

No. 70590-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
 DIVISION ONE

FILED
 COURT OF APPEALS DIV 1
 STATE OF WASHINGTON
 2014 APR 28
 10:58 AM

SOLOMON M. MEKURIA ,

Appellant,

v.

ASTER MENFESU,

Respondent.

REPLY BRIEF OF APPELLANT

Solomon M. Mekuria
Appellant, Pro Se

10421 Meridian Ave. S., Unit B
Everett, WA 98208
(425) 350-9576

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES ii - iii

1. OBJECTIONS to inadmissible DV remarks..... 1

2. The irrelevance of the mother's blindness in 2010.....3

3. NOTEWORTHY: At divorce trial, the mother NEVER testified that she was blind10

4. Mother's specious claim that father's Motion for Adequate Cause was without evidence.....10

5. Extra evidence on revision.....11

6. The issue of the mother's credibility as it pertains to blindness...13

7. The mother's entire legal argument supports a reversal.....15

8. MISPLACED argument/finding that the mother was always blind.....16

9. Judge Cahan's "no one ran to CPS" TESTIMONY18

10. "Properly included emails" on revision.....22

11. More self-incrimination regarding revision23

12. Bias is NOT improperly raised for first time on appeal.....24

13. Attorney fees25

TABLE OF AUTHORITIES

Washington Supreme Court Cases

<u>Chapman v. Perera</u> 41 Wn. 2d 444, 455-56, 704 P.2d 1224 (1985).....	13
<u>Cowiche Canyon Conservancy v. Bosley</u> 118 Wn.2d 801, 819, 828 P.2d 549 (1992).....	9
<u>In re Marriage of Moody</u> 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999).....	12, 22
<u>Noble v. Safe Harbor Family Pres. Trust</u> 167 Wn. 2d 11, 17, 216 P.3d 1007 (2009).....	9
<u>State v. Lewis,</u> 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990).....	9
<u>State v. Rohrich,</u> 149 Wn.2d 647, 654, 71 P.3d 638 (2003).....	9
<u>Nguyen v. DOHMQAC</u> 144 Wn.2d 516, 524, 29 P.3d 689 (2001).....	21
<u>Willener v. Sweeting,</u> 107 Wn.2d 388, 393, 730 P.2d 45 (1986).....	9

Washington Court of Appeals Cases

<u>Brin v. Stutzman,</u> 89 Wn. App. 809, 951 P.2d 291 (1998).....	9
<u>In re Custody of C.C.M.</u> 149 Wn. App. 184, 202, 202 P.3d 971 (2009).....	21
<u>In re Marriage of Morrow</u> 53 Wn. App. 579, 770 P.2d 197 (1989).....	13

<u>In re Marriage of Zigler,</u> 154 Wn. App. 803, 226 P.3d 202 (2010)	8, 9
<u>In re Parentage of Jannot</u> 110 Wn. App. 16, 25, 37 P.3d 1265 (2002).....	9
<u>Kirshenbaum v. Kirshenbaum</u> 84 Wn. App. 798, 808, 929 P.2d 1204 (1997).....	25

United States Court of Appeals

<u>Lillie v. United States,</u> 953 F.2d 1188, 1191 (10th Cir. 1992).....	15
--	----

Washington Statutes

RCW 26.09.004.....	6, 7
RCW 26.09.191.....	1, 2, 6, 8
RCW 26.09.260.....	4, 8, 20

Washington State Court Rules

Admission to Practice Rules (APR) 5(e)	3
Rule of Evidence (ER) 402	3
Rule of Evidence (ER) 602.....	11, 13, 19
Rule of Evidence (ER) 605	19, 20
Rules of Professional Conduct (RPC) 3.7.....	13

Appellant Solomon M. Mekuria makes the following reply to Respondent's responsive brief.

1. OBJECTION to inadmissible DV remarks

The mother (Respondent) and her attorney go FOUR YEARS back in time, pre-dating the order being appealed. They go back and cite a protection order that has long been expired. They back before the original dissolution trial. The trial resulted in a finding that there was NO DOMESTIC VIOLENCE issues. See CP 11, Final Parenting Plan, Section 2.1, that deals with RCW 26.09.191(2)(a)(iii) domestic violence issues and finds: "Does not apply."

