Supreme Court No. 923027
Court of Appeals No. 72343-0-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BYRON MCNAUGHT,

Appellant/Petitioner

v.

ANGELIKA MCNAUGHT

Appellee/Respondent

ON APPEAL FROM THE COURT OF APPEALS, DIVISION ONE

RESPONSE TO PETITION FOR REVIEW

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TABLE OF CONTENTS

I. INTRODUCTION

COMES NOW Respondent, Angelika McNaught, by and through counsel of record, and responds to the Petition for Review.

Respondent respectfully requests the court to deny the Petition in its entirety, and award attorney fees. This is because the decision by the trial court and analysis by the Court of Appeals was correct.

II. RESPONSE TO ISSUES FOR REVIEW

1. The Petitioner misstates the actions of the trial court. The trial court did not arbitrarily decide the mother was the primary residential parent solely (or at all) on the basis of the temporary order, or improperly impose a presumption "before the final parenting plan was entered"; it found as a result of all the evidence and testimony at trial that the mother had been, and was, the primary residential parent, and properly applied the presumption in the Relocation Act, RCW 26.09.520.

2. The ruling by the trial court, that the mother was the primary residential parent, did not violate the father's right of access to a judge and a full trial. The father had a multiple day trial, with an attorney; he called all the witnesses, including the parenting evaluator; he presented all the evidence he wanted to present. The right of access to a judge does not

include a right to have a decision that the father likes.

3. The relocation presumption, as applied in this state, does not violate the equal protection clause under Article 1 and 4 of the Washington Constitution.

4. Division I and Division II do not conflict in how presumptions are applied in the context of divorce trials, where relocation is an issue and there is no final parenting plan.

5. The rule in Division I should not be reversed; there is no evidence - other than articles attached to the Petition - that it applies "outdated" social science; it does not put children or families at risk; and there is no evidence that it spurs more litigation then the prior relocation case law. Further, reversing the "Division I rule" would mean, as a practical matter, overturning the entire Relocation Act.

III. STATEMENT OF THE CASE – BACKGROUND

Much of Appellant's statement of the case is accurate. Much of the evidence he relies upon, however, is misleading; mischaracterized; or leaves out much of the trial evidence.

1. Angelika's Home Was in Texas. The evidence was clear that Angelika's heart was in Texas. RP at 1033-1034. She and Byron had lived in Texas before moving to Washington. They had gotten married in Texas.

Byron's brother and sister – with whom he was close – lived in the Dallas area. RP at 58-59.

She could have a much better life in Texas. Before moving to Washington, they had owned a house in Texas, where she had an art studio and a fenced backyard. It had about 2200 square feet. RP at 1248-1249. By comparison, Byron's apartment in Mercer Island, which cost him $1,370 per month, about the same cost as their mortgage had been in Texas, had a thousand square feet; no secured parking; and did not even have a microwave. RP at 1252-1253.

Angelika's mother, sister, and her children lived in the Dallas area, and had for years. RP at 16. Angelika talked to her mother and to her sister frequently. Alaina and her cousins were close as well. RP at 22-23; RP at 66. The cousins were the only extended family close to her age that Alaina had. Byron's siblings in Texas had no children.

All of Angelika's close friends – that she had grown up with – were all in the Dallas area. RP at 59-60.

It was important to Angelika to raise Alaina close to her family and cousins. Angelika testified that she wanted Alaina to grow up, close to her cousins and family. She wanted their support. RP at 432.

Angelika also testified that she had no support system to speak of in Washington, to help raise Alaina. Byron had made it clear he was going to insist on the exact terms of the parenting plan; he planned to have witnesses at every exchange until Alaina was 18, RP at 1289-1290, despite being asked by Angelika to dial down the hostility.

While it was true that Laurel McNaught and she had been close, Laurel McNaught had taken sides in the divorce. She had insisted on accompanying Byron to every single exchange, solely to protect him from Angelika. She sat or stood where she could watch and listen to the exchanges. RP at 885. That was intimidating to Angelika. RP at 198-200. Angelika had asked not to be at exchanges all the time. RP at 896. She refused to stop. RP at 896.

