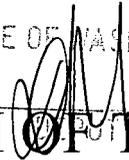


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DIVISION II

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STATE OF WASHINGTON

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**COURT OF APPEALS DIVISION II OF THE
STATE OF WASHINGTON**

Pierce County Cause No. 12-3-00600-7

Court Of Appeals No. 44762-2-II

In re the Marriage of:

**JAMELL COLLINS
Appellant/Petitioner**

and

**ARLENE MELINDA COLLINS
Apellee/Respondent**

APPELLANT'S RESPONSIVE BRIEF

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RESPONSE

It is the Appellant's position that although the Honorable Judge Martin did weigh all the factors, she abused her discretion by failing to properly consider the evidence.

V. (a): RCW 26.09.187(3) FACTORS

In concerning the first factor, the Judge acknowledges that Ms. Collins was unstable in 2011, that she moved around a lot, and that Mr. Collins was the more stable parent. She disregards that Ms. Collins was not a big part of Illiana's life, by her own choice, and does in fact state that "Ms. Collins is showing maturity and stability that was not there in 2011." (Verbatim Transcript of Proceedings, Judge's Oral Decision, page 6, lines 17-18). However, there was no evidence of this presented at trial. Ms. Collins failed to show she was any more stable than she was in 2011. She still had no steady employment, she only presented testimony that she was going to school and would be getting employed. But again, school does not mean that there will automatically be employment. The Judge imputed her income from this potential job in order to establish that Ms. Collins could financially support Illiana. Ms. Collins is also in no more of a stable living condition than she was in 2011, as she still lives with her parents. Keep in mind that Ms. Collins lived with her parents prior, and on a whim decided to move to North Carolina. And then Illiana was picked up in Florida. The fact of the matter is, the finding that Ms. Collins is more stable is manifestly unreasonable when there was no hard evidence provided to support this.

As far as the second factor, the fact that there was an agreement between the parties, Mr. Collins testified that he did not feel it was willingly, he felt as if the New Jersey Judge was forcing him too. The voluntariness of that agreement is questionable. However, Ms. Collins would like the court to forget that part of the New Jersey Order included that both parties provide an itinerary well in advance. In February of 2012, Mr. Collins did not withhold the child. As he testified, he was following the order, as Ms. Collins never provided an exact date and time she would arrive. There was text messages exchanged, but it was never set when her plane was even landing. She arrived at Mr.

Collins house later in the evening, after Illiana was already asleep, and Mr. Collins did not want to wake her. After she called the police, she was not communicative the next day in attempting to make arrangements to pick up Illiana. Ms. Collins wants the court to believe that he was keeping the child from her; however, she failed to comply with the components of the Order. She showed up whenever she pleased and expected Mr. Collins to go along, that is interfering with the relationship of the father. Further, Ms. Collins is the one who withheld the child from Mr. Collins in order to get the New Jersey Order. They had an agreement that Ms. Collins return the child, and she refused, causing the court action in New Jersey.

As far as the third factor, the past and present ability of each parent to fulfill parenting functions, again, the court failed to properly consider the evidence. Illiana was with Mr. Collins due to Ms. Collins inability to properly parent. Ms. Collins failed to attempt to visit the child, made sporadic phone calls, and all around was an absent parent. If you look at the phone call records that Ms. Collins provided, you will see that most of these phone calls were placed to Mr. Collins' cell phone while he was at work and Illiana was not around. Further, it seems the Judge did not even acknowledge that the child was in a dangerous situation when Mr. Collins retrieved the child from strangers in Florida. Again, the court decides that somehow Ms. Collins is now more stable, even though there was no real evidence to support the claim. This factor should not have been considered neutral.

Considering the fourth and fifth factors, the child has spent the majority of her time with her father. She had created the strong bond with her father and her step-siblings in the house. She had a very stable, and set environment. She does need to have a relationship with her mother, but to uproot her stability and change primary parents, when there was no evidence that it was in her best interest, is ignoring this factor.