The mother has repeatedly tried to re-litigate this and other issues, post-dating the trial. I ask this court to NOT be distracted by attempts to prejudice me and only focus on the appealable issue at hand:

"Is there substantial evidence that the mother's has a physical handicap (blindness) that impairs her parenting and is that a change from the original Final Parenting Plan that does not contemplate or find that there is any physical impairment?"

The answer, of course, is "yes". There was never a finding that the mother's blindness impaired her parenting. Now that the mother has admitted on the record that the child was burned under her care, and the

mother admits that she didn't know about the burn and the father submitted multiple photos of multiple OTHER injuries under the mother's care (CP 220-222), this is a NEW CHANGED circumstance, not found in the Final Parenting Plan that has arisen since the final order, warranting a finding of adequate cause.

The mother and her attorney, as they always do, throughout the record, portray the mother as a victim of domestic violence that does NOT EXIST according to the original trial judge's findings in the Final Parenting Plan. CP 11. The mother and her attorney are currently seeking a minor modification in which they DON'T EVEN ASK for a finding of domestic violence or domestic violence RCW 26.09.191(2)(a)(iii) restrictions and reductions in the father's visitation. See Petition at CP 406.

The mother and her attorney only bring domestic violence claims/issues up, here and now.

King County commissioners, attorneys and judges were once interviewed and quoted in a Seattle Weekly article that exposed how domestic violence protection orders are used and abused for leverage purposes and in order to prejudice another party in custody battles on a regular basis¹. The mother and her attorney are attempting to prejudice

¹ Shapiro, Nina. "Ripped Apart: Divorced dads, domestic violence, and the systematic bias against me in King County family court." Seattle Weekly. January 17, 2012.

me here and now, with a similar distasteful modus operandi discussed in the Seattle Weekly article.

Such tactics violate the Oath of Attorney in the Admission to Practice Rules 5(e), which reads:

“7. I will abstain from all offensive personalities and advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause...”

There is no legitimate, relevant (ER 402) or lawful purpose in bringing up the EXPIRED protection order to this court now.

2. The irrelevance of the mother’s blindness in 2010

Beginning in the last paragraph on page 1, the mother discusses her blindness and states “in August 2010 she was legally blind”.

This is completely IRRELEVANT to the issue at hand before this court. Once again, the issue is NOT whether the mother’s blindness exists. The issues are:

- (1) Whether there has been a substantial change of circumstances
- (2) Whether that circumstance is new and different SINCE the final order
- (3) Whether the child’s environment is detrimental to the child’s welfare and whether a change in custody causes less harm than keeping the child in the mother’s care.

These factors are requisite for a major modification and are laid out in RCW 26.09.260, which reads in part:

Retrieved on 1/4/2014 from Seattle Weekly’s website:
<http://www.seattleweekly.com/2012-01-18/news/ripped-apart/>

“(1) ...the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child....

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child...”

This is precisely what the father’s Petition for Modification alleged in Sections 2.8 and 2.13. CP 23 – 25.

This is what the father alleged and demonstrated in his Motion for Adequate Cause. CP 211 – 230.

And it is an uncontested fact that the mother admitted that she did not even know about the child’s worst injury under her care (the burn) until AFTER the child told the mother about it. And the mother admitted that it “may have happened at my house while we were cooking.” CP 232, lines 14 – 16.

So the mother was cooking WITH THE CHILD, right there with

her, but she did not even notice this burn until days later.

If the mother was blind at the time of the original parenting plan in 2010, then her blindness has worsened and impaired her parenting. If the blindness has not worsened, then it is EVEN MORE TROUBLING that the mother CAN see but yet the child still gets injured and the mother does not even notice injuries until after the child tells the mother – EVEN IF the child’s injury occurs when the mother is there, presumably cooking with the mother.

This is why a family law commissioner found adequate cause. The father demonstrated something more than prima facie allegations (substantial evidence) that there was a danger to the child’s welfare under the mother’s care and it was possible that the mother’s physical impairment was contributing to that. The order finding adequate cause and order for an investigation are CP 451 and 448.

