

No. 43660-4-II
44504-2-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

In re Marriage of:

CHRISTOPHER A. WODJA,

Appellant,

v.

TERESA G. HARKENRIDER,

Respondent.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY _____
DEPUTY

CONSOLIDATED BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

Appellant Christopher A. Wodja appeals multiple decisions by the Honorable Kathryn Nelson. These decisions were post-decree, post-trial, court-ordered reviews of a Final Parenting Plan. Many of the decisions leading up to the Notice of Appeal were reconsiderations that were delayed and subject to continuances. Then a second Notice of Appeal was made, bringing other recent decisions up for review by this court. The second notice of appeal incorporates an order on a second reconsideration (of a previous order on reconsideration).

Some of the post-decree hearings, though, were “post-decree motions” from the mother, which asked for impermissible modifications to a Final Parenting Plan and final Decree.

I filed a second Notice of Appeal as the matters after July 2012 continued to be litigated with new final orders.

The Court of Appeals has consolidated both appeals.

The following is a summary of the decisions of Judge Nelson which are reversible error, which should be vacated, reversed, and/or remanded:

- (1) Judge Nelson's September 12, 2012 decision to take permanent, personal jurisdiction of this case, and personal

jurisdiction over the out-of-state children “until the children are emancipated”, which usurps the UCCJEA. See second footnote of 2CP¹ 97.

- (2) Judge Nelson awarding attorney fees for opposing party when I prevailed on a motion and there was no finding of “need and ability to pay”. CP 372, 373.
- (3) Judge Nelson’s multiple, repeated decisions that failed to award me any visitation or telephonic contact whatsoever with the children (when all experts assigned to the case recommend that I have contact with the children). CP 468, 2CP 96, 2CP 148, 2CP 161. There is no substantial evidence in the record that supports depriving the children of a father and vice versa, nor is there substantial evidence supporting findings of vexatious litigation by June 21, 2012 order. CP 390. To the contrary, many of my motions, evidence, and expert witness testimony are all substantial evidence in the record supporting father/ children contact.
- (4) Some of the motions of the mother, permitted by Judge Nelson, were modifications of final orders not authorized by

¹ Since there are two appeals that have been consolidated, there is a second set of Clerk’s Papers originally under appeal No. 44504-2 that started numbering from 1. To avoid confusion with the duplicative Clerk’s Papers page numbers, I cite the second set of Clerk’s Papers with a 2 in the front “2CP”.

statute, such as changing providers named in the original parenting plan and adding treatments not ordered by the court. CP 37, 97, 201. To wit, they were impermissible modifications of a parenting plan, without following statutory criteria. The only exceptions to this were the subject matter, up for review, regarding: (1) possible increased visitation for father, see CP 5, section 3.13 and (2) whether mother should continue UAs for alcohol use/abuse, see CP 28, lines 7 – 16.

- (5) Judge Nelson placed herself as a witness in this case, using her own personal opinion, to determine my readiness for reunification based solely upon a few short, brief appearances in court, replacing her own alleged personal knowledge for that of experts, stating after the fact that they did not do their job as the court expected them to and even going so far as to testify to Dr. Whitehill's state of mind ("he appear to forget his trial testimony"). Then she completely ignored the recommendations of the experts whom she appointed herself and other experts and those with personal knowledge, ruling there was no reason for father/children contact at all. 2CP 96.

- (6) Judge Neslon abused her discretion and refused to permit experts to testify in court throughout her decisions or disregarding the experts altogether. CP 323.
- (7) Judge Neslon found that I am litigious and intransigent to the point of vexatious litigation, warranting restrictions on my access to the courts, but without substantial evidence in the record supporting such a finding. CP 390.
- (8) Judge Nelson's repeated allowance of the mother's testimony as admissible and her reliance upon the mother's testimony, even though there is no way the mother could possibly have any personal knowledge of what she attests to (being in Massachusettes and testifying to alleged facts and assessing the expert witnesses' opinions, even though the mother is no expert herself). CP 39, 99, 173,118, 203, 208, 225, 236, 326, 375.
- (9) Judge's Nelson's open-ended, latest, vague rulings of 9/12/2012 and that makes no goals or markers for the father to accomplish for reunification, even though the court states the court wants reunification.
- (10) Judge Nelson's finding that there is no concern about the mother's alcohol use/abuse. CP 182.

(11) There is no substantial evidence in the record supporting any of findings, rulings, orders being challenged on appeal.

(12) The father was subject to unfair, biased and egregiously unjust proceeding and opposing counsel was permitted to railroad him in court.

B. ASSIGNMENT OF ERROR

1. The trial court erred in taking personal jurisdiction of this case until the children are 18 years of age. 2CP 97, footer.
2. The trial court erred in not ordering the mother to obtain an alcohol assessment and evaluation after April 27, June 8 and August 31 hearings (4/27 and 9/12 orders). CP 182, CP 323, 2CP 96
3. The trial court erred in denying any contact with the children on April 27 and September 12. CP 182, 2CP 96.
4. The trial court erred in finding bases for restrictions on the father's contact. CP 182, 2CP 96
5. The trial court erred in finding that the father is litigious/ intransigent and in ordering that the father must obtain permission to have any matter heard while he is pro se. CP 390.
6. The trial court erred in awarding attorney fees at a June 8 hearing, without a showing of need and ability to pay. CP 323.

