

70537-7

70537-7

Case No: 70537-7-1

**IN COURT OF APPEALS
OF THE STATE OF WASHINGTON**

Division One, Seattle

Michelle Wilburn-Donahue (n/k/a/ Baker),
Petitioner – Appellant,

v.

Christopher Scott Dilworth,
Respondent – Appellee.

Responding Brief of Appellee Christopher Scott Dilworth

Appeal from the Superior Court of King County, the Honorable Suzanne
R. Parisien, Case No 09-3-02166-KNT

Respondent
Christopher Scott Dilworth
22612 SE 273rd Street
Maple Valley, WA 98038
206-226-9416

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BRIEF OF Christopher Scott Dilworth
Case No: 70537-7-I

My appellee brief is filed Pro Se. I was quoted \$10,000 by legal counsel to file this brief on my behalf and am unable to secure that type of funding for this response. I apologize in advance for any errors made in format or presentation of my brief. In order to continue my visitation of my daughter Katelyn Mae Dilworth on a monthly basis in the State of Texas I need to preserve and save as much money as possible to cover expenses and lost wages.

A modified parenting plan was ordered by the court on April 18, 2013 by the honorable Judge Suzanne Parisien. There is a section in the parenting plan 3.11 Transportation Arrangements "Appendix A" that the honorable Judge Suzanne Parisien modified where the mother and I split not only the airfare of my monthly visits but also the hotel and car rental as well. In the previous parenting plan the mother was responsible for only the half of the airfare. The entire first paragraph spoke of the mother and I splitting the costs of airfare, hotel and car rental expenses. One sentence however in the first part of the paragraph only cited the airfare which resulted in the mother not feeling she should pay for half of the other two expenses.

The King County Superior Court Judge was clear in her intent but with only a few words left unsaid in a section of one sentence the mother felt she was not responsible to pay her portion ordered by the court.

Because the mother was not interpreted it as it was intended I asked for a simple clarification of the order. A telephone conference was offered as a solution. The mother was informed of the telephone conference; at the time of the conference the mother chose to not include her attorney in the conference, they offered to reschedule the conference to include the mothers attorney and the mother declined their offer. The conference was held and Honorable Judge Parisien restated her intent of the section in which the mother and I both share equally in the airfare, hotel and car rental expense of my monthly visitation.

It is my understanding The King County Superior Court is allowed to make such clarifications in the manner that took place.

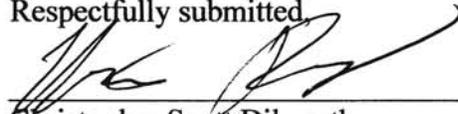
Conclusion

This appeal of the modified parenting plan is frivolous and without merit being filed simply because the mother Michelle Wilburn-Donahue (n/k/a Baker) does not want to follow the modified plan. It is within my rights as a father to request a modified parenting plan when a child is moved out of state. Mrs. Baker moved to Texas with her husband to promote her husbands career in the military without concern as to how this

would impact our child and the finances for either party. Possibly she assumed I would not make the effort to travel to Texas to see my daughter. The relationship with my daughter Katelyn Mae Dilworth is one of the most important relationships in my life along with that of my other child. I will never abandon Katelyn and will continue to a part of her life.

October 9, 2013

Respectfully submitted,



Christopher Scott Dilworth
22612 SE 273rd Street
Maple Valley, WA 98038
206-226-9416

Superior Court of Washington
County of KING

No. 09-3-02166-3 KNT

In re the Parentage of:

Katelyn Mae Dilworth

Parenting Plan

Final Order (PP)

Child(ren),

Michelle Wilburn-Donahue

Petitioner,

And

Christopher Dilworth

Respondent

This parenting plan is the final parenting plan signed by the court pursuant to an order determining parentage signed by the court on this date or dated

proposed by Michelle Baker.

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following parents: Michelle Baker and Christopher Dilworth, and to the following child:

<u>Name</u>	<u>Age</u>
Katelyn Mae Dilworth	5

ORIGINAL

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II. Basis for Restrictions

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child and the right to make decisions for the child.

