de novo.

In the present case, the superior court judge correctly refused to consider the new issues and new evidence offered on the motion for revision.

Marriage of Moody, 137 Wn.2d 979, 992-993, 976 P.2d 1240 (1999).

Judge Fleck did not merely adopt the commissioner's rulings as her own; rather she made her own provisions. The order states in part, in handwritten form:

. . . Therefore, in terms of failure and refusal to exercise time that father was required, . . .

CP 46

A thorough reading of the 2/23/12 VRP does not show anything remotely resembling a refusal by Appellant to comply with the parenting plan provisions. There is nothing in the VRP which shows Appellant expressing indifference to his daughter's need to have parenting time with him.

The commissioner abused his discretion as previously discussed in this brief. Judge Fleck appears to have revisited the issues pursuant to the scheme detailed in **Moody**: in other words she re-evaluated the evidence and made her own determinations. The cited result above is completely unsupported by the evidence. Most importantly, judge Fleck instructed Appellant to read 83 Wn.App. 613 and to get any parenting plan deviation agreements in writing.

This directly contradicts any finding of bad faith or intentional disobedience against Appellant. First, there is no direct evidence (such as an open court admission) that Appellant refused to exercise his residential

time or that he would refuse in the future. Second, there is no indication that there was anything more than reasonable confusion over meeting at a neutral location. Neither party could say for certain that the other side absolutely did not appear at the transfer place since both asserted that they spent limited time there before giving up and leaving. Commissioner Curry essentially decided the matter on the existence of sales receipts and an employee's explanation of the meaning of various imprints thereon. It is difficult to believe that an reasonable person could accept hearsay exhibits not verified in open court by the maker of the hearsay exhibit as a showing of bad faith failure to exercise residential time.

Sadly, two judicial officers have no problem doing so even though reaching those conclusions required using those hearsay exhibits to corroborate the credibility of another witness without any cross-examination. This is unacceptable and it denies due process to Appellant.⁴

The revision order also issued a threat to Appellant that if he does not stop litigating this case, he will be punished in the future with paying Respondent's attorney fees and also with retroactively having to pay for the revision hearing fees. *See CP 46*. As a final slap, judge Fleck "informed" Appellant that continuing litigation/conflict damages the child.

If litigation damages the child, why is it only the father who gets told to back off? Is his litigation different than mother's litigation?⁵ And

⁴ Judge Fleck "encouraged" Appellant to read 83 Wn.App. 613 but it has nothing to do with his situation. Also, that case was a reversal of the trial court and the two headnotes that might relate to this case are marked as dictum.

⁵ It is worth noting that Respondent later litigated an ex parte change to the parenting plan after this order was entered yet she suffered no penalty for it.

last but not least, exactly *how* does litigation damage the child? If litigation *by definition* is damaging to the child, then why does our society encourage the use of domestic violence restraining orders? This particular language and choice of topics in this order shows strong evidence of judge Fleck being biased against Appellant.

The presentation of impeachment evidence via a reconsideration motion, which cast doubt on the veracity of Respondent's declaration, should have caused a remand to the commissioner for further action.

Appellant filed a motion for reconsideration in an effort to bring what he felt was a serious problem -- he was ordered to pay attorney fees of Respondent even though she most likely did not actually owe any fees. He attached a declaration of a private investigator with photos which strongly indicated that Respondent had made a false declaration to the court that she lived with her father when she actually was staying at her attorney's house.

Rightly or wrongly, Appellant concluded that the report showed two things: (1) that Respondent was paying her legal fees in a manner other than cash; and (2) that she was pretending to reside with her father which meant that the minor child likely was relocated without notice.

Judge Fleck was not pleased that Appellant failed to heed her warning not to further litigate the case. Appellant stated in his motion that the attorney fees were for more than the contempt portion. He stated that he possessed a letter admitting that Respondent was deviating from the parenting plan transportation provision. CP 47-48.

Appellant acknowledges that under the standards of **Moody**, judge Fleck technically was correct to refuse to consider the additional evidence. But that does not mean that Appellant's issue and challenge should be ignored. **Moody** also holds, as cited earlier in this brief: "In an appropriate case, the superior court judge may determine that remand to the commissioner for further proceedings is necessary." Appellant contends that this situation was such an appropriate case for remand to the commissioner for an evidentiary hearing. It should not have been swept under the rug as judge Fleck did.

In judge Fleck's order dated 5/16/12, it states at Finding # 1:

The father acted in bad faith when he refused to see the child for several months when the mother did not agree to his requests or demands to deviate from the parenting plan. . . .

If judge Fleck can revisit the original revision motion after having already determined it, then she cannot deny Appellant the opportunity to do so. Either the revision motion is back before the court or it is not. A woman can be pregnant or not pregnant - there is no such thing as being "a little bit" pregnant. The same holds true here. Judge Fleck abused her authority by selectively revising the revision issues after having already determined them.

Judge Fleck's Finding # 3 completely ignores Appellant's evidence and deems it unworthy of any consideration. As stated above, and as held in **Moody**, the superior court has full authority to deal with issues. To declare that the evidence Appellant presented regarding the existence of fees

actually incurred is not relevant is to say that it does not matter if there are any actual damages. This makes no sense. It strongly indicates that the judge is trying to avoid exposing Respondent's former attorney to a likely WSBA grievance for violation of RPC 1.8(j)(1) by not having an evidentiary hearing on the issue of whether fees are actually owed by Respondent to the law firm.⁶

The salient fact issue is where Respondent resides and if she moved without informing Appellant beforehand. If she lived with her attorney, it is unreasonable to assume a normal attorney-client relationship and fee arrangement is present. As can be seen from ¶ 3 in the Order on Reconsideration [CP 101], judge Fleck disregarded Appellant's proffered evidence regarding Respondent's residence based on its lack of relevance to whether attorney fees were incurred by Respondent due to Appellant's contempt filing.

However, ¶ 3 certainly acknowledges the existence of the evidence by the trial court. An examination of Appellant's Motion for Reconsideration shows that there was substantial evidence presented to show that Respondent's residence was actually where Appellant said it was -- at her attorney's home despite her denials. Absent an admission from Respondent, it is almost impossible to have direct evidence of Respondent's residence. Appellant's evidence (presented with his motion) certainly constitutes a preponderance of the circumstantial evidence needed to persuade a

⁶ For clarity, the attorney involved is Respondent's former attorney who is also apparently a partner in the firm.

rational trier of fact of the truth of the matter asserted.

Possibly in an effort to avoid the objectively overwhelming evidence that Respondent and the minor child were already residing at her former attorney's home, judge Fleck included the following in ¶ 5:

On the basis of credibility determinations and findings made as a result of the trial, the statements made in the father's pleadings filed since entry of the orders following trial, the revision hearing, my familiarity with these parties, and the extent of litigation initiated by the father since the entry of the orders following trial, . . .

At the outset, it should be noted that nothing in the cited language informs someone reading it what Appellant did that was so wrong. Vague clues can be gleaned from the phrases "credibility determinations"; "statements made in the father's pleadings"; and "my familiarity with these parties".

The phrase "my familiarity with these parties" is shocking and it strongly suggests that judge Fleck has a disqualifying bias. Whether the bias exists and its extent is unknown but one thing is known -- the phrase indicates that something in this case has become personal for the judge, so much so that a personal possessive pronoun was used. This strongly suggests that judge Fleck was imputing credibility to Respondent based on her personal interest in the case.

The phrase "credibility determinations" is very problematic. It strongly implies that issues before the court are decided by pre-determined credibility, to the detriment of one and the benefit of the other. Based on the rest of ¶ 5, it seems clear that judge Fleck begins any analysis of an issue in this case from the position that Appellant is not credible no matter

what he submits.

Obviously, this is not a method that is used when making a rational decision. Interestingly, this apparent bias against Appellant and in favor of Respondent is not a recent development in this case. From Findings of Fact signed & entered by judge Fleck on 5/24/2011:

The mother has a juvenile history from 16 and 18 years ago. The mother also has convictions for Reckless Endangerment, Harassment[,] Burglary 2, (1993) Taking Vehicle without Permission, Residential Burglary, theft 3 (1995), Theft 2 (2004), Attempted Controlled Substances Violation (2007), Identity Theft 2 (2008) and she pled guilty to six counts of forging prescriptions for purposes of gaining access to a controlled substance and was sentenced in January of 2010.

CP 114⁷

The wording is a bit awkward. Apparently, Respondent's criminal behaviors started while she was still a minor child and continued relatively unabated well into adulthood. From 1993 to virtually the present time, Respondent routinely engaged in criminal behavior that culminated in convictions for fraud. It cannot be disputed that Respondent is a career criminal who deceives people for personal gain by lying. She has no credibility.

Yet the above quoted finding goes on to make excuses for her:

This adult criminal history appears largely due to her dependence on Tramadol, a prescription synthetic narcotic, which according to the mother's sister, does not make a person drowsy as other narcotics such as Percoset do. The mother was given a residential DOSA sentence for treatment by ABHS in Chehalis, Washington. She completed a three month program with Pioneer while in jail and stayed longer in jail in order to complete that

⁷ The sentencing in January 2010 was to jail for about two years.

program. She completed a six month residential treatment program with ABHS in September 2010 as well as her aftercare treatment on February 2, 2011, and is now in outpatient treatment.

Contrary to judge Fleck's opinion, criminal behavior is due to the criminal's voluntary choice to violate the laws. It is absurd to pretend that Respondent's long and consistent criminal lifestyle is anything but what it appears to be -- a bad actor being given too many chances to re-offend. A quick research into Tramadol would reveal that it is very unlikely to have any meaningful connection with Respondent's decades-long crime spree.

Even if Tramadol did have a connection, Respondent stopping her abuse of this drug does *nothing* to rehabilitate her destroyed credibility. Getting sober does not mean liars stop lying. The use of fraud for illicit purposes is a moral defect, not a bio-chemical side effect of Tramadol.⁸

The critical point is that judge Fleck, as far back as 5/24/2011, knew that Respondent was a career criminal and that she deliberately used deceit and lying to commit her crimes. The recitation of coerced drug treatment regimens is paltry and woefully insufficient to show even a little bit of rehabilitation. It was bad enough for judge Fleck to ignore this reality in 2011 -- it is shameful for judge Fleck, on 5/16/2012, to again personally vouch for the credibility of a party in a case pending in her court. *See **CJC Canon 2(B); Canon 3(D)***.

