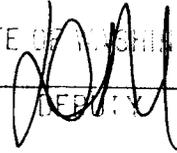


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COURT OF APPEALS  
DIVISION II

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**No. 40119-3**

**COURT OF APPEALS**

**DIVISION II**

**OF THE STATE OF WASHINGTON**

**Clyde Reed Jr., Appellant**

**v.**

**Catherina Y. Brown, Respondent**

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**BRIEF OF APPELLANT—November 19**

**Clyde H. Reed Jr  
16210 E Shore Dr  
Lynnwood, Wa  
98087**

Table of Authorities.....	Opening Page
Assignment of Error.....	1
Issues Pertaining to Assignment of Error.....	2
Standard of Review.....	3
Statement of the Case.....	3
Argument.....	16
Conclusion.....	49

**CASES**

125 Wn. 2 <sup>nd</sup> 413 <i>Federal Signal v Safety Factors</i> .....	18, 37, 43
137 Wn. 2 <sup>nd</sup> 933 <i>DGHI Enters v Pacific Cities Inc</i> .....	18, 21
42 Wn. 2 <sup>nd</sup> 621 <i>Peterson v Shoonover</i> .....	18
105 Wn. App. 168 <i>Marriage of Combs</i> .....	20, 22
92 Wn 2 <sup>nd</sup> 474 <i>State v Burke</i> .....	21
72 Wn. 2 <sup>nd</sup> 109 <i>JA Henderson v Bardahl Corporation</i> .....	28
130 Wn. App 39 <i>Regan v Dept of Licensing</i> .....	37
86 Wn 2d 432, 545 P 2d. 1193 <i>Morgan v Prudential Ins</i> .....	46
117 Wn.2d P2d.483 <i>State v McCormack</i> .....	27

**STATUTES**

26.26.130 (7).....	21
--------------------	----

26.09.191.....1,2,3,27,28,29,34,36,43,48,49  
26.09.187 (3).....1,2,3,23,24,25,28,44  
26.26.160.....19  
26.09.004 (2).....43  
26.09.260.....1,23,24

**RULES**

CR 52 (2) (B).....21  
CR 60.....18  
PCLR 3 (C).....12

### ASSIGNMENT OF ERROR

1. The trial court erred in failing to enter findings of fact and conclusions of law addressing primary residential placement, and instead relied on an oral ruling that the issue of residential placement had been decided already by the Armijo Court. The trial court erred in its interpretation of the Judgment and Order as an order of the Armijo court that primary placement had been decided, when its purpose was to achieve compliance by Brown with the court order to add Reed's name to the child's last name.
2. The trial court erred when it granted a motion in limine reliant on *Possinger v Possinger* 105 Wn App 326 (2001), which allows a court to grant a temporary plan and revisit the plan at the end of an interim period to make final disposition of parenting issues--applying the criteria of 26.09.187, rather than the criteria of 26.09.260...—yet the court indicated it was applying the criteria of 26.09.260 in it's oral ruling granting primary residence to Brown.
3. The trial court erred when it entered Findings and Conclusions that there were no 26.09.191 factors, yet excluded evidence through a motion in limine that would have showed '191' factors
4. The trial court erred in failing to articulate findings of fact and conclusions of law as regards the instability of Brown's lifestyle, in direct contrast to the requirements of Marybridge Hospital for an environment of stability and order.
5. The trial court erred when it failed to find that Brown's conduct as regards Tuscany's health constitutes neglect or substantial nonperformance of parenting functions
6. The trial court erred in failing to enter findings of fact and conclusions of law that Reed had demonstrated a strong, stable relationship with the child that substantially exceeded any demonstrated bond between the child and Brown.
7. The trial court erred in entering conclusions of law that are at odds with its findings of fact.
8. Pursuant to the Res Judicata, the trial court erred in entering a restraining order where the proceedings already addressed the same acts, transaction, and occurrences between the same parties.
9. The trial court erred failing to apply the "priority of action" rule where the first court to obtain jurisdiction over a case possesses exclusive jurisdiction to the exclusion of other coordinate courts.

### ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Must the trial court enter findings of fact/conclusions of law for material issues? Where there is an oral decision, but no

- findings/conclusions for a key issue, should the appellate court render a decision on the issue? Can a court exclude key evidence of 26.09.191 factors yet find there were no such factors present?
2. If a Judgment and Order is prepared to achieve compliance with requirements to include Father's name as part of child's last name, and coincidentally addresses residential placement by filling in a checkbox, can that inadvertency determine childhood residency?
  3. If the court grants a motion in limine based on a case that provides for applying the criteria for establishing a permanent parenting plan rather than the process for modifying a parenting plan, must it adhere to that process, and apply the criteria for establishing a parenting plan including 26.09.187 (3) Residential Provisions?
  4. Where there is medical testimony addressing the best interests of the child, and evidence that one parent's lifestyle is contrary to the conditions called for by the medical evidence, must a trial court find that such lifestyle is inconsistent with the child's best interest?
  5. Where the law clearly defines parenting functions to include health concerns, and the conduct of one parent demonstrates clear neglect of those concerns, must the trial court find substantial nonperformance of those parenting functions?
  6. Where there is demonstration by one parent of a parenting relationship where the strength, stability and nature of the relationship is shown to substantially exceed that shown by the other parent, must the trial court enter a finding to that effect?
  7. Can the trial court enter findings that clearly support the case of the father—with no findings in favor of the mother—yet enter conclusions that are not consistent with those findings—leaving primary residential placement with the mother?
  8. Can the petitioner be subjected to two different trials, in two different venues, involving the same offence, same parties, concurrently? Must the first court have exclusive jurisdiction?

#### STANDARD OF REVIEW

Reed asserts that the trial court erred in applying the law 26.26 in ruling that the Judgment and Order determined primary residential placement; in interpreting *Possinger v Possinger*; in consistency between finding of fact and conclusions of law; in interpreting Rules of Evidence ER 402, the

Priority of Action rule, CR 52 (2) B, PCLR 3C and CR 60. The Court reviews application of law and conclusions of law, as well as application of court rules, de novo; the standard of review should be de novo.

#### STATEMENT OF THE CASE

On May 27, 2006, about 1.5 years after their relationship began, CP 748 ARP 15 12/03/08 Catherina Brown requested Clyde Reed to come to her house to help her with landscaping. He said he had to work on an apartment building he owned; after she insisted he agreed that he'd spend two hours, from 8-10 a.m. ARP 19 12/03/08 (Armijo Report of Proceedings of December 3, 2008 Page 19) When finished Brown had other tasks for Reed, who resisted--she insisted. ARP 19 12/03/08 Eventually, around 4 p.m., they returned and were sitting in her driveway in his truck, he seeking to leave, she insisting that he mustn't, and refusing to leave his truck for almost an hour ARP 19-20 12/03/08. Mutual pushing ensued, eventually resulting in her falling from the open door of the vehicle; she came around to his side, and as he was attempting to roll up the window, she hit him in the face with closed fist, reached to the ignition, took his keys and walked a block to her mother's house. ARP 125-126 12/04/08 ARP 19-20 12/03/08 He drove away using spare keys. ARP 21 12/03/08 She called later, insisting that he return--she had left her cell phone in his truck. ARP 126 12/04/08 ARP 22-23 12/03/08 He did

return; she then asked him to take her to the airport; she had scheduled a trip to Miami. ARP 126 12/04/08 ARP 23 12/03/08 He did, but she missed her flight. ARP 23 12/03/08 ARP 126-127 12/04/08 She asked him take her to a hospital-- to have them look at her head she claimed she'd bumped. ARP 127 12/04/08 ARP 26 12/03/08 He did, and waited outside the emergency room at St. Francis for 4 hours, till after 1 a.m. ARP 25-26 12/03/08 Brown said she had been interviewed by police, at medical staff encouragement ARP 127 12/04/08. ARP 27 12/03/08 Two days later, he received an email from her, expressing regret and apologizing; she said she had tried to call him, but didn't think that he'd take the call. CP 783 ARP 29, 31-32 12/03/08 Reed and Brown resumed their relationship ARP 127 12/04/08. ARP 30 12/03/08 In July, she became pregnant with Tuscany. ARP 127 12/04/08 Several months later Reed received a letter from the Office of the City Attorney indicating that he was to be charged with domestic violence for his role in the incident *Id.* The record shows no participation by Brown in the prosecution for over a year. CP 774-779 Reed agreed to a Stipulated Order of Continuance, agreeing that he would take a batterer's assessment, pursue recommended treatment, attend a victim's impact panel, pay court costs, avoid illegal behavior, and avoid hostile contact with Brown, be monitored for compliance for two years, with dismissal following. CP 774-779 ARP 48 12/03/08 Reed rented an

adjustable hospital bed for Brown who was on bedrest at his house in Lynnwood ARP 28 12/04/08 ARP 128-129 12/04/08; he purchased a mini-refrigerator for her bedside and stocked it, rented a wheelchair, attended prenatal appointments and classes, shopped for and prepared foods that the doctor recommended. ARP 29 12/04/08 ARP 36 12/03/08 ARP 56 12/04/08 It was never enough; in one email, she told Reed that she was leaving the relationship because he had not brought her fruit before her breakfast at the hospital. CP 800 On February 14, 2007, Tuscany was born. ARP 133 12/04/08 The delivery proceeded without complication, but Brown had to go through an emergency post delivery operation; Reed was present for the entire procedure. ARP 32 12/04/08 ARP 134 12/04/08 ARP 43 12/03/08 Reed visited Tuscany at the hospital frequently, staying overnight, bringing requested Brown meals. ARP 31 12/04/08 ARP 44 12/03/08 Because the relationship was very negative, Reed had determined to minimize contact with Brown outside of public view particularly at his house ARP 75 12/03/08. When Brown was released, Reed came to the hospital to pick her up; she insisted on going to his house. ARP 35 12/04/08 ARP 135 12/04/08, He declined. ARP 55 12/03/08 She became enraged, shouting, ARP 36, 135 12/04/08, ARP 56 12/03/08 He quickly left; she called when he reached the parking lot, insisting that he return; he refused, and left. ARP 36, 12/04/08 That

evening, his brother, who lives in Olympia, called, saying Brown had asked him to pick her up at the hospital, and take her to Reed's house. ARP 36, 136 12/04/08 Reed left and stayed at a motel. ARP 32 12/02/08 Brown was taken to Reed's house, and stayed the night there. ARP 136 12/04/08 When he returned the next day she was gone. ARP75-76 12/03/08 Tuscany was released shortly thereafter. APR 76 12/03/08 Though concerned, Reed spent overnights with Brown and Tuscany over the next few weeks frequently. *Id.* After one argument, he left and did not return to her house for overnight stays, though he continued to attend to their needs ARP 77 12/03/08. Soon, Reed began visitation with Tuscany *Id.* In Reed's proceedings in Tacoma Municipal Court he had received a 'batterer's assessment' from the Social Treatment Opportunity Program (STOP) agency in Tacoma. ARP 58 12/04/08 ARP 45 12/04/08 Reed voluntarily began making child support payments in about 5/07 of \$750. ARP 59 12/04/08 ARP 138 12/04/08 Brown couldn't get work--Reed agreed to pay \$850 monthly (6/07) to help with her mortgage. CP 853p 39 ARP 139-139 12/04/08 On August 4, 2007, Brown, who hadn't shown up for the previous transfer was two hours late for a scheduled transfer at Southcenter ARP 79 12/03/08 CP 846-7. When Brown handed Tuscany to Reed, Tuscany began to cry, because he had not seen her for over a week, due to Brown's no-show. ARP 80 12/03/08 CP 846-7 CP 851-3 He asked