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

Christopher Dilworth's residential time with the child shall be limited, and mutual decision-making and designation of a dispute resolution process other than court action shall not be required because this parent has engaged in the conduct which follows:

A history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

2.2 Other Factors (RCW 26.09.191(3))

Christopher Dilworth's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow.

A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.

Other:

The father has been convicted of acts of domestic violence, specifically Assault in the Fourth Degree and Interfering with Domestic Violence Reporting (King County Cause No 08-1-09935-7 KNT.)

III. Residential Schedule

The residential schedule must set forth where the child shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children Under School Age

There are no children under school age.

3.2 School Schedule

Upon enrollment in school, the child shall reside with Michelle Baker, except that the

1 child will reside with or be with the other parent as provided below:

2 Up to two weekends per month, from Friday evening at 6:00 pm to Sunday afternoon at
3 5:00 pm (unless other arrangements are made) and for four (4) weeks in the summer.
4 Mother shall be reasonably flexible with Father to account for flight times.

5
6 **3.3 Schedule for Winter Vacation**

7 The child shall reside with Michelle Baker during winter vacation, except for the following
8 days and times when the child will reside with or be with the other parent:

9 The child shall spend winter break from the day after school ends until the morning of
10 December 26th with the mother in odd years and with the father in even years, and shall
11 spend the remainder of winter break, from the morning of December 26th until the
12 evening of the day before school starts with the father in odd years and the mother in
13 even years.

14
15 **3.4 Schedule for Other School Breaks**

16 The child shall reside with Michelle Baker during other school breaks, except for the
17 following days and times when the child will reside with or be with the other parent:

18 With the mother in even years and the father in odd years.

19
20 **3.5 Summer Schedule**

21 Upon completion of the school year, the child shall reside with Michelle Baker, except for
22 the following days and times when the child will reside with or be with the other parent:

23 Other:

24 Four (4) weeks each summer with the father. This vacation time may be taken as
25 consecutive or non-consecutive weeks, subject to agreement by both parties. If the
parties cannot agree, the vacation time will be taken consecutively.

The father shall not be entitled to any other time in the summer other than the four
weeks.

The father shall notify the mother of his requested four weeks no later than May 1st of
each year. Summer vacation will begin the day after school lets out and end one week
before school resumes.

3.6 Vacation With Parents

1 Each parent shall be entitled to take the child on vacation during their scheduled time
2 with the child. Each parent shall provide the other parent with the vacation itinerary
3 including information as to where the child will be staying, all flight/transportation
information and contact numbers where the child can be reached during the vacation.

4 3.7 Schedule for Holidays

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

	With Michelle Baker	With Christopher Dilworth
	(Specify Year <u>Odd/Even/Every</u>)	(Specify Year <u>Odd/Even/Every</u>)
6 New Year's Day	Even	Odd
7 Martin Luther King Day	All	
8 Presidents' Day	All	
9 Memorial Day	All	
10 July 4th	See Note 2	
11 Labor Day	See Note 2	
12 Veterans' Day	All	
13 Thanksgiving Day	Even	Odd
Christmas Eve	Odd	Even
Christmas Day	Odd	Even

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

16 From 6:00 pm the day before the holiday begins to 9:00 am the day after the holiday.

17 Other:

18 While the child resides outside the State of Washington, Thanksgiving shall begin at
19 3:00 on Wednesday afternoon and continue to 6:00 on Sunday afternoon if the father is
20 traveling to the state where she resides to pick her up, but shall begin at 9:00 am
Thanksgiving morning if the mother brings the child to Washington. While the child
resides in Washington, Thanksgiving shall begin at 6:00 PM on the Wednesday before
Thanksgiving and continue to Sunday evening at 6:00 pm.

