

No. 90072-8

SUPREME COURT
OF THE STATE OF WASHINGTON
Cowlitz County Cause Nos. 08-3-00476-1 and 13-3-00787-2
Consolidated

In re the Custody of:
MASON WADDLE,
GREG MINIUM and LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
Respondent,

JOHN SHMILENKO,
Respondent,
PATTI SHMILENKO,
Respondent
and
GREG and LINDA MINIUM,
Petitioners.

APPEAL FROM THE SUPERIOR COURT
FOR COWLITZ COUNTY
THE HONORABLE STEPHEN M. WARNING

APPENDIX TO MOTION FOR DISCRETIONARY REVIEW

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Washington State Supreme Court

APR - 3 2014

Ronald R. Carpenter
Clerk *RJC*

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SUPERIOR COURT

4 MAR 10 2014

5 COWLITZ COUNTY
6 BEVERLY R LITTLE, Clerk

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10 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

11 In re the Custody of
12 MASON WADDLE,
13 Child,
14 GREGORY SCOTT MINIUM and
LINDA MINIUM,
15 Petitioners,
16 and
17 PATTI SHMILENKO,
18 JOHN SHMILENKO,
19 PATTI SHMILENKO, and
20 GREG and LINDA MINIUM,
21 Respondents.

No. 08 3 00476 1

ORDER RE ADEQUATE CAUSE
(NONPARENTAL CUSTODY)

Clerk's Action Required

22
23 I. BASIS

24 1.1 A petition requesting that visitation of the child be granted to the Moving Party,
25 JOHN SHMILENKO, has been presented to the Court.

26 1.2 A hearing was held on January 13, 2014.

1 II. FINDINGS

2 ***The Court Finds:***

3 2.1 JURISDICTION.

4 This court has jurisdiction over the proceeding and the parties.

5 2.2 SERVICE ON NONMOVING PARTY.

6 Respondents GREG MINIUM and LINDA MINIUM were served with a copy of the
7 Nonparental Custody Petition, Summons, and Petitioner's Amended Proposed
8 Residential Schedule, as follows:

9 a. GREG MINIUM was personally served on November 17, 2013.

10 b. LINDA MINIUM was personally served on November 17, 2013.

11 2.3 TIME ELAPSED SINCE SERVICE ON THE NONMOVING PARTY.

12 More than 20 days have elapsed since the date of service on Respondents
13 GREG MINIUM and LINDA MINIUM who were served within the state of
14 Washington.

15 2.4 DE FACTO PARENT STATUS

16 There is adequate cause to proceed with the De Facto Parent based on the
17 following findings:

18 a. MASON WADDLE ("MASON") has no living parents that are able to
19 consent to and foster a parent-like relationship as provided in Section 2.5;

20 b. Respondent JOHN SHMILENKO and the child have lived together in the
21 same household during all visitations as provided in Section 2.5.

22 c. Respondent JOHN SHMILENKO has assumed the obligations of
23 parenthood without expectation of financial compensation as provided in
24 Section 2.5.

25 d. Respondent JOHN SHMILENKO has fully and completely undertaken a
26 permanent, unequivocal, committed and responsible parental role in the

1 child's life as provided in Section 2.5.

2 2.5 ADEQUATE CAUSE FINDING.

3 a. The Court finds that there is not adequate cause for Respondent JOHN
4 SHMILENKO to move forward with a nonparental custody petition under
5 RCW 26.10.

6 b. The Court finds that Respondent JOHN SHMILENKO has established
7 adequate cause to proceed under the equitable remedies of the court as a
8 de facto parent and grants leave to allow the Respondent JOHN
9 SHMILENKO to amend his nonparental custody petition to include a
10 request for custody/visitation under the court's equitable powers.

11 *2. v see attached "A" and "D."*
ORDER *AS ORDERED*

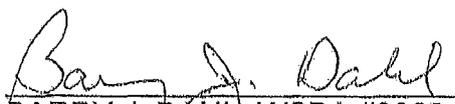
12 **It is Ordered:**

13 The matter is set for trial at the date and time previously established, *see*

14 DATED: *March* ~~February~~ 10, 2014.

15
16 
JUDGE STEPHEN M. WARNING

17 Presented by:

18 
19 BARRY J. DAHL, WSBA #3309
20 Of Attorneys for Respondents SHMILENKO

Dated: February 3, 2014

22 Approved for entry:

23 
24 NOELLE A. McLEAN, WSBA #22921
25 Of Attorneys for Petitioners/Respondents MINIMUM

26 Dated: *March* ~~February~~ 10, 2014

1 ~~2.2 SERVICE ON NONMOVING PARTY.~~

2 The nonmoving parties, Greg Minium, Linda Minium, and Patti Shmilenko, were
3 served with a copy of the Second Amended Nonparental Custody Petition on
4 January 31, 2014, through their respective attorneys' offices.

5 2.3 TIME ELAPSED SINCE SERVICE ON THE NONMOVING PARTY.

6 More than 20 days have elapsed since the date of service on all nonmoving
7 parties served within the state of Washington.

8 ~~2.4 ADEQUATE CAUSE FINDINGS AND CONCLUSIONS~~ DA 3/10/14

9 A. Linda Minium moved to strike her Discover Answers that were filed by
10 Matthew Anderson on 02/19/2014. The court considered the discovery
11 answers, but did not give much weight to the same. Ruling on the
12 individual objections within the Discovery Answers were not determined by
13 the court and are reserved for further ruling.

13 ~~B. De Facto Parent requires an adequate finding based upon the 4-prong
14 test established in *Parentage of L.B.*, 155 Wn.2d 679, 710, ¶ 45, 122 P.3d
15 161 (2005), cert. denied, 547 U.S. 1143 (2006) .~~

15 1. Mason Waddle's parents were untimely killed when he was
16 approximately one (1) year old. Since that time, Mason Waddle has
17 resided primarily with Greg and Linda Minium pursuant to a
18 Nonparental Custody Decree entered on 03/23/2010.

18 2. The court finds there is no parent to judge rights as against under the
19 De Facto Parent Analysis. The Nonparental Custody Orders entered
20 in 2010 placed custody of Mason Waddle with Greg and Linda
21 Minium, and conferred a right to visitation with Patti Shmilenko.
22 Neither of these three (3) parties have rights under a traditional
23 theory, and the court considers Greg and Linda Minium, and Patti
24 Shmilenko as De Facto Parents.

23 3. John Shmilenko claims under the parameters established by the
24 Nonparental Custody Order entered in 2010, that he is also a de facto
25 parent.

25 4. Adequate Cause is a necessary gatekeeping function in all domestic
26 cases, including de facto parent. The intent is to keep frivolous cases
27 out of court. DA 3/10/14

1 a. The court assumes John Shmilenko has established a
2 bonded and dependent relationship with Mason during the
3 visitation afforded Patti Shmilenko pursuant to court order.

4 b. The court analogizes this factor to one where children of
5 separating parents have a visitation schedule, but that
6 doesn't change the bond the children have established with
7 the parent prior to the entry of the court order.

8 c. The court recognizes the level of John Shmilenko's
9 relationship will be tested and proven at the time of trial.

10 C. Adequate cause for hearing the petition has been established by court
11 order after a contested hearing. *WJA*
Feb 3, 2014

12 D. This court certifies under RAP 2.3(b)(4) that its ruling involves a controlling
13 question of law as to which there is substantial ground for a difference of
14 opinion and that immediate review by the Court of Appeals may materially
15 advance the ultimate termination of the litigation, which is in the best
16 interests of all the parties, including the child.

17 **III. ORDER**

18 **IT IS ORDERED:**

19 3.1 The court enters a Finding of Adequate Cause on the Second Amended
20 Nonparental Custody Petition filed by John Shmilenko related to De Facto
21 Parent.

22 3.2 The court reserves ruling on the Objections contained in Linda Minlum's
23 Discovery Answers that were filed with the court on or about 02/19/2014.

24 3.2 Trial shall be set on this matter on a subsequent date.

25 3.3 The court certifies this ruling pursuant to Rules of Appellate Procedure 2.3(b)(4). *WJA*

26 3.4 The minimum request for attorney fees is denied. *Feb 3, 2014*

27 DATED: _____

28 _____
JUDGE/COMMISSIONER

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IN THE SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the custody of:

NO. 08-3-00476-1

MASON WADDLE,

Child,

GREGORY SCOTT MINIUM and
LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and GREG
and LINDA MINIUM,

Respondents.

VERBATIM REPORT OF PROCEEDINGS

Monday, February 24, 2014
Cowlitz County Superior Court, Hall of Justice
312 S.W. First Avenue
Kelso, WA 98626

BEFORE: THE HONORABLE JUDGE STEPHEN M. WARNING

1 APPEARANCES:

2 Matthew J. Andersen, of WALSTEAD MERTSCHING, P.S., P.O. Box
3 1549, Longview, WA, 98632; Attorney for Petitioner

4 NOELLE A. McLEAN, Attorney at Law, P.O. Box 757, Kelso, WA,
5 98626; Attorney for Respondents, Greg and Linda Minium.

6

7 Prepared at the Request of Noelle McLean, Attorney at Law

8

9

THREE RIVERS TRANSCRIPTS

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Castle Rock, WA 98611

(360) 749-1754

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DR 8

1 MONDAY, FEBRUARY 24, 2014, 12:47 P.M.; KELSO, WASHINGTON

2
3 THE COURT: All right, Counsel, go ahead.

4 MS. MCLEAN: Your Honor, I guess just
5 procedurally, which of the three Motions do you want to
6 hear first?

7 THE COURT: Oh --

8 MS. MCLEAN: There's the contempt; the continuance;
9 and the adequate cause. And is it --

10 THE COURT: Let's see, let's start with the
11 continuance last --

12 MS. MCLEAN: Okay.

13 THE COURT: -- adequate cause first, then contempt.

14 MS. MCLEAN: Okay.

15 THE COURT: Mr. Andersen?

16 MR. ANDERSEN: Thank you, Your Honor.

17 We -- we presented the Court with our Amended
18 Petition, per the Court's prior ruling with regard to *de*
19 *facto* parent, and we've done that filing under the *LB*
20 case, and we've, again, provided the Court with
21 Declarations to support enough evidence and move
22 forward.

23 The response from the Miniums has been that,
24 well, they can't win based in -- based on, basically, a
25 Summary Judgment standard; and, we've provided the Court

1 with certainly enough to move forward, primarily the
2 idea being the *de facto* parent, while certainly a rough
3 fit for this case is a robust doctrine that comes from a
4 long-standing common law jurisdiction this Court has.

5 There are -- the briefing that we've provided
6 has shown to the Court that this originally -- parentage
7 and visitation/custody -- was handled by the Court in
8 equity and common law, and a certain amount of that
9 power of the Court was displaced by the statutes. The
10 *LB* case, I think, does a great job of articulating the
11 parameters of that displacement, and so -- articulates
12 that that power, that original power in the Court to
13 wrangle with situations like what we have here still
14 exists. When the Legislature comes up with a statute,
15 due to changes in technology and other parameters that
16 we have here, and tragic situations, the Court retains
17 that power and you can't expect the Legislature to come
18 up with a fix for most problems, let alone all problems.

19 And I think that the interesting thing about
20 *de facto* parent, again, is *de facto* -- the Court's power
21 doesn't come from *de facto* parent. The Court in *LB*
22 looked at the idea of *de facto* parent and said: Is that
23 consistent with our presently-existing equitable
24 jurisdiction here? And what our point has been, and
25 what our -- our Petition says is: Look, there's this *de*

1 *facto* parent test that we think we have equitable cause
2 to move forward on. The Miniums like to present
3 themselves as the parents; they're not the parents.
4 They like to present themselves as consenting to
5 allowing us to have my client's contact with the boy;
6 that's not true. We have a joint Parenting Plan that
7 was agreed to by the parties, and, again, there's no way
8 that the Court can say that the Miniums, under this *de*
9 *facto* parent test, are parents.

10 Even if -- even if Your Honor was to go into
11 those facts, again, we still have to fall back on the
12 old power of the Court, which is to deal with the
13 situation the Legislature didn't contemplate, and that's
14 -- that's what we have here. Mr. Shmilenko has provided
15 the Court with Declarations provides (sic) the love and
16 support he's provided to the child; there's a report in
17 the Court file that says it would be in the kid -- the
18 child's best interest to continue that contact. And the
19 Miniums have shown their desire to cut that off. I
20 mean, we're here on one of their Motions to stop all
21 visitation. They want to be in complete control, and
22 we'll get into that a little bit later.

23 But if you look at the way they've responded
24 to their Discovery --

25 MS. MCLEAN: Your Honor, I'm going to object --

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MR. ANDERSEN: -- and the way that they --

MS. MCLEAN: -- as to the Discovery.

First off, I'm objecting to the Court even considering Discovery. The Discovery was provided for purposes of the Contempt Motion, not for purposes of the Adequate Cause. Had I known that Mr. Andersen was going to raise that issue in this argument, I would've actually brought my Motion to Strike.

It's improper, under RC -- or CR 33(d) for him to have admitted under -- into the record my client's Discovery Answers. Under 26 -- CR 26(h), only a portion of Discovery Answers may be submitted for purposes of showing contrary testimony as a means of -- essentially controverting their testimony. At this juncture, what Mr. Andersen is attempting to do is to provide those Discovery Answers, again in violation of the Rules, to use them as improper character evidence. That's not allowed under the Rules of Evidence, and the only way that Discovery Answers come into play is if they're allowable under Discovery Rules -- I'm sorry, under Evidence Rules.

And, so, the Court should --

THE COURT: Why aren't they prior statements of a Party Opponent?

MS. MCLEAN: According to 26(h), it indicates that

1 -- and let me get there -- "A party filing discovery
2 materials in order of the court or for use in a
3 proceeding or trial shall file only those portions (sic)"
4 -- "portions upon which the party relies and may" -- I'm
5 sorry -- "and may file a copy in lieu of the original."

6 THE COURT: All right.

7 MS. MCLEAN: The concern is, is at this point there
8 is the suggestion that somehow the Court should conclude
9 from the Discovery Answers that somehow my client has a
10 particular -- they're attempting to cloud this Court's
11 judgment as it relates to my client's character. That
12 is not before the Court at this juncture, as it relates
13 to statements of adequate cause -- the factual
14 statements related to adequate cause or the issues
15 related to contempt. There's nothing in there that
16 shows that she's made a contrary statement compared to
17 her prior Declarations.

18 THE COURT: Okay.

19 The purpose of 26(h) is to -- so the Court
20 doesn't have to wade through eighty pages of
21 Interrogatories. Prior statements of a party opponent
22 are always admissible for any purpose, they're part of
23 the record, so I'll allow it.

24 Go ahead.

25 MR. ANDERSEN: Thanks, Your Honor.

1 And, again, this goes to why this is
2 important. The -- Charlotte Rosen, who was hired by
3 both parties as a joint expert, says it's in the best
4 interests of the child to have this continuing
5 relationship. And the Shmilenko -- or the Miniums, they
6 don't want that anymore, they're done with it. They
7 have -- they have turned into this -- this different
8 situation where they are now the parents, my clients are
9 these interlopers who are interfering with their
10 relationship with what, I think, they view as their
11 child. And that's why it's important for Your Honor to
12 come forward and say: Look, we've got this evidence in
13 the record that this relationship with John is
14 important; we need to protect that; and if you look at
15 the Discovery responses and you look at the vitriol and
16 the hatred that the Miniums express there, that's
17 threatening. There's no question that that relationship
18 is in jeopardy, and if you look at the fact that their
19 attorney has filed a request that that -- that the
20 visitation be cut off.

21 So, again, this is important. It's not a
22 situation where the Miniums can be trusted to just,
23 yeah, we're gonna allow John to have his -- his time
24 with Mason every now and then, as it -- and in the best
25 interest. Your Honor can't trust 'em, that's why that

1 information is important.

2 And, again, the best interest of the child is
3 what's most important here. Your Honor has jurisdiction
4 outside of the statute because the statute doesn't touch
5 on this. And, you know, when I read that *LB* case, I
6 can't help but to think back what Your Honor said when
7 you ruled two years ago on the statutory claim:
8 Legislature doesn't always cover all the bases.
9 Sometimes there are little spots that were missed; and,
10 again, that's why it's important that we have this
11 backup of the Court's equitable powers.

12 THE COURT: Ms. McLean?

13 MS. MCLEAN: Just briefly, may I go back to the
14 Court's ruling related to the Discovery, because within
15 the Discovery Answers themselves, there are specific
16 objections that were raised as the questions violating
17 CR 26; specific case law where they were asking for the
18 production of information which is not allowed under
19 case law, and the Court hasn't addressed any of those
20 objections that are specifically within the Discovery
21 Answers; and, yet, you've entered them in the record
22 over the objections that are in the documentation
23 itself.

24 THE COURT: Well, they were entered in the record
25 by the party that filed them. There's objections that

1 haven't been resolved yet, I fully understand that. And

2 --

3 MS. MCLEAN: But the Court is taking those
4 statements without ruling on the objections.

5 THE COURT: What do you mean, "taking the
6 statements"?

7 MS. MCLEAN: In other words, you're considering the
8 information. If -- if Mr. Andersen's argument is that
9 all of this is vitriol and it shows a tendency --

10 THE COURT: The fact of the objections, you mean?

11 MS. MCLEAN: There's objections within -- as it
12 relates to whether or not some of that information is
13 even discoverable, and the Court hasn't ruled on those
14 objections --

15 THE COURT: No, I understand that.

16 MS. MCLEAN: -- at this point, and yet you're
17 considering that information by allowing these Discovery
18 Answers to be --

19 THE COURT: But the --

20 MS. MCLEAN: -- entered in full.

21 THE COURT: -- fact of the objections isn't of any
22 consequence. I'm not -- I'm considering the substantive
23 Answers that have been made. The fact of objections are
24 --

25 MS. MCLEAN: Even if there's objection in the --

1 so, in other words --

2 THE COURT: Oh, okay, now I --

3 MS. MCLEAN: -- there's an objection --

4 THE COURT: -- understand what you're saying, yeah.

5 MS. MCLEAN: -- in the Discovery Answer, and it
6 says without waving the objection --

7 THE COURT: Um-hum.

8 MS. MCLEAN: -- here's our Answer --

9 THE COURT: Okay.

10 MS. MCLEAN: -- and the Court has carte blanc now
11 ruled that you're considering all of that without even
12 considering the objections that are in the Discovery
13 materials.

14 THE COURT: Okay, and I would agree with you, to
15 the extent they're objected to, it's for another day. I
16 agree with that.

17 MS. MCLEAN: Okay.

18 THE COURT: Having said all that, I think -- you
19 know, I understand that the parties' legal positions and
20 the legal position stated to the extent they are in
21 those Discovery Answers, it's of relatively-minimal
22 value for this hearing.

23 MS. MCLEAN: Okay.

24 THE COURT: Okay, go ahead.

25 MS. MCLEAN: Thank you.

1 With that, first off, let me correct a mis-
2 statement by Mr. Andersen. My clients did not
3 participate in hiring Ms. Rosen. Ms. Rosen was hired by
4 Ms. Shmilenko; they participated in an evaluation by Ms.
5 Rosen -- my clients participated in that evaluation with
6 Ms. Rosen; they did not retain or hire her.

7 As it relates to adequate cause and the *de*
8 *facto*, adequate cause is a threshold analysis. It is
9 Mr. Shmilenko's obligation to prove *prima facie* that he
10 meets all of the criteria of the four-prong test. If he
11 doesn't meet adequate cause, just as he didn't in his
12 Nonparental Custody Petition for visitation, then the
13 case is dismissed. And our position is that John
14 Shmilenko has not met adequate cause for the nonparental
15 -- I'm sorry, that he didn't meet it for the adequate
16 cause for nonparental, and that ultimately the Court
17 should dismiss this case because we also do not believe
18 that he meets the four-prong criterial for defacto
19 parent.

20 John and Patti Shmilenko have always referred
21 to themselves, both of them, in their relationship with
22 Mason, as grandparent in nature, and I've outlined that
23 in my Memorandum. John Shmilenko indicated in his
24 Declaration in support of the Motion to Consolidate the
25 cases that, "I have maintained a grandparent/grandchild

1 relationship with Mason throughout Mason's entire life."
2 Patti Shmilenko, in the Motion and Declaration to Add a
3 Party filed, "John Shmilenko has had a close and loving
4 grandparent relationship with the child."

5 Mason's contact with John has been only during
6 those times that Patti Shmilenko has had court-ordered
7 visitation. Mason has never lived with John and Patti
8 Shmilenko prior to or following Mason's parents' death.
9 John Shmilenko does not meet the requirements to prove
10 that he is Mason's *de facto* parent. If anyone meets the
11 *de facto* parent test it is the Miniums and their
12 relationship should be recognized as having the
13 fundamental liberty interests in the care of the child.

14 We talked about the case of *LB*. *LB* held that
15 attaining the status of *de facto* parent should be no
16 easy task because once you've established a *de facto*
17 parent relationship, that parent, that *de facto* parent,
18 stands in par -- legal parity with a legal parent. And
19 there is a stringent four-prong test that's been set up
20 by *LB* to avoid opening the door to claims such as this
21 claim filed by John Shmilenko. *LB* does not want to open
22 the door to teachers, nannies, parents, best friends of
23 the parents, the adult siblings, the aunts, and
24 specifically *LB* talks about grandparents. They don't
25 want to open the door to grandparents and every third-

1 party care giver to be able to come into here and say:
2 We want to be identified as a *de facto* parent.

3 The failure to meet one factor in the four-
4 prong test, and John Shmilenko fails, and we submit that
5 he does fail. There has been no evidence that Mason's
6 parents or the Miniums fostered and consented to a
7 parental-like relationship between Mason and John
8 Shmilenko. At most, the Miniums have consented to a
9 grandparent-like relationship between Mason and John,
10 which is acknowledged by John and Patti; but, that
11 doesn't meet the relationship standard established and
12 discussed in the controlling case of *LB*.

13 In *LB*, the third party was held out as the
14 other parent. This was a second mother to that child
15 for six years. The mother -- the second mother was
16 listed on the school records; named as the mother in the
17 child's baby book; shared parental responsibilities for
18 that entire six-year period; the child recognized that
19 second mother as exactly that: A mother.

20 In the *Custody of AFJ*, the biological man and
21 the Petitioner -- or I'm sorry, and their partner -- I'm
22 sorry, bio mom and her partner agreed to raise the child
23 together and gave the child both of their names; held
24 each other out as co-parents; again, lived together,
25 provided all of those parenting functions; and, again,

1 the child had a psychological and emotional connection
2 to the second parent.

3 In the *Parentage of JAB*, the child was
4 considered -- the child considered the Petitioner his
5 father and the child's legal parents fostered a parent-
6 like relationship and the parents supported the idea of
7 the Petitioner adopting the child. So, again, you have
8 this psychological connection. You also have the parent
9 -- *de facto* parent, or Petitioner, actually engaging in
10 that relationship.

11 Mr. Shmilenko's contact with Mason during
12 Patti's time is mere passive -- passive acquiescence,
13 and under the case law that does not equate to
14 consenting to and fostering a parent-like relationship.
15 When we look at the case of the *Dependency of DM*,
16 basically the Courts found that being a foster parent
17 alone does not allow you to rise to the level of *de*
18 *facto* parent, because foster parents expect to receive
19 income during that process; however, just because that
20 person had been a foster parent was not an exclusive bar
21 to that person being able to come in and ask the Court
22 to be recognized as the *de facto* parent, given the time
23 that the child was with that person prior to the foster
24 care placement.

25 And, essentially, the Court said the because

1 the parents had abandoned the child -- the parent had
2 abandoned the child to her domestic partner, and then
3 the domestic partner essentially put the child with the
4 aunt, the aunt ends up becoming the foster parent. But
5 the aunt doesn't have the ability to become a *de facto*
6 parent when it's a third party who gives the child to
7 the aunt, not the parents. And the Court, again, said
8 that that mere acquiescence was improper in determining
9 that a prong had been met.

10 Similarly here, we've got a Court Order that
11 provides for parenting time between Mason and Patti.
12 Because Patti then decides, on her own, that she's going
13 to allow contact or a relationship with Mason during her
14 residential time with her husband, John, is mere
15 acquiescence because of a Court Order by -- by this
16 Court, and mere acquiescence by my clients.

17 The second prong is that John and Mason lived
18 in the same household together, and again, other than
19 Patti's visitation Order, the child has not lived with
20 John; there's been no factual statements that suggests
21 that the child has lived for any specific period of time
22 with John Shmilenko outside of the visitation schedule
23 for Patti.

24 The case of the *Adoption of RLM* determined
25 that -- let's see -- just because a parent and a person

1 claiming to be a *de facto* parent have lived together,
2 that is insufficient alone to establish a defacto
3 parent. There is no Washington case examining the
4 extent that a Petitioner and a child must have lived
5 together; however, the ALI that I cited in the
6 Memorandum indicates that the most significant factor in
7 determining whether an individual and a child regularly
8 spend the night together for a significant period of
9 time is one of the considerations.

10 An example is that in one of the cases -- or
11 an example that they provided is that two overnights per
12 week and four days during the day for full days, where
13 the person claiming to be the *de facto* parent was
14 providing all the meals, arranged for medical care,
15 enrolled in school, was the primary source of
16 discipline, and the fact that they had that ongoing
17 involvement with the child, even the drafters in that
18 indicated that that was an exceptional example, and to
19 -- for this case there has been no rise to that level of
20 an exceptional example as it relates to the time
21 associated with or the relationship between Mr.
22 Shmilenko and Mason. There have been no facts to prove
23 that Mr. Shmilenko and Mason's relationship is that
24 exceptional or extreme level; and even, again by
25 Declarations, Mason essentially refers to him as a

1 grandfather, Papa John -- or Pa John is, I think, the
2 reference.

3 The third prong is -- our concern is that
4 there's been no proof by Mr. Shmilenko that he exhumed
5 (sic) -- assumed the obligations of parenthood without
6 the expectation of financial compensation. Mr.
7 Shmilenko has not undertaken any obligations of
8 parentinghood (sic) -- or of parenthood, financial or
9 otherwise. Granted, during the time that Mason is with
10 Ms. Shmilenko during her visitation there are incidental
11 expenses associated with that; but, there has -- excuse
12 me -- there has been no showing that they have
13 contributed to his extracurricular activities, his
14 clothing, his care, his food. There's nothing that
15 shows that they have provided that. And the *Parentage*
16 *of MF* found that attending school functions, helping to
17 get dressed in the morning, and other numerous events
18 together were not sufficient for the Court to enter a
19 finding of *de facto* parent.

20 The fourth prong relates to the parental role
21 and the length of time for the dependent, bonded
22 relationship that is parent like. Again, by -- under
23 Declarations, both Mr. and Mrs. Shmilenko identify his
24 relationship as a role of a grandparent. Unlike the
25 *Parentage of LB*, the child in that case called the

1 Petitioner "Momma" after the Petitioner cared for the
2 child for over six years.

3 In the *Parentage of BMH*, the child --
4 ultimately, the child's biological father had passed
5 away, but the child referred to the Petitioner, who had
6 been involved in his life for, I believe it was six or
7 seven years, and called him "Father" and the child saw
8 that individual as the only father and the only bonded
9 relationship, even though for, I believe it was the
10 first three years of his life, his biological father was
11 alive before he was timely (sic) killed -- untimely
12 killed. Again, Mason views, and the Declarations from
13 my clients, show that Mason views Greg Minium as his
14 "Pa" or his "Dad," and that that relationship has been
15 daily and consistent and more parental like, clearly,
16 than the level of relationship that has been suggested
17 by Mr. Shmilenko in his claims here today.

18 So, our position is that the Court should find
19 that John Shmilenko, on a *prima facie* basis, cannot meet
20 the four-prong test announced under *LB*; the Court should
21 find that he has not met the adequate cause standard;
22 and the Court should dismiss his case.

23 If the Court is not inclined to do that, and
24 if you believe that *de facto* criteria have been met on a
25 *prima facie* basis, we urge you not to allow it to

1 proceed because we do believe that it would lead to an
2 absurd result. The concern, again, is that Mr.
3 Shmilenko, if he were identified as a *de facto* parent,
4 now becomes elevated above Linda and Greg Minium, who
5 have been the child's day-to-day care providers,
6 provided all of his parenting functions for the past six
7 years since his parents' untimely death, and it could
8 lead to a disruption in Mason's relationship with the
9 Miniums, which would be a travesty for this child, who
10 has already lost his biological parents.

11 If the Court does enter a Finding of adequate
12 cause, we are asking that the Court certify the decision
13 under Rules of Appellate Procedure 2.3(b)(4) because we
14 believe it is a question that should be answered sooner,
15 to avoid a long, drawn-out litigation. We do intend to
16 ask the Court of Appeals for immediate review. We would
17 ask that the Court certify that decision; and,
18 ultimately, assuming that the Court does dismiss the
19 adequate cause -- or dismiss the Petition for lack of
20 adequate cause, we have filed a Certificate of Attorney
21 Fees/Costs, we're asking that the Court require Mr.
22 Shmilenko to reimburse my client's attorney fees. As of
23 -- I'm sorry, as of February 19th, my attorney's -- my
24 clients' attorney fees just related to the adequate
25 cause on the nonparental custody, which was dismissed,

1 and now this matter have totaled four thousand five
2 hundred and sixty-seven dollars (\$4,567), not including
3 time since then and including today's hearing. I
4 anticipate that total costs would -- and attorney fees
5 would be five thousand, two hundred and fifty-seven
6 dollars (\$5,257) and we would ask that the Court award
7 those.

