

9

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2016 MAR 25 AM 10: 50

Linda Lyons Dalew
Thurston County Clerk

14-3-00778-8
TRBF
Trial Brief
170085



Superior Court of Washington
County of THURSTON

In re the Marriage of:

ANNETTE MARIE ROTH,

and

STEPHEN KEITH HICKS,

Petitioner,

Respondent.

No. 14-3-00778-8

PETITIONER'S AMENDED
TRIAL BRIEF

I. PROCEDURAL HISTORY

Ms. Roth filed a Petition for Legal Separation on May 30, 2014. The parties have been married for 17 years and have one son in common, Lucas Hicks, who is currently seven years old. Mr. Hicks did not leave the home until approximately September 1, 2014. A Proposed Parenting Plan was filed by Mr. Hicks on March 6, 2015, but no Response was ever filed.

On April 10, 2015, Ms. Roth filed an Amended Summons and Petition for Dissolution of Marriage. A Return of Service was filed on April 13, 2015, indicating service upon Mr. Hicks on April 10, 2015. Mr. Hicks has not filed a Response to the Petition for Dissolution.



1 A Domestic Violence Order of Protection which was originally issued on April 15,
2 2015 under Thurston County Superior Court Cause # 15-2-30089-7 and modified in
3 September 23, 2015 is currently in effect. Under that Order, Mr. Hicks was to
4 participate in perpetrator treatment program approved under RCW 26.50.150,
5 completing a full intake as required by RCW 26.50.150 and WAC 388-60-0165, and
6 within 30 days. Mr. Hicks was to sign releases such that Ms. Roth could provide
7 information in the assessment process. Mr. Hicks was to follow all
8 recommendations made by the treatment provider.
9

10 Under that same Order, Mr. Hicks was to complete a Chemical Dependency
11 evaluation within 30 days, and sign releases such that Ms. Roth could provide
12 information in the assessment process. Mr. Hicks was to follow all recommendations
13 made by the treatment provider. Under that Order Mr. Hicks was to pay \$3,000 in
14 attorney fees on behalf of Ms. Roth.
15

16 Mr. Hicks sought Modification of the DVPO and set a Hearing for July 8, 2015.
17 Mr. Hicks also filed a Alcohol/Drug Evaluation on or about July 8, 2015 which did not
18 contain evidence that collateral information had been obtained from Ms. Roth.

19 Mr. Hicks also sought recusal of the Court Commissioner at that time. The
20 Motion was denied, with a Hearing on August 26, 2015 as a Review on the Domestic
21 Violence matter.

22 Following a Compliance Hearing on August 26, 2015, Mr. Hicks was found to be
23 non-compliant for his failure to obtain domestic violence treatment. A new Review
24 date of September 23, 2015 was set.
25

1 The Modification of the DVPO on September 23, 2105 occurred as a result of Mr.
2 Hicks failing to comply with the treatment requirements of the Order, upon Review.
3 The Court at that time found that Mr. Hicks was not in compliance with the treatment
4 requirements as ordered, and discharged the Case Coordinator. Mr. Hicks is still
5 required under that Order to comply with the treatment requirements of the Order
6 issued on April 15, 2015. At that time, the Court also ordered that Mr. Hicks is to pay
7 an additional \$1500 in attorney fees.
8

9 There is currently a Petition for Renewal of the Order for Protection set for April
10 15, 2016. Service upon Mr. Hicks has not been obtained at this time.

11 The Order for Protection has disallowed visitation between Mr. Hicks and his son
12 given the severity of the abuse, and the issue of Mr. Hicks' abuse of substances. Mr.
13 Hicks has not had contact with his son since the entry of the Temporary Order for
14 Protection on February 6, 2015.
15

16 II. PARENTING

17 *RCW 26.09.187 (3) (a-c)* provides the criteria for establishing the residential
18 provisions of a permanent parenting plan:

19 (a) The court shall make residential provisions for each child which encourage
20 each parent to maintain a loving, stable, and nurturing relationship with the
21 child, consistent with the child's developmental level and the family's social
22 and economic circumstances. The child's residential schedule shall be
23 consistent with *RCW 26.09.191*. Where the limitations of *RCW 26.09.191* are
not dispositive of the child's residential schedule, the court shall consider the
following factors:

- 24 (i) The relative strength, nature, and stability of the child's relationship with
each parent;
25 (ii) The agreements of the parties, provided they were entered into
knowingly and voluntarily;

- 1 (iii) Each parent's past and potential for future performance of parenting
2 functions as defined in *RCW 26.09.004(3)*, including whether a parent has
3 taken greater responsibility for performing parenting functions relating to
4 the daily needs of the child;
5 (iv) The emotional needs and developmental level of the child;
6 (v) The child's relationship with siblings and with other significant adults,
7 as well as the child's involvement with his or her physical surroundings,
8 school, or other significant activities;
9 (vi) The wishes of the parents and the wishes of a child who is sufficiently
10 mature to express reasoned and independent preferences as to his or her
11 residential schedule; and
12 (vii) Each parent's employment schedule, and shall make
13 accommodations consistent with those schedules.

