No. 92994-7

No. 46788-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Rachelle K. Black,

Appellant,

v.

Charles W. Black,

Respondent.

BRIEF OF APPELLANT

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I. INTRODUCTION

The trial court entered final orders of dissolution that, contrary to Washington law, penalize Rachelle Black for seeking a divorce after she came to understand that she was a lesbian. The court attempted to justify its orders by saying the children would find it "challenging" to adjust to the divorce and their mother's "homosexuality" because she and her former husband, Charles Black, had raised their children as conservative Christians who belonged to a church that espoused condemnation of homosexuality as a sin. The orders are manifestly unjust, contrary to Washington precedent, and unconstitutional; they also ignore that Rachelle was a stay-at-home mother for 15 years, was found to have a strong relationship with her children, and that there were no findings that the children would actually be harmed by their mother. Rachelle appeals the restrictions on her speech, conduct, and religion; the restrictions on the ability of her partner to be present with her children; a residential time decision that limits her time with her children to four overnights every two weeks; the denial of maintenance; an award of child support to Charles; and the designation of sole decision-making authority related to the children's religion, education, and day care to Charles. The Court should reverse the orders and, where necessary, remand for further proceedings.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it entered a Final Parenting Plan that imposes restrictions on Rachelle's conduct, speech, and religion, and

on the ability of her partner to have contact with her children. *See* CP 41 para. 6. 49 (Final Parenting Plan §§ 3.13 7, 3.13.8).

2. The trial court erred when it entered a Final Parenting Plan that establishes Charles as the primary residential parent and reduces Rachelle's role from a stay-at-home mother to having her children four overnights every two weeks. *See* CP 41 para. 4. 46-50 (Final Parenting Plan § 3).

3. The trial court erred in entering a Final Parenting Plan that gives Charles sole decision-making authority over the children's education, religion, and day care. *See* CP 51 (Final Parenting Plan § 4).

4. The trial court erred in entering a Decree of Dissolution that denied spousal maintenance for Rachelle. *See* CP 42 para. 4. 69 (Findings of Fact and Conclusions of Law § 2.12), 78 (Decree of Dissolution § 3.7).

5. Because the trial court erred in designating Charles as the primary custodial parent, the trial court erred in entering a Child Support Order requiring Rachelle to pay child support. *See* CP 42 para. 5. 49 (Final Parenting Plan § 3.12), 55-66 (Child Support Order § 3).

6. The trial court erred by entering findings of fact that are not supported by substantial evidence, including, but not limited to, findings that Charles is the more stable parent and that Rachelle was gone from the home 20 percent of the time before the final orders of dissolution were entered by the trial court. *See* Findings of Fact 2.12, 2.19, 2.20, 2.21, A.19,

A.21, A.36, and A.37[1] and underlined findings in the trial court's Letter Decision,[2] Final Parenting Plan, and Child Support Order attached as Appendices A-D. *See* Appendix A, at CP 69-71, 73-75; Appendix B, at CP 39-42; Appendix C, at CP 51; Appendix D, at CP 56, 62.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether a trial court can impose restrictions upon a parent's speech, conduct, or religion during their residential time without making specific findings of harm to the children and without relating the specific restrictions to any findings of harm? (Assignment of Error 1.)

2. Did the trial court improperly impose restrictions on Rachelle's speech, conduct, or religion based on her sexual orientation? (Assignment of Error 1.)

3. Did the trial court improperly impose restrictions upon Rachelle's speech, conduct, or religion in violation of her constitutional rights under the U.S. and State of Washington Constitutions? (Assignments of Error 1 and 3.)

4. Whether a trial court can consider a parent's sexual orientation in its residential placement decision? (Assignment of Error 2.)

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[1] These findings of fact have also been underlined in Appendix A

[2] The trial court incorporated the Letter Decision into the Findings of Fact and Conclusions of Law and into the Decree of Dissolution, CP 71, 75, 80, and it is therefore a basis for the trial court's orders. *State v. Wilks*, 70 Wn.2d 626, 629, 424 P.2d 663 (1967) (written memoranda are considered on appeal as a basis for trial court's judgment where incorporated into findings, conclusion, and judgment), *disapproved of on other grounds by State v. Head*, 136 Wn.2d 619, 964 P.2d 1187 (1998). The trial court also incorporated the Parenting Plan and Child Support Order into the Findings of Fact and Conclusions of Law as findings of fact. CP 70.

5. Whether the trial court considered impermissible factors outside of those enumerated in RCW 26.09.187(3), such as a parent's earning capacity and religious views, in its residential time decision? (Assignment of Error 2.)

6. Whether the trial court properly weighed the factors enumerated in RCW 26.09.187(3) in its residential time decision, in particular, failing to credit Rachelle's strong relationship with the children and role as a stay-at-home parent? (Assignment of Error 2.)

7. Whether the trial court can express a preference for one parent's religion over another and award sole decision-making authority regarding religion to one parent without making findings of substantial harm to the children? (Assignment of Error 3.)

8. Whether the trial court can give one parent sole decision-making authority without the requisite statutory findings under RCW 26.09.191 and RCW 26.09.187(2)? (Assignment of Error 3.)

9. Whether the trial court denied spousal maintenance for untenable reasons when it inadequately analyzed the factors under RCW 26.09.090? (Assignment of Error 4.)

10. Whether the order of child support should be reversed because of the trial court's error in the residential time decision? (Assignment of Error 5.)

11. Whether the trial court erred by entering findings of fact that are not supported by substantial evidence, including, but not limited to, findings that Charles is the more stable parent and that Rachelle was

gone from the home 20 percent of the time before the final orders of dissolution were entered by the trial court? (Assignment of Error 6.)

IV. STATEMENT OF THE CASE

A. The Parties' Marriage

Appellant Rachelle Black is a 39-year-old mother of three children, ages 15, 12, and 8. CP 73. She married Respondent Charles Black when she was 19, in 1994. *Id.* In 1995, the couple settled in the Tacoma area, where they had met and Rachelle had been raised. RP 53, 150-51; Ex 40, at 6. Both worked at the business owned by Rachelle's parents—Charles in the lumber yard and Rachelle in the office doing data entry. RP 191-92.

The Blacks had their first child, a boy, in 1999, and agreed that Rachelle should stay at home with their child while Charles continued to work. CP 73; RP 192. Rachelle therefore trained Charles to do her office job, and when their child was born, Charles took over Rachelle's position. RP 192. Over the course of their 20-year marriage, Charles was promoted at his in-laws' company; Rachelle's parents gave the couple the two-story, five-bedroom home Rachelle grew up in; and, in 2002 and 2006, the couple had two more boys. CP 73; RP 192, 237, 267, 287, 306-07.

The family also joined the conservative Christian church at which Rachelle's parents were and continue to be elders. CP 73; RP 184. When their first child was old enough, they jointly decided to send him to a private, Christian school, and ultimately made the same decision for their other two boys. CP 39, 41; RP 145. Rachelle continued to work as a stay-at-home mother for the three children. CP 40, 74; RP 134, 175-76, 256.

As a stay-at-home mother, Rachelle was the primary caretaker of the children, parenting them while Charles worked and taking care of the housekeeping, grocery shopping, and cooking, as well as volunteering in the children's schools. CP 40, 74; RP 95-97, 104-05, 120, 125-26, 128-34, 175-76, 287. Rachelle took the children to the doctor and made the day-to-day health care decisions for the children. RP 99, 143-44, 256-57, 401, 407-08. There is no dispute that Rachelle maintained a strong and stable relationship with her children. *See* CP 40; RP 101-03, 362; Ex 58.

B. The Parties' Separation

Several years ago, Rachelle began to question her sexuality and in December 2011 told her husband that she thought she might be a lesbian. CP 40, 73; RP 271. Charles told Rachelle that she should figure it out. RP 409. On May 8, 2013, Rachelle petitioned for dissolution. CP 1. The trial court noted the parties' date of separation as May 19, 2013. CP 68.

The parties continued to live together until the divorce decree was final on September 19, 2014, although Rachelle had moved to a separate bedroom of the house in January 2012. CP 73, 76-80; RP 269, 320. From commencement to conclusion of the dissolution, Rachelle continued to be a stay-at-home mother,[3] cooking meals, volunteering at the children's schools, and taking care of them before and after school. CP 40; RP 120-22, 125-26, 128-34, 141. Charles continued to work full time. RP 287.

[3] The court found that Rachelle stopped being a stay-at-home mother in 2011, a finding Rachelle disputes. CP 74 Finding of Fact A 21. In fact, Rachelle continued in that role until trial. CP 73; RP 120-22, 125-26, 128-34, 141.

Rachelle also maintained her Christian beliefs, although she modified her viewpoints regarding homosexuality. RP 276-77.

While the dissolution was pending, the parties cooperated in the management of parenting without temporary orders. RP 141-43, 322-23; *see* Exs. 2, 5, 6, 41, 44, 45. They specifically agreed that each should have individual time with the children, and so Rachelle would leave the family home to allow Charles his time. RP 367-68. Rachelle took the children to events on her own, including sporting events and camping. RP 108, 110-11. She also took some time to make new friends, come to terms with her sexuality, and ultimately, entered into a relationship with a woman, Angela Van Hoose. RP 111-12, 114-16, 167. The trial court found that from December 2011 to March 8, 2014, Rachelle was home 80 percent of the time. CP 40, 73. Rachelle disputes that she was absent 20 percent of the time; indeed, as discussed in Section V.C.2, *infra*, there is no substantial evidence to support the trial court's calculation. Regardless, the fact that she was home 80 percent of the time while Charles worked full time indicates that she continued to be the primary caretaker of the children.

C. The Divorce Proceedings and Trial

Both Rachelle and Charles sought to be the primary residential parent. CP 5; Ex 2, at 2-4; Ex 41, at 3-8. Charles also requested sole decision-making authority on all aspects regarding the children's lives except non-emergency health care. Ex 41, at 10. Rachelle requested sole decision-making authority for educational and non-emergency health care

and joint decision-making authority regarding the children's religious upbringing. RP 256, 258; Ex 2, at 6. She requested two years of $2,000 monthly spousal maintenance so she could complete a two-year degree program and be better able to support herself than she could with only her high school degree. RP 196-97; Ex 6, at 3. Charles would not agree to maintenance and sought to take possession of the home. RP 307, 384.

Charles also sought severe restrictions on Rachelle's speech, conduct, and religious expression pursuant to RCW 26.09.191—all related to Rachelle's sexual orientation and the evolution of her religious viewpoints. Ex 41, at 2-3, 7-8. In particular, he sought to prohibit her from discussing homosexuality or anything related to "alternative lifestyles" with her children, from discussing religion with her children, or from participating in any activity that might "relate" to homosexuality or "alternative lifestyles," unless explicitly approved by the children's therapist. *Id.* Rachelle did not agree to these restrictions and did not seek to impose similar restrictions on Charles. Ex 2, at 2, 4-5; *see* RP 260-66. The parties went to trial in August 2014. CP 28-33.

1. The guardian ad litem report and testimony.

At Charles's request, the trial court appointed a guardian ad litem ("GAL"), Kelly LeBlanc, who filed a report and testified at trial. CP 5, 18-23; *see* RP 13-78. In both, the GAL reveals discomfort with and judgment of Rachelle,[4] for example, criticizing and exaggerating behavior of

[4] As discussed below (*see, e.g.*, footnote 10, *infra*), the GAL's report and testimony also included multiple factual errors and assumptions that were not supported by any evidence.

Rachelle's that was more than two decades old (*i.e.*, when she was 17 or 18) and is typical of many young adults. RP 166-68, 187-88; Ex 40, at 5-6. The GAL also repeatedly characterized Rachelle's sexuality using discriminatory and outdated phrases such as "lifestyle choice" and "gender preference decision," and implied that Rachelle should have stayed in the marriage and acted on her "alternative lifestyle" only after her children were grown. *See* RP 14, 33, 39, 41-45; Ex 39, at 3, 6-7; Ex 40, at 17, 21-22. Indeed, the GAL expressed concern over the fact that Rachelle discussed homosexuality and the meaning of the word "transgender" with her children. RP 47; Ex 40, at 23-24.

Consistent with these views, the GAL testified that, in her opinion, the children, who had been raised in a "sheltered" conservative Christian environment, would be unable to handle the reality that their mother was a lesbian or her evolving religious beliefs regarding homosexuality and divorce. RP 36-37, 45-49, 61. Even though she believed Rachelle had a strong relationship with her children, RP 76-77, the GAL proposed severe restrictions on Rachelle's time with the children and on her speech, conduct, and exercise of religion when with the children, Ex 40, at 25. She recommended Charles be the primary residential parent. RP 14-15; Ex 40, at 24-25.

2. Other testimony.

The court heard additional testimony from the parties: the children's therapist, Jennifer Knight; the children's former principal and teacher; a parent at the children's school; and Angela Van Hoose

(described by the court clerk as "Petitioner's Gay Partner" on the witness record). CP 34. Overall, the testimony reflected Rachelle's strong relationship with the children and good parenting skills. For example, the children's therapist, who had become involved at the recommendation of the GAL, testified that the children have a strong emotional bond with their mother, are close to her, find comfort from her, and were becoming accepting of their mother being in a same-sex relationship. RP 350, 362; Ex 38. The GAL testified that Rachelle had a strong bond with her children. RP 28, 76-77. Multiple witnesses testified that Rachelle had continued to live in the home and be the primary caretaker of the children during the in-home separation, including preparing meals, taking care of the children while Charles worked, and volunteering at schools. RP 63, 120-22, 125-26, 128-34, 141, 211-12, 214, 229. Charles also testified that Rachelle is a "pretty good mother," she loves the children and the children love her, and he has no concerns for their physical safety while with her. RP 382.

The testimony also reflects Charles's discomfort with and hostility toward Rachelle's lesbian identity. Rachelle offered testimony that Charles had referred to her as a "militant lesbo;" that he tracked her activity on the computer; that he had told her parents, her pastor, her friends, and the principal of the children's school about her sexuality before she was ready; and that he told her he would take the children away from her because she was gay. RP 174, 176-79, 181-82, 200-02, 270-72; Exs 57, 59. Charles admitted to referring to Rachelle in those terms.

tracking her computer activity, and telling people about her sexuality before she was ready. RP 328-29, 369-73, 382. Charles also attempted to justify the restrictions he sought to impose on Rachelle by asking the trial court to find, under RCW 26.09.191, that Rachelle had willfully abandoned the children, had neglected or substantially not performed parenting functions, and had a long-term impairment resulting from substance abuse that interfered with her ability to perform parenting functions. RP 376-79; Ex 41, at 2-3. The trial court rejected these allegations. CP 41, 46, 74.

D. The Court's Final Divorce Orders and Findings

Ultimately, the trial court endorsed the GAL's view that the children would find it "challenging" to adjust to Rachelle as a lesbian. Accordingly, the court designated Charles the primary residential parent and the sole decision maker regarding the children's religion, education, and day care; entered restrictions limiting Rachelle's speech, conduct, and free exercise of religion in the limited amount of time she has with her children; denied Rachelle's request for spousal maintenance; and ordered her to pay child support. CP 46-49, 51, 55, 69, 78. Yet the trial court expressly declined to find a basis for restrictions under RCW 26.09.191 and otherwise made no factual finding that the children would be harmed by their mother's sexual orientation, conduct, or religion; that Rachelle was a poor parent; or that she would not be able to meet her children's needs. *See* CP 39-42, 46, 49, 73-75.

