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DIVISION II

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STATE OF WASHINGTON

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No. 47809-9-II

COURT OF APPEALS, DIVISION II

OF THE STATE OF WASHINGTON

In re: Marriage of Gray

MICHAEL KENICHI GRAY, Petitioner,

v.

SARA JUNE GRAY, Respondent

RESPONDENTS BRIEF

Sara Gray  
Pro Se  
8615 185th Avenue KPN  
Vaughn, WA 98394

P/M: 3/25/16

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**A. Assignments of error**

Assignments of Error

1. The court erred in allowing Mr. Gray's counterclaim at trial May 18th, 2015. Mr. Gray did not file for Adequate Cause and subsequently was not granted Adequate Cause. He did not make a Note for Commissioner's Calendar to have his proposal heard at trial. Subsequently Mr. Gray does not have a motion to be reconsidered or appealed. Mr. Gray's Child Support Revision was also erroneously filed within this motion and it was not considered.
2. The court erred in taking time away at trial from Ms. Gray to present her motion.

### **Issues Pertaining to Assignments of Error**

The rule reads,

"Counter Motions. In the event there is an existing motion or adequate cause hearing and the responding party wishes to file a counter motion to be heard the same date they may do so without leave of the court by e-filing a Note for Commissioner's Calendar, as long as the counter motion and all supporting pleadings are filed and served

a minimum of fourteen (14) calendar days before the hearing. Any necessary Order to Show Cause shall be timely presented to the Ex Parte Department. The Note for Commissioner's Calendar shall be electronically filed and scheduled in accordance with PCLSPR 94.04(c)(1)."

**B. Statement of the Case**

In March 2011, Ms. Gray and her two children leave the family home shared by herself, Mr. Gray, Mr. Gray Sr. and their two children Evan (age 2) and Charles (age 5 months) to escape domestic violence. The bruising that occurred to Ms. Gray that day, March 11, 2011 was photographed and supplied to the court appointed GAL, Laurie Ault Sayan (GAL Report pg. 5). The GAL'S findings were that Michael Gray was the abuser. She reports, "I find that there was domestic violence in this marriage. The mother was battered with physical abuse of pushing and hitting and with emotional abuse of control and name calling" (GAL

Report pg. 20) included in the report was a statement by Ms. Gray's mother, Mary Sutton. She said, "He followed her into the bathroom. He yelled at her in the shower. Later when the couple was in South Dakota she witnessed another incident that worried her. Sara had gone out to lunch or coffee with her home town girlfriends. While she was gone Mike and Evan paced the floor and there was an argument when she got home late". (GAL Report pg. 18) Ms. Ault Sayan reports Mike's own admissions made to her during her investigation, "During that call Mr. Gray admitted to me that he does have some obsessive compulsive traits" (GAL Report pg. 8) and "He admits to breaking three doors in their home. He threw her laptop out the front door because he was upset and wanted her to leave." (GAL Report pg. 10). She recommended in her report dated July 20, 2011 that Ms. Gray

should remain the custodial parent and Mr. Gray to have visitation one weekday overnight per week and every Friday to Sunday evening. Ms. Gray provided the court with a seven page description of the abuse she was a victim of. (Declaration of Respondent 4-7-11 pg. 1-7).

A Temporary Restraining Order was signed April 12, 2011 (TMRO4-12-11). A No Contact Order was ordered in DV Court February 27, 2012 for 2 years protecting Ms. Gray. Mr. Gray was found guilty of unlawful recordings of Ms. Gray and another 2 year No Contact Order replaced the old one October 31, 2012. On March 31, 2014 a Temporary Restraining Order was ordered restraining Mr. Gray from his children due to suspected abuse of his current girlfriend (TPROTSC/ORTSC 3/31/14). CPS reports were unfounded

despite verbal testimony of the children describing the abusive event and written testimony of the children's grandfather describing Evan's testimony given to him.

Visitation resumed.