8 MR. ANDERSEN: Thank you, Your Honor.

9 Just a few quick things here. You know, this
10 -- this arrangement we have is an agreement. The
11 Shmilenkos -- Patti Shmilenko and Miniums agreed they
12 would parent Mason under that -- the Court's prior
13 Order; and had the Miniums told my client that, hey,
14 we're gonna do this for five years and when that Order
15 comes ripe and we have to mediate we're gonna tell you
16 no, we're gonna refuse to mediate, and we're gonna file
17 a Motion to have you cut out because we're the parents
18 now, we never would've gotten in that agreement in the
19 first place. And that's what's unfair about this, is
20 for the Miniums now to say we're the parents and we need
21 protection under this -- under the Constitution, under
22 the adequate cause or under the *de facto* parent theory,
23 it's just ridiculous.

24 This is a situation where Patti Shmilenko is a
25 parent just as much as the Miniums are. Now, the

1 Miniums they want to teach Mason to call them mom and
2 dad. I don't think that's up -- I don't think that's
3 appropriate --

4 MS. MCLEAN: Your Honor, I'm going to object,
5 that's outside of the scope of the Declarations and pure
6 speculation.

7 THE COURT: Well, I think it was just argued, but I
8 -- who calls who what doesn't have a whole lot of legal
9 force, at this point.

10 MR. ANDERSEN: Well, there was -- there was an idea
11 that linking this to another case that the child calling
12 them mom and dad was relevant --

13 THE COURT: Okay, I --

14 MR. ANDERSEN: -- and I don't think it is, I think
15 it shows a lack of --

16 THE COURT: I'm not concerned about that, at this
17 point.

18 MR. ANDERSEN: Okay.

19 So, we agree to that Order, and now they want
20 -- again, they want protection from us on this. And,
21 again, why are we not the parents, as well? Because we
22 made this agreement, I don't think that would be fair.

23 And the second one is, this idea that there
24 would be attorney fees owed under the statute, that
25 statute, first of all, Your Honor ruled was

1 unconstitutional as applied here. This is a common law
2 issue and has nothing to do with the statute and if Your
3 Honor reads it, it says it's allowed, that Your Honor
4 may do it under it's discretion based on need for issues
5 under that chapter. Right now we're not under that
6 chapter, we're in common law, we're outside that statute
7 altogether. So, there isn't a statutory basis for fees
8 other than that, which wouldn't apply to this
9 proceeding; and with regard to the other one, again,
10 there has been no showing of need.

11 Certification, I don't understand how stopping
12 everything and having an appeal is gonna -- gonna move
13 us toward a timely resolution of anything.

14 Thank you.

15 THE COURT: All right.

16 I have spent a lot of time trying to sort out
17 the legal aspects of this, and I think why they are so
18 difficult is this: Unlike every case that I've read, and
19 every aspect of the statutes that I've read, there is no
20 parent to judge anybody else's rights as against. And
21 that's the basis of all this *de facto* parent and third
22 party custody and everything else. The starting point
23 is we measure anybody else's claim of right against the
24 right of the parents.

25 I think probably where we got in trouble, if

1 you will, in this case was in 2010. We had a child with
2 no parents. There is no guardian for that child. What
3 we have is a Court Order that establishes custody in two
4 people and visitation in a third party. Nobody has any
5 *de jure* rights to that child under any traditional form
6 of authority, guardianship or anything else. At most
7 what we've got is a situation where there are three
8 people who are considered *de facto* parents. That was
9 made *de jure* by virtue of an Agreed Order that got
10 signed, and I don't think anybody at the time was --
11 whether Counsel or the Judge who signed the Order was
12 thinking of this situation at the time. If we were,
13 maybe it should've been done strictly by way of a
14 guardianship, or something like that; but, I wouldn't
15 expect anybody to kind of come up with these
16 permutations at this point.

17 So, what we've got is three people who are, by
18 virtue of that document, *de facto* parents. That's the
19 only rational way I can analyze it, because they don't
20 fit under anything else. We have a fourth person who is
21 claiming, under the parameters established by that
22 Order, that same kind of *de facto* parent relationship,
23 and whether a child calls them "grandpa" or "mom" or
24 "dad" or "Uncle Fred" or "The Man on the Moon" really is
25 of no consequence to that. I don't see that meaning

1 anything at all.

2 That Order doesn't establish anybody as parent
3 versus grandparent. It simply establishes a residential
4 schedule, and as I recall that's the title of it -- no,
5 I'm sorry, it's a Custody --

6 MS. MCLEAN: It's a residential --

7 THE COURT: -- Nonparental Custody Decree.

8 MS. MCLEAN: Yeah.

9 THE COURT: Okay.

10 You know, there's all sorts of things, in
11 retrospect: Maybe the State should've been a party;
12 maybe there should've been a Dependency proceeding; but,
13 it is what it is, and it says these three people are
14 entitled to spend time with the child -- or have the
15 child spend time with them. So, that's the extent of
16 everybody's rights under that document is the four
17 corners of the document.

18 So, where do we go from there? I think
19 adequate cause is necessary. Adequate cause is the
20 gatekeeper function given to the Court in essentially
21 all aspects of RCW 26 proceedings. It's the means to
22 keep frivolous cases out of the court, if you will. The
23 one area where it hasn't existed until now is
24 relocation, and that's being changed because it was
25 recognized that it needs to be there. So, all

1 gatekeeping in Title 26, I think, has to be done by
2 adequate cause, including in this situation.

3 So, have we got adequate cause established?
4 Here, the standard would be adequate cause as a *de facto*
5 parent, just like everybody else. And, so, number one:
6 The natural or legal parent consented to and fostered
7 the relationship of the child of the moving party.
8 Doesn't apply, because nobody here amounts to a natural
9 or legal parent.

10 Number two: The child and the moving party
11 live together in the same household. The allegation is
12 yes. The fact that the child doesn't live there as much
13 as in the other household doesn't make a whole lot of
14 difference. I think if we told people who are not the
15 primary parents in most custody proceedings that because
16 you have less overnights than the other the child
17 doesn't live with you, I think they'd be very surprised.
18 So, two has been met.

19 Three: The moving party assumed obligations of
20 parenthood without expectation of financial
21 compensation. I think same thing, somebody who has a
22 child less than the other side is still assuming aspects
23 of parenthood. The allegation is made that I've taken
24 on those obligation, certainly it's still to be tested,
25 but I -- that is sufficient for adequate cause on that

1 issue.

2 The moving party has been in a parental role
3 for a length of time sufficient to establish with the
4 child a bonded, dependent relationship parental in
5 nature. And, again, this is obviously still to be
6 tested; but, if we have a basic faith in kind of the
7 fundamental premise of how we divvy kids up among
8 separating parents, that the one whose not primary is
9 still a parent, under the allegations here it has to
10 amount to adequate cause.

11 So, I am going to find adequate cause. We are
12 swimming well away from any established channel markers,
13 legally. So I do think it's appropriate to certify this
14 matter immediately. Having said that, though, it's also
15 not in anybody's best interests for us to put this on
16 hold for a year and a half or two years to allow the
17 Court of Appeals to deal with it. So while I am
18 certifying the matter, I am not precluding the parties
19 -- I am not granting any sort of temporary hiatus. We
20 may still proceed with all other aspects of the case at
21 the same time. I don't see any detriment to either side
22 to allow that appeal to go forward, to see if better
23 minds than mine disagree with my legal analysis; but, at
24 the same time, it's in the best interests of the child
25 that we deal with the factual issues as expeditiously as

1 I can. So, I am finding adequate -- that adequate cause
2 is necessary and I am finding adequate cause on that
3 basis.

4 That takes us to the Continuance --

5 MS. MCLEAN: So, can we do --

6 THE COURT: -- Motion, does it? Or contempt, is
7 it?

8 MR. ANDERSEN: Your Honor, I have an Order from two
9 weeks ago that was shared with --

10 THE COURT: I'm gonna want Counsel to look at it;
11 I'm gonna want to spend some time with it; so, I'm not
12 ready to deal with Presentation right now.

13 MS. MCLEAN: So, Presentation on March 10?

14 THE COURT: Right.

15 And I'd like to see proposed Orders -- and
16 normally we don't do objections, but given this, if both
17 sides have Orders I would like to see 'em a week ahead
18 of time.

19 MS. MCLEAN: That's the 3rd?

20 THE COURT: Yes.

21 MS. MCLEAN: All right.

22 THE COURT: All right.

23 I think next was the Contempt issue.

24 MS. MCLEAN: All right.

25 MR. ANDERSEN: Yes, Your Honor.

1 Your Honor, we brought a Motion for an Order
2 to Show Cause on Contempt, as we've had some alarming
3 discussions with Mason regarding the litigation, and
4 that's sort of the beginning point here is that liti --
5 that little Mason apparently knows a good deal about
6 what's going on in court and has an opinion on that, and
7 wants to know -- basically is making the Miniums
8 arguments for them to the Shmilenkos.

9 We also have an allegation with regard to how
10 well they're taking care of him. Your Honor will note
11 that that allegation is pretty similar to the things
12 that the Miniums like to say about Patti in her -- in
13 their Discovery Responses and their prior Declarations.
14 There's an objection with regard to hearsay, Your Honor.
15 I don't think that's even close to being relevant. I
16 mean, this is -- Your Honor can take notice of the fact
17 that these statements were made. Whether the boy was
18 telling the truth with regard to what was told to him is
19 not relevant; the fact that he's involved in the
20 conversation and showing some knowledge of the
21 litigation, showing some knowledge of the allegation,
22 shows that he -- it's circumstantial evidence that
23 someone at the Minium house is talking to him. I don't
24 think there's a hearsay issue.

25 The only one that perhaps could be a hearsay

1 issue, again, would be the one that "Ma says you don't
2 take very good care of me." Again, I think that Mason
3 is involved in this discussion alone shows that. The
4 other statements, they're not hearsay. Mason taking the
5 position that "Why do you need more than two overnights?
6 Why'd you serve those papers on us?" Those aren't
7 hearsay statements, those are question that he has, and
8 from those Your Honor can see that Mason has been
9 involved.

10 Now, the response has been that no, we don't
11 run down the Shmilenkos. And, again, this is why we
12 provided the Court with the Discovery Responses. This
13 has become a situation where because we've had this
14 Agreed Order, the Miniums have taken the position that
15 this child is theirs, that they are the parents. In
16 their Briefing to Your Honor they say "we're the
17 parents, they're the grandparents" and they're
18 interfering with us and all the things we're trying to
19 do, and they're squeezin' out harder and harder and
20 harder, and what they want to do is to cut the
21 Shmilenkos out of the picture altogether. And if you
22 look at the way they describe Patti, how could you not
23 believe -- how could you believe otherwise? How could
24 you believe that they -- that they're not?

25 I mean, [unintelligible] completely rotated

1 away from two grandparents -- sets of grandparents doing
2 their best under the circumstances to the Miniums in
3 competition with the Shmilenkos. The fact -- the -- the
4 -- I mean, I love this --

5 MS. MCLEAN: Your Honor, I'm going to object as to
6 the relevance of that line of argument related to a
7 Contempt Motion.

8 MR. ANDERSEN: Your Honor, this is my argument.

9 THE COURT: I'll allow it.

10 We have this -- this wonderful gift of private
11 school that was out there, and this is something that
12 the -- the --

13 MS. MCLEAN: Your Honor, I'm gonna object; that's
14 outside of the scope of the Declarations.

15 MR. ANDERSEN: It's in the Declaration.

16 THE COURT: I don't recall seeing that in
17 Declarations.

18 MS. MCLEAN: No.

19 MR. ANDERSEN: It's in the Miniums' Discovery
20 Responses --

21 MS. MCLEAN: It's not in the --

22 MR. ANDERSEN: -- castigate us for --

23 THE COURT: Okay, I'll --

24 MR. ANDERSEN: -- offering to pay for private
25 school.

1 THE COURT: I'll sustain the objection.

2 MR. ANDERSEN: What we have is you have the -- also
3 you have the situation with the -- my client having the
4 audacity to volunteer at school, and the Miniums --

5 MS. MCLEAN: Again, Your Honor --

6 MR. ANDERSEN: -- changing teachers.

7 MS. MCLEAN: -- I'm objecting; that's outside of
8 the scope of the Declaration --

9 MR. ANDERSEN: It's right here in Declarations.

10 MS. MCLEAN: -- and it's not relevant --

11 THE COURT: Okay --

12 MS. MCLEAN: -- for purposes of Contempt Motion.

13 THE COURT: -- overruled.

14 MR. ANDERSEN: And instead of being sort of ashamed
15 and realizing that was a very small thing of them to do,
16 they've completely lost perspective and they're in here
17 wearing it on their shoulder: We're proud of ourselves
18 because that Patti, she wanted to volunteer for
19 kindergarten. And, again, this shows -- shows what
20 we're looking at, and when you look at the behavior in
21 -- in their own Discovery Responses, and the things they
22 say about Patti, how can you doubt it?

23 Now, what they admit to is: Well, we were
24 served papers and we had a sudden outburst of grief
25 about the litigation and we couldn't help it. And the

1 first issue there is if, you know, the Miniums don't
2 want to be served papers they need to tell their
3 attorney to accept service of papers --

4 MS. MCLEAN: Your Honor, again --

5 MR. ANDERSEN: -- otherwise we have to come to
6 their house with them --

7 MS. MCLEAN: -- I'm objecting --

8 MR. ANDERSEN: -- that's how it works.

9 THE COURT: What's the objection?

10 MS. MCLEAN: Outside of the scope of the
11 Declarations.

12 THE COURT: What is?

13 MS. MCLEAN: That somebody --

14 MR. ANDERSEN: [Unintelligible].

15 MS. MCLEAN: -- else should've been served, or that
16 there was any communications about --

17 THE COURT: Okay.

18 MS. MCLEAN: -- trying to serve my office.

19 THE COURT: I don't think that representation was
20 made; I'll overrule the objection.

21 All right.

22 MR. ANDERSEN: So -- but, again, if -- if what
23 they're saying is true, if Your Honor takes the admitted
24 Declarations, they are saying, basically, we were so
25 distraught because we were served with papers we

1 couldn't help it, and that Mason is picking up on things
2 here and there that we can't stop. And that's their
3 job. They are ordered to not allow Mason to be involved
4 in their discussions, and if he's overhearing it, all
5 they're doing is admitting the violation by -- by saying
6 that.

7 So, Your Honor, our -- we would ask that Your
8 Honor hold them in contempt; to assess a sanction of
9 five hundred dollars (\$500).

10 THE COURT: Ms. McLean?

11 MS. MCLEAN: Thank you.

12 May it please the Court, on behalf of Greg and
13 Linda Minium. The Contempt Motion is based upon two
14 statements that are suggested by Patti, John, and I
15 believe one other witness, to have been stated by my
16 clients to Mason. They describe this incident, first
17 off, where Mason was not feeling well, and there have
18 been no facts in any of the Declarations to suggest that
19 somehow this was an excited utterance to be able to get
20 around the Rules of Evidence. Mason supposedly claimed
21 that Linda cares for Mason better than Patti. There has
22 been no indication in the Declarations that attributes
23 that statement that Pat -- or that Linda made that
24 statement to Mason; and, I would submit that Mason's
25 statement is clearly hearsay.

1 They're asking this Court to believe that,
2 first off, the truth of the statement. That this
3 statement somehow that Linda cares better for Mason than
4 Patti does; and, secondly, that Linda, or Greg, made
5 that statement to Mason. They have no absolute
6 testimonial knowledge that Linda had made any statement
7 like that to Mason; Linda adamantly denies making any
8 statement like that to Mason; and what's concerning is
9 that in her own Declaration, Patti Shmilenko
10 acknowledges that she disputed the information and the
11 claim by Mason, and that she then, herself, under sworn
12 declaration, admits that she engaged in a conversation
13 with Mason that she does take good care of him. And
14 what's implied in that statement, and that argument back
15 to Mason that she admits she engaged in, is, one: She
16 admits that she's not only directly engaging in that
17 argument with him; but, essentially says if what you are
18 telling me is true, I disagree with that, which is
19 involving him in the litigation that she claims
20 shouldn't be happening; and, it also implies that Linda,
21 if she made that statement, is a liar. That's the
22 portrayal of what she's trying to do by engaging in this
23 conversation with Mason.

24 And my client is -- tells you, in her
25 Declaration that she never made that statement to Mason.

1 There's been no discussion by these parties with Mason
2 about who does what care. If you look back to the
3 situation, Mason was feeling poorly. Mason, it sounds
4 like from the Declaration, was feeling poorly the entire
5 weekend and they didn't do whatever was necessary to
6 calm that issue for him, or address that issue for him.
7 This six-year old child is entitled to have an opinion,
8 if that was his way, at six years old, to express an
9 opinion that "mom" makes my tummy feel better than
10 grandmom, he's entitled to that opinion; but, again,
11 it's complete hearsay and without testimonial knowledge
12 by Ms. Shmilenko, Mr. Shmilenko, or Barbara Kivela as it
13 relates to they never observed Linda make that statement
14 and she denies it.

15 The second claim is that Mason is aware of the
16 court litigation. In argument, Counsel says, well, we
17 could've been asked to make arrangements to serve
18 Counsel. Well, I wasn't a party -- I wasn't
19 representing the Miniums at that point because there
20 wasn't any pending litigation. How are my clients
21 supposed to speculate and say, oh, by the way, if you
22 have something coming down the line that you're gonna
23 serve us, would you rather not serve us at home but
24 would you go and -- to my former attorney and have them
25 accept service? There -- there was no phone call made

1 to our office, no offer of providing that. Instead,
2 they sent a process server out there, and Linda is
3 served with her first lawsuit.

4 And, you know, one of the things that I
5 learned as an attorney early on was you always have to
6 think before you serve somebody and the impact that
7 that's going to have. And that was upsetting for Linda,
8 because these parties have bene participating in an
9 evaluation that the Shmilenkos had requested for the
10 past nine months; they had been acting in good faith;
11 and, then they get served blind sided by this Petition.
12 Yes, she tells you, she was upset by that.

13 There is nothing that indicates -- they have
14 no testimonial knowledge that suggests that they've
15 talked to Mason about this. Mason, again, observed them
16 serving, and --

17 THE COURT: Well, a six-year old --

18 MS. MCLEAN: -- her being upset.

19 THE COURT: -- isn't going to know what's going on
20 just by seeing somebody hand somebody else a piece of
21 paper, so that doesn't --

22 MS. MCLEAN: No, and Linda tells --

23 THE COURT: -- get us very far; does it?

24 MS. MCLEAN: Linda tells you, in her Declaration,
25 that when Greg came around -- and Greg tells you, too --

1 when he came around the corner and asked what was wrong,
2 she said that Patti just served us. So, again, the
3 concern is that it's pure speculation, as it relates to
4 them telling him about a court action or being involved
5 in a court action, they have absolutely no proof that
6 the Miniums have violated this Order. Both Mr. and Mrs.
7 Minium tell you specifically they have never used the
8 word "fight" with Mason, they have never said that they
9 are in a fight with Patti and John Shmilenko, that has
10 never happened.

11 And, again, it's her -- it's Ms. Shmilenko's
12 obligation to prove, by a preponderance of the evidence,
13 testimonial evidence that Greg and Linda failed to
14 comply with the Parenting Plan in bad faith, or through
15 intentional misconduct. And somebody's reaction about
16 getting served clearly is not an intentional reaction,
17 as it relates to considering violating a Parenting Plan.
18 It's a guttural reaction that, oh my God, we're now back
19 in the litigation system. That is not what a Contempt
20 Motion or the provision of that Parenting Plan meant.

21 And our position is that, again, because the
22 Affidavit must be based on personal knowledge, and it
23 should not be based on hearsay or what they perceive
24 should be the inference of what a six-year old tells
25 them, that the Court should not enter a finding of

1 contempt against the Miniums. They have not willfully
2 violated the provisions of the Parenting Plan in bad
3 faith or through intentional misconduct. So, we would
4 ask that the Court dismiss this case and consider
5 awarding us attorney's fees, and I've again outlined in
6 a Certificate of Attorney's Fees and Costs the fact that
7 they've incurred eight hundred and seventy-four dollars
8 (\$874) in attorney's fees up through February 19, and
9 with the anticipation of the preparation of the Order
10 and Presentation and today's argument, we expect that
11 the total cost will be approximately twelve hundred and
12 nineteen dollars (\$1219).

13 MR. ANDERSEN: Thank you, Your Honor.

14 It's not speculation, it's called
15 circumstantial evidence, and it's -- it's strong. This
16 isn't Perry Mason. Circumstantial evidence is a type of
17 evidence that we rely on in our system. You can send a
18 man to death row on circumstantial evidence, and the
19 fact that the child has knowledge of how many days a
20 week; did you have to serve us; right to the vacation.
21 How many -- do you need -- do you really need more time
22 with me? Okay, the fact that he has that knowledge and
23 enough to formulate those questions shows that he
24 obtained it from somewhere other than papers showed up
25 on the doorstep and Pat -- Linda got upset.

1 Your Honor, it also shows that he's on their
2 side. This is something that they're talking to him
3 about, otherwise how else would he -- would he -- why
4 would he be challenging my clients and what they're
5 trying to obtain in this litigation?

6 Ms. McLean said, well, you know, Patti, she
7 shouldn't of -- she shouldn't have talked to Mason about
8 the fact that -- that she takes good care of him. And
9 then she says, well, why didn't they ask him more about
10 this -- his knowledge of the litigation. So, which way
11 is it? My client's done her best to not violate the
12 Order, and when a little kid tells you, "you don't take
13 good care of me," I think it's -- I think Patti is
14 within her right to say, "Yes, I do," and to talk to him
15 about that.

16 Again, it's not hearsay; it's not offered for
17 the truth of the matter asserted; and I don't understand
18 why we keep hearing that argument.

19 And finally, you know, with regard to Ms.
20 McLean's lecture on being careful and when you serve and
21 when you don't serve, Your Honor, what she didn't tell
22 you is her office has a standing policy: She doesn't
23 accept original service of anything, and to come in here
24 and chastize me because we -- we know that --

25 MS. MCLEAN: I'm going to object -- how --

1 MR. ANDERSEN: -- and we served --

2 MS. MCLEAN: Mr. Andersen has --

3 THE COURT: I'll sustain the objection.

4 MS. MCLEAN: -- no personal -- thank you.

5 THE COURT: Well, I -- it's not relevant here and
6 it's not part of the Affidavits.

7 MS. MCLEAN: And he's never practiced with me.

8 THE COURT: Okay, it's not part of the Affidavits.

9 MR. ANDERSEN: So, what we've got here is the
10 papers were served; the Miniums claim by accident, or
11 whatever, that they discussed the matter in front of the
12 child; well, that's the least they've done. I think
13 they've probably done more, based on the position we've
14 taken, and I think that a sanction of five hundred
15 dollars (\$500) would be -- would be moderate.

16 THE COURT: All right.

17 First of all, I'm going to deny the hearsay
18 objection. This is the classic case of the situation
19 where the statements are relevant not for the truth of
20 them, but for the fact that the statement was made by
21 the child.

22 The statements made by the child are certainly
23 beyond a mere, immediate expression of concern that I
24 just got served with papers, or we just got served with
25 papers, especially when it occurred when this

1 litigation, under another cause number, was ongoing.
2 It's statements that clearly shouldn't have been made in
3 front of the child.

4 Having said that, is it an intention violation
5 of the Court Order? And I don't think I'm going to find
6 that it is, at this point, so I'm going to --

7 MS. MCLEAN: I'm sorry, that it is?

8 THE COURT: I'm not going to find that it is, so
9 I'm going to deny the Motion for Contempt and not award
10 fees either way. But, certainly, the child should not
11 be part of this going forward.

12 All right, and the Motion for Continuance?

13 MR. ANDERSEN: Thank you, Your Honor.

14 MS. MCLEAN: Yes, may it please the Court.

15 I've provided for the Court the outline of two
16 pages of hours that have been involved in Motions that
17 have been involved, and I don't know how thick the
18 Court's file is, I'm up to two fold -- or two files and
19 a three-inch binder. The suggestion by Counsel that
20 somehow I'm just back sitting on my laurels when already
21 I have over forty-five hours in on this case is
22 substantial.

23 When this case started, when --

24 THE COURT: And I'm -- I apologize for
25 interrupting.

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When's our trial date right now?

MS. MCLEAN: The week of May 20th.

THE COURT: And it's just -- it's one of "the week
ofs," it's not a --

MS. MCLEAN: It's a "week-of" for three days --

THE COURT: Okay. All right.

MS. MCLEAN: -- we set it back in -- originally,
the last -- the first part of October, I believe it was
October 3rd, 2013, on Ms. Shmilenko's Petition that was
pending at that time, and when we set that, that was one
and a half months before Mr. Shmilenko's Petition was
filed with this Court, and it was four -- we set that
trial date four months before Your Honor just entered
the Consolidation Order last month, five months now
before your ruling today that there is adequate cause to
now proceed on a *de facto* Petition -- parent Petition.

So, again, the suggestion that we've not been
forthright in pursuing Discovery, just as the Court
pronounced from the bench, you having difficulty
struggling on a legal concepts and what this means, as
the practitioner in preparing my client's defense and
making sure that we have appropriate evidence before the
Court, I need an opportunity to properly prepare and to
obtain expert witness information. I contacted Counsel,
Mr. Dahl, other Counsel, back in December; asked whether

1 or not Ms. Shmilenko would participate in an evaluation
2 with Dr. Poppleton, was told that they would get back to
3 me. In January, I was told that they would not. So,
4 I'm surprised now by the Reply Declaration that they
5 will agree, only if my clients will agree to participate
6 in an evaluation with Dr. Meharg, which is the first
7 time I've ever heard anything about Dr. Meharg now being
8 involved:

9 So, our request is that the Court allow this
10 trial to be continued, one, because, as I stated, you
11 just made the finding on adequate cause as it relates to
12 the *de facto* parent; and, we are asking that Dr.
13 Poppleton be involved.

14 Clearly, from the legal perspective, I --
15 until today, didn't know definitively if John Shmilenko
16 was going to be involved as a party to this action, or
17 if the Court was going to dismiss today. We're trying
18 to craft the issues before the Court and what, in fact,
19 Dr. Poppleton would need to investigation, as it relates
20 to his visitations investigation.

21 My Motion to Continue was filed four months
22 before the existing trial date, and this is the first
23 request because, again, until just now we don't even
24 still know -- or didn't know -- what the legal map was,
25 as far as what the different legal standards are going

1 to be; what the different facts that we're going to need
2 to pursue; and really, what -- what witnesses are going
3 to be able to fill in those factual claims that the
4 Court even indicated you were having some difficulties
5 with.

6 Obviously, the Court is aware that experts
7 need to be disclosed about one month before trial, and
8 we did ask for their participation with Dr. Poppleton.
9 Dr. Poppleton submitted a Declaration with his
10 Curriculum Vitae outlining what a visitation
11 investigation involved. Had they agreed, based in
12 December when we had asked them to participate in this
13 evaluation, we might not be here asking for a
14 continuance; but, we didn't get the word until January
15 and, quite frankly, between the Ex-Parte Motion for an
16 Order Shortening Time, which this Court denied; a Motion
17 for Adequate Cause, which ultimately was argued a second
18 time; and, now, the *de facto* parent arguments, quite
19 frankly there's been a lot of time involved. Does that
20 suggest that I've somehow been dilatory in representing
21 my clients? Absolutely not.

22 I am one attorney representing my clients; I'm
23 not a team of three attorneys that appear to have been
24 working on the Shmilenko's case. My clients should be
25 allowed the opportunity for their full day in court. I

1 did have Discovery Requests drafted when the Court
2 determined that the *de facto* -- that Mr. Shmilenko was
3 going to be allowed to amend his Petition to include *de*
4 *facto*. I included *de facto* claims, and those were
5 served before -- clearly before today's hearing. And,
6 so, I'm trying to -- trying to keep costs down; I'm
7 trying to keep Discovery honed in on what's important,
8 rather than sending over frivolous pages of Discovery
9 Requests; but, again, with the target continuing to move
10 in this case, we need to have an opportunity.

11 As the case law that I outlined shows,
12 continuances should be granted liberally to ensure that
13 the ends of justice are met. Ms. Shmilenko, in her
14 Reply Declaration, acknowledges that even she needs
15 additional Discovery, that apparently now she intends to
16 hire an additional expert witness; and, I would submit
17 that granting a continuance furthers the justice in --
18 in this case, and allows both sides to fully develop
19 what is in Mason's best interests, and gives the Court
20 the appropriate tools to make a well-rounded decision as
21 it relates to this young man.

22 So, we are asking that the Court -- apparently
23 they are willing to participate with Dr. Poppleton --
24 asking that the Court continue our existing trial date
25 since, again, just as of today we now know at least what

1 the two legal claims are going to be, and to allow us
2 that opportunity to proceed.

3 The other thing I'll tell the Court is I spoke
4 with your Court Administrator. She indicated that
5 apparently you're in the second or third week of your
6 J.H. Kelly trial that week, and we are currently, I
7 believe, second civil set; doesn't even include the
8 criminal trials.

9 THE COURT: Mr. Andersen.

10 MR. ANDERSEN: Thank you, Your Honor.

11 Our response to the request was for Ms. McLean
12 to provide us with a written letter telling us what they
13 want of our clients so we could meet with them; she
14 chose to file a Motion instead of give us a written
15 description of what would be required of us in the Dr.
16 Poppleton [unintelligible]. She moved forward with this.
17 We had never objected to doing that, we just wanted to
18 know what we were agreeing -- what we were going to
19 agree to.

20 With regard to the continuance, the reason
21 there's dilatory conduct is Ms. McLean and the Miniums
22 have known since July that they didn't like the joint
23 expert's opinion. Charlotte Rosen has told us what's in
24 the best interests of the child, she told us back in
25 July. They knew they didn't like it, they knew they

1 wanted a re-do, and this was a joint agreement. They
2 came together for a joint evaluation, and my clients
3 paid for it. If the Miniums want to help pay for half
4 of it too, they can, but my clients paid for it. But
5 that was an expert that we both agreed would look at
6 this, and she gave her opinion and they don't like it,
7 they want to redo it, and they've known that for months.

