

No. 65515-9-I

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

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IN RE: THE MARRIAGE OF

TAMARA RODDEN,

Respondent,

and

JAMES RODDEN,

Appellant.

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BRIEF OF APPELLANT

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## I. INTRODUCTION

Appellant James Rodden has primary custody of his daughter. Yet he cannot participate in decisions about his daughter's education, health care and religion. Those decisions are left entirely to Tamara Rodden, the non-custodial parent.

The trial court deprived Mr. Rodden of decision-making rights based on a misinterpretation of the marriage dissolution statute and an unsupported finding of fact. As a result, Mr. Rodden and his daughter are in an odd and impractical position that is neither contemplated by state law nor consistent with due process. That is, Mr. Rodden is responsible for day-to-day care of his daughter, but has no control over major decisions that affect her daily life, including where the girl goes to school, and which doctor or therapist she can see. Moreover, the restriction on decision-making bears no logical relationship to the unproven allegation of domestic violence that it is intended to address. Simply put, the parenting plan is a recipe for conflict, contrary to the best interests of the child and the legislative intent to minimize conflict.

Like all parents, Mr. Rodden has a fundamental liberty interest in the care and nurturing of his child. Under the state and federal constitutions, he could not be deprived of that interest

without due process of law. The process in this case fell far short of what was due.

In permanently denying mutual decision-making to Mr. Rodden, the trial court stated that it was relying on a record of two “deferred prosecutions,” although the Judicial Information System record shows only dismissals and does not show any deferrals. The trial court also relied on a written report of a guardian ad litem although he was not made available for cross examination. And although clear and convincing evidence was the proper standard of proof, the trial court applied something less than a preponderance of evidence standard. In short, the trial court presumed guilt when a presumption of innocence was required.

In sum, the trial court’s decision to restrict Mr. Rodden’s parenting rights was not supported by substantial evidence, was based on an erroneous interpretation of the law, and was the result of an unconstitutional process. Therefore, the decision should be reversed and Mr. Rodden should be awarded costs and attorney fees for this appeal.

## **II. ASSIGNMENTS OF ERROR**

### *Assignments of Error*

1. The trial court erred as a matter of law by adopting a permanent parenting plan that grants sole decision-making to the mother, based on her unproven allegation of domestic violence, while granting primary custody to the father.

2. The trial court erred by finding that the father has a history of acts of domestic violence when the finding was not supported by substantial evidence.

3. The trial court erred by approving a parenting plan that permanently deprives the father of mutual decision-making without due process of law.

4. The trial court erred by denying a motion to reconsider the permanent parenting plan.

*Issues Pertaining to Error*

1. Does a trial court err when it grants sole decision-making to the mother based on an allegation of domestic violence against the father, when there is no conviction or admission of guilt, and when the allegation is not proven by either a preponderance of evidence or any other evidentiary standard?

2. Does a trial court err when it grants sole decision-making to one parent based on alleged domestic violence by the other parent, when such action requires proof of either a felony

domestic assault or multiple acts of domestic violence, and when there was only one assault charge that was of a non-felony nature?

3. Does a trial court err by applying RCW 26.09.191 inconsistently within the same parenting plan?

4. Does a trial court err when it considers a Judicial Information System (JIS) report in determining if a parent has a history of domestic violence, when RCW 26.09.191(6) requires applying civil rules of evidence in making such a determination, and when those rules are not followed?

5. Does a trial court violate ER 201, which prohibits taking judicial notice of disputable adjudicative facts, when the court considers information gathered by the court itself, when the information relates directly to the parties and issues before the court, and when the information is disputed by a party?

6. Does a trial court err by finding in a dissolution proceeding that a parent has a history of domestic violence, when a separate prior proceeding involving the same parties and the same allegation determined that domestic violence was not proven, and when collateral estoppel prohibits litigating the same issue twice?

7. Does a trial court commit an error of law, in violation of RCW 26.09.220(2) and due process rights, when it considers a

guardian ad litem's report without providing for confrontation and cross examination of the guardian ad litem as a witness?

8. Does a trial court violate a father's due-process rights when it permanently deprives him of the right to participate in education, religion and health care decisions for his child, when the father is found to be fit to maintain primary custody of the child, when the deprivation is based on facts not proven by a preponderance of evidence, when the father had no opportunity to confront or cross examine the author of a report which the court relied upon, and when the court presumed that the father committed domestic violence in the absence of a conviction?

9. Does the trial court err when it adopts a parenting plan that excludes the father from mutual decision-making, when the exclusion bears no logical relationship to the alleged domestic violence which it is designed to address?

### III. RELEVANT FACTS

#### **A. The Commissioner Who Heard Testimony of Both Parents about an Alleged Assault Found That Domestic Violence Was Not Proven.**

James and Tamara Rodden were married in June 1998, and their only child was born in September 1999. CP 87, 190. Mrs.

Rodden (hereafter “the mother”) petitioned for dissolution of the marriage in April 2008. CP 189.

In the divorce petition, the mother stated in the “parental conduct” section, where domestic violence would be mentioned if applicable, “does not apply.” CP 181. She proposed to give herself primary custody of the child, then eight years old. CP 182. But she proposed to give Mr. Rodden (hereafter “the father”) a substantial amount of residential time - 77 hours a week, including three overnights. Id. The mother also proposed joint decision-making, and stated that “there are no limiting factors” (such as domestic violence) that should restrict decision-making. CP 185.

In responding to the dissolution petition, the father accused the mother of domestic violence and proposed a protection order protecting both him and his daughter from the mother. CP 179. He also proposed to take sole custody of the child and to have sole decision-making rights, based on the alleged domestic violence. CP 171, 175.

In opposition to the father’s proposal, the mother filed a declaration on May 12, 2008, stating that Mr. Rodden had assaulted her on March 30, 2008, just before she petitioned for divorce. CP 167. She made this allegation although her

dissolution petition, filed on April 2, 2008, stated “does not apply” regarding domestic violence. CP 181.

In the declaration, the mother complained about the father’s sole-custody proposal. CP 168. She stated that she had obtained a “Domestic Violence No Contact Order” because she was afraid the father would take the daughter to California. CP 167. But she acknowledged that she had “past problems with alcohol,” including “a DUI in November 2007” and “a probation violation when some friends spiked my drink at dinner.” CP 168. She also acknowledged that Commissioner Alfred Heydrich had denied both hers and the father’s petitions for protection orders against each other, after determining the orders were not needed. Id., CP 23.

Commissioner Heydrich denied the petitions on April 14, 2008, after hearing testimony of both parents, including the mother’s testimony that the father had grabbed and bruised her on March 30, 2008. CP 142, 156. The father testified that during an angry confrontation in which the mother accused him of “dating,” she took his phone and “began to do kind of a shoving-pushing game” with it, that he finally “lurched forward to reach for the phone,” and that he did not mean to grab her and did not recall

grabbing her. CP 156. After hearing the testimony and assessing the credibility of both witnesses, the commissioner stated:

Unless I receive more evidence in this case at a later hearing that convinces me otherwise, I'm not going to grant protection orders for anybody in this case.

