

**FILED**

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COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

COURT OF APPEALS, DIVISION III  
STATE OF WASHINGTON

No. 296539

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Stevens County Superior Court Case No. 05-3-00011-4  
The Honorable Judge Allen C. Nielson

In re the Marriage of:

LAURA LOUISE DE AGUERO (RULAND)  
Respondent,

And

PARIS ANTHONY DE AGUERO  
Appellant

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REPLY BRIEF OF APPELLANT

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There are many inaccuracies in the Respondent's Brief, hereafter cited as "RB." See chart at AP-1.

### **RESPONSE TO ARGUMENT**

**RB 9-11: Standard Applied by the Trial Court** Mr. De Agüero thoroughly described in his Appellant's Opening Brief, hereafter referred to as "AB," and maintains that the trial court did abuse its discretion because the evidence does not support the trial court's findings and the facts do not meet the requirements of the best interest standard for placing Dillon with Ms. Ruland. AB generally.

**RB 11-15: Appellate Standard of Review** Mr. De Agüero did not request another trial on the merits, but rather that evidence is properly applied to the "best interests" standard of RCW 26.09.187(3)(a)(i-vii). Mr. De Agüero detailed many instances in which Judge Nielson's findings are not supported by substantial evidence; some of his findings are the opposite of what was presented. AB generally. Mr. De Agüero also described in detail many instances in which the facts do not meet the requirements of the best interest standard for placing Dillon with Ms. Ruland. AB generally.

With the enactment of the relocation statutes, RCW 26.09.405-RCW 26.09.560, *Littlefield* was overruled as to the relocation standard, but the case continued to be cited by all three divisions for other reasons.

Based upon the language of RCW 26.09.187, evaluating best interests is to be based upon circumstances at the time of trial for parts i, ii, iv, v, vi, and vii because only part iii specifies that both past and future performance are to be considered. Because of the specificity in time provided for this one provision, it can therefore be extrapolated that the other provisions apply to the present juncture in time only.

**RB 15-27: Judge Nielson's Findings are Supported by the Record and by Substantial Evidence**

Judge Nielson's findings are in large part not supported by the record or substantial evidence. AB generally. Also, AP-2 and AP-3.

At the beginning of the trial, Judge Nielson warned:

"Also, just frankly, memory, if we do part of the trial and then we have to wait a month or two, frankly, I have a hard time remembering the nuances of the testimony and I have to go back and re-create it. So, we want to get it done as soon as we can." RP124

This warning proved to be true, as his findings are hopelessly skewed toward what he heard during the second part of the trial, after a break.

Mr. Geissler's incessant editorializing and insertion of his own opinions and versions of events during the trial had the effect of confusing the facts, which is apparent in the oral ruling of the trial and again during the ruling on the Motion for Reconsideration where Judge Nielson uses Mr. Geissler's words. For example, throughout the trial, Mr. Geissler says

that the children harbor “vitriolic” hatred toward their mother, dislike their mother, will do anything to damage their mother’s relationship with Mr. Ruland, e.g., RP69,190,316,326. There are no statements or evidence that the children feel vitriolic hatred toward their mother other than *his* statements. This caused Judge Nielson to actually believe that the children dislike their mother, RP1382-1383;1387, although the GAL and the children reported that they are distraught over the situation and they love their mother. EX125, p.2,5-6,20-21; RP43,45, 53-54,326-327; CP20-21, 22,33-38, 84-91,92-96

Every single allegation made in his brief is a matter of Mr. Geissler projecting his own tactics upon Mr. De Aguero, e.g., he claims that Mr. De Aguero picks and chooses parts of the record out of context, RB15, but he does this to a ridiculous extent. For example, Mr. Geissler uses Dr. Ashworth’s statement that Mr. De Aguero is Brandon and Dillon’s primary source of negative information about their mother to claim that Dr. Ashworth made the conclusion that Mr. De Aguero alienated the children from their mother. RB16-17. This is simply untrue. First, Dr. Ashworth specifically stated that Dillon is *not* alienated from his mother. RP771. Also, Dr. Ashworth said that he doesn’t know that alienation has occurred with the older children as he doesn’t have any direct evidence of that. RP790. Furthermore, when questioned about the purported

“negative information,” Dr. Ashworth’s example was not the level of cynical information that would instill the supposed “vitriolic hate” in Brandon that Mr. Geissler kept suggesting. The complete portion of the transcript regarding Mr. De Agüero as the boys’ source of negative information is as follows:

Q: Were you able to ascertain from Brandon what the source of his anger towards his mother was?

A: It sounded like or it appeared that some of that - - some of his beliefs had come from Mr. De Agüero. And I asked him specifically about - - oh, I think the thing you already mentioned, where he had heard that there were feces and things like that.

Q: Okay, was he able to express other things that people had told him about his mother?

A: I believe so, but I have no notes in front of me about that. And, I mean, he hadn’t witnessed that himself, so somebody else had told him that. RP769-770

Dr. Ashworth’s conclusion is incorrect; Brandon testified that he had been to the Ruland home many times, RP718, and he grew up with Ms. Ruland so he was familiar with his mother’s habits. To say that negative information about Ms. Ruland’s housekeeping habits translates into an issue of alienation is literally absurd. The other children, including Dillon, all talked about the animal feces and messy house to the GAL. AB26. Fairness was an issue with Dr. Ashworth’s methodology, as he failed to state the primary source of negative information about the children’s father, although he previously noted Ms. Ruland made disparaging remarks about Mr. De Agüero during a telephone

conversation with Brandon that she recorded. EX23. Both parents made disparaging remarks about each other and both are the primary source of negative information about the other. AB11. According to statements made to the GAL by all four children, Ms. Ruland was aggressive in her attempt to terminate the children's relationship with their father by isolating them from him. AB15-16. Brandon testified, "Our mom told us that we couldn't have contact with him." RP724. Based upon the evidence, the appropriate conclusion was reached by the GAL: "both parents had engaged in behaviors that had emotionally damaged the kids, but the mother...had so damaged the relationship with the three older kids that it may be beyond repair." RP110. Ms. Ruland told the three older children they were "dead to her." EX125, p.30.

The court did not apply the photo journals for their full probative value, but they are conclusive evidence of the six relevant best interest factors, illustrating that: (i) The bond between Mr. De Agüero and Dillon was extremely strong and he is an active parent; (ii) Ms. Ruland's delay in noting the matter for trial resulted in Dillon becoming accustomed to his father's lifestyle and integrating into the family and community; (iii) Mr. De Agüero was performing parenting functions in an exemplary manner and Dillon blossomed with health while in his care; (iv) Dillon and Mr. De Agüero engaged in strong father-son bonding activities to satisfy Dillon's

need for male bonding; (v) There were strong relationships with all of his siblings. EX116,117,118. The judge minimized their value by saying he's "got to believe" Ms. Ruland will do the same thing, RP1386. She provided no evidence of any involvement in sports, school, or any significant other activities; Dillon's siblings don't live with her; she did not bring one single photo to trial. How could Judge Nielson state that he believes she will provide a similar photo journal?

