

FILED

No. (341445)

COURT OF APPEALS, DIVISION 3
OF THE STATE OF WASHINGTON

JUN 02 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

In re the Parentage of: A.R.
Joseph Huizar, Appellant

v.

Teresa Ramos, Respondent

BRTEF OF APPELLANT

(Joseph J Huizar Pro se)
(Appellant)
(1911 Hoxie Ave Apt A
Richland, WA, 99354)

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A. Assignments of Error

1. Did the petitioner received a fair trial in front of an impartial tribunal?
2. Did the trial court erred by infringed on petitioner's Due process, and violation the appearance of fairness doctrine and Canon 3 (D)(1) of the Code of Judicial Conduct (CJC).
3. The trial court abused its discretion when deciding a motion to recuse filed 01/22/2016.
4. The trial court erred by entry of ¶ 2.6 in having contradictory findings of facts on final residential schedule and a temporary residential schedule.
5. The trial court erred by entry of ¶ 2.6 or abused its discretion when making a finding of fact that petitioner's domestic violence perpetrator's treatment classes were not benefiting petitioner.
6. The trial court erred by entry of ¶ 2.6 or abused its discretion when making a finding of fact that; after this court's temporary Residential Schedule of February 27, 2015, father has missed a total of 14 weekly visits between March 2015 and October 30, without reasonable excuse.

7. The trial court erred by entry of ¶ 2.6 or abused its discretion when making a finding of fact that father has harassment of 3 women.
8. The trial court erred by entry of ¶ 2.6 or abused its discretion when making a finding of fact that Peggy Mosshart tried to have an adult conversation with petitioner outside the presence of the child, petitioner refused and proceeded to have the conversation in the child's presence to the detriment of the child.
9. The trial court erred by entry of ¶ 3.7 of judgment and order establishing final residential schedule.
10. The Trial court erred by entry of ¶ 2.6 or abused its discretion when making a finding of fact. This court finds the Residential Schedule signed by the court on even date herewith in the best interests of the parties' child. Also falling to apply RCW 26.09.184 (1) (c) (b)
11. The Trial court erred by entry of ¶ 3.2 Conclusion of law when making a Conclusion of law that (Declares this proceeding was properly begun ;)

B. Issues Pertaining to Assignments of Error

1. Whether the trial court erred by applying an erroneous view as to the impartiality of the tribunal and it might reasonably be questioned?
2. Whether the trial erred by infringing on petitioner's Due Process, whether the trial court erred by not satisfying the appearance of partiality, and Whether the trial court violated the appearance of fairness doctrine and Canon 3 (D)(1) of the Code of Judicial Conduct (CJC);?
3. Whether the trial court erred by applying a clearly erroneous standard that denied petitioner's motion to recuse?
4. Whether the trial court erred by applying a clearly erroneous standard to its contradictory findings of facts and does substantial evidence support its finding? CP (22) ¶ 2.6
5. Whether substantial evidences support the trial court finding of fact that domestic violence perpetrator treatment classes were not benefiting petitioner and was this finding of facts basis on unreasonably grounds?
6. Whether substantial evidence/record support the trial court finding of fact that father has missed a total of 14 weekly visits without reasonable excuse and was this finding of fact basis on untenable ground?
7. Whether substantial evidences support the trial court finding of fact that father has harassment of 3 women and was this finding of fact basis unreasonably grounds.
8. Whether substantial evidences/record support the trial court finding of fact that Peggy Mosshart tried to have an adult conversation with petitioner outside the presence of the child, petitioner refused and proceeded to have the conversation in the child's presence to the detriment

of the child and was this finding of fact basis on untenable reasons/untenable grounds/
unreasonably.

9. Whether the trial court erred by applying a clearly erroneous standard to that fact that Peggy Mosshart was an expert witness in the case and issue a judgment \$116.67 to Mrs. Mosshart.

10. Whether the trial court erred by providing a clearly erroneous standard or by failing to apply the correct statutory factors of RWC 26.09.187 (3) in making its decisions concerning the final parenting plan. Also falling to apply RCW 26.09.184 (1) (c) (b).

