No. 96438-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re the Marriage of:

TATYANA MASON,
Appellant in this Court/ Respondent in the COA-II

and

JOHN MASON,
Respondent in this Court/Appellant in the COA-II.

Tatyana seeks review of the Unpublished Opinion of the Court of Appeals division II in this case, No. 49839-1-II, filed on **July 31, 2018**.

A timely motion for reconsideration filed on August 20.
The Court of Appeals denied the motion on **September 24**.

Tatyana Mason's Petition for Review
Basis RAP 13.4

The decision of the Court of Appeals is in conflict with prior, published decisions of the Court of Appeals and of this Court re: **CR 60(b)(11)** which make clear the proper standard for review.

In its unpublished opinion, the Court of Appeals improperly applied de-novo instead of abuse of discretion, overturn the Trail Court's findings and substituted its own judgment.

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<u>**TABLE OF CONTENTS:**</u>

Table of Authorities iii

I. IDENTITY OF PETITIONER 1

II. COURT OF APPEALS DECISION..1

III. INTRODUCTION..1

IV. ISSUES PRESENTED FOR REVIEW 2

V. STATEMENT OF THE CASE 3

A. The Trial Court vacated two orders of child support pursuant to CR60(b)(11) extraordinary circumstances and sanctioned John and his attorney under CR11(a)(1)(2)(3) for multiply lies during the proceeding.............................. 3

B. On appeal, the court of appeals applied **de-novo** instead of abuse of desertion, overturn the trail court findings, approved John's lie which was specifically rejected by the trial court and substituted its own judgment 4

VI. FACTS ON REVIEW 4

A. In issuing its decision, the trail court found 4

B. The Trial Court did not merely find John to be not credible, but found that John intentionally **lies multiple times** through his advocacies in the trial court in violation of CR 11(a)(1)(2)(3) by Judge 9

C. The Court of Appeals ignored the findings of the trial court, instead of applying the abuse of discretion standard 11

VII. ARGUMENT 12

A. Standard for Review 12

B. The Trial Court Did not Abuse its Discretion When it Overturned the Two Child Support Orders Pursuant to CR60(b)(11) 12

C. The Court of Appeals failed to give deference to the trial court's credibility determinations 17

This Court to ignore John's answer to Tatyana's petition for review because John will continue lies through his advocacies in violation of RAP 18.9 as he did it during the trial court in violation of CR11(a) by judge and lies at the Court of Appeals in his opening brief and his answer to Tatyana's motion for reconsideration 20

VIII. CONCLUSION 20

<u>XI. APPENDIX</u> 21

(1). The Court of Appeals Unpublished Opinion Dated July 31, 2018 22

(2). Order Denying Respondent (Tatyana's) Motion for Reconsideration dated September 24, 2018 40

(3) The Trial Court's Oral Ruling dated 11/02/16 3 RP at 469-482 43

(4) The Trial Court's Oral Ruling re: John was found lied through his declaration and his advocacies in violation of CR 11(a)(1)(2)(3) by judge RP 12/09/16; the ruling started at 4 RP 14 line 21 62

(5) The trial Court order vacated the 2013 order of child support dated 11/27/16 *See* CP 122-5 85

(6) The trial Court order vacated the 2015 order of Child support dated 12/14/16 *See* CP 225-6 90

TABLE OF AUTHORITIES:

Boeing Co. v. Heidy,
147 Wn.2d 78, 87 (2002)... ... ...p.17

Davis vs. Davis, 2012-Ohio-2088... ... ...p.10;18;19

First-Citizens Bank & Trust Co. v. Reikow,
177 Wn.App. 787, 797, 313 P.3d 1208 (2013)... ... ...p.13

In re G.W.F.,
170 Wn. App. 631, 637, 285 P.3d 208 (2012)... ... ...p.17

In re Marriage of Flannagan,
42 Wn. App. 214, 709 P.2d 1247 (1985)... ... ...p.12;13;19

In re Marriage of Hammack,
114 Wn. App. 805, 810-11, 60 P.3d 663 (2003)... ... ...p.13

In re Marriage of Jennings,
138 Wn.2d 612, 980 P.2d 1248 (1999)... ... ...p.12;13;19

McCallum v. Allstate Property and Cas. Ins. Co.
149 W. App. 412 (2009)... ... ...p.17

Shandola v. Henry,
198 Wn. App. 889, 903, 396 P.3d 395 (2017)... ... ...p.12-3

State v. Asaeli,
150 Wn. App. 543 (2009)... ... ...p.17

State v. Tili,
148 Wn.2d 350, 360, 60 P.3d 1192 (2003)... ... ...p.14

State v. Eppens,
30 Wn. App. 119, 126, 633 P.2d 92 (1981))... ... ...p.14

In re Marriage of Thurston,
92 Wn. App. 494, 503-04, 963 P.2d 947 (1998)... ... ...p.13

I. Identity of Petitioner: Tatyana Mason, respondent at the Court of Appeals, (herein after Tatyana), petitions for review by this Court.

II. Court of Appeals Decision: Tatyana seeks review of the Unpublished Opinion of the Court of Appeals in this case, No. 49839-1-II, filed on July 31, 2018. Tatyana filed a timely motion for reconsideration on August 20. The Court of Appeals improperly denied the motion on September 24. A copy of the opinions and the trial court rulings are provided in the appendix.

III. Introduction: The trial court in this case properly exercised its discretion under CR 60(b)(11) to vacate two child support orders under extraordinary circumstances. The trial court was concerned with Tatyana's damaged immigration status that left her with no legal authorization to work; John's domestic violence and lies though his advocacies; and that the child support orders prevented Tatyana from receiving her permanent resident status and obtaining employment.3 RP 471,75-76[1]; CP 123(E)(H)[2]; Ex 38[3]; 4RP 17-9. The trial court did not merely find John to be not

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[1] The Verbatim Report of Proceedings are consecutively numbered and shall be referred to first by the date then "RP" then the page number: RP 10/17/16 is 1 RP at page; RP 10/18/16 is 2 RP; RP 11/02/16 is 3 RP; RP 12/09/16 is 4 RP.
3 RP 469-482 & 4 RP 14-21 are the oral rulings of the trial court.

[2] **CP 122-25** & **CP 225-26** are the orders vacated 2013 & 2015 orders of child supports.

[3] **Ex 38** is the USCIS letter dated 02/27/15 stated that in order for Tatyana to receive her permanent resident status and green card, Tatyana needs to submit: Certified copy of dismissal from appropriate state child support. 3 RP 471; 3 RP 475-6 line 22.

credible, but **found that John intentionally lied through his advocacies** in the trial court in violation of CR 11(a)(1)(2)(3) by judge. 4 RP 18-19. Also, John hid his financial obligation under I-864 affidavit from Tatyana and the trial courts. 4 RP 17-18. In its unpublished opinion, the Court of Appeals, rather than applying the required abuse of discretion standard of review, ignored the trial court's findings and substituted its own judgment. Op.11-4; 3 RP 471,75-6. Further, the Court of Appeals based its decision on John's false statements which were specifically rejected by the trial court under CR 11(a)(1)(2)(3). Op.13; 4 RP 17-9; 3 RP 474. The decision of the Court of Appeals is in conflict with prior, published decisions of the Court of Appeals and of this Court regarding CR60 (b)(11) which make clear the proper standard for review. Tatyana requests this Court accept review and reverse the court of appeals decisions.

IV. Issues Presented for Review: (1). Whether the trial court acted within its discretion in vacating the 2013 & 2015 child support orders on **the basis that the damage to Tatyana's immigration status which left her with no legal authorization to work** and earn income was an extraordinary circumstance requiring relief in the interests of justice.

2. Whether the trial court's acted within its discretion in vacating two orders of child support on the basis that the USCIS required Tatyana to file a certified copy of dismissal from appropriate state child support or court which it will allow Tatyana to fix her immigration status and obtain

employment was an extraordinary circumstance requiring relief in the interests of justice.

3. Whether the trial court's acted within its discretion in vacating two orders of child support on the basis that "is going to be beneficial to both parties in long run: it will ultimately allow Tatyana to obtain citizenship later on, which will terminate John's I-864 obligation later.

4. Whether the trial court's acted within its discretion and find through its observation that Tatyana is facing a language barrier and she is been operating at a disadvantage in 2013 trial court without interpreters.

5. Did the Court of Appeals apply the correct standard of Abuse of Discretion in reviewing the trail Court's decision?

6. Did the Court of Appeals improperly ignore relevant facts in overturning the trial court's decision?

7. Did the court of appeals inappropriately reject the trial court's determination of credibility of the parties?

8. Did the court of appeals inappropriately limit the trial court and Tatyana's trail brief to whether the prior court should have considered the I-864 affidavit of support that had not been presented in 2013?

V. Statement of the Case: **(A).** The Trial Court vacated two orders of child support pursuant to CR60(b)(11) as the extraordinary circumstances and sanctioned John and his attorney under CR11(a) (1)(2) (3) for multiply lies during the proceeding. **(B).** On appeal, the court of

appeals **applied de-novo instead of abuse of discretion**, overturn the trail court findings and substituted its own judgment. Because the court of appeals applied the wrong standard on review, the Supreme Court should hear this case and apply the proper standard of abuse.

VI. Facts on Review: (A) In issuing its decision, the trail court found that: "John brought Tatyana to the United States on a fiancéé visa in June, 1999". 3 RP 469; CP 123 (C); Tatyana did not speak, or understand English. 2 RP 244; CP 123 (G). "The Court is persuaded that [Tatyana] has difficulty understanding and communicating in English [even today]." 3 RP 477; 4 RP 16; CP 123 (G). John handled all Tatyana's immigration paperwork and her immigration matters on his own and without the aid of an attorney. 2 RP 244. "John and Tatyana were married on August 19, 1999". 3 RP 469. CP 123 (C). Within 30 days after the parties' legal marriage, the USCIS required John to sign and file a notarized I-864 Affidavit of Support. INA §213 (a)(3)(b); CP 123(C). The Affidavit of Support is a contract between John and the United States Government "wherein [John] promises to the US government to financially support Tatyana who is being brought into this country by John" Ex.33; 3 RP 469-70; CP 123 (B). "Upon the I-864 application signed and notarized by John, there was a two-year period during which the conditions attached to that conditional permanent residence status [green card] could be removed [in 2001]". 3 RP 469-70; CP 123(D); Ex 8.

> "Now, [the trial court] indicated that the conditions on the [Tatyana's] conditional permanent residence were not removed by John within the two years as required under the law" and "due to John's domestic violence toward Tatyana" Ex.38; 3 RP 471 line 2-4; CP 123 (E).

Marry Pontorollo testified at the trial that Tatyana was a client of their Domestic Violent organization since 2001 and based on their record- John is a perpetrator who was abusive toward Tatyana and her children. Ex.14; 3 RP at 385. Ms. Pontorollo's testimony found credible by the trial court:

> "Perpetrator's manipulation of immigration status is extremely common [in the US]... It is a common utilization of control. Immigration status and threats of deportation are particularly when children are involved, are very common. It's a fear" 3 RP 385

"John had no real incentive to continue to work with Tatyana to maintain her permanent status and legal authorization to work in the United States". 3 RP 470; CP 123(E)(H). "[Tatyana] lived in the house with [John] that he was paying the mortgage on in order for her to survive". 3RP 475. "Tatyana become the victim of domestic violence from John" CP 123(E). "So it's not surprising that John did not want to file the necessary the USCIS forms to remove the conditions from Tatyana's green card on the conditional residence status within the two-year period". 3 RP 470; CP 123(E). "The parties separated on July 18, 2007." 3 RP 470.