Judge Cahan misapplied the law. Judge Cahan said that there was blindness before and there is blindness now. But, that is NOT the issue. The issue is whether the blindness causes an impairment to perform parenting functions. Or even WITHOUT consideration of blindness, whether the mother neglects the child’s medical needs, neglects to perform parenting functions.

The Final Parenting Plan has no RCW 26.09.191 factors. Section

.191 reads in pertinent part:

“(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct:

(i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions...

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

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

...(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

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

RCW 26.09.004 defines parenting functions as follows:

“(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.”

The substantial evidence, and the mother’s own admission shows that the child regularly gets injured under her care. And the mother does not treat the injuries or even notice them until later. The mother complained that the father had not taken the child to the doctor well after the burn injury. CP 232, lines 19. But, the mother had not done so and the child was under her care when it occurred. Even more disconcerting, the mother “plays down” the burn injury as “minor”. CP 232 line 19.

Either the mother’s blindness has CHANGED and DEGRADED to the point that it causes an impairment to her ability to perform parenting functions, OR the mother’s ability to perform parenting functions has diminished to neglect or she willfully refuses to perform them. These are bases for restrictions on the mother’s residential time, per .191 above. Parenting functions include exercising appropriate judgment. The mother refuses to exercise appropriate judgment, which is refusal to perform parenting functions, which is a .191(2)(i) or (3)(a) basis for restrictions. Neglecting to notice an injury or to take a child to the doctor and treat it

IN AND OF ITSELF is poor judgment and refusal or neglect to perform parenting functions, which is a .191 basis for restrictions as stated.

In the case In re Marriage of Zigler, 154 Wn. App. 803, 226 P.3d 202 (2010), the mother had custody of the child, per the final parenting plan. The father sought to modify, based upon new incidents of domestic violence in the home. (He also argued pre-decree incidents of violence, but was able to do so because the final plan was agreed upon). That stated, the father got “in the door” with a finding of adequate cause because of the detrimental effect of the new .191 problem with the mother. After finding adequate cause, the court had a 12-day hearing and changed custody.

The Court of Appeals cited RCW 26.09.260(2)(c) and .260(1) in its opinion. Id at 806. I relied upon these same statutes in my Petition for Modification and Motion for Adequate cause. CP 23, 211.

Zigler states at 809:

"[T]he information considered in deciding whether a hearing is warranted should be something that was not considered in the original parenting plan." In re Parentage of Jannot, 110 Wn. App. 16, 25, 37 P.3d 1265 (2002), aff'd, 149 Wn.2d 123, 65 P.3d 664 (2003).

The mother’s blindness was not considered in the original parenting plan. Her blindness affecting her performance of parenting functions was also not considered. Injuries to the child under the mother’s

care were also not considered.

These are new facts. These are changes in circumstances. They also pose a threat to the child's physical and her emotional well-being. There is substantial evidence supporting such findings. There is substantial evidence to support a finding of adequate cause.

No rational or reasonable trier of fact would have reversed the commissioner's finding of adequate cause. Therefore, Judge Cahan's decision was untenable and there is a basis for reversal by this court, as I pointed out in my original brief, on the authority of State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141 (1990); Willener v. Sweeting, 107 Wn.2d 388, 393, 730 P.2d 45 (1986); Brin v. Stutzman, 89 Wn. App. 809, 951 P.2d 291 (1998), citing Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992); and Noble v. Safe Harbor Family Pres. Trust, 167 Wn. 2d 11, 17, 216 P.3d 1007 (2009)).

3. NOTEWORTHY: At divorce trial, the mother NEVER testified that she was blind

When confronted on the stand and asked what her proof was that she was legally blind, the mother would not answer the father's attorney's questions and it was declared by the Honorable Monica Benton that the mother was "non-responsive" when it came to the issue of evidence that

she was blind.

So, the mother and her attorney are lying that the original divorce court contemplated her blindness. So, there never was finding that she was blind.

THIS IS WHY THE MOTHER AND HER ATTORNEY DON'T EVEN ATTEMPTED to refer to any transcript or CP from the original trial to support this claim.

So, it could actually be said that there was no evidence of blindness and now there is; therefore, the blindness IS a change of circumstance. But, the blindness alone, still, is not the main issue. The main issue is the mother's neglect and possibly how the blindness has degraded and affected her parenting.