11. Whether the Trial court erred ¶ 3.2 Conclusion of law when making a Conclusion of law that (Declares this proceeding was properly begun ;)

Petitioner Question of law, “Did the trial court modify the temporary parenting plan or implement the temporary plan when proceeding to trial (CP) 51(CP) 54 and did the trial court interpret the law correctly when modify or implement the temporary parenting plan?”

Also the trial court failed to establish that the petitioner was in contempt of the temporary parenting plan without having an (order to show re: contempt) before it made it findings that the petitioner missed visits without a reasonable excuse (CP) 54. Was this an irregularity in obtaining a judgment?

C. Standard for review

In re Marriage of Littlefield, 133 Wn. 2d 39, 940 P.2d 1362 (1997)

“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 it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.”

The trial court's challenged findings are reviewed for substantial evidence. In re Marriage of Rockwell, 170 P.3d 572 (2007). Substantial evidence is defined as “a sufficient quantity of evidence to persuade a fair-minded, rational person that the finding is true.” Id. at 242.

In re parentage of Goude, 152 Wn. App. 784,790,219 P.3d 717 (2009)

Substantial evidence must support the trial court’s factual findings. Goude, 152 Wn. App at 790.

This standard is also violated when a trial court bases its decision on an erroneous view of the law. Id. (citing Mayer v. Sto Indus. Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

A trial court abuses its discretion when its decision is manifestly unreasonable or based upon untenable grounds or untenable reasons. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

Questions of law and conclusions of law are reviewed de novo. See Veach v. Culp, 92 Wash.2d 570, 573, 599 P.2d 526 (1979).

D. Argument

1. There is a conflict of interest in this case (CP) 38-39 declaration of probable cause (CP) 40
Bail order

The judge's impartiality might reasonable be questioned. The Judge's has prior knowledge of (CP) 38-39 in which his impartiality can be questioned. Michael G. McCarthy Previous involvement in my criminal case 10-1-01908-7 is evidence that shows this judge is potential bias against Appellant. Even if the judge forgot the facts; or does not recall, it still does not satisfy the appearance of partiality.

28 U.S.C code (§) 455

"The goal of section 455(a)

When disqualifies judge from acting in proceeding in which his impartiality might reasonable be questioned, is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible. *Liljeberg V Health services Acquisition Corp.* (1988) 486 us 847, 100 L Ed 2d 855, 108 s ct 2194, 11 FR serv 3d 433.

The judge's forgetfulness, however, is not the sort of objectively ascertainable fact that can avoid the appearance of partiality. *Hall v. Small Business Administration*, 695 F.2d 175, 179 (5th Cir.1983). Under section 455(a), therefore, recusal is required even when a judge lacks actual knowledge of the facts indicating his interest or bias in the case if a reasonable person, knowing

all the circumstances, would expect that the judge would have actual knowledge." 796 F.2d, at 802.

The absence of actual or apparent bias is not guaranteed in this case.

U.S. Const. Amend. XIV, (§) 1

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness." *In re Murchison* 349 US 133 Supreme Court (1955)

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." *Marshall v. Jerrico, Inc.*, 446 US 238 - Supreme Court 1980

The right to a fair trial is a fundamental liberty secured by the due process guarantee of the fifth and fourteenth Amendments. *In re Murchison* 349 US 133 Supreme Court (1955)

"The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial." *State v. Madry*, 8 Wn. App. 61 504 P2d 1156 (1972).

The trial court erred by applying an erroneous view as to the impartiality of the tribunal and it might reasonable be questioned. The Appellant did not receive a fair, impartial, and neutral hearing. There is proof of evidence that the trial Judge Impartiality can reasonable be question and a grave injustice has been done. (CP) 38-39 is a prejudice/bias document against Appellant that can manifest and cloud the judge impartiality. This case was a judge trial. There is more weight put on the judge impartiality in a judge trial because the judge is the trier of fact in the case.

