Case #93873-3

THE SUPREME COURT OF WASHINGTON

On appeal from:
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
#48027-II

Angela K. Scoutten kna Schreiner

Appellant,

v.

Michael J. Scoutten

Respondent.

APPELLANT'S REPLY TO RESPONDENTS BRIEF

Angela K. Scoutten kna Schreiner
5105 Grand Loop Way #602
Tacoma, WA 98407

A. ASSIGNMENTS OF ERROR

1. The Appellate Court is factually incorrect that Mr. Scoutten filed a separate Petition for Modification in this case. The trial court did not change the case type from a relocation trial to a modification trial at any time. This decision in direct conflict with both Hoseth, 115 Wash. App. At 569, 63 P 3d 164, and In re Custody of Halls, 126 Wn. App. 599, 608, 109 P.3d 15 (2005).

2. The Appellate Court erred by determining that Adequate Cause was not required before making a major modification to an existing parenting plan citing the modification statute RCW 26.09.260(2)(c) regarding detriment to the child. The trial court erred by determining adequate cause was waived "just by virtue of the filing of the relocation".

3. The Appellate Court erred by determining that a substantial change occurred as defined by statute and RCW 26.09.260(2)(c). The Appellate Court erred by determining that all procedural and statutory requirements were not applicable to the trial court in this case before making a major modification to an existing parenting plan in accordance with the modification statute RCW 26.09.260(2)(c), not the relocation statute RCW 26.09.260(6). The trial court failed to followed the proper statutory framework in accordance with RCW 26.09.260(1)(2).The Appellate Court erred by ignoring the statutory requirement that a modification was both necessary and in the best interests of the child in accordance with RCW 26.09.260(1),

4. The Appellate Court erred by refusing to review de novo Appellate Error #28 in Appellants Brief regarding the trial court's error to require mandatory dispute resolution provisions in RCW 26.09.184(4) and in accordance with the provisions in the prior final parenting plan entered May 3rd, 2013, RCW 26.09.260, Pierce County Local Rule 16(4)(c) and

PCLSPR Rule .94.05. In re the Parentage of Austin Smith-Bartlett, a court of Appeals Division 3 case, that court held "The mandatory dispute resolution provisions of the domestic relations statute require de novo review." RCW 26.09.184(3)(e).

B. ARGUMENT

1.Petition for Modification

The Appellate court neglected to address Appellant's Error #16 and upholding a trial court decision that failed to require Mr. Scoutten to file a separate Petition for Modification before making a major modification to an existing parenting plan under the modification statute RCW 26.09.260(2)(c). In re the Marriage of: Linderman, a Court of Appeals Division 3 case, that court held "Ms. McWain filed her Petition for modification and her petition for modification/objection on the same day. The petition for modification, which required a finding on adequate cause, was treated separately. The petition for modification was denied in July 2009. Ms. McWain's objection to relocation did not need a separate finding of adequate cause. As a result, her objection to relocation took a different path than her petitions for modification. The trial on the objection took place in March 2010. Applying the factors set forth in RCW 26.09.520, the court denied Ms. McWain's objection to relocation. The court explained that **this was a relocation proceeding, not a modification proceeding."** Similarly, the trial court in this case should have determined that this was a relocation proceeding, not a modification proceeding.

The reasons a party seeking to modify a prior custody decree must show a substantial change in circumstances are twofold: "[T]o discourage harassment of the parent who is awarded custody by the disgruntled parent

who is denied it and to assure as much stability as possible in the environment of the child." In re Habeas Corpus of Rankin, 76 Wn.2d 533, 537, 458 P.2d 176 (1969). [T]he court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. Absent a showing that our settled precedent IS incorrect and harmful, our interpretation of this consistent statutory language should remain consistent. State v. Abdulle, 174 Wn.2d 411, 415, 275 P.3d 1113 (2012).

A Court Abuses it's discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria. Hoseth, 115 Wash. App. At 569, 63 P 3d 164.

The Appellate Court neglected to respond to Error #16 in Appellant's Brief regarding Mr. Scoutten failing to **file** a Petition for Modification in this case. Mr. Miller falsely claims in his response that his client filed a separate Petition to Modify parenting plan and separate filing fee to justify a modification under RCW 26.09.260(1)(2). Mr. Miller contradicts his own claims in the Verbatim Report of Proceedings on page 445.