to soothe her; Brown said no, and took her ARP 80 12/03/08 CP 846-7 CP 851-3 Eventually Brown allowed him to hold her again ARP 80 12/03/08 CP 846-7 CP 851-3 Brown then required him to go to the adjacent Baby's R Us. ARP 81 12/03/08 CP 846-7 CP 851-3 He said he'd wait at Starbucks with Tuscany, and when time to pay came at the cash register, he'd meet her there, pay, and go. ARP 81 12/03/08 CP 846-7 CP 851-3 She demanded he accompany her into the store; he complied *Id.* She finished, he paid, they walked to her car together to get the diaper bag *Id.* Reed got it, walked to his car with the child, hoping he had completed the transfer. ARP 82 12/03/08 Instead, Brown followed him across the parking lot, to his car. ARP 82 12/03/08 CP 846-7 CP 851-3 Reed retrieved the carseat from the trunk, sat in the driver's seat, and affixed in the back seat--a process he had done many times. *Id.* Brown, standing over him, insisted on the return of the child, again. Reed said he was able to manage *Id.* Brown insisted *Id.* Upon compliance, Brown, standing over him while he was seated in the car, in an aggressive, confrontational tone, said he'd better adjust his attitude, 'get on the same page with her', how she would assure the only way he could see Tuscany was under paid supervision. *Id.* Reed remained seated, eyes cast downward, silent, through Brown's monologue *Id.* Given the hostile tone, Reed calmly returned the diaper bag, and drove away. ARP 152 12/04/08 Brown called him 15 minutes

later, and in voice-mail, insisted that he return for Tuscany, for visitation  
ARP 83 12/03/08. Reed did not pick up the call *Id.* Brown, in February,  
2008--used that event to charge violation of no hostile contact. CP 846-  
849 CP 851-854 On August 10, 2007, Reed had deposited the \$750 child  
support in Brown's account, but had not deposited the \$850 mortgage  
payment, when Brown called and said that, since he hadn't paid, she  
intended to accept a contract position in Chicago; she would be leaving the  
following Monday. ARP 84 12/0308 CP 846-849 CP 851-854 Reed  
objected that Tuscany would be without support in Chicago *Id.* Brown  
ignored him, confirming that she intended to go ARP 55-56 12/04/08.  
ARP 84 12/0308 CP 846-849 CP 851-854 Reed silently allowed her to  
finish, hung up the phone, called an attorney, and initiated an action to  
prevent her from taking Tuscany out of state pending completion of the  
actionCP 35-37 ARP 86 12/0308 Brown was served over the weekend, on  
August 11, 2007, outside St. Joseph's Hospital. Three days later, Reed was  
served with a Protection Order, charging him with DV in Pierce County  
Superior Court. CP10-12, CP 13-17 On August 11, 2007, when Brown  
was served, Reed's mother was in the final stages of a terminal illness  
ARP 105 12/03/08. The family, including Reed, was gathered around her  
bed at St Joseph's *Id.* Reed had arranged to have process server Mel  
Cahoon serve the papers *Id.*. That morning, he was in contact with Cahoon

by telephone; Cahoon had encountered her and was following her to serve papers *Id.* . She was headed towards St. Joseph's *Id.*. Reed's attorney told him to notify hospital staff to bar her from entry at the entrances. CP 904 Reed declined, to avoid confrontation. *Id.*In order to avoid confrontation, Reed left his mother's bedside, and departed the hospital CP 905. Cahoon caught up with her as she parked her van on the street outside St. Joseph's. ARP 45 12/02/2008 When he served her with the papers, and began walking back to his vehicle, she jumped out of her van, ran at him and "bodyslammed" him . CP at 24 She hadn't put her van in park; Tuscany was inside ARP 46 12/02/08. The van rolled backwards til it hit a curb. *Id.* Brown threw the papers in his vehicle, he retrieved them and returned them to Brown's van; she threw them out on the street. *Id.* Cahoon was thankful that Brown was not armed. ARP 51 12/02/08 Reed had earlier parked in a nearby parking lot, and walking to the lot, arrived near the scene; Brown screamed at Reed that he'd "better pick up those papers." CP 905 She parked the van--Tuscany had not been hurt from the rolling van, apparently--and went into the hospital, and upstairs to Reed's mother. *Id.* She told Reed's mother of her intent to move out of state, and Reed's efforts to prevent her from taking Tuscany. *Id.* This greatly disturbed Mrs. Reed, making her last days uncomfortable with worry. *Id.* In the Superior Court case, Brown indicated in her PO affidavit that the "Tacoma District

Attorney office warned me to stay away and protect myself after the assault. The suggested I seek an order of protection for myself and my unborn child” CP at 13-17. She further stated that, in regards to the Tacoma Municipal Court proceeding involving assault charges against Reed for the May 2006 incident, that “Clyde was convicted of this crime”. CP at 16. Both were untrue—she could not have been pregnant in May 2006; nevertheless, the Superior Court issued an order of protection against Reed. In the Municipal Court case, until Reed served Brown with papers preventing her from taking Tuscany out of state on August 11, 2007 she had refused to participate in the proceeding, despite the pleading of the City Attorney’s office, CP 105 After that date, August 11, 2007-- more than a year after the case began--she began a series of contacts with that office, including an email dated December 18, 2007, the date of Reed’s court proceeding in Tacoma Municipal Court to monitor the SOC CP 850 CP 858 p4 At the 12/07 proceeding, the City Attorney said Brown had approached him and expressed fear of Reed. CP 859 p 7 The case had been on track for early dismissal CP 859 p 9. Brown’s intervention caused the court to deny early dismissal, and resulted in charge of a violation of the No Hostile Contact order, set for review 2/19/08. CP 848 Based on the August 2007 Southcenter attempted exchange, Brown testified that she had been afraid, and Reed violated the No Hostile Contact order, that his

SOC should be revoked, that he should be tried for DV. CP 846-849 Judge Ladenburg noted the custody dispute and refused her request to revoke the SOC CP 840-841. On December 18, 2008, he dismissed charges against Reed, with prejudice, CP 779, CP 838 even though she appeared in court again and insisted she was still afraid CP 832-834. In the Parenting Plan case, a GAL had been appointed, but Brown refused to complete intake paperwork, and declined to meet with the GAL for seven months CP 159 Brown's attorney had forwarded to the GAL the STOP evaluation records--protected records under the federal HIPPA act--which had been prepared through the Municipal Court proceedings, and which had been dismissed by the Tacoma Municipal Court following Brown's communications with the STOP evaluator, and the increasingly hostile and inaccurate letters that STOP wrote following the contact with Brown (including, again, an implication that Brown had been pregnant at the time of the May 27, 2006 pushing incident) ARP 44-45 ARP 58 12/04/08 CP 844 p4. The Municipal Court had allowed Reed to seek a separate evaluation after the STOP reports were discredited because of Brown's efforts to influence -- which did not begin until after the August 2007 action by Reed to prevent removal of Tuscany ARP 44-45 ARP 58 12/04/08. On 9/25/08, the parties attended a privileged settlement conference process (PCLR 3 (c)) that was unsuccessful CP 339 CP 221 On September 26, 2008 Brown

emailed the GAL, disclosing privileged proceedings and denigrating Reed, violating the non-disclosure requirement. *Id.* On September 26, 2008 Brown called Reed's sister in law, Debra Reed, threatening to harass Reed at his job. CP 280-281. Also, within days of the failed mediation Brown called Reed directly. ARP 111 12/03/08 Reed indicated that he could not talk to her. *Id.* Brown indicated, that he didn't need to talk--that if he proceeded to pursue visitation, "it was going to get ugly". *Id.* Shortly after, Reed's supervisor, Councilmember Larry Gossett of the King County Council ARP 112 12/3/08 called to say he had heard that there was a DV conviction against Reed and offered a chance to explain.*Id.* Gossett confirmed that Brown had come in to see him personally and communicated this information. CP 522 After Judge Lisa Worswick denied Reed's motion to continue the trial CP 348-349 trial in Pierce County Superior Court was assigned to Judge Sergio Armijo; trial ended on December 8, 2008, after 3.5 days ARP 31 12/08/08. Both sides had rested; Judge Armijo said he was ready to rule, that he was granting Reed 4 overnights every other week, with an additional night on the alternate week *Id.* After a break Brown intervened in Armijo's rendering of decision ARP 36 12/08/08 and claimed she had just talked by phone to Marybridge staff—that they opposed any significant change in schedule, precluding any overnights for Reed *Id.* Marybridge staff did not appear,

and were not heard directly by the court *Id.* However, Judge Armijo retreated and reversed his ruling, based on Brown's assertion. ARP 39 12/08/08 He required that there be no significant change in the arrangements. *Id.* The judge signed a temporary parenting plan effectuating this arrangement, CP at 366-377 and a "Judgment and Order Determining Parentage and Granting Additional Relief (JODPGAR)", prepared by Reed's counsel Vogel to require compliance with earlier orders that Reed's name be included as part of Tuscany's; the JODPGAR contained a checkbox addressing primary residential placement. CP 380 In that checkbox, the status that had been provided for in the initial temporary parenting plan, was continued naming Brown as the primary residential parent, consistent with Brown's request to hold current status til after treatment. CP 380 There was no statement by Judge Armijo addressing permanent residential placement--and after he reversed direction at Brown's request and provided for no overnights, the record is silent on the question of permanent primary residential placement. ARP 36-90 12/08/08 This Judgment and Order was prepared by Reed's attorney, reviewed and altered by Brown, and handed to Judge Armijo for signature CP 378. Matters not addressed by the court were to be deferred until April 17 2009, the date set for return and review. CP at 374 There were no Findings of Fact and Conclusions of Law entered by the court. In

later proceedings, references by both parties showed clear understanding that the orders were temporary, pending further court action. CP 491 Judge Armijo said he found Brown to be very physical against Reed, including hitting him and driving the car at him ARP 82 12/08/08 He found that Reed had been denied access to Tuscany, against the best interest of the child. ARP 89 12/08/08 Armijo told Brown to amend the protection order to facilitate visitation, which she failed to do. ARP 90 12/08/08 Armijo ordered that Reed would not be required to do further anger management counseling recommended by STOP ARP 82 12/08/08 Armijo said he could continue in the proceedings through a pro tem status, ARP 73 12/08/08 but he became unavailable and the case was assigned to Judge John Hickman CP 400; his first hearing came in 2/09, when Reed sought the promised overnights. Brown opposed the overnights based on Tuscany's Sensory Integration Dysfunction. HRP (Hickman Report of Proceedings) at 2, and at 10 (02/06/09) Judge Hickman didn't grant overnights, but extended visitation hours, and required exchanges at the Burien Police, due to Brown's claims of fear. HRP 27-29 02/06/09 In 3/06, Reed again requested overnights HRP 32-33 03/06/09 Over Brown's objections, Judge Hickman granted one overnight weekly to Reed. HRP at 43 (03/06/09) Later that morning, following the court's consideration of other cases, Brown insisted that the court return to the issue, repeating her

earlier action in the Armijo trial. She insisted that Marybridge opposed any overnights for Reed, and requested the court to reverse its ruling. Judge Hickman refused, and said that she was compelled to comply; if she didn't, she would see a disruption in the routine beyond her imagination. HRP Supplemental 5 03/06/09. At the start of the trial which began in September, Pam Soliere, Brown's then-Counsel, citing *Possinger v Possinger*, offered a Motion in Limine to confine the trial to matters that had occurred since December 2008, asserting that the temporary parenting plan and the JODPGAR had named Brown as the primary residential parent; that the only remaining issues for trial were a visitation schedule for Reed, child support, and attorney's fees. CP 535-537 She referred to the issues that had been testified to prior to December 2008 as being Res Judicata. CP 535-537 HRP at 54-55, 09/14/09 Vogel objected to any implication of Res Judicata, as regards the temporary or permanent nature of any orders. In ruling in support of the Motion in Limine, Judge Hickman indicated that the Armijo proceeding resulted in temporary orders. HRP at 57-58 (09/14/09) Reed went into the September trial unclear as to whether the JODPGAR was being addressed as permanent--as implied, at least, by Soliere's Motion in Limine--or temporary, as indicated by Judge Hickman in his comments. In her closing statement, Soliere referred to the JODPGAR as being permanent. Judge Hickman,

ruled orally that Judge Armijo's order addressing residential placement was permanent. HRP 532 10/09/09 Judge Hickman granted Reed significant visitation, and indicated that Brown's credibility was suspect, and contrary to Brown's claim, Reed had presented no threat whatsoever to her during the trial or the preceding ten months CP 619. Apparently because he had orally ruled that custody had already been decided, he offered no ruling on the criteria addressing residential status, including the nature, strength and stability of the relationships between the child and each parent. Pursuant to CR 60, in 8/2010 Reed offered post judgment motions objecting to the oral ruling that the Armijo court had decided primary residential placement, to the exclusion of pre-12/08 evidence, and to the ruling of primary placement with the mother. CP 877-918 Judge Hickman denied the motions.