21 Note 2: Summer holidays are assigned to the mother every year unless these holidays
22 fall within the father's designated summer vacation residential time per 3.5 above

23 3.8 Schedule for Special Occasions

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

With Michelle Baker

With Christopher Dilworth

(Specify Year
Odd/Even/Every)

(Specify Year
Odd/Even/Every)

Mother's Day

All

Father's Day

All

Child's Birthday

Odd

Even

Mother's birthday

All

Father's birthday

All

3.9 Priorities Under the Residential Schedule

Paragraphs 3.3 - 3.8 have priority over paragraphs 3.1 and 3.2, in the following order:

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

1 winter vacation (3.3)

3 school breaks (3.4)

2 summer schedule (3.5)

6 vacation with parents (3.6)

5 holidays (3.7)

4 special occasions (3.8)

3.10 Restrictions

There are limiting factors in paragraph 2.2, but there are no restrictions on (name) Christopher Dilworth's residential time with the child for the following reasons:

At present, he is in compliance with the requirements of 3.1 of the previous parenting plan and has refrained from concerning conduct.

3.11 Transportation Arrangements

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

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

The mother and the father shall each pay half of the airfare for the father to visit the child once per month and for the child to visit the father in Washington once a year. The mother shall reimburse the father for her share of air fare within 30 days of receipt of transportation expense verification, provided that the father books flights at least three weeks in advance and takes advantage of best available rates for airfare, hotel accommodations, and car rentals. If the father elects to book a more expensive transportation or accommodation, the mother shall be obligated only to pay 50% of what

1 the father would have paid had he booked his reservations at least three weeks in
2 advance and made reasonable effort to take advantage of available savings. Father
3 shall account for frequent flier miles earned for all trips paid in part by the mother and
shall credit her with half of any discount he obtains through use of frequent flier miles.

4 Nothing in this provision shall be construed as limiting the father to one visit in
5 Washington per year. However, the mother shall be required to pay no more than 50%
6 of the airfare for one visit per year and any additional visits shall be paid for solely by the
father.

7 The child may not travel alone by air until age 10. Father shall arrange transportation for
8 the child to Washington and mother shall reimburse the father for 50% of the airfare
9 expenses for one visit each year, on the same terms as above. While the child is too
10 young to travel alone, the mother shall reimburse the father for 50% of his airfare to
11 accompany the child for the annual Washington visit for which she is partially financially
12 responsible. If the parents agree, the mother may instead escort the child to Washington
and the father will reimburse the mother on the same terms as above for the mother's
and the child's airfare.

13 While the child is residing outside of Washington, the father will give the mother seven
14 days advance notice of intended visitation days, and the mother will give the father
15 seven days notice of intent to visit Washington with the child.

16 Neither party shall transport the child in an automobile or other motorized conveyance if
17 they have consumed alcohol or taken any non-prescribed controlled substances, nor
18 shall they allow a third party who has done so to transport the child. Neither party may
19 transport the child unless they have a valid driver's license and insurance, nor shall they
20 allow a third party who does not have the same to transport the child.

21 Neither party shall transport the child without an appropriate restraints being properly
22 installed and utilized..

23 **3.12 Designation of Custodian**

24 The child named in this parenting plan are scheduled to reside the majority of the time
25 with Michelle Baker. This parent is designated the custodian of the child solely for
purposes of all other state and federal statutes which require a designation or
determination of custody. This designation shall not affect either parent's rights and
responsibilities under this parenting plan.

26 **3.13 Other**

27 **3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

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

1
2 If the person with whom the child resides a majority of the time plans to move, that
3 person shall give notice to every person entitled to court ordered time with the child.

4 If the move is outside the child's school district, the relocating person must give notice by
5 personal service or by mail requiring a return receipt. This notice must be at least 60
6 days before the intended move. If the relocating person could not have known about the
7 move in time to give 60 days' notice, that person must give notice within five days after
8 learning of the move. The notice must contain the information required in RCW
9 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

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

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

16 If information is protected under a court order or the address confidentiality program, it
17 may be withheld from the notice.

18 A relocating person may ask the court to waive any notice requirements that may put the
19 health and safety of a person or a child at risk.

20 Failure to give the required notice may be grounds for sanctions, including contempt.

21 **If no objection is filed within 30 days after service of the notice of intended
22 relocation, the relocation will be permitted and the proposed revised residential
23 schedule may be confirmed.**

24 A person entitled to time with a child under a court order can file an objection to the
25 child's relocation whether or not he or she received proper notice.

