COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

In Re

MONIQUE A. McDEVITT
Appellant

V.

DAVID A DAVIS
Respondent

NO. 31348-4-III

PETITION FOR DISCRETIONARY REVIEW TO THE SUPREME COURT OF WASHINGTON

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IDENTITY OF PETITIONER

The Petitioner is Monique Adel McDevitt, the Appellant in the Court of Appeals' underlying determination.

CITATION TO COURT OF APPEALS DECISION

The Petitioner seeks review of the Court of Appeals decision entered on June 12, 2014 under cause no. 31348-4-III. No motion for reconsideration was filed. Specifically, the Petitioner seeks review of the Court of Appeals determination that she could not withdraw her relocation request. Additionally, the Petitioner asserts that the trial court had operated under a "review hearing" basis rather than in reliance on the authority provided by the relocation statute.

ISSUE PRESENTED FOR REVIEW

1. Could the mother withdraw her request for relocation after receiving the decision of the trial court, and has the decision of the Court of Appeals Division III thus created a conflict with the prior decision of the Court of Appeals Division One?

STATEMENT OF THE CASE

A final parenting plan in this matter was entered on September 1, 2009 by Superior Court Judge Jerome Leveque pursuant to a decree of dissolution. CP 1-6. Monique McDevitt (hereafter referred to as "mother") was ordered to be the custodial parent. CP 1-6. Judge Leveque further ordered that because of the ages of the children and because the mother had relocated to Hawaii, the father could exercise visitation of 3 hours per day when he traveled to Hawaii. Additional visitation could occur if the mother traveled to the continental United States. CP 1-6. Judge Leveque ordered that "This plan shall be subject to review on the motion of either party when the children are two years old to determine if the placement schedule with the father should change." CP 1-6.

David Davis (hereafter referred to as "father") moved for reconsideration of Judge Leveque's decision, contesting in part the parenting plan provisions. CP 7-8. He filed a brief in support of his reconsideration motion. CP 9-24. The mother also filed a reconsideration brief. CP 25-28. This motion for reconsideration was denied by Judge Leveque. CP 29-30. Thus, per Judge Leveque's parenting plan, the residential schedule could be reviewed on motion by either party once the children were two years of age.

On November 16, 2010, the father filed his motion for a review of the residential schedule as authorized by Judge Leveque's final parenting plan and on January 25, 2011, an order was entered by Court Commissioner Valerie Jolicouer pursuant to the father's request for a review hearing, providing the father with revised parenting time. CP 31-33.

After this new parenting schedule had been in place for less than a year, the father filed a petition for a summons and petition for modification of the parenting plan on November 22, 2011. CP 34-43. His basis for this modification was that the final parenting contemplates modification. CP 34-43. He proposed a new parenting plan. CP 44-52. He set a hearing for an adequate cause determination. CP 53-54. The motion for adequate cause was denied without prejudice. CP 55-56. In denying the motion for adequate cause, Court Commissioner Valerie Jolicouer made a finding that this review hearing provided for in Judge Leveque's final parenting plan had already been provided on January 25, 2011. CP 55-56. See also CP 31-33.

On February 2, 2012, the father filed an amended petition for modification of the parenting plan. CP 57-64. He also filed a new request for an adequate cause hearing given Commissioner Jolicouer's prior dismissal without prejudice. CP 65-66. On February 22, 2012, the order

on adequate cause was entered by Commissioner Jolicouer. CP 67-68. This order on adequate cause again denied Mr. Davis's second request for a minor modification but allowed Ms. McDevitt's petition for relocation to proceed to trial. CP 67-68. The mother submitted a proposed parenting plan on July 23, 2012. CP 69-76. The father submitted a proposed parenting plan on August 10, 2012. CP 77-86.

The matter then proceeded to trial and on October 25, 2012 Judge Salvatore Cozza entered his memorandum opinion. CP 87-89. On November 6, 2012, Ms. McDevitt filed a motion for reconsideration. CP 90-93. She also filed a memorandum in support of the motion for reconsideration on the same date. CP 94-97. This was followed by a declaration from Ms. McDevitt on November 13, 2012. CP 98-107. In this declaration, Ms. McDevitt informed the court that she was not relocating due to her husband's loss of a job, that she had returned to Hawaii prior to the trial before Judge Cozza, and that her husband's other potential job prospects fell through as well. CP 98-107. This issue was noted for hearing. CP 108-109. A notice of withdrawal for request to relocate was also filed. CP 110-111.