8 They filed in October the Motion to have my
9 clients cut out of the picture altogether. And to say,
10 well, we didn't know that there was going to be an
11 adequate cause issues, is Dr. Poppleton going to analyze
12 the issue of *de facto* parent? Is he a legal expert or
13 is he going to -- be an expert to look at what's best
14 for the child? He's going to be looking at what's best
15 for the child, and they knew back in July that they
16 didn't agree with the joint expert, they knew they
17 needed a new one and wanted a redo, and instead they
18 waited; okay? And they filed in October, and they
19 should've known, hey, we're filing in October, we're
20 disagreeing with Charlotte Rosen, we better have
21 somebody lined up so that we have an expert, but they
22 didn't. Okay, so they knew what they needed but they
23 didn't take any steps to make that happen. So, that's
24 the dilatory conduct.

25 But the biggest -- the biggest problem is that

1 the evidence under CR 40(e) has to be material. They
2 have to show what it is we're going to find and how it's
3 going to be material. And the only way Your Honor can
4 find that Dr. Poppleton will add anything material is if
5 Your Honor assumes that because the doctor is going to
6 be hired by the Miniums that he's going to disagree with
7 Charlotte Rosen. We have an expert opinion on the
8 record, and for there to be a material other expert
9 opinion it has to disagree with that, and that's a very
10 cynical represent -- very cynical idea that I don't
11 think Your Honor can buy in to.

12 If Dr. Poppleton had said there's some things
13 about Charlotte Rosen's report that I've got -- I have
14 problems with and I need to address them and look at
15 them, we'd be in a different position. But right now
16 we're just -- everyone is assuming Dr. Poppleton is
17 going to be hired by the Miniums so he's gonna go
18 against Charlotte Rosen, and I don't think they can meet
19 the materiality requirement just as well.

20 And, again, we also have a problem with the
21 trial continuance. I mean, this is a situation where
22 we've got a situation that's basically deteriorating.
23 The Miniums have turned on the Shmilenkos and they're
24 lashing out, and we need to -- we need to have a
25 resolution to this. We're at now -- beyond just the

1 fact that the visitation right now is extremely limited
2 for my client, we need this -- this problem to be
3 resolved; we need the parties all to get on with it.
4 So, I think the damage to Mason is -- it can't be
5 overstated, it's something we need to resolve. We need
6 to attempt to have our trial.

7 If Your Honor is gonna grant the continuance
8 under CR 40(e), Your Honor also has the ability to put
9 in terms and conditions. I'm assuming that we're
10 looking at a setting sometime in the late Summer, or
11 perhaps even the late Fall, and if that's how we're
12 gonna end up, then we need to have an Order that
13 addresses all these other holidays that are coming up;
14 we need to have an Order that addresses the Summer. And
15 I think CR 40(e) gives Your Honor the power to sort of
16 mitigate the damage that would be caused by stretching
17 this out.

18 Right now, the Miniums basically have what
19 they want, which is my client seeing the boy twice a
20 month, and if they can just have the trial go on and on
21 and on, they're essentially going to win just by not
22 having the trial, and I think Your Honor needs to
23 address that.

24 THE COURT: Okay, the, kind of, standard calculus
25 on a Motion for Continuance is obviously important: One

1 side sees the need for more work to be done, the other
2 side disagrees and says we are ready to go; and, then,
3 you add to that the issue of the child's best interest,
4 which in general is for a quick resolution.

5 Unfortunately, and I assume, because I know the lawyers
6 on both sides have been involved in these discussions,
7 unfortunately the other issue that's going on here that
8 I have to put into the calculus is our lack of ability
9 to do trials. We don't have enough courtrooms; we don't
10 have enough judges; I wish it were otherwise; and if
11 you've got an extra hour I'll talk to you about various
12 aspects of that, which you don't.

13 And, I had already anticipated the comment Ms.
14 McLean made. The usual situation in any week is the
15 criminal cases take up all, or nearly all, of our trial
16 time. The unusual situation is between now and the
17 middle of Summer, I have two trials that involve cases
18 that have to be heard, for a variety of reasons, and one
19 of those is a case involving J.H. Kelly and the Cameron
20 Glass Plant. There's a great deal of money and a lot of
21 people's jobs that are impacted by it, and so we made a
22 decision a while ago that just come heck or high water,
23 that case is gonna go, and it starts, I think, the first
24 or sec -- I think the second week of May. That means
25 one courtroom is tied up, and we severely stretch our

1 ability just to get the criminal cases out.

2 So, the odds that this case will go to trial
3 on that May date are so vanishingly small that I think a
4 continuance is appropriate, because more than anything,
5 I'm kind of recognizing reality and telling both sides
6 to go forward now, on a realistic basis, than on an
7 unrealistic one.

8 Having said that, I think two things are
9 necessary in this case: One is a Case Management Order.
10 We need to set some time limits on Discovery and experts
11 and some due dates, so we don't have any problems when
12 we do have a trial date that finally arrives. Number
13 two, any issues of modification of residential time, I'd
14 certainly like to address sooner rather than later, so
15 that if there are issues about extended time over the
16 Summer, or any holidays or anything else that one side
17 thinks needs to be addressed, I'd sure like to have
18 those heard as soon as we can, so that both sides have a
19 little bit of certainty going forward, and maybe we can
20 lower the emotional pressure on everybody involved in
21 this case as much as possible.

22 So, presentation?

23 MS. MCLEAN: March 10?

24 THE COURT: I would like to have a Case Management
25 Order by two weeks after that.

1 MS. MCLEAN: I'm out the 12th through the 22nd.
2 THE COURT: Okay.
3 MS. MCLEAN: So, can we --
4 THE COURT: When is a good date for that, then?
5 How about the 31st? That gives you some time after you
6 get back.
7 MS. MCLEAN: Yeah. When do you want my proposal,
8 though, because I -- I would have to have my proposal to
9 you by the 24th, and I just fly back late on the 22nd.
10 THE COURT: All right, both sides get me your
11 Proposed Order by the 26th, if you don't have an agreed
12 one.
13 MS. MCLEAN: Gee, thanks. Wow.
14 THE COURT: We do the best we can.
15 MS. MCLEAN: Okay.
16 So, 2/26 (sic) for a proposed?
17 THE COURT: For proposed, and 31st to sort those out
18 if they're not agreed.
19 MR. ANDERSEN: That's March 26th --
20 MS. MCLEAN: Oh, March 26th --
21 MR. ANDERSEN: -- for the proposal --
22 THE COURT: Yes.
23 MS. MCLEAN: -- and March 31 for Presentation?
24 THE COURT: For -- just for the case --
25 presentation of the Case Management Order. Presentation

1 of the other Orders the 10th, again with the caveat that
2 I'd like to see the Orders regarding Adequate Cause by
3 the 3rd.

4 MS. MCLEAN: And, then, I'm assuming that the
5 Shmilenkos are going to voluntarily participate with Dr.
6 Poppleton, as was indicated in their Declarations?

7 THE COURT: I assume that what they're saying is
8 what they're doing, so --

9 MS. MCLEAN: All right, thank you.

10 MR. ANDERSEN: Your Honor, the -- can we address
11 Spring Break?

12 THE COURT: I -- I think --

13 MR. ANDERSEN: Right now they're set up for --

14 THE COURT: -- when is that?

15 MS. MCLEAN: The first week in April, and as my
16 client indicated in her Declaration, her husband already
17 took off work from Fibre in order -- Fibre -- Norpac,
18 I'm sorry --

19 THE COURT: Well, I'm not going to address the
20 merits of it today --

21 MR. ANDERSEN: Well, Your Honor --

22 THE COURT: -- and I don't think I should address
23 it today because I haven't -- I wasn't prepared for that
24 one, and I don't know if both sides have presented
25 everything they wanted to.

1 If you want me to address it on the 10th I will
2 do that.

3 MR. ANDERSEN: Okay, yeah.

4 MS. MCLEAN: So, I need to know now, so we can
5 provide appropriate replies.

6 THE COURT: Okay.

7 All right, so the 10th we'll address Spring
8 Break, as well.

9 It would be nice if we can take care of any
10 other issues that anybody anticipates over the next six
11 months regarding visitation at the same time. I don't
12 want these folks to have to come back and address them
13 piecemeal, so if there are issues about Summer, or any
14 other holidays, I'd like to address those at the same
15 time --

16 MR. ANDERSEN: Yes.

17 MS. MCLEAN: Thank you.

18 THE COURT: -- if we could.

19 All right.

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21 (Proceedings conclude at 1:54 p.m.)

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CERTIFICATE

I, Melissa Firth, do hereby certify:

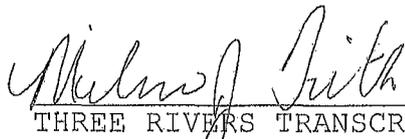
That I am a court-approved transcriber for the State of Washington, County of Cowlitz;

That the annexed and foregoing transcript of digitally recorded proceedings was transcribed by me;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, or a relative or employee of any such attorney or counsel, and that I am not financially interested in the said action or the outcome thereof;

I further certify that the transcript is a true and correct record of all audible portions of the recorded testimony, including questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing proceedings. Areas of the record which were not decipherable for any reason are noted as [inaudible] or [unintelligible].

Dated this 6th day of March, 2014.



THREE RIVERS TRANSCRIPTS
By Melissa J. Firth
P.O. Box 515
Castle Rock, WA 98611
(360) 749-1754

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Service of this document is
hereby accepted this 19
day of February 2014
NOELLE MCLEAN *WSP, P-R*
Attorneys for Petitioners

Service of this document is
hereby accepted this 19
day of February 2014
[Signature]
Attorneys for GAL

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of
MASON WADDLE,
Child,
GREGORY SCOTT MINIUM and
LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
JOHN SHMILENKO,
PATTI SHMILENKO, and
GREG and LINDA MINIUM,
Respondents.

No. 08 3 00476 1

REPLY DECLARATION OF
PATTI SHMILENKO RE
ADEQUATE CAUSE
DETERMINATION

PATTI SHMILENKO declares as follows:

1. Although MASON has had court-ordered visits with me, JOHN has been there every step of the way since MASON was born. JOHN is an important part of MASON's life and fulfills many needs of MASON. He is an active and involved figure in MASON's life and provides food, care, nurturing and security for MASON. I have reviewed the

REPLY DECLARATION OF PATTI SHMILENKO
RE ADEQUATE CAUSE DETERMINATION - Page 1 of 3

Walstead Mertsching PS
Clyde Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, Washington 98632-7934
(360) 423-5220

COPY

cc returns 2/19/14

1 | MINIUMs' response to JOHN's Petition under De Facto Parent. Both sets of grandparents
2 | have taken on parent-type duties since MASON's parents passed.

3 | 2. JOHN and I have certainly taken on an important role in MASON's life. We
4 | historically provided clothes, shoes, underwear, socks, coats, car seats and personal
5 | hygiene items and only stopped at the request of LINDA MINIUM. We have a bedroom for
6 | MASON, all of his necessities, allergy medicine, a home medical kit, dental care, flossing
7 | and bathing items. We have eczema lotions and purchase fragrance free soaps due to
8 | MASON's allergies. We both are trained in CPR. LINDA MINIUM refused to allow either
9 | JOHN or me to go along to any of MASON's doctor visits or be part of that care. We are
10 | sensitive to MASON's allergies and removed our dog from our home because of those
11 | allergies, only to learn the MINIUMs have dogs. We contacted Cowlitz County Asthma
12 | Outreach Program for air quality information to prevent and manage MASON's asthma.
13 | We purchased green cleaning supplies and scheduled a home assessment for air quality.
14 | Both JOHN and I diligently read labels on foods and educate ourselves to understand
15 | MASON's allergies. We purchased the appropriate vacuum cleaner which is the best to
16 | pick up allergens and use HEPA filters that capture small particles.

17 | 3. I had contacted MASON's school and was approved as a volunteer. I sent a note
18 | to MASON's teacher requesting to volunteer in her class with no response from her. I now
19 | understand that LINDA MINIUM has denigrated me to MASON's teacher and the principal.
20 | LINDA MINIUM changed MASON's original assigned kindergarten teacher as I have a
21 | relationship with her and her family. JOHN and I talk about school with MASON and are
22 | interested in supporting his growth and development. We both empathize with MASON
23 | and listen to his feelings. We discipline him when necessary but love him unconditionally.
24 | We show MASON pictures of his daddy, Zach, and tell him of his daddy. JOHN involves
25 | MASON in his daddy's hobbies by teaching MASON how to fish, etc.

26 | ///

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4. We teach MASON to respect others and treat others the way he would like to be treated. We teach him to be polite and to say "please" and "thank you". I took MASON to swimming lessons at the YMCA for over two years. We have taken MASON to the Longview Library for the summer reading program, encouraged him with his Kung Fu, and go to all of the tournaments of which we are aware. Unfortunately for MASON, we have never received an invite to his practice sessions.

5. We have had birthday parties every year for MASON at Chuck E. Cheese, our home and the Rainier Swimming Pool, with between 5 and 10 kids in attendance. At our house, MASON plays with a friend's son, EVAN, and we take them to the Children's Museum and OMSI. We maintain a relationship with some of Zach's (our son) friends who have children and try to coordinate play dates, although that is more difficult with our present limited visitation schedule.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at _____, on February _____, 2014.
(City and State)

See attached

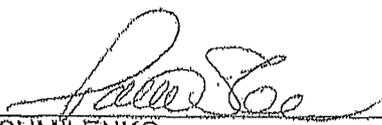
PATTI SHMILENKO

1 4. We teach MASON to respect others and treat others the way he would like to be
2 treated. We teach him to be polite and to say "please" and "thank you". I took MASON to
3 swimming lessons at the YMCA for over two years. We have taken MASON to the
4 Longview Library for the summer reading program, encouraged him with his Kung Fu, and
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6 never received an invite to his practice sessions.

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10 Museum and OMSI. We maintain a relationship with some of Zach's (our son) friends who
11 have children and try to coordinate play dates, although that is more difficult with our
12 present limited visitation schedule.

13
14 I declare under penalty of perjury under the laws of the state of Washington that the
15 foregoing is true and correct.

16 Signed at PORTLAND OR, on February 19th, 2014.
(City and State)

17
18 
19 PATTI SHMILENKO

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1 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

2 In re the Custody of

3 MASON WADDLE,

4 child,

5 GREGORY SCOTT MINIUM and LINDA
6 MINIUM,

7 Petitioner,

8 and

9 PATTI KAY SHMILENKO,
10 JOHN SHMILENKO, PATTI KAY SHMILENKO,
and GREG and LINDA SHMILENKO,

11 Respondent.

No. 08 3 00476 1

AFFIDAVIT REGARDING FILING
DOCUMENT TRANSMITTED BY
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(No Mandatory Form Developed)

12 STATE OF WASHINGTON

13 County of Cowlitz

} ss.

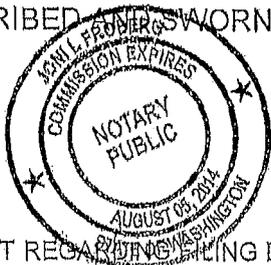
14 HEIDI THOMAS being first duly sworn, on oath, deposes and says as follows:

15 1. I am the legal assistant to BARRY DAHL, counsel for Respondents, PATTI
16 SHMILENKO and JOHN SHMILENKO, in the above-entitled action.

17 2. I received the attached REPLY DECLARATION OF PATTI SHMILENKO RE
18 ADEQUATE CAUSE DETERMINATION by facsimile or email transmission. I have
19 examined the attached REPLY DECLARATION OF PATTI SHMILENKO RE ADEQUATE
20 CAUSE DETERMINATION, determined that it consists of five pages (including this page),
21 and it is complete and legible.

22 Heidi Thomas
HEIDI THOMAS

23 SUBSCRIBED AND SWORN to before me this 19th day of February 2014.



24 Signature Joni L. Froberg
25 Printed Name Joni L. Froberg
26 Notary Public for the state of Washington
My Appointment Expires 8-5-14

AFFIDAVIT REGARDING FILING DOCUMENT
TRANSMITTED BY FACSIMILE/EMAIL - Page 1 of 1

Walstead Mertsching PS
Civic Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, Washington 98632-7934
(360) 423-5220

Service of this document is
hereby accepted this 19
day of February 2014

NOELLE MCLEAN
Attorneys for Petitioners

Service of this document is
hereby accepted this 19
day of February 2014

~~_____~~
Attorneys for CAL

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of

MASON WADDLE,

Child,

GREGORY SCOTT MINIUM and
LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and
GREG and LINDA MINIUM,

Respondents.

No. 08 3 00476 1

REPLY DECLARATION OF
JOHN SHMILENKO RE
ADEQUATE CAUSE
DETERMINATION

JOHN SHMILENKO declares as follows:

1. I am one of the Respondents and make this declaration from my own personal knowledge. Since the untimely death of MASON's biological parents, the MINIUMs and PATTI and I have been responsible for raising MASON. When MASON visits our home, we provide him all the care that parents would provide. Upon review of the MINIUMs' Response to our Petition, it appears they do not acknowledge any of the roles that we have played in MASON's raising over the past five (5) years. Although the agreed order

REPLY DECLARATION OF JOHN SHMILENKO
RE ADEQUATE CAUSE DETERMINATION - Page 1 of 3

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COPY

cc: Clients 2/19/14

DR 68

1 gave the MINIUMs more time with MASON, the basis behind that agreement was that
2 both sets of grandparents would continue to be active and involved in raising MASON.

3 2. At our home, PATTI generally is the one who prepares dinner. However, I do the
4 barbequing and MASON enjoys assisting me. I have taught MASON how to baste the
5 barbeque dinner and he has helped me brine salmon when we prepare smoked salmon.

6 3. PATTI and I both have regularly bought MASON clothing and other items. I
7 enjoy getting MASON clothing for outdoor activities (gloves, boots, rain gear) as one of
8 our favorite activities is to go walking on Willow Grove Beach and working together
9 around our property. MASON and I really enjoy digging holes and trenches together
10 and especially making dry wells. When MASON and I are working, I have always
11 taught MASON that it is always "safety first" and we wear goggles when working with
12 tools.

13 4. At the MINIUMs' demand, we are now not allowed at MASON's school; however,
14 I try to teach MASON to have a good vocabulary and learn new words. PATTI and I
15 have taught MASON to always say "please" and "thank you".

16 5. I have been teaching MASON how to fish. It appears that MASON truly has his
17 daddy's strong "fishing genes". I have also been giving MASON piano lessons and
18 MASON is doing extremely well in a very short time. MASON loves The Beatles and
19 can identify most of the Beatles' specific songs when I play one or two chords of a given
20 song on the guitar or piano. He has a musical talent and it is amazing to observe.

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6. I am deeply offended that the MINIUMs, after signing an Agreed Order, now appear to be positioning themselves as MASON's "parents" and downplaying PATTI's and my role in the care of MASON, which I have been active in since MASON was born.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at _____, on February _____, 2014.
(City and State)

See attached

JOHN SHMILENKO

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6: I am deeply offended that the MINIMUMs, after signing an Agreed Order, now appear to be positioning themselves as MASON's "parents" and downplaying PATTI's and my role in the care of MASON, which I have been active in since MASON was born.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at PORTLAND, OREGON, on February 19, 2014.
(City and State)



JOHN SHMILENKO

1 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

2 In re the Custody of

3 MASON WADDLE,

4 child,

5 GREGORY SCOTT MINIUM and LINDA
6 MINIUM,

7 Petitioner,

8 and

9 PATTI KAY SHMILENKO,
10 JOHN SHMILENKO, PATTI KAY SHMILENKO,
and GREG and LINDA SHMILENKO,

11 Respondent.

No. 08 3 00476 1

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DOCUMENT TRANSMITTED BY
FACSIMILE/EMAIL

(No Mandatory Form Developed)

12 STATE OF WASHINGTON)
13 County of Cowlitz) ss.

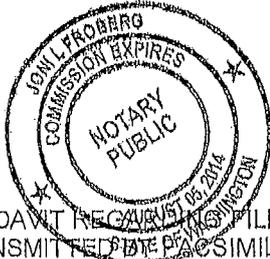
14 HEIDI THOMAS being first duly sworn, on oath, deposes and says as follows:

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16 SHMILENKO and JOHN SHMILENKO, in the above-entitled action.

17 2. I received the attached REPLY DECLARATION OF JOHN SHMILENKO RE
18 ADEQUATE CAUSE DETERMINATION by facsimile or email transmission. I have
19 examined the attached REPLY DECLARATION OF JOHN SHMILENKO RE ADEQUATE
20 CAUSE DETERMINATION, determined that it consists of five pages (including this page),
21 and it is complete and legible.

22 Heidi Thomas
HEIDI THOMAS

23 SUBSCRIBED AND SWORN to before me this 19th day of February 2014.



24 Signature Joni L. Froberg
25 Printed Name Joni L. Froberg
Notary Public for the state of Washington
26 My Appointment Expires 8-5-14

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Walstead Mertschur PS
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Longview, Washington 98632-7934
(360) 423-5220

Service of this document is
hereby accepted this 6
day of February 2014
NOELLE MCLEAN 1:05 p.m.
Attorneys for Petitioners

Service of this document is
hereby accepted this 19
day of February 2014

[Signature]
Attorneys for GAE

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of

MASON WADDLE,

Child,

GREGORY SCOTT MINIUM and
LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and
GREG and LINDA MINIUM,

Respondents.

No. 08 3 00476 1

REPLY MEMORANDUM
RE ADEQUATE CAUSE
DETERMINATION

A. Procedural Posture

On January 13, 2014, this Court: (a) Dismissed JOHN SHMILENKO's statutory claim for visitation; (b) *sua sponte* granted JOHN SHMILENKO leave to amend his petition to include a claim for equitable relief under *De Facto* Parent as articulated in *In Re Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005); and (c) found adequate cause for JOHN SHMILENKO to move forward with a claim under *Parentage of L.B.*

REPLY MEMORANDUM RE ADEQUATE
CAUSE DETERMINATION - Page 1 of 6

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Longview, Washington 98632-7934
(360) 423-5220

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cc client 2/19/14

DR 73

1 On February 3, 2014, the parties presented orders and counsel for the MINIUMs
2 complained about the lack of hearing on adequate cause. The Court scheduled the parties to return
3 on February 24, 2014, to give Ms. McLean her day in court.

4 **B. Argument**

5 Counsel's *Memorandum of Authorities Re De Facto Parent* presses the MINIUMs' position
6 regarding JOHN SHMILENKO's equitable claim as if it were a motion to dismiss or a motion for
7 summary judgment. This, however, is an adequate cause hearing. The standard applicable is as
8 follows:

9 The adequate cause hearing is a threshold determination. *In re Custody of B.M.H.*, 165 Wn.
10 App. 361, 267 P.3d 499, review granted 173 Wn.2d 1031, 277 P.3d 668. The moving party must
11 make a showing of adequate cause by setting forth facts supporting the requested order. *Grieco v.*
12 *Wilson*, 144 Wn.App. 865, 184 P.3d 668.

13 The court file contains sufficient evidence to meet this standard. In the abundance of
14 caution, JOHN SHMILENKO has filed another declaration to provide the Court with additional
15 factual background.

16 Ms. McLean's brief raises a number of legal issues that should be dealt with once both sides
17 have had the time to conduct some discovery. Furthermore, with the holiday on Monday, JOHN
18 SHMILENKO has had less than three court days to respond to what is essentially a motion for
19 summary judgment. It would be unfair for the Court, and contrary to the civil rules, to dismiss
20 Mr. SHMILENKO's claim without giving him the benefit of the notice and discovery afforded him
21 by the civil rules.

22 Nonetheless, the MINIUMs' memorandum is loaded with arguments that make sense only if
23 the Court buys into the proposition that the MINIUMs are MASON's parents. The Court will recall
24 that the current custody arrangement is the result of an agreed order. Had the SHMILENKOs
25 known that the MINIUMs would some day use the agreed order as a weapon to strip MASON of
26 his access to his grandparents, they never would have agreed to it. The SHMILENKOs and the

1 MINIMUMs agreed to a joint parenting plan that placed MASON in the MINIMUMs' home the
2 majority of the time. But the agreement did not set up the MINIMUMs as "parents" and the
3 SHMILENKO's as "grandparents." While the MINIMUMs are doing their best to lord over the
4 SHMILENKO's with this distinction, nowhere in the court record is there such a ruling.

5 This is a critical point in considering the MINIMUMs' arguments with regard to JOHN
6 SHMILENKO's *De Facto* Parent claim. At every stage in the analysis, Ms. McLean inserts the
7 MINIMUMs as "parents." The MINIMUMs are not MASON's parents, not for *De Facto* Parent and
8 not for anything else. This disconnect with reality is probably driving the MINIMUMs' hatred of the
9 SHMILENKO's. The MINIMUMs see MASON as belonging to them, and the SHMILENKO's as
10 interlopers who are disturbing their nonexistent parent-child relationship with MASON. In her
11 discovery responses, LINDA MINIMUM states: "We have been in forced visitation with a person we
12 don't even know since we were granted temporary custody of Mason on 09/29/2008." *Declaration*
13 *of Matthew J. Andersen*, Exhibit B., page 12, line 11. But the MINIMUMs were not forced into
14 anything, and they have no rights to MASON outside the Court's order. The MINIMUMs' status with
15 regard to MASON is the result of a compromise with the SHMILENKO's. Had the MINIMUMs
16 originally said, "MASON is going to be ours, you can see him when it suits us," the SHMILENKO's
17 never would have cooperated in entering the agreed order.

18 At line 4, page 3 of her *Memorandum of Authorities Re De Facto Parent*, counsel for the
19 MINIMUMs states: "Mason had never lived with Patti and John Shmilenko, either before or after his
20 parents' untimely deaths." This is simply untrue. MASON lived with the SHMILENKO's, under an
21 agreed order, on the dates indicated in that order. MASON lived with the MINIMUMs under the
22 terms of the same order. The MINIMUMs have taken the mantle of parents for themselves and
23 relegated the SHMILENKO's to being inconvenient grandparents. The MINIMUMs also claim that
24 MASON's time with JOHN SHMILENKO was not "voluntary" since it was required by the Court's
25 order. The MINIMUMs always seem to forget that this was an agreed order.

26 ///

1 The MINIMUMs have trained MASON to refer to the SHMILENKOs with grandparent-type
2 names, while referring to themselves with father and mother-type names. Whether this is being
3 done for the purposes of litigation or to soothe the MINIMUMs' pain of loss, it is irrelevant to the
4 analysis. The SHMILENKOs are MASON's grandparents; he should refer to them as such. The
5 fact that the MINIMUMs have taught MASON to refer to them as "mom" and "dad" is evidence of
6 nothing more than the MINIMUMs overreaching. The MINIMUMs are not MASON's father and
7 mother, and they should not be teaching MASON otherwise.

8 The fact that the SHMILENKOs refer to themselves as grandparents only shows that they
9 have a firm grip on reality, whereas the MINIMUMs, who are also grandparents, have chosen to blur
10 the line between themselves and MASON's actual parents. At one point in the MINIMUMs'
11 memorandum, they actually claim that *they* are *De Facto* Parents and request protection "from
12 further State interference in Mason's care and custody." The MINIMUMs then argue, under *De Facto*
13 Parent, "At best, the Miniums consented to a 'grandparent-like' relationship between Mason and
14 John, who is in fact not a biological relative." At page 6, line 4, counsel states, "That the Miniums
15 may have allowed John Shmilenko to provide care for Mason during Mason's court-ordered
16 residential time with Patti Shmilenko does not equate to consenting to and fostering a parent-like
17 relationship." But the MINIMUMs are not parents. Who are they to consent to anything under the *De*
18 *Facto* Parent test?

19 All of the MINIMUMs' arguments are based on the fallacy that they are parents in need of
20 protection from interlopers. The reality is that they are maternal grandparents who are raising
21 MASON together, under an agreed order, with MASON's paternal grandparents.

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1 JOHN SHMILENKO admits that the *De Facto* Parent analysis is a rough fit for the facts of
2 this case. *De Facto* Parent, however, is a robust equitable doctrine. Even if the Court were to
3 conclude that JOHN SHMILENKO cannot make out a claim for *De Facto* Parent, the case would
4 not be over. JOHN SHMILENKO's amended petition requests:

5 In the alternative, Moving Party, JOHN SHMILENKO, petitions the Court for
6 custody/visitation under the equitable powers of the Court as articulated in *In re*
Parentage of L.B., 155 Wn.2d 679, 688-89, 122 P.3d 161 (2008).

7 This claim is based on the Supreme Court's description of common law parentage in *In Re*
8 *Parentage of L.B.*, 155 Wn.2d 679, 122 P.3d 161 (2005). While *In re Parentage of L.B.* may be
9 most famous for its analysis of *De Facto* Parent, the Washington Supreme court provides a very
10 thorough description of the court's historical authority regarding parentage:

11 In the face of advancing technologies and evolving notions of what
12 compromises a family unit, this case causes us to confront the manner in which
13 our state, through its statutory and common law principles, defines the terms
14 "parents" and "families." During the first half of Washington's statehood,
15 determination of the conflicting rights of persons in family relationships were
16 made by courts acting in equity. But over the past half-century, our legislature
17 has established statutory schemes intend to govern various aspects of parentage,
18 child custody disputes, visitation privileges, and child support obligations. Yet,
19 inevitably, in the field of familial relations, factual scenarios arise, which even
20 after a strict statutory analysis remain unresolved, leaving deserving parties
21 without any appropriate remedy, often where demonstrated public policy is in
22 favor of redress.

23 And so we turn to the question before us: whether our state's common
24 law recognizes *de facto* parents and, if so, what rights and obligations accompany
25 such recognition. Specifically, we are asked to discern whether, in the absences
26 of a statutory remedy, the equitable power of our courts in domestic matters
permits a remedy *outside* of the statutory scheme, or conversely, whether our
state's relevant statutes provide the exclusive means of obtaining parental rights
and responsibilities.

