

FILED
October 6, 2015
Court of Appeals
Division I
State of Washington
No. 72147-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

CHRISTOPHER JAMES BURROWS,

Respondent,

v.

ALICIA ANN DE GON,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR SNOHOMISH COUNTY
THE HONORABLE MILLIE JUDGE

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

I. INTRODUCTION1

II. STATEMENT OF FACTS..... 2

A. The parties were married for 11 years, and have three minor children..... 2

B. Both parties are well-educated and highly intelligent, but suffer from mental health challenges. Their children also have special needs. 3

1. Burrows suffers from depression and anxiety, which he treats with medication and regular therapy. 3

2. DeGon suffers from personality issues similar to a personality disorder that she refuses to acknowledge, and that caused her to abuse Burrows during the marriage..... 8

3. All three children have special needs.12

4. DeGon neglected the children’s mental health and medical needs, while interfering with Burrows’ attempt to get the children appropriate care.15

C. The parties collaborated to sell a business that DeGon started, along with software that Burrows developed. The sale fell through.17

D. By the time of trial, Burrows’ ability to work was impacted, in part due to his mental health, and DeGon was working less than full-time.21

E. After a 7-day trial, the trial court designated Burrows as primary residential parent, divided the parties’ assets and liabilities, and granted Burrows short-term maintenance. 22

III.	ARGUMENT	26
A.	The trial court properly crafted a parenting plan based on the substantial evidence before it. The trial court’s decision is consistent with the statute and was made with the best interests of the children in mind.	26
1.	The children suffered as a result of the mother’s neglect, which warranted designating the father as the primary residential parent and granting him sole decision-making.	29
2.	The trial court’s parenting plan was not based on either parent’s “sexual preferences” or on the father’s PTSD.....	32
B.	It was within the trial court’s discretion to grant the father’s request for a restraining order. The mother was given notice of the father’s request and an opportunity to defend.....	35
C.	The trial court properly imputed income to the mother for purposes of child support.	40
D.	The trial court properly awarded maintenance to the father, whose mental health condition impacted his ability to work.	42
E.	Trial court’s valuation of the AgileRecruiter software was supported by the evidence.....	43
F.	The trial court properly characterized the family residence as community property, as it was acquired a month before the parties’ marriage, the community paid down the mortgage, and the wife quitclaimed her interest to the community.....	44

G.	It was within the trial court’s discretion to refuse to order the husband to reimburse the wife for payment of his share of the medical insurance premiums prior to the date that he was ordered to pay his share, and order her to be responsible for the expert fees.	46
H.	This Court should deny the wife’s request for attorney fees and award attorney fees to the husband.	47
IV.	CONCLUSION	47

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Chatwood v. Chatwood</i> , 44 Wn.2d 233, 266 P.2d 782 (1954)	27
<i>DewBerry v. George</i> , 115 Wn. App. 351, 62 P.3d 525, <i>rev. denied</i> , 150 Wn.2d 1006 (2003)	41
<i>Dewey v. Tacoma Sch. Dist. No. 10</i> , 95 Wn. App. 18, 974 P.2d 847 (1999)	37
<i>Estate of Borghi</i> , 167 Wn.2d 480, 219 P.3d 932 (2009)	44
<i>Fernando v. Nieswandt</i> , 87 Wn. App. 103, 940 P.2d 1380, <i>rev. denied</i> , 133 Wn.2d 1014 (1997)	31
<i>Grieco v. Wilson</i> , 144 Wn. App. 865, 184 P.3d 668 (2008) <i>aff'd sub</i> <i>nom. In re Custody of E.A.T.W.</i> , 168 Wn.2d 335, 227 P.3d 1284 (2010)	34
<i>Katare v. Katare</i> , 125 Wn. App. 813, 105 P.3d 44 (2004), <i>rev.</i> <i>denied</i> , 155 Wn.2d 1005 (2005)	29
<i>Katare v. Katare</i> , 175 Wn.2d 23, 283 P.3d 546 (2012), <i>cert. denied</i> , 133 S.Ct. 889 (2013)	29
<i>Marriage of Akon</i> , 160 Wn. App. 48, 248 P.3d 94 (2011)	35
<i>Marriage of Booth</i> , 114 Wn.2d 772, 791 P.2d 519 (1990)	40

<i>Marriage of Burrill</i> , 113 Wn. App. 863, 56 P.3d 993 (2002), <i>rev. denied</i> , 149 Wn.2d 1007 (2003)	32
<i>Marriage of Chandola</i> , 180 Wn.2d 632, 327 P.3d 644 (2014)	27
<i>Marriage of Chua & Root</i> , 149 Wn. App. 147, 202 P.3d 367, <i>rev. denied</i> , 166 Wn.2d 1027 (2009)	35
<i>Marriage of Griswold</i> , 112 Wn. App. 333, 48 P.3d 1018 (2002), <i>rev. denied</i> , 148 Wn.2d 1023 (2003)	45
<i>Marriage of Jacobson</i> , 90 Wn. App. 738, 954 P.2d 297, <i>rev. denied</i> , 136 Wn.2d 1023 (1998).....	26-27
<i>Marriage of Konzen</i> , 103 Wn.2d 470, 693 P.2d 97, <i>cert. denied</i> , 473 U.S. 906 (1985)	45
<i>Marriage of Littlefield</i> , 133 Wn.2d 39, 940 P.2d 1362 (1997).....	26
<i>Marriage of Luckey</i> , 73 Wn. App. 201, 868 P.2d 189 (1994)	42
<i>Marriage of Neumiller</i> , 183 Wn. App. 914, 335 P.3d 1019 (2014).....	38-39
<i>Marriage of Petrie</i> , 105 Wn. App. 268, 19 P.3d 443 (2001)	28
<i>Marriage of Rich</i> , 80 Wn. App. 252, 907 P.2d 1234, <i>rev. denied</i> , 129 Wn.2d 1030 (1996).....	31
<i>Marriage of Shui & Rose</i> , 132 Wn. App. 568, 125 P.3d 180 (2005), <i>rev. denied</i> , 158 Wn.2d 1017 (2006)	40

<i>Marriage of Soriano</i> , 31 Wn. App 432, 643 P.2d 450 (1982).....	43
<i>Marriage of Swanson</i> , 88 Wn. App. 128, 944 P.2d 6 (1997), <i>rev. denied</i> , 134 Wn.2d 1004 (1998).....	31-32
<i>Marriage of Tomsovic</i> , 118 Wn. App. 96, 74 P.3d 692 (2003).....	39
<i>Parentage of Jannot</i> , 149 Wn.2d 123, 65 P.3d 664 (2003)	27
Statutes	
RCW 26.09.050	35-36
RCW 26.09.080	46
RCW 26.09.090	42
RCW 26.09.140.....	47
RCW 26.09.187.....	29
RCW 26.09.191	28-29, 34
RCW 26.19.071.....	40-41
RCW ch. 26.50	35-36
RCW 26.50.010.....	33-34
Rules and Regulations	
RAP 18.1	47

I. INTRODUCTION

The trial court made extensive findings of fact based on substantial evidence presented during a 7-day trial that fully support its decision to designate the father as the primary residential parent of the parties' three children, with sole decision-making. (Appendix A) Contrary to the mother's claim on appeal, the trial court's parenting decision was not based on any alleged bias against her "sexual preferences." Instead, the decision was based on the children's best interests and the trial court's determination that the mother neglected the children's mental health and medical needs, interfered with the father's access to the children, and abused the father, who has suffered from major depression, by exploiting his vulnerabilities.

This baseless appeal is a continuation of the mother's abusive conduct. The trial court's parenting plan, as well as its decisions regarding child support, maintenance, and property, are fact-based, supported by substantial evidence, and well within its discretion. This Court should affirm the trial court and award attorney fees to the father for having to respond to this appeal.

II. STATEMENT OF FACTS

A. The parties were married for 11 years, and have three minor children.

Respondent Christopher Burrows, age 57, and appellant Alicia DeGon, age 47, were married on April 14, 2001. (RP 385; CP 2233) They had purchased their family residence in Mukilteo the previous month. (RP 398, 623) Each contributed equally to the down payment, but agreed to title the home in DeGon's name only because Burrows was concerned that his former wife might seek to put a lien on the residence. (RP 399, 625-26) Later in the marriage, and consistent with the parties' intention that the home would be owned jointly, DeGon quitclaimed the family residence to the community. (RP 527-28; Exs. 100, 101)

The parties have three children: two sons, ages 12 (DOB February 8, 2002) and 10 (DOB May 30, 2003); and a daughter, age 8 (DOB February 23, 2006). (RP 386, 406, 408, 409) Burrows also has three adult children from his previous marriage. (RP 387)

The parties separated on July 23, 2012 when Burrows filed a petition to dissolve the marriage in Snohomish County Superior Court. (CP 2231-38) The action was precipitated by DeGon's attempt to obtain a domestic violence restraining order against

Burrows. (See RP 19-20, 386, 391) DeGon's petition was dismissed with prejudice because her allegations were not credible. (Ex. 2)

B. Both parties are well-educated and highly intelligent, but suffer from mental health challenges. Their children also have special needs.

1. Burrows suffers from depression and anxiety, which he treats with medication and regular therapy.

Burrows was born in England and graduated from Cambridge University with a Ph.D in high energy physics in 1980. (RP 394; see also Ex. 36 at 2) He joined the European Space Agency in 1984 to work on the Hubble telescope. (RP 395) He remained with the agency until 2000 when he resigned due to major depression resulting from the end of his first marriage, which "basically crashed [his] life" when his first wife returned to England with their children from that marriage. (RP 388-89, 396)

Burrows was still depressed when he and DeGon began dating the same year, but the parties married in April 2001, and Burrows did not suffer another major depression until 2008, after a multi-million dollar business deal that he and DeGon had entered into fell through and the parties became mired in litigation with another company. (RP 385, 386-87, 389, 403, 405-06, 416, 787) Another episode occurred in 2010, when DeGon "disconnected" from the

family, spending weekends away from the family and hours on the phone working or socializing when she was at home. (RP 390, 464-65) Believing DeGon was having an affair (which she denied), Burrows became depressed. (RP 390, 464, 902)

By summer 2010, DeGon had temporarily moved out of the family home. (RP 419, 464-65) DeGon claimed she moved from the family home in Mukilteo to a friend's home in Belltown because it was closer to her job in Issaquah. (RP 902-03, 937-38, 946) Burrows fell deeper into depression. (RP 390) DeGon told him that she expected to return home one day and find him dead. (RP 420)

Despite being aware of Burrows' mental state, DeGon left the children, then ages 8, 7, and 4, in his care for approximately six months while she lived in Belltown, visiting the children only every other weekend. (RP 390, 464-66) The trial court found that DeGon's decision to leave the "family home for a period of six months and abandon[] her children, focusing on her own needs, while Dr. Burrows was falling into a depression over the break-up of their relationship" was one example in a "pattern of child neglect" by DeGon. (Finding of Fact (FF) 2.19(k), CP 54)

Burrows suffered another major depression after the parties separated in 2012. He had been feeling stressed due to DeGon's

emotional abuse, and his therapist recommended a “trial separation” to reduce the chance of him falling into another major depression. (RP 390, 434; Exs. 48) Burrows went to England to visit family, and indeed felt better after being away from DeGon. (RP 434-35) However, DeGon used Burrows’ absence as an opportunity to obtain an *ex parte* restraining order preventing him from any contact with her and the children except by email. (RP 190, 435-37)

The order was eventually dismissed with prejudice because the commissioner did not find credible DeGon’s allegations that Burrows was violent and abusive. (Ex. 2) Nevertheless, this caused Burrows to fall into a major depression, and he voluntarily admitted himself into a hospital in England. (RP 436) At the end of the dissolution trial, the trial court also rejected DeGon’s claims that Burrows was violent, finding “that there is no evidence in the record to support” her claim. (FF 2.19(e), CP 51) Instead, the trial court found that “Ms. DeGon intentionally cut off Dr. Burrows from having contact with the children” without basis. (FF 2.19(j), CP 53) The trial court found that DeGon engaged in the “abusive use of conflict” by seeking a domestic violence protection order based on unfounded claims that Burrows was violent. (FF 2.19(g), CP 52)

