

FILED

OCT 25 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 284875-III
Consolidated with 290794-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

THE MARRIAGE OF BARBARA HOLLINGSHEAD,
APPELLANT/PETITIONER

Vs.

ERNEST R. WILSON, RESONDENT

APPEAL FROM YAKIMA COUNTY SUPERIOR COURT
Honorable Court Commissioner Gayle Harthcock
Honorable Judge Michael Schwab

BRIEF OF APPELLANT
BARBARA HOLLINGSHEAD,
And on behalf of minor children, K.H. & J.H.

BARBARA HOLLINGSHEAD,
Pro Se Appellant
Barbara Sue Hollingshead
PMB 2848 PO Box 257
Olympia, WA 98507
Protected Phone Number

FILED

OCT 25 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 284875-III
Consolidated with 290794-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

THE MARRIAGE OF BARBARA HOLLINGSHEAD,
APPELLANT/PETITIONER

Vs.

ERNEST R. WILSON, RESONDENT

APPEAL FROM YAKIMA COUNTY SUPERIOR COURT
Honorable Court Commissioner Gayle Harthcock
Honorable Judge Michael Schwab

BRIEF OF APPELLANT
BARBARA HOLLINGSHEAD,
And on behalf of minor children, K.H. & J.H.

BARBARA HOLLINGSHEAD,
Pro Se Appellant
Barbara Sue Hollingshead
PMB 2848 PO Box 257
Olympia, WA 98507
Protected Phone Number

TABLE OF CONTENTS

	Page
A. NATURE OF CASE	1-3
B. ASSIGNMENTS OF ERROR	3-4
(1) Assignments of Error	3
(2) Issues Pertaining to Assignments of Error	4
C. INTRODUCTION	4-5
D. STATEMENT OF THE CASE	5-11
1. The court’s failure and refusal to provide fair and equitable treatment for both children under the constitution and laws and contrary to their best interests.	
2. The court’s failure to allow a change of venue to the children’s county of residence contrary to their best interests.	
E. SUMMARY OF ARGUMENT	11-13
F. ARGUMENT	14-26
G. CONCLUSION	26-29

TABLE OF AUTHORITIES

Cases

In Barber v. Barber, P.3d, 2007 WL 10661 (Wash.App/ Div. 2).....	18
In re Celine R ., 31 Cal. 4th 45, 71 P.3d 787, 1 Cal. Rptr. 3d 432 (2003).....	20
Clay v. City of Huntington, 184 W.Va. 708, 403 S.E.2d 725 (1991).....	16

Crone v. Crone, 180 W.Va. 184, 375 S.E.2d 816 (1988).....	16
Esmieu v. Schrag, 88 Wn.2d 490, 563 P.2d 203 (1977).....	14
Hague v. Corvin, 23 Wn.App 913. August 1979.....	25, 26
In re Parentage of L.B ., <u>155 Wn.2d 679</u> , 122 P.3d 161 (2005).....	20
Lehr v. Robertson , 463 U.S. 248, 261, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983).....	22
McClintock v. Serv-Us Bakers, 103 Ariz.72, 436 P.2d 203 (1977).....	15
Meyer v. Nebraska, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923).....	6
The State of Washington, on the Relation of Marie Nielsen et al., Plaintiffs, v. The Superior Court for Thurston County, John M. Wilson, Judge, Respondent, 7 Wn.2d 562, (Feb. 1941).....	25, 26
Pierce v. Society of the Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510, 534-35, 45 S.Ct. 571, 69 L.Ed. 1070 (1925).....	6
Quilloin v. Walcott , 434 U.S. 246, 255, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978).....	22
Restatement (Second) of Conflict of Laws 104 (1969).....	13-14
State ex rel. Chris Richard S. v. McCarty, 200 W.Va. 346, 489 S.E.2d 503 (1997).....	16
State v. Santos , <u>104 Wn.2d 142</u> , 143-44, 702 P.2d 1179 (1985).....	20-22
Gladys B. Schroeder v. John W. Schroeder, 74 Wn.2d 853 (November 1968).....	24, 26
Shields, 157 Wn.2d at 142-43.....	6, 7, 20, 21, 23
Simpson v. Stanton, 119 W.Va. 235, 193 S.E. 64 (1937).....	16
In re the Marriage of Stewart, 133 Wn. App. 545, June 2006.....	7, 19

Dependency of T.R. 155 108 Wn. App. 149.....	7, 17, 19
In re the Marriage of Thomas, 63 Wn. App. 658, 660, 821 P2d 1227 (1991).....	27
Troxel v. Granville, 530 U.S. 57, 77, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).....	6
Washington v. Glucksberg, 521 U.S. 702, 720, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997).....	6
Wisconsin v. Yoder, 406 U.S. 205, 232-33, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972).....	6

Statutes

RCW 4.12.030.....	24, 26
RCW 13.34.020.....	7
RCW 26.09.....	12
RCW 26.09.140.....	13
RCW 26.09.280.....	10, 23, 24, 26
RCW 26.44.....	2, 4, 5, 8, 9, 11, 17
RCW 26.50.....	4, 5, 7, 8, 9, 11

Rules and Regulations

CANON 3 Judges shall perform the duties of their office impartially and diligently.....	14-15
CR 84 VENUE.....	12
RAP 18.1.....	13