155 Wn.2d at 687-88, 122 P.3d 161. (Internal citations omitted; Emphasis not
added.)

The Washington Supreme Court answered the above question with a resounding "yes":

Washington courts have consistently invoked their equity powers and common
law responsibility to respond to the needs of children and families in the face of
changing realities. We have often done so in spite of legislative enactments that
may have spoken to the area of law, but did so incompletely. With these common

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law principles in mind, we turn to whether Washington's common law recognizes *de facto* parents.

Id. at 689, 122 P.3d 161.

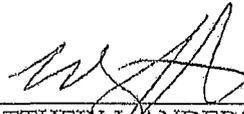
This historical equitable power specifically included the power to award visitation, *Id.* at 699, 122 P.3d 161, and "Washington's visitation law evinces its common law foundation, a lack of legislative intent to preempt the common law, and equally important, its emphasis on the interests of the children at the center of such familial situations." *Id.* at 701, 122 P.3d 161.

It was under these equitable powers that the Washington Supreme Court then turned to analyze whether *De Facto* Parent was the law of the State of Washington. That is, the court's equitable power to act where the legislature has failed to do so pre-existed *De Facto* Parent and created *De Facto* Parent. In the event the Court finds that the factors for *De Facto* Parent are too narrow to apply to this case, what next? Shall the Court just throw up its hands and do nothing? Absolutely not. Washington law provides the Court with the power to fashion a remedy where the legislature has failed to do so. If *De Facto* Parent is inapplicable in cases where both natural parents are deceased, then the Court must use its equitable powers to protect MASON's best interest.

C. Conclusion

The Court should deny the MINIUMS' improperly docketed motion to dismiss JOHN SHMILINKO's claim for equitable relief.

DATED: February 19, 2014.



MATTHEW J. ANDERSEN, WSBA #30052
Of Attorneys for Respondents SHMILENKO

Service accepted this
14 day of Feb, 20 14
BJD ACK
Attorney for Respondent John

FILED
SUPERIOR COURT

2014 FEB 14 P 2:03

Service accepted this
14 day of Feb, 20 14
BJD ACK
Attorney for Respondent Patti

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK
BY 

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,

Child,

GREG MINIUM and LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and
GREG and LINDA MINIUM,

Respondents.

No. 08 3 00476 1

DECLARATION OF LINDA
MINIUM RE: ADEQUATE CAUSE

My name is Linda Minium, and I am providing this declaration based upon my personal knowledge and information and in response to the claims outlined in John Shmilenko's Second Amended Non-Parental Parent Custody Petition supporting his claim for de facto parent status related to Mason Waddle. From the time Mason was born until his parents untimely death in August 2008, Mason resided solely and primarily with his parents, Libby Minium and Zach Waddle. Since 8/07/08, Mason has been in our primary care and has not lived with John Shmilenko other than as allowed

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DR 79

Noelle A. McLean PS
Attorney at Law
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Kelso, Washington 98626
(360) 425-0111 - (360) 425-2232 Fax
noelle@noellemclean.com

1 by Patti Shmilenko during her visitation times set forth in the Agreed Final Order
2 Residential Schedule entered in this matter. I have seen very little of John Shmilenko
3 in the presence of Mason over the past five (5) years. In late January 2013, during a
4 meeting with Charlotte Rosen, I noted that I had not seen John Shmilenko since
5 December 2010. After that meeting with Charlotte Rosen, John Shmilenko showed up
6 at the visitation exchange. After the reduction of the visitation time pursuant to the
7 court's temporary order entered in September 2013 between Mason and Patti
8 Shmilenko, John has become very aggressive in his claim to Mason and is now
9 attending more of the visitation exchanges. Patti Shmilenko's court ordered visitation
10 allows her six (6) overnight visits every two (2) months, or approximately 10 percent of
11 Mason's time. I dispute the suggestion that this comprises a "parent like relationship"
12 or that it supports a claim that John Shmilenko has been in a "parental role for a
13 length of time sufficient to have established with the child a bonded, dependent,
14 parental in nature."
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18 Mason's relationship with me and my husband is like child and parent. Mason
19 refers to my husband, Greg as "pa" or "dad." Mason refers to me as "ma" or "mom."
20 Our relationship is parental in nature and my husband and I have assumed all of the
21 parenting functions that Mason's parents would have performed had they still been
22 alive. Mason's relationship with John Shmilenko is one of child and grandparent, as
23 acknowledged in John's Shmilenko's Second Amended Petition. Mason refers to
24 John Shmilenko as "Pa John." Mason refers to Patti Shmilenko as "Grandma Patti."
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27 After Mason was born in August 2007, I did not observe a relationship between
28 John Shmilenko, Zach Waddle and Mason Waddle. At that time, Zach began working

1 for Georgia Pacific Wauna mill in approximately October 2007. Zach commuted to
2 Wauna, worked long hours, jet skied, duck hunted, fished, and spent time with our
3 daughter, Libby and his son, Mason. We spent a great deal of time with our daughter
4 Libby and Mason, and many Friday and Sunday nights at dinner with Zach, Libby, and
5 Mason (when Zach was not at work). I did observe John Shmilenko visit the hospital
6 after Mason's birth and on three (3) or (4) occasions for just a short amount of time. I
7 am aware that John and Patti Shmilenko traveled a lot and were out of the country for
8 a month shortly after Mason was born. John and Patti both work and live primarily in
9 Portland, Oregon, although they also have a home in Longview, Washington. Their
10 work in Portland, Oregon limited their face-to-face contact with Zach, Libby and
11 Mason. It should be noted that Zach's biological father, Richard Miller has contact
12 with Mason and continues to teach Mason about his deceased father, Zach. I am
13 aware that Zach continued to have a relationship with his father, Rich Miller, which
14 was not supported by his mother, Patti Shmilenko. Rich Miller has also been present
15 in Mason's life since birth, which was supported by Zach and Libby prior to their death
16 and has been supported by us since their death.

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20 I am very concerned that the court is considering John Shmilenko's limited
21 contact with Mason Waddle to be a "de facto parent" relationship. Clearly, my
22 husband and I have been involved in Mason's daily life prior to and following his
23 parents' death. If anyone is "parent like" it is my husband, Greg, and I who have
24 stepped up and taken on the daily parental role after the loss of Mason's parents. It
25 would be detrimental to Mason's development if John Shmilenko is recognized as
26 having a relationship that stands legally equal to Libby or Zach's parental role, and it

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Noelle A. McLean PS

Attorney at Law

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Kelso, Washington 98626
(360) 425-0111 - (360) 425-2232 Fax
noelle@noellemclean.com

1 seems to ignore the actual role that my husband and I have been carrying on for the
2 past six (6) years.

3 I do not believe that John Shmilenko meets the test that he has assumed the
4 parental obligations for Mason. The obligations of parenthood that we have assumed
5 and perform on a daily basis are as follows: providing a permanent home for Mason,
6 providing food with nutritional value, providing clothing, making sure that Mason has
7 his healthcare needs met and his immunizations up to date, as well as his dental care
8 needs (including dental surgery), meeting his school attendance and educational
9 needs at Mint Valley Elementary and communicating with his teachers, taking care of
10 his specific allergy needs (dog, cat, egg, milk, peanut, grasses, and hay), providing
11 fair and appropriate discipline needs, teaching acceptable behavior, teaching him
12 about expectations in life and guiding him with his goals, providing and promoting
13 opportunities with other children his age (play dates, birthday parties, swimming,
14 bowling etc.), caring for his emotional and physical needs on a daily basis, and on and
15 on. Mr. Shmilenko has never been in the role to meet these daily parenthood
16 obligations and needs for Mason, and his limited contact has been limited to those
17 visits for Patti Shmilenko as outlined above. In fact, in May of 2012, Patti Shmilenko
18 made arrangements to pick Mason up later in the day on her Saturday/Sunday
19 weekend because she had a real estate client that she needed to show some houses.
20 Ms. Shmilenko expressed feeling more comfortable leaving Mason with us rather than
21 leaving him in John Shmilenko's care. Accordingly, she changed the scheduled pick
22 up time from 10:00 a.m. to 3:00 p.m. on 05/03/12. Even Ms. Shmilenko
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acknowledges through her actions that Mr. Shmilenko is not an identified and involved
or an appropriate care provider alone for Mason.

Accordingly, I request that the court deny the adequate cause finding of de facto
parent on behalf of John Shmilenko.

I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct. Signed at Kelso, Cowlitz County, Washington.

DATED: _____ See Attached
LINDA MINIUM
Petitioner

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parent on behalf of John Shmilenko.

I declare under penalty of perjury under the laws of the State of Washington that
the foregoing is true and correct. Signed at Kelso, Cowlitz County, Washington.

DATED: 2/13/14

Linda D. Minium
LINDA MINIUM
Petitioner

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,
Child,
GREG MINIUM and LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
JOHN SHMILENKO,
PATTI SHMILENKO, and
GREG and LINDA MINIUM,
Respondents.

No. 08 3 00476 1
CERTIFICATE OF FACSIMILE
TRANSMISSION

I declare and state as follows:

The undersigned has examined the following documents: Declaration of Linda Minium Re: Adequate Cause, signed by Linda Minium, consisting of one signature page. This document is complete and legible, including the signature page. This declaration is made pursuant to GR 17.

...
...

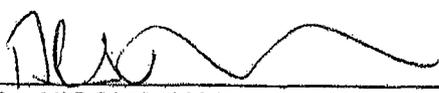
CERTIFICATE OF FACSIMILE TRANSMISSION
Page 1

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I declare under the penalty of perjury under the laws of the State of Washington
that the foregoing is true and correct. Signed at Kelso, Washington.

DATED: 2/13/14


By: NICOLE HAMM, Legal Assistant to
NOELLE McLEAN P.S. WSB 22921
Attorney for Petitioner

Service accepted this

14 day of FEB, 20 14

BTD
Attorney for Respondent [unclear]

FILED
SUPERIOR COURT

Service accepted this

14 day of FEB, 20 14

BTD
Attorney for Respondent [unclear]

2014 FEB 14 P 2:03

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY [Signature]

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,

Child,

GREG MINIUM and LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and

GREG and LINDA MINIUM,

Respondents.

No. 08 3 00476 1

MEMORANDUM OF AUTHORITIES
RE DE FACTO PARENT

I. STATEMENT OF THE FACTS

Greg and Linda Minium are the maternal grandparents of Mason Waddle, who was born on 08/20/2007. Mason's biological parents were tragically killed by a drunk driver on August 7, 2008, when Mason was less than a year old. Since then, Mason has

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1 resided primarily with the Miniums, with whom he now has a parent-child relationship.
2 Mason refers to Greg as "pa" and "dad" and he refers to Linda as "ma" or "mom."

3 Patti Shmilenko is Mason's paternal grandmother. John Shmilenko is Patti's
4 husband and the stepfather of Mason's late father. Mason had never lived with Patti and
5 John Shmilenko, either before or after his parents' untimely deaths. It was never
6 disputed that Mason would reside with the Miniums after his parents' deaths. However,
7 the Miniums agreed that Mason should have visitation with his paternal grandparents.
8 On March 22, 2010, an agreed order was entered giving Patti Shmilenko only a visitation
9 schedule. Patti Shmilenko's visitation provided a graduated schedule based upon
10 Mason's age. Patti Shmilenko had visitation every Tuesday and Thursday for six (6)
11 hours, and alternating weekends for one overnight (at first a 24 hour visit, and then a 31
12 hour visit). In addition, Patti Shmilenko had four hours of visitation on Thanksgiving, a
13 24-hour visit on Christmas Day, a six-hour visit on Father's day, and Mason's birthday
14 every other year for 24-hours. The visitation order was modified on a temporary basis on
15 10/07/2013. John Shmilenko was residing with Patti at the time the order was entered,
16 but he is not named in the order. Rich Miller, Mason's biological grandfather with whom
17 Mason is close, has informal visitation with Mason arranged by agreement with the
18 Miniums.
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22 Mason's relationship with John and Patti Shmilenko is one akin to child-
23 grandparent: Mason refers to Patti Shmilenko as "Grandma Patti" and he refers to John
24 Shmilenko as "Pa John." Patti and John Shmilenko have always identified themselves
25 as Mason's grandparents. "I have maintained a grandparent-grandchild relationship
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1 with Mason throughout Mason's entire life." (Declaration of John Shmilenko in Support
2 of Motion to Consolidate Cases filed 12/20/2013, page 2, ¶ 3). "John Shmilenko has
3 had a close and loving grandparent relationship with the child." (Motion and
4 Declaration to Add Party filed 08/30/2013, Page 2).

5 John Shmilenko's contact with Mason has been consistent with Patti Shmilenko's
6 visitation times set forth in the Agreed Final Residential Schedule. John Shmilenko's
7 relationship with Mason has been fostered solely as a result of the court order. Mason
8 has never lived exclusively with John and Patti Shmilenko. John Shmilenko filed a
9 nonparental custody petition to request "visitation" with Mason, consistent with his wife's
10 (Patti Shmilenko). John Shmilenko requested visitation in case something happened to
11 Patti: he would be able to continue his visitation with Mason, since he was not a party to
12 the then existing lawsuit and agreed Final Order Residential Schedule. The court denied
13 adequate cause and dismissed John Shmilenko's nonparental custody petition for
14 visitation. The court has allowed leave for John Shmilenko to amend his petition for *De*
15 *Facto Parent*.

16 The issue before the court is whether John Shmilenko meets the criteria for
17 adequate cause and/or prima facie determination as a *De Facto Parent*.

18 II. STATEMENT OF THE LAW & ARGUMENT

19 **A. The paternal grandmother's husband cannot meet the requirements to prove 20 that he is the child's *de facto* parent.**

21 This court must dismiss John Shmilenko's action, as he cannot meet the test to
22 establish himself as the *de facto* parent of Mason Waddle. If Mason has any *de facto*
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1 parent, it is the Miniums, and they should be protected from any further State
2 interference in Mason's care and custody. *Parentage of L.B.*, 155 Wn.2d 679, 710, ¶
3 45, 122 P.3d 161 (2005), *cert. denied*, 547 U.S. 1143 (2006) (if a party is able to prove
4 they are a *de facto* parent then both he and the child's legal parent "both have a
5 fundamental liberty interest in the care, custody, and control" of the child) (emphasis in
6 original).
7

8 Our Supreme Court established the common law *de facto* parentage cause of
9 action in *Parentage of L.B.* There, the Court considered the parental rights of a
10 woman who could not at the time establish any legal right under the Washington
11 Parentage Act to a child she had raised since birth with the biological mother. The
12 Court in *L.B.* held that a non-biological mother could under these limited
13 circumstances maintain a common law parentage action because there was no other
14 statutory mechanism to allow her to pursue her parental rights over the objection of
15 the child's only other parent. *L.B.*, 155 Wn.2d at 706-07, ¶ 37.
16

17 But as the Court held in *L.B.*, obtaining the status of *de facto* parent should be
18 "no easy task," 55 Wn.2d at 712, ¶ 47, because once established, a *de facto* parent
19 can stand in legal parity with a "legal" parent, whether biological, adoptive or
20 otherwise. *L.B.*, 155 Wn.2d at 708, ¶ 41. Thus, the Court established a stringent four-
21 part test to establish standing as a "*de facto*" parent to avoid opening the door to
22 persons like John Shmilenko, who seek legal rights in children to whom they are not
23 parents, including "teachers, nannies, parents of best friends, adult siblings, aunts,
24 grandparents, and every third-party caregiver." *L.B.*, 155 Wn.2d at 712, ¶ 47.
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1 That test requires the petitioner to show: 1) the natural or legal parent consented
2 to and fostered the parent-like relationship; 2) the petitioner and child lived together in
3 the same household; 3) the petitioner assumed obligations of parenthood without
4 expectation of financial compensation; and 4) the petitioner has been in a parental role
5 for a length of time sufficient to have established with the child a bonded, dependent
6 relationship parental in nature. **L.B.**, 155 Wn.2d at 708, ¶ 40. Failure to meet even
7 one factor is fatal to a *de facto* parentage claim. **Dependency of D.M.**, 136 Wn. App.
8 387, 397, ¶ 22, 149 P.3d 433 (2006), *rev. denied*, 162 Wn.2d 1003 (2007). Here,
9 John Shmilenko cannot meet even one of the necessary factors to establish himself
10 as a *de facto* parent under **L.B.**, never mind all four factors as is required.
11

12
13 There is no evidence that either Mason's parents or the Miniums - his legal
14 guardians - "*consented to and fostered parent-like relationship*" between Mason and
15 John Shmilenko. At best, the Miniums consented to a "grandparent-like" relationship
16 between Mason and John, who is not in fact a biological relative. But such a relationship
17 is a far cry from the cases where *de facto* parentage was established when the biological
18 parent held out the third party as the other "parent" to her child. See, e.g., **Parentage of**
19 **L.B.**, 155 Wn.2d 679 (for the first 6 years of child's life, the biological mother held out her
20 former partner as a second mother to her child, naming her as mother in baby book,
21 listing her as a parent for school records, and sharing parental responsibilities); **Custody**
22 **of A.F.J.**, ___ Wn.2d ___, 314 P.3d 373 (2013) (biological mother and partner agreed to
23 raise child together, gave child both their names, and held each other out as co-parents);
24 see also **Parentage of J.A.B.**, 146 Wn. App. 417, 191 P.3d 71 (2008) (the child always
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1 considered petitioner as his father, the child's legal parents fostered this "parent-like"
2 relationship, and the parents had at one point supported the idea of petitioner adopting
3 the child).

4 That the Miniums may have allowed John Shmilenko to provide care for Mason
5 during Mason's court-ordered residential time with Patti Shmilenko does not equate to
6 consenting to and fostering a parent-like relationship. A parent's "mere passive
7 acquiescence" in allowing a third party to care for her child is insufficient to meet this
8 first factor. See *Dependency of D.M.*, 136 Wn. App. at 397, ¶ 22 (parent did not
9 foster a "parent-like relationship" between child and maternal aunt when the parent
10 had abandoned child with her domestic partner, who in turn, left the child with the
11 aunt); *Adoption of R.L.M.*, 138 Wn. App. 276, 288-89, ¶ 21, 156 P.3d 940 (2007)
12 (paternal aunt who cared for the child when the parents' drug problems prevented
13 them from caring for the child could not show that parents "consented and fostered a
14 parent-like relationship"), *cert. denied*, 129 S.Ct. 343 (2008).
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18 John Shmilenko also cannot meet the second factor, because other than the
19 visitation that has been allowed by virtue of Patti Shmilenko's third party visitation order,
20 he has never "lived together [with the child] in the same household." See *Adoption of*
21 *R.L.M.*, 138 Wn. App. at 288, ¶ 21 (petitioner was not a *de facto* parent because there
22 was no evidence that the petitioner had lived with the child prior to an order allowing her
23 to do so when the child was found dependent). While no Washington case has
24 examined the extent that the petitioner and child must have lived together to meet this
25 factor, the ALI *Principles of the Law of Family Dissolution*, §2.03 (2000) provides
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1 some guidance. There, the drafters state, "the most significant factor in determining
2 whether an individual has 'lived with' a child is whether that individual and the child
3 regularly spend the night in the same residence." *Principles of the Law of Family*
4 *Dissolution*, §2.03 at 119.

5 While the ALI drafters described "exceptional circumstances" where other factors
6 will predominate over the overnight requirement, no such circumstances exist here. For
7 instance, the drafter provided an example where the child may stay in a non-parent's
8 home two overnights per week, plus an additional four days a week from early morning
9 before breakfast until bedtime when he is returned to the parent's home, and the non-
10 parent arranges for the child's medical care, enrolled him in school, and is the primary
11 source of discipline. *Principles of the Law of Family Dissolution*, §2.03 at 120,
12 Illustration 17. The drafters noted that under these "extreme circumstances," the court
13 may consider the non-parent a *de facto* parent even though the child does not spend the
14 night regularly in the non-parent's home. *Principles of the Law of Family Dissolution*,
15 §2.03 at 120, Illustration 17. Here, there is no similar "exceptional" or "extreme"
16 circumstance that would warrant finding that the child "lived" in the same household as
17 John Shmilenko to establish him as a *de facto* parent. John Shmilenko's contact allowed
18 for day visits on Tuesdays and Thursdays and an alternating weekend consisting of one
19 (1) overnight stay.

20 John Shmilenko also cannot prove the third factor that he "*assumed obligations of*
21 *parenthood without expectation of financial compensation.*" With the exception of any
22 incidentals that might be provided during Mason's residential time with Patti Shmilenko,
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1 John Shmilenko has not undertaken any obligations of parenthood – financial or
2 otherwise – to warrant a finding that he is *de facto* parent. As the Supreme Court held in
3 ***Parentage of M.F.***, 168 Wn.2d 528, 228 P.3d 1270 (2010), “attending school functions,
4 helping the child get dressed in the morning, or engaging in the other numerous events
5 that together make up family with a child” alone is not sufficient to establish standing for
6 a petitioner to pursue status as a *de facto* parent.
7

8 Finally, John Shmilenko cannot prove the fourth factor that he has been in “*parental*
9 *role for a length of time sufficient to have established with a child a bonded, dependent*
10 *relationship, parental in nature.*” As earlier stated, John Shmilenko’s relationship with
11 Mason is at best one that is “grandparental” in nature. This is unlike ***Parentage of L.B.***,
12 155 Wn.2d 679, where there was evidence that the child viewed the petitioner as her
13 mother, called her “mamma,” and the petitioner provided “much of the child’s mothering
14 during the first six years of life.” This is also unlike ***Parentage of B.M.H.***, ___ Wn.2d ___,
15 315 P.3d 470, where the child referred to the petitioner as his “father,” and witnesses
16 testified that the children saw the petitioner “as his one and only father [and] is bonded
17 with [petitioner] as any boy to his father.”
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19

20 Even if John Shmilenko could meet the test for a *de facto* parent, this court should
21 still reject its application here because it would lead to absurd results that would be
22 contrary to the child’s best interests. ***State v. Allenbach***, 136 Wn. App. 95, 103, ¶ 17,
23 147 P.3d 644 (2006) (it is a “well-settled rule that we must construe the law to avoid an
24 absurd result”). If John Shmilenko were established as Mason’s *de facto* parent his
25 “rights” as a “parent” would be elevated above the Miniums, who have been the child’s
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1 legal guardian for over six (6) years, and over even his wife, Patti Shmilenko, who is only
2 entitled to third party visitation, despite the fact that he is not biologically related to
3 Mason and his role in Mason's life has been extremely limited compared to the Miniums'.
4 This would be contrary to Mason's best interests, as it could potentially lead to the
5 disruption of his relationship with the Miniums. As the *L.B.* Court held, even if the test is
6 met, the petitioner "is not entitled to any parental privileges, as a matter of right only as is
7 determined to be in the best interests of the child at the center of any such dispute." 155
8 Wn.2d at 708-09, ¶ 41.
9

10 **B. If this court finds adequate cause for petitioner to pursue his *de facto***
11 **parentage claim, it should certify its decision for review under RAP 2.3(b)(4).**

12 In the event this court finds adequate cause on John Shmilenko's *de facto*
13 parentage action, this court should certify its ruling under RAP 2.3(b)(4) to allow
14 immediate review of the decision by the Court of Appeals. Whether a step-grandparent
15 whose contact with the child has been limited to visitation under a third party visitation
16 order to which he is not a party can establish himself as a *de facto* parent is a question
17 that should be addressed sooner rather than later to avoid a long drawn out litigation in
18 the superior court that may be terminated if the appellate court conclude the answer is
19 no. Whether the *de facto* parentage doctrine can be read so broadly to include
20 petitioners like John Shmilenko is a "controlling question of law as to which there is a
21 substantial ground for difference of opinion and that immediate review of the order may
22 materially advance the ultimate termination of the litigation." RAP 2.3(b)(4).
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III. CONCLUSIONS

The petitioners' respectfully request the court to dismiss John Shmilenko's *de facto* parent petition.

Respectfully submitted.

Dated: 2/13/14



NOELLE McLEAN, PS
WSB #22921
Attorney for Petitioners

Service accepted this

3rd day of Feb, 20 14

Kathy Williams *attorney*
Attorney for Respondent Patti.

FILED
SUPERIOR COURT

2014 FEB -3 P 2:39

Service accepted this

3rd day of Feb, 20 14

Kathy Williams *attorney*
Attorney for Respondent John

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY *sw*

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,

Child,

GREG MINIUM and LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and
GREG and LINDA MINIUM,

Respondents.

No. 08 3 00476 1

RESPONSE TO AMENDED
NONPARENTAL PARENT
CUSTODY PETITION

(RSP)

TO THE ABOVE-NAMED RESPONDENTS: JOHN SHMILENKO and PATTI SHMILENKO, by and through their attorneys BARRY DAHL and MATTHEW ANDERSON.

I. RESPONSE

1.1 ADMISSIONS AND DENIALS.

The allegations of the petition in this matter are ADMITTED or DENIED as follows (check only one for each paragraph):

...

...

...

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1 Paragraph of the Petition

- 2 1.1 Admitted and Unknown.
3 1.2 Admitted.
4 1.3 Admitted.
5 1.4 Admitted.
6 1.5 Admitted.
7 1.6 Admitted and denied.
8 1.7 Admitted.
9 1.8 Admitted and denied.
10 1.9 Denied.
11 1.10 Admitted.
12 1.11 Admitted.
13 1.12 Admitted.
14 1.13 Denied.
15 1.14 Denied.
16 1.15 Denied.

17 Each allegation of the petition which is denied is denied for the following reasons:

18 1.1 John Shmilenko's date of birth is unknown to Greg and Linda Minium, and
19 until recently, John Shmilenko resided primarily in Portland, Oregon.

20 1.6a Until recently, the respondent, Patti Shmilenko resided primarily in
21 Portland, Oregon.

22 1.8 The child has never resided primarily with the respondent, Patti
23 Shmilenko.

24 The child has resided primarily with Greg and Linda Minium since
25 08/07/2008.

26 John Shmilenko was interviewed by family court in the initial case, and
27 involved in that manner previously.

28 1.9 Greg and Linda Minium, deny there is a legal basis to establish visitation
for John Shmilenko pursuant to RCW 26.10, as nonparental visitation has
been ruled unconstitutional. The court has dismissed his claim under
RCW 26.10. Greg and Linda Minium deny John Shmilenko's proposed
residential schedule is in the child's best interests. Greg and Linda
Minium deny that visitation as requested by John and Patti Shmilenko is in
the child's best interests.

1 1.13 Greg and Linda Minium, deny there is adequate cause for visitation to
2 John Shmilenko pursuant to De Facto Parent. John Shmilenko has not
3 maintained a parent-child like relationship with the child, which is
4 acknowledged in his petition. John Shmilenko's proposed residential
5 schedule is not in the child's best interests.

6 Greg and Linda Minium are the primary parents for Mason, and exercise a
7 parent-child like relationship with Mason. Greg and Linda Minium have
8 not independently fostered any relationship between Mason Waddle and
9 John Shmilenko, and deny fostering any parent-child relationship between
10 John Shmilenko and the child. Greg and Linda Minium deny that John
11 Shmilenko has been actively involved with the child during Patti
12 Shmilenko's visits. For the first two (2) years of the visitation schedule,
13 John Shmilenko was not present at exchanges, preschool programs,
14 sports activities, any other activities, nor was he involved in
15 communications with the petitioners involving the child. Mason's
16 biological paternal grandfather, Richard Miller, is involved with Mason and
17 will continue to teach Mason about deceased father, Zach, if anything
18 should happen to Ms. Shmilenko. John Shmilenko is not a blood relative
19 to Mason Waddle.

20 John Shmilenko's request is predicated upon the possibility of something
21 happening to Patti Shmilenko, which Greg and Linda Minium deny is a
22 reality or the basis for an adequate cause finding.

23 The existing residential schedule between the Miniums and Patti
24 Shmilenko did not include John Shmilenko, and visits did not terminate
25 upon the passage of age 5, as Patti Shmilenko continued to exercise
26 visitation under the "preschool schedule."

27 John Shmilenko was not a party to the prior proceeding involving Patti
28 Shmilenko and cannot benefit by the agreements between those parties to
waive threshold requirements of adequate cause. John Shmilenko should
be required to meet the requirements of adequate cause.

1.14 See answer to 1.13 above.

1.15 Greg and Linda Minium have assumed the role of primary parent for
Mason Waddle, and they have not consented to or fostered a parent-like

1 relationship with John Shmilenko. Greg and Linda Minium have allowed
2 visitation to Patti Shmilenko pursuant to court order.

3 Mason lived with his biological parents until 08/07/2008 when he was
4 placed with Greg and Linda Minium shortly before their deaths. Greg and
5 Linda Minium deny that John Shmilenko has been present during all of
6 Patti Shmilenko's visits.

7 John Shmilenko has not assumed any obligations of parenthood.
8 Obligations of parenthood include but are not limited to: Providing a
9 permanent home for Mason; providing food with nutritional value;
10 providing clothing; making sure Mason has his health care needs met and
11 his immunizations up to date as well as his dental care needs covered
12 including his dental surgery; meeting Mason's school attendance
13 requirements at Mint Valley Elementary and communication with his
14 teacher; taking care of his specific allergy needs in regard to dog, cat, egg,
15 milk, peanut, grasses and hays; providing fair and appropriate discipline
16 needs; teaching acceptable behavior; teaching him about expectations in
17 life and guiding him with his goals; providing and promoting opportunities
18 and time with other children his age (playdates, birthday parties,
19 swimming, bowling, etc.); caring for his emotional and physical needs on a
20 daily basis; and etc. John Shmilenko cannot meet the criteria for De Facto
21 Parent. Patti Shmilenko, as Mason's biological grandmother, cannot meet
22 the criteria for De Facto Parent. Mason visits with Patti Shmilenko
23 approximately 144 hours out of 1,459 hours in a two (2) month period
24 (three full weekends out of eight) or 10% of the time. John and Patti
25 Shmilenko have no decision-making authority, and have not been involved
26 in those parenthood responsibilities. John Shmilenko has not fully and
27 completely undertaken a permanent, unequivocal, committed and
28 responsible parental role in Mason's life.

