

No.14-3-05406-1 KNT

73892-5

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Andrea Barclow-Wilkins,

Appellant,

v,

John Wilkins,

Respondent.

BRIEF OF APPELLANT

Andrea Barclow-Wilkins
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206.387.8736.
Appellant

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[Signature]

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TABLE OF AUTHORITIES

STATUTES

RCW 26.09.260

RCW 9a.04.050

RCW 26.09.191(3)

RCW 9a.44.073(2)

COURT RULE

CR 59(4)

I. INTRODUCTION

The trial court entered the final order of dissolution that removed the child Rebeccah Wilkins from my residential care to John Wilkins residential care who resides in Salt Lake City, Utah. The court trial court deemed Domanic Barclow, Rebeccah's biological brother a threat to her. The order lacks adequate evidence to prove that Domanic posed any threat to Rebeccah. I am appeal the parenting plan removing residential care from me; the restrictions on my son Domanic. There is no evidence to support that Domanic is a threat to Rebeccah, just hearsay testimony from an incident that happened when Domanic was 4 years old and in the care of his father Kegan Milton.

II. ASSIGNMENT OF ERROR

1. The trial court erred when it entered the final Parenting Plan that imposed restriction on Domanic without any factual evidence. (CP pg.51 section 3.10)
2. The trial court erred in Findings of Facts and Conclusion of Law that the GAL reported: "There is

information to suggest that Rebecca has struggled with her attachment with her mother”. (CP pg.58 section 2.19)

3. The trial court erred in the Findings of Facts and Conclusion of Law that the GAL reported that the mother initiated therapy for the mother and Rebecca but during January-May 2014, the mother attended only five sessions. (CP pg.58 section 2.19).
4. The trial court erred in the Findings of Facts and Conclusion of Law, The GAL reported: While in her mother’s care Rebecca was tardy to school 14 days through the winter grading period, and absent 9 days. (CP pg.58 section 2.19)

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether a trial court can impose restrictions on Domanic who was 4 years old at the time of the alleged incident without making specific findings of harm or evidence?
(Assignment of Error 1)

2. Did the trial court have right to insinuate that Domanic would harm another child with no evidence only hearsay testimony?
(Assignment of Error 1)
3. Did the trial court base inaccurate judgment when it failed to note also in the GAL report it stated that “Rebecca was still making improvement while not being in therapy and she was getting better”. (Assignment of Error 4)
4. The trial court denied motion to reconsideration base on “New evidence” CR 59 (a)(4) pertaining to Rebeccah’s school attendance, the new evidence showed the GAL report error in the time frame of the absences that the court use to determine the decision. (Assignment of Error 5)

IV. STATEMENT OF THE CASE

The trial court found that Rebeccah was tardy to school 14 days through the winter grading period and absent 9 days. A motion was filed under CR 59(a)(4) based upon “Newly discovered evidence, material for the party making the application, which could not with reasonable diligence have discovered and produced at trial.” The court denied a motion to reconsider new evidence about Rebeccah’s attendance that indicated that she was only tardy 3 times and absent 1time winter quarter, and of the 9 absences for the school year. (CP pg.77-81)

The court found that Rebeccah has struggled with her attachment with me, only when Mr. Wilkins moved her to Wisconsin without my consent for 5 months, this was the reason for Rebeccah being in therapy. It also found that I initiated therapy for myself and Rebeccah yet I did not make all of my appointments. (CP pg. 20 line 2) Yes, there was a scheduling issues that would cause Rebeccah to miss a half day of school once a week.

There was no evidence and no finding that being in therapy is necessary to improve my relationship with

Rebecca given the current state of our relationship, the GAL noted: “Andrea and Rebecca have a normal mother-daughter relationship, they do a lot together and enjoy “girl time.....get their nails done and bake cookies and cupcakes.” (CP pg.28 line 1-3). This is an indication of a bond of affection/closeness between us. The GAL stated: “She talked more positively about her father and his household, and I observed that the father and Rebecca were more openly affectionate...” as the court found. But the GAL also noted: “At the same time, Rebecca has been with her mother primarily for over two years and spends vacation time with the father, making it natural for her to talk of missing her father and the fun things they do together” (CP pg.32 line 21-26) and Rae Gutman-Pazder Rebecca’s former therapist stated; “Rebecca did mention at one session that she had fun at her dad’s, and that he had no rules. (CP pg.20 line13-14). There are also positive reports of Rebecca’s interactions with her mother, and no indication that the mother will abandon Rebecca” (CP pg.33 line 1-2)

As to Domanic returning and whether he poses a risk to Rebecca if he returns. The finding indicates that the

evidence is “inconclusive” (CP pg.58). It does not warrant a RCW 26.09.191(3) restriction, and never identifies what risk of harm to Rebecca that concerns the court. The evidence of any concern was only as recent as March 7, 2011 stated in the GAL report reads: “The Snohomish County case involving the mother’s son Domanic was dismissed at a status review hearing, with addition that “the mother shall make arrangements to pick up the child from the petitioner [Kegan Milton] as soon as she can,” The petition alleged that Domanic had been acting out sexually, and that other children in each parent’s home could be at risk.”(CP pg.31 line 17-22) The trial court did not hear from Domanic himself or other parties involved in the 2011 incident.

V. ARGUMENT

The trial court didn’t talk with nor have Domanic examined by a physician under; RCW 9a.04.050 which states “Children under the age of eight years are incapable of committing crime” also “court may also direct his or her examination by one or more physicians, whose opinion shall be competent evidence upon the question of his or her age”. The trial court deemed Domanic a threat to Rebecca

with no factual evidence only speculation and hearsay. There was no evidence given to about Domanic being a sexual predator, Mr. Wilkins pleadings to convince the court does not constitute proof (RCW.5.40.010). All allegations against Domanic are speculative and “hearsay” at best. The alleged incident that happened with Domanic in 2011 was when he was 4 years old and in the care of his father Kegan Milton, who did not testify. Mr. Wilkins who had no attorney, addressed the trial court without any restraints and was able to speak more freely and slandered a 9-year-old innocent child in court with no evidence of any kind.

The trial court placed restrictions RCW 26.09.191(3) without any evidence or evaluation (RCW 9a.04.050) of the child and not addressing or making findings consistent with the GAL report with evidence or circumstances in the report. The court ignored that Rebecca and I have a strong relationship and only after when Mr. Wilkins took Rebecca to Wisconsin without my consent she needed therapy.

VI. CONCLUSION

I appeal the parenting plan removing residential of care Rebecca from me; the restrictions on my son Domanic. The court should reverse the orders and, where necessary, remand for further proceedings

Respectfully submitted this 25th day of January,

By:  _____

Andrea Barclow, Appellant

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Certificate of Electronic Service

I certify that on January 27, 2016, I served by electronic Mail true and accurate copies of the opening Brief. I served these copies to the following Partie(s):

John Wilkins

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Also I Sent it Fedex on January 26,2016 to

John Wilkins

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Signed this 27th day of January in Burien, WA



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