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No. 68424-8-I
King County Superior Court No. 11-3-01394-8 SEA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

NEHA VYAS CHANDOLA,
Plaintiff-Appellee,

v.

MANJUL VARN CHANDOLA,
Defendant-Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY

The Honorable James A. Doerty, Judge

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT5

 A. THE EVIDENCE AND FINDINGS ARE INSUFFICIENT TO
 SUPPORT THE TRIAL COURT’S RESTRICTIONS5

 B. THE TRIAL COURT FAILED TO CONSIDER THE
 DISTORTING EFFECTS OF FALSE SEXUAL ABUSE
 ACCUSATIONS.....8

 C. THE TRIAL COURT DENIED VARN’S RIGHTS TO
 SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION
 BY FAILING TO TAKE HIS AND P.R.C.’S INDIAN
 CULTURE INTO ACCOUNT10

IV. CONCLUSION.....12

TABLE OF AUTHORITIES

Cases

<i>In re Marriage of Jensen-Branch</i> , 78 Wn. App. 482, 899 P.2d 803 (1995).....	10
<i>Marriage of Combs</i> , 105 Wn. App. 168, 19 P.3d 469, <i>review denied</i> , 144 Wn.2d 1013, 31 P.3d 1184 (2001).....	8
<i>Marriage of Watson</i> , 132 Wn. App. 222, 130 P.3d 915 (2006).....	8

I.
INTRODUCTION

In this reply brief, Varn will not repeated arguments made in his opening brief, but will respond as necessary to specific points made by Neha.

II.
STATEMENT OF THE CASE

As supposed proof that Varn’s parenting was harmful, Neha points to Judge Doerty’s statement that P.R.C. was a “changed child” after living with her mother for a year. Response at 4. It is hardly surprising, however, that a child would become more sociable and throw tantrums less often when aging from two to three. *See e.g.*, Centers for Disease Control and Prevention, Child Development Homepage¹, (toddlers “will experience huge thinking, learning, social, and emotional changes” between the ages of two and three). Had Varn not been separated from P.R.C. during that year due to the unfounded sexual abuse allegations, he would have received credit for the changes.

Neha agrees that she had some “mental health adjustment problems,” but incorrectly states that “the only problem affecting the

¹ <http://www.cdc.gov/ncbddd/childdevelopment/positiveparenting/toddlers2.html>

ability to parent was with Varn.” Response at 4. In fact, both Dr. Wheeler and Dr. Hedrick expressed concern that Neha’s extreme level of anxiety caused her to overreact to normal childhood behaviors, potentially leading P.R.C. to incorrectly believe she has serious problems. *See* Opening Brief at 16-17, 19. Further, both psychologists believed that Neha’s anxiety led her to make unfounded allegations of sexual abuse against Varn. This harmed P.R.C. by depriving her of normal contact for almost a year with a loving father to whom she was deeply bonded.

Neha complains that Varn was overprotective of P.R.C., for example, by insisting that someone watch her at all times. She also maintains that Varn indulged P.R.C. in order to satisfy his own needs, for example, by giving her too much control over her eating and sleeping schedule. Response at 5-6. In fact, the testimony showed that Varn was at all times focused on P.R.C.’s happiness and welfare. *See* Opening Brief at 5-9; 12-13. Reasonable parents may differ on how much a toddler should be soothed to stop her crying and how much she should be disciplined. They may also differ on the level of precautions necessary to keep a toddler safe. But making a choice different from a judge’s does not constitute a sufficient showing of “harm” to limit residential time.

It is simply not true, as Neha claims, that P.R.C.’s pediatrician repeatedly warned Varn about the “risks” of giving P.R.C. milk at night.

See Response at 8. P.R.C. was not allergic to milk. Her pediatrician, Dr. Fukura did recommend that Varn and Neha stop such feedings earlier than they did, but he his concerns were minor and he considered it within the range of reasonable parental styles to continue such feedings. RP 543, 549, 555. “I don’t consider it a form of abuse or anything.” RP 555.

Neha maintains that Varn wished to discuss with P.R.C. Neha’s allegations of sexual abuse. *See* Response at 7. In fact, Varn merely said at one point that he might inform P.R.C. about that “someday”, but he later decided against that. RP 196, 899. Neha, on the other hand, yelled at Varn in P.R.C.’s presence that he had done something awful to P.R.C.’s vagina. RP 899-90.

Neha overstates Dr. Hedrick’s approval of Dr. Wheeler’s assessment. *See* Response at 9. Dr. Hedrick’s testimony was limited to a review of Dr. Wheeler’s report, so she could not opine whether the facts were accurate. Nevertheless, Dr. Hedrick had two major procedural concerns and one major substantive concern.

First, Dr. Hedrick had serious concerns about Dr. Wheeler’s home visit to observe Varn’s parenting. Instead of arranging to see Varn interact one-on-one with P.R.C., she simply showed up for about 45 minutes at one of Varn’s supervised sessions. These necessarily involved multiple

adults and children in an unnatural setting, and prevented a fair comparison to Neha's parenting. RP 488-90.