1. The court restricted Rachelle's conduct.

Adopting the proposal in Charles's parenting plan, the trial court ordered Rachelle not to discuss her sexual orientation with the children, homosexuality in general, religion, or anything related to any "alternative lifestyles," or otherwise "expose" them to such concepts, unless she gets specific and prior authorization from the children's therapist for each and every such discussion or activity. CP 49. Specifically, Rachelle is prohibited from:

> having further conversations with the children regarding religion, homosexuality, or other alternative lifestyles concepts and further that she is prohibited from exposing the children to literature or electronic media; taking them to movies or events; providing them with symbolic clothing or jewelry; or otherwise engaging in conduct that could reasonably be interpreted as being related to those topics unless the discussion, conduct or activity is specifically authorized and approved by [the children's therapist.]

Id., at § 3.13.8.[5] The court also ordered that Rachelle's children have no contact with her partner without prior therapist approval and the therapist's determination of how and when any contact should occur. *Id.*, at § 3.13.7. The court imposed no equivalent restrictions on Charles. *Id.*, at § 3.13. His speech has not been limited, and he may bring people he is dating around the children whenever and however he chooses.[6] *Id.*

Although Rachelle may be able to engage in some of this speech and conduct with specific and prior approval from the children's therapist, it is not clear from the wording of the order how much the therapist can

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[5] Court of Appeals Commissioner Schmidt issued a stay of this restriction on January 22, 2015; the Court denied Charles's motion to modify on February 11, 2015.

[6] Charles is merely required to "use counseling services" of his choice before introducing the children to someone with "whom he has a serious relationship." CP 49.

authorize. *See* CP 49 § 3.13.8. Moreover, the order makes the restrictions permanent and the need for therapist approval ongoing and specific to *every* activity and *every* conversation, which requires the therapist to be available on an ongoing, on-call basis. *See id.* Finally, even if the therapist does approve certain conduct or speech, the therapist appears to have the power to reverse her decision later. *Id.*

2. The court limited Rachelle's residential time.

The court made Charles the primary residential parent and restricted Rachelle's residential time to every other Thursday afternoon through Monday morning. CP 46-49. This was despite the court finding that Rachelle had a strong and stable relationship with her children, showed a good potential for future performance of parenting functions, and had been a "traditional stay-at-home mother for the majority" of the marriage. CP 40, 46-49, 75.

3. The court awarded sole decision-making authority regarding education and religion to Charles.

The trial court also awarded sole decision-making authority regarding the children's religion, education, and day care to Charles on the basis that both parents were opposed to mutual decision making on all issues. CP 51, 75. However, neither party sought sole decision-making authority on all issues. Charles sought sole decision-making authority on most aspects of the children's lives, except for non-emergency health care. Ex 41, at 10. Rachelle sought sole decision-making authority regarding education and non-emergency health care, but requested that both parents

be allowed to share their religious beliefs with the children during their residential time and did not oppose the children's continued attendance at their family church. RP 258; Ex 2, at 6. Rachelle expressed no opinion regarding decision making on day care. RP 256-58; Ex 2, at 6.

4. The court denied maintenance entirely to Rachelle and required Rachelle to pay child support.

The trial court also denied spousal maintenance for Rachelle, despite finding that she had a need for assistance, but finding Charles had an inability to pay. CP 42, 69, 78. The court also ordered Rachelle to pay child support. CP 55.

V. ARGUMENT

A. Standard of Review

A trial court's parenting plan, spousal maintenance decision, and child support orders are reviewed for an abuse of discretion. *See In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644 (2014); *In re Marriage of Zahm*, 138 Wn.2d 213, 226-27, 978 P.2d 498 (1999) (spousal maintenance); *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 423, 154 P.3d 243 (2007) (child support).

A trial court abuses its discretion if its decision is "manifestly unreasonable or based on untenable grounds or untenable reasons." *Chandola*, 180 Wn.2d at 642 (internal quotation marks and citation omitted). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are

unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (citations omitted). Moreover, a court abuses its discretion if it "restrict[ed] parental rights because the parent is gay or lesbian." *In re Marriage of Wicklund*, 84 Wn. App. 763, 770, 932 P.2d 652 (1996).

Constitutional challenges are reviewed de novo. *See Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006) ("Constitutional challenges are questions of law subject to de novo review."); *In re Welfare of H.Q.*, 182 Wn. App. 541, 550, 330 P.3d 195 (2014) (considering due process argument under de novo standard of review).

Moreover, a trial court's orders and conclusions of law must be supported by findings of fact that are in turn supported by substantial evidence. *See In re Dependency of A.M.M.*, 182 Wn. App. 776, 785, 332 P.3d 500 (2014). "Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." *In re Custody of A.F.J.*, 179 Wn.2d 179, 184, 314 P.3d 373 (2013) (internal quotation marks and citation omitted).

Here, the trial court's orders are untenable and unreasonable. They reflect an impermissible bias against Rachelle based on her sexual orientation, an incorrect application of Washington law, and a violation of Rachelle's constitutional rights. Moreover, significant findings of fact upon which the court relied are not supported by substantial evidence.

B. The Restrictions on Rachelle's Speech and Conduct Violate Washington Law and the Constitutions of Washington and the United States.

1. The trial court abused its discretion when it considered Rachelle's sexual orientation in imposing restrictions.

Washington law is clear that a parent's sexual orientation, even where it introduces change into the children's lives, is not a basis for judgments about parenting. *Wicklund*, 84 Wn. App. at 770; *In re Marriage of Cabalquinto*, 43 Wn. App. 518, 519, 718 P.2d 7 (1986). Washington law values and protects the bond between parents and their children. The court in a dissolution proceeding is tasked with minimizing the effects on the children and attempting, where possible, to maintain continuity in the children's lives. *See* RCW 26.09.002; *Underwood v. Underwood*, 181 Wn. App. 608, 612, 326 P.3d 793 (2014).

In *Wicklund*, for example, the trial court restricted a father from "practic[ing] homosexuality" while the children were in his care, including making "displays of affection." 84 Wn. App. at 769. Before entering into a long-term relationship with another man, Wicklund (with his ex-wife) had been active in the Jehovah's Witness faith. *Id.* at 766. The trial court found that "the outward or demonstrative practice of homosexuality is an abomination to the Jehovah Witness faith and beliefs" and concluded that the "active and outward practice of homosexuality by the [father] in the presence of his children is not in the children's best interest." *Id.* at 769 (alteration in original). The Washington Court of Appeals struck down the restrictions, holding that the children's purported confusion was "not a

proper reason to order a restriction." *Id.* at 770. Instead, the Court of Appeals held that such confusion amounted to normal adjustment difficulties after dissolution. *Id.* at 771. "[R]estrictions on a parent's conduct designed to artificially ameliorate changes in a child's life are not permissible. If the problem is adjustment, the remedy is counseling." *Id.*

Similarly, the Washington Court of Appeals struck down a visitation decree that permitted a father's visitation with his minor son only if the father "does not associate with his homosexual companion to the extent that the companion is a member of the household or the boy could get the idea that 2 men are other than casual friends." *Cabalquinto*, 43 Wn. App. at 519. Determining that there was "no evidence in the record to support a finding that the visitation would endanger the child's physical, mental, or emotional health," the Court of Appeals reversed. *Id.* (internal quotation marks omitted). "There are some restraints society places upon parents, of course, but they are few in number and sexual preference[7] is not one of them." *Id.*

For these reasons, the trial court's belief that it would be "challenging" for the children to reconcile their religious beliefs with the fact that their mother is a lesbian, CP 40-41, is not sufficient support for restricting Rachelle's conduct or the time the children spend with Rachelle's partner. Moreover, the trial court's restrictions go far beyond ordering counseling for the children, the approach recommended in

[7] The term "sexual preference" is also disfavored. It implies that homosexuality is a choice and that an individual can change his or her "sexual preference" if desired.

Wicklund. The parenting plan restricts Rachelle's interaction with her children unless she has prior therapist approval for *each specific* activity or conversation. CP 49 § 3.13.8. Instead of acting as a therapist whose involvement is meant to support the children and help guide the parents, the therapist has been put in the role of gatekeeper, with authority over key aspects of Rachelle's life. Rachelle is never allowed to have spontaneous or authentic conversations with her children about any topic that might touch on sexuality or religion, because each conversation must be specifically approved. She must seek therapist approval to do anything as simple as help her children with homework that might implicate religion, take them to a movie that might have a gay or lesbian character, have friends over for dinner who might be gay or lesbian, or spend an evening with her children and partner. Not only are there no findings that would justify putting Rachelle in this position, but also such a situation is not practicable—the children's therapist cannot be expected to respond promptly to every such request.[8]

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[8] Rachelle testified that she would be willing to work with the therapist in introducing her new partner, Ms. Van Hoose, to the children. RP 170-71. This testimony reflects Rachelle's willingness to consider the advice of a therapist on how best to help the children adjust to the divorce. It in no way invites the therapist to have such specific and sweeping control over every conversation or activity that may be related to "homosexuality" or religion, or ongoing control over every aspect of her partner's interaction with the children. Rachelle never requested or agreed to the restrictions as they exist in the parenting plan. *See RP 260-66*. Moreover, should the therapist approve some activity on an ongoing basis, the therapist has the power to reverse her decision, making it appropriate for this Court to render a decision regarding the therapist approval clause. *See In re Marriage of Horner*, 151 Wn.2d 884, 893 n.8, 93 P.3d 124 (2004) (case was not moot because "'there was a reasonable expectation that the same complaining party would be subjected to the same action again'" (quoting *Weinstein v. Bradford*, 423 U.S. 147, 149, 96 S. Ct. 347, 46 L. Ed. 350 (1975))

In sum, the trial court did far more than order counseling for Rachelle's children. Instead, without any findings of harm or any permissible basis, the trial court imposed restrictions on Rachelle that are even more sweeping than those struck down in *Wicklund* and *Cabalquinto*. Here, as in those cases, the unlawful orders must be vacated.

2. The restrictions are not justified under RCW 26.09.191.

The court here expressly refused to find a basis for restrictions on Rachelle's conduct under RCW 26.09.191. However, the court then proceeded to impose restrictions on Rachelle. If the court had imposed these pursuant to RCW 26.09.191, they would fail, as discussed below. Certainly, they should fail where the court itself acknowledges there is no basis in the statute for limitations on the mother. *See Chandola*, 180 Wn.2d at 644-45 (identifying restrictions as provisions not normally included in parenting plans).

Restrictions under RCW 26.09.191(3) must be based on "a particularized finding" of harm. *Chandola*, 180 Wn.2d at 646; *see also In re Marriage of Katare*, 125 Wn. App. 813, 826, 105 P.3d 44 (2004) (requiring "express findings"). That is, restrictions can only be imposed where it is necessary to protect the child from physical, mental, or emotional harm. *Chandola*, 180 Wn.2d at 648; *see also Wicklund*, 84 Wn. App. at 770-71.

The fact that children might find it "challenging" to adjust to a divorce is insufficient. RCW 26.09.191(3) restrictions "requir[e] more than the normal . . . hardships which predictably result from a dissolution

of marriage." *In re Marriage of Katare (Katare IV)*, 175 Wn.2d 23, 36, 283 P.3d 546 (2012) (internal quotation marks and citation omitted), *cert denied*, 133 S. Ct. 889, 184 L. Ed. 2d 661 (2013). Instead, the harm must be the type that "concern[s] either the lack of any meaningful parent-child relationship whatsoever or conduct by the parent that *seriously endangers* the child's physical or emotional well-being." *Chandola*, 180 Wn.2d at 647 (emphasis added). "By requiring trial courts to identify specific harms to the *child* before ordering parenting plan restrictions, RCW 26.09.191(3) prevents arbitrary imposition of the court's preferences." *Id.* at 655.

Here, the trial court did not make any particularized finding of harm. In fact, the trial court expressly rejected Charles's request to impose restrictions pursuant to statute and found that the limitations under RCW 26.09.191 do *not* apply in this case.[9] CP 41, 46, 49. The trial court also noted that Rachelle has a "strong and stable" relationship with the children. CP 40, 75.

The court's only justification appears to be its belief that the children would find it "challenging . . . to reconcile their religious upbringing with the changes occurring within their family over issues of divorce involving marriage and dissolution, as well as homosexuality." CP 40-41. But this belief is not supported by substantial evidence—it only

[9] "[T]he the absence of a finding in favor of the party with the burden of proof as to a disputed" material fact is normally interpreted as a negative finding against that party. *In re Marriage of Olivares*, 69 Wn. App. 324, 334, 848 P.2d 1281 (1993), *disapproved of on other grounds by In re Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009).

reflects an assumption by the GAL.[10] And, in any event, the Washington Supreme Court noted in *Katare IV* that such challenges are a normal consequence of divorce and are an impermissible basis for imposing restrictions under RCW 26.09.191(3).

The court here plainly abused its discretion by ordering restrictions without the support of any findings of significant harm to the children. In so doing, it created a barrier between Rachelle and her children that can only make worse any challenges they face in adjusting to the divorce.

3. The restrictions in the Final Parenting Plan are unconstitutional prior restraints.

The restrictions on Rachelle's speech are prior restraints, which are presumptively invalid. *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558, 95 S. Ct. 1239, 43 L. Ed. 2d 448 (1975); *In re Marriage of Suggs*, 152 Wn.2d 74, 81-82, 93 P.3d 161 (2004); *State v. Coe*, 101 Wn.2d 364, 374-75, 679 P.2d 353 (1984). The Washington Court of Appeals has only upheld prior restraints contained in final divorce orders to prohibit defamatory speech against the other parent or protect the other parent and

[10] *See* GAL's testimony at RP 34-37, 46, 48-49, 57-60; Ex 40, at 23-24. Not only was the GAL's report and testimony riddled with inaccuracies and bias when it came to Rachelle, the GAL only met with the children twice, during which time she spoke to some of the children for as little as 10 to 15 minutes, and she did not provide any data for her assumptions. *See* RP 26-28, 34-37, 48-49, 57-60; Ex 40, at 23-24. She even admitted at trial that "it's really hard to predict what's going on with these boys." RP 60. Her view is also remarkably short-sighted, and ignores the children's long-term and loving relationship with their mother. *See* RP 362, 382. The therapist did not specifically opine on the children's ability to adjust to "homosexuality," but she did note that the children were starting to get more used to the idea of their mother being in a same-sex relationship. RP 350. Ms. Knight recommended that the children be introduced slowly to Ms. Van Hoose because she was concerned that the GAL would recommend in her final report to the court that the children not be allowed to see Ms. Van Hoose. *See* RP 356.

the children from harassing and intrusive conduct. *See In re Marriage of Olson*, 69 Wn. App. 621, 630, 850 P.2d 527 (1993) (interpreting injunction prohibiting "disparaging remarks" regarding former wife as prohibiting only defamatory remarks in order to avoid constitutional problems); *Dickson v. Dickson*, 12 Wn. App. 183, 187-89, 191-92, 529 P.2d 476 (1974) (observing that there was "sufficient evidence that [the father's] conduct interfered with the welfare of his minor children" and yet modifying injunction in order to protect ex-wife and children from any harassment or intrusion on their privacy while protecting father's First Amendment right to state his religious beliefs).

Here, the prior restraints on Rachelle's speech have nothing to do with preventing defamation of Charles or preserving his relationship with the children. Instead, the trial court's order broadly prohibits Rachelle from speaking with her children about *her* sexual orientation and religion—which are areas of protected speech. As such, the restrictions are unconstitutional prior restraints.

