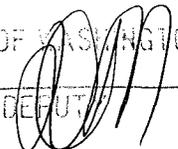


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  DEPUTY

NO. 41562-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In Re the Marriage of Diana Sushak v. Bobby Beasley, Jr.

Bobby Beasley
Appellant

Diana Sushak
Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR THURSTON COUNTY
CAUSE NO. 10-3-00740-8

BRIEF OF APPELLANT

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(360) 432-1778

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it entered an order modifying a permanent parenting plan, entitled “Order Clarifying Residential Time During Dialysis and Transplant”, on the Petitioner’s Motion to Clarify; a parenting plan cannot be modified through a motion to clarify.

2. The trial court erred in refusing to consider the father’s motion for attorney’s fees, or “reserving” that issue.

3. The trial court erred in appointing an attorney chosen by the mother to represent the minor child, where no notice was provided to the father that any motion to appoint would be made.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err when it modified a permanent parenting plan after hearing a “Motion to Clarify” that parenting plan?

2. Did the trial court err when it refused to address the father’s motion for attorney’s fees, where the mother sought modification of a parenting plan under the guise of a motion to clarify; a procedure that is clearly prohibited by legal authority?

3. Did the trial court err when it appointed an attorney for the minor child, who was chosen and contacted by the mother, where no motion was filed for the appointment of an attorney for the child and no

notice was given to the father that any such oral motion or oral advocacy would be made by the attorney?

C. STATEMENT OF THE CASE

The parties were divorced years ago and a permanent parenting plan was entered on March 17, 2009. (Ex. 1). The mother brought a “motion to clarify” the parenting plan, that in fact was a motion to modify the parenting plan. (CP 5). The mother’s motion was not intended to clarify a disputed term in a parenting plan; it was intended as a means to take more of the father’s visitation time away from him, and that is what the trial court did. (CP 232-32).

The Motion to Clarify did not specify what the petitioner wished the court to clarify; in fact the only request made was to modify the parenting plan, not clarify a disputed term in it. The Motion is quite brief, and states that “regarding the issue of interim visitations to accommodate a minor child’s critical changes in hospitalization schedules”, and further that “The Petitioner is requesting an interim change to the visitation schedule of minor child because of critical changes in the child’s medical circumstances.”

The trial court entered an order lessening the father’s visitation time with the child. The trial court declined to consider the father’s motion for attorney’s fees. The trial court also considered and granted an

oral motion by attorney Kristen Bishopp to be appointed to represent the minor child, although no motion to do so had been filed and no notice had been provided to the father.

D. ARGUMENT

1. Motion to Clarify.

The Petitioner's motion claimed that she was requesting an interim change to the visitation schedule because of critical changes in the child's medical circumstances. (CP 5). But, the order entered by the court does not contain any provision that the parenting plan reverts back at any time; the order is final by its terms. (CP 231-32).

Further, these are not proper subjects for a motion to clarify, but require a motion for either a major or minor modification of the parenting plan. A permanent parenting plan may be changed by three ways only: by agreement of the parties, by petition to modify, and by temporary order. In order to modify a parenting plan, the court must find a substantial change in circumstances, even if the modification is minor. A "modification" occurs when a party's rights are either extended beyond or reduced from those originally intended. In contrast, a "clarification" is merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary. In re Marriage of Holmes, 128 Wn. App. 727, 734-35, 117 P.3d 370 (2005).

A court may clarify a decree by defining the parties' respective rights and obligations, if the parties cannot agree on the meaning of a particular provision. A court abuses its discretion when it makes changes to a parenting plan under guise of clarification when no motion to modify the parenting plan is pending. In re Marriage of Christel and Blanchard, 101 Wn. App. 13, 22-23, 1 P.3d 600 (2000) (court abused its discretion in order imposing new limits on rights of parents; not a clarification to explain terms and no motion to modify had been filed).

Here, the petitioner did not file a motion to modify the parenting plan, there was no agreement to do so, and the petitioner did not file a motion for a temporary order. There is no provision in the parenting plan that she asked the court to explain. Rather, she clearly asked the court to change the visitation schedule. (CP 5). This cannot be done via a motion to clarify; a motion to modify is required.