Second, Dr. Wheeler failed to administer to Varn and Neha the MMPI, which is "clearly the best researched, most frequently used test in any aspect of forensic psychology." RP 465. It is specifically the most frequently used test in parenting evaluations. *Id.* "Because it has validity scales that are built into it, because the reliability and validity data about the test itself is very good, it's the test of choice." RP 466.

Third, even accepting Dr. Wheeler's data as accurate, Dr. Hedrick found the amount of residential time Dr. Wheeler recommended for Varn to be clearly inadequate. *See* Opening Brief at 20-21. Further, contrary to Neha's contention, Judge Doerty did not incorporate Dr. Hedrick's "recommendation" into his ruling. Rather, the amount of time he granted Varn was only the bare minimum Dr. Hedrick believed could let P.R.C. maintain any sort of bond with Varn.

Neha faults Varn for "feeling" he had been accused of abuse and then reacting "dramatically." RP 13. But by any account, Varn's concerns were based on more than a feeling. Neha directly accused Varn of doing something terrible to P.R.C.'s vagina, and then promptly obtained an order prohibiting Varn for almost a year from unsupervised contact with his daughter. Such allegations of sexual abuse are the proverbial

“atom bomb” in divorce cases. The impact on the accused parent is certainly “dramatic” in its severity and duration. He quickly gains a reputation as a child molester and loses normal contact with the child. As this case demonstrates, the harm to the parent and child often continues long after the allegations are shown to be false.

III. ARGUMENT

A. THE EVIDENCE AND FINDINGS ARE INSUFFICIENT TO SUPPORT THE TRIAL COURT’S RESTRICTIONS

In an effort to show that Varn’s parenting was truly harmful to P.R.C., Neha quotes some witnesses saying they observed P.R.C. to be “cranky,” “tired,” “prone to tantrums,” “clingy,” or “fussy” during the time Varn and P.R.C. were living together. It would be difficult, however, to find any two-year-old who did not sometimes fit such descriptions. Notably, the child’s long-time pediatrician, Dr. Fukura, testified that her development was normal in terms of gross motor, fine motor and social and adaptive behavior. IV RP 542. Dr. Fukura is a board certified pediatrician with over 27 years of experience. He has been P.R.C.’s primary doctor since shortly after her birth. RP 533. He saw P.R.C. on at least 20 occasions. RP 523. He had no reason to slant his testimony.

Neha compares Varn’s practice of giving P.R.C. milk at night to letting P.R.C. dictate whether she should use a car seat. Response at 19.

But this analogy demonstrates the flaw in the trial court's reasoning. If a parent permitted a two-year-old to ride in a car unprotected because she did not like her car seat, a finding of "harm" might well be justified. But here, whenever P.R.C. might be in any true harm, Varn was vigilant to protect her. He not only insisted in finding the best car seat for P.R.C., but also that someone keep an eye on her while she was riding in it. He did not do that because P.R.C. wanted him to; he did it because he wished to protect her from harm. Perhaps, like many first-time parents, Varn was arguably over-protective at times. But it is ludicrous to suggest that that amounts to "harm" to the child.

As another example relevant to this case, a judge might legitimately find harm if a parent let his toddler run around unsupervised in a dangerous area. But at the other end of the spectrum, a parent should be free to decide that it is best to hold his toddler when she is in an uncomfortable setting without fear of a judge finding that to be harmful.

Contrary to Neha's argument, Varn is not claiming these issues are "about him." Rather they are about whether it is up to a judge or a parent to micro-manage child-rearing decisions.

Neha's statement that Varn stopped recommended therapy is misleading. Response at 21. In fact, at the recommendation of his own therapist, Dr. Haygeman, he discontinued individual counseling and

sought group therapy, but he was unable to begin a group by the time of trial. RP 921, 961-62.

Neha maintains that the grandparent restrictions were necessary in part because Varn's parents had undermined Neha's relationship with P.R.C. in the past. Response at 23. For example, Neha claimed that they would applaud when P.R.C. went to Varn instead of her, and would not follow her feeding instructions. But even if that were true, any problem has disappeared now that Neha and Varn live separately. The grandparents have no opportunity to disturb Neha's time with P.R.C.

This is, in any event, an ad hoc justification made in hindsight. As Neha concedes, she did not even request a limitation on P.R.C.'s time with her paternal grandparents. Further, Dr. Wheeler found that Varn's parents were a positive influence on P.R.C. *See* Opening Brief at 33. Judge Doerty made no finding that the grandparents did or would interfere with Neha's parenting.

Neha claims that Judge Doerty required P.R.C. to sleep in her own room when at Varn's house because of Varn's "hovering." Response at 24. Judge Doerty, however, gave no explanation for that restriction, and there was no testimony from anyone that sleeping in the same room would cause harm to P.R.C. Since P.R.C. has never slept in her own room, either before or after the separation, it is hard to see how this restriction

accomplishes anything besides trauma to the child. *See* Opening Brief at 34-35.