4. Mother's specious claim that father's Motion for Adequate Cause was without evidence

On page 5, in the first paragraph, the mother argues in her brief that the father, "Without any evidence, he claimed that these photographs represented 'injuries' either negligently or intentioned cause by Ms. Menfesu..."

But, my own testimony is evidence. The mother's own admissions in her response were evidence. The pictures were evidence. I testified in my Motion for Adequate Cause that the child's injuries were discovered

soon after I received the child at exchanges. CP 211.

This testimonial evidence is evidence that he injuries occurred not under the fathers care. So, this testimonial evidence shows they occurred under the mother's care. The mother's own admissions confirm this. Rule of Evidence (ER) 602 permits me to testify to things that I have personal knowledge of. The mother dismissed my testimony, her admissions, the pictures as being "without any evidence". Her own argument is self-incriminating as she makes light of the matter, which is further disconcerting.

5. Extra evidence on revision

On page 6, in the last paragraph the mother's attorney writes: "Copies of emails from the GAL were submitted to Judge Cahan with the Motion for Revision with a request that he court address this issue if it declined to dismiss..."

The mother is ADMITTING that she submitted extra evidence on revision with an EXTRA request that was NOT before the commissioner.

No extra evidence is EVER permitted on revision, neither are new issues allowed to be raised on revision. In re Marriage of Moody, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999).

The mother:

- (1) made an EXTRA request on revision

(2) submitted EXTRA documents on revision

(3) submitted EXTRA testimony on revision, which was
the attorney's unsworn testimony

There was NO OTHER official, properly filed, properly written motion before Judge Cahan, just the revision. And references in the motion were made to things beyond JUST what the GAL said. And of course, the GAL's emails did not even EXIST before the commissioner's hearing. The proper recourse would have been to do a Motion for Reconsideration, as the mother's veteran attorney should have known.

The fact that the mother and her attorney used and abused the revision process like this and continued to violate fundamental maxims, is all indicative of unnecessary litigation. They are intransigent. They break basic, well-known, fundamental rules knowingly. They make simple motions like a revision, oppressive. I have to point out to the court the attorney's misconduct. I have to object to the inadmissible, improper, unnecessary requests and inadmissible evidence. This costs time, money and energy beyond simply arguing the merits of a legitimate motion.

When a party has made a proceeding unduly difficult and has thereby unnecessarily increased legal costs, sanctions and costs awards are appropriate. In re Marriage of Morrow, 53 Wn. App. 579, 770 P.2d 197 (1989).

Sanctions based upon intransigence have also been awarded when a party has filed unnecessary motions and irrelevant, immaterial pleadings. Chapman v. Perera, 41 Wn. 2d 444, 455-56, 704 P.2d 1224 (1985).

Judge Cahan should have stricken the inadmissible motion and sanctioned the mother instead of rewarding her intransigence. This court should admonish the veteran attorney for her misconduct.

Even if new testimony was allowed on revision, attorneys may not testify under RPC 3.7 and ER 602. So, Ms. Helm violated multiple, well-established maxims, mocking the court and the process as if it was her own playground to do as she will with it.

6. The issue of the mother's credibility as it pertains to blindness

Much is made by the mother about the existence of her "medical condition that impairs her sight" since 1999 and how she was "legally blind" at least by August 2010. So her "sight impairment" steadily degraded and her sight deteriorated from 1999 to 2010 so that she became legally blind. In that period of time, VERY CLOSE to the August 2010 date, the court can see her driving WITH SUNGLASSES on, as depicted in an April 7, 2009 picture. CP 440. There are also pictures of her playing a driving video game and looking into a camcorder, also with sunglasses on, with her "impaired sight".

Once again, the existence or non-existence of blindness is not an

issue, in and of itself.

But, the mother's repeated claims about her blindness give great concern about her credibility. She receives disability money due to her claims of blindness. But, she drives and does other sight oriented things when she is "legally blind" or close to the period of time that she is getting to be "legally blind". But, she swears under oath that she only "can see light and shadows". CP 198, lines 10 - 11, which also reads that "she is NOT ABLE TO SEE if the father approaches her between the bus stop and the police station." Before I filed the Petition to Modify, the mother never complained of any such problems. Her blindness has gotten worse, according to her own testimony.

