

NO. 70827-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

THOMAS BRET HAGGERTY.

Appellant,

v.

SAIYIN PHASAVATH,

Respondent.

APPELLANT'S STRICT REPLY

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STRICT REPLY

In the Notes accompanying RCW 9A.36.021 [Public Law 2011 c 166 § 1; 2007 c 79 § 2; 2003 c 53 § 64; 2001 2nd sp.s. c 12 § 355; 1997 c 196 § 2. Prior: 1988 c 266 § 2; 1988 c 206 § 916; 1988 c 158 § 2; 1987 c 324 § 2; 1986 c 257 § 5.], the following statement expresses the intent of the legislature of the state of Washington:

Finding -- 2007 c 79: "The legislature finds that assault by strangulation may result in immobilization of a victim, may cause a loss of consciousness, injury, or even death, and has been a factor in a significant number of domestic violence related assaults and fatalities. While not limited to acts of assault against an intimate partner, assault by strangulation is often knowingly inflicted upon an intimate partner with the intent to commit physical injury, or substantial or great bodily harm. **Strangulation is one of the most lethal forms of domestic violence.** [Bold added.] The particular cruelty of this offense and its potential effects upon a victim both physically and psychologically, merit its categorization as a ranked felony offense under chapter 9A.36 RCW." [2007 c 79 § 1.]

Saiyin Phasavath, the respondent in this action, is a repeat offender of this kind of extreme domestic violence. The record indicates that Phasavath prefers to inflict assault by strangulation, and that she includes the use of her fingernails to rake the neck as well. This was the form of

the assault she used on the minor child TJ Haggerty, when he was simply trying to protect his younger brother from her unbridled rage.

Small wonder there has been ongoing litigation between the parties, as Mr. Haggerty has continually sought to protect his children from the repeated and proved acts of extreme domestic violence by Phasavath. The courts, however, have suffered in their ability to clearly see this case because of the acts of Phasavath to engage in false reports to the police and false statements to the court, and by the acts of counsel for Phasavath, who has actually attempted to alter the sworn testimony of TJ Haggerty in violation of applicable law. The court should look beyond the tactics of obfuscation used by counsel for Phasavath and recognize how the lower court has been misled.

Phasavath claims that Mr. Haggerty has “a long history of deception,” yet it is Phasavath who was arrested and convicted for filing a false police report. We note that there is no citation to the record in Phasavath’s argument ad hominem, as Phasavath is unable to assert any incident of deception, other than to complain about Mr. Haggerty’s use of the laws of the state of Washington to attempt to protect his children from her as a violent predator and her lawyer who demanded that the strangled child recant his testimony.

Phasavath claims that Mr. Haggerty has “a long history of domestic violence” yet it is Phasavath who was arrested for strangling her 14-year-old son, and convicted thereafter. In regard to her claim that Haggerty is a

domestic violence perpetrator, Phasavath is unable to assert any 9-1-1 call, any arrest, any trial, or any conviction of any sort by Haggerty for any act of domestic violence. Instead, Phasavath simply relies on the fact that she has called him a domestic violence perpetrator time after time in order to obtain a strategic advantage in a child custody case, which is a tactic used by counsel for Phasavath which demeans the prestige of this court, and the legal system in general.

The mother, her current husband Chan Phasavath, and her oldest son Khoraphol have all been convicted from charges related to domestic violence. CP 435-438. Both Saiyin Phasavath and Karma Zaike were considered suspects in one or more assaults on TJ Haggerty. CP 444. Saiyin Phasavath was arrested for assaulting TJ Haggerty. CP 447. Law enforcement has been confronted by her husband Chan wearing a bullet proof vest and pistol. CP 447. The police found TJ Haggerty with several lateral abrasion and scratch marks across the front of both sides of his neck. CP 448. The police also found scratches and “claw marks” on both forearms of TJ Haggerty. CP 448. The incident of this assault was the result of TJ Haggerty intervening between Saiyin and the youngest son Samuel. CP 448. His testimony indicated that Saiyin punched TJ Haggerty in the stomach, scratched his neck, dug her fingernails into both forearms, pushed him into a wall, and put him in a headlock. CP 448. Samuel Haggerty, the youngest child, told the police during this same incident that Saiyin had tackled him in the past, CP 448, thrown a comb

and make-up kit at him, CP 448, that he had seen Saiyin throw a knife at TJ Haggerty, and that he had seen Saiyin throw TJ against the wall. CP 448.