4. The restrictions are unconstitutionally vague.

For a prohibition on speech to be constitutional, the restriction must be clearly defined so that "ordinary people can understand what conduct is prohibited." *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983). The restrictions on Rachelle are exactly the sort of vague restrictions the First Amendment protects against. The restrictions prevent all conversations regarding "religion, homosexuality, or other alternative lifestyles concepts" and prohibit Rachelle from

"exposing" the children to anything "related" to those topics. CP 49 § 3.13.8. To comply with this order, Rachelle must therefore avoid all topics touching on religion, which could be a discussion of any world religion in any context, or assisting her children with religion-based homework. She must avoid any discussions about or exposure of the children to "homosexuality," which is impossibly broad, and could mean that she has to take steps to prohibit the children from simply being around other gay or lesbian parents or viewing TV shows or movies that might have a gay character. And she must guess what "alternative lifestyle" means, a term that often means different things to different people and is nowhere defined. Compounding the vagueness of these terms, the Final Parenting Plan allows discussion of these topics only if "the discussion, conduct or activity is *specifically* authorized and approved" by the children's therapist. *Id* (emphasis added). But it is not clear whether the therapist can lift the restrictions altogether, or whether, if lifted, they can be re-imposed.

Given the breadth and vagueness of these restrictions, if they were upheld, Rachelle must constantly question her decisions and live in fear of violating the order. Even restrictions on unprotected speech require more specificity. *See Suggs*, 152 Wn.2d at 83-84 (striking down order restricting libelous, harassing speech for lack of specificity).

5. The restrictions discriminate based on the content of speech.

The restrictions also are unconstitutional because they are based on content. They single out categories of speech—"religion, homosexuality, or other alternative lifestyles concepts"—that Rachelle cannot discuss with her children. CP 49 § 3.13.8. A restriction on speech is content-based if it "classif[ies] permissible speech in terms of subject matter." *Collier v. City of Tacoma*, 121 Wn.2d 737, 752-53, 854 P.2d 1046 (1993). Such restrictions "are 'presumptively invalid' and subject to strict scrutiny." *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 358, 129 S. Ct. 1093, 172 L. Ed. 2d 770 (2009) (citation omitted). A content-based restriction can only pass strict scrutiny if it is the least restrictive means to further a compelling interest. *S.O.C., Inc. v. Cnty. of Clark*, 152 F.3d 1136, 1145 (9th Cir.), *amended*, 160 F.3d 541 (9th Cir. 1998). Here, the court made no attempt to satisfy this extremely stringent test, and the record does not support that either factor is satisfied.

6. The restrictions imposed on Rachelle and the allocation of sole decision-making authority regarding religion impermissibly burden her free exercise of religion.

The court's order requires Rachelle to "refrain from having further conversations with [her] children regarding religion . . . or otherwise engaging in conduct that could reasonably be interpreted as being related to" religion and allocates sole religious decision-making authority to Charles. CP 49 § 3.13.8, 51 § 4.2. These provisions unconstitutionally infringe on Rachelle's right to free exercise of religion, given there was no

finding of actual or potential harm to the children from exposure to her beliefs. *See* U.S. Const. amend. I; U.S. Const. art. I, § 11; *Munoz v Munoz*, 79 Wn.2d 810, 813, 489 P.2d 1133 (1971); *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 490, 899 P.2d 803 (1995).[11]

Washington courts require a specific showing of substantial harm to the children before a parenting plan may restrict a parent's right to practice her religion or restrict a parent's decision making authority with respect to religious upbringing. *Munoz*, 79 Wn.2d at 813-14; *Jensen-Branch*, 78 Wn. App. at 490. "The obvious reason for such a policy of impartiality regarding religious beliefs is that, constitutionally, American courts are forbidden from interfering with religious freedoms or to take steps preferring one religion over another." *Munoz*, 79 Wn.2d at 812-13. Here, the trial court only found it might be "challenging" for the children to adjust to this change in viewpoints. CP 40-41. Challenges are not inherently harmful. Moreover, the challenge here is not as extreme as the court seemed to think. Rachelle remains a Christian, and the primary difference between her religious practice and Charles's is that she, unlike Charles but like many other Christians, does not view homosexuality or

[11] RCW 26.09.184(5) states that a permanent parenting plan "shall allocate decision-making authority to one or both parties regarding the children's . . . religious upbringing." Notwithstanding this provision, any decision regarding religious upbringing must be consistent with constitutional protections. *See Munoz*, 79 Wn 2d at 814 ("[W]here the trial court does not follow the generally established [constitutional] rule of noninterference in religious matters in child custody cases without an affirmative showing of compelling reasons for such action, we are of the opinion that this is tantamount to a manifest abuse of discretion ").

divorce as a sin.[12] By contrast, in *Munoz*, the mother was Mormon and the father Catholic, and the trial court found it would be "detrimental" to the children to be raised with conflicting religious beliefs. 79 Wn.2d at 811-12. Not surprisingly, in a pluralistic society, this Court reversed the restriction on the father taking the children to Catholic services or instructional classes. *Id.* at 814-16.

Likewise, in *Jensen-Branch*, the father belonged to a church that the mother viewed as a cult. 78 Wn. App. at 486. The trial court awarded sole religious decision making to the mother, without finding actual or potential harm to the children from the conflicting religious beliefs. *Id.* at 488. The Court of Appeals reversed because, absent such harm, the constitution "does not allow sole decisionmaking [regarding religion], even if the parents are not capable of joint decisionmaking[.]" *Id.* at 492.

In this case, as in *Munoz* and *Jensen-Branch*, there has not been a showing that exposure to the different religious views will cause actual or potential harm to the children here. Nor has there been any showing that joint religious decision making will harm the children. Accordingly, the trial court's order restricting Rachelle's ability to discuss religion with her children and granting sole religious decision-making authority to Charles should be reversed.

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[12] There is no evidence in the record to support any substantial conflict between Rachelle's and Charles's religious beliefs. The trial court found that Rachelle stopped sharing her family's religious beliefs in December 2011. *See* CP 39 para. 2. But Rachelle testified that she still retains the same religious beliefs with which she was raised, with the exception that she no longer believes that homosexuality is sinful. RP 276-77.

C. The Residential Provisions Misapply Washington Law and Are Unsupported by Substantial Evidence

The court severely limited the children's time with their mother in the absence of any evidence that she was any less the loving and capable parent she has always been. In fact, the court's findings tacitly acknowledge as much: that Rachelle had been a traditional stay-at-home mother, has a strong and stable relationship with her children, showed good potential for parenting in the future, volunteered at the children's schools, and continued to perform these same duties while living in the marital residence. CP 40, 73-75; *see also* RP 101-03, 133-34.

Washington law, which promotes continuity of the bonds between parent and child, strongly favors Rachelle as the primary residential parent. *See* RCW 26.09.002 ("Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents . . ."). The court reached a contrary result by misapplying this law, and by focusing on Rachelle's sexual orientation, speculating as to harms for which the record provides no support. The result not only disserves the children's best interests, but also demeans and discriminates against Rachelle as a lesbian parent, signaling to the children that their mother is the subject of the state's disapproval. As discussed below, prejudice, not a proper application of the RCW 26.09.187 factors, drove the court's decision

1. The residential time decision cannot be based on Rachelle's sexual orientation.

Rachelle's sexual orientation and evolving religious views regarding homosexuality cannot properly be grounds for the residential time decision. Rather, the court must focus on the statutory factors and the presumption that children are best served by maintaining continuity in their relationships with their parents. Here, instead, the court improperly focused on Rachelle's sexual orientation and religious beliefs, just as it did with the restrictions discussed above.

In doing so, the court relied prominently on the GAL's biased views, whose reports reveal her obvious discomfort with and judgment of Rachelle and are replete with manifest inaccuracies.[13] She repeatedly characterized Rachelle's sexuality using discriminatory and outdated phrases such as "lifestyle choice" and "gender preference decision" and implied that Rachelle should have postponed divorce and denied her "alternative lifestyle" until her children were grown. *See* RP 14, 33, 39, 41-45; Ex 39, at 3, 6-7; Ex 40, at 17, 21-22. These may be the GAL's views, but Washington law does not make these kinds of judgments; it imposes no barriers to divorce and does not discriminate on the basis of sexual orientation. *See, e.g.*, *Wicklund*, 84 Wn. App. 763, 770; *Cabalquinto*, 43 Wn. App. at 519. Yet, the GAL faulted Rachelle for her

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[13] For example, and as discussed above, the GAL exaggerated the importance of Rachelle's behavior in high school, more than two decades ago. RP 167-68, 187-88. She repeatedly asserted that Rachelle was absent from the family home a "majority of the time" after she began to reveal that she was a lesbian—an assertion that was plainly disproved at trial. Ex 40, at 21; *see* RP 394-405, 412-14, Exs 65, 66; *see also* CP 40, 73.

"choice" to acknowledge her sexual orientation as it was the source of "controversy" and "confusion." RP 43-45; Ex 40, at 22. "While it is not my intent to cast judgment on Ms. Black's lifestyle choice, [the GAL opined,] the fact remains that it is a choice that can result in significant controversy." Ex 39, at 7 (GAL's preliminary report). After Rachelle objected to the GAL's description of her sexual orientation as a "lifestyle choice," the GAL attempted to explain the statement in her final report as follows:

> My use of "choice" in the context of my preliminary report and in the context of my present analysis did not relate to Ms. Black's stated gender preference in and of itself. However, Ms. Black did choose to spend a large majority[14] of her time away from the home over the past three years; did choose to terminate the marriage; and is planning on living with Ms. Van Hoose. All of those decisions were a matter of choice and all of those choices are inconsistent with teachings and principles that she and Mr. Black elected to share with their children. Ms. Black's choices did disrupt her relationship with the children and given the family's faith and historical belief system, the choices have also created a great deal of controversy and confusion.

Ex 40, at 21-22. This explanation only underscores the GAL's view that Rachelle should have chosen to live a life denying any expression to her sexual orientation. Washington law does not require this, not only because it is an infringement on personal autonomy and liberty, but because there is no per se harm to children from parents living authentic lives.

The court should have corrected for this erroneous interjection of bias into the proceeding, rather than embracing it. *See Fernando v*

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[14] As noted above, the GAL's statement that Rachelle spent a "large majority" of her time away from home is wildly inaccurate and is not supported by the record in this case

Nieswandt, 87 Wn. App. 103, 107, 940 P.2d 1380 (1997) (trial court "free to ignore the guardian ad litem's recommendations if they are not supported by other evidence . . ."). Indeed, the court compounded the error by reading into Washington's preference for continuity a preference for parents never changing, when what is meant is custodial continuity. *See* RCW 26.09.002 ("Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents . . ."). The court found the children would be "challeng[ed]" to reconcile their religious upbringing with the changes in their family regarding divorce and homosexuality. CP 40-41. A challenge is not a harm. *Wicklund*, 84 Wn. App. at 771. Indeed, what and when to teach children new information is a parent's decision, which cannot be abridged absent some compelling state interest. Just as the court could not order these parties to remain married, the court cannot exile the mother from her children because of her sexual orientation. Rather than protect against the GAL's discriminatory, outdated, and inaccurate views, the court effectively adopted them in entering the parenting plan, severely limiting Rachelle's residential time with her children.

2. The residential time decision misapplies Washington law.

The proper focus for the court's residential time determination is on the factors set forth in RCW 26.09.187(3). Yet, here, the court ignored its own findings regarding Rachelle's history and strength as a parent,

emphasizing instead Charles's stabilizing influence in not "challenging" the children, but maintaining his membership in a church that condemns homosexuality and divorce. *See* CP 40-41. Charles is free to practice these beliefs, but the court is not free to sanction them as stabilizing, or to designate Charles as "the more stable parent" because he has not come to any different understanding of his sexual orientation. CP 40 (able to provide for the children "financially," "emotionally," and in maintaining their "religious upbringing.").[15] This is an extraordinarily narrow view of the children's needs, and actually ignores and impedes their primary need—the need to maintain their attachment to their parents. The elevation of "stability" over attachment and historical parenting contravenes the statute and Washington policies and penalizes Rachelle for acknowledging her sexual orientation and having different religious views regarding homosexuality.

The trial court's findings indicate that, with respect to the most important factor in making residential provisions—"[t]he relative strength, nature, and stability of the child's relationship with each parent," RCW 26.09.187(3)(a)(i)—a residential time decision so drastically limiting Rachelle's time is not justified. The trial court expressly found "both parents have a strong and stable relationship with the children," CP 40, and that "[b]oth parents love their children and their children love them,"

[15] A number of the court's findings incorrectly state that, after 2011, Rachelle was no longer a stay-at-home mother and that Charles was the more stable parent. CP 40 paras 4, 6, 7; CP 41 para 4; CP 74 Finding of Fact A.21, CP 75 Finding of Fact A.37. For the reasons set forth in this section, those findings are untrue, not supported by substantial evidence, and in error.

CP 41. Moreover, in assessing the residential time factors under RCW 26.09.187(3), the court found the parties mostly equal in their parenting abilities. *See* CP 40-41. The trial court, however, then focused on Charles's "stability," and in doing so, made multiple errors of law and fact.

First, the trial court erred in considering that Charles was a more "stable" parent because he could better provide for the children "financially." CP 40. The trial court found it "most concerning . . . that Ms. Black has done nothing to prepare herself for life as a single parent since 2011 other than to claim that her current girlfriend will provide for her,"[16] and that it was not proper for Rachelle to "assume[] that Ms. Van Hoose would provide for her physical and financial security." CP 41 para. 4. No Washington case law has indicated that such considerations, which would inevitably penalize stay-at-home parents, may serve as the basis for making a residential time decision. But in any case, the trial court ignored that Rachelle testified that, after being a stay-at-home parent for 15 years, she wanted to go back to school to complete her education and support herself. RP 192-94, 267-68. The court also ignored testimony regarding the reality of the Blacks' situation pre-divorce—Charles himself testified that neither could afford to move out unless they had sold the house, and ultimately the house was refinanced to give Rachelle some of the only money she was provided post-dissolution. CP 75, 77, 79; RP 380. This

[16] For the reasons stated in this paragraph, this finding of fact is not supported by substantial evidence. *See* RP 192-94, 267-68. In addition, referring to Ms. Van Hoose as Rachelle's "current girlfriend" is demeaning.

finding also is inconsistent with the court's findings that "both parents have good potential for future performance of parenting functions" and Rachelle "appears to be very intelligent and should have no difficulty finding employment." CP 40, 41, 75. The court's reasoning improperly penalized a stay-at-home parent like Rachelle by favoring the parent with a higher earning capacity and work experience.[17]

Second, the trial court also erred in considering that Charles was the more "stable" parent in "maintaining [the children's] religious upbringing," noting that the children "have been taught from the Bible since age 4." CP 40. The trial court's focus appears to largely have been on the fact that Charles was maintaining his membership in the church that he and Rachelle had joined that regarded homosexuality as sinful. This consideration is not a factor under RCW 26.09.187(3) and raises serious First Amendment issues by impermissibly favoring one parent's religious views over another.[18] *See* Section V.B.6, *supra*. It would mean that a parent who changes her religious views during a marriage would

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[17] Ironically, as discussed in Section V.E, *infra*, the court also then denied Rachelle maintenance, and therefore assistance to become more financially stable and independent, relying on the support she has from Ms. Van Hoose as a justification for why she did not need maintenance.

[18] To be sure, RCW 26.09.184(3) provides that a court may consider a child's "religious beliefs" in fashioning a permanent parenting plan. Putting aside the fact that the record in this case is bereft of evidence regarding the children's actual religious beliefs (as opposed to beliefs that may be taught in their church and schools), this statutory provision cannot be constitutionally invoked to penalize a parent in a parenting plan if their religious views are different from those that their children have been taught. *See, e.g.*, *Munoz*, 79 Wn.2d at 812-13 ("constitutionally, American courts are forbidden from interfering with religious freedoms or to take steps preferring one religion over another.") (citation omitted).

inevitably be penalized in a residential time decision if her religious views are different from those previously taught to the children.