Since this court is asked to review if substantial evidence is in the record supporting a denial of adequate cause, the only evidence supporting the dismissal was the mother's sworn testimony. Her argument against the pictures of the child's injuries was based solely upon her testimony. The court relied solely upon her testimony. There are grave concerns that there is no basis to believe the mother.

Another example before this court, again, is that the mother likes to bring up claims of domestic violence. Yet, with a current, open modification action, she seeks NO RELIEF consistent with the claim of domestic violence. See Petition at CP 406. The mother STILL proposes

virtually the same residential schedule and no restrictions on the father's visitation with the child, as a true domestic violence victim would demand/require.

Now, Judge Cahan made no specific finding of the mother's credibility. But, it was solely her testimony that persuaded the court, ostensibly. And her testimony is dubious. So, the substantial evidence relied upon to deny adequate cause on revision, was evidence that was nonexistent, due to the lack of credibility of that evidence.

Moreover, Judge Cahan gave her own testimony that the original trial included a finding that the mother was blind, so there is therefore no change of circumstances. Well, Judge Cahan may not testify under ER 602 and 605. (Since there is no written finding, she cannot speak on the matter). The Court of Appeals in Division Two once held:

“When a {court} engages in off-the-record fact gathering, {it} essentially has *become a witness* in the case.” Wells v. Wells, No. 29849-0-II, Div. 2 Court of Appeals (filed 7/20/2004), citing Lillie v. United States, 953 F.2d 1188, 1191 (10th Cir. 1992).

7. The mother's entire legal argument supports a reversal

The mother's pages 7 through 9 are filled with case law that supports my basis for seeking a reversal. The standard to change custody is a high threshold to overcome. And that is why Commissioner Canada-Thurston found adequate cause: because there was a physical disability

and there was evidence of the mother's negligence. Whether the disability impairs the mother's parenting or whether the mother neglects the child apart from her blindness does not matter. Why not? Because there was evidence of repeated physical injuries to the child under the mother's care.

This is the substantial evidence that Ms. Helm speak of in citing case law. It was untenable for Judge Cahan to ignore the substantial evidence.

8. MISPLACED argument/finding that the mother was always blind

Since the commissioner found adequate cause, why then did Judge Cahan reverse that decision on revision? The answer lies in the mother's brief on page 10. The mother incriminates herself and the Judge when she says in the first paragraph:

“...Judge Cahan properly determined that he mother's sight impairment was not a new circumstance because it existed prior to entry of the parenting plan and was known to the divorce trial court when it entered the Final Parenting Plan....”

It is at this very point that the mother's attorney is either deliberately specious and playing a game of misdirection, or is utterly incompetent. It is at this very point that Judge Cahan was extremely biased and looked for a reason to deny adequate cause or she did not understand the simple/basic issue before the court (incompetence).

Firstly, the original award of custody was NOT before the court on

revision. That, admittedly, was decided.

Secondly, the issue was not the existence or non-existence of blindness, per se, but whether a NEW circumstance of the blindness impairing the mother to endanger the child exists OR whether the mother simply neglects the child which causes the child to repeatedly injure herself. It is untenable and defies reason and shows the judge to be irrational and unreasonable in that she cannot discern this very simple point. The only explanation is bias or incompetence. However it may be explained, this was still a decision that no rational and reasonable trier of fact would have made.

Thirdly, Judge Cahan made up her own facts. There was no finding by the original trial judge that the mother is/was blind. It was not for Judge Cahan to testify and/or make that determination.

Fourthly, EVEN IF Judge Cahan was correct and the trial court “decided the mother was the appropriate person to have custody of the child” despite the divorce trial judge being “well aware of the vision impairment” that all has NOTHING to do with the here and now. According to Judge Cahan’s logic, a new modification action must be judged solely by the facts and circumstances at the time of the original decree. This makes no logical sense.

And even though the court found the mother to be the proper

custodian, that is not a basis for Judge Cahan to REMAIN SILENT on the child's current, repeated injuries and the other claims before the court at THIS TIME.