The order entered by the trial court modifies the parties' parenting plan and it gives no termination date. (CP 231-32). It is in effect permanently or until one party or the other moves to modify it. It is in fact a permanent modification of the parenting plan and is therefore a final order which can be appealed pursuant to RAP 2.2(a). The mother's intent was to again minimize the father's visitation time; she had done the same thing repeatedly via ex-parte emergency motions with no notice to the

father until chastised by the court for doing so. (Ex. 2, Transcript, March 26, 2010, pg. 3).

2. Father's Motion for Attorney's Fees.

Second, the trial court reserved ruling on the father's motion for attorney's fees for having to defend another motion that was not merited by law or fact. (CP 210). The Court of Appeals should direct that the trial court address the motion for attorney's fees and award them. The court should award the respondent his reasonable attorney's fees for having to defend against an improper motion. RCW 26.09.260(11) states that if a motion to modify a custody decree or parenting plan has been brought in bad faith, the court *shall* assess the attorney's fees and court costs of the nonmoving party. Here, the petitioner is attempting to achieve a modification of the parenting plan under the guise of a motion for clarification. No summons and petition or motion for an order of adequate cause for modification have been filed. No legal authority exists for modification under a motion to clarify, not even temporary modification. Nor did the petitioner make a good faith effort to mediate this matter; the respondent requested both specification of the issues to be mediated and that his attorney be involved; no specification was given and no contact whatsoever was made with respondent's attorney. (RP 24).

Both parties have known for some time that the child would have to undergo dialysis at some point; he was on a list for a kidney transplant. The mother could easily have filed a proper motion to modify the parenting plan if she had sufficient facts to base it on. What the trial court's order does is the following: it takes away the father's every Wednesday visit, makes it every other week, and limits his time on that day to the time between going to dialysis and returning from dialysis. Thus, the father's every week mid-week visit is both changed to every other week and he only gets to visit the child during dialysis and transportation to and from dialysis. (CP 231); (Ex. 1). This was not a proper subject for a motion to clarify; it was not requested in the motion to clarify; and no showing was made that the father's time should be taken away. The trial court made several other rulings contained in the order that are also not proper subjects for a motion to clarify.

An order modifying or clarifying visitation rights is an appealable order because it affects substantial rights. Sutter v. Sutter, 51 Wn.2d 354, 355-56, 318 P.2d 324 (1957).

Mr. Beasley has no problem with part (1), (2), or (3). He does object to parts (4), (5), (6), and (7) of the order. Those parts change and reduce his visitation time with his child. Part (7) orders mediation where there was no valid request for mediation by the terms of the parenting

plan. (CP 231-32). However, since there was no motion for modification filed, the entire order must be reversed and vacated.

3. Appointment of Attorney for Minor Child.

Finally, the trial court appointed attorney Kristin Bishopp to represent the minor child. Attorney Bishopp was contacted by the mother and asked to represent the child, causing the father grave concern for her objectivity; (RP 22); there was no motion pending before the court to appoint an attorney for the child; the father was deprived of basic due process of law by being denied any say in the selection of said attorney and prior notice and opportunity to be heard on the matter. Essentially, the mother asked Ms. Bishopp to represent the child; Ms. Bishopp orally moved the court to be appointed; and the court appointed Ms. Bishopp, all without prior notice to Mr. Beasley, the father.

At the hearing, Mr. Beasley objected to Ms. Bishopp's participation, on the grounds that she was not representing any party to the case, she had no standing, and Mr. Beasley was provided with no notice of the claims made by Ms. Bishopp in her argument to the court. (RP pg. 21, ln. 11-16, RP 27, ln. 7-10). Ms. Bishopp stated that she was concerned that the minor child needed an independent voice (RP 22), but she had not been appointed to represent the child, yet was advocating for him. The court then appointed Ms. Bishopp to represent the child. (RP 22). Again,

there was no motion to appoint an attorney for the child filed. (RP 25). Procedural due process requires prior notice and opportunity to be heard at a meaningful time and in a meaningful manner. Halsted v. Sallee, 31 Wn. App. 193, 197, 639 P.2d 877 (1982).

Here, Mr. Beasley did not receive any prior notice that Ms. Bishopp would seek to be appointed; there was no such written motion for appointment of counsel for the child by either Ms. Bishopp or the mother, and the mother's Motion to Clarify was vague in the extreme as to what relief the mother was seeking. The trial court's oral order appointing Ms. Bishopp as counsel for the child should be reversed.