Third, in determining that Charles was the more "stable" parent, the court made a cursory finding that Charles was better able to meet the needs of his children "emotionally." CP 40. But there is no substantial evidence in the record to support this finding,[19] and there is instead substantial evidence in the record to the contrary: even while separated from Charles, Rachelle continued to live in the family home, actively volunteer at the children's schools, help the children with their homework, take the children to doctor's appointments and school in the morning, care for the children when they were ill, and cook family meals. CP 40, 73, 74; RP 120, 128-34, 141, 143, 407-08. The court also found that Rachelle had a stable and loving relationship with her children and that "both parents have good potential for future performance of parenting functions." CP 40. Moreover, the children's therapist testified at trial that the children have a strong emotional bond with their mother, are close to her, and find comfort with her. RP 362. She also testified they were becoming accepting of their mother being in a same-sex relationship. RP 350.

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[19] The court's opinion that Charles is more emotionally stable seems based entirely on the GAL's view of Rachelle's "choice" to be a lesbian and inaccurate claims about Rachelle's teenage years, her absences from the marital residence, and her alcohol use *See* CP 40-41; Ex 40, at 20-22. The court expressly rejected the latter concern, found Rachelle was in the home 80 percent of the time, and made no explicit mention of Rachelle's teen years. CP 39-42, 73-75. In short, there is no evidence either of these parents lack emotional stability. Indeed, the ability to adapt to life's changes is essential to emotional stability.

And as discussed above, it clearly would be improper to regard Charles as better able to provide for the children "emotionally" simply because he remains a heterosexual and because his views regarding homosexuality have not changed. Unfortunately, the trial court's focus on Charles's supposed ability to better support the children "emotionally" seems entwined with its impermissible favoritism of Charles's religion and the short-sighted notion that the children might have difficulty adjusting to Rachelle's being a lesbian. Indeed, the court's reasoning endorses Charles's religion-based view of his ex-wife and endorses the idea that the children should be encouraged in this same view. *See, e.g.*, Ex 41, at 10. As discussed in Sections V.B.6, *supra*, and V.D.1, *infra*, the court cannot take sides in this disagreement; absent some clear harm, the mother has an equal right to support the children "emotionally" in understanding her religious views, and in all matters.

Finally, while commending Charles for maintaining full-time employment while taking on greater parenting responsibilities than he had before, the trial court also faulted Rachelle for the small portion of time she spent away from the home during the couple's separation, finding that she was gone about 20 percent of the time (a finding that Rachelle disputes).[20] CP 40 para. 3, 73 Finding of Fact A.19, 75 Finding of Fact

[20] The court's finding that Rachelle was "absent approximately 20% of the time from December, 2011 to March of 2014" is not supported by substantial evidence. CP 40 para. 3; CP 73 Finding of Fact A.19. First, the trial court appears to describe two different methods for calculating the amount of time Rachelle was gone—neither of which is specific enough to replicate the court's calculations with any accuracy. *Compare* CP 40 ("I did not include in this count the camping trips or any disputed entries") *with* RP Presentation Mot. at 4 ("What I did is I took the calendar that was either agreed she

A.39. The court ignored that Rachelle spent some of that time away so Charles could have time alone with the children, a reciprocity upon which they had agreed. RP 367-68. Nor did the court find that Rachelle had neglected or substantially failed to perform parenting functions, as Charles had alleged in his proposed parenting plan. CP 46; Ex 41, at 2-3.[21] Finally, it is hard to understand the court's criticism of Rachelle when, even by the court's calculations, she would have been home to provide parenting functions 80 percent of the time. *See* CP 40, 73. This fact supports granting her primary residential care of the children, not the opposite.

In sum, the trial court's residential time decision is not consistent with RCW 26.09.187(3) and is tainted by the same unlawful reasons that led to the restrictions. And it is apparent that the trial court improperly focused on Rachelle's sexuality and evolving religious beliefs. Under Washington law, the trial court should have focused on Rachelle's strong and stable relationship with the children, which was built and maintained

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was gone or there were some documentation.") Moreover, it is unclear what documentation formed the basis for the court's finding: a calendar kept by Charles (Ex 65), game schedules from the Seattle Storm basketball team (Exs 67, 68), date-stamped photos from Rachelle's phone showing her and the boys (Ex 66), testimony from the parties, or some combination of some or all of these sources. No matter the method or documentation relied upon, it appears that the trial court overstated Rachelle's absences by counting partial days—even a mere half hour in the early morning or during the day when the children would have been in school—as full days gone. *See, e.g.*, Ex 65 (Mar. 19, 2012; Apr. 17, 2012; Apr. 23, 2012; Feb. 18, 2104). The court also did not appear to account for the days Rachelle was absent at Charles's request. RP 367-68, days when Rachelle was outside of the home but with her children, RP 110; or days when Rachelle may have been gone but the children were with their grandparents, *see* Ex 65 (Nov. 30, 2012). And, curiously, the trial court made no effort to conduct any similar calculation of Charles's absences, such as when he was at his full-time job or away from the home with friends. RP 113-14, 118.

[21] "[T]he the absence of a finding in favor of the party with the burden of proof as to a disputed" material fact is normally interpreted as a negative finding against that party. *Olivares*, 69 Wn. App. at 334.

through the many years in which she was a stay-at-home mother and the children's primary caregiver. The residential time decision allowing Rachelle to spend only four nights out of every 14 with her children is therefore in error and should be reversed. The children do not deserve this treatment any more than their mother does.

D. The Court Abused Its Discretion in Allocating Decision-Making Authority

A court may give one parent sole decision-making authority only if limits on joint decision making are appropriate—for example, if both parents are opposed or one parent is opposed and that opposition is reasonable. Factors making sole decision making reasonable include the "existence of a limitation under RCW 26.09.191," "[t]he history of participation of each parent in decision making [regarding the children's education, health care, and religious upbringing]," "[w]hether the parents have a demonstrated ability and desire to cooperate with one another in decision making" in these areas, and "[t]he parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions." RCW 26.09.187(2)(c).

1. The trial court abused its discretion when it granted sole decision-making authority over the children's religious upbringing to Charles.

As the Washington Supreme Court recently reiterated, limitations on a parent must only be ordered "when they are reasonably calculated to prevent relatively severe physical, mental, or emotional harm to the child." *Chandola*, 180 Wn.2d at 658. This principle applies with specific force to

religious decision making, where constitutional protection for the free exercise of religion precludes sole decision making "*even if the parents are not capable of joint decisionmaking*, if leaving each parent free to teach the children about religion *independently* would not cause actual or potential harm to the children." *Jensen-Branch*, 78 Wn. App. at 492 (emphasis added). Here, as discussed in Section V.B.6, *supra*, the trial court granted Charles sole decision-making authority over the children's religious upbringing without finding actual or potential harm to the children from exposure to the minimal conflict between Charles's and Rachelle's religious beliefs.[22] Essentially, the court came down on the side of one religious viewpoint. Neither the U.S. nor Washington Constitutions allow this, and the children do not need it.

Even if the court's decision here were constitutionally allowed, there was no need for the court to assign sole decision-making authority to Charles. The trial court's finding that "[b]oth parties are opposed to mutual decision-making" and have expressed very different goals regarding their children's religious education is not supported by substantial evidence. CP 51 § 4.3, 75 Finding of Fact A.36. Contrary to the court's finding, Rachelle agreed that "each parent may share his/her religious beliefs and practices with the children." Ex 2, at 6; *see also* RP 258. The court also did not find that any limit under RCW 26.09.191 was necessary or that Charles's opposition to shared decision making was

[22] The trial court granted joint decision-making authority in major decisions regarding health care. CP 51 § 4.2. Rachelle is not appealing this aspect of the parenting plan.

reasonable. *See* RCW 26.09.187(2)(b); CP 41, 46, 73-75. Moreover, the RCW 26.09.187(2)(c) factors weigh in favor of mutual decision making. For example, Charles and Rachelle both shared in decisions related to the children's religion during their marriage, and Rachelle has already stated that she will respect Charles's desire to share his religious beliefs with the children. CP 39, 41; RP 36, 258. Thus, even without the constitutional deficiencies, the court's grant of sole decision-making authority to Charles regarding religion was an abuse of discretion.

2. The trial court abused its discretion when it granted sole decision-making authority over the children's education to Charles.

The court also erred in awarding Charles sole decision-making authority over the children's education.[23] CP 41, 51. In this case, the children attend conservative Christian schools; thus, any decisions regarding education are inextricably intertwined with decisions regarding religion. Even though both parties opposed mutual decision making over education, the court's grant of sole decision-making authority to Charles on education is constitutionally deficient for the same reasons as the court's grant of decision-making authority on religion, as discussed more fully above and in Section V.B.6, *supra*. Again, the court, without cause, has sided with one parent in an ideological dispute.

[23] The trial court also appears to have ordered the Black's eldest child to attend a private, Christian school. RP Presentation Mot. at 14; *see also* CP 41, 61. This order infringes on Rachelle's constitutional right to freedom of religion (indeed, Charles's as well).

3. The trial court abused its discretion when it granted sole decision-making authority over the children's day care to Charles.

There is no support in the record for the court's award of sole decision-making authority over the children's day care pursuant to RCW 26.09.187(2)(b). The trial court's finding that "[b]oth parties are opposed to mutual decision-making" is not supported by substantial evidence.[24] CP 51. The court made no finding that Charles's opposition to mutual decision making was reasonable. RCW 26.09.187(2)(b). Moreover, the factors in RCW 26.09.187(2)(c) weigh heavily in favor of mutual decision making on day care. No RCW 26.09.191 restrictions were imposed. CP 41, 46, 49. Given that the parties remained in the same house at the time of dissolution, they presumably made some joint decisions regarding the children's day care. *See* CP 40, 73. And the parties would also have remained geographically close after the divorce. RP 247-48, 267-68.

The trial court's award of sole decision-making authority to Charles in all significant areas of the children's lives is not justified by the application of the statutory factors or the evidence. Instead, it reflects the impermissible preference the court displayed for Charles's religion and the short-sighted attitude that the children must be protected from their mother because she is a lesbian. This aspect of the parenting plan should also be reversed and remanded.

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[24] Although Charles's Proposed Parenting Plan opposed mutual decision making for major decisions regarding day care, Rachelle's Proposed Parenting Plan did not reflect a preference. *Compare* Ex 2, at 6 *with* Ex 41, at 10.

E. The Denial of Maintenance to Rachelle Violates Washington Law

The trial court's refusal to grant Rachelle spousal maintenance runs afoul of Washington law requiring a "*just*" award based on the "*fair* consideration" of RCW 26.09.090's six statutory factors, discussed below.[25] *In re Marriage of Washburn*, 101 Wn.2d 168, 177, 677 P.2d 152 (1984) (emphasis added). Each of the factors weighs heavily in favor of maintenance for Rachelle. Even though it expressly found that Rachelle needed spousal maintenance, the trial court denied her any by focusing on a single statutory factor—Charles's ability to pay—and erroneously finding that "Charles does not have the ability to pay spousal maintenance."[26] CP 42, 69. This was a clear abuse of discretion, especially as it raises concerns about Rachelle being treated unfairly because of the reasons she left the marriage.

"The purpose of spousal maintenance is to support a spouse, typically the wife, until she is able to earn her own living or otherwise becomes self-supporting." *In re Marriage of Luckey*, 73 Wn. App. 201, 209, 868 P.2d 189 (1994). "[M]aintenance is not just a means of providing bare necessities, but rather *a flexible tool by which the parties' standard of*

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[25] RCW 26.09.090 sets forth the factors a court must consider in granting maintenance, namely, the financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, the time needed by the spouse seeking maintenance to acquire education or training for appropriate employment, the standard of living during marriage; the duration of the marriage, the age, physical, and emotional condition and financial obligations of the spouse seeking maintenance; and the ability of the spouse from whom maintenance is sought to meet his or her needs while meeting the needs of the party seeking maintenance

[26] A number of the court's findings incorrectly state Charles's income and monthly expenses. *See* CP 42 para 4, 56, 62, 69 Finding of Fact 2.12 For the reasons set forth in this section, those findings are not supported by substantial evidence and are in error.

living may be equalized for an appropriate period of time." *Washburn*, 101 Wn.2d at 179 (emphasis added). "[T]he only limitation placed upon the trial court's ability to award maintenance is that the amount and duration, considering all relevant factors, *be just*." *Id.* at 178 (emphasis added).

The standard of living of the parties during marriage and the parties' post-dissolution economic condition are "paramount" in the court's determination. *Washburn*, 101 Wn.2d at 181; *see also In re Marriage of Sheffer*, 60 Wn. App. 51, 57-58, 802 P.2d 817 (1990). This factor is so important that the Washington Supreme Court has affirmed a maintenance award even in a situation where the wife had the ability to be self-supporting to allow her "to share, temporarily, in the lifestyle" she helped the community attain during the 10-year marriage. *Washburn*, 101 Wn.2d at 179. The Washington Court of Appeals has also affirmed maintenance awards for stay-at-home parents in decades-long marriages, recognizing that these parents had sacrificed for the sake of the community and "forfeited economic opportunities while [their] [spouses] capitalized on them." *In re Marriage of Morrow*, 53 Wn. App. 579, 587-88, 770 P.2d 197 (1989); *see also Sheffer*, 60 Wn. App. at 57-58. In *Sheffer*, for example, the court acknowledged a maintenance award was appropriate where the stay-at-home parent had "provided the services needed by the community to function as a family . . . at a sacrifice of her economic opportunities in the market place," which left her "economically disadvantaged" compared to her spouse. *Id.* at 57.

Here, the trial court denied Rachelle maintenance even though all six statutory factors—including the parties' standard of living during the marriage and post-dissolution economic status—weighed heavily in favor of a maintenance award.

1. Rachelle's limited financial resources weigh in favor of maintenance.

At the time of dissolution, Rachelle had no savings, minimal retirement funds,[27] no source of income, and no separate property. *See* CP 42, 68, 69, 74, 77, RCW 26.09.090(1)(a). Even though Rachelle was awarded about half of the value of the liquid community property, these proceeds are wholly insufficient to "equaliz[e] the parties' standard of living." *Washburn*, 101 Wn.2d at 182, or to allow Rachelle to get the training necessary for her "to earn her own living or otherwise become self-supporting," *Luckey*, 73 Wn. App. at 209, given her lack of income and her expenses, as described below.

The trial court also impermissibly considered support Rachelle could receive from her partner. In explaining the maintenance decision, the court expressed a belief "that at some point in the near future Rachelle will be residing with Ms. Van Hoos[e] in a marital relationship." CP 42. The court also considered Ms. Van Hoose's current salary and her willingness to support Rachelle. CP 42. Washington law requires the court to focus on Rachelle's ability to support herself, not on any donative

[27] The court noted that Rachelle had $8,648 in "retirement funds," which is a negligible amount for retirement. CP 42, 74, 77.

assistance she may receive from others. Anticipating remarriage is not a permissible factor in the maintenance analysis.

In its residential time decision, the court faulted Rachelle for not making an effort to re-enter the work force and gain financial independence.[28] CP 41 para. 4. However, the trial court refused to award Rachelle any maintenance, making it impossible for her to attain the very independence the court faulted her for not having. CP 41. This does not make sense, except as further evidence of bias, conscious or otherwise.

2. The time needed for Rachelle to ready herself for employment weighs in favor of maintenance.

Rachelle has a high-school education, was a stay-at-home mother for most of the 20-year marriage, and has virtually no employment history. CP 40; RP 191-94. She needs time to acquire sufficient education or training to enable her to find employment. *See* RCW 26.09.090(1)(b). The court even acknowledged as much. CP 41.