A response to the mother's declaration was filed by the father on November 14, 2012. CP 112-113. A further response by the father was

filed the same date. CP 114-117.

On November 5, 2012, Judge Cozza entered the final parenting plan. CP 118-128. An order on modification was also entered. CP 129-131. Reconsideration was denied. CP 132-132. See also the trial minutes at CP 133-133. An appeal was timely filed by the mother. CP 134-150. The decision of the Court of Appeals was filed on June 12, 2014.

ARGUMENT

1. THE MOTHER SHOULD BE ALLOWED TO WITHDRAW HER REQUEST FOR RELOCATION AFTER RECEIVING THE DECISION OF THE TRIAL COURT, AND THE DECISION OF THE COURT OF APPEALS DIVISION III IS IN CONFLICT WITH THE PRIOR DECISION OF THE COURT OF APPEALS DIVISION ONE.

The best interests of the child must be the controlling consideration in any custody decision. Marriage of McDole, 122 Wn.2d 604, 610 (1993). However, the procedures relating to the modification of a parenting plan are statutorily prescribed and compliance with the criteria set forth in the statute is mandatory. Marriage of Shyrock, 76 Wn.App. 848, 852 (1995). There is a strong presumption in favor of custodial continuity and against modification. Marriage of McDole, 122 Wn.2d 604, 610 (1993).

The mother filed a notice of withdrawal for her request to relocate. CP 110-111. Her intent to remain in Hawaii can also be seen in her declaration. CP 98-107. Yet pursuant to RCW 26.09.260(6) the trial court granted a modification based on this relocation. See order on modification, page 2, section 2.4, CP 129-131.

This issue was addressed by Marriage of Grigsby, 112 Wn.App. 1 (2002). In Grigsby, after the court restrained the mother from relocation, she decided not to relocate. Id. at 4 and also at 15. The trial court nonetheless still granted the modification even after being informed that the mother was not going to relocate. Id. The Grigsby court held that while the record supported the trial court's findings of fact on the statutory relocation factors, because the mother was no longer actively pursuing relocation, the trial court was without authority to modify the parenting plan. Id. at 4 and 15-17.

Here, the mother gave notice that she was no longer relocating. Under the Grigsby analysis the trial court thus lacked any authority to modify under RCW 26.09.260(6). The trial court still proceeded to enter a new parenting plan based on the relocation.

In the instant decision, Court of Appeals Division III attempts to differentiate its holding from the Grigsby decision. The Division III Court

ruled that the case is distinguishable from the Division One Grigsby case because in the Division One Grigsby case the mother had been restrained from relocation and in this case the mother had been granted relocation both on a temporary and permanent basis.

However, this distinction is one of semantics only. The clearly stated premise from Grigsby is that upon receipt of the trial court's decision, the parent who petitioned to relocate could withdraw their relocation petition. There is sound public policy for Division One's position. As stated in Marriage of McDole, 122 Wn.2d 604, 610 (1993) there is a strong presumption in favor of custodial continuity and against modification.

In this case, allowing the mother to withdraw her relocation request would ensure that the children continued to follow the parenting plan that was in effect since January 25, 2011 when an order was entered by Court Commissioner Valerie Jolicouer pursuant to the father's request for a review hearing, providing the father with revised parenting time. CP 31-33.

Instead, by denying the mother's request, extreme and dramatic changes were made to the parenting plan with Mr. Davis being awarded over 100 additional overnight visits (depending on the length of summer vacation) beyond the prior parenting order without literally any change in

circumstances. Under Judge Leveque's original plan the mother resided in Hawaii. CP 1-6. When Ms. McDevitt withdrew her relocation request, the children remained in the same Hawaii home. CP 98-107.

Such dramatic changes are contrary to this Court's holding in McDole, but run contrary to the progeny of cases that have concurrent rulings. An emphasis in the case law has been to provide for the maximum possible stability for the children in the wake of the turbulence caused by the parents' marital breakdown. In re Marriage of Thompson, 32 Wn.App. 418, 421 (1982). The Dissolution Statute, RCW 26.09.200 et seq., which is modeled after the Uniform Marriage and Divorce Act, was designed to favor custodian continuity and disfavor modification. Marriage of Thompson, 32 Wn.App. 418, 421 (1982) (citing In re Marriage of Roorda, 25 Wn. App. 849, 851 (1980); Anderson v.Anderson, 14 Wn. App. 366, 368, (1975), *review denied,* 86 Wn.2d 1009 (1976)).