Other Authorities

BEEKER, R., <i>The Illusion of Protection</i> (Domestic Violence Report, May 1, 2006).....	23
Bridge, Bobbie, Supreme Court Justice retired, Washington Voices Washington State CASA Newsletter, Winter 2009.....	20, 28
DV manual for Judges 2006, Washington State Administrative Office of the Courts,.....	18
Inter-American Commission on Human Rights, 1889 F Street, N.W., Washington, D.C., 20006.....	2, 5, 10, 11, 12
Neustein, A., and Leshner, M., FROM MADNESS TO MUTINY: WHY MOTHERS ARE RUNNING FROM THE FAMILY COURTS AND WHAT CAN BE DONE ABOUT IT (Northeastern Univ. Press 2005).....	20
Russell, K. <i>Child Abuse: When Family Courts Get It Wrong</i> . (Christian Science Monitor, October 14, 2009).....	9
Substitute Senate Bill #5407.....	18-19
Washington State Address Confidentiality Program, Washington State Secretary of State, PO Box 257, Olympia, WA 98507.....	1
Washington State Constitution.....	2, 5, 10, 11, 12, 14
Washington State Equal Rights Amendment Constitutional article XXXI.....	8, 12
United States Constitution.....	2, 5, 10, 11, 12, 14

For clarification of the parties, the Appellant will hereafter be identified as Hollingshead, the Respondent will be identified as Wilson, and the minor children will be identified as K.H. and J.H.

A. NATURE OF CASE

There is a long history of domestic violence in this case and the children and Hollingshead have had an Order for Protection against Wilson since 2002. (EX PE 101) Hollingshead has been receiving threats of death and harm from Wilson towards the children, other family members, and herself since February 2002. (EX PE 127) The current Order for Protection is due for renewal in October of 2010, although it was originally set for a term of 11 years and was to expire in 2017, when the youngest child reached the age of maturity. (EX PE 100) The courts in both Yakima and King County have found that Wilson has a pattern of violating the Protection Order and has been found in contempt for these violations; his latest violation occurred on July 27, 2010 when he sent Hollingshead another written death threat through the US Mail. Hollingshead continues to seek court assistance to protect her minor children, as well as herself. (EX PE 47- 48, 97 – 101, PI 102 - 103, 121, 127 – 130, 133 – 134) Hollingshead, the children, and her parents are all participants in the Washington State Address Confidentiality Program

which protects their location in an attempt to protect them from Wilson carrying out his threats of harm and death, thus leaving them in the fear of imminent harm from Wilson. (PE 90) This, however, has not prevented Wilson from continuing to send Hollingshead written threats of harm and death, for which he has been found in contempt. (EX PE 47 – 48, 97 – 103, 127 – 130)

In the past numerous years, Hollingshead has attempted to provide her children with a level of protection against the continued abuse perpetrated by Wilson. The trial court has failed to enforce orders for protection, consider reports of abuse from medical and mental health providers (CP 141-149, 205-207)(RCW 26.44), or enforce its own orders in regard to stipulations for the father to complete counseling and treatment. Rather, the court allowed the father unsupervised visitation with the children regardless of the danger it put them in.

When Wilson voluntarily terminated his visitation rights with K.H., Hollingshead filed a motion with the trial court asking for equal rights and treatment for J.H. The trial court refused to provide J.H. with equality. (US & Washington State Constitutions)(Inter-American Commission on Human Rights) The trial court failed to properly file motions and allow hearings and issued orders without argument (CP 177-190), dismissed motions without allowing argument (CP 23), issued orders without

(2) Issues pertaining to assignments of error.

1. Did the trial court err and abuse its discretion by continually failing to validate and consider the reports of abuse and neglect from medical and mental health providers and thus issuing orders that continued to place the children in harm's way?
(Assignment of error # 1 – 3)
2. Did the trial court err and abuse its discretion by failing to allow or provide Hollingshead, K.H., & J.H. with their constitutional rights of equal, fair, and impartial judicial treatment? (Assignment of error # 1-2)
3. Did the trial court err and abuse its discretion by reversing a change of venue to the children's county of residence?
(Assignment of error #4)

C. INTRODUCTION

Hollingshead has attempted to provide her two youngest children, K.H. & J.H., with a level of protection from the abuse and neglect they suffer at the hands of their father, Wilson. (RCW 26.50, 26.44) The trial court initially afforded them this protection. In the instant issue for this case, Hollingshead requested that the court allow judicial equality for J.H. following Wilson voluntarily terminating his visitation rights with K.H.

(CP 166-170) Wilson's continued physical and emotional abuse of the children leaves them in a constant state of fear and harm. (RCW 26.44, 26.50) The trial court abused its discretion and denied J.H.'s constitutional rights when it failed to provide judicial equality to both children. (CP 9, 23, 24, 109,110)

In the Spring of 2010, the trial court, through the court commissioner, granted Hollingshead a change of venue to her county of residence noting that the professional witnesses for the children were all present in King County and it was in the children's best interest to have the case transferred to that county. Under revision, however, this was reversed.