B. THE TRIAL COURT FAILED TO CONSIDER THE
DISTORTING EFFECTS OF FALSE SEXUAL ABUSE
ACCUSATIONS

Neha first maintains that her accusations against Varn could not have affected the proceedings significantly because she waited until separation to raise them, so “there was no effect on Varn’s access to P.R.C. for the majority of her life.” Response at 24-25. At the same time, Neha repeatedly argues that she should get all the credit for P.R.C.’s development during the year that Varn was restricted from caring for P.R.C. This is precisely the reasoning rejected in *Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (2006), and *Marriage of Combs*, 105 Wn. App. 168, 19 P.3d 469, *review denied*, 144 Wn.2d 1013, 31 P.3d 1184 (2001). *See* Opening Brief at 36-38.

Neha further claims that “no one questioned the veracity of the various reports made of what P.R.C. said or did.” Response at 25. In fact, as to almost all the incidents on which Neha relied, the only witnesses were herself and her mother. Varn’s mother witnessed nothing more than P.R.C. saying “rub, rub.” Varn and his supervisor did witness P.R.C. point to her genitals and say they hurt, but that took place long after Varn was restricted to supervised visitation. (In fact, Dr. Wheeler viewed that

as evidence that Neha's concerns were unfounded.) *See* Opening Brief at 13-16.

That Neha waited until the moment of separation to make her allegations and immediately obtain restrictions on Varn does not reflect well on her veracity. The incidents she relied on for her claims happened long before. If she was truly concerned about abuse, she would presumably have raised the issue sooner. Judge Doerty himself seemed to question Neha's veracity: "With the benefit of hindsight and a thorough trial it appears to the court that Neha may have needed to precipitate a crisis in order to escape the marriage and extended family dynamic." CP 94.

Neha also claims that her concerns "seemed reasonable" to the experts who testified. In fact, both experts believed that Neha's accusations were a reflection of her extreme anxiety, causing her to "pathologize" normal behavior in a way that could be harmful to P.R.C. *See* Opening Brief at 16-17; 19. As Dr. Hedrick explained, "[t]he tendency to attribute negative catastrophic outcomes is one that any evaluator in this circumstance would be concerned about." RP 517.

C. THE TRIAL COURT DENIED VARN'S RIGHTS TO
SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION
BY FAILING TO TAKE HIS AND P.R.C.'S INDIAN CULTURE
INTO ACCOUNT

Neha cites *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 899 P.2d 803 (1995), for the proposition that courts may impose restrictions to prevent harm to a child even when those restrictions impinge on fundamental rights, such as the free exercise of religion. The *Jensen-Branch* case, however, illustrates why the court's restrictions are inappropriate here. In *Jensen-Branch*, the father had strict, fundamentalist religious beliefs, *inconsistent* with those of the mother. This conflict caused tension and confusion for the children. For example, the father would tell the children that it was wrong to celebrate some of the traditional Christian holidays, as the mother did, because they were really pagan. He would not let the children enjoy Halloween because he believed it to be a "satanic" day. He also believed the world would end in two years. *Id.* at 484-87.

The Court noted that, because a constitutional right was involved, a mere "best interest of the child" standard was inappropriate. Rather, any restrictions must be based on a "substantial" showing of harm to the child. *Id.* at 490. Further, the court must use the "least restrictive alternative available." In the *Jensen-Branch* case, the trial court could properly find

that the extreme conflict between the parents over religion might justify a ruling that the mother have sole decision-making on that issue. *Id.* at 492-93.

Here, on the other hand, both parents are of Indian descent and, consistent with Indian culture, both believe in raising children with the assistance of grandparents and both find it appropriate for small children to sleep in the same room as their parents. Thus, there is no conflict to resolve.

Further, there was no other substantial showing of harm to justify interference with Varn's and P.R.C.'s constitutional rights to practice their culture and to live in an extended family. *See* Opening Brief at 39-41. The vague notion that Varn might learn to parent better if he did it on his own was far too speculative. Neither expert made that recommendation and Neha did not even argue for it. Certainly, less restrictive alternatives were available. For example, Varn does not dispute the provision of the parenting plan that he engage in parent training. It would be reasonable for the trial court to require that he attend those sessions without his parents (which was Varn's expectation in any event). The parenting plan requires Varn to "successfully complete" parenting training. Obviously, the trainer would not find Varn successful if he handed off all the difficult tasks to his parents.

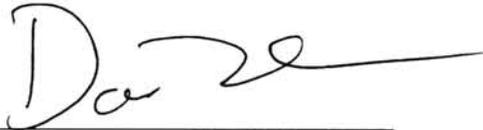
Similarly, any concerns about Varn disrupting P.R.C.'s sleep could be addressed without banishing P.R.C. to a separate room. The parenting plan requires Varn to comply with any conditions set by the child's therapist, who would likely discern any disruption of sleep patterns. Once again, the trial court's order was not based on a showing of substantial harm and was not the least restrictive alternative. In fact, the ruling is likely to traumatize a three-year-old who has never before been required to spend the night sequestered in an empty room.

IV. CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and remand for the court to enter a new parenting plan with no restrictions against Varn. In the alternative, the Court should remand for a new trial.

DATED this 5th day of October, 2012.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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