An Objection to Relocation was filed in this case (CP 52-58), not a separate Petition to Modify with affidavit setting forth facts required by RCW 26.09.260(1) (2) and PCLSPR 94.04 (g).

THE COURT: I don't have a working copy of the petition, and so—and Ms. Hosannah says there wasn't a separate Petition, but for some reason I had it in my mind that there was.

MS. HOSANNAH: No, it was just in the Objection.

MR. MILLER: It's in the Objection. **Yes, the objection is to the Petition and modification of custody decree. So it's all in this one document (VRP 445).**

RCW 26.09.260(1) (2) requires a petitioning party to file and serve his motion to modify with an affidavit and proposed parenting plan. See, e.g., In re Parentage of MF., 141 Wn. App. 558, 572, 170 P.3d 601 (2007) (holding that it is an abuse of discretion for a court to ignore the specific requirements of RCW 26.09.260); Further, under RCW 26.09.270, a party seeking to modify a parenting plan must submit with his motion "an affidavit setting forth facts supporting the requested modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits." And the court must deny the motion unless it finds adequate cause from the affidavits to hear the motion. RCW 26.09.270. In re Custody of Halls, 126 Wn. App. 599, 608, 109 P.3d 15 (2005) (holding that a petition's failure to comply with any of the procedural requirements of RCW 26.09.270 meant the court did not have jurisdiction to modify the parties' parenting plan). The trial court was made aware of the fact that Mr. Scoutten did not file a Petition for Modification after the relocation trial (VRP 445) but still proceeded to modify the existing parenting plan more than a month later citing a modification statute(RCW 26.09.260(2)(c), not the relocation statute(RCW 26.09.260(6). Mr. Miller stated on record to the trial court that his client **had not** filed a separate Petition to Modify with affidavit setting forth facts on May 4th, 2015. Mr. Miller stated that his client had filed an Objection to Relocation (RP 445). Additionally, there were no affidavits or proposed parenting plan filed along with the missing Petition for modification required by statute (RCW 26.09.270) In re Custody of Halls, 126 Wn. App. 599, 608, 109 P.3d 15 (2005) (holding that a

petition's failure to comply with any of the procedural requirements of RCW 26.09.270 meant the court did not have jurisdiction to modify the parties' parenting plan). There were no attachments to the Objection to Relocation. An Objection to Relocation is filed on form: WPF DRPSCU 07.0730. A Petition to Modify is filed on form: WPF DRPSCU 07.0100. The forms are different, have different requirements, and apply to different statutes. An Objection to Relocation does not include an adequate cause finding or a substantial change of circumstances required to justify a modification of the parenting plan under RCW 26.09.260 (1)(2). Further, none of the allegations were included in the Objection to Relocation, therefore I was never given an opportunity to respond in a required opposing affidavit (RCW 26.09.270). Since the trial court modified the parenting plan under RCW 26.09.260(2)(c), Mr. Scoutten was required to file a Separate Petition for Modification. The trial court erroneously proceeded to make a major modification of the parenting plan without a Petition to Modify, without required affidavits, without a response to the required affidavits, without adequate cause, without a substantial change of circumstances, without finding a modification was both necessary and in the best interest of the child(RCW 26.09.160(1), and without proof of harm to the child required under RCW 26.09.260(2) (c).

According to Pierce County Local Rules a modification action is commenced by completing the requirements listed below:

Petition to Modify Parenting Plan

PCLSPR 94.04 (g) Petition to Modify Parenting Plan/Residential Schedule

> (1) How Initiated. An action for modification of a final parenting plan/residential schedule is commenced by **the filing of a Summons, Petition for Modification of Custody, Proposed Parenting Plan/Residential Schedule, and Petitioner's Notice of**

> **Adequate Cause on the mandatory forms** under the existing dissolution, paternity, or other case.
> (2) Case Schedule. Upon filing, the Clerk's Office shall issue an Order Setting Case Schedule. Refer to Appendix, Form A.
> (3) Requirements. The petitioner(s) **shall obtain an Order Finding Adequate Cause on the Commissioners' dockets** on or before the court hearing date specified in the Order Setting Case Schedule or the petition will be dismissed without further notice. The petitioner(s) and respondent(s) **shall attend the mandatory Impact on Children seminar. A settlement conference, or other dispute resolution process, is required prior to trial**, unless waived by the Court; see PLCR 16(c).
> (4) Case Assignment. All Petitions to Modify Parenting Plan/Residential Schedule shall be assigned to Family Court.

