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	SUPERIOR COURT OF WASHINGTON FOR SPOKANE COUNTY
<p>In re the Parenting of Natalie Hansen</p> <p>Johnna Fitzgerald</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>Chad L. Hansen,</p> <p style="text-align: right;">Respondent.</p>	

NO. 15-3-00590-0

**ORDER ON RESPONDENT'S
MOTION TO VACATE FINAL
ORDERS UNDER CR 60 (b)(1)
AND (4)**

I. BASIS & AUTHORITIES

On September 4, 2014 Respondent moved the court to vacate final orders on the parties' parenting plan and child support. (CP 23). The motion was set for hearing. (CP 24). On October 14, 2015 Respondent filed a notice that he was requesting an evidentiary hearing on his motion to vacate. (CP 50). On October 19, 2015 Petitioner filed a motion to shorten time for instructions on whether the hearing would be based on declarations or live testimony. (CP 51). A hearing was held on October 23, 2015 and an order was issued setting this matter for hearing with live testimony. (CP 53). The hearing was held on December 11, 2015.

Ten witnesses testified and 17 exhibits were admitted. See Clerk's Witness Time Sheet for the list of witnesses and Clerk's Log for the admitted exhibits.

1 Respondent's theories to vacate were CR 60 (b) (1) irregularity in proceedings and CR
2 60(b) (4) fraud. Respondent did not submit authority or briefing in advance of the hearing,
3 other than citing CR 60. Petitioner submitted a Memorandum in Opposition to Motion to
4 Vacate with citation to authorities on the standards applicable to the two bases offered to
5 vacate final orders.

6 In part, CR 60 (b) provides that on

7 motion and upon such terms as are just, the court may relieve a party ...
8 from a final judgment, order, or proceeding for the following reasons: (1)
9 Mistakes, inadvertence, surprise, excusable neglect or irregularity in
10 obtaining a judgment or order; ... (4) Fraud (whether heretofore
denominated intrinsic or extrinsic), misrepresentation, or other misconduct
of the adverse party...

11 Petitioner's memorandum provides authority defining irregularity. It includes the "failure
12 to adhere to some prescribed rule or mode of proceeding in court," such as compliance with a
13 procedural step that is "necessary for the orderly conduct of trial or done at an unreasonable
14 time or in an improper manner." *Mosbrucker v. Greenfield Implement Inc.*, 54 Wn. App.
15 647,652 (1989). *Merritt v. Graves* is cited for a similar definition of irregularity. Under
16 *Merritt*, it is characterized as failure to adhere to a procedural rule or mode of proceeding
17 which includes either failure to do something that is procedurally necessary or doing
18 something at an unreasonable time or in an improper manner. *Merritt v. Graves*, 52 Wn. 57,
19 59 (1909).

20 The *Washington Pattern Jury Instructions* set forth nine elements for fraud: (1)
21 Representation of an existing fact; (2) materiality of the representation; (3) falsity of the
22 representation; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that it be
23 acted upon by the claimant; (6) the claimant's ignorance of the falsity; (7) the claimant's
24 reliance on the truth of the representation; (8) the claimant's right to rely upon it; and (9)
25 resulting damage .WPI 160.1 citing *Stiley v. Block*, 130 Wn. 2d 486 (1996). Fraud must be
26 proven by clear, cogent and convincing evidence. WPI 160.2, citing *Stiley v. Block*. Clear and
27 convincing is defined as "highly probable." WPI 160.02. More specifically, "proof by clear,
28 cogent and convincing evidence means that the element must be proved by evidence that

1 carries greater weight and is more convincing than a preponderance of evidence. Clear and
2 convincing evidence exists when occurrence of the element has been shown by the evidence
3 to be highly probable.”

4 Respondent requested attorney’s fees and costs under RCW 4.72.09. In part, this statute
5 provides that if a party moves to vacate a final order and is unsuccessful, the court, in its
6 discretion, may award the responding party interest on a judgment, costs and damages which
7 result from the request to vacate. RCW 4.72.090 does not appear to expressly authorize
8 recovery of attorney’s fees, costs for an expert witness, or costs for investigation such as a
9 polygraph.