CP 162. Attorneys for both parties then told the commissioner that they were willing to drop their petitions for protection. CP 164. The commissioner signed an order of dismissal for both petitions stating: "Parties did not meet their respective burdens." CP 23.

The parents' protection-order petitions were handled by the same family law commissioner who reviewed their proposed parenting plans. CP 139, 167. A month after denying the petitions, Commissioner Heydrich approved a temporary parenting plan similar to what the mother had proposed. CP 133-139. The plan gave the mother primary custody but gave the father substantial residential time. CP 134. The commissioner approved joint decision-making and found no limiting factors justifying sole decision-making. CP 137. The "parental conduct" section, where domestic violence would be indicated if applicable, said "reserved." CP 133. At the time, the father was still facing a fourth-degree assault charge arising from the March 30, 2008 incident that was discussed at the protection order hearing. CP 83, 142.

## **B. The Mother Lost Primary Custody Due to Drinking.**

In February 2009, the mother was arrested for driving while intoxicated. CP 96. She voluntarily gave the child's custody to the father as of February 26, 2009. CP 116-120.

On April 9, 2009, the father moved to amend the temporary parenting plan to severely restrict the mother's residential time, citing a recommendation of the guardian ad litem in the case, attorney R. Scott Mawson. CP 123, 127.<sup>1</sup> The father's proposed plan included joint decision-making by both parents. CP 131.

The mother agreed with the father's proposed plan with a few "clarifications," including that her visits would increase "in accordance with ongoing recommendations by the guardian ad litem," and that she may drive a car with the child "as long as I have a valid drivers license." CP 119. The father then filed a declaration recommending more restrictions on driving. CP 116-118.

The trial court approved a second temporary parenting plan on April 24, 2009. CP 108. The new plan limited the mother's

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<sup>1</sup> The motion included a letter from Mr. Mawson to the parties' attorneys stating in part: "The purpose of this communication is to recommend a residential schedule which the parties can follow until more information becomes available as to the events of last week. In particular, I will need to see the results of Ms. Rodden's evaluation which has not yet been scheduled. Therefor [sic] I am recommending that Emily have residential time with mother every Sunday (or Saturday, if the parties agree on that day) from 9am until 7:30 pm..." CP 125.

residential time based on a “long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions.” CP 109. Primary custody was given to the father. Id. The mother’s residential time consisted of Saturdays from 9 a.m. to 7:30 p.m., and one after-school visit each week. Id. She was allowed to drive with the child only on the condition of taking antabuse and using a car interlock device to prevent drunk driving. CP 111. The court approved joint decision-making, and found no limiting factors that should restrict it. CP 113.

A couple of months later, the court approved a third temporary parenting plan which increased the mother’s residential time somewhat, but still left primary custody with the father. CP 102. Other relevant terms remained the same. CP 108-115.

**C. The Parents Agreed to Joint Decision-making. But the Court Rejected their Proposal Because of the Mother’s Unproven Allegations of Domestic Violence.**

Prior to the July 15, 2009 dissolution hearing, the mother and father agreed to a final parenting plan which gave primary custody to the father and which included joint decision-making. RP (July 15, 2009) at 16. The guardian ad litem had recommended

joint decision-making.<sup>2</sup> At the hearing, however, Whatcom County Superior Court Judge Charles R. Snyder said he was concerned about the parents' proposal for shared decision-making because "when I read RCW 26.09.191, and when there is a history of domestic violence, I think the Court is constrained not to allow for joint decision-making on major issues." Id. The court added: "It appears there has been a finding by a court to that effect with regards to Mr. Rodden." Id. The court did not explain what "finding by a court" it was referring to. Id. The court advised the parties to address the decision-making issue at the next hearing. Id. at 17.

After hearing the judge's concern, the mother proposed to abandon the earlier agreed plan for mutual decision-making. CP 66. The mother proposed a plan giving herself sole responsibility for education, religion and health care decisions, and depriving the father of decision-making based on alleged domestic violence. CP 66-67, 71-72. It was the first time the mother opposed mutual decision-making.

The father filed a response emphasizing lack of evidence of domestic violence. His response said:

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<sup>2</sup> RP (October 27, 2009) at 7.

The Court made comments about its concern about this issue based on an apparent review of *ex parte* communications of an unknown origin... To the extent that the court was relying on information within the court file, such information is not evidence in this case. It is not available for cross examination and does not give the father an opportunity to face the accuser. If the information is related to records brought up by the court on its computer, such information is not sworn to, nor may it be challenged or cross examined...

The court is not free to seek out its own evidence during a trial to reach conclusions not established by the evidence presented in court, subject to objection and challenge. This is a fundamental violation of due process right of notice and an opportunity to respond.

Attachment 1.<sup>3</sup>

The only *ex parte* investigation disclosed by the court was an August 13, 2009, background check using the Judicial Information System (JIS), a limited-access database with information about criminal history and case status. CP 76-85.<sup>4</sup> The court generated a JIS printout and placed it in a sealed court file in accordance with a local court rule, WCSPR 94.08(o). CP 76. However, the JIS check was made one month *after* the court stated at the July 15, 2009 hearing that "it appears there has been a finding by a court"

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<sup>3</sup> This response is being added to designated clerk's papers.

<sup>4</sup> See <http://www.courts.wa.gov/jis/> for a description of the system.

that the father committed domestic violence. Id., RP (July 15, 2009) at 16. The court never explained a basis for that statement.

The court's JIS printout shows two single-line entries related to domestic violence for the father.<sup>5</sup> CP 83. One entry reflects the March 30, 2008 assault charge. Id. That charge is shown as dismissed, indicated by the code "D." Id. The printout also shows that an alleged violation of a protection order was dismissed. Id.

The court was asked about the JIS report at the September 22, 2009 hearing on the final parenting plan. RP (September 22, 2009) at 6-7. Although the JIS report, printed by the court prior to the hearing, shows that both of the charges at issue were coded "D" for dismissed, the following colloquy took place:

**Mother's attorney:** I think the Court's required to look at the JIS before looking at a final parenting plan, and I don't know if the court - -

**Court:** I have.

**Mother's attorney:** - - has seen anything that indicates what his history was.

**Court:** *It just says deferred*, and there's a violation of a protection order charge that has the same resolution. *It shows deferred*, both out of district court.

Id. (italics added). Thus, the court characterized the JIS report as showing "deferred" domestic violence charges although the report

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<sup>5</sup> The system uses codes to indicate the judgments made in individual cases. The relevant JIS codes are listed at <http://www.courts.wa.gov/jislink/?fa=jislink.codes> (see "status codes") and are attached to this brief as Attachment 2.

actually says nothing about deferral and instead says the charges were dismissed. CP 83-84. The JIS code for deferral - OD - does not appear in the father's JIS report. CP 83-84.<sup>6</sup>

The court stated that if there is a history of domestic violence, it must deny mutual decision-making under RCW 26.09.191. Id. at 7. The court said:

I think if there's been a prosecution for fourth degree assault, and if there's been prosecution for violation of a no contact order, and even if it resolves in some sort of a deferred, it doesn't mean that there wasn't something that happened.

