**Superior Court of Washington**

**County of Snohomish**

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| **In re:**  JANE D. SMITH  **Petitioner,**  **and**  JOHN D. SMITH  **Respondent.** | **No.** 55-5-55555-5  **RESPONSE TO MOTION FOR REVISION** |

John Smith (Respondent / Father / Ex-Husband), by and through his counsel, Genesis Law Firm, PLLC, hereby responds to Jane Smith’s (Petitioner / Mother / Ex-Wife) motion for revision of Commissioner Smart’s May 12, 2015 order.

**I. REQUESTED RELIEF**

Father respectfully requests that the Court uphold Commissioner Smart’s May 12, 2015 order. Commissioner Smart found a) that Mother lacked adequate cause to modify the parties’ parenting plan and thus b) that Mother could not suspend Father’s residential time or reunification therapy with the children.

Mother has been trying to punish Father by keeping him from his children ever since she found out about Father’s girlfriend, Maya, who has since become his wife. Not only has Mother kept him from seeing the children, she has blocked reunification therapy intended to remedy the emotional injury she caused by keeping the children from Father.

This is something the Court warned Mother about on April 23, 2015, three weeks prior to the order Mother seeks to revise. At that time, Commissioner Smart stated “it could appear [Mother primary motive] is to delay the reunification [between Father and the children].” *April 23, 2015 Minute Entry at Court Docket #144*. Commissioner Smart did not sanction Mother, but she insinuated Mother’s conduct was approaching intransigence. *See April 23, 2015 Order Appointing Replacement Reunification Therapist at Court Docket #143 (“[M]other’s actions do not amount to intransigence* ***at this time****”) (bold represents interlineation by Commissioner Smart)*.

**II. FACTS BEFORE COMMISSIONER SMART**

See declarations and supporting materials filed for the May 12, 2015 hearing.

**III. ISSUES**

The factual assertions in this section can all be found in the declarations submitted to Commissioner Smart and in the court record before her at the May 12, 2015 hearing.

**A. No Contact Between Father and Children for Five Years**. The lack of contact between the children and Father is the primary basis for Mother’s requests to modify the parenting plan and stop reunification therapy. But the court record shows Father has not been derelict in pursuing reunification and visitation. Just the opposite, and Mother has been the one blocking or delaying reunification.

As Commissioner Smart found, Father “followed up appropriately” with the prerequisites to reunification in 2011 and 2012. And in late 2012, he filed a motion for clarification and contempt to force Mother to cooperate in reunification therapy. A week later Mother reacted by petitioning for modification of the parenting plan and suspension of reunification. The Court determined Mother’s requests lacked adequate cause. In relevant part, the Court found that “[t]he detriment related to lack of contact with the children is already addressed in [the parenting plan section that requires reunification therapy].”

A few weeks later, Mother filed a motion for Father to retake his anger assessment. Father immediately re-took the anger assessment, which resulted in no additional treatment recommendations.

He then took steps to re-initiate reunification therapy once the new anger assessment report became available. In the summer of 2013, Father contacted the previously appointed therapist. The therapist declined her appointment, so Father sought Mother’s cooperation in appointing an alternate therapist. He caused his attorney to contact Mother’s counsel by email in August 2013. Father and his attorney received no response; Mother chose to ignore the request for a replacement reunification therapist.

According to Mother, she actually agreed to Father’s proposed therapist, but she conspicuously lacks any emails or letters corroborating that she agreed or otherwise replied. As Commissioner Smart correctly surmised, the request for an alternate therapist came in writing from Father’s counsel. If her counsel had responded, a written record would normally be in her attorney’s file; yet Mother cannot produce any such document. That suggests Mother is fibbing about having replied to Father’s request for an agreed alternate therapist. It is also improbable Father would neglect reunification after having pursued it diligently for several years.