"The 2007 court placed a Domestic Violence Protection Order against John". Supp. CP __, sub 50; 3 RP at 470. The 2007 Court found that "John committed act of abuse and control toward Tatyana, the court found that Tatyana is a disadvantage spouse; John has been dishonest with

the 2007 Court trial; John is secreting the children in bad faith". Supp. CP _, sub 50. "The divorce was final on June 24th, 2008". 3 RP 470. "Tatyana was not supported by John." 3 RP 475 line 17-21. After final divorce, "[Tatyana] was a full time student and taking out loans and lived out of her school work study". 3 RP 475. Final divorce did not stop John to continue his control toward Tatyana. John with help of his attorney Ms. Robertson filed hundreds of motions and petitions to harass Tatyana through the court in the manner of which the court system was not design. *See* docket of the case 07-3-00848-0 Mason vs. Mason.

In March 2011, **John fabricated the evidences** and "there was a modification proceeding which continued and ultimately resulted in a child support order being entered on November 25, 2013 against Tatyana" CP 9-23; 3 RP 470-1;475-6. **Even though, Tatyana has no permanent resident status and legal authorization to work-- the 2013 court order stated that "Tatyana is voluntarily unemployed"** CP 9-23; Op.12-3; 3RP 471; 475-6; CP 123-4(H). **The 2013 trial court imputed income to Tatyana based on her school loan and her school work study, which was fundamentally wrong.** CP 9-23; 3RP 471-2,75-6,77-8; CP123(G) (H); CP124(G). "The 2013 court failed to consider Tatyana's language barrier as also the complicated nature of this case" 4 RP 16 line 1-2; CP 123(G). "The 2013 trial court failed to consider the I-864 affidavit - where John is a sponsor for Tatyana who failed to pay his obligation". 3 RP 472;

CP 123(G) and that John intentionally hid his obligation from Tatyana and the trial courts though lies of his advocacies.3 RP 474; 4 RP 17-9; CP 208; CP 1367-8. Since Tatyana has no green card, legal authorization to work and income, the trial court found that "the I-864 obligation is such a significant factor in this case that to set a child supports without its consideration that John failed to pay his obligation to Tatyana under I-864 is unjust result". 3 RP 472,75-6; CP 123 (H); 124 (G); 4 RP 17-8.

Judge Wickham said: "I should say I've had a chance to observe [Tatyana] in court for three separate days with two interpreters and although she has a reasonable ability to use English, her English is not good, and her statements were more clear through the interpreters than in her English". 3 RP 477 line 21-4. In the 2013 trial court "[Tatyana] had no interpretative services in this case and prior to this trial proceeding" CP 123 (G). "so I believe Tatyana's been operating at a disadvantage" 3RP at 478 line 4. "It's not hard for me to understand why [Tatyana] might not have done well with an English-speaking attorney or with an English-speaking court prior to this proceeding." 3 RP 477 line 21-4. "Certainly, if a court was entering a child support order, it would take into account [Tatyana's immigration status and and her ability to earn income under this status] also whether [John] receiving child support was also paying his obligation to Tatyana required by immigration law". 3 RP 472. "I think that goes without saying that that would be considered both in the

calculation of the child support and as to offsets." 3 RP at 472 line 6-12. According to **INA §274(a)(a)[4]; INA §245(c)[5]**and **SSI 01133.455[6]** the 2013 and 2015 trial courts violated these law. 3 RP 471,75-6; CP 123 (E)(H); CP 124 (G)."[Immigration] is a complicated field, even for people who work in it, and so it's not hard for me to understand why [Tatyana] would not have understood it fully in the prior proceedings". 3 RP 478 line 7-10. "I know that in the motion hearings I had leading up to this, [Tatyana] did not have interpreter services- she was in disadvantage." 3 RP 478 line 2. Also, the USCIS letter dated February 27, 2015 stated that the conditions were not removed from Tatyana's green card by John; that Tatyana does not have permanent resident green card status and legal authorization to work in the US. Ex 38. **In order to receive a green card, Tatyana need to submit: Certified copy of arrangement or dismissal from appropriate state Child Support**. Ex 38. *See* also, 3 RP 471,75-6; CP 491 (Tatyana's trial brief).

The trial court ruled on 11/02/16: "Tatyana, through her own testimony and through the testimony of her expert has presented compelling evidence that she is now in a disfavored status as someone who has significant unpaid child support and that the immigration authorities have the discretion to deny her permanent residency at this point, so she is in the awkward position of being in this country but having no ability to obtain permanent status. And with the focus on legal status that currently

[4] **INA §274 A (a)** stated: "A noncitizen may not seek or obtain employment in the US without proper work authorization".
[6] **INA §245(c)** "If a person works without proper authorization s/he may be found inadmissible and unable to adjust their status to that of a lawful permanent resident".
[7]**SI 01133.455** "higher education work study is not credible income".

exists in this country, it's not hard to believe that most employers will not hire her, because she is not able to show proof of legal status. And were she to go back to immigration, she would most likely be denied because of the child support orders". **3 RP at 471.** "So based on all of this, I am prepared to vacate the child support order, which I believe will have the effect of allowing Tatyana to apply for her green card and remove the conditions that were placed on her conditional permanent residence status, which I think in the long run is going to be beneficial to both parties, because it will ultimately allow her to obtain citizenship, which will terminate the I-864 obligation. That's one of the grounds to do that. It also will allow her to obtain employment, which is another basis for terminating the obligation. Otherwise, I see no way for either party to get out of this box that you are both in". **3 RP at 475-6**

B. THE TRIAL COURT DID NOT MERELY FIND JOHN TO BE NOT CREDIBLE, BUT FOUND THAT JOHN INTENTIONALLY LIED THOUGH HIS ADVICAIES IN THE TRIAL COURT IN VIOLATION OF CR 11(a) (1)(2)(3) BY JUDGE:

Under CR 11(a)(1)"John though his advocacies **has made many misrepresentations** that were not grounded in facts. On July 6, 2016, John's advocacy filed Ms. Seifert's declaration, who failed to acknowledge the existence of Department of Justice before Department of Homeland Security. Ex 49. Also, Ms. Seifert, who claimed herself as an immigration expert for 27 years does not know history of the immigration law and does not know what's the year of I-864 was enforced". Ex 49; Ex 80; 4 RP 4.

Under CR 11(a)(2)"John's advocacies **intentionally mislead** the trial court on the several cases including case cites as **Davis vs. Davis**, 2012-Ohio-2088. CP 45-92 (John's trial brief); 3 RP 474; 4 RP 5-6; CP 673.

Under CR 11(a)(3) During the trial proceeding, **John have consistently perjured himself** by stating in several of his declarations signed under oath that "he never signed and filed I-864 affidavit of

support". Ex 80, even the physical fact was presented at the trial court through FOIA[7], John still denied his notarized signature and his obligation.4 RP 4-5; 4 RP 17-8.

On 11/02/16 the trial court ruled: "John and his advocacies raised a question that the I-864 affidavit was no longer operable and supported their argument with *Davis v. Davis* case. In *Davis* case the parties had a decree of separation; in this case we have a decree of divorce. *Davis* case does not apply here" 3RP 474. **On 12/09/16 the trial court ruled**:"I will impose the additional one-third under Civil Rule 11(a), and **I'm doing that based on a declaration that was filed by Ms. Robertson July 6th.** It's a statement of [John], and I'm going to read in pertinent part. This is from the first page of that declaration, "She claimed in part that I have filed an I-864 support affidavit when she came to this country, and, therefore, I should have been supporting her, and she never should have been required to pay child support. Nothing could be further from the truth." That's his statement. Then on the second page, "I believe the I-864 was a document I may have started to complete, but it was not what I was required to file and so I did not complete or file the document." And then later on that page, "**Respondent claims that I would have had to complete I-864 as part of the fiancée visa application, but that is not true.**" And then on page three, "**Respondent's representation that I had to have filed the I-864 form is simply not true." Those statements raise the issue of the existence of the I-864**". 4 RP 17 line 12-25; 4 RP 18.

"Now, clearly clients are entitled to aggressive advocacies, but I believe the advocacies in this case presented an untrue presentation to the court which created unnecessary litigation. And I believe that that is a violation of the portion of CR 11(a)(1)(2)(3) which says that the signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion or legal memorandum and that, to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1), it is well grounded in fact; (2), it is warranted by existing law or a good faith argument; (3), it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." I believe those statements were made for that purpose, and, therefore, I believe CR 11 does apply here"4 RP at 18-9 line 11... ruling; (RP 12/09/16 ruling)

[7] FOIA is the Freedom of Informational Act Certified Documents.

C. THE COURT OF APPEALS IGNORED THESE FINDINGS OF THE TRAIL COURT, INSTEAD OF APPLYING THE ABUSE OF DISCRETION STANDARD:

The facts added by the court of appeals goes beyond the findings of the trial court Op.11-3 and adds findings specifically rejected by the trial court. 4 RP 17-8. The court of appeals ignored the trial court findings that: **(1).**Tatyana's immigration status has been damaged by John; CP 123(E); 3 RP 471 line 2-7. **(2)** that Tatyana has no legal authorization to work; CP 123(H); 3 RP 471. **(3)** that the 2013 and 2015 orders of child support are preventing Tatyana from receiving her permanent resident status and obtain employment CP 123; 3 RP 475-6; **(4)** that Tatyana's language barrier also the complicated nature of this case" 3 RP 477-8 line 13; 4 RP 16; CP 123(G). The court of appeals ignored the Trail Court's findings and decided to write its own findings of fact and limited the trial court and Tatyana's trial brief to I-864. The court of appeals wrote:

"Here, the trial court vacated the 2013 child support order based on the parties 'failure to inform the court of the I-864 affidavit when the court entered the child support order. Op. 10 "But we hold that the court's failure to consider the I-864 affidavit in the 2013 proceeding is not the type of extraordinary circumstance required by CR 60(b)(11)"Op. 10. "During the 2013 proceedings, Tatyana was voluntarily unemployed." Op.11. "Tatyana argues that extraordinary circumstances exist because John knowingly withheld the I-864 affidavit from the court in the 2013 proceedings. But there is no evidence to support her argument. John testified that he was unaware that he had completed or filed the form. The I-864 affidavit Tatyana produced at the CR 60(b)(11) trial was signed in 1999, over a decade before any of the relevant proceedings began. **John stated in multiple declarations that he did not remember filling out the I-864 affidavit, and added that he did not believe he was required to do so based on Tatyana's type of visa.** The trial court made no factual finding that John knowingly withheld the affidavit from her" Op 13.

The Court of Appeals findings are in **direct opposition of the Trial Court's findings** that John and his attorneys had knowingly misrepresented their knowledge considering the I-864 affidavit.

VII. ARGUMENT : (A). Standard for Review: This Court should accept review of a court of appeals decision when the decision is in conflict with a prior, published decision of the court of appeals or of this Court. RAP 13.4(b)(1) and (2). The court of appeals decision in this case conflicts with the decision of this Court in **In re Marriage of Jennings**, 138 Wn.2d 612, 980 P.2d 1248 (1999) and with the published decision of the Court of Appeals in **In re Marriage of Flannagan**, 42 Wn. App. 214, 709 P.2d 1247 (1985). In short, the court of appeals failed to apply the required abuse of discretion standard of review. Instead, the court of appeals substituted its own judgment, ignored the trial court's findings and reasoning, and contradicted the trial court's credibility determinations.

(B). The Trial Court Did not Abuse its Discretion When it Overturned the Two Child Support Orders Pursuant to CR60(b)(11):

A trial court may vacate a judgment under CR 60(b)(11) when the case involves "extraordinary circumstances." **Shandola v. Henry,** 198 Wn. App. 889, 903, 396 P.3d 395 (2017). The provision is "intended to serve the ends of justice in extreme, unexpected situations and when no other subsection of CR 60(b) applies." **Shandola,** 198 Wn. App. at 895. It applies to "extraordinary circumstances involving irregularities extraneous

to the proceeding." **Shandola**, 198 Wn. App. at 895. Courts considering motions to vacate orders in dissolution have found circumstances to be sufficiently extraordinary when they materially frustrate the purpose of the relevant order. See, e.g., **In re Marriage of Hammack**, 114 Wn. App. 805, 810-11, 60 P.3d 663 (2003); **In re Marriage of Thurston**, 92 Wn. App. 494, 503-04, 963 P.2d 947 (1998). Trial court decisions under CR 60(b) was within the sound discretion of the trial court "and will not be disturbed absent a clear abuse of discretion." **In re Marriage of Flannagan**, 42 Wn. App. 214, 222, 709 P.2d 1247 (1985). Where the trial court "could reasonably conclude" that certain facts constitute "extraordinary circumstances," the appellate court must affirm. **In re Marriage of Jennings**, 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999).

