

In re Custody of S.F.-T.C.

Court of Appeals of Washington, Division Three

March 15, 2016, Filed

No. 32367-6-III

Reporter

2016 Wash . App. LEXIS 509 *

Davenport, Law Office of Kari L. Hayles-
Davenport, Kennewick, WA.

*In the Matter of the Custody of S.F.-
T.C.JANET CAREY ET AL., Respondents, v.
JASMINE ROSE CAREY ET AL., Appellant.*

For Respondent(s): Jacqueline Jeanne Shea
Brown, Benton-Franklin County Superior
Court, Kennewick, WA; Patricia S.
Novotny, Attorney at Law, Seattle, WA.

Notice: DECISION
PUBLISHED OPINION

WITHOUT

Judges: Authored by Laurel H. Siddoway,
Concurring: George B. Fearing, Kevin M.
Korsmo..

Prior History: [*1] Appeal from Benton
Superior Court. Docket No: 12-3-00255-1.
Judge signing: Honorable Cameron
Mitchell. Judgment or order under review.
Date filed: 02/20/2014.

Opinion by: LAUREL H. SIDDOWAY

*In re Custody of S.F.-T.C., 192 Wn. App.
1039, 2016 Wash. App. LEXIS 463 (2016)*
[*In re Custody of S.F.-T.C., 2016 Wash. App.
LEXIS 165 \(Wash. Ct. App., Feb. 9, 2016\)*](#)

Opinion

ORDER DENYING MOTION FOR
RECONSIDERATION AND AMENDING
OPINION

Counsel: For Appellant: Kenneth Wendell
Masters, Masters Law Group PLLC,
Bainbridge Island, WA; Kari L Hayles-

THE COURT has considered respondents'
motion for reconsideration, and is of the
opinion the motion should be denied and its
opinion of February 9, 2016, should be
amended to include a footnote, numbered
“3,” following the language “in 2012 and
2013.” on line 14, page 19 of the slip

opinion, to read as follows:

PANEL: Judges Siddoway, Korsmo,
Lawrence-Berrey

In a motion for reconsideration, the Careys point out that a trial court is not prohibited from speculating under Washington case law, citing [B.M.H., 179 Wn.2d at 238](#). But the court in *B.M.H.* pointed out that the trial court did not *impermissibly* speculate in that case since there [*2] were multiple instances of past conduct on which it based its concern. It stated that “this court will, *if necessary*, speculate about future possibilities in making determinations about domestic relations.” *Id.* (emphasis added). The court in *B.M.H.* still concluded that the possibly warranted speculation that the mother would interfere with the nonparent's relationship with B.M.H. was insufficient to show actual detriment.

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Implicit in *B.M.H.*'s discussion of speculation is the fact that even where speculation is permitted, it often will provide an insufficient basis for finding actual detriment. *Cf., Dependency of T.L.G., 139 Wn. App. 1, 17, 156 P.3d 222 (2007)* (When the State denies a parent's visitation with a child, “[t]he legislatively-mandated risk of harm must be an actual risk, not speculation”). Speculation provides an insufficient basis here.

Therefore,

IT IS ORDERED, the motion for reconsideration of this court's decision of February 9, 2016, is hereby denied and the opinion is amended as set forth above.