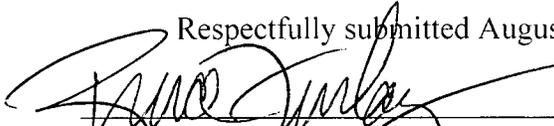
E. CONCLUSION

A modification to a parenting plan cannot be achieved via a motion to clarify. A motion to clarify is solely for the purpose of clarifying a disputed or unclear term; that is not what was requested or what was ordered here. The trial court's order changed and reduced Bobby Beasley's visitation time with his child; it did not explain terms of the parenting plan. The order of the trial court should be reversed.

The trial court should have considered the father's motion for attorney's fees and ruled on that motion. This Court should order the trial court to do so and to award attorney's fees for having to respond to a motion that was not made in good faith.

The trial court's oral order appointing an attorney for the child should be reversed; the father was deprived of due process of law. Moreover, when the court appoints an attorney for a child, it is not appropriate for one party to choose that attorney.

Respectfully submitted August 19, 2011.



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EXHIBIT 1

EXPEDITE
 Hearing set for:
Date: March 17 2009
Time: 1:30 pm
Judge/Calendar: Casey
Thurston County Court

FILED
SUPERIOR COURT
THURSTON COUNTY WA



RECEIVED & FILED 2009 MAR 17 PH 5:12

MAR 17 2009
J. GOULD, CLERK

PAT SWARTOS, Clerk of the
Superior Court of Mason Co. Wash

BY _____
DEPUTY

(Signature)

DCS

Superior Court of Washington
County MASON

In re the Marriage of:

No. 03-3-00220-5

DIANA LYNN SUSHAK

Parenting Plan

and

Petitioner,

Final Order (PP)

BOBBY DALE BEASLEY

Respondent.

This parenting plan is the final parenting plan signed by the court pursuant to an order signed by the court on this date or dated today's date which modifies a previous parenting plan or custody decree.

It is Ordered, Adjudged and Decreed:

490

I. General Information

This parenting plan applies to the following child:

| Name | Age |
|-----------------|-----|
| Clayton Beasley | 9 |

II. Basis for Restrictions

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

ORIGINAL

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

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

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

2.2 Other Factors (RCW 26.09.191(3))

The respondent's involvement or conduct may have an adverse effect on the child's best interests because of the existence of the factors which follow:

Other:

The Court Finds that the Father supports the parties' daughters in their alienation from their Mother.

III. Residential Schedule

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

3.1 Schedule for Children Under School Age

There are no children under school age.

3.2 School Schedule

Upon enrollment in school, the child shall reside with the petitioner, except for the following days and times when the child will reside with or be with the other parent:

From Friday at 3:00 p.m. to Monday at 8:30 a.m. every other week.

From Wednesday 2:00 p.m. to Wednesday 5:00 p.m. every other week

BB ACK
08

3.3 Schedule for Winter Vacation

The child shall reside with the petitioner during winter vacation, except for the following

1 days and times when the child will reside with or be with the other parent:

2 The child shall reside with the Father from 10:30 p.m. December 24th until 2:00 p.m. on
3 January 1st every year. The school schedule shall resume following Winter Vacation.

4 **3.4 Schedule for Other School Breaks**

5 The child shall reside with the petitioner during other school breaks, except for the
6 following days and times when the child will reside with or be with the other parent:

7 In EVEN years the child will reside with the Father during Spring Break, from Friday
8 after school releases until Wednesday at 2:00 p.m. In ODD years the child shall reside
9 with the Father from Wednesday at 2:00 p.m. until Monday when school resumes.

10 **3.5 Summer Schedule**

11 Upon completion of the school year, the child shall reside with the respondent, except
12 for the following days and times when the child will reside with or be with the other
13 parent:

14 *Summer schedule shall begin one day (1) after
15 the last day of school.*

16 The child shall reside with the mother from Saturday at 3:00 pm to Tuesday at 8:30 a.m.
17 every other weekend, and on ~~Wednesdays~~ from 2:00 p.m. until 5:00 p.m. every week.
18 The exchanges shall take place at ~~Bear Creek Store.~~ *Thursday*
19 *Agate*

20 ~~The child shall attend swimming lessons at the expense of the mother. Each parent is
21 responsible for transporting the child to swimming lessons during their residential time.~~

22 The child shall continue individual counseling throughout the summer while in the
23 Father's care, and Father shall be responsible for transporting the child to counseling
24 appointments. The Father will keep himself apprised of all appointments.