The notion of equal access to the courts is well-stated as follows:

The policy underlying equal access to the courts is not only sound but socially compelling. Our courts

⁸ It should be noted that the paragraph describes ABHS treatment twice. It appears to be the same treatment described in two different ways.

serve as a complaint desk for our society. Curiously enough, they have served reasonably well. Otherwise, the so-called social compact and our society as we know it might have come unglued [by] now. But this is not time for equanimity or self-serving encomiums. Our court system is the central mechanism for the orderly resolution of disputes that arise in our society between citizens and between citizens and the government. Moreover, it is manifest that there is a direct relation between access to the courts and the exertion of power within the system relative to the evaluation and resolution of citizens' grievances. Failure to provide equal access to the courts demonstrates not only a poverty of sensitivity to social problems but also is fraught with the dangers of alienating our citizenry from the system and encouraging self-help with concomitant breaches of the peace and likely overtones of violence. Indeed, much of the turmoil in our country in recent years has been attributed to the "frustrations of the powerless."

Carter v. University, 85 Wn.2d 391, 393-394, 536 P.2d 618 (1975).

Notwithstanding the speculative dicta connecting access to the courts with violence, individual judges have the authority to control their courtrooms and to facilitate the processing of cases in their courts. However, any restriction must comport with due process:

"[D]ue process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." *Boddie v. Connecticut*, [cite omitted]. The opportunity required depends on "the nature of the case" and "the limits of practicability". [cite omitted]. *Boddie* held that indigent persons unable to pay the filing fee to obtain a divorce are entitled to waiver of the fee. However, when access to the courts is not essential to advance a fundamental right, such as the freedom of association or disassociation involved in *Boddie*, access may be regulated if the regulation rationally serves a legitimate end. [cites omitted].

In other words, "[t]here is no absolute and unlimited

constitutional right of access to courts. All that is required is a reasonable right of access—a reasonable opportunity to be heard." . . . The requirement that litigation proceed in good faith and comply with court rules has always been implicit in the right of access to the courts. [cite omitted]. Otherwise, a person could barge into court and demand a hearing at the expense of others who have an equal or greater right of access depending on the merits and nature of their claims. If access is to be guaranteed to all, it must be limited as to those who abuse it.

Marriage of Giordano, 57 Wn. App. 74, 77-78, 787 P.2d 51 (1990).

In Giordano, the record showed:

Ms. Giordano filed numerous motions to enforce the agreed order and to modify it. The number of motions threatened to preempt the family law motions calendar and to involve all 39 superior court judges (court's comment). As a result, the case was specially assigned to a single judge for disposition in civil track I.

The court issued restraining orders "to take control of the case and the behavior of the parties, and to stop the expenditure of attorney fees". One order restrained Ms. Giordano from contacting any public or private agency if the effect was to involve Mr. Giordano or "to stir up any more trouble." The court also issued a written moratorium on motions barring motions until trial on a separate issue, at which time trial would be conducted "on all issues brought to the attention of the Court". The moratorium did not apply in case of harassment, emergency, or delinquency in support payments exceeding 1 month.

The moratorium lasted 4 months. During its pendency, Ms. Giordano filed 12 motions. She obtained a wage assignment, a discovery order, and an order granting extensive relief pursuant to her motions. She obtained a continuance of the trial date for personal reasons.

Giordano, at 75-76.

Division One affirmed the trial court restriction, also described as a moratorium. What is different is that the instant case has no time limit nor

does it have any exceptions. It is a blanket impediment without any apparent legitimate purpose.

Judge Fleck describes Appellant as angry and defiant, two qualities which are not only legal but subjective. No acts of the Appellant are described by judge Fleck, beyond

. . . the extent of litigation initiated by the father since the entry of orders following trial. . . .

CP 101

Not only does this language make it impossible to figure out which motions are being described, it also makes it impossible to determine the starting point for counting (or otherwise assessing) the “extent of litigation” for which Appellant is negatively responsible.

However, the most important deficiency in this passage is that its reach goes to infinity without any standards to guide either Appellant or a reviewing judge other than judge Fleck. Is the reviewing judge (if not judge Fleck) simply expected to withhold approval no matter what? Is the judge supposed to look for legal deficiencies? If such deficiencies are found, should the judge tell Appellant what they are even though that would amount to providing legal advice?⁹

Or, as is most likely, judge Fleck expects the pro se Appellant to believe it is now impossible to get a motion heard and therefore never file another one? The facts that are known from the record seem to fit only this scenario. If so, it clearly violates Appellant’s right to be treated equally

⁹ It is worth noting that any such advice from a judge could not be relied upon by Appellant because an attorney-client relationship could not be formed.

and to be held to the same standards as other similarly situated persons.

The lack of standards makes Appellant's hurdle totally arbitrary.

Irrespective of other arguments, the awards of attorney fees are neither reasonable nor authorized under either CR 11 or the frivolous statute.

Judge Fleck's Finding # 4 states: "The award of \$4500 is an appropriate sanction for the father's CR 11 violations and pursuant to RCW 7.21.030(3)." The record contains no Motion for CR 11 Sanctions. There is reference to CR 11 in Respondent's pleadings but Appellant was given no notice that CR 11 sanctions were properly before the court. Most critically, Appellant was given no specific warning of his alleged bad behavior nor is there any showing of an action that violates CR 11.

Because the word "frivolous" appears several times in the record of this case, it seems appropriate to deal with it first and get it out of the way. The lead case on the frivolous statute states:

Thus, the intent of the Legislature is clear. The action or lawsuit is to be interpreted as a whole. If that action as a whole, or in its entirety, is determined to be frivolous and advanced without reasonable cause, then fees and costs may be awarded to the prevailing party. Under RCW 4.84.185, the trial court is not empowered to sort through the lawsuit, search for abandoned frivolous claims and then award fees based solely on such isolated claims.

The frivolous lawsuit statute has a very particular purpose: that purpose is to discourage frivolous lawsuits and to compensate the targets of such lawsuits for fees and expenses incurred in fighting meritless cases. The statute is not to be used in lieu of more appropriate pretrial motions, CR 11 sanctions or complaints to the bar association. The statute provides for the nonprevailing party, not that party's attorney, to pay attorneys' fees and

costs. [emphasis added].

Biggs v. Vail, 119 Wn.2d 129, 136-137, 830 P.2d 350 (1992).

In any event, RCW 4.84.185 is unavailable under the following holding unless a specific motion is made:

Further, it was error to award attorney fees based on the frivolous claims statute, RCW 4.84.185, because no formal motion for an award of fees was made as required by the statute.

Hamilton v. Huggins, 70 Wn. App. 842, 849, 855 P.2d 1216 (1993).

Obviously, the \$4500 fee award cannot be based on frivolousness.

On the other hand regarding CR 11, our Supreme Court has held:

In deciding whether the trial court abused its discretion, we must keep in mind that "[t]he purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system". [cite omitted]. CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. [cite omitted]. Courts should employ an objective standard in evaluating an attorney's conduct, and the appropriate level of pre-filing investigation is to be tested by "inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted". [cite omitted]. In deciding upon a sanction, the trial court should impose the least severe sanction necessary to carry out the purpose of the rule. [cite omitted]. CR 11 sanctions are not appropriate where other court rules more specifically apply.

Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994).

Further along in **Biggs**, it states:

Although we do not agree with Biggs' theories regarding this case, his protests are well taken. Normally, such late entry of a CR 11 motion would be impermissible, since without prompt notice regarding a potential violation of the rule, the offending party is given no opportunity to mitigate the sanction by amending or withdrawing the offending paper. [cite

omitted]. Prompt notice of the possibility of sanctions fulfills the primary purpose of the rule, which is to deter litigation abuses. . . . Both practitioners and judges who perceive a possible violation of CR 11 must bring it to the offending party's attention as soon as possible. Without such notice, CR 11 sanctions are unwarranted. [emphasis added].

Biggs, at 198.

Since no specific act was found by the court in this instant case to be a sanctionable violation of CR 11, the award of \$4500 in attorney fees was unreasonable using that rule as a basis. Nor is the amount reasonable if describing the cost of filing a contempt motion against Appellant. The 2/23/12 VRP [appendix 2] shows clearly that the award of fees includes amounts far in excess of what could be awarded under RCW 7.21.030.

There can be no combining of the bases for awarding fees because the purpose of awarding fees under CR 11 is different than the purpose under the remedial contempt statute. Additionally, Respondent's attorney admitted that the fees being sought (and which were granted) included amounts that were allegedly incurred well before the petition for modification and the contempt action were filed. *See appendix 2, page 22-23.*

The filing of a Notice of Intention to Relocate is directed to prospective action, not ratification. Also, the ex parte court should have been made aware that the issue of Respondent's residence was recently subjected to challenge regarding the same address as her ex parte application.

On ¶1.1 & ¶1.2, Respondent stated, "On August 24, 2012, I intend to relocate the following children: Name [B.P.E.S.]¹⁰ Age 7" and "Notification to other parties: This notice is being served before the date of the

¹⁰ Initials are used for the minor child.

intended relocation of the children.” Appellant did not respond to the notice and Respondent’s attorney entered the parenting plan in ex parte court.¹¹

As far as can be determined from the trial court record, Respondent did not inform the ex parte court that she had just vigorously denied living at the address she listed as “intend” on the notice. There is nothing in the notice about the prior litigation involving this subject. There is also nothing in the trial court record to show that Respondent informed the ex parte court that Appellant had filed an appeal of the matter.

When Appellant became aware of the entry of the modified parenting plan, he filed and served a supplemental notice of appeal. Appellant also filed and served in the trial court a motion to vacate the ex parte orders. [CP supp.]. Respondent’s attorney appeared ex parte and got an order quashing the hearing date set for the motion to vacate.¹² [CP supp.].