The last major depression occurred during the dissolution action. At the time, Burrows had been representing himself *pro se* and DeGon insisted on communicating with him directly, rather than through her attorney. (RP 98-102; CP 2241-42¹; Ex. 35) The stress of the upcoming trial, DeGon's unwanted contact, and the fact that he was unable to fill his prescription for anti-depression medication because DeGon had terminated his health insurance (which DeGon denied), caused Burrows to fall into another major depression. (RP 98-102, 204-05, 393-94, 460, 469 718, 750-52; CP 2241-42) The trial date was subsequently continued, and Burrows obtained counsel. (RP 359)

Burrows acknowledged these episodes of depression, and described himself as a "high functioning depressive." (RP 392) Although the trial court found that Burrows "may suffer from Bipolar 2 disorder" (FF 2.19(b), CP 50), Burrows denied being "bipolar," explaining that his depression usually arises out of stress and

¹ This declaration from Burrows' treating physician was admitted as Ex. 35 at trial. (RP 269-70) Although Ex. 35 is not listed as an admitted exhibit on the Clerk's Exhibit List (CP 485) it was referenced repeatedly during trial and relied upon by the trial court. (*See e.g.* RP 518, 983; 6/13 RP 5)

disappointment rather than brain chemistry. (RP 389, 390, 576)² Burrows acknowledged, however, that to avoid any further depressive episodes, he must constantly and vigilantly take medication. (RP 393, 460)

The trial court found that the symptoms of Burrows' depression are "treatable and that he has voluntarily engaged in treatment." (FF 2.19(c), CP 50; *see also* RP 203) The trial court found that "Dr. Burrows has remarkably good insight into his mental illness, his need for treatment and finds he is willing and able to take medications and continue engaging in necessary individual therapy with a mental health treatment provider to treat his symptoms. Once major stressors are removed from him, Dr. Burrows is a highly functioning person who is clearly capable of parenting his children." (FF 2.19(d), CP 51)

The parenting evaluator agreed with the trial court's assessment, testifying that Burrows is "stable and able to parent as long as he is medicated." (RP 203) Burrows' doctor also reported

² Dr. Maiuro testified that he believed that Burrows "very likely" had "bipolar II," but suggested it be looked at more carefully by his treating physician. (RP 847) Burrows acknowledged that he had also been diagnosed as bipolar in 2000, during the breakup of his first marriage. (RP 567) Burrows disagreed with the bipolar diagnoses based on the opinion of other professionals. (RP 576)

that due to treatment, “Dr. Burrows is presently stable and strong enough to begin full-time parenting of his children.” (FF 2.19(d), CP 5; *see also* CP 2239-42; Ex. 35) DeGon also acknowledged that Burrows “is a fabulous father” when he is well, and described his relationship with the children as “warm and wonderful.” (RP 664)

2. DeGon suffers from personality issues similar to a personality disorder that she refuses to acknowledge, and that caused her to abuse Burrows during the marriage.

DeGon, like Burrows, is well-educated and highly intelligent, but also suffers from mental health difficulties. She has an MBA from Arizona State, and is a highly compensated executive recruiter. (RP 397-98) Although the trial court did not find that DeGon suffered any major mental illness, it acknowledged that she had personality features consistent with “Histrionic Personality Disorder with Narcissistic Traits and Obsessive Features” as diagnosed by Dr. Roland Maiuro, who had been appointed to perform psychological evaluations on both parties. (FF 2.19(f), CP 51, *citing* Ex. 36 at 11; *see also* RP 863)

Dr. Maiuro reported that based on diagnostic testing, DeGon falls within a range of individuals who “attempt to dominate, browbeat, or control others.” (FF 2.19(f), CP 52, *citing* Ex. 36 at 13) “Dr. Maiuro noted that Ms. DeGon’s emotional and personal needs

can interfere with her judgment, resulting in a violation of personal boundaries and unhealthy behavior.” (FF 2.19(h), CP 52, *citing* Ex. 36 at 13) Based on his evaluation, Dr. Maiuro concluded that DeGon likely engaged in “acts of psychological or emotional abuse.” (RP 863; Ex. 36 at 14)

The trial court found Dr. Maiuro’s diagnosis was consistent “with the evidence presented in this case.” (FF 2.19(h), CP 52) During the marriage, DeGon hounded Burrows about matters both small and large, at all hours, even when she knew he was struggling with stress and depression. (RP 287-88, 293-94, 341; Ex. 86) After they separated, Burrows asked DeGon to not contact him due to the stress it caused him, but she ignored his requests and sent him repeated emails. (RP 100-02, 458-60) The trial court found “that Ms. DeGon engaged in repeated behaviors that appear to have been directly designed to push Dr. Burrows past the breaking point. She engaged him endlessly (day and night) in discussions about the break up of their relationship. She was aware of the fragility of his mental health and seemed to lack empathy for it and how her behavior and the continued conflict made it worse.” (FF 2.19(h), CP 52)

While she had primary care during the pending dissolution proceedings, DeGon would purport to “negotiate” with Burrows for

additional time with the children, and then at the last moment revoke her agreement. (RP 103, 105, 110-15, 309, 499-500, 506-08; Ex. 85) The trial court expressed concern that “Ms. DeGon continues to use access to the children as a bargaining chip at best, and at worst, as a means of controlling Dr. Burrows.” (FF 2.19(j), CP 53)

Burrows testified to DeGon’s emotional and sexual abuse at trial. Burrows believed that DeGon “got off on degrading and humiliating [him] with [his] ‘permission.’” (Ex. 36 at 5) Dr. Maiuro reported that “Dr. Burrows was at times vulnerable and dependent, due to his mental illness and desire to please Ms. DeGon.” (FF 2.19(f), CP 52; Ex. at 21) This resulted in the parties engaging in consensual (and sometimes nonconsensual) BDSM sexual activities. (RP 648) It is not necessary for respondent to repeat here the testimony concerning one nonconsensual incident in particular, except to note that Burrows testified that these abuses were the reason his doctor believed that Burrows was showing signs of Post Traumatic Stress Disorder (PTSD) and anxiety. (RP 648-49; *see also* CP 2241-42; Ex. 35; Ex. 36 at 18-19)

At trial, DeGon did not dispute Burrows’ description or perception of the nonconsensual incident described at RP 648. Instead, DeGon challenged Dr. Burrow’s allegations of abuse in an

unsuccessful motion for reconsideration, asserting that their sexual activities were always consensual. But as the trial court found, despite advance notice of Burrows' claims, DeGon "did not vigorously dispute or defend against these claims at trial. In fact, she sought to limit questions about this subject when her witness [] was cross-examined." (CP 49-50)

The trial court noted that Dr. Maiuro had characterized these sex acts as both "abusive" and "degrading and potentially health endangering for Dr. Burrows, concluding that these experiences and his relationship with Ms. DeGon rendered Dr. Burrows vulnerable and traumatized." (FF 2.19(h), CP 52, *citing* 36 at 20, 21) In concluding that "Ms. DeGon's actions intentionally traumatized Dr. Burrows on an emotional and physical level," the trial court quoted from Dr. Maiuro's report that "Ms. DeGon was aware of [Dr. Burrows'] characteristics and vulnerabilities, but nonetheless pushed the limits of sexual freedom, experimentation to a degrading and punitive level. It is these special circumstances that make the behavior abusive in quality. It is amplified by the high levels of coercive control that she evidenced on the DVI, a specialized measure of abusive tendencies and conduct." (FF 2.19(f), CP 52, *quoting* Ex. 36 at 21)

The trial court made a specific finding that DeGon abused Burrows, and that it was “clear to the Court from Dr. Burrow’s words and demeanor on the witness stand, that he was traumatized by these incidents and that he believes he suffers from PTSD as a result of it.” (FF 2.19(h), CP 53) The trial court acknowledged that there was a dispute as to whether Burrows “actually suffers from PTSD,” but found it “is not important to the overall disposition of this case. The evidence clearly showed that Dr. Burrows was traumatized and felt emotionally and physically abused by Ms. DeGon, and that Ms. DeGon appears to lack insight into her behavior and its effect on him.” (CP 53)

Unlike Burrows, who the trial court found had insight into his mental illness and actively sought treatment, the trial court found that DeGon had less insight. (*See* FF 2.19(f), CP 51) The trial court found that DeGon lacked “self-awareness” and had a “tendency to deny, minimize, or under-report” anything that did not portray her in the most favorable light. (*See* FF 2.19(f), CP 51, *citing* Ex. 36)

3. All three children have special needs.

At the time of trial, the children were ages 12, 11, and 8. (CP 22) The parenting evaluator believed all three children had special needs. (RP 72)

The older son exhibited behavioral issues and lacked social skills. (RP 73) Both Burrows and the children's pediatrician believed that some of the older son's behavior may be because he is on the autism spectrum, for which he should be tested. (RP 73, 77)

DeGon described the older son as having a "temper," and being under "tremendous stress." (RP 663, 664) He was once banned from the school bus after "terrifying girls" on the bus. (RP 438-39) More recently, the older son became agitated and damaged one of the parties' vehicles with a sledgehammer and destroyed some plants in the garden with a pick axe – an act that "horrified" the parenting evaluator. (RP 149-51) This incident occurred after the parties separated, while the children were in DeGon's primary care. (RP 151) The parenting evaluator believed DeGon exercised poor judgment by leaving these tools accessible to the older son after this incident. (RP 151)

The older son was also aggressive towards his younger brother. (RP 436-37, 456-57; *see also* Ex. 29) The older son bullied his brother and once deliberately slammed his foot in a car door. (RP 456-57, 459) Burrows had built a separate bedroom so that the younger son no longer had to share a room with his older brother.

(RP 433) After the parties separated, DeGon moved the younger son back into the same bedroom with his older brother. (RP 433)

Burrows expressed concern that DeGon left the older son home alone with his younger siblings. Burrows described an incident where he attempted to Skype with the three children, who were home alone, and could see the brothers fighting. (RP 436-37, 577-78) Burrows, who was in England at the time, felt “powerless.” (RP 437, 578)

The younger son has fewer behavioral issues than his older brother, but is “way below grade level” in his reading and has a visual processing deficit. (RP 74-75, 82; *see* Ex. 29) Possibly as a result of these neurological delays, the younger son has been diagnosed with adjustment disorder with anxiety and a depressive disorder. (RP 82, 456)

The younger son reported to his pediatrician that he had once been “prepared to knife himself,” but his older brother stopped him in time. (RP 87-88; Ex. 26) DeGon was aware of this incident, but failed to inform Burrows, who learned about this incident for the first time from the older son. (RP 88) The older son also admitted to cutting himself, even though he denied being suicidal. (RP 78-79)

The daughter has fewer issues than her brothers. She is a “little bit below grade level” and had severe speech delays when she was younger. (RP 75, 431)

4. DeGon neglected the children’s mental health and medical needs, while interfering with Burrows’ attempt to get the children appropriate care.

Despite reports by both the parenting evaluator and the children’s pediatrician, DeGon minimized the children’s issues. (See RP 151-52, 156-58, 163-64, 167-68, 231-32; Ex. 41) For instance, when the pediatrician told her that the children had some “very pressing medical and emotional needs,” DeGon asked the doctor to “minimize [her] recommendations as much as possible because she just couldn’t take on any more.” (Ex. 41) At the same time DeGon was avoiding following through with the pediatrician’s recommendations, she was also trying to block Burrows’ ability to make medical decisions for the children. (See Ex. 41) The children’s pediatrician reported that DeGon informed her repeatedly that Burrows was prohibited from making any medical decisions for the children, which in fact was not true. (RP 156-57; Ex. 41)

The parenting evaluator also reported that DeGon failed to follow through with her recommendation that the children attend regular counseling. (RP 151-52, 163-64, 167-68, 231-32) The

parenting evaluator testified that DeGon tends to wait for a crisis before reacting to the children's needs. (RP 231-32) As a result, the parenting evaluator recommended that Burrows be given sole decision-making on the children's mental health issues. (RP 151-52, 167-68, 231-32)

The trial court found that DeGon neglected the children by refusing "to seek mental health counseling for [the sons] after both have exhibited serious conditions – [older son]: cutting, manipulation/aggressiveness toward his siblings, obsession with *Slenderman* character³; and [younger son]: suicidal ideations – requiring ongoing therapy." (FF 2.19(k), CP 53) The trial court also found that "Ms. DeGon tends to minimize the impact that [the older son]'s abusive behavior has on his younger brother and sister, and has, left them in his care placing them in danger." (FF 2.19(k), CP 53)

The trial court found that DeGon was also neglectful because she failed "to seek medical treatment" when the older son injured his

³ According to the parenting evaluator, *Slenderman* is a mythical creature, who can cause "memory loss, insomnia, paranoia, coughing fits (nicknamed, "slendersickness"), photo/video distortions and can teleport at will." (Ex. 29 at 19). The older son has reported that he believes *Slenderman* is real. (Ex. 29 at 19) The older son has frightened other students by discussing *Slenderman* in "great detail" at school. (Ex. 29 at 19)

leg during her residential time. (FF 2.19(k), CP 53-54) Burrows described seeing the older son the following day, and he could “barely walk.” (RP 452-53) Burrows took the older son to a doctor, who treated him for a fracture. (RP 452) Although DeGon disputes the severity of this injury, the trial court found Burrow’s report of this incident credible. (See FF 2.19(k), CP 53-54)

The trial court found that the “sum” of DeGon’s actions, which include leaving the children in 2010 while Burrows was suffering from depression, failing to seek counseling for the children, failing to protect the younger children from the older son, and failing to seek medical treatment for the older son, “constitutes a pattern of child neglect for which restrictions in the parenting plan are warranted.” (FF 2.19(k), CP 54)

C. The parties collaborated to sell a business that DeGon started, along with software that Burrows developed. The sale fell through.

