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SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE

In re the Marriage of: **SIRINYA SURINA** **Petitioner,** **And** **AARON MICHAEL SURINA** **Respondent.**	**No.** 17-3-01817-0 Memorandum Re: Shared Parenting

I. INTRODUCTION

Sirinya Surina petitioned the court for a dissolution of marriage August 14, 2017.

Petitioner further requested an immediate Restraining Order, which was granted on shortened time on August 14, 2017.

II. FACTS

On September 27, 2017 the court ordered temporary orders including ordering parties to enter a formal temporary parenting plan, placing the children primarily in the care of the Petitioner, temporary child support and a temporary family law order that ordered the following:

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1. Ordering the minor child, David Surina into counseling,
2. Restraining by civil restraint the Respondent from entering the Petitioner's Residence.
3. Ordered Respondent time to retrieve personal property from the family residence.

On November 8, 2017 the court ordered a Formal Temporary Parenting Plan, placing the children in the primary care of Petitioner with Respondent exercising residential time including but not limited to every other weekend from Friday after school to Sunday at 5:30 p.m. and every Wednesday from approximately 3:30 p.m. to 7:00 p.m.

The court further ordered a civil restraining order limiting contact between the parties to communication in writing about the children only, which Respondent promptly violated.

The court addressed the October 19, 2017 show cause order for contempt filed by Petitioner. The court took issue with the communications between Petitioner and Respondent, finding the parties relationship was very unequal. It further noted its concern that after it ruled primary placement of the children with Petitioner that Respondent's next communication to Petitioner was trying to switch what the court had just ordered. The court found Respondent's communication a "very big abuse of power in the unequal relationship." Exhibit P-23, Page 4. The court noted the communication included an attempt to place the youngest child in daycare and the oldest child into full time school, both to strengthen Respondent's argument for primary placement of the children. The court stated, "the three things in combination tell me you're trying to get placement of the children, . . . but you're trying to do it by trickery upon mom." The

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court warned Respondent about the communication. Exhibit P-23 Page 5.

Respondent was not dissuaded by the court's warning. Respondent filed an accusation of child molestation by Petitioner's friend and financial supporter, Carl Wilson in the District Court, which Respondent later abandoned. District Court Judge Walker admonished Respondent to hire an attorney and seek counseling for his controlling behavior. This court direction was ignored by an appeal of Judge Walker's ruling to the Superior Court which was abandoned. Respondent next flew over to Thailand, Petitioner's native country, and obtained a divorce and custody decree by default without notice to Petitioner. Respondent's attempt to have the Thailand default orders enforced by the Spokane County Superior Court, was dismissed based on denial of due process. (Superior Court No. 19-3-00129-32) The court awarded attorney fees and CR11 sanctions for $4,000 to Sirinya Surina who had to respond to the filing.

The court has ordered Respondent to pay approximately $35,000 in judgments for CR11 sanctions and contempt for failure to follow the simplest orders from the court.

The last judgment/sanction entered by Court Commissioner Swennumson was in the amount of $2,500. Court Commissioner Swennumson once again found Respondent acts were inappropriate.

Respondent has asked law enforcement for over 17 well child Check and has made many CPS complaints by himself and his surrogates. His latest deviant behavior has been to whip the children into a frenzy before exchanging them on Wednesday night. He then stretches the exchange out to sometimes as much as 1 ½ hours. This includes

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remaining in the neighborhood to prolong the children's transfer anxiety by driving around the block or driving over to Manito Park where he knows the children are going. This all in an attempt of control, intimidation and disruption of the mother and children to support the false narrative that the children "want more time" with their father. This behavior is a reflective precursor of what Respondent's proposed alternating physical custody parenting plan would look like in practice.

III. LEGAL ARGUMENT

It is an erroneous argument to suggest the statutes promote equal, shared, or joint residential time. Although several factors must be considered by the court in *every* child residential determination, the greatest weight is given to:

> [T]he relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child.

Here, Petitioner has been a stay at home Mom for the children's entire lives.

While the court may order alternating physical custody of the child, it may *only* do so if: 1) alternating custody is in the best interests of the child; *and* 2) there is no indication of physical, sexual or repeated emotional abuse of the child by a parent and there is no history of willful abandonment of the child by a parent; *and* 3) the parents have agreed to joint physical custody *or* the parents have a satisfactory history of cooperation and shared performance of parenting functions. RCW 26.09.187(3)(b). In this case, all 3 factors are at issue due to the repeated emotional abuse of the children when Respondent purposefully prolongs the exchanges to the detriment of the children.

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Of course, before a plan allowing for frequent alternation between household for brief and substantially equal period of time can be ordered RCW 26.09.187(3)(b) requires the Court address 191 which the history of this litigation during its pendency reveals that an arrangement would not be in David and Andrew's best interest.