The issue here is whether Respondent should be estopped from changing her position from the recently litigated issue of her actual residence, done in resistance to Appellant’s petition to modify the transportation provision of the parenting plan. Principles of estoppel are as follows:

Collateral estoppel, or issue preclusion, prevents relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case. [cite omitted]. Before the doctrine may be applied, the

¹¹ It should be noted that Respondent’s attorney signed the declaration portion of the pattern form motion instead of Respondent. There is no authority for attorneys to sign declarations for their clients. Therefore the declaration is not a declaration at all and provides no factual support for the motion.

¹² The motion to vacate remains pending before the trial court in a sort of “no man’s land.” No responsive or opposing pleadings were filed by Respondent. The quash motion was presented directly to judge Fleck who had heard the original litigation that is on appeal -- not to the ex parte department.

party asserting the doctrine must prove: (1) the issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice.

Spahi v. Hughes-Northwest, Inc., 107 Wn. App. 763, 774, 27 P.3d 1233 (2001).

Because the veracity of the pleading which stated that Respondent *intends* to relocate is disputed, basic fairness should prevent her from changing her position without at least being subject to cross-examination.

There is no authority to impose a punishment sanction on Appellant for filing a motion to vacate an order obtained ex parte. Also, there is no authority for Respondent to seek relief in the form of an order to quash without proper notice and opportunity to respond.

Appellant followed RAP 7.2(e) by filing the motion to vacate according to the court clerk's procedures. The clerk's office set the hearing date and noted the motion for hearing. Appellant then served Respondent with the hearing date order given to him by the clerk's office.

Respondent's attorney contacted Appellant by phone advising him that she was going to go to court on 11/6/12 to quash the order to show cause. [CP supp.]. She also sent an email which stated that the date was 11/7/12 and including attached pdf files of documents she intended to file.

Initially, it should be noted that no emergency existed nor was one claimed to exist. Thus, Respondent disobeyed **CR 7, LCR 7(b)(4)(A), LCR 7(b)(4)(D), LCR 7(b)(10)(A), and LCR 7(b)(10)(D)**. Irrespective of the validity of the order restricting Appellant's access to the court, there is

no authority to disobey these rules regarding notice. Due process requires that everybody be bound by the same rules and that notice be meaningful. Cursory and superficial treatment of the rules by a party is questionable -- outright disregard is prejudicial.¹³

If that is not bad enough, there's also the matter of adding provisions to the proposed order that was served. Not only was this motion heard with insufficient notice, but apparently judge Fleck believes that it doesn't matter if Appellant gets any notice at all for items that she wants to add or that Respondent's attorney wants to add.

The handwritten portions of the order quashing the hearing date are void ab initio due to lack of *any* prior notice to Appellant, legal or actual.

The award of attorney fees is without authority regardless of the validity of the earlier order restricting Appellant from filing motions. Even if it is construed as a CR 11 action, it is fee shifting which is not the least sanction available to "solve" the "improper" filing. The least sanction necessary is a case-by-case determination which requires notice and opportunity to be heard. Most critically, Appellant was denied the opportunity to request that judge Fleck recuse herself from the issue of sanctions since she created the order from which sanctions might have arguable authority.

¹³ Email is not a proper method of giving notice, especially when time is of the essence. Arguably it can satisfy actual notice but not legal notice.

F. Conclusion

The Court of Appeals should vacate all the awards of attorney fees; reverse the contempt finding against Appellant and dismiss it; vacate the ex parte default parenting plan modification; reverse the vacation of default modification of parenting plan & reinstate the original order of default; and remand with directions to re-assign the case to a different judge.

The Court of Appeals should also consider making a referral to the WSBA regarding attorney Cassady's personal relationship with Respondent while he and his firm represent her.

Respectfully submitted:

9 Dec 2012 Tom Baicy
date Tom Baicy, Appellant *pro se*

Appendix 1

CASE#: 09-3-03868-0 KNT JUDGMENT# YES JUDGE ID: 47
 TITLE: BAICY VS SHAY
 FILED: 06/02/2009
 CAUSE: PPS PARENTING PLAN/CHILD SUPPORT DV: Y

RESOLUTION: CDAT DATE: 04/18/2011 COURT DECISION AFTER TRIAL
 COMPLETION: JODF DATE: 05/25/2011 JUDGMENT/ORDER/DECREE FILED
 CASE STATUS: APP DATE: 06/12/2012 ON APPEAL
 ARCHIVED:
 CONSOLIDT:
 NOTE1:
 NOTE2:

----- PARTIES -----

CONN.	LAST NAME, FIRST MI TITLE	LITIGANTS	SERVICE
PET01	BAICY, THOMAS OWEN		
RSP01	SHAY, DANELLE MARIE		
MNR01	SHAY, BAINYA POPPY ELSIE		
INV01	WASHINGTON STATE OF CHILD SUPPT		
WTP01	BOTTIMORE, LESLIE R		
BAR#	29957		
AIP01	ODOM, CAROLEE		
BAR#	09568		
WTR01	CASSADY, RICHARD B. JR		
BAR#	23655		
ATR02	FILER, HERITAGE MARIE DANIE		
BAR#	38251		

----- APPEARANCE DOCKET -----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
	06/02/2009	\$FFR	FILING FEE RECEIVED	
1	06/02/2009	SMPT	SUMMONS & PET-RESDL SCHED/PPLAN/ SUPPT	
2	06/02/2009	*ORSCS JDG36	SET CASE SCHEDULE JUDGE GEORGE T MATTSON, DEPT 36	05-03-2010ST
3	06/02/2009	CICS LOCK	CASE INFORMATION COVER SHEET ORIGINAL LOCATION - KENT	
4	06/02/2009	CIF	CONFIDENTIAL INFORMATION FORM	
5	06/02/2009	CSWP EXP04	CHILD SUPPORT WORKSHEET/PROPOSED EX-PARTE, DEPT - KENT	
6	06/02/2009	RSTOSC	RESTRAINING ORD & ORD TO SHOW CAUSE	06-25-2009
7	06/02/2009	NTMTDK ACTION	NOTE FOR MOTION DOCKET PAR PLAN, TEMP ORDER, SHOW CAUSE	06-25-2009MF
8	06/02/2009	DCLR	DECLARATION OF THOMAS BAICY	
9	06/02/2009	PPP	PROPOSED PARENTING PLAN / PET	
10	06/02/2009	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
11	06/02/2009	MTSC	MOTION FOR ORDER TO SHOW CAUSE	
12	06/02/2009	FNDCLR	FINANCIAL DECLARATION PETITIONER	
13	06/17/2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
14	06/17/2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
15	06/17/2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
16	06/17/2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
17	06/17/2009	SADP	SEALED ACKNLEDG/DENIAL OF PATERNITY	
-	10/19/2009	SCS	STATUS CONFERENCE SETTING	10-26-2009FC
18	10/26/2009	LIST	LIST /STATUS CONF/NONCOMP	
19	10/26/2009	HSTKNA COM12	HEARING STRICKEN:IN COURT NONAPPEAR COMMISSIONER MARK HILLMAN	
20	11/02/2009	ORTA	ORD TO APPEAR FAIL TO FOLL SCHEDULE	01-11-2010
21	12/03/2009	MTSC	MOTION FOR ORDER TO SHOW CAUSE /PET	
22	12/03/2009	DCLR	DECLARATION OF THOMAS BAICY	
23	12/03/2009	PPP	PROPOSED PARENTING PLAN	
24	12/03/2009	FNDCLR	FINANCIAL DECLARATION /PET	
25	12/03/2009	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
26	12/03/2009	CSWP	CHILD SUPPORT WORKSHEET/PROPOSED	
27	12/03/2009	NTMTDK ACTION	NOTE FOR MOTION DOCKET TEMP ORDER	12-28-2009MF
28	12/03/2009	CIPLD	CONFIRM ISSUES:PLEADING TO BE FILED	01-11-2010CN
-	12/03/2009	CI	C.I.: REFERRED TO FAMILY LAW MED.	
29	12/03/2009	TPROTSC EXP04	TEMP REST ORD & ORD TO S/C/ISSD EX-PARTE, DEPT - KENT	12-28-2009MF
30	12/08/2009	ORCJ JDG47	ORDER FOR CHANGE OF JUDGE JUDGE DEBORAH FLECK, DEPT 47	
31	12/11/2009	RTS	RETURN OF SERVICE	
32	12/11/2009	DCLRM	DECLARATION OF MAILING	
33	12/28/2009	PPT FAM02	PARENTING PLAN - TEMPORARY FAMILY LAW - KENT	
34	12/28/2009	MTHRG FAM02	MOTION HEARING FAMILY LAW - KENT	
-	12/28/2009	AUDIO	AUDIO LOG DR1F	
35	12/28/2009	ORS FAM02	ORDER FOR SUPPORT FAMILY LAW - KENT	
35A	12/28/2009	TMRO FAM02	TEMP RESTRAINING ORDER /ISSD FAMILY LAW - KENT	
36	12/29/2009	NT	NTC /CLIENT MEDIATION NONCOMPLIANCE	
37	01/11/2010	NTHG ACTION	NOTICE OF HEARING MTN FOR DEFAULT	01-22-2010
38	01/11/2010	MTDFL	MOTION FOR DEFAULT / PETITIONER	
38A	01/11/2010	LIST	LIST/NONCOMPLIANCE/AMEND	
38B	01/11/2010	ORSTAC	ORDER ON STATUS CONFERENCE/ON TRACK	
38C	01/11/2010	STAHRG COM02	STATUS CONFERENCE / HEARING COMMISSIONER LEONID PONOMARCHUK	
39	01/12/2010	DCLRM	DECLARATION OF MAILING	
40	01/12/2010	DCLRM	DECLARATION OF MAILING	
41	01/12/2010	NT	NOTICE /NONCOMPLIANCE/FCS	
42	01/14/2010	RQ	REQUEST FR NTC OF TEMP DISMISSAL	
43	01/19/2010	COPC	CONFIRMATION OF PARENTING CLASS	
44	01/26/2010	NT	NOTICE /KCFCS CASE CLOSURE	
45	01/27/2010	COPC	CONFIRMATION OF PARENTING CLASS/PET	
46	02/02/2010	CP	COPY /LTR FCS	
47	02/09/2010	RSP	RESPONSE TO MOD PETITION /SHAY	
48	02/18/2010	NT	NOTICE NONCOMPLIANCE /FCS	
49	03/04/2010	NT	NOTICE /KCFCS NONCOMPLIANCE	
50	03/09/2010	ORPTH	ORDER TO APPEAR PRETRIAL HRG/CONF	04-05-2010