Because the state adopts the role of *parens patriae*, the trial court should investigate possible danger to the child; it is not the sole responsibility of the attorneys. Doubt was cast upon Mr. Ruland's stability in raising his own children when both Mr. Ruland and his daughter Lavette testified that she is "doing better" now that she has left his home. RP1206-07. Consulting a well-known source such as the DSM-IV would have allowed the judge to make an informed decision. Mr. Ruland was not truthful in his testimony because he stated he was on "full disability" for his mental illness, RP1237-38, and then stated that it did not affect his ability to function, RP1238-39. He is either stable or he is not. Also, despite several CPS complaints about both the current Ruland home and Ms. Ruland's former home, none of the Ruland or De AGuero children had ever been interviewed by CPS. RP945,1012. Judge Nielson should have been wary of that fact.

Mr. Geissler includes many snippets of remarks made by Judge Nielson, all of which only serve to support Mr. De Aguero's point that the judge's findings are contradictory. For example, Judge Nielson describes the GAL report and interviews:

"She [GAL] did have a number of interviews, some fifteen interviews and so normally that's a pretty exhaustive investigation," RP 1380

"All of these other interviews, I - - You know, again, there've been a number of them, and they've - - they've been somewhat detailed, and they've - - they've been insightful - - That's one thing." RP94

During the hearing for the Motion to Reconsider, he contradicts himself, saying that Ms. Albright presented a "tendentious treatment of the facts," RP3/15/11, p. 48.

Another contradiction in Judge Nielson's assessment of the GAL:

"But it's not just the training and experience in the GAL, which I think in and of itself is enough to be a GAL, but there's 50 cases, you know, related cases, where, over that period of years, makes for some experience and ability to correlate what she found in this investigation presumably with other cases, patterns that she talks about." RP108

Then, despite her ample experience, he accuses her of falling "prey" to Mr. De Aguero, RB20, even though she never at any time spoke to him alone like she did with the others, including Ms. Ruland. Her report of Mr. De Aguero's interview is less than one page in her report, EX125, p.44, while Ms. Ruland's interview covers four and one-half pages, EX125, pp. 17-21, and her joint interview with Brandon is another

two pages, EX125, pp. 21-22. Wes Ruland had more time with the GAL than Mr. De Agüero, EX125pp 40-43; AB21-22. Mr. De Agüero lives 3000 miles away from Washington, when did this relationship develop?

The behavior of each court-appointed professional should have given Judge Nielson notice as to his or her objectivity. The GAL did not socialize or conference with anyone from either party before or after her appearance. On the other hand, Dr. Ashworth was huddled with team Ruland before and after his appearance, socializing as though they were all old friends. Mr. Geissler used unethical tactics to intimidate the original court-appointed psychologist into resigning, and then insisted on Dr. Ashworth's appointment. CPI03-106.

During the GAL testimony, Mr. Geissler made 33 separate objections with his editorializing which included what he thought was the proper order of questions, e.g., he thought her address should be given before her education at RP34; the courtroom procedures; the role of the GAL, etc. In addition, he made another 37 objections to the content of her testimony. All of this was a calculated effort to minimize the importance of the GAL, confound the process, make continuity impossible, and cause her to be flustered. It worked.

Mr. Geissler asserts that Dillon's frequent doctor visits in 2005 were due to ongoing medical problems that were not resolved, RB20-21,

but the reason they were not resolved is that Ms. Ruland was not providing adequate care and she continued to expose him to second hand smoke despite repeated warnings. CP434-486 (1/24/05; 1/31/05;1/30/08). Mr. Geissler blatantly misquotes the medical records as he picks out three positive statements about Dillon's demeanor during a visit, RB20-21, but the records as a whole are evidence of ongoing neglect. CP434-486. His citation "This is a surprisingly happy, alert child," RB20, was made out of context, as this notation referenced that despite his high fever, Dillon was happy and alert. CP434-486. Mr. Geissler takes out of context the citation from the medical record dated 1/24/2005: "It is questionable whether or not she [grandmother] is smoking in the room with the child," RB20; it referenced that Dillon sleeps in the same room with his grandmother, but it was unclear to the doctor whether she smokes in the room. Dillon's diagnosis on that date was sinusitis and *Exposure to tobacco smoke*. RP287; 289-292; CP434-486.

Mr. Geissler states that "neglect would be not getting Dillon his shots, and not taking Dillon to the doctor or dentist." RB21. He is thereby stipulating to her neglect, because she failed to take Dillon to a dentist, even though she was repeatedly advised that Dillon needed oral care. See CP434-486, 2005 records dated 1/31, 5/9, and 10/15. By the time she finally bothered to take him to a dentist, his "bottle rot" had progressed to

the point that a pedodontist had to extract all four top front teeth. CP434-486, 10/3/05; 6/19/06. Bottle rot is not a condition that develops overnight. This is a mother who literally watched her toddler's teeth rot over a period of months while she was repeatedly warned but did nothing to prevent it, such as merely weaning the child from the bottle and/or simply brushing his teeth. The doctor also noted that she failed to bring him in for weight checks. CP434-486, 5/9/05.

The GAL testified: "I did go and - - get copies of Dillon's dental records, because all of his front teeth were missing. And on the side of the - - the dental notes they had commented that the child was four years old and still on the bottle, and had very poor dentin. And so I was concerned about that, 'cause that would go to the nutrition." RP 111

Mr. Geissler attributed the dental problems to Dillon's "poor teeth brushing" RB20, but this is to be expected at age three. Ms. Ruland failed in her responsibility to clean his teeth until he could do so adequately. Also, he stated that the records indicate "good dentition" when in fact on 5/9/05, the doctor noted "poor dentition." RP 111; CP434-486.

It is noteworthy that there were *no dental issues* for the two years Mr. De Agüero reconciled with Ms. Ruland. CP434-486. Then, Ms. Ruland began dating Mr. Ruland in December 2007, RP1211, Mr. De Agüero was not allowed to see Dillon for another protracted period of time, RP441,443, during which Dillon developed major dental problems that required several painful visits to correct. CP434-486, See dental

records from 2008: 5/5, 6/2, 7/7, 8/18, 9/8. For Dillon to get to the point that he needed significant dental work suggests that his oral care was completely neglected yet again by Ms. Ruland. When Dillon lived with his father for 22 months, he had no dental issues. RP211;EX-128.

A similar pattern can be seen in Dillon's medical records. During the year Ms. Ruland isolated Dillon from his father, he had five separate diagnoses of persistent sinusitis/cough, usually attributed to exposure to tobacco. The doctor noted that he was continuously ill and he was diagnosed with "failure to thrive." RP291; CP434-486 (See 4/1/05). The report dated 5/9/05 reveals the doctor's frustration with the case. Then, during the 2-year purported reconciliation period, there were only two doctor visits. CP434-486. Mr. De Agüero discouraged Ms. Ruland from smoking in Dillon's presence and Mr. De Agüero did the cooking for the family. Mr. De Agüero stated that when he left town for work, Dillon was exposed to smoke, became sick, and required nebulizer treatments. This was a constant source of dispute between Mr. De Agüero and Ms. Ruland.