3. The parties' standard of living during their marriage weighs in favor of maintenance.

The parties enjoyed an above-average standard of living during their marriage. Even though Charles will continue to live in the five-bedroom family home and enjoy the benefits of his nearly $100,000-a-

[28] The trial court found it "most concerning . . . that Rachelle has done nothing to prepare herself for life as a single parent since 2011 other than to claim that her current girlfriend will provide for her." CP 41 para. 4. This finding of fact is not supported by substantial evidence. In fact, testimony at trial directly contradicted this finding: Rachelle testified that she had looked into student loans so that she could attend college and had looked for work. RP 192-94.

year salary,[29] it is highly unlikely that—even with maintenance, training, and employment—Rachelle would be able to recreate a standard of living similar to what the parties enjoyed during the marriage. Without maintenance to pay for education or training needed for employment, it will be impossible for her to even come close. *See* RCW 26.09.090(1)(c).

4. The length and nature of the marriage weighs in favor of maintenance.

The parties were married 20 years, during which time Rachelle cared for the children and the home, sacrificing her own earning potential and any accompanying retirement savings for the benefit of the community. *See* RCW 26.09.090(1)(d).

5. Rachelle's age and financial obligations weigh in favor of maintenance.

Rachelle is 39 and has financial obligations including health insurance, car insurance, car payments, rent, utilities, phone bills, and child-related costs. Ex 7, at 3-5. She is unemployed with no immediate way to meet these obligations herself, much less cover the expenses ("education program or job-training classes") that the court recognized were necessary for her to become employable. CP 41. The share of community property awarded to her may be sufficient for her to cover the "bare necessities," but it is in no way sufficient to "equalize" the parties' standard of living, *Washburn*, 101 Wn.2d at 179, or assist Rachelle in her effort to become self-sufficient, *Luckey*, 73 Wn. App. at 209.

[29] The trial court found Charles to have a gross monthly income of $8,159.00. CP 42, 62, 69.

6. Contrary to the court's finding, Charles is able to pay maintenance while meeting his own needs.

As to the sixth factor—Charles's ability to pay spousal maintenance based on his financial obligations (RCW 26.09.090(1)(f))—the court found:

> The respondent has no ability to pay based on monthly bills, paying mortgage costs, health care costs, community debt and educational tuition on a total gross monthly income of $7,410.00 in wages and $749.00 in VA disability and Rachelle paying minimal child support in the foreseeable future for the parties' three children.

CP 69 Finding of Fact 2.12. This finding is not supported by substantial evidence. In fact, the court overstated Charles's expenses and underestimated his income and ability to pay maintenance.

As an initial matter, the trial court erred by including community debt among Charles's monthly obligations. The trial court ordered that all community debt be paid off by the refinance or sale of the marital residence, with the remaining proceeds divided equally between the parties. CP 42, 77, 79. As a result, half of the community debt was effectively paid by Rachelle. Therefore, Charles will not be paying community consumer debt moving forward.

Additionally, the trial court erred in including the full amount of the children's educational tuition in its calculations of Charles's ability to pay maintenance. Testimony at trial indicates that Charles pays only one-half of the children's tuition, already discounted by the school, and that the

children's grandparents pay for the remainder.[30] RP 154, 247. The court also included more than $1,000 in health insurance payments that Charles claims he pays for himself and his children, without requiring any proof of this expense. RP 335. This is despite language in the Order of Child Support that "[t]here is insufficient evidence for the court to determine which parent must provide [health insurance] coverage." CP 59 § 3.18.1(A)(1). The court's inclusion of the health insurance expenses among Charles's financial obligations was therefore in error. Even as calculated by the court, however, Charles's monthly expenses do not appear to exceed his monthly income.

As Charles testified at trial, he understated his gross monthly income in his financial declaration by more than $2,000. RP 337. So, the court recalculated his gross monthly income and determined it was $8,159 ($7,410 in wages and $749 in VA disability). CP 42, 69 Finding of Fact 2.12. But the court failed to include the $13,000 bonus Charles received as part of his income and therefore based Charles's ability to pay on a deceptively low gross-income figure. *See* CP 42; RP 337-38; Ex 47 (July 16, 2014).

The court's analysis is further tainted because the evidence in the record is insufficient to support the trial court's finding that the amount of Charles's total monthly deductions from his gross income is $1,877.98.

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[30] The children's tuition, as documented in Exhibit 50, is $1,078.08 per month. However, as testified to at trial, Rachelle's parents pay for 50 percent of the children's tuition, or $539.04 each month, leaving Charles responsible for the other $539.04, not the full $1,078.08 considered by the trial court. *See* RP 154, 247

CP 62. Nor is it clear that this figure informed the court's maintenance decision. Although it appears the court correctly rejected Charles's "total deductions from gross income" listed in his financial declaration as $2,108.93, Ex 46, at 2, a review of Charles's paycheck stubs indicates that he had only about $1,700 each month in total deductions. Ex 50.[31] Thus, assuming the court's calculation of Charles's gross monthly income—$8,159—is accurate, Charles's monthly take-home pay would have been closer to $6,500, not $6,281.02 as determined in the Child Support Order. CP 42, 56 § 3.3; Ex 50. This number grows by more than $1,000 per month when considering the $13,000 bonus Charles received, which the court erred in excluding from its analysis. CP 42; RP 337-38; Ex 47 (July 16, 2014).

By relying on a flawed analysis, the trial court wrongly determined that Charles could not pay maintenance. Had the court adequately analyzed and considered all of the RCW 26.09.090 factors, it could not have found a reasonable basis for denying Rachelle maintenance. The court's denial of maintenance to Rachelle must be reversed.

F. The Award of Child Support to Charles Violates Washington Law

Because the custodian designation and allocation of residential time were in error, so was the award of child support. *See* Chapter 26.19 RCW.

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[31] Admittedly, the paystubs would not account for any deductions related to his disability payment; however, there is no evidence in the record of the disability payments or the associated deductions.

G. Upon Remand, the Matter Should Be Assigned to a New Judge, and if Needed, a New GAL

It is appropriate to reassign a case when a judge has demonstrated personal bias or when warranted by "unusual circumstances," such as when "the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously expressed views or findings determined to be erroneous or based on evidence that must be rejected[.]" *In re Ellis*, 356 F.3d 1198, 1211 (9th Cir. 2004) (internal quotation marks and citation omitted). Reassignment is also proper when it "is advisable to preserve the appearance of justice." *Id.*; *see also In re Marriage of Muhammad*, 153 Wn.2d 795, 807, 108 P.3d 779 (2005) (instructing trial court to assign case to a new trial judge "for the sole purpose of avoiding any appearance of unfairness or bias").

Here, for the reasons throughout this brief, the trial court's findings and order reflect a bias against Rachelle, conscious or otherwise. Moreover, the trial court appears to have adopted the GAL's discriminatory and judgmental views of Rachelle. Under the circumstances, and to preserve the appearance of justice, reassignment of both the judge and the GAL is necessary and appropriate.

VI. CONCLUSION

For the foregoing reasons, Rachelle Black respectfully asks this court to reverse the restrictions on her speech, conduct, and religion; the restrictions on the ability of her partner to be present with her children; the residential time decision; the denial of maintenance; the award of child

support to Charles; and the designation of sole decision-making authority related to the children's religion, education, and day care to Charles; and, where necessary, and upon reassignment to a new judge and GAL, to remand to the trial court for further proceedings consistent with this Court's opinion and for such other relief as the Court may deem appropriate.

RESPECTFULLY SUBMITTED THIS 17th day of February, 2015.

By: _____

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Appendix A
Findings of Fact and Conclusions of Law

13-3-01744-9 43324977 FNFCL 09-22-14

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Superior Court of Washington
County of Pierce

In re the Marriage of: RACHELLE K. BLACK **Petitioner,** **and** CHARLES W. BLACK **Respondent.**	**No.** 13-3-01744-9 **Findings of Fact and Conclusions of Law (Marriage) (FNFCL)**

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner.

Petitioner's Lawyer.

Respondent.

Respondent's Lawyer.

Kelly Theriot LeBlanc, GAL
Jennifer Knight, Therapist
Angela VanHoose
Amber Berry
Jo Cooksley

II. Findings of Fact

Upon the basis of the court record, the court ***Finds***:

STEVEN R. LEVY
P. O. Box 1427
Graham, WA 98338
253-670-4119

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

The respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The respondent is currently residing in Washington.

The parties lived in Washington during their marriage and the petitioner continues to reside, or be a member of the armed forces stationed, in this state.

The parties may have conceived a child while within Washington.

2.4 Date and Place of Marriage

The parties were married on 07/21/1994 at Leesville, LA.

2.5 Status of the Parties

Petitioner and respondent are not yet physically separated. The petition for dissolution was filed on 5/19/2013 and this shall be used as the date of separation.

2.6 Status of Marriage

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined.

2.7 Separation Contract or Prenuptial Agreement

There is no written separation contract or prenuptial agreement.

2.8 Community Property

The parties have the following real or personal community property:

1. Family home commonly known as and located at 2729 - 263rd St. Ct. E., Spanaway, WA 98387
2. Husband's 401(k) with Hall Forest Products
3. Toyota Avalon 2006
4. Ford Expedition 2004
5. Toyota Avalon 1995
6. Salem Trailer 2004
7. Life Insurance policies

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8. Household goods and furnishings
9. Tools and equipment
10. Personal affects

2.9 Separate Property

The petitioner has no real or personal separate property.

The respondent has no real or personal separate property.

2.10 Community Liabilities

The parties have incurred the following community liabilities:

Chase Card 7128	$8,390.00
Chase Slate Card 5813	$2,689.00
Chase 0131	$3,709.00
US Overdraft 9980	$12,712.00
American Express 1006	$8,905.00
GAP Silver Card 4537	$4,161.00
Multi Care 2989	$1,785.75
Target	$1,964.00

Other:

a. Mortgage on the family home located at 2729 - 263rd Street Ct E, Spanaway, WA
b. Debt on 2006 Toyota Avalon to Pentagon Federal Credit Union
c. Debt on Salem Trailer to BECU.

2.11 Separate Liabilities

The petitioner has no known separate liabilities.

The respondent has no known separate liabilities.

2.12 Maintenance

Maintenance should not be ordered because:

The respondent has no ability to pay based on monthly bills, paying mortgage costs, health care costs, community debt and educational tuition on a total gross monthly income of $7,410.00 in wages and $749.00 in VA disability and Ms. Black paying minimal child support in the foreseeable future for the parties' three children.

2.13 Continuing Restraining Order

Does not apply.

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2.14 Protection Order

Does not apply.

2.15 Fees and Costs

The respondent shall pay $1,500.00 to Ms. Young towards petitioner's attorney fees. The payments shall be over an 8-month period, beginning in October, 2014. If not paid, *this award may be reduced to judgment.*

2.16 Pregnancy

Neither spouse is pregnant.

2.17 Dependent Children

The children listed below are dependent upon either or both spouses.

Name of Child	Age	*Parent's* Names
C[redacted]	15	Rachelle Black Charles Black
C[redacted]	12	Rachelle Black Charles Black
J[redacted]	7	Rachelle Black Charles Black

2.18 Jurisdiction Over the Children

This court has jurisdiction over the children for the reasons set forth below:

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

2.19 Parenting Plan

The parenting plan signed by the court on this date is approved and incorporated as part of these findings.

2.20 Child Support

There are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Order of Child Support signed by the court on this date and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

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2.21 Other:

See attached Exhibit A. . .

The court incorporates its written decision of September 2, 2014 herein.

III. Conclusions of Law

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

3.1 Jurisdiction

The court has jurisdiction to enter a decree in this matter.

3.2 Granting a Decree

The parties should be granted a decree.

3.3 Pregnancy

Does not apply.

3.4 Disposition

The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor children of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 Continuing Restraining Order

Does not apply.

3.6 Protection Order

Does not apply.

3.7 Attorney Fees and Costs

Attorney fees, other professional fees and costs should be paid. See Paragraph 2.15.

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253-670-4119

3.8 Other

The Court specifically finds no 3.13 conditions apply or .191 limitations but adopts the conditions set forth in paragraph 3.10 of the Father's Proposed Parenting Plan.

Dated: 9-19-14

Judge/~~Commissioner~~
JAMES ORLANDO

Presented by:

Steven R. Levy, WSBA No. 4727
Attorney for Respondent

Approved as to form:

Heather M. Young, WSBA No. 27366
Attorney for Petitioner

Approved:

Charles Black, Respondent

Approved as to form:

Rachelle Black, Petitioner

FILED
DEPT. 1
IN OPEN COURT
SEP 19 2014
By
DEPUTY

STEVEN R. LEVY
P. O. Box 1427
Graham, WA 98338
253-670-4119

9/23/2014 3107 0093

EXHIBIT A
FINDINGS OF FACT

1. Ms. Black was born on April 16, 1975.
2. Mr. Black was born on June 3, 1973.
3. The parties were married on July 21, 1994.
4. The parties have three children:
   A. C[redacted], whose DOB is March 3, 1999.
   B. E[redacted], whose DOB is March 23, 2002.
   C. J[redacted], whose DOB is December 13, 2006.
5. The parties own a home located at 2729 - 263rd St. Ct. E., Spanaway, WA 98387, which on the date of trial, they both still occupy. They maintain separate bedrooms and interact with each other to a very limited extent.
6. The family prior to December 10, 2011, had by choice attended Church for All Nations, a conservative Christian Church.
7. Ms. Black's parents are elders in the Church for All Nations.
8. Mr, Black still attends the Church for All Nations.
9. Ms. Black no longer attends the Church for All Nations.
10. The children prior to December 10, 2011, by agreement of the parties have attended religious based educational institutions all their lives.
11. C[redacted] and J[redacted] presently attend Tacoma Baptist, a school Ms. Black attended up to the end of her senior year.
12. Ms. Black does not wish the children to attend Tacoma Baptist or New Hope (the school J[redacted] presently attends), but rather would have them all attend public school.
13. Mr. Black desires the children continue with their religious based education and has enrolled them for the upcoming year in their respective religious based schools.
14. Mr. and Mrs. Hall have historically assisted the parties in paying for the children's education. They are also owners of Halls Forest Products, Mr. Black's employer and are Ms. Black's parents. They have agreed to arrange Mr. Black's work schedule so he may pick up and drop off the children before and after school.
15. Mr. Black and the children have in the past had a close relationship with Mr. and Mrs. Hall, whose house is approximately 10 minutes away from the Black home, and continue to maintain same.
16. Ms. Black's relationship with the Hall's since approximately December 10, 2011, has be come strained and continues to be so.
17. Mr. Black, if possible would like to remain in the family home. Ms. Black does not wish to remain in the family home.
18. Ms. Black in December of 2011, told Mr. Black that she might be a lesbian.~~and that she wanted to find herself.~~
19. Ms. Black began in 2011, being absent from the family home, leaving the children to be cared for by Mr. Black. Although the parties testified to different amounts of time Ms. Black was absent from the home, the Court finds ~~that it is undisputed~~ that Ms. Black was absent approximately 20% of the time from December, 2011 to March of 2014.