D. STATEMENT OF CASE

1. The court erred and abused its discretion by failing to ensure Hollingshead's and J.H.'s constitutional rights or providing them with equal, fair and impartial treatment.

Hollingshead has been subjected to continual denial of her and the children's constitutional rights in the venue of Yakima County Superior Court. (US & Washington State Constitutions)(Inter-American Commission on Human Rights) Although she has followed court rules when filing motions and setting hearings, the court has failed to properly file documents, and she has been

harmful to force children to remain in the custody of parents who are unfit or who present an actual detriment to the children's growth and development.” Shields, 157 Wn.2d at 142-43.

“A child has the right to basic nurturing, which includes the right to a safe, stable, and permanent home and the speedy resolution of dependency and termination proceedings. When the rights of a child conflict with the rights of a parent, the rights of the child prevail.” DEPENDENCY OF T.R. 155 108 Wn. App. 149, August 2001

RCW 13.34.020 states: *“the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.”*

“Under chapter 26.50 RCW, a domestic violence protection order may temporarily prohibit contact between a parent and his or her minor children. Such an order is not an impermissible modification of a parenting plan. The protection order that prohibited Wilson Stewart from contact with his children pending further proceedings in family court was authorized by the statute, supported by the evidence, and did not violate his constitutional rights as a parent.” In re the Marriage of Stewart, 133 Wn. App. 545, June 2006

The petitioner has not been allowed to provide the judicial intervention needed by K.H. and J.H. that is afforded them by statute, case law, and the constitution. The trial court has left them in an unsafe and abusive environment in the respondent's care.

2. The court erred and abused its discretion by failing to allow and ensure judicial equality for the minor, J.H.

An individual has standing under the 2002 UPA that children must be treated equally. Also, Washington's equal rights amendment, constitutional article XXXI, is a clear mandate of public policy declaring that equality of rights and responsibility under the law shall not be denied or abridged on account of sex.

When Hollingshead requested judicial equality for J.H., not only did the court commissioner deny her request, she further put J.H. into continued physical and emotional harm by forcing him to continue in unsupervised contact with his father. " Judge - I can tell you that I am not going to release the second child just because the father is determined not to visit with the older child so that one is just denied flat out." (RP 7) His welfare and safety was ignored and his emotional abuse was not even considered as relevant.

(RCW 26.44, 26.50) Wilson was allowed to terminate his visitation with K.H. – a girl – but J.H. – a boy – was forced to continue to attend visitation. The trial court has denied J.H. equal treatment due to his sex.

3. The court erred and abused its discretion by ignoring the reports from the children's medical and mental health providers, reports to

Child Protection Services, and failing to ensure the best interests of the children.

The trial court continues to ignore reports from providers who are pleading with them to take action to protect the welfare and safety of these children. (CP 141-149, 205-207, 1493-1565, 1582-1668)(RCW 26.44, 26.50) Professionals were deposed in connection with the dependency proceedings in which they confirm their great concern for the welfare of the children which necessitated their reports to Child Protection Services. (CP 1493-1561, 1582-1668)

“Actually, according to one conservative estimate, more than 58,000 children per year are ordered by family courts into unsupervised contact with physically or sexually abusive parents following divorce in the United States.

The fact that this type of scandal is taking place in the American justice system defies the imagination. Not since the Roman Catholic Church pedophile scandal has the US seen this level of institutional harm inflicted on innocent children.

Meanwhile, the child's other parent, commonly referred to as the "protective parent," is typically demonized by court professionals as an "alienator" for bringing evidence of child abuse to the court's attention.” Russell, K., Child Abuse: When Family Courts Get It Wrong, (Christian Science Monitor, October 14, 2009)

Child Protective Services and the state Attorney General’s office filed a dependency petition in response to the overwhelming evidence of abuse and neglect reported by professionals. (CP 1462-

1491) As part of this dependency, the children wrote statements to the court enumerating the horrors they have been put through while in the respondent's care. (CP 1570-1580) J.H. drew pictures depicting his physical harm from Wilson and his emotional trauma caused by contact with Wilson. (CP 1566-1569) They pleaded with the court to help them. Their pleas once again fell on deaf ears.

4. The court erred and abused its discretion by reversing a change of venue to the children's county of residence.

On concurrent jurisdiction from the dependency court, Hollingshead requested a change of venue to King County from Yakima County. Hollingshead and the children have resided in King County for over six years and all the witnesses for the children are located there. Yakima County, on April 7, 2010 granted the change of venue. (CP 1428-1429) On revision on April 23, 2010 the order was reversed. (CP 1669) This places Hollingshead and the children in the position of not being afforded their equal, fair and impartial treatment through court as is their right under state statute and the constitution. (US & Washington State Constitutions)(Inter-American Commission on Human Rights) RCW 26.09.280 grants litigants to seek judicial relief in their county of residence. The trial court has refused to allow

Hollingshead or the children to obtain this relief. As a result, they have not been afforded equal, fair or impartial relief in the venue of Yakima County. This is in direct violation of their rights through both federal and state statute, as well as the constitutions. (US & Washington State Constitutions)(Inter-American Commission on Human Rights)