Judge Nielson used the medical records for the limited purpose of concluding that the mother was Dillon's primary caregiver for most of his life, RP1380-1381; CP210-21, because she was the one who took him to the doctor, but this conclusion is unreasonable, as Ms. Ruland's behavior is the cause of the medical issues in the first place. This is no different

than a parent causing any other physical harm and then taking the child to the doctor. Her continued pattern of exposing Dillon to cigarette smoke and knowing its harmful effects is tantamount to a battery upon the child. Judge Nielson's conclusion that Ms. Ruland was the primary caregiver his whole life based upon taking him to the doctor during 2005 and 2008 is not only unreasonable, but it is also unfair to Mr. De Augero because he was denied contact for the periods of time these records cover. When he did have Dillon in his care, Mr. De Aguero took Dillon to the doctor every 6 months – for a well-child visit. EX-128

The GAL contrasted Dillon's medical and dental records when living with Ms. Ruland versus those with Mr. De Aguero:

“- - according to the medical notes Dillon appears to be doing quite well, as opposed to - - to the medical - - notes I reviewed of his health care in Northport.” RP211.

All three of the older children reported that Dillon's health had vastly improved while living with his father. AB23-24

Dr. Ashworth did not definitively recommend placement of Dillon with Ms. Ruland:

Q: So in the best interests of Dillon, you made what recommendation?

A: That Dillon stay with Ms. Ruland. And - - the specific question there was where he go to school. And I recommended that he stay and begin school in Stevens County, which I figured would be Northport.

Q: What were your concerns about Mr. De Aguero in terms of Dillon's best interests? What were the reasons why you felt that Ms. Ruland would be a better fit as the custodial parent?

A: If I can back up just a little bit, I believe that both these individuals can be and probably are good parents. And I believe I've said that several times in these documents. I haven't seen anything which suggests any great level of risk to Dillon no matter what the final decision is. RP789-90

He was not in the position to analyze Dillon's best interests. The only factor he analyzed was the bonding factor, and he stated that he could not determine which parent had the stronger bond. RP771. Additionally, he admitted that he had no recent information. RP814,824.

Judge Nielson's statement that Mr. De Aguero alienated the boys from their mother is not supported by the record. Dr. Ashworth said he had no direct evidence of that. RP290. The trial court's conclusion was based upon: 1) Dr. Ashworth's report of a disparaging remark made by Mr. De Aguero in the waiting room; 2) Dr. Ashworth said the boys identified their father as their primary source of negative information; and 3) Mr. De Aguero spoke negatively about Ms. Ruland during his interview with Dr. Ashworth. He took all three of these instances out of context as follows:

1) Regarding the "disparaging remark": Dr. Ashworth said that one of his office personnel overheard Mr. De Aguero make negative statements, but could not say what the negative statements were. RP766. [Marseilles made the statement "Mom is late," to which Mr. De Aguero laughed and responded, "Well, that's your mother." This exchange can

hardly be characterized as disparaging.] Judge Nielson ignored the many examples that were given wherein Ms. Ruland spoke negatively about Mr. De Agüero to the children, including but not limited to: the taped phone conversations she had with Brandon in which she “failed” to restrain from making negative comments about Mr. De Agüero; Dillon recounted many comments his mother had made about Mr. De Agüero and court proceedings; Cierra told the GAL that the parents talk “the same way” about each other; Ms. Guglielmino said the parents work to put the children in the middle; in his previous letter, Dr. Ashworth said that both parents use alienation tactics. Mr. De Agüero stipulated in his brief that both parents made disparaging remarks about the other. AB11,16; EX23.

2) See above at pages 3-4 regarding source of negative information.

3) Dr. Ashworth stated that Mr. De Agüero spent “a lot of time” talking in interviews about “bad stuff” about Ms. Ruland while she did not do that, RP790-791, but he contradicts this statement at least three times during his testimony: First, Ms. Ruland filled out at least six allegation forms comprised of complaints lobbied against Mr. De Agüero while Mr. De Agüero filled out only one allegation form about Ms. Ruland, in which he complained about her exposing Dillon to second hand smoke. RP795, 799. The purpose of the forms is to avoid using interview time to

complain about each other and they require 18 pieces of paper. RP795, 799. Second, she provided extensive additional negative materials including police reports, declarations, etc., but did not include the photo album to show that Mr. De Agüero has a positive relationship with Dillon. Dr. Ashworth was surprised when he saw it because he was unaware of Mr. De Agüero's positive cooperation with Ms. Ruland. RP812-813. Third, he stated that on the psychological evaluations, the parents "blame each other" for Dillon's problems. RP 763.

Finally, if Dr. Ashworth believed that Mr. De Agüero was alienating the children, and he were concerned about it, he would not have concluded:

"I believe that both these individuals can be and probably are good parents. And I believe I've said that several times in these documents. I haven't seen anything which suggests any great level of risk to Dillon no matter what the final decision is." RP 790

In cases such as these, it is established that the court must look to the behavior of the parent to determine the cause of alienation. The difference between them is that Ms. Ruland was aggressive in her attempt to terminate the relationship between the children and their father.

AB15-17

The trial court concluded that the Dillon would come to loathe his mother as the older children did, but the older children stated that they

love their mother, and there was no evidence in the record that this was occurring. After 22 months, Dillon's relationship with his mother was intact and he stated to Dr. Ashworth that he wanted to live in "Florida and Washington"; he visited his mother during every holiday and had regular telephonic communication. In addition, Mr. De Agüero kept her connected with him by sending monthly journal scrapbooks illustrating his activities. There was no evidence in the record that Dillon was being alienated from his mother. AB 6,14.

Based upon the patterns of behavior of each parent, no reasonable person could conclude that Dillon will be allowed to have a continuing relationship with his father and siblings if he is placed with his mother. A reasonable person would conclude that during the time Dillon lived with his father, he was able to have a relationship with both of his parents and all of his siblings. There was no indication that this pattern was in danger. Based upon the pattern of behavior of both parents, a reasonable person could only conclude that in order for Dillon to have a continued relationship with both parents as well as all his siblings would be for Dillon to reside with his father. The GAL concluded:

"Historically it - - it appears that every time Dillon's with his mother he's isolated from his family, his other family. And based on this history I believe it will continue, and that it's - - it's a very negative environment for Dillon to be in." RP 206

“Dillon will be able to have a relationship with all of his immediate family members, with - - if he’s left in the care of his father, as well as the extended family members of - - on his mother’s side, because he’ll be able to see them when he comes up to visit, whereas if he’s left - - or returned to the mother’s care, he - - he will be isolated from his immediate family members.” RP210-11

“The benefit for - - for Dillon to, if he’s - - if he’s with his father, would be that he would have a relationship with all of his family members.” RP211

Mr. Geissler characterizes Superintendent Guglielmino as a “disinterested lay witness,” which is not the case. RB24. Her children played on the same sports teams as the Ruland children and their children grew up together during the 27 years she lived there. RP 1024,1028. As a professional, she had a vested interest in retracting her negative comments as they are fodder for a lawsuit. This is the reason school personnel are wary of talking to GALs. In two separate declarations and during her testimony, the GAL defended her original report that Ms. Guglielmino described Marseilles as a “quasi-pseudo parent” to Dillon. She said that she “clearly” remembered it, and that if it’s in her notes, Ms. Guglielmino definitely said it. She compared the words used by Ms. Guglielmino to that of another case, which is the reason she remembered it so clearly. RP271. The GAL was surprised by Ms. Guglielmino’s candid remarks because school personnel are seldom forthcoming. She was not surprised that the statements were recanted. See AB21.