2. Tatham V. Rogers, 170 Wn. App. 76; 283 P.3d 583; 2012 citing State V. Finch, 137 Wn. 2d 792, 808,975 P.2d 967 (1999) Washington's Appearance of fairness doctrine not only require a judge to be impartial, it also requires that the judge appear to be impartial. The facts in this case suggest that there is actually or potentially bias. (CP) 38-39. The judge in this case should not have knowledge of (CP) 38-39. "The CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." Sherman v. State, 128 Wn.2d 164, 205, 905 P.2d 355 (1995).

"Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may be reasonably questioned." Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wn.App. 836, 840, 14 P.3d 877 (2000).

(CP) 38-39 is evidence that can be admitted into a trial court following the Rule of Evidences but knowledge of the document already know by the trial court created a mere suspicion of the partiality of the tribunal and the appearance of bias or prejudice can damage the public's

confidence in our judicial system. The principle of fairness and impartiality on the part of the judge is as old as the history of courts. The Appearance of fairness doctrine was raised at the trial court level in this case. (CP) 57.

The trial court clearly error and violation the Appearance of Fairness doctrine.

(RP) 110- 111/ (RP 64) (RP 69) bias and prejudice is more than a mere suspicion in this case.

3. Trial court erred by applying a clearly erroneous standard that denied petitioner's motion to recuse. (CP) 57-58. The trial court made no findings of facts as to why it denied petitioner's motion to recuse. The trial court must make findings of facts in order to support its judgements. The judgment becomes clearly erroneous; without any finding of facts to support the judgement of the judge.

4. The trial court erred by applying a clearly erroneous standard of its contradictory findings of facts and does substantial evidence support its finding. (CP) 22) ¶ 2.6 At the time Father filed his petition for residential schedule the child did not have any personal relationship with him not having seen him since March 18, 2011. The trial court made its factual finding of facts in the temporary Residential Schedule. The trial court's Findings of facts are; I have not seen my child since March 18, 2011, and the trial court made its ruling upon those findings of facts that I have not seen my child since March 18, 2011. Final Residential Schedule findings of facts At the time Father filed his petition for residential schedule the child did not have any personal relationship with him not having seen him since March 18, 2011. (With one exception when father came by mother's home and assaulted mother in the presence of the child) These findings of facts in the Final Residential schedule are not supported by the record because they clearly contradict. These

finding of facts in the Final Residential Schedule are basis on untenable ground which is an abuse of discretion by the trial court. Courts acts on untenable grounds if its factual findings are unsupported by the record.

5. The trial court findings of facts that domestic violence perpetrator treatment classes were not benefiting petitioner and was this finding of facts basis on unreasonably grounds?

WAC 388-60-0025

What is the purpose of this chapter?

(1) This chapter establishes minimum standards for programs that treat perpetrators of domestic violence.

(2) These standards apply to any program that:

(a) Advertises that it provides domestic violence perpetrator treatment; or

(b) Defines its services as meeting court orders that require enrollment in and/or completion of domestic violence perpetrator treatment.

(3) These programs provide treatment only to perpetrators of domestic violence, including clients who are self-referred or those who are court-ordered to attend treatment.

(4) An agency may administer other service programs in addition to domestic violence perpetrator treatment services; however, the domestic violence perpetrator treatment program must be considered a separate and distinct program from all other services the agency provides.

WAC 388-60-0035

Must domestic violence perpetrator treatment programs be certified?

All programs providing domestic violence perpetrator treatment services must:

(1) Be certified by the department; and

(2) Comply with the standards outlined in this chapter.

WAC 388-60-0045

What must be the focus of a domestic violence perpetrator treatment program?

- (1) A domestic violence perpetrator treatment program must focus treatment primarily on ending the participant's physical, sexual, and psychological abuse.
- (2) The program must hold the participant accountable for:
 - (a) The abuse that occurred; and
 - (b) Changing the participant's violent and abusive behaviors.
- (3) The program must base all treatment on strategies and philosophies that do not blame the victim or imply that the victim shares any responsibility for the abuse which occurred.

WAC 388-60-0055

What must be a treatment program's primary goal?