RCW 26.09.181 (b) states: "In proceedings for a modification of custody or a parenting plan, a proposed parenting plan shall be filed and served with the motion for modification and with the response to the motion for modification." There were no attachments to a non-existent Petition for Modification or his Objection to relocation (CP 52-58).

2. ADEQUATE CAUSE

In re parentage of C.M.F., the Supreme Court stated "Washington case law is fairly uniform in erring on the side of requiring a party seeking to change a custody decree or a parenting plan to show adequate cause and then meet the statutory requirements for modification. See, e.g., In re Parentage of MF., 141 Wn. App. 558, 572, 170 P.3d 601 (2007) (holding that it is an abuse of discretion for a court to ignore the specific requirements of RCW 26.09.260); In re Marriage of Watson, 32 Wn. App. 222, 238-39, 130 P.3d 915 (2006) (holding that after the family law court had dismissed a modification petition for lack of proof it had no authority to make its own modifications); In re Marriage of Lemke, 120 Wn. App. 536, 541-42, 85 P.3d 966 (2004) (holding that a court does not have

discretion to grant a modification hearing if there is no adequate cause shown); In re Marriage of Shryock, 76 Wn. App. 848, 852, 888 P.2d 750 (1995) (holding that procedures relating to the modification of a prior custody decree are statutorily prescribed and mandatory).” Moreover, it would run contrary to the public policy embodied in chapter 26.09 RCW (i.e., protect the "best interests of the child") if the custodial parent could waive a statutory requirement meant to protect the stability of the child's life. See RCW 26.09.002; In re Marriage of Lemke, 120 Wn. App. 536, 540, 85 P.3d 966 (2004) (explaining that requiring a court to find adequate cause prevents harassment). "When interpreting a statute, our fundamental objective is to determine and give effect to the intent of the legislature." State v. Sweany, 174 Wn.2d 909, 914, 281 P.3d 305 (2012). The Appellate Courts ruling is in direct conflict with In re Marriage of Grigsby in this case. The trial court determined due process rights to an adequate cause hearing were waived “**just by the filing of the relocation**” (VRP 468). The intent to relocate was *filed* on January 31st, 2015(EX 1). It was not until over 3 months later on April 23rd, 2015 before a relocation trial was held, raising due process concerns.

Monday, May 4th, 2015

Afternoon Session

THE COURT:

In a relocation case, that adequate cause requirement is already satisfied just by virtue of the filing of the relocation, and it doesn’t go away regardless of the outcome of that decision. So even though Mom has decided that she isn’t going to relocate, the adequate cause is already satisfied. (VRP 468).

This is in direct conflict with a Division 1 Case. In re Marriage of Grigsby, the Appellate court was unambiguous that the person intending to relocate

does not waive the right to adequate cause by filing or **proposing a relocation**, as the trial court determined in this case (VRP 468).

"The Legislature's choice of language in RCW 26.09.260(6) is noteworthy. The statute provides that a hearing to determine whether there is adequate cause for the modification is not required "so long as the relocation is being pursued." **Had the Legislature indicated that a showing of adequate cause is not required after relocation is proposed, for example, the trial court's modification of the parenting plan here would have been proper. But the normal requirement of a showing of adequate cause is excused only so long as relocation is being pursued."** In re Marriage of Grigsby, 112 Wn. App. 1,57 P.3d 1166 (2002).

Similarly, in this case the trial court denied the relocation for M.S., and I withdrew my own relocation directly after that.

MS. HOSANNAH: I've had an opportunity to speak with my client, and she is not going to relocate (VRP 445).