E. SUMMARY OF ARGUMENT

A trial court order addressing the placement of children is reviewed for an abuse of discretion. The trial court erred and abused its discretion by failing to provide protection for the children from the abuse from Wilson, his spouse and stepson. (CP 9, 23, 24, 109, 110, 208)(RP 6)(RCW 26.44, 26.50) The trial court abused its discretion and erred in failing to recognize and consider the long history of domestic violence and abuse. (CP 1426-1427, EX PE 47- 48, 97 – 101, PI 102 - 103, 121, 127 – 130, 133 – 134)(RCW 26.44, 26.50) The trial court erred and abused its discretion by failing to protect the mother and children. (CP 9, 23, 24, 109, 110, 208, 1426-1427)(RP 1-9)(RCW 26.44) Medical and Mental Health providers continue to report escalating instances of abuse and neglect to Child Protective Services. (CP 1493-1565, 1582-1668) On December 18,

2009, the state filed a dependency action against the father. (CP 1456-1668)

The court erred in failing to address the children's documented and on-going medical and emotional conditions, and to consider the best interests of the children in the orders that were signed. (CP 141-149, 205-207, 1493-1565, 1582-1668, 1669)(RCW 26.09) The children continue to have medical and mental health needs that are not being properly addressed and put them at risk from Wilson not properly caring for their medical and mental health needs. (CP 1493-1565, 1582-1668)

The due process rights of Hollingshead and the children are being violated in the venue of Yakima County. (RP 6)(CP 23)(United States Constitution, 14th Amendment)(Washington State Constitution) (Washington State Equal Rights Amendment, Constitutional Article XXXI)(Inter-American Commission on Human Rights)(Rule 84) There have been numerous instances over the term of this case of the trial court abusing its discretion, failing to provide constitutional due process rights (CP 9, 177-190, 208)(RP6), and failing to act in the best interests of the children (RCW 26.09). Hollingshead has been denied the right to be heard in a scheduled court hearing (CP 9, 23), hearings stricken without notice and orders issued without hearing or argument (CP 23), clerk's office failing to file documents and motions (CP 177-190, 202, 208), and

allowing stipulations in orders that were never pled or argued (CP 208). When equal treatment under the law was requested for her son, J.H., the trial court again failed to afford them their due process and constitutional rights, refusing to grant him equal treatment as that of his sister. This denial of equal treatment is at issue in this appeal.

With order of concurrent jurisdiction from King County juvenile court/dependency, Hollingshead was granted a change of venue of the family law case to King County where she and the children reside. (CP 1428-1427) The court commissioner determined that it was in the children's best interest to have issues related to them heard and decided in their county of residence where all professionals involved with them are located. "Judge - I think it's in the best interest of the children to have the litigation there at this point and so I am going to grant the motion for change of venue." (RP 13) (CP 1428-1429) This order of venue change was reversed under revision and it is this reversal that is at issue in this appeal.

Hollingshead is entitled to her reasonable attorney fees and costs on appeal pursuant to RAP 18.1 and RCW 26.09.140.

F. ARGUMENT

Hollingshead brings four issues before this court for argument. The issues are those of constitutional rights, judicial equality, the safety and welfare of her two minor children, and her right to venue in her home county. It is evident that Hollingshead is not being allowed her constitutional rights to an equal, fair, and impartial hearing and due process under the law. The trial court has continually failed to afford her and the children's rights under the US & Washington State Constitutions.

The trial court has issued orders without even allowing fair argument. (CP 9, 23, 24, 208) For the issues under this appeal, the commissioner actually stated, "Okay, I am going to stop you. I really wasn't listening to all of these arguments that were being made." (RP 6) She further stated that my case was "burning through a lot of court resources..." (RP 6)

"As held by our Supreme Court in ESMIEU v. SCHRAG, 88 Wn.2d 490, 563 P.2d 203 (1977), an order is void as violative of due process where based on a hearing for which there was not adequate notice or an opportunity for a party to be heard."

Canon 3 of the Codes for Judicial Conduct reads: Model Code of Judicial Conduct:

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.*

5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice

6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice against parties, witnesses, counsel or others.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding.

The trial court has not afforded Hollingshead or her children any equal, fair, and impartial hearings. It has allowed the opposing counsel to slander her without cause or substantiation to the point that the judicial pool is tainted against her. (RP 3-4) As a result the constitutional rights of the mother and children are continually being denied.

"We hold that the constitutional right to a meaningful opportunity to be heard was violated by these procedures. SEE MCCLINTOCK v. SERV-US BAKERS, 103 Ariz. 72, 436 P.2d 891 (1968); Restatement (Second) of Conflict of Laws 25, comment H (1969).

Restatement (Second) of Conflict of Laws 104 (1969) states:

"A judgment rendered without judicial jurisdiction or without adequate notice or adequate opportunity to be heard will not be recognized or enforced in other states." Comment A to this provision refers to

Restatement (Second) of Conflict of Laws 25 (1969). Comment H to section 25 provides:

"If the defendant was denied a reasonable opportunity to be heard, a judgment rendered against him will be void in the state of rendition itself, if this state is a State of the United States, and in any event will not be recognized or enforced in other states. This will be true even though the state had judicial jurisdiction over the defendant and even though he was given proper notice of the action. Notice to a defendant of the claim which is being made against him is of no value to him if he is denied the opportunity to defend against the claim. This may happen when in the particular action the conduct of the court is so flagrant as to deny the defendant the opportunity to be heard, such as when the court arbitrarily strikes out an answer which the defendant makes to the claim and renders judgment against him. The same is true when, although the defendant is given notice of the action, a judgment is rendered against him so shortly thereafter that he has no adequate opportunity to interpose a defense."