7. The trial court erred in granting the mother an award of attorney fees in the amount of \$500 after the father prevailed on June 15, for his motion regarding the title of a vehicle. CP 372.
8. The trial court erred in ignoring expert testimony of the witnesses that the court appointed in this case. CP 114, 182, 188, 248, 264, 266, 403, 406, 408 & 2 CP 59, 62, 124, 188.
9. The trial court erred in testifying, when a judge is not permitted to testify, act as an expert witness, nor substitute her alleged personal knowledge for an actual witness or expert. 2CP 96.
10. The trial court erred in relying on its own opinion and testimony. 2CP 96.
11. The trial court erred in admitted any and all testimony from the mother and of her attorney regarding any subject matter and expert opinion covering the period of time after she relocated in early 2012, since the mother could not possibly have any ER 602 personal knowledge or ER 702 expert knowledge of her allegations and because her attorney may not testify, nor does he have personal knowledge. CP 39, 99, 118, 173, 203, 208, 225, 236, 326, 375 & 2CP 1, 48, 126.
12. The trial court erred in relying on the mother as a credible witness.

13. Many, if not all, of the court's decisions against the father were a result of biased, prejudicial and unjust rulings, not rooted in fact, evidence or law, but on egregious conduct of the court, which violates the Code of Judicial Conduct and the maxim of substantial justice being done.

C. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Should this court vacate and/or reverse the trial courts order that Judge Nelson takes personal jurisdiction of this case for the life of the children? [pertains to Assignments of Error 1]
2. Should the court vacate and/or reverse the trial court's denial of all and any contact between the father and children? [pertains to Assignments of Errors 2 – 4, 8 -13].
3. Should this court find that there is no substantial evidence in the record for prohibiting father/child contact? [pertains to Assignments of Errors 2 – 4, 8 -13].
4. Should this court vacate and/or reverse the trial court's awards of attorney fees without showing of need and ability to pay? [pertains to Assignment of Error 6 - 7].
5. Should this court vacate, reverse or remand on the issue of the mother needing an alcohol evaluation/assessment? [pertains to Assignments of Errors 2, 8 - 13].

6. Should this court vacate or reverse the trial court's finding that the father is litigious and intransigent, warranting limits on his access to the courts, and also vacate any awards of sanctions? [pertains to Assignments 5, 10-13].
7. Should this court reverse and order visitation as recommended by the experts who testify or remand to the trial court to enter such visitation and make specific findings as to the reliability of the experts testimony, as opposed to remaining silent on their testimony. [pertains to Assignments of Error 8 - 13].
8. Should this court find that the none of the mother's testimony is admissible (and that it should be stricken) when she speaks on (1) the pleadings/statements of experts; (2) any matter related to facts or alleged facts occurring in Washington State, which occurred since the time that mother has been out of state. [pertains to Assignments of Error 8 -13].
9. Should this court vacate the court's denial of father/children contact based upon a finding that Judge Nelson obviously had a patently obvious, untenable bias against the father, so much that substantial justice was not done and the integrity of the court system has been called into question and compromised? [pertains to Assignment of Error 1-13].

D. STATEMENT OF THE CASE

After a Dissolution trial in December 2011, final orders were entered on December 16, 2011, including a Final Parenting Plan and Findings of Facts and Conclusions of Law. CP 1 – 19.

On February 8, 2012, the court entered a Corrected Findings of Facts and Conclusions of Law. CP 20. Section 2.19 lays out reasons justifying a Final Parenting Plan which deprives the father from any contact with the children. Those reasons include:

(1) the reliance upon testimonies of Jennifer Knight, Kelly LeBlanc and Dr. Mark Whitehill.

(2) the need for the father to get treatment for Axis II disorders of narcissism and histrionic disorders.

Page 7, line 16 of the Findings stated that no father/children contact would be allowed:

“pending further order of the Court as specifically set forth in the Parenting Plan.” CP 20.

Section 2.21, page 9, line 7 of the Findings states that the mother has:

“alcohol dependency...was put on reand U.A.s by the Court...drank alcohol to excess...The court requires reandom testing through the anticipated April 27, 2012 hearing on a once to twice per month basis...file the results of those tests...” CP 20.

Section 3.1 of the Parenting Plan states:

“The father shall have no residential time with the children until conditions are met in section VI. below.” CP 1.

Section VI reads:

“Prior to the court allowing any contact between the father and children he shall comply with the recommendations of Dr. Mark Whitehill which include:

1. Twelve months of weekly individual psychotherapy with Michael Compte to address Father’s personality disorders as set forth in Dr. Whitehill’s report.
2. Successful completion of a course in anger management with Bill Notarfrancisco” (who was recommended by Whitehill).

On February 10, 2012, the court changed psychotherapy treatment providers for the father in the Order re Treatment Providers. CP 31.

On March 8, 2012, after the father had completed 90% of anger management treatment with Bill Notarfrancisco, the court ordered the father to start anger management treatment all over again with Steve Pepping, who was not available and eventually substituted with Diane Shepard on June 22, 2012. CP 394.

Dr. Whitehill (whom the court relies on) had a “strong endorsement” for Notarfrancisco to provide service. CP 33 – 36.

Section 3.13 of the Parenting Plan allowed for an April 27, 2012 review hearing to:

“assess Father’s progress...i.e. and improvement in Father’s condition through progress in his treatment and behavior that would allow a change in the no contact with the children provision that is the result of trial...” CP 1.

The Corrected Findings (CP 20) permits a review hearing for the mother, also, in order to determine if she further needs UA tests for her alcohol issues.

On April 27, 2012, Judge Nelson, in her Order on Post-Decree Matters (CP 182):

- (1) relieved the mother from any obligation for alcohol UAs
- (2) excused the mother for the UAs that she had missed
- (3) changed the psychotherapy provider to Paula van Pul
- (4) changed anger management provider to Bill Kohlmeyer, who later withdrew because of misrepresentations that the mother’s attorney made about him to the court.
- (5) ordered that there still be no father/child contact.