Under the deferential abuse of discretion standard, a trial court abuses its discretion only if its decision was manifestly unreasonable or was based on untenable grounds or untenable reasons. **First-Citizens Bank & Trust Co. v. Reikow**, 177 Wn.App. 787, 797, 313 P.3d 1208 (2013). A discretionary decision rests on untenable grounds if the trial court relies on unsupported facts; it is based on untenable reasons if the trial court applies the wrong legal standard; it is manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take. **Id.** This kind of

review requires the appellate court to review the factual findings upon which the trial court relied and the legal standard the trial court applied.

The court should review the written findings of fact and conclusions of law and, where it is helpful to the court's review, the reasoning provided by the trial court's oral rulings. "An appellate court may consider a trial court's oral decision in interpreting its written findings of facts and conclusions of law, so long as there is no inconsistency."**State v. Tili,** 148 Wn.2d 350, 360, 60 P.3d 1192 (2003) (citing **State v. Eppens**, 30 Wn. App. 119, 126, 633 P.2d 92 (1981)). The trial court's written findings in this case culminated with this statement: "the conditions were not removed from Tatyana's green card by John due to his domestic violence acts" CP 123(E); 3 RP 471. "[Tatyana] is not able to work due to her current immigration status. Further, the arrears which have accrued under the 2013 Order of Child Support would likely prevent her from removing the conditions on her current resident status and obtaining permanent residency in the United States." CP 123-4 (Finding H); This finding was supported by evidence. 3 RP 471,475-6; Ex 38. Also, "Tatyana did not speak English and no interpretative services available for Tatyana in 2013 court and prior to this proceeding". This finding was supported by evidence CP 123 (G) and the trial court observation statement: "I've had a chance to observe [Tatyana] in court for three separate days with two interpreters and although Tatyana has a reasonable ability to use English,

her English is not good and it's not hard for [the trial court] to understand why Tatyana might not have done well with an English-speaking attorney or with an English-speaking court prior to this proceeding."3 RP 477-8; CP 123(G). The trial court entered these finding because it explains the extraordinary circumstances, extraneous to the proceedings, that justify vacating the child support orders under CR 60(b)(11). This explanation of the findings and conclusions is strengthened by review of the trial court's oral ruling. The trial court's oral ruling explains that CP 123 (Finding E; G and H) are the extraordinary circumstance, extraneous to the proceedings, that justified the trial court's order vacating the child support orders under CR 60(b)(11):

"[Tatyana] through her own testimony and through the testimony of her expert [Mr. Gairson], has presented compelling evidence that she is now in a disfavored status as someone who has significant unpaid child support and that the immigration authorities have the discretion to deny her permanent residency at this point, so she is in the awkward position of being in this country but having no ability to obtain permanent status. And with the focus on legal status that currently exists in this country, it's not hard to believe that most employers will not hire her, because she is not able to show proof of legal status. And were she to go back to immigration, she would most likely be denied because of the child support orders". 3 RP 471; CP 123 (E)(H) **"So based on all of this,** I am prepared to vacate the child support orders, which I believe will have the effect of allowing Tatyana to apply for her permanent green card and remove the conditions that were placed on her conditional permanent residence status and obtain employment"; ... "Otherwise, I see no way for either party to get out of this box." 3 RP 475-6

Judge Wickham detected the injustice in this case. 3 RP at 472. "Tatyana could not pay her current child support or the arrears because she has no status in this country, has no legal authorization to work and could

not obtain employment". 3RP 471; CP 123 (finding H). There was one reasonable way out of this catch-22: vacate the child support orders so "that Tatyana could obtain legal status and obtain employment.3 RP475-6. **Tatyana's damaged immigration status was the extraordinary circumstances, extraneous to the proceedings, that justified vacating two child support orders under CR 60(b)(11).** The trial court's decision was based on facts supported by the evidence. CP 123(finding H); 3 RP 478. It was made by applying the correct legal standard: extraordinary circumstances, extraneous to the proceedings that created an injustice that outweighed the value of finality. The decision was a reasonable solution to the unjust situation created by the orders before they were vacated.

But, the Court of Appeals took a different course. Instead of reviewing the trial court's actual reasoning, the court of appeals determined that the real reason for the trial court's decision was limited only to whether the prior court should have considered the I-864 affidavit of support that had not been presented in 2013. Based on that limited reason—which was not the trial court's actual reason—the Court of Appeals held that the parties' failure to present the I-864 affidavit to the prior courts was not an extraordinary circumstance under CR 60(b)(11). In doing so, the court of appeals failed to apply the abuse of discretion standard to the trial court's decision.

Instead, the Court of Appeals improperly added its own findings and substituted its own judgment. Op 1,10-3. Ignoring the findings and reasoning set forth by the trial court in its written and oral decisions set forth above, the court of appeals decided that it knew what the trial court really meant, and that it was not a proper reason to vacate, while ignoring the well stated basis of the trial court. The opinion says multiple times that

the trial court "erred," as if the review was **de novo** for questions of law. Op.10-4. The Court of Appeals failed to apply the required abuse of discretion standard of review. **(C).The Court of Appeals also failed to give deference to the trial court's credibility determinations:** The court "defers to the trier of fact for resolution of conflicting testimony, evaluation of the evidence's persuasiveness, and assessment of the witnesses' credibility." **In re G.W.F.,** 170 Wn. App. 631, 637, 285 P.3d 208 (2012). Credibility determinations are for the trier of fact and are not subject to appellate review. **McCallum v. Allstate Property and Cas. Ins. Co.,** 149 W. App. 412 (2009). "Appellate courts do not weigh evidence or assess credibility. It is the sole province of the trier of fact to pass on the weight and credibility of evidence." **Boeing Co. v. Heidy**, 147 Wn.2d 78, 87 (2002). Only the finder of fact can assess the persuasiveness of the evidence and resolve conflicts in the testimony. **State v. Asaeli,**150 Wn. App. 543 (2009). The trial court specifically found that John through his advocacies intentionally misled the court in denying the existence of the I-864 affidavit in his declaration filed on July 6, 2016:

"I will impose the additional one-third under Civil Rule 11(a), and I'm doing that based on a declaration that was filed by Ms. Robertson on July 6th, 2016 [on behalf of John]. It's a statement of [John], and I'm going to read in pertinent part. This is from the first page of that declaration, *"She claimed in part that I have filed an I-864 support affidavit when she came to this country, and, therefore, I should have been supporting her, and she never should have been required to pay child support. Nothing could be further from the truth."* That's his fist statement. Then on the second page, *"I believe the I-864 was a document I may have started to complete, but it was not what I was required to file and so I did not complete or file the*

document." And then later on that page, "Respondent claims that I would have had to complete I-864 as part of the fiancée visa application, but that is not true." And then on page three, "**Respondent's representation that I had to have filed the I-864 form is simply not true.**" Those statements raise the issue of the existence of the I-864... Now, clearly [John] is entitled to aggressive advocacy, but I believe the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation." 4 RP 17-8. "I believe CR 11(a) does apply here" 4 RP at 19.

But the Court of Appeals ignored the trial court's determination and instead sided with John's lies, stating:

"John testified that he was unaware that he had completed or filed the form. ... John stated in multiple declarations that he did not remember filling out the I-864 affidavit, and added that he did not believe he was required to do so based on Tatyana's type of visa." Op. at 13.

These are the same statements that the trial court found were intentionally misleading! However, the court of appeals' reliance on John's statements—which the trial court found to be false—fails to give the deference required under the abuse of discretion standard of review.

The trial court found that John's advocacies intentionally mislead the trial court with several cases including misinterpreted case cites as **Davis v. Davis**, 2012-Ohio-2088. *See* CP 45-92 (John's trail brief); CP 673; CP 1953; 4 RP 5-6; 3 RP 474 . The trial court found that:

"Now, there was some question raised by Ms. Seifert and by John that the I-864 affidavit was no longer operable... The **Davis vs. Davis** case stands for the proposition that a spouse's quarters are credited to the quarters of the person being sponsored during the marriage, even after a decree of separation. In this case, however, we don't have a decree of separation. We have a decree of divorce. **Davis v. Davis** case does not apply here" **3 RP 474.** "Now, clearly clients are entitled to aggressive advocacies, but I believe the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation. And I believe that that is a violation of the portion of CR 11(a) (1)(2)(3) which says that the signature of a party or of an attorney constitutes a certificate by the party or attorney

that the party or attorney has read the pleading, motion or legal memorandum and that, to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1), it is well grounded in fact; (2), it is warranted by existing law or a good faith argument; (3), it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." I believe those statements were made for that purpose, and, therefore, I believe CR 11(a)(1)(2)(3) does apply here." 4 RP 18-9.

Because the Court of Appeals failed to apply the correct standard of review, its decision conflicted with previous published opinions of the Court of Appeals and of this Court, which require that deferential standard be applied to review of decisions under CR 60(b)(11).Trial court decisions under CR 60(b)(11) are within the sound discretion of the trial court "and will not be disturbed absent a clear abuse of discretion." **In re Marriage of Flannagan**, 42 Wn. App. 214, 222, 709 P.2d 1247 (1985). Where the trial court "could reasonably conclude" that certain facts constitute "extraordinary circumstances," the appellate court must affirm. **In re Marriage of Jennings**, 138 Wn.2d 612, 625-26, 980 P.2d 1248 (1999). Under this standard, it is not the appellate court's role to determine **de novo** whether any particular set of facts constitutes extraordinary circumstances.

Rather, the appellate court is limited to determining whether the trial court's decision was reasonable. That is, could the trial court reasonably conclude that the facts constitute extraordinary circumstances?

Here, it was reasonable for the trial court to conclude that the facts on which it relied—related to Tatyana's immigration status—constituted

extraordinary circumstances, extraneous to the proceedings that created an injustice that outweighed the value of finality of the prior child support orders. CP 123(H); 3 RP 471,75-6;478; 4 RP 17-9. The Court of Appeals should have applied this deferential standard and affirmed. This Court should accept review and reverse the Court of Appeals decision.

John's answer to **Tatyana's Petition for Review should be ignored by this Court** because John will lies through his advocacy in violation of RAP 18.9 again as he did it during the trial court in violation of CR 11(a) found by the trial judge. 3 RP 474; 4 RP 17-9. At the Court of Appeals, John filed the false statements of fact in his opening brief and lies that "the trial court and Tatyana's motion limit to I-864"(John's An. p.5 - 09/06/18)

VIII. CONCLUSION: It was reasonable for the trial court to conclude that the facts on which it relied—related to Tatyana's immigration status, no legal authorization to work, language barrier, John's domestic violent and his consistent lies through his advocacies---constituted extraordinary circumstances, extraneous to the proceedings that created an injustice that outweighed the value of finality of the prior child support orders. The Court of Appeals should have applied this deferential standard and affirmed. This Court should accept review and reverse the Court of Appeals decisions dated 07/ 31/18 & 09/24/18

Dated: October 22 of 2018

Respectfully Submitted by:

Tatyana Mason

Appendix 1

Filed
Washington State
Court of Appeals
Division Two

July 31, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of JOHN ARTHUR MASON, Appellant, and TATYANA IVANOVNA MASON, Respondent.	No. 49839-1-II UNPUBLISHED OPINION

MAXA, C.J. – John Mason appeals the trial court's order vacating a 2013 order requiring his former wife Tatyana Mason to pay him child support. The trial court vacated the child support order under CR 60(b)(11) because in the 2013 proceeding the court had not been informed that John[1] had an obligation to support Tatyana based on an I-864 affidavit of support relating to Tatyana's immigration to the United States.