Moreover, as concerns shared parenting time, it is still the implicit concept in Washington that to have a shared arrangement there should be a showing of a satisfactory history of cooperation and shared parenting between the parents, which is lacking in this file, as opposed to continual discord and inflexibility, the concerning controlling domestic abuse issue aside. This criteria was one explicitly required by statute prior to 2007 but is now subsumed within the phrase "best interests of the child." Indeed, as illustrated by the recent non authoritative unpublished persuasive case of *Parentage of Riggings,* 2017 Wash LEXIS 2848 (12/18/17) (submitted pursuant to GR 14.1 and *Rodriguez v. Zavala,* 188 WN.2d 586, 398 P. 3d 1071 (2017) though a satisfactory history of cooperation was explicitly removed from the statue, nevertheless the existence of conflict between parents will prevent shared parenting. *See also,* Davis, Lizdas, Murphy, Yauch, The Dangers of Presumptive Joint Physical Custody, Battered Women's Justice Project (May 2010) wherein it is written:

> . . . The presumption that joint physical custody is in the best interests Of the child directly contradicts current research. According to a team of psychologists at Wake Forest University, "[I]mposing joint physical custody on families who are litigating, particularly if litigation is protracted, is highly unlikely to promote the best interest of the children and may in fact do them harm." This conclusion is reinforced by numerous longitudinal investigations . . . [t]he research suggests, among other things, that post separation shared parenting arrangements can negatively impact children's emotional and physical development, particularly where the parents are engaged in entrenched conflict. . . . The weight of the research calls for an individualized analysis of whether [Joint Physical Custody] is in the best interests of the child. Presumptive calls for none. It treats every case the same, regardless of the developmental needs of the children or the level and context of parental conflict. . . while presumptive Joint Physical Custody pay lip service to the best interest of the child, in actuality, it fails to account for the interests of the child altogether. In fact, the individual child does not factor into the equation at all."

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And in a high conflict case with prior findings of one parent being a **credible threat** to the safety of the other, there is no joint decision making, often no dispute resolution through mediation, nor shared parenting on a 50/50 basis, for any period of time. In fact, the 2016 Domestic Violence Judicial Manual suggests shared parenting is not appropriate as does David and Andrew's developmental needs at 7 and 3 years old respectively.

Indeed, RCW 26.09.187 makes clear, whatever the schedule, the schedule must be "consistent with the child's emotional needs and developmental level." And, there is no evidence a shared 50/50 placement is consistent with David and Andrew's emotional needs and developmental level, the other concerns voiced in this case aside. And, although one can "presume" in some adult minds a 50/50 schedule sounds nice and sound "fair" such an adult orientated presumption is not what the statues demand. In fact, *in re: Marriage of Kovacs,* 121 Wn 2d 795, 804-805, 854 P.2d 629 (1993), in a detailed discussion of the Washington Parenting Act, addressed this very misrepresentation, that presumptions are allowed in the initial parenting decision, including presumptions regarding shared placement (i.e., joint custody). As explained in *Kovacs,* such presumptions are not allowed,

Indeed, to quote from A Minnesota Family Law Symposium: Reforming the System to Protect Children in High Conflict Custody Cases, 28 Wm. Mitchell L. Rev. 495, 508 (2001), cited with approval in Abbott v. Abbot, 560 U.S. 1,13,130 S. Ct 1983, 176 L. Ed 2d 789 (2010):

> . . . Joint custody, however, is not a panacea, especially if the parties do not agree to it. Joint custody is not a cookie cutter solution to contested cases. The rate of relitigation for sole custody and joint custody in court mandated arrangements is the same. Children suffer more in conflicted custody arrangements. Joint custody can harm the child if one parent is abusive extremely rigid or "emotionally un-divorced". And manipulative to the other parent. A presumption in favor of joint physical custody can result in the child being treated more like

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chattel, with time divided fifty/fifty, even with parents living in difference states. Research demonstrated that judges should not order joint legal nor joint physical custody in cases of domestic violence. Recently, there has been a growing consensus that neither joint legal or physical custody should be imposed in high conflict cases. Joint custody may "cement rather than resolve chronic hostility and condemn the child to living with two tense, angry parents indefinitely."

Conclusion

Mr. Surina's request for a shared parenting schedule is not in David and Andrew's best interests, nor supported by evidence, and should be denied. Mr. Surina has recruited David to do his bidding and was found in contempt by the court when he sent David into the family residence to grab a cell phone Respondent thought should be in his possession. The claims and history of domestic violence aside, Mr. Surina is extremely rigid, very litigious, "emotionally un-divorced" (as evidenced by his repeated motions in various courts and aggressive resistance for over almost 2 years to the petition for dissolution), and manipulative, as reflected by all of the pleadings to date and the many mis-representations clearly documented in Ms. Surina's submissions.

Respectively submitted:

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