14 Factor (i) shall be given the greatest weight.

15 (b) Where the limitations of *RCW 26.09.191* are not dispositive, the court may
16 order that a child frequently alternate his or her residence between the
17 households of the parents for brief and substantially equal intervals of time if
18 such provision is in the best interests of the child. In determining whether
19 such an arrangement is in the best interests of the child, the court may
20 consider the parties geographic proximity to the extent necessary to ensure
21 the ability to share performance of the parenting functions.

22 (c) For any child, residential provisions may contain any reasonable terms or
23 conditions that facilitate the orderly and meaningful exercise of residential
24 time by a parent, including but not limited to requirements of reasonable
25 notice when residential time will not occur.

RCW 26.09.191 states with respect to restrictions in temporary or permanent
parenting plans that

- (1) The permanent parenting plan shall not require mutual
decision-making or designation of a dispute resolution process other
than court action if it is found that a parent has engaged in any of the
following conduct: (a) Willful abandonment that continues for an
extended period of time or substantial refusal to perform parenting
functions; (b) physical, sexual, or a pattern of emotional abuse of a
child; or (c) a history of acts of domestic violence as defined in **RCW*
26.50.010(1) or an assault or sexual assault which causes grievous
bodily harm or the fear of such harm.

1 (2)(a) The parent's residential time with the child shall be limited if it is
2 found that the parent has engaged in any of the following conduct: (i)
3 Willful abandonment that continues for an extended period of time or
4 substantial refusal to perform parenting functions; (ii) physical, sexual,
5 or a pattern of emotional abuse of a child; (iii) a history of acts of
6 domestic violence as defined in *RCW 26.50.010(1) or an assault or
7 sexual assault which causes grievous bodily harm or the fear of such
8 harm....

6 DOMESTIC VIOLENCE

7 On February 6, 2015, Ms. Roth filed a Petition for Order of Protection after
8 receiving text messages from Mr. Hicks regarding their son stating "*now come over*
9 *and pick him up before I toss him in the g*dd*mn river...*" and, "*Do you want your*
10 *son to see his father splatter blood all over the wall when fired again through his*
11 *skull Then don't bother coming to get him*".

12 A Temporary Order of Protection was granted restraining Mr. Hicks from having
13 contact with Ms. Roth and their son. The Temporary Order of Protection was
14 reissued several times.

15 On April 15, 2015, an Order of Protection was entered with court. Mr. Hicks was
16 ordered to complete a Domestic Violence Evaluation and a Chemical Dependency
17 Evaluation with collateral contacts to be done within 30 days. Ms. Roth was awarded
18 \$3,000.00 in attorney fees. A review hearing was set for July 8, 2015.

19 Mr. Roth completed a Chemical Dependency Evaluation on May 1, 2015, but the
20 evaluation did not have the input of Ms. Roth. On July 8, 2015 Mr. Hicks indicated
21 to the Court he had not yet completed the Domestic Violence Evaluation due to
22 insufficient funds. Another review hearing was set for August 26, 2015.

23 On August 26, 2015, Mr. Hicks was found in Non Compliance with the Court. An
24
25

1 Order Re: Non Compliance was entered with the court and a review was set for
2 September 23, 2015.

3 Mr. Hicks failed to appear at the hearing on September 23, 2015. Ms. Roth was
4 awarded \$1,500.00 in attorney fees. Mr. Hicks continues to be non-compliant with
5 the treatment requirements ordered by the Court.
6

7 Ms. Roth has provided the majority of the child care for the minor child, and
8 provides a stable environment to meet his needs. Mr. Hicks struggles with
9 methamphetamine addiction which has caused him to be volatile and make
10 concerning threats regarding their son.

11 It is unknown if Mr. Hicks has a steady income. Ms. Roth is concerned about
12 their son being in an unsafe and unstable environment especially since Mr. Hicks
13 has not completed the domestic violence treatment ordered by the court. Mr. Hicks
14 is not permitted to have visitation until he follows all orders of the Court, and it
15 should remain so.
16

17 III. CHILD SUPPORT

18 Ms. Roth is employed by the Thurston County Economic Development Council.
19 Her earnings are reflected in the Child Support Worksheets she has proposed and in
20 her Financial Declaration which will be presented for entry.