On May 11, 2012, Judge Nelson clarified the following matters and entered the following orders (CP 219):

- (1) that the father is not required to do a year-long, domestic violence (DV) course, as requested by the mother
- (2) that DV issues, if any may be addressed by Paula van Pul
- (3) a new anger management specialist must be found to replace Bill Kholmeyer
- (4) if parties could not agree on anger management specialist, then the court would hear argument on that and reconsideration motion of father on 5/25/2012, his requests included re-evaluating mother's alcohol issues.

Judge Nelson entered an order (CP 323) on June 8, 2012, 30 days after father's Motion for Reconsideration (CP 184) filed.

The order:

- (1) ignored written, sworn statements from three (3) experts regarding the mother's alcohol UA results. CP 248,264,266.
- (2) denied the father's request to have another leading chemical dependency expert testify, in open court, to his analysis of the mother's UAs and alcohol issues. CP 234. RP for 6/8/2012.
- (3) found that the Motion for Reconsideration, based upon testimony of four (4) experts "was not brought in good

faith." CP 221.

(4) the court continued to rely upon the mother's testimony (the one with the alcohol issues) that she just couldn't get UAs done as required. RP for 6/8/2012.

(5) the court declined to appoint Diane Shepard at this time, (an issue which the court said it would resolve at least 10 days earlier by May 25). CP 220-21, paragraphs #3 – 4.

On June 15, 2012, the father prevailed on a motion to clarify the transfer of the title of a vehicle into his name. The court awarded the mother \$500 attorney fees for this motion, with no basis or findings for the award. CP 373, 374. RP for 6/15/2013.

The mother's attorney abruptly withdrew from the case (CP 372) on the same day the father prevailed (June 15, 2012) and only two (2) days after it was disclosed that Attorney Gina Auter lied to the court about Bill Kohlmeyer. CP 339-40, 356-58.

On June 21, 2012, the court entered an order on mother's Motion re Vexatious Litigation (based upon RP 6/15/2012 hearing). The court found that the father engaged in such litigation and should have limited access to courts. CP 390.

On June 22, 2012, (based upon RP 6/15/2012 hearing),

Diane Shepard was appointed anger management specialist and to restart the treatment (6 months after Notarfrancisco's treatment was 90% complete). CP 394.

THE ORDERS IN JUNE ARE THE ORDERS IN THE FIRST NOTICE OF APPEAL BEFORE THIS COURT. THE JUNE 8 ORDER INCORPORATES RULINGS AND ISSUES DATING BACK TO THE APRIL 27 ORDER, AS THOSE MATTERS WERE CONTINUED AND RECONSIDERED THROUGH JUNE 8.

Another review date had been set by the court for August 3, 2012. But, on July 26, 2012, the court struck the August 3 date and ordered a review date of August 31, 2012.

On August 31, 2012, oral argument was heard. RP for 8/31/2012. The court eventually entered its written decision on September 12, 2012. 2CP 96. The court made vague findings and denied any child/father contact, despite all of the court-appointed treatment providers and experts' recommendation for father/child contact (including Dr. Whitehill, whom the court repeatedly found reliable). CP 114, 182, 188, 248, 264, 266, 403, 406, 408 & 2 CP 59, 62, 124, 188.

The court specifically stated that the court found very little change in father's anger, even though no expert testified to that.

The court cited its own personal observations at a few court hearings in which there was never a finding that the father acted angrily. 2CP 96.

On September 24, 2012, the father filed reconsideration. 2CP 104. The court denied the reconsideration on October 12, 2012. 2CP 148.

On October 22, 2012, the father moved for reconsideration of the 10/12/2012 order. TBS ("To Be Supplemented" with my 3rd Designation of Clerk's Papers).

Via e-mail, the Judicial Assistant struck the latest reconsideration hearing. 2CP 152, lines 11 – 20.

On November 16, 2012, the father motioned the court to re-instate the stricken hearing, setting a hearing on 11/30/2012. 2CP 150 – 160.

On November 29, 2012, the court answered the 10/22/2012 Motion for Reconsideration by stating in written letter that the parties should not appear on 11/30/2012 to re-instate the motion and court's final decision is incorporated by it's 9/12 and 10/12/2012 orders. 2CP 161.

THE COURT'S ORDERS OF 9/12, 10/12 AND 11/29/2012 ARE THE SUBJECT OF THE SECOND NOTICE OF APPEAL.

THEY ARE JOINED, TIED TOGETHER AND INCORPORATED BY THE FATHER'S RECONSIDERATION MOTIONS.

E. ARGUMENT

1. In general

Instead of addressing matters in chronological order in this Argument section, I will first address, the simpler, most obvious, reversible errors of Judge Nelson.

Stare decisis is part of our common law state in order to create predictability or guidance in the law, contributing to the integrity the judicial process, saving needless litigation. State of Washington v. Danny J. Barber, Jr., 170 Wn.2d 854, 863, 248 P.3d 494 (2011).

Judge Nelson created a scenario of needless litigation because nothing has changed in her orders, even though multiple specialists appointed by Judge Nelson HERSELF to do multiple evaluations and investigation, they were eventually disregarded by Judge Nelson. The Judge stated that she expected some change and resolution by April 27, 2012. 2CP 100, lines 5 – 6. But she refused to even allow the father to have an anger management counselor for several months. CP 159 (p. 2, #3), CP 219 (p.2, #3),

CP 394. Judge Nelson's change in counselors, and slow delays, combined with delay tactics of the mother to appoint a new one were roadblocks for the father to even get access to fulfilling the obligations that Judge Nelson ordered the father to fulfill.