Since separation in 2011 Mr. Gray and Ms. Gray have predominantly used 3rd parties to exchange the children. From January 2012 to November 2013 the parties used Kindercare daycare for exchanges. The parties were never present at the same time. Since then, Ms. Sarah Montgomery, Mr. Gray's fiancé, has been present for Friday exchanges. Mr. Gray has been present for the Monday exchanges that occur at school either in the front lobby or in the children's classrooms. Other than brief notes to one another concerning the children's personal items and health, conversations between parties were nonexistent and/or civil. There

were never any incidents or arguments. Both parties have used email as their main means of communication. Phone calls are rare and usually for last minute or urgent needs. Text messages are occasional. Mr. Gray extensively asserts that the children are exposed to "abuse of conflict" between the parties but there is no evidence to support his claim. The children have never witnessed an incident between Mr. Gray and Ms. Gray since Ms. Gray left March 2011 which was her impetus for leaving. Not only is there no evidence to support this claim that Ms. Gray abuses conflict, there is no evidence that the children are harmed or at risk of being psychologically harmed by Ms. Gray. (See Verbatim Report pg. 26 & 27)

The only statement made by someone other than Mr. Gray and Ms. Gray is that of the children's counselor Kim Greene. In it she states, "Both of his parents have actively

participated in making sure Evan regularly attends his counseling sessions with me and have demonstrated a sincere interest in the emotional well-being of their son." She goes on to state, "In the past month, due to some behavior modification techniques suggested by his mother, Evan has stopped biting his lips and reports no feeling of anxiousness." She concludes her letter by saying, "Based on Evan's progress and his consistent verbalizations of not wanting a change to his current schedule I do not believe that it is in Evan's best interest to change his current schedule with his parents." (See Sealed Personal Health Care Records 5/8/2015)

There is no evidence that supports Mr. Gray's claim that the children are at risk of physical, emotional and/or psychological harm. Mr. Gray's accusations are unfounded. Contrary to Mr. Gray's accusations that Ms. Gray uses abuse of conflict, the GAL

reported that Mr. Gray's abuse of conflict was exhibited as such, "The father is scrutinizing everything the mother is doing and looking at each diaper rash and red mark as a sign of abuse. He is accusing the mother is lying when she tells him that she is the only one providing care except for when she had to come to court. He is causing conflict by taking the children to a doctor's appointment without notifying the mother." (GAL Report pg. 21).

### **C. Argument**

I urge the court to read deeply our lengthy and complicated case file going back to March 2011. Mr. Gray has multiple reasons for his request for appeal. He has used this same method of using the court system to aggravate our already complicated

case since 2011. If the court looks back on our filings, it indicates that Mr. Gray has filed multiple requests for reconsideration over the years. He took our Final Orders to the Appeals Court in 2012. It is apparent that Mr. Gray uses the court system to continue his abuse. He exhibits behaviors of an abuser who uses the judicial system to continually attempt to control and manipulate his victim. He bombards the courts with loads of files to sift through while I, the motioning party, am left with little time to present my case. As an example, Mr. Gray files seven pages of health records. Only 3 of those pages were relevant to the case. (SEALPHC 10-3-14).

In the Tennessee Journal of Race, Gender and Social Justice, Donna King wrote the following in a publication entitled *Naming the Judicial Terrorist: An Expose of an*

*Abuser's Successful Use of a Judicial*

*Proceeding for Continued Domestic*

*Violence,*

"Abusers, experts at manipulation, use judicial proceedings to continue victimizing women by creating "endless opportunities to prolong and delay a case or retry it for years." Fathers' rights groups train abusers to delay divorce proceedings by representing themselves and "engaging in frivolous litigation tactics." Abusers successfully deploy intimidation, isolation, and control under the guise of litigation strategies that "[t]he court system itself encourages. "[T]hrough sheer perseverance," an abuser learns that "the emotional stress of receiving pleadings" and continually having to appear in court "will wear down [his victim's] resolve to fight."

"Fathers' rights groups claim that, "judges detest family court." The legal community considers family courts among the least prestigious and least important courts of the United States' judicial system, yet these courts often hear highly complex litigation between extremely contentious parties. The combined effect of the family courts' lack of attention and complicated proceedings make them "difficult or dangerous for victims to litigate [their] case[s]." Abusers "engage in extensive, irrelevant discovery aimed at stalling and delaying" litigation resting on the assumption that "lazy and incompetent" family law judges will assist them in

“delaying [their] cases.” The effect of these abusive tactics causes family courts to deny women equal protection of the law in such subtle ways that victims often do not realize the violation of their rights, thus preventing them from addressing the injustice.”

