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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

In re the Parentage of: A.R.

JOSEPH HUIZAR,

Appellant

v.

TERESA RAMOS,

Respondent

**BRIEF OF RESPONDENT
TERESA RAMOS**

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I. STATEMENT OF THE CASE

Joseph Huizar (“Huizar”) is the father and Teresa Ramos (“Ramos”) is the mother of a six year old daughter (four at the time of trial) named Aaliyah Ramos. A non-jury trial (original trial) was held on February 19, 2015 before the Honorable Michael McCarthy (“Judge McCarthy”) with the final papers being entered on February 27, 2015. CP 88, 89. The Findings of Facts and Conclusions of Law entered on that date were not appealed by Huizar. The Temporary Residential Schedule was entered the same date which found willful abandonment by Huizar for an extended period of time, a history of acts of domestic violence and neglect or substantial non-performance of parenting functions. CP 85. In paragraph 2.6 of the Findings of Fact the trial court found:

The child has always resided with mother. Father has a history of domestic violence that includes three different women all of whom he had an intimate relationship with, and harassment. 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. Pursuant to this court's order of June 3, 2013, father was given the right to have weekly supervised visits with his daughter. However, father only exercised one supervised visit with the child which was on August 21, 2013. Since then, father has had no further contact with the child and this court believes father had the ability to pay for

the supervision since he was working during at least some of that time. This court finds the Residential Schedule proposed by mother is in the best interests of the child and should be adopted by this court.

Under paragraph 3.10 of the Residential Schedule the court ordered:

All contact between father and child shall be supervised by Caring Hearts or other agreed professional agency. Father shall also successfully complete a Domestic Violence Perpetrator's Treatment Program.

Under paragraph 3.13 of the Residential Schedule the court ordered:

In addition to complying with the restrictions in paragraph 3.10, Father's visitations shall be once per week for one hour for 52 weeks. All of father's supervised visits shall be at father's expense. If father misses more than one visit in a given month or more than five visits throughout the 52 weeks, his visits shall be automatically suspended until further court order. Father shall also be required to successfully complete a domestic violence perpetrator's treatment program as provided in paragraph 3.10 above. This matter may be brought back for review before this court at any time after one year for entry of a final parenting plan or sooner if father has not complied with any of the above requirements or if father has been charged with any type of domestic violence or assault related crime.

Caring Hearts was the first professional supervising agency used by Huizar. CP 85, paragraph 3.10. Caring Hearts quit supervising visits as explained by letter of March 24, 2015 which stated in part on page 3:

...Huizar was very demanding and yelling at me over the phone. Huizar asked me for my supervisor's name and number. I provided Huizar with the owner's name and number. After speaking to my supervisor about everything that had happened, she and I made a mutual agreement to discontinue services for this case, due to Huizar's unacceptable behavior and all of the unnecessary time Caring Hearts has spent trying to collaborate these visits...

(Ex 14.6). Huizar missed six visits with his daughter after Caring Hearts quit. RP 118:24 – 119:1. Peggy Mosshart was then appointed by the court as a professional supervisor. Ms. Mosshart supervised visits beginning in May 2015 until she quit supervising visits in July 2015. (Ex 14.8). Ms. Mosshart quit supervising visits as explained in part by a letter dated August 13, 2015:

...Mr. Huizar has been extremely hard to work with...Previously to these visits, I had never had a verbal confrontation with a client. I finally had to threaten to call the police to remove Mr. Huizar from a visit because of his refusal to follow the guidelines and his combative attitude at one visit...I made it a personal/professional goal to find a way to work with Mr. Huizar... Mr. Huizar expected changes in the schedule to meet his needs such as when he said he was attending his DV classes or that his work schedule changed. However, he refused to make any accommodations when Ms. Ramos or I asked for the same courtesy.

As a point of fact I called all the facilities that conducted DV classes in the Tri City area and without exception they all stated they did not have classes on Friday afternoon/evening as Mr. Huizar claimed. Mr. Huizar

refused to provide the name of the agency that he was working with or proof that he was working swing shift hours at his employment...

