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No. 709445-5-I

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

In re

Linda C. Moravec,
Respondent

and,

Richard Warnick,
Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 MAY 28 AM 11:31

DECLARATION OF LINDA C. MORAVEC IN REPONSE TO
TO BRIEF FILED BY APPELLANT
REGARDING
REVIEW FROM THE SUPERIOR COURT
FOR KING COUNTY
The Honorable Regina Cahan

Linda C. Moravec
(Self-representing herself)
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I. INTRODUCTION

This is a case that has already been argued in this court on December 13, 2013 in front of the honorable Judge Mary Neel. At that court date I represented myself as I have no resources to finance an attorney. I have already refinanced my home to receive funds to alleviate some of my current legal debt and am still in no position to appear in this court with legal representation. The appellant's attorney is working pro-bono.

After the December 13 hearing it was ordered by Judge Mary Neel that Judge Cahan's order be upheld. I argued that there was indeed adequate cause to modify the parenting plan because there was a proven substantial change in circumstances between the time we entered the CR2A agreement (June 26, 2012) and April 19, 2013 when final documents were entered.

I would also like to thank you in advance for accepting my brief document although it may not contain certain required elements and does not conform with the proper format.

II. DECLARATION/RESPONSE TO BRIEF FILED BY LESLIE GILBERTSON FOR THE APPELLANT RICHARD WARNICK

From what I have established, this "re-appeal" by the appellant Richard Warnick has the same three (3) components that were presented at the first appeal on December 13, 2013.

1. Errors on the part of the court in up-holding Judge Cahans ruling that the modification of the parenting plan should not have occurred.
2. Objections to the modified residential schedule which curtailed visitation time to alleviate stress on Kevin (son) and until they could participate in reconciliation counseling.
3. Objections to the raising of the child support from $100 to $316.

I am inserting the text from my declaration written by me for the December 13, 2013 hearing seeing as this was how Judge Mary Neel came to her decision to uphold the ruling of Judge Regina Cahan.

> I respectfully and humbly request that you take this declaration into consideration in my Response and Opposition to these Motions brought on by Mr. Richard Warnick and his counsel. I am already in an insurmountable amount of debt due to attorney/legal fees and can no longer afford to retain one for this matter. I will do my earnest to represent myself in order to show that Judge Cahan's ruling to adopt the parenting plan that Mr. Warnick and his counsel are determined to overturn was in the best interest of the child (Kevin) and should remain as ordered. I will remain truthful, factual and do my best to be void of emotion when explaining why Judge Cahan's decision should be upheld.
>
> Mr. Warnick and I were married in August of 1994, our son Kevin was born on October 22 of 1999 and Mr. Warnick and I separated on January 12 of 2011 when he was removed from the residence, arrested and charged with Domestic Violence.
> We took part in mediation on June 26, 2012 with Mr. Boyd Buckingham, Mr. Warnick's 1st attorney Richard Cassady, and my attorney Stacey L. Smythe. We entered into the CR2A agreement on that day with, in regards to the parenting plan, the following settlement to the residential schedule and order of child support:
>
> Mr. Warnick agreed to a residential schedule of every other weekend (pick up from school on Friday and return to school Monday morning) and on the alternating weeks

(pick up from school Wednesday and return to school Friday). This scheduled was never adhered to by Mr. Warnick and by August, less than two months after we entered into the CR2A agreement, he elected not to coordinate any visitations with Kevin for a period of almost 5 months. By this time is was January of 2013 and after months of emotional and physical abandonment, Kevin was traumatized at the idea of resuming visitations at his father's whim.

Sometime near the end of 2012, Mr. Warnick moved out of his Auburn residence (which made the residential schedule very convenient to maintain) and decided to move into a residence over 40 miles away in Bellevue. Shortly thereafter he moved in with his mother.

The agreement to my receiving $100 a month's child support was made with the assumption that Mr. Warnick would have Kevin a substantial amount of time however that never transpired and again, already it has been months since he has exercised any of his parental rights concerning his residential time with Kevin.

I believe his actions following the signing of the CR2A agreement on June 26, 2012 proves that there IS adequate cause to modify the parenting plan and that there WAS, and still is, a substantial change in circumstances.