Ms. Helm and the mother argue that I did not prove the "...sight impairment was a substantial change in circumstances..." (last sentence of paragraph 1, on page 10). This incriminates the mother and Judge Cahan. I did not even attempt to prove that. I attempted and DID PROVE that the child suffers physical injury under the mother's care. The mother and Judge Cahan made up an entire concocted story that I was ONLY trying to prove the mother's blindness is new. That's not what my paperwork claimed. And then Judge Cahan rules against me because I did not prove this farce of an argument that I never actually made.

9. Judge Cahan's "no one ran to CPS" TESTIMONY

Judge Cahan testified that "no one ran to CPS". Then she testified on behalf of all children and said, "kids can get scratched and even get burned in the best – under the best care..." RP 38.

First of all, the lack of a CPS claim does NOT PRECLUDE a party from bringing a court action. If the courts were POWERLESS to proceed because no CPS claims was filed, then the courts should not exist. All child abuse should solely rest within the power authority and discretion of CPS.

But, Judge Cahan was also “testifying” or speaking to my “state of mind” which she cannot do under ER 602 and 605. She was saying that I should have went to CPS and waited and waited and waited for their slow process to take place instead of moving the court which has personal jurisdiction over these parties. She insinuates that my state of mind was that I did not think the injuries to be serious because I did not go to CPS. She is testifying for me.

Judge Cahan also did the following (which NO REASONBLE JUDGE would do). She said there was no direct link between the blindness and the child’s injuries, including the burn. (1) The mother is blind. (2) The mother ADMITTED that she did not see the child’s burn for days. (3) The mother ADMITTED she did not know there was a burn until after the child told her.

ANY REASONABLE judge would draw a conclusion that the mother’s blindness caused the mother to NOT notice the burn.

But, Judge Cahan makes the untenable, unreasonable conclusion that it was impossible for the blindness to be linked to overlooking the child’s injury. It is astonishing that Judge Cahan cannot link the two, that she refuses to link the two and that she finds it impossible. NO REASONABLE judge would be SO definitively dismissive of this likelihood.

Judge Chahan's indifference and nonchalant opinion of the repeated injuries to the child show a disregard for the pre-eminent high regard of the BEST interests of the child. RCW 26.09.260(1) does not say that the court should consider a modification in light of the "bare minimum safety" of the child. It does not say that the court do what is "tolerable for the child", as Judge Cahan implies (that it is "tolerable" for the child to be with a mother who lets her get burned scratched and physically injured on a regular basis). The statute says that the court should modify to a parenting plan that is in the child's "best interests" if there is a change of circumstances. There were no burns and repeated scratches and skin lesions/disfigurements before the final parenting plan. This is new. Judge Cahan stepped OUTSIDE of the courtroom and violated ER 605 and testified with expert testimony, alleging that even under the "best care" children get burns. No testimony from any child psychologist or child safety or child neglect expert was before the court. Judge Cahan is a disconcerting display of bias, excused the mother's neglect as nothing to be concerned about.

The allegation that I "provided no proof that the incidents happened in the mother's care" flies in the face of the mother's OWN ADMISSION that the burn could have happened while she was cooking. The fact the mother did not know about the injury and that I did IS

ALONE DISCONCERTING. Moreover, again, my testimony IS evidence. I don't have to prove beyond a reasonable doubt that the mother did this. I testified that I discovered the injuries after exchanges. By a preponderance of evidence, in a sworn declaration, by a credible declarant, I demonstrated that the injuries occurred while the child was NOT under my care. That leaves the responsibility to the mother since they happened under her residential time.

Civil courts in custody matters use the "preponderance of evidence standard" which is at the "low end of the...spectrum.." In re Custody of C.C.M., 149 Wn. App. 184, 202, 202 P.3d 971 (2009), (citing Nguyen v. DOHMQAC, 144 Wn.2d 516, 524, 29 P.3d 689 (2001)).