We hold that (1) the trial court erred in vacating the 2013 child support order because the failure of the parties to inform the court of the I-864 affidavit was not an extraordinary circumstance extraneous to the prior proceedings, (2) the trial court did not err in awarding Tatyana a portion of her expert witness fees under RCW 26.09.140, and (3) the trial court erred in imposing CR 11 sanctions against John without including specific findings supporting the award in its CR 11 order.

[1] To avoid confusion, we refer to the parties by their first names. We intend no disrespect.

Accordingly, we reverse the trial court's order vacating the 2013 child support order and a related order vacating an order that prospectively modified Tatyana's child support obligation. We affirm the trial court's award of expert fees to Tatyana under RCW 26.09.140. And we vacate the trial court's order imposing CR 11 sanctions on John and remand either for entry of specific findings supporting the award of CR 11 sanctions that are included or incorporated in the court's CR 11 order or a determination that CR 11 sanctions are not warranted.

FACTS

Marriage and Dissolution

Tatyana came to the United States in 1999 on a "fiancée visa" sponsored by John. At the time, Tatyana did not speak English, so John filled out her immigration paperwork. One of the forms that John signed was an affidavit of support, known as an I-864 affidavit, agreeing that he would provide financial support to Tatyana for a certain period of time.

The parties married in 1999 and later had two children. John filed a petition for dissolution in 2007. The trial court entered a decree of dissolution in 2008, which allocated residential time evenly and included a requirement that John make child support payments to Tatyana.

In 2011, John filed a petition to modify the parenting plan based on his allegation that Tatyana abused the children. The trial court held a trial on the modification, during which Tatyana was represented by counsel. The trial court granted John's petition to modify the parenting plan and entered a finding of abuse against Tatyana under RCW 26.09.191.

As part of its modification, the trial court entered an amended order of child support on November 25, 2013. The court imputed income to Tatyana on the basis that she was voluntarily unemployed. The previous year Tatyana had worked and been paid at an hourly rate of $12, and

she agreed that this level of income should be imputed to her. The court ordered that Tatyana pay $412.04 per month in child support. Neither party informed the court that John had signed an I-864 affidavit agreeing that he would provide financial support to Tatyana.

Tatyana appealed the trial court's order granting John's petition. *See In re Marriage of Mason*, No. 45835-7-II (Wash. Ct. App. July 7, 2015) (unpublished), http://www.courts.wa.gov/opinions/. She did not contest the trial court's imputation of income or its imposition of child support payments. *Id.* at 1. In July 2015, we affirmed the trial court's order. *Id.*

Motions to Dismiss Child Support

Shortly after we affirmed the trial court's modification, Tatyana filed a series of three motions in the trial court to dismiss her child support obligation.[2] She filed a motion in September 2015, arguing that it was error to impute income to her and that her unpaid child support was interfering with her immigration status. A superior court commissioner denied the motion. Tatyana did not appeal.

The same day that her first motion was denied, Tatyana filed a second motion requesting modification of her child support obligation and again contesting the imputation of income and child support. On October 13, 2015, a superior court commissioner granted Tatyana's motion in part. The commissioner entered an amended child support order ruling that Tatyana was unable to work and imposing monthly child support of $50 per child, the statutory minimum. However, the commissioner denied Tatyana's motion to vacate unpaid child support that already had accrued. Neither party appealed.

[2] The case procedure has been abbreviated at certain points for clarity.

Next, Tatyana filed a petition to modify the parenting plan and a motion to vacate the full amount of the child support order. The motion to vacate alleged various errors relating to the 2013 child support order. The motion also described Tatyana's precarious economic situation, including the allegation that she was unable to obtain employment because of her immigration status and unpaid child support. Tatyana did not reference John's I-864 affidavit by name, but stated, "I am asking for a maintains [sic] fee, since he brought me to here, promised to a government to support me 100%." Clerk's Papers (CP) at 1001.

A superior court commissioner denied Tatyana's petition to modify the parenting plan and motion to vacate the child support order. Tatyana moved to revise the commissioner's order. At an April 29, 2016 hearing, Tatyana argued that John had completed an I-864 affidavit of support as part of her initial visa application. Tatyana presented a copy of the affidavit, and John objected because it was not notarized or dated. The trial court continued the hearing to July 8 and directed Tatyana to have an official authenticate the immigration documents.

Before the July 8 hearing, John submitted a declaration stating that he did not remember what he signed during the immigration process in 1999 and did not remember filing the I-864 affidavit. He added, "[Tatyana] claims that I would have had to complete an I-864 as part of the fiancé's [sic] visa application but that is not true." CP at 403. He explained that the fiancée visa required a different form and that the I-864 affidavit was instead required for family-based immigration. John added that he had attempted to submit a Freedom of Information Act request for the documents he had submitted but he received a letter stating that he was not eligible to receive them unless Tatyana signed the request.

At the July 8 hearing, the trial court stated that it would treat Tatyana's motion to vacate the 2013 child support order as a motion to vacate under CR 60(b). In a subsequent letter ruling,

the court explained that because the parties had raised credibility issues, a trial was necessary to allow the parties to present testimony.

Trial and Ruling

At trial, Tatyana represented herself. She offered the testimony of Jay Gairson, an immigration attorney, as an expert witness. The trial court ruled that it would allow Gairson's testimony on immigration law to assist in understanding the issues and law in that area.

Gairson testified generally about immigration law, as well as about Tatyana's particular immigration situation. He stated that he had reviewed Tatyana's files and concluded that John had signed an I-864 affidavit. The affidavit imposed on John a financial obligation to Tatyana, requiring him to support her up to 125 percent of the federal poverty guideline. Gairson explained how the support requirement operated: "If you look at those guidelines for a . . . single individual, you take 125 percent of that amount and then you subtract any income that she would have earned from that year, and that will tell you how much Mr. Mason would have owed her." Report of Proceedings (RP) (Oct. 17, 2016) at 67.

The trial court entered an order granting the motion to vacate and provided written findings of fact and conclusions of law. The court found that John had signed an I-864 affidavit, but that there was no evidence that any other judge in the case had considered the affidavit. The trial court entered a conclusion of law that the I-864 affidavit created a continuing obligation on John to support Tatyana and that the obligation had not terminated. The court also concluded, "The I-864 affidavit is such a significant factor in this case that to set child support without its consideration creates an unjust result." CP at 124. In its oral ruling, the trial court explained that the I-864 affidavit would be considered "in the calculation of the child support and as to offsets." RP (Nov. 2, 2016) at 472.

The court ruled that CR 60(b)(11) was the appropriate basis to bring a motion to vacate and that the 2013 child support order should be vacated because the court was not informed of the I-864 affidavit when the order was entered.[3] On that basis, the court vacated the 2013 child support order as well as any remaining unpaid child support. The court stated that John could seek entry of a new child support order, and that the court would consider a request for expert fees at a later hearing.

The court subsequently entered an order in December 2016 vacating the amended child support order the commissioner entered on October 13, 2015, which the court inadvertently failed to include in its previous order.

Expert Witness Fees

The trial court held a hearing on the issue of expert witness fees. Tatyana requested the costs of Gairson's expert testimony, which he calculated to be $12,800, as well as sanctions under CR 11. The trial court awarded Tatyana costs equal to two-thirds of Gairson's fee based on the parties' relative financial positions.

The trial court awarded to Tatyana the remaining one-third of Gairson's fee as CR 11 sanctions. The court based its sanction award on John's declaration statements that because he was not required to file I-864 affidavit, he did not do so. The court reasoned,

> Those statements raise the issue of the existence of the I-864, which is what required this court to have a three-day trial over whether or not that document existed. Now, clearly clients are entitled to aggressive advocacy, but I believe the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation.

RP (Dec. 9, 2016) at 18. However, the court did not enter any written findings regarding CR 11 and did not include the basis of its award in the CR 11 order.

[3] The trial court considered whether vacation would be appropriate under CR 60(b)(1), (2) and (3), but declined to apply those subsections.

Based on its rulings, the trial court entered an order awarding Tatyana $8,533 in costs under RCW 26.09.140 and $4,267 in sanctions under CR 11.

John appeals the trial court's order vacating the 2013 child support order and the order awarding expert fees and imposing CR 11 sanctions.

ANALYSIS

A. FORM I-864 AFFIDAVIT OF SUPPORT

This court previously reviewed the effect of an I-864 affidavit of support in *In re Marriage of Khan*, 182 Wn. App. 795, 798-99, 332 P.3d 1016 (2014). As the court explained, a family-sponsored applicant for permanent residency in the United States must prove that he or she is unlikely to become a public charge. *See* 8 U.S.C. § 1182(a)(4). To that end, the applicant's family sponsor may be required to execute and submit an affidavit of support on Form I-864. 8 U.S.C. §§ 1182(a)(4)(C)(ii), 1183a(a)(1). The sponsor must agree "to provide support to maintain the sponsored [immigrant] at an annual income that is not less than 125 percent of the [f]ederal poverty line during the period in which the affidavit is enforceable." 8 U.S.C. § 1183a(a)(1)(A).

The I-864 support obligation continues indefinitely until it is terminated. *Khan*, 182 Wn. App. at 799. Termination occurs when the sponsored immigrant (1) becomes a United States citizen, (2) has worked or is credited with 40 qualifying quarters of coverage (as defined by the Social Security Act, 42 U.S.C. § 413), (3) no longer has lawful permanent resident status and departs the United States, (4) becomes subject to removal but obtains a new grant of adjustment of status as relief from removal, or (5) either the sponsor or the sponsored immigrant dies. 8 U.S.C. § 1183a(a)(2)-(3); 8 C.F.R. § 213a.2(e)(2). The support obligation continues after

dissolution of the marriage between the sponsor and the sponsored immigrant. *Khan*, 182 Wn. App. at 799.

The I-864 affidavit creates a binding contract between the sponsor and the federal government, and establishes the sponsored immigrant as a third-party beneficiary. *Id.* The immigrant can enforce the support obligation against his or her sponsor. 8 U.S.C. § 1183a(a)(1)(B); *Khan*, 182 Wn. App. at 799, 803-04.

B. APPLICATION OF CR 60(b)(11)

John argues that the trial court erred in applying CR 60(b)(11) to vacate the 2013 child support order.[4] We agree.

1. Legal Principles

Under CR 60(b), a trial court may relieve a party from a final judgment, order, or proceeding for one of 11 stated reasons. A catch-all provision under CR 60(b)(11) states that the court may grant relief from a final judgment for "[a]ny other reason justifying relief from the operation of the judgment." That provision is "intended to serve the ends of justice in extreme, unexpected situations and when no other subsection of CR 60(b) applies." *Shandola v. Henry*, 198 Wn. App. 889, 895, 396 P.3d 395 (2017). CR 60(b)(11) applies to "extraordinary circumstances involving irregularities extraneous to the proceeding." *Shandola*, 198 Wn. App. at 895.

The trial court has discretion in deciding whether to grant or deny a motion to vacate under CR 60(b). *Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013). Therefore,

[4] Initially, John argues that Tatyana's motion was barred by collateral estoppel because she already appealed the child support order and the order was affirmed. Br. of App. at 25-28. We decline to consider this argument because John did not raise it in the trial court. RAP 2.5(a). As an aside, we note that RCW 26.09.170(5)(a) expressly states that a party owing child support may file a petition to amend "at any time."

we review CR 60(b) orders for abuse of discretion. *Shandola*, 198 Wn. App. at 896. A trial court has abused its discretion when its decision is based on untenable grounds or is made for untenable reasons. *Id.*

For the purpose of this court's review, any unchallenged findings of fact included in the trial court's order are verities on appeal. *Rush v. Blackburn*, 190 Wn. App. 945, 956, 361 P.3d 217 (2015).