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
51	03/16/2010	PPP	PROPOSED PARENTING PLAN	
52	03/19/2010	NT	NOTICE /KCFCS CASE CLOSURE	
53	03/26/2010	NTWDA	NOTICE OF WITHDRAWAL OF ATTORNEY	
54	03/26/2010	DCLRM	DECLARATION OF MAILING	
55	03/26/2010	DCLRM	DECLARATION OF MAILING	
56	04/05/2010	STAHRG JDG47	STATUS CONFERENCE / HEARING JUDGE DEBORAH FLECK, DEPT 47	
-	04/05/2010	AUDIO	AUDIO LOG DR 4F/11:13:45	
57	04/05/2010	ORPTC	ORDER ON PRE-TRIAL CONFERENCE	
58	04/05/2010	APPS	APPEARANCE PRO SE /BAICY	
59	04/14/2010	DCLRM	DECLARATION OF MAILING	
60	04/20/2010	NTHG	NOTICE OF HEARING/CHANGE TRIAL DATE	05-03-2010
61	04/20/2010	MTCTD	MOTION TO CHANGE TRIAL DATE /RSP	
62	04/20/2010	DCLR	DECLARATION OF DANELLE SHAY	
63	04/20/2010	DCLRM	DECLARATION OF MAILING	
64	04/26/2010	NTAPR	NOTICE OF APPEARANCE/DCS	
65	04/26/2010	RSP	RESPONSE /STATE	
66	05/03/2010	ORCTD	ORD FOR CONTINUANCE OF TRIAL DATE	08-09-2010ST
67	05/03/2010	ORACS	ORDER AMENDING CASE SCHEDULE	
68	07/28/2010	TRMM	TRIAL MEMORANDUM /STATE	
69	08/10/2010	WTRC	WITNESS RECORD	
70	08/10/2010	NJTRIAL JDG47	NON-JURY TRIAL JUDGE DEBORAH FLECK, DEPT 47	
-	08/10/2010	AUDIO	AUDIO LOG DR 4F	
71	08/10/2010	APPS	APPEARANCE PRO SE /THOMAS BAICY	
72	08/10/2010	APPS	APPEARANCE PRO SE /DANELLE SHAY	
73	08/13/2010	CRRSP	CORRESPONDENCE TO COURT/JENNIFER V	
74	08/13/2010	CRRSP	CORRESPONDENCE TO COURT/THOMAS B	
75	08/13/2010	CRRSP	CORRESPONDENCE TO COURT/DANNY SHAY	
76	08/13/2010	ORTR	ORDER OF TRANSFER TO FAM CRT	
77	08/13/2010	PPT	PARENTING PLAN - TEMPORARY	
78	08/13/2010	ORTR	ORDER OF TRANSFER TO FAM CRT	01-24-2011ST
79	09/01/2010	NT	NOTICE /NONCOMPLIANCE /KCFCS	
80	10/18/2010	LTR	LETTER FROM FAM COURT SERVICES	
81	12/01/2010	COPC	CONFIRMATION OF PARENTING CLASS/RSP	
82	12/03/2010	LTR	LETTER /FCS	
83	12/17/2010	MTC	MOTION TO CONTINUE / PET	
84	12/17/2010	DCLRM	DECLARATION OF MAILING	
85	01/05/2011	ORCTD	ORD FOR CONTINUANCE OF TRIAL DATE	04-18-2011ST
86	01/05/2011	ORACS	ORDER AMENDING CASE SCHEDULE	04-18-2011
87	02/25/2011	ORPTH	ORDER TO APPEAR PRETRIAL HRG/CONF	03-21-2011
88	03/10/2011	FNDCLRP	FINANCIAL DECLARATION OF PET	
89	03/21/2011	STAHRG JDG47	STATUS CONFERENCE / HEARING JUDGE DEBORAH FLECK, DEPT 47	
-	03/21/2011	AUDIO	AUDIO LOG DR4F	
90	03/21/2011	ORPTC	ORDER ON PRE-TRIAL CONFERENCE	
91	04/08/2011	SEALRPT	SEALED CONFIDENTIAL RPTS /PAR EVAL	
92	04/08/2011	NT	NOTICE /KCFCS CASE CLOSURE	
92A	04/18/2011	NJTRIAL JDG47	NON-JURY TRIAL JUDGE DEBORAH FLECK, DEPT 47	
-	04/18/2011	AUDIO	AUDIO LOG DR 4F	
93	04/20/2011	WTRC	WITNESS RECORD	
94	05/25/2011	JDORS	JDG& OR FOR SUPPORT/RESID SCHEDULE	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
95	05/25/2011	PP	PARENTING PLAN (FINAL ORDER)	
96	05/25/2011	FNFCL	FINDINGS OF FACT&CONCLUSIONS OF LAW	
97	05/25/2011	ORS	ORDER FOR SUPPORT	
98	05/25/2011	EXLST	EXHIBIT LIST	
99	05/25/2011	STPORE	STIP&OR RET EXHBTs UNOPND DEPOSTNS	
100	06/20/2011	MTAF	MOTION AND AFFIDAVIT/DECLARATION	
101	06/20/2011	DCLR	DECLARATION OF THOMAS BAICY	
102	06/20/2011	ORPRFP EXP04	ORDER TO PROCEED IN FORMA PAUPERIS EX-PARTE, DEPT - KENT	
103	06/20/2011	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
-	06/20/2011	\$NF	NON FEE	
104	06/23/2011	CRRSP	CORRESPONDENCE TO PARTIES/S COURT	
105	09/21/2011	PNCA	PERFECTION NOTICE FROM CT OF APPLS COA CASE #67312-2-1	
106	10/11/2011	PPP	PROPOSED PARENTING PLAN	
107	10/11/2011	CSW	CHILD SUPPORT WORKSHEET	
108	10/11/2011	SMPM	SUMMONS & PETITION FOR MODIFICATION FOR CSTDY/PAR PLAN/RESID SCHED BAICY, THOMAS OWEN	
109	10/11/2011	PET01 ORSCS	ORDER SETTING CASE SCHEDULE /VOID	
110	10/11/2011	CICS LOCK	CASE INFORMATION COVER SHEET ORIGINAL LOCATION - KENT	
111	10/11/2011	CIF	CONFIDENTIAL INFORMATION FORM	
112	10/11/2011	NT	NOTICE RE CASE SCHEDULE	
113	10/11/2011	*ORSCS JDG47	SET CASE SCHEDULE JUDGE DEBORAH FLECK, DEPT 47	09-17-2012ST
114	11/04/2011	RTS	RETURN OF SERVICE	
115	11/07/2011	NTMTDK ACTION	NOTE FOR MOTION DOCKET FINAL DECREE -1:30PM	11-22-2011DP
115A	11/09/2011	ORDYMT EXP06	ORDER DENYING MOTION/PETITION EX-PARTE, DEPT. KENT - CLERK	
116	11/10/2011	ORDYMT EXP04	ORDER DENYING MOTION/PETITION EX-PARTE, DEPT - KENT	
117	11/22/2011	ORDFL EXP04	ORDER OF DEFAULT V RESPONDENT EX-PARTE, DEPT - KENT	
118	11/22/2011	MTHRG EXP04	MOTION HEARING EX-PARTE, DEPT - KENT	
-	11/22/2011	AUDIO	AUDIO LOG DR 1J RJC	
119	11/22/2011	MTDFL	MOTION FOR DEFAULT /PET	
120	11/22/2011	ORMDD EXP04	ORDER MODIFICATION PARENTING PLAN EX-PARTE, DEPT - KENT	
121	11/22/2011	PP	PARENTING PLAN (FINAL ORDER) /ADJUSTED EX-PARTE, DEPT - KENT	
122	11/22/2011	LIST	LIST /FACILITATORS FINAL HEARING	
123	12/12/2011	MTSC	MOTION FOR ORDER TO SHOW CAUSE/ PET	
124	12/12/2011	ORTSC EXP07	ORDER TO SHOW CAUSE RE CONTEMPT EX-PARTE, DEPT. SEATTLE - CLERK	12-29-2011MF
125	12/22/2011	RTS	RETURN OF SERVICE	
126	12/22/2011	FNDCLR	FINANCIAL DECLARATION / PET	
127	12/22/2011	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
128	12/22/2011	ORS EXP06	ORDER FOR SUPPORT EX-PARTE, DEPT. KENT - CLERK	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
129	12/27/2011	OB	OBJECTION / OPPOSITION /REPLY	
130	12/29/2011	APPS	APPEARANCE PRO SE /D SHAY	
131	12/29/2011	APPS	APPEARANCE PRO SE /T BAICY	
132	12/29/2011	HCNTU ACTION	HEARING CONTINUED: UNSPECIFIED CONTEMPT -CT	01-30-2012MF
-	12/29/2011	FAM02	FAMILY LAW - KENT	
-	12/29/2011	VIDEO	VIDEO LOG	
133	12/29/2011	ORCNT FAM02	ORDER OF CONTINUANCE FAMILY LAW - KENT	
134	01/09/2012	MTSC	MOTION FOR ORDER TO SHOW CAUSE	
135	01/09/2012	NTAPR	NOTICE OF APPEARANCE /RESP	
136	01/09/2012	NTHG ACTION	NOTICE OF HEARING DETERMINATION ADEQUATE CAUSE	01-30-2012
137	01/09/2012	DCLR	DECLARATION OF DANELLE M SHAY	
138	01/09/2012	DCLR	DECLARATION OF DANELLE M SHAY	
139	01/09/2012	DCLR	DECLARATION OF DANNY SHAY	
140	01/09/2012	RSP	RESPONSE TO PET FOR MOD /D SHAY	
141	01/09/2012	ORTSC EXP06	ORDER TO SHOW CAUSE RE 11 22 ORDERS EX-PARTE, DEPT. KENT - CLERK	01-30-2012MF
142	01/09/2012	ORTSC EXP06	ORDER TO SHOW CAUSE RE CONTEMPT EX-PARTE, DEPT. KENT - CLERK	01-30-2012MF
143	01/09/2012	NTMTDK ACTION	NOTE FOR MOTION DOCKET CR55/60 & CONTEMPT MOTIONS	01-30-2012MF
144	01/09/2012	MTSC	MOTION FOR ORDER TO SHOW CAUSE	
145	01/11/2012	DCLR	DECLARATION OF DANELLE M SHAY	
146	01/26/2012	RTS	RETURN OF SERVICE	
147	01/26/2012	RPY	STRICT REPLY /FATHER	
148	01/26/2012	DCLR	DECLARATION OF THOMAS BAICY	
149	01/27/2012	OB	OBJECTION / OPPOSITION /RSP	
150	01/27/2012	DCLR	DECLARATION OF RSP	
151	01/27/2012	DCLR	DECLARATION OF MCDONALDS	
152	01/30/2012	DCLR	DECLARATION RE ATTORNEY FEES	
153	01/30/2012	MND	MANDATE /67312-2-I/DISMISSED	
154	01/30/2012	ORV FAM02	ORDER VACATING DEFAULT & PARENTING PLAN (SUBS 117, 120, 121) FAMILY LAW - KENT	
155	01/30/2012	MTHRG FAM02	MOTION HEARING FAMILY LAW - KENT	
-	01/30/2012	AUDIO	AUDIO LOG DR 1F	
-	02/02/2012	\$FFR	FILING FEE RECEIVED	56.00
156	02/02/2012	SMPM	SUMMONS & PETITION FOR MODIFICATION OF CHILD SUPPORT /THOMAS	
157	02/02/2012	CICS LOCK	CASE INFORMATION COVER SHEET ORIGINAL LOCATION - KENT	
158	02/02/2012	CSWP	CHILD SUPPORT WORKSHEET/PROPOSED	
159	02/02/2012	FNDCLRP	FINANCIAL DECLARATION OF PET	
160	02/02/2012	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
161	02/02/2012	NTMTDK ACTION	NOTE FOR MOTION DOCKET ADEQUATE CAUSE/TEMP PP/CHD SPPT	02-23-2012JF
162	02/02/2012	MTAF	MTN/DCL FOR FINDING ADEQ CAUSE/PET	
163	02/02/2012	NTHG	NOTICE OF HEARING /ADEQUATE CAUSE	02-23-2012
164	02/09/2012	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
165	02/09/2012	NTWSUB	NOTICE WITHDRAW & SUBSTITUT COUNSEL	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
166	02/09/2012	NTHG ACTION	RE NOTICE OF HEARING DETERM ADEQUATE CAUSE	02-23-2012
167	02/09/2012	NTMTDK ACTION	NOTE FOR MOTION DOCKET MTN FOR DSM OF CHILD SUPPORT MOD	02-23-2012JF
168	02/09/2012	NTMTDK ACTION	NOTE FOR MOTION DOCKET MTN TO CONTEMPT/DISMISS PP	02-23-2012
169	02/09/2012	MT	MOTION FOR DISMISSAL OF PET/RSP	
170	02/16/2012	DCLR	DECLARATION OF DANELLE M SHAY	
171	02/16/2012	RSP	RESPONSE TO PET/RSP	
172	02/16/2012	NT	NOTICE OF OBJECTION	
173	02/17/2012	RSP	RESPONSE TO MT TO DISMIS/PET	
174	02/17/2012	DCLR	DECLARATION /RSP	
175	02/17/2012	RPY	REPLY ARGUMENT	
176	02/22/2012	DCLR	DECLARATION/HERITAGE M FILER	
177	02/23/2012	ORCN FAM02	ORDER ON CONTEMPT FAMILY LAW - KENT	
178	02/23/2012	MTHRG FAM02	MOTION HEARING FAMILY LAW - KENT	
-	02/23/2012	AUDIO	AUDIO LOG DR1F	
-	02/27/2012	SCS	STATUS CONFERENCE SETTING	03-05-2012FC
179	02/23/2012	ORDYMT	ORDER DENYING MOTION MOD DENIED / ORD VACATE ORS 12-22-2011/ OR GRANT RSP MTN RE CONTEMPT	
180	03/05/2012	NTHG ACTION	NOTICE OF HEARING REVISION	03-30-2012
181	03/05/2012	MTFR	MOTION FOR REVISION /RSP	
182	03/05/2012	ORDSMWO	ORDER OF DISMISSAL W/OUT PREJUDICE	
183	03/05/2012	STAHRG PRO	STATUS CONFERENCE / HEARING JUDGE PRO TEM	
184	03/05/2012	LIST	LIST /STATUS CONF/NONCOMPLIANCE	
185	03/27/2012	NT	NOTICE OF OBJECTION	
186	03/28/2012	OB	OBJECTION / OPPOSITION /PET	
187	03/30/2012	MTHRG JDG47	MOTION HEARING JUDGE DEBORAH FLECK, DEPT 47	
-	03/30/2012	AUDIO	AUDIO LOG DR 4F	
188	03/30/2012	APPS	APPEARANCE PRO SE /THOMAS BAICY	
189	03/30/2012	ORDYMT	ORDER DENYING MOTION REVISION	
190	04/09/2012	NTHG ACTION	NOTICE OF HEARING MTN FOR RECONSIDERATION	04-17-2012
191	04/09/2012	MTRC	MOTION FOR RECONSIDERATION /PET	
192	04/09/2012	MTRC	MOTION FOR RECONSIDERATION /PET	
193	04/13/2012	DCLR	DECLARATION OF RICHARD CASSADY JR	
194	04/13/2012	DCLR	DECLARATION OF DANELLE SHAY	
195	04/13/2012	NT	NOTICE OF OBJECTION	
195A	04/16/2012	RPY	REPLY OF THOMAS BAICY	
195B	04/16/2012	DCLR	DECLARATION OF JOSEPH JUREY	
196	04/17/2012	DCLR	DECLARATION OF HERITAGE M FILER	
-	05/08/2012	\$FFR	FILING FEE RECEIVED	56.00
197	05/08/2012	PTMD	PETITION TO MODIFY OF CHD SUPPORT/ THOMAS	
198	05/08/2012	CIF	CONFIDENTIAL INFORMATION FORM	
199	05/08/2012	SM	SUMMONS	
200	05/08/2012	CSWP	CHILD SUPPORT WORKSHEET/PROPOSED	