#### ARGUMENT

1. The trial court erred in failing to enter findings of fact and conclusions of law addressing primary residential placement, and instead relied on an oral ruling that the issue of residential placement had been decided already by the Armijo Court. The trial court erred in its interpretation of the JODPGAR as an order of the Armijo court that primary placement had been decided, when the purpose of the JODPGAR was to achieve compliance by Brown with the court order to add Reed's name to the child's last name.

Primary residential placement was a central issue at trial. A trial court must enter findings of fact on all material issues in order to inform the appellate court of what questions were decided and the manner in which

they were decided. 125 Wn.2nd 413, Federal Signal v. Safety Factors The trial court did indicate orally that the issue had been decided by the Armijo court, but that Hickman decision was never made a finding of fact/ conclusion of law. A trial court's oral ruling is merely a verbal expression of an informal opinion at the time it is made....and does not have final or binding effect unless it is formally incorporated into findings of fact, conclusions of law, and a judgment 137 Wn.2nd 933, DGHI Enters. v. Pacific Cities There were no findings of fact or conclusions of law entered by the Armijo court. I ask that the Court rule that no final decision was made by the Armijo court, and render a judgment on the issue of primary residential placement in the absence of any such judgment, and that the Court base its ruling on the weight and quality of evidence provided during the trial court process, and render a decision that grants primary residential status to the father, based on the clear predominance of evidence and testimony in support of that outcome. However, the trial court's oral decision determining that the Armijo court had decided primary residential placement was in error, and I ask for reversal. The appellate court reviews application of the law *de novo*. The trial court decided in error that the application of 26.26 RCW requires where the JODPGAR has a checkbox entry to such effect, custody must be granted to that parent. Through Tuscany's first two years, Reed repeatedly

attempted to have Tuscany's last name include his—"Brown-Reed"—and Brown repeatedly attempted to frustrate that effort. CP 195 CP 144-149 CP 151 Pursuant to Reed's request, on July 29 2008 the court ordered Brown to file the paternity affidavit to address including Reed's last name ARP 89-91 12/04/08 CP 254 CP 256 CP 304 CP 110. Brown and Reed both signed an affidavit when Tuscany was born, giving Tuscany Reed's last name. Brown didn't file it, claiming that it had been lost. After the court order, Brown prepared an altered affidavit, without Reed's name, and attempted to file it. ARP 89-91 12/04/08 CP 171-172 Despite repeated requests, Brown declined to file the affidavit with Reed's last name included. ARP 89-91 12/04/08 Vogel, at the last day of the Armijo trial, prepared a JODPGAR, with the last name "Brown-Reed" as Tuscany's last name, as an attempt to require compliance with the earlier court order. Brown struck out the name "Reed" as Tuscany's last name in two places, initialed the strikeout, and it was handed to Armijo, who signed it. CP 379, 381 It was not until the September 2009 trial, when Judge Hickman required that the last name be Brown-Reed—over a year after the initial court order requiring compliance,—that Brown complied. The JODPGAR also contained a checkbox addressing primary residential placement, which Vogel, consistent with a similar provision made in the Temporary Parenting Plan signed on the same day, and consistent with earlier court

orders, provided for continuation of Brown's status as primary residential parent, understood to be on a temporary basis pending outcome of further proceedings in April. Months later, Brown's new attorney made the claim that that checkbox entry constituted a permanent order of the Armijo court, contrary to the history of the case. Judge Hickman accepted that claim in error, and ruled orally that primary residential placement had been decided by that JODPGAR; even when Reed filed a post judgment motion seeking correction, Judge Hickman declined to correct the matter CP 877. The Appellate Court reviews application of law de novo. 117 Wn.2d P2d.483 State v McCormack Judge Hickman applied 26.26 incorrectly in ruling that the JODPGAR determined custody. A judgment arrived at by means of a fundamentally wrong theory and lacking any findings supporting the proper theory may be reversed on appeal. 86 Wn.2d 156 Local Union 1296 International Association of Firefighters v City of Kennewick The trial court's judgment was based on a fundamentally wrong theory that primary residential placement decisions are made based on 26.26.130, in preference over the provisions of 26.09 RCW, which require that the best interests of the child be addressed. The court made this decision based on a mistaken interpretation of the law, and a lack of institutional memory resulting from the reassignment of the case to the Hickman court, mistakenly accepting that Judge Armijo had

intentionally and finally acted on primary residential placement. RCW 26.26.130(7) says that residential provisions made under 26.26 RCW are to be “on the same basis as provided in chapter 26.09 RCW”, which addresses dissolutions and parenting plans. 26.26.160 says further, that modifications pursuant to 26.09.130 (7) are to be “in accordance with 26.09”; and that review petitions for modification of parenting plans, custody orders, or other order governing residence of a child, are to be pursuant to RCW 26.09.” Legislative intent indicates that residential determinations are to be addressed in RCW 26.09, and that proceedings under 26.26 are to defer to 26.09 proceedings, and to be in conformance with them. All parties acknowledge that the Armijo court’s action in entering a temporary parenting plan—labeled at the top as “temporary parenting plan”—was intended as a temporary measure, as requested by Brown. In the Order in Limine submitted by Brown in the September 14, 2009 trial, Brown’s attorney indicates...”the court found it appropriate to enter an *interim parenting plan* for a specified period of time”. CP 536-537 Brown’s attorney indicates, (9/14/09) “From December 8<sup>th</sup> til now would be the issues before this court addressing the *interim parenting plan entered by Judge Armijo* HRP 55. The court itself indicated its understanding that the temporary plan was temporary.

“Judge Armijo made some preliminary decisions and then decided to defer a final order until the spring of ‘09 in order for there to be an additional hearing...to determine what... should be the final parenting plan and issued temporary orders or interim orders until that time.”HRP 56, line 9-21. The proceedings demonstrate no intent by Judge Armijo to issue a final judgment on primary residential status. Following Brown’s intervention to convince Armijo to reverse his expressed intent to grant Reed extensive overnight visitation, ARP 36 12/08/08, the record is silent on any discussion about primary residential status. Yet Judge Hickman orally ruled that primary residential status had been decided by the Armijo action in the JODPGAR, which is created under the authority of RCW 26.26.130 (7). Such ruling violates the statutory requirement that the court make residential provisions under 26.26.130(7) “on the same basis as” 26.09, and that the court decide residential questions based on the best interests of the child, as addressed in 26.09.187; the court decided permanent residence based on 26.26, related to questions of determination of parentage—not based on the criteria of 26.09.187, as required by law. Judge Armijo could not have entered temporary provisions regarding residential status in the temporary parenting plan, yet entered a final determination regarding primary residential status in the JODPGAR; any substantive difference between court rulings on the residential status provisions of 26.26 RCW and 26.09 RCW would lead to absurd outcomes, with rulings addressing residential provisions in different ways, leading to

confusion and conflict; absurd results should be avoided. 92 Wn.2d 474  
State v. Burke The Armijo court did not enter any Findings of Facts and  
Conclusions of Law on any topic; presumably, this was to be deferred  
until April 2009. For final decisions, CR 52 (2)B requires Findings of Fact  
and Conclusions of Law. The oral ruling does not have final or binding  
effect unless it is formally incorporated into findings of fact, conclusions  
of law, and a judgement. 137 Wn.2nd 933, DGHI Enters. v. Pacific Cities,  
Inc. The absence of findings and conclusions deprived Reed of the  
opportunity to appeal. A temporary parenting plan assigning primary  
status to one parent is not to give that parent an advantage in permanent  
placement. Marriage of Combs, 105 Wn App 168; Marriage of Kovacs,  
121 Wn 2<sup>nd</sup> 795 P 2d 629 The combination of no ruling by the Armijo  
court, and the mistaken presumption of a ruling by the Hickman court,  
resulted in not only preference for the parent with temporary primary  
placement, but in the wholesale grant of custody. The Appellate Court  
should clarify that the Armijo court did not decide the issue of primary  
residential status, should confirm that the Hickman court declined to make  
a ruling on primary residential status based on a position in error that the  
Armijo court had previously decided the matter--thus leaving no decision,  
by any court on the issue of primary residence--and should determine  
primary residential status based on the best interests of the child, or should

remand to the Hickman court to determine the primary residential status based on the best interest of the child, and require the trial court to decide based on the evidence already submitted, both in the Hickman and Armijo trials, regarding the bond between the child and the respective parents consistent with 26.09.187.

2. The trial court erred when it granted a motion in limine reliant on *Possinger v Possinger* 105 Wn App 326 (2001), which allows a court to grant a temporary plan and revisit the plan at the end of an interim period to make final disposition of parenting issues--applying the criteria of 26.09.187, rather than the criteria of 26.09.260...—yet the court indicated it was applying the criteria of 26.09.260 in its oral ruling granting primary residence to the mother.

The trial court granted Brown's Motion in Limine disallowing evidence or testimony regarding events before 12/08/08. The motion in limine relied on *Possinger v Possinger*, 105 Wn. App 326 which allowed an interim parenting plan, until the parties changing circumstances are resolved, addressing the permanent plan later. Contrary to Brown's position that the Armijo court provided final orders on the residential schedule before changing circumstances, *Possinger* confirms Reed's position that a court can provide for a temporary plan pending changes in circumstances, and then complete a permanent parenting plan--including residential provisions of 26.09.187--following those changes. Brown's reliance on this case should have led the court to confirm that it would

address the permanent parenting plan, including residential provisions in the 09/09 trial on the basis of 26.09.187 criteria, requiring that parenting plan provisions including residential schedule be addressed at that time.

Instead, the court said

"One issue that was not reserved at issue is who's to be the primary parent for Tuscany. Ms. Brown was named in that role, and any changes in seeking a change in the primary custodian would require the filing of a modification petition after this date since the primary custodian issue was not reserved." HRP 532 10/09/09

The trial court required reliance on RCW 26.09.260 criteria, requiring procedures to modify a permanent parenting plan, in conflict with Possinger, which requires reliance on 26.09.187, rather than 26.09.260.

The Appellate Court reviews issues of law de novo. 117 Wn.2d P2d.483 State v McCormack A judgment arrived at by means of a fundamentally wrong theory and lacking any findings supporting the proper theory may be reversed on appeal. 86 Wn.2d 156 Local Union 1296 International Association of Firefighters v City of Kennewick The court made this decision based on fundamentally wrong theory, relying on requirements for modification of a parenting plan of 26.09.260, rather than residential provisions of 26.09.187, as required by Possinger--but relied on Possinger as the legal basis for its action.

3. The trial court erred when it entered Findings and Conclusions that there were no factors under 26.09.191 present, yet excluded evidence through a motion in limine that would have allowed demonstration of '191' factors, and demonstration of domestic violence by Brown.