20. ~~The children~~ reported to ~~their~~ therapist that Ms. Black was not around as much as she ~~was before 2011~~. BEGAN LIKING SPORTS
21. Ms. Black was a stay at home Mom prior to 2011.
22. Both parties volunteer at the schools.
23. Both parties have been historically involved in the children's medical and dental care and Ms. Black has recently tried to discourage Mr. Black's involvement in J[redacted] medical care.
24. Mr. Black earns $7,410 and has VA benefits of $749. Mr. Black earned a one time bonus in 2013.
25. Ms. Black has no job, has not enrolled in any course of education and has not established a new residence since filing for the dissolution,
26. Ms. Black has established a relationship with Ms. Van Hoose since January, 2012, a person whom she wishes to marry and who along with Ms. Black, testified Ms. Van Hoose will support Ms. Black financially after the dissolution.
27. Both Kelly LeBlanc (GAL) and Jennifer Knight (therapist) testified that the children are naive and have trouble coping with change and need stability.
28. Both the GAL and therapist testified to their concerns about Ms. Black's failure to establish a plan for being a single parent and leaving one relationship for another.
29. The parties have agreed to split all the assets 50%. The assets consist of:
    1. The family home
    2. Toyota Avalon 2006
    3. Ford Expedition 2004
    4. Salem Trailer 2004
    5. Ms. Black's insurance policy
    6. Mr. Black's 401(k)
30. The following assets are the children's:
    (a) Toyota Avalon 1995
    (b) C[redacted] life insurance policy
    (c) E[redacted] life insurance policy

    The children's life insurance policies and 1995 Toyota Avalon should be placed in trust.
31. The parties have acquired the following debt:

Chase Card 7128	$8,390.00
Chase Slate Card 5813	$2,689.00
Chase 0131	$3,709.00
US Overdraft 9980	$12,712.00
Am Ex 1006	$8,905.00
GAP Silver Card 4537	$4,161.00
Multi Care 2989	$1,785.75
Target	$1,964.00
Pentagon Fed. Credit Union	$9,979.77
Chase Mortgage	$147,165.00
BECU	$1,715.39

32. Ms. Black currently has no substance abuse issues but may have had in the past.
33. The parties obtained 2 CMA's of the family home which range in amounts from $480,000 to $599,000. The assessed value for 2015 is $511,000.

34. The Court finds that Mr. Black should be allowed to refinance the home at $500,000, pay the bills, and split the proceeds. If unable to do so, the home should be listed for sale between $520,000 and $ 550,000.

35. Ms. Black was specifically told by the therapist to allow no contact between the children and Ms. Van Hoose. Ms. Van Hoose had contact with the children approximately two weeks prior to trial, AT A STORM GAME AND AT A DINNER IN CONJUNCTION WITH THE GAME

36. Both parties requested sole decision making at trial, have a recent history of lack of communication, and have expressed very different goals concerning the children's education, and religious education.

37. That Mr. Black has been the more stable parent since 2011.

38. Both parents have a strong relationship with the children.

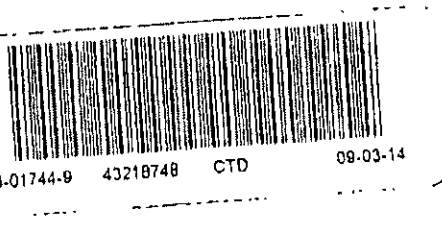
39. Mr. Black has taken on greater parental responsibility since 2011 in both the home and educational needs of the children while maintaining full time employment.

40. Both parents have good potential for performance of parenting function in the future.

41. The children have expressed no opinions as to their preference of residence.

42. The Court's written decision dated September 2, 2014 is incorporated herein and made a part hereof.

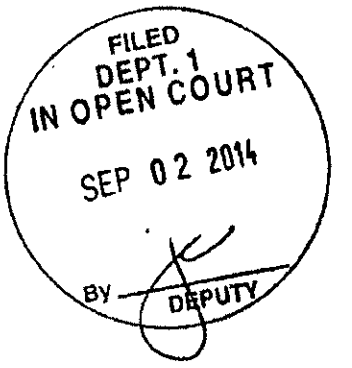
Appendix B
Judge's Letter Decision



SUPERIOR COURT OF THE STATE OF WASHINGTON FOR PIERCE COUNTY

JAMES R. ORLANDO, JUDGE
L. Janet Costanti, *Judicial Assistant*
DEPARTMENT 1
(253)798-7578

334 COUNTY-CITY BUILDING
930 TACOMA AVENUE SOUTH
TACOMA, WA 98402-2108



September 2, 2014

Ms. Heather Young
Attorney at Law
1457 South Union
Tacoma, WA 98405

Mr. Steven Levy
Attorney at Law
Po Box 1427
Graham, WA 98338

Re: Marriage of Black
Pierce County No. 13-3-01744-9

Dear Counsel:

It is the policy of this state, as set forth in RCW 26.09.002, that the best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of parents or as required to protect the child from physical, mental or emotional harm. In addition, in establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child.

Parenting Plan:
Under this legislative background, the case at hand involves a family that believed in the importance of a religious-based education and started each of their children in faith based schools at the pre-kindergarten level. C[redacted] is now 15 and attends Tacoma Baptist School, which is the same high school Ms. Black attended up to the end of her senior year. E[redacted] is 12 and also attends Tacoma Baptist. J[redacted] is 7 and attends New Hope school. The family had attended Church of All Nations, which has been described as a conservative Christian church. Ms. Black's parents are actively involved as elders of the church. Up until 2011 the mother, father and children shared the same religious views and values.

In 2011, Ms. Black told Mr. Black that she believed she might be a lesbian. There was testimony from Ms. Black that Mr. Black encouraged her to find out if in fact she was a lesbian. It is unclear as to whether Mr. Black anticipated that his encouragement would lead to Ms. Black falling in love with a woman whom she now desires to marry.

Despite her proclamation that she is a lesbian, she has continued to live with Mr. Black in the same household while maintaining separate sleeping quarters. The parties have not yet separated into different households. The children were not aware of the pending dissolution until the Guardian ad litem came to interview them and were not told of their mother's sexual orientation until a counseling session with Jennifer Knight. As I indicated in my oral remarks after trial, I am very concerned about the upcoming impact to these children and encourage the parents to use counseling to help offset the trauma they may suffer when the move occurs.

Ms. Black was a traditional stay-at-home mother for the majority of this 21 year marriage. In 2011, she began spending nights away from the residence while she attempted to sort out her sexual identity. Mr. Black maintained a calendar with entries as to when she was out of the residence. Ms. Black disputes the accuracy of some of his entries but agrees with many of them. From December 2011 through March 8, 2014, there are a total of 828 days. Under a rough calculation of the days away from the residence that Ms. Black does not dispute, there would appear to be 169 days that she was not home providing parenting functions. I did not include in this count the camping trips or any disputed entries. Under the log, it appears that Ms. Black was away approximately 20% of the time in question.

In establishing a residential schedule, the court is to consider the factors set forth in RCW 26.09.187. Factor (i) shall be given the greatest weight. Here, both parents have a strong and stable relationship with the children. Ms. Black stayed at home while Mr. Black worked. Both children have benefited from strong and stable parenting up until 2011. After December 2011, Mr. Black has taken on greater parental responsibility due to the absences of Ms. Black from the residence. Mr. Black has maintained his full-time employment while still meeting the needs of the children at home and in their educational program. Both parents have been active in various roles at the elementary school and volunteered both in and out of the classroom. Much testimony was presented about which parent spent more time as a volunteer in the classroom but it is clear that both parents volunteered when requested and supported the educational program.

The parents have not entered into any agreements regarding a parenting plan.

Both parents have good potential for future performance of parenting functions, and as indicated above, Ms. Black performed the bulk of the parenting functions up until December 2011 at which time Mr. Black assumed many of her responsibilities when she was away from home.

These children have been described as naïve in some areas and [redacted] has been described as very withdrawn socially. Part of this has been caused by the sheltered environment both parents chose for them and the significant time spent in religious education. These are not worldly children and the Guardian ad litem appropriately expressed her concern as to how stability is so significant for them. Here, Mr. Black is clearly the more stable parent in terms of the ability to provide for the needs of these children, both financially as well as emotionally and in maintaining their religious upbringing. These children have been taught from the Bible since age 4. I believe it will be very challenging for them to reconcile their religious upbringing with the changes occurring within their family over issues involving

marriage and dissolution, as well as homosexuality. Counseling should be made available for them to work through these issues.

The children have a strong level of involvement with their school and have benefited from a beautiful residence where the parties have resided since 2002.

The children were not asked to express an opinion regarding their preferences for a residential schedule.

As previously indicated, Ms. Black is currently unemployed and Mr. Black works full-time. His work hours allow him to take C[redacted] and E[redacted] to the school bus in the morning and then pick them up in the afternoon. His employer has indicated that they're willing to adjust his schedule to allow for a later start time and he would then be able to make arrangements for all three children to get to school in the morning while still being able to pick them up after school.

In the present case, I believe that Mr. Black should be designated as the primary residential parent. I make this finding based upon the role he performed since 2011 in being the more stable parent. Both parents love their children and the children love them. What is most concerning is that Ms. Black has done nothing to prepare herself for life as a single parent since 2011 other than to claim that her current girlfriend will provide for her. Jennifer Knight expressed her concern over the propriety of Ms. Black leaving one relationship for another and assuming that Ms. Van Hoose would provide for her physical and financial security. I share this concern and would have the same concern if Ms. Black was leaving the relationship for another man with the same expectations.

Ms. Black will need to participate in either an education program or job-training classes in order to ready herself for the job market. She appears to be very intelligent and should have no difficulty in finding employment. Her search for employment or participation in an educational program would impact her ability to be a full-time parent for these children. In addition, these children have not developed a relationship with Ms. Van Hoose and the counselor is recommending a slow transition to introducing them to her role as Ms. Black's partner.

I believe that the father's proposed parenting plan is appropriate in this case and would adopt it except for the section 3.13 conditions. I do not believe these restrictions are necessary. I also find that there are no section .191 limitations in this case but do believe that the conditions set forth in section 3.10 are appropriate. The father should also use counseling to introduce the children to any serious relationships he intends to pursue.

While it appears that Ms. Black may have been consuming a significant amount of alcohol during the marriage, she does not appear to have any ongoing substance abuse issues and I do not believe that any additional treatment or counseling is necessary.

I believe that these children should continue in their existing schools for this year if the father is financially able to maintain the $1000 per month cost of their education. I believe that C[redacted] would be best served by continuing his high school education at Tacoma Baptist. If Mr. Black cannot afford the cost to continue the younger children in their current schools, they may be transitioned to a public school setting.

Property Division:

All of the property in question is community property. With regard to the residence, I believe it is important for these children to be maintained in their current residence to help them overcome the trauma caused by Ms. Black moving out of the residence. I believe that she needs to move within 30 days. Mr. Black can refinance the residence at a value of $500,000, pay off the community debt and divide the proceeds equally with her. If he does not qualify for a refinance, then the home should be listed for sale with a reasonable sale price between $520,000 and $550,000. The proceeds would then be used to pay off the community debt and the balance divided equally. If the property was to be sold at $550,000, the real estate commission and closing costs typically would be 10% of that total. This means that a refinance will produce the same benefit to Ms. Black as a sale would, without the significant disruption to the children. The refinance should be applied for immediately and if not feasible, then the home immediately listed for sale.

Ms. Black is awarded 50% of Mr. Black's 401(k) which is valued at $145,135. She is also awarded her retirement valued at $8684. She is awarded her vehicle valued at $13,225 subject to the debt of $10,202. Mr. Black is awarded the Ford expedition valued at $4300 and the Salem trailer valued at $6255 less the debt owed of $1715. The parties are to attempt to divide the household goods and furnishings as well as personal family photos. If they cannot agree on the division, dispute resolution should be attempted. There were no values given at trial for the household goods and furnishing or personal property.

To facilitate Ms. Black's move, Mr. Black needs to pay her $2500 immediately. The financial declaration which he provided listed savings in excess of $4000. In addition, she should be awarded one half of any bonus he receives for 2014.

Ms. Black has a need for spousal maintenance but Mr. Black does not have the ability to pay spousal maintenance. In addition to the mortgage cost, he is paying in excess of $1200 per month for health care for him and the children. He is also paying all community debt and education tuition for the children. His gross income is $7410 and he receives $749 in VA disability for a total of $8159. I calculated this income using a 40 hour workweek and his wage of $42.75.

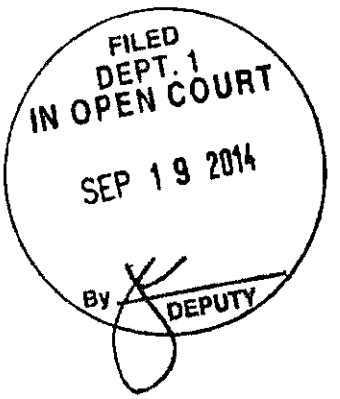
The bonus he received in 2013 was a one-time bonus and I am not including it in calculating his 2014 income. If he does receive a bonus for 2014, Ms. Black would receive one half of it. If income is imputed to Ms. Black at minimum wage, her current support obligation would be $50 per child. If she obtains gainful employment, then child support will need to be revisited. Ms. Van Hoos testified that she earns in excess of $70,000 per year at her employment at the Boeing Company. She also testified that she is willing to support Ms. Black and provide her with a residence. While I cannot order Ms. Van Hoos to fulfill these promises, I certainly believe that at some point in the near future Ms. Black will be residing with Ms. Van Hoos in a marital relationship.

I believe that Mr. Black should pay $1500 towards Ms. Young's attorney fees. This money should not come from the refinance but should be paid over the next 8 months. If not paid, a judgment would be entered.

Sincerely,

James R. Orlando

Appendix C
Final Parenting Plan



Superior Court of Washington
County Pierce

In re the Marriage of: RACHELLE K. BLACK **Petitioner,** **and** CHARLES W. BLACK **Respondent.**	**No.** 13-3-01744-9 **Parenting Plan** **Final (PP)**

This parenting plan is the final parenting plan signed by the court pursuant to a decree of dissolution, legal separation, or declaration concerning validity signed by the court on this date.

It Is Ordered, Adjudged and Decreed:

I. General Information

This parenting plan applies to the following children:

Name	Age
[redacted]	15
[redacted]	12
[redacted]	7

II. Basis for Restrictions

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the children and the right to make decisions for the children.

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2.1 Parental Conduct (RCW 26.09.191(1), (2))

Does not apply.

2.2 Other Factors (RCW 26.09.191(3))

Does not apply.

III. Residential Schedule

The residential schedule must set forth where the children shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the children shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the children and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children Under School Age

There are no children under school age.

3.2 School Schedule

Upon enrollment in school, the children shall reside with the respondent/father, except for the following days and times when the children will reside with or be with the other parent:

From Thursday at 3:30 p.m. to Monday at 8 a.m. every other week

3.3 Schedule for Winter Vacation

The children shall reside with the respondent/father during winter vacation, except for the following days and times when the children will reside with or be with the other parent:

In even years: the children shall reside with the father from 6 p.m. the day school is released for winter vacation until noon on Christmas Day and then shall reside with the mother from noon on Christmas Day until 6 p.m. the Sunday before school resumes.

In odd years; The children shall reside with the mother from 6 p.m. the day school is released for winter vacation until noon on Christmas Day and then shall reside with the father from noon on Christmas Day to 6 p.m. the Sunday before school resumes.

Winter vacation shall reset the alternating weekends with the parent having the first portion of winter vacation having the first weekend following school resuming.

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3.4 Schedule for Other School Breaks

The children shall reside with the respondent/father during other school breaks, except for the following days and times when the children will reside with or be with the other parent:

The parties should alternate all other school breaks with the father having the first school break in even years and the mother in odd. This paragraph does not apply to Paragraph 3.3 or 3.5.

3.5 Summer Schedule

Upon completion of the school year, the children shall reside with the respondent/father, except for the following days and times when the children will reside with or be with the other parent:

Same as school year schedule.

Other:

Each party should be entitled to exercise two weeks of uninterrupted residential time with the children during the summer months if their work schedule permits them to do so.

The parties are required to exchange their proposed vacation dates by May 15th of each calendar year. In the event of a conflict of dates, Mr. Black's dates receive priority in even years and Ms. Black's dates receive priority in odd years.