25 The child shall attend Kidney Camp for one week during the summer. Kidney Camp
usually occurs at the end of July or the beginning of August. The Mother shall transport
the child to and from Kidney Camp. The child shall reside with the Mother the night
before camp begins and the night the child returns from camp. The summer schedule
shall resume after the child returns from Kidney Camp. The Mother shall make all
arrangements for camp each year.

~~Kidney Camp is the child's time, and there will be no "make-up" time permitting to either
parent for "missed" visitations during this time.~~ *The summer schedule
shall skip the camp week.*

The child shall be returned to the Mother's residence the five (5) days prior to school
commencing in the fall, with day #5 being the first day of school, ~~enrollment or
orientation.~~ Thereafter the regular "School Schedule" shall resume.

3.6 Vacation With Parents

Parenting Plan (PPP, PPT, PP) Page 3 of 11
WPF DR 01.0400 Mandatory (6/2008) - RCW 26.09.181; .187; .194

Redford Law Firm
2633A Parkmont Ln. SW, Ste. A
Olympia, WA 98502
360.570.0907/360.570.0917 fax

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The schedule for vacation with parents as follows:

Both parents
The Mother shall have two weeks of uninterrupted vacation with the child every summer.
Both shall notify the other parent of their
~~Mother shall notify father of her intent to exercise vacation time, by certified letter~~
containing the dates that ~~she~~ *each* wishes, no later than May 1st of each year.

9/16/04
57/04
9/16/04
BB/04

In the event of a conflict, Mother shall have priority in ODD years and Father shall have priority in EVEN years.

This provision is not to be construed in a manner that would allow conflict to prevent Mother's exercise of this time.

If there is no resolution in the event of conflict by June 1st of each year, this matter will be immediately submitted to Mediation per this Parenting Plan.

In the event that Mother fails to notify Father of her intent to exercise summer vacation, or in the event that Father fails to respond to Mother's notification of intent to exercise summer vacation, the parent who has failed to comply with this provision shall not have priority in the event of a conflict.

3.7 Schedule for Holidays

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

| | With Petitioner (Specify Year Odd/Even/Every) | With Respondent (Specify Year Odd/Even/Every) |
|------------------------|---|---|
| New Year's Day | | Every |
| Martin Luther King Day | School Schedule | School Schedule |
| Presidents' Day | School Schedule | School Schedule |
| Memorial Day | School Schedule | School Schedule |
| July 4th | Even | Odd |
| Labor Day | School Schedule | School Schedule |
| Veterans' Day | School Schedule | School Schedule |
| Thanksgiving Day | Odd | Even |
| Christmas Eve | Every | |
| Christmas Day | | Every |

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

The Thanksgiving Holiday shall begin on Wednesday after release from school until Friday at 3:00 p.m. The regular "School Schedule" shall resume on the weekend following Thanksgiving.

1 4th of July shall begin on that date at 8:30 a.m. and continue until July 5th at 2:00 p.m.

2 The normal school schedule shall apply to the holidays marked "School Schedule". The
3 child shall reside with the parent who has regular visitation on that holiday weekend.

4 **3.8 Schedule for Special Occasions**

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

| | | |
|---|---|---|
| 7 | With Petitioner (Specify Year Odd/Even/Every) | With Respondent (Specify Year Odd/Even/Every) |
|---|---|---|

8 Mother's Day, Father's Day, all birthdays and other special occasions shall be
9 celebrated during each parent's regular scheduled visitation time, ~~with the exception of~~
~~the time the child spends at Kidney Camp.~~

BBB

10 **3.9 Priorities Under the Residential Schedule**

11 Does not apply because one parent has no visitation or restricted visitation.

12 **3.10 Restrictions**

13 The respondent's residential time with the child shall be limited because there are
14 limiting factors in paragraphs 2.1 and 2.2. The following restrictions shall apply when
the child spend(s) time with this parent:

15 Father shall refrain from acts of domestic violence, ~~abusive use of conflict and parental~~
16 ~~alienation.~~

BBB

17 **3.11 Transportation Arrangements**

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

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

21 During the school schedule visitation, the child shall ride the school bus to the Father's
22 home after school, or be picked up by the Father when school ends for the day.