The policy reasons underlying the marriage dissolution act are to: (1) maximize the finality of custody awards since children and their parents should not be subjected to repeated litigation of custody issues determined in the original action, Schuster v. Schuster, 90 Wn.2d 626, 628 (1978); In re Marriage of Roorda, *supra* at 852; (2) prevent "ping-pong" custody litigation since stability of the child's environment is of utmost concern,

Schuster v. Schuster, *supra* at 628; and (3) preserve the basic policy of custodial continuity since custodial changes are viewed as highly disruptive for the child, In re Marriage of Roorda, *supra* at 851; Anderson v.Anderson, *supra* at 368.

In the instant case, a final parenting plan in this matter was entered on September 1, 2009 by Superior Court Judge Jerome Leveque pursuant to a decree of dissolution. CP 1-6. Judge Leveque ordered that David Davis, the father, could exercise visitation of 3 hours per day when he traveled to Hawaii. CP 1-6. On January 25, 2011, an order was entered by Court Commissioner Valerie Jolicouer pursuant to the father's request for a review hearing (as expressly proved for by Judge Leveque), providing the father with revised parenting time. CP 31-33. The father continued to have limited overnight contact.

On November 5, 2012, Judge Cozza entered the final parenting plan. CP 118-128. Judge Cozza granted the father, *for just the summer 2013 schedule*, 46 overnights with the children. CP 118-128. Judge Cozza's plan provides the father with virtually the entire summer beginning in 2014. He also provides substantial additional overnight contact in spring vacation, winter vacation, and during monthly school schedule visits. Depending on the length of the children's summer vacation, Judge Cozza

added well over 100 overnight contacts to the prior parenting plan. The children were 4 years old when Judge Cozza added these very extensive overnight contacts to the prior parenting plan. CP 118-128.

These are the type of extreme results that will occur if the Division III rationale is applied. The Division One Grigsby decision allows the relocating parent to assess the trial court's ruling and make a determination in favor of continued parenting plan continuity.

Division III also ruled that by allowing a parent to withdraw their relocation following trial, the end result is a wasted trial. See also footnote 3 of their decision. However, there is no distinction from the situation present in the Division One Grigsby decision. In Grigsby, the mother also proceeded through a trial before deciding to not relocate. Regardless of judicial economy, public policy is advanced by allowing the relocating parent to make a decision in favor of continued custodial continuity.

Similarly, there would be another chilling effect on custodial continuity if a relocating parent could not withdraw their request to relocate if their new employment prospects changed. It can be fairly argued from the body of relocation case law that the vast majority of relocation motions are based on employment requirements. New employment opportunities can be lost for a variety of reasons, many of which are bona fide and beyond

the control of the relocating parent. If an employment opportunity is lost, the relocating parent should be allowed to withdraw their request, move back to their original state of residence, and continue to follow the parenting plan without change. Custodial continuity is thus promoted and the best interests of the children are served. This result is allowed by the Grigsby decision.

Under the current Division III decision, once the relocation action is filed and temporary relocation is granted, the trial court retains the authority to make wholesale changes to every aspect of the parenting plan regardless of whether the relocating parent would otherwise choose to return to their prior city and/or state of residence. In the instant case, Judge Cozza utilized this wholesale authority to make changes to not only add over 100 overnights of residential contact (depending on length of summer schedule) but to also change the non-residential provisions of the plan by taking away the mother's sole decision making authority and substituting joint decision making. CP 118-128. Again, such results are highly contrary to the premise of custodial continuity.

It should be noted that the mother's temporary relocation to Denver was short-term in nature. After her husband lost his job there, she had relocated back to the family home in Hawaii. CP 98-107. She had

returned to Hawaii prior to the relocation trial, although her husband was contemplating other job opportunities. CP 98-107. These other opportunities did not materialize and Ms. McDevitt thus remained in Hawaii. CP 98-107. Because the mother was in Hawaii, the parties were following the same parenting plan that had been in effect since Court Commissioner Jolicouer's review hearing in 2011. CP 31-33, CP 98-107. Judge Cozza's decision, as affirmed by Division III, is highly detrimental to custodial continuity. The Grigsby determination best support the public policy enumerated in McDole and its progeny of cases.