Laurel testified at trial she was prepared to do that – to go along and watch at exchanges – if asked, until Alaina was 18 years old. RP at 901. This taking Byron's side, directly against Angelika, destroyed the trust and any relationship between the two women. Laurel McNaught was not going to be any support to Angelika; she had made herself the enemy.

The time Laurel spent with Alaina did dwindle over time. By her enmity to Angelika, she made it impossible for Angelika to trust her at all. Angelika's employer cut back her hours to 20 hours a week or so; she was

able to do her work when Alaina was sleeping, and so had no need for babysitting. RP at 87-88. By the time of trial, Laurel's contact with Alaina was only when Byron had Alaina.

While Angelika's mother, Lara Bach, had spent a good deal of time in Washington during the divorce, her parents could not make a living in Washington and they could not continue to come up here. RP at 166-168; 174-179. After the divorce, Angelika would be alone in Washington.

2. Angelika had done the majority of the parenting; Alaina was very, very close to her. The evidence was clear that Angelika had done the majority of raising Alaina, and was the primary residential parent. RP at 385-387.

The evidence was also clear that Alaina was attached to her mother far more than she was to her father. Alaina co-slept with her mother. When she was upset, or scared, she went to her mother. RP at 25-28; 109-116; 154-156. Byron had admitted that as well. RP at 170-172; 223-224; 228. Byron had not taken care of Alaina by himself for extended periods. RP at 273. He was uncomfortable taking care of Alaina by himself, RP at 1292-1293, and didn't like it. RP at 1293. In his own materials for Dr. Hutchins-Cook, he had estimated that he had done less than 40% of the

parenting duties. RP at 1301. Dr. Hutchins-Cook found Angelika had done 75%-85% of the parenting. RP at 384-385.

Byron reacted coolly when Angelika texted him about Alaina's progress. RP at 230-232. When they went on family vacations in Texas, Byron went and visited his family by himself, leaving Alaina with Angelika. RP at 21-22. When Angelika took Alaina to Texas for a two-week vacation, Byron never once called and asked how Alaina was. RP at 1304.

Their text messages also showed the depth of Alaina's attachment with her mother. RP at 220-225; Trial Exhibit 24, page 2.

Byron liked his "alone time", when he did not have to be with Angelika and Alaina. RP at 1302-1305. He took time off from work and went to the movies, or snowboarding, without his wife or daughter. RP at 1303-1304. He went out to social events, drinking with friends, while Angelika stayed home with Alaina. RP at 1067-1069.

Even Laurel McNaught's testimony showed the attachment between Alaina and her mother. During the day, when Angelika was working, when Laurel as at the apartment, she saw Alaina crawling to her mother and playing with her mother. RP at 855-856. Laurel testified that Angelika was a very good mother and she had no concerns about her. RP

at 860. (To be fair, she praised Byron as well. RP at 861. But it was apparent Angelika had spent the vast majority of the time with Alaina.)

Dr. Hutchins-Cook even testified that Byron could not calm her as Angelika could. RP at 374-375; 272-273. She testified that Angelika had done the majority of the parenting prior to the divorce. RP at 250; 257. While she did say that Alaina was attached to both parents, she did not compare the two attachments. RP at 291. That was left to the other witnesses.

While Dr. Hutchins-Cook did recommend an eventual 50/50 parenting plan, she was clear this was conditioned on development and a plan that suits time away from each parent according to developmental stage. RP at 248. She could not specify what that actually meant, however. RP at 248.

Alaina had never been in daycare. Angelika chose to work from home, specifically so that she would be there for Alaina. RP at 75-76.

