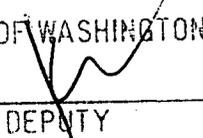


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COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

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No. 46904-9-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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Edward J. Lange Jr., Respondent,

v.

Tammy R. Lange, Appellant.

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BRIEF OF APPELLANT

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## **I. ASSIGNMENTS OF ERROR**

1. The court erred by failing to consider the cumulative nature of Ms. Lange's parenting ability.
2. The court erred by considering bias witness testimony by Counselor, David Stehman.
3. The court erred by failing to consider Ms. Lange was a victim of domestic violence, and Mr. Lange was a perpetrator.

### *Issues Pertaining to Assignments of Error*

- A. Did the court err by failing to consider the cumulative nature of Ms. Lange's parenting ability? (Assignment of Error 1)
- B. Did the court err by considering bias witness testimony by Counselor, David Stehman? (Assignment of Error 2)
- C. Did the court err by failing to consider Ms. Lange was a victim of domestic violence, and Mr. Lange was a perpetrator? (Assignment of Error 3)

## **II. STATEMENT OF THE CASE**

Tammy Lange (Ms. Lange) and Edward Lange, Jr. (Mr. Lange) were married for over 19 years, and share two (2) children together: Edward John Lange, III, and Amber Nicole Lange (RP 271). The parties separated in May of 2013, and the legal dissolution was filed in Kitsap County, WA, on October 11, 2013 by Mr. Lange, and was finalized on October 14, 2014 after the trial (CP 4, 649-656, 670-694).

Mr. Lange was employed with the United States Navy for about 23 years, and throughout the entire duration of his marriage to Ms. Lange (RP 43). During his deployments overseas, Mr. Lange hardly kept in contact with his children except sometimes via text messages or Facebook (RP 271) and for most of Mr. Lange's career he was out at sea (RP 37). Mr. Lange also admits that he had "very limited text contact" with [his children], if any. (RP 236). And if any, it was probably "just with Eddie." (Id).

His most recent and final deployment was located in Stennis (RP 38). This trip was nearly over 8 months long. Mr. Lange left on the 27<sup>th</sup> of August 2012, and returned on May 3, of 2013 (RP 57). Soon after, he got out of the Navy (RP 44).

Ms. Lange did not work for the majority of the marriage, with the exception of small waitressing jobs in the 1990's for up to a year, administrative support work, as well as working for a koi farm for a short period of time, which lasted about 6 months (RP 61). Due to Ms. Lange's Crohn's Disease, she had to leave these jobs (RP 72). She was hospitalized on multiple occasions, and would sometimes require treatment for her disability (RP 72). Mr. Lange stated at trial that she has been hospitalized for her disability "in the neighborhood of twenty [times]." (RP 72) This equates to more than

once a year, on average (Id). Mr. Lange also admits that this disability impacts her ability to work a full-time job (Id).

Throughout the marriage, Ms. Lange took care of both children on a full time basis, and she also handled all of the finances for the marriage (RP 52, 56). When Mr. Lange returned from his work trip from Stennis in May of 2013, the parties separated, and moved into separate residences. The children were residing with Ms. Lange. During Mr. and Ms. Lange's separation, there was a fire at the community home, and Mr. Lange asked if the children wanted to reside with him during this time, and they indicated to Mr. Lange that they wanted to be at home despite an incident with a fire in their home (RP 81). Mr. Lange admits this in his testimony (Id). During trial, Mr. Lange testified that the children "were still comfortable and trusted Mom" after the fire incident (RP 237).

In October of 2013, the children were primarily placed with Mr. Lange, while there was an on going CPS investigation for child abuse by Ms. Lange (RP 61), after a brief stay with the children's aunt. The children have been with their father ever since. This was determined at a CPS hearing this same month (RP 66). Prior to this, the children were primarily in Ms. Lange's care.

The children have historically done well in school while in the mother's care, and Mr. Lange even stated in trial that Amber is typically an A and B student, but the past school year, while the child was with him, her grades were not so good (RP 85). Amber's grades declined heavily while under Mr. Lange's care receiving D's and F's (RP 86). He also admits that he has only checked Amber's grades one time (RP 89) while in his care.

Also during Mr. and Ms. Lange's marriage, there were rocky times. The parties have a history of domestic violence as Ms. Lange being the victim. There is reason to believe that these domestic violence incidents were stemmed from alcohol abuse by Mr. Lange (RP 112). Mr. Lange admits to abusing Ms. Lange emotionally and physically at the date of trial (RP 127). Mr. Lange has also had a history of sexual indecencies in which included his stepdaughter, Jessica, who is an underage girl (RP 272). In addition, there was a military protection order (MPO) implemented by the Navy protecting Ms. Lange from domestic violence (RP 128, 130, 272). According to the language of the MPO, it states: "Service member accused of domestic violence against protected person over an undetermined period of time." (RP 131).