10 II. FINDINGS

11 **Irregularity:** The testimony and evidence at trial centered on whether Mr. Hansen signed
12 the final orders governing the parties’ parenting plan and child support obligations. There was
13 little or no evidence of a procedural failure separate from the theory that Mr. Hansen’s
14 signature had been forged. In sum, no irregularity was proven.

15 **Fraud:** Mr. Hansen’s fraud theory was that he did not sign the Judgment and Order
16 Establishing Residential Schedule and Child Support; Findings of Fact and Conclusions of
17 Law on Petition for Residential Schedule/Parenting Plan or Child Support; Parenting Plan
18 Final Order; or the Order of Child Support Final Order. These final orders are all dated May
19 21, 2015. (CP 7 - 12).

20 Ms. Fitzgerald did not rely on Mr. Hansen’s burden of proof. She submitted expert
21 testimony from Hannah McFarland, a certified document and handwriting examiner. Mr.
22 Hansen stipulated that she was a qualified document and handwriting examiner. Ms.
23 McFarland examined each of the documents that Mr. Hansen denies signing, (hereafter
24 “challenged” documents or signatures), and compared the challenged signatures to signatures
25 that Mr. Hansen admitted in open court were his, (hereafter “exemplar” documents or
26 signatures). This includes going to the Spokane County Clerk’s Office and examining the
27 originals of each of the challenged and exemplar signatures. She evaluated numerous
28 characteristics and features of the challenged and exemplar signatures. Ultimately, Ms.

1 McFarland opined that she was 100% certain that Mr. Hansen had signed the challenged
2 documents.

3 Ms. Gina Costello is a family law lawyer who volunteers on Thursday's in Judge Maryann
4 Moreno's Court to give guidance to *pro se* parties to enable them to complete final papers and
5 obtain final orders. Ms. Costello recalled helping Mr. Hansen and Ms. Fitzgerald. One aspect
6 of their time together stood out to her. She recalled Mr. Hansen negotiating with Ms.
7 Fitzgerald to obtain the tax exemption for the parties' daughter Natalie and requesting to pay
8 for childcare. Ms. Costello's testimony was corroborated in part by Dee Cook, the Volunteer
9 Lawyer Program Paralegal. Ms. Cook explained that the Family Law Docket for Thursday,
10 May 21, 2015, had a check mark by both Ms. Fitzgerald's name and Mr. Hansen's. Ms. Cook
11 is the one who regularly takes roll in this manner and she would not have checked both
12 parties' names if they had both not checked in with her.

13 The Parenting Plan provides that Ms. Fitzgerald will be the primary custodian of Natalie
14 and that Mr. Hansen will visit Natalie Mondays and Fridays from 5-8 p.m., every other
15 Wednesday from 5-8 p.m. and Saturdays from 9-3 p.m. The Plan provided that Mr. Hansen's
16 visitation would take place at Ms. Fitzgerald's home or another location approved by Ms.
17 Fitzgerald. As of May 21, 2015 Tamra Hansen did not know that her husband, Chad Hansen,
18 had an affair with Ms. Fitzgerald or that they had a baby together.¹ Ms. Fitzgerald testified
19 that the reason the parties agreed to the visitation terms is Mr. Hansen did not want his wife to
20 know about the affair or the child and that Mr. Hansen had taken Natalie to his automobile
21 shop and she did not want Mr. Hansen taking the baby to unsafe places.

22 Exhibits demonstrate that Mr. Hansen acknowledged the existence of the Parenting Plan
23 terms. For example, emails show him expressing dissatisfaction with the terms of his
24 visitation and being dictated to by Ms. Fitzgerald simply because he had signed a parenting
25 plan. As another example, an email shows that he sought to use the terms of the Plan as
26 leverage to have access to Natalie.

27 _____
28 ¹ Ms. Fitzgerald was also married at the time of the Parties' affair.

1 Heather Otsby has been the primary babysitter for Natalie. She testified that she talked
2 with both Mr. Hansen and Ms. Fitzgerald on May 21, 2015, and among other things, Mr.
3 Hansen indicated they were going to court. Ms. Otsby also testified to Mr. Hansen having
4 expressed dissatisfaction with the final Parenting Plan and having commented that he should
5 not have joined in the Plan if he did not like it, or words to this effect.