When the parties married in 2001, Burrows was unemployed after leaving the European Space Agency. (RP 395-96) By 2002, Burrows had begun working for Jet Propulsion Laboratory, where he remained employed until 2005 when the “work dried up.” (RP 396-97) Burrows worked from home while at Jet Propulsion Laboratory,

allowing him to care for the sons, who were then still infants. (RP 406-07)

At the same time that Burrows left Jet Propulsion Laboratory, DeGon was trying to develop software with another company to use in MetaJiva, a recruiting business that she started during the marriage. (RP 400) Because Burrows was unable to find consistent contract work in his field, he decided to collaborate with DeGon to work on software for her business. (RP 401) This also allowed him to continue to work from home and help care for the children, with the assistance of a nanny, while DeGon worked outside of the house. (RP 409-10)

During the summer of 2005, Burrows wrote software called AgileRecruiter that matched prospective employers with job seekers. (RP 401, 694-95) MetaJiva became successful using this software, and the parties incorporated the business in 2006. (See RP 401-02) DeGon held 51% of the stock and Burrows 49%. (RP 401-02)

In 2007, the parties sold MetaJiva to another company, Solutions IQ. (RP 402) Solutions IQ bought both the software and MetaJiva for \$3 million, to be paid over time. (RP 402-03, 601-03) The deal fell apart a year later due in part to conflict between DeGon, who had been designated as a Vice President, and Solutions IQ. (RP

403-05, 417) The parties were then forced into litigation. (RP 403-05, 416)

The parties eventually settled with Solutions IQ in late 2010. (RP 415-16) As a result, the parties received some money, and MetaJiva and the AgileRecruiter software were returned to them. (RP 415-16) Upon its return, Burrows continued to develop AgileRecruiter. (RP 380, 416, 610)

AgileRecruiter and its database became a point of contention during the dissolution action. DeGon had wanted control over the software, while Burrows wanted to continue to work on and improve it. (RP 493-99) Burrows was concerned that if DeGon had control over it, she would allow a third party to essentially “reverse engineer” the software, making AgileRecruiter worthless. (RP 540-41, 594, 620-21) Under temporary orders, Burrows was granted the right to continue developing the software, while DeGon was granted the right to use the software for her work, although she continued to complain that she could not use it. (CP 1794-96; RP 697)

At trial, Burrows testified that he believed that DeGon had already allowed third parties access to the confidential source code for AgileRecruiter. (RP 540-41, 620-21, 698) DeGon denied the charge. (RP 621, 641) Burrows testified that he no longer wished to

develop the software and agreed it could be awarded to DeGon. (RP 544, 620-21) Neither party was certain of the software's current value. Burrows believed it had a *de minimis* value, especially if DeGon allowed third parties access to its source code. (RP 539-44, 597, 621) DeGon testified that it was worth \$1 million, based on its value when it was previously sold to Solutions IQ, and asked that it be awarded to Burrows. (RP 737)

In determining AgileRecruiter's value, the trial court considered both parties' proposed values, as well as information regarding the earlier use of the software by Solutions IQ. (FF 2.8(b), CP 43-35) The trial court found the value of AgileRecruiter, including the database, was \$80,000. (FF 2.8(b), CP 44) The trial court reasoned that since there had been a "fee of \$10,000 per month for use of the program. Even assuming 50% of the value was in the database, which is probably low, that would amount to an annual value of \$60,000. The database is usable beyond a single year. Accordingly, ascribing it a value of \$80,000 is not unreasonable in light of the value placed on it by Solutions IQ." (FF 2.8(b), CP 44) The trial court also reasoned that its value was "likely slightly below 10 percent of its original value" when it was sold to Solutions IQ for

\$1 million, making the trial court's value of \$80,000 "an appropriate valuation." (FF 2.8(b), CP 45)

D. By the time of trial, Burrows' ability to work was impacted, in part due to his mental health, and DeGon was working less than full-time.

While still working on AgileRecruiter, Burrows began performing reviews for NASA on a part-time basis in 2009. (RP 410-15, 610) Burrows could perform these reviews at home, which allowed him to continue to help care for the children. (RP 411) Burrows earned approximately \$60,000 in 2013, working part-time. (RP 412-13, 415)

By the time of trial in May 2014, Burrows' ability to continue performing reviews for NASA was in question. (RP 525) Burrows had "disappeared" for a month during his last review because he had fallen into a major depression when he had no access to his medication. (RP 525) Burrows was eventually able to finish the review after resuming his medication, but he believed his reputation had been damaged. (RP 525) Further, Burrows is a British citizen with a green card. (RP 525-26) Due to recent Homeland Security restrictions, NASA is limiting individuals working on their reviews to American citizens. (RP 525-26)

In any event, Burrows testified that even if he could return to NASA, he could only work part-time. (RP 518) His physician recommended that due to his recent mental health issues, Burrows should not work full time. (RP 518, 633; CP 2241-41; Exs. 35, 69)

After the business deal fell through, DeGon continued her work as an executive recruiter. In 2010 through 2011, she worked for Intellectual Ventures full time, earning \$15,000 to \$20,000 per month. (RP 417-18) DeGon was either fired or resigned from Intellectual Ventures. (CP 610) By the time of trial, Ms. DeGon was working for Kaman Engineering Services less than full time for an annual salary of approximately \$72,000. (RP 711, 742)

E. After a 7-day trial, the trial court designated Burrows as primary residential parent, divided the parties' assets and liabilities, and granted Burrows short-term maintenance.

Burrows filed a petition to dissolve the parties' marriage on July 23, 2012. (CP 2233-38) Prior to trial in the dissolution action, Burrows sought a domestic violence restraining order against DeGon because he could not handle the stress of continued contact with her, particularly because she persisted in contacting him when he asked her to stop. (RP 634-35, 644-45) Because the dissolution trial was upcoming, the motion was dismissed "without prejudice to raise at impending trial." (Ex. 14)

On May 12, 2014, the parties appeared for a 7-day trial before Snohomish County Superior Court Judge Millie Judge. The issues at trial were parenting, maintenance, property distribution, and Burrows' request for a restraining order.

The trial court designated Burrows as the primary residential parent of the parties' three children and granted him sole decision-making. (CP 26, 27-28) The trial court acknowledged both parties' shortcomings, including their mental health issues, the fact that it believed that both parents had engaged in the abusive of conflict, and that it believed that Burrows had spoken negatively about DeGon in front of the children. (CP 23; FF 2.19(l), CP 54) However, it found that restrictions were warranted against DeGon because of "episodes of child neglect by the mother," "denying a parent access to the children by the mother," and "acts of abuse by the mother against the father." (CP 23; FF 2.19(l), CP 54)

The trial court provided unsupervised residential time for the children with the mother on alternating weekends Thursday after school until return to school on Monday. (CP 23) The trial court also granted Burrows a restraining order against DeGon after concluding that she "intentionally traumatized Dr. Burrows on an emotional and

physical level.” (FF 2.19(j), CP 53; CP 238-40) The order is to expire on February 23, 2027, when the youngest child turns 18. (CP 238)

The trial court awarded monthly child support of \$1,946.50 to Burrows for all three children. (CP 14) The trial court declined to impute full-time income to Burrows because his doctor recommended that he only work part-time. (FF 2.20, CP 55) The trial court found that if he worked full time, Burrow could earn an average of \$9,666 monthly; it then imputed part-time income to him at \$6,666. (FF 2.20, CP 55)

The trial court “conservatively” imputed full-time income to DeGon at \$8,800 monthly because she was working 80% time or 30 hours per week at \$55 per hour. (FF 2.20, CP 55) This amount is significantly less than the \$15,000 to \$20,000 monthly she had been earning at Intellectual Ventures during the marriage. (RP 417-18) The trial court found that “given Ms. DeGon’s work history, education and experience,” DeGon was “voluntarily under-employed and understating her income.” (FF 2.20, CP 55) The trial court also imputed an additional \$900 in monthly income because it found that DeGon was underreporting her other sources of income, including fees from private clients and underreported bonuses and/or stock received from her employer. (FF 2.20, CP 55-56)

After finding that the family residence was community property, the trial court awarded it to Burrows. (FF 2.8(a), CP 42-43; CP 40) The trial court awarded the AgileRecruiter software and database to DeGon at a value of \$80,000. (FF 2.8(b), CP 44-45; CP 39) After distributing the parties' other assets and liabilities, the trial court awarded DeGon an equalizing judgment of \$75,000. (CP 38)

The trial court awarded short-term maintenance to Burrows of \$1,800 per month for two years. (CP 34) In making its decision, the trial court found that Burrows "is in the process of recovering from a severe depression and is presently unable to work more than part-time pursuant to his doctor's orders." (FF 2.12, CP 47) The trial court also acknowledged that it was questionable whether or when Burrows could return to NASA because of the new Homeland Security restrictions and the damage to his reputation from his last mental health crisis. (FF 2.12, CP 47) The trial court found that it may "take Dr. Burrows up to 24 months of time to re-establish himself in the work force, given the challenges he faces." (FF 2.12, CP 47) The trial court also questioned "whether he will be able to return to full-time work [] given his age and recovering mental and emotional conditions." (FF 2.12, CP 47)

The trial court found that DeGon had the ability to pay maintenance because she has an MBA degree, has worked with many Fortune 500 companies, has many high-level contacts in the business, and demonstrated an ability to earn a six-figure salary. (FF 2.12, CP 48) The trial court found that a “modest support payment will allow Dr. Burrows to maintain some semblance of the lifestyle that was established by the parties during their marriage, until such time as he is able to get back to work full-time.” (FF 2.12, CP 48)

DeGon filed a motion for reconsideration and/or new trial. (CP 85) The trial court granted the motion in part by making minor changes to the decree that are reflected above, and amending its findings of fact. (CP 58-59) DeGon appeals those orders.

III. ARGUMENT

A. The trial court properly crafted a parenting plan based on the substantial evidence before it. The trial court’s decision is consistent with the statute and was made with the best interests of the children in mind.

Trial courts are given broad discretion to fashion a parenting plan based upon the children's best interests, after consideration of the statutory factors. *Marriage of Jacobson*, 90 Wn. App. 738, 743, 954 P.2d 297, *rev. denied*, 136 Wn.2d 1023 (1998) (*citing Marriage of Littlefield*, 133 Wn.2d 39, 52, 940 P.2d 1362 (1997)). Discretion is abused only if the decision is manifestly unreasonable or based on

untenable grounds. *Jacobson*, 90 Wn. App. at 743. This is no doubt a unique case because both parents have mental health issues, and the trial court found that they both engaged in conflict. However, this “uniqueness” is why the trial court should be given deference in its decision.