Id. The father's attorney responded that there is "not sufficient evidence to establish" that domestic violence happened. Id. at 8. The attorney argued that the only evidence concerning domestic violence was presented in the protection order proceeding before the family law commissioner, and the commissioner found the evidence insufficient for granting protection. Id. The father's attorney also argued that the court should not rely on allegations in the guardian ad litem's report because the guardian ad litem did not testify, and there was no opportunity to cross-examine him. Id. at 16-17. He also said that the prosecutor did not pursue criminal

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<sup>6</sup> See footnote 5 regarding JIS codes.

charges and there was no conviction, and therefore there is no reason to deprive the father of mutual decision-making. Id. at 6, 8.

In response, the court said that “for a deferred, you must admit something,” and:

a deferred, as I understand it, says ‘if I do all these things, there’s not going to be a conviction, but if I don’t comply with these things, then I’m back in court, and I can be found guilty.’

Id. at 8, 10. The father’s attorney disagreed that an admission of guilt is required for a deferred prosecution. Id. The court then stated that it was willing to consider records from the criminal proceedings if the father wanted to provide them, but if the records showed an agreement by the father to meet requirements in exchange for a deferred prosecution of domestic violence, the court would view that as “proof” that domestic violence occurred. Id. at 9.

The court said the parenting statute “doesn’t say that there has to be any particular quantum of evidence” in order to find a history of domestic violence. Id. at 11. The court added that when a man is charged with assault and violating a protection order, “I have to assume there’s sufficient information” to find that domestic violence occurred. Id. at 11. The court concluded that based on the allegations described in the guardian ad litem’s report, and

based on the JIS report, “it is this court’s belief that there’s a history of domestic violence. Id. at 17.

That day the court signed a permanent parenting plan giving primary custody to the father – including eight out of every 14 nights – but giving sole decision-making to the mother. CP 48-49, 53-54. The court denied mutual decision-making to the father based on domestic violence. CP 49. The court found that the mother’s alcohol abuse interferes with her parenting, but did not restrict the mother’s residential time because she “is actively pursuing sobriety.” CP 49, 51-52. The court included in the final plan an order to use dispute resolution instead of court action to resolve disagreements. CP 54.<sup>7</sup>

The father moved for reconsideration of the final parenting plan, stating again that domestic violence was not proven, that it was improper to rely on a guardian ad litem’s report without an opportunity to cross-examine the guardian ad litem, and that the JIS report does not establish domestic violence. CP 7-8. The father explained that the assault charge was based on the same March 30, 2008 incident that was discussed at the April 14, 2008

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<sup>7</sup> Also on September 22, 2009, the court adopted findings of fact which stated that the parenting plan “is the result of an agreement of the parties.” CP 61. But the father did not agree to sole decision-making.

protection order hearing, and argued that the order dismissing the mother's protection petition "constitutes collateral estoppel" as to whether domestic violence occurred. CP 8. The motion included a copy of the order stating that the mother did not meet her burden of proof for a domestic violence protection order. CP 23.

In addition, the father said in a declaration that both the assault and no-contact violation charges were dismissed and that he was "not required to do any classes or treatment" or to serve probation as a result of the charges. CP 25. The father also submitted a Declaration of Eric R. Yurk explaining the basis for the charge of violating a no-contact order. CP 25-27.

Mr. Yurk's declaration said that on July 21, 2008, he went to the mother's house to check on its condition at the father's request. CP 27. Mr. Yurk said that he "felt it would not be an issue" because he had known the Roddens for years, their children are friends, and he had been their guest numerous times. Id. After he pulled into the driveway "to look at some damage," a man who was doing repair work at the house invited Mr. Yurk inside. Id. Mr. Yurk stated that at no time did he attempt to contact the mother. Id.

When the reconsideration motion was heard, it was not disputed that there was never any hearing about the guardian ad

litem's report – the parents believed a hearing was unnecessary because they had agreed to carry out the guardian ad litem's recommendations. RP (October 27, 2009) at 4-6. The court nevertheless continued to cite the guardian ad litem's report as a basis for finding domestic violence. *Id.* at 9. The court stated that the guardian ad litem's report indicated that the assault charge "ended up in a deferred prosecution," which suggested to the court that the father must have agreed that he would "be found guilty of the offense" if he did not complete requirements for deferral. *Id.* The court also mentioned an allegation in the guardian ad litem's report that the father was referred to Child Protective Services for spanking his daughter. *Id.*, CP 96.

When the court said it was relying on the guardian ad litem's written account of "events," the following colloquy ensued:

**Father's attorney:** That is not evidence...

**Court:** *I know it's not evidence.*

**Father's attorney:** It is not admissible evidence.

**Court:** This Court, for purposes of deciding [parental] decision-making, only has to determine whether it *believes* that there was a history of domestic violence.

**Father's attorney:** It has to decide - - it has to make a finding.

**Court:** And I am making a finding.

**Father's attorney:** By a preponderance of evidence?

**Court:** We will disagree on that...

Id. at 11-12 (italics added). The court said that just because the commissioner found insufficient evidence to warrant domestic violence protection, after the commissioner heard testimony of the mother and father about the alleged assault, “doesn’t mean that the event didn’t happen.” Id. at 13. The court said the mere “existence of” charges, “however they resulted, indicates that there has been that kind of activity.” Id. at 14.

The court denied the motion for reconsideration, stating there was sufficient evidence of domestic violence to deprive the father of decision-making. CP 4. This appeal followed.

#### IV. ARGUMENT

##### **A. Standard of Review.**

This court reviews provisions of a parenting plan for abuse of discretion. In re Marriage of Littlefield, 133 Wn.2d 39, 46 (1997). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. Id. at 46-47. A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the acceptable legal standard. Id. at 47. A decision is based on untenable reasons if it is based on an incorrect standard or if the facts do not meet the requirements of the correct standard.

Id. A decision is based on untenable grounds if the factual findings are unsupported by the record. Id.

An appellate court will not disturb a trial court's findings in a parenting plan if they are supported by "ample evidence." In re Marriage of Kovacs, 121 Wn.2d 795, 810 (1993). Required findings must be sufficiently specific to permit meaningful review, and at a minimum must indicate the factual bases for ultimate conclusions. In re Dependency of C.R.B., 62 Wn.App. 608, 618 (1991). Statutory interpretation is a question of law reviewed de novo. In re Marriage of Katare, 125 Wn.App. 813, 825 (2005).

**B. The Trial Court Failed to Apply Any Evidentiary Standard to Factfinding, Which Violated the Parenting Statute.**

The most obvious flaw in the trial court's decision is the failure to apply *any* standard of proof to the question of whether domestic violence occurred. The trial court stated that no quantum of evidence was required, that it was *not* finding domestic violence by a preponderance of evidence, and that it merely had to subjectively *believe* that domestic violence occurred in order to deprive the father of parental decision-making. The lack of an evidentiary standard was best illustrated by the court's statement that, when a man is charged with assault and violating a protection

order, “I have to assume there’s sufficient information” to find that domestic violence occurred. RP (September 22, 2009) at 11.