20 1.2 NOTICE OF FURTHER PROCEEDINGS.

21 Notice of all further proceedings in this matter should be sent to the address
22 shown on the last page of this form.

23 1.3 OTHER:

24 Requires John Shmilenko to contribute a reasonable amount towards the Greg and
25 Linda Minium's attorney fees and costs incurred in this action.
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1 II. REQUESTS

2 2.1 REQUEST FOR DISMISSAL.

- 3 A. Greg and Linda Minium request that the petition be dismissed due to lack
4 of adequate cause and as unconstitutional pursuant to RCW 26.10.160(3)
5 and supporting case law.
- 6 B. Greg and Linda Minium request that the petition be dismissed due to lack
7 of adequate cause and lack of substantive proof of the 4-prong test of De
8 Facto Parent as outlined in *In re Parentage of L.B.*, 155 Wn.2d 679, 707-
08, 122 P.3d 161 (2005) and progeny.

9 2.2 REQUEST FOR RELIEF IF THE PETITION IS NOT DISMISSED.

10 The responding party requests the court to grant the relief below.

- 11 A. Award custody of the child(ren) as follows:
12 To the respondents, Greg and Linda Minium.
- 13 B. Approve our proposed residential schedule for the dependent children,
14 which schedule is attached and incorporated into this response.
- 15 C. Award the tax exemptions for the dependent child(ren) as follows: to Greg
16 and Linda Minium every year.
- 17 D. Order payment of attorney's fees, other professional fees and costs.
- 18 E. For such other and further relief as the court may deem just and
19 appropriate.

20
21 Dated: 2/11/14


22 NOELLE McLEAN P.S. WSBA 22921
23 Attorney for Respondents
24 P O Box 757/415 S 3rd Avenue
25 Kelso WA 98626
26
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1 I declare under penalty of perjury under the laws of the state of Washington that the
2 foregoing is true and correct. Signed at Longview, Washington.

3 DATED: _____ See Attached
4 GREG MINIUM
5 Respondent

6 I declare under penalty of perjury under the laws of the state of Washington that the
7 foregoing is true and correct. Signed at Longview, Washington.

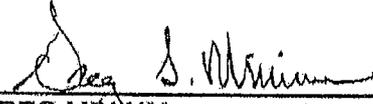
8 DATED: _____ See Attached
9 LINDA MINIUM
10 Respondent

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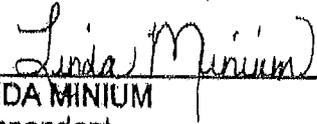
I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Signed at Longview, Washington.

DATED: 2-2-2014


GREG MINIMUM
Respondent

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Signed at Longview, Washington.

DATED: 2/2/14


LINDA MINIMUM
Respondent

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,
Child,
GREG MINIUM and LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
Respondent.

No. 08 3 00476-1

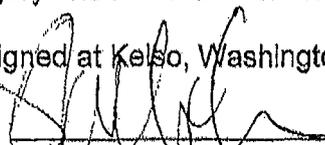
CERTIFICATE OF FACSIMILE
TRANSMISSION

I declare and state as follows:

The undersigned has examined the following documents: Response to Amended Nonparental Parent Custody Petition, signed by Greg Minium and Linda Minium, consisting of one signature page. This document is complete and legible, including the signature page. This declaration is made pursuant to GR 17.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed at Kelso, Washington.

DATED: 2/2/14



NOELLE McLEAN P.S. WSB 22921
Attorney for Petitioner

CERTIFICATE OF FACSIMILE TRANSMISSION
Page 1

Noelle A. McLean PS
Attorney at Law
415 S 3rd Avenue - P.O. Box 757
Kelso, Washington 98626
(360) 425-0111 - (360) 425-2232 Fax
noelle@noellemclean.com

FILED
SUPERIOR COURT

2014 FEB -3 P 12:03

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY slw

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of

MASON WADDLE,

Child,

GREGORY SCOTT MINIUM and
LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

JOHN SHMILENKO,

PATTI SHMILENKO, and
GREG and LINDA MINIUM,

Respondents.

No. 08 3 00476 1

ORDER CONSOLIDATING
CASES

Clerk's Action Required

(No Mandatory Form Developed)

This matter came before the Court on Petitioner JOHN SHMILENKO's motion for an order which consolidates Cowlitz County Cause Number 13 3 00787 2 with this cause of action Cowlitz County Superior Court Cause Number 08 3 00476 1, and sets each action for trial together. The motion was made on the ground that both actions present common questions of law and fact which can conveniently be tried together without prejudice to any party.

90

1 The Court heard the oral argument of counsel for Petitioner JOHN SHMILENKO,
2 Barry J. Dahl, and counsel for Respondents MINIMUM, Noelle A. McLean. The Court,
3 having considered the argument of counsel, the pleadings, records, and other evidence
4 filed in this action, and otherwise being fully advised, *finds as follows:*

5 1. Cause No. 13 3 00787 2, which is now pending in this Court, and the
6 instant action present common questions of law and fact.

7 2. The two actions can be conveniently tried together without prejudice to
8 any party and consolidation of the actions for trial will serve judicial economy.

9 Based on the above findings, *It is Ordered:*

10 1. Petitioner JOHN SHMILENKO's motion is granted.

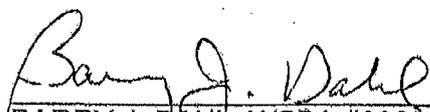
11 2. The above-captioned action and Cowlitz County Superior Court Cause
12 Number 13 3 00787 2 are consolidated under Cause Number 08 3 00476 1. The
13 consolidated cases shall be tried together.
14

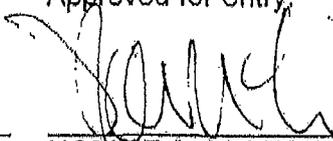
15 DATED: February 3, 2014.

16
17 
18 JUDGE STEPHEN M. WARNING

19 Presented by:

Approved for entry:

20 
21 BARRY J. DAHL, WSBA #3309
22 Of Attorneys for Respondents
SHMILENKO
23 Dated: February 3, 2014


24 NOELLE A. McLEAN, WSBA #22921
25 Of Attorneys for Petitioners/Respondents
MINIUM
26 Dated: February 3, 2014

1 Service of this document is
2 hereby accepted this 21
3 day of Jan, 2014
NOELLE MOLEAN (u)
4 Attorneys for Miniums

7 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

8 In re the Custody of

9 MASON WADDLE,

10 Child,

11 GREGORY SCOTT MINIUM and
12 LINDA MINIUM,

13 Petitioners,

14 and

15 PATTI KAY SHMILENKO,

16 JOHN SHMILENKO,

17 PATTI SHMILENKO, and
18 GREG and LINDA MINIUM,

19 Respondents.

No. 08 3 00476 1

SECOND AMENDED
NONPARENTAL PARENT
CUSTODY PETITION
(PTCUS)

20 I. BASIS

21 1.1 IDENTIFICATION OF MOVING PARTY.

22 Name: JOHN SHMILENKO, Birth date: December 25, 1953

23 Residence: Cowlitz County, Washington

24 1.2 IDENTIFICATION OF OTHER PARTIES.

25 a. Name: GREGORY SCOTT MINIUM, Birth date: September 20, 1955

26 Residence: Cowlitz County, Washington

SECOND AMENDED NONPARENTAL PARENT CUSTODY
PETITION (PTCUS) - Page 1 of 9
WPF CU 01.0100 Mandatory (07/2011) -- RCW 26.10.030(1)

Walstead Mertsching PS
Civic Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, Washington 98632-7934
(360) 423-5220

COPY

COPY to Client 1/31/14

DR 107

- 1 b. Name: LINDA MINIUM, Birth date: September 17, 1955
- 2 Residence: Cowlitz County, Washington
- 3 c. Name: PATTI KAY SHMILENKO, Birth date: June 10, 1958
- 4 Residence: Cowlitz County, Washington
- 5 1.3 CHILD FOR WHOM CUSTODY IS SOUGHT.
- 6 Name: MASON WADDLE, Age: 6
- 7 1.4 IDENTIFICATION OF ALL ADULTS LIVING IN MOVING PARTY'S HOUSEHOLD.
- 8 Name: JOHN SHMILENKO, Age: 60
- 9 Name: PATTI KAY SHMILENKO, Age: 55
- 10 1.5 INDIAN CHILD WELFARE ACT.
- 11 Child's Indian Status: The child is not an Indian child as defined in Laws of 2011,
- 12 ch. 309, §4, and the federal and Washington State Indian Child Welfare Acts do
- 13 not apply to these proceedings.
- 14 1.6 JURISDICTION.
- 15 a. The following Respondents reside in the state of Washington:
- 16 (1) Respondent PATTI KAY SHMILENKO;
- 17 (2) Petitioner/Respondent GREG MINIUM;
- 18 (3) Petitioner/Respondent LINDA MINIUM.
- 19 b. The following Respondents were personally served with summons and
- 20 petition within this state:
- 21 (1) Petitioner/Respondent GREG MINIUM;
- 22 (2) Petitioner/Respondent LINDA MINIUM.
- 23 c. Respondent PATTI KAY SHMILENKO submitted to the jurisdiction of this
- 24 state by consent as evidenced by joinder signed by Respondent PATTI
- 25 KAY SHMILENKO.

26 ///

1 d. Petitioners/Respondents GREG MINIUM and LINDA MINIUM reside with
2 the child in this state.

3 1.7 JURISDICTION OVER THE CHILD.

4 This court has jurisdiction over this proceeding for the reasons below.

5 a. This court has exclusive continuing jurisdiction. The court has previously
6 made a child custody, parenting plan, residential schedule or visitation
7 determination in this matter and retains jurisdiction under RCW 26.27.211.

8 b. This state is the home state of the child because the child lived in
9 Washington with a person acting as a parent for at least six consecutive
10 months immediately preceding the commencement of this proceeding.

11 1.8 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT
12 INFORMATION.

13 <u>Name of Child</u>	<u>Parent's Name</u>	<u>Parent's Name</u>
14 MASON WADDLE	LIBBY M. DAVIS MINIUM	ZACHARY A. WADDLE
	(Deceased)	(Deceased)

16 The child permanently resides in this county or can be found in this county.

17 a. During the last five years, the child has lived:

18 (1) In no place other than the state of Washington and with no person
19 other than Respondent PATTI KAY SHMILENKO or Petitioners.

20 (2) With Libby M. Davis Minium and Zachary A. Waddle, the deceased
21 biological parents, at 530 – 23rd Avenue, Longview, Cowlitz County,
22 Washington, up until their deaths on August 9, 2008; and since that
23 time, Mason has resided with Petitioners/Respondents GREGORY
24 SCOTT MINIUM and LINDA MINIUM with visitation to Respondent
25 PATTI KAY SHMILENKO.

26 (3) The child permanently resides in this county.

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b. Claims to custody or visitation.

The following persons have physical custody of, or claim to have custody or visitation rights to, the child:

- (1) Respondent PATTI KAY SHMILENKO
- (2) Petitioner/Respondent GREGORY SCOTT MINIUM
- (3) Petitioner/Respondent LINDA MINIUM.

c. Involvement in any other proceeding concerning the child.

Moving Party JOHN SHMILENKO has not been involved in any other legal proceedings concerning the child.

d. Other legal proceedings concerning the child.

Moving Party JOHN SHMILENKO does not know of any other legal proceedings concerning the child.

1.9 VISITATION.

a. **Moving Party JOHN SHMILENKO:** Visitation should be as set forth in the proposed Residential Schedule previously filed with this court on November 14, 2013, which is incorporated by reference as part of this Petition.

b. **Respondent PATTI SHMILENKO:** Visitation should be as set forth in the proposed Residential Schedule previously filed with the court on November 14, 2013, which is incorporated by reference as part of this Petition.

1.10 CHILD SUPPORT.

Does not apply

1.11 HEALTH INSURANCE COVERAGE.

Does not apply.

///

1 1.12 CONTINUING RESTRAINING ORDER.

2 Does not apply.

3 1.13 ADEQUATE CAUSE

4 a. MASON WADDLE ("MASON") is not in the custody of a parent, because
5 MASON has no living parents. JOHN SHMILENKO's proposed residential
6 provisions are in MASON's best interests. JOHN SHMILENKO is married to
7 Respondent PATTI KAY SHMILENKO, who is MASON's biological
8 grandmother. JOHN SHMILENKO is MASON's stepgrandfather, a
9 nonparent to MASON and an adult member of Respondent PATTI KAY
10 SHMILENKO's household. He has maintained a grandparent-grandchild
11 relationship with MASON throughout MASON's lifetime. JOHN
12 SHMILENKO has, and has had, a close and loving grandparent bond with
13 MASON during MASON's lifetime.

14 b. Since the entry of the original nonparental custody decree by the court,
15 JOHN SHMILENKO has been present with Respondent PATTI KAY
16 SHMILENKO during visits with the child. JOHN SHMILENKO has no other
17 children or grandchildren and treats MASON as if they were biologically
18 related. MASON is JOHN SHMILENKO's grandchild in every way except by
19 birth. Even though JOHN SHMILENKO's interest as a grandparent of
20 MASON was not formally established in this Court's Cause
21 No. 08 3 00476 1, he has been a grandparent to MASON during every step
22 of that court proceeding. It is in MASON's best interest that JOHN
23 SHMILENKO have established visitation that will continue even in the event
24 PATTI KAY SHMILENKO no longer is able to exercise visitation.

25 ///

26 ///

1 c. Petitioners and Respondent PATTI KAY SHMILENKO stipulated "that they
2 have not made visitation provisions for MASON beyond age five (5) such
3 that Adequate Cause is not necessary for the Court to review the residential
4 schedule" in that case. [AGREED FINDINGS OF FACT AND
5 CONCLUSIONS OF LAW, entered March 23, 2010, page 3, para. 2.13.]
6 Petitioners and Respondent PATTI KAY SHMILENKO also agreed that
7 "Adequate Cause is not necessary to review the residential schedule when
8 the child is five (5) years old." [Id. at page 4, para. 3.7.]

9 d. Petitioners and Respondent PATTI KAY SHMILENKO agreed that "the
10 parties recognize the child will be entering school, and it is appropriate to
11 review the child's developmental stage and visitation issues at that time."
12 [AGREED FINAL ORDER RESIDENTIAL SCHEDULE entered March 23,
13 2010, page 2, para. 3.2.] As a result, JOHN SHMILENKO need not
14 establish additional adequate cause in order for the Court to entertain this
15 Petition, as Petitioners have already agreed that revisiting visitation at this
16 stage is appropriate at this stage in MASON's life. Even if the Court
17 disagrees regarding the stipulated Order and Findings of Fact, the facts set
18 forth in paragraphs a. and b. of this section, and in this Petition generally,
19 provide Adequate Cause for JOHN SHMILENKO's Petition to go forward.

20 1.14 BEST INTEREST OF THE CHILD.

21 The requests made in this petition are in the best interests of the child as set
22 forth in paragraph 1.13 above and 1.15 below.

23 ///

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1 1.15 ALLEGATION REGARDING EQUITABLE CLAIMS FOR PARENTAL STATUS.

2 Moving Party JOHN SHMILENKO is the de facto parent of MASON WADDLE
3 because:

4 a. (1) MASON WADDLE ("MASON") has no living parents who are able to
5 consent to and foster the parent-like relationship;

6 (2) MASON lived with his deceased biological parents until the time of their
7 deaths on August 9, 2008. Since that time, MASON has resided with
8 Petitioners, GREGORY SCOTT MINIUM and LINDA MINIUM. Moving
9 Party, JOHN SHMILENKO, and Respondent PATTI KAY SHMILENKO
10 and the child have lived together in the same household during all
11 visitations.

12 (3) Moving Party, JOHN SHMILENKO, has assumed the obligations of
13 parenthood without expectation of financial compensation.

14 (4) Moving Party, JOHN SHMILENKO, has fully and completely undertaken a
15 permanent, unequivocal, committed and responsible parental role in the
16 child's life.

17 b. In the alternative, Moving Party, JOHN SHMILENKO, petitions the Court
18 for custody/visitation under the equitable powers of the Court as
19 articulated in *In re Parentage of L.B.*, 155 Wn.2d 679, 688-89, 122 P.3d
20 161 (2008).

21 ///

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1 ***Joinder***

2 I, PATTI KAY SHMILENKO, join in the petition. I understand that by joining in the
3 petition, a decree or judgment and order may be entered in accordance with the relief
4 requested in the petition, unless, prior to the entry of the decree or judgment and order,
5 a response is filed and served.

6 I request notice of all further proceedings in this matter. Further notice
7 should be sent to my attorneys, Walstead Mertsching at 1700 Hudson
8 Street Third Floor Longview WA 98632.

9 Any time this address changes while this action is pending, you must notify the
10 opposing parties in writing and file an updated Confidential Information Form
11 (WPF DRPSCU 09.0200) with the court clerk.

12 Dated: January _____, 2014.

13
14 See attached

15 PATTI KAY SHMILENKO

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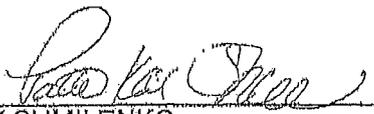
Joinder

I, PATTI KAY SHMILENKO, join in the petition. I understand that by joining in the petition, a decree or judgment and order may be entered in accordance with the relief requested in the petition, unless, prior to the entry of the decree or judgment and order, a response is filed and served.

I request notice of all further proceedings in this matter. Further notice should be sent to my attorneys, Walstead Mertsching at 1700 Hudson Street Third Floor Longview WA 98632.

Any time this address changes while this action is pending, you must notify the opposing parties in writing and file an updated Confidential Information Form (WPF DRPSCU 09.0200) with the court clerk.

Dated: January 31st, 2014.



PATTI KAY SHMILENKO

1 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

2 In re the Custody of

3 MASON WADDLE,

4 child,

5 GREGORY SCOTT MINIUM and
6 LINDA MINIUM,

7 Petitioners,

8 and

9 PATTI KAY SHMILENKO,

10 JOHN SHMILENKO,

11 PATTI SHMILENKO, and
12 GREG and LINDA MINIUM,

13 Respondents.

No. 08 3 00476 1

AFFIDAVIT REGARDING FILING
DOCUMENT TRANSMITTED BY
FACSIMILE/EMAIL

(No Mandatory Form Developed)

14 STATE OF WASHINGTON)
15 County of Cowlitz) ss.

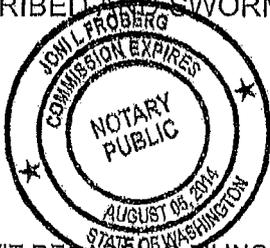
16 HEIDI THOMAS being first duly sworn, on oath, deposes and says as follows:

17 1. I am the legal assistant to MATTHEW ANDERSEN, counsel for
18 Respondents, JOHN SHMILENKO and PATTI K. SHMILENKO, in the above-entitled
19 action.

20 2. I received the attached SECOND AMENDED NONPARENTAL PARENT
21 CUSTODY PETITION by facsimile or email transmission. I have examined the attached
22 SECOND AMENDED NONPARENTAL PARENT CUSTODY PETITION, determined that
23 it consists of 11 pages (including this page), and it is complete and legible.

24 Heidi Thomas
HEIDI THOMAS

25 SUBSCRIBED AND SWORN to before me this 31st day of January 2014.



26 Signature Joni L. Froberg
Printed Name Joni L. Froberg
Notary Public for the state of Washington
My Appointment Expires 8-5-14

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IN THE SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the custody of:

NO. 13-3-00787-2

MASON WADDLE,

Child,

JOHN SHMILENKO,

Petitioner,

and

PATTI SHMILENKO, GREG MINIUM
and LINDA MINIUM,

Respondents.

VERBATIM REPORT OF PROCEEDINGS

Monday, January 13, 2014
Cowlitz County Superior Court, Hall of Justice
312 S.W. First Avenue
Kelso, WA 98626

BEFORE: THE HONORABLE JUDGE STEPHEN M. WARNING

Barry J. Dahl, of WALSTEAD MERTSCHING, P.S., P.O. Box 1549,
Longview, WA, 98632; Attorney for Petitioner

NOELLE A. McLEAN, Attorney at Law, P.O. Box 757, Kelso, WA,
98626; Attorney for Respondents, Greg and Linda Minium.

Prepared at the Request of Noelle McLean, Attorney at Law

THREE RIVERS TRANSCRIPTS
P.O. Box 515
Castle Rock, WA 98611

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Page No.

Proceedings

ADEQUATE CAUSE/MOTION FOR CONSOLIDATION:

3

1 MONDAY, JANUARY 13, 2014, 9:54 A.M.; KELSO, WASHINGTON

2
3 MR. DAHL: Your Honor --

4 THE COURT: Go ahead.

5 MR. DAHL: -- on the Petitioner's Motions.

6 John Shmilenko has filed a Chapter 26.10
7 Petition requesting a visitation order. In that
8 proceeding, it's necessary to identify adequate cause in
9 order to proceed for Mr. Shmilenko. The adequate cause
10 determination is governed by 26.10.032(1) and it
11 requires an Affidavit or Declaration declaring the child
12 is not in the physical custody of a parent and setting
13 forth facts supporting the Petitioner's Petition.

14 In support of adequate cause, John and Patti
15 Shmilenko have provided Declarations which factually
16 establish that Mason is not in the physical custody of a
17 parent; that John Shmilenko has a bonded, grandparent-
18 type relationship with Mason; and that Mason's -- has
19 actually been visiting with John since Mason's birth;
20 and, also, at times as ordered by this Court for the
21 past five years, approximately, for Patty Shmilenko.

22 In addition to the Shmilenkos' Declarations,
23 Charlotte Rosen, a qualified GAL, as well as an expert,
24 has provided this Court with her Declarations and report
25 regarding her physical --

1 MS. MCLEAN: Your Honor, I'm going to object, as
2 that has not been submitted pursuant to the existing
3 cause number, which is 13-3-00787-2.

4 MR. DAHL: It is a matter --

5 MS. MCLEAN: The Court has not consolidated those
6 cases; the investigation was specifically related to --
7 well, it was supposed to have been a mediation, but
8 specifically related to the visitation rights of -- and
9 the visitation agreement between the Respondents in this
10 case; it's highly improper for the Court to consider
11 information and Declarations outside of the existing
12 case; and, I would submit that the Court should not
13 consider that information, it has not been filed in this
14 cause number.

15 THE COURT: Okay.

16 I don't think there's any reason that I can't
17 consider pertinent Affidavits from other cases, it's
18 part of the court record. I don't think there's any
19 special importure (sic) just by putting a different
20 cause number on it.

21 All right, go ahead.

22 MR. DAHL: Thank you, Your Honor.

23 The Declarations and report from Charlotte
24 Rosen is based upon her personal observations of John's
25 relationship with Mason over a nine-month period of

1 time. Based on her experience, her observations, it's
2 her professional judgment and recommendation -- excuse
3 me, not, but recommendation -- that John's visitation
4 continue.

5 We're also here on a Motion for Consolidation
6 and a Motion for Appointment of GAL. John and Patti
7 Shmilenko each have separate court cases regarding the
8 same issues, and that is the court-ordered visitation
9 with their six-year old grandson, Mason. John's filed a
10 Motion to Consolidate, pursuant to CR 42(a), because, as
11 identified in the Court Rule, there are common questions
12 of law and fact for both cases; this proposed
13 consolidation is more convenient for the Court, for
14 witnesses, and the parties. There is no possible
15 prejudice that I can identify for Linda and Greg Minium,
16 given the identical factual issues in both cases, and
17 trying this matter once, instead of twice, serves the
18 interests of both judicial and personal economy.

19 Regarding the appointment of a GAL, the
20 Miniums request the the Shmilenkos pay the entire GAL
21 fee. There is no basis or evidence to justify such a
22 partition of this expense and the parties' agreed 2008
23 residential Order reserved the determination of
24 visitation for the school schedule. The original Family
25 Court investigation cost was divided equally, there's no

1 basis to order otherwise today. The equal partition in
2 2008 was based on the parties' income being
3 approximately the same. The Court Order is identified
4 in the Patti Shmilenko case as number two, which is
5 under the Motion for Consolidation of that case.

6 THE COURT: Go ahead.

7 MS. MCLEAN: May it please the Court.

8 I represent the Respondents, Greg and Linda
9 Minium. Let me just preface my comments by saying I --
10 I am concerned by Mr. Dahl's presentation and Mr.
11 Shmilenko's attempt, essentially, to unjustly enrich
12 himself or benefit by the agreement that was reached
13 between the Miniums and Patti Shmilenko.

14 Throughout his comments to the Court so far,
15 he has attempted to benefit by that agreement, by saying
16 that the visitation was reserved. He wasn't a party to
17 that visitation agreement. He attempts to now identify,
18 at least in argument, that Charlotte Rosen is Guardian
19 ad Litem. She was previously proffered to my clients as
20 the mediator, as mediates -- mediation was contemplated
21 in the original residential schedule between the
22 Respondents, not the Petitioner.

23 As it relates to the legal avenues for Mr.
24 Shmilenko to be here, he has filed a Petition under RCW
25 26.10. His Petition is for visitation. 26.10 is a

1 statute for nonparental custody, and I've outlined in my
2 Memorandum that I filed with the Court on January 7,
3 2014, the nonparental visitation issues that I have
4 concerns with.

5 First off, the question -- the first question
6 in my mind for the Court is: What avenue does Mr.
7 Shmilenko have in order to come to court? Based upon
8 the case law and the statutory authority, it appears
9 that he has two different avenues. The first is a 26.10
10 custody petition; the second is a de facto parent
11 petition. He has not filed a de facto parent petition,
12 we're here under 26.10, and I would submit that under
13 the case law there is no legislative authority for him
14 to pursue nonparental visitation.

15 Once a statute has been determined to be
16 unconstitutional, as the Court indicated previously, and
17 in the cases that I outlined in my Memorandum, the Court
18 has to then look to determine if it is severable. The
19 Court has determined, *In re Custody of Smith*, that this
20 statute that Mr. Shmilenko is attempting to seek legal
21 redress is not severable, that it is unconstitutional.
22 And the case of *L.B.* went on further to say that a
23 statute, once it's been held facially unconstitutional,
24 renders the statute entirely inoperative.

25 And so, today, there is no legal avenue for

1 Mr. Shmilenko, under 26.10, to come into court and say:
2 I want a visitation request. I agree with Mr. Dahl in
3 his Supplemental Memorandum that he submitted that if
4 the Court were to get to the issues, and the only issue
5 before the Court would be as to custody placement of
6 Mason, that as between two nonparents, two competing
7 nonparents, the issue, or the standard, the legal
8 standard, is the best interests of the child; but, there
9 is no legal avenue at this juncture for visitation under
10 26.10.

11 He does have a legal avenue, however, under de
12 facto parent and he has failed to file a Petition under
13 de facto parent. He has failed to submit the four
14 statutory factors that would meet a de facto parent.
15 And if the Court harkens back to the other case
16 involving Patti Shmilenko, you collaterally estopped my
17 clients from benefitting years later, and arguably the
18 Court should collaterally estop Mr. Shmilenko from
19 benefitting and enriching himself from an agreement that
20 was reached between these now Respondents in his case.

21 And, in fact, if you look at the factors under
22 de facto parent, you will see that because of that
23 Court-ordered visitation, Mr. Shmilenko would fail as it
24 relates to that test. This is not a case where common
25 law comes into place, because he does have a legal

1 avenue with de facto parent that he has failed to claim.

2 And, so, we would submit that it is not
3 appropriate for nonparental visitation under 26.10; that
4 he has an obligation to pursue any visitation requests
5 under the de facto parent, he has failed to do so; and,
6 that, essentially, the Court should dismiss his case.

7 If the Court finds that somehow the 26.10
8 statute for nonparental visitation remains viable
9 because there is not a parent in this case, although I
10 would argue that the statute does not carve out a
11 circumstance for this type of a case -- the statute is
12 clear and unambiguous in its language and, again, as
13 indicated by the *L.B.* case is not severable -- but if
14 you were to determine, then the question is: Is whether
15 or not there is adequate cause to establish a --
16 proceeding forward.

17 And, again, the concern that I have is that at
18 this juncture, Mr. Shmilenko is, first off, he files his
19 Petition under a basis that -- what if? What if
20 something happens to my wife? What if that hap --
21 something happens to my wife that she is unable to
22 exercise her visitation and sometimes in the future,
23 when I'm looking into my crystal ball that I am somehow
24 then cut out of his life? Those "what ifs" have not yet
25 occurred.

1 The question is: Is whether or not he has
2 standing, at this juncture, to pursue a visitation claim
3 when those "what ifs" have not occurred? Why are we
4 here? He, at least under his own Declarations, is
5 already enjoying a benefit of a legal case that his wife
6 and the Respondents entered in to, so why are we here?

7 If the Court is looking at adequate cause, his
8 initial pleadings and, I would submit, his current
9 pleadings do not meet the basis of adequate cause,
10 particularly as it relates to custody. If you're
11 talking about visitation, then the question is: Is --
12 how is it appropriate for him to benefit from a court-
13 ordered visitation plan? And again, when you look back
14 to the de facto parent -- when you look back to the de
15 facto parent factors, one of the factors was that the
16 visitation was of that parent's own accord, rather than
17 a court order, and his visitation, since this child was
18 nine months old, has been all due to a Court Order by
19 virtue of being married to the Petitioner in another
20 case.