2. Extraordinary Circumstances

a. Legal Background

A trial court may vacate a judgment under CR 60(b)(11) only when the case involves "extraordinary circumstances." *Shandola*, 198 Wn. App. at 903. Courts considering motions to vacate orders in a dissolution have found circumstances to be sufficiently extraordinary when they materially frustrate the purpose of the relevant order. *See, e.g., In re Marriage of Hammack*, 114 Wn. App. 805, 810-11, 60 P.3d 663 (2003); *In re Marriage of Thurston*, 92 Wn. App. 494, 503-04, 963 P.2d 947 (1998).

The court in *Hammack* considered a separation agreement that exempted one party from child support payments in exchange for the other party receiving a larger share of the couple's property. 114 Wn. App. at 807. The court concluded that the agreement waiving child support was against public policy, making it void and unenforceable. *Id.* at 811. A settlement based on a void agreement was an extraordinary circumstance sufficient to vacate the settlement. *Id.*

In *Thurston*, the court vacated a dissolution decree when one party refused to transfer a partnership interest as required in the decree. 92 Wn. App. at 496-97. Because failure of the transfer would "throw the whole settlement out," it was a material condition of the settlement and presented an extraordinary circumstance supporting vacation. *Id.* at 503-04 (quotation marks

omitted); *see also In re Marriage of Knies*, 96 Wn. App. 243, 250-51, 979 P.2d 482 (1999) (holding that transition of the obligor's income from pension to disability allowed the obligor to circumvent property settlement and constituted an extraordinary circumstance).

But an attorney's error, erroneous advice, or negligence are not sufficient grounds for vacating a judgment. *Lane v. Brown & Haley*, 81 Wn. App. 102, 109, 912 P.2d 1040 (1996). Similarly, an unfair result, even when caused by poor representation, is insufficient grounds to vacate. *See In re Marriage of Burkey*, 36 Wn. App. 487, 488-90, 675 P.2d 619 (1984).

In *Burkey*, Ms. Burkey discovered that she had received inadequate representation and moved to vacate a decree of dissolution based on her allegation that Mr. Burkey had failed to inform her of the value of all of their property. *Id.* at 488. The court held that vacation of the dissolution decree was improper. *Id.* at 489-90. The court stated that the parties knew of all the property, there was no fraud between Mr. Burkey and Ms. Burkey's attorney, and Mr. Burkey was not responsible for the quality of Ms. Burkey's representation. *Id.*

In addition, in *In re Marriage of Yearout*, this court held that extraordinary circumstances did not exist when an obligor lost 25 percent of his income, allegedly making it impossible to meet his child support and other obligations. 41 Wn. App. 897, 898, 902, 707 P.2d 1367 (1985).

b. Extraordinary Circumstances Analysis

Here, the trial court vacated the 2013 child support order based on the parties' failure to inform the court of the I-864 affidavit when the court entered the child support order. The trial court stated that the affidavit was a "significant factor" and that imposing child support without considering it created an "unjust result." CP at 124. It appears that the trial court's rationale was that the I-864 affidavit was new evidence not previously considered. But we hold that the

court's failure to consider the I-864 affidavit in the 2013 proceeding is not the type of extraordinary circumstance required by CR 60(b)(11).

First, it is questionable whether the I-864 affidavit would have impacted Tatyana's child support obligation even if it had been presented to the court in 2013. During the 2013 proceedings, the court found that Tatyana was voluntarily unemployed and the parties agreed to impute income of $2,080 per month to her. The court used Tatyana's imputed income to calculate her child support obligation, and that obligation applied regardless of her actual income. *See In re Marriage of Goodell*, 130 Wn. App. 381, 389-90, 122 P.3d 929 (2005) (stating that a parent cannot avoid child support by remaining voluntarily unemployed or underemployed).

The I-864 affidavit would not have changed Tatyana's income for purposes of the child support calculation. The I-864 affidavit required John to provide payments to Tatyana only when her income was below 125 percent of the federal poverty guideline. *See Khan*, 182 Wn. App. at 798-99. At the time of the 2013 child support order, this income level was $1,197 per month.[5] But even if John was required to pay that amount to Tatyana, her child support obligation would not decrease because her *imputed* income for child support was significantly greater. Therefore, even if the trial court had considered the I-864 affidavit in 2013, the affidavit would have had no practical effect.

In her earlier motions to avoid her child support obligations, Tatyana argued that the trial court erred in imputing income to her. But a revelation that Tatyana may be entitled to I-864 payments is not a reason to question the validity of the court's 2013 ruling that she was

[5] The child support schedule attached to the 2013 order listed $1,197 as 125 percent of federal poverty guideline, to serve as a "Self-Support Reserve." CP at 20.

voluntarily unemployed. Tatyana's entitlement to payments under the I-864 affidavit is a separate issue from whether she was voluntarily unemployed. And even if the imputation of income to her was error, legal errors cannot be the basis for a CR 60(b) motion; they must be corrected on appeal. *In re Marriage of Tang*, 57 Wn. App. 648, 654, 789 P.2d 118 (1990). Tatyana did not appeal the court's 2013 calculation of child support payments.

Second, the fact that John's I-864 obligation might be relevant as an offset for Tatyana's child support obligation[6] does not constitute an extraordinary circumstance. Even if John owed money to Tatyana, that amount would not affect the amount of Tatyana's child support obligation. The trial court's calculation under RCW 26.19.065 and .071 determines the amount of child support based on actual or imputed income. And Washington dissolution law and a spouse's I-864 obligations are independent of each other. *Khan*, 182 Wn. App. at 801. "Nothing in the federal statutes or regulations provides that an I-864 obligation must . . . be enforced in a dissolution action." *Id.*[7]

Third, there is reason to be cautious about vacating an order in circumstances like this one, where a party has merely presented new evidence that was previously available but not identified. CR 60(b)(11) does not relieve a party from a final judgment simply because some important evidence was not produced at trial. Reducing the threshold for what qualifies as an extraordinary circumstance also cuts against judicial values of preservation of resources and finality. *See Guardado v. Guardado*, 200 Wn. App. 237, 244, 402 P.3d 357 (2017) (recognizing

[6] The trial court explained, "[I]f a court was entering a child support order, it would take into account whether or not the person receiving child support was also paying spousal maintenance." RP (Nov. 2, 2016) at 472.

[7] However, as this court noted in *Kahn*, Tatyana can enforce the I-864 support obligation against John in a separate action. 182 Wn. App. at 803-04.

value of preserving resources); *Shandola*, 198 Wn. App. at 895 (stating that finality of judgments is "a central value in the legal system").

Tatyana's primary argument seems to be that extraordinary circumstances exist because she lacked the resources to meet her past child support obligations. But to the extent that her argument is that the 2013 child support order is too burdensome, an unfair result does not amount to extraordinary circumstances as required by CR 60(b)(11). *See Yearout*, 41 Wn. App. at 902.

Tatyana also argues that extraordinary circumstances are present because her situation when she first arrived in the United States allowed John to take advantage of her. She points out that she did not know English, did not have friends or family, and did not have any money. Her limitations on arriving to the United States may explain why Tatyana was previously unaware of the I-864 affidavit. But Tatyana's limitations in 1999 do not demonstrate extraordinary circumstances to justify vacating the 2013 child support order. Whether her discovery of the I-864 affidavit is an extraordinary circumstance depends on how it impacts the validity of that order.

Finally, Tatyana argues that extraordinary circumstances exist because John knowingly withheld the I-864 affidavit from the court in the 2013 proceedings. But there is no evidence to support her argument. John testified that he was unaware that he had completed or filed the form. The I-864 affidavit Tatyana produced at the CR 60(b)(11) trial was signed in 1999, over a decade before any of the relevant proceedings began. John stated in multiple declarations that he did not remember filling out the I-864 affidavit, and added that he did not believe he was required to do so based on Tatyana's type of visa. The trial court made no factual finding that John knowingly withheld the affidavit from her.

3. Extraneous to the Proceedings

To vacate an order under CR 60(b)(11), any extraordinary circumstances must either be an irregularity extraneous to the court's action or go to the question of the regularity of the proceedings. *Tatham v. Rogers*, 170 Wn. App. 76, 100, 283 P.3d 583 (2012). The extraordinary circumstance must demonstrate a " 'fundamental wrong' " or a " 'substantial deviation from procedure.' " *In re Marriage of Furrow*, 115 Wn. App. 661, 674, 63 P.3d 821 (2003) (quoting Philip A. Trautman, *Vacation and Correction of Judgments in Washington*, 35 WASH. L. REV. 505, 515 (1960)).

For example, an irregularity extraneous to the court's action occurs when a trial court fails to disqualify itself as required by the controlling judicial code. *See Tatham*, 170 Wn. App. at 100-01. An irregularity is also extraneous to the proceedings when there has been a change in the law, *Union Bank, NA v. Vanderhoek Assocs., LLC*, 191 Wn. App. 836, 845, 365 P.3d 223 (2015), or when an unforeseen event occurs after proceedings conclude. *See Knies*, 96 Wn. App. at 250-51 (applying CR 60(b)(11) when obligor's source of income changed, circumventing property settlement agreement).

Here, Tatyana's failure to submit the I-864 affidavit to the court previously was not an event extraneous to the 2013 proceedings that resulted in entry of the child support order. No event outside of the proceedings impacted that order. Rather, Tatyana identified evidence that should have been presented in the earlier proceedings but was not. But presentation of evidence regarding the parties' income was specifically at issue in the proceedings leading up to the 2013 child support order.

4. Summary

We hold that Tatyana's motion did not identify an event that was either an extraordinary circumstance or extraneous to the 2013 proceedings resulting in entry of the child support order. Accordingly, we hold that the trial court abused its discretion in vacating the 2013 child support order under CR 60(b)(11).[8]

C. AWARD OF EXPERT WITNESS FEE

John argues that the trial court erred in awarding to Tatyana a portion of Gairson's expert witness fee. We disagree.

1. Award of Costs

Under RCW 26.09.140, the trial court in a dissolution action "after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding." This statute authorizes an award of costs on a motion to vacate filed in a dissolution action. *In re Marriage of Moody*, 137 Wn.2d 979, 993-94, 976 P.2d 1240 (1999). An award of costs under RCW 26.09.140 is not necessarily limited to the prevailing party. *In re Marriage of Rideout*, 150 Wn.2d 337, 357, 77 P.3d 1174 (2003).

In determining whether to award costs, the trial court compares each party's relative need and ability to pay. *In re Marriage of Spreen*, 107 Wn. App. 341, 351, 28 P.3d 769 (2001). We review a trial court's decision regarding an award under RCW 26.09.140 for abuse of discretion. *In re Marriage of Obaidi*, 154 Wn. App. 609, 617, 226 P.3d 787 (2010).

[8] John also argues that Tatyana's CR 60(b) motion was not filed within a reasonable time as that rule requires. Because we reverse on other grounds, we do not address this argument.

Here, the trial court awarded Tatyana costs of $8,533, based on its calculation of two-thirds of Gairson's expert witness fee for preparing and testifying. The trial court stated that it considered the parties' relative assets, including that Tatyana was "essentially unemployed and homeless" and that John earned roughly $4,500 per month. RP (Dec. 9, 2017) at 17. The trial court recognized that Gairson spent more time on this case than was typical. But the trial court concluded that the fee was reasonable based on Tatyana's language barriers, her lack of familiarity with the law, and the complicated nature of the case.

The court evaluated the amount of Gairson's fee and considered the parties' respective abilities to pay. Accordingly, we hold that the trial court did not abuse its discretion in awarding Tatyana these costs.

D. AWARD OF CR 11 SANCTIONS

John argues that the trial court erred in imposing sanctions against him under CR 11 without adequate written findings supporting the sanctions. We agree.