26 An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,
27 (Objection to Relocation/Petition for Modification of Custody Decree/Parenting
28 Plan/Residential Schedule). The objection must be served on all persons entitled to time
29 with the child.

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

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

1 **IV. Decision Making**

2 **4.1 Day to Day Decisions**

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

6 **4.2 Major Decisions**

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

	Michelle Baker has sole decision making for:	Christopher Dilworth has sole decision making for:	Both parents have joint decision making for:
10 Education decisions	X		
11 Non-emergency health care	X		
12 Religious upbringing	X		

13
14 **4.3 Restrictions in Decision Making**

15 Sole decision making shall be ordered for the following reasons:

16 A limitation on a parent's decision making authority is mandated by RCW
17 26.09.191 (See paragraph 2.1).

18 One parent is opposed to mutual decision making, and such opposition is
19 reasonably based on the following criteria:

- 20 (a) The existence of a limitation under RCW 26.09.191;
- 21 (b) The history of participation of each parent in decision making in
22 each of the areas in RCW 26.09.184(4)(a);
- 23 (c) Whether the parents have demonstrated ability and desire to
24 cooperate with one another in decision making in each of the
25 areas in RCW 26.09.184(4)(a); and
- (d) The parents' geographic proximity to one another, to the extent
that it affects their ability to make timely mutual decisions.

1
2 **V. Dispute Resolution**

3 *The purpose of this dispute resolution process is to resolve disagreements about carrying out*
4 *this parenting plan. This dispute resolution process may, and under some local court rules or*
5 *the provisions of this plan must, be used before filing a petition to modify the plan or a motion for*
6 *contempt for failing to follow the plan.*

7
8 No dispute resolution process, except court action is ordered.

9 **VI. Other Provisions**

10 There are the following other provisions:

11 1. The parents shall communicate by email or text message. Neither party shall contact
12 the other party by any other means except in the case of an emergency involving the
13 child.

14 2. The parents will provide each other with as complete and thorough information as
15 possible regarding the child's physical and emotional well-being, including all medical
16 information, whether or not of a routine nature.

17 3. The mother shall make the child available for visitation with the father whenever she
18 brings the child to Seattle, provided, however, that the child's visit with the father shall
19 not interfere with the child's participation in other family events, such as family reunions,
20 weddings or the like. Whenever possible, the mother shall give the father seven days
21 notice of her intent to visit Seattle, but shall not be in violation of the parenting plan if she
22 returns to Seattle on short notice (as, for example, to be at the bedside of a gravely ill
23 relative.) The father may request residential time during the visit in accordance with his
24 scheduled residential time as provided in 3.1, and his residential times may be for such
25 periods as are permitted under Section 3.1. He may also request additional residential
time, but the mother is not expected to cancel activities which were the intended purpose
of her trip to Washington to accommodate the father's additional requests.

4. If the mother relocates within the United States to follow her husband as he relocates
in response to military orders, the father shall not object. Jurisdiction shall remain in King
County, however, unless the father permanently relocates to another state. If such
military relocation places the residence of the mother and the child substantially near to
or substantially further from King County, this parenting plan may be reviewed without a
threshold showing of adequate cause.

5. The father shall not consume alcohol or illegally use controlled substances when the
child is with him or for 24 hours before the child is with him. If the mother suspects the
father has alcohol or illegal controlled substances in his body at the time a visit is to
begin or during a visit, she may demand that he take a blood or breath test to determine
whether or not this is the case. In that event, the visit shall not begin until it is determined
that the father does not have alcohol or illegal controlled substances in his body. If the
test shows negative, the mother must pay for the test and must allow double makeup
time for any visit time missed. If the test is positive the father must pay for the test and
visits shall cease until further court order or specific written agreement of the parties.

1 6. Neither party shall allow the child to be in the presence of anyone who either is
2 consuming alcohol or has consumed alcohol and who is showing signs of intoxication or
3 who has a blood alcohol level of 0.08 grams of alcohol per 100 milliliters of blood, or at
4 such other level as the State of Washington may establish as the level of legal
5 intoxication. Neither party shall allow the child to be in the presence of anyone illegally
6 using a controlled substance.