-----APPEARANCE DOCKET-----

SUB#	DATE	CODE/ CONN	DESCRIPTION/NAME	SECONDARY
201	05/08/2012	*ORSCS	SET CASE SCHEDULE	08-23-2012ST
-	05/08/2012	NOTE	201	08-23-2012
		ACTION	SUPPORT MOD	
202	05/09/2012	NT	NOTICE RE ORD SETTING CASE SCHEDULE	
203	05/14/2012	NTMTDK	NOTE FOR MOTION DOCKET	05-31-2012MF
		ACTION	MTN FOR TEMP ORDER OF CHILD SUPPORT	
204	05/14/2012	CSWP	CHILD SUPPORT WORKSHEET/PROPOSED	
205	05/14/2012	SEALFN	SEALED FINANCIAL DOCUMENT(S)	
206	05/14/2012	MTAF	MT/DCLR FOR TEMP ORDER/ PET	
207	05/14/2012	FNDCLRP	FINANCIAL DECLARATION OF PET	
208	05/16/2012	ORDYMT	ORDER DENYING MOTION FOR RECONSIDER	
209	05/22/2012	NTAB	NOTICE OF ABSENCE/UNAVAILABILITY	
210	05/23/2012	OB	OBJECTN TO MTN FOR TEMP ORDER & FOR TERMS/RSP	
211	05/30/2012	NTNS	NOTICE OF VOLUNTARY DISMISSAL	
212	05/31/2012	ORDSM	ORDER OF DISMISSAL /CHLD SUPRT MOD	
213	06/12/2012	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
-	06/12/2012	\$AFF	APPELLATE FILING FEE	290.00
214	07/19/2012	PNCA	PERFECTION NOTICE FROM CT OF APPLS #689258	
215	08/01/2012	NTRELOC	NTC OF INTENDED RELOC OF CHILDREN /SEALED SUB	
216	08/01/2012	PPP	PROPOSED PARENTING PLAN /RSP	
-	08/06/2012	VRPT	VERBATIM RPT TRANSMITTED 8/8/2012 HRG OF 2/23/2012	
216A	08/06/2012	DSGCKP	DESIGNATION OF CLERK'S PAPERS 68925-8-I/BAICY / PGS 1-102 TRANS COA 9-5-12	
217	08/07/2012	DCLRM	DECLARATION OF MAILING	
218	08/20/2012	INX	INDEX CLKS PPRS PGS 1-102	
-	08/20/2012	\$CLPR	CLERK'S PAPERS - FEE RECEIVED 706577 CP / BAICY/ PD 8-31-12	76.00
219	09/04/2012	NOTE	CLKS PPRS PGS 1-102	
220	09/06/2012	PP	PARENTING PLAN (FINAL ORDER)	
		EXP01	EX-PARTE, DEPT	
221	09/06/2012	ORGRRE	ORDER GRANTING RELOCATION	
222	09/06/2012	MEXRSC	MTN/DCL FOR EXPARTE RO & ORDSC/RSP	
223	09/19/2012	DSGCKP	DESIGNATION OF CLERK'S PAPERS COA / FILER/ DID NOT PREPARE	

-----END-----

Appendix 2

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

THOMAS BAICY,)	
)	
)	
Petitioner,)	Cause No. 09-3-03868-0 KNT
)	
v.)	
)	
DANELLE N. SHAY)	
)	
Respondent.)	
)	
)	

Official record of proceedings
Held before the Honorable
Commissioner John Fletcher Curry
Held on February 23, 2012
In Kent, Washington

Colleen Donovan, Transcriptionist
Flygare & Associates, Inc.
1715 South 324th Place, Suite 250
Federal Way, WA 98003

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2
3 APPEARANCES

4 FOR THE PETITIONER:

5 Pro Se

6
7
8
9 FOR THE RESPONDENT:

10 Heritage Marie Daniele Filer, Attorney at Law

11 LAW OFFICES OF DANCEY & CASSADY LLP

12 811 1ST Avenue, Suite 100

13 Seattle, WA 98104-1435

14 (206) 623-5133

1 * * * * *

2 (COURT IN SESSION 1:33:11 P.M.)