Ms. Guglielmino said she saw Paris De Aguero at school “two times,” but Mr. Geissler failed to mention that she told him both times that he could not be on school grounds because of a restraining order contained within Ms. De Aguero’s default divorce decree. RP1002-1003. (Ms. Ruland alleged no domestic violence to the GAL or Dr. Ashworth and none of the children alleged domestic violence. EX125) Thus, Mr. De Aguero was not in a position to be a regular at Northport School. Dillon’s current teacher at Ward’s Creek said that Mr. De Aguero was a very participatory parent and she was surprised there was a custody dispute going on because Dillon never said anything about it. AB 16, 23, 24.

**There is No Evidence of Judicial Bias**

Mr. Geissler downplays the relationship between Ms. Ruland’s cousins and the judge, saying they “may” have worked with him, RB27, but he does work with and interact with all of them regularly. Although Judge Nielson previously upheld the temporary parenting plan, there was no testimony or witnesses in those motion hearings and since Ms. Ruland has a different last name than her cousins Esther Keenan, Kelly King, and Michael Gilmore, it is probable he didn’t connect the family members. These family members and others were present during the first days of the trial, RP259, and they were very disruptive and their behavior intimidated the GAL. Mr. Geissler cited *In re Application of Borchert* for the standard

in finding for judicial bias, which Judge Nielson does meet: He stated during the Motion to Reconsider that the outcome was obvious from November 30, as he incorrectly stated that Mr. De Agüero's witnesses were on cell phones devising a scheme. None of his witnesses owned cell phones. RP3/15/11, p.47; AB47-48

**RB 28-29: Mr. De Agüero's Motion to Reconsider was Properly**

**Denied**

Judge Nielson attempted to break down the questions in the polygraph to say that it was "weak" with regard to what the children said their mother did. A polygraph test is not "weak" or "strong" because either a person is lying or a person is not lying. A polygraph is a pass/fail test. The special case detective who performed the test determined that both boys were being truthful and he did write a statement to that effect. Attorney Platt offered to return with his signature signed under oath, but Judge Nielson would not allow it, despite the serious nature of what was reported by the boys. RP3/15/11 pp.45-46

**RB 29-33: The Trial Court Correctly Determined that Mr. De Agüero was not Entitled to Equitable Remedies**

There was no collateral attack on the award of maintenance. Mr. Glanzer addressed the issue in his opening statement, objecting that it was ordered by default with no time limit, and it wasn't litigated or agreed to.

RP23-24. Judge Nielson indicated that he had the authority to change the initial award of maintenance:

The court does have the authority to, at this juncture, given a full trial, go back and modify the amounts that have been established by a prior support order or decree. And I also would observe that I don't believe I'm bound by Judge Baker's ruling inasmuch as I don't think it was as full - - she didn't have the benefit of a full evidentiary hearing or trial that I've had. So, I believe I do have some latitude, here, in how I proceed. RP1371

He then acknowledged that Ms. Ruland was given ½ the couple's business but stated that because it was unclear how much the business made, he would not change the award. Since he failed to apply the facts to RCW 26.09.090, reversal is proper. AB38-39.

Mr. De Agüero made a child support chart as an example of how the past child support should be calculated, considering all the circumstances and credits previously given.

Laches applies because Ms. Ruland had a previous case for the enforcement of child support through DCS so she did know of her rights: She closed, re-opened, and re-closed the case within a 2-month period of time in August-September 2006. RP428-431. Her commencement was unreasonably delayed considering that she had four children to support and no income. She was reconciled with Mr. De Agüero, which was confirmed by the children, Patsy Guglielmino, Mr. De Agüero, Ms. Davis, and even Ms. Ruland herself who testified that they were "intimate" and

“exclusive” during the time period of March 2006 through February 2008. RP535,705,1063. Mr. De Aguero was damaged by the delay because he thought they were working things out, as she stated to the DCS, and so did not keep records of his expenditures and the cash given to Ms. Ruland during the conciliatory period. Is it customary for couples to keep track of expenditures on each other? His damages are that he is now forced to pay the child support obligation that he has already paid. AB41-43.

Mr. De Aguero did also prove the elements of equitable estoppel because Ms. Ruland later asserted or acted inconsistently with a claim afterward asserted. When she closed her case with DCS, she stated that he was “Paid in Full”; she proceeded to engage in a marital relationship with Mr. De Aguero. The children testified that their parents were together and acted as though they were married. RP530;534-536;703-705. Mr. De Aguero believed she showed good faith in closing the account and resuming their relationship. He is now injured by her contradictory actions of re-opening the case because he spent the majority of his income in 2006 and 2007 in the support of Ms. Ruland and the children and now must pay a second time. AB41-4. When she re-opened the DCS case in March 2008, she stated that he owed \$81,000 and that he “never paid a thin penny” of child support, despite her statement that he was “Paid in Full” in August 2006. Therefore, she has a history of being untruthful.

**RB 34-36: Motion for Award of Attorney's Fees to Respondent**

This motion should be stricken as improper per RAP 17.4(d), which states: Motion in Brief. A party may include in a brief only a motion which, if granted, would preclude hearing the case on the merits. His motion would not preclude hearing the case on the merits.

**CONCLUSION**

Mr. Geissler did not provide any compelling argument that discounted the arguments in Mr. De Aguero's brief. He did not address many important issues, such as Ms. Ruland's pattern of lying to the court, beginning with her UCCJEA violation; how she obtained her car; her relationship with Mr. De Aguero, her involvement in 7 DMI, etc.

The factors outlined in RCW26.09.187 must be upheld as the proper standard in the determination of placement. Here, Ms. Ruland did not prove that placement of Dillon with her satisfied all of the factors while Mr. De Aguero provided substantial evidence that placement of Dillon with him satisfies all of the factors:

FACTOR 1: Bonding

Finding: Dillon has a closer bond with his mother

Record: Dr. Ashworth stated that he could not determine which parent had the stronger bond because Dillon was bonded to both parents. The

mother's behavior toward the older children had damaged her relationship with them.

Mr. De Agüero's case: The photo journal showed a strong father-son bond for 22 months; all three older children reported to the GAL who reported and testified that Mr. De Agüero had an extremely strong bond with Dillon.

Ms. Ruland's case: Dr. Ashworth said that Mr. De Agüero was the primary source of negative information about Ms. Ruland; however, Ms. Ruland was witnessed making many disparaging remarks about Mr. De Agüero as well.

#### FACTOR 2: Agreements between the parties

Finding: Not discussed

Record: Ms. Ruland failed to note the matter for trial and in doing so, gave her implied consent to allow Dillon to fully integrate into his father's family and community.

#### FACTOR 3: Past/Future Performance

Finding: Ms. Ruland took exemplary care of Dillon; medical and dental records show she took him; Ms. Ruland performed all parenting duties for the first 6 years of his life.