Evidence of Judge Nelson's desire for improper personal control of this case and her bias against me is epitomized her audacity to supercede the UCCJEA. Not even this UNIFORM code guides her courtroom.

"A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. An error of law constitutes an untenable reason." In re Marriage of Farmer, 259 P.3d 256, 2011 Wash. LEXIS 670, Supreme Court No. 83960-3 (filed September 8, 2011) at Headnote 1; (citing , Noble v. Safe Harbor Family Pres. Turst, 167 Wn. 2d 11, 17, 216 P.3d 1007 (2009)).

2. Judge Nelson ignored the maxims regarding jurisdiction, particularly the UCCJEA

Judge Nelson took personal jurisdiction over the children in this case, for the rest of the children's lives through emancipation. 2CP 97, line 23, footnote #2. This is above and beyond what the

UCCJEA permits. I need not argue any further as to what an untenable, egregious, abusive of authority and reversible error this is. The children now live in the New England area. The court cannot take personal jurisdiction over them at all now and especially not for life.

In family law cases, judges routinely retain responsibility for subsequent matters that arise between the parties. See In re Marriage of Adler, 131 Wn. App. 717, 725, 129 P.3d 293 (2006), *review denied*, 158 Wn.2d 1026 (2007); In re Marriage of Possinger, 105 Wn. App. 326, 19 P.3d 1109, *review denied*, 145 Wn.2d 1008 (2001); In re Marriage of Little, 96 Wn.2d 183, 194, 634 P.2d 498 (1981).

But, a trial judge may not retain **exclusive** jurisdiction over **parties**. The judge can only maintain responsibility for subsequent matters that happen to properly come back to that court's venue jurisdiction. Id.

3. Attorney fee award of \$500 was abuse of discretion, ignoring the standard of law

Judge Nelson awarded the mother \$2,500 and \$500 in attorney fees (the latter, after my prevailing motion regarding a title

transfer). CP 323, 374. There were no findings written as to why the non-prevailing party received the latter award. It was an uncontested fact on the record that the mother earns a 6-figure salary. The extant Order of Child Support, entered on December 16, 2011, states that the mother earns a net income of \$9,501 per month. TBS. The mother had no need for help to pay her attorney fees. Moreover, she did not even attempt to demonstrate that she had a need, nor that the father had the ability to pay.

Neither party is entitled to attorney fees as a matter of right. In re Marriage of Leslie, 90 Wn. App. 796, 805, 954 P.2d 330 (1998), review denied, 137 Wn.2d 1003 (1999).

A party "must make a showing of need and of the other's ability to pay fees in order to prevail." Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 808, 929 P.2d 1204 (1997) (citing In re Marriage of Konzen, 103 Wn.2d 470, 693 P.2d 97 (1985)).

4. There is no substantial evidence in the record to prohibit father's contact

(a) The standard on "substantial evidence"

A trial court's findings will be upheld if they are supported by substantial evidence. In re Marriage of McDole, 122 Wn.2d 604,

610, 869 P.2d 1239 (1993).

A reviewing court may not disturb findings of fact supported by substantial evidence even if there is conflicting evidence.

Merriman v. Cokeley, 168 Wn.2d 627, 631, 230 P.3d 162 (2010).

An appellate court may disturb findings of fact if they are not supported by substantial evidence. In re Marriage of Lutz, 74 Wn. App. 356, 370, 873 P.2d 566 (1994).

A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds.

Boguch v. Landover Corp., 153 Wn. App. 595, 619, 224 P.3d 795 (2009).

Discretion is abused when ***no reasonable person*** would have ***taken the view adopted*** by the trial court. Carle v. McChord Credit Union, 65 Wn. App. 93, 111, 827 P.2d 1070 (1992).

The finding of reasonableness necessarily involves factual determinations and factual determinations will not be disturbed on appeal, when they are supported by substantial evidence. Glover for Cobb v. Tacoma Gen. Hosp., 98 Wn.2d 708, 718, 658 P.2d 1230 (1983).

A discretionary decision rests on "untenable grounds" or is based on "untenable reasons" if the trial court relies on

unsupported facts and the court's decision is "manifestly unreasonable" if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.'" State v. Rohrich, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (quoting State v. Lewis, 115 Wn.2d 294, 298-99, 797 P.2d 1141(1990).

Appellate courts may determine whether the trial court's findings of fact are supported by substantial evidence. Willener v. Sweeting, 107 Wn.2d 388, 393, 730 P.2d 45 (1986).

"Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." Brin v. Stutzman, 89 Wn. App. 809, 951 P.2d 291 (1998), citing Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 819, 828 P.2d 549 (1992).

In Brin, the trial court was reversed on one judgment by Division One because there was not substantial evidence supporting some findings for that judgment.

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable

reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. Ryan v. State, 112 Wn. App. 896, 899-900, 51 P.3d 175 (2002) (quoting In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362.

(b) The only conflicting evidence is the mother's testimonies—which are INADMISSIBLE

Throughout the proceedings in this matter, the only evidence supporting the mother's opposition to my contact with the children was the mother's own sworn testimonies. That is all. CP 39, 99, 118, 173, 203, 208, 225, 236, 326, 375 & 2CP 1, 48, 126.