"[t]he due process of law guaranteed by the State and Federal Constitutions, when applied to procedure in the courts of the land, requires both notice and the right to be heard." Syl. pt. 2, Simpson v. Stanton, 119 W.Va. 235, 193 S.E. 64 (1937). See also, syl. pt. 3, State ex rel. Chris Richard S. v. McCarty, 200 W.Va. 346, 489 S.E.2d 503 (1997); syl. pt. 1, Clay v. City of Huntington, 184 W.Va. 708, 403 S.E.2d 725 (1991); syl., Crone v. Crone, 180 W.Va. 184, 375 S.E.2d 816 (1988)."
Shields, 157 Wn.2d

Shields, 157 Wn.2d at 142-43 "Just as parents' constitutional rights are long established, it is also true that children have rights regarding their well-being that are important factors properly guiding courts' custody decisions. Recognition of these rights is not offensive to the constitution. Just as it is impermissible to interfere with a parent's custodial relationship without a showing of adequate cause, it is likewise harmful to force children to remain in the custody of parents who are unfit or who present an actual detriment to the children's growth and development."

The trial court continually fails to allow Hollingshead and her children their US & Washington State Constitutional and due process rights.

Further, also their rights under the Inter-American Commission on Human Rights. Most importantly, the children are not allowed to have adequate judicial representation in the venue of Yakima County. They are not afforded equal protection under the law, where one child, a girl, is allowed termination of visitation in the abusive home of her father, but another child, a boy, is denied this right. This places the boy into a continuing environment of abuse and neglect. (RCW 26.44) This is believed to be due to his gender, a flagrant case of sex discrimination. He has not been afforded due process, constitutional rights and his safety and welfare is being ignored.

“A child has the right to basic nurturing, which includes the right to a safe, stable, and permanent home and the speedy resolution of dependency and termination proceedings. When the rights of a child conflict with the rights of a parent, the rights of the child prevail.” *DEPENDENCY OF T.R. 155 108 Wn. App. 149, August 2001*

Another issue is that of the court failing to provide the children with a safe and abuse-free environment. There is overwhelming evidence of abuse and neglect and the children’s providers have diligently filed reports with Child Protection Services (CP 141-149, 205-207, 1493-1565, 1582-1668) over the past two years pleading with them to intervene for the children and help to ensure their safety. The abuse has escalated to the point that the children have been reported as suicidal as their only means of escaping

the abuse. Although the state filed a dependency petition (CP 1462-1491), it is feared that the trial court will continue to ignore the children's welfare and safety and will order them back in to the dangerous and detrimental environment of their father's home.

In Barber v. Barber, P.3d, 2007 WL 10661 (Wash.App/ Div. 2). The appeals court found

"This statute does not require "a pattern of conduct" or a "continuity of purpose." It follows then that what a petitioner must show in seeking renewal of the original order carries differing evidentiary standards. And we agree with the Spence decision that showing past violence and present fear is sufficient. Tarie made such a showing here. Additionally, requiring a new act of domestic violence to support an extension would make an extension superfluous because a new act would plainly support a new order. Additionally, the nature of the harm and the identity of the participants, i.e., acts of violence by family or household members, differ greatly from acts that annoy or harass."

The DV Manual for Judges 2006, Washington State Administrative Office of the Courts states,

"The court's order should reflect the best interest of the child and protect both the child and the abused parent from further violence. In drafting parenting plan orders, the court must determine how to best protect the child and the adult victim from any further violence. Even where the risk of physical harm to the child is slight, the exchange of the child between parents is an all too common opportunity for violence or harassment against the adult victim."

Attachment 1 for Chapter 496, Laws of 2007,

Section 303(4), SSB5470 has issued amendments to many of the RCW 26.09 sections. For example,

“The court may not, for example, order a residential schedule that requires a child to frequently alternate his or her residence between the households of the parents for ‘brief and substantially equal intervals of time’ if a limitation, such as domestic violence, exists.” Section 303, SSB 5470 has been amended *“to allow the court to also consider the safety of the parent who may be at risk of physical, sexual or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time with the child. The court may require supervised contact, the completion of relevant counseling or treatment, and impose other limitations.”* *“Section 401 also allows the court to order exchanges of the child to take place in a protected setting, supervised visitation as described above, and/or the use of safe exchange centers or alternative safe locations to facilitate the exercise of residential time.”*

*In Stewart, “Under chapter 26.50 RCW, a domestic violence protection order may temporarily prohibit contact between a **parent** and his or her minor **children**. Such an order is not an impermissible modification of a **parenting plan**. The protection order that prohibited Wilson Stewart from contact with his **children** was authorized by the statute, supported by the evidence, and did not violate his constitutional rights as a parent.”*

The court’s orders put the children and the mother at risk of continued physical and emotional abuse and “fear of imminent harm” from Wilson.

It is past time for the children’s welfare to come first.