There is no authority for a trial court to deprive a parent of decision-making authority based on assumptions or subjective beliefs. On the contrary, RCW 26.09.191(6) directs the court to apply “civil rules of evidence, proof and procedure” in determining if domestic violence occurred. Thus, contrary to the trial court’s reasoning, the parenting plan statute expressly imposes the usual standards of evidence and proof. Because the trial court failed to apply any evidentiary standard to the determination of domestic violence, the decision was based on untenable reasons and should be reversed.

**C. The Trial Court Incorrectly Applied RCW 26.09.191.**

1. The mandate in RCW 26.09.191(1)(c), to restrict decision-making when domestic violence is found, does not apply here.

A permanent parenting plan must allocate to one or both parents the authority to make decisions regarding the child’s education, health care and religious upbringing. RCW 26.09.184(5)(a). Here, the trial court awarded sole decision-making to the mother based on RCW 26.09.191(1)(c), which says:

The permanent parenting plan shall not require mutual decision-making...if it is found that a parent has engaged in...a history of **acts of domestic violence** as defined in RCW 26.50.010(1) or **an assault...which causes grievous bodily harm** or the fear of such harm.

(emphasis added). Thus, in order for RCW 26.09.191(1) to apply in this case, the father must have committed multiple “acts” of domestic violence, or he must have committed a single assault that caused or threatened to cause “grievous bodily harm.” Neither of those conditions was met here.

a. **“Grievous bodily harm” was not even alleged.**

The parenting statute does not define “grievous bodily harm.” However, the criminal code uses a similar term, “great bodily harm,” defined as injury “which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ.” RCW 9A.04.110(c). In other words, it is life-threatening or life-altering harm. No such harm was even alleged, let alone proven, in this case.

The only injury alleged was bruising. It was not proven. But even if bruising was proven, it would not approach the kind of life-threatening or permanent physical damage that would

constitute “grievous” injury, for purposes of applying RCW 26.09.191(1)(c).<sup>8</sup> Therefore, because there was no single assault causing grievous bodily harm, the trial court could not restrict decision-making under RCW 26.09.191(c) unless it found that multiple acts of domestic violence occurred.<sup>9</sup>

**b. The trial court relied upon an alleged act that did not fit the statutory definition of domestic violence.**

The parenting statute uses the definition of “domestic violence” contained in RCW 26.50.010(1)(a), which is:

physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members.<sup>10</sup>

Thus, in short, there must be actual or threatened *physical harm* to constitute domestic violence for RCW 26.09.191(1)(c) purposes.

In finding a history of domestic violence under RCW 26.09.191(c), the trial court relied on two allegations shown in the

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<sup>8</sup> In fact, if the mother had alleged grievous injury, the father would not have been charged with fourth-degree assault. Assault involving “great bodily harm” is a first-degree offense. RCW 9A.36.011. By contrast, fourth-degree assault involves something less than substantial harm. RCW 9A.36.011-.041.

<sup>9</sup> It appears that the trial court did rely on the multiple-acts provision, rather than the “grievous” assault provision, in finding that RCW 26.09.191(1)(c) required restricted decision-making in this case. RP (September 22, 2009) at 17 (“it is this court’s belief that there’s a history of domestic violence”).

<sup>10</sup> The term also includes sexual assault and stalking, not relevant here. RCW 26.50.010(1)(b) and (c).

JIS report: fourth-degree assault, and violation of a protection order. This was an error of law. The alleged violation of the protection order did not involve actual or threatened physical harm. It merely involved the father's friend stopping at the mother's house to look at property damage, while the mother was not home. Thus, in treating this alleged violation as "domestic violence," although it did not fit the statutory definition of domestic violence, the trial court erroneously applied the law.

It appears that the trial court relied on JIS coding in describing the no-contact allegation as domestic violence. However, just because JIS uses a "DV" code to refer to protection order violations, that does not mean any such violations, if proven, constitute "domestic violence" as defined by RCW 26.50.010(1)(a). The trial court simply did not apply the required statutory definition.

Moreover, even if the alleged no-contact violation did fit the statutory definition, it would not matter because the charge was dismissed without any finding or admission of guilt. In sum, because RCW 26.09.191(1)(c) applies only when the trial court finds more than one act of domestic violence, and because one of the two acts found by the trial court did not fit the statutory definition of domestic violence, the court erred in finding that the father had a

history of acts of domestic violence warranting denial of decision-making authority.

**c. Guilt cannot be presumed.**

A fundamental tenet of American law is that a person is innocent until proven guilty. The presumption of innocence is codified in RCW 9A.04.100(1) and sanctified in our constitutional jurisprudence. It is the reason why pending charges and unproven allegations may not be the basis for an exceptional sentence. State v. Bolton, 68 Wn.App. 211, 218 (1992). It is also a compelling reason to reverse the trial court in this case.

The United States Supreme Court has recognized that parenting is a fundamental right that cannot be curtailed based on mere presumption. Stanley v. Illinois, 405 U.S. 645, 656-57 (1972). “Presumption is always cheaper and easier than individualized determination.” Id. But when a presumption “needlessly risks running roughshod over the important interests of both parent and child,” it cannot stand. Id. at 657.

That is what happened here, where the trial court ran roughshod over the father’s important interest in decision-making by presuming that if he was accused of domestic violence, he must be guilty. The trial court also presumed that the father must have

admitted guilt in order to get his assault and no-contact charges “deferred.” There was no evidence or law to support these presumptions.

While an admission of guilt is required for a deferred prosecution under Chapter 10.05 RCW, nothing in the record indicates that the statute was invoked in Mr. Rodden’s case. It is possible that charges were deferred instead under CrRLJ 6.1.2, which allows a defendant to stipulate to the admissibility of evidence and to agree to forego trial if deferral conditions are not met. No admission is required by that rule. It is also possible that the prosecutor simply dropped the charges. The JIS report and the guardian ad litem’s report, which the court relied upon, did not establish which if any of these possibilities occurred.

Even if a charge was deferred under Chapter 10.05 RCW, it would be improper to treat that as evidence of domestic violence. “By definition, deferred prosecution defendants have not even been prosecuted, much less convicted.” State v. Friend, 59 Wn.App. 131, 135 (1989). In sum, the trial court’s presumptions of guilt lacked any basis in law or fact, and require reversal of the decision.

2. The trial court failed to implement parts of RCW 26.09.191, such that the parenting plan is internally inconsistent.

**a. It makes no sense to bar joint decision-making but require dispute resolution.**

The trial court denied mutual decision-making based on RCW 26.09.191(1)(c), which says in part:

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....a history of acts of domestic violence as defined in RCW 26.50.010(1).

(emphasis added). Thus, if the trial court really believed there was a history of domestic violence, despite the lack of supporting evidence, it should have excluded *both* mutual decision-making *and* dispute resolution. The statute suggests a legislative belief that, when parental relations are torn by domestic violence, parents are unlikely to resolve matters amicably without court intervention. Here, the trial court excluded only mutual decision-making, not dispute resolution, contrary to the statute and common sense. And while Mr. Rodden does not oppose dispute resolution, the point is that the trial court applied the statute inconsistently.

