

FILED

JAN 26 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 337171

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

TIFFANY A. CLARK n/k/a ZAPHIA,

Appellant,

vs.

WALTER N. CLARK III,

Respondent,

RESPONDENT'S BRIEF

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS
OF ERROR

1. Whether Appellant is able to show that the trial court abused its discretion under RCW 26.09.260.
2. Whether Appellant is able to show that the trial court abused its discretion under RCW 26.09.220.
3. Whether Appellant is able to show that the trial court erred under RCW 26.09.187(3) and RCW 26.09.187(iv).
4. Whether Appellant failed to show that the trial court erred in modifying the parenting plan.
5. Whether Appellant was deprived of any right to a fair trial.
6. Whether Appellant failed to show that the trial court failed to keep proper records of the filings and actions of the case.

B. ARGUMENT

1. **Appellant is unable to show that the trial court abused its discretion during any phase of the proceedings.** (See Issues Pertaining to Appellant's Assignments of Error: Nos. 1, 2, and 4)

"A trial court abuses its discretion if its decision

is manifestly unreasonable or based on untenable grounds or untenable reasons. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if its based on an incorrect standard or the facts do not meet the requirements of the correct standard.” (See In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997) *citations omitted*)

The primary purpose of the Parenting Act of 1987 (RCW 26.09) is clearly set forth under RCW 26.09.002: “The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.”

Appellant's Declaration in Support of Parenting Plan (DCLSPP), dated May 19, 2015, along with its supporting documentation clearly establishes that the

child's best interests are not served by allowing him to continue residing a majority of the time with his mother, Tiffany "Zaphia" Clark:

1. Numerous Behavioral Referrals for inappropriate and abusive behaviors while residing a majority of the time with Mother; (see page numbered 3)
2. "Walter's behaviors and academic levels negatively impact his involvement and progress in the general education classroom;" (see page numbered 4)

Appellant states that the trial court "used abuse of digression by ignoring evidence as seen In re: of Shyrock, 76, Wn. App. 848, 850, 888, P.2d 750 (1995)." Unfortunately, in Shryock the issue had nothing to do with a trial court ignoring relevant evidence. In Shryock it was found that the trial court abused its discretionary authority when it failed to comply with criteria set forth in RCW 26.09.260.

In this present matter, Appellant has thoroughly established that the trial court properly and lawfully modified the parenting plan because "the child's

present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." (RCW 26.09.260(2)(c))

In order for Appellant to show that the trial court abused its discretion, Appellant must show that the original parenting plan did not place the child in an environment which was detrimental to the child's physical, mental, or emotional health and that the harm caused by modification of the parenting plan outweighs any advantages to the child, despite Appellant's claims indicating that the plan needed to be modified for the benefit of the child. (See RCW 9A.72.050 penalties for inconsistent statements made in the course of one or more official proceedings)

Appellant has clearly proven that the original parenting plan was not sufficient to ensure the best possible outcomes for the child. The trial court did not abuse its discretionary authority by modifying the

parenting plan and any attempt by Appellant to establish that the original arrangement was not detrimental to child must result in prosecution under RCW 9A.72.050.

2. Appellant has failed to show how the trial court violated any due process or other Constitutionally protected rights. (See Issues Pertaining to Appellant's Assignment of Errors: Nos. 3, 4, 5, and 6)

Appellant argues that “It was a breach of the constitutional rights, of the child and the mother (in defense of her sons wellbeing), as also seen in the following case; In Marriage of Rideout, 150 Wn .2d 337, 352 (2003).”

Rideout is not relevant in this present matter, as neither parent has been found in contempt and this is not a contempt proceeding.

Appellant also argues that “As seen In: re Marriage of Mansour, 126, Wn. App. 1, 11, 106 P. 3d 768 (2004) due to appellants partial statements going dismissed, or not allowed at hearings and trial; the

courts are responsible, due to continuing jurisdiction over the matters in this family law case, for holding the relationship of the appellant and her son in an area of harm, by allowing abusive use of conflict by respondent thus, he continued to manipulate the child's delicate psyche(Cp143), and caused undue hardship(Exhibit 5)."

In Mansour there was substantial evidence proving that the child had been physically abused by the father. In this present matter there is no evidence to suggest that the child had ever been physically abused by his father. Appellant has failed to prove by clear, cogent, and convincing evidence that her son had ever been abused by his father. Appellant's inadmissible hearsay testimony is insufficient for any court to find cause for holding a parent accountable for abusing a child.

Appellant further argues that "Due to the hearsay of the courts and the respondent as unlawfully noted libelous statements, attention of the

courts was deflected as seen; In re: Marriage of Eklund, 143 Wn.App.207, 214-16, 177 P 3.d 189. (2008).”