“A child has the right to basic nurturing, which includes the right to a safe, stable, and permanent home and the speedy resolution of dependency and termination proceedings. When the rights of a child conflict with the rights of a parent, the rights of the child prevail.” *DEPENDENCY OF T.R. 155 108 Wn. App. 149, August 2001*

The trial court has continued to fail to address the issue of domestic violence and abuse. The court’s determination that a child could have made things up cannot and should not be sustained without some scientific

or psychological support in the record. To do otherwise would be to endorse mere lay speculation that is incorrect, on a subject for which lay opinion is inadequate, and in the face of contrary expert psychological information. This would permit courts, to depart from a reality-based assessment of facts to a degree that should not be countenanced, especially where such important safety concerns are at stake. Neustein, A., and Lesherm M., From Madness to Mutiny: Why Mothers Are Running From The Family Courts and What can Be Done About It (Northeastern Univ. Press 2005)(many family court judges resist clear evidence of child abuse and reach for theories couched in psychological language to explain them away.)

“Justice BRIDGE, J. - I agree with the resolution of this case and with the analysis of the law as set forth in the majority opinion. I concur separately because I want to take this opportunity to acknowledge the often unrepresented third party in any custody dispute, the child. In my mind, decisions about a child's welfare should be premised to a greater degree than our current precedent allows on the concept that a child has a fundamental right to a stable and healthy family life. That right should include independently valued protections of a child's relationship with siblings and with adults other than his or her biological parents with whom the child has formed a critical bond. See, e.g ., In re Parentage of L.B ., 155 Wn.2d 679 , 122 P.3d 161 (2005); In re Celine R ., 31 Cal. 4th 45, 71 P.3d 787, 1 Cal. Rptr. 3d 432 (2003) (discussing the importance of stable sibling relationships).

Consideration of rights the child holds is of paramount importance because, regardless of the family constellation from which the child comes, in any placement dispute it is the child who is the most vulnerable and the most voiceless. Indeed, many practitioners and scholars have long advocated for a more child-centered focus in the resolution of disputes in

our family courts. Melinda A. Roberts, *Parent and Child In Conflict: Between Liberty and Responsibility* , 10 NOTRE DAME J.L. ETHICS & PUB. POLY 485, 485-505 (1996); Annie G. Steinberg, Barbara Bennett Woodhouse & Alyssa Burrell Cowan, *Child-Centered, Vertically Structured, and Interdisciplinary: An Integrative Approach to Children's Policy, Practice, and Research* , 40 FAM. CT. REV. 116, 121 (2002). This court has recognized as much in the context of paternity disputes. "It would be ironic to find issues of parent-child ties are of constitutional dimension when the parents' rights are involved but not when the child's are at stake." *State v. Santos* , 104 Wn.2d 142 , 143-44, 702 P.2d 1179 (1985). I see no reason why this concern for the constitutional right of the child should be implicated in a paternity proceeding, and not in other proceedings affecting the placement and care of a child.

Santos instructs that, "The importance of familial bonds accords constitutional protection to the parties involved in judicial determinations of the parent-child relationship." 104 Wn.2d at 146 . The notion of these "parties" invariably includes the children at issue. *Id.* "Familial bonds" are not just about biology; "biological relationships are not exclusive determination of the existence of a family." *Smith v. Org. of Foster Families for Equality & Reform* , 431 U.S. 816, 843, 97 S. Ct. 2094, 53 L. Ed. 2d 14 (1977).

[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in "promot[ing] a way of life" through the instruction of children as well as from the fact of blood relationship.

Id. at 844 (citation omitted); *In re Parentage of L.B.* , 155 Wn.2d 679 , 122 P.3d 161 (recognizing *de facto* parent status for nonbiological parents). Once we recognize that the child's interest in his or her familial bonds is constitutionally protected, *Santos* , 104 Wn.2d at 146 , and that familial bonds stem not just from biology, but also from the intimacies of daily association, then it logically follows that a child has a constitutionally protected interest in whatever relationships comprise his or her family unit. It would be prudent, then, for courts and the legislature to begin to acknowledge the harm that may be visited upon a child when his or her fundamental right to a stable family unit is compromised by the fundamental rights of the biological parent.

Courts tasked with the difficult duty of resolving the question of a child's welfare may have to reconcile potentially competing interests held by a biological parent and child. But is not, at least in part, a biological parent's right to control the outcome of his or her child's life dependent upon the responsibility he or she has exercised on behalf of that child throughout the child's life, and the interest he or she has taken in the child's rearing? "[T]he mere existence of a biological link does not merit [full] constitutional protection [for a biological parent]." Lehr v. Robertson , 463 U.S. 248, 261, 103 S. Ct. 2985, 77 L. Ed. 2d 614 (1983).

The significance of the biological connection is that it offers the natural [parent] an opportunity that no other . . . possesses to develop a relationship with [the child]. If [the parent] grasps that opportunity and accepts some measure of responsibility for the child's future, he [or she] may enjoy the blessings of the parent-child relationship and make uniquely valuable contributions to the child's development. If [the parent] fails to do so, the Federal Constitution will not automatically compel a State to listen to his [or her] opinion of where the child's best interests lie.