The trial court granted a Motion in Limine which cited Res Judicata as the pertinent doctrine. CP at 536. CP at 594 HRP 11 9/14/09 However, that Doctrine requires that there be a final action or judgment by the court. The purpose of collateral estoppel by judgment is to preclude parties or their privies from relitigating an issue that has been finally determined by a court of competent jurisdiction after the party ... has had the opportunity to fairly and fully present his case. ...For collateral estoppel by judgment to be applicable, the facts or issues claimed to be conclusive on the parties in the second action must have been actually and necessarily litigated and determined in the prior action. Collateral estoppel by judgment will not be applied so as to work an injustice.<sup>72</sup> Wn.2d 109, JA Henderson, Appellant v. Bardahl International Corporation As noted above, there was no such final determination, and collateral estoppel was used to work an injustice. Further, the court proceeded to enter findings and conclusions CP 619 asserting that there were no 26.09.191 factors present in the case. Though Reed had provided extensive evidence of abusive use of conflict in the Armijo trial, ARP 80-83 12/03/08; ARP 105 12/03/08; ARP 44-53 12/02/08; ARP 111-113 12/03/08; CP 522 as well as instances of domestic violence committed by Brown ARP 15-16 12/03/08; ARP 17-18 12/03/08; ARP 60-62 12/04/08 and Brown had demonstrated explicit efforts to deny

access to the child without due cause during both the Armijo and the Hickman trials HRP 534 10/09/09 HRP 535 10/09/09 CP 619 Finding 2.2, Judge Hickman nonetheless ruled that there were no 26.09.191 factors. The code mandates that residential provisions be consistent with '191' factors: RCW 26.09.187(3) "The child's residential schedule shall be consistent with RCW 26.09.191." Any court action which buries or hides such factors is contrary to 26.09.187 (3), and is in error. The trial court's action to exclude evidence prior to 12/08/08, while entering a finding of no factors under 26.09.191, deprived Reed of the opportunity to present extensive evidence of abusive use of conflict and dv by Brown; and of the opportunity to demonstrate the extensive efforts to withhold access to the child without due cause, with the result that the best interests of the child are not served, and the child is assigned permanent residential status in an atmosphere of abusive use of conflict and continual efforts to exhaust, undermine and frustrate Reed's relationship with the child. The Rules of Evidence ER 402 require that all relevant evidence is generally admissible. The exclusion of evidence from before 12/08/08 violates ER 402; the court reviews interpretation of court rules de novo. RCW 26.09.191(3)(e) addresses the abusive use of conflict, and its potential for creating the danger of serious damage to the child's psychological development. The facts present a clear danger of serious damage to

Tuscany's psychological development, pursuant to actions of Brown.

Brown has shown--

- a willingness to create a confrontation when she, at the Southcenter parking lot, repeatedly insisted that I give Tuscany back to her during a visitation transfer process, and aggressively confronting Reed with her demand that I 'get on the same page' with her, requiring that I abandon that afternoon's effort for visitation, and later seeking that the Municipal Court withdraw the Stipulated Order of Continuance, based on her allegation that she was afraid during that transfer process CP 846-849.
- a heated, physical confrontation with a process server, placing Tuscany's safety directly at risk in order to avoid being served with orders in this case; and to force Mr. Reed to leave the bedside of his dying mother, as she carried Tuscany into the hospital where she knew Reed would be, fresh from the confrontation with the process server. ARP 46 12/02/08
- an insistence that Tuscany's transfers occur in the lobby of a police department--a tense, armed environment in the presence of German Shepherd police dogs and officers armed with automatic rifles openly carried--based on a mutually combative incident four years ago, for which the Municipal Court has dismissed charges with prejudice. This setting conveys anger tension and hostility to Tuscany. HRP 478 L 19

- Brown demonstrates an intent to continue positioning Tuscany in an environment of extreme tension: In her 7/09 Declaration, she proposes the following, out of proportion to any reasonable perception of danger: “It would also be more convenient because there would be an officer there to assist with taking our daughter from one parent to the other rather than having to call 911 and wait for an officer to have to come to the location from the field.” CP at 513
- a clear willingness to place Tuscany in the middle of a tense, hostile confrontation that she set up, when, she drew me to the Baskin/Robbins parking lot near Northgate, called police, and asked them to take Tuscany from me, screaming, across the parking lot to Brown. CP 426, 441
- On the second to last day of proceedings before Judge Hickman, Brown served Reed with a motion to extend an expiring protection order--in the Hickman courtroom, using court personnel to accomplish service, saying she was frightened by Reed, due to his actions before Judge Hickman over the previous 10 months. CP at 605-606 There had been no complaint, by Brown or any other party to the proceedings, about Reed’s behavior during the trial. While Judge Hickman included a finding that “actions by the father while this case has been before Judge Hickman were not manipulative, controlling or an extension of any pattern of domestic violence”CP at 619, # 2.5-2.6 the order was nonetheless granted by a court

commissioner. In support of this request, Brown's attorney indicated that Reed had sent an abusive email to Brown--but such email was never produced, and doesn't exist. CP 823 p6 This action placed a profound chilling effect on communication between the parents, given the standard that Brown applies in defining her fear of Reed. That lack of communication directly threatens Tuscan; for a child who knows that her parents aren't communicating, is likely to manipulate them to her best short term advantage, with long-term damaging consequences.

- a psychological evaluation by a court-appointed psychologist, Dr. Stephen Klien, which determined, among other things, that Brown demonstrates the following characteristics CP 746-750:

“ demonstrates results from a personality assessment instrument which show a need to “downplay any problems or difficulties...” such that the results may “under-represent her psychological problems”; a ‘lack of awareness of how she upsets or provokes others; a “narcissistic personality style”; a “strong feeling of entitlement”; an expectation of “special favors without assuming reciprocal responsibilities”; “self interest typically comes before the interests of others’; “a contributor to a high conflict custody dispute”; “long standing problematic personality patterns”; “a strong self-focus and a corresponding general lack of awareness of her impact on others”; “her frustrations and resentments cause her to heighten rather than resolve conflict”; “some of her actions seem more in her interest than in that of Tuscan”; “tends to see herself as a victim and not a major contributor to the conflict”; “if she had any interest in counseling it would be for support and not for self change”

While Klien's evaluation of both Brown and Reed was extensive, sophisticated and comprehensive, it did not turn up any indication of fear of Reed by Brown. CP 746-750 On the contrary, Klein indicated that it

was Reed who's 'appetite, energy level, concentration, and sleep are all affected.' Exhibit 2 Page 3 Further, in the evaluation by Dr. Klein of Reed, Klein indicated that "If this level of conflict continues, I am concerned about its impact on their daughter". Exhibit 2, Page 5 But Dr. Klein clearly indicated that Reed's inclination towards conflict was the opposite of Brown's. According to Klein, Reed tends to be

"socially shy, but also very aware of his impact on others; he is not a reactive and emotional person; a personality style marked by avoidant traits; Individuals with this personality style are often sensitive to the feelings and wants of others; no significant psychological problems; sincere in being actively involved in Tuscany's care and development, and in learning to cooperate better with Ms. Brown in parenting matters" Exhibit 2

Additionally, in light of Klein's concerns about Brown's narcissistic tendencies, Dr. Christin Larue testified that such tendencies can have the potential to endanger the child, and the only way to assess the effect is through direct parent child observation. ARP 146-148 12/03/08 No officer of the court has ever witnessed the relationship between Brown and Tuscany, nor been to Brown's home--thus the court has no means of knowing how Brown's narcissistic tendencies are affecting Tuscany.

The comparison of Dr. Klein's evaluation of Reed and Brown leads to the following: 1) Tuscany is at risk from the conflict; and 2) Brown is 'heightening, rather than resolving conflict', while Reed has conflict avoidant traits, and is sensitive to the feelings of others 3) Tuscany is

potentially at risk from Brown's diagnosed narcissistic tendencies. Brown's conduct is having an adverse effect on Tuscan's best interest, and specifically, the abusive use of conflict by Brown is creating the danger of serious damage to Tuscan's psychological development. Additionally Brown has demonstrated domestic violence, using a vehicle as a weapon against Reed, attacking him for washing clothes at her house, and other instances ARP 15-16 12/03/08; ARP 17-18 12/03/08 CP 441-442 ARP 60-62 12/04/08 I ask the court to find that there are abusive use of conflict patterns addressed in 26.09.191 as well as domestic violence by Brown; and impose restrictions on Brown consistent with the intent of the law, or remand this case to the trial court for review of the issue of 26.09.191 factors and domestic violence, based on documents and evidence on the record to be entered by both sides, and entry of a finding of the presence of such factors. Further, 26.09.191 (3) (f) provides that a parent's involvement or conduct may have an adverse effect on the child's best interests, if (f) A parent has withheld from the other parent access to the child for a protracted period without good cause. Brown has undertaken an extended, aggressive effort to deny visitation to Reed by CP 424-429, among other things, attempting to destroy Reed's ability to pursue this case by exhausting him financially and emotionally, trying to destroy his image before the judicial system. Reed was seeking primary

residential placement, while Brown constructed barrier after barrier to Reed's attempts to establish a relationship with Tuscany based on a reasonable schedule. These efforts include: Brown attempted to use the Tuscany's sensory integration disfunction to deny Reed overnight visitation. In the Armijo trial, Brown intervened, after both sides had rested, with an assertion that Marybridge had asserted its opposition to any change in visitation schedule, after Armijo had said he was going to grant Reed extensive overnights. ARP 36 12/08/08 Brown repeated the action three months later, when in March, 2009, Judge Hickman finally granted Reed overnight visitation; Brown responded by insisting the court reconvene, and asserting that Marybridge Hospital opposed any change in schedule. HRP 3 Suppl 3/06/09 Judge Hickman, at the trial in September, asked Marybridge staff directly if they had opposed overnights for Reed; they said they hadn't. HRP 413 9/16/09 Judge Hickman found that "the mother has used the sensory integration issue as a means to prevent the father from having standard visitation with the child" (CP 619 Finding Fact 2.2); testifying in Tacoma Municipal court that Reed had violated a no-hostile-contact order, with potential incarceration consequences for Reed--based on an incident during which Reed had specifically declined to engage in confrontation with her, in spite of her confrontational efforts--and instead, Reed surrendered his opportunity for visitation, and departed

the scene silently. CP 849; four days after Reed served her preventing her from removing Tuscany from the state on August 10, 2007, CP at 35 she sought a protection order against Reed; she deceived the court, implying that she was pregnant at the time of the May 2006 incident CP 16; contacting the sister-in-law, threatening to have Reed fired CP at 280; contacting Reed's workplace and falsely indicating to Reed's supervisor that he had been convicted of domestic violence ARP 111 12/03/08; denying Reed the opportunity to be involved with Tuscany's medical proceedings CP 508-510; poisoning the GAL against Reed by forwarding privileged information from a failed mediation effort, and by alleging to the GAL Reed's presumed dislike of her, the GAL CP 752-754; calling Reed directly following the failed mediation attempt, and threatening that if he didn't stop efforts to seek time with Tuscany, "it's going to get ugly".ARP 111 12/03/08 Forcing Reed to seek a court order to participate in Tuscany's medical treatment CP 507 These instances demonstrate substantial evidence of the presence of factors under 26.09.191 3 (f). Substantial evidence is evidence that is sufficient to convince a fair minded person of the truth of the declared premise. 130 Wn. App 39, Regan v. Dept of Licensing

4. The trial court erred in failing to articulate findings of fact and conclusions of law as regards the instability of Brown's lifestyle, in direct

contrast to the requirements of Marybridge Hospital for an environment of stability and order.