This marriage had marital problems and both will admit to this (RP 70). As a result, the children are in therapy (RP 36, 68), and began these counseling sessions in November of 2013, not too soon after the parties separated. (RP 68). David Stehman was and is their counselor. (RP 69, 94). On most counseling sessions, Mr. Lange was present at the session. (Id). And prior to Mr. Stehman seeing the children, he was primarily Mr. Lange's mental health counselor (CP 716). Mr. Lange also admits that counseling with the children could have been conducted in individual sessions while being covered under his free military insurance, yet the counseling was usually done all together (RP 236).

On January 17, 2014, a Temporary Parenting Plan was entered under Kitsap County Superior Court Cause No. 13-3-01238-9, as a part of the Legal Dissolution Process (CP 360-369). This Parenting Plan gave temporary custody to Mr. Lange and granted Ms. Lange visitation upon approval and recommendations from the children's counselors. It also stated that once the visitation becomes appropriate, the visitation shall take place in a therapeutic setting, or as directed by the therapist (Id).

Mr. Stehman admits to the court at trial that as a general ethics policy, they do not release records of children who allegedly

have been traumatized by the person requesting the records, even if it was their biological mother (RP 95-96). And when asked the question by Mr. Lange's counsel, of whether he was willing to engage with Ms. Lange regarding further therapy with her involvement with all evidence presented to show her fitness as a parent, and his response was "let's see." (RP 97). In addition, Ms. Lange was not required to complete services to see her children during the pendency period, but needs only verified compliance. (RP 106). However, Mr. Stehman is adamant about not meeting with Ms. Lange for possible integration counseling, without her full compliance of her "list of requirements." (RP 98). Ms. Lange's counselor is Mr. Seifert, and there was a release signed to have her speak with Mr. Stehman, but he simply denies he received anything (RP 112-113).

Furthermore, Mr. Lange states at trial that he believes Ms. Lange has an alcohol problem (RP 238), despite his own battles with alcohol and abuse towards his wife. And when the judge asked him whether he believed her alcohol use is a major barrier, he responded with "I don't know. I can only tell you what the kids have told me." (RP 239). Prior to trial on the dates of February, 20, 2014 and June, 26, 2014, Ms. Lange got drug and alcohol assessments

done by Healthy Whole Solutions in Port Orchard, WA, and on all occasions, there was no evidence of symptomology that would support a diagnosis of substance use disorder (CP 489, 490, 529).

On October 24, 2014, Appellant and her husband, Mr. Lange, finalized their legal dissolution under Kitsap Superior Court Cause No. 13-3-01238-9, and the Final Parenting Plan was entered upholding the Temporary Parenting Plan which states Ms. Lange is to get visitation with her children only upon recommendation by the counselor (CP 4, 649-656, 670-694). Ms. Lange has not seen her children since.

### **III. ARGUMENT**

A. The court erred by failing to consider the cumulative nature of Ms. Lange's parenting ability.

A parent's due process interest in the companionship, care, custody, and management of her child is commanding and more precious than any property rights. *U.S.C.A. Const. Amend. 14*. Parents do not simply lose this right because they have not been model parents. *In re A.W. v. T.P.*, 182 Wash.2d 689 (2015).

When Mr. Lange originally filed for divorce in October of 2013, he initially proposed that he and Ms. Lange each have one child on a primary basis: He would have Eddie, and Ms. Lange

would have Amber (CP 8-16). He also placed absolutely no 2.1 or 2.2 restrictions on Ms. Lange (Id). This indicates that Mr. Lange did not believe that Ms. Lange was a parent who should have any visitation limited in any way. He also stated in his original petition that the children shall have unrestricted telephone access with each parent at all reasonable times without interference by the other parent (CP 15). However, he eventually amended his petition after CPS became involved and decided to suddenly state that there were "long term emotional" or "long term physical impairments resulting from substance abuse..." (CP 93-102) when he stated that there were no such things just 3 months prior.

Once Ms. Lange found out her husband was leaving her, she became distressed and displayed from concerning behavior which included a fire incident in her home. However, when CPS investigated whether this behavior would warrant neglect, all findings were unfounded (CP 170). There is no history of assaultive behavior, and she was simply distressed due to her pending divorce. DSHS reports will indicate that "she has never gotten like this [assaultive] before (CP 171). Particularly after this fire incident, the narrative describing facts during the CPS investigation, the children reported that "they were never in any danger and were

aware of what was going on.” (Id). It was reported that the only thing that actually caught on fire was a towel (Id). The mother had a nervous breakdown and was self-harming but reported never having any intent to do anything that would harm her children (CP 160). The children agree with this and are teenagers that can self protect.” (Id).