3 UNKNOWN FEMALE SPEAKER: 303860.

4 JUDGE CURRY: Good afternoon. Can the parties please
5 identify themselves for the record.

6 MR. BAICY: Thomas Baicy.

7 MS. FILER: I'm Heritage Filer, Your Honor, and
8 standing to my left is Danelle Shay, the respondent.

9 JUDGE CURRY: All right. Thank you. And it appears
10 that we're here on a motion for adequate cause on behalf
11 of Mr. Baicy. Is that correct?

12 MR. BAICY: Yes.

13 JUDGE CURRY: Your motion to modify child support.
14 Correct?

15 MR. BAICY: Yes.

16 JUDGE CURRY: All right. You may proceed. I read the
17 papers.

18 MS. FILER: And Your Honor, we did file an objection,
19 and the cause is because we did not receive the note for
20 motion in an adequate amount of time. I did receive an
21 email about a week ago which had the note for motion as
22 well as the notice of adequate cause, unsigned, and
23 again, I didn't have the requisite 14 days' notice, so we
24 did file an objection.

25 JUDGE CURRY: And I assume you're objecting to the

1 finding of adequate cause?

2 MS. FILER: We have our own motion for finding of
3 adequate cause and our motions to dismiss are before the
4 Court as well, as well as our motion for contempt.

5 JUDGE CURRY: But are they, they're not before me
6 today.

7 MS. FILER: They are before you today.

8 JUDGE CURRY: I don't have your motion for contempt.

9 MS. FILER: It was pushed forward through from the
10 January 30th hearing and it's on our note for motion.
11 Mother's contempt motion and mother's motion to dismiss
12 parenting plan adequate cause. And it was filed --

13 JUDGE CURRY: Motion to dismiss parenting plan?

14 MS. FILER: Yes, Your Honor. And it was filed on
15 February 9th. So the -- the active motions that are
16 before the Court, Your Honor, are a motion to dismiss the
17 parenting plan and our motion to dismiss the order of
18 child support. Excuse me, the petition for modification
19 of --

20 JUDGE CURRY: Okay. That's -- I understand a
21 petition.

22 MS. FILER: Understood. And -- and our motion for
23 contempt.

24 JUDGE CURRY: All right. I don't have the motion for
25 contempt.

1 MS. FILER: You don't have the note or you don't have
2 the motion itself?

3 JUDGE CURRY: I have not read a motion for contempt.
4 I have not seen a motion for contempt. What's the
5 contempt?

6 MS. FILER: It's a violation of the parenting plan.
7 Both the -- the original order, the order entered by
8 yourself in December as well as in January.

9 JUDGE CURRY: So, I know I've read a response to a
10 contempt, but I never had the original motion for
11 contempt. I have the motion for order to show cause or a
12 vacating order of default in parenting plan and dismiss
13 adequate cause for modification of petition of mother.
14 Okay.

15 MS. FILER: And the motion for order to show cause by
16 contempt was filed on the 9th of January and we submitted
17 the working copies as well.

18 JUDGE CURRY: It was -- I do see it --

19 MS. FILER: Thank you, Your Honor.

20 JUDGE CURRY: -- and it's buried in --

21 MS. FILER: I see that, Your Honor.

22 JUDGE CURRY: -- 14 of --

23 MS. FILER: There is a lot before the Court today, Your
24 Honor.

25 JUDGE CURRY: I'm going to read that one before we go

1 forward on it. All right. Let me go read -- I'll read
2 that one real quickly before we go forward, so if we have
3 another hearing I'll hear that and I'll come back to
4 that.

5 MS. FILER: Okay. Thank you, Your Honor.

6 JUDGE CURRY: All right. Thank you.

7 UNKNOWN SPEAKER: (Inaudible).

8 JUDGE CURRY: I'm going to pass on it because there is
9 a motion buried in here that I didn't get to.

10 (COURT OFF RECORD 1:37:40.

11 (COURT BACK ON RECORD 1:52:09.)

12 THE BAILIFF: -- Curry presiding.

13 JUDGE CURRY: Thank you. Please be seated.

14 THE BAILIFF: Did you need to go back on the other one
15 first or should we go --

16 JUDGE CURRY: We can go on Baicy.

17 THE BAILIFF: Okay. Will the parties on Baicy please
18 come forward? This is on Cause No. 09-3-03868-0.

19 JUDGE CURRY: All right. We have counter-motions so I
20 will let you proceed with your motion, sir, and then
21 you'll have a chance to respond, and then you can do your
22 motion and you'll have a chance to respond, so proceed.

23 MR. BAICY: Okay, Your Honor, I'm asking the Court to
24 modify only one line of my parenting plan, the
25 transportation section. I'm asking the transfer of the

1 child to be held at McDonald's close to the mother's
2 house. The change of circumstance is that the mother and
3 I actually started doing this after final parenting plan.

4 This is also in the child's best interest because it
5 avoids conflict at exchanges. The mother's father and
6 I -- we do not get along. There was times in the past,
7 one time in particular, that the father refused to turn
8 the child over -- grandfather -- refused to turn the
9 child over and I had to call the police.

10 JUDGE CURRY: Now, wasn't he also, as I understood it,
11 the same circumstance that existed at the time of trial?

12 MR. BAICY: Yes.

13 JUDGE CURRY: And wasn't the issue also addressed at
14 the trial -- of the grandfather?

15 MR. BAICY: Yes. Well, the grandfather threatened me
16 in the courtroom when --

17 JUDGE CURRY: Okay. And that was before the decision
18 of the judge.

19 MR. BAICY: Yes.

20 JUDGE CURRY: Okay. And since you know he made that
21 threat in the courtroom the judge still ruled what she
22 ruled. Correct?

23 MR. BAICY: Yes. She opened up the case.

24 JUDGE CURRY: So what is the change of circumstances?

25 MR. BAICY: Well, this is -- this is an arrangement

1 that we had before trial. We, the two of us, had agreed
2 on this.

3 JUDGE CURRY: Okay. I understand that. What has
4 changed since the judge made her ruling? Change of
5 circumstances means a substantial change of circumstances
6 since the judge made her ruling. What has occurred?

7 MR. BAICY: Well, nothing except for the fact that
8 we -- we don't get along and --

9 JUDGE CURRY: But did you get along at the time of
10 trial?

11 MR. BAICY: No. We didn't.

12 JUDGE CURRY: All right. What's next?

13 MR. BAICY: And --

14 JUDGE CURRY: Do you want to address the default
15 parenting plan that was entered on November 22nd?

16 MR. BAICY: Well, the default parenting plan, yeah, it
17 was -- it was that we agreed to meet at the McDonald's,
18 and --

19 JUDGE CURRY: But how did you enter that parenting
20 plan without her participation?

21 MR. BAICY: Well, she was served, and I have a notice.

22 JUDGE CURRY: I don't -- don't see that. Show me.
23 Because there was no indication in the file that there
24 was a service so I did not see it. Do you have the
25 notice? How was she served?

1 MR. BAICY: I paid for the service, Your Honor, and
2 I -- I don't have it on me.

3 JUDGE CURRY: Okay. All right. You said it's filed,
4 though, right?

5 MR. BAICY: Yes. She was served.

6 JUDGE CURRY: Will you print out the return of
7 service? About what time would that have been served?
8 In November? Is that correct?

9 MR. BAICY: Yes.

10 JUDGE CURRY: It's a return of service from November.
11 All right. Thank you. All right. Go on.

12 MR. BAICY: And -- and next I'm addressing the child
13 support.

14 JUDGE CURRY: Go ahead.

15 MR. BAICY: The judge based on my testimony that I
16 would find work this summer. People thought the
17 construction industry would take a turn. It did not. We
18 are still in a recession and construction is still at the
19 worst. On top of that, Judge Melanie Fleck (phonetic),
20 Judge Fleck can only make findings about facts in front
21 of her. She cannot predict the future. This is like
22 throwing someone in jail for someone -- for something
23 they think they might do in the future. The Court should
24 allow the child support modification to be moved to a
25 trial affidavit.

1 JUDGE CURRY: And did you also have a contempt?
2 MR. BAICY: Not for the child support. No.
3 JUDGE CURRY: But you're addressing your issues right
4 now.
5 MR. BAICY: Yes.
6 JUDGE CURRY: And do you have a contempt motion?
7 MR. BAICY: No. I don't.
8 MS. FILER: Thank you, Your Honor. In regards to the
9 parenting plan, I think that you nailed it right on the
10 head. There has been no change in circumstances which is
11 required by RCW 26.09.260.
12 JUDGE CURRY: We have to get to the Rule 60(b) issues
13 first.
14 MS. FILER: Okay.
15 JUDGE CURRY: And so, the Rule 60(b) means we have to
16 set aside.
17 MS. FILER: Well, there has -- there was an order of
18 vacation entered on January 30th --
19 JUDGE CURRY: Okay.
20 MS. FILER: -- for the parenting plan and the motion
21 for default. The issue that is outstanding is that there
22 was an order of child support that was entered subsequent
23 to the parenting plan. It was entered December 22nd.
24 And that is still becoming -- still problematic. It was
25 entered under the order for default. It was entered

1 without my client signing, without the prosecutor
2 signing. So there's issues there; but that was still --
3 that was entered under the --

4 JUDGE CURRY: How come that wasn't vacated at the same
5 time?

6 MS. FILER: I do not -- it's not clear to me, Your
7 Honor, but we did have issues with --

8 JUDGE CURRY: The default was vacated?

9 MS. FILER: Yes, Your Honor.

10 JUDGE CURRY: Well, if the default was vacated, how
11 was that order not vacated?

12 MS. FILER: I don't know, Your Honor, except to say
13 that my client -- that the order -- the child support
14 obligation reduced to \$69.00 a month. My client's only
15 been receiving that. We did contact the prosecutor who
16 was also puzzled at how this had all come to be, and it
17 appears that it's still in effect.