21 It is unknown if Mr. Hicks is currently employed at this time and his income has
22 been imputed at or about minimum wage, with a transfer amount of \$161.00 per
23 month.

24 Ms. Roth's position is she shall claim their son for even tax years and Mr. Hicks
25

1 claim their son for odd tax years, if he is current on his child support obligations by
2 December 31st of that tax year.

3 IV. PROPERTY, DEBTS, LIABILITIES

4 The issue of the division of real property is no longer at issue for the trial. A
5 Notice of Trustee's Sale was obtained by Ms. Roth which indicated a sale on March
6 18, 2016. It is unknown if this sale occurred. However, Ms. Roth cannot afford to
7 save this property as it is too far in arrears. If Mr. Hicks is able to save the property,
8 Ms. Roth is not opposed to such and would seek no interest in such.

9 During the marriage, the parties took out an auto loan through Chase Auto
10 Finance for the 2003 BMW. The BMW was repossessed for nonpayment. The
11 parties have a joint credit card account with American Express which has an
12 outstanding balance of \$4,500.00. Ms. Roth is willing to pay the balance of the
13 American Express credit card debt and any debt associated with the 2002 Chevrolet
14 Impala. There are no additional community liabilities or debts incurred by the parties.

15 It is Ms. Roth's position that any stocks, bonds, mutual funds, or other negotiable
16 instruments in Mr. Hicks' name remain his, and that Ms. Roth will keep all stock,
17 bonds, mutual funds, certificates of deposits, notes, or other negotiable instruments
18 in her name.

19 It is Ms. Roth's position that any and all personal property in her possession shall
20 be granted to her, and any and all personal property in Mr. Hicks' possession shall
21 be granted to him.

22 Ms. Roth proposes that any and all bank accounts, credit union accounts,
23
24
25

1 savings and loan accounts or other depositories, except as described, where the
2 account is in her name be granted to her. Ms. Roth proposes that any and all bank
3 accounts, credit union accounts, savings and loan accounts or other depositories,
4 except as described, where the account is in his name be granted to Mr. Hicks.

5 Ms. Roth proposes she keeps any and all life insurance on her life.

6 Ms. Roth also proposes that she keep the money in her IRA, approximately
7 \$9,500.00.
8

9 Ms. Roth's position is each party shall individually keep any rights virtue of past
10 or future employment.

11 Each party should be individually responsible for their auto loans, if any, and auto
12 insurance.

13 Ms. Roth's position is that each party should pay their debts incurred since
14 separation on approximately September 1, 2014.
15

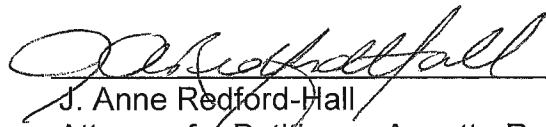
16 V. RELIEF REQUESTED

- 17 1. Enter the Wife's Proposed Parenting Plan as the Final Parenting Plan in this
18 matter;
- 19 2. Enter the Wife's Proposed Child Support Worksheets and Order of Child
20 Support;
- 21 3. Order that any stocks, bonds, mutual funds, or other negotiable instruments in
22 the Husband's name remain his, and that those in the Wife's name be awarded
23 to her;
- 24 4. Order any and all personal property in the Wife's possession to be granted to
25

- 1 her, and any and all personal property in the Husband's be granted to him;
- 2
- 3 5. Order that any and all bank accounts, credit union accounts, savings and loan
- 4 accounts or other depositories, in the name of the Wife be granted to her, and
- 5 that any and all bank accounts, credit union accounts, savings and loan accounts
- 6 or other depositories, in the name of the Husband be granted to him;
- 7
- 8 6. Order that the Wife be awarded any and all life insurance on her life;
- 9
- 10 7. Order that the Wife be awarded her IRA in the approximate amount of \$9,500.00;
- 11
- 12 8. Order that each party shall individually keep any rights by virtue of past or future
- 13 employment;
- 14
- 15 9. Order that the Wife be awarded the 2002 Chevy Impala, and that the Husband
- 16 be awarded any vehicle in his possession;
- 17
- 18 10. Order that each party shall be individually responsible for their auto loans if any;
- 19
- 20 11. Order that each party be individually responsible for all debts in their name only
- 21 since the date of separation on approximately September 1, 2014;
- 22
- 23
- 24
- 25

DATED this 24th day of March, 2016.

THE REDFORD LAW FIRM



J. Anne Redford-Hall
Attorney for Petitioner, Annette Roth

27963