CR 11(a) requires every pleading, motion, and legal memorandum of a party represented by an attorney to be signed and dated by an attorney of record. The attorney's signature certifies that, to the best of the attorney's knowledge and based on an inquiry reasonable under the circumstances, the pleading, motion, or legal memorandum was not filed "for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." CR 11(a)(3).

CR 11(a) authorizes the imposition of an appropriate sanction for a violation of the rule, including reasonable attorney fees and litigation expenses. *Eller v. E. Sprague Motors & R.V.'s, Inc.*, 159 Wn. App. 180, 190, 244 P.3d 447 (2010). We review imposition of CR 11 sanctions for abuse of discretion. *In re Marriage of Lee*, 176 Wn. App. 678, 690, 310 P.3d 845 (2013).

When the trial court imposes CR 11 sanctions, it must state the basis for the sanctions in its CR 11 order. *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994). In *Biggs*, the Supreme Court stated:

> [I]n imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct *in its order*. The court must make a finding that either the claim is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose.

Id. (emphasis added) (additional emphasis omitted). The court remanded because there were no such findings. *Id.* at 201-02.

This court cited *Biggs* in requiring findings supporting the imposition of sanctions in the trial court's CR 11 order:

> [T]he court must make explicit findings as to which pleadings violated CR 11 and as to how such pleadings constituted a violation of CR 11. The court must specify the sanctionable conduct in its order.

N. Coast Elec. Co. v. Selig, 136 Wn. App. 636, 649, 151 P.3d 211 (2007). Written findings are not necessarily required as long as comprehensive oral findings are expressly incorporated into the court's CR 11 order. *Johnson v. Mermis*, 91 Wn. App. 127, 136, 955 P.2d 826 (1998).

Here, the trial court explained its ruling orally, stating that John improperly represented facts regarding filing the I-864 affidavit in a declaration statement. But the court's order imposing sanctions did not state the basis for the sanction or incorporate its oral ruling. Therefore, the trial court's sanction award was insufficient under *Biggs* and *North Coast Electric* and we vacate the trial court's CR 11 order.

E. ATTORNEY FEES ON APPEAL

Both parties request attorney fees on appeal. John requests fees based on Tatyana's alleged intransigence. Tatyana requests attorney fees and costs under RCW 26.09.140 based on

her financial need and because John's appeal is frivolous. We decline to award attorney fees to either party.

CONCLUSION

We reverse the trial court's order vacating the 2013 child support order, reverse the trial court's December 2016 order vacating the October 13, 2015 order that prospectively modified Tatyana's child support obligation, and reinstate the October 13, 2015 order. We affirm the trial court's award of expert fees to Tatyana under RCW 26.09.140. And we vacate the trial court's order imposing CR 11 sanctions on John and remand either for entry of specific findings supporting the award of CR 11 sanctions that are included or incorporated in the court's CR 11 order or a determination that CR 11 sanctions are not warranted.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, C.J.

We concur:

WORSWICK, J.

LEE, J.

Appendix 2

Filed
Washington State
Court of Appeals
Division Two

September 24, 2018

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of JOHN ARTHUR MASON, Appellant, and TATYANA IVANOVNA MASON, Respondent.	No. 49839-1-II ORDER DENYING RESPONDENT'S MOTION FOR RECONSIDERATION

The respondent moves for reconsideration of the court's July 31, 2018 opinion. Upon consideration, the court denies the motion.

The respondent argues that a number of other factors other than the respondent's I-864 obligation justified the trial court's relief from the 2013 child support order. This court's opinion and this order do not preclude the respondent from filing a motion for relief from the child support order or a motion to modify ongoing child support based on these factors, if allowed by applicable law.

The respondent argues that a number of negative consequences will result from the reinstatement of the 2013 child support order as modified by the superior court commissioner's October 13, 2015 order. However, as this court noted in its opinion, an immigrant can enforce the I-864 support obligation against his or her sponsor. 8 U.S.C. § 1183a(a)(1)(B); *In re Marriage of Khan*, 182 Wn. App. 795, 799, 803-04 (2014). This court's decision and this order

do not affect the respondent's ability to recover the amount of any I-864 obligations from the appellant or to offset that amount against the respondent's child support obligations.

Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Maxa, Lee

FOR THE COURT:

Maxa, C.J.

MAXA, C.J.

Appendix 3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
FAMILY AND JUVENILE COURT

In re the Matter of:	)	
	)	
JOHN MASON,	)	COURT OF APPEALS
	)	NO. 49839-1-II
Petitioner,	)	
	)	THURSTON COUNTY
vs.	)	NO. 07-3-00848-0
	)	
TATYANA MASON,	)	
	)	
Respondent.	)	
	)	

VERBATIM REPORT OF PROCEEDINGS
(Trial & Ruling - Volume III)

BE IT REMEMBERED that on November 2, 2016, the above-entitled matter came on for trial before the HONORABLE CHRIS WICKHAM, Judge of Thurston County Superior Court.

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APPEARANCES

For the Petitioner:	LAURIE ROBERTSON Washington Family Law Group 10700 Meridian Ave N, Ste. 107 Seattle, WA 98133-9008
For the Respondent:	TATYANA MASON (Appearing Pro Se)
Also Present:	DIANA NOMAN MARINA DELAHUNT ALMIRA SAFAROVA-DOWNEY Russian Interpreters

I N D E X

WITNESS	Page No.
JOHN MASON	
DIRECT EXAMINATION	336
CROSS-EXAMINATION	368
MARY PONTAROLO	
DIRECT EXAMINATION	379
CROSS-EXAMINATION	390
REDIRECT EXAMINATION	395
JOHN MASON	
CROSS-EXAMINATION (Cont'd)	397
REDIRECT EXAMINATION	421
RECROSS-EXAMINATION	422
TATYANA MASON	
DIRECT EXAMINATION	424

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E X H I B I T S

Petitioner's Exhibit 53	340
Petitioner's Exhibit 54	341
Petitioner's Exhibit 55	348
Petitioner's Exhibit 56	349
Petitioner's Exhibit 57	349
Petitioner's Exhibit 58	350
Petitioner's Exhibit 59	351
Petitioner's Exhibit 78	353
Petitioner's Exhibit 61	355
Petitioner's Exhibit 62	356
Petitioner's Exhibit 63	358
Petitioner's Exhibit 79	365
Petitioner's Exhibit 72	367
Respondent's Exhibit 14	382
Respondent's Exhibit 80	397
Respondent's Exhibit 82	420

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Mr. Gairson would not testify on behalf of me with all those documents if it's something would be wrong.

THE COURT: You've got one minute left.

MS. MASON: Yes. I would say I believe -- so I believe what the court noticed many legal and serious fact errors presented by Mrs. Robertson and Seifert and everything what Ms. Robertson right now is arguing is undermined her argument in this case.

THE COURT: Thank you. In a perfect world, I'd spend a couple days, I'd write up a very complete and detailed analysis of this case, and I'd send it out to everybody. But I don't live in a perfect world, and so I'm going to do the best I can right now to summarize what I have heard and seen over the last few days of trial. And if I misstate something, I apologize. I think there's value in my communicating this while it's relatively fresh in my mind. Granted, it's been a couple weeks here since we started, but it's reasonably fresh in my mind.

So the record shows that John and Tatyana -- I'm going to call you by your first names, I hope that's okay -- were married on August 19th, 1999. That Tatyana was brought over here on a fiancee visa, that she received a conditional residency status upon the application of John. And upon his signing of an

I-864 in 1999, which is an affidavit in which the sponsoring individual promises to the U.S. government to support the person who is being brought into this country, there was a two-year period during which the conditions attached to that conditional permanent residence status could be removed.

I've heard testimony and seen evidence that, fairly early on in the relationship, there was conflict ultimately resulting in a protection order being filed, resulting in Ms. Mason going to SafePlace to get advice as to how to proceed and so on.

So it's not surprising that the couple did not file the necessary form to remove the conditions on the conditional residence status within the two-year period. How well either one of them understood what their obligation was, I'm not sure. I'm not persuaded that they were clearly aware of it. However, it's also apparent from what I've heard and seen that John had no real incentive to continue to work with Ms. Mason to maintain her permanent status in the United States early on in the marriage.

The parties separated on July 18th, 2007. The divorce was final June 24th, 2008. There was a modification proceeding which ultimately resulted in

a child support order being entered November 25th, 2013. Now, I indicated that the conditions on the conditional permanent residence were not removed within the two years as required under the law. However, I heard testimony that it is possible to file a Form I-751 to remove the conditions even after the two years have passed.

Ms. Mason, through her own testimony and through the testimony of her expert, however, has presented compelling evidence that she is now in a disfavored status as someone who has significant unpaid child support and that the immigration authorities have the discretion to deny her permanent residency at this point, so she is in the awkward position of being in this country but having no ability to obtain permanent status. And with the focus on legal status that currently exists in this country, it's not hard to believe that most employers will not hire her, because she is not able to show proof of legal status. And were she to go back to immigration, she would most likely be denied because of the child support order.

Now, it's true this matter got to my courtroom through a very circuitous path, as Ms. Robertson pointed out through John's testimony and through the

entry of various exhibits along the way. However, based on my review of the record, I'm persuaded that no court in the lengthy proceedings involving John and Tatyana has ever considered the impact of the I-864 on the obligations of John and Tatyana to each other. Certainly, if a court was entering a child support order, it would take into account whether or not the person receiving child support was also paying spousal maintenance to the person paying it. I mean, I think that goes without saying that that would be considered both in the calculation of the child support and as to offsets.

I understand the *Khan* case. I've reread it, and I understand that it stands for the proposition that a family law court is not required to enforce the I-864 obligation. The court was very clear to say that because the family court does not have to enforce the affidavit, that preserves the remedy to the beneficiary of the I-864 affidavit to pursue relief separately. But I don't read the *Khan* case as saying that the I-864 affidavit is not relevant. They did not reverse Judge Hogan for even considering it. And so I don't believe that the *Khan* case directs this court or any other court to disregard it.

In my mind, it is the elephant in the room in this

case. I indicated to Ms. Mason that my understanding of Civil Rule 60(b)(1), (2) and (3) is that a motion under those paragraphs has to be brought within a year of the entry of the order. And she raised the point, well, the year doesn't begin until the Court of Appeals speaks. That may be true. I've never seen that raised before, but there is some support for the idea that an order is not final until the last appeal has been completed.

But I think rather than rely on (1), (2) and (3), I think the court has to go to subsection (b)(11), which is, "any other reason justifying relief from the operation of the judgment." And in doing that, I will say that I do not believe, in 25 years of being a court commissioner and a trial judge, that I have ever found a basis to vacate a court order under (b)(11). My understanding of the case law is that (b)(11) is disfavored; that the appellate decisions encourage for us to use (1) through (10), and, if they are not available, to deny the motion.

However, (b)(11) does exist, and, as I say, in this case, it seems to me the I-864 affidavit is the elephant in the room. And for an order to stand that involves the financial relationship of the parties, without considering the obligation of one to support

the other makes no sense to me, and so I think it has to be considered.

Now, there was some question raised by Ms. Seifert and by John that the I-864 affidavit was no longer operable. And as we heard, it terminates on the death of the sponsor, which is not applicable here; if the sponsor becomes a U.S. citizen, which has not happened here; or if the sponsored immigrant is credited with 40 quarters of gainful employment in excess of 125 percent of the poverty level.

The *Davis vs. Davis* case stands for the proposition that a spouse's quarters are credited to the quarters of the person being sponsored during the marriage, even after a decree of separation. In this case, however, we don't have a decree of separation. We have a decree of divorce, and the section that speaks to crediting spousal quarters requires the parties to be married at the time the determination of 40 quarters is made.