(Ex 14.8) Huizar missed another six visits with his daughter after Peggy Mosshart quit supervising the visits. RP 119:2-5. GMC was then appointed to supervise the visits. CP 171. Huizar subsequently missed visits on October 9, 2015 and October 30, 2015. On Revision, Judge Federspiel found the two October visits were missed without reasonable excuse, and more than five over the 52 week period by Order dated December 28, 2015. CP 283. This matter was then set for a one day supplemental trial for entry of a final Parenting Plan.

Just prior to the supplemental trial Huizar filed an emergency motion to recuse Judge McCarthy from hearing the supplemental trial. CP 304. Huizar alleged Judge McCarthy should recuse himself from hearing the February 8, 2016 trial based upon the fact that Judge McCarthy signed a bail reduction order on January 27, 2011 in Yakima County Superior Court cause number 10-1-01908-7. CP 247. This was a criminal case against Huizar whereby Judge McCarthy signed an order reducing Huizar's bail from \$100,000 to \$15,000. Huizar plead guilty in that criminal case to Unlawful Imprisonment-

Domestic Violence on July 27, 2011 before Judge James Lust. CP 247. Judge McCarthy denied the motion to recuse by order signed February 5, 2016. CP 306. During the supplemental trial, Ramos remembered that Huizar had come to Ramos's house one other time after their daughter's first birthday wherein Huizar assaulted Ramos in front of their daughter. RP 112:14 – 113:14. A Final Residential Schedule was then entered on February 19, 2016 which found parental conduct factors of willful abandonment and a history of acts of domestic violence. CP 315. Other factors of neglect or substantial nonperformance of parenting functions and the abusive use of conflict which creates the danger of serious damage to the child's psychological development were also found. CP 315.

II. RESTATEMENT OF ISSUES

1. Did the trial court abuse its discretion when it denied Huizar's Motion to Recuse? (This appears to cover Petitioner's Assignments of Error 1-3).
2. Is there substantial evidence in the record to support the trial court's finding that at the time Huizar filed his Petition for

Residential Schedule the child did not have any personal relationship with him?

3. Is there substantial evidence in the record to support the trial court's finding that Huizar's Domestic Violence Perpetrator's Treatment classes were not benefiting him?

4. Is there substantial evidence in the record to support the trial court's finding that between March 2015 and October 30, 2015 Huizar had missed a total of 14 weekly visits without reasonable excuse?

5. Is Huizar precluded from challenging the trial court's previous finding of harassment against Huizar, and if not, is there substantial evidence to support it?

6. Is there substantial evidence which supports the trial court's finding that Peggy Mosshart tried to have an adult conversation with Huizar outside the presence of the child, but Huizar refused to the detriment of the child?

7. Did the trial court abuse its discretion by entering a judgment against Huizar for Peggy Mosshart's bill of \$116.67?

8. Did the trial court abuse its discretion in entering its Final Residential Schedule herein?

9. Was the Final Residential Schedule entered by the trial court a modification action?

III. ARGUMENT

A. The Trial Court did not abuse its discretion in denying Petitioner's motion to recuse itself.

Huizar argues that Judge McCarthy should have recused himself from hearing the February 8, 2016 trial based solely upon the fact that Judge McCarthy signed a bail reduction order on January 27, 2011 in Yakima County Superior Court cause number 10-1-01908-7. CP 247. This was a criminal case against Petitioner whereby Judge McCarthy signed an order reducing Huizar's bail from \$100,000 to \$15,000. Huizar plead guilty in this criminal case to Unlawful Imprisonment- Domestic Violence on July 27, 2011 before Judge James Lust. CP 247.

Recusal lies within the sound discretion of the trial court. A party should move for recusal before the judge has made any rulings. RCW 4.12.050.