Record: Dillon was removed from Ms. Ruland's home in February 2009 because she was *not* performing her parenting duties to Dillon. Reports

from all four children were that she neglected Dillon. His medical and dental records show a history of neglect.

Mr. De Aguero's case: He showed in his performance for 22 months that he performed all parenting functions in an exemplary manner.

Ms. Ruland's case: Ms. Guglielmino and Ms. Beardslee said she was an active parent at school and that Dillon was clean and fed.

#### FACTOR 4: Emotional Needs/Developmental Level

Finding: Dillon will have a relationship with both parents only if he's with his mother; she is better able to prevent alienation.

Record: In Ms. Ruland's care, Dillon was not allowed to have a relationship with his father. In Mr. De Aguero's care, Dillon was allowed to have a relationship with both parents and all of his siblings. All four children reported that their mother isolated them from their father. When Dillon visits his mother, he is isolated from his father and siblings. At Dillon's age, he identifies more strongly with his male parent.

#### FACTOR 5: Child's Relationship with Siblings/Other Adults; involvement with surroundings

Finding: Sibling relationships not as important as relationships with Ms. Ruland's cousins.

Record: Dr. Ashworth said the sibling relationships were very important and would only "shade" in the direction of parents being slightly more

important than the siblings. There was no mention of his bond with stepfather Wes Ruland. There was no evidence of the bond between Dillon and any of Ms. Ruland's cousins; there was only mention that there were cousins available in the area.

Ms. Ruland's case: Extended family lives in the area. She provided no evidence of community involvement.

Mr. De Agüero's case: Dillon lives with and has a strong bond with all siblings. He has significant ties to the community through involvement in sports, church, and scouts. He is very attached to Ms. Davis

Judge Nielson did not consider RCW 26.09.184 or 26.09.002.

Mr. De Agüero respectfully requests the court to reverse the decision of placement of Dillon; to reverse the award of spousal support; to reverse the amount of child support owed or to remand for its proper calculation; and to order that Ms. Ruland pay for the costs associated with this appeal.

Respectfully Submitted this 10<sup>th</sup> day of August, 2012.



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Paris De Agüero, in pro se

AP-1: TABLE OF MR. GEISSLER'S MISSTATEMENTS  
OF THE RECORD

MR. GEISSLER'S STATEMENT	COURT RECORD
Mr. De Aguero has never petitioned for a modification of maintenance. RB 7 and 29	Mr. De Aguero filed a petition to terminate/modify maintenance on 5/22/08. RP3/15/11, pp 61-62
Dillon's teacher and superintendent testified. RB8	Dillon's <i>former</i> teacher and superintendent testified. RP852;993
Mr. De Aguero claimed to live with Ms. Ruland from August 2006 to February 2009. RB8	School principal/superintendent Patsy Guglielmino, Marseilles, and Brandon also testified that Mr. De Aguero lived with Ms. Ruland from March 2006 through March 2008. RP530,703,1027 Ms. Ruland remarried in October 2008 so it's ridiculous for Mr. Geissler to claim that Mr. De Aguero said he lived with her until February 2009.
Mr. De Aguero claimed that Ms. Ruland agreed to forgive past due child support in exchange for a car. RB 8 and 30	Mr. De Aguero made no such claim; he stated that giving the car to Ms. Ruland was part of their reconciliation: "Q: Well, what are the terms and conditions with regard to you dropping the litigation and returning that car, and coming back up here to - - to - - to WA state?" A: That I was to drop the litigation, and I'd put the car - - I'd get the car put back into her name solely. Q: And what - - and then what was - - what did - - What did you get in return for that? A: To being able to move back into the house and be with the kids and Laura again." RP1281- 1282
Mr. De Aguero was allowed limited visitation in the original parenting plan. RB9	The original parenting plan left visitation entirely up to the discretion of the mother. CP13-19
Dr. Ashworth did not state that Ms. Ruland submitted entirely negative additional materials. RB16	Dr. Ashworth testified that Ms. Ruland gave him a number of documents. RP 755. And that they were "uniformly negative." RP 800

<p>The testimony at RP84 is the GAL testimony that Cierra left home after being verbally abusive to her mother. RB17</p>	<p>RP 84, lines 20-21: “He [Wes Ruland] said Marseilles threatened to run away so Laura let him go on a visit to their father’s home.”</p>
<p>Mr. De Aguero is attempting to utilize Dr. Mart’s evidence as substantive evidence. RB18</p>	<p>Mr. De Aguero included the article as part of a list of reasons as to why the court placed an inordinate amount of weight upon the opinion of Dr. Ashworth. AB7-10</p>
<p>Mr. De Aguero did not object to Dr. Ashworth being qualified as an expert at trial. RB18</p>	<p>Mr. De Aguero objected to the testimony of Dr. Ashworth because he was never intended to testify per Commr. Monasmith’s order. RP8-9</p>
<p>Mr. De Aguero outright defames Wes Ruland by stating, without reference to the record, that he is a white racist supremacist. RB18-19</p>	<p>Mr. De Aguero did cite EX125, the GAL report, wherein Marseilles stated that Wes Ruland is a “white racist supremacist” who influenced Dillon to the point that he called a black man “nigger.” AB36 [Specifically, EX125, p. 34]</p>
<p>Mr. De Aguero cites evidence not found in the trial court record. RB19</p>	<p>Mr. Geissler makes this blanket statement without examples. Mr. De Aguero cited CP, RP, and EX accurately.</p>
<p>Sparse mention is made of the fact that the GAL actually testified, and also that Ms. Ruland presented opposing expert testimony from Dr. Clark Ashworth. RB19</p>	<p>Mr. De Aguero stated both of these facts in his brief. AB generally; specifically at 4, 7-10, 18. The GAL reports were cited along with the RP because they are easier to read, due to Mr. Geissler’s constant interruptions during her testimony.</p>
<p>Citation is made to the GAL report as if they are verities. RB 19</p>	<p>Mr. De Aguero stated that the GAL was accurate in that Dillon mirrored the reports of the older children, EX-125, pp. 37-40, and the GAL testified that even though none of the children lived together, their reports meshed, RP308.</p>
<p>Judge Nielson indicated that concerns over Bill Harris were unfounded. RB 21</p>	<p>Judge Nielson indicated that the issue was not specifically addressed. RP1381-82</p>
<p>Mr. De Aguero disingenuously states that Dr. Ashworth never recommended primary residential placement with Ms. Ruland whereas the GAL did have a</p>	<p>Dr. Ashworth stated:  “I believe that both these individuals can be and probably are good parents. And I believe I’ve said that several times in these documents. I</p>