21 So, again, the concern is: Is why should he be
22 allowed to benefit by that in pursuing this action? And
23 we would submit that the Court should not allow that
24 type of unjust enrichment in this type of a case.

25 Let's see -- as it relates to consolidation,

1 again, just by virtue of today's argument, I'm concerned
2 that Mr. Shmilenko is going to attempt to benefit from
3 the agreements that were reached between the
4 Respondents. The issues related to his Petition are
5 establishing an initial either custody order or
6 visitation plan. If the Court believes that there is
7 legal avenue to allow him to do that, rather than
8 dismiss this case; wherein the case involving Ms.
9 Shmilenko and my clients, that's a modification of an
10 existing residential schedule.

11 So while I recognize that the parties are the
12 same, assuming that Mr. Shmilenko is allowed to pursue
13 his case, the factors, I believe, are very different in
14 establishing an initial residential schedule versus --
15 or custody plan, versus modifying an existing schedule
16 that he has not been a party to for the past four years.
17 So, or position is that the Court should not consolidate
18 the cases.

19 If the Court dismisses, as we've requested, we
20 believe that the Shmilenkos should be required -- or Mr.
21 Shmilenko should be required to provide us his 2012 tax
22 return and proof of his 2013 wage information. We don't
23 know that information; we didn't know that information,
24 to the best of my recollection, back in 2009 because
25 child support was not an issue between nonparents; and,

1 we should be entitled to submit an attorney aff --
2 Attorney Fee Affidavit for an award of fees, based upon
3 the dismissal.

4 THE COURT: Mr. Dahl?

5 MR. DAHL: Two comments/areas of discussion: One,
6 reference to Charlotte Rosen's qualifications, and
7 that's what it was, and her qualifications includes the
8 Court's qualifications for a GAL, and that was provided
9 in that context.

10 RCW 26.10.160(3) specifically states: "Any
11 person may petition the court for visitation rights at
12 any time, but not including to custody proceedings. The
13 court may order visitation for any person when
14 visitation may serve in the best interests of the child,
15 whether or not there has been any change in
16 circumstances." The expert's report identifies the
17 expert's opinion that it is in the best interests of the
18 child that visitation proceed for both Patti and John
19 Shmilenko. And this isn't something that Mr. Shmilenko
20 is doing -- he's doing it on behalf of his spouse and
21 his spouse's family, and that is the concern. It's only
22 in that extreme circumstance in which Mrs. Shmilenko is
23 not available.

24 And none of us hope that would ever happen,
25 but it's beyond me how grandparents are fighting over

1 this, in which two sets of grandparents have an extreme
2 tragedy, and now one of the grandparents is being
3 pointed out that because he's not by blood, he has no
4 basis to do what he's doing. The statute, Chapter 26.10
5 RCW, specifically grants him the authority to do what he
6 is doing.

7 THE COURT: Okay, I want to take a short break. I
8 thought I had all the legal information that I needed.
9 I want to go look at one statutory reference again, make
10 sure I've got the language correct in my head, so give
11 me five minutes.

12 MS. MCLEAN: All right.

13 (Court recesses at 10:11 a.m.)

14 (Court resumes at 10:18 a.m.)

15 THE COURT: All right, thank you.

16 THE CLERK: You are welcome.

17 THE COURT: Okay, a starting point: The Legislature
18 has, for reasons known only to them, made family law
19 really, really, really complicated; okay? The starting
20 point way back when, when they launched the new
21 parenting plan statutes was 'we are gonna simplify
22 everything,' and it has gone entirely the other
23 direction.

24 Then we have this tragic situation that
25 everybody is trying their best to make work that the

1 Legislature, because they've gotten so complex and so
2 detailed, they didn't account for you guys. But, at the
3 same time, they've said, 'by God, this is it, if you
4 don't fit into these boxes,' -- I don't know what. They
5 just say if you don't fit in the box then you don't fit
6 and nothing happens.

7 So, that makes it difficult; okay? And,
8 unfortunately, it probably makes it expensive, too,
9 because we're kind of plowing new ground with you
10 people, I think. That's not anybody's fault, it's just
11 where it is.

12 As I said before, and I still think it's
13 really important, Mr. Shmilenko was not party to that
14 original agreement, so he doesn't benefit from it nor
15 does he suffer from it. I don't think he can be
16 collaterally estopped from anything by virtue of that
17 agreement because he's not a party to it.

18 I agree with Ms. McLean that there is no basis
19 under 26.10 for this proceeding. I think Mr. Shmilenko
20 is limited to the de facto parent option. Now, having
21 said that, I guess I suppose one thing I can do today
22 then is to say: Okay, this is dismissed, and then run
23 everybody back through the hamster wheel again until we
24 come back in under another proceeding. Mr. Shmilenko
25 can convert the Petition he filed to a de facto

1 parenting proceeding, but I think that's the legal
2 standard that applies to this action. His visits, to
3 date, have not been pursuant to a Court Order because
4 there is no Order that gives him visitation of any time.

5 So, I'm gonna allow the matter to proceed
6 under a de facto parenting structure. It is his
7 obligation to convert that Petition, but it just -- it
8 seems to me that I should save everybody one trip to
9 court; and, assuming that there is an additional GAL
10 fee, under the circumstances I think it's appropriate
11 that it's his responsibility.

12 MR. DAHL: Can I ask Your Honor, in your decision,
13 what the applicability of 26.10.160(3) is, then?

14 THE COURT: I -- I think, by its language, it
15 doesn't apply, it very specifically limits it, that
16 section, and I think it doesn't apply here.

17 So, that's --

18 MS. MCLEAN: So, for purposes of your ruling, would
19 you please go through the four factors of de facto
20 parent, so we know what your findings are as it relates
21 to them?

22 THE COURT: I'm going to wait until the Amended
23 Petition comes in and a proposed Order, and then we'll
24 deal with those.

25 MS. MCLEAN: So, is the Court going to entertain

1 another Motion --

2 THE COURT: I think just by way of presentation --

3 MS. MCLEAN: -- arguing the --

4 THE COURT: -- we'll address them.

5 I -- I guess I don't want to put words in
6 anyone's mouth; I don't want to anticipate the language
7 of the Amended Petition, but based on what's been
8 presented here, I anticipate that we have that present,
9 so --

10 MS. MCLEAN: Well, I guess by virtue of your
11 ruling, in allowing him leave to file as a de facto
12 parent, my question, essentially, is: Are you then
13 precluding us from again moving this Court to dismiss if
14 we feel he has not met the four factors at first blush?

15 THE COURT: No, not at all.

16 MS. MCLEAN: Okay, I just wanted to make clear that
17 I'm still able --

18 THE COURT: Right.

19 MS. MCLEAN: -- to pursue a Motion to Dismiss --

20 THE COURT: Yeah, I --

21 MS. MCLEAN: -- because I anticipate de facto --
22 although I'll have to look back at it, I'm anticipating
23 de facto requires an adequate cause finding, as well.

24 THE COURT: Yeah, and I -- as I said, we're in
25 fairly-complex legal ground here; okay? I'm trying my

1 best to follow the law, but at the same time not just
2 put these people, you know, on a treadmill of legal
3 proceedings that's going to cost everybody money they
4 certainly shouldn't have to spend just because of the
5 complexity of the statute. So, I want to wait until I
6 see a proposed Order --

7 MR. DAHL: Your Honor --

8 THE COURT: -- I think we do need adequate -- a
9 finding of adequate cause and that needs to be part of
10 the Order; but, I want to see that when I have the
11 Amended Petition in my hand, as well.

12 MR. DAHL: Could I ask the question, Your Honor:
13 Did the Court have the opportunity to look at the Reply
14 Memorandum that my office prepared --

15 THE COURT: Yes.

16 MR. DAHL: -- and emailed to you?

17 THE COURT: Yes.

18 MR. DAHL: Could I ask, then, the applicability of
19 *In Custody of S.H.B.* and --

20 THE COURT: Okay, I --

21 MR. DAHL: -- it's 118 W.App 2nd --

22 THE COURT: -- I've given you my ruling, I'm not
23 going to debate it; I'm not gonna say why this case does
24 or doesn't apply; okay?

25 But, we need an Amended Petition and we'll

1 address that at presentation --

2 MS. MCLEAN: So, is --

3 THE COURT: -- what the Order looks like, and we'll
4 do that on the 3rd.

5 MR. DAHL: Okay.

6 Now, what about the Guardian --

7 MS. MCLEAN: Okay, so -- before we move on to the
8 Guardian ad Litem, may I just ask a further
9 clarification question?

10 THE COURT: Yes.

11 MS. MCLEAN: So, for purposes of a written Order,
12 you said you're allowing him leave to convert his
13 Petition; he's to file his new converted, or Amended
14 Petition, at the time of our presentation; and, then, at
15 a later date we'll address any further Motion for
16 Adequate Cause and/or Motion to Dismiss --

17 THE COURT: No --

18 MS. MCLEAN: -- is that --

19 THE COURT: -- he's gonna file an Amended Petition
20 and a Proposed Order Finding Adequate Cause at
21 presentation; all right?

22 I think based on what's in the file and what
23 I've read I would find adequate cause; but, I want the
24 Petition so the language tracks.

25 MR. DAHL: And is the adequate cause --

1 MS. MCLEAN: So I don't have an opportunity to have
2 input on that? Or my clients to file a --

3 THE COURT: You'll have an opportunity at
4 presentation, but I -- we have -- we've plowed the
5 ground of the factual issues present here. I don't want
6 these folks to have to go through the process all over
7 again, just under a different heading. I don't think
8 that there's anything that's missing from the Affidavits
9 that I need in order to make that preliminary finding.

10 MR. DAHL: Is the adequate cause to be determined
11 under Chapter 26.10, which hasn't --

12 THE COURT: No, it's under de facto parent.

13 MR. DAHL: Under de facto parenting --

14 THE COURT: Right.

15 MR. DAHL: -- which is common law, not statutory.

16 THE COURT: Right.

17 MR. DAHL: Okay.

18 THE COURT: Yeah, the Order should indicate that
19 26.10 does not apply to this circumstance.

20 Then, on the GAL issue?

21 MR. DAHL: Yes.

22 MS. MCLEAN: I've contacted --

23 THE COURT: You had a question?

24 MR. DAHL: Well, we filed a Motion in both cases
25 for an appointment of GAL. It's the same GAL, I would

1 assume.

2 THE COURT: And I don't have any problem with that,
3 but he bears the cost.

4 MR. DAHL: Okay, could I ask the question, then:
5 Without him, we would still need a GAL under the Court
6 Rule --

7 THE COURT: Okay, given the circumstances that have
8 gotten us to this point, this is strictly a matter of
9 equity and there are equitable arguments on both sides
10 that are perfectly valid; but, I think that's the best I
11 can do, so he's gonna bear that cost.

12 MS. MCLEAN: So --

13 MR. DAHL: And what is the GAL cost?

14 MS. MCLEAN: Well, I have the next three names on
15 the list, they are: Mayrie Grimm; Jamie Parnell; and
16 Chris Luchamen.

17 MR. DAHL: Well, no, the cost.

18 MS. MCLEAN: Each one of them has a different fee
19 schedule --

20 THE COURT: Yeah.

21 MS. MCLEAN: -- depending upon who the Court
22 appoints.

23 THE COURT: I -- I think we should -- from their
24 standpoint, it should be treated as one case and not
25 two. I don't want them to double up, but whoever of the

1 three ends up with it, it's whatever their fee is.
2 MS. MCLEAN: Is the Court consolidating the cases,
3 or --
4 THE COURT: Yes.
5 MS. MCLEAN: Okay.
6 THE COURT: Yeah --
7 MR. DAHL: Your Honor, I did --
8 THE COURT: -- and, again, solely to try to
9 mitigate the costs involved to the parties, I think
10 consolidation is appropriate.
11 MR. DAHL: I did prepare separate Orders, one for
12 consolidation and one for the appointment of a GAL.
13 THE COURT: Let's address all those on the 3rd.
14 MS. MCLEAN: All right.
15 MR. DAHL: Okay.
16 I mean, the Order is just fill in the blanks.
17 THE COURT: Okay, well, I just --
18 MS. MCLEAN: Yeah.
19 THE COURT: -- it's gonna be complex enough, I
20 don't want to sign anything ahead of time.
21 MR. DAHL: Okay, now, what date did you provide?
22 THE COURT: The 3rd.
23 MR. DAHL: Okay.
24 THE COURT: Does that work, Ms. Mclean?
25 MS. MCLEAN: Yes.

1 MR. DAHL: Yeah, that works.

2 THE COURT: All right.

3 MS. MCLEAN: And, so, of those three names, I would
4 point out that Chris Luchamen did the original Family
5 Court investigation in this matter. I think that that
6 conflicts him out.

7 THE COURT: Go through the process, and if you
8 don't have an agreement I will address it.

9 MS. MCLEAN: Okay.

10 MR. DAHL: Question about the Petition, the Amended
11 Petition.

12 Are we required to do an Amended Summons? Or
13 is the Petition being amended to the provision under
14 common law?

15 THE COURT: No, I don't think you need to do an
16 Amended Summons. I just think you need to amend the
17 Petition --

18 MR. DAHL: Just be able to serve --

19 MS. MCLEAN: And I'll --

20 THE COURT: -- and serve Ms. McLean.

21 MR. DAHL: -- Ms. McLean?

22 MS. MCLEAN: -- file a timely Response.

23 THE COURT: All right.

24 MS. MCLEAN: I'll file a timely Response.

25 MR. DAHL: Okay, well --

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THE COURT: All right.

MR. DAHL: Okay.

MS. MCLEAN: Thank you.

THE COURT: The 3rd at 9:00.

MS. MCLEAN: Thank you.

(Proceedings conclude at 10:28 a.m.)

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CERTIFICATE

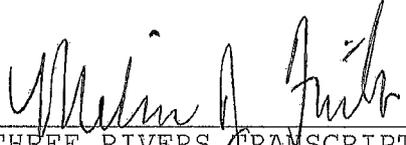
I, Melissa Firth, do hereby certify:

That I am a court-approved transcriber for the State of Washington, County of Cowlitz;

That the annexed and foregoing transcript of digitally recorded proceedings was transcribed by me;

I further certify that the transcript is a true and correct record of all audible portions of the recorded testimony, including questions and answers, and all objections, motions and exceptions of counsel made and taken at the time of the foregoing proceedings. Areas of the record which were not decipherable for any reason are noted as [inaudible].

Dated this 24th day of January, 2014.



THREE RIVERS TRANSCRIPTS
By Melissa J. Firth
P.O. Box 515
Castle Rock, WA 98611
(360) 749-1754

Service accepted this
3 day of Dec, 20 13
BTD NCR
Attorney for petitioner J. Shmilenko

ENDORSED FILED
SUPERIOR COURT
DEC 03 2013
COWLITZ COUNTY
BEVERLY R LITTLE, Clerk

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,

Child,

JOHN SHMILENKO,

Petitioner,

and

PATTI SHMILENKO, GREG MINIUM,
and LINDA MINIUM,

Respondents.

No. 13 3 00787 2

RESPONSE TO NONPARENTAL
CUSTODY PETITION

(RSP)

TO THE ABOVE-NAMED PETITIONER and RESPONDENT: JOHN SHMILENKO and
PATTI SHMILENKO, by and through their attorney BARRY DAHL.

I. RESPONSE

1.1 ADMISSIONS AND DENIALS.

The allegations of the petition in this matter are ADMITTED or DENIED as
follows (check only one for each paragraph):

Paragraph of the Petition

1.1 Admitted and Unknown,

- 1 1.2 Admitted.
- 2 1.3 Admitted.
- 3 1.4 Admitted.
- 4 1.5 Admitted.
- 5 1.6 Admitted.
- 6 1.7 Admitted.
- 7 1.8 Admitted and denied.
- 8 1.9 Denied.
- 9 1.10 Admitted.
- 10 1.11 Admitted.
- 11 1.12 Admitted.
- 12 1.13 Denied.
- 13 1.14 Denied.
- 14 1.15 Admitted.

Each allegation of the petition which is denied is denied for the following reasons:

- 11 1.1 Petitioner's date of birth is unknown to the respondents, Greg and Linda Minium.
- 13 1.8 The court has already collaterally estopped John Shmilenko from being joined as a necessary party to the existing action in 08-3-00476-1. John Shmilenko is not a biological parent of the minor child, has not had custody of this child, and does not have legal standing to request visitation pursuant to RCW 26.10. In addition, the child has been in the respondents Greg and Linda Minium's placement since 08/07/2008. Denied that the child has lived within anyone other Greg and Linda Minium for the past five (5) years in the state of Washington.
- 19 1.9 Respondents, Greg and Linda Minium, deny there is a legal basis to establish visitation for the petitioner pursuant to RCW 26.10, as nonparental visitation has been ruled unconstitutional. The Respondents deny the Petitioner's proposed residential schedule is in the child's best interests.
- 22 1.13 Respondent, Greg and Linda Minium, deny there is adequate cause for visitation to the petitioner, pursuant to RCW 26.10.160(3) and In re Custody of Smith, 137 Wash.2d 1, 969 P.2d 21 (1998) which held that nonparental visitation is unconstitutional. John Shmilenko is not a blood relative to Mason Waddle. Petitioner was not part of the Residential Schedule set by the court in March of 2010 pursuant to an agreement between Greg and Linda Minium and Patti Shmilenko. The Joinder of John Shmilenko at Ms. Shmilenko's request was denied due to judicial

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1 estoppel. Petitioner has limited contact with Mason when Mason visits his
2 paternal grandmother, Patti Shmlenko. Petitioner was not a party to the
3 action in 08-3-00476-1 and should be precluded from benefitting from
4 decisions made between the parties that ultimately provided for
5 unconstitutional visitation to the respondent, Patti Shmlenko. Petitioner is
6 required to prove adequate cause and his petition is to stand on its own
7 merits, per the Order Re: Joinder of John Shmlenko entered on
8 10/28/2013 in Cowlitz County Superior Court Cause number 08-3-00476-
9 1.

10 1.14 See answer to 1.13 above.

11 1.2 NOTICE OF FURTHER PROCEEDINGS.

12 Notice of all further proceedings in this matter should be sent to the address
13 shown on the last page of this form.

14 1.3 OTHER:

15 Requires the petitioner to contribute a reasonable amount towards the respondents'
16 (Greg and Linda Minium) attorney fees and costs incurred in this action.

17 II. REQUESTS

18 2.1 REQUEST FOR DISMISSAL.

19 The responding party requests that the petition be dismissed due to lack of
20 adequate cause and as unconstitutional pursuant to RCW 26.10.160(3) and
21 supporting case law.

22 2.2 REQUEST FOR RELIEF IF THE PETITION IS NOT DISMISSED.

23 The responding party requests the court to grant the relief below.

24 A. Award custody of the child(ren) as follows:

25 To the respondents, Greg and Linda Minium.

26 B. Approve our proposed residential schedule for the dependent children,
27 which schedule is attached and incorporated into this response.

28 C. Award the tax exemptions for the dependent child(ren) as follows: to Greg
and Linda Minium every year.

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D. Order payment of attorney's fees, other professional fees and costs.

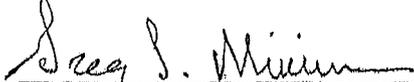
E. For such other and further relief as the court may deem just and appropriate.

Dated: 12/11/13


NOELLE McLEAN P.S. WSBA 22921
Attorney for Respondents
P O Box 757/415 S 3rd Avenue
Kelso WA 98626

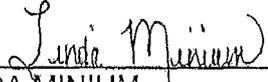
I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Signed at Kelso, Washington.

DATED: 12/2/13


GREG MINIMUM
Respondent

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Signed at Kelso, Washington.

DATED: 12/2/13


LINDA MINIMUM
Respondent

ENDORSED FILED
SUPERIOR COURT

NOV 14 2013

COWLITZ COUNTY,
BEVERLY R LITTLE, Clerk

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of
MASON WADDLE,
Child,
JOHN SHMILENKO,
Petitioner,
and
PATTI SHMILENKO, GREG MINIUM and
LINDA MINIUM,
Respondents.

No. 13 3 00787 2

NONPARENTAL CUSTODY
PETITION
(PTCUS)

I. PARTIES

1.1 IDENTIFICATION OF PETITIONER.

a. Name: JOHN SHMILENKO, Birth date: December 25, 1953
Last known residence: Cowlitz County, Washington

1.2 IDENTIFICATION OF OTHER PARTY/PARTIES.

a. Name: PATTI SHMILENKO, Birth date: June 10, 1958
Last known residence: Cowlitz County, Washington

b. Name: GREG MINIUM, Birth date: September 20, 1955
Last known residence: Cowlitz County, Washington

COPY
Walstead Mertsching PS
Civic Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, Washington 98632-7934
(360) 423-5220

CC - Client 11/12/13 AS CC: PDP DR-147 3/11/14

1 c. Name: LINDA MINIUM, Birth date: September 17, 1955

2 Last known residence: Cowlitz County, Washington

3 1.3 DEPENDENT CHILD.

4 Name: MASON WADDLE, Age: 6

5 1.4 IDENTIFICATION OF ALL ADULTS LIVING IN PETITIONER'S HOUSEHOLD.

6 Name: JOHN SHMILENKO, Age: 59

7 Name: PATTI SHMILENKO, Age: 55

8 1.5 INDIAN CHILD WELFARE ACT.

9 Child's Indian Status: None of the children are Indian children as defined in Laws
10 of 2011, ch. 309, §4, and the federal and Washington State Indian Child Welfare
Acts do not apply to these proceedings.

11 1.6 JURISDICTION.

12 a. The following Respondents reside in the state of Washington:

13 (1) Respondent PATTI SHMILENKO;

14 (2) Respondent GREG MINIUM;

15 (3) Respondent LINDA MINIUM.

16 b. The following Respondents will accept service or will be personally served
17 with summons and petition within this state:

18 (1) Respondent GREG MINIUM;

19 (2) Respondent LINDA MINIUM.

20 c. Respondent PATTI SHMILENKO submits to the jurisdiction of this state by
21 consent as evidenced by joinder signed by Respondent and attached to
this Petition.

22 1.7 JURISDICTION OVER THE CHILD.

23 This court has jurisdiction over this proceeding for the reasons below.

24 a. This court has exclusive continuing jurisdiction. The court has previously
25 made a child custody, parenting plan, residential schedule or visitation
determination in Cowlitz County Superior Court Cause No. 08 3 00476 1
and retains jurisdiction under RCW 26.27.211.

26 ///

1 b. This state is the home state of the child because the child lived in
2 Washington with a parent or a person acting as a parent for at least six
3 consecutive months immediately preceding the commencement of this
4 proceeding.

5 1.8 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT
6 INFORMATION.

7 <u>Name of Child</u>	<u>Parent's Name</u>	<u>Parent's Name</u>
8 MASON WADDLE	9 LIBBY M. DAVIS MINIUM	10 ZACHARY A. WADDLE,
	11 (deceased)	12 (deceased)

13 a. During the last five years, the child has lived in the following places with
14 the following persons:

15 With Libby M. Davis Minium and Zachary A. Waddle, the deceased
16 biological parents, at 530 - 23rd Avenue, Longview, Cowlitz County,
17 Washington, up until their death on August 9, 2008; and since that time,
18 Mason has resided with Respondents GREG MINIUM and LINDA MINIUM
19 with visitation to Respondent PATTI SHMILENKO.

20 The child permanently resides in this county.

21 b. During the last five years, the child has lived:

22 In no place other than the state of Washington and with no person other
23 than Respondents or Petitioner.

24 c. Claims to custody or visitation.

25 The following persons have physical custody of, or claim to have custody
26 or visitation rights to, the child:

(1) Respondent PATTI SHMILENKO;

(2) Respondent GREG MINIUM;

(3) Respondent LINDA MINIUM.

d. Involvement in any other proceeding concerning the child.

Respondents have been involved in the following proceedings regarding
the child:

Cowlitz County Superior Court Cause No. 08 3 00476 1, in which
the parties entered and the court approved an Agreed Residential
Schedule Final Order concerning the child. Said Order provides for
custody to Respondents GREG MINIUM and LINDA MINIUM and

1 for visitation to Respondent PATTI SHMILENKO, but does not
2 provide for visitation to Petitioner, PATTI SHMILENKO's husband
3 and the child's step-grandfather. That action involves the same
4 questions of law and fact as this action. Petitioner requests that
this action be consolidated with Cowlitz County Superior Court
Cause No. 08 3 00476 1 in the interests of justice and of the mutual
convenience of the parties, of witnesses, and of the Court.

5 e. Other legal proceedings concerning the child.

6 Petitioner knows of no legal proceedings which concern the child other
7 than the action identified above and this present matter.

8 1.9 VISITATION.

9 **Petitioner JOHN SHMILENKO:** Visitation should be as set forth in Petitioner's
Proposed Residential Schedule which is incorporated by reference as part of this
Petition.

10 **Respondent PATTI SHMILENKO:** Visitation should be as set forth in
11 Petitioner's Proposed Residential Schedule which is incorporated by reference
as part of this Petition.

12 1.10 CHILD SUPPORT.

13 Does not apply.

14 1.11 HEALTH INSURANCE COVERAGE.

15 Does not apply.

16 1.12 CONTINUING RESTRAINING ORDER.

17 Does not apply.

18 1.13 ADEQUATE CAUSE.

19 a. MASON WADDLE ("MASON") is not in the custody of a parent, because
20 MASON has no living parents. Petitioner's proposed residential provisions are in
21 MASON's best interests. JOHN SHMILENKO is married to Respondent PATTI
SHMILENKO, who is MASON's biological grandmother. JOHN SHMILENKO is
22 MASON's step-grandfather, a nonparent to MASON and an adult member of
Respondent's household. He has maintained a grandparent-grandchild
23 relationship with MASON throughout MASON's lifetime. JOHN SHMILENKO has,
and has had, a close and loving grandparent bond with MASON during MASON's
lifetime.

24 b. Since the entry of the original nonparental custody decree in this Court's
25 Cause No. 08 3 00476 1, JOHN SHMILENKO has been present with Respondent
PATTI SHMILENKO during visits with the child. JOHN SHMILENKO has no other
26 children or grandchildren and treats MASON as if they were biologically related.

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MASON is JOHN SHMILENKO's grandchild in every way except by birth. Even though JOHN SHMILENKO's interest as a grandparent of MASON was not formally established in this Court's Cause No. 08 3 00476 1, he has been a grandparent to MASON during every step of that court proceeding. It is in MASON's best interest that JOHN SHMILENKO have established visitation that will continue even in the event PATTI SHMILENKO no longer is able to exercise visitation.

c. In Cowlitz County Superior Court Cause No. 08 3 00476 1, the Respondents stipulated "that they have not made visitation provisions for Mason beyond age five (5) such that Adequate Cause is not necessary for the Court to review the residential schedule" in that case. [Agreed Findings of Fact and Conclusions of Law, entered March 23, 2010, page 3, para. 2.13.] Respondents also agreed that "Adequate Cause is not necessary to review the residential schedule when the child is five (5) years old." [id. at page 4, para. 3.7.]

d. In Cause No. 08 3 00476 1, Respondents agreed that "the parties recognize the child will be entering school, and it is appropriate to review the child's developmental stage and visitation issues at that time." [Agreed Final Order Residential Schedule entered March 23, 2010, page 2, para. 3.2.] As a result, JOHN SHMILENKO need not establish additional adequate cause in order for the Court to entertain this Petition, as Respondents have already agreed that revisiting visitation at this stage is appropriate at this stage in MASON's life. Even if the Court disagrees regarding the stipulated Order and Findings of Fact, the facts set forth in paragraphs a. and b. of this section, and in this Petition generally, provide Adequate Cause for JOHN SHMILENKO's Petition to go forward.

1.14 BEST INTEREST OF THE CHILD.

The requests made in this petition are in the best interests of the child as set forth in paragraph 1.13 above.

1.15 OTHER:

Does not apply.

I. RELIEF REQUESTED

Petitioner **requests** that the court enter an order finding that there is adequate cause for hearing this Petition and **requests** the following relief:

2.1 Consolidate this matter with Cowlitz County Superior Court Cause No. 08 3 00476 1, which involves common questions of law and fact with this Petition and said causes should be adjudicated together in the interests of justice, and the mutual convenience of the parties, of witnesses and of the Court.

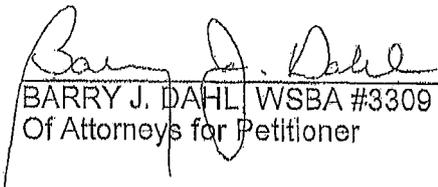
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1 2.2 Approve Petitioner Proposed Residential Schedule pursuant to paragraph 1.9.

2 Dated: November 13, 2013.

3
4 
5 BARRY J. DAHL WSBA #3309
6 Of Attorneys for Petitioner

7 I declare under penalty of perjury under the laws of the state of Washington that the
8 foregoing is true and correct.

9 Signed at _____, _____, on November _____, 2013.
10 City State

11 [See attached signature by facsimile]
12 JOHN SHMILENKO, Petitioner

13 **Joinder**

14 I, PATTI K. SHMILENKO, join in the petition. I understand that by joining in the petition,
15 a decree or judgment and order may be entered in accordance with the relief requested
16 in the petition, unless, prior to the entry of the decree or judgment and order, a response
17 is filed and served.

18 Dated: November _____, 2013.

19 [See attached signature by facsimile]
20 PATTI SHMILENKO, Respondent

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1 2.2 Approve Petitioner Proposed Residential Schedule pursuant to paragraph 1.9.

2 Dated: November _____, 2013.

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BARRY J. DAHL, WSBA #3309
Of Attorneys for Petitioner

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at PORTLAND OREGON on November 13, 2013.
City State


JOHN SHMILENKO, Petitioner

Joinder

I, PATTI K. SHMILENKO, join in the petition. I understand that by joining in the petition, a decree or judgment and order may be entered in accordance with the relief requested in the petition, unless, prior to the entry of the decree or judgment and order, a response is filed and served.