Marriage of Farr, 87 Wn. App. 177, 188, 940 P.2d 679 (1997). If a party does not move for recusal prior to the particular judge making

any rulings in the case, that party must demonstrate the judge is prejudiced. *Id.* at 188. *Parentage of J.H.*, 112 Wn. App. 486, 496, 49 P.3d 154 (2002). In this particular case, Judge McCarthy was the trial judge for the original trial in this case on February 19, 2015. CP 88-89. Huizar did not ask Judge McCarthy to recuse himself before or during the original trial. The first time Huizar raised this issue was in a motion to recuse Judge McCarthy which he filed on January 22, 2016 just prior to the supplemental trial on the residential schedule only. CP 304. Judge McCarthy denied that motion by order signed February 5, 2016. CP 306. There is no evidence of prejudice or a conflict of interest or a violation of the appearance of fairness as alleged by the simple fact of Judge McCarthy signing a bail reduction order in 2011. In addition, Huizar plead guilty to the felony crime of Unlawful Imprisonment- Domestic Violence in that criminal case.

A trial court abuses its discretion if its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *In re Marriage of Thomas*, 63 Wn. App. 658, 660, 821 P.2d 1227 (1991). The trial court did not abuse its discretion in denying Petitioner's Motion to Recuse.

B. There is substantial evidence in the record to support the trial court's finding that at the time Huizar filed his Petition for Residential Schedule the child did not have any personal relationship with him.

The child was only three years old at the time Huizar filed his Petition for Residential Schedule on March 20, 2013. Prior to filing his Petition, Huizar had only seen his daughter twice in the last two years. Once on her first birthday and then a second time when Huizar assaulted Ramos in the presence of the child. CP 88, RP 112:14 – 113:14. Just because the findings in the original trial only found one contact between Huizar and child since the child's first birthday, and the supplemental trial found one additional contact does not mean there was no evidence in the record supporting these findings as Huizar alleges. Brief of Appellant, page 14. Ramos remembered during the supplemental trial after being pressed by Huizar that Huizar had also assaulted her in front of the child after the child's first birthday. RP 112:14 – 113:14. Whether Huizar saw his child only once or twice at most between the child's first and third birthdays (average of once per year) doesn't change the fact the child did not have a personal relationship with him. Substantial evidence exists if it persuades a fair-minded, rational person of the truth of the finding.

In re Marriage of Spreen, 107 Wn. App. 341,346, 28 P. 3d 769 (2001).

There is substantial evidence to support the trial court's finding the child did not have a personal relationship with Huizar at the time he filed his Petition herein.

C. There is substantial evidence in the record to support the trial court's finding that Huizar's Domestic Violence Perpetrator's Treatment classes were not benefiting him.

When asked if she had noticed any difference in Huizar's anger while he was going through his domestic violence classes, Ramos testified that she actually felt Huizar's anger had gotten worse. Ramos testified Huizar was a very angry person who has no respect for anyone. RP 146:19 – 147:18. Ramos previously testified that she had spoken to Huizar in January 2016. Ramos testified Huizar had attempted to call her hundreds of times on a blocked number, had threatened to make her life a living hell, had threatened to run up her attorney's fees and had threatened to let their child know when supervised visits were lifted that Ramos was the reason they did not have a relationship. RP 119:20 – 124:24. Huizar's threats to make her life a living hell and to run up her attorney's fees are substantive threats based upon his prior behavior. As Ramos testified during the

supplemental trial, Huizar was so verbally abusive a few years back that she had to change her phone number. RP 125:16-18. In addition, Commissioner Naught found Huizar had abused the judicial process in this case to such an extent, including needlessly increasing Ramos's attorney's fees and harassing Ramos, that it restricted Huizar's ability to file motions and petitions. CP 274, paragraph 31 and 35. Accordingly, there is substantial evidence in the record to support the trial court's finding that Huizar's Domestic Violence Perpetrator's Treatment classes were not benefiting him.

D. There is substantial evidence in the record to support the trial court's finding that between March 2015 and October 30, 2015 Huizar had missed a total of 14 weekly visits without reasonable excuse.