23 The child shall not be withdrawn from school early without express knowledge and
24 consent of the other parent.

25 The Father shall be responsible for having the child back to school on Monday mornings
either by transporting the child or by the child riding the school bus. It will be the

responsibility of the Father to have the child to school on time during his scheduled visitation time.

The parents shall meet at ^{Agate} Deer Creek Store for all other exchanges of the child.

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3.12 Designation of Custodian

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

3.13 Other

The Father shall obtain a State Certified Domestic Violence Evaluation. The Evaluation must be completed within 30 days of entry this Order with the Court. Father shall follow any and all treatment recommendations, if applicable.

The domestic violence treatment provider will have collateral contact with the victim in this matter, or in the alternative, the former Guardian ad Litem, William Kogut.

Both parents shall have access to the child's medical and educational records. It is the responsibility of each parent to obtain these records.

Both parents will be able to attend separate parent teacher conferences, and are responsible for making their own arrangements.

Both parents will continue to be responsible for maintaining and continuing their own ongoing education through Seattle Children's Hospital regarding child's medical treatment and requirements. ^{Both parents may attend medical appointments.}

Handwritten initials: MJK/BB

The Mother will provide Father with a check related to the adoption support that she receives in the following manner: She shall provide the monthly amount received, minus her cost for medications, supplies and/or related medical equipment for the needs of the child for the months of July and August. Father will receive such at the ~~end~~ ^{First} of each month and following an accounting of necessary items and services, which will be provided by the mother.

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Both parents will follow any and all recommendations and requirements and restrictions regarding the child's medical treatment, diet, and activities given by child's physicians.

The parents ^{may} both communicate by email as needed. Each shall provide the following information at the time of all exchanges: any concerns regarding the child along with fluid intake ~~amounts and types~~, food intakes ~~amounts and types~~, health information (~~headache, vomiting, diarrhea, any pains, sore throats, etc.~~) and information ~~of any and all~~ appointments scheduled for the child.

Handwritten initials: MJK/BB

1 Email communication may also be used to provide any and all appointment information
 2 that has been scheduled for the child. Email communication is not an acceptable
 3 means of notifying the other parent, in the event of an emergency or when immediate
 4 care for the child is required.

5 Email addresses will be obtained and in place prior to the next visitation, and following
 6 entry of this Order. At that time, the parties shall inform each other of their respective
 7 email addresses.

8 If the child returns to dialysis or has any major changes in his medical routine, both
 9 parents will attend mediation by a court approved mediator or agency to make
 10 adjustments in parenting plan to accommodate the child's new routine. Mediation shall
 11 be scheduled immediately following the time that the parents become aware of the need
 12 for the shift in the child's medical routine.

13 3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

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

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

17 If the move is outside the child's school district, the relocating person must give notice
 18 by personal service or by mail requiring a return receipt. This notice must be at least 60
 19 days before the intended move. If the relocating person could not have known about
 20 the move in time to give 60 days' notice, that person must give notice within 5 days after
 21 learning of the move. The notice must contain the information required in RCW
 22 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

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

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

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

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

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

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

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

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

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

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

IV. Decision Making

4.1 Day-to-Day Decisions

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

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

Education decisions: petitioner

Non-emergency health care: petitioner, with input from Respondent *BBB QED*

Religious upbringing: ~~joint~~ both *BB QED*

~~Activities such as Sports~~ petitioner *BB QED*

~~Emergency Medical Health Care~~ joint *BB QED*

4.3 Restrictions in Decision Making

~~Where applicable above, sole decision making shall be ordered to the petitioner for the following reasons:~~

~~One parent is opposed to mutual decision making, and such opposition is reasonably based on the following criteria:~~ *BBB QED*

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

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V. Dispute Resolution

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

Disputes between the parties, other than child support disputes, shall be submitted to (list person or agency):

Mediation by a court approved mediator or agency, if this box is checked and issues of domestic violence or child abuse are present, then the court finds that the victim requested mediation, that mediation is appropriate and that the victim is permitted to have a supporting person present during the mediation proceedings, or

The cost of this process shall be allocated between the parties as follows:

50% petitioner 50% respondent.