Similarly, Division III's determination of subsequent remedy is contrary to the holdings of this Court. At page 10 of its decision, Division III ruled that since Ms. McDevitt did not actually relocate to Denver and instead remained in Hawaii, that Ms. McDevitt's remedy was to file yet another relocation action. However, this Court ruled that children should not be subjected to repeated litigation of custody issues determined in the original action, Schuster v. Schuster, 90 Wn.2d 626, 628 (1978).

If Division III's ruling is not reversed by this Court, the children will be subjected to yet another prolonged relocation action that will proceed to yet another trial. Division One's Grigsby analysis is far more consistent with this Court's prior holdings. The relocating parent can simply decide

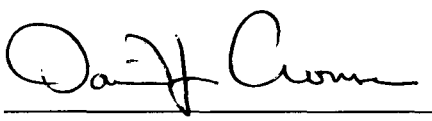
not to relocate and another trial is avoided. The Grigsby decision best meets both the need for custodial continuity and the need to avoid continual litigation.

CONCLUSION

Custodial continuity, continuity of a parenting plan, and avoiding continued litigation are in the best interests of children. The holding in Grigsby advances all of these interests. The Division III holding has caused a serious disruption in the children's longstanding parenting plan and their resulting stability and has also required continuing litigation through a new relocation action.

Petitioner Monique McDevitt requests that this Court grant the Petition for Discretionary Review and reverse the Court of Appeals' determination. Ms. McDevitt should be allowed to withdraw her request for a relocation as she remains in Hawaii, even prior to trial. Pursuant to the withdrawal of her request to relocate, the parenting plan as amended January 25, 2011 should remain in effect.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is a person of such age and discretion to be competent to serve papers.

That on the 14th day of July, 2014, she served a copy of this Appellate Brief to the persons hereinafter named at the places of address stated below which is the last known address.

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SUBSCRIBED AND SWORN to before me this 14th day of July, 2014.

NOTARY PUBLIC in and for the
State of Washington, residing in Spokane.
My Commission Expires: 9-9-16

APPENDIX

FILED
JUNE 12, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In re the Marriage of:	)	
	)	No. 31348-4-III
MONIQUE ADEL MCDEVITT,	)	
	)	
Appellant,	)	
	)	
v.	)	PUBLISHED OPINION
	)	
DAVID ALLEN DAVIS,	)	
	)	
Respondent.	)	

KORSMO, J. —Appellant Monique McDevitt[1] challenges the trial court's modification of the final parenting plan. We affirm with leave for Ms. McDevitt to pursue further proceedings in the trial court.

FACTS

The marriage of Ms. McDevitt and respondent David Davis dissolved around the time of the birth of their only children, twin sons. A final parenting plan was entered September 1, 2009, when the two boys were one year old. The plan made Ms. McDevitt

[1] Ms. McDevitt has remarried and now uses the surname Putz, but we use the name McDevitt to be consistent with the case title and her briefing.

the custodial parent and permitted her to relocate with the children to Hawaii, near her parents, while Mr. Davis remained in Spokane County.

Given the distance between Hawaii and Spokane, Ms. McDevitt had near exclusive custody as well as decision-making authority for the children. Mr. Davis was allowed three hours of visitation per day should he visit Hawaii, and Ms. McDevitt was required to notify him and accommodate visitation should she be in the continental United States. The parenting plan also specified that either party could seek review of the placement schedule when the children were two.

A court commissioner reviewed the original order on January 25, 2011, and made several clarifications to visitation details. The commissioner also reserved summer and Christmas visitation to a future hearing. Ten months later, Mr. Davis filed a petition for modification or adjustment; the children were then three. He sought a minor modification and wrote that the original decree contemplated modification.

The commissioner denied the petition without prejudice on January 24, 2012, determining that there was no statutory basis for the petition since her previous ruling had been just one year earlier. Mr. Davis then filed an amended minor modification request. One day after that request was filed, Ms. McDevitt filed a notice of intent to relocate the children from Hawaii to Colorado where her new husband would be employed.

The commissioner again heard the matter and found that the mother's petition, but not the father's modification request, justified a hearing. The matter was set over for trial

and eventually heard before Judge Salvatore F. Cozza that fall. Mr. Davis filed a proposed parenting plan that allowed him one three-night weekend with the children in Denver every other month and allowed him one-half of the children's' school vacations (including summer break) once they started school. At trial, Ms. McDevitt testified that she and the children had been living in Colorado since the time of the relocation request.