Ramos testified that Huizar missed six visits after Caring Hearts quit supervising Huizar's visits. Ramos testified that Huizar missed another six visits after Peggy Mosshart quit supervising visits, and then Huizar missed another two visits in October for a total of 14. RP 118:24 – 119:5. CP 283. Caring Hearts and Peggy Mosshart both quit supervising visits due to Huizar being so difficult to work with. CP 313, paragraph 2.6; RE 14.6 and 14.8 This finding of fact was not challenged by Huizar. Unchallenged findings are verities on appeal.

Marriage of Possinger, 105 Wn. App. 326, 338, 19 P.3d 1109 (2001). In fact, Huizar became so difficult to work with Ms. Mosshart had threatened to call the police on Huizar. RP 12:6-11. When a person is so difficult to work with that two paid professional supervisors quit, that person has no one to blame for missed visits but themselves. In addition, Huizar missed visits on October 9th and October 30th. They were found to be without reasonable excuse by the Honorable Douglass Federspiel by Order on revision dated December 28, 2015. CP 283. Huizar did not even call before his missed visit on October 30th. In regard to the October 9th missed visit, Huizar claimed his child from another relationship was very sick and he could not find a baby sitter for him, so he was not able to make the visit. Huizar's testimony was not very believable as he claimed his other child had a fever of 98, then 98.9 after the court told him that would not be a fever. RP 52:20 – 53:6. When asked about other details of the October 9, 2015 missed visit, Huizar gave vague answers and repeatedly asked "what's the question" such that the trial court warned Huizar about credibility. RP 54:3 – 61:24. Huizar's other child does not live with him and does not go on his supervised visits in this case. RP 46:12-

13, and 59:23-25. Thus, the claim his other child was sick was meaningless since he would not have taken his other child with him on his supervised visit sick or not sick. RP 51:18 – 61:24. There is therefore substantial evidence in the record to support the trial court's finding that between March 2015 and October 30, 2015 Huizar had missed a total of 14 weekly visits without reasonable excuse.

E. Petitioner is precluded from challenging the trial court's previous finding of harassment by Huizar. Even if not precluded from challenging this finding, there is substantial evidence to support it even though it is irrelevant since it has no bearing on limitations under RCW 26.09.191.

The original trial of this matter took place on February 19, 2015 with final papers entered on February 27, 2015. CP 88-89. The Findings of Fact entered at that time stated in part in paragraph 2.6 that Father has a history of domestic violence that includes three different women all of whom he had an intimate relationship with, and harassment. CP 88. Huizar did not challenge this finding of a history of domestic violence against him. Instead, Huizar challenges the finding of harassment only with no citation to authority which is required. An Appellate court should not address an issue for which

no citation of authority is provided. *City of Bremerton v. Sesko*, 100 Wn. App. 158, 161, 995 P.2d 1257 (2000).

When asked for clarification about the previous trial findings, the trial court stated the prior findings were the law of the case and remained valid so no additional testimony was taken on those matters. RP 42:9 – 43:8. The doctrine of collateral estoppel also precludes Huizar from challenging this finding now. As stated in *City of Bremerton v. Sesko*, 100 Wn. App. 158, 163, 995 P.2d 1257 (2000):

A party asserting collateral estoppel as a bar must prove four elements: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. *Reninger v. Department of Corrections*, 134 Wash.2d 437, 449, 951 P.2d 782 (1998) (citing *Southcenter Joint Venture v. National Democratic Policy Comm.*, 113 Wash.2d 413, 418, 780 P.2d 1282 (1989)).

The findings of fact at issue in the February 2015 trial had identical issues, were a final judgment, involved identical parties and application of the doctrine does not work an injustice on Huizar. CP 88-89. The original trial found there were limiting factors in RCW 26.09.191 against Huizar. So the issue at the time of the supplemental

trial was for the court to determine what limits it was going to place on Huizar long term do to the limiting factors it found. Huizar's compliance with weekly supervised visits, performance of a domestic violence perpetrator's treatment program, completion of a Cope with Divorce parenting class, and whether or not Huizar had been charged with any type of domestic violence or assault related crime(s) in the interim would help the court determine this. CP 85, paragraph 3.13. However, if Huizar missed more than one visit in a given month or more than five visits throughout a 52 week period of time, the matter may be brought back to the court before one year for entry of a final parenting plan. CP 85, paragraph 3.13. Consequently, since Huizar did not appeal the findings in the original trial he is barred from challenging the trial court's previous finding of harassment.