6 Mr. Hansen's testimony was that he did not go to court with Ms. Fitzgerald on May 21,
7 2015 and the challenged final documents do not contain his signature. His explanation
8 includes the contention he could not have gone to court because he could not have gotten to
9 work at his shop and he had witnesses who would testify that they saw him at the shop.

10 The first of his witnesses was Mark Huber. In summary, Mr. Huber is a friend of Mr.
11 Hansen. He testified that he could not say whether Mr. Hansen was at his shop on the
12 morning of May 21, 2015.

13 Mr. Hansen's next witness was Mr. Rick Markham. In summary, Mr. Marham testified
14 that he was a friend of Mr. Hansen and he could not have gotten to Mr. Hansen's shop until
15 10:45 a.m. or later. The evidence of timing was to the effect that Mr. Hansen may have had
16 time to get to his shop by sometime after 10 and before 10:45, after appearing in court and
17 having the challenged final orders entered.

18 Mr. Hansen's next witness was Gabe Bighouse. Mr. Bighouse is an employee and friend
19 of Mr. Hansen. He testified that Mr. Hansen was at his shop the entire morning of May 21,
20 2015, from 8:00 a.m. on. In the course of cross examination, Mr. Bighouse acknowledged
21 that he lived with Mr. and Ms. Hansen after Natalie was born and that he helped keep Mr.
22 Hansen's affair and baby daughter from Ms. Hansen. He also admitted to having been
23 convicted of a crime of dishonesty.

24 Mr. Hansen's next witness was his wife, Ms. Tamra Hansen. In sum, Ms. Hansen testified
25 that she arrived at the shop around 9 a.m. and Mr. Hansen and Mr. Bighouse were there. She
26 acknowledged that the signatures on Mr. Hansen's summons and petition for legal separation
27 were likely Mr. Hansen's. At the time that Mr. Hansen signed and filed pleadings for legal
28 separation, he was trying to demonstrate to Ms. Fitzgerald that he was going to get a divorce

1 from his wife so he could be with Ms. Fitzgerald and Natalie. At the time Mr. Hansen was
2 telling Ms. Fitzgerald this, he had attempted to have Ms. Hansen believe that the two of them,
3 Ms. Hansen and Mr. Hansen, would reconcile. Ultimately, Ms. Hansen acknowledged that
4 Mr. Hansen had deceived her.

5 Mr. Hansen repeatedly testified that he would do anything for Natalie and that he felt the
6 challenged final documents were overly restrictive.

7 **Summary and conclusion re CR 60 (b) (4):** The evidentiary hearing, the weight of the
8 evidence, and the foregoing findings demonstrate that Johnna Fitzgerald did not make a false
9 representation. To the contrary, the evidence was clear and convincing or greater than Mr.
10 Hansen did sign the challenged final orders. In light of this, he did not meet the elements for
11 fraud or vacating the challenged final orders under CR 60 (b) (4).

12 **Attorneys' fees, expenses and costs:** After hearing the evidence, reviewing trial notes,
13 and careful consideration, the court finds that it would award reasonable attorney's fees,
14 expert costs and other authorized costs or expenses resulting from Mr. Hansen's motion to
15 vacate if it is provided authority authorizing it. At this point, RCW 4.72.090 on its face only
16 appears to authorize reimbursement of costs. Ms. Fitzgerald may submit a cost bill, delineate
17 what costs in her Exhibit 26 meet the definition of costs under RCW 4.72.090 and any other
18 authority she has for recovery of costs, attorney's fees and expert witness fees.

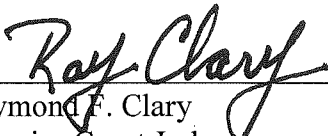
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III. ORDER

It is HEREBY ORDERED AND ADJUDGED that:

1. Respondent's, Mr. Hansen's, motion to vacate is denied.
2. If Petitioner, Ms. Fitzgerald, provides authority for award of attorney's fees, or expert witness costs, investigative costs and/or shows that any of her invoices under her Exhibit 26 are recoverable, the court will give further consideration to awarding them.

Dated: December 15, 2015.



Raymond F. Clary
Superior Court Judge