In the Division One Case-- In Re Marriage of Grigsby, at the end of a three-day relocation 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 fiance find different out of-state employment. Id. at 6,15-16. The mother appealed. Id. at 6. Division One of the Appeals Court reversed the parenting plan modification, concluding the third sentence in RCW

26.09.260(6) 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." The emphasized language of the statute means that the trial court had to abandon the parenting plan modification once the relocating party withdraws the intent to relocate ("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. In re Marriage of Grigsby, 112 Wn. App. 1,57 P.3d 1166 (2002).

The Appellate Court in this case stated “the request for relocation was tried along with the request for modification without objection from the parties. Thus, the adequate cause challenge fails” (Pg. 17). However, contrary to the Appellate Court’s belief that Mr. Scoutten filed a Separate Petition for Modification to warrant adequate cause for relief in this case, that belief is factually incorrect. The reason there was “no objection from the parties” was because Mr. Scoutten’s Objection to Relocation (which is the only filing in this case) had the statutory right to ask for a principle change in residence as long as the relocation was being pursued for the child. However, after the trial court denied the relocation, the intent to relocate for the mother was also withdrawn on May, 4th, 2015. Therefore, the court lacked the jurisdiction to modify the parenting plan in accordance with settled Caselaw. In re Marriage of Grigsby, 112 Wn. App. 1,57 P.3d 1166 (2002). All court documentation records this as a relocation trial. The Order Assigning Case to Family Court and Notice of Hearing is filed under RELOCATION (CP 59). All Court paperwork indicates this case was continued under a relocation trial on three separate occasions. See Orders Amending Case Schedule (CP 71-72, CP 74-75, CP 199-200). The Note for Motion Docket indicates this was only a relocation trial (CP 51). The trial court did not change the course schedule

to a modification trial at any time. Moreover, the trial court did not modify the parenting plan citing the relocation statute. The trial court citied RCW 26.09.260(2)(c). This is a modification statute requiring Mr. Scoutten follow the procedural and statutory requirements in accordance with 26.09.260(1)(2) and PCLSPR 94.04 (g). The trial court did not require Mr. Scoutten to complete any of these requirements. In re Marriage of Shryock, 76 Wn. App. 848, 852, 888 P.2d 750 (1995) (holding that procedures relating to the modification of a prior custody decree are statutorily prescribed and mandatory).

PCLSPR 94.04 (g) Petition to Modify Parenting Plan/Residential Schedule

(1) How Initiated. An action for modification of a final parenting plan/residential schedule is commenced by the **filing of a Summons, Petition for Modification of Custody, Proposed Parenting Plan/Residential Schedule, and Petitioner's Notice of Adequate Cause** on the mandatory forms under the existing dissolution, paternity, or other case.

(2) Case Schedule. Upon filing, the Clerk's Office shall issue an Order Setting Case Schedule. Refer to Appendix, Form A.

(3) Requirements. **The petitioner(s) shall obtain an Order Finding Adequate Cause** on the Commissioners' dockets on or before the court hearing date specified in the Order Setting Case Schedule or the petition will be dismissed without further notice. The petitioner(s) and respondent(s) shall attend the mandatory Impact on Children seminar. A settlement conference, or other dispute resolution process, is required prior to trial, unless waived by the Court; see PLCR 16(c).

(4) Case Assignment. All Petitions to Modify Parenting Plan/Residential Schedule shall be assigned to Family Court.

3. Substantial Change of Circumstances: Detriment to the child (RCW 26.09.260(2)(c).

The Appellate Court found that "a change in MS's environment so that the child is more bonded with one parent over another, or one parent's ability to provide stability over another parent is also justification under RCW 26.09.260(2)(c)"(Pg. 18). A parenting plan's overriding purpose is to do what is in the best interest of the child. RCW 26.09.002; see RCW 26.09.184(1) (detailing the specific objectives of a parenting plan). The legislature specifically recognized that the child's best interests are normally served "when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm." RCW 26.09.002. Whether the trial court had sufficient evidence to find detriment to the child under RCW 26.09.260(2)(c). It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a "better" decision. Smith, 137 Wn.2d at 20. The Supreme court has consistently held that the interests of parents yield to state interests only where "parental actions or decisions seriously conflict with the physical or mental health of the child." In re Welfare of Sumey, 94 Wn.2d 757, 762, 621 P.2d 108 (1980) (citing Parham, 442 U.S. at 603). Mr. Scoutten's self-serving testimony that he supposedly has a better relationship with M.S. than her mother and is supposedly more stable is not evidence of detriment to the physical, mental or emotional health of M.S. These are not the kind of substantial and extraordinary circumstances that justify state intervention with parental rights. There is a strong presumption against modifying a parenting plan and it requires a two step process, first adequate cause must be found and then the parties must proceed to trial