The police found probable cause to arrest Saiyin for DV Assault 4th Degree. CP 449.

Chan Phasavath was also arrested for assaulting TJ Haggerty. Phasavath had spit in TJ's face (CP 522), and threw him against a wall (CP 526), and had given a false report to the police. CP 522. The petition before the court brought by Haggerty on July 10, 2013, also alleged that Chan Phasavath had assaulted Samuel Haggerty. CP 434-435. This was confirmed by a letter from the boys' counselor Debra J. Sweeney stating that Samuel had suffered abuse from both his mother and her husband. CP 437.

Phasavath claims that the father was "forum shopping" to the Snohomish County Superior Court. Mr. Haggerty merely sought protection for both of his children, one of whom who had been in his custody for approximately 14 months, and the other who had been thrown to the ground repeatedly by Chan Phasavath, and did so in a forum that was appropriate under the statute. Mr. Haggerty lives, and has always lived in Snohomish County, TJ Haggerty, the oldest child, was living with him at the time at the express instruction of the mother, and the youngest child was resident with him following the incidence of abuse. The court

considered jurisdiction in entering its temporary restraining order, and moved ahead.

Further, Phasavath makes the argument that “[t]his appeal arises out of the Father’s use of forum shopping to the Snohomish County Superior Court, which was unaware of the Father’s prior misdeeds, in an attempt to use a Domestic Violence Protection Order (DVPO) to improperly modify the parties’ parenting plan.”

Phasavath is a convicted domestic violence perpetrator. Her husband, Chan Phasavath is also a convicted domestic violence perpetrator. Phasavath’s oldest son Koraphol, who lives with Phasavath from time to time, is a convicted serial domestic violence perpetrator. Phasavath has been convicted of lying to the police. Mr. Haggerty sought protection for his sons, when new incidents of domestic violence were recurring at the Phasavath household, a home that is notorious to the Renton Police Department.

To make the claim that such a request was improper ignores the intent of the legislature in this state to protect children from domestic violence, ignores the years of juris prudence in this court and in the Supreme Court of this state. The legislature has expressed its intention that chapter 26.50 RCW is to prevent acts of domestic violence. Minor children who have already experienced abuse are not required to wait until Respondent commits further acts of violence against them before seeking yet another order for protection. *Muma v. Muma*, 115 Wn. App. 1, 6-7, 60

P.3d 592 (2002), (a petitioner need not “wait [for] further acts of violence . . . in order to seek an order of protection”); *Spence v. Kaminski*, 103 Wn. App. at 332-33, 103 Wash.App. 325 (2000), (parties' continuing contact while they struggled over custody issues, together with evidence that petitioner continued to be afraid of the respondent, was sufficient to support protection order); *Hecker v. Cortinas*, 110 Wn. App. 865, 870, 43 P.3d 50 (2002), (“the Act does not require infliction of physical harm; rather, the infliction of ‘fear’ of physical harm is sufficient”).

Counsel for respondent apparently believes that seeking protection under this well established body of law is “improper.” Given that counsel for Respondent actively engaged with the oldest child in this case, having demanded in a private conversation that he recant his sworn statement and tell the police that he had inflicted the wounds on himself, may give this court some guidance as to why counsel is taking the position that seeking a protection order for these children is “improper.”