3. Angelika testified that it was important for Alaina, to grow up in a house. In a house, unlike an apartment, she would have a back yard to play in, without having to be watched constantly. RP at 1034-1037; 939-941. Alaina knew how a house was better than an apartment. RP at 1034-1036. She could play outside in the back yard. RP at 927. She could have

a pet – one of Angelika's dreams was to have a pet dog for Alaina to play with. RP at 926-927. She could have the kitchen she had always wanted. RP at 928. All of this is impossible or minimal in an apartment.

4. Angelika could afford to buy a nice house in Texas and was unqualified to buy one in Washington. Angelika was pre-qualified, on her salary of $45,000 a year or so, to buy a house for about $200,000. RP at 451. There was a wide variety of very nice homes in Plano in that price range. Trial Exhibit 29. She did not want to buy a condo; RP at 931-933. She could not make more money in her career, as a practical matter, than $45,000 a year. RP at 1004-1005. She did not want to spend Alaina's childhood in a rental. RP at 447-4550; 1004-1006; 1036-1037.

With current mortgage rates, Angelika could buy a house for $190,000, with a monthly payment of between $1100 and $1300 a month. RP at 928-931; 451-454. That was much cheaper than her apartment rent on Mercer Island of $2,500 per month, which was going up each year. RP at 929-931; 447-450. The cost of a home in Texas, far better than a comparable home in Washington, was comparable to the apartment rent ($1370 per month) that Byron was paying. RP at 1252.

Byron cannot argue here that Angelika did not demonstrate that she could not meet her expenses if she purchased a home in Washington; he argued that she could buy a home in Washington. RP at 1311-1312.

Byron had put together a selection of comparable homes in Washington that he felt were appropriate for his child, and that were in that price range. Trial Exhibit 163. (These were the "ugliest homes" that Appellant refers to. In fact, this exhibit was gathered and submitted by Byron, not Angelika. RP at 1262; 1316.) The contrast between a $190,000 home in Plano and a $190,000 home in Washington speaks for itself. That became quite clear when Byron was walked through the details of the homes he had used in Exhibit 163. See Trial Exhibit 31; RP at 1262-1273.

5. The cost of living was substantially lower in Texas. Testimony showed most living expenses were substantially lower in Texas. RP at 104-105; 457-466. Also Trial Exhibit 23. Byron testified the house they had owned in Texas, a house with 2200 square feet and an art studio for Angelika, had cost only $1423 per month. RP at 1248-1249. That house also had a fenced back yard. RP at 1249. Byron, at trial, was thinking of buying a home; he expected to pay about $290,000 and he expected to be a condo. RP at 1251. He thought he could afford that much on his salary.

The lower expenses have two effects: first, Angelika can afford a nicer home for Alaina; second, she can afford more – or better – extra enrichment activities for Alaina. If on Mercer Island she could afford one activity – say, gymnastics – in Texas, she could afford both gymnastics and ballet. A dollar simply stretches farther, where expenses are lower. This can only benefit Alaina.

6. Angelika did not blindside Byron or the trial court in her relocation. It is important to understand what happened in the parenting evaluation. After the temporary orders were entered, Angelika made a real effort to try to make staying in Washington work. She tried to get along with Byron.

Her mother came up a lot, and her parents tried to buy a home in Washington. Her parents were trying to make a living by buying and flipping houses. Angelika did tell Dr. Hutchins-Cook she intended to stay here; she felt it was important, if at all possible, to try to make it work.

It turned out to be impossible. Her parents tried to buy two different houses. Trial Exhibits 26 and 27. Both sales fell through, and it was clear to them that Washington was simply too expensive. The first attempt was on March 6, 2014; that deal fell through. RP at 167-170; Trial Exhibit 26. The second attempt was on May 21, 2014. Trial Exhibit

27. Dr. Hutchins-Cook released her report on April 21, 2014 – a month before her parents' second attempt to buy a home. Trial Exhibit 3.