Id . at 262 (footnote omitted); Quilloin v. Walcott , 434 U.S. 246, 255, 98 S. Ct. 549, 54 L. Ed. 2d 511 (1978) (suggesting a stable environment may trump parental rights in certain instances, particularly where the complaining parent has not played a pivotal role in the child's life). Where a biological parent has failed to fulfill his or her responsibilities to a child, such that the child has formed a stable and healthy family unit outside the boundaries of a blood relationship, it may be that a child's interests and rights are not preserved or respected by placement with that parent.

I recognize that the present case does not give this court the opportunity to fully flesh out what rights a child may hold in circumstances like those presented here. But I hope that if and when the time comes to define what role the child must play in a decision about his or her life, the contours of that role will be informed by the recognition of some degree of constitutional protection the child holds to stable and healthy family relationships. Moreover, I would hope that in the future our state's courts and our family and child welfare laws move more cohesively toward a recognition of the child's independent rights in questions concerning his or her living arrangement and associations. Such considerations should be manifestly proper in a proceeding where it is ultimately the child who has the most at stake. See Santos, 104 Wn.2d at 143."

For example, in keeping with its goals of permanency and stability for the child, California has a statutory scheme that allows courts to take into account familial attachments, such as sibling relationships, when making placement decisions. See, e.g., CAL. WELF. & INST. CODE § 16002 (West 2001); CAL. WELF. & INST. CODE § 366.26 (West Supp. 2006); In re Celine R., 31 Cal. 4th 45; In re Luke M., 107 Cal. App. 4th 1412, 1422-24, 132 Cal. Rptr. 2d 907 (2003). I regret that Washington does not have similar statutory provisions.” Shields, 157 Wn.2d at 142-43

*We are sending our children very mixed messages that teach them to minimize the abuse happening in their family, a message that plays into the hands of the abuser whose goal it is to silence his victims. Worse, because our society and the judicial system are failing to respond to what is clearly criminal behavior (and often even punishing protective mothers for trying to raise the abuse issues), they are giving our children a blurred picture of what is appropriate behavior between family members. It is no wonder that our youth exhibit violent behavior today, or that the cycle of violence continues in successive generations? Beeker, R., *The Illusion of Protection, Domestic Violence Report, May 1, 2006.**

In 2010 the trial court commissioner finally admitted that it is in the best interests of the children to have venue for decisions made for them in the county where they have resided for over six year. (CP 1428-1429)(RP 13)

She ordered a change of venue to King County where the mother and child live. Under revision, unfortunately, Yakima County took venue back, which necessitates the issue now under appeal.

RCW 26.09.280 Parenting plan or child support modification or enforcement -- Venue. Every action or proceeding to change, modify, or enforce any final order, judgment, or decree entered in any dissolution or legal separation or declaration concerning the validity of a marriage or domestic partnership, whether under this chapter or prior law, regarding the parenting plan or child support for the minor children of the marriage or the domestic partnership may be brought **in the county where the**

minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the children is then residing.

The court's refusal to allow for King County to have the authority to hear issues related to the welfare of the children is in conflict with RCW

26.09.280.

RCW 4.12.030 Grounds authorizing change of venue. The court may, on motion, in the following cases, change the place of trial when it appears by affidavit, or other satisfactory proof: (1) That the county designated in the complaint is not the proper county; or, (2) That there is reason to believe that an impartial trial cannot be had therein; or, (3) That the convenience of witnesses or the ends of justice would be forwarded by the change.

The court's refusal to allow King county to have the authority to hear issues related to the welfare of the children is in conflict with RCW

4.12.030.

“We see no occasion to **change** the long established rule in this state that a defendant has an absolute right to have a transitory form of action moved to his place of residence, under the provisions of RCW 4.12.025, the pertinent portion of which reads: An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For some of the pertinent cases see Andrews v. Cusin, supra, and State ex rel. Martin v. Superior Court, 97 Wash. 358, 166 Pac. 630 (1917); State ex rel. De Lape v. Superior Court, 156 Wash. 302, 286 Pac. 851 (1930) and State ex rel. Nielsen v. Superior Court, 7 Wn.2d 562, 110 P.2d 645, 115 P.2d 142 (1941).” Gladys B. Schroeder v. John W. Schroeder, 74 Wn.2d 853 (November 1968)

The court's refusal to allow King county to have the authority to hear issues related to the welfare of the children is in conflict with Schroeder.

" Hereafter every action or proceeding to change, modify, or enforce any final order, judgment, or decree heretofore or hereafter entered in any dissolution or legal separation or declaration concerning the validity of a marriage, whether under this chapter or prior law, in relation to the care, custody, control, or support of the minor children of the marriage may be brought in the county where said minor children are then residing, or in the court in which said final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the said children is then residing. We agree." Hague v. Corvin, 23 Wn.App 913. August 1979.

The court's refusal to allow King county to have the authority to hear issues related to the welfare of the children is in conflict with Hague v. Corvin.