Mr. Haggerty has placed before this court the record of fraudulent reporting to police and witness tampering by attorney Karma Zaike. Zaike made a false report to the Renton Police on August 9, 2011, when she told the police that “the biological father is prohibited from having contact or parental rights to the children, per an order.” CP 453. Mr. Haggerty has always had residential time with both sons pursuant to the Parenting Plan, CP 488, and enjoyed those rights at the time of this incident because the Superior Court of King County denied the mother’s request for a new

restraining order. CP 188. On August 11, 2011, Zaike met with Chan Phasavath and TJ Haggerty at her office without the benefit of a guardian ad litem, and was advised during the course of this meeting by the Renton Police that she was suspected of advising TJ to not testify or to recant his story. CP 456.

On August 9, 2011, TJ Haggerty reported to the Renton Police that Zaike said “TJ, you are a liar. You did this to yourself. You need to stop lying about this whole thing. You need to take back your statement. This is your fault. You escalated the situation to the point where your mother lost it.” CP 461; 480. TJ later explained to the police that he had been repeatedly assaulted by Saiyin; that she had hit him with a book, a spatula, a pan, a hanger, make-up, a chair, and the remote control (CP 477). Saiyin has also slapped him, back-handed him to the face, and even attacked him with a knife. CP 462.

On August 11, 2011, TJ Haggerty gave a sworn statement to the Renton Police that Zaike had called him a liar and demanded that he recant his testimony. CP 472-473. This statement has never been refuted by Zaike.

Mr. Haggerty also brought a petition seeking modification of both the Parenting Plan and the Order of Child Support to reflect the integration of TJ Haggerty into Petitioner’s household. As such, the modification of the Parenting Plan was subject to the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, as codified in Washington

under RCW 26.27 et seq. (hereafter, the “UCCJEA”). The UCCJEA provides for jurisdiction within the state, and does not specify the forum in which such matters may be heard.

Washington law is not silent on the issue. Public Laws 2008 c 6 § 1020; 1991 c 367 § 10; 1987 c 460 § 20; 1975 c 32 § 4; 1973 1st ex.s. c 157 § 28, as codified in RCW 26.09.280 provide as follows:

Every action or proceeding to change, modify, or enforce any final order, judgment, or decree entered in any dissolution or legal separation or declaration concerning the validity of a marriage or domestic partnership, whether under this chapter or prior law, regarding the parenting plan or child support for the minor children of the marriage or the domestic partnership **may be brought in the county where the minor children are then residing** [bold added], or in the court in which the final order, judgment, or decree was entered, **or in the county where the parent or other person who has the care, custody, or control of the children is then residing.** [Bold added].

While state jurisdiction is determined by Washington’s adoption of the UCCJEA, forum is determined by statute, and Mr. Haggerty was at all times acting in conformity therewith. Therefore, the representation made by Phasavath and her counsel that Mr. Haggerty was acting “improperly” in bringing a modification proceeding in Snohomish County is belied by both existing law, and by the subsequent acts of the Superior Court, who

later found adequate cause to hear the matter at trial in Snohomish County. Phasavath is intentionally and willfully misleading the court as to existing law, and does so without citation to the record or with reference to existing public laws, statutes, or case precedent.

Modifications of parenting plans are governed by RCW 26.09.260 and .270. RCW 26.09.260(1) provides that “[e]xcept as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.”

RCW 26.09.260 (2) provides in applicable part that “[i]n applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless: b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan; and (c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is

outweighed by the advantage of a change to the child.” The criteria of this statute limits the court’s range of discretion. *In re the Custody of Halls*, 126 Wn.App. 599, 606, 109 P.3d 15 (2005).