There are no historical or current alcohol/drug use identified for Ms. Lange (CP 161). Also, prior to the news of the divorce, Amber had good grades, great attendance, and a great discipline record. (CP 178). The Counselor at her school stated that her grades plummeted a little as of around the time there were issues at home (Id). Another school counselor noted that “Amber is intelligent, hard working, kind, well-behaved and generally just a veru nice kid.” (CP 219) This same counselor stated that Amber “has been quite depressed as of late...and Amber has been more depressed.” (Id). Similarly with Eddie, he also was historically a great student. And while Ms. Lange was the primary parent for both of these children since birth up until they were taken with their father, this further indicates that her good parenting has contributed to the successes of her children. Marital and family problems during

a tumultuous time for Mr. and Ms. Lange should not warrant absolutely no time with Ms. Lange and her children.

The children have historically done well in school while in the mother's care, and Mr. Lange even stated in trial that Amber is typically an A and B student, but the past school year, while the child was with Mr. Lange, her grades were not so good (RP 85). Amber's grades declined heavily while under Mr. Lange's care receiving D's and F's (RP 86). He also admits that he has only checked Amber's grades one time (RP 89) while in his care.

In addition, During Mr. Lange's deployments overseas, Mr. Lange hardly kept in contact with his children except sometimes via text messages or Facebook (RP 271) and for most of Mr. Lange's career he was out at sea (RP 37). Mr. Lange also admits that he had "very limited text contact" with [his children], if any. (RP 236). And if any, it was probably "just with Eddie." (Id). The court fails to recognize this, and rather than focusing on the cumulative parenting of Ms. Lange, she was judged for her non-model behavior as a parent during a tumultuous divorce with her husband.

In addition, Mr. Lange repeatedly states throughout the duration of this case that the children do not want to see their mother, yet they are minors and their sole opinions should not

dictate such restrictive visitation with their mother. Mr. Lange's declarations state on multiple different occasions that the children do not want to see their mother as if this weighs heavily on her parenting ability as a whole (CP 429, 541, 603). This is child hearsay and should not be allowed. Also, Mr. Lange was on terminal leave for a period of time and he stated that he and Ms. Lange lived apart since August of 2012. But that is simply when he was deployed. When he returned from deployment in May of 2012, he stated the marriage was over, and did not come home. He was not actually concerned for the children or how Ms. Lange was caring for them. He actually didn't do anything for 6 months and only became involved when CPS became involved in October of 2013 (CP 378).

Ms. Lange continues to go to therapy and is on the right track. For 17 years, she was the primary parent for the children, yet she is not unable to see her children or speak with them. Although all future visitations are to be controlled by the counselors that are involved, we believe that this process is also highly prejudicial for Ms. Lange considering who the children's counselor is, and particularly his failure to communicate with Ms. Lange's counselor.

B. The court erred by considering bias witness testimony by Counselor, David Stehman.

An appellate court reviews a trial court's rulings regarding the placement of children and the allocation of parental decision-making authority for abuse of discretion; a trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *In re H.A.A.*, 182 Wash. App. 1023 (2014). See also, *Bennett v. Xitco*, 175 Wash. App. 1033 (2013). A court may reject evidence where, as here, it only remotely demonstrates bias, if at all. *State v. Clizbe*, 130 Wash. App. 1030 (2005).

In the current case, the trial judge used testimony of the mental health counselor, David Stehman, who erred in providing the court and CPS with information that were based only on assumptions, hearsay, and bias. Mr. Stehman did not personally speak with the children without the presence of their Father, Mr. Lange. Rather, Mr. Stehman was the personal Mental Health Counselor for Mr. Lange exclusively until the children were brought into the counseling sessions (CP 716). This causes an immense amount of bias when he has been treating Mr. Lange only, and hearing his side of the story exclusively up until the point of the CPS Hearing and the Divorce trial. Mr. Stehman was not actually

-serving the best interests of the children initially, but rather Mr. Lange's best interests. This is more than remote bias. Mr. Stehman also testified in both the Family Law Legal Dissolution trial and the CPS Hearing, in which he spoke unfavorably upon Ms. Lange both times, without ever speaking with her or encountering her directly. He took the words of Mr. Lange, and as his advocate, and used them against Ms. Lange in court. Mr. Stehman specifically states in his declaration filed under Kitsap County Cause No. 13-3-01238-9 that: "[Ms. Lange] continuously and repeatedly physically and emotionally abused [the children]." (CP 536-539). This is false in that Eddie III specifically stated to the police in the police report, that there is no prior abuse from his mother, but only one prior incident where *he* pushed his mother, not the other way around (Id). This is a faulty statement from Mr. Stehman as he is speaking on behalf of Mr. Lange, *not* the children.

The trial court used the biased statements of Mr. Stehman and relied on them to determine that Ms. Lange have no residential time with the children unless approved by the children's counselor himself. This should not be acceptable, as all of her visitation rights are conditioned upon a biased counselor.