<p>definitive recommendation...  Dr. Ashworth specifically testified that his recommendation based on "the best interests of Dillon" was that "Dillon stay with Ms. Ruland."  RB21</p>	<p>haven't seen anything which suggests any great level of risk to Dillon no matter what the final decision is." RP 790  AND:  Q: So in the best interests of Dillon, you made what recommendation?  A: That Dillon stay with Ms. Ruland. And - - the specific question there was where he go to school. And I recommended that he stay and begin school in Stevens County, which I figured would be Northport." RP789-790  To use the word "stay" means that he doesn't think Dillon should "go" but since he had already moved to Florida, this opinion is obsolete. These statements are not a definitive opinion as to the question of custody of Dillon.</p>
<p>Dr. Ashworth concluded that the same type of alienating behavior instilled in the older children by Mr. De Agüero would likely be instilled in Dillon if he were left in Mr. De Agüero's custody. RB 23, citing RP793-794</p>	<p>This statement was simply not made by Dr. Ashworth on RP 793-794, or any other portion of Dr. Ashworth's testimony.</p>
<p>Judge Nielson did not blame the kids for their poor relationship with Ms. Ruland RB25-26</p>	<p>Judge Nielson: "Kids that age shouldn't be that judgmental." RP1383  "They [the boys], though, have to - - they have to learn a little bit of forgiveness as to their mother. And I hope they can." RP1387</p>
<p>Judge Nielson compared the influence of other significant adults in Dillon's life, particularly Elaine Davis and Wes Ruland because he compared the marital status of the two couples. RB 26.</p>	<p>Judge Nielson did not mention the relationship between either one of these adults and Dillon. He stated that the Rulands have a marital relationship as opposed to Mr. De Agüero and Ms. Davis. Mr. and Ms. Ruland have each been married 3 times and thus marriage is not an indicator of stability for either one of them. Mr. De Agüero and Ms. Davis had known each</p>

	other for a much longer period of time than the Rulands had known each other.
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AP-2: EXAMPLES OF JUDGE NIELSON'S FINDINGS WHICH DO  
NOT REFLECT THE COURT RECORD

JUDGE NIELSON'S FINDING	COURT RECORD
<p>“That was one theory that was floated, that essentially, you know, the car would go to the mother and she in turn would drop the support obligation and any continued litigation.” RP 1375; CP 210-21</p>	<p>Mr. De Aguero never “floated” this theory. He stated that the car was given to Ms. Ruland in consideration for their reconciliation. This was yet another one of Mr. Geissler’s incorrect statements. RP1281-1282</p>
<p>“The mother had one (DUI). The father had apparently two or three, and from the evidence has yet to undergo any kind of treatment.” RP 1378</p>	<p>1. Treatment of <u>both</u> Mr. De Aguero and Ms. Ruland was not discussed; however most states have a mandatory treatment program. 2. Mr. De Aguero stated that he had two DUI’s, not “two or three.” 3. Judge Nielson did not mention the incident wherein Ms. Ruland had 12-year old Marseilles drive her to the store because she was intoxicated and he rolled the vehicle. EX125, pp.4,32</p>
<p>“Cierra is there, but there’s not the same bond as with the older brothers.” RP1379</p>	<p>Cierra moved to FL to be with Dillon; Cierra lived with the family; Mr. De Aguero described her relationship with Dillon: Q: With Cierra, what type of contact does she have with - - with Dillon?” A: Daily. She lives with us. Q: And what interaction does she have with Dillon? RP473 A: She takes Dillon to the park probably three, four times a week, in summer time. She on occasion reads bedtime stories to him, as I do myself. She eats with us when she’s - - when she’s home. She watches TV a lot of times in - - in her room with Dillon, by herself. She’s always - - always looking out for him.” RP473-474 “Cierra’s very - - how do I say? - - kind of motherly, older sister, you</p>

	<p>know, really -- has a -- a strong bond with Dillon as well. And the way they interact is very special.” RP475</p>
<p>“I give the nod, if you will, on this question of sibling support to the mother.” RP1380</p> <p>“In coming years, Dillon will have more family support in the Northport area.” CP 210-211</p>	<p>Judge Nielson made this conclusion based upon Ms. Ruland’s extended family, but the strength, nature, and stability of Dillon’s interactions with her extended family was not discussed.</p>
<p>“And as a judge I always look for who’s going to the doctor. It’s usually the mother, you know, but it’s sometimes the father. Here it was always the mother.” RP 1381</p>	<ol style="list-style-type: none"> <li>1. Mr. De Aguero provided medical and dental records for the time period that Dillon lived with him and he took Dillon to the doctor and dentist every 6 months for well-child check-ups. RP211, EX128</li> <li>2. Because of Ms. Ruland’s isolation of the children, Mr. De Aguero had no access to Dillon in 2005 and 2008 – the periods of time covering the vast majority of the medical/dental records submitted by Ms. Ruland.</li> </ol>
<p>“Did the GAL give a lot of credence, maybe undue credence, to Marseilles? Yes.” RP1381</p>	<p>All four children gave the <u>same</u> reports to the GAL about the mother’s neglect of Dillon, smoking in the presence of Dillon, lack of food, and the generally filthy home, even though none of them were living together at the time! EX125,126,127; RP308.</p>
<p>“Did the GAL overstate the condition of the housing? Yes. Or, the poor condition? Yes.” RP1381</p>	<ol style="list-style-type: none"> <li>1. The most recent report was from a CASA worker hired by Ms. Ruland, who reported that the house was in the midphase of construction; there is no water plumbed to the house from an approved water source; there was no septic system. AB24-25</li> <li>2. The GAL testified that the house was “under construction” and had been for “quite a long period of time.” RP225-226</li> </ol>

<p>“But none of that ever panned out.”  [Referring to Mr. Harris’s molestation of Cierra] RP 1382</p>	<p>The molestation was brought up numerous times, RP 45, 48, 76, 89, 92-94;240-244, 573, 899, although the molestation itself was not described in detail.  The GAL did describe Mr. Harris ripping the towels off the De Agüero boys. RP 59  Dr. Ashworth recommended that Dillon not have unsupervised contact with the grandparents because there had been an allegation of sexual misconduct by the grandfather. RP 800  Ms. Ruland said that Cierra told her about the molestation when Cierra was 13 years old.</p>
<p>“She [GAL] could have come in and said, ‘Judge, I took that into consideration what that doctor said, but I’ll tell you, for these reasons I don’t think he’s right.’ And if she had done that it would have tripled the power of her position.” RP 1382</p>	<p>The GAL <u>did</u> discuss her opinion of Dr. Ashworth’s report; she stated that she reviewed his work which consisted of a bonding assessment in which he stated that both parents were bonded with Dillon. She felt that Dr. Ashworth had exceeded the scope of his appointment. RP 334. She reiterated her opinion of Dr. Ashworth’s work during the Motion to Reconsider, but Judge Nielson ignored it, and the GAL was constantly interrupted. RP 3/15/10, p.41</p>
<p>Describing the Ruland children:</p> <ol style="list-style-type: none"> <li>1. “These young people and that family are outstanding.” RP1381</li> <li>2. “The stability is, what Mr. Ruland has done in raising his kids, and has done with these children when they’ve been in his custody, and not with the mother, and what he has accomplished here in recent years.” RP1385</li> </ol>	<p>In what way are they outstanding?  <u>Weston</u> graduated from high school at the age of 20 (RP918 – Weston is 22 years old; RP923 – Weston graduated in June 2009) and then joined the Army Reserves, but now lives at home. He was in court with a Mohawk haircut and t-shirt.  <u>Lavannah</u> was in the Air Force Reserves (Wes claimed) and even though it was promised that she would testify, she did not testify.  <u>Isaiah</u> graduated from high school and was living at home doing nothing. RP1205</p>