Dated: November 13, 2013.


PATTI SHMILENKO, Respondent

1
2 SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

3 In re the Custody of

4 MASON WADDLE,

5 Child,

6 JOHN SHMILENKO,

7 Petitioner,

8 and

9 PATTI SHMILENKO, GREG MINIUM and
10 LNIDA MINIUM,

11 Respondents.

No.

AFFIDAVIT REGARDING FILING
DOCUMENT TRANSMITTED BY
FACSIMILE/EMAIL

(No Mandatory Form Developed)

12 STATE OF WASHINGTON

13 County of Cowlitz

} ss.

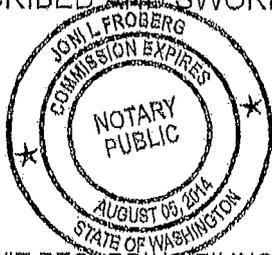
14 KAREN MURPHY being first duly sworn, on oath, deposes and says as follows:

15 1. I am the legal assistant to BARRY J. DAHL, counsel for Petitioner, JOHN
16 SHMILENKO, in the above-entitled action.

17 2. I received the attached NONPARENTAL CUSTODY PETITION by facsimile
18 or email transmission. I have examined the attached NONPARENTAL CUSTODY
19 PETITION, determined that it consists of seven pages (including this page), and it is
20 complete and legible.

21 *Karen Murphy*
22 KAREN MURPHY

23 SUBSCRIBED AND SWORN to before me this 13th day of November 2013.



Signature *Joni L. Froberg*
Printed Name Joni L. Froberg
Notary Public for the state of Washington
My Appointment Expires 8-5-14

AFFIDAVIT REGARDING FILING DOCUMENT
TRANSMITTED BY FACSIMILE/EMAIL - Page 1 of 1

Walstead Mertsching PS
Civic Center Building, Third Floor
1700 Hudson Street
PO Box 1549
Longview, Washington 98632-7934
(360) 423-5220

1 2. Based on the factual submissions in this action, JOHN SHMILENKO will be ~~able~~ ^{permitted}
2 to state the factual basis needed to properly bring his own Third-Party Custody or De
3 Facto Parentage action.

4 3. In the event JOHN SHMILENKO brings a Third-Party Custody or De Facto
5 Parentage, it will be more convenient for the parties and more helpful to the Court if his
6 action is consolidated with the present action, ~~given that the questions of law and of fact~~
7 ~~would be the same.~~ ^{consolidation} Such ~~joinder~~ would be in the interest of justice and of the efficient
8 adjudication of both matters.

9
10 Based on the above findings, **It Is Ordered:**

- 11 1. Respondent's August 30, 2013 MOTION TO ADD PARTY is denied.
12 2. ~~JOHN SHMILENKO is granted leave to commence his action alleging De Facto~~
13 ~~Parentage or Third-Party Custody as to MASON WADDLE.~~

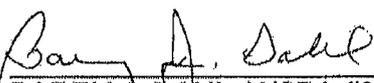
14 3. In the event JOHN SHMILENKO properly commences such a De Facto
15 Parentage or Third-Party Custody action as to MASON WADDLE, the Court will sign an
16 Order ^{consolidating} ~~joining~~ this case with JOHN SHMILENKO's new action. - ^{His action would}
17 ~~have to stand on its own merits.~~ SM

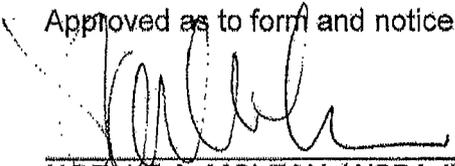
18 DATED: October 28, 2013

19
20 
JUDGE STEPHEN M. WARNING

21 Presented by:

Approved as to form and notice of

22
23 
24 BARRY J. DAHL, WSBA #3309
Of Attorneys for Respondent
25 Dated: October 28, 2013

26

NOELLE A. MCLEAN, WSBA #22921
Of Attorneys for Petitioners
Dated: October 28, 2013

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FILED
SUPERIOR COURT

2013 OCT -7 A 11:54

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK
[Signature]

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of
MASON WADDLE,
Child,
GREG MINIUM and LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
Respondent.

No. 08 3 00476 1

**ORDER RE: TEMPORARY
AMENDMENTS TO FINAL
ORDER RESIDENTIAL
SCHEDULE AND JOINDER
REQUEST**

(OR)

Respondent PATTI SHMILENKO presented to this Court on September 16, 2013, MOTION FOR TEMPORARY AMENDED RESIDENTIAL SCHEDULE and MOTION TO ADD PARTY. Petitioners, Respondent and the Requesting Party, with their attorneys, appeared in person. The Court having considered the Motions, Declarations, Memorandums of Law and the Court file, and finding that: (1) this case involves nonparents and does not involve the deceased parents of the child; (2) ~~there is no constitutional prohibition to the Petition filed by the Respondent and Requesting Party;~~ (3) judicial estoppel applies to Petitioners' request this proceeding be dismissed; (4) there has been an effort to mediate the concerns between the parties; (5) the child has a strong

BDO 10/7/13

[Signature]
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AGO 10/7/13

1 relationship with both sets of biological grandparents and ~~Respondent Party~~, JOHN
2 SHMILENKO; (6) Charlotte Rosen is a qualified therapist and her report and
3 recommendation filed as a Sealed Confidential Report has been considered by the Court;
4 and (7) finding good cause,

5 **It is hereby Ordered:**

6 1. § 3.2 SCHOOL SCHEDULE of this Court's March 23, 2010 AGREED FINAL
7 ORDER RESIDENTIAL SCHEDULE is amended as follows:

8 a. The child, MASON WADDLE, now age 6, shall reside with GREG and
9 LINDA MINIMUM (nonparental custodians), except for visits with PATTI
10 SHMILENKO: on the second weekend of each month as defined by Friday,
11 commencing October 2013 from Friday 6:00 p.m. to Sunday 6:00 p.m.; and the
12 fourth weekend of alternating months, as defined by Friday, commencing
13 September 2013 from Friday 6:00 p.m. to Sunday 6:00 p.m.

14 b. The child shall have one midweek telephone call with Respondent PATTI
15 SHMILENKO each Tuesday at 6:00 p.m., or at such other time as the parties
16 agree. *

17 2. Subject to paragraph 1. above, this Court's March 23, 2010 AGREED FINAL
18 ORDER RESIDENTIAL SCHEDULE continues as this Court's Residential Order.

19 3. The MOTION TO ADD PARTY by JOHN SHMILENKO is deferred for further
20 argument at presentation. Said requested joinder is also conditional until the

21 /// *C. For 2013, Petitioners have 12/23 at 10am to 12/26 at
22 /// 12am, and Respondent has 12/24 at 10am to
23 /// 12/25 at 10:00 Am. J 10/7/13
24 /// BAO 10/7/13
25 ///
26 ///

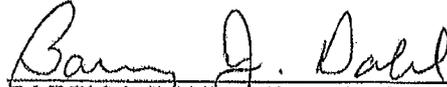
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necessary and acceptable DCFS/CPS Investigation Information Report and WSP
Criminal History Record are filed with the Court.

DATED: October 7, 2013.

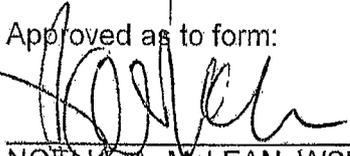

JUDGE STEPHEN M. WARNING

Presented by:


BARRY J. DAHL, WSBA #3309
Of Attorneys for Respondent

Dated: October 3, 2013

Approved as to form:


NOELLE A. McLEAN, WSBA #22921
Of Attorneys for Petitioners

Dated: October 7, 2013


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FILED
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2013 AUG 30 P 3:54

COWLITZ COUNTY
BEVERLY R. LITTLE, CLERK

BY BD

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of

MASON WADDLE,

Child,

GREG MINIUM and LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

Respondent.

No. 08 3 00476 1

SUMMONS (MODIFICATION/
ADJUSTMENT OF CUSTODY
DECREE/PARENTING PLAN/
RESIDENTIAL SCHEDULE)
(SM)

TO: GREG MINIUM and LINDA MINIUM, Petitioners.

1. An action has been started in the above court requesting that a residential schedule be modified. Additional requests, if any, are stated in the petition, a copy of which is attached to this notice.
2. You must respond to this notice and petition by serving a copy of your written response on the person signing this summons and by filing the original with the clerk of the court. If you do not serve your written response within 20 days (or 60 days if you are served outside of the state of Washington) after the date this summons was served on you, exclusive of the day of service, the court may

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1 enter an order of default against you, and the court may, without further notice to
2 you, enter an order regarding adequate cause and a decree to modify/adjust the
3 parenting plan/residential schedule and providing for other relief requested in the
4 petition. If you serve a notice of appearance on the undersigned person, you are
5 entitled to notice before an order of default or a decree may be entered.

6 3. Adequate cause for hearing the petition has previously been established and the
7 court may set a date for hearing why the requested order or modification should
8 not be granted. Temporary amended residential visitation is being sought. The
9 court may proceed immediately to hear the motion for temporary
10 placement/custody, or may continue the matter to a later time.

11 4. You may file an opposing declaration to show that there is not adequate cause to
12 hold a full hearing. If you do not file an opposing declaration or respond and the
13 court finds that adequate cause exists, the court may enter an adequate cause
14 order and an order modifying/adjusting the custody decree/parenting
15 plan/residential schedule without notice to you pursuant to RCW 26.09.270.

16 5. Your written response to the summons and petition must be on form WPF
17 DRPSCU 07.0200, Response to Petition for Modification/Adjustment of Custody
18 Decree/Parenting Plan/Residential Schedule. This form may be obtained by
19 contacting the clerk of the court at the address below, by contacting the
20 Administrative Office of the Courts at (360) 705-5328, or from the Internet at the
21 Washington State Courts homepage:

22 <http://www.courts.wa.gov/forms>

23 ///
24 ///
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- 1 6. If this action has not been filed with the court, you may demand that Respondent
- 2 file this action with the court. If you do so, the demand must be in writing and
- 3 must be served upon the person signing this notice. Within 14 days after you
- 4 serve the demand, Respondent must file this action with the court, or the service
- 5 on you of this summons and petition will be void.
- 6 7. If you wish to seek the advice of an attorney in this matter, you should do so
- 7 promptly so that your written response, if any, may be served on time.
- 8 8. One method of serving a copy of your response on Respondent is to send it by
- 9 certified mail with return receipt requested.

10 This summons is issued pursuant to Superior Court Civil Rule 4.1 of the state of
11 Washington.

12 DATED: August 30, 2013.

13
14 Barry J. Dahl #45260 for
15 BARRY J. DAHL, WSBA #3309
16 Of Attorneys for Respondent

17 ***File original of your response***
18 ***with the clerk of the court at:***
19 Cowlitz County Superior Court Clerk
20 Hall of Justice
21 312 SW First Avenue
22 Kelso, WA 98626
23 Phone: (360) 577-3016

Serve a copy of your response
on Respondent's attorney:
Barry J. Dahl
Attorney at Law
Civic Center Building, Third Floor
1700 Hudson Street
Longview, WA 98632
Phone: (360) 423-5220

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2013 AUG 30 P 3: 54

COWLITZ COUNTY
DEVERLY R. LITTLE, CLERK

BY _____

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of
MASON WADDLE,
Child,
GREG MINIUM and LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
Respondent.

No. 08 3 00476 1

PETITION FOR
MODIFICATION/ADJUSTMENT
OF CUSTODY
DECREE/PARENTING
PLAN/RESIDENTIAL SCHEDULE
(PTMD)

I. PARTIES

1.1 IDENTIFICATION OF REQUESTING PARTY/PARTIES.

a. Name: PATTI K. SHMILENKO, Birth date: June 10, 1958
Last known residence: Cowlitz County, Washington

b. Name: JOHN SHMILENKO, Birth date: December 25, 1953
Last known residence: Cowlitz County, Washington

1.2 IDENTIFICATION OF OTHER PARTY/PARTIES.

a. Name: GREG MINIUM, Birth date: September 20, 1955
Last known residence: Cowlitz County, Washington

1 b. Name: LINDA MINIUM, Birth date: September 17, 1955
2 Last known residence: Cowlitz County, Washington

3 1.3 DEPENDENT CHILD.

4 Name: MASON WADDLE, Age: 6

5 II. BASIS

6 2.1 PETITION FOR AN ORDER MODIFYING CUSTODY DECREE/PARENTING
7 PLAN/RESIDENTIAL SCHEDULE.

8 This is a petition for an order modifying the prior custody decree/parenting
9 plan/residential schedule/judgment establishing parentage and approving the
10 proposed amended parenting plan/residential schedule, which is filed with this
11 petition.

12 2.2 ADEQUATE CAUSE.

13 There is adequate cause for hearing the petition for modification pursuant to:

14 a. Paragraph 3.7 of the March 23, 2010 Agreed Findings of Fact and
15 Conclusions of Law; and

16 b. Paragraph 3.2 of the March 23, 2010 Residential Schedule Final Order.

17 2.3 CHILD SUPPORT.

18 Does not apply.

19 2.4 JURISDICTION AND VENUE.

20 The court has proper jurisdiction and venue.

21 a. The Requesting Parties reside in Cowlitz County, Washington and
22 Portland, Oregon.

23 b. The child resides in Cowlitz County, Washington.

24 c. Petitioners reside in Cowlitz County, Washington.

25 ///

26 ///

1 2.5 JURISDICTION OVER PROCEEDING.

2 This court has jurisdiction over this proceeding for the reasons below.

3 a. This court has exclusive continuing jurisdiction. The court has previously
4 made a child custody, parenting plan, residential schedule or visitation
5 determination in this matter and retains jurisdiction under RCW 26.27.211.

6 b. This state is the home state of the child because the child lived in
7 Washington with persons acting as a parent for at least six consecutive
8 months immediately preceding the commencement of this proceeding;
9 and any absences from Washington have been only temporary.

10 c. No other state has jurisdiction.

11 2.6 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT
12 INFORMATION.

<u>Name of Child</u>	<u>Parent's Name</u>	<u>Parent's Name</u>
MASON WADDLE	LIBBY M. DAVIS MINIUM (deceased)	ZACHARY A. WADDLE, (deceased)

17 a. During the last five years, the child has lived in the following places
18 with the following persons:

19 With Libby M. Davis Minium and Zachary A. Waddle, the
20 deceased biological parents, at 530 - 23rd Avenue,
21 Longview, Cowlitz County, Washington, up until their death
22 on August 9, 2008; and since that time, Mason has resided
23 with Petitioners with visitation to PATTI SHMILENKO and
24 JOHN SHMILENKO.

25 ///

26 ///

- 1 b. Claims to custody or visitation.
- 2 The Requesting Parties do not know of any person other than
- 3 Petitioners who has physical custody of, or claims to have custody
- 4 or visitation rights to, the child.
- 5 c. Involvement in any other proceeding concerning the child:
- 6 The Requesting Parties have not been involved in any other
- 7 proceedings regarding the child.
- 8 d. Other legal proceedings concerning the child:
- 9 The Requesting Parties do not know of any other legal proceedings
- 10 concerning the child.

11 2.7 CUSTODY DECREE OR PARENTING PLAN/RESIDENTIAL SCHEDULE.

12 The Agreed Final Order Residential Schedule was entered on March 23, 2010 at

13 Cowlitz County, Washington.

14 2.8 MODIFICATION UNDER RCW 26.09.260(1), (2).

15 Does not apply.

16 2.9 MODIFICATION OR ADJUSTMENT UNDER RCW 26.09.260(4) OR (8).

17 Does not apply.

18 2.10 ADJUSTMENT TO RESIDENTIAL PROVISIONS UNDER RCW 26.09.260(5)(a)

19 AND (b).

20 Does not apply – see § 2.1.

21 2.11 ADJUSTMENTS TO RESIDENTIAL PROVISIONS UNDER RCW

22 26.09.260(5)(c), (7), (9).

23 Does not apply.

24 ///

25 ///

26 ///

1 2.12 ADJUSTMENTS TO NONRESIDENTIAL PROVISIONS UNDER
2 RCW 26.09.260(10).

3 The Dispute Resolution, Decision Making, Participation in Child's Events,
4 Restrictions on residential time and Transportation Arrangement provisions of the
5 parenting plan should be adjusted because there is a substantial change of
6 circumstances of the child and the adjustments are in the best interest of the
7 child:

8 2.13 SUBSTANTIAL CHANGE IN CIRCUMSTANCE.

9 The requested modification or adjustment of the custody decree/parenting
10 plan/residential schedule is based upon the following substantial change in
11 circumstance:

12 a. The residential schedule originally entered in 2010 stated that the parties
13 recognize that the child will be entering school and it is appropriate to
14 review the child's developmental stage and visitation issues at that time.
15 The child is now six and school age. As set forth by ¶ 2.2 above and
16 ¶ 2.13 of the Agreed Findings of Fact and Conclusions of Law, the parties
17 agreed to participate in mediation. Therapist Charlotte Rosen has
18 completed an evaluation and provided a report with recommendations of a
19 workable schedule.

20 b. In addition, as set forth in the Agreed Findings of Fact and Conclusions of
21 Law dated March 23, 2010 when the March 23, 2010 Agreed Final Order
22 Residential Schedule was entered, the parties agreed it was necessary to
23 review the residential schedule when Mason became school aged and
24 adequate cause was not necessary for a modification. After Charlotte
25 Rosen's July 16, 2013 report was issued, Petitioners have delayed
26 responding and have not agreed to modify the residential schedule based

1 on the recommendations of Ms. Rosen. Requesting Parties have brought
2 this Petition to modify the current residential schedule based on the
3 recommendations of Ms. Rosen.

4 2.14 PROTECTION ORDER.

5 Does not apply.

6 2.15 SERVICEMEMBERS CIVIL RELIEF ACT STATEMENT.

7 Does not apply

8 2.16 OTHER: REQUESTING PARTY JOHN SHMILENKO.

9 Requesting Party JOHN SHMILENKO is the child's Paternal Step-grandfather.
10 He and Respondent, PATTI SHMILENKO married on September 12, 1998.
11 Since the birth of the child, MASON WADDLE, Requesting Party JOHN
12 SHMILENKO has had a close and loving grandparent relationship to the child
13 MASON WADDLE. It is appropriate he be joined as an additional party in this
14 proceeding.

15 III. RELIEF REQUESTED

16 Requesting Parties **request** that the court reaffirm there is adequate cause for hearing
17 this petition, enter an order which joins Requesting Party JOHN SHMILENKO as an
18 additional party, enter an order modifying the parenting plan/residential schedule and
19 approve Respondent's parenting plan/residential schedule, which is filed with this
20 petition.

21 Dated: August 30, 2013.

22 *BARRY J. DAHL* #45260 for
23 BARRY J. DAHL, WSBA #3309
24 Of Attorneys for Respondent and Requesting Party

25 *NICOLE M. TIDEMAN*
26 NICOLE M. TIDEMAN, WSBA #45260
Of Attorneys for Respondent and Requesting Party

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We declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Portland, Oregon, on _____, 2013.

(see attached signature)

PATTI K. SHMILENKO, Respondent

Signed at Portland, Oregon, on _____, 2013.

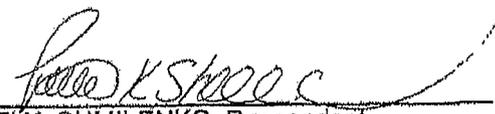
(see attached signature)

JOHN SHMILENKO, Requesting Party

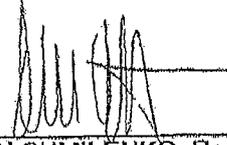
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We declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Portland, Oregon, on Aug 30th, 2013.


PATTI K. SHMILENKO, Respondent

Signed at Portland, Oregon, on Aug 30th, 2013.


JOHN SHMILENKO, Requesting Party

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of
MASON WADDLE,
child,
GREG MINIUM and LINDA MINIUM,
Petitioner,
and
PATTI SHMILENKO,
Respondent.

No. 08 3 00476 1

AFFIDAVIT REGARDING FILING
DOCUMENT TRANSMITTED BY
FACSIMILE/EMAIL

(No Mandatory Form Developed)

STATE OF WASHINGTON)
County of Cowlitz) ss.

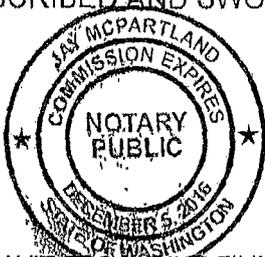
HEIDI THOMAS being first duly sworn, on oath, deposes and says as follows:

1. I am the legal assistant to BARRY J. DAHL, counsel for Respondent, PATTI K. SHMILENKO, in the above-entitled action.

2. I received the attached PETITION FOR MODIFICATION/ADJUSTMENT OF CUSTODY DECREE/PARENTINGPLAN/RESIDENTIAL SCHEDULE by facsimile or email transmission. I have examined the attached PETITION FOR MODIFICATION/ADJUSTMENT OF CUSTODY DECREE/PARENTINGPLAN/RESIDENTIAL SCHEDULE, determined that it consists of nine pages (including this page), and it is complete and legible.

Heidi Thomas
HEIDI THOMAS

SUBSCRIBED AND SWORN to before me this 30 day of August 2013.



Signature *Jay McPartland*
Printed Name Jay McPartland
Notary Public for the state of Washington
My Appointment Expires December 5, 2016

FILED

QUALITY COUNTY SUPERIOR COURT
BERRY R. LITTLE
COUNTY CLERK
KELSO WA

00-3-00476-1

Recpt. Date	Act. Date	Time
08/30/2013	09/03/2013	03:55 PM
Receipt/Item #	Trans-Code	Doccket-Code
2013-04-05837/01	1109	\$FR
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Paid By: WILSTEAD, MERTSCHEIDT		
Transaction Amount:		\$56.00

DR 172

1 2.2 COUNTY WHERE CHILDREN RESIDE.

2 The child named in paragraph 2.1 permanently reside in this county or can be
3 found in this county.

4 2.3 INDIAN CHILD WELFARE ACT.

5 Indian child status:

6
7 a. The child is not Indian children as defined by 25 U.S.C § 1903 and The
8 Indian Child Welfare Act, 25 U.S.C. § 1901, et seq., does not apply to
these proceedings.

9 2.4 BASIS OF JURISDICTION.

10 a. This state is the home state of the children because

11 i the children lived in Washington with a parent or a person acting as
12 a parent for at least six consecutive months immediately preceding
13 the commencement of this proceeding.

14 2.5 BACKGROUND RECORDS CHECK.

15 The court has consulted the judicial information system, if available, to determine
16 the existence of any information and proceedings that are relevant to the
17 placement of the child. The court has also directed the Department of Social and
18 Health Services to release information as provided under RCW 13.50.100; and
19 has required the petitioner to provide the results of an examination of state
20 criminal identification data provided by the Washington State Patrol criminal
21 identification system as described in chapter 43.43 RCW for the petitioner and
22 adult members of the petitioner's household.

23 2.6 STANDING.

24 At the beginning of the case, the child had not been in the physical custody of
25 either parent due to their premature deaths on 08/09/08.

26 2.7 BEST INTEREST OF THE CHILD.

27 It is in the best interests of the child(ren) to be placed in the custody of the
28 petitioner(s), and at the time:

a. The child(ren) have not been in the physical custody of either parent since
08/09/08, because both biological parents were involved in a tragic
accident resulting in their mutual deaths.

1 2.8 ADEQUATE CAUSE.

2 Adequate cause for this proceeding has been found in an order entered on &; or
3 is agreed as evidenced by the signatures on the last page of this document.

4 2.9 LIMITATIONS ON VISITATION.

5 Does not apply.

6 2.10 CHILD SUPPORT.

7
8 Does not apply as the biological parents are deceased. Greg and Linda Minium
9 shall continue to receive the Social Security Death Benefits to help in raising
Mason Waddle.

10 2.11 CONTINUING RESTRAINING ORDER.

11 Does not apply.

12 2.12 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

13
14 Each of the parties has sufficient property, income or resources available to pay
15 his or her own respective attorney fees, professional fees and costs.

16 2.13 OTHER.

17 The petitioners (maternal grandparents) and the respondent (paternal
18 grandmother) have entered into an agreed residential schedule to allow Mason to
19 have reasonable contact with the respondent. It is anticipated the child will have
20 some adjustment as he ages and begins to understand the reality of the tragic
21 and untimely loss of his parents. As he ages and developmental stages change,
22 the parties believe it is appropriate to review the residential schedule when
23 Mason is five (5) years old and as he begins to transition into a regular school
routine. The parties will attempt to resolve these issues through mediation, but if
they are not successful, the parties agree and stipulate that they have not made
visitation provisions for Mason beyond age five (5) such that Adequate Cause is
not necessary for the court to review the residential schedule.

24 III. CONCLUSIONS OF LAW

25 The court makes the following conclusions of law from the foregoing findings of fact:

26 3.1 JURISDICTION.

27
28 The court has jurisdiction over the children.

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3.2 DISPOSITION.

It is in the best interest of the children to reside with: Greg and Linda Minium.

3.3 CHILD SUPPORT.

Does not apply.

3.4 VISITATION.

Respondent – Patti Shmilenko: Visitation shall be as set forth in the Residential Schedule signed by the court on this date or dated _____ and approved by the court and incorporated as part of these findings.

3.5 CONTINUING RESTRAINING ORDER.

Does not apply.

3.6 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

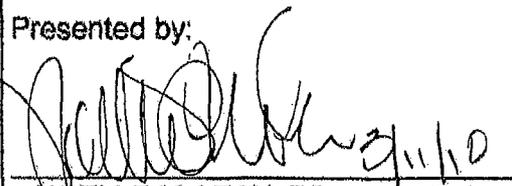
Does not apply.

3.7 OTHER.

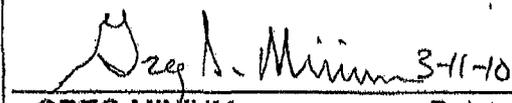
Adequate Cause is not necessary to review the residential schedule when the child is five (5) years old.

Date: 23 March 2010


JUDGE *Clayton*

Presented by:

NOELLE McLEAN, PS Date
WSB #22921
Attorney for Petitioners

Approved by:
Notice of presentation waived:
see attached
MARSHA MORASCH Date
WSB #20130
Attorney for Respondent


GREG MINIUM Date
Petitioner

see attached
PATTI SHMILENKO Date
Respondent

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Linda Minium 3/11/2010
LINDA MINIMUM Date
Petitioner

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE

Child,

GREG MINIUM and LINDA MINIUM

Petitioner,

and

PATTI SHMILENKO,

Respondent.

No. 08 3 00476 1

**CERTIFICATE OF FACSIMILE
TRANSMISSION**

I declare and state as follows:

The undersigned has examined the following documents:

Agreed Findings of Fact and Conclusions of Law (Nonparental Custody)

signed by Marsha Morasch, attorney for Respondent, and Patti Shmilenko, respondent, consisting of one signature page. The Declaration has been signed by the person making the Declaration. This document is complete and legible, including the signature page. This declaration is made pursuant to GR 17.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed at Kelso, Washington.

DATED: 3/23/10

Dana Walker
By: DANA WALKER, Legal assistant to
NOELLE McLEAN P.S. WSB 22921
Attorney for Petitioner

CERTIFICATE OF FACSIMILE TRANSMISSION

NOELLE A. McLEAN P.S.
Attorney at Law
206 West Main Street - P.O. Box 757
Kelso, Washington 98626
(360) 425-0111 (360) 425-2232 fax

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3.2 DISPOSITION.

It is in the best interest of the children to reside with: Greg and Linda Minium.

3.3 CHILD SUPPORT.

Does not apply.

3.4 VISITATION.

Respondent - Patti Shmilenko: Visitation shall be as set forth in the Residential Schedule signed by the court on this date or dated _____ and approved by the court and incorporated as part of these findings.

3.5 CONTINUING RESTRAINING ORDER.

Does not apply.

3.6 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

Does not apply.

3.7 OTHER.

Adequate Cause is not necessary to review the residential schedule when the child is five (5) years old.

Date: _____

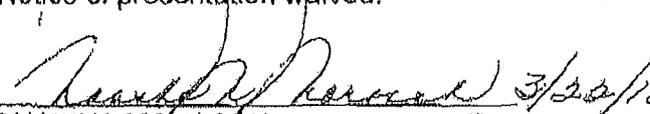
JUDGE

Presented by:

Approved by:

Notice of presentation waived:

 3/11/10

 3/22/10

NOELLE McLEAN, PS Date
WSB #22921
Attorney for Petitioners

MARSHA MORASCH Date
WSB #20130
Attorney for Respondent

GREG MINIUM Date
Petitioner

 3/22/10
PATTI SHMILENKO Date
Respondent

ENDORSED
FILED
SUPERIOR COURT
MAR 23 2010.
COWLITZ COUNTY

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE;

Child,

GREG MINIUM and LINDA MINIUM,

Petitioners,

and

PATTI SHMILENKO,

Respondent.

No. 08 3 00476 1

AGREED NONPARENTAL
CUSTODY DECREE

(DCC)

I. JUDGMENT/ORDER SUMMARIES

1.1 Restraining Order Summary:

Does not apply.

1.2 Money Judgment Summary:

Does not apply.

END OF SUMMARIES

II. BASIS

The findings of fact and conclusions of law have been entered in this case.

NONPARENTAL CUSTODY DECREE (DCC) - Page 1
WPF CU 02.0200 (6/2008) - ROW 26.10.040

Noelle A. McLean PS
Attorney at Law
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Kelso, Washington 98626
(360) 425-0111 - (360) 425-2232 Fax

III. DECREE

IT IS DECREED that:

3.1 JURISDICTION OVER THE CHILDREN

The court has jurisdiction over the children as set forth in the Findings of Fact and Conclusions of Law.