The case in Eklund involves a parent who had willfully violated a court-ordered parenting plan and has absolutely nothing to do with Appellant's alleged deprivation of Constitutional Due Process rights.

Appellant's erroneous claims regarding any alleged deprivation of rights are frivolous and without any merit, as Appellant filed for and requested a modified parenting plan which the court granted. Appellant has failed to show how the trial court acted arbitrarily, capriciously, or without authority.

- 3. Appellant has failed to show how the trial court's “prima facie allegations VIA libelous statements” have legally stigmatized or otherwise harmed her.**
(See Issues Pertaining to Appellant's Assignment of Errors: Nos. 1, 5, and 6)

Appellant insists that the trial court made “libelous statements” including “mother being unable

to provide on a 'mental level' to care for herself and her child." A statement cannot be considered libel (or slander or defamation) if that statement is true.

Appellant alleges a: "Verbal agreement between mother and father pertaining to the desire to not require mother to share mental health screenings, (CP124,125 lines 5-11)."

The trial court appointed a guardian ad litem in accordance with RCW 26.09.220 who had authority under section (2) to "consult any person who may have information about the child and the potential parenting or custodian arrangements."

Appellant asked the trial court to modify the parenting plan. The trial court took necessary steps to ensure "that the modification is in the best interest of the child and is necessary to serve the best interest of the child." Appellant acknowledges that she is in need of mental health treatments and that she attempted to withhold this information from the trial court.

C. CONCLUSION

Appellant states: "When a request to modify plan was set forth it was not intended to separate the child from herself, which would change the parent child relationship, by restraining mother from contacting her child at other residence VIA phone, it is in violation of her liberty interests."

Appellant further argues that: "Litigation of custody on both final hearings, the presiding Judge utilized libelous statements to enforce RCW 26.09.260, proper digression of the courts was ignored, by not requiring evidence to carry out such a major modification in the favor of the party in contempt."

Appellant has failed to show any grounds upon which an appeal can be granted. The trial court did not abuse it's discretionary authority, there was no abuse of digression, the libel claims are frivolous and without merit (see *absolute privilege*). Despite repeated allegations Appellant acknowledges that contempt has never been established due to her own

actions (or lack thereof).

The trial court did not err in granting Appellant's request for modification of the parenting plan. The trial court did not err in interpreting or applying the law (specifically, The Parenting Act of 1987, RCW 26.09). The trial court did not abuse its discretion by properly and lawfully obtaining relevant evidence that Appellant admits to deliberately withholding.

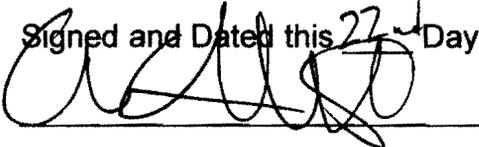
The trial court properly and lawfully determined and allocated the parties' parental responsibilities. The trial court has ensured that the best interests of the child are served by creating a parenting arrangement that best maintains the child's emotional growth, health and stability, and physical care. (RCW 26.09.191(3)(e))

Due to the fact that Appellant has failed to state a claim from which any court can grant relief, Mr. Clark respectfully requests this court to dismiss this appeal and to take further action as appropriate.

Alternatively, and only in the event that this

court takes further action in this matter, Appellant must be instructed to file a signed and dated amended Brief of Appellant to which Mr. Clark can properly respond), including, but not necessarily limited to, a fair statement of relevant facts and procedure, and accurate statutory citations. (CR 11, RAP 10.3(a)(5), RAP 10.7)

Signed and Dated this 27th Day of January 2016.



Walter N. Clark III

118 92nd St NE

Tulalip, WA 98271

CERTIFICATE OF SERVICE

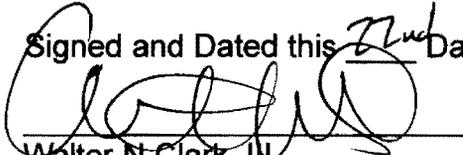
I, Walter N. Clark III, hereby certify under penalty of perjury of the laws of the State of Washington that on the 22nd Day of January, 2016, I caused true and correct copies of the forgoing RESPONDENT'S BRIEF to be delivered to the following parties:

Division III Court of Appeals
Clerk / Administrator
Renee S. Townsley
500 N Cedar St
Spokane, WA 99201

Guardian Ad Litem
Thomas E. Janisch

Appellant
Tiffany "Zaphia" Clark
507 102nd Dr SE #C1
Lake Stevens, WA 98258

Signed and Dated this 22nd Day of January 2016.



Walter N Clark, III
118 92nd St NE
Tulalip, WA 98271