The summer schedule should be construed to terminate the last weekend in August so that it will not disrupt the parties' ability to implement the provisions of the Labor Day holiday schedule.

3.6 Vacation With Parents

Does not apply.

3.7 Schedule for Holidays

The residential schedule for the children for the holidays listed below is as follows:

	With Petitioner/Mother (Specify Year Odd/Even/Every)	With Respondent/Father (Specify Year Odd/Even/Every)
New Year's Day	even	odd
Martin Luther King Day		
Presidents' Day		
Memorial Day	odd	even
July 4th	odd	even
Labor Day	even	odd
Veterans' Day		

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Thanksgiving Day	even	odd
Christmas Eve	odd	even
Christmas Day	even	odd
Easter	odd	even

For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

10 a.m. the day of to 10 a.m. the following day, except Christmas Eve/Day

Holiday except Christmas Eve/Day which fall on a Friday or Monday shall include Saturday and Sunday

Thanksgiving: The holiday shall be defined as Wednesday after school to Friday morning.

3.8 Schedule for Special Occasions

The residential schedule for the children for the following special occasions (for example, birthdays) is as follows:

	With Petitioner/Mother (Specify Year Odd/Even/Every)	With Respondent/Father (Specify Year Odd/Even/Every)
Mother's Day	every	
Father's Day		every
Father's Birthday		every
Mother's Birthday	every	
C[redacted] Birthday	even	odd
C[redacted] Birthday	odd	even
J[redacted] Birthday	even	odd

Other:

9 a.m. to 8 p.m. the day of the special occasion.

3.9 Priorities Under the Residential Schedule

Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

Rank the order of priority, with 1 being given the highest priority:

3 winter vacation (3.3)
4 school breaks (3.4)
5 summer schedule (3.5)
1 holidays (3.7)
2 special occasions (3.8)
6 vacation with parents (3.6)

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3.10 Restrictions

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

3.11 Transportation Arrangements

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the children between parents shall be as follows:

The receiving parent shall provide the transportation.

3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside the majority of the time with the respondent/father. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 Other

1. Ms. Black resume counseling with Ms. Cheshire.
2. Ms. Black seek out employment and obtain same before seeking expansion of her visitation.
3. Both parties complete comprehensive parenting classes.
4. Telephone access to the children shall be allowed for 20 minutes twice a week.
5. If the parties move from the present location to a distance of more than 50 miles apart, then the Parenting Plan must be submitted by a mediator for alternation before seeking Court intervention.
6. Ms. Black is required to provide proof of residence and assurance that she is able to provide appropriate accommodations for the children within her home.
7. The children are to have no contact with Ms. VanHoose until such time as Ms. Knight feels that the children are ready. Ms. Knight has the discretion to determine when and/or how contact should occur.
8. Ms. Black is ordered to refrain from having further conversations with the children regarding religion, homosexuality, or other alternative lifestyles concepts and further that she is prohibited from exposing the children to literature or electronic media; taking them to movies or events; providing them with symbolic clothing or jewelry; or otherwise engaging in conduct that could reasonably be interpreted as being related to those topics unless the discussion, conduct or activity is specifically authorized and approved by Ms. Knight.
9. Mr. Black shall use counseling services before introducing the children to any individual with whom he has a serious relationship.
10. The children are to continue in therapy.
11. All three children should if possible, remain in their current schools (C[redacted] and E[redacted] at Tacoma Baptist School and J[redacted] at New Hope). If not financially possible, E[redacted] and J[redacted] may enter public school but C[redacted] should remain at Tacoma Baptist.

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3.14 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.

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 be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

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

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

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

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

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

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

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IV. Decision Making

4.1 Day-to-Day Decisions

Each parent shall make decisions regarding the day-to-day care and control of each child while the children are residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

4.2 Major Decisions

Major decisions regarding each child shall be made as follows:

Education decisions:	respondent/father
Non-emergency health care:	joint
Religious upbringing:	respondent/father
Day care	respondent/father

4.3 Restrictions in Decision Making

Sole decision making shall be ordered to the respondent for the following reasons:

Both parents are opposed to mutual decision making.

V. Dispute Resolution

The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must, be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.

Disputes between the parties, other than child support disputes, shall be submitted to mediation by a court mediator.

The cost of this process shall be allocated between the parties as follows:

50% petitioner 50% respondent.

The dispute resolution process shall be commenced by notifying the other party by written request. certified mail.

In the dispute resolution process:

(a) Preference shall be given to carrying out this Parenting Plan.

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Graham, WA 98338
253-670-4119

(b) Unless an emergency exists, the parents shall use the designated process to resolve disputes relating to implementation of the plan, except those related to financial support.

(c) A written record shall be prepared of any agreement reached in counseling or mediation and of each arbitration award and shall be provided to each party.

(d) If the court finds that a parent has used or frustrated the dispute resolution process without good reason, the court shall award attorneys' fees and financial sanctions to the other parent.

(e) The parties have the right of review from the dispute resolution process to the superior court.

VI. Other Provisions

There are no other provisions.

VII. Declaration for Proposed Parenting Plan

Does not apply.

VIII. Order by the Court

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

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 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: 9-19-14

Judge/~~Commissioner~~
JAMES ORLANDO

FILED
DEPT. 1
IN OPEN COURT
SEP 19 2014
By _____ DEPUTY

Presented by:

Steven R. Levy, WSBA No. 4727
Attorney for Respondent

Approved as to form:

Heather M. Young, WSBA No. 27366
Attorney for Petitioner

STEVEN R. LEVY
P. O. Box 1427
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253-670-4119

Approved:

Charles Black, Respondent

Approved as to form:

Rachelle Black, Petitioner

STEVEN R. LEVY
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Appendix D
Child Support Order

Superior Court of Washington
County of Pierce

In re the Marriage of:	**No.** 13-3-01744-9
RACHELLE K. BLACK	**Order of Child Support**
Petitioner,	**Final Order (ORS)**
and	**Clerk's Action Required**
CHARLES W. BLACK	
Respondent.	

I. Judgment Summary

1.1 Judgment Summary for Non-Medical Expenses

Does not apply.

1.2 Judgment Summary for Medical Support

Does not apply.

II. Basis

2.1 Type of Proceeding

This order is entered under a petition for dissolution of marriage or domestic partnership, legal separation, or declaration concerning validity:

decree of dissolution, legal separation or a declaration concerning validity.

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2.2 Child Support Worksheet

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

2.3 Other

Does not apply.

III. Findings and Order

It Is Ordered:

3.1 Child(ren) for Whom Support is Required

Name (first/last)	Age
C[redacted] B[redacted]	15
C[redacted] B[redacted]	12
J[redacted] B[redacted]	7

3.2 Person Paying Support (Obligor)

Name (first/last): Rachelle Black
Birth date: 04/16/1975
Service Address: [redacted]

The obligor parent must immediately file with the court and the Washington State Child Support Registry, and update as necessary, the Confidential Information Form required by RCW 26.23.050.

The obligor parent shall update the information required by paragraph 3.2 promptly after any change in the information. The duty to update the information continues as long as any monthly support remains due or any unpaid support debt remains due under this order.

For purposes of this Order of Child Support, the support obligation is based upon the following income:

C. The net income of the obligor is imputed at $1,364.93 because:

the obligor is voluntarily unemployed.

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The amount of imputed income is based on the following information in order of priority. The court has used the first option for which there is information:

minimum wage in the jurisdiction where the parent lives at full-time earnings because the mother has been a homemaker for approximately 21 years.

3.3 Person Receiving Support (Obligee)

Name (first/last): Charles Black
Birth date: 06/03/1973
Service Address:
2729 263rd Street Ct E
Spanaway, WA 98387

The obligee must immediately file with the court and the Washington State Child Support Registry and update as necessary the Confidential Information Form required by RCW 26.23.050.

The obligee shall update the information required by paragraph 3.2 promptly after any change in the information. The duty to update the information continues as long as any monthly support remains due or any unpaid support debt remains due under this order.

For purposes of this Order of Child Support, the support obligation is based upon the following income:

A. Actual Monthly Net Income: $ 6,281.02.

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

3.4 Service of Process

Service of process on the obligor at the address required by paragraph 3.2 or any updated address, or on the obligee at the address required by paragraph 3.3 or any updated address, may be allowed or accepted as adequate in any proceeding to establish, enforce or modify a child support order between the parties by delivery of written notice to the obligor or obligee at the last address provided.

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3.5 Transfer Payment

The obligor parent shall pay the following amounts per month for the following children:

Name	Amount
C[redacted] B[redacted]	$50.00
C[redacted] B[redacted]	$50.00
J[redacted] B[redacted]	$50.00
Total Monthly Transfer Amount	$150.00

The obligor parent's privileges to obtain or maintain a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle may be denied or may be suspended if the obligor parent is not in compliance with this support order as provided in Chapter 74.20A Revised Code of Washington.

3.6 Standard Calculation

$150.00 per month. (See Worksheet line 17.)

3.7 Reasons for Deviation From Standard Calculation

The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

3.8 Reasons why Request for Deviation Was Denied

A deviation was not requested.

3.9 Starting Date and Day to Be Paid

Starting Date: October 1, 2014

Day(s) of the month support is due: 1st of each month

3.10 Incremental Payments

Does not apply.

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///

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3.11 Making Support Payments

Direct Payment: Support payments shall be made directly to:

Charles Black
2729 263rd Street Ct E
Spanaway, WA 98387

A party required to make payments to the Washington State Support Registry will not receive credit for a payment made to any other party or entity. The obligor parent shall keep the registry informed whether he or she has access to health insurance coverage at reasonable cost and, if so, to provide the health insurance policy information

Any time the Division of Child Support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the receiving parent might be required to submit an accounting of how the support, including any cash medical support, is being spent to benefit the children.

3.12 Wage Withholding Action

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order.

3.13 Termination of Support

Support shall be paid until the children reach the age of 18, or as long as the children remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.

3.14 Post Secondary Educational Support

The right to request post secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.

3.15 Payment for Expenses not Included in the Transfer Payment

Does not apply because all payments, except medical, are included in the transfer payment.

3.16 Periodic Adjustment

Child support shall be adjusted periodically as follows:

Pursuant to statute or upon Ms. Black obtaining employment.

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3.17 Income Tax Exemptions

Father shall have all tax exemptions until Mother obtains a full-time job. If mother maintains full-time employment, the father shall have two exemptions in odd years and one in even years. Mother shall have during her full-time employment, one exemption in odd years and two in even years. If mother does not maintain a full-time job for six months in any given year, the father shall have all three exemptions.

The parents shall sign the federal income tax dependency exemption waiver.

3.18 Medical Support - Health Insurance

Each parent shall provide health insurance coverage for the children listed in paragraph 3.1, as follows:

3.18.1 Health Insurance (either check box A(1) or check box A(2) and complete sections B and C. ***Section D applies in all cases.***)

A. Evidence

(1) There is insufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Therefore, the court is not specifying how insurance coverage shall be provided. The petitioner's and respondent's medical support obligations may be enforced by the Division of Child Support or the other parent under RCW 26.18.170 as described in paragraph 3.18.2, below.

B. Findings about insurance:

Does not apply because A (1) is checked, above

C. Parties' obligations:

Does not apply because A (1) is checked above.

D. Both parties' obligation:

If the children are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the children listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

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A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the parent seeking enforcement or the Department of Social and Health Services may seek direct enforcement of the coverage through the other parent's employer or union without further notice to the other parent as provided under Chapter 26.18 RCW.

You may have separate obligations to provide health insurance coverage for the child(ren) under federal law.

3.18.2 Change of Circumstances and Enforcement

A parent required to provide health insurance coverage must notify both the Division of Child Support and the other parent when coverage terminates.

If the parents' circumstances change, or if the court has not specified how medical support shall be provided, the parents' medical support obligations will be enforced as provided in RCW 26.18.170. If a parent does not provide proof of accessible coverage for the child(ren) through private insurance, a parent may be required to satisfy his or her medical support obligation by doing one of the following, listed in order of priority:

a. Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
b. Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child(ren) listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or
c. Contributing the parent's proportionate share of a monthly premium paid by the state if the child(ren) receives state-financed medical coverage through DSHS or HCA (Health Care Authority) under RCW 74.09 for which there is an assignment.

A parent seeking to enforce the obligation to provide health insurance coverage may apply for support enforcement services from the Division of Child Support; file a motion for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show Cause re Contempt); or file a petition.

3.19 Uninsured Medical Expenses

Both parents have an obligation to pay their share of uninsured medical expenses.

The petitioner shall pay 18% of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and the respondent shall pay 82% of uninsured medical expenses (unless

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stated otherwise, the respondent's proportional share of income from the Worksheet, line 6).

3.20 Back Child Support

Back child support that may be owed is not affected by this order.
Back interest that may be owed is not affected by this order.

3.21 Past Due Unpaid Medical Support

Unpaid medical support that may be owed is not affected by this order.
Back interest that may be owed is not affected by this order.

3.22 Other Unpaid Obligations

Other obligations that may be owed are not affected by this order.
Back interest that may be owed is not affected by this order.

3.23 Other

If the father wishes for the 2 YOUNGER children to attend private school, he shall be solely responsible for all costs associated with private school. ONCE THE MOTHER OBTAINS EMPLOYMENT SHE SHALL BE RESPONSIBLE FOR HER PROPORTIONATE SHARE OF [redacted] PRIVATE SCHOOL TUITION. SFC

Dated: 9-19-14

Judge/~~Commissioner~~ JAMES ORLANDO

Presented by:

Approved for entry:
Notice of presentation waived:

FILED
DEPT. 1
IN OPEN COURT
SEP 19 2014
By _____ DEPUTY

Steven R. Levy, WSBA No. 4727
Attorney for Respondent

Heather M. Young, WSBA No. 27366
Attorney for Petitioner

Approved:

Charles Black, Respondent

Approved:

Rachelle Black, Petitioner

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DEPT. 1
IN OPEN COURT

SEP 19 2014

By _____ DEPUTY

Washington State Child Support Schedule Worksheets

[ ] Proposed by [ ] [ ] State of WA [ ] Other (CSWP)
Or, [X] Signed by the Judicial/Reviewing Officer. (CSW)

Mother Rachelle K. Black **Father** Charles W. Black
County Pierce **Case No.** 13-3-01744-9

Child(ren) and Age(s): C[redacted] B[redacted], 15; C[redacted] B[redacted], 12; J[redacted] B[redacted], 7		
Part I: Income (see Instructions, page 6)		
1. Gross Monthly Income	**Father**	**Mother**
a. Wages and Salaries	$7,410.00	$1,615.45
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	-
e. Other Income	$749.00	-
f. Imputed Income	-	-
g. Total Gross Monthly Income (add lines 1a through 1f)	$8,159.00	$1,615.45
2. Monthly Deductions from Gross Income		
a. Income Taxes (Federal and State) Tax Year: 2014	$884.10	$126.94
b. FICA (Soc.Sec.+Medicare)/Self-Employment Taxes	$566.87	$123.58
c. State Industrial Insurance Deductions	$10.01	-
d. Mandatory Union/Professional Dues	-	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	$417.00	-
g. Maintenance Paid	-	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	$1,877.98	$250.52
3. Monthly Net Income (line 1g minus 2i)	$6,281.02	$1,364.93
4. Combined Monthly Net Income (line 3 amounts combined)	$7,645.95	
5. Basic Child Support Obligation (Combined amounts →)	$2,377.00	
C[redacted] B[redacted] $846.00		
C[redacted] B[redacted] $846.00		
J[redacted] B[redacted] $685.00		
6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)	.821	.179