The dispute resolution process shall be commenced by notifying the other party by written request. certified mail.

In the dispute resolution process:

- (a) Preference shall be given to carrying out this Parenting Plan.
- (b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.
- (c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.
- (d) If the court finds that a parent has used or frustrated the dispute resolution

process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.

(e) The parties have the right of review from the dispute resolution process to the superior court.

VI. Other Provisions

There are the following other provisions:

The child will attend swimming lessons, so long as medically able to, even while residing with father. Mother shall pay for swimming lessons.

The child shall not be permitted to participate in contact sports without written recommendation of child's nephrologist, and subject to the joint decision-making provisions herein.

The child will continue to attend individual counseling throughout the year. The parent with whom the child is residing with will transport the child to all counseling appointments.

The Mother will provide father with medications and any special medical supplies. Routine supplies will be exchanged once a month.

The Mother will arrange all appointments. The parent the child is with will attend the appointment, and thereafter provide the other parent with a copy of any and all instructions or information from that appointment.

Both parents are responsible for obtaining clothes for the child while at their home, with the exception of school clothes. School clothes and supplies will be provided by Mother.

If child is ill and unable to attend school on Monday mornings during the school year, the Father shall notify the Mother immediately and make arrangements for transferring the child to the mother. The parents shall meet at Deer Creek Store.

There will be no "make-up" visitation time if the child is hospitalized. If the child is in the hospital during a parent's visitation, it is the choice of that parent whether or not they choose to stay with the child in the hospital. If the parent chooses not to stay with the child scheduled visitation time will not be made up.

There will be no "make-up" visitation time in the instance where the parent seeking such has allowed the child to attend other events during their residential time.

~~In the event of the Father being found in contempt by a court with respect to joint medical decisions for the child, mother shall thereafter be the sole decision maker on all medical decisions related to the child.~~

Handwritten initials/signature

There will be no excessive use of alcohol, no use of illegal drugs and no smoking allowed in the presence of the child, by either parent, or the allowance of such by others who would be in the child's presence.

Clayton shall have the opportunity to contact either parent by telephone.
VII. Declaration for Proposed Parenting Plan

BB
35

Does not apply.

VIII. Order by the Court

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

WARNING: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

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

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

Dated: March 17, 2009 [Signature]

Judge/Commissioner
[Signature] check considered
Approved for entry:

Presented by:

[Signature] 3-17-09 27963
J. Anne Redford-Hall
Attorney for Petitioner

[Signature] Pro See
Bobby Beasley
Respondent

EXHIBIT 2

REC'D & FILED
MASON CO. WA.

2010 MAY 19 P 2:20

PAT SWARTOS, CO. CLERK
BY _____ DEPUTY

Copy

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

| | | |
|----------------|---|--------------------|
| DIANA SUSHAK, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| BOBBY BEASLEY, |) | SUPERIOR COURT NO. |
| |) | 03-3-00220-5 |
| Respondent. |) | |
| |) | |

VERBATIM REPORT OF PROCEEDINGS
(RULING OF THE COURT)

BE IT REMEMBERED that on March 26, 2010, the above-entitled and numbered cause came on for hearing before JUDGE PAULA CASEY, Thurston County Superior Court, Olympia, Washington.

Pamela R. Jones, Official Court Reporter
Certificate No. 2154
Post Office Box 11012
Olympia, WA 98508-0112
(360) 754-3355 x6484
jonesp@co.thurston.wa.us

A P P E A R A N C E S

For the Petitioner:

BRUCE FINLAY
Attorney at Law
PO Box 3
Shelton, WA 98584

For the Defendant:

JUDITH ANNE REDFORD-HALL
Attorney at Law
2633A Parkmont Lane SW, Ste A
Olympia, WA 98502

1 March 26, 2010

Olympia, Washington

2 MORNING SESSION

3 Department 1

Hon. Paula Casey, Presiding

4 APPEARANCES:

5 For the Petitioner, Bruce Finlay, Attorney at Law;

6 For the Respondent, Judith Anne Redford-Hall,

Attorney at Law

7 Pamela R. Jones, Official Reporter

8 * * * * *

9 THE COURT: So Ms. Sushak, Mr. Beasley,

10 I want you to sit at this counsel table so I can
11 speak to you. I can't see through your lawyers and
12 I want to look at both of you.