A trial court must enter findings of fact on all material issues in order to inform the appellate court of what questions were decided and the manner in which they were decided. 125 Wn.2d 413 Federal Signal v. Safety Factors The issue of the instability of Brown's lifestyle was a material issue before the trial court. The testimony of Dianna Bamboe of Marybridge Hospital, emphasized the need for an environment of stability and order HRP 401 9/16/09. The trial court should have entered a finding of fact that the Respondent's current lifestyle, and her desired career path involving potentially frequent relocation nationwide, are not consistent with the child's needs as indicated by Marybridge Hospital, and are not consistent with the best interests of the child. RCW 26.09.002 requires that the court make its decision on the parenting plan based on 'the best interests of the child'. There was direct testimony from medical providers at Marybridge Hospital that Tuscan's best interests require a stable, predictable environment. HRP 401 9/16/09 HRP 432 9/16/09 The respondent herself testified that she had received direction from the occupational therapy staff at Marybridge indicating that Tuscan's best interest requires that she be provided with an environment that emphasizes stability, consistency and predictability. ARP 20 12/08/08 However, Brown's actions and intentions have been shown to be in direct contrast

with these requirements. Brown's answers on cross examination demonstrate the following:

- that, according to her mother who (HRP 286 9/15/09) watches Tuscany while she's gone, Brown teaches dance class 12 times monthly, (two to three times weekly) Lasting from 7-9 p.m. HRP 438 9/16/09 In the morning, Tuscany doesn't know, because Brown doesn't know, whether she'll be with her mother for that evening, or whether her mother will be teaching and she'll be at some other caregiver's home. (HRP 433 9/16/09)
- that she travels out of state, during which time 'she has no idea' who is watching Tuscany HRP 440 9/16/09; That when she's with Brown, Tuscany's bedtime varies day to day HRP 444 9/16/09; That when she's with Brown, Tuscany's naptime varies day to day HRP 444 9/16/09; That five to eight people have been involved with transferring Tuscany to Reed, in Brown's absence HRP 444 9/16/09. These transfers can be traumatic for Tuscany, in her mother's absence ARP 106, 111 12/04/08.; That Brown and Tuscany spend the night at the grandmother's house in unpredictable patterns--sometimes two nites weekly, sometimes three nites weekly, sometimes four nites weekly. HRP 445 9/16/09 That in the morning, Tuscany doesn't know, because her mother doesn't know whether she's going to be sleeping in her bed at her mother's house, or her crib in the TV room with one or several adult relatives watching TV at her grandmother's

house HRP 446 9/16/09. From both testimony at the Armijo trial ARP 140-142 12/04/08, the Hickman trial HRP 332 9/16/09 HRP 470 9/17/09 , and from the Klein report CP 747 Brown says she intends to follow a career involving out of state travel for short-term, temporary jobs in locations remote from the home that Tuscany is familiar with, remote from her father, grandparents, Reed's family. Brown's jobs have been short term in recent years, followed by unemployment CP 747 This pattern of travel/work/no work is opposite the pattern that Brown testified that Marybridge requires for Tuscany. ARP 68-72 12/04/08 Reed, in contrast, has been at a single job for the past 15 years. Exhibit 2 Page 2 He has lived in the Northwest for over 30 years. Exhibit 2 Page 1-2 No one other than Reed has picked Tuscany up for a transfer. HRP 126 9/14/09 While Reed has arranged for Tuscany to be in daycare while he works, Tuscany sleeps in her bed at Reed's house every night that she's with him--except on those occasions when he has taken her camping. Tuscany knows that there will be some fun and interesting developmental activity when she's with Reed, that she explicitly looks forward to--including reading, camping, horseback riding, fishing, biking, swimming, canoeing. The court should find Brown's lifestyle and career plans are contrary to Tuscany's best interests, consistent with the testimony of Marybridge staff.

5. The trial court erred when it failed to find that Brown's conduct as regards Tuscany's health constitutes neglect or substantial nonperformance of parenting functions.

RCW 29.06.191 3a provides that a parent's involvement may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist: A parent's neglect or substantial nonperformance of parenting functions. RCW 29.06.004 (2) defines "parenting functions" as those aspect of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include: (b) attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family. The testimony of Brown's witness, occupational therapist Dianna Bamboe, employed by Marybridge Hospital, demonstrates Brown's lack of attention to Tuscany's health needs. Marybridge was treating Tuscany for sensory integration disfunction through May of 2009. Bamboe testified that Brown requested transfer of Tuscany from the care of Marybridge to the Birth to Three program in Federal Way, because that program was closer to Brown's home. HRP 409 9/16/09 Brown failed to follow through on either getting

Tuscany enrolled in the Birth to Three program, or returning her to the Marybridge occupational therapy program when she found that the Birth to three program had a waiting list. HRP 408-410, 416 9/16/09 As a consequence of this failure, Tuscany continued for four months--June-September 2009--without treatment of her Sensory Deficit Disorder condition. HRP 416 9/16/09 This followed on an earlier transition process, where Bamboe had explicitly returned Tuscany to treatment at the Marybridge program because Brown had not gotten her enrolled in the Birth to Three Program in March, 2009--and that initial preempted transition process should have demonstrated to Brown that Marybridge considered continuous attention to Tuscany's care to be imperative. HRP 416 Brown deceived the court by saying that there was a miscommunication from Bamboe on that issue, which the court explicitly rebutted in its findings of fact. HRP 413-418 9/16/09 HRP 427-428 9/16/09 HRP 536 10/09/09 Tuscany received a black eye while in Brown's care in March, 2009. Brown testified that this occurred while she was traveling to Las Vegas, and Tuscany had been left with her grandmother HRP 441-442 9/16/09. Tuscany received a severe cut on her foot in August 2009. Brown testified that this cut occurred in the early morning of August 20, 2009--Reed was called by the hospital at 2 a.m.. HRP 100 9/14/09 HRP 450 9/16/09 Reed testified that, contrary to the

instructions of the medical staff at Marybridge, the splint resulting from that cut was left on beyond the time that it should have been removed, and because Tuscany was in great discomfort, Reed called the hospital late on the night of August 22, 2009, and as directed, immediately removed the splint, and took a day off work to take Tuscany in to the hospital the following day. HRP 102 9/14/09 They recommended leaving the splint off, and purchasing a pair of shoes which would allow air circulation, which Reed did. Tuscany has a subsurface scar over her eye, which has been there at least 18 months and appears permanent; it appears only when Tuscany grimaces or laughs; it appears to have resulted from a blow of some sort. CP 525 Brown does not acknowledge that this scar is present, and offers no explanation of its origins. There is no record that there has ever been any medical followup related to this scar, that Brown has pursued. Christin Larue has, in two separate reports, noted a distinct 'flat affect' that Tuscany demonstrated when she initially began meeting with Reed and Tuscany. CP at 284-285 CP at 290 Those reports were available to Brown through the court proceedings. She never sought medical attention for these concerns ARP 64-65 12/04/08 ARP 82 12/04/08; instead she sought to to intimidate Larue when she cross examined her on the stand ARP 149-150 12/03/08. These events demonstrate a clear pattern of neglect and substantial nonperformance of parenting functions, as

defined by RCW 26.09.004 (2)b. A trial court must enter findings of fact on all material issues in order to inform the appellate court of what questions were decided and the manner in which they were decided. 125 Wn.2d 413, Federal Signal v. Safety Factors I ask that the court either enter a finding that Brown demonstrated neglect in her parenting of Tuscany, or that the court remand this case to the trial court for an examination of evidence as regards this issue, and the entry of a finding to that effect upon examination of relevant evidence, and require that the court address this pattern as another element of the presence of 26.09.191 factors in its consideration of primary placement.

6. The trial court erred in failing to enter findings of fact and conclusions of law that Reed showed a strong, stable relationship with the child that substantially exceeded any bond between the child and Brown.

A trial court must enter findings of fact on all material issues in order to inform the appellate court of what questions were decided and the manner in which they were decided (125 Wn.2d 413 Federal Signal v. Safety Factors). RCW 26.09.187 (3) requires that the court consider the relative strength, nature and stability of the child's relationship with each parent. Reed demonstrated a rich, mutually engaged, deep, responsive, interconnected relationship with the child, through expert testimony, through the testimony of friends and associates, through video testimony, and through documentation. Brown offered limited lukewarm testimony

regarding bonding and attachment. The trial court should have entered a finding of fact that Reed had demonstrated a strong, stable relationship with the child that substantially exceeded any shown with Brown. Christin LaRue, a qualified bonding specialist, testified extensively as to Reed's practices as a father. HRP 210 9/15/09. Kristal McKinney, Masters in Social Work, also testified as a friend HRP 259, as did Erica Moore HRP 168 9/14/09 and Linda Lee HRP 173 9/14/09. Four reports by Larue describing Reed's parenting style, observed over a period of years, were admitted. CP at 77 CP at 283 CP at 286. CP at 132 Reed narrated a video of his two years with Tuscany. HRP 9/14/09. Reed's relationship with Tuscany is much stronger than Brown's HRP 278 9/15/09, HRP 307 9/14/19, HRP 314 9/14/09. The court should find Reed showed a much stronger, more stable, and greater bond than Brown's.

7. The trial court erred in entering conclusions of law that are at odds with its findings of fact.

In finding after finding, the trial court found Brown to have misled or deceived the court, to have denied the father access to the child, to have falsely accused the father of bad faith or violations of court orders, to have deceived the court by claiming there was a miscommunication to explain her failure to address health treatment requirements for the child CP 619 The father was found not to have been manipulative, controlling or involved in domestic violence, contrary to Brown's claims; and that there

is no evidence to restrict the fathers visitation—"the opposite is true". The court had no adverse findings against the father, and several positive findings. Yet, in its conclusions of law, there was no positive outcome for Reed, other than rebutting Brown's DV claims. If Brown's story wasn't credible, the court had no basis to affirm that Tuscany's best interests were with Brown as primary parent; yet, the court awarded primary residence to Brown—apparently because it had orally ruled that the issue had already been decided by Armijo. Appellate review of factual issues is limited to determining if the trial court's findings of facts....support the conclusions of law and judgment Morgan v Prudential Ins 86 Wn 2d 432, 545 P 2d. 1193 The findings of fact don't support the conclusions of law; they would support conclusions that the court has insufficient credible evidence that the mother is capable of addressing the best interests of the child, but overwhelming evidence of the father's capacity and intent to do so, and that the child's best interests lie in primary residency with Reed. The appellate court reviews conclusions of law de novo. The Court should conclude based on the absence of findings in support of primary residency with the mother, and overwhelming evidence of the father's capacity and intent to provide for the best interests of the child, that the best interests of the child are with the father—or failing that, require the trial court to develop conclusions of law that are consistent with its findings of fact

regarding primary placement, and the mothers attempt to deny access, and to deceive and manipulate the court, and the paucity of evidence supporting placement with Brown.

8. Pursuant to Res Judicata, the trial court erred in entering a restraining order where the respondent had already undergone a disposition for the same acts, transaction, and occurrences between the same parties. The Doctrine of Res Judicata bars a party from bringing a claim if a court of competent jurisdiction has rendered a final judgment on the merits in a previous action involving the same parties, same transaction and occurrences, as well as the same claims. *In re Intl Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir.), cert. denied, 115 S. Ct. 577 (1994). A final judgment on the merits has a preclusive effect in a later action if the two actions have an identity of cause of action and an identity of parties or privies. See *Woodley v. Myers Capital Corp.*, 67 Wn. App. 328 (1992). “A dismissal with prejudice is as conclusive of the rights of the parties as an adverse judgment after trial, being res judicata of all questions which might have been litigated in the suit, 50 C.J.S. Judgments § 633, p. 62, and cases cited. In *United States v. Parker*, 120 U.S. 89, the Court announced that a dismissal with prejudice is a final judgment on the merits which will bar a second suit between the same parties for the same cause of action. On December 18, 2008, the Tacoma Municipal Court, Judge Ladenburg presiding, ruled that “Defendant, having fully complied with all the

conditions of the deferral, the Court granted the dismissal with prejudice and closed the file. The ruling was a final disposition on the matter. See Verbatim Transcript dated December 18, 2008, pg. 37, lns 1-5. Brown's DV allegations are not credible, insubstantial and inconsistent Exhibit 3,4,5; her charges led the court to permanently require Tuscany to be transferred in the hostile, tense environment of a police station. I ask the court to reverse the trial court, and additionally find that Brown's credibility issues lead to the conclusion that she has been deceptive in her allegations of domestic violence.