That deal also fell through; the sellers had multiple offers and her parents could not compete. RP at 432-440.Her parents decided they could not live here. Angelika would be alone. By the time of trial, her parents had actually signed a purchase and sale agreement for a house in McKinney, right next to Plano, for $215,000. See Trial Exhibit 32. That house is far better than the average $215,000 home in Mercer Island. Trial Exhibit 32, pages 11-14.

But the evidence is indisputable that her parents were seriously trying to buy a house here, and Angelika was still trying to make it work here, a month after Dr. Hutchins-Cook released her report. The recommendations were not the reason she decided to relocate.

The relationship with Byron had gotten worse. There was evidence that Byron was following her; and despite her request, he insisted on having both of his parents at every single transfer, looking at her, intimidating her.

She decided that staying in Washington was impossible and she had to move. She provided a Notice of Relocation appropriately.

7. Angelika made much less than Byron; her income would stretch much further in Texas. Finances drove her decision to move as well. Byron's income was $144,000 for 2013, and likely to be better than that in 2014. Byron's career was in very good shape; he had ample ability to live on Mercer Island and buy a home.

Angelika was in the exact opposite position. She made only about $20,000 in 2013. She had made about the same by the time of trial in 2014. Trial Exhibit 10; Financial Declaration at Trial Exhibit 7. Even working full time, the most she could likely make was $40,000 or so a year – not enough to buy anything in King County. She would never make anything close to what Byron was making. While she assumed the court would order some maintenance, the chances were it would only last 2-3 years at most.

Cost of living was a huge factor. The Mercer Island apartment rent had gone up to $2,500 per month – over half of her income. It was likely going up again the following year. RP at 929-931; 447-450. Most expenses were either the same or much less in Texas. See Trial Exhibit 23.

Angelika did provide the Zillow details on Byron's comps, however. Trial Exhibit 31. They showed one of his houses was located

next to a junkyard; others were condos with tiny kitchens. The comparably-priced houses in Texas were far superior.

It was true that moving to Texas would not increase her income. But it was also very true that her income bought a lot better lifestyle in Texas, for her and Alaina, than it ever would in King County.

Byron produced no evidence that a move to Texas would harm Alaina. In fact, the opposite was true: she would end up living in a much nicer house. She would be able to afford many more activities than Angelika could pay for in Washington, since activities are paid for from discretionary income.

Dr. Hutchins Cook did not testify that Alaina should not relocate. She specified that she had no opinion, though she was not a fan of relocations in general. She did testify that Angelika had done the majority of the parenting. She did say Byron had come a long way in his parenting.

She also testified, when asked specifically about which would cause greater harm to Angelika – disrupting her relationship with her mother, or with her father – disrupting the relationship with her mother would cause greater harm. There was no equivocating in her answer.

She also testified that in a long distance relocation, Skype can be a viable means to maintain a relationship.

Byron did have the time and money to travel. He made over $145,000 per year, and his career was on the rise. He could work from home, with prior coordination with his supervisor, and he had 20 days per year of vacation in addition.

There is a cost to long distance transportation. It is possible that, if Byron actually takes all the time he has under the Parenting Plan, that the costs of travel may equal the lower cost of Texas. But that assumes Byron will actually do all the travel; and it does not take into account the greater quality of life for Alaina, living in her own house, with their own backyard, and a pet, close to her cousins and aunt and grandmother –for the same cost as living in a two-bedroom apartment somewhere in King County. This comparison is inapt.

Ultimately, Dr. Hutchins-Cook did recommend a parenting plan which would, eventually, in two years, go to a 50/50 plan. But initially, under her proposal, Byron actually had the same or a little less time than he had under the parenting plan.

It is also important to note that throughout the trial, Byron maintained that he should be named the primary residential parent. He has not appealed the court's decision to name Angelika as the primary residential parent.

IV. ARGUMENT

a. Imposing A Presumption in The Dissolution Does Not Violate Due Process. Petitioner argues that imposing a presumption before a final parenting plan is entered violates due process. This is not correct.