Without Mother’s cooperation with reunification, Father and his attorney evaluated whether he should once again litigate the issue. However, an auto collision left Father unable to work and, by September 2013, financially destitute. He could not afford the legal retainer necessary to take Mother back to court. The anticipated cost was simply too high given the “scorched-earth” tactics Mother had employed in 2012 - 2013. Father was also frightened of litigating pro se, because losing might preclude him from seeing his children again. He felt he had no choice but to wait and litigate once his auto injury suit settled.

Soon as the auto injury suit settled in early 2015, Father renewed his pursuit of reunification therapy. In February 2015 his attorney sent Mother an offer to amicably select a replacement therapist. Mother did not respond. In March 2015 his attorney sent Mother another letter, this time requesting mediation. Mother re-hired her previous counsel, who advised they needed more time, principally because they intended to check whether the appointed therapist was truly unavailable.

Father’s attorney sent them a March 2015 email from the appointed therapist, confirming she did not have room on her schedule for another reunification case. Despite the email and a follow-up request for an answer, Mother and her counsel went silent once again.

In April 2015 Father filed a motion for a replacement reunification therapist (which the Court granted on April 23, 2015 over Mother’s strenuous objection). Approximately a week later Mother filed her current petition for modification of the parenting plan and to halt reunification therapy.

The parties have repeated this pattern over and over. Father tries to move forward with reunification; Mother seeks to block or delay. Based on these facts, Father respectfully requests that the Court affirm Commissioner Smart’s well-researched determination regarding lack of contact with the children. Moreover, reunification therapy—which is already ordered—is the appropriate remedy for lack of contact.

**B. Allegations of Abuse and Misconduct**. In her declarations for the hearing on May 12, 2015, Mother alleged Father abused the children and exposed them to photos of nude women.

Father vehemently denies these allegations. But the point appears moot. Father has not seen the children since prior to the 2011 parenting plan, so these allegations have no bearing on this modification proceeding. And Mother did not list these allegations in her motion for revision.

**C. Injuries from Father’s Auto Accident**. Mother’s third and final alleged basis for relief are the injuries Father suffered in his auto accident. She chiefly points to a psychological report from his auto injury suit, and she highlights verbiage pertaining to Father’s inability to control his anger due to head trauma.

In rebuttal, please consider:

* Father submitted to an anger / DV assessment with Dr. Dale Genius more than six months after the auto accident. Dr. Genius had no major concerns and did not recommend any further treatment.
* Dr. Genius’s anger evaluation did not specifically pertain to brain trauma from the auto accident, but he presumably probed for anger issues regardless the source. The evaluation included collateral contacts with people who had seen Father on a daily basis since his auto accident, such as his current wife, Maya. The evaluation also included an interview and five-page written test.
* Dr. Genius was the anger evaluator Mother specifically asked the Court to appoint in her 2013 motion for a second anger assessment.
* Dr. Genius performed his assessment in the context of a custody dispute—his report identifies this as the context. The PI evaluator, on the other hand, was probably a professional expert Father’s plaintiff attorney hired to maximize PI damages.
* Dr. Genius’s report states Father is a “low risk” on the self-control index. The self-control index appears to be the most relevant aspect of the report in light of Mother’s brain-trauma allegations. The report describes “low risk” as follows: “Low risk scorers typically do not have serious control problems.”
* The current orders adequately address any remaining concerns the Court might have. As related above, the 2011 parenting plan grants the reunification therapist control over the amount and type of visitation, including supervision. The newly appointed reunification therapist, Don Grey, is an experienced Guardian ad Litem. Commissioner Smart also ordered the parties to supply Mr. Grey with the PI psychological report.

**IV. EVIDENCE RELIED UPON**

The documents submitted for the May 12, 2015 hearing, and other documents on file.

**V. LEGAL AUTHORITY**

RCW 26.09.260.

GENESIS LAW FIRM, PLLC

Dated:

SAMUEL K. DARLING, WSBA No. 40157

Attorneys for Respondent