The father's evidence supporting reunification and contact with the children included the statements and testimonies of multiple expert witnesses and specialists. CP 408, 248, 406, 114, 264, 403, 266. Most of these witnesses, experts and specialists were appointed by Judge Nelson. In an utter display of untenable bias, the court ignored all of them, and ruled in favor of the mother's sworn statements. The court made up its own personal opinions about visitation and continually denied visitation, up until a new final decision, rendering all the work, treatment and evaluations as an exercise in futility and a waste of time and money. 2CP 96.

The mother's sworn testimonies against the father were personal attacks on his character, allegations that he still needed more treatment and allegations that the treatment providers did not do their jobs correctly. CP 39, 99, 118, 173, 203, 208, 225, 236, 326, 375 & 2CP 1, 48, 126. One declaration was even from the mother's own attorney, who cannot testify under Rule of Professional Conduct (RPC) 3.7 and had no personal or expert knowledge of what he testified to, regarding parenting. 2CP 48. Mr. Fisher even has the audacity to diagnose the father with "paranoia" and prejudice the father in violation of his oath in APR 5(e) ("I will advance no fact prejudicial to a party.") 2CP 48.

Under Rule of Evidence (ER) 602, the mother cannot testify to something that she does not have personal knowledge of. And ER 701 and 702 prohibit her from acting like an anger management or mental health specialist. She was not qualified to allege anything about the father that occurred in Washington State, since she lived in the Greater New England area over 2,800 miles away, during the times of all of her declarations.

She cannot even testify to anything that she heard about. ER 802. Personal knowledge of a fact cannot be based upon the reports or statements of another. Hollingsworth v. Wash. Mut. Sav.

Bank, 37 Wn. App. 386, 393, 681 P.2d 845 (1984).

In Yurkovich v. Rose, 68 Wn.App. 643, 847 P.2d 925 (1993) a witness was not allowed to testify as to what had occurred at a meeting because the witness had not been present at a meeting. Not only was the mother not present at my meetings with the experts and treatment providers, she was thousands of miles away. Yet, the court permitted the mother's testimonies of my personal state of mind, what I was doing with treatment, whether these experts did their job correctly and other content that she could not have possibly known.

Testimony should be excluded if no trier of fact could reasonably find that the witness had personal knowledge of the events in question. State v. Vaughn, 36 Wn. App. 171, 672 P.2d 771 (1983).

The court struck some of my pleadings, simply because they were allegedly untimely. CP 390, #5. The mother never argued that she suffered any prejudice with the father's pleadings. She simply asked for them to be stricken and they were. Nearly every single word of every proposed order of the mother's was signed off by Judge Nelson, throughout these proceedings, with only rare, single line or word adjustments. The court could have admitted

untimely pleadings because the court has the inherent power to waive its own local rules, especially when there is no substantial injustice or harm to a party. Raymond v. Raymond, 47 Wn. App. 781, 784, 737 P.2d 314 (1987). The court often changed court dates or shortened time on the mother's behalf.

Since this matter affects a Constitutional right of mine (access to the children) and the court's MOST IMPORTANT, top priority is THE VERY BEST interests of the children, then a formality of timeliness should not get in the way of such rights and interests, especially there were many continuances, causing delays for the fathers' matters, while the mother's request SPED up the time or shortened time, to cater to the mother. See May 9, 2012 Order Shortening Time, for one. TBS.

"RCW 26.09.002. What this policy promotes is the continued parental involvement in the children's lives to the greatest extent possible, given the dissolution of the marriage. In re Marriage of King, 162 Wn.2d 378, 174 P.3d 659 (2007).

The "welfare of the children is of supreme importance." In re Marriage of Dunkley, 15 Wn. App. 775, 778, 551 P.2d 1394 (1976).

The court must balance the interests of all parties involved, while keeping in mind that the child's interests are paramount.

McDaniels v. Carlson, 108 Wn.2d 299, 738 P.2d 254 (1987).

The mother acted as an expert when she made “if/then” predictions about the father (how he would pose risk to the children IF he was permitted contact). The Court of Appeals has affirmed a trial court’s exclusion of an expert’s testimony, speculating about future behavior. In re Twining, 77 Wn. App. 882, 894 P.2d 1331 (1995). If an expert cannot testify speculatively about future behavior, certainly the mother (a non-expert) cannot testify either.

Appellate court reversed admissibility of expert testimony when that expert drew “inferences from facts not in evidence or by assuming facts actually conflicting with eyewitness testimony.” Davidson v. Munic. Of Metro. Seattle, 43 Wn.App. 569, 719 P.2d 569 (1986). Herein, the mother attacks the eyewitness testimony of experts giving the father treatment, when the mother is not even an expert in those areas of speciality.

The mother made inconsistent claims. On August 20, 2012, the mother claimed that Dr. Whitehill was “extremely thorough” and “undoubtedly the most knowledgeable evaluator and professional in this case to date”. 2CP 1, p.11 lines 1 – 13. But, she simultaneously opposed father/ children visitation. Yet, Dr. Whitehill supports father/children visitation and supports recommendations

of Paula van Pul, as he would defer to her. 2CP 59. Ms. van Pul has repeatedly recommended father/children contact. CP 403 & 2CP 62, 124.

Mueller v. Garske, 1 Wn. App. 406, 409, 461 P.2d 886

(1969) reads:

“A party is ***not permitted*** to maintain ***inconsistent positions*** in judicial proceedings. It is not as strictly a question of estoppel as it is a rule of procedure based on manifest justice and on a consideration of orderliness, regularity and expedition in litigation.”

When a trial court hears and sees the witnesses, it is thus afforded an opportunity, not possessed by the Court of Appeals, to determine the credibility of the witnesses. Garofalo v. Commellini, 169 Wash. 704, 705, 13 P.2d 497 (1932). (Recently cited by Division One in non-published case Farmers v. Bird, Docket No. 64291-0-I, filed 10/02/2009).