“Every family law case is unique. Each family faces different challenges, and trial court judges are responsible for crafting orders and plans that take those challenges into account.” *Marriage of Chandola*, 180 Wn.2d 632, 663, ¶ 74, 327 P.3d 644 (2014) (Owens, dissenting). “Parenting plans are individualized decisions that depend upon a wide variety of factors, including culture, family history, the emotional stability of the parents and children, finances, and any of the other factors that could bear upon the best interests of the children.” *Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003). Accordingly, “trial courts must necessarily be allowed broad discretion in custody matters, because so many of the factors to be considered can be more accurately evaluated by the trial judge, who has the distinct advantage of seeing and hearing witnesses, and is in a better position to determine their credibility.” *Chatwood v. Chatwood*, 44 Wn.2d 233, 240, 266 P.2d 782 (1954).

Here, after a 7-day trial, the trial court properly designated the father as the primary residential parent and granted him sole decision-making. (CP 26, 27-28) The trial court found factors under RCW 26.09.191(3) warranted restrictions in the parenting plan, including granting sole decision-making to the father. (CP 23) Specifically, the trial court found that the mother had neglected the children, denied the father access to the children, and abused the father. (CP 23) These findings are fully supported by substantial evidence. (*See* § II.B, *supra*)

In any event, the mother's residential time is not "restricted." The mother is allowed unsupervised residential time with the children four overnights every other weekend. (CP 23) The only actual "restriction" on the mother is that she is not allowed to participate in decision-making for the children. (CP 27-28) This ruling is based not only on the .191 factors the trial court found, but because the father opposed mutual decision-making and the trial court found his opposition reasonable. (CP 28) The mother does not assign error to this finding and it is a verity on appeal. *Marriage of Petrie*, 105 Wn. App. 268, 275, 19 P.3d 443 (2001) (findings are verities when appellant fails to assign error to the findings).

Further, there is no legal or factual support for the mother's claim that her residential time was "unconstitutionally restricted." (App. Br. 41) "A parenting plan that complies with the statutory requirements to promote the best interests of the children" does not raise an issue of constitutional magnitude or violate a parent's constitutional rights. See *Katare v. Katare*, 125 Wn. App. 813, 823, 105 P.3d 44 (2004), *rev. denied*, 155 Wn.2d 1005 (2005). Because the parenting plan here complies with RCW 26.09.191 and RCW 26.09.187, and was crafted with the children's best interests in mind, this Court should affirm.

- 1. The children suffered as a result of the mother's neglect, which warranted designating the father as the primary residential parent and granting him sole decision-making.**

In challenging the trial court's decision, the mother argues that there was an "insufficient showing of harm to justify restrictions." (App. Br. 32) But "the trial court need not wait for actual harm to accrue before imposing restrictions on visitation." *Katare v. Katare*, 175 Wn.2d 23, 36, ¶ 23, 283 P.3d 546 (2012), *cert. denied*, 133 S.Ct. 889 (2013). "Rather, the required showing is that the danger of damage exists." *Katare*, 175 Wn.2d at 36, ¶ 23.

In this case there was more than a "danger of damage." There was substantial evidence that as a result of the mother's "pattern of

child neglect” (FF 2.19(k), CP 53), the children had indeed been harmed. (See § II.B.3, .4, *supra*) Because the mother neglected to obtain necessary and recommended mental health counseling for the children, they showed signs of serious mental health conditions, including aggression, cutting, manipulation, and suicidal ideation. (See § II.B.3, .4, *supra*)

Further, each of the mother’s arguments challenging the trial court’s parenting plan is premised on her claim that other evidence contradicting the trial court’s findings should have been given more weight. (See App. Br. 37-41) For instance, the mother argues that there was evidence from the children’s school that the children were in fact doing well in their mother’s care. (App. Br. 39-40) But there was also conflicting evidence that the children were not doing well. (See § II.B.3, .4, *supra*) Although the school reported that the older son was currently “showing socially acceptable behavior,” (RP 877-78, 882) there was evidence that this might be a “new strategy” by him to become the “teacher’s pet” and “traffic controller in his class [so that he] can tell another student to take five if the student is his enemy.” (Ex. 29 at 14) Thus, the trial court properly found that the older son needed mental health counseling to correct what appeared to be signs of manipulative behavior. (See FF 2.19(k), CP 53)

Based on the evidence that it found more credible and on which it placed greater weight, the trial court properly crafted a parenting plan that was in the children's best interests. The trial court's rejection of the mother's evidence is not a basis for reversal. This Court's "role or function is not to substitute our judgment for that of the trial court or to weigh the evidence or credibility of witnesses." *Marriage of Rich*, 80 Wn. App. 252, 259, 907 P.2d 1234, *rev. denied*, 129 Wn.2d 1030 (1996).

The mother also argues that restrictions were not warranted because neither Dr. Maiuro nor the parenting evaluator recommended restrictions on the mother's residential time. (App. Br. 38) But the trial court was free not to follow the advice of these professionals if it believed that their recommendations were not supported by the evidence or in the children's best interests. See *Fernando v. Nieswandt*, 87 Wn. App. 103, 107-08, 940 P.2d 1380, *rev. denied*, 133 Wn.2d 1014 (1997). While the trial court should consider the recommendation of an evaluator, it is not bound by it. *Marriage of Swanson*, 88 Wn. App. 128, 137-38, 944 P.2d 6 (1997), *rev. denied*, 134 Wn.2d 1004 (1998). Instead, the trial court must independently weigh the parties' comments and criticisms of the evaluator's recommendations, and make its own assessment of the

children's best interests. *Swanson*, 88 Wn. App. at 138. This is exactly what the trial court did here.

2. The trial court's parenting plan was not based on either parent's "sexual preferences" or on the father's PTSD.

The mother's argument that the trial court abused its discretion in entering its parenting plan is essentially her claim that the trial court should not have believed the father's testimony that he had been subjected to nonconsensual sexual activities and felt traumatized after years of abuse at the hand of the mother. (*See App. Br. 34-35*) But credibility determinations are left to the trier of fact and are not subject to review. *Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003).

The fact that the father may have previously consented to certain sexual activities does not mean that he consented to every sexual activity. And when the father testified that he had not consented during the incident that he described at RP 648, and felt traumatized by it, the trial court in its proper role as fact finder believed him. *Burrill*, 113 Wn. App. at 868. In finding that the mother abused the father, the trial court was also free to believe Dr. Maiuro's initial report that the mother had known of the father's

vulnerabilities “but nonetheless pushed the limits on sexual freedom, experimentation to a degrading and punitive level.” (Ex. 36 at 21)

The mother complains that she is being punished for her “sexual preferences” and that the trial court showed “disgust for DeGon’s sexual activity by requiring that she seek a mental health evaluation with a sexual addiction specialist.” (App. Br. 37) But this is a recommendation that was made by Dr. Maiuro, whose recommendations the mother largely agreed with. (RP 693) As Dr. Maiuro noted, “although there is no evidence that the children were exposed to the couple’s atypical sexual activity, it would be prudent to have reassurance that the mother has improved insight and the ability to ‘take it or leave it.’ This would protect and responsibly shelter the children from any feared untoward influences should she introduce potentially new domestic partners to the home in the future.” (Ex. 36 at 23-24) Under these circumstances, it was wholly proper for the trial court to order the mother to undergo a mental health evaluation with a sexual addiction specialist.⁴

Finally, the mother complains that “emotional abuse is not domestic violence as defined by RCW 26.50.010(1) and cannot be

⁴ Contrary to the mother’s claim on appeal (App. Br. 25), the evaluation was not a “pre-condition” to the mother exercising residential time with the children. (See CP 23, 25)

used as a basis for restricting Ms. DeGon’s residential time.” (App. Br. 35-36)⁵ But the trial court did not impose limitations on the mother because of domestic violence under RCW 26.09.191(2)(a)(iii) (the parent’s residential time with the child shall be limited if it is found that the parent has engaged in [] a history of acts of domestic violence as defined in RCW 26.50.010(1)”). (CP 22) Instead, it found a basis for restrictions under RCW 26.09.191(3), because “a parent’s involvement of conduct may have an adverse effect on the children’s best interests.” (CP 23) Specifically, the trial court found that the mother engaged in abusive use of conflict, neglected the children, denied access to the children to the father, and abused the father. (CP 23) These findings are all supported by substantial evidence. (See § II.B, *supra*)

The trial court’s findings under RCW 26.09.191(3) support the parenting plan crafted by the trial court. Because of the conflict between the parties and the father’s fear of the mother due to years of abuse (regardless of whether it resulted in PTSD), the trial court

⁵ Although the trial court used the term “domestic violence” in its oral ruling, it did not make a finding of domestic violence in its amended written findings of fact. (See CP 49-54) “If the oral decision conflicts with the written decision, the written decision controls.” *Grieco v. Wilson*, 144 Wn. App. 865, 872, ¶ 16, 184 P.3d 668 (2008) *aff’d sub nom. In re Custody of E.A.T.W.*, 168 Wn.2d 335, 227 P.3d 1284 (2010).

properly eliminated possible points of contact between the parties by limiting the exchanges of the children to every other weekend at school, and granting the father sole decision-making.

B. It was within the trial court’s discretion to grant the father’s request for a restraining order. The mother was given notice of the father’s request and an opportunity to defend.

The decision to grant or deny a restraining order is reviewed for abuse of discretion and substantial evidence. *Marriage of Chua & Root*, 149 Wn. App. 147, 154, ¶ 20, 202 P.3d 367, *rev. denied*, 166 Wn.2d 1027 (2009). On appeal, “substantial evidence is the quantum of evidence sufficient to persuade a rational, fair-minded person the premise is true. In determining the sufficiency of evidence, an appellate court need only consider evidence favorable to the prevailing party. In evaluating the persuasiveness of the evidence and the credibility of witnesses, [the court] must defer to the trier of fact.” *Marriage of Akon*, 160 Wn. App. 48, 57, ¶ 26, 248 P.3d 94 (2011) (citations omitted).

As a preliminary matter, the mother is wrong when she claims that the trial court entered a “domestic violence protection order.” (App. Br. 41) The trial court entered a restraining order under RCW 26.09.050(1), not a protection order under RCW ch. 26.50. (*See CP*

34, 238-40) RCW 26.09.050 grants the trial court authority to “make provision for any necessary continuing restraining order.” The trial court was not required to make any specific findings under RCW ch. 26.50 to enter its restraining order. Instead, the trial court found that a restraining order was necessary because the mother “intentionally traumatized Dr. Burrows on an emotionally and physically level.” (FF 2.19(i), CP 53) This was more than an adequate basis to grant the father a restraining order.

Here, the mother does not seriously contend that there was no factual basis to grant the father a restraining order. Instead, she largely rehashes the same factual arguments she made in objecting to the parenting plan, in particular that the father consented to every sexual activity between the parties. (*See App. Br. 43-44*)

Recognizing that she has no factual basis to refute the restraining order, the mother resorts to arguing that she had no “notice” or an “opportunity to be heard” before the restraining order was granted, thus the trial court should have granted her a new trial to present evidence. (*App. Br. 41-42*) But the record simply does not bear out her claim.

The mother knew that the father was raising the issue of abuse, because he reported it to both Dr. Maiuro and the parenting

evaluator during the evaluation process. (Exs. 29, 36) Further, more than two months before trial, the father filed a separate petition for a domestic violence protection order. (See Ex. 14) Although a temporary order was denied, it was “without prejudice to raise at impending trial.” (Ex. 14) Thus, the mother had notice that the father would likely renew his request for a restraining order at trial.

The father also gave notice that he was seeking a restraining order in both his trial brief (CP 515) and in his counsel’s opening statement at trial. (RP 14) During the trial, the father presented evidence recounting the bases for his request for a restraining order, which included that the mother had threatened him with a gun, incidents of nonconsensual sex, and that when asked, she had refused to stop contacting him by email. (RP 644-48) At no point did the mother seek to exclude this evidence.

The trial court noted that the mother made “no request for a continuance [] to allow more time to address these allegations” if she believed it was necessary. (CP 49-50) Thus, the mother impliedly consented to having this issue tried by the trial court. See *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 26, 974 P.2d 847 (1999) (in determining whether a matter not plead was tried by consent, the reviewing courts looks at “whether the issue was mentioned before

the trial and in opening arguments, the evidence on the issue admitted at the trial, and the legal and factual support for the trial court's conclusions regarding the issue”).

Further, regardless of the fact that the father had not sought a restraining order in his original petition for dissolution, the trial court had discretion to consider this issue at trial. In fact, had it refused to do so, it would have been considered reversible error. *See Marriage of Neumiller*, 183 Wn. App. 914, 335 P.3d 1019 (2014).