9. The trial court erred failing to apply the "priority of action" rule under which the first court to obtain jurisdiction over a case possesses exclusive jurisdiction to the exclusion of other coordinate courts to avoid unseemly and expensive jurisdictional conflicts.

After Brown, on August 10, 2007, told Reed that she intended to leave for Chicago with Tuscany that following Monday, Reed filed an action in King County Superior Court CP 35-37, preventing Brown from removing Tuscany from the state pending outcome of the proceedings. That proceeding was later transferred to Pierce County Superior Court in light of the location of Brown's residence in Pierce County (her mailing address is in King County, leading to confusion by Reed's attorney as to the appropriate venue). Three days later, on August 14, 2007, Brown filed an action in Pierce County Superior Court charging Reed with domestic violence. CP 13 (At the same time, Brown began participating in an

action against Reed in Tacoma Municipal Court in which the City Attorney charged Reed with Domestic Violence—charges ultimately dismissed with prejudice. CP 859) The priority of action rule applies when there is an identity of subject matter, relief, and parties between the actions such that a final adjudication in the first filed action would, as res judicata, bar further proceedings in the second action. The priority of action rule requires that the first court to obtain jurisdiction over a case possesses exclusive jurisdiction to the exclusion of other coordinate courts to avoid unseemly and expensive jurisdictional conflicts. 137 Wn. App. 296, Feb. 2007 Atl. Cas. Ins. Co. v. Or. Mut. Ins. Co. The Pierce County Superior Court hearing the parenting plan case 07-3-03417-9, under Judge Armijo first (initially assigned to Judge Worswick), and then under Judge Hickman, under the Priority of Action rule, had exclusive jurisdiction over this case. The Superior Court addressing the protection order in #07-2-02403-0, in issuing the initial protection order and subsequent extensions, did not have jurisdiction, and any ruling by such courts should be dismissed. The test requires 1) parties 2) subject matter, 3) relief, be identical. Parties to each of the cases were identically Catherina Brown and Clyde Reed. The subject matter in the Protection Order case #07-2-02403-0 was whether Clyde Reed committed Domestic Violence, against Brown CP 804-813. The subject matter in the Parenting Plan, while

broader, subsumed entirely the dv issue, and Brown described extensively the domestic violence allegations against Reed in the Armijo court, seeking a dv finding ARP 123-4 12/04/08—showing subject matter identity. The relief sought in both cases was a finding of dv by Reed against Brown—with associated restrictions on Reed’s freedom of movement, association, and communications--again, identical in both cases. A consideration of dv by the Armijo court made any action on the issue in the 07-2-02403-0 case res judicata. In response to Brown’s claims of dv, Armijo said he found that Brown had been very physical against Reed ARP 82 12/08/08 The Court should dismiss the DV protection order and all the extensions.

Credibility The trial court found repeatedly, in its findings and conclusions that Brown was deceiving the court. HRP 536 10/09/09 On the original statement in support of her claim for a protection order, Brown implied she was pregnant at the time of the May, 2006 pushing incident. CP 16. She notes that Tuscany was born on February 14, 2007, at 33 weeks HRP 340 9/16/09. A basic calculation shows that she could not have been pregnant on 5/27/06 with a 33 week pregnancy. Brown indicates that Reed committed domestic violence over the course of their relationship. Examples offered by Brown: Reed wouldn’t bring certain foods when requested; Reed’s home is sparsely furnished...there was no TV. ARP 129

12/04/08 Judges Ladenburg CP 841 p6, Armijo ARP 82 12/08/08 and Hickman CP 619 HRP 536 10/09/09 refused to believe Brown about her allegations of domestic violence. Brown says that Reed threatened her, during an exchange at Southcenter, "He glared at me." The Court:"and what happened?" "He threatened me." ARP 152 12/04/08 Bu she told the Tacoma Municipal Court about the same 8/04/07 incident: Moriarty: "He didn't stand there in the parking lot, yell and scream at you or get into a big altercation. He gave you your daughter and he left." "Yes." CP 849, p 24 After testimony by the Process Server Cahoon, concerning Brown's assault of him--she cross examined him directly showing familiarity with the event, ARP 45-46 12/02/08 Brown, in a later response to Armijo, simply denied that she ever committed the assault ARP 145 12/04/08 Brown quotes Klien's report as saying that "Reed lacks insight into the developmental needs of a small child" ARP 20 12/08/08 there is no such language. Exhibit 2 While Brown claims fear of Reed, he received email messages from her during that period after 5/27/06 apologizing for her actions on 5/27/06; asking Reed to go on overseas trips with her; offering unsolicited indications of love, and other messages inconsistent with fear and intimidation. CP 783-803 Brown asserts to the Armijo and Hickman courts that Marybridge discouraged overnights by Reed due to the sensory concern regarding Tuscany ARP 36-37 12/08/08 HRP Supplemental 3-5

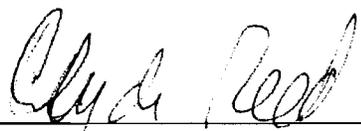
3/06/09--a position Dianna Bamboe of Marybridge denied under questioning from Judge Hickman HRP 413 9/16/09 Through City Attorney Chou, Brown led the Ladenburg court to believe that Follman hadn't reviewed the STOP evaluation: "Chou: ... Mr. Follman, the person who did the evaluation, apparently admitted in the trial...—what was it again? Brown: Family Law--Chou:--the family law trial that he never reviewed the STOP evaluation...As Ms Brown has indicated,...she cross-examined Follman ..., he admitted on the stand that he never reviewed the STOP evaluation" CP 831 At the Armijo trial, Follman testified: Brown: ... did you have an opportunity to review his first batterer's assessment from the STOP agency prior to meeting with him? Follman: I don't recall if it was before or after. Brown: ... Once you had an opportunity to review the assessment from the STOP agency, were you in touch with the agency...?" ARP 64-65 12/03/08 By contrast, none of the 3 courts over the 3 years of this process ever questioned Reed's credibility or truthfulness.

#### CONCLUSION

The issues raised in this brief have to do with Reed's fundamental constitutional rights as a parent to the relationship with his child, and are of the greatest weight. I request that the Court of Appeals enter findings and conclusions that the weight of evidence supports primary residential placement with Reed, and reverse the trial court's determination that

primary residential status was decided by the Armijo Court; enter a finding that Brown engaged in abusive use of conflict; withheld access to the child without due cause; committed domestic violence; and failed to perform parental duties in neglecting the health of the child, and enter findings and conclusions that Brown's unstable lifestyle is contrary to Tuscany's interests; and enter findings and conclusions that Reed demonstrated strength, nature and stability of the relationship between father and child substantially greater than Brown's. I request the Court to remand this case to the Trial Court to address visitation for the mother. Failing that, I request that the Appeals Court 1) Reverse the Trial Court oral finding that the Armijo Court arrived at a final decision as regards primary residential placement; 2) remand this case with direction to examine the relative weight of evidence regarding the strength, nature and stability of the parents relationship with the child, and to determine primary residential placement,; 3) provide that the trial court reverse its findings of fact, and its conclusion of law, that there are no factors under 26.09.191, and confirm of the presence of factors on the part of Brown under RCW 26.09.191 and arrive at a finding of fact, and a conclusion of law on that issue, and restrict visitation by the mother in light of such finding and conclusion; 4) require the court to take input on the issue of domestic violence by Brown, and arrive at a finding and conclusion, 5)

that the trial court provide a finding of fact and conclusion of law, confirming the instability of Brown's lifestyle, compared to requirements for consistency and structure addressed by Marybridge; 6) provide that the trial court arrive at a finding and conclusion confirming the mother's failure to perform parenting functions with regards to neglect of the child's health needs, and enter findings and conclusions that Brown's demonstrated instability in her lifestyle is contrary to Tuscany's interests; and that the trial court, based on these findings and conclusions, determine primary residential status and visitation. I request the court reverse the trial courts in Reed's Protection Order case, in that that court did not have jurisdiction, and as in violation of Res Judicata, and find that Brown's credibility issues show that she has been deceptive in her allegations of domestic violence. Given Brown's extended efforts to delay and distract the court through deceit and misleading tactics, I request fees and expenses be awarded to me for these proceedings. Reed paid for transcripts of two trials and other proceedings, mailings, production of clerk's papers, and similar costs.

  
\_\_\_\_\_  
Clyde Reed, Pro Se

*Nov 19 2010*

# EXHIBIT I

Reed's Version: Rough Timeline of Events	
June/July 05	Laundry incident at Brown's house: Brown throws detergent box, laundry articles at Reed—Reed flees the house
Nov 05	Driving incident: Reed late for Brown's birthday, Brown drives vehicle on sidewalk at him
May 06	Shoving incident in truck at Brown's house May 27; Reed takes Brown to airport, she misses flight; Brown apologizes May 29
June	Couple reunites
July	Tuscany is conceived
Aug	Reed receives notice he is to be tried for DV in Tacoma Municipal Court
Nov	Brown lives at Reed's house on bedrest. Brown attacks Reed to get his cellphone—Reed flees house
Dec	Stipulated Order of Continuance is agreed upon in Tacoma Municipal Court
Jan 07	
Feb	Tuscany is born
March	Brown, Tuscany released from hospital. Reed leaves Brown at hospital to avoid hostile contact—Brown nonetheless goes to his house to stay. Reed abandons house to her, stays at motel
June	Reed pays child support; Reed agrees to pay half Brown's mortgage to get her to stay
Aug	Aug 4 Southcenter: Reed surrenders visitation when Brown initiates parking lot confrontation; Aug 10: Brown says she's leaving for Chicago, Reed initiates parenting plan litigation. Aug 14: Reed served with Protection Order for DV
Sept	Protection Order is issued by Superior Court Commissioner: 07
Dec	Brown initiates contact w Tacoma City Attorney, asserts domestic violence
Jan 08	
Feb	Brown testifies at Tacoma Municipal Court hearing that shes afraid, that Reed violated No Hostile Contact provision of SOC based on Aug 4 Southcenter exchange, telephone exchange
March	Judge Ladenburg denies Brown request for revocation of SOC
Sept	Mediation fails, Brown calls Reed on telephone to say 'It's going to get Ugly, Brown seeks reissuance of Protection Order , contact is made with Reed's supervisor
Dec	Armijo trial proceeds; Brown intervenes in ruling to assert Marybridge opposes Reed overnights; Armijo concedes, delays til April 09, Transfers at Northgate, issues no Findings/Conclusions. In Tacoma Municipal Court, Brown testifies she's still afraid, but Ladenburg denies her request, dismisses charges with prejudice
Jan 09	Case reassigned to Hickman
Feb	Hickman's first hearing—grants Reed additional time, moves transfer to Burien PD
March	Hickman's 2 <sup>nd</sup> hearing—grants Reed 1, overnight, admonishes Brown
Sept	Hickman trial; Brown Order in Limine;
Oct	Hickman rules orally that Armijo decided custody

EXHIBIT 1  
2 (included in Clerk's Papers)

Board of Directors

Philip J. Frank, Ph.D.  
Maxwell R. Knauss, Ph.D.  
Paul A. Nelson, Ph.D.