Judge Nelson relied completely on the mother’s testimonies throughout post-trial decisions, but the mother has been living on the East Coast throughout that entire time. The Court of Appeals is in the same position as the trial judge to determine credibility of the mother’s declarations, if they were actually deemed admissible,

since the mother NEVER APPEARED before the trial court for any of the matters being appealed.

(c) Admission of Declaration of Steve Fisher

Judge Nelson permitted the mother's attorney Steve Fisher to testify by way of his declaration dated 8/28/2012. 2CP 48. Therein, he testifies to the father's state of mind, his actions and assesses things that only an expert can assess. It is inadmissible. I incorporate my Objection dated 8/30/2012 by reference and the argument against an attorney testifying. 2CP 65. This court should order that this declaration was inadmissible, or if admitted, Steve Fisher should be ordered discharged from the case, since he has made himself a witness, per RPC 3.7.

(d) When the mother was running out of justification for her testimony, the court remained eerily silent and shut down oral argument

As the evidence favoring father's reunification mounted, the court became more withdrawn and ruled on matters without oral argument. As shown above, the court's main witness relied upon (the mother), was becoming "trapped in a corner", especially when

she praised Dr. Whitehill who testifies to the need for father/child contact and who defers to Paula van Pul, whom the mother hypocritically opposes.

So, the mother agrees with Dr. Whitehill. 2CP 1, p.11 lines 1 – 13. But, she disagrees with Paula van Pul, whom Dr. Whitehill defers to and trusts. 2CP 59.

The mother had incriminated herself as a party who simply attacks and attacks anyone and everything. My treatments were based upon Dr. Whitehill's testimony. So, the mother finds him credible. But, after Whitehill testified that treatment was going well and contact was needed, Judge Nelson no longer allowed oral argument, in which I could point out the fatal flaws of the mother's testimony (the testimony that Judge Nelson solely relied upon).

Now, Judge Nelson made some conclusions and referenced some work of the experts, but she did so vaguely and misrepresented their words. 2CP 96. They all clearly recommend immediate reunification. CP 114, 182, 188, 248, 264, 266, 403, 406, 408 & 2 CP 59, 62, 124, 188. Judge Nelson took pieces of recommendations to fit what is ostensibly an agenda to ensure no father/children contact, and that indefinitely, with no parameters and guidelines, just a vague, murky, ambiguous finding of someday

down the road, the father may get better, with no benchmarks as to what that is, or what the court means. 2CP 96.

This appellate court typically will not make a credibility determination on the mother. But, this court is in the same position as the trial court since the mother only wrote declarations. This court can also make an admissibility determination. And none of the mother's testimony against me and my treatment providers is admissible. Therefore, the only evidence left is my and their testimonies. Thereafter, Judge Nelson is only left with her in-court impressions of me for a few hearings lasting a few minutes. Judge Nelson cannot testify and she is not an expert on anger management and mental health, even if she could testify.

It was untenable to not order any visitation, especially after the court stated that the court hoped and hopes for father contact. 2CP 96.

(e) The harm cause by permitting and relying upon the mother's inadmissible declarations severely prejudiced the father, and affected a Constitutional right

This is a major, untenable issue. There was not a mere harmless error in permitting the mother's testimony throughout this

case. The mother's testimony was the weighted evidence used by the court to deny me access to the children. It was the only contravening evidence against father/children contact. I was severely harmed and prejudiced by the admissibility and consideration of the mother's inadmissible testimonies.

In effect, my parental rights have been terminated for the past year. Parental rights are a well-established fundamental right.

The United States and Washington Supreme Courts have long recognized parents' fundamental rights to the care and custody of their children. The rights to conceive and to raise one's children have been deemed essential, basic civil rights of manIt is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. Stanley v. Illinois, 405 U.S. 645, 651, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972), (quoting Meyer v. Nebraska, 262 U.S. 390, 399, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541, 62 S. Ct. 1110, 86 L. Ed. 1655 (1942); Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944)).

The rights have been recognized as protected by the due

process clause of the Fourteenth Amendment, the equal protection clause of the Fourteenth Amendment and the Ninth Amendment.

Id.

State interference with the parents right to rear her or his children is subject to strict scrutiny, justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved. In re Custody of Smith, 137 Wn.2d 1, 15, 969 P.2d 21 (1998), aff'd sub nom. Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).

(f) Vagueness of rulings – no narrowly drawn compelling interests were found or shown to continue to deprive father/ children contact

Judge Nelson's latest rule is vague, ambiguous, contradictory and confusing. 2CP 96. All the experts recommend father/ children contact and even state that further prohibitions are detrimental to the children.

But, depriving me of access to the children warrants something more than guesses, conjecture and vague language and findings. Such a continued, harsh deprivation of a fundamental liberty warrants a finding of a narrowly drawn compelling interest of

the State. Id. and In re Custody of Nunn, 103 Wn. App. 871, 14 P.3d 175 (2000).

In Nunn, the mother's Constitutional right trumped all the unpleasant things about the mother: she was rude and hostile towards witnesses, attorneys and the court and was therefore found to be unworthy of custody of her child. But, the higher courts reversed.

In this instant case, I was neither rude, nor hostile to anyone in the courts. Yet, my access to the children is still totally cut off indefinitely. Partly, it is due to the judge's own personal diagnosis of what she VAGUELY explains. The opening of her latest findings states "no temporary order allowing visitation will now be entered...the court's decision rests on facts more limited and more expansive than set forth here." 2CP 96, p. 1, lines 14 – 17. How can a court make findings based on things that are NOT in the court's findings?