As a factual matter, to the extent that "due process" means the right to a trial, Mr. McNaught clearly had due process. He had a multi-day trial; he had counsel; he called every witness he wanted to call. He had the testimony of a parenting evaluator. He had many pages of evidence. The record is voluminous. He cannot – with a straight face – argue that he was not given a hearing.

Petitioner is correct that to have due process, the parents must have full access to the courts with a meaningful opportunity to be heard. Bay v. Jensen, 147 Wash.App. 641, 656, 196 P.3d 753 (2008). Byron had a full trial, in every sense of the word.

Petitioner seems to be arguing that the presumption in the Relocation Act is either unconstitutional or violates due process.

A party asserting that a statute is unconstitutional must, by argument and research, persuade the court that there is no reasonable doubt that the statute violates the Constitution. Island County v. State, 135

Wash.2d 141, 146-47, 955 P.2d 377 (1997). Mr. McNaught has not done that.

No Washington court has found that. In fact, Washington courts have consistently found the opposite. One example is Osborne v. Osborne, 119 Wash.App. 133, 144, 70 P.3d 465 (Div I, 2003). Osborne noted that unlike Troxel v. Granville, 530 U.S. 57, 66, 120 S.Ct. 2054, 2059, 147 L.Ed.2d 49 (2000), or In Re Custody of Smith, 137 Wash.2d 1, 20, 969 P.2d 21 (1998), which establishes visitation rights, the Relocation Act "establishes a rebuttable presumption that the relocation of the child will be allowed. Thus, the Act both incorporates and gives substantial weight to the traditional presumption that a fit parent will act in the best interests of her child. The burden of overcoming that presumption is on the objecting party, who can only prevail by demonstrating that the detrimental effect of the relocation upon the child outweighs the benefit of the change to the child and the relocating person." Osborne at 144, citing RCW 26.09.510.

Osborne also found that the Relocation Act had none of the defects that caused the US Supreme Court with respect to RCW 26.10.160(3), or the Washington Supreme Court to find the former RCW 26.09.240, facially unconstitutional. Osborne at 145-146.

Because the Relocation Act is constitutional, the only possible due process violation is whether the test in Marriage of Horner, 151 Wash.2d 884, 895, 93 P.3rd 124 (2004); Osborne, and Kim, supra, violates Mr. McNaught's due process rights. It clearly does not.

Horner is very clear that the interests and circumstances of the relocating parent are particularly important. The standard for relocation is not only the best interest of the child. Instead, the trial court must consider the child and the relocating party within the context of the competing circumstances and interest required by the Relocation Act. Horner at 895.

Horner, and the Relocation Act itself, does not deal specifically with divorces where relocation is an issue in the divorce trial. The one case dealing directly with that is Marriage of Kim, 179 Wash.App. 232, 240-242, 317 P.3d 555 (2014), Pet. Den, 180 Wash.2d 1012, 325 P.3d 914.

First, Marriage of Kim, citing Horner at 895, found that where the trial court makes a decision on the "best interests of the child", Kim at 243-244, it overlooks the statutory presumption that a proposed relocation will benefit the child and, therefore, will be granted. Kim at 245. Thus a relocation decision, based solely on a "best interests" test, as proposed by

Petitioner, is not a mere "interpretation" of a statute; it is contrary to the plain language of the Statute itself.

Second, because Kim is a case where the court made a relocation decision as part of the final divorce trial, the Kim directive is clear: in a trial where relocation is an issue, the trial court must first decide who the primary residential parent is, and then apply the Relocation Act factors (and the presumption) to decide whether the child may move. But the question of who the primary residential parent has been, in a divorce trial, is primarily a factual decision, not a legal one.

The court heard testimony on both relocation factors and the parenting history of the parties. The evidence and testimony was clear that Angelika had been the primary residential parent, in that she had provided the majority of the child's care during the marriage, and the child was more bonded to her than to the father. The parenting evaluator's testimony supported that conclusion. Mr. McNaught himself agreed that Alaina was more bonded, in effect, to her mother. This finding had nothing to do with the temporary order.