Associates

Kristi Breen, Ph.D.  
Jodi Howell, Ph.D.  
Stephen A Klein, Ph.D.  
Milzi Kodish, M.A., L.M.H.C.  
Reba McGear, M.A., A.R.N.P.  
Sylvia Fradkin, A.R.N.P.



Allenmore  
Psychological  
Associates, P.S.

PSYCHOLOGICAL EVALUATION  
(Confidential Information)

NAME: Clyde Reed  
DATE OF BIRTH: 03-13-54  
DATE OF REPORT: 11-07-08

REFERRAL QUESTION:

Clyde Reed and Catherina Brown are in the midst of a custody dispute regarding their daughter, Tuscany (twenty months). The Guardian ad Litem has requested both parents to complete psychological evaluations. This evaluation sought to assess the current psychological functioning of Mr. Reed as it affects his parenting and his ability to cooperate with Ms. Brown in parenting matters.

ASSESSMENT INSTRUMENTS:

Clinical Interview (10-15-08 and 10-22-08)  
Shipley Institute of Living Scale  
Conflict Tactics Scale (CTS2)  
Minnesota Multiphasic Personality Inventory-2 (MMPI-2)  
Millon Clinical Multiaxial Inventory-III (MCMI-III)  
Parenting Stress Index

I also reviewed documents provided by Mr. Reed's attorney which included the Preliminary Report (4-11-08) and Supplemental Report (6-25-08) from the Guardian ad Litem, Ms. Kelly LeBlanc; a Renton Police Department Case Report (8-9-02); Domestic Violence Perpetrator Assessment from the Follman Agency (9-20-07); and a Home Visit Report from Ms. Christin LaRue (October 08).

INTERVIEW:

Family-of-Origin: Mr. Reed was born in Fort Sill, Oklahoma, while his father was serving in the Army. When he was three, the family moved to Germany for five years. His father was then transferred to Fort Lewis. Mr. Reed lived in Tacoma through the rest of his childhood except for his junior year in high school in North Carolina. Mr. Reed is the third of five children: a brother and a sister older and a brother and a sister younger. His parents are both deceased. His father died in 2006 and his mother died last year. His father served in the Army for over twenty years and then worked for Tacoma City Light as an architectural engineer for fifteen years. Mr. Reed described this father as a quiet, kind, supportive, and intelligent man. He described their relationship as good but somewhat distant. Mr. Reed's

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7

mother was an elementary teacher for over thirty years. He described her as social, warm, and giving. He described a warm relationship with her but also indicated that she was a very busy woman and time was limited with her. His parents were married for fifty-eight years. He could not remember them ever arguing in front of their children. He indicated that his father was the disciplinarian in the family and he would spank his kids with his hand up until they were seven or eight and then it was restrictions. He described his mother as the more verbal disciplinarian.

**Education:** Mr. Reed graduated from Lincoln High School in 1972. His grades were mostly As and B+s. He was a National Merit Semifinalist and he received math and ROTC scholarships as well as a wrestling scholarship. He attended University of Puget Sound and graduated in 1976 with a B.S. Degree in Sociology. A few years later he attended the University of Washington and received his Masters Degree in Public Administration.

**Employment:** Mr. Reed works as a Legislative Analyst for the King County Council. He has had this position since 1995 and continues to like his work. He is also kept busy as the owner of a fifteen unit apartment house in Capital Hill District of Seattle. His previous employment includes work for Washington State Senate, State Park and Recreation Department, State Department of Ecology, and Seattle Central Community College.

**Health:** Mr. Reed describes himself as "pretty healthy." He has had no major surgeries and he has no ongoing medical conditions. He takes no medications.

**Alcohol and Drugs:** Mr. Reed describes his alcohol intake as minimal, i.e., an occasional glass of wine or a beer. He said alcohol has never been a problem for him nor has anyone ever complained about his drinking. Regarding drugs, he experimented with marijuana in high school but has never used any illegal drugs since then.

**Counseling:** Except for one session of marital counseling in the mid 80s, Mr. Reed has never been in counseling nor felt the need. He did not believe anyone in the family has had any mental health treatment. "I come from strong people - we work through these things."

**Legal:** Mr. Reed was arrested one time as a juvenile for shoplifting. He was in junior high at the time and he spent a couple days at Remann Hall. As an adult he was arrested six years ago for indecent exposure. He explained the circumstances as waiting for someone outside a community center on a hot afternoon and falling asleep in his car wearing only shorts. A complaint was filed against him but was dismissed at the hearing. He also indicated a domestic violence charge that relates to a conflict with Ms. Brown in May 06. He explained that they were being physical with each other but that he did wrongly shove her. Since that time he has had an anger management assessment through the Social Treatment and Opportunity Program (STOP) and a domestic violence perpetrator assessment through the Follman Agency. He has also completed a

Victims' Panel and a one day anger management class by Mr. Follman.

Relationships: Mr. Reed was married for a short time (? 83-84) to Ms. Cassandra Edwards. They had a son, Desmond, born 4-18-84. He described their marriage as contentious – “angry but not physical... there was disappointment on both sides.” He indicated their divorce was mutual.

Mr. Reed and Ms. Brown met through on-line dating in 2005. As the relationship developed there were recurring arguments. He described Ms. Brown as talented but emotional and quick-tempered. He believes she has more of a problem with anger than he does but does admit that he has difficulty interacting with her. He is hopeful they will do better over time after the court has made its decision.

Children: Tuscany was born 2-14-07. Mr. Reed described his daughter as a beautiful, brilliant, and generally peaceful little girl. He listed her needs as love, emotional stimulation, routine, and an absence of tension from exposure to conflict. Because he believes that the child's first three years are critical for learning, he wants Tuscany to have much stimulation and novelty to foster growth. He would like her not to spend time in front of the television.

Parenting: Mr. Reed responded to several hypothetical behavior problems that often confront parents of toddlers. He answered the questions in a confident manner. His responses stressed the importance of protecting and supporting the child but also fostering a sense of self. “You need to be there for them but they also need autonomy.” With regard to discipline, he sees no need for spanking or yelling. He is relying on his relationship with his daughter to help her develop an understanding of what is appropriate and what is not. If needed, he would also use time out and loss of special activities.

#### **PSYCHOMETRIC FINDINGS:**

The Institute of Living Scale is a brief, cognitive screening test administered with paper and pencil. This test consists of two parts, vocabulary and verbal conceptual thinking. Mr. Reed's performance on this test indicates intellectual functioning in the well above average range.

The MMPI-2 is a widely used personality assessment instrument. This test consists of 567 self-reference statements responded to in a true/false format. This test is helpful in generating inferences about current emotional functioning as well as long-standing behavioral patterns. Mr. Reed appeared to answer the test questions in an open and candid manner such that the test results likely reflect his current emotional functioning. His responses indicate considerable unhappiness and worry at this time. His appetite, energy level, concentration, and sleep are all affected. The unhappiness and worries are lowering his effectiveness in day-to-day problems and responsibilities. His responses indicate that he tends to be quite socially shy but also very aware of his impact on others. He is not a

reactive and emotional person. Emotions are relatively constricted. Also, his responses indicate that he tends to be self-blaming more than other-blaming for the problems in his life. With regard to anger, his responses indicate the stress and upset of the custody context may elicit one or a few emotional outbursts from him, but his temper should not pose a serious risk. Finally, with regard to bonding and attachment, the depth of his bonding may be uneven. At times his interests may override the interests of the child. Also, because he tends to dichotomize others as being either for him or against him, he would be very sensitive to any comments that favored the child's mother over him. As the child gets older, she would have to be careful what she said about her mother in his presence.

The MCMI-III is an objective personality assessment instrument consisting of 175 true/false questions. This test is helpful in identifying personality traits and patterns. Mr. Reed showed a distinct tendency toward avoiding self-disclosure in his responses on this test. His responses indicate a personality style marked by avoidant traits. Individuals with this personality style are often sensitive to the feelings and wants of others. However, they have a strong need for acceptance and a fear of rejection and humiliation. In most social situations, they tend to be nervous and uncomfortable – constantly on guard. Social activities take a good deal of energy. However, overall no significant psychological problems are evident on this test.

The Parenting Stress Index is an instrument that screens for high levels of parenting stress associated with dysfunctional parenting behavior and negative interactions between the parent and child. The three main sources of stresses assessed are child characteristics, parent characteristics, and situational life stress. Mr. Reed responded to the questions with regard to his daughter, Tuscany. None of the child scales have an elevated score. Only one parent scale has an elevated score: spousal support. His responses indicate some stress from a perceived lack of emotional support from Ms. Brown in the parenting of Tuscany.

The Conflict Tactics Scale is a widely used self-report measure for identifying specific tactics used by a couple during conflict. These tactics include negotiating as well as psychological aggression and physical assault. Mr. Reed denied any assaultive behavior on either his or Ms. Brown's part this past year. He did acknowledge some very limited and minor verbal abuse on both their parts. However, he mostly noted adaptive, negotiating behaviors on both their parts this past year. Surprising for a couple in conflict, he indicated that they both engaged in adaptive behaviors an almost equal number of times.

#### **DSM-IV DIAGNOSIS:**

Axis I: Relational Problem (V62.81) vs. Adjustment Disorder (309.28)  
Axis II: Avoidant Personality Features  
Axis III: No Diagnosis  
Axis IV: Custody Conflict  
Axis V: Current GAF (Global Assessment of Functioning) = 65

**CLINICAL IMPRESSIONS AND RECOMMENDATIONS:**

**Strengths:**

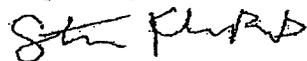
Mr. Reed is very intelligent, responsible, and quiet but determined. He has been successful in work. Over the past twenty-five years he has held several responsible and challenging positions in state and county government. He strongly values education and is open to new learning, particularly in the area of parenting and child development. Finally, I believe he is sincere both in being actively involved in Tuscany's care and development and in learning to cooperate better with Ms. Brown in parenting matters.

**Concerns:**

Conflict with Ms. Brown - There is a domestic violence charge and a protection order currently in effect. Mr. Reed does have an anger problem with Ms. Brown even though he believes she has more an anger problem than he does. Based on my evaluations of both parents, I do not believe that he poses a current risk to Ms. Brown or their daughter. However, if this level of conflict continues, I am concerned about its impact on their daughter. Mr. Reed has indicated that he wants a more cooperative relationship with Ms. Brown. He also admits that she is a very difficult person for him. More in his testing than in the interviews, he reports significant emotional drain and upset from their continued custody conflict. He endorses several depression and somatic symptoms. Although he has difficulty with the idea of counseling for himself, I believe he would benefit from it. I recommend counseling for him that would help him in his interactions with Ms. Reed and keep the focus on Tuscany's best interests.

Parenting - Because Tuscany was born so premature, she has some sensory processing difficulties at this time in her development and possibly into the future. Mr. Reed needs to be aware and understanding of his daughter's particular difficulties. He needs to be in the information loop for his daughter. I also would encourage him to continue to increase his learning in parenting and early child development.