The primary goal of a domestic violence perpetrator treatment program must be to increase the victim's safety by:

- (1) Facilitating change in the participant's abusive behavior; and
- (2) Holding the participant accountable for changing the participant's patterns of behaviors, thinking, and beliefs.

WAC 388-60-0075

What must a treatment program require of its participants?

(1) All participants must attend consecutive, weekly group treatment sessions. A program may develop policies which allow excused absences to be made up with the program director's approval.

Exception: Another type of intervention may be approved for certain documented clinical reasons, such as psychosis or other conditions that make the individual not amenable to treatment in a group setting.

(2) The program must assign each participant to a home group and the participant must be required to attend the same scheduled group each week. The program's director must authorize any exceptions to this requirement and document the reason for the exception.

(3) Each participant must sign all releases of information required by the treatment program, including those specified in WAC 388-60-0145.

(4) Each participant must sign a contract for services with the treatment program.

WAC 388-60-0315

What are the minimum qualifications for all direct treatment staff?

(1) All staff with direct treatment contact with participants must be:

(a) Registered as counselors or certified as mental health professionals as required under chapter 18.19 RCW; and

(b) Free of criminal convictions involving moral turpitude.

(2) Each staff person providing direct treatment services to a participant must have a bachelor's degree.

(a) The department will review requests for an exception to this requirement on a case-by-case basis.

(b) In order to qualify for an exception, the employee must possess year-for-year professional level experience equivalent to a bachelor's degree. The department determines this equivalency at the discretion of the DSHS program manager responsible for monitoring domestic violence perpetrator treatment programs.

(3) Prior to providing any direct treatment services to program participants, each direct treatment staff person must have completed:

(a) A minimum of thirty hours of training about domestic violence from an established domestic violence victim program; and

(b) A minimum of thirty hours of training from an established domestic violence perpetrator treatment services program.

(i) If located within Washington state, the domestic violence perpetrator treatment program must be certified and meet the standards as outlined in this chapter.

(ii) If located out-of-state, the domestic violence perpetrator treatment program must meet the standards outlined in this chapter as well as chapter 26.50 RCW.

(4) All employees must complete all sixty hours of required training before the employee may begin to provide any direct services to group participants. Any work experience accrued prior to completion of the sixty hours of training will not count toward any requirement for work experience.

Appellant attended 26 weekly and 3 bi-weekly of domestic violence treatment.

RCW 26.50.150

Domestic violence perpetrator programs.

RCW 26.50.010

(3) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

There is no substantial evidence to support this finding of fact that domestic violence treatment classes were not benefiting the petitioner and the trial court clearly provided an erroneous view.

Chapter 388-60 WAC provide the legal standards.

Domestic violence perpetrator treatment program standards are clearly outline in Chapter 388-60 WAC which is design to help Participants of domestic violence treatment by certified counselors. The trial court erred by providing an erroneous view as to whether domestic violence treatment classes were not benefiting petitioner. There was no expert testimony or opinion pertaining to petitioner's progress in domestic violence treatment. Or there was no expert testimony or opinion by a certified counselor to suggest that domestic violence treatment is not benefiting petitioner. There was no evidence presented to the court that domestic violence treatment classes is not benefiting petitioner.

6. The trial court erred in the finding of fact that after this court's temporary Residential Schedule of February 27, 2015, father has missed a total of 14 weekly visits between March