Two days after the completion of trial, Judge Cozza announced his decision by letter. The letter began by noting that Judge Jerome J. Leveque had originally contemplated that visitation would be reviewed once the boys had reached age two and, "thus it is proper apart from the differences of the parties to take a fresh look at things now." Clerk's Papers (CP) at 87. Judge Cozza noted that but for the relocation to Hawaii, the parties would have been entitled to equal visitation and decision-making responsibility. He also noted that neither parent was innocent with respect to complications that arose with the post-dissolution relationship, but was concerned that the mother had not always been acting in good faith. Judge Cozza ordered that Mr. Davis's proposed parenting plan be adopted and that both parents have joint decision-making.

Ms. McDevitt moved for reconsideration, arguing that the ruling worked a major modification without a request from the parties or sufficient findings under the statute. Eight days later, Ms. McDevitt moved to withdraw her intent to relocate, asserting that her husband had lost his job and the couple intended to return to Hawaii with the

children. Three days later, Judge Cozza denied reconsideration and entered orders implementing his decision and setting forth the new parenting plan.

Ms. McDevitt timely appealed. This court initially set the matter for consideration on a non-argument calendar, but re-set the case for oral argument so that the parties could address the decision in *In re Parentage of C.M.F.*, 179 Wn.2d 411, 314 P.3d 1109 (2013). Ms. McDevitt's counsel also advised us that she had in fact relocated to Hawaii with her children and spouse.

ANALYSIS

Ms. McDevitt argues both that the trial court lacked authority to modify the parenting plan after she withdrew her relocation request and that the trial court's ruling exceeded its authority under its minor modification authority. We do not agree that the latter contention is at issue in this case and also believe that the attempt to withdraw the relocation request was ineffectual in this context. We address those two contentions in that order.

The ability to modify a parenting plan is strictly controlled by statute. RCW 26.09.260 lists several different bases on which a parenting plan or custody ruling is subject to modification. This court considers a challenge to a modification ruling under well-settled standards. The modification order is reviewed for abuse of discretion. *In re Marriage of Zigler*, 154 Wn. App. 803, 808, 226 P.3d 202, *review denied*, 169 Wn.2d 1015 (2010). Discretion is abused when it is exercised on untenable grounds or for

untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). There is a strong presumption against modification. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

Modification follows a two-stage process. First, the party seeking modification must establish adequate cause to alter the existing plan—typically that requires evidence of a significant change of circumstances unknown at the time of the original parenting plan. *Zigler*, 154 Wn. App. at 809. If adequate cause is established, the matter will proceed to a hearing. *Id.*

Ms. McDevitt argues that the court bypassed this process in considering modification based on Judge Leveque's initial determination that the parenting plan could be re-opened when the children turned two. She bases her argument on the previously quoted line from Judge Cozza's letter decision. We believe she read too much into that comment, which was simply Judge Cozza's recognition that Judge Leveque had anticipated that parenting plan arrangements would need to be revisited when the children were a bit older. That Judge Cozza would use that recognition as a jump-off point for starting his analysis of the circumstances was understandable. However, it was not the basis for re-opening the parenting plan.

In *C.M.F.*, the trial court had adjudged the respondent as father for purposes of entering a parentage decree and left the child with the mother, subject to one of the parties to file a parenting plan to set visitation. 179 Wn.2d at 416. The court determined

that the trial court had effectively reserved the parenting plan for an indefinite period and ruled that such open-ended plans were contrary to the legislative intent and common law authority. *Id.* at 427-28.

It certainly is arguable that *C.M.F.* would have prevented Judge Cozza from re-opening the parenting plan based solely on Judge Leveque's original determination that the plan could be reviewed when the children turned two.[2] As noted, however, that was not the basis on which Judge Cozza acted. The commissioner set the matter for hearing solely on the basis of Ms. McDevitt's relocation petition. CP at 68. Judge Cozza's order also solely invokes the relocation statute as the basis for revising the parenting plan. CP at 130.

Parenting plan modification based on relocation is governed by RCW 26.09.260(6). That statute provides:

> (6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine

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[2] In the course of its analysis, the *C.M.F.* majority noted several cases where trial courts had reserved parenting plans for one year periods (as Judge Leveque did here). 179 Wn.2d at 425-27. The court used these cases, without necessarily approving them, as a contrast for the open-ended reservation used in *C.M.F.* While the plan entered in this case was also a one-year reservation, Judge Cozza did not review the plan until several years later.

> adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

The third sentence clearly states that the relocation petition itself is a basis for modifying a parenting plan. The second sentence of subsection (6) also expressly permits consideration of new parenting plans as a result of a relocation request. As the commissioner's order referring the case for hearing and the trial judge's own findings both reflect that the relocation petition was the basis for the modification, there is no serious contention that the trial court acted on the basis of an open-ended reservation of the parenting plan.

However, the third sentence also states that an adequate cause for modification hearing "shall not be required *so long as the request for relocation of the child is being pursued.*" Ms. McDevitt strenuously argues that the emphasized language of the statute means that the trial court had to abandon the parenting plan modification once she indicated her intent to return to Hawaii. She contends that this situation is controlled by the decision in *In re Marriage of Grigsby*, 112 Wn. App. 1, 57 P.3d 1166 (2002).

In *Grigsby*, the mother petitioned for relocation to Texas from Washington due to her fiancé receiving a job offer, while the father attempted to restrain the mother from

leaving the state. *Id.* at 5-6. At the end of a three-day trial, the judge denied the motion to relocate and did not address the parenting plan, leaving that to the parties if they deemed it necessary. *Id.* at 6. The mother's counsel promptly announced that the mother no longer desired to relocate. *Id.*

Despite the denial of the relocation request, the father sought a hearing to modify the parenting plan by making him the primary care parent. *Id.* The court granted the request and also made minor modifications to the residential schedule, in part so that there would be no danger of uprooting the children should the fiancé find different out-of-state employment. *Id.* at 6, 15-16. The mother appealed. *Id.* at 6.

Division One of this court reversed the parenting plan modification, concluding that the previously emphasized language of the third sentence ("so long as the relocation is being pursued") precluded the modification of the parenting plan once the mother withdrew her request. *Id.* at 16-17. Having followed the same procedure as the mother in *Grigsby*, Ms. McDevitt understandably believes that the same outcome should result here.[3] However, there are two significant factual differences between this case and that one.

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[3] In light of our disposition, we need not decide whether we entirely agree with *Grigsby*. We do note that the statute only waives the requirement of an adequate cause hearing when a relocation request is pursued; the statute does not similarly speak to the trial court's authority to modify a parenting plan when a request is no longer being pursued. While the *Grigsby* reading of the statute would promote judicial economy where (as there) the court has not already acted on the parenting plan modification, there

The biggest difference is the fact that unlike the mother in *Grigsby*, Ms. McDevitt actually did relocate while the motion was pending. Judge Cozza here was thus dealing with an accomplished relocation rather than an anticipated one. It also was the second relocation Ms. McDevitt had made since the dissolution had commenced. Under these circumstances, we think the trial court properly could act upon the actual factual circumstances before it rather than on the anticipated future conduct of Ms. McDevitt.

The other significant difference is that unlike *Grigsby*, here the trial court had ruled on the parenting plan modification before Ms. McDevitt acted to withdraw her request to relocate. Allowing Ms. McDevitt to withdraw her request at that stage essentially gave her veto power over a decision she did not like. A parent, rather than the trial judge, then would be the one who decided what was in the current best interests of the children. Such an outcome is contrary to the legislative intent of the parenting plan statute.

For both reasons, we do not believe *Grigsby* controls the outcome here. Having been presented with an actual move to Colorado, and no objection to the move, the trial court approved the relocation and entered a parenting plan appropriate to the new

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is little judicial economy when the withdrawal comes at the end of a contested hearing after the court has been supplied significant information concerning the current best interests of the children. Although the legislature may have intended to also foreclose review of the parenting plan when relocation is no longer on the table, we normally would expect a clearer limitation on the court's otherwise broad authority to make the parenting plan modification decision.

geographic relationship and the age of the children. This resulted in more equal visitation and the sharing of parental responsibility, an outcome that normally would have occurred in the original parenting plan if Ms. McDevitt had not relocated to Hawaii in the first place. Under these circumstances, we see no error. The fact that Ms. McDevitt then wanted to return to Hawaii, even for a legitimate reason, did not alter the fact that Judge Cozza had authority to revise the parenting plan to fit the changed realities of the parties then before him.

Since Ms. McDevitt has returned to Hawaii, she is free to file another relocation petition. The trial court is affirmed.[4]

Korsmo, J.

WE CONCUR:

Brown, A.C.J.

Fearing, J.

[4] Ms. McDevitt asks us to stay the imposition of the modification order requiring the children to spend the summer with Mr. Davis. We deny that motion with leave for her to renew it in the trial court if she files a new relocation petition.