In this case, according to my calculation, I have to believe it comes to 29 quarters, and the social security record of Tatyana shows essentially she had one quarter earnings during the marriage. She's had a number of quarters of earnings since, but, during the marriage, she had one. Even crediting John's

quarters to her during the marriage, she does not reach 40 quarters by the end of the marriage, and so that provision does not apply.

Another basis for termination of the support obligation is if she departs the United States permanently. As we heard from her testimony, she did depart, but it was for two weeks for her mother's funeral. It certainly wasn't permanent. And, finally, if the sponsored immigrant dies, and that hasn't happened either.

So the various provisions that allow for the termination of the I-864 support obligation, none of those have come to pass, so the obligation is still alive.

I also note with regards to credited quarters that I find credible Tatyana's testimony that, during the majority of the marriage, she was not supported by John. Granted, she lived in the house with him that he was paying the mortgage on in order for her to survive. She was taking out loans and probably not doing much of anything.

So based on all of this, I am prepared to vacate the child support order, which I believe will have the effect of allowing Tatyana to apply for her green card and remove the conditions that were placed on

her conditional permanent residence status, which I think in the long run is going to be beneficial to both parties, because it will ultimately allow her to obtain citizenship, which will terminate the I-864 obligation. That's one of the grounds to do that. It also will allow her to obtain employment, which is another basis for terminating the obligation. Otherwise, I see no way for either party to get out of this box that you are both in.

We've talked about setting a new support amount. I'm going to leave it to John and his attorney as to whether or not they wish to do that. I have heard testimony from Ms. Gairson that John owed Tatyana a certain amount of money under the I-864 affidavit. I fully expected to hear an argument for that today. I would not have granted that relief, because, again, I'm only looking at the child support order, but I would expect a court setting support to consider that obligation and net out any child support. And I'm assuming the I-864 obligation would probably surpass any amount of support based upon Tatyana's difficulty in obtaining substantial gainful employment.

So I don't know that it's going to be beneficial to either side to enter that order, but I leave it up to John. He has a right to request it, and so that

would be his choice.

For Tatyana, I would say that, from what I've seen, you have a right to seek support under the I-864 affidavit. You can file a claim for that in state court or in federal court. My guess is if it were filed in Thurston County Superior Court, we would join it with this case, because the issues are related. But, currently, it's not part of the case, so unless and until that's filed, this court is not going to be enforcing that obligation separate and apart from an offset on child support.

I recognize that everyone here is operating at a disadvantage. I should say I've had a chance to observe Ms. Mason in court for three separate days with two interpreters. And although she has a reasonable ability to use English, her English is not good, and her statements were more clear through the interpreters than in her English. I know she is more comfortable, perhaps, speaking in an English-speaking situation with English than in Russian, and that's understandable. But it's not hard for me to understand why she might not have done well with an English-speaking attorney or with an English-speaking court prior to this proceeding.

I am aware of no proceedings prior to the last

three days in which interpretive services were provided for her. I know that in the motion hearings I had leading up to this, she did not have interpreter services, and so I believe she's been operating at a disadvantage. And although she has had the benefit of communication with immigration and more recently with Mr. Gairson, this is a complicated field, even for people who work in it, and so it's not hard for me to understand why she would not have understood it fully.

As to John, I think, in some ways, the same thing holds true. It's not surprising to me that he would not have fully understood all of the obligations he was undertaking and the requirements of the law. As I say, I've been doing this work for 25 years, and yet I've only had maybe four of these cases. And the only reason why this issue appeared to me is because I was educated by a self-represented party, a spouse, roughly three years ago in a trial. State court judges do not get training on these affidavits or their impact, and, as counsel has pointed out, there's very little case law on it.

And so everyone is doing the best they can without a lot of guidance, but, as I say, it's hard for me to understand why a court setting child support, if it

knew about the existence of the affidavit, would not take that into account. I think it's a significant issue.

Now, I agree with the *Khan* court that it's not controlling, but it is such a big issue that I don't think it can be ignored, and that's why I believe it's the elephant in the room and why it is a basis to vacate the prior child support order.

I'm going to set this matter on for my motion calendar on November 21st at 1:30. It's a special calendar, because we have some days that we won't have calendars coming up. And, at that point, Ms. Mason can present an order vacating the order of child support. You're the prevailing party here, so it's your responsibility to prepare the order. The best way to do that is for you to prepare an order, send a copy to Ms. Robertson, ask her if she agrees with it, listen to her suggestions as to how it could be better stated and, if you like, incorporate those suggestions, redo the order, get her to sign off on it, bring me an order with her signature. If that doesn't work, then both of you can be here, and I'll hear from you both as to what's right or what's wrong with the order that Ms. Mason prepares.

All we're doing is vacating the child support

order. I anticipate a request for fees in this case. I'm going to want a separate motion from each side telling me exactly what you want, how much you're asking for, what it's based on. You can refer to exhibits in the trial record if you want, or you can submit additional affidavits if you want. And I will need some information as to the financial status of both parties, so I'm going to ask that you both submit a new financial declaration as of November 2016, a court form which shows what your financial situation is, and I will consider that to determine financial situation. If you want to submit more than that, you're welcome to, but you don't have to. I'm fully prepared to determine an award of fees on financial declarations alone.

And then, Mr. Mason, should you choose to seek a new child support order retroactive to the date of the one that's being vacated, you can schedule that for another hearing. I only ask that you do that in the month of December, so that I can be the one to hear it. Because this case is so complicated, I don't want to have to pass it off to someone else.

MS. MASON: Will we put that on your regular motions calendar?

THE COURT: I have a special motion calendar

Monday the 21st at 1:30.

MS. MASON: I mean, if you want us to do the other motion for December.

THE COURT: Oh, for support, yes. I have, I believe, two calendars in the month of December. One is December 9th, and one is December 23rd. Any questions? Ms. Mason?

MS. MASON: So, basically, I understood with the affidavit of support, I have to file in federal court, right? That's what I understand.

THE COURT: If you are looking to receive money as a result of that affidavit, you can file it in state court or federal court, as far as I can tell. And what I'm saying is, if you file it in Thurston County Superior Court, it will get joined with this case. I'm not saying you have to do that or you should do that. I'm just explaining that that's a separate claim, separate from what's going on right now.

MS. MASON: Okay. And another question, it's in December 9 or 23, Mr. Mason will propose new child support order, right, motion?

THE COURT: He hasn't decided to do that. His attorney asked when he could do that. I told her those were the two calendars I have in December, so

I'm inviting him to schedule it for one of those days. You'll get notice of this if he files.

MS. ROBERTSON: Okay.

THE COURT: Any other questions?

MS. ROBERTSON: No, that's fine.

THE COURT: Ms. Robertson? Thank you. Court will be in recess.

--oOo--

CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

1. I reported the proceedings stenographically;

2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;

3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this 20th day of April, 2017.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

Appendix 4

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON
FAMILY AND JUVENILE COURT

In re the Matter of:	)	
	)	
JOHN MASON,	)	COURT OF APPEALS
	)	NO. **49839-1-II**
Petitioner,	)	
	)	THURSTON COUNTY
vs.	)	NO. 07-3-00848-0
	)	
TATYANA MASON,	)	
	)	
Respondent.	)	
	)	

TRANSCRIPTION OF AUDIO RECORDING

BE IT REMEMBERED that on December 9, 2016, the above-entitled matter came on for hearing before the HONORABLE CHRIS WICKHAM, Judge of Thurston County Superior Court.

Reported by: Aurora Shackell, RMR CRR
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For the Respondent: TATYANA MASON
(Appearing Pro Se)

(After hearing trial, the court ruled as follows)

--oOo--

THE COURT: We're next going to go to the motion calendar, and the first matter is Mason and Mason. This seems to be a day for electronic challenges. I'm waiting for the record to be called up here. I have my notes, so maybe I'll just begin.

I noted -- as you know, I issued a written decision, an actual order, and when I was looking at it the other day, I noticed it was on Ms. Robertson's pleading paper, because she sent me the -- her associate sent me the electronic order, and that's what I worked from. And so I apologize, it looks like the order that you created. I know that it wasn't the order you created, just so it's clear that that was an order that the court created on your pleading paper.

And that order was entered on November 23rd, and it set another hearing, which is today, to take up the issue of attorney's fees and costs. And I have -- the motion is, I believe, from Ms. Mason. I don't believe that Mr. Mason has a similar motion, does he?

MS. ROBERTSON: Correct. No.

THE COURT: Okay. So, Ms. Mason, this is your

motion. Go ahead.

MS. MASON: Yes. Thank you. Your Honor, I am requesting to grant me fees under CR 11, $82,000, including 45,000 for my own time preparing for this trial. I am requesting -- as you know, Your Honor, CR 11(b) covered my conduct as a pro se, and I have done my best to do this job, and I have prevailed due to my diligent work and passion.

In contrast, Mrs. Robinson had ignored her duties under CR 11(a) as an attorney. Under CR 11(a)(1), Mrs. Robinson has made many misrepresentations that were not grounded in facts. On July 7, 2016, Mrs. Robertson filed Ms. Seifert's declaration, who failed to acknowledge the existence of Department of Justice before Department of Homeland Security. Ms. Seifert, who claimed herself as an immigrational expert for 27 years does not know immigrational law and does not know what's the year I-864 was enforced.

So single trip to my mother's funeral in 2004, they said, terminated obligation under I-864, Mr. Mason, but, however, she refused to mentioned, if I depart permanently. And other issues there. Is this because Ms. Robertson instructed Ms. Seifert to falsely testify in every aspect of law in this case?

John has consistently prejudiced himself by

stating in several of his declarations signed under oath that he never signed affidavit of support. Even the physical fact was presented at the trial. John still denied it. On April 29th, 2016, this court directed both parties to request I-864 from FOIA, Freedom of Information Act, and John decide to trick this case -- this court again. Instead of I-864, he request I-129, which is fiancee visa, and which was valid only for 90 days, and so it was expired before August 1999. So, of course, FOIA denied his request.

Next, Ms. Robertson helped John to continue his control, continue his abuse and prejudice in this court so many times by writing for him and on his behalf -- on his behalf submitted to the court all information what is just manipulating declarations signed under oath -- under oath with, "John does not sign affidavit of support."

Under CR 11(a)(2), Ms. Robertson made many unwarranted and bad faith arguments. Ms. Robinson shows a lack of competence before this trial. Ms. Robertson misled this court on several cases during the trial, as *Davis v. Davis* case, which -- she's supporting her argument with *Davis v. Davis* case, where couple were just separated, but they're still married. In our case, we're divorced. This case

does not apply to our case.

So another one, she misquoted case *Liu vs. Mund* where it's basically sponsor. A sponsor cannot mitigate I-864, but Ms. Robertson stated everything around backward. Ms. Robertson was wrong on the *Shumye vs. Felleke* case again during the trial and tried to enforce the income, which does not apply to both for me.

So is Ms. Robinson doing this because -- on purpose or is it because of the lack of competence of the law?

Ms. Robertson failed to understand and follow the law in this case and it's done in bad faith or it's through the gross incompetence as shown by use of the argument that is not warranted by the existing law CR 11 A(3). Many of Ms. Robertson's tactics in this case were done to increase my costs and put me even more in deeper economic hardship, to unnecessarily delay justice, to purposefully harass me for -- and for other inappropriate purposes.

So Ms. Robinson is not for the first time actually ambushed me at this court since 2007. For example, before the trial, it's five minutes before trial, she actually served me with the trial brief. When I served her -- which she knows was on October 13th, it

was exchanged the documents between parties. So she didn't do that. I filed in the court my paperwork, and on Friday, I submit to her, but she refused to give it to me. So it's okay for Ms. Robertson to serve her legal documents through e-mail when she wanted them, but she does not accept from me any legal documents through the e-mail. She wants priority mail, which costs 6.45 for each time.

THE COURT: You have three minutes left. Do you want to save some time to respond to her?

MS. MASON: Sure.

THE COURT: Your request, as I understand it, is for --

MS. MASON: Attorney's fees and several --

THE COURT: I have $81,751 for your costs.