18 So this order -- and we didn't know anything about it
19 until the -- I believe the prosecutor is who sent our
20 firm a copy of it to show that this one -- let's take a
21 look here at the order that was entered on the 30th to
22 see what it says specifically. "The Mother's motion for
23 vacation is granted. The order of default, final
24 adjusted parenting plan, final order (inaudible),
25 modification of parenting plan are hereby vacated and

1 void." But it doesn't mention the order of child
2 support.

3 But I believe it's because we didn't know that it
4 existed at that point.

5 JUDGE CURRY: But if --

6 MS. FILER: But another attorney was on the case at
7 that point so I -- I --

8 JUDGE CURRY: And the thing is, if the default is
9 vacated --

10 MS. FILER: Right.

11 JUDGE CURRY: -- you can't have an order that was
12 entered under default existing.

13 MS. FILER: That's my belief as well. It's still
14 causing a few problems, though, so I'd like to make that
15 clear in the orders today. Okay?

16 JUDGE CURRY: Then there's the adequate cause issue,
17 the child support issue, and the contempt issue.

18 MS. FILER: Okay. I'll move forward, Your Honor. So
19 with the parenting plan, again, the father has been
20 living with my client since 2008 since he had a stroke.
21 He was -- that was at the -- before the trial. It was
22 all brought in front of the judge, Judge Fleck, at trial.
23 It has not been a change of circumstances.

24 Further, on file is a declaration from my client's
25 father stating she -- he hasn't even had contact with the

1 respondent since trial and this isn't denied in any
2 declaration that the father has presented to the Court
3 either, so really there is no reason for the modification
4 whatsoever.

5 As far as the order of child support, there hasn't
6 been a substantial circumstance -- change in
7 circumstances under RCW 26.09 for that as well. Again,
8 this was -- in order to ask for the Court to recognize a
9 substantial change it has to be something that was, could
10 have, or should have been raised at trial -- excuse me --
11 it can't be something that was, could have, or should
12 have been raised at trial. Judge Fleck made very
13 thorough findings in her findings of fact and conclusions
14 of law, and the issue of whether the father would be
15 working was, in fact, raised at trial

16 Judge Fleck found if father is not working he is
17 voluntarily unemployed and income should be imputed at
18 \$19.00 an hour. So this issue has already been before
19 the Court and a determination has been made.

20 There were -- in the findings it also shows his job
21 qualifications. It's not just the construction industry,
22 it's also hydraulic machinery, telecommunications, he's
23 part of the pile driver's union, it was certainly flushed
24 out -- the options available, as well as what were to
25 happen if he didn't find employment. It's already been

1 before the Court.

2 Nevertheless, under RCW 26.09.170 an obligor's
3 voluntary unemployment or voluntary under-employment by
4 itself is not a substantial change in circumstances, Your
5 Honor.

6 As far as the contempt of the parenting plan, so --
7 Your Honor, initially the parenting plan -- the -- these
8 are orders that are less than a year old. They were
9 entered on May 25th. From July 3rd through November there
10 was no contact between the father and the child.
11 According to my client he had July 4th with the child.
12 She called him, he didn't return the call, he called
13 her -- her back on July 6th demanding that she take the
14 child to his house, refusing to follow Judge Fleck's
15 order to pick the -- that the receiving parent pick the
16 child up. She said, "No, we follow the parenting plan,"
17 and then he didn't see the child.

18 He's never picked the child up from my client's house.
19 She did say that she brought -- went to McDonald's on one
20 occasion because she's trying to be accommodating. She
21 doesn't like this child to suffer because dad won't come
22 and pick the child up. But there comes a point where the
23 father needs to follow the court orders. And she's
24 following the court orders and he's not.

25 As far as -- since both of these parties came before

1 you in December. You said, "Well, follow the temporary
2 order until the next hearing,' so my client went to
3 McDonalds. The opposing party didn't show up at
4 McDonalds. She waited, she played in the playground, he
5 later claimed and tried to bring a contempt motion
6 claiming that he was there only to show that he had gone
7 through the drive-through.

8 So we also provided a declaration from McDonald's
9 showing that the receipts he provided were from a drive-
10 through register, not actually going inside, basically
11 trying to make my client look like she's violating the
12 parenting plan when really, he's avoiding the obligations
13 of the Court.

14 JUDGE CURRY: So, on this one, though the contempt is
15 that he didn't take the child for visitation.

16 MS. FILER: He didn't pick the child up -- there's --
17 there's multiple times where he didn't pick the child up
18 from the house, there's times where he didn't come and
19 pick the child up from McDonald's. Since the --

20 JUDGE CURRY: But like I said, the motion is that he's
21 not exercising his visitation.

22 MS. FILER: Correct, Your Honor. That is correct.
23 Since the order was entered -- this last order was
24 entered January 30th, vacating the prior order, re-
25 establishing the May 25th order, there has still been

1 problems. Even with us going through this contempt
2 process he has still not picked the child up. He didn't
3 pick the child up January 6th, he has never picked the
4 child up on any of the Wednesdays involving the child.

5 Looks like on February 3rd he asked -- said, "Well,
6 I'm not going to -- I'm not available. Bring her on
7 Saturday instead," so there's still contempt going on
8 past the point of -- of us coming into court saying,
9 "He's in contempt. He's not following these orders,"
10 which is a big problem. He has a complete disregard, not
11 just for the Court's orders, but the subsequent orders
12 that have been put in place with him on warning that
13 these motions are being brought.

14 So, Your Honor, we have requested attorney fees. He
15 doesn't take the court orders seriously. He didn't even
16 follow his own parenting plan to go to McDonald's. The
17 ink was barely dried on the final orders before he rushed
18 the parties back into court. He has filed claims against
19 my client in the Renton Court small claims, he filed an
20 appeal to Judge Fleck's order, he filed a petition to
21 modify the parenting plan, puzzling, he also filed a
22 petition to change the order of child support, we've been
23 in for contempt motions, and again, the trial was just 10
24 months ago. But this is repeated harassment when there's
25 no basis.

1 The last time that my client was in, she was in before
2 Commissioner Canada-Thurston who strongly encouraged --
3 in fact, that's the language used in the order -- for the
4 father to seek legal counsel before he pursued this
5 route. And he filed this motion not even a week after
6 being encouraged to do so. And I don't see an attorney
7 with him here today.

8 So, Your Honor, not only am I asking --

9 JUDGE CURRY: You've got about 30 seconds.

10 MS. FILER: -- for attorney fees to be applied to
11 deter this continued harassment, but I've also asked Your
12 Honor to put something in the order that requires the
13 respondent -- excuse me -- the petitioner to either seek
14 an attorney before filing future claims with the Court,
15 or get permission through an ex parte department to
16 proceed with any more motions or petitions with the
17 Court, just to stop this harassment in its track.

18 And, Your Honor, I did present the opposing party with
19 an updated declaration of our attorney fees, which was
20 filed yesterday and I have for Your Honor, if I can hand
21 it up.

22 JUDGE CURRY: Hand it to the Court.

23 MS. FILER: Thank you.

24 JUDGE CURRY: Sir, you have a chance to reply.

25 MR. BAICY: Okay, Your Honor, what she says about me

1 not picking the child up, it's -- it's totally false.
2 I've submitted, I believe, four receipts verifying that
3 I'm always at the McDonald's --

4 UNKNOWN FEMALE SPEAKER: (Inaudible).

5 JUDGE CURRY: (Inaudible) McDonald receipts and I read
6 the declaration McDonald's that tell me those are drive-
7 through receipts -- is what the McDonald's is telling me,
8 and they're the ones that are the experts in that regard
9 because they know what register it came from.

10 MR. BAICY: That's -- that's correct. They are. But
11 the thing is, I go there at 5:00. I wait 15 minutes. I
12 go through the drive-through, come around, and then I go
13 into the McDonald's itself and then look for them.
14 This -- this contempt motion was filed because she was
15 not complying to -- dropping the child off at McDonald's.

16 JUDGE CURRY: But -- but then her receipt shows she
17 was, in fact, inside the McDonald's and had a receipt
18 from inside the McDonald's.

19 MR. BAICY: Possibly one -- one time. Possibly one
20 time.

21 JUDGE CURRY: But it's the same time that you were
22 there going through a drive-through.

23 MR. BAICY: Yeah. And -- and under oath, I was there
24 too. I always do both. I -- I survey the parking lot
25 and I go inside the McDonald's. There's no point for me

1 just to go through the drive-through.

2 JUDGE CURRY: Since the parenting plan was vacated,
3 have you picked up the child from the house?

4 MR. BAICY: No, I haven't, because --

5 JUDGE CURRY: That -- that's a court order, too. So,
6 tell me what happened there. Why -- why is it that you
7 are not going to follow the parenting plan when it
8 specifically says the exchanges occur at the homes.

9 MR. BAICY: Because initially, after the final orders,
10 the two of us agreed --

11 JUDGE CURRY: Okay.

12 MR. BAICY: -- on going to the McDonald's.

13 JUDGE CURRY: I'm talking about you got an order and
14 it changed it. That order was then vacated specifically
15 because of this issue. After that you still didn't go
16 and pick up the child at the house. That doesn't make a
17 lot of sense to me. You don't have to lean over. The
18 microphone will pick it up if you're across the room, so
19 you can stand up, you don't have to lean to the
20 microphone. But go ahead.

21 MR. BAICY: I'm just not comfortable going to the
22 house --

23 JUDGE CURRY: Okay.

24 MR. BAICY: -- because there's -- there's conflict
25 there.

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JUDGE CURRY: There's a difference being comfortable and following a Court order.

MR. BAICY: What I don't understand is: Why would the Court want me to go and pick up my child in a place that the child could be subjected to conflict. All I'm requesting is one line to be changed on the parenting plan so we could meet at a McDonald's close to her house. It's no inconvenience to her.

JUDGE CURRY: And that was vetted out at the trial. Based on that, Judge Fleck, who is a judge in this Court and is a very competent and very able judge in this Court, made a determination after a full trial, that's where the transportation would take place.

MR. BAICY: I'm just confused to what -- confused to why would --

JUDGE CURRY: I don't think you're confused, I think you're defiant. I don't think you want to follow her order because you don't agree with it. Just because you don't agree does not make the order wrong. You're not righter than the judge.