Judge Cahan stated at the beginning of the 8/23/13 hearing that she has never seen a case handled this poorly. She mentioned that she spent a lot of time going through all the documentation and this was evidenced by her knowledge of many details that were brought up during the hearing. She ruled that visitations with the father should be curtailed to reduce the trauma and pressure on Kevin being forced to spend time with Mr.Warnick and ordered that Mr. Warnick to seek unification/reconciliation counselling for he and Kevin. Both he and his counsel (now Attorney Leslie Gilbertson) and myself and Stacey L. Smythe agreed to use a counsellor in Puyallup, Jennifer Knight. I took Kevin to the intake session on 8/31/2013. Jennifer Knight never heard from Mr. Warnick and he has rebuffed this order by Judge Cahan which may have been beneficial to resuming a relationship with Kevin.

Judging by their arguments, it is apparent to me that their portal to having this ruling over turned is solely based on technicalities of filings, motions, and has nothing to do with what is best for Kevin. Their arguments also include that due to Mr. Warnick's injury from a few months ago, that he is not able to work and does not have the funds

to meet an increased child support payment of $316. Mr. Warnick was awarded a portion of my 401K (CR2A agreement) and has the means of financial support of his mother to continue to afford attorneys.

I do not believe this is the correct forum to rehash all the 2 years plus, almost 3 years of declarations, opinions, and disagreements on how this case should be handled so I will leave you with the facts stated above and a final request for your thoughtful consideration to the parenting plan Judge Cahan implemented. I have faith in the Courts that they will make a decision based on what is in the best interest of the child, Kevin Warnick.

Thank you for your time.

I will now address the 3 components that I understand to be the basis of their argument for re-appeal which may be viewed as redundant but is still my position in this case.

Alleged errors on the part of the court in up-holding Judge Cahans ruling that the modification of the parenting plan should not have occurred.

Regarding this alleged error on the court's part in there not being adequate cause or a significant change in circumstance. Since our entering into the CR2A agreement on June 26, 2012, Richard Warnick ceased in attempting in any arrangements of visitation or exercising the residential schedule for a period of almost 5 months as outlined below:

July 2012: 7/6 to 7/13. 7/20 to 7/27. Much of the time at his paternal grandmother's without Richard while he went fishing, without his son.
August 2012: 8/4 to 8/10. Much of the time at his paternal grandmother's without Richard.
September 2012: No visitation exercised.
October 2012: No visitation exercised.
November 2012: No visitation exercised.
December 2012: No visitation exercised.
January 2013: 1/4 to a.m. 1/6 school. 1/18 to 1/21 a.m. school.
February 2013: 2/1 to 2/4 a.m. school.

March 2013: No visitation exercised.
April 2013: No visitation exercised.

In support of adequate cause and significant change in circumstances, at some point near the end of 2012, Mr. Warnick moved out of his Auburn residence, which would have made the residential schedule very convenient to maintain, and decided to move into a residence over 40 miles away in Bellevue. Shortly thereafter he moved in with his mother who resides in Seattle which is still at least 40 miles away.

Objections to the modified residential schedule which curtailed visitation time to alleviate stress on Kevin (son) and until they could participate in reconciliation counseling.

On August 23, 2013 we had another hearing to once again modify the parenting plan (Judge Cahan) and after 6 days of deliberation on this case it was ruled that our proposed parenting plan was ordered into effect. The curtailment on the residential was to reduce the stress and pressure being put in Kevin. In the meantime it was ordered that the reconciliation counselling with the mutually agreed upon counselor (Ms. Jennifer Knight in Puyallup) be pursued by the father in hopes of salvaging his badly damaged relationship with Kevin.

I took Kevin to the intake session on 8/31 and from thereon, sessions were to be with Kevin and his father. The first appointment for them on 9/21 was cancelled by Ms. Knight due to illness and she had called Richard to set up a re-schedule. There was no appointment re-scheduled by Richard and on 10/9 Ms. Knight called to tell me that he had chosen to go a different direction. She suggested yet another counselor to Richard but there was never any appointment made.

Richard claims in his "re-appeal" that the curtailment on his visits also impacts his mother and sister whom all reside in the same house. For him to argue this is confusing as to there was a time in July 2013 when Kevin was to visit with them and Richard told his sister, which she relayed to me in a phone call, that Richard would not allow them to see him because it interfered with his time and if she picks up Kevin from my residence

he said he would take her to court. (??)