C. The court erred by failing to consider Ms. Lange was a victim of domestic violence, and Mr. Lange was a perpetrator.

And when a child witnesses or lives with domestic violence, it is not in and of itself considered child neglect in Washington State (*RCW 26.44.020*). If the children have been hurt because of domestic violence (DV) committed against the abused adult, the abused has the right to be seen as a victim of a crime, and not be blamed for the abuse.

Ms. Lange and Mr. Lange have had a tumultuous relationship throughout the years, and Ms. Lange has actually been a victim of abuse throughout the course of the marriage. Mr. Lange admits to abusing Ms. Lange emotionally and physically at the date of trial (RP 127). None of this was considered when the children were initially removed from the home in October of 2013. After the children were placed with Joy Deluca, their aunt, a shelter hearing took place in which Mr. Lange obtained placement. The Court failed to consider Mr. Lange's history, and rather focused on the fact that Mr. Lange was not present for the incident on October 17, 2013, thus conveniently placing Mr. Lange in a seemingly innocent position in the matter. Due to this advantage, Mr. Lange was able to gain leverage over Ms. Lange in their divorce proceedings and won

primary placement despite the 17 years of proper parenting primarily done by Ms. Lange during Mr. Lange's sporadic and long absences.

Ms. Lange notified the Army Courts about the abuse (CP 481) and a MPO was put in place. In addition, Mr. Lange has a history of indecent exposure, and was convicted, demoted and incarcerated in the brig for 90 days in April of 2014. (CP 485, 517, 602). Mr. Lange committed indecent acts upon his stepdaughter (Ms. Lange's daughter from a previous relationship) "by exposing his penis in front of his step-daughter with the intent to gratify the sexual desires of [Mr. Lange]." (Id). As a result of his crime and his abuse, the MPO was issued to protect both Ms. Lange and her and Amber. Also, the Navy currently has placed him on legal hold until they release him from the military (Id). Despite these despicable acts upon his stepdaughter, CPS failed to take into account these acts, and rather than placing the children elsewhere, placed them with Mr. Lange, which, again, gave Mr. Lange unjust leverage over Ms. Lange in their pending parenting action.

The trial court has focused on a single isolated incident has resulted in an unfair advantage for Mr. Lange regarding the Parenting Plan action.

#### **IV. CONCLUSION**

In conclusion, there is no indication that Ms. Lange was unable to care for her children, but rather she struggled with the mere fact that a single isolated incident has caused any and all visitation to be taken from her. For 17 years Ms. Lange was the primary caretaker and parent. Mr. Lange was often unavailable due to working overseas for the 19 years of their marriage. And as a result of Ms. Lange's parenting, the children are doing well in school, and performing at levels which are appropriate for children at their age. It is a detriment placed on Ms. Lange for the court not to consider the cumulative and positive factors contributed to Ms. Lange's parenting ability. Rather a focus on a single isolated incident has resulted in an unfair advantage for Mr. Lange regarding the Parenting Plan action.

This single incident is not cause enough to consider Ms. Lange an parent who is not afforded visitation with her children. In addition, sharing her children with people who participated in the protective custody period was clearly difficult for Ms. Lange as she wanted to be free to parent her children without reprimands from others. This does not equate poor parenting. The Court erred by simply relying on mother's single isolated incident to argue that she

was abusive, and relied on the temperament of the mother towards the social worker and police officers on one isolated incident as a means to further measure fitness as a parent, and this is incorrect. See *In re Welfare of C.B.*, 134, Wn. App. 942 (2006).

Lastly, Ms. Lange was highly prejudiced due to the bias testimony by David Stehman that was allowed, and used against her in court. This weighed heavily against her and contributed to the trial court's ruling. In addition, the court did not take into account that she was a victim of domestic violence by the Mr. Lange, despite his admission to doing so. But rather, the court focused only on her isolated unmodel-like parenting behavior with CPS.

Based on the foregoing facts and authorities, Ms. Lange respectfully urges this court to reverse the court's decision to substantially limit the visitation of the appellant with her children, and allow her more reasonable time, not controlled by a third party.

DATED this 29<sup>th</sup> day of June, 2015.

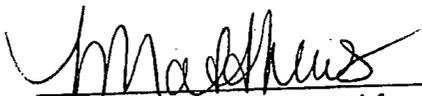
  
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)  
)  
EDWARD J. LANGE JR., )  
)  
Respondent, ) CERTIFICATE OF  
) SERVICE  
)  
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CERTIFICATE OF SERVICE

I certify that on June 29, 2015, I served a true and correct copy of the Brief of Appellant by E-mail, on John Claire Andrews, Attorney at Law, at [jandrews@bcawalawyers.com](mailto:jandrews@bcawalawyers.com).

  
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