	<p><u>Levi</u> was on track to graduate a year late. RP1205</p> <p><u>Lavette</u> was “doing better” now that she left the Ruland home. She wears excessive, thickly applied black eye make up with harshly bleached hair, and had holes in various places of her face, indicating many piercings.</p> <p><u>Israel</u> was still in high school.</p> <p>Who did Brandon hang out with in Northport? According to the Rulands, he was best buddies with Lavannah and Isaiah. RP926,963-964,1183, 1210,1213</p> <p>How did Brandon describe the kids at Northport? He said they were all a bunch of “potheads.” EX125, p.36. The two Ruland kids who testified fit the description of what one would visualize as being a “pothead.”</p>
<p>“And the telephone records confirm that there’s not been any barrier there, either way, I find, as far as communication. I think both parents can talk to Dillon.” RP 1383</p>	<p>Mr. De Aguero, Ms. Davis, Cierra, Marseilles, Brandon, <i>and</i> Dillon all reported that Dillon cannot talk to Mr. De Aguero or his siblings when he is with his mother. RP 197,334-336, EX125. Ms. Ruland did <u>not</u> provide any telephone records showing that there was communication; she only stated that there had been without providing any documentation to refute the testimony of all of her children.</p>
<p>“The - - Dr. Ashworth, when he testified, he concluded the father had alienated the boys from their mother.” RP 1383</p>	<p>Dr. Ashworth did not make this conclusion. He stated: “The parental alienation issue would be relevant to the extent that that was caused or set up by the other parent. And I don’t know that that’s true, although it appeared, as I said in my letter that the boys’ source of negative information or negative</p>

	<p>attitude towards the mother was their father.” RP 776</p> <p>When questioned about the alleged “negative information,” Dr. Ashworth said that Brandon couldn’t have known about the conditions in the Ruland home unless Mr. De Aguero had told him. See above at p.4</p>
<p>“...this home up here that Mr. Ruland is building is - - you know, by Ferry County for sure, but even Stevens County, any standards, is large enough, and it’s being improved, and it’s completely habitable. And so, you know, has all the amenities, electricity and all the utilities that are involved.” RP1384</p>	<p>The home was under construction RP1187; it did not have all the amenities: the electrical wiring was not completed RP1218, there was no water plumbed from a legal source RP930-31,1219, and there was no approved septic system. The GAL said it looked like it had been under construction for “quite a long period of time.”</p>
<p>Paraphrasing: The relationship between the Rulands is more stable because they are married and they have an established lifestyle. RP1384</p> <p>Laura Ruland has been married to Willard Ruland since November, 2008. They have a close, stable relationship. CP 210-21</p>	<p>Both Rulands have been married 3 times RP1202-1203; therefore, marriage is not an indication of stability for either one of them. Mr. De Aguero has been with Ms. Davis for a longer period of time and they had known each other for more than eight years.</p>
<p>“I think that in the future there’s more stability long-term - - over the ten-year period, that works in favor of the mother.” RP1385</p>	<p>Judge Nielson did not consider that all 3 older children ran away from Ms. Ruland’s home; Lavette Ruland is better off now that she has left her father’s home RP1207; Mr. Ruland has a mental disorder characterized by instability.</p>
<p>“It is now evident the children, and in particular Dillon, were well cared for by their mother.” CP 210-21</p>	<p>All four children and the medical records of Dillon in Northport indicate that Dillon was not well cared-for by his mother. AB18-19; CP434-486; EX-125,126,127 generally</p>
<p>“But from February, 2006 to December, 2007, the father resided in California. In that time, he</p>	<p>Mr. De Aguero has never lived in Los Alamitos and he did not live in Pleasant Grove, Utah at any time in</p>

<p>resided in Downey, California; Los Alamitos, California; and Pleasant Grove, Utah.” CP 210-21</p>	<p>2006 or 2007; he moved there with Ms. Davis in May 2008. The children testified that he lived with them in Northport and traveled to California monthly for work. RP 530,703,1027</p>
<p>The car, a 2002 Mitsubishi Montero was purchased by Elaine Davis. She then sold it to Paris De Aguero in 2004 while he was married to Laura De Aguero Ruland. In her 2005 bankruptcy filing, Ms. Davis reported the car was in her name but owned by her boyfriend. CP210-21</p>	<p>Ms. Davis testified that she re-opened the bankruptcy filing and that the document admitted was not accurate, RP638-639; therefore, Judge Nielson could not make any conclusions based upon the document. [The car was a provision in the contract that was added to Ms. Davis’s assets when the bankruptcy was re-opened. RP638-639.]</p>
<p>“The mother had a strong, nurturing relationship with Dillon before he left to live with his father in February, 2009. This relationship continues to this day.” CP210-21</p>	<p>There was no evidence or testimony describing the nature of her relationship at the time of trial; the 3 older children reported that their mother was neglecting Dillon, and Dillon stated that his mother doesn’t want to take care of him “every second” and that the Rulands spend a lot of time alone in their room. RP81-84; EX125 generally.</p>
<p>“In the coming years, Dillon will have more family support in the Northport area.” CP 210-21</p>	<p>The strength of the relationship between Ms. Ruland’s cousins and Dillon was not mentioned.</p>
<p>“Marseilles is condescending and indifferent toward his mother. Brandon is openly hostile.” CP 210-21</p>	<p>The GAL stated and there was ample evidence that the older boys loved their mother. EX125, p.2,5-6,20-21; RP43,45, 53-54,326-327; CP20-21, 22,33-38, 84-91,92-96 Marseilles testified that he was “hurt” but not angry. RP 540. During the interview with the GAL, Brandon stated that he could not be angry with his mother. Brandon’s tonality in court was not hostile in any manner and he was very polite and good-natured.</p>
<p>“Paris De Aguero remains very negative in his repeated comments</p>	<p>Mr. De Aguero made very few statements about Ms. Ruland to the</p>

<p>about his former wife – the mother of his children.” CP 210-21</p>	<p>GAL; he only filled out one allegation form for Dr. Ashworth while Ms. Ruland filled out six allegation forms.</p> <p>He was not nearly as negative in his testimony regarding Ms. Ruland as she was about him. In fact, his only negative statements in the RP were that the house was a mess whenever he returned home and he was concerned about her smoking around Dillon.</p>
<p>“The three older children were given a good upbringing by their mother, but now are openly hostile towards her.” CP 210-21</p>	<p>The GAL stated that they are <u>not</u> hostile towards their mother. EX125. Judge Nielson did not see them interact with Ms. Ruland and neither did Dr. Ashworth. Judge Nielson gives no credit for the children’s upbringing to the father, although the parents did not divorce until June 2005 and were reconciled from March 2006-March 2008 and Brandon lived with Mr. De Aguerro beginning June 2008.</p>
<p>“She showed good judgment regarding his welfare.” CP210-21</p>	<p>She allowed his teeth to rot and exposed him to second hand smoke; she isolated him from his father and siblings; all four children reported neglect, isolation, and safety concerns. EX125,126,127; CP 22, 33-38, 39-46, 47-49, 58-60, 72-83; 434-486; RP Volumes I, II-A, and II-B generally</p>
<p>“If Dillon is permanently placed with his father, it is likely he, too, would come to loathe his mother.” CP 210-21</p>	<p>The older children do not loathe their mother. The idea of the children hating their mother was Mr. Geissler’s constant editorializing. The GAL stated that they all love their mother. EX125, p.2,5-6,20-21; RP43,45, 53-54,326-327; CP20-21, 22,33-38, 84-91,92-96</p>
<p>“Paris De Aguerro and Laura Ruland presently live in comparable homes.” CP 210-21</p>	<p>The homes are not comparable as to location, completion, amenities, or facilities. AB18-29</p>
<p>Dillon will be the only child in his</p>	<p>Mr. Ruland testified that he has 4</p>