The mother and her attorney argue as if pictures, testimony by declaration in lieu of affidavit are not enough evidence. The mother's protection order, which she continually recites to was relied solely upon her word and her words about fear and me being a heinous menace are thrown out at hearings when she does not even seek similar restraints. The mother uses "buzz words" like fear to invoke prejudice against me, after her failed attempt to get a domestic violence finding in our parenting plan. This tactic is barred by doctrines of res judicata, collateral estoppel and judicial estoppel. But, because the mother perpetuates them repeatedly and harasses me in the courts with them all the time (all while NOT seeking

relief consistent with her allegations) the mother is engaging in a harassing, vexatious abuse of the use of conflict. Since she is lying to the court under oath on a regular basis, then that is a preponderance of evidence that she is disparaging me to the child, which was another of my claims. I was not solely arguing “the mother is newly blind” argument, as the mother argues.

10. “Properly included emails” on revision

The mother and her attorney cite NO AUTHORITY supporting their contention that additional evidence on revision was proper. Why not? Because no such authority exists. The mother’s attorney makes up her own rules and then plays by them. The fact that Judge Cahan tolerated this (in defiance of our Supreme Court’s maxims regarding revision in Moody) further shows an untenable bias for the mother (tolerating violations of unambiguous, well-established guidelines, rules and/or maxims).

The mother incriminates herself saying that the emails had nothing to do with the motion before the court, when the mother states, “...the court had not need to consider or rely on the emails” (last sentence of first paragraph on page 12).

11. More self-incrimination regarding revision

On page 13, the mother cites the county’s local rule on revision, proving that she should have known not to file extra materials.

The mother also wants me to prove a negative. The Motion for Revision is full of argument and testimony. CP 459 – 467. That is not allowed on revision. It is not my burden to prove that this argument/testimony does not exist in the record previous to the commissioner’s decision. It simply doesn’t exist. If it exists as the mother lies and says in her brief, then it’s HER BURDEN to refer to the record and show where it exists. I’m saying it DOES NOT EXIST. I don’t have to prove that. They say it DOES exist. So, they need to prove what they are purporting. They need to use their own legal standard to support what they proclaim.

Moreover, NOTHING NEW is allowed on revision. The mother and her attorney need to let the paperwork BEFORE THE COMMISSIONER speak for itself. There’s no need to argue and add factual statements on revision because the arguments are already on the pleadings. So, they ADDED argument and “testimony”.

12. Bias is not improperly raised for first time on appeal

Bias is a Constitutional and due process issue. My authorities are clearly laid out in my original brief. Constitutional issues may be raised for the first time on appeal.

But, the bias was indicated AFTER the judge ruled. I had no other

choice but to raise it after she demonstrated the bias. I could not predict the judge's bias in pleadings before the commissioner. I cannot add that argument on revision, like the mother and her attorney like to add things on revision. This is a timely appeal and I raise the bias issue as soon as I am able at the subsequent proceeding: my appeal.

The rest of the mother's argument about me filing an affidavit of prejudice is misplaced. I did not know that Judge Cahan would be biased toward me until after she demonstrated the bias. Judge Cahan came straight to the judicial branch from an attorney office. She's been a judge for one year. A commissioner with 20 years' experience on the bench found adequate cause. I had no reason to believe that a new judge would reverse on revision. I have since discovered Judge Cahan's and Ms. Helm's affiliations and am shocked like my attorney was at the revision ruling. Ms. Helm has been hostile toward my attorney in court halls, like a bully in junior high school hallways is to kids two grades lower. I had no reason to believe that a judge could possibly make the ruling Judge Cahan did in favor of a hostile, unprofessional attorney who ignores rules that she now cites in her own brief. The ONLY explanation is an egregious bias which I never would have thought possible before the hearing in front of Judge Cahan.

13. Attorney fees

There are no attorney fees. Ms. Helm works pro bono. There is no demonstration of need and ability to pay (the mother's burden).

Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 808, 929 P.2d 1204

(1997). The mother has frivolously sought and repeatedly failed at obtaining an award of attorney fees at the trial court level. Just like she has frivolously sought to prejudice me with allegations of domestic violence when the court does not believe her and she does not even seek relief consistent with that allegation.

The only reason to seek attorney fees that she does not ever have to pay is to inflict financial hardship upon me. This is further indication of the mother's intransigent M.O. and how Ms. Helm has made this matter a personal one in which she has her own vendetta against me.

Respectfully submitted January 5, 2014.



Solomon M. Mekuria, pro se
Appellant