In *Neumiller*, the trial court refused to consider evidence of the wife’s claim that the parties had been in a committed intimate relationship before their marriage because it was not plead in the original petition for dissolution. Division Three reversed, holding that there was “no surprise” to the husband. *Neumiller*, 183 Wn App. at 923, ¶ 22. “The facts concerning the parties’ premarital relation was well known to both.” *Neumiller*, 183 Wn App. at 923, ¶ 22. Further, in a joint pretrial report, the wife asserted that certain pre-marriage assets were community property, giving the husband “notice that the couple’s relationship at that time was at issue because she did not agree it was his separate property.” *Neumiller*, 183 Wn App. at 923, ¶ 22. Division Three remanded with directions

for the trial court to consider evidence of the parties' committed intimate relationship. *Neumiller*, 183 Wn App. at 923, ¶ 24.

Likewise here, there was “no surprise” to the mother that the father would be asking for a restraining order. The trial court properly considered evidence presented at trial supporting entry of the restraining order and properly refused to consider the mother’s evidence that she sought to present *after* trial as part of her motion for reconsideration. *Marriage of Tomsovic*, 118 Wn. App. 96, 109-10, 74 P.3d 692 (2003) (a party cannot rely on evidence in a motion for reconsideration that could have been obtained earlier and presented at trial).

Finally, the mother argues that the trial court abused its discretion in entering the restraining order because it “implicates” her “right to the care, custody, and management of her children.” (App. Br. 42) But the restraining order only restricts her contact with the father, not the children. (See CP 238: “Name of Protected Children: Does not apply”) As the trial court acknowledged, the restraining order was specifically “tailored to allow DeGon to engage in school and extracurricular activities with the children, while minimizing the potential future conflict between the parties and protecting Dr. Burrows from future harassment or abuse.” (CP 50)

The trial court properly entered a restraining order against the mother. Because the evidence that she presented in her motion for reconsideration was evidence that she could have presented earlier, the trial court properly denied her motion for reconsideration.

C. The trial court properly imputed income to the mother for purposes of child support.

A trial court's award of child support, including its imputation of income to a voluntarily unemployed or underemployed parent, is reviewed for an abuse of discretion. *Marriage of Shui & Rose*, 132 Wn. App. 568, 588, ¶ 35, 125 P.3d 180 (2005), *rev. denied*, 158 Wn.2d 1017 (2006). Trial court decisions regarding child support will seldom be changed on appeal; a parent who challenges such decisions must show that the trial court manifestly abused its discretion, and when there is no abuse of discretion, the trial court's decision will be upheld. *Marriage of Booth*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990).

Here, the trial court properly found the mother voluntarily underemployed because she worked less than full-time when she has a history of full-time employment at a higher wage. (FF 2.20, CP 55) After finding the mother voluntarily underemployed, the trial court could have imputed income to the mother at her "historical rate of pay" (RCW 26.19.071(6)(b)) – between \$15,000 and \$20,000

monthly, the year before the parties separated. (RP 417-18) *See DewBerry v. George*, 115 Wn. App. 351, 368, 62 P.3d 525, *rev. denied*, 150 Wn.2d 1006 (2003) (affirming trial court's decision imputing income to father at his historical rate of pay as an executive and not the full-time wages of a long shoreman). Instead, the trial court exercised its discretion and imputed her monthly income at only \$8,800 based on full-time hours at her current rate of pay. RCW 26.19.071(6)(a).

The mother claims that the trial court should not have imputed income to her unless it found that she was voluntarily underemployed for purposes of reducing child support. (App. Br. 46) But this finding is only necessary if the parent is "gainfully employed on a full-time basis." RCW 26.19.071(6). The trial court did not find that the wife was "gainfully employed on a full-time basis" because it found she was employed less than full-time. (FF 2.20, CP 55) In any event, because the trial court also found that the mother failed to report other sources of income available to her, including "income from other clients, rental income, bonuses or stock" (FF 2.20, CP 55), this implies that the mother was in fact trying to reduce her child support obligation. Thus, the trial court properly imputed income to the mother in establishing child support for the parties' three children.

D. The trial court properly awarded maintenance to the father, whose mental health condition impacted his ability to work.

An award of maintenance is discretionary, and will not be disturbed on appeal absent a showing that the trial court abused its discretion. *Marriage of Luckey*, 73 Wn. App. 201, 209-10, 868 P.2d 189 (1994). The trial court’s discretion in awarding maintenance is “wide;” the only limitation on the amount and duration of maintenance is that, in light of the relevant factors under RCW 26.09.090, the award must be “just.” *Luckey*, 73 Wn. App. at 209.

Here, the trial court did not abuse its discretion in awarding “modest” short-term monthly maintenance of \$1,800 for two years to the husband. The wife’s argument that the trial court erred by “imputing” her income when calculating maintenance (App. Br. 44-45) ignores the full context of the trial court’s decision and its substantial discretion to determine maintenance. The trial court not only considered the wife’s actual and potential income and child support obligation, but also considered the husband’s health, employability, current income, and receipt of child support. (FF 2.12, CP 47-48)

Contrary to the wife’s assertion, the parties were not on “equal” footing after she pays child support to the husband. (App.

Br. 45) Although the trial court imputed the husband's income at \$6,660 for purposes of child support (FF 2.20, CP 55), he in reality had zero income. While he had been working at NASA before trial, the husband testified that unless and until he became a U.S. citizen he could not continue working for the agency. (RP 525-26) The trial court found that the husband had "skill and scientific expertise," but acknowledged that it might take him "up to 24 months to re-establish himself in the work force, given the challenges he faces." (FF 2.12(3), CP 47)

The trial court properly considered both parties' actual and potential income in awarding maintenance. The trial court's decision was well within its discretion and its findings are supported by substantial evidence.

E. Trial court's valuation of the AgileRecruiter software was supported by the evidence.

The wife fails to establish that the trial court abused its discretion by valuing the AgileRecruiter software and database at \$80,000. (App. Br. 46-47) A trial court does not abuse its discretion by assigning values to property within the scope of the evidence. *See Marriage of Soriano*, 31 Wn. App 432, 435, 643 P.2d 450 (1982). In this case, the husband testified that the value of the software was unknown or *de minimis* and the wife testified that it was worth \$1

million. (RP 539-44, 597, 621, 737) Unremarkably, now that this asset was awarded to the wife, she claims on appeal that it was worth much less than she proposed at trial. The trial court properly considered both parties' values, as well as other evidence, to find that the software and database was worth \$80,000. (See FF 2.8(b), CP 43-45)

F. The trial court properly characterized the family residence as community property, as it was acquired a month before the parties' marriage, the community paid down the mortgage, and the wife quitclaimed her interest to the community.

The trial court properly characterized the family residence as community property. Regardless of the fact that it was acquired one month before marriage in the wife's name, there was evidence that both parties contributed to its acquisition with the intent to make it community property. (See § II.A., *supra*) Furthermore, after the parties married, the community paid the mortgage payments. Even if the burden was on the husband to prove the family residence was community property by clear and convincing evidence, he did so through his testimony and evidence that the wife signed a quitclaim deed including the husband's name on the title of the property to "create community property." See *Estate of Borghi*, 167 Wn.2d 480,

488-89, ¶ 14, 219 P.3d 932 (2009) (a quit claim deed may be used to transform the character of property) (Exs. 100, 101).

Even if the trial court should have characterized the residence as the wife's separate property, "mischaracterization of property is not grounds for setting aside a trial court's allocation of liabilities and assets, so long as the distribution is fair and equitable." *Marriage of Griswold*, 112 Wn. App. 333, 346, 48 P.3d 1018 (2002) (quotation omitted), *rev. denied*, 148 Wn.2d 1023 (2003). "Where there is mischaracterization, the trial court will be affirmed unless the reasoning of the court indicates (1) that the property division was significantly influenced by characterization and (2) that it is not clear that the court would have divided the property in the same way in the absence of the mischaracterization." *Griswold*, 112 Wn. App. at 346 (quotation omitted); *see also Marriage of Konzen*, 103 Wn.2d 470, 478, 693 P.2d 97 ("This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors."), *cert. denied*, 473 U.S. 906 (1985).

Even if the family residence should have been considered the wife's separate property (with a substantial community lien and separate lien in favor of the husband), it is unlikely that the trial

court's decision to award it to the husband, with whom the children primarily reside, would change. RCW 26.09.080(4) (in distributing assets of the parties whether "community or separate," the court may consider the desirability of awarding the family home to the spouse with whom the children reside the majority of the time). The trial court properly characterized the family residence as community property, and in any event, properly awarded it to the husband.

G. It was within the trial court's discretion to refuse to order the husband to reimburse the wife for payment of his share of the medical insurance premiums prior to the date that he was ordered to pay his share, and order her to be responsible for the expert fees.

The first and only order specifically establishing an obligation on the husband to pay his share of the medical premiums was entered on December 21, 2012. (Ex. 6: "Father shall pay his own medical premium directly to the provider, starting 1/1/2013") Thus, the trial court did not abuse its discretion in declining the wife's request that the husband reimburse her for his share of the premiums paid by her prior to that date. The trial court also did not abuse its discretion in making the wife responsible for the expert witness fees.

The appropriateness of the trial court's rulings on both issues is evident by the trial court's finding that "Ms. DeGon has had access

to and utilized community assets to fund her own expenses and attorney's fees during these proceedings to a greater degree than Dr. Burrows." (FF 2.10, CP 45-46) Further, the trial court acknowledged that because the wife was awarded cash of \$75,000, that would also assist her in paying the expert's fees. (FF 2.10, CP 46) The trial court did not err in making these discretionary decisions.

H. This Court should deny the wife's request for attorney fees and award attorney fees to the husband.

This Court should deny wife's request for attorney fees, and instead award attorney fees to the husband based on his need and the wife's ability to pay under RCW 26.09.140. The husband was awarded maintenance to support him while he is limited in his ability to work due to his mental condition to lessen the disparity in the parties' households. The husband should not be forced to use his property or maintenance awards to pay attorney fees to defend this meritless appeal of discretionary decisions by the trial court. The husband will comply with RAP 18.1(c).

IV. CONCLUSION

This Court should affirm and award attorney fees to respondent.

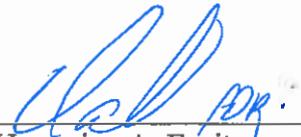
Dated this 6th day of October, 2015.

SMITH GOODFRIEND, P.S.

V. FREITAS LAW, PLLC

By: 

Catherine W. Smith
WSBA No. 9542
Valerie Villacin
WSBA No. 34515

By: 

Veronica A. Freitas
WSBA No. 19405

Attorneys for Respondents

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 6, 2015, I arranged for service of the foregoing Brief of Respondent to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Veronica A. Freitas V. Freitas Law, PLLC 210 Summit Avenue East Seattle, WA 98102	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Erin C. Sperger Erin Sperger, PLLC 1617 Boylston Avenue Seattle, WA 98122	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 6th day of October,
2015.


Tara D. Friesen

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**Superior Court of Washington
County of Snohomish**

In re:

CHRISTOPHER BURROWS,

Petitioner,

and

ALICIA DEGON

Respondent.

No. 12-3-02040-1

**Amended Findings of Fact and
Conclusions of Law after
Reconsideration**

I. Basis for Findings

The findings are based on trial held before the Honorable Millie M. Judge on May 12 through May 21, 2014 in Snohomish County Superior Court, and after receipt of the Respondent's "Motion for Reconsideration Or in the Alternative a New Trial or to Re-Open For Additional Testimony and Evidence," and Petitioner's Legal Memo In Response to Motion to Reconsider, and Respondent's Reply to the same. The Court grants in part, and denies in part, Respondent's motions as set forth in the Court's letter decision dated September 18, 2014.

At trial, Petitioner was represented by Veronica Freitas and Respondent was represented by Aaron L. Shields. Jeannette Heard, Guardian ad litem, also appeared and testified. Both parties presented witnesses and evidence was admitted. Based on the evidence presented at trial, the Court enters the following Findings of Fact and Conclusions of Law in this matter.

II. Findings of Fact

Upon the basis of the court records, the court *Finds*:

2.1 Residency of Petitioner

The Petitioner is a resident of the state of Washington.

2.2 Notice to the Respondent

The respondent appeared.