3.2 CUSTODY.

The petitioners, Greg and Linda Minium are granted custody of the following child: Mason Waddle.

3.3 VISITATION.

Respondent Patti Shmilenko: Visitation shall be as set forth in the Residential Schedule signed by the court on this date or dated _____.

3.4 CHILD SUPPORT.

Does not apply as the biological parents are deceased. Greg and Linda Minium shall continue to receive the Social Security Death Benefits to help in raising Mason Waddle.

3.5 CONTINUING RESTRAINING ORDER.

Does not apply.

3.6 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

Does not apply.

3.7 OTHER:

Does not apply.

3.8 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A CHILD:

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

1 If the person with whom the child resides a majority of the time plans to move,
2 that person shall give notice to every person entitled to court ordered time with
3 the child.

4 If the move is outside the child's school district, the relocating person must give
5 notice by personal service or by mail requiring a return receipt. This notice must
6 be at least 60 days before the intended move. If the relocating person could not
7 have known about the move in time to give 60 days' notice, that person must
8 give notice within five days after learning of the move. The notice must contain
9 the information required in RCW 26.09.260. See also form DRPSCU 07.0500
10 (Notice of Intended Relocation of A Child).

11 If the move is within the same school district, the relocating person must provide
12 actual notice by any reasonable means. A person entitled to time with the child
13 may not object to the move but may ask for modification under RCW 26.09.260.
14 Notice may be delayed for 21 days if the relocating person is entering a domestic
15 violence shelter or is moving to avoid a clear, immediate and unreasonable risk
16 to health and safety.

17 If information is protected under a court order or the address confidentiality
18 program, it may be withheld from the notice.

19 A relocating person may ask the court to waive any notice requirements that may
20 put the health and safety of a person or a child at risk.

21 Failure to give the required notice may be grounds for sanctions, including
22 contempt.

23 If no objection is filed within 30 days after service of the notice of intended
24 relocation, the relocation will be permitted and the proposed revised residential
25 schedule may be confirmed.

26 A person entitled to time with a child under a court order can file an objection to
27 the child's relocation whether or not he or she received proper notice.

28 An objection may be filed by using the mandatory pattern form WPF DRPSCU
07.0700 (Objection to Relocation/Petition for Modification of Custody
Decree/Parenting Plan/Residential Schedule). The objection must be served on
all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection
unless: (a) the delayed notice provisions apply; or (b) a court order allows the
move.

If the objecting person schedules a hearing for a date within 15 days of timely
service of the objection, the relocating person shall not move the child before the

Noelle A. McLean PS

Attorney at Law

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hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

WARNING: VIOLATION OF RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT AND MAY BE A CRIMINAL OFFENSE UNDER RCW 9A.40.060(2) OR RCW 9A.40.070(2). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST.

Gary Bashor

Dated: _____

JUDGE/COMMISSIONER

Petitioner or petitioner's attorney:
A signature below is actual notice of this order.

Respondent or respondent's attorney:
A signature below is actual notice of this order.

Presented by:

Approved by:
Notice for presentation waived:



NOELLE McLEAN, PS Date
WSB #22921
Attorney for Petitioners

See attached

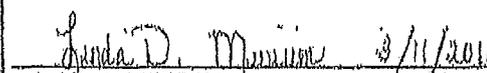
MARSHA MORASCH Date
WSB #20130
Attorney for Respondent



GREG MINIMUM Date 3-11-10
Petitioner

See attached

PATTI SHMILENKO Date
Respondent



LINDA MINIMUM Date 3/11/2010
Petitioner

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ENDORSED
FILED
SUPERIOR COURT
MAR 23 2010
COWLITZ COUNTY

SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE,
Child,
GREG MINIUM and LINDA MINIUM,
Petitioners,
and
PATTI SHMILENKO,
Respondent.

No. 08 3 00476 1
AGREED FINAL ORDER
RESIDENTIAL SCHEDULE

(RS)

This residential schedule is the final residential schedule signed by the court pursuant to a nonparental custody decree entered on the undersigned date.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This residential schedule applies to the following children:

<u>Name</u>	<u>Age</u>
Mason Waddle	2
...	
...	

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II. BASIS FOR RESTRICTIONS

2.1 LIMITING CONDUCT OF PATTI SHMILENKO (RCW 26.10.160).

Does not apply.

III. RESIDENTIAL SCHEDULE

These provisions set forth where the child shall reside each day of the year and what contact the child shall have with each party.

3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.

Prior to enrollment in school, the child shall reside with Greg and Linda Minium (nonparental custodian), except for the following days and times when the child will visit with Patti Shmilenko:

To age 3: Every Tuesday and Thursday from 1:00 pm to 7:00 pm. Alternating weekends from Saturday at 10:00 am to Sunday at 10:00 am.

Age 3 -- 5: Every Tuesday and Thursday from 1:00 pm to 7:00 pm. Alternating weekends from Saturday at 10:00 am to Sunday at 5:00 pm.

3.2 SCHOOL SCHEDULE.

Upon enrollment in school, the child shall reside with Greg and Linda Minium (nonparental custodian), except for the following days and times when the child will visit with Patti Shmilenko:

Age 5 thereafter: Visitation shall remain as set forth in paragraph 3.1. However, the parties recognize the child will be entering school, and it is appropriate to review the child's developmental stage and visitation issues at that time. The parties agree to participate in mediation in an effort to resolve any further visitation issues prior to court intervention.

3.3 SCHEDULE FOR WINTER VACATION.

Does not apply.

3.4 SCHEDULE FOR OTHER SCHOOL BREAKS.

Does not apply.

1 3.5 SUMMER SCHEDULE.

2 Does not apply.

3 3.6 VACATIONS.

4 The schedule for vacation is as follows:

6 a. Greg and Linda Minium shall be allowed to schedule one uninterrupted week of vacation time with the minor child each calendar year with 30 days notice to Patti Shmilenko. Said extended visitation shall not be scheduled to interfere with Patti Shmilenko's overnight weekend visitation.

9 3.7 SCHEDULE FOR HOLIDAYS.

10 The residential schedule for the child for the holidays listed below is as follows:

	<u>With Patti Shmilenko</u>	<u>With the Miniums</u>
Thanksgiving Day	<u>Split</u>	<u>Split</u>
<i>In odd-numbered years, the Miniums will have the child from 10:00 am to 2:00 pm and Patti Shmilenko will have the child from 2:00 pm to 6:00 pm. In even-numbered years, Patti Shmilenko will have the child from 10:00 am to 2:00 pm, and the Miniums will have the child from 2:00 pm to 6:00 pm.</i>		
Christmas Eve	<u>December 24th from 10:00 am to December 25th at 10:00 am.</u>	<u>Every</u>
Christmas Day	<u>December 25th from 10:00 am to December 26th at 10:00 am.</u>	<u>Every</u>

20 3.8 SCHEDULE FOR SPECIAL OCCASIONS.

21 The residential schedule for the child for the following special occasions (for example, birthdays) is as follows:

	<u>With Patti Shmilenko</u>	<u>With the Miniums</u>
Mother's Day	<u>Sunday from 1:00 pm to 7:00 pm.</u>	<u>Every</u>
Father's Day	<u>Sunday from 1:00 pm to 7:00 pm</u>	<u>Every</u>

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With Patti Shmilenko

With the Minlums

Mason's Birthday (08/20) Odd
August 20th at 10:00 am to August 21st at 10:00 am.

Even

Mother's Birthday (01/09) _____
January 9th at 10:00 am to January 10th at 10:00 am.

Every

Father's Birthday (12/25) Every
Same as set forth at 3.7 for Christmas Day.

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

If the residential schedule, paragraphs 3.1 - 3.8, results in a conflict where the children are scheduled to be with the nonparental custodian(s) and another party at the same time, the conflict shall be resolved by priority being given as follows:

Rank in order of priority, with 1 being given the highest priority.

- [1] Special Occasions (3.8)
- [2] Holidays (3.7)
- [3] Summer Schedule (3.5)
- [4] Winter Vacation (3.3)
- [5] Other School Breaks (3.4)
- [6] Vacations with parents (3.6)
- [7] School schedule (3.1, 3.2)

3.10 RESTRICTIONS.

- a. Through 12/31/10, it is agreed that all overnight visitations shall take place in Cowlitz County at Patti Shmilenko's home at Willow Grove. If Patti Shmilenko intends upon traveling outside of Cowlitz County with Mason, she will provide notice to the Greg and Linda Minium.
- b. Commencing 01/01/11 thereafter, Mason may spend the night at Patti Shmilenko's home either in Willow Grove or Portland. If Patti Shmilenko intends upon traveling outside of Cowlitz County with Mason, she will provide notice to the Greg and Linda Minium.
- c. Commencing with 01/01/11, if Patti Shmilenko intends to travel overnight outside of Cowlitz, Clark, or Multnomah County, she will provide at least 30 days notice to the Greg and Linda Minium. If the parties have any objections and are unable to resolve it through communications of their own, then they may file a motion with the court to review the travel outside of those counties.

Noelle A. McLean PS
Attorney at Law

206 West Main Street - P.O. Box 757
Kelso, Washington 98626
(360) 425-0111 - (360) 425-2232 Fax

1 d. All visitation communications shall take place via email, rather than during
2 the visitation exchanges. All parties shall comply with visitation times as
3 outlined in this parenting plan, or as otherwise agreed to in writing (via
email or US Mail) prior to the visitation.

4 3.11 TRANSPORTATION ARRANGEMENTS.

5 Transportation costs are included in the Child Support Worksheets and/or the
6 Order of Child Support and should not be included here.

7 Transportation arrangements for the child shall be as follows:

8 A. Visitation transportation will be shared with the exchanges occurring at the
9 Walgreens parking lot. The parties may agree to an alternative location in
10 the future in writing (e.g. Email and/or US mail).

11 B. The child shall be picked up and returned at the designated times. Should a
12 delay become necessary, the other party shall be notified immediately. All
13 transporters shall be timely in their transportation exchanges of the minor
14 child to avoid delay of more than fifteen (15) minutes following the time of
15 exchange. If there is an emergency, that information shall be relayed as
16 reasonably as possible to the other party. Age appropriate child safety
17 restraints shall be used at all times during said transportation.

18 C. Only licensed and insured drivers may transport the minor child. Failure of
19 the party transporting the child to provide proof of insurance shall result in a
20 waiver of visitation, until such time as appropriate documentary proof is
21 provided.

22 3.12 OTHER.

23 Does not apply.

24 3.13 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION OF A
25 CHILD.

26 This is a summary only. For the full text, please see RCW 26.09.430 through
27 26.09.480.

28 If the person with whom the child resides a majority of the time plans to move,
that person shall give notice to every person entitled to court ordered time with
the child.

If the move is outside the child's school district, the relocating person must give
notice by personal service or by mail requiring a return receipt. This notice must

1 be at least 60 days before the intended move. If the relocating person could not
2 have known about the move in time to give 60 days' notice, that person must
3 give notice within 5 days after learning of the move. The notice must contain the
4 information required in RCW 26.09.440. See also form DRPSCU 07.0500,
(Notice of Intended Relocation of A Child.).

5 If the move is within the same school district, the relocating person must provide
6 actual notice by any reasonable means. A person entitled to time with the child
7 may not object to the move but may ask for modification under RCW 26.09.260.

8 Notice may be delayed for 21 days if the relocating person is entering a domestic
9 violence shelter or is moving to avoid a clear, immediate and unreasonable risk
10 to health and safety.

11 If information is protected under a court order or the address confidentiality
12 program, it may be withheld from the notice.

13 A relocating person may ask the court to waive any notice requirements that may
14 put the health and safety of a person or a child at risk.

15 Failure to give the required notice may be grounds for sanctions, including
16 contempt.

17 If no objection is filed within 30 days after service of the notice of intended
18 relocation, the relocation will be permitted and the proposed revised residential
19 schedule may be confirmed.

20 A person entitled to time with a child under a court order can file an objection to
21 the child's relocation whether or not he or she received proper notice.

22 An objection may be filed by using the mandatory pattern form WPF DRPSCU
23 07.0700, (Objection to Relocation/Petition for Modification of Custody
24 Decree/parenting Plan/Residential Schedule). The objection must be served on
25 all persons entitled to time with the child.

26 The relocating person shall not move the child during the time for objection
27 unless: (a) the delayed notice provisions apply; or (b) a court order allows the
28 move.

If the objecting person schedules a hearing for a date within 15 days of timely
service of the objection, the relocating person shall not move the child before the
hearing unless there is a clear, immediate and unreasonable risk to the health or
safety of a person or a child.

IV. OTHER PROVISIONS

There are the following other provisions:

...

1 61 DECISION MAKING.

2 Major decisions regarding the child shall be made as follows:

- 3 Education decisions GREG & LINDA MINIUM ONLY
- 4 Non-emergency health care GREG & LINDA MINIUM ONLY
- 5 Religious upbringing GREG & LINDA MINIUM ONLY

6 Sole decision-making shall be ordered to the grandparents, Greg and Linda
7 Minium, because the biological parents are deceased.

8 6.2 HEALTH CARE – EMERGENCY.

9 Patti Shmilenko shall be empowered to obtain emergency health care for the child
10 without the consent of Greg and Linda Minium. However, Patti Shmilenko shall
11 notify Greg and Linda Minium as soon as reasonably possible of any illness
12 requiring medical attention, or any emergency involving the child.

12 6.3 HEALTH CARE – NON-EMERGENCY.

13 The legal custodians, Greg and Linda Minium, shall be empowered to obtain
14 routine and emergency health care and dental care for the child. Each legal
15 custodian shall execute any necessary authorizations to implement this section.

16 6.4 COMMUNICATION AND COOPERATION BETWEEN GRANDPARENTS.

- 17 a. Each grandparent shall provide the other with the address and phone
18 number of their residence, and current email and cell phone numbers and
19 update such information promptly whenever it changes.
- 20 b. The Greg and Linda Minium will provide notice to Patti Shmilenko of any
21 extracurricular activities for Mason, in order to allow Patti Shmilenko to
22 attend and observe Mason's participation. Patti Shmilenko shall receive
23 approval from the Greg and Linda Minium before she enrolls Mason in any
24 activities. Any activities approved of by Greg and Linda Minium and enrolled
25 in by Patti Shmilenko – notice to Greg and Linda Minium will be provided to
26 allow Greg and Linda Minium to attend and observe Mason's participation.
- 27 c. The Greg and Linda Minium will provide notice to Patti Shmilenko if they
28 intend to adopt Mason.

26 ...
27 ...

1 6.5 COMMUNICATION WITH CHILDREN.

- 2 a. Neither the petitioners nor the respondent shall ask the child to make
- 3 decisions or requests involving the residential schedule. Neither the
- 4 petitioners nor the respondent shall discuss the residential schedule with the
- 5 child except for plans, which have already been agreed to by both parties in
- 6 advance.
- 7 b. Neither the petitioners nor the respondent shall encourage the child to
- 8 change his primary residence or encourage the child to believe it is his
- 9 choice to do so. It is a choice that will be made by the parties or, if they
- 10 cannot agree, the courts.
- 11 c. Neither the petitioners nor the respondent shall advise the child of other
- 12 legal matters regarding the parties' relationship. Neither the petitioners nor
- 13 the respondent shall use the child, directly or indirectly, to gather information
- 14 about the other parties or take verbal messages to the other parties. Neither
- 15 the petitioners nor the respondent shall make derogatory comments about
- 16 the other parent or allow anyone else to do the same in the child's presence.
- 17 Neither the petitioners nor the respondent shall allow or encourage the child
- 18 to make derogatory comments about the other parties.

19 V. DECLARATION FOR PROPOSED RESIDENTIAL SCHEDULE

20 Does not apply.

21 VI. ORDER BY THE COURT

22 It is ordered, adjudged and decreed that the residential schedule set forth above

23 is adopted and approved as an order of this court.

24 WARNING: Violation of residential provisions of this order with actual knowledge

25 of its terms is punishable by contempt of court and may be a criminal offense

26 under RCW 9A.40.060(2) or RCW 9A.40.070(2). Violation of this order may

27 subject a violator to arrest.

28 If a party fails to comply with a provision of this plan, the other parties' obligations

under the plan are not affected.

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Pursuant to the 2008 Miscellaneous General Order Regarding Data Base Search filed January 7, 2008, the data-base search required by Chapter 496, §304, 2007 Session Laws shall not be done in this case.

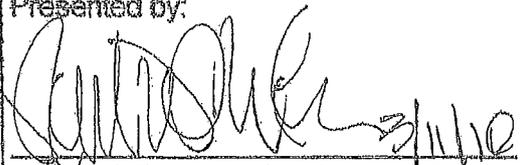
Cathy Bashor

Dated: _____

JUDGE

Presented by:

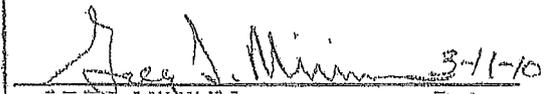
Approved for entry:

 3/11/10

see attached

NOELLE McLEAN, PS Date
WSB #22921
Attorney for Petitioners

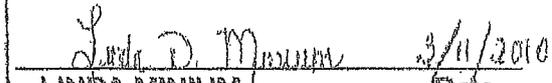
MARSHA MORASCH Date
WSB #20130
Attorney for Respondent

 3-11-10

see attached

GREG MINIMUM Date
Petitioner

PATTI SHMILENKO Date
Respondent

 3/11/2010

LINDA MINIMUM Date
Petitioner

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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

In re the Custody of:

MASON WADDLE

Child,

GREG MINIUM and LINDA MINIUM

Petitioner,

and

PATTI SHMILENKO,

Respondent.

No. 08 3 00476 1

CERTIFICATE OF FACSIMILE
TRANSMISSION

I declare and state as follows:

The undersigned has examined the following documents:

Agreed Final Order Residential Schedule

signed by Marsha Morasch, attorney for Respondent, and Patti Shmilenko, respondent, consisting of one signature page. The Declaration has been signed by the person making the Declaration. This document is complete and legible, including the signature page. This declaration is made pursuant to GR 17.

I declare under the penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Signed at Kelso, Washington.

DATED: 3/23/10

Dana Walker

By: DANA WALKER, Legal assistant to
NOELLE McLEAN P.S. WSB 22921
Attorney for Petitioner

CERTIFICATE OF FACSIMILE TRANSMISSION

NOELLE A. McLEAN P.S.
Attorney at Law
206 West Main Street - P.O. Box 757
Kelso, Washington 98626
(360) 425-0111 (360) 425-2232 fax

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Pursuant to the 2008 Miscellaneous General Order Regarding Data Base Search filed January 7, 2008, the data-base search required by Chapter 496, §304, 2007 Session Laws shall not be done in this case.

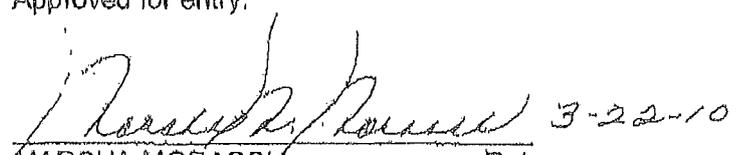
Dated: _____

JUDGE

Presented by:

Approved for entry:

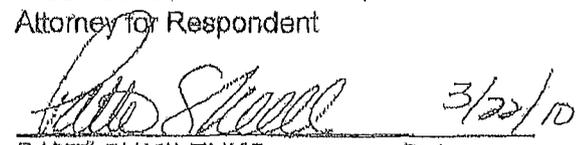
 3/11/10

 3-22-10

NOELLE McLEAN, PS
WSB #22921
Attorney for Petitioners

MARSHA MORASCH
WSB #20130
Attorney for Respondent

GREG MINIUM
Petitioner

 3/22/10
PATTI SHMILENKO
Respondent

LINDA MINIUM
Petitioner

RESIDENTIAL SCHEDULE (PRS, TRS, RS) - Page 9
W/PF CU.01.0450 Mandatory (7/2007) - RCW 26.10.160,
26.10.040

Noelle A. McLean PS
Attorney at Law
206 West Main Street - P.O. Box 757
Kelso, Washington 98626
(360) 425-0111 - (360) 425-2232 Fax

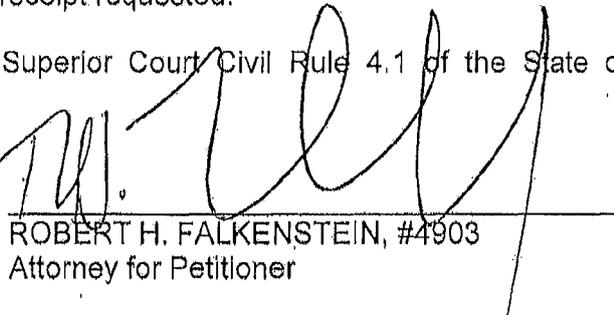
1 how to get this form may be obtained by contacting the clerk of the court, by
2 contacting the Administrative Office of the Courts at (360) 705-5328, or from the
Internet at the Washington State Courts homepage:

3 <http://www.courts.wa.gov/forms>

- 4 4. If you do not file and serve your written answer within 20 days (60 days if you are
5 served outside of the State of Washington) after the date this summons was
6 served on you, exclusive of the date of service, the court may, without further
7 notice to you, enter a default judgment against you ordering the relief requested
8 in the petition. If you serve a notice of appearance on the undersigned person,
9 you are entitled to notice before an order of default may be entered.
- 10 5. You may demand that the other party file this action with the court. If you do so,
11 the demand must be in writing and must be served upon the person signing this
summons. Within 14 days after you serve the demand, the other party must file
12 this action with the court, or the service of this summons and petition will be void.
- 13 6. If you wish to seek the advice of an attorney in this matter, you should do so
14 promptly so that your written answer, if any, may be served on time. Copies of
these papers have not been served upon your attorney.
- 15 7. One method of serving your written answer and completed worksheets is to send
16 them by certified mail with return receipt requested.

17 This summons is issued pursuant to Superior Court Civil Rule 4.1 of the State of
18 Washington.

19 DATED: September 3, 2008


ROBERT H. FALKENSTEIN, #4903
Attorney for Petitioner

20 FILE ORIGINAL OF YOUR
21 RESPONSE WITH THE
22 CLERK OF THE COURT AT:

SERVE A COPY OF YOUR RESPONSE ON:
Petitioner's attorney

23 SUPERIOR COURT
312 SOUTH FIRST
KELSO, WA 98626
PHONE: 360-577-3016

ROBERT H. FALKENSTEIN
950 - 12TH AVENUE, SUITE 100
P.O. BOX 868
LONGVIEW, WA 98632
PHONE: 360-577-8995

SUM FOR NONPARENTAL CUST PROC - 2
WPF CU 01.0200 (6/2006)
CR 4.1; RCW 26.10.030(2)

ROBERT H. FALKENSTEIN

ATTORNEY AT LAW
950 - 12th Avenue, Suite 100
P.O. Box 868
Longview, WA 98632

Telephone : (360) 577-8995
Fax : (360) 577-8997

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FILED
SUPERIOR COURT

2008 SEP 11 P 2:55

COWLITZ COUNTY
RONI A. BOOTH, CLERK

BY _____

**SUPERIOR COURT OF WASHINGTON
COUNTY OF COWLITZ**

In re the Custody of:

MASON JOE WADDLE,

Child,

GREG S. MINIUM and LINDA D. MINIUM,
Maternal Grandparents,

Petitioners,

and

PATTI SHMILENKO,
Respondent.

NO. 08 3 00476 1

NONPARENTAL CUSTODY
PETITION

(PTCUS)

I. BASIS

1.1 IDENTIFICATION OF PETITIONERS.

Name	GREG S. MINIUM
Date of Birth	09/20/1955
Last Known Residence (County and state only)	Cowlitz County State of Washington
Relationship to Child	Maternal grandfather

Name	LINDA D. MINIUM
Date of Birth	09/17/1955
Last Known Residence (county and state only)	Cowlitz County State of Washington
Relationship to Child	Maternal grandmother

1 1.2 IDENTIFICATION OF RESPONDENTS.

2 The biological parents of Mason Joe Waddle, namely, Zachary A. Waddle and
3 Libby M. Davis Minium are deceased, having been killed in an accident on
4 August 9, 2008 in the state of Oregon. As a result, the maternal grandparents
5 now seek the custody of Mason J. Waddle, the biological parents' minor child.

6 1.3 CHILDREN FOR WHOM CUSTODY IS SOUGHT.

Name	MASON Joe WADDLE	
Age	1	

7 1.4 IDENTIFICATION OF ALL ADULTS LIVING IN PETITIONER'S HOUSEHOLD

8 a. Name and age: Not applicable.

9 1.5 INDIAN CHILD WELFARE ACT

10 a. Does not apply.

11 1.6 JURISDICTION.

12 The child resides in this state as a result of the acts or directives of the deceased
13 biological parents.

14 Other: The maternal grandparents reside in Cowlitz County, State of
15 Washington.

16 1.7 JURISDICTION OVER THE CHILD

17 This court has jurisdiction over this proceeding for the reasons set forth below.

18 a. This state is the home state of the child because

19 the child lived in Washington with a parent or a person acting as a
20 parent for at least six consecutive months immediately preceding
21 the commencement of this proceeding.

22 1.8 UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT
23 INFORMATION.

<u>Name of Child</u>	<u>Parent's Name</u>	<u>Parent's Name</u>
Mason Joe Waddle	Libby M. Davis Minium Deceased	Zachary A. Waddle Deceased

ROBERT H. FALKENSTEIN

ATTORNEY AT LAW
950 -- 12th Avenue, Suite 100
P.O. Box 868
Longview, WA 98632

Telephone : (360) 577-8995
Fax : (360) 577-8997

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The child permanently resides in this county or can be found in this county.

During the last five years, the child has lived:

in the following places with the following persons, including the State of Washington, the dates the child lived there and the names of the persons with whom the child lived. The present addresses of those persons must be listed in the required Confidential Information Form):

With Libby M. Davis Minium and Zachary A. Waddle, the deceased biological parents at 530 23rd Avenue, Longview, Cowlitz County, Washington up until they were killed on August 9, 2008 and since that time Mason has resided with the petitioners.

Claims to custody or visitation.

The petitioners do not know of any other person who has physical custody of, or claims to have custody of the child. It is the petitioners' understanding however, that the paternal grandmother and the step-grandfather, John and Patti Shmilenko, would like to have court-ordered visitation.

Involvement in any other legal proceedings concerning the child.

The petitioners have not been involved in any other legal proceedings concerning the child.

Other legal proceedings concerning the child:

The petitioners do not know of any other legal proceedings concerning the child.

1.9 VISITATION.

The court shall determine what visitation rights on the part of the paternal grandmother and step-grandfather are in the best interests of the minor child.

1.10 CHILD SUPPORT.

Does not apply.

1.11 HEALTH INSURANCE COVERAGE.

Does not apply.

1 1.12 CONTINUING RESTRAINING ORDER.

2 Does not apply.

3 1.13 ADEQUATE CAUSE.

4 This petition is being filed because

5 The child has not been in the physical custody of either parent since
6 August 9, 2008.

7 The biological parents were killed in an accident which occurred in
8 Cloverdale, Oregon on August 9, 2008. During the child's first year of life,
9 he has become strongly bonded with the petitioners who are the parents
10 of the deceased biological mother and the maternal grandparents of
11 Mason. Mason has spent significant time including overnights with the
12 petitioners. The child has a paternal grandmother and step-grandfather
13 that reside in the state of Oregon. It is the understanding of petitioners
14 that the paternal grandmother and step-grandfather are seeking court-
15 ordered visitation rights. The child has never spent an overnight with the
16 paternal grandmother and step-grandfather and they do not have a strong
17 bond with Mason. This matter should be referred into Family Court for
18 input concerning the future visitation rights of the paternal grandmother
19 and step-grandfather.

20 It is clearly in the best interests of the child to be placed in the legal
21 custody of petitioners. The child has been in the physical custody of the
22 petitioners since the tragic death of the child's parents.

23 1.14 BEST INTEREST OF THE CHILDREN.

The requests made in this petition are in the best interests of the child because:

See paragraph 1.13.

1.15 OTHER: Does not apply.

20 II. RELIEF REQUESTED

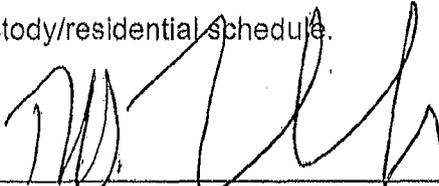
21 The petitioners REQUEST that the Court enter an order finding there is adequate cause
22 for hearing this petition and giving petitioners custody of the child listed in paragraph 1.3
23 of this petition and requiring either or both parents to maintain or provide health
insurance coverage for the child consistent with RCW 26.10.060. The petitioners also
REQUEST the relief described below.

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2.1 Award the tax exemptions for the dependent child as follows: to petitioners.

2.2 Approve petitioners' proposed custody/residential schedule.

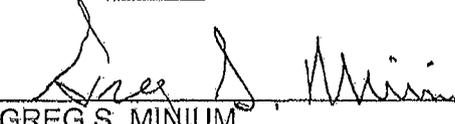
DATED: September 4, 2008



ROBERT H. FALKENSTEIN, #4903
Attorney for

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Longview, Washington, on September 9, 2008.



GREG S. MINIMUM

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Longview, Washington, on September 9, 2008.



LINDA D. MINIMUM

FILED

QUALITZ COUNTY SUPERIOR COURT
RUDI A. ROTH
COUNTY CLERK
KELSO WA

08-3-00476-1

Rept. Date Acct. Date Time
09/11/2008 09/11/2008 03:01 PM

Receipt/Item # Tran-Date Docket-Date
2008-01-06859/01 1203 \$FFR

Cashier: SRM

Paid By: FALKENHEIM, ROBERT
Transaction Amount: \$220.00