"It is, of course, somewhat within the discretion of the court whether it will or will not grant a **change of venue** on the ground of the convenience of witnesses. But discretion in this regard is never arbitrary. It must, like discretion in other matters, be based on reason. If it appears from the entire showing that the convenience of witnesses will be promoted by the change, the court cannot deny it on the ground of discretion without an abuse of discretion. To hold otherwise would be to deny to a party the benefit of the statute." The State of Washington, on the Relation of Marie Nielsen et al., Plaintiffs, v. The Superior Court for Thurston County, John M. Wilson, Judge, Respondent, 7 Wn.2d 562, (Feb. 1941)

The court's refusal to allow King county to have the authority to hear issues related to the welfare of the children is in conflict with Nielsen.

It is apparent that for Hollingshead and the children to ever receive equal, fair and impartial judicial intervention venue will need to be changed to

their county of residence as is allowed by RCW 26.09.280, RCW 4.12.030, and decisions is Hague v. Corvin, Nielsen, and Schroeder. Wilson's continued abuse of the children has necessitated Hollingshead's continued attempt to receive protection for them through the court. Equal, fair and impartial judicial relief for them will not be possible without a change of venue to their county of residence.

G. CONCLUSION

The trial court's decision and orders put Hollingshead and the children at risk, both emotionally and physically. Hollingshead would welcome this Court's interest in the children's welfare, and Wilson's conduct, even as the scope of the underlying harm continues to expand. It sometimes seems to Hollingshead that there is no legal action to be taken that could keep up with the actual state of the damage being done to the children, as such damage continues in weekly, even daily increments. The trial court abused its discretion and failed to act in the best interests of the children. The trial court abused its discretion and failed to follow laws and statutes in issuing orders in this case. The orders in this case are certainly not those of a reasonable nature considering the history of the parties and the continued abuse the children are suffering.

"A court abuses its discretion when it makes Findings of Fact that are not supported by any evidence." In re the Marriage of Thomas, 63 Wn. App. 658, 660, 821 P2d 1227 (1991).

Hollingshead respectfully requests that the court help her to continue to protect her children as well as herself, that the children's medical and mental health be considered the number one priority and that any orders that are made in the future take their welfare, needs, and schedules into consideration first. Hollingshead believes it important for this Court to know that the heart of this case -- the two minor children -- is part of a story that is still being written. Their own statements and drawings reveal the horror they have been put through by the trial court's orders. (CP 1566-1580) It is Hollingshead's hope that this court will listen to the pleas of these vulnerable young people and give them the voice that should be afforded them through statute and constitution.

That basis has been borne out now, and it manifests in the bodies and minds of the children who experience trauma that digs deeper every time they are compelled to visit the man they do not even call "father." Their therapists and doctors are afraid the younger child, J.H., is showing signs of sexual abuse by someone in his father's house. (CP 1493-1565, 1582-1668) The older child, K.H., has become hardened and defiant, as her anger at not being heard or protected by the legal system that controls her

life threatens to spin out of control. As the sole advocate for these two children, my children, Hollingshead begs leave of this Court to demonstrate how the Yakima County court system has utterly failed to protect the real subjects of this action, and how the chronic and continuing harm from that failure cannot be addressed quickly or adequately enough for them.

Retired Supreme Court Justice Bobbe Bridges stated, “ The movement for children’s rights... is a movement which is every bit as potent and as important and as passionate as any other civil rights movement that we have experienced in this nation’s history. In the current system, under which kids are property and things are done in adult time and not child time and for adult convenience...” Washington’s Voice, Washington State CASA Newsletter; winter 2009. It is Hollingshead’s hope that this court will be the voice of these children and will not consider them the property of Wilson who abuses them.

Justice has been delayed and delayed and delayed in this matter, and it had concomitantly been denied. These minor children's rights to live free from harm and the threat of harm has been trampled and forgotten, overlooked as Wilson attempts to draw all attention to him. Hollingshead prays that this honorable Court will consider the basis of this action, fully and fairly, and render an appropriate judgment thereon.

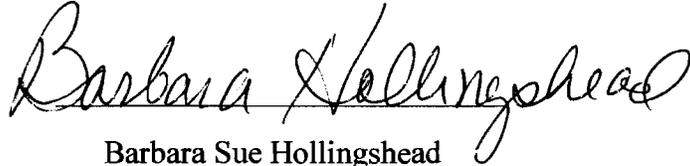
The trial court's decision and orders put Hollingshead and the children at risk, both emotionally and physically. The trial court failed to enforce Orders for Protection and ensure ordered protection for Hollingshead and the minor children. The trial court abused its discretion and failed to act in the best interests of the children. The trial court failed to provide Hollingshead and the minor children with their Washington State and United States Constitutional rights, thus resulting in severe physical, emotional, and judicial harm. Hollingshead requests that both children are afforded equal judicial intervention and J.H. is given the same right of protection from the father's abuse that K.H. is being allowed.

Hollingshead requests that a change of venue be approved to her county of residence so that the children can get a fair and impartial hearing on their best interests.

Hollingshead respectfully requests fees be awarded to her.

DATED THIS 23, October 2010.

Respectfully submitted,



Barbara Sue Hollingshead
PMB 2848 PO Box 257
Olympia, WA 98507

CERTIFICATE OF TRANSMITTAL

I certify that on this date I sent a true and complete copy of this brief to the respondent's attorney of records via US Mail postage prepaid to Connaughton Law Office, 514B North 1st St, Yakima, WA 98901.

October 23, 2010



BEULAH HOLLINGSHEAD