Even if Huizar is not precluded from challenging the finding of harassment, there is substantial evidence to support it. Ramos would submit domestic violence is a gross form of harassment. Since Huizar did not challenge the finding of a history of acts of domestic violence against three women, then the finding of harassment would be established as well. There is substantial evidence that Huizar

harassed Ramos several times. Huizar had verbally abused Ramos a few years back to such an extent that Ramos had to change her phone number. RP 125:16-18. Further, as recently as January of 2016, Huizar had repeatedly called Ramos and went off in a profanity laced tirade he would make her life a living hell, keep taking her back to court to run up her attorney's fees and show their child his big box of court papers after he was off supervision to let her know Ramos was the reason he was not able to see her. RP 119:20 – 124:24. Further, the findings do not state that Huizar harassed three women, only that the court found harassment and without question there is evidence of that towards Ramos. CP 88, 313. Regardless, such finding is irrelevant as it is not a criteria for limiting Huizar's time with the child.

RCW 26.09.191

F. There is substantial evidence which supports the trial court's finding that Peggy Mosshart tried to have an adult conversation with Huizar outside the presence of the child, but Huizar refused to the detriment of the child.

Peggy Mosshart testified Huizar was angry over the supervised visitation taking place in Grandview, WA rather than Sunnyside, WA. RP 21:18-21. This was true even though Grandview was closer to where Huizar lived. RP 24:16-18. Ms. Mosshart wanted to discuss

the guidelines of the visit with Huizar since he was being totally unreasonable in her opinion. RP 21:18-21. Ms. Mosshart requested to talk with Huizar away from the presence of the child, but Huizar refused. RP 22:16-18. Ms. Mosshart could not talk to Huizar over the telephone because Huizar hung up on her. RP 22:19-20. Ms. Mosshart had to threaten to call the police on Huizar because of Huizar's refusal to follow the guidelines and his combative attitude. RE 14.8. This conflict which took place in the presence of the child was detrimental to the child. There is therefore substantial evidence which supports the trial court's finding that Peggy Mosshart tried to have an adult conversation with Huizar outside the presence of the child, but Huizar refused to the detriment of the child.

G. The trial court did not abuse its discretion by entering a judgment against Huizar for Peggy Mosshart's bill.

Huizar was ordered to pay for his supervised visits by court order. CP 85, paragraph 3.13. Since Huizar subpoenaed Ms. Mosshart to testify regarding his supervised visits, he should be required to pay her for her services while testifying as could reasonably be expected as part of her services.

H. The trial court did not abuse its discretion in entering its Final Residential Schedule herein.

Appellate courts are extremely reluctant to change child placement decisions by the trial court. *Murray v. Murray*, 28 Wn. App. 187, 189 622 P.2d 1288 (1981). An appellate court may not substitute its findings for those of the trial court if there is substantial evidence to support the trial court's findings. *In re Marriage of Kovacs*, 121 Wn. 2d 795, 810, 854 P.2d 629 (1993). The original trial of this matter took place on February 19, 2015 with final papers entered on February 27, 2015. The Findings of Fact entered at that time stated in paragraph 2.6 that Huizar had willfully abandoned the parties' child for an extended period of time, that Huizar had a history of acts of domestic violence and that Huizar had neglected or substantially not performed parenting functions for the parties' child. CP 85, paragraph 2.1-2. Huizar did not challenge or appeal these findings or the Judgment and Order Establishing Residential Schedule dated February 27, 2015 which gave primary residential placement of the parties' child to Ramos. CP 88-89.

RCW 26.09.187(3)(a) states in pertinent part as follows:

The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors

...