The court brushed aside the sixth and seventh factor, and employment schedule should have been considered, as Ms. Collins did not really have one.

V(b): THE FINDING OF ABUSIVE USE OF CONFLICT

Again, the issue of February 2012 arises. It is interesting that so much weight is put on this incident, and yet no consideration of Ms. Collins action is taken into account. It doesn't seem to be a problem that Ms. Collins did not provide an itinerary as required, that she just showed up after 11 pm, it is only a problem that Mr. Collins did not wake his sleeping child and hand her over. It is more troubling that the Judge seems to fail to take into consideration the fact that Ms. Collins withheld the child from Mr. Collins in what resulted in the New Jersey Order, and the fact that Mr. Collins had to travel across the country to Florida at one point to retrieve his child from strangers.

Next, the appellee lays out what they deem as "facts" and then erroneously state that the facts they outline are unopposed by the Appellant.

- a. Mr. Collins did not make misrepresentations of where the child resided the last five years. The child primarily resided with him once he was back from deployment. That was because Ms. Collins was an unstable parent.
- b. I'm not sure where the appellee is referring to, but Mr. Collins testified that Ms. Collins withheld Illiana from him and he had to go start proceedings in New Jersey. He started them and testified that she was not there when he started the proceeding, but she was there for the hearing the court held.
- c. It is Mr. Collins belief that Ms. Collins had a drug problem. He could not prove it, but it was his belief and he provided testimony to why he believed that, including factors of extreme mood changes and rapid weight loss.
- d. Mr. Collins stated that he feared Ms. Collins was a flight risk, considering the moves to North Carolina, and the fact that he had to travel to Florida, and that is why he did not want to allow Illiana to travel to Canada with Ms. Collins. The credible evidence of her risk of flight would be the fact that Ms. Collins had taken the child to many different states without Mr. Collins' knowledge.

- e. Her arrival was unannounced at his home. She never said when she would be arriving. Ms. Collins never even told Mr. Collins when her plan was landing, and arrived at his home after 11 pm.
- f. I am unaware of any time when Mr. Collins' attorney thought the child would be in physical danger. The argument concerning the emergency temporary order was that it was detrimental to uproot the child from everything she knows.

Last, it is known that the Judge does not have to follow the guardian ad litem report; however it appears she disregards the report by going against every recommendation. Again, the guardian ad litem spent a considerable amount of time doing his job. There was no evidence that Ms. Collins was now more stable, just her testimony of promises. It is not even known if she has steady employment currently. There did not seem to be any better evidence than what the GAL had, the Judge just seems to set it aside. She barely even mentions the GAL report in her oral ruling.

CONCLUSION

Based on the argument above, the court did abuse its discretion by ignoring the prior actions of Ms. Collins and stating that she was more stable now with no direct evidence of stability. The court also abused its discretion in finding that there was an abusive use of conflict, by placing all the blame on Mr. Collins and failing to take into account the actions and disregard by Ms. Collins herself.

Uprooting the child is not in the best interest of Illiana.

DATED this 8th day of November, 2013

Respectfully submitted,

TAMBLYN LAW GROUP



Erika George, WSBA # 43871
Attorney for Jamell Collins

DECLARATION REGARDING SERVICE

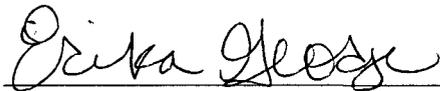
I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true.

On the 10th day of October, I received an email from Hayley Fulton of Benjamin & Healy stating that she had inadvertently copied the wrong attorney on the submission of the Respondent's Brief. The email attached a copy of the Respondent's Brief. The email was dated October 9, at 5:21 pm. My office was closed for the day, and I received it first thing on October 10. 30 days from October 10 is November 9, which falls on a Saturday. Due to the Veterans day holiday, the next business day is November 12, 2013.

On the 12th day of November, I served Jason Benjamin electronically with a true copy of Appellants Responsive Brief. Mr. Benjamin and I have an agreed reciprocal service via electronic mail.

DATED this 12th day of November, 2013

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