My motion was not adequately discussed because Mr. Gray's motion, although improperly filed, dominated our trial.

Mr. Gray's desires throughout the case whimsically change from month to month. He declares at the Adequate Cause hearing that he believes the plan is fine and should remain the same. In November he covertly attempts to personally email Judge Arend with an emotional and dramatic plea to continue the trial date and ask for a Guardian Ad Litem. (See Letter from Dept 12 and Copies of Emails dated 5/7/2012). He files multiple different parenting plans, each different. Mr. Gray filed very different parenting plans during my motion starting

Sept 2014. He filed 3 different plans (Proposed Parenting Plan 10/03/2014, 4/2/2015 and 4/22/2015). Each plan is totally different and two contradict what he is pleading for now. His final submission 19 days before trial is a Major modification with a change in residence, school for the kids and asks for full custody of the kids. He asks for an almost 180 degree flip in the parenting plan. Mr. Gray is exhibiting the behavior of an abuser toward his victim.

Mr. Gray exhibits abusive behavior by his attempts at gaining custody. In a journal called National Council of Juvenile and Family Court Judges a publication written for judges use called *Batterer Manipulation of the Courts to Further Their Abuse, and Remedies for Judges*, the article explains,

"Despite assumptions by laypersons that domestic violence ends with separation, in reality the batterer may respond to

separation by escalating behavior in order to reestablish control or punish a partner for leaving. For example, the use of custody proceedings is a strategy commonly identified by batterers themselves as a means to control or harass former partners. Research shows that batterers are more likely to apply for custody and equally likely to have it granted in comparison to non-violent fathers. As a result, battered women have an ongoing need both for safety planning after separation and for consideration of a range of remedies and interventions from courts and court related services."

"Growing research indicates that litigation filed for the sole purpose of harassing a victim is not uncommon in civil legal matters involving domestic violence; and that it creates challenges for judges to determine whether a matter is legitimate and if not, what appropriate sanctions may be. Such was the case in *Davey v. Dolan*, a federal district court case in New York that imposed sanctions for vexatious litigation."

"The sheer volume of lawsuits that he filed made clear Davey's intent to harass. However, intent is likely to be murkier in the bulk of cases. To discourage frivolous claims, courts can analyze situations where an abuser appears to be using the legal system to further the abuse and can impose appropriate sanctions. A few ideas for bolstering the safety of domestic violence victims and avoiding waste of judicial resources include:

- Not letting first or subsequent violations of any order go by without consequences.
- Ordering the abuser to pay all reasonable costs, expenses, and attorney's fees incurred by the defendants in responding to the violation of any order or the filing of frivolous lawsuits, including lost wages of the victim."
- Even if not required to do so in your jurisdiction, making findings in your order that will be helpful to you and the parties should additional actions follow, such as requiring prior authorization from the court before filing further litigation or requiring the abuser to attach the court's opinion and order of injunction to all subsequent filings.

#### **D. Conclusion**

Mr. Gray's request for appeal should be denied based on the fact that he was never granted Adequate Cause. Mr. Gray should not have been allowed to present his motion at trial. Mr. Gray should be monitored by the court and held account for his misuse of court time and procedure. Mr. Gray has zero evidence to support his claims and accusations. I deny that I have abused

conflict in any way. I deny that I have psychologically or emotionally harmed our children.

My motion for a modification to our parenting plan was denied. I respect the decision of the court and the request of our children to not change the plan that has been in place for five years. I have been the custodial parent for all of that time. For the two years prior to divorce, I was a stay at home parent. I have been the children's primary parent for seven years. Mr. Gray lacks any evidence that would suggest a change in the custodial parent.

March 4, 2016

Respectfully submitted,

*Sara Gray*

Sara Gray

ProSe

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STATE OF WASHINGTON

BY AP  
DEPUTY

Washington State Court of Appeals

Division Two

Case No: 47809-9-II

Declaration of Service

Brief of Respondent

Petitioner: Michael Gray

Respondent: Sara Gray

The undersigned declares under penalty of perjury under the State of Washington that a true copy of the Respondent's Brief along with this declaration of service was served upon Michael Gray today by sending a copy via US mail using Certified Mail.

Dated at Vaughn, WA March 4, 2016.





Washington State Court of Appeals

Division Two

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