2015 and October 30, 2015 without reasonable excuse. (CP) 17 ¶ 3.13 Temporary Residential Schedule; the trial court would have proceeded to trial if father had missed more than 5 visits throughout the 52 weeks. Caring Heart Inc. quit and petitioner allegedly missed 6 visits during that time frame without a reasonable excuse; which would have resulted the court to proceed to trial. However the court did not proceed to trial because respondent was close to contempt for violating the parenting plan (CP) 24. The April 17 2015 hearing made no findings of facts that father has missed visits without a reasonable excuse. ¶ 2.6 Final parenting plan Finding of Fact that father missed a total of 14 weekly visits between March 2015 and October 30 2015 without reasonable excuse is completely an erroneous view of the trial court. During the time when Caring Hearts Inc. supervision services quit petitioner filed a motion for an order to show cause re: contempt on respondent in this case and had to comply with Rule 94.04W (b) Family Law Proceedings (Filing and Service. The moving party shall, no later than 14 calendar days prior to the hearing date, file with the clerk and serve on each other's party/counsel his/her motion, note for motion, and all supporting documents. Unless previously filed and still current, the moving party's supporting documents shall include these mandatory forms, fully completed and signed by the moving party). The result of the motion for contempt was (CP) 24. After supervisor Peggy Mosshart quit petitioner filed 2 motions for order to show cause re: contempt against respondent. Which petitioner also had to comply with rule 94.04W (b). Father had visits moved to GMC Training institution.

There is no substantial evidence to support that father has missed a total of 14 visits without a reasonable excuse.

7. Substantial evidence does not support the trial court finding of fact that father has harassment of 3 women, and was this finding of fact based on unreasonable grounds. This finding of facts is outside of the range of acceptable choices given the facts and the legal standard. There is no substantial evidence to support this finding of facts, and it's clearly frivolous. There was no other testimony from witness' to suggest that father has harassment of 3 women or evidences.

8. Substantial evidence/record does not support the trial court finding of fact that Peggy Mosshart tried to have an adult conversation with petitioner outside the presence of the child, petitioner refused and proceeded to have the conversation in the child's presence to the detriment of the child and was this finding of fact basis on untenable reasons/untenable grounds/ unreasonably.

(RP) 21pg 22pg 23pg

A. Because you were just being totally unreasonable and would

not discuss the circumstances about the visit. You were

angry because there had been a change in the place, and you

met us in Sunnyside while we were at the visit in Grandview.

And I did wait the additional time it took you to get from

Sunnyside to Grandview, and I didn't charge you for that

time. You have strong personality, and sometimes you come

across very strongly (RP) 21

Q. In response to the guidelines, are we supposed to have these

discussions in front of your child, in front of the child?

A. Mr. Huizar, I asked you to step away and talk to me briefly and you refused. You said this was your time with your child, and you would not interrupt the visit to talk to me.

I could not talk to you on the telephone because you hung up on me. The only communication I could have with you was through text messages, and sometimes you didn't respond to those. So it was impossible for me to have a conversation with you at any other time because we left right after the visits. I had to return Aaliyah to her daycare, and you had (RP) 22 places to be. There were no places for us to talk except for a few minutes there, and you were uncooperative.

And I let it lie. (RP) 23

There is no substantial evidence to support this finding of fact and the trial court clearly provided an erroneous view. Petitioner did not proceed to have the conversation in the child's presence to the detriment of the child.

9. The trial court erred by applying a clearly erroneous standard to that fact that Peggy Mosshart was an expert witness in the case and issue a judgment \$116.67 to Mrs. Mosshart.

CR45

(f) Subpoena For Hearing or Trial.

(1) When Witnesses Must Attend – Fees and Allowances. [Reserved. See RCW 5.56.010.]

(2) When Excused. A witness subpoenaed to attend in a civil case is dismissed and excused from further attendance as soon as the witness has given testimony in chief and has been cross-examined thereon, unless either party moves in open court that the witness remain in attendance and the court so orders. Witness fees will not be allowed any witness after the day on which the witness' testimony is given, except when the witness has in open court been required to remain in further attendance, and when so required the clerk shall note that fact.

Petitioner complied with CR 45. The witness Peggy Mosshart lives within the Yakima County. The trial court perceived a clearly erroneous view and issued a judgment of \$116.67 to Mrs. Mosshart, stating that Mrs. Mosshart was an expert witness. Mrs. Mosshart was not called as an expert witness, and Mrs. Mosshart is not a Guardian ad litem in this case. Mrs. Mosshart was a supervisor in this case, and gave testimony to what she observed during visits. Mrs. Mosshart gave no expert opinion, just testimony, as an opinion testimony by a lay witness.