13 This is a tragedy that we are back here. This
14 was a four-day trial a year ago, and I thought I
15 made it clear at the time that the thing that is
16 most harmful to your son is this kind of constant
17 bickering. I am astounded that we are back.

18 Ms. Redford-Hall, I am astounded that you went
19 to court to get an emergency order in November for
20 something that allegedly occurred in April, no DV
21 evaluation that you knew of, and May, no attendance
22 at a training that your client was concerned about.
23 Your client waited six months after those conditions
24 apparently hadn't been satisfied, and then rushed
25 you to court to suspend visitation. This is a
tragedy.

1 So let's address domestic violence counseling;
2 first, the evaluation. Mr. Beasley, you knew good
3 and well that you had to within 30 days get a
4 domestic violence evaluation. And there would be
5 two people who might be interested in that. One,
6 the court, where you could file the eval, or, two,
7 Ms. Sushak with her lawyer. The evaluation was
8 never made known to anyone. What good is it sitting
9 in your own file or in the evaluator's file? Well,
10 there was no requirement in the court order that it
11 be filed, so I suppose you might not have known to
12 file it.

13 Secondly, Mr. Beasley, you knew that there had
14 to be a collateral contact or I, the judge, would
15 not find it acceptable because the other side of the
16 story has to be told. At the time of the order, we
17 knew that the victim may not be available and that
18 was precisely why the GAL, Mr. Kogut, was the
19 alternative to be able to report the other side of
20 the story to the evaluator. And yet, an evaluation
21 is now submitted that did not contain any contact
22 with those outsiders. So, number one, the
23 evaluation is inadequate.

24 Number two, you did do the evaluation within 30
25 days. There was no order that the evaluation was to

1 be filed. I'm not going to find you in contempt,
2 but I am going to find that failure to have
3 collateral contacts would be a reason for limiting
4 your visitation because we still don't have an
5 appropriate domestic violence evaluation. Don't try
6 to speak. You're here to listen right now.

7 With respect to the idea of going to nutritional
8 training, Mr. Beasley didn't go to the nutritional
9 training in May. It isn't Ms. Sushak's job to set
10 up nutritional training for Mr. Beasley. It's the
11 doctor's job to set it up and Mr. Beasley's job to
12 attend. It's unclear to me from the record whether
13 Ms. Sushak set the training up or whether the doctor
14 set it up or whether Mr. Beasley could have attended
15 an alternative training. In any case, we know that
16 he did attend an important consult a month later,
17 and the documents in the record indicate there was
18 30 minutes of nutritional counseling that took place
19 at that meeting.

20 I'm sure that the consult is something different
21 than nutritional education, but whether it would
22 satisfy the court order or not is somewhat in
23 question. I'm not going to find there is contempt
24 on that count. And if it had been such concern
25 about Mr. Beasley not knowing what to feed his son

1 on the weekend, I cannot even imagine that you would
2 wait six months to do something about it. So Mr.
3 Beasley within 30 days from today needs to complete
4 the domestic violence evaluation with collateral
5 contact with the original victim or Mr. Kogut, or
6 there has to be some consequence to it in terms of
7 visitation. The only reason for the domestic
8 violence evaluation is to ensure Clayton's safety.

9 Ms. Sushak, it is not your job to make
10 appointments for Mr. Beasley, but it is appreciated
11 that you will inform him of appointments that you
12 are aware of. And Mr. Beasley, it's your job to get
13 all the nutritional information possible so that
14 your son can be healthy and safe. So the order is
15 revised.

16 MR. FINLAY: Does the Court want that
17 language -- how much of the language -- I assume the
18 court wants the order to reflect that Bobby has got
19 30 days to do the collateral contact. Does the
20 Court want in there that the next comments you made
21 about not being Ms. Sushak's job to make
22 appointments for Bobby is that important to be in
23 there?