**b. Screening was not required.**

In another example of inconsistent application, the trial court found that domestic violence was a limiting factor under RCW 26.09.191(2)(a)(iii), but the court did not require screening of both

parties “to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.” RCW 26.09.191(4). Such screening is required in every case involving RCW 26.09.191(2)(a)(iii) allegations. Id.

In sum, the trial court applied only some parts of RCW 26.09.191 while ignoring others, illustrating an arbitrary approach and resulting in an internally inconsistent plan. The plan should be reversed and remanded with instructions to remove the finding of domestic violence and grant mutual decision-making, which would achieve internal consistency as well as compliance with the law.

**D. The parenting plan statute is intended to minimize conflict. That purpose was defeated here.**

RCW 26.09.184(1) sets out the general objectives of a permanent parenting plan. Besides providing for the child’s physical and emotional needs and best interests, the objectives include minimizing “the child’s exposure to harmful parental conflict” and encouraging parents “to meet their responsibilities to their minor children through agreements.” RCW 26.09.184(1).

A permanent parenting plan must include a process for resolving disputes out of court, unless certain exceptions apply. RCW 26.09.184(4). The statute encourages parents to agree on

how they will make decisions. RCW 26.09.187(2)(a). In sum, a permanent parenting plan is supposed to promote agreement and discourage conflict, if possible.

The Legislature's purpose of minimizing conflict is defeated when, as here, a permanent plan gives one parent primary custody, and gives the other parent sole decision-making. In this case, for example, at the time of the dissolution hearing the child went to school in the mother's school district. RP (September 22, 2009) at 5. If that was not the school most convenient to the child's primary home with the father, and with the father unable to make education decisions, it is easy to imagine conflict arising in such a situation.

Also, the father cannot choose a counselor for his daughter even though, as her primary caregiver, he is most familiar with her needs. He cannot choose his daughter's doctors although medical appointments are most likely to occur during his residential time. The statute simply does not contemplate a situation like this, where a child lives primarily with the parent who cannot make major life decisions, and where such decisions are made solely by the parent who is least involved with the child's daily activities and needs. It is a recipe for conflict.

### **E. The Trial Court Violated Rules of Evidence.**

As noted above, RCW 26.09.191(6) directs the court to apply “civil rules of evidence, proof and procedure” in determining if domestic violence occurred. Yet here, the trial court violated numerous rules of evidence in making its determination. These errors, individually and collectively, are manifestly unreasonable and warrant reversal of the decision.

1. The parenting law itself prohibited the court from receiving the guardian ad litem’s report in evidence.

A trial court may appoint a guardian ad litem to investigate and report on parenting arrangements for a child. RCW 26.09.220(1). The guardian ad litem may consult with any person in preparing a report. RCW 26.09.220(2). The report “may be received in evidence at the hearing” only if requirements of RCW 26.09.220(3) are met. *Id.* Those requirements include making the investigation file available to parents’ counsel and disclosing names and addresses of all persons consulted. RCW 26.09.220(3). Also, the report may not be received in evidence unless *any party may call the guardian ad litem, or persons consulted by the guardian ad litem, for cross examination.* *Id.*, RCW 26.09.220(2).

Here, the requirements of RCW 26.09.220(3) were not met. The father had no opportunity to cross-examine the guardian ad litem or the persons who contributed information to the guardian ad litem's report, including the child's therapist who discussed a spanking that the father denied was harmful. Accordingly, it was a violation of RCW 26.09.220(2) for the trial court to use the guardian ad litem's report as evidence.

2. The guardian ad litem's report and the court's JIS printout contained inadmissible hearsay related to domestic violence allegations.

Hearsay is a statement, other than one made by the declarant while testifying at a hearing, offered in evidence to prove the truth of the matter asserted. ER 801(c). Here, the allegations described in the guardian ad litem's report and JIS printout were offered by the mother and court for the truth of the matter asserted. Indeed, the court stated that it relied on the guardian ad litem's written account of events and the JIS report in finding that domestic violence occurred. Therefore the reports constituted hearsay.

Hearsay is inadmissible unless an exception applies. ER 802. No exception applies to either report. There is an exception allowing evidence of final judgments, but only for felony convictions that are "entered after a trial or upon a plea of guilty (but not upon a

plea of nolo contendere).” ER 803(a). There is no exception for dismissed charges such as those at issue here. ER 803.<sup>11</sup> In sum, by relying on inadmissible hearsay as evidence of domestic violence, the trial court abused its discretion.

3. Evidence rules prohibited the trial court’s acceptance of a disputed JIS report without proof of its factual assertions.

The trial court improperly took judicial notice of the JIS report. “Judicial notice” is when a court, for purposes of convenience, accepts well-known facts without requiring proof through an adversarial process. Black’s Law Dictionary, 2<sup>nd</sup> Pocket Edition (2001), p. 381. Judicial notice of adjudicative facts is prohibited unless each fact is “not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” ER 201(b). Adjudicative facts are those facts relating to the parties and issues before the court. State v. Grayson, 152

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<sup>11</sup> There is also an issue under ER 410, which bars admission of evidence of an offer to plead guilty or nolo contendere, and any statements relevant to such pleas or offers. The trial court repeatedly stated that the father must have admitted guilt or offered to admit guilt in the criminal proceedings, in order to get the deferred prosecutions that the court believed had been obtained. The court relied on this assumption even though ER 410 would have prohibited admission of any direct evidence along those lines. This was an abuse of discretion.

Wn.2d 333, 340 (2005). A court's taking judicial notice of a matter raises a question of law reviewed de novo. Fusato v. Wash. Interscholastic Activities Assoc., 93 Wn.App. 762, 771 (1999).

A court should consider adjudicative facts only if "parties in an adversarial context have the opportunity to scrutinize, test, contradict, discredit and correct" the facts. Grayson, 152 Wn.2d at 340. Unless the parties can immediately verify facts "by resort to easily accessible sources of indisputable accuracy and verifiable certainty," adjudicative facts should not be judicially noticed. Fusato, 93 Wn.App. at 772. Moreover, Washington courts "cannot, while deciding one case, take judicial notice of records of other independent and separate judicial proceedings even though they are between the same parties." In re Adoption of B.T., 150 Wn.2d 409, 415 (2003).<sup>12</sup>

Here, the facts stated in the JIS report were adjudicative facts because they pertained to an issue before the court – whether the father had a history of domestic violence. Accordingly, ER 201(b) applies. But the rule's requirements were not met.

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<sup>12</sup> Only if the separate proceeding is "engrafted, ancillary or supplementary" to the present proceeding is judicial notice allowed. Id. Accord, Spokane Research & Defense Fund v. City of Spokane, 155 Wn.2d 89, 98-99 (2005) (appellate court would not judicially notice separate proceeding involving the same parties and issues).