But, Judge Nelson makes a vague reference to the "more expansive evidence" on page 2, line 2, which is "the court's own observations of Mr. Wodja's words and actions." Beyond the ambiguous findings in this ruling, the court seems to have relied heavily on the court's own personal perceptions of the father's

words and actions. His actions can only be seen by the court for a few minutes, in court, where there was NEVER a finding of inappropriate conduct during ANY hearing. The judge is testifying and doing so as a witness, which she has no authority to do under ER 602, 609 and 702. Her findings are fundamentally flawed, in that she ignores all of the witnesses, except the mother who has no personal knowledge, then the Judge relies upon her own personal observations.

One of the greatest complaints against me by the mother and the most detailed criticism of me was that I litigated aggressively on my own behalf and made some procedural mistakes along with way. It appears I was punished for litigating in the same manner the mother did. She personally attacked me as a heinous, reprehensible human being and I attacked her credibility and motives and alcoholism and use of children as a weapon. I had the testimony of experts to back up my claims. So, my litigation tactics were punished and the mother's errors went unpunished and her personal attacks on me (despite the experts' opinions of me) were allowed free reign.

The mother essentially attacked me for having omnipotent power to control people with decades of experience in dealing with

mental health issues, anger management and domestic violence. No reasonable judge or attorney could find such a claim realistic or justified. But, Judge Nelson continually “rubberstamped” all of the mother’s proposed orders into all of the orders on appeal here.

Judge Nelson did not provide such a narrowly drawn, compelling interest to hinder my access to the children, after there is overwhelming evidence that the children should have contact with their father. Therefore, her decisions against me and the children could have only been the result of prejudice, bias, and or passion, resulting in a tragic miscarriage of justice.

(g) The best interests of the children

RCW 26.09.002 states that the State recognizes the fundamental importance of the children’s relationship to both parents and the need for continued contact with both parents.

Dr. Herman Gill provided expert testimony that it is extremely detrimental to the children to continue to be deprived of any contact with their father.

The record also shows that the mother does not perform parenting functions herself (as defined under RCW 26.09.004(3))

from Sunday through Friday at times because she travels and hires a nanny.

The best interests of the children must be the #1 priority of the court. The court states that its intent was to deal with anger management and Axis II disorders and then hoped that there would be visitation by April 27, 2012 and that it has always been the goal of the court. That said, the court makes vague ambiguous applications of the need for more and more anger management and treatment despite the experts' unanimous recommendations for father contact, in the children's and father's interest and as a necessity for optimum treatment.

What was the point of appointing experts if the court just ignored and dismissed them?

(h) Further evidence of unjust, biased inequitable proceedings warranting Judge's removal

No reasonable judge would refuse to at least hear from an expert. CP 159. RP from 6/8/2012 hearing. When presented with three declarations from chemical dependency experts and a live expert in court to testify, the court declined. CP 114, 248, 264. The court was ruling on the mother's UA results and the court solely

relied upon its own opinion. CP 159.

The court relied in part on experts to find that there was a need for UAs in the original decree and findings and that the mother had alcohol abuse problems. CP 9. But, when it came time to analyze the UA results, the court did not want to merely hear from David A. Harris, BA, DCP, NCAC II from Sound Counseling, Inc. and Chairman of the Ethics Committee for the Chemical Dependency Professionals of Washington State. CP 248.

It is untenable for a judge to ignore four experts and to NOT want to hear from a leading one in the state on the subject matter in front of the court. Why would a court not want to hear from them, unless the court already had its mind made up before hearing argument and testimony?

The Code of Judicial Conduct's Preamble and Canons describes the imperative and vital role that judges have in maintaining the public confidence in the judicial system and the integrity thereof. If the Canons are violated, then so is that confidence and integrity. Among the Canons obligations are that of a fair hearing, impartiality, the right to be heard and more. I was denied all of these repeatedly throughout 2012.

This court should find Judge Nelson's conduct throughout

this case disconcerting and biased and order that I must no longer be subjected to appear in front of her.

The former Canon 2(A) read:

“Judges should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

Violation of this Canon has been a basis for removal from office or suspension without pay. In re Anderson, 138 Wn.2d 830, 981 P.2d 426 (1999). In re Hammermaster, 139 Wn.2d 211, 985 P.2d 924 (1999).

Even given the untenable bias, egregious partiality, shattering the public's confidence and the unfair proceedings, I am merely seeking an order that precludes Judge Nelson from further ruling in this case.

5. Substantial evidence supporting father/children contact: all of the court-appointed experts' opinions

All of the court-appointed experts wrote and held that the father either (1) completed his court-ordered duties and more; and/or (2) the children need contact with their father and the father

is ready for contact; and/or (3) part of court-ordered treatment would be served by father/children contact.

Dr. Whitehill deferred to Paula van Pul's expertise on this matter, which means that Dr. Whitehill supported contact and reunification. 2CP 59.

The mother stated Dr. Whitehill can be trusted. Dr. Whitehill's original recommendations were the main basis for the original restrictions on the father. CP 20, p.7, lines 14 – 25.

It is an uncontested fact that everyone relies upon Dr. Whitehill in this case. Ironically, the court ignored Dr. Whitehill when he supported reunification and trusted the judgment of Paula van Pul. 2CP 59. This is further evidence of the court's bias against the father.

6. The court itself created roadblocks for the father

One of the most bizarre rulings and findings comes from the 9/12/2012 Findings and Order. 2CP 96. On page 5, lines 4 – 9, Judge Nelson stated that the 4/27/2012 review date was set with the expectation that significant progress could be made regarding the father's anger management. Then the Judge stated that that did not happen.