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

App. A

1 **2.3 Basis of Personal Jurisdiction Over the Respondent**

2 The facts below establish personal jurisdiction over the respondent. The respondent
3 is currently residing in Washington and the parties resided in this State throughout
4 their marriage.

5 **2.4 Date and Place of Marriage**

6 The parties were married on April 14, 2001 in the State of Arizona.

7 **2.5 Status of the Parties**

8 Husband and wife separated on July 23, 2012.

9 **2.6 Status of Marriage**

10 The marriage is irretrievably broken and at least 90 days have elapsed since the date
11 the petition was filed and since the date the summons was served.

12 **2.7 Separation Contract or Prenuptial Agreement**

13 There is no written separation contract or prenuptial agreement.

14 **2.8 Community Property**

15 The parties have real or personal community property that has been equitably divided
16 as set forth in the parties' Decree of Dissolution. Said Decree is incorporated by
17 reference into these findings of fact as though set forth fully herein. With regard to
18 specific property, the Court makes the following findings of fact:

- 19 a. Single family residence. With regard to parties' single family residence, there
20 was a dispute as to whether the asset was properly characterized as separate or
21 community property. The single family residence is located at 12320 Scenic
22 Drive, Edmonds, WA. Based upon the competing valuations presented by each
23 party, the Court places a present market value on the residence of \$450,000.
24 Respondent argues that the residence is her separate property and should be
25 awarded to her. Having considered all of the evidence, the Court finds that the
26 Respondent has failed to show by clear cogent and convincing evidence that the
27 single family residence is the separate property of Alicia DeGon.

28 The Court finds that this asset is properly characterized as a community asset.
The property was purchased with the separate fund contributions of both spouses,
one month prior to their marriage. Although both contributed separate funds to
the purchase, title was put in the name of Alicia DeGon only. The evidence
demonstrates that the parties intended to create a community asset, but were
attempting to shield the property from claims from Dr. Burrow's ex-wife. This is
further bolstered by the fact that Ms. DeGon later executed a Quitclaim Deed

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 conveying title to the property to the Marital Community. (Exhibit 100, 101)
2 The evidence also establishes that throughout their marriage, the mortgage on the
3 property was paid for with community funds. The parties made no attempt to
4 maintain the property as a separate asset. Accordingly, the Court concludes that
5 the single family residence is properly characterized as a community asset.

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- b. AgileRecruiter™ Software. There was extensive evidence presented by both parties as to the value of this asset, however, no expert testimony was presented by either of them. The Software, Trademark and Source Code were awarded to Christopher Burrows as part of the settlement of a legal dispute with a company known as Solutions IQ. (Exhibit 67). AgileRecruiter™ is a multifaceted platform and software recruiting program designed by the parties in 2006, which allowed employees, employers and the recruiter to interface on a hosted website. The program consisted of a database of approximately 60,000 employee candidate names and their private contact information, a search engine that would allow the recruiter to mine through the database for potential candidates to fill open positions, and an employer area where client companies could see candidate resumes and other information submitted in application for their job openings. The product was owned by the parties' former corporation known as MetaJiva. Through the Company, Ms. DeGon worked as an executive level recruiter (CEO, CFO, etc.) for various high performing public and private companies.

15 The product and MetaJiva were sold to Solutions IQ in 2007. The deal required
16 that Solutions IQ pay MetaJiva \$10,000 per month for use of the software
17 program. The deal also included Alicia DeGon joining the company as a salaried
18 Vice President, and Dr. Christopher Burrows contracting with the company as a
19 consultant for \$100 per hour plus profit sharing. The total value of the deal was
20 approximately \$3 million. Eventually the relationship between the parties soured,
21 and their business deal was severed. As part of settling their disagreements,
22 Solutions IQ paid the parties the sum of \$525,000 in cash and released them from
23 their non-compete restrictions. Ownership of the trade names, trademarks and
24 domain names for AgileRecruiter™ and MetaJiva™ was transferred to
25 Christopher Burrows and Alicia DeGon, respectively. The MetaJiva Corporation
26 was dissolved and presently has no value. The software program was also
27 transferred back to Burrows and DeGon for their full use and improvement in
28 2011. However, the parties were required to delete names from the database that
belonged to Solutions IQ. (Settlement Agreement at Par. 3).

Since obtaining the rights back to Agile Recruiter, Dr. Burrows testified that the program was hosted on Rackspace (an online webhost) and that it has been consistently available to Ms. DeGon on the web for use as a recruiting tool since it was returned to them. Dr. Burrows has also been attempting to update the program given market competition. A serious point of conflict between the parties has been whether the program is ready for re-release in the marketplace.

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 Dr. Burrows thinks it is not in an updated form; Ms. DeGon thinks that it could
2 have been released and/or sold. Dr. Burrows believes that Ms. DeGon has
3 disclosed the confidential source code to third parties at some point within the
4 past year or so, limiting the value of the program and its source code severely.
5 Given that concern, Dr. Burrows placed a value on it of approximately of \$0 to
\$10,000. He stated that it could be awarded to Ms. DeGon, as he no longer has
any use for it, assuming its source code has been shared.

6 The Court has been asked to also value the AgileRecruiter™ database. Dr.
7 Burrows testified that the program has been available for use by Ms. DeGon in
8 her recruiting work since 2011. The Court finds that despite advances in
competitor products on the market, the AgileRecruiter program and database itself
has value.

9 In determining a reasonable valuation, the Court has considered the testimony of
10 the parties and the evidence presented. First, the court analyzed the actual market
11 transaction between MetaJiva™ and Solutions IQ. Second, the Court considered
12 the testimony of both parties. Having considered both, the Court concludes that
the database is worth at least \$80,000.

13 First, the Court looks to the transactions that took place between the parties and
14 Solutions IQ for an indication of its value. Solutions IQ was paying a fee of
15 \$10,000 per month for use of the program. Even assuming 50% of the value was
16 in the database, which is probably low, that would amount to an annual value of
17 \$60,000. The database is usable beyond a single year. Accordingly, ascribing it
a value of \$80,000 is not unreasonable in light of the value placed on it by
Solutions IQ.

18 Second, the Court considers the arguments of the parties. In making a valuation,
19 Ms. DeGon testified that

20 “AgileRecruiter is in my opinion the culmination of many years of
21 my personal career. . . . Reflecting the value created by actual
22 transactions over time, the sale of the company, the [unintelligible]
the company, and also (settlement) the tax return performance in
23 which I had the asset to use, what I was able to do with it, [I] think
it is worth about \$1 million.”

24 Ms. DeGon further testified that she felt the asset had been stolen from her by Dr.
25 Burrows and that she could not tolerate the risks and costs to re-commercialize it
26 as a product now. She stated, “I think Chris took it, I think he should keep it.” Dr.
27 Burrows testified that it had some value for use as a recruiting tool, but did not
specify a number. The Court finds that it is likely that at one time the
28 AgileRecruiter program was worth over \$1 million as stated by Ms. DeGon.

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 However, today, with advances in the marketplace and considering competing
2 technologies referred to by the parties such as "LinkedIn," the Court finds that
3 today's value is likely slightly below 10 percent of its original value. Accordingly,
the Court concludes that \$80,000 is an appropriate valuation.

- 4 c. At trial, Respondent sought the return of her wedding ring, which she claims is
5 presently in the possession of Petitioner. Dr. Burrows testified that the ring was
6 lost, likely in England. On reconsideration, the Court finds that the return of this
7 asset was omitted from the Court's earlier decision. The Court orders Dr.
Burrows to make a good faith effort to locate the ring and return it to Ms. DeGon
if found.

8 **2.9 Separate Property**

9 The parties have real or personal separate property which has been awarded to them
10 as set forth in the Decree of Dissolution. Said Decree is incorporated by reference
11 into these findings of fact as though set forth fully herein.

12 **2.10 Community Liabilities**

13 The parties have incurred community liabilities which have been allocated as set forth
14 in the parties' Decree of Dissolution. Said Decree is incorporated by reference into
these findings of fact as though set forth fully herein.

15 Chase Credit Card. On reconsideration, Respondent sought to have the Court re-
16 characterize Petitioner's credit card debt as a separate liability, since certain charges
17 arose after the parties separated. The Court declines to do so. It is clear from the
18 evidence and testimony that both parties used community assets after separation for
their own use and to support the children during the pendency of the dissolution
action.

19 At separation, July 23, 2012, both parties took an equal sum of \$35,721 from
20 community assets and placed those funds in separate accounts for their own use and
21 living expenses. (Exhibit 116; Testimony of Christopher Burrows) Dr. Burrows
22 paid child support, living expenses and some of his attorney's fees from those funds.
23 When his funds ran short, he cashed out his Edward Jones retirement account in the
24 amount of \$31,624 and deposited those funds into his Bank of America bank account.
(Ex. 77) During the same time, Dr. Burrows was working only sporadically and did
25 not have access to the rest of the community's assets. He opened a Chase credit card
account and incurred new debt in the amount of \$19,865. Dr. Burrows testified that
Ms. DeGon charged approximately \$3,900 on that card for her own purchases.

26 Meanwhile, Ms. DeGon, having received the sum of \$35,721 from community assets
27 (Ex. 61), also received monthly child support payments from Dr. Burrows. (Ex. 62)

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The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 She retained control of her Edward Jones retirement account in the amount of
2 \$21,109, which is a community asset. (Ex. 65) During the pendency of this case, Ms.
3 DeGon took \$25,000 from another Bank of America account (#1879) for her own
4 living expenses, litigation costs and attorney's fees. On July 16, 2013, Ms. DeGon
5 also took out a home equity loan on the parties' single family residence in the amount
6 of \$50,000 for her use and deposited the cash in her Bank of America Account ("Hip
7 Moves" 8402). (Ex. 62; 77). During this time she was also working and receiving
8 funds from her job. Ms. DeGon paid health insurance premiums that should have
9 been paid by Dr. Burrows. (This is addressed separately, in Paragraph 2.11, below).
10 She also paid for \$7,300 in taxes owed to the IRS. (Ex. 141) She also paid over
11 \$65,000 in attorney's fees for her own legal representation using these funds.

12 Given that Ms. DeGon has had access to and utilized community assets to fund her
13 own expenses and attorney's fees during these proceedings to a greater degree than
14 Dr. Burrows, and the fact that Ms. DeGon used the Chase credit card for her own
15 purchases, the Court finds, therefore, that it is fair and equitable to characterize Dr.
16 Burrows' Chase credit card debt as a community liability which should be considered
17 as part of the division of liabilities in this case. The Court also finds that in light of
18 the financial positions of the parties, it is proper to award payment of costs of experts,
19 psychological evaluations, GAL fees and other court costs to Ms. DeGon. The Court
20 is also awarding her an equalizing payment from Dr. Burrows which will assist her in
21 paying for such costs.

22 **2.11 Separate Liabilities**

23 The parties have incurred separate liabilities which have been allocated as set forth in
24 the parties' Decree of Dissolution. Said Decree is incorporated by reference into
25 these findings of fact as though set forth fully herein.

26 Medical Insurance Premiums. It is uncontested that Petitioner was required to pay his
27 portion of his medical insurance premiums. On reconsideration, Respondent sought
28 to have the Court award as a separate liability payable to Ms. DeGon, the sum of
\$9,079.00 for alleged unpaid medical premiums. Respondent alleges that this sum
was proven at trial and directs the court to Exhibit 145. The Court also considered
Exhibits 5, 6 and 122 related to this issue, as well as the testimony of Dr. Burrows
and Ms. DeGon. Based on the evidence presented, it is clear to the court that Dr.
Burrows was not ordered to pay until January 1, 2013. Accordingly, back payments
for the period of August through December 2012 are not appropriately awarded to
Respondent. It is uncontroverted that Dr. Burrows paid \$533 each month for January
through March 2013 to Ms. DeGon to pay the insurance company for his portion of
the medical premiums. It is also clear from the evidence that Dr. Burrows paid
premiums in the amount of \$3,198 into the registry of the court for the months of
April through September 2013. Those amounts were awarded to Ms. DeGon.
Remaining, then, is the amount of \$3,475 for the period of October 2013 through

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 May 2014. (Exhibit 122) The Court finds that this amount should be awarded as a
2 separate liability owing to Respondent and was omitted from the original order.
3 Accordingly, reconsideration is granted as to this item.