Mrs. Mosshart has no expert knowledge in this case because she is not the Guardian ad Litem for the child in this case. Substantial evidence does not support the trial court finding of facts.

10.

The court erred in this case and did not properly address the factors of RCW ,26.09.187(3) in making its residential provisions for the child. The trial

court must look at the factors in RCW 26.09.187(3) when making

decisions regarding a parenting plan. These factors include:

i) The relative strength, nature, and stability of the child's

relationship with each parent;

ii) The agreements of the parties, provided they were

entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future

performance of parenting functions as defined in *RCW

26.09.004(3), including whether a parent has taken greater

responsibility for performing parenting functions relating

to the daily needs of the child;

(iv) The emotional needs and developmental level of the

child;

(v) The child's relationship with siblings and with other

significant adults, as well as the child's involvement with

his or her physical surroundings, school, or other

significant activities;

(vi) The wishes of the parents and the wishes of a child

who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

RCW 26.09.187(3)(a).

The development of a parenting plan must be based on the statutory factors contained in RCW 26.09.187(3)(a)

RCW 26.09.002

Policy.

Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests.

Residential time and financial support are equally important components of parenting arrangements. 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. Further, the best

interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.

The trial court erred by providing a clearly erroneous view when applying the criteria for establishing a final parenting plan and failed to interpret the objectives of a final parenting plan.

RCW 26.09.184

Permanent parenting plan

- (1) Objective (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan;

The final parenting plan does not address the permanent parenting plan objective (c).

Objective (c) is not addressed in the final parenting plan because it does not clarify how it will make changes that minimize the need for future modification as the child grows and matures.

The relationship between the father and the child will grow. What will happen when this child turns 13 years old, 15 years old, or 17 years old? The final parenting plan does not even consider changes that minimize for future modification. The trial court clearly provides an erroneous view in applying the statute of RCW 26.09.184 (c).

Major purpose behind the Parenting Act's requirement of detailed permanent parenting plan is to ensure that parents have a well thought out working document with which to address the future needs of children. In re marriage of Possinger 105 Wash.App. 326, 19, p.3d 1109 (2001).

The final parenting plan is not a well thought out document with which to address the future needs of the child in this case.

The final parenting plan residential provision (iii) (iv) (i)

(iii) Each parent's past and potential for future

performance of parenting functions as defined in *RCW

26.09.004(3)

The trial court erred by clearly providing an erroneous view to statute RCW 26.09.004 (a)

Maintaining a loving, stable, consistent, and nurturing relationship with the child; and did not

consider father potential for future performance of parenting functions RCW 26.09.187(3) (iii)

Father has the ability to perform parenting functions and the more father maintains a loving,

stable, consistent, and nurturing relationship with the child; the final parenting plan should

evolve as the relationship grows in order to maintain the child's emotional needs. 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.

RCW 26.10.160

Visitation rights—Limitations.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

Father has the ability to meet the requirement of RWC 26.10.160 (n) in which the trial would not have to apply the limitations in a parenting plan. The trial court would then have to consider the residential provision RCW 26.09.187 (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preference as to his or her residential schedule. The child will develop and will sufficiently mature to express reasoned and independent preferences as to his or her residential schedule. The trial court erred and provided an erroneous view of RCW 26.08.187 (vi)

The trial court erred in clearly providing an erroneous view when applying the residential provision in this case because it fails to interpret the child's development level as the child grows and matures. Also, father's future performance of parenting functions as defined in RCW 26.09.004 (3).

RCW 26.09.187

(iv) The emotional needs and developmental level of the child. The trial court erred in the final parenting plan because it does not address the developmental level of the child at all. The trial court provide and erroneous view in apply RCW 26.09.187 (iv) nothing in the final parenting plan discuss the developmental level. The final Parenting plan is supposed to address this child until she is 18 years of age.

11. "In order to modify a parenting plan, the court must find a 'substantial change in circumstances,' even if the modification is minor." Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 807, 929 P.2d 1204 (1997); RCW 26.09.260(1), (4). A 'modification' occurs 'when a party's rights are either extended beyond or reduced from those originally intended.