But, the first court-ordered appointment, Bill Notarfrancisco, testified that the father was doing well. Yet, the court dismissed him. Several months of delays led to a new anger management specialist, but not until June 22. The father fought such delays throughout. The opposing counsel created delays and the court refused to appoint a new specialist at one hearing.

7. No substantial evidence supporting a finding of vexatious litigation

The court's 6/21/2012 order regarding "Vexatious Litigation..." (CP 390) makes the following findings which are the court's personal testimony of my state of mind or petty findings that are harmless:

- (1) I intended to increase the mother's costs (this finding was made in light of the mother having as much or more pleadings/motions than me)
- (2) I made harmless errors of untimely filings
- (3) I made harmless error of seeking Order to Show Cause in Ex Parte, even though Ex Parte can set a return hearing before a Judge,
- (4) I made other errors regarding court rules

- (5) I sought motions for reconsideration (which the court actually ruled on)
- (6) the judge complains about some duty I supposedly have to circulate a proposed agreed order (when ER 408 prevents settlement negotiations from being admitted)— nevertheless there's no evidence of me trying to avoid agreements
- (7) I emailed the Judicial Assistant and accidentally failed to CC opposing counsel, one time out of dozens of emails
- (8) I made typos regarding the mother's name
- (9) The automated LINX system had me as an attorney on a Notice of Hearing, whether it was a gliche or typo by me.

These and other findings and conclusions in the court's order are not tantamount to a finding of engaging in vexatious litigation, warranting sanctions.

This motion was brought AFTER such claims were lost at all the previous hearings mentioned in the order.

The doctrine of res judicata was violated in re-litigating issues of the Decree and findings already resolved therein.

I incorporate by reference my arguments in my 6/13/2012

Objection and Response to Motion re Vexatious Litigation. CP 333.

The mother's Motion re Vexatious Litigation was granted. CP 390. Her motion cited the following authorities as a basis for the relief requested: Yurtis v. Phipps, 143 Wn. App. 680, 181 P.3d 849 (2008) and In re Marriage of Giordano, 57 Wn. App. 74, 787 P.2d 51 (1990). CP 293.

These two cases were extreme and exceptional. They attributed a voluminous file to misconduct of a sanctioned party (the mother herein contributes to at least half the file if not more). In Yurtis, the sanctioned party had went on re-litigating a finalized case for years and years, going to appellate and supreme court levels multiple times.

The legal precedent does not even compare to the petty typos and failure to confirm, etc. that the court vilifies me with. If this vexatious litigation finding is affirmed then any attorney who makes typos and procedural errors and/or who aggressively advocates for his/her client and loses a hearing or two, will also be subject to CR 11 sanctions and a finding of vexatious litigation. The court system cannot withstand such a light, petty standard for finding vexatious litigation.

There is no evidence in the record to substantiate this claim,

other than the mother's over-the-top, hyperbolic statements that I have complete mind control and deceptive powers over everyone involved in the court system.

F. CONCLUSION

The trial court committed the following untenable conduct.

The trial court abused its discretion by not granting residential time with the children and father.

The trial court abused its discretion by ignoring all testimony, evidence and expert opinion favorable to me.

The trial court abused its discretion by considering and admitting the mother's testimonies that violated ER 602, 701, 702.

The trial court abused its discretion by awarding attorney fees to the mother when I prevailed on a motion, without the requisite finding of need and ability to pay.

The trial court abused its discretion by taking jurisdiction of the children until age 18.

The trial court abused its discretion by using its own opinion and making itself out to be an expert on anger management and mental health issues.

The trial court created roadblocks for me to accomplish its own court-ordered treatment for me, and then disregarded the experts' evaluations of the treatment, causing one to wonder what the point is of appointing experts if they are going to be ignored.

The trial court shattered public confidence in the judicial system and was completely biased and partial for the mother, preventing substantial justice from being done in this case.

There is substantial evidence in the record supporting reunification and contact between the father and the children.

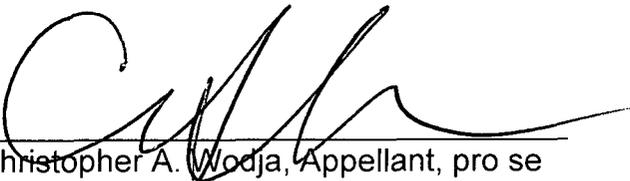
The court violated public policy, in light of the evidence, by essentially continuing to terminate my parental rights indefinitely.

The court's findings to continue the prohibitions are not narrowly drawn, compelling interests, but vague, ambiguous, contradictory, confusing statements that cannot be considered facts.

The court should reverse these decisions, vacating the awards of \$2,500 and \$500 in attorney fees, vacating the finding of vexatious litigation, striking inadmissible declarations of the mother's and lifting the prohibition on father/children contact.

The court should also order that Judge Nelson shall be disqualified from ever ruling in this case at the trial level.

Respectfully submitted July 17, 2013.



Christopher A. Wodja, Appellant, pro se

DECLARATION OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on this 17th day of July, 2013, I emailed a true copy of this Brief of Appellant to the Respondent's attorney of record, Stephen William Fisher, WSBA #7822, per our service by email agreement. An email was sent to Mr. Fisher's email address of steve@fircrestlaw.com and his Legal Assistants, Sarah Rees at her email address sarah@fircrestlaw.com, Debbie at dc@fircrestlaw.com, and Terri S. Farmer at terri@fircrestlaw.com.

Signed July 17, 2013.



Christopher A. Wodja, pro se
Appellant