Respectfully Submitted,



Stephen A. Klein, Ph.D.  
Licensed Clinical Psychologist

### Exhibit 3 Selected Descriptions of Reed's Domestic Violence by Catherina Brown

<p>Brown: Subjected to quite a bit of things. I was subjected to emotional, verbal abuse, insults, name calling          The Court: Can you be specific?          Brown: Mr. Reed would do things like I explained earlier. I was hormonal. I was pregnant. I would request certain foods and he wouldn't bring them saying I don't need them.          ...Mr. Reed's home is sparsely furnished          ...There was no TV          The Court: No TV?          ARP 129-130          12/04/08</p> <p>Reaction of the Court:          Now, remember this, Ms. Brown, you have also been very physical against him. I found that to be the case. He pushed you out of the car. You hit him and all kinds of things and you drove the car up on the street.          ARP 82 12/08/08</p>	<p>Brown: We had infrequent visits. There were no major problems. I was out of the abuse, which was a good thing.          The Court:          Now, you keep referring to the abuse. When you talk about verbal and emotional, you hit him too, right?          Brown:          Once, yes.          The Court:          You hit the server, right?          Brown: No, I did not.          ARP 148          12/04/08</p>	<p><i>Brown: 8/04/07 transfer at Southcenter, told to the Armijo Court</i>          The Court: So what happened, you took the kid away from him?          Brown: No. I held the baby. He was upset. He glared at me.          The Court:          And what happened?          Brown: He threatened me.          The Court:          How did he threaten you?          Brown: He said, "Get away from me. Get away. I have this."          ARP 152          12/04/08</p>	<p><i>Brown: 8/04/07 transfer at Southcenter, told to the Ladenburg Court</i>          Defense Attorney Moriarty: So when he left, he did not have your daughter?          Brown: No, he did not.          Moriarty: So, he gave your daughter back to you?          Brown: Yes          Moriarty: So he gave your daughter back to you and then he left?          Brown: Yes          Moriarty: Okay. He didn't stand there in the parking lot, yell and scream at you or get into a big altercation. He gave you your daughter and he left.          Brown: Yes. CP 849 p24          Reaction of the Court:          Judge Ladenburg refused Brown's request for a finding of a violation of the no hostile contact order, and dismissed the charge against Reed with prejudice. CP 779 CP 838 P 37</p>	<p>The Court: Let me ask you this: Why do you think you need a no-contact order two years after the incident?          Brown: Mr. Reed threatened me, Your Honor. He was really upset when I said that I was going to take this job in Chicago. Tuscany and I were going to be homeless and he had--he said he would help. And when he decided that he was upset with me, like he always does, he gets upset with me and punishes me, and one of the punishments was that he wasn't going to help me pay--"</p> <p>Reaction of The Court:          But you understand no contact orders are to protect your person, not economic issues.          Brown: No. I felt threatened by Mr. Reed. I was afraid Your Honor.          Armijo Report of Proceedings, P 18          12/08/08</p>	<p>Brown: I am in fear of Mr. Reed and would like continued protection of the law. Mr. Reed is very controlling and continue to manipulate me through the courts and uses our daughter as a pawn to win this case. The litigation is frivolous and I consider it an extension of the abuse I have occurred during the relationship and for the last 2 years. I am still being abused by him.          Clerk's Papers 781          Protection Order Petition 9/09</p> <p>Reaction of the Court:          Actions by the father, while this case has been before Judge Hickman were not manipulative, controlling or an extension of any pattern of domestic violence. If a protection order is to be extended, it shall not be on the grounds of anything that has happened over the last ten months.          Hickman Findings of Fact CP 619</p>	<p>Brown: Your honor, there is an anger issue that needs to be addressed, especially since my daughter is going to be two years old and we know how the wonderful twos are. And I would hate to see Mr. Reed lose his temper with my daughter.</p> <p>Reaction of the Court: Again, I don't want you to use that. The anger problem is not with the child. The anger is between you two          Now part of the report indicates because of your personality, counseling is not going to help. You just have that type of personality: im right, he's wrong          ARP 81-82          12/08/08</p>
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## Exhibit 4: Brown's allegations of abuse v Brown's apologies, solicitation of Reed's company

<p>Prior to Aug '07--Brown's Allegations of Domestic Violence, and Brown's description of time-frame of Domestic Violence between approx Feb 05 (when they met) and August 07 (when protection order filed, following which there has been no contact)</p>	<p>May 2006-July 2007—Email messages, Brown to Reed: Brown's apology for shoving event, expressions of regret, attestations of love, requests to accompany her on cruises, requests to take overseas trips together, requests for money, requests for prenatal support</p>
<ul style="list-style-type: none"> <li>• Mr. Reed has been mentally and physically abusive to me for the duration of our relationship. ARP (Armijo Report of Proceedings) 145 12/04/08</li> <li>• Your Honor, I've been a victim of domestic violence and abuse. I suffered two plus years of emotional and mental abuse from Mr. Reed during our dating. We had an incident in May of 2006 when it became physical. ARP 123-124 12/04/08</li> <li>• At Mr. Reed's home, I was subjected to quite a bit of things. I was subjected to emotional, verbal abuse, insults, name calling. ARP 129 12/04/08</li> <li>• We were not in a great relationship. He wouldn't stay the night. Maybe once or twice he would stay the night. But he wasn't there for us. He expressed on several occasions he's not going to have anything to do with us. He would get upset and say he didn't want to have anything to do with us. Q. Can you give us times, again, please? A. After Tuscany's birth (2/07) we were discharged in March (3/07) and this was between April and May.</li> <li>• We had an incident at Babies R Us and he was upset with me and he decided at this time, I guess, I'm not sure, that he wasn't going to help me because he said he was going to put the money into the account and the money wasn't there. Q. When is this?...Month, year? A. August 2007... I mentioned my mortgage again and I was, you know—utilities that needed to be take care of, my home. I needed to survive. I was losing everything that I had worked hard for all of these years. And he said he would do whatever he could to prevent me from leaving, whatever he could. ARP 140 12/04/08</li> <li>• The Friday that we had the conversation, Mr. Reed said he would do anything—threatened to take my daughter if I did not stay. Because of our incident on August the 4<sup>th</sup>, I became afraid. That Friday I went to get a restraining order, Friday the 10<sup>th</sup>. Because it was closed to—closed and they told me to come back Monday. I come back on Monday, completed my paperwork. I don't know about the threat that he did or anything or the incident that happened. They asked me "Did you call the police?" I said "No" But I'm afraid now because he threatened that he would do anything. I've already been abused. I didn't want to know what anything was. ARP 142 12/04/08</li> <li>• But Mr. Reed had liberal visitation to her prior to this litigation. So we had no problems prior to this litigation, other than we weren't in a relationship. We had infrequent visits. There were no major problems. I was out of the abuse, which was a good thing. ARP 145 12/04/08</li> </ul>	<ul style="list-style-type: none"> <li>• Clyde, Just returned to the office. Been out since Friday. A solemn and melancholy morning after to life changing weekend. Thank you for putting a smile on my face this morning. I forgot that you sent flowers to my office on Friday. I am sad I was not in the office to receive them...A lot has transpired since your initial gesture of the flowers and invitation to accompany you to a film. How I wish I could turn back the hands of time. I made an attempt to call, to see if you were OK. Didn't think you would accept my call or return the call. You're constantly in my thoughts and I know that things will work out positively, for both of us. PS Thanks for assisting me with my landscaping. 5/30/06 CP 784</li> <li>• In spite of everything we have endured, know that my heart weeps. I am sorry, I really care and I love you still. 5/30/06 CP 784</li> <li>• ...I will love you today, tomorrow, always and forever! 7/14/06 CP 787</li> <li>• Mike, All inclusive to Jamacia for \$459.00 See the attached email. I think you should plan this trip, asap! Lover Boy! 8/09/06 CP 788</li> <li>• Hey There! The ultrasound was rescheduled until tomorrow at 2 pm. Can you come with me? 09/05/06 CP 789</li> <li>• Mike, if possible, can you transfer some money into my account a Bank of America, so that I can get more gas and buy lunch? I don't have any money to eat lunch today. ...Just a reminder that the ultrasound appt is at 2 pm today, same place, Evergreen Hospital Suite 500B. 09/06/06 CP 790</li> <li>• Wanna go see this movie together? It's playing at the Central Cinemas in Columbia City 09/06/06 CP 791</li> <li>• Can we take a Babymoon Cruise? See the attached for ideas. Great Rates. Babymoon happens before the baby is born. Let me know what you think. 09/07/06 CP 793</li> <li>• Wanna go to Germany? 09/13/06 CP 794</li> <li>• I just hung up from you and wanted to let you know how I felt. I asked you to bring some fruit with you when you brought me my clothes. You so frustrated about driving in traffic, you didn't deem it important. ...I don't want to deal with you anymore....I will keep you informed and let you know when your daughter is born... 1/26/07 CP 800</li> <li>• Catherina has found a great vacation deal for you at <i>Hotwire Cruises</i> 7/30/07 CP 785</li> </ul>

**Reed's Batterer's Assessment: Input from James Follman, Domestic Violence Counselor, conducted Batterer's Assessment**

- Well, he was not your typical domestic violence perpetrator assessment interview. He, I say it was unusual in that he did not appear to be overly defensive. He didn't blame the victim. He was accountable. He described what he did. That's not normally what you hear when you're conducting an assessment. ARP 59-60 12/03/08
- After that, if they are really somebody with a problem behavior, they'll continue to behave that way because that's what they know. So in this case I didn't see that pattern of behavior to indicate that this person behaves in an abusive manner. So I thought, well, a short term intervention it would probably be appropriate in this case. ARP (Armijo Report of Proceedings)62 12/03/08
- In this case, he spoke about her with some empathy, which is very unusual. No vindictiveness, no revenge. I didn't think this was a person that really needed to do that much work on their behavior. He recognized he was out of line in this case, and he's willing to do something about it. ARP 63 12/03/08
- I think there's much more evidence to say that this person is not a perpetrator of domestic violence than there is evidence that he is. I would be feeling kind of uncomfortable today if I had to justify why I put him in the program. Because like I said, normally I'm looking for that pattern of behavior that says this individual is abusive and he victimizes other people. I just didn't have that. In this case I'm satisfied that there was just not the information—I was not able to conclude there was a problem here. ARP 74 12/03/08
- I would stick by that assessment today. ARP 68 12/03/08

**Testimony of Catherina Brown regarding Reed's alleged abuse, and Brown's attempt to contact Follman**

- Mr. Follman, did your agency receive telephone calls from Catherina Brown on five occasions? So Catherina Brown, I made five calls to your agency inquiring about this report. ARP 65 12/03/08
- Mr. Reed has been mentally and physically abusive to me for the duration of our relationship. ARP 145 12/04/08
- Your Honor, I've been a victim of domestic violence and abuse. I suffered two plus years of emotional and mental abuse from Mr. Reed during our dating. We had an incident in May of 2006 when it became physical. ARP 123-124 12/04/08
- At Mr. Reed's home, I was subjected to quite a bit of things. I was subjected to emotional, verbal abuse, insults, name calling. ARP 129 12/04/08
- We were not in a great relationship. He wouldn't stay the night. Maybe once or twice he would stay the night. But he wasn't there for us. He expressed on several occasions he's not going to have anything to do with us. He would get upset and say he didn't want to have anything to do with us. Q. Can you give us times, again, please? A. After Tuscany's birth (2/07) we were discharged in March (3/07) and this was between April and May.
- We had an incident at Babies R Us and he was upset with me and he decided at this time, I guess, I'm not sure, that he wasn't going to help me because he said he was going to put the money into the account and the money wasn't there. Q. When is this?...Month, year? A. August 2007... I mentioned my mortgage again and I was, you know—utilities that needed to be take care of, my home. I needed to survive. I was losing everything that I had worked hard for all of these years. And he said he would do whatever he could to prevent me from leaving, whatever he could. ARP 140 12/04/08

**AFFIDAVIT OF SERVICE**

I certify that a copy of the foregoing document(s) on all parties or their counsel of record were served pursuant to court order by mail on November 19, 2010 to the address identified below:

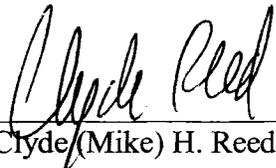
TO:

Catherina Brown  
1911 SW Campus Drive Suite 339  
Federal Way Wa 98023

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

EXECUTED this 19<sup>th</sup> day of November 2010 at Seattle, WA.

10 NOV 19 AM 8:36  
COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY [Signature]  
DEPOSED

  
Clyde (Mike) H. Reed, Jr.

Appellant, Pro se  
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