There is no due process violation. The trial court did not simply use the temporary order as a shortcut; the evidence was overwhelming that Angelika was and had been since birth, the primary residential parent.

We would note that this court has probably considered the due process rights of a non-relocating party, when it denied review of Marriage of Kim. This issue has been decided.

2. The Presumption in Division I Cases Do Not Conflict with Due Process. Petitioner argues that Division I cases treat fathers and mothers unequally.

This is patently not true. A divorce, by definition, divides the children's time between the parents. But while both parents have a fundamental right to a relationship with their children, vis-à-vis the State, there is no fundamental due process right, under the Constitution, to any specific amount of time vis-à-vis the other parent. **There is no due process right to half the time with the child.**

Petitioner argues that Division I was wrong when it found that the non-primary parent bears the burden of proof. But that burden is an inherent part of the Relocation Act itself, not Division I.

3. Divisions Do Not Conflict in Applying Presumptions. Petitioner argues that the application of presumptions under Washington law differ between jurisdictions, and cites Bank of Washington v. Hilltop Shakemill, Inc., 266 Wash. App. 943, 946, 614 P.2d 1319 (1980). Hilltop Shakemill,

Inc. is a case dealing with community debt, not parenting, and not with a statute that specifically provides for a controlling presumption.

There are no cases, in Division I or II, that we can find, where the courts' decisions in relocation cases applied the Relocation Act presumption differently.

It is true that in Welfare of C.B, 134 Wash.App. 942, 955, 43 P.3d 846 (2006), Division II held that where a parent's Constitutional rights are at issue, the statutory presumption requires a parent to assume the burden of production but not persuasion. But that is qualitatively very different from a relocation case, where the Act provides for a rebuttable presumption, and where the rights are those between the parents, and not a parent versus the State.

Petitioner then argues that when an objecting parent produces "proof", the presumption should go away, and the parents should then be on a level playing field. The court should note there is no definition of what amount of "proof" would be sufficient to discard the presumption. That is because there is no way to separate the burden of proof from the presumption in the Act.

That proposition is completely contrary to the Relocation Act, which states that the relocation **will** be allowed (*emphasis added*) unless

the objecting party proves that "the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the [11 child relocation] factors." RCW 26.09.520.

It is not the relocating party's job to argue for the presumption to apply. That is not the nature of a "presumption". Under the Act, the presumption is built in. The relocating parent may move unless the presumption is rebutted; clearly the objecting party has the burden of proof. But "production" and "persuasion" go hand in hand. "Rebutting" a presumption implies both a requirement for evidence; and persuading a court that it is sufficient to overcome the presumption.

A trial is not a summary judgment hearing, where a prima facie case is sufficient to avoid summary judgment. It is a weighing of factors, like any decision in a divorce case.

It is impossible to separate the existence of "proof" from the weight of it. There is no such thing, in a divorce trial, as a bright line standard for "rebutting" the presumption, just as there is no bright line test for deciding a parenting plan, awarding maintenance, or dividing assets. It is always a complex matter of hearing testimony and evidence from both parties; weighing the validity, relevance, truthfulness, etc., of the

witnesses, evidence, and testimony; and then deciding if the totality of all the evidence is sufficient to rebut the presumption.

4. Division I Does Not "Extend the Law To The Detriment of Washington Citizens". Petitioner initially seems to argue for the rule in Marriage of Pape, 139 Wash.2d 694, 989 P.2d 1120 (1999). But Pape –as Petitioner points out - has been overruled by the Relocation Act.

Petitioner goes on to argue that in the past twenty years, research has shown that the social findings in the Act are supposedly simplistic and detrimental when applied as a bright line.

We absolutely do not agree that two articles – which were never before the trial court, or the appellate court, and which have unknown and unverifiable credibility or weight – are relevant to this case.