<p>mother's home. CP 210-21</p>	<p>children who live with him. RP1203-1207</p>
<p>"Elaine Davis owns her home, but Paris De Agüero lives there at her sufferance." CP 210-21</p>	<p>Ms. Davis did not state that Paris De Agüero lives there at her sufferance. This was Mr. Geissler's theory. Also, Mr. Ruland owns his own home, Ms. Ruland only makes \$270 per month, so why didn't the judge state that Ms. Ruland was there at his sufferance?</p>
<p>"It [Mr. Ruland's mental illness] is under control." CP 210-21</p>	<p>Mr. Ruland stated that he is on "full disability" for bipolar disorder and back pain. RP1238</p>
<p>"Though the father has a good relationship with his son, the mother has the stronger, more stable relationship." CP 210-21</p>	<p>Dr. Ashworth could not determine which parent had the stronger bond; he had no evidence of any kind for the entire year prior to trial. Mr. De Agüero submitted photographic evidence demonstrating his strong bond with Dillon. EX116-118</p>
<p>"The mother is better able to avoid alienation of the father; the father has not avoided alienation of the three older children from their mother and this will likely happen if he has custody of Dillon." CP 210-21</p>	<p>All four children reported that their mother isolated them from their father and that she now isolates Dillon from their father whenever he is in her care. AB generally, EX125,126,127. Ms. Ruland admitted that she did not allow contact with the children in 2005 and 2008. She stated that Mr. De Agüero had to hire an attorney in order to obtain visitation and her attitude was extremely negative about "having" to give him a visitation. Brandon testified that his mother said he could not have contact with his father.</p>
<p>"The mother has the healthier, more nurturing relationship with Dillon." CP 210-21</p>	<p>Dr. Ashworth could not determine which parent had the stronger bond; Mr. De Agüero provided evidence that his bond with Dillon was extremely secure.</p>
<p>"The mother performed nearly all parenting functions from Dillon's birth to February, 2009 – for over six of his eight years." CP 210-21</p>	<p>Mr. De Agüero testified that he was the primary caregiver in Dillon's infancy. The parents did not divorce until June 2005; they reconciled from March 2006-March</p>

	<p>2008.</p> <p>There were extensive reports of neglect by the mother. RP 42, 44, 48, 49, 51-52,62, 69,70, 80, 95,196,446, CP 39-46;72-83,22, 33-38, 39-46, 47-49, 58-60, 72-83</p>
<p>“But they [Mr. De Agüero and Ms. Davis] have failed to use good judgment when helping Dillon maintain his relationship with his mother.” CP 210-21</p>	<p>They sent the mother monthly photo journals and Dillon visited his mother each and every vacation period, paid for by Ms. Davis, and they had made sure that Dillon had regular telephonic contact with his mother. RP812-13; EX116-118;125-127</p>

AP-3: EXAMPLES OF JUDGE NIELSON'S IMPROPER  
COMPARISONS

JUDGE NIELSON'S STANDARD	CORRECT STANDARD
<p>I lived in Ferry County for 18 years. This kind of habitation is common. There's nothing wrong with it. So I think the GAL overstated the poor housing question. RP1381</p>	<p>He should have compared the two homes available to Dillon: Mr. De Aguero's home to that of Ms. Ruland. Dillon was accustomed to living in a finished home with many amenities and a well-organized and established community.</p>
<p>I look at her (GAL) position about care for the child, and I compare that to the medical records that were available during that time period. RP1380</p>	<p>Judge Nielson looked only at the medical records during the years 2005 and 2008 but did not examine the most recent medical records available, from 2009-2010, when Dillon lived with his father, to find that Mr. De Aguero took him to the doctor while in his care. The person who took him is not relevant. He should have compared the <i>content</i> of Dillon's medical records in Ms. Ruland's care to those while in Mr. De Aguero's care, as the GAL did, see above at p.12</p>
<p>"The - - Dr. Ashworth, when he testified, he concluded the father had alienated the boys from their mother." RP1383</p>	<p>Dr. Ashworth did not make this conclusion. See above. Also, Judge Nielson did not mention Ms. Ruland's alienation of the father from the children by isolating them from him, talking about court matters, and speaking about him in a disparaging manner.</p>
<p>"Many of us take medications. Many folks take those and live fully productive and stable lives." [Referencing Mr. Ruland's dependence on medications] RP1385</p>	<p>Judge Nielson should have compared the two sets of parents as to their dependence upon medication, rather than comparing Mr. Ruland to a vague population of people. Mr. De Aguero and Ms. Davis do not take medication.</p>
<p>"The stability is, what Mr. Ruland has done in raising his kids, and has done with these children when they've been in his custody, and not</p>	<p>This is not a custody case between Mr. Ruland and Mr. De Aguero. Mr. Ruland's accomplishments in raising his children is irrelevant, not</p>

<p>with the mother, and what he has accomplished here in recent years.” RP1385</p>	<p>to mention that his “accomplishments” and what he has done with his kids was not discussed other than to say that Lavette was “doing better” living with her mother. If Judge Nielson thought it was necessary to compare Mr. Ruland to Mr. De Agüero, then why didn’t he also compare the “accomplishments” of Ms. Davis to those of Ms. Ruland?</p>
<p>“He’s [Dillon] down there and he’s doing well in school and he’s involved in these activities, and that’s completely true. RP1385. On the other hand, when the boy was up here, he did fine in school.” RP1386</p>	<p>The proper standard is to compare Dillon’s attachment to physical surroundings, including activities and school. There was no evidence of involvement in any activities when living with Ms. Ruland, whereas Mr. De Agüero provided evidence that he was involved in scouting, church, and year-round sports. EX116-118</p>

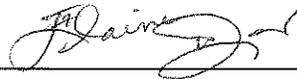
Certificate of Service

I, Elaine Davis, under penalty of perjury under the laws of the State of Washington, declare that on the day of August 10<sup>th</sup>, 2012, I deposited in the United States postbox, with first class postage attached, a copy of the document to which this certificate of service is attached: Reply Brief of Appellant.

I mailed the document to the attention of Bryan Geissler, Ms. Ruland's attorney of record, at the following address:

Bryan Geissler  
N 205 University Ave #3  
Spokane, WA 99206

Signed at Saint Augustine, FL on August 10<sup>th</sup>, 2012.



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Elaine Davis

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