

No. 48194-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Parenting and Support of L.H. and C.H.

MARESA LYNETTE HARDEN,

Appellant

v.

JASON ANTHONY HESTER,

Respondent

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

In the Parenting Act, the Washington State Legislature has indicated its strong intent to protect survivors of domestic violence and their children, finding “that the identification of domestic violence as defined in RCW 26.50.101 . . . [is] . . . necessary to improve outcomes for children.” RCW 26.09.002. The Parenting Act helps ensure these better outcomes by mandating certain restrictions on parents who have engaged in domestic violence. In this case, the trial court identified the father of C.H. and L.H., Jason Hester, as having committed domestic violence against their mother, Maresa Harden. But then, based solely on its stated concern that Mr. Hester could be negatively affected by including a finding of domestic violence in the parties’ parenting plan, the trial court failed to make that explicit finding. This failure is an error of law that requires reversal.

That error led to others. When one parent has a history of domestic violence, the Parenting Act is unambiguous and mandatory: the court must order sole parental decision-making to the protective parent, and cannot designate a future dispute resolution process other than court action. Yet, despite recognizing Mr. Hester’s history of domestic violence – and even ordering Mr. Hester to either complete domestic violence perpetrators’ treatment or prove he had already

done so to have less restricted parenting time with the children – the court ordered mutual decision-making and required mediation of any future parenting disputes.

By failing to follow the Parenting Act's mandates, the trial court entered an order that leaves Ms. Harden, L.H., and C.H. at risk and unprotected in future proceedings. Such an order flies in the face of Washington law and policy enacted to protect children from exposure to domestic violence, ensure the safety of victims of domestic violence, and hold abusers accountable for their violence. This Court should reverse, and in any subsequent proceedings, require the trial court to follow the unambiguous requirements of RCW 26.09.191.

II. ASSIGNMENTS OF ERROR

1. The trial court erred by failing to include a finding in the parties' final parenting plan that Mr. Hester has a history of domestic violence under RCW 26.09.191. (CP 246, 269-270. 283; Sealed CP (SCP) 14).

2. The trial court erred in ordering joint decision-making between Ms. Harden and Mr. Hester in the final parenting plan in violation of RCW 26.09.191(1), which prohibits the trial court from ordering joint decision-making when one parent has committed domestic violence. (CP 256, 287).