The JIS report was judicially generated from a limited-access database that requires a subscription for its use. Thus, the parties did not have an immediate, easy way to verify its accuracy, making judicial notice inappropriate. Fusato, 93 Wn.App. at 772. Also, the facts should not have been judicially noticed because they were subject to reasonable dispute. ER 201(b). Indeed, the trial court mischaracterized the JIS report, stating that it showed deferred status for two charges when in fact it showed dismissals. Any report that relies on coding to describe judgments is reasonably disputable, as this case illustrates. Moreover, the very purpose of the JIS report was to allow judicial notice of records from separate proceedings involving the same parties, which is improper. B.T., 150 Wn.2d at 415. In sum, because the court's judicial notice of the JIS report violated ER 201, it was manifestly unreasonable and warrants reversal of the decision.<sup>13</sup>

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<sup>13</sup> Other evidence rules are implicated as well. To prove the content of a writing, the original of the writing is generally required, unless it has been lost or destroyed or "no original can be obtained by any available judicial process." ER 1002; ER 1004. Here, the trial court discussed the content of the JIS report at a hearing although the parties did not then have the original, which was generated from the court's computer and placed in a sealed file. Thus, the court effectively offered its own characterization of the report's contents as evidence in lieu of the original. A judge presiding at a trial may not testify in that trial as a witness. ER 605. In sum, the court's handling of the JIS report was fraught with problems, notwithstanding that WCSPR 94.08(o) directed the court to generate the report.

#### **F. The Trial Court's Process Was Unconstitutional.**

The United States Supreme Court has recognized that “freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment.” Santosky v. Kramer, 455 U.S. 745, 753 (1982). “The fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents.” Id. A parent’s interest in management of his child is “far more precious than any property right.” Stanley v. Illinois, 405 U.S. 645, 651 (1972). “The parents’ claim to authority in their own household to direct the rearing of their children is basic in the structure of our society.” Polovchak v. Meese, 774 F.2d 731, 734 (7<sup>th</sup> Cir. 1985), quoting Ginsberg v. New York, 390 U.S. 629, 639 (1968).

Freedom to make decisions about a child’s health care, education and religion – the interest at stake here – easily fits within these constitutionally protected parental rights. Such major decisions are an essential part of the care and management of a child. RCW 26.09.004(2) (parenting functions allocated in a parenting plan include making decisions “necessary for the care and growth of the child”). A parent who cannot make education,

religion and health care decisions is deprived of personal choice in matters of family life, as well as authority to direct the rearing of a child in the parent's own household. Therefore, the decision-making authority at issue here is a fundamental liberty interest of constitutional magnitude. Santosky, 455 U.S. at 753; Polovchak, 774 F.2d at 734.

Parents have due-process rights whenever government action affects freedom to raise a child or has a potential or actual divisive impact on family relations. Polovchak, 774 F.2d at 734-35. Due process is *not* limited to cases where parental relations are terminated completely. Id. In Polovchak, for example, immigrant parents were entitled to due process before the government granted asylum to their minor child over their objections. Id. The severity of impact on parent-child relations merely affects the nature of the process due, not whether it is due. Id. at 735; In re Sumey, 94 Wn.2d 757, 762-63 (1980).

In assessing the constitutionality of a procedure which infringes on a parent's right to the care and custody of a child, a court must "ascertain the proper balance between the parents' constitutional rights and the State's constitutionally protected *parens patriae* interest in protecting the best interest of the child."

Sumey at 762-63. To achieve that balance, Washington courts consider three factors: 1) the parents' interests; 2) the risk of error created by the state's chosen procedure; and 3) the state's interest. In re Key, 119 Wn.2d 600, 610 (1992). Applying that test to the process used by the trial court here, the process falls far short of what was due.

1. Because the father is a fit parent, the state's parens patriae interest in restricting his rights is minimal, whereas the father's interest in raising his child is weighty.

As already discussed, a father's freedom to raise his child is a fundamental liberty interest. The state's interest, by contrast, is weak or non-existent. Without a finding of unfitness or some other serious risk to the child, the state's parens patriae interest "does not even come into play." Santosky, 455 U.S. at 767, n. 17. When a parent is considered fit, such as here where the father was given primary custody, the parent's interest is "cognizable and substantial" and the state's interest in caring for the child is "de minimis." Stanley, 405 U.S. at 651-52, 657. Thus, two of the three factors – the parent's interest and the state's interest – weigh in favor of strong procedural protection here.

2. The risk of error was enormous.

The other factor in evaluating constitutional adequacy of a process for depriving individual rights is the risk of making an erroneous decision. Key, 119 Wn.2d at 610. Here, the risk of error was so exceptionally high as to deny the father due process.

**a. There was no valid standard of proof.**

As discussed above, the trial court failed to apply any evidentiary standard whatsoever to the question of whether the father had a history of acts of domestic violence. When the father's attorney asked the trial court if it found domestic violence by a preponderance of the evidence, the trial court said "we will have to disagree." The trial court stated that no quantum of evidence was required, and that it merely had to subjectively *believe* that domestic violence occurred in order to deprive the father of parental decision-making. The court also stated that, when a man is charged with assault and violating a protection order, "I have to assume there's sufficient information" to find that domestic violence occurred. RP (September 22, 2009) at 11.

In short, the trial court's decision was wholly subjective. When "imprecise substantive standards" leave determinations "unusually open to the subjective values of the judge," there is a

risk of erroneous factfinding. Santosky, 455 U.S. at 762. That is what happened here.

Due process requires a standard of proof that is commensurate with the weight of the interests at stake. Santosky, 455 U.S. at 755. In cases involving individual rights, the standard of proof “reflects the value society places on individual liberty.” Id. at 756. Courts require the highest standard of proof - beyond a reasonable doubt - in criminal cases, and an intermediate standard of “clear and convincing evidence” when the individual interests at stake are “particularly important” and “more substantial than mere loss of money.” Id. at 755-56. Here, although the parent was permanently deprived of a fundamental parenting right, the trial court did not even apply the minimal standard of proof - a preponderance of evidence. Because the court’s purely subjective standard was not commensurate with the weight of the father’s interest, it violated due process. Santosky, 455 U.S. at 755.

**b. The lack of an opportunity for cross examination added to the high risk of error.**

State proceedings to remove parental rights have been found constitutional where they provided a right to examine witnesses and to receive a decision based solely on the evidence

adduced at a hearing. Key, 119 Wn.2d at 611 (upholding constitutionality of the RCW 13.34.090 dependency procedure), contrasted with In re Marriage of Ebbighausen, 42 Wn.App. 99, 103-04 (1985) (finding due process violation where father was deprived of custody without allowing testimony on the merits). In Ebbighausen, the court recognized the importance of requiring that all evidence used in deciding parental rights “should be in open court.” Id. at 103.

Here, there was never any testimony about the allegations of domestic violence. There was no hearing on the parenting plan because the parents had agreed to carry out the guardian ad litem’s recommendations. A hearing on the merits is necessary to satisfy due process when parental rights are stake. C.R.B., 62 Wn.App. at 616.

The court relied on the guardian ad litem’s written account of what other people alleged, without affording the father an opportunity to examine the guardian ad litem or the persons who contributed information to his report. When the right to confront witnesses is denied, there is a danger of making decisions based on unverified facts. State v. Dahl, 139 Wn.2d 678, 688 (1999) (relying on hearsay in revoking a sentence was unconstitutional).

