# Superior Court of Washington

**County of Snohomish**

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| **In re the Marriage of:**JANE A. SMITH**Petitioner,****and**JOHN B. SMITH**Respondent.** | **No.** 55-5-55555-5**HUSBAND’S TRIAL BRIEF** |

**I. INTRODUCTION**

This is a marital dissolution (divorce) involving young spouses and their four-year-old daughter, Elsa. Husband is 25 years old; Wife is 22. They married in May 2013 and separated in July 2015 (two-year marriage). The parties have very little in the way of income, assets, or debts. The main issue is the parenting plan for their four-year old. As the Court will see, Wife is both **deceitful and dangerous for the child**. The GAL recommends naming Husband the custodial parent.

 Each party alleges numerous “191 factors” (factors that endanger the child) against the other, such as domestic violence, drug abuse, and abusive use of conflict. The GAL recommended no “191 factor” findings against Husband, but **multiple findings against Wife**.

 Both parties claim a closer parent-child bond than the other spouse. The GAL report indicates the child is closely bonded with Husband, and that the child is “relatively fearful . . . , tentative in her actions, as if waiting for a hammer to fall, when she is with [Wife].”

 Likewise, each party will presumably claim to have performed the majority of the parenting functions prior to their separation. The GAL found Husband—the stay-at-home spouse—performed the majority of the parenting functions. Moreover, the GAL report indicates Wife essentially conceded on this point during interviews.

 With respect to Wife, the GAL report focuses on her untruthfulness, aggressiveness, inability to form bonds due to lack of empathy, and vindictive refusal to communicate with Husband on important parenting topics.

**II. STATEMENT OF FACTS**

The parties married May 2014 in California, where Wife’s family lives. They initially lived with her family but were not happy there. Her sister had punched a hole in a door when trying to hit Husband, and the rest of the family had histories of sorting their disputes with their fists as well.

 Husband brought his own imperfections to the marriage. He suffered from a congenital right arm defect for which he has undergone several surgeries and was prescribed medical marijuana as pain relief. Husband remained physically strong and active, but he had difficult-to-treat headaches.

 The parties decided to move into a medical marijuana grow house in California shortly after Wife became pregnant. It seemed like an ideal solution. Husband could work there fulltime, receive discounted medicine, and eliminate most of their overhead.

 While living there, coworkers noticed Wife often hit Husband. The grow house owner saw her “punch” Husband on multiple occasions. Another time she threw a bowl at him and started yelling. A mutual friend witnessed Wife slap Husband because his phone was dead. According to the witnesses, Husband would try to calm her down and then apologize to the bystanders.

 In late 2014—just before their daughter’s birth—the parties moved to Snohomish County, where they could be close to Husband’s family. They thought life in Washington would be better for their daughter.

 When their daughter was about six months old, Husband began receiving partial SSID, and Wife said she could no longer “stand” being a stay-at-home parent. The parties decided to reverse roles. She found a fulltime waitress position. And Husband quit his job to become a fulltime dad, only working part-time when the parties needed additional income, such as around Christmas.

 Wife’s anger issues did not subside when she returned to work, and she threatened to commit suicide several times. On approximately five occasions, she left the house at night with a knife. Husband had to call his mother to care for the child, and then he would head into the dark to search for Wife. A similar incident involved Wife locking herself in a room with a knife and the child, threatening to end her life, and by inference, their daughter’s life. Husband broke a hole in the door to unlock it. Aside from restraining Wife, this was the most physically aggressive action he had taken toward her, and it was to save her and their daughter.

 Compounding their problems, Wife’s father came to Washington to visit. The visit ended with him being arrested for repeatedly punching Husband. Wife described the incident to the police as follows:

My husband and dad were arguing about an article. My dad started getting loud and my husband told him to calm down or he would have my dad leave. Then my dad got up and started to hit my husband and I tried to step between and break them apart[;] my dad continued hitting. My dad pushed him up against the wall and I kept telling my dad to stop and he wouldn’t. My husband told me to call the cops[.] I asked where the phone was & couldn’t find it. Then I tried to get my dad to stop again[;] I tried to hit him and pull him off. They finally let go of each other. I got my dad’s things [from] the floor. My dad got his bags from the spare room and left.

 There were several other domestic violence incidents, and Husband made an audio recording of Wife threatening him with a knife shortly before they separated.

 The parties’ relationship ended in dramatic fashion in July 2015. During an argument, Wife had tried to hit Husband in the head with a hammer, ostensibly trying to kill him. He called 911, and the police arrested her. She was furious with Husband.

 Shortly after being released from custody, Wife filed a divorce petition in which she turned the tables on him. She alleged Husband had been domestically violent and accused him of abusing marijuana. Her explanation to Husband was something to the following effect: “I’m going to ruin your life by taking your daughter”.