24 THE COURT: No. I think they all know
25 they need to make their own appointments.

1 And Mr. Beasley, if you're contacted to go to an
2 appointment, it sounds like the two of you are
3 attending some of the appointments together with the
4 doctors. I have these two files here representing
5 three or four inches that have happened since my
6 trial and the two of you don't get along well enough
7 to have your appointments together. It's great if
8 you can have your appointments together and if you
9 can't have your appointments together you had better
10 have separate ones.

11 MR. FINLAY: Your Honor, I don't have an
12 order.

13 THE COURT: I can't imagine what a
14 struggle Clayton is experiencing because he knows
15 the day-to-day combat that is going on between the
16 two of you. What he needs is some cooperation.
17 He's going to see his dad, his dad is going to get
18 his domestic evaluation I assume. If treatment is
19 required, you're going to get it, Mr. Beasley. I
20 thought we made all of this clear a year ago. And
21 Mr. Finlay, the order may not have been completely
22 clear to you, but it was completely clear to
23 Mr. Beasley, there's no question in my mind.

24 MR. FINLAY: I understand. I don't have
25 an order prepared, Your Honor. May I prepare one

1 and present it?

2 THE COURT: Yes. Hopefully you can
3 present it by mail. Do you want another date? I'll
4 put it on the calendar for two weeks from today if
5 you can't agree.

6 MS. REDFORD-HALL: We can do that, yes.

7 THE COURT: So anyway, I just had a
8 couple more words to say I guess. When a person
9 doesn't do a domestic violence evaluation, is that a
10 matter to be brought before the court for contempt?
11 Probably not. It is a matter to be brought before
12 the court to restrict visitation. I don't care if
13 Mr. Beasley has a domestic violence evaluation or
14 not, except if he doesn't it's going to affect his
15 visits. Whether he goes to the nutritional
16 appointments or not I really don't care, but if he
17 doesn't, it's going to affect his visits. So it is
18 not a means of punishing Mr. Beasley for not doing
19 these things for contempt, as it would be for
20 failure to pay child support or failure to permit a
21 visit to take place, but it is a basis for
22 restricting contact.

23 MS. REDFORD-HALL: Understood.

24 THE COURT: Which is the harshest
25 punishment of all. Something has to be worked out.

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Mr. Beasley I assume is going to get that domestic violence evaluation. I guess I'm going to put in the order that he has to provide a copy to Ms. Redford-Hall immediately upon its completion.

MR. FINLAY: I've already spoken to Mr. Nordo-Francisco ,Your Honor, so it will be fairly quick.

THE COURT: Okay.

MS. REDFORD-HALL: Thank you, Your Honor.

FILED
COURT OF APPEALS
DIVISION II

11 AUG 23 PM 1:45

STATE OF WASHINGTON
BY  DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION II

| | | |
|------------------------|---|------------------------|
| In Re the Marriage of: |) | |
| |) | No. 41562-3-II |
| DIANA SUSHAK, |) | |
| Petitioner, |) | CERTIFICATE OF SERVICE |
| |) | |
| vs. |) | |
| |) | |
| BOBBY BEASLEY, |) | |
| Respondent. |) | |

CERTIFICATE OF SERVICE

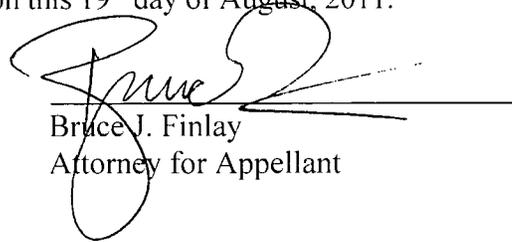
I hereby certify that on this 19th day of August, 2011, I caused the original and one copy of the Motion to Allow Exhibits to be delivered for filing via U.S. Mail to:

Clerk of Court
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402
(253) 593-2970, tel

I further certify that on this 19th day of August 2011, I caused a copy of the Motion to Allow Exhibits to be delivered to the following via U.S. mail:

Judith Anne Redford-Hall, Attorney for Respondent
2625 Parkmont Lane SW, Suite C
Olympia, WA 98502-1038

Declared under penalty of perjury under the laws of the State of Washington at Shelton, Washington this 19th day of August, 2011.



Bruce J. Finlay
Attorney for Appellant