In sum, because there was no opportunity to confront or examine witnesses whose allegations were determinative, the father's due process rights were denied.

When a judgment is entered without procedural due process, it is void. Ebbighausen, 42 Wn.App. at 102; Sumey, 94 Wn.2d at 762. Because the permanent parenting plan was entered without due process, this Court should declare it void.

**G. The Mother Was Collaterally Estopped from Alleging that the March 30, 2008 Incident was Domestic Violence.**

The protection order hearing on April 14, 2008, resulted in a final decision on the merits that the mother had not met her burden of proving that domestic violence occurred on March 30, 2008, when the father was arrested after the struggle over the cell phone. Collateral estoppel applies when: "1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; 2) the earlier proceeding ended in a judgment on the merits; 3) the party against whom collateral estoppel is asserted was a party to the earlier proceeding; and 4) application of collateral estoppel does not work an injustice on the party against whom it is applied." Christensen v. Grant Hosp. Dist. 1, 152 Wn.2d 299, 307 (2004). All of those elements are met here, where the

same allegation of domestic violence was the issue in both proceedings involving the same parties. It is particularly appropriate to apply collateral estoppel here, where the first proceeding was the only one at which witnesses testified, and where the court had an opportunity to evaluate the credibility of the witnesses. In sum, because there was a final decision on the merits on the same issue in a prior proceeding, the trial court erred by reopening the issue and making a contrary decision.

**H. The Decision-Making Restriction Was Not Reasonably Calculated to Address the Alleged Problem.**

A court “may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191.” Katare, 125 Wn.App. at 826. Any limitations or restrictions imposed “*must be reasonably calculated to address the identified harm.*” Id. (italics added). That is not the case here, where there is no logical relationship between the mother alleging that the father assaulted her and violated a no-contact order in 2008, and the father being unable to make decisions about education, religion and health care for his daughter. Even if domestic violence occurred, which was not proven, leaving all

education, health care and religion decisions to the mother does not protect the mother or daughter from a risk of violence.

As it is, the parenting plan makes the father responsible for most day-to-day decisions for the girl. It is hard to imagine what benefit to the child is accomplished by allowing the primary parent to make only some decisions, and not others.

In Katare, the court overturned a restriction on the father's traveling with his children beyond a two-county area because it was "not logically related" to the RCW 26.09.101 issue that it was designed to address. Katare, 125 Wn.App. at 832. The mother had alleged that the father threatened to move the children to India. Similarly here, the restriction on the father's decision-making is not logically related to the RCW 26.09.191(1)(c) finding of domestic violence because, if a true risk existed, the father would not have primary custody. This inconsistency is another reason for reversal.

### III. CONCLUSION

For the foregoing reasons, the Court should declare the parenting plan void based on lack of due process. Alternatively, the court should reverse the decision approving the plan and remand the matter with instructions to include mutual decision-making in the plan, absent proof by at least a preponderance of evidence that

RCW 26.09.191(1)(c) applies. The Court should award the father costs of this appeal including reasonable attorney fees pursuant to RCW 26.09.140.

Dated this 5th day of November, 2010.

RESPECTFULLY SUBMITTED,

HARRISON, BENIS & SPENCE LLP

By:   
Katherine George, WSBA No. 36288  
Attorney for Appellant

# ATTACHMENT 1

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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF WHATCOM**

Clerk's File Stamp

In re the Marriage of:  
TAMARA RODDEN,  
  
and  
JAMES F. RODDEN,  
  
Petitioner,  
  
Respondent.

NO. 08-3-00254-3

**RESPONDENT'S RESPONSE  
TO PROPOSED FINAL ORDERS**

Comes now respondent, James Rodden, by counsel, David B. Hunter, and submits his responses to Petitioner's Proposed Final Orders in the above entitled action.

**PARENTING PLAN**

The Proposed Parenting Plan in Paragraph 2.1 provides that mutual decision making shall not be required because the father has engaged in "a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous harm or the fear of such harm." No evidence was presented at trial of any such history or assault. The Court made comments about its concern about this issue based on an apparent review of ex parte communications of an unknown origin in raising this issue. To the extent that the court was relying on information within the court file, such information is not evidence in this case. It is not available for cross examination and does not give the father an opportunity to face the

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**RESPONDENT'S RESPONSE  
TO PROPOSED FINAL ORDERS**

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1 accuser. If the information is related to records brought up by the court on its computer, such  
2 information is not sworn to, nor may it be challenged or cross examined. Finally, even if the  
3 father's record were examined as a part of the trial evidence, there would be no evidence of any  
4 conviction for any such crime nor would there be any orders issued after a trial on any such issue.  
5 The court is not free to seek out its own evidence during a trial to reach conclusions not  
6 established by the evidence presented in court, subject to objection and challenge. This is a  
7 fundamental violation of due process right of notice and opportunity to respond. A trial has been  
8 held in this case. No admissible evidence was presented to the court sufficient to make a finding  
9 as reflected in Paragraph 2.1. Neither did the parties agree to the inclusion of this finding in the  
10 Parenting Plan. For the same reasons Paragraph 4.2 should provide for joint major decision  
11 making and Paragraph 4.3 should not be applicable.

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13  
14 In Paragraph 3.7 the July 4<sup>th</sup> schedule is backward, as the Agreement reached provides  
15 that the mother will have three uninterrupted weeks with the child starting on July 1 in odd years.  
16 See, also, Paragraph 3.5. Likewise, the Thanksgiving vacation is backward such that the mother  
17 should have even and the father should have odd.

18  
19 Under VI. Other Provisions, there was no recommendation from the GAL nor any  
20 agreement that the father could not drink alcohol. Neither did the court make any such ruling nor  
21 was any evidence presented from which the court could conclude that such a provision was  
22 justified.

### 23 **ORDER OF CHILD SUPPORT**

24 In Paragraph 3.17, the court made no rulings regarding the tax exemptions. Given the  
25 evidence presented at trial concerning the mother's income, she stands not to benefit from the  
26 exemption and, in any case, provides no real financial support for her child which would justify  
27 her receiving a tax exemption.  
28

1 **DECREE AND FINDINGS**

2           Regarding the Schwab 401K Logitech funds, the Exhibit should identify only the vested  
3 portion of such funds as being divided between the parties, since neither party is entitled to the  
4 portion which has not vested.

5  
6 Respectfully submitted,

7  
8 

9  
10 David B. Hunter, WSBA # 20404

11 Attorney for Respondent

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## ATTACHMENT 2



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### Status Codes

- Case Disposition Status (district/municipal court non-civil cases)
- Case Disposition Status (district/municipal court civil DV cases)
- Case Disposition Status (district/municipal court CV/SC cases)
- Case Disposition Status (superior court cases)
- Judgment Status
- Accounting Status
- Warrant or FTA Status
- Hearing Status (district/municipal cases only)
- Order Status
- Parking Payment Status
- Parking Hearing Status
- Parking Delinquency Status
- Parking Hold Status
- Parking Release Status

### Status Codes

Displayed on DCH, ICH, SNCI, CNCI, PTP and PKV screens.