WSCSS-Worksheets - Mandatory (CSW/CSWP) 07/2013 Page 1 of 5

Part II: Basic Child Support Obligation (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)	$1,951.52	$425.48
8. Calculating low income limitations: Fill in only those that apply.		
Self-Support Reserve: (125% of the Federal Poverty Guideline.)	$1,216.00	
a. Is combined Net Income Less Than $1,000? **If yes,** for each parent enter the presumptive $50 **per child.**	-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? **If yes,** for that parent enter the presumptive $50 **per child.**	-	-
c. Is Monthly Net Income equal to or more than Self-Support Reserve? **If yes,** for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, enter that amount or the presumptive $50 per child, whichever is greater.	-	$150.00
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive $50 per child.	$1,951.52	$150.00

Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)		
10. Health Care Expenses	Father	Mother
a. Monthly Health Insurance Paid for Child(ren)	-	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	-	-
d. Combined Monthly Health Care Expenses (line 10c amounts combined)	-	
11. Day Care and Special Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)		
	-	-
	-	-
	-	-
	-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	-	-
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)	-	
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)	-	
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	-	-

Part IV: Gross Child Support Obligation		
15. Gross Child Support Obligation (line 9 plus line 14)	$1,951.52	$150.00

Part V: Child Support Credits (see Instructions, page 9)		
16. Child Support Credits		
a. Monthly Health Care Expenses Credit	-	-
b. Day Care and Special Expenses Credit	-	-

c. Other Ordinary Expenses Credit (describe)	- - -	- - -
d. Total Support Credits (add lines 16a through 16c)	-	-
Part VI: Standard Calculation/Presumptive Transfer Payment (see Instructions, page 9)		
17. Standard Calculation (line 15 minus line 16d or $50 per child whichever is greater)	**$1,951.52**	**$150.00**
Part VII: Additional Informational Calculations		
18. 45% of each parent's net income from line 3 (.45 x amount from line 3 for each parent)	**$2,826.46**	**$614.22**
19. 25% of each parent's basic support obligation from line 9 (.25 x amount from line 9 for each parent)	**$487.88**	**$37.50**
Part VIII: Additional Factors for Consideration (see Instructions, page 9)		
20. Household Assets (List the estimated value of all major household assets.)	Father's Household	Mother's Household
a. Real Estate	-	-
b. Investments	-	-
c. Vehicles and Boats	-	-
d. Bank Accounts and Cash	-	-
e. Retirement Accounts	-	-
f. Other: (describe)	-	-
	-	-
	-	-
	-	-
21. Household Debt (List liens against household assets, extraordinary debt.)		
a.	-	-
b.	-	-
c.	-	-
d.	-	-
e.	-	-
f.	-	-
22. Other Household Income		
a. Income Of Current Spouse or Domestic Partner (If not the other parent of this action)		
Name	-	-
Name	-	-
b. Income Of Other Adults in Household		
Name	-	-
Name	-	-
c. Gross Income from overtime or from second jobs the party is asking the court to exclude per Instructions, page 8	-	-
d. Income Of Child(ren) (if considered extraordinary)		
Name	-	-
Name	-	-

e. Income From Child Support		
Name	-	-
Name	-	-
f. Income From Assistance Programs		
Program	-	-
Program	-	-
g. Other Income (describe)		
	-	-
	-	-
23. Non-Recurring Income (describe)		
	-	-
	-	-
24. Child Support Owed, Monthly, for Biological or Legal Child(ren)	Father's Household	Mother's Household
Name/age: Paid [ ] Yes [ ] No	-	-
Name/age: Paid [ ] Yes [ ] No	-	-
Name/age: Paid [ ] Yes [ ] No	-	-
25. Other Child(ren) Living In Each Household (First name(s) and age(s))		

26. Other Factors For Consideration

Mother's income was imputed at minimum wage as she has no history of employment during this marriage.

Father's income is based upon his July 16, 2014 pay statement. Father's "other income" is his VA disability payments.

Taxes for both were calculated using Circular E at single with 4 exemptions and 3 child tax credits for father and 1 exemption for mother.

Other Factors For Consideration (continued) **(attach additional pages as necessary)**

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IN OPEN COURT

SEP 19 2014

By _____ DEPUTY

Signature and Dates

I declare, under penalty of perjury under the laws of the State of Washington, the information contained in these Worksheets is complete, true, and correct.

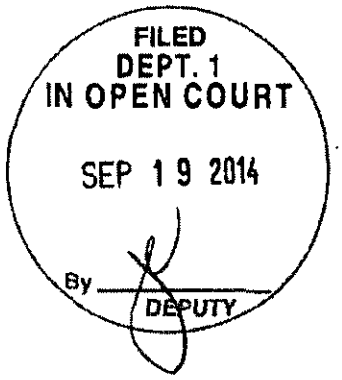
Mother's Signature	Father's Signature
Date City	Date 9-19-14 City Tacoma

Judicial Reviewing Officer JAMES ORLANDO 9-19-2014

Worksheet certified by the State of Washington Administrative Office of the Courts.
Photocopying of the worksheet is permitted.

9/23/2014 2107 0087

Appendix E
Decree of Dissolution



Superior Court of Washington
County of Pierce

In re the Marriage of:	
RACHELLE K. BLACK	**No.** 13-3-01744-9
Petitioner,	**Decree of Dissolution (DCD) (Marriage)**
and	
CHARLES W. BLACK	**Clerk's Action Required**
Respondent.	

I. Judgment Summaries

1.1 Real Property Judgment Summary:

[✓] Does not apply

[ ] Real Property Judgment Summary is set forth below:

Name of Grantor: Rachelle Black

Name of Grantee: Charles Black

Assessor's property tax parcel or account number: 031826-2-006

1.2 Money Judgment Summary:

Does not apply.

End of Summaries

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II. Basis

Findings of Fact and Conclusions of Law have been entered in this case.

III. Decree

It is decreed that:

3.1 Status of the Marriage

The marriage of the parties is dissolved.

3.2 Property to be Awarded the Petitioner

The petitioner is awarded as separate property the following property (list real estate, furniture, vehicles, pensions, insurance, bank accounts, etc.):

1. 50% of Mr. Black's 401(k), which is valued at $145,135.00
2. Her retirement (life insurance) valued at $8,684.00
3. One-half of the net proceeds of the refinance/sale of the family home after payment of all community bills and closing costs, if applicable. See also 3.15.2 and 3
4. One-half of the household goods, furnishings and personal family photos. The parties are to attempt to divide the household goods and furnishings as well as personal family photos. If they cannot agree on the division, dispute resolution should be attempted.
5. Her personal effects.
6. Her 2006 Toyota Avalon automobile valued at $13,225 subject to the debt of $9,979.77
7. The sum of $2,500.00, ~~payable from the husband to the wife to assist with relocation costs, to be paid immediately~~ PAID 9/15/14 HMLY SRL
8. One-half of any bonus husband receives in 2014. OR 2015 FOR 2014 HMLY

3.3 Property to be Awarded to the Respondent

The respondent is awarded as separate property the following property (list real estate, furniture, vehicles, pensions, insurance, bank accounts, etc.):

1. 50% of his 401(k)
2. The Ford Expedition valued at $4,300.00
3. The Salem Trailer valued at $6,255 less the debt owed of $1,715.00
4. One-half of the net proceeds of the refinance/sale of the family home after payment of all community bills and closing costs, if applicable. See also 3.15.2 and 3.
5. One-half of the household goods, furnishings and personal family photos. The parties are to attempt to divide the household goods and furnishings as well as personal family photos. If they cannot agree on the division, dispute resolution should be attempted.
6. One half of any bonus husband receives in 2014. OR 2015 FOR 2014 HMLY
7. Northwestern Mutual life insurance.

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3.4 Liabilities to be Paid by the Petitioner

The petitioner shall pay the following community or separate liabilities:

1. Debt to Pentagon Federal Credit Union on the 2006 Toyota Avalon automobile awarded to her.
2. All community debt other than the debt set forth in 3.4.1 and 3.5.1 is to be paid from the refinance or sale of the family home.

Unless otherwise provided herein, the petitioner shall pay all liabilities incurred by the petitioner since the date of separation.

3.5 Liabilities to be Paid by the Respondent

The respondent shall pay the following community or separate liabilities:

1. The debt to BECU on the Salem Trailer.
2. All community debt other than the debt set forth in 3.4.1 and 3.5.1 is to be paid from the refinance or sale of the family home.

Unless otherwise provided herein, the respondent shall pay all liabilities incurred by the respondent since the date of separation.

3.6 Hold Harmless Provision

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

3.7 Maintenance

Does not apply.

3.8 Restraining Order

No temporary restraining orders have been entered under this cause number.

3.9 Protection Order

Does not apply.

3.10 Jurisdiction Over the Children

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

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3.11 Parenting Plan

The parties shall comply with the Parenting Plan signed by the court on this date. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

3.12 Child Support

Child support shall be paid in accordance with the order of child support signed by the court on this date. This order is incorporated as part of this decree.

3.13 Attorney Fees, Other Professional Fees and Costs

Attorney fees, other professional fees and costs shall be paid as follows:

The respondent shall pay $1,500.00 to Ms. Young towards petitioner's attorney fees. The payments shall be over an 8-month period, beginning in October, 2014. If not paid, this award may be reduced to judgment.

3.14 Name Changes

Does not apply.

3.15 Other

1. All community property shall be equally divided except for the property and debt specifically given to each party above.
2. The parties shall pay the following liabilities from the refinance or sale of the family home and split the net proceeds.

Chase Card 7128	$8,390.00
Chase Slate Card 5813	$2,689.00
Chase 0131	$3,709.00
US Overdraft 9980	$12,712.00
American Express 1006	$8,905.00
GAP Silver Card 4537	$4,161.00
Multi Care 2989	$1,785.75
Target	$1,964.00
Chase Mortgage	$147,165.00

3. Mr. Black should pay to Ms. Black $2,500.00 within 10 days of the decree being entered.
4. Mr. Black may refinance the residence at a value of $500,000, pay off the community debts which are listed in paragraph 3.15.2 and divide the proceeds equally with Ms. Black. If he does not qualify for a refinance, then the home should be listed for sale with a reasonable sale price between $520,000 and $550,000. The proceeds would then be used to pay off the community debt and the balance divided equally. The refinance should be applied for immediately and if not feasible, then the home immediate listed for sale. The realtor, if the home is to be sold shall be Jason Fueston. If the parties cannot agree on how much or when to lower the price, then ~~Mr. Fueston will make that determination.~~ EITHER PARTY MAY MAY BRING A MOTION BEFORE JUDGE ORLANDO

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5. The parties own a 1995 Toyota Avalon and life insurance for C[redacted] and E[redacted]. All these items shall be placed in trust and turned over to the appropriate child upon the child reaching age 21. The Toyota Avalon shall be transferred to C[redacted] when he turns 19.

6. The Court incorporates is written decision of September 2, 2014 herein.

Dated: 9-19-2014

Judge/~~Commissioner~~ JAMES ORLANDO

Presented by:

Steven R. Levy, WSBA No. 4727
Attorney for Respondent

Approved as to form:

Heather M. Young, WSBA No. 27366
Attorney for Petitioner

Approved:

Charles Black, Respondent

Approved as to form:

Rachelle Black, Petitioner

FILED
DEPT. 1
IN OPEN COURT
SEP 19 2014
BY
DEPUTY

STEVEN R. LEVY
P. O. Box 1427
Graham, WA 98338
253-670-4119

Appendix F
Excerpts of Pertinent Statutes

RCW 26.09.090

Maintenance orders for either spouse or either domestic partner — Factors.

(1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party,

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance, and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

[2008 c 6 § 1012; 1989 c 375 § 6; 1973 1st ex.s. c 157 § 9]

Notes:

Part headings not law -- Severability -- 2008 c 6: See RCW 26.60.900 and 26 60.901.

RCW 26.09.187
Criteria for establishing permanent parenting plan.

(1) DISPUTE RESOLUTION PROCESS The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(a) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

(2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26 09.184(5)(a), when it finds that:

(i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09 191, and

(ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

(i) A limitation on the other parent's decision-making authority is mandated by RCW 26 09.191;

(ii) Both parents are opposed to mutual decision making,

(iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority

(i) The existence of a limitation under RCW 26 09 191;

(ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09 184(5)(a),

(iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and

(iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances The child's residential schedule shall be consistent with RCW 26 09 191 Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors

(i) The relative strength, nature, and stability of the child's relationship with each parent.

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily,

(iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26 09.004 (3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child,

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule, and

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

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09 191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur

[2007 c 496 § 603, 1989 c 375 § 10; 1987 c 460 § 9.]

Notes:

***Reviser's note:** RCW 26 09.004 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (3) to subsection (2)

Part headings not law -- 2007 c 496: See note following RCW 26.09.002.

Custody, designation of for purposes of other statutes RCW 26.09 285.

RCW 26.09.191
Restrictions in temporary or permanent parenting plans.

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child, or (c) a history of acts of domestic violence as defined in RCW 26 50 010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm

(2)(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct: (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (ii) physical, sexual, or a pattern of emotional abuse of a child, (iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm, or (iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A 44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection,

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection,

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096,

(G) RCW 9A 64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection,

(H) Chapter 9.68A RCW,

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection,

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct (i) Physical, sexual, or a pattern of emotional abuse of a child, (ii) a history of acts of domestic violence as defined in RCW 26.50 010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or (iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44 086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A 44 089;

(E) RCW 9A 44.093,

(F) RCW 9A.44 096,

(G) RCW 9A.64 020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection,

(H) Chapter 9 68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies

(c) If a parent has been found to be a sexual predator under chapter 71 09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A 44.076, provided that the person convicted was at least eight years older than the victim,

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44 083,

(vi) RCW 9A 44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A 44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection,

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence

(i) RCW 9A.64 020 (1) or (2), provided that the person convicted was at least five years older than the other person,

(ii) RCW 9A.44.073;

(iii) RCW 9A 44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44 079, provided that the person convicted was at least eight years older than the victim,

(v) RCW 9A 44 083,

(vi) RCW 9A 44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A 44 100,

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection,

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such

residential time The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A 44 RCW, RCW 9A.64.020, or chapter 9 68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A 64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent

(m)(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not

enter an order allowing a parent to have contact with the child in the offender's presence *if the parent resides with a* person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

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

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26 09 004;

(c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

(d) The absence or substantial impairment of emotional ties between the parent and the child;

(e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;

(f) A parent has withheld from the other parent access to the child for a protracted period without good cause, or

(g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure

(7) For the purposes of this section

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18 320.010

[2011 c 89 § 6, 2007 c 496 § 303; 2004 c 38 § 12, 1996 c 303 § 1; 1994 c 267 § 1 Prior: 1989 c 375 § 11, 1989 c 326 § 1, 1987 c 460 § 10]

Notes:

Effective date -- 2011 c 89: See note following RCW 18 320.005

Findings -- 2011 c 89: See RCW 18 320.005.

Part headings not law -- 2007 c 496: See note following RCW 26 09 002.

Effective date -- 2004 c 38: See note following RCW 18.155 075

Effective date -- 1996 c 303: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1996]." [1996 c 303 § 3.]

Effective date -- 1994 c 267: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 267 § 6.]

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that on February 17, 2015, I caused to be served a true and correct copy of the foregoing **BRIEF OF APPELLANT** on the following via the method of service indicated below:

COUNSEL FOR RESPONDENT CHARLES W. BLACK:

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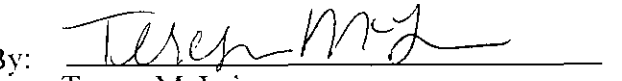
DATED at Seattle, Washington, this 17 day of February, 2015.

By: 
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