4 **2.12 Maintenance**

5 The Court concludes that Dr. Burrows has a need for spousal maintenance and Ms.
6 DeGon has the ability to pay \$1,800 per month for 24 months beginning on July 1,
7 2014 through June 30, 2016. The Court's decision as to maintenance is based upon
8 the facts in evidence presented at trial and the factors set forth in RCW 26.09.090,
9 which are analyzed below.

- 10 1. Dr. Burrows is in the process of recovering from a severe depression and is
11 presently unable to work more than part-time pursuant to his doctor's orders. His
12 financial resources are severely limited at present, which is a marked departure
13 from his prior experience as a wage earner.
- 14 2. Second, with regard to his future employment outlook, Dr. Burrows holds a PhD,
15 and is an internationally known astrophysicist and apparently a self-taught
16 computer programmer. He has worked as a part-time consultant for NASA and
17 the European space agency. Most of his work consisted of scientific analysis and
18 review of grant proposals which he could perform from home, only traveling to
19 meetings a few times each year. In the past, he served as the primary caregiver
20 for the family's three young children, aided by the help of a nanny.

21 The evidence revealed that Dr. Burrows is a British citizen working legally in the
22 U.S. However, his ability to work for NASA in the future as a consultant may be
23 compromised by new Homeland Security restrictions on foreign nationals
24 working on such project. Additionally, Dr. Burrows believes that his reputation
25 may have been damaged during his last consulting contract with NASA, due to
26 mental health crisis.

- 27 3. Dr. Burrows wrote the software source code for the Agile Recruiter program
28 owned by the parties, and is likely able to use this skill and his scientific expertise
in the future for employment purposes. Accordingly, the Court finds that it may
take Dr. Burrows up to 24 months of time to re-establish himself in the work
force, given the challenges he faces. It is unknown when he will be able to return
to full time work. Given his age and recovering mental and emotional conditions,
the Court finds that he is in need of maintenance.
4. The Court considers the fact that prior to dissolution, the parties enjoyed an
upper-middle class lifestyle, where Dr. Burrows worked less than full-time.
According to the Respondent, their marriage of 13 years resulted in a large,
blended family of six children (some now adults from Dr. Burrows' first

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 marriage), who lived across two continents. According to Ms. DeGon, their
2 lifestyle included international travel, the enjoyment of music, ample enrichment
3 opportunities and the ability to pursue business ventures. The Court finds that a
4 modest support payment will allow Dr. Burrows to maintain some semblance of
the lifestyle that was established by the parties during their marriage, until such
time as he is able to get back to work full time.

- 5 5. The Court considers the ability of the Respondent to pay maintenance to the
6 Petitioner. Ms. DeGon has an MBA degree and has worked with many Fortune
7 500 companies as an executive-level recruiter. She has an impressive work
8 history, strong business acumen and many high-level contacts in the business
9 community. She has a demonstrated ability to earn a six-figure salary. Ms. DeGon
10 is also an experienced entrepreneur. As calculated in Paragraph 2.20 below, Ms.
DeGon's net monthly income is approximately \$6,298 after paying child support.
The Court concludes that she has sufficient funds to pay maintenance to the
Petitioner on a short-term basis of 24 months.

11 Based on all of the foregoing factors, the Court concludes that the Petitioner is in
12 need of, and Respondent has the ability to pay, maintenance in the amount of \$1,800
13 for a period of 24 months.

14 **2.13 Continuing Restraining Order**

15 A Continuing Restraining Order against the Wife is necessary as set forth in
16 Paragraph 2.19, below.

17 **2.14 Protection Order**

18 Does not apply.

19 **2.15 Fees and Costs**

20 There is no award of fees or costs to either party.

21 **2.16 Pregnancy**

22 The wife is not pregnant.

23 **2.17 Dependent Children**

24 The children listed below are dependent upon either or both spouses.

Name of <u>Child</u>	<u>Age</u>	Mother's <u>Name</u>	Father's <u>Name</u>
Jack	12	Alicia DeGon	Christopher Burrows
Simon	11	Alicia DeGon	Christopher Burrows

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The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

2 **2.18 Jurisdiction Over the Children**

3 This court has jurisdiction over the children for the reasons set forth below.

4
5 This court has exclusive continuing jurisdiction. The court has previously made child
6 custody, parenting plan, residential schedule or visitation determinations in this
matter and retains jurisdiction under RCW 26.27.211.7 This state is the home state of the children because the children lived in Washington
8 with a parent or a person acting as a parent for at least six consecutive months
immediately preceding the commencement of this proceeding.9
10 **2.19 Parenting Plan**11 The parenting plan signed by the court on this date is approved and incorporated as
12 part of these findings. As part of the parenting plan, the court finds that a Case
13 Manager should be appointed to serve as the sole method of communication between
the parties. Accordingly, a separate Case Management Order should be entered by
the Court.14 The following Findings of Fact relate specifically to and support the entry of
15 restrictions in Paragraph 3.10 of the Final Parenting Plan. Ms. DeGon originally
16 requested that these Findings of Fact be removed from the Parenting Plan itself and
17 placed within this document, which the court originally denied. On reconsideration,
the Court finds that it is more appropriate to place its Findings of Fact and
18 Conclusions of Law as to those issues within this Order, and has amended the
documents accordingly.19 Finally, on reconsideration, the Court was asked by Respondent to remove the RCW
20 26.09.191 restrictions, modify the mother's visitation to allow for additional
weekend(s), and to provide for joint-decision-making through the case manager. For
21 the reasons stated below, the Court finds that there is substantial evidence in the
record to support the imposition of .191 restrictions and to deny joint decision-
22 making.¹ Given the high level of conflict that exists between these two parties, there23
24
25 ¹ Respondent alleges on reconsideration that the Court had no basis to impose .191 restrictions or a continuing
restraining order against her. She now seeks to add new testimony and evidence into the record, or alternatively
26 a new trial, alleging that she did not have a fair opportunity to respond to Dr. Burrows' claims of physical and
emotional abuse, harassment or neglect of the children. The trial in this matter lasted over a period of 10 court
27 days. Dr. Burrows' claims were presented in his trial brief, during opening statements and closing arguments,
and during direct testimony from Dr. Burrows himself, as well as his adult son, Daniel Burrows. Information
28 about his claims of abuse was also presented through the testimony of the GAL and Dr. Maioro. Each of theseThe Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 is an ongoing need for a restraining order. The Court also believes that the residential
2 time has been appropriately allocated between the parties and that no further changes
3 to the Parenting Plan are necessary at this time. Accordingly, the Motion for
Reconsideration as to those three issues is denied.

4 Restrictions in the Parenting Plan. As to the restrictions imposed in the Parenting
5 Plan pursuant to RCW 26.09.191, the court enters the following findings of fact and
conclusions of law:

- 6
- 7 a. It is uncontroverted that each parent is highly intelligent, highly educated and
loves their children. However, they each suffer from mental health challenges
8 and have engaged in certain behaviors that necessitate the imposition of
restrictions relative to protecting the children.
- 9
- 10 b. For his part, it is uncontroverted that Dr. Burrows suffers from Major
Depressive disorder at times, mainly brought on by acute periods of distress
11 such as the collapse of his marriage and the loss of his children. (Exhibits 34,
36) He may also suffer from Bipolar 2 disorder, and was diagnosed with
12 PTSD by Dr. Shawn Morgan, PhD, his treating psychologist. (Exhibits 36).
Additionally, Dr. Burrows may suffer from a more generalized Anxiety
13 Disorder. (Exhibit 36 at p. 20) In the past, Dr. Burrows has suffered from
four episodes of major depression, several of which have resulted in voluntary
14 hospitalizations, caused by the break-up of his two marriages.
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- 16 c. Dr. Maioro indicated that Dr. Burrows may also, during periods of stress,
demonstrate some Narcissistic Personality Traits, Obsessive Compulsive
17 Personality Features and Dependent Personality Features. However, Dr.
Maioro noted that these are areas of personality "dysfunction" or disturbances
18 (meaning that they are transitory) rather than a compounding frank personality
disorder. (Exhibit 36) The evidence shows that Dr. Burrows' symptoms are
19 treatable and that he has voluntarily engaged in treatment. (Exhibit 34)
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22 witnesses was subject to cross-examination by Respondent's attorney. Ms. DeGon also testified after these
allegations were made and called a witness on her own behalf. Ms. DeGon did not vigorously dispute or defend
23 against these claims at trial. In fact, she sought to limit questions about this subject when her witness, Ms.
Baker-Anderson was cross-examined. No request for a continuance was made to allow for more time to address
24 these allegations. Accordingly, the Court finds that there is no basis to conclude that these allegations came as
any surprise to Respondent, or that she did not have every opportunity to address them either on cross-
25 examination, in her own case in chief, or during rebuttal. The Court finds that a separate, continuing
restraining order which sets forth the parameters of limited contact between the parties is in the best interests of
26 the children and the parties, themselves, given the high degree of conflict between them. The Court concludes
that the order has been tailored to allow Ms. DeGon to engage in school and extracurricular activities with the
27 children, while minimizing the potential future conflict between the parties and protecting Dr. Burrows from
future harassment or abuse.

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The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

- 1 d. The Court finds that Dr. Burrows has remarkably good insight into his mental
2 illness, his need for treatment and finds he is willing and able to take
3 medications and continue engaging in necessary individual therapy with a
4 mental health treatment provider to treat his symptoms. Once major stressors
5 are removed from him, Dr. Burrows is a highly functioning person who is
6 clearly capable of parenting his children. In fact, the Court finds that access to
7 his children is important to Dr. Burrows' continued recovery from his last
8 bout of depression. Dr. Shawn Morgan reports that Dr. Burrows is presently
9 stable and strong enough to begin full-time parenting of his children. (Exhibit
10 36)
- 11 e. As to Ms. DeGon's allegations that Dr. Burrows can become violent when
12 angry, the court finds that there is no evidence in the record to support such a
13 claim. Dr. Maioro concluded that Dr. Burrows is more likely to have an anger
14 and irritability problem than a domestic violence problem, directly related to
15 his compromised coping skills secondary to his mental conditions. Examples
16 of this include the throwing of a placemat and shoving a coffee cup across a
17 table when he was irritated. The evidence presented at trial supports the expert
18 psychologist's evaluation and was also demonstrated by the Father's filing
19 certain motions and writing letters demanding investigations based on
20 paranoid ideations. While Ms. DeGon would like to characterize these court
21 filings as intransigence, the Court finds that he was simply shutting down as
22 his mental state collapsed, and that some of her actions directly contributed to
23 this. However, the Court finds that some of Dr. Burrows' court filings also can
24 be fairly described as the abusive use of conflict, regardless of his mental
25 state.
- 26 f. For her part, Ms. DeGon does not suffer from an Axis I or major mental
27 illness, however she was diagnosed by Dr. Maioro as having a Histrionic
28 Personality Disorder with Narcissistic Traits and Obsessive Features. This
results in her making frequent demands for personal attention or protection
which come off as "overstated, self-serving, manipulative and testy at times."
(Exhibit 36) Ms. DeGon told Dr. Maioro that she did not feel she has any
need for mental health treatment in 2013. In discussing her Profile Validity,
Dr. Maioro cautioned that Ms. DeGon was less frank and open than Dr.
Burrows, and that as a result, the existing profile may understate the nature of
her problems. It may also reflect a tendency to become arrogant and
intolerant of other's failings when challenged. It also results in a tendency to
ignore limits imposed by others. Numerous examples of this behavior are
found in the record in this case. In evaluating Ms. DeGon for domestic
violence, Dr. Maioro noted that Ms. DeGon's response patterns on the
Truthfulness Scale were in the "problem range." He found that she is
considered limited due to poor self-awareness, a tendency to deny, minimize
or under-report and has a need to be seen in a favorable light. She scored in a

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 medium range for control issues. Dr. Maioro stated in his report that people in
2 this range attempt to dominate, browbeat or control others. In this case,
3 evidence was presented that this is exactly how Ms. DeGon related to Dr.
4 Burrows. Dr. Maioro reported that Dr. Burrows was at times vulnerable and
5 dependent, due to his mental illness and desire to please Ms. DeGon. He
6 stated:

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There is evidence that Ms. DeGon was aware of these characteristics and vulnerabilities, but nonetheless pushed the limits on sexual freedom, experimentation to a degrading and punitive level. It is these special circumstances that make the behavior abusive in quality. It is amplified by the high levels of coercive control that she evidenced on the DVI, a specialized measure of abusive tendencies and conduct. (Exhibit 36 at 21).