Objections to the raising of the child support from $100 to $316

Richard claims that he has no money to pay support as he is still injured and un-employed since last year. Yet for the last 3 years he has been able to hire 3 separate attorneys. He is living with his mother and has her financial backing.
At the time of mediation in June 2012, it was disclosed that he had a trust fund and in addition to that, as a result of the CR2A agreement he has access to $55,000 from my 401K retirement fund. The QDRO was finalized months ago. With these funds he could easily be able to support his son financially and get the counseling that they need.
The $100 a month was agreed upon due to the residential schedule being set in such a fashion that, had he elected to exercise his rights to this schedule, Richard would have had Kevin a substantial amount of time. Mr. Warnick's work history shows an obvious pattern of being minimally to un-employed for the past several years. For example, at an August 2012 hearing he was ordered by the judge to become full time employed by January 2013 in order to support his son. At that time I was ordered to pay him $500 a month in spousal maintenance which financially impacted me a great deal. He became employed in late January 2013 only to "resign" less than 3 months later.
I stopped paying spousal maintenance at that point.

III. RESPONSE TO ARGUMENT/TABLE OF AUTHORITIES BY LESLIE GILBERTSON FOR THE APPELLANT RICHARD WARNICK

Throughout the entire argument section where the table of authorities were presented, RCW 26-09-260 is mentioned in support of the argument to overturn the first appeals court ruling on December 13, 2013. RCW 26-09-260, from my understanding, is that a modification of the parenting plan is not warranted without adequate cause or substantial change in the circumstances of the child or the nonmoving party and that the modification is to be in the best interest of the child and is necessary to serve the best interests of the child. There was, and still is, this adequate cause and substantial change in circumstances in regards to the binding CR2A agreement entered into on June 26, 2012. Abruptly stopping attempts to exercise the residential schedule on the father's part for a period of almost five months just a little over a month after the CR2A was entered in and the father opting to move 40 miles away are definite changes in circumstances. And as of this writing and by the time we have our 2nd appeals court hearing, it will have been over 700 days where the father has spent time with his son less than 40 days of that time. The modification motioned for was designed with the best interests of Kevin in ordering reconciliation counselling (which the father elected not to pursue) and curtailing the residential schedule so as to relieve the pressure and stress on the child caused by the father's elective abandonment physically, emotionally and, indirectly, financially.

The modification also orders the child support to increase from $100 to $316 in order for the mother to be able to provide for the child more suitably. The current child support of $100 is not sufficient as Kevin is solely provided for by me and is in my care 100% of the time. At the time of the agreement, he was 12 years old and is now 14 years of age with increasing needs in all areas of his life. I am currently not receiving any child support, last payment was last January, 2014 for $50 and I have received a total of $321 since September, 2013 which equates to $40 a month of support.

Judge Regina Cahan took time with this case and agreed that this did indeed meet the criteria of adequate cause and substantial change in circumstance and made her ruling with the best interests of the child which agrees with RCW 26-09-260.

For the appellants counsel to state (page 12 of Leslie Gilbertson's brief) that **the father's residential time and child support obligation were severely impacted with no reasonable basis submitted by anything other then the mother's self-serving declaration** is clearly not how the court saw it.

IV. CONCLUSION

This court should uphold the ruling of Superior Court Commissioner Regina Cahan ordered on August 28, 2013, and which was previously upheld on December 13, 2013 in this court. There is a trial date in October 2014 to further address the parenting plan.

DECLARATION OF SERVICE

The undersigned declared under penalty to perjury under laws of the State of Washington, that the following is true and correct:

That on May 23, 2014, I arranged for service of the forgoing Brief of Linda C. Moravec/Respondent for upcoming hearing date of June 13, 2014 for case number 70944-5 on the following parties:

Office of the Clerk Court of Appeals, Division I One Union Square 600 University St. Seattle, WA 98101-4170	___X___ U.S. Mail ___X___Facsimile _____ Email
Leslie E. Gilbertson 11033 NE 24th St., Suite 200 Bellevue, WA 98004	____X __ U.S. Mail _____ Facsimile ____X___ Email

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DATED this 23rd day of May, 2014.

Linda C. Moravec

Linda C. Moravec/Respondent