But "social science" is not a basis to find a statute unconstitutional, or to throw out all of the existing case law. That is left to the Legislature, not the courts. The presumption in the ACT is statutory in nature; and the Court has long since held the ACT is constitutional.

The ACT does not act to harm Washington citizens. Both parties here are Washington citizens; the ACT acts to resolve parenting and relocation disputes between parents. Obviously – as is true in almost all family law trials – one side, or both, inevitably feel they got hurt, and the

law was applied to their detriment. That does not mean the Act is detrimental to Washington citizens. Byron certainly felt it was applied to his detriment; but Angelika was also a Washington resident, and the exact same Act was applied to her benefit. The fact the application of a family law statute makes one half of the litigants unhappy does not mean it is unconstitutional.

Petitioner asks the court to as a legislature; make a value judgment as to what parenting plans are appropriate, and a value judgment as to whether any move is in the best interest of any child. In no uncertain terms, he is asking the court to find that the ACT is bad for children and should be thrown out.

That is not within the purview of the court. On an individual level, that is within the purview of the trial court, which can – and did – hear expert testimony on the effect of a move on the child. (And decided there was little detriment.) On a macro level, it is the job of the legislature to consider "social science", in deciding how to deal with parents moves.

There is no evidence that the ACT "spurs" litigation. Indeed, it arguably acts to discourage litigation. By creating a rebuttable presumption, it makes it harder to fight a parent's moving; and that discourages litigation over moving parents.

IV. AN AWARD OF ATTORNEY FEES IS WARRANTED.

Attorney fees are awarded on the basis of need and ability to pay; and at the appellate level under RAP 18.1. There was no question Byron had superior resources and greater income than Angelika did. It was also clear that in the future, Byron would be making more money; Angelika would not.

Byron testified that with his current income of $140,000 per year, he only had expenses of $4,959 per month. RP at 1257; Trial Exhibit 17. He expected to make about $12,000 per month this year. RP at 1256. (This was without maintenance or child support factored in.) His W-2, bank statements, and his 2013 tax return all support the court's decision that he has ample ability to pay. See Trial Exhibits 7 (W-2); 14 (Husband's 2013 tax return), and Exhibit 109 (Husband's Bank Statements).

An award of attorney fees was well within the discretion of the trial court.

V. CONCLUSION

Petitioner would ask the court to find (1) the application of the Relocation Act presumption, in a divorce trial, is a new issue; (2) that the presumption that is integral to the Relocation Act should be discarded if the objecting parent can supply a minimal undefined modicum of

evidence; and (3) the court should overturn the entire Relocation Act because of an article.

None of these are bases for considering this appeal. This is, in fact, a run-of-the-mill divorce case, where the evidence was very strong that the mother had been, and was, the primary residential parent, and where the reasons for relocating were very strong. The court used well-settled law in making its decision. There is no conflict between Divisions; there is no real ambiguity in the application of the Relocation Act. This Court should deny the Petition.

We would ask the court to deny the appeal and award the mother attorney fees under RAP 18.1.

RESPECTFULLY SUBMITTED this 10th day of October, 2015.

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TABLE OF AUTHORITIES

FEDERAL CASES

STATUTES

STATE CASES

COURT RULES

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In Re The Marriage Of: ANGELIKA McNAUGHT, Respondent and BYRON McNAUGHT, Appellant	NO. 923027 DECLARATION OF DELIVERY

I certify that I am Craig Jonathan Hansen. I am over the age of 18, am competent to testify, and have personal knowledge of the facts of this case. On October 12, 2015, I caused to be delivered via ABC Legal Messengers, to:

Washington Supreme Court
Olson & Olson PLLC Leslie J. Olson 1601 Fifth Ave Ste 2200 Seattle WA 98101-1625

which were the last known addresses, containing Respondent's Reply Brief; Declaration of Delivery, to be delivered not later than October 13, 2015.

Dated this 11 day of October 2015.

CRAIG JONATHAN HANSEN