I'm going to -- I'm ready to roll on the issues. As to the issue of the child support order, the child support order has no ability to exist because the default was set aside. The child support order should have been set aside, and so I am setting aside the child support

1 order that was entered at that time ab initio. That's
2 from the date that it was entered. That means the other
3 child is in effect ab initio from that date. And there
4 is no choice because that was already set aside and those
5 orders are all void. So that order was already set
6 aside. There's no reason that support order should have
7 existed.

8 As to the parenting plan request for modification, I
9 do not find that there is adequate cause to -- to alter
10 the parenting plan. Judge Fleck, after an extended
11 trial, made a ruling. You specifically told me that the
12 circumstances haven't changed. You still don't get
13 along. You still don't like the father.

14 The father specifically stated in his declaration that
15 wasn't rebutted that you guys haven't had any contact
16 since the trial whatsoever, and you told me today the
17 reason you're not going there is because you're not
18 comfortable. It's not a matter of comfort. There is a
19 court order in effect. You're violating the court order.

20 As to the child support order, again, there's no
21 change of circumstances testified to. The same
22 circumstances exist now as existed at the time of trial.
23 I am not going to modify the child support. The child
24 support petition is hereby dismissed.

25 As to the contempt -- as to the issue of going to

1 McDonald's, first of all, there was no orders regarding
2 the exchanges at McDonald's so I'm not going to find
3 contempt for the McDonald's. I mean, I understand that
4 the temporary orders -- that follow the temporary orders
5 at the last hearing -- follow the temporary orders, but
6 he has proof he was there, you have proof he was there --
7 I don't know what occurred.

8 I'm not going to find him contempt for that; but since
9 the orders were in effect, again, you were supposed to
10 pick up the child from the home, I will find that you're
11 in contempt. You violated a court order. The way the
12 clerk's court order is follow the court orders. And that
13 means pick ups take place at the home is where they're
14 supposed to -- to take place.

15 What are the -- attorneys' fees are what right now?

16 MS. FILER: A total of \$5,981.

17 JUDGE CURRY: Now, is that just for the contempt?

18 MS. FILER: I believe it's just in response to all of
19 this. It's been going -- this is just the recent -- our
20 response to the petition for modifications.

21 JUDGE CURRY: You should address the issue of the
22 attorneys' fees. Have you received the declaration?

23 MR. BAICY: I have.

24 JUDGE CURRY: Okay. You can go ahead and respond to
25 the issue of attorneys' fees.

1 MS. FILER: And just to clarify very quickly, Your
2 Honor, you said you found contempt since the January 30th
3 order was entered, how about contempt prior to the
4 temporary order being entered in November of 2011 from
5 July 3rd.

6 JUDGE CURRY: I'm going to find the contempt now,
7 because I don't know what the agreements were. It seems
8 like there was some acquiescence at the time, but I'm
9 very sure after the order was set aside --

10 MS. FILER: Thank you, Your Honor.

11 JUDGE CURRY: -- that the order was violated.

12 Now, on here it says, "previous balance \$2,512."

13 MS. FILER: And that was provided previously from
14 Richard Cassady who was the prior attorney last month,
15 and he provided a declaration. I just updated the
16 declaration. So there -- there is also a financial
17 declaration with the billing that displays what the
18 \$2,512. was used and spent for, Your Honor.

19 JUDGE CURRY: That is the -- No. 21? Anything you
20 have to address on the attorneys' fees, sir?

21 MR. BAICY: No.

22 JUDGE CURRY: I'll award \$4,500.00 in fees based on
23 the contempt and what I find to be a bad faith filing of
24 the modification of the parenting plan and the obtaining
25 of a judgment on the parenting plan and on the child

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IN RE: Baicy v. Shay
CAUSE NO. 09-3-03868-0 KNT

AFFIDAVIT

I, Colleen Donovan, do certify that the audio recording provided to me of the proceedings held before the Commissioner John Fletcher Curry in The Superior Court Of Kent for King County, Washington, was transcribed by me to the best of my ability.

Colleen Donovan,
Transcriptionist

Appendix 3



m e m o

Having Heard a Motion: by both parties (Father for contempt against Mother, Mother ~~contempt~~ for contempt against Father: and Mother vacating the 11/22/11 order of Default, Final Adjusted Parenting Plan & other final orders)

It is Hereby Ordered: the Mother's Motion for vacation is GRANTED. The order of Default, Final Adjusted Parenting Plan, And Order re Modification of Parenting Plan are hereby vacated, and void. The court makes this order based upon the following facts: (1) When Father filed his modification petition and summons on 10/11/11 his appeal of Judge Fleck's 5/25/11 orders, Findings, Judgement and order, Order of Child Support, and Parenting Plan Final Order, were all still pending before the Court of Appeals Division I; (2) according to Court of Appeals Docket for the Appeal, Father's case still pending before the Appellate Court as of 11/22/11, which is the date Father filed for default and final orders (Father filed his motion to dismiss his appeal 11-18-11, and Appellate Court did not file its ruling terminating review until 12-1-11, furthermore the Appellate Court did not file its mandate until 1-27-12), therefore this Court did not have jurisdiction to default the mother, and modify Judge Fleck's 5/25/11 orders, and the orders entered 11-22-11 are void; (3) Also problematic with Father's final orders is that they were entered on the Ex Parte Calendar NOT Family Law, and there is no order finding there was adequate cause for the court to proceed with Father's petition to modify the Parenting Plan (the Court ~~was~~ provided Father with a copy of the Case Schedule which has the adequate cause deadline). Court has informed Father that in order for his petition to modify is granted to Modify Judge Fleck's orders, RCW 26.09.260

© Disney

The heart is the strongest muscle of all.
But the gluteus maximus ain't far behind!
- Goofy



memo

requires a substantial change of circumstances occur since the parties had trial before Judge Fleck, and the substantial change cannot be any issue that was, could have, or should have been raised at trial with Judge "Fleck", and if Father proceeds with his petition to modify, and a court does not find there is adequate cause, Father could be sanctioned. This court strongly encourages Father to consult a Family Law attorney before proceeding further. The court is not addressing either parties motions for contempt or Mother's request for attorney fees/sanctions today as those issues will be here to be addressed another day, and renoted accordingly. It is suggested the renoting not occur until Father has been afforded adequate time to seek legal assistance. The court does remind the Father of his ability to file for reconsideration if this Court's understanding of the time line re: his appeal & the date his modification was filed, and the default and final orders were entered, HOWEVER, there still remains the other problems re: entering final orders without finding of adequate cause on Ex Parte Calendar still remains. Bottom line: this is crossed out: all orders entered "1/22/" are vacated and void, and the final orders entered 5/25/"(can't read)" fall force an default. Vacating the order for default is granted

FAM02



Superior Court of Washington
County of King

Beinya Shrey, Child
Thomas O. Beiry Father, Petitioner
and
Denelle M. Shrey, Mother, Respondent

No. 09-3-03868-0KNT

ORDER ON FAMILY LAW MOTION
[] Clerk's Action Required

THE ABOVE-ENTITLED COURT, HAVING HEARD A MOTION by both parties
(Father for contempt against Mother, Mother for contempt against Father, and Mother for
vacating the 11/22/11 order of Default, Final Adjusted Parenting Plan to their final orders)

IT IS HEREBY ORDERED the Mother's motion for vacation is GRANTED. The
Order of Default, Final Adjusted Parenting Plan, and order re Modification of Parenting
Plan are hereby vacated, and void. The court makes this order based upon
the following facts: (1) when Father filed his modification petition and summons
on 10/11/11 his appeal of Judge Fleck's 5/25/11 orders, Findings, Judgment and order
Order of Child Support, and Parenting Plan final order were all still pending before
the Court of Appeals Division I; (2) according to Court of Appeals Docket for
the appeal, Father's case still pending before the Appellate Court as of 1/22/11,
which is the date Father filed for default and final orders (Father filed his
motion to dismiss his appeal 11-8-11, and Appellate Court did not file its ruling
terminating review until 12-7-11, furthermore the Appellate Court did not file
its mandate until 1-27-12), therefore this Court did not have jurisdiction
to default the Mother, and modify Judge Fleck's 5/25/11 orders, and the
orders entered 11-22-11 are void; (3) also problematic with Father's final orders

Date: _____

FAMILY COURT COMMISSIONER

Presented By: _____

Copy Received: _____

Attorney For Petitioner

Attorney For Respondent #123655
RICH CROSSADY

Order on Family Law Motion
SCForm FL 113 Rev. 6/01

is that they were entered on the Ex Parte Calendar not Family Law, and there is no order finding there was adequate cause for the court to proceed with father's petition to modify the parenting plan (the Court was provided Father with a copy of the Case Schedule, which has the adequate cause deadline). Court has informed Father that in order for his petition to modify is granted to modify Judge Fleck's orders, RCW 26.09.260 requires a substantial change of circumstances occur since the parties had trial before Judge Fleck, and the substantial change cannot be any issue that was, could have, or should have been raised at trial with Judge Fleck, and if Father proceeds with his petition to modify, and a court does not find there is adequate cause, Father could be sanctioned. This Court strongly encourages Father to consult a family law attorney before proceeding further. The Court is not addressing either party's motions for contempt or Mother's request for attorney fees/sanctions, today as those issues will have to be addressed another day, and related accordingly, it is suggested the reporting not occur until father has been afforded adequate time to seek legal assistance. The court does remind the Father of his ability to file for reconsideration if this Court's understanding of the time line re: his appeal, the date his modification was filed, and the default and final orders were entered, however, there still remains the other problems re: entering final orders without finding of adequate cause on Ex Parte Calendar still remains. Bottom line: all orders entered 11/22/11 are vacated and void, and the final orders entered 5/15/12 are also void and fall for a petition. The order for default is gone.

Date: 1/30/2012

Bonnie Wallace-Jurich
Court Commissioner
APPROVED BONNIE WALLACE-JURICH

Presented By:

Approved: *[Signature]* #23655

Attorney For:

Attorney For: Respondent
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Order on Family Law Motion

Page 2 of 2 *JBF*