 In her declarations to this Court, Wife made several material allegations that were easy to disprove. For example:

 **A. Said Never Hit**. She said she had never been domestically violent and had never hit Husband. But she had previously signed a police declaration admitting to punching him.

 **B. Said Hit in Chest, Not Face**. Next she claimed she had only hit him in the chest, not the face. But she had told police she had hit him in the face.

 **C. Said Never Primary Parent**. She said Husband had never been the primary care parent of their daughter. But he had been the stay-at-home parent while she worked fulltime.

 Not knowing who to believe, the Court essentially “split the baby” by adopting a temporary custody order that gave half the child’s waking time to each parent. The original temporary custody order allocated most of the overnights to Wife, who was in the former family home. At the GAL’s urging, the parties entered an agreed temporary custody order that gave Husband half the overnights.

 The GAL arranged for each party to submit to reduced-price domestic violence assessments with Dr. Dale Todd. Perhaps because the assessments were reduced cost, Dr. Todd did not contact any collateral witnesses for the parties’ assessments. He instead read the declarations from the court file, interviewed the parties, and conducted a written examination geared toward eliciting false responses. The assessments did not result in recommended DV treatment for either party, but Dr. Todd conspicuously labeled Wife a “problem risk” on the “truthfulness index”. That means she probably did not tell the truth.

 The GAL also arranged separate parenting classes for each party. The class instructor thought the child acted oddly around Wife, and she reported the odd behavior to the GAL. She described the child as cold toward Wife and unmoving rather than seeking comfort from her or exploring the environment like most two-year-old children would.

 Husband was worried for his daughter’s safety and noticed numerous signs of potential neglect and abuse. He tried to discuss the topic with Wife, but she refused. Their daughter had a diaper rash that got worse when in Wife’s care, but she would not talk to him about it. The child returned to father with bruises and other marks that could have resulted from abuse, but again she usually refused to alleviate Husband’s apprehensions by offering an explanation.

 The diaper rash became so severe that Husband called CPS. CPS was indifferent given that the problem was minor by their standards.

 Months later the GAL recommended that Husband take the child to Providence for a forensic exam for an injury to the head and suspicious bruising. Wife seemed unwilling to talk about the cause of the injuries, which heightened anxieties. CPS did not find any definitive evidence of abuse and halted the investigation.

 At the GAL’s recommendation, Husband took the child to Providence for a second exam in early May 2016. The child complained her maternal grandfather had been hitting her. The forensic nurse concluded the child only had redness but that the coloration could be evidence of abuse. Providence referred the matter to CPS. CPS did not believe the matter was worth investigating without more evidence and closed the case.

 On May 15, 2016, the Court entered a temporary order prohibiting the material grandfather from having contact with the child without supervision. The Court also ordered the parties to communicate using FamilyWizard software, since Wife was refusing to communicate directly. Husband has been using FamilyWizard as ordered. Wife, on the other hand, has yet to access FamilyWizard, let alone communicate using it.

**III. LAW**

When establishing a parenting plan, the Court’s highest-level concerns are the dangerous behaviors listed in RCW 26.09.191, sometimes called “191 factors”. See RCW 26.09.187 (stating that other factors are relevant only when RCW 26.09.191 limitations are not dispositive). These 191 factors include:

 b. A long-term emotional or physical impairment which interferes with the parent’s performance of parenting functions . . . ;

 c. A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;

 d. The absence or substantial impairment of emotional ties between the parent and the child;

 e. The abusive use of conflict by the parent which creates the danger of serious damage to the child’s psychological development;

 f. A parent has withheld from the other parent access to the child for a protracted period without good cause; [and]

 g. Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

RCW 26.09.191(3).

 Washington passed legislation specifically protecting normal medical marijuana use from categorization as a 191 factor. The law, codified as RCW 69.51A.120, reads:

A qualifying patient . . . may not have his or her parental rights or residential time with a child restricted solely due to his or her medical use of cannabis in compliance with the terms of this chapter absent written findings supported by evidence that such use has resulted in a long-term impairment that interferes with the performance of parenting functions . . . .

 If 191 factors are not dispositive, the court should consider the following criteria, with the first criteria carrying the most weight:

(i) The relative strength, nature, and stability of the child's relationship with each parent;

(ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;

(iii) Each parent's past and potential for future performance of parenting functions . . . , including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;

(iv) The emotional needs and developmental level of the child;

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

RCW 26.09.187.

 In entering a permanent parenting plan, “the court shall not draw any presumptions from the provisions of the temporary parenting plan.” RCW 26.09.191(5). A temporary order does not “prejudice the rights of a party or any child which are to be adjudicated at subsequent hearings in the proceeding.” RCW 26.09.060(10).

 Respectfully submitted this \_\_\_\_\_\_ day of June, 2016.

 GENESIS LAW FIRM, PLLC

Dated:

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