7 7. Neither party shall allow the child to be exposed to second hand tobacco smoke.

8 8. Neither party shall communicate derogatorily or in a negative way about the other
9 parent in the presence of the child, nor allow the child to be exposed to such
10 communication from others.

11 9. Neither party shall take the child out of the country without the other's permission,
12 except that either party may take the child through Canada in transit between Alaska
13 and Washington.

14 10. Both parties shall be respectful in their relationship and communication.

15 11. The mother agrees to sign appropriate releases as necessary to allow the father to
16 obtain medical and educational information about the child when this is possible without
17 compromising third party information. Where, as in military facilities, medical information
18 cannot be disclosed without providing the social security number of the stepfather, the
19 mother will provide medical information upon request.

20 12. When transferring the child to the father or when picking up the child after the
21 father's residential time, the mother may elect to be accompanied by her husband,
22 Charles Baker, or by such other responsible adult with whom she may feel safe. She
23 may also elect to have Mr. Baker, or any other responsible adult with whom the child is
24 completely familiar and comfortable attend the transfer and pick up in her place. The
25 father may also entrust transfer of the child to such other responsible adult with whom
the child is completely familiar and comfortable. However, the father shall personally
attend the transfer the majority of the time. Both parents shall be responsible for
ensuring that those conducting transfers on their behalf behave courteously and
appropriately.

13 The child shall have liberal phone privileges with the parent with whom the child is not
then residing without interference of the residential parent, once the child is old enough
to participate in a phone conversation. Phone privileges includes but is not limited to
Skype and/or Facetime communications. "Liberal" shall be defined as at least two
phone calls a week at reasonable hours and for a reasonable duration, given the child's
age. Phone calls to the other parent will be permitted at any reasonable time at the
child's request

14 14. Neither parent shall discuss the status of child support or any other legal matter
15 between the parties with the child for any reason under any circumstance.

16 15. From the time the child is four years of age, the father shall have residential time as
17 provided in Sections 3.3, 3.4 and 3.5 above, even though the child is not yet enrolled in
18 school. Residential times as provided in these sections shall mirror what they would be if
19 the child were enrolled in the school district where she resides.

20 16. The mother will provide copies of all offers from schools, sports teams or other similar
21 organizations offering opportunity to purchase photographs of the child.

22 17. The father will be notified of all school, athletic, church, scouting or other similar
23 events in which the child participates and is normally accompanied by her parents. Both
24 parents may participate in school or extracurricular activities for the child, such as open
25 house or athletic activities, to which parents are normally invited. The mother shall have

1 no obligation to inform the father of private social events to which the child, or the child
2 and the mother, have been expressly invited.

3 18. The mother shall provide the father with any and all medical information of which she
4 may be aware that is necessary to care for the child during visitation, including all
5 medications, prescription and otherwise, with instructions. The father shall also provide
6 the mother with complete information, including medical reports, medications and
7 instructions, in the event that the child develops a medical problem while in his care.

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VII. Declaration for Proposed Parenting Plan

VIII. Order by the Court

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

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.040.060(2) or RCW 9A.40.070(2). Violation of this order may subject a violator to arrest.

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

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

Dated: _____

April 18, 2013



Judge Suzanne Parisien

PROOF OF SERVICE FORM

PART 1: Delivered By Federal Express: Proof of Service by Federal Express.

I, Christopher D. Luorath, declare that I am over the age of eighteen years and not a party to the action. My address is
22612 SE 273RD St Maple Valley WA
98038

On, 10-10-13, I served the response brief by placing an original and a true copy in the Federal Express mail enclosed in a sealed envelope with the fee fully prepaid, addressed as follows:

Washington State Court of Appeals
600 University Street
One Union Square
Seattle, WA 98101-1176

PART 2: I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 10, 2013, at Seattle, Washington.


Signature

Christopher D. Luorath
Type or Print Name

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0015 007 11 2013 09 18