and prove (1) a substantial change occurred in circumstances as they were previously known to the court, (2) the present arrangement is detrimental to the child's health, (3) the modification is in the child's best interest, and (4) the change will be more helpful than harmful to the child. The legislature has clearly stated its goal of maintaining residential continuity in the children's lives. RCW 26.09.002; In re Marriage of Combs, 105 Wn. App. 168, 174, 19 P.3d 469 (2001).

Detriment RCW 26.09.260(2)(c)
THE COURT:
…**I didn't get any evidence that I think demonstrates the actual detriment. "(VRP 470, Court's Oral Ruling).**

4. Mandatory Arbitration

In re the Parentage of Austin Smith-Bartlett, a court of Appeals Division 3 case, that court held "The mandatory dispute resolution provisions of the domestic relations statute require de novo review." RCW 26.09.184(3)(e).

RCW 26.09.184(3) mandatory parenting plan arbitration : This arbitration is governed by RCW 26.09.184(3).The court's authority to mandate arbitration of disputes about the implementation of parenting plans derives solely from RCW 26.09.184(3). This statute mandates the inclusion in every parenting plan of a dispute resolution process, such as arbitration, as an alternative to court action. RCW 26.09.184(3). The statute requires that the precise language of the statute be included in every decree. RCW 26.09.184(3) (f). The statute provides:

Participation in the arbitration is mandatory on parents for all disputes about the plan, except those involving financial support. RCW 26.09.184(3)(b). The superior court cannot mix and match the arbitration rules from different statutes, because its jurisdiction to mandate arbitration is statutory. Banchero, 63 Wash.2d at 249, 386 P.2d 625. They are jurisdictional and cannot be changed by stipulation. Sullivan v. Purvis, 90 Wash.App. 456, 459-60, 966 P.2d 912 (1998). See PCLR 16(c). Settlement conferences are mandatory in dissolutions, paternity cases involving petition or motion for establishment of residential schedule or parenting plan and post-dissolution petitions for modification.

F. Conclusion

In re parentage of C.M.F., the Supreme Court stated "Washington case law is fairly uniform in erring on the side of requiring a party seeking to change a custody decree or a parenting plan to show adequate cause and then meet the statutory requirements for modification. See, e.g., In re Parentage of MF., 141 Wn. App. 558, 572, 170 P.3d 601 (2007) (holding that it is an abuse of discretion for a court to ignore the specific requirements of RCW 26.09.260); In re Marriage of Watson, 32 Wn. App. 222, 238-39, 130 P.3d 915 (2006) (holding that after the family law court had dismissed a modification petition for lack of proof it had no authority to make its own modifications); In re Custody of Halls, 126 Wn. App. 599, 608, 109 P.3d 15 (2005) (holding that a petition's failure to comply with any of the procedural requirements of RCW 26.09.270 meant the court did not have jurisdiction to modify the parties' parenting plan); In reMarriage of Lemke, 120 Wn. App. 536, 541-42, 85 P.3d 966 (2004) (holding that a court does not have discretion to grant a modification hearing if there is no adequate cause shown); In re Marriage of

Shryock, 76 Wn. App. 848, 852, 888 P.2d 750 (1995) (holding that procedures relating to the modification of a prior custody decree are statutorily prescribed and mandatory).”

Similarly, the trial court in this case made a modification citing RCW 26.09.260(2)(c), not RCW 26.09.260(6). Therefore, procedures related to the major modification of the prior custody decree entered May 3rd, 2013 were statutorily prescribed and mandatory. The trial court’s substantive and procedural decisions raise due process concerns.

Respectfully submitted,

Angela K. Schreiner, Pro Se 2/17/2017