This case establish when a modification occurs in a parenting plan

"A court could not order a change of custody merely because the custodial parent was in contempt of a court order; rather, there needed to be a finding that a change of custody was in the best interests of the child."

Schuster v. Schuster, 585 P. 2d 130 - Wash: Supreme Court 1978

This case establish a change custody only when it in the best interests of the child.

The trial court made a change of custody without making a finding that a change of custody was in the best interests of the child. The trial court modify the temporary parenting when proceeding to trial without making a finding of substantial change in circumstances. The trial court did not interpret the law correctly when proceeding to trial because in order to change the temporary parenting there has to be findings of "substantial change in circumstances" Kirshenbaum v. Kirshenbaum, 84 Wn. App. 798, 807, 929 P.2d 1204 (1997) or "a change of custody was in the best interests of the child." Schuster v. Schuster, 585 P. 2d 130 - Wash: Supreme Court 1978

Clearly there was an irregularity in obtaining a judgement (CP 54) because the respondent in this case did not file an (order to show cause: contempt) before the hearing (CP 54). Petitioner was not given the opportunity to be heard before the trial court made its findings of fact on (CP 54). This is an irregularity and the trial court should not have proceeded to trial. Petitioner Due process cannot be over look in this case at any time.

V. Request for Attorney/pro se fees

Mr. Huizar request fee incurred on appeal be awarded pursuant to RAP 18.1 and RCW 26.09.140 the court of appeals may, in its discretion, award attorney fees and costs.

E. Conclusion

The constitution floor has been establish in this case. Petitioner has provided evidences that show without a doubt the judge in the case is potential bias or appears to be potential bias. (CP) 38-39 is a prejudice document that will forecast a prejudgment on petitioner. The risk of injustice is far too great to not deal with the conflict of interest in this case. The judge impartiality can reasonable be question in the case without a doubt 28. U.S.C code (§) 455 Recusal statue is meant to shield litigants from biased and prejudiced judges. Impartial means the absence of actual or apparent bias and there is no guarantee in this case that the trial court was completely neutral, fair, or appear partiality. There is more weight put on a judge impartiality in a trial, by a judge, because the judge is the trier of fact and no facts should suggest the judge impartiality can reasonably be question. The system of law has always endeavored to prevent even the

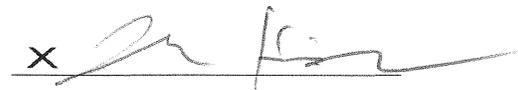
probability of unfairness. Petitioner is entitled to a fair trial in a fair tribunal which is a basic requirement of petitioner due process and it is guaranteed by petitioner 14th amendment Right.

The finding of facts that are challenge in the case deal with untenable grounds, untenable reasons and unreasonably. No fair-minded person after reviewing the evidence in this case would have been persuaded that the findings are true. The challenge finding of facts in the case could only have been made by the trial court exercising an abuse of discretion and there is no substantial evidence to support the court findings of facts in the case. Justice must satisfy the appearance of Justice; in this case there is no guarantee that justice has been done.

It is therefore respectfully requested that this Court of Appeals division III

Reverse and Remand for the bases set out in this brief

Respectfully submitted

x 

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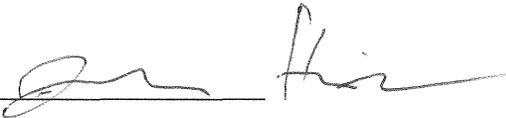
CERTIFICATE OF SERVICE

I hereby certify that under penalty of perjury of the law of the State of Washington that on the 31 of May 2016, I filed the forgoing document; Brief of Appellant, as follows; VIA Certified mail to the following/ hand delivery to respondent attorney by serving party

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Dated this day 31 of May 2016

X 

CERTIFICATE OF SERVICE

I Neil Garza hereby certify that under penalty of perjury of the law that I am over the age of 18 and I am competent to be a witness. On the 31 of May 2016, I caused a true and correct copy of the forgoing document, Brief of Appellant; to be delivered to the following:

Hand delivery

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X Neil Garza

Serving party