\*\*\* Indicates new or changed item.

#### Case Disposition Status (district/municipal court non-civil cases)

CD column on DCH, ICH, SNCI, CNCI

Displays the case disposition recorded on CSD

<b>CL</b>	Closed
<b>TR</b>	Transferred
<b>*</b>	Archived Case
<b>#</b>	Imported from Non-JIS Court
<b>Blank</b>	Case not disposed

#### Case Disposition Status (district/municipal court civil DV cases)

CD column on ICH

The case disposition recorded on CVJ does NOT display on ICH.

### Case Disposition Status (district/municipal court CV/SC cases)

CD column on CNCI

The case disposition recorded on CVJ or system generated on CIVT displays in the CD column on CNCI.

<b>CL</b>	Closed
<b>DP</b>	Dismissed with Prejudice
<b>DW</b>	Dismissed without Prejudice
<b>SA</b>	Satisfied
<b>TC</b>	Transfer - Civil
<b>TR</b>	Transferred
<b>*</b>	Archived
<b>#</b>	Imported from Non-JIS Court
<b>Blank</b>	Case not disposed

### Case Disposition Status (superior court cases)

CD column on DCH, ICH

The SCOMIS Completion Codes recorded on the SCOMIS Basic screen are translated and display in the CD column on DCH and ICH.

<b>SCOMIS Completion Code</b>	<b>Equivalent Case Disposition Code</b>
<b>JODF</b>	CM (completed)
<b>UNCL</b>	CM
<b>CDCM</b>	CM
<b>STCL</b>	CM
<b>Blank</b>	Blank (No completion code in SCOMIS)

The JIS case disposition code recorded on the CSD screen displays in the CD column on SNCI and CNCI.

<b>CL</b>	Closed
<b>Blank</b>	Case not closed on CSD

### Judgment Status

Jg column

For a district/municipal court non-civil case, the finding/judgment code recorded on the PLS screen displays on DCH, ICH, SNCI, and CNCI.

For a district/municipal court civil case with a DVP or HAR cause, the Jg column is blank on ICH. These cases do not display on DCH.

For a superior court criminal/juvenile offender case (S1 & S8), the charge Result Code recorded on the SCOMIS Charge screen is translated and displays in the Jg column on DCH and ICH.

SCOMIS Result Code		Equivalent Fnd/Jdgmt Code	
<b>D</b>	(dismissed)	<b>D</b>	(dismissed)
<b>G</b>	(guilty)	<b>G</b>	(guilty)
<b>NG</b>	(not guilty)	<b>NG</b>	(not guilty)
<b>P</b>	(pending)	<b>OD</b>	(other deferral)
<b>CV</b>	(change of venue)	<b>CV</b>	(change of venue)
<b>V</b>	(vacated conviction)	<b>V</b>	(vacated conviction)
<b>TR</b>	(transferred for sentencing or supervision)	<b>TR</b>	(transferred for sentencing or supervision)

For a superior court non-criminal or non-juvenile offender case, the Jg column on ICH will be blank.

**Accounting Status**

A column on SNCI and CNCI screens (for district/municipal court cases only)

<b>F</b>	Paid in Full
<b>P</b>	Partial Payment
<b>*</b>	Archived Case
<b>#</b>	Imported from Non-JIS Court
<b>Blank</b>	No Accounting Activity

**Warrant or FTA Status**

W or F column on DCH, ICH, SNCI, CNCI

<b>A</b>	FTA Adjudicated
<b>I</b>	Issued
<b>O</b>	Ordered
<b>M***</b>	Warrant activity on Superior Court case with multiple defendants
<b>N</b>	Past Activity (includes FTA canceled; warrant recalled, quashed, expired, served, or canceled before issuance)
<b>*</b>	Archived Case (does NOT indicate past FTA or warrant activity on archived case)
<b>#</b>	Imported from Non-JIS Court
<b>Blank</b>	No FTA or Warrant Activity

For superior court cases filed in or converted to JIS, the most recent docket code recorded on the SCOMIS Docket screen is translated and displays on DCH and ICH as follows:

<b>Equivalent JIS Warrant Status Code</b>	<b>SCOMIS Docket Code</b>	<b>Docket Code Description</b>
O (warrant ordered)	<b>ORIBW</b>	Order Directing Issuance of Bench Warrant
O	<b>ORAPP***</b>	Order for Apprehension / Pick-Up (effective 3/5/2007)
O	<b>ORW</b>	Order for Warrant
<del>O</del>	<del><b>ORWADFC</b></del>	<del>Order for Warrant of Arrest &amp; Detention of Fugitive (Effective 3/5/2007, this docket code no longer affects case management status or JIS warrant status code.)</del> ***
I (warrant issued)	<b>BW</b>	Bench Warrant
I	<b>\$BWICF</b>	Bench Warrant Issued Copy Filed W/Fee
I	<b>BWICF</b>	Bench Warrant Issued Copy Filed
I	<b>WAR</b>	Warrant (end effective 6/24/1998)
I	<b>WA</b>	Warrant of Arrest
N (past warrant activity)	<b>ORQBW</b>	Order Quashing Bench Warrant
N	<b>ORQWA</b>	Order Quashing Warrant of Arrest
N	<b>RTW***</b>	Return from Warrant Status (added 3/5/2007)
N	<b>SHRTBW</b>	Sheriff's Return on Bench Warrant
N	<b>\$SHRTBW</b>	Sheriff's Return on Bench Warrant
N	<b>SHRTWA</b>	Sheriff's Return on Warrant of Arrest
N	<b>\$SHRTWA</b>	Sheriff's Return on Warrant of Arrest

**Hearing Status (district/municipal cases only)**

S column on SNCI and CNCI screens

<b>C</b>	Hearing Scheduled (Calendared)
<b>Blank</b>	No Hearing Scheduled

**Order Status**

O column on DCH and ICH screens for district/municipal court cases and superior court cases filed in or converted to JIS.

<b>A</b>	Active
<b>D</b>	Denied
<b>E</b>	Expired
<b>T</b>	Terminated

**Parking Payment Status**

P column on PTP & PKV screens

<b>A</b>	Accounting Activity
<b>F</b>	Paid in Full
<b>Blank</b>	No Accounting Activity

**Parking Hearing Status**

C column on PTP & PKV screens

<b>Y</b>	Yes, hearing scheduled
<b>Blank</b>	No Hearing Scheduled

**Parking Delinquency Status**

D column on PTP & PKV screens

<b>N</b>	Delinquent Notice Submitted from PKS
<b>Blank</b>	Not Delinquent

**Parking Hold Status**

H column on PTP & PKV screens

<b>Y</b>	Yes, Hold on License Issued
<b>Blank</b>	No Hold Issued

**Parking Release Status**

R column on PTP & PKV screens

<b>Y</b>	Yes, Hold Release Issued
<b>Blank</b>	No Hold Release Issued

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on November 5, 2010, I caused delivery of a copy of the Brief of Appellant and Reports of Proceedings by U.S. mail to:

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Dated this 5th day of November, 2010, at Bellevue, Washington.

  
KATHERINE GEORGE