A parenting plan may be modified if it is shown that the children have been integrated into the family of the petitioning parent with the consent of the other parent in substantial deviation from the original parenting plan. “Consent” refers to a voluntary acquiescence to surrender of legal custody. *In re Marriage of Taddeo-Smith*, 127 Wn. App. 400, 405-06, 110 P.3d 1192 (Div. I, 2005). *Also see In re Marriage of Timmons*, 94 Wn.2d 594, 601,617 P.2d 1032 (1980) (discussing former RCW 26.09.260(1)(b) (1980) recodified as RCW 26.09.260 (2)(b) by Laws 1991, ch. 367, § 9). It may be shown by evidence of the relinquishing parent’s intent, or by the creation of an expectation in the other parent and in the children that a change in physical custody would be permanent. The children’s views as to where ‘home’ is, and whether the environment established at each parent’s residence is permanent or temporary are significant in determining whether ‘consent’ and ‘integration’ are shown. While time spent with each parent is not determinative, it is a factor.” *In re Marriage of Timmons*, 94 Wn.2d 594, 601, 617 P.2d 1032 (1980).

Furthermore, integration occurs where the primary residential parent consents for the child to change residences on a permanent basis. *George v. Helliard*, 62 Wn. App. 378, 814 P.2d 238(1991). Where a

temporary arrangement is made for the child to reside with the other parent because the primary parent needed medical care, this does not give rise to modification. *In re Marriage of Taddeo-Smith*, 127 Wn. App. 400, 405-06, 110 P.3d 1192 (2005). The statute allows for modification of a parenting plan if the child's living environment is "detrimental." RCW 26.09.260(2)(c). A finding of detriment requires more than a showing of illicit conduct by the parent who has custody. There must be a showing of the effect of that conduct upon the minor child or children. *In re Marriage of Frasier*, 33 Wn.App. 445, 450, 655 P.2d 718 (1982). Detriment is a different (and less stringent) inquiry than parental unfitness. *In re Marriage of Velikoff*, 95 Wn.App. 346, 354, 968 P.2d 20 (1998). Cohabitation or remarriage alone is not sufficient to establish detriment. *Wildemuth v. Wildemuth*, 14 Wn.App. 442, 542 P.2d 463 (1975).

Modifications of child support orders are governed by statute as well. RCW 26.09.1707 states in relevant part: (1) [T]he provisions of any decree respecting maintenance or support may be modified:... except as otherwise provided in subsections ... (8) ... of this section, only upon a showing of a substantial change of circumstances.

RCW 26.09.170(1) envelopes an adjustment action within the purview of a modification, making an adjustment a form of modification. But the statute makes plain by the qualifying circumstances and procedural requirements of each that an adjustment action is more limited in scope. A full modification action is commenced by service of a summons and

petition and it is resolved by trial. RCW 26.09.175. It may only be sustained under certain prescribed circumstances. RCW 26.09.170. The relevant prerequisite is a substantial change of circumstances, RCW 26.09.170(1), which Washington courts have consistently held is one that was not contemplated at the time the original order of support was entered. *See In re Marriage of Arvey*, 77 Wn.App. 817, 894 P.2d 1346 (1995). A full modification action is significant in nature and anticipates making substantial changes and/or additions to the original order of support. By contrast, parties may adjust an order of child support every 24 months on a change of incomes, without showing a substantial change in circumstances. RCW 26.09.170(8)(a). This routine action may be effected by filing a motion with the court for a hearing. RCW 26.09.170(8)(a). No summons or trial is necessary. An adjustment action therefore simply conform existing provisions of a child support order to the parties' current circumstances.

This court should weigh in its decision the willingness of Phasavath to engage in perjury at the trial level, the existence of well-documented domestic violence in her home, and the acts of her counsel to tamper with key witnesses in this very case in order to obtain an outcome that is best stated as fraudulent to the machinations of the Superior Courts of this state in their burden to carefully adjudicate child custody matters that are respectful of the fundamental rights of the parents to the care, companionship, custody and control of their children, while considering

the best interests of the children, particularly the right of the children to be free from continual and systematic perpetrations of domestic violence.

Respectfully submitted this 23rd day of April, 2014.

A handwritten signature in black ink, appearing to read 'Stephen Pidgeon', written over a horizontal line.

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CERTIFICATE OF SERVICE

The undersigned now certifies that a true copy of the Notice of Appeal in this action was served on the following:

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by electronic mail this 23rd day of April, 2014.



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