- g. The Court further finds that Dr. Maioro concluded that Ms. DeGon has a tendency to overstate and exaggerate claims about Dr. Burrow's behavior, consistent with her personality disorder. One example of this was the filing of a Petition for a Domestic Violence Protection Order against Dr. Burrows, on claims that were determined to be unfounded by the Commissioner. The Court finds that Ms. DeGon's filing of a Domestic Violence Protection Order and the filing of numerous pre-trial motions are fairly described as the abusive use of conflict.
- h. Dr. Maioro noted that Ms. DeGon's emotional and personal needs can interfere with her judgment, resulting in a violation of personal boundaries and unhealthy behavior. The Court finds that this is consistent with the evidence presented in this case, including the testimony of Jenny Heard, the GAL, Daniel Burrows, Christopher Burrows and various emails between the parties, such as that set forth in Exhibit 86. The Court finds that Ms. DeGon engaged in repeated behaviors that appear to have been directly designed to push Dr. Burrows past the breaking point. She engaged him endlessly (day and night) in discussions about the break-up of their relationship. She was aware of the fragility of his mental health and seemed to lack empathy for it and how her behavior and the continued conflict made it worse. Dr. Burrows reported to his doctors that he was subjected to both consensual and nonconsensual sadomasochistic sexual experiences by Ms. DeGon and others participating with her. Dr. Maioro characterized these sex acts as degrading and potentially health endangering for Dr. Burrows, concluding that these experiences and his relationship with Ms. DeGon rendered Dr. Burrows vulnerable and traumatized. (Exhibit 36 at 20). Dr. Maioro determined that such behavior was abusive. (Ex. 36 at p. 21) It is clear to the Court from Dr.

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 Burrow's words and demeanor on the witness stand, that he was traumatized
2 by these incidents and that he believes he suffers from PTSD as a result of it.²

- 3 i. Based upon the foregoing facts, the Court concludes that Ms. DeGon's actions
4 intentionally traumatized Dr. Burrows on an emotional and physical level. Dr.
5 Burrows is requesting a permanent No Contact Order between Ms. DeGon
6 and himself. The court finds that there is substantial evidence to support such
7 an order. However, the court finds that the order should expire after the
8 youngest child reaches the age of 18 years, at which time there would be little
9 need for further communication between the parties as to child-rearing issues.
- 10 j. After their separation and Dr. Burrows' return to the UK where he was
11 voluntarily hospitalized, the Court finds that Ms. DeGon intentionally cut off
12 Dr. Burrows from having contact with the children. The evidence in the
13 record establishes that Ms. DeGon continues to use access to the children as a
14 bargaining chip at best, and at worst, as a means of controlling Dr. Burrows
15 and third parties attempting to mediate their disputes. (See, e.g., Testimony of
16 the GAL, Ms. Heard, Testimony of Daniel Burrows and Christopher
17 Burrows, and numerous emails between the parties and members of the
18 Burrows family).
- 19 k. As to other grounds for .191 restrictions, the evidence presented reveals that
20 Ms. DeGon has engaged in a pattern of child neglect toward her children,
21 which has taken various forms. The common theme in this neglect is that Ms.
22 DeGon appears to minimize issues and fails to adequately care for their basic
23 health needs. Most serious of these is the fact that she has refused to seek
24 mental health counseling for Jack and Simon after both have exhibited serious
25 psychological conditions -- Jack: cutting and manipulation/aggressiveness
26 toward his siblings, obsession with the *Slenderman* character; and Simon:
27 suicidal ideations -- requiring ongoing therapy. This refusal to obtain
28 treatment has persisted even after the GAL recommended weekly therapy
several times, stressing its importance. Other examples were presented at
trial. Ms. DeGon tends to minimize the impact that Jack's abusive behavior
has on his younger brother and sister, and has left them in his care placing
them in danger. Dr. Burrows testified that he witnessed one such occasion
over Skype when he was in England, during which time he could see and hear
the children fighting and crying out at the hands of Jack, and no other adults
were present. Additionally, Ms. DeGon failed to seek medical treatment for
Jack after he jumped from a ladder and seriously injured his leg and was in

26 ²There is some dispute between Dr. Maioro and Dr. Shawn Morgan of the Everett Clinic as to whether Dr.
27 Burrows actually suffers from PTSD. The court finds this is not important to the overall disposition of this
28 case. The evidence clearly showed that Dr. Burrows was traumatized and felt emotionally and physically
abused by Ms. DeGon, and that Ms. DeGon appears to lack insight into her behavior and its effect on him.

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 obvious pain. Upon discovering this after school the next day, his father took
2 him to the doctor and it was determined that the leg was fractured. Lastly, in
3 2010, Ms. DeGon left the family home for a period of six months and
4 abandoned her children, focusing on her own needs, while Dr. Burrows was
5 falling into a depression over the break-up of their relationship. The Court
6 finds that the sum of these actions constitutes a pattern of child neglect for
7 which restrictions in the parenting plan are warranted.

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1. Based on the foregoing findings of fact, the Court concludes that both parties' conduct may have an adverse effect on the children's best interests because of the existence of the following factors:

- (1) The abusive use of conflict by Both Parties;
- (2) Episodes of child neglect by the Mother;
- (3) Denying a parent access to the children by the Mother;
- (4) Acts of abuse by the Mother against the Father; and
- (5) Derogatory statements by the Father about the Mother that could lead to the alienation of affection.

Accordingly, the Court concludes that restrictions should be imposed in Paragraph 3.10 of the Final Parenting Plan pursuant to RCW 26.09.191(3).

2.20 Child Support

There are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Court issued an Order of Child Support on June 13, 2014, accompanied by the Washington State Child Support Schedule Worksheet. On reconsideration, Respondent is seeking a recalculation of the parties' income, claiming that Respondent makes less than the amount imputed by the Court. In addition, the Respondent has asked the Court to recalculate the amount of credit awarded to Respondent for payment of health insurance and to include the maintenance award in the child support calculation. The Court re-examined the evidence and testimony at trial and finds that reconsideration should be granted on this issue because the Court finds it underestimated both parties' incomes.

Respondent argues that Dr. Burrows' income should have been based on the information set forth in the Petitioner's Financial Declaration (Exhibit 73). However, this Exhibit was not offered into evidence and the Court, accordingly, has not considered it. In determining Child Support, the Findings of Fact set forth in Paragraph 2.12(1),(2), (3) and (5) above, and also imputes deductions at the minimum rate for both parties. The Court has considered Exhibit 151, Petitioner's Financial Declaration filed in September, 2013. As of that time, Petitioner had earned \$77,406 for the year, but his household expenses were \$7,164 per month. He paid no tax and states that he will likely owe for past years, plus penalties and interest. For 2014, the

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 Respondent testified that he had no income, was working on updating the MetaJiva
2 software program at home with the hope that it could be monetized, but that he was
3 otherwise unable to work. During that time he was surviving on funds from his credit
4 card.

5 On reconsideration, the Court finds that an error was made in calculating both parties'
6 income.

7 The Court finds that on average, Dr. Burrow's full-time wage was \$116,000. At half-
8 time, this would be equal to \$80,000 annually or \$6,666 monthly. The Court should
9 have imputed wages to Dr. Burrows in this amount because his physicians have said
10 that he is able to work part-time and he has shown success as a consultant in the past.
11 However, the Court denies the Respondent's motion for reconsideration as to the
12 inclusion of maintenance as gross income in making the child support calculation.
13 The Court did not include spousal maintenance as part of his gross income. The
14 Court calculates spousal maintenance *after* it determines the child support obligation
15 of each party. See, *In re Marriage of Wilson*, 165 Wn. App. 333 (2011).

16 At trial, Respondent testified that she is presently working for Kaman Engineering in
17 Everett on a contract basis. (Exhibit 64) Her starting salary is \$3,461, paid bi-weekly
18 or annualized at \$90,000. Ms. DeGon's compensation is adjusted to reflect the fact
19 that she only works .80 FTE (or 30 hours per week) at a rate of \$55 per hour. The
20 company's offer letter states that additional compensation will be granted based on
21 Ms. DeGon generating "new streams of revenue directly related to your role and
22 responsibilities." In addition, as a regular, exempt employee, Ms. DeGon is eligible to
23 receive health care coverage, purchase company stock at 85% of market rate, and
24 participate in a 401K Plan with an employer match of 100% up to 5% of total
25 compensation. (Ex. 64) Ms. DeGon stated that she is also working with other clients
26 to supplement her income. She has provided the Court with no information as to the
27 income associated with those private clients. (Exhibit 59, 140)

28 At the time of trial, Ms. DeGon was also receiving monthly rental payments in the
amount of \$900 per month. (Exhibit 59) The Court has reviewed both Financial
Declarations presented by Ms. DeGon (Exhibits 59 and 140) and finds that neither
accurately reflects her income, when considering the totality of compensation that she
receives. Based solely on her potential salary if she were working full time, her
monthly income is \$6,600. Respondent's Financial Declaration does not declare
income from other clients, rental income, bonuses or stock. (Ex. 140). In response to
questions from the Court, Ms. DeGon testified that she was unable to state how much
she is making with any certainty, because it varies from month to month.

Given Ms. DeGon's work history, education and experience, the Court finds that she
is presently voluntarily under-employed, and understating her income. Accordingly,
the Court should have, and now does, impute income to her in the conservative

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 amount of full-time earnings at her current rate of pay pursuant to RCW
2 26.19.071(6)(a), which is \$8,800, plus an additional amount of \$900 per month,
3 representing other sources of income which she has not documented.³ These amounts
4 have been considered in determining child support.

5 Accordingly, the Court finds that it is just and reasonable to re-calculate both parties'
6 income. The Court declines to increase the amount of deductions from gross income
7 (calculated using only the lowest federal income tax rate), where neither party offered
8 the Court any testimony or evidence as to deductions at trial. The Court finds that a
9 Revised Child Support Worksheet should be adopted and a new Amended Child
10 Support Order signed by the Court.

11 **2.21 Other**

12 The Petitioner has noted in response to Respondent's reconsideration request that the
13 Court awarded a 2010 promissory note in the amount of \$25,000 to him, that he
14 disputes and believes is in the control of Ms. DeGon and should be awarded to her.
15 The Court agrees and will adjust this asset award accordingly.

16 **III. Conclusions of Law**

17 The court makes the following conclusions of law from the foregoing findings of fact:

18 **3.1 Jurisdiction**

19 The court has jurisdiction to enter a decree in this matter.

20 **3.2 Granting a Decree**

21 The parties should be granted a decree of dissolution.

22 **3.3 Pregnancy**

23 The wife is not pregnant.

24 **3.4 Disposition**

25 The court should determine the marital status of the parties, make provision for the
26 disposition of property and liabilities of the parties, make provision for any necessary

27 ³This amount includes income from unreported sources such as private recruiting contracts with other clients
28 (e.g., Neal Analytics, Whidbey Telecom and The Arnold Group, or others). (See, Ex. 59) It also reflects
unreported bonuses and/or stock received from Kaman Engineering Services authorized in her employment
contract (described in Exhibit 64), and/or rental income Respondent was receiving as of the time of trial.

The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435

1 continuing restraining orders, and make provision for the change of name of any
2 party. The distribution of property and liabilities as set forth in the decree is fair and
3 equitable.

4 **3.5 Continuing Restraining Order**

5 A continuing restraining order should be entered against Alicia DeGon protecting
6 Christopher Burrows until the youngest child reaches the age of 18. A separate no
7 contact order specifying the details of the restrictions imposed will be prepared and
8 entered by the court.

9 **3.6 Protection Order**

10 Does not apply.

11 **3.7 Attorney Fees and Costs**

12 GAL Fees shall be paid per the Judgment and Order re Guardian Ad Litem Fees and
13 Discharge of GAL entered on June 16, 2014. Each party shall bear their own costs of
14 suit and attorney's fees.

15 **3.8 Appointment of a Case Manager**

16 A case manager shall be appointed pursuant to a separate order of this court.

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18 Dated: October 30, 2014.

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20 _____
21 Judge of the Superior Court

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The Hon. Millie M. Judge
Snohomish County Superior Court
3000 Rockefeller Avenue, M/S 502
Everett, WA 98201-4060
Law Clerk: 425-388-3435