In this case, the limitations of RCW 26.09.191 were dispositive of the child's residential schedule. Huizar was found by the trial court to have willfully abandoned the parties' child for an extended period of time and that he had a history of acts of domestic violence. CP 88, 313. RCW 26.09.191(2)(a) states in relevant part as follows:

The parent's residential time with the child **shall** be limited if it is found that the parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time...or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1)...

(Emphasis added).

The trial court did not find any limiting factors in regard to Ramos. Because the trial court found two significant limiting factors in regard to Huizar, the trial court was not required to address the additional factors listed in RCW 26.09.187(3)(a)(i-vii) as these limiting factors were dispositive of the child's residential schedule. Huizar claims the trial court did not provide for the child's changing

needs as the child grows and matures. Brief of Appellant, page 26. Again, the trial court was not required to address this factor either because of the dispositive nature of the limiting factors the court found against Huizar. Further, the problem with this argument is the child's need to be protected from willful abandonment, exposure to domestic violence and the abusive use of conflict (CP 315, paragraph 2.2) never change. Accordingly, the trial court did not abuse its discretion in entering its Final Residential Schedule herein.

I. The Final Residential Schedule entered by the trial court was not a modification action subject to RCW 26.09.260.

Contrary to the claims of Huizar, the trial court did not need to find a substantial change of circumstances as in a modification or that a change in custody was in the best interests of the child. *See* Brief of Appellant, p. 29, Argument No. 11. This matter was not a modification of a parenting plan under RCW 26.09.260. The parenting plan covered the first year only. The trial court wanted to see how Huizar would respond to domestic violence treatment and faithful exercise of time with his child which were at the core of his limiting factors. This was a proper exercise of the trial court's equitable powers derived from the common law. *Marriage of*

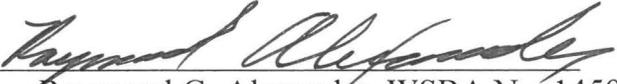
Possinger, 105 Wn. App. 326, 336, 19 P.3d 1109 (2001). Huizar's position that the trial court made a change of custody without making a finding that it was in the best interests of the child is not factually accurate. See Brief of Appellant, p. 29, Argument No. 11. The parties' child has always resided with Ramos as was found by the trial court. CP 313, paragraph 2.6. Huizar did not challenge this finding of fact and therefore it is a verity on appeal. *Possinger*, at 338. The *Possinger* court, in a similar set of facts, put in place a parenting plan after trial that would be reviewed after one year for entry of a final parenting plan. *Id.* at 328-332. The *Possinger* court preferred to call it a permanent or final parenting plan with an interim residential schedule. *Id.* at 337. Whether the residential schedule was temporary or permanent, the court held it was not a modification proceeding under RCW 26.09.260. *Id.* at 337. Therefore, the Final Residential Schedule entered by the trial court was not a modification action subject to RCW 26.09.260.

IV. CONCLUSION

Wherefore, Respondent respectfully this court to affirm the decision of the trial court.

DATED this day of August, 2016.

HALVERSON | NORTHWEST Law Group P.C.
Attorneys for Respondent Ramos

By: 
Raymond G. Alexander, WSBA No. 14592

CERTIFICATE OF SERVICE

I, JENNIFER FITZSIMMONS, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct.

I am an assistant to Raymond G. Alexander the attorney for Teresa Ramos and am competent to be a witness herein.

On August 1, 2016 I caused to be mailed by U.S. Mail, postage pre-paid, the original of the foregoing document to the following:

Court of Appeals Division III 500 N. Cedar Street Spokane, WA 99201	<input checked="" type="checkbox"/> First Class U.S. Mail
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On August 1, 2016, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated below:

Joseph Huizar 1911 Hoxie Ave, Apt #A Richland, WA 99354	<input checked="" type="checkbox"/> First Class U.S. Mail
---	---

DATED at Yakima, Washington, this 1st day of August, 2016.


Jennifer Fitzsimmons, Legal Assistant
HALVERSON | NORTHWEST Law Group P.C.