MS. MASON: Right. This is including --

THE COURT: And that includes the CR 11.

MS. MASON: Well, this is basically, I present the information about my covering my time, because I believe why my time has less value than Ms. Robertson's time. And this because I didn't want to go the trial. Ms. Robertson presented her declaration which basically falsely represent the facts of the laws.

THE COURT: I have a document that you

submitted that shows a total of $81,751. Is that the number?

MS. MASON: Yes. Correct.

THE COURT: All right. Ms. Robertson, go ahead.

MS. ROBERTSON: First of all, we provided this per my client's declaration as well as a memoranda of law that clearly outlines the law on the request that has been made by the respondent. First and foremost, under the law, a pro se litigant cannot be awarded attorney's fees. They are not an attorney. They have not incurred attorney's fees. And multiple cases have ruled on that. We have those cases outlined in our brief, including *In re Marriage of Brown*, *West vs. Thurston County*, *Mitchell vs. Washington State Department of Corrections*. All of those are in our briefs. In fact, to award a pro se litigant attorney's fees would be contributing to them practicing without a license, which violates the law.

So Ms. Mason coming in here and requesting $45,000 in attorney's fees for herself, as well as an additional $15,000 to allegedly correct her immigration, are not proper for this motion. When the court set this motion at the end of the hearing,

it was set specifically to address expert fees. Those fees had been testified and addressed to you at the trial with regards to Mr. Gairson. That's what this court set the motion for. That's what was anticipated what would be argued. For Ms. Mason to come before this court and request attorney's fees for herself, a non-attorney, is completely improper. For her to request $15,000, as she says, to have her immigration corrected, is completely outside the scope of this matter.

So what the court needs to look at, really, are Mr. Gairson's fees versus Ms. Seifert's fees, and we've argued that, again, in the memo as well as in my client's declaration.

Under the law, this court needs to really look at the reasonableness of Mr. Gairson's fees. Even he testified at trial that his fees were unreasonable, that they were excessive, that he had spent over 20 hours just meeting with Ms. Mason. Really, he came into this court allegedly as an expert. He was admitted as an expert in immigrational law to explain parts of immigration al law to this court. He testified -- excuse me -- he testified that he did not know the history of this case. He testified that he was not representing Ms. Mason. He testified that

he didn't even know the nature of the motion before the court, that his role was to come in and talk about immigration law where he said he was an expert in. And yet, he charged 41 hours of his time and is seeking roughly $15,000 in fees.

Those fees don't apply to this case. If the court wants to make a reasonable comparison, we provided Ms. Seifert's bill. Ms. Seifert's bill is roughly $2,500 for doing exactly the same thing, for coming to this court and providing expert opinion on immigration law.

Now, those were the experts on immigration law, and if the court recalls, when the trial started, the court itself said that this was not an area the court had a lot of knowledge in, that this was not an area of law that comes before the family court, and that's why this court was looking at those two people to come in and offer their testimony and offer their information. There was never any bad faith. There was never any finding of bad faith by this court or that anything was manipulated.

My client provided responsive materials because we got Mr. Gairson's report the day before trial, something that we never even anticipated, because this was a motion to vacate a 2013 order. This

wasn't a motion for this court to decide what my client owed under the affidavit. And if the court looks back at the report that was provided by Mr. Gairson, a large part of that report, that's what that's all about. It was at that point that my client was required to provide responsive materials and to bring in Ms. Seifert. Prior to that, it was never his intention to do that, because that's not what the motion was about.

On the day of trial, we provided full copies to the court, to opposing party, of our exhibits. Our exhibits consisted of orders that had previously been entered before this court. There was nothing surprising about it. There was nothing new about it. We never got copies of Ms. Mason's exhibits, and the court can recall as we went through the trial, every time she presented an exhibit, we had to look at it because, previously, we had never received a copy of it.

So for her to make claims that there was any bad faith in this action, which my client wasn't the one who filed three years after the order was entered, is completely unreasonable. And, again, the case law is clear, she doesn't get attorney fees. So, really, what the court is looking at are the expert fees that

should be awarded to either party for their experts. Mr. Mason's position is that they both brought in experts, they should both be responsible for the experts that they provided to this court without an award of fees to either party.

Also, under 26.09.140, the court does have to look at ability to pay. My client solely supports the two children of these parties and now has lost a judgment for child support, support that should have gone to these children. He has incurred debt because of that. He gets nothing. He gets zero from Ms. Mason to support their children, and that needs to be a consideration. This court said it was requesting financial declarations from the party. We provided financial declarations. We provided bank statements. We provided pay records. We provided tax returns. All we got from Ms. Mason was a financial declaration.

So the court should look at the evidence before it and make a determination that each party should be responsible for their own expert fees, and there should be no additional award of fees to either party. Thank you.

THE COURT: All right. Ms. Mason, you have three minutes.

MS. MASON: Yes. As you see, Your Honor, Mr. Mason already contradicts himself by saying that he has very little income. However, he still was able to buy overly-aggressive attorney, and he still was able to pay a second attorney, Ms. Seifert. So two attorneys have been fighting me on the issues of law and interpretation of facts, so I had no other choice as to hire expert because I know the unethical behavior of Ms. Robertson since 2007.

So they compare Lisa Seifert and Jay Gairson, but it's absolutely incomparable because you can see -- you did see how Lisa Seifert's report. She does not know the law or she was instructed by Ms. Robertson to misrepresent every fact in this case and lost. Mr. Gairson actually, he took time. He actually looked at my old immigrational case. He had to view all those documents, and he takes time to make sure everything lies was not changed. So he did a very good job. Instead of Lisa, who spent for two hours and testified on every aspect of law is wrong. And Mr. Gairson, who actually prepared the report and spent time to explain everything, and in result, it sounds like what Ms. Robertson completely or she is incompetent in the law, or she did this on purpose in the bad faith to mislead, misquote, misinterpret the

law. And I am really asking what Ms. Robertson has to discipline by abuse of CR 11(a) as an attorney. Because I was following the duty my conduct under CR 11(b) as a pro se, but Ms. Robertson decide to not follow and ignore this conduct under CR 11(a) as an attorney.

So, also, I submitted --

THE COURT: You've got 30 seconds left.

MS. MASON: Yes. I submitted my paperwork, and based on equal justice, the litigant pro se can actually have -- based on federal statutes, can actually award at least attorney fees. And that's an established in law, and I provided this declaration. And, also, I complete -- I was basically calculated how I got this 45,000 is basically from July 8th to November 2nd is 15 weeks, multiply by five days a week and six hours per day, is 450 hours. And I multiplied by a hundred, because based on mean --

THE COURT: You're out of time.

MS. MASON: Yes.

THE COURT: I want to start by saying that I know you have spent a great deal of time on this case, and you ultimately prevailed in the hearing that we had, and that was in no small part due to the effort that you put into it. I've already

acknowledged the language barriers that you face, and you were still able to marshal the information together to present a strong case. However, this is a request for fees, and Washington law does not award -- does not compensate parties for the time that they spend preparing their case. You're not an attorney, as Ms. Robertson has said, and so your fees cannot be awarded by this court. And so all of the work that you did clearly was valuable, but I do not have the authority to compensate -- to require Mr. Mason to compensate you for it. That's the first piece.

So if I go through your summary here, I believe the only -- well, I can probably cover mail costs. There is such a thing as statutory attorney's fees which I can probably add on here. But I don't know that I can cover any of these other costs, other than Mr. Gairson. Mr. Gairson was a professional expert that you retained for the purpose of proving your case. He clearly presented good evidence for you, and so he was competent at what he did. I understand Ms. Robertson's point that even by his own admission, he spent more time with you than he thought was normal or customary under the circumstances, but I believe that that time probably was necessary because

of, again, your language barriers and also the complicated nature of this case. It's not as if he was consulting with another attorney; he was consulting with someone who he essentially had to educate as to the law so that you could bring the information yourself to the court.

And when I look at all of that, I look at his total fee of $12,800, in the scope of this case, with the degree of adversity presented in this case, I think that's a reasonable figure. So I will adopt that figure as reasonable. So I will allow that as a cost of litigation, along with your priority mail costs, which you've listed as $71, and I will add something called statutory attorney's fees.

And Ms. Robertson, help me out here with the number. It's a standard number in the statute. I haven't looked at it for some time.

MS. ROBERTSON: She's -- she's not entitled to that.

THE COURT: I think any party is.

MS. ROBERTSON: She's not an attorney.

THE COURT: I recognize that, but I think it goes with judgment.

MS. ROBERTSON: I mean, if you're talking about a contempt judgment, there's a $100 addition.

THE COURT: No, I'm talking about -- that's okay. I'm not going to order something that I don't have the authority in front of me. If you want to find the authority for this, Ms. Mason, I'll add it on to what I'm going to award. I will award you two-thirds of Mr. Gairson's costs on the financial -- relative financial positions of each of you. You are essentially unemployed and homeless. Mr. Mason earns roughly $4,500 a month net. And so it's reasonable to me that he pay two-thirds of that cost and you pay one-third.

As to the remaining one-third, I will impose the additional one-third under Civil Rule 11, and I'm doing that based on a declaration that was filed by Ms. Robertson July 6th. It's a statement of Mr. Mason, and I'm going to read in pertinent part. This is from the first page of that declaration, "She claimed in part that I have filed an I-864 support affidavit when she came to this country, and, therefore, I should have been supporting her, and she never should have been required to pay child support. Nothing could be further from the truth." That's his statement.

Then on the second page, "I believe the I-864 was a document I may have started to complete, but it was

not what I was required to file and so I did not complete or file the document." And then later on that page, "Respondent claims that I would have had to complete I-864 as part of the fiancee visa application, but that is not true." And then on page three, "Respondent's representation that I had to have filed the I-864 form is simply not true."

Those statements raise the issue of the existence of the I-864, which is what required this court to have a three-day trial over whether or not that document existed. Now, clearly clients are entitled to aggressive advocacy, but I believe the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation. And I believe that that is a violation of the portion of CR 11 which says that the signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion or legal memorandum and that, to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1), it is well grounded in fact; (2), it is warranted by existing law or a good faith argument; (3), it is not interposed for any improper purpose such as to harass

or to cause unnecessary delay or needless increase in the cost of litigation." I believe those statements were made for that purpose, and, therefore, I believe CR 11 does apply here.

The remaining one-third of Mr. Gairson's fee, I will assess to Mr. Mason because of CR 11 violations. So I will grant a judgment for the entire cost of Mr. Gairson's services.

MS. ROBERTSON: And there's no consideration that she forged U.S. documents? And we provided proof that she forged --

THE COURT: Ms. Robertson, be careful here. You have already pushed this issue farther than you ever should have. Your client and, by extension, you should have known there was an I-864 regardless of what you were looking at, and you put this court and Ms. Mason through three days of trial on that issue.

MS. ROBERTSON: For the record, my client was never going to ask for the trial, and when this court asked us at the beginning of the trial why we couldn't submit this on affidavits, my client agreed it should have been something that was submitted on affidavits, and it was Ms. Mason who requested that the court go forward with trial --

THE COURT: This court set the trial itself,

if you'll recall, because I was concerned about the issues that you and your client had raised, and I felt there was no way that I could resolve those issues without a trial with witnesses in person. That trial was unnecessary, and it was raised solely because of the allegations that were made that were baseless.

This is the end of this hearing. Ms. Mason, if you have an order to present, I will sign it this morning after Ms. Robertson takes a look at it.

MS. MASON: Yes, I do.

THE COURT: You need to show it to Ms. Robertson first.

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CERTIFICATE OF REPORTER

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, AURORA J. SHACKELL, CCR, Official Reporter of the Superior Court of the State of Washington in and for the County of Thurston do hereby certify:

1. I received the electronic recording from the trial court conducting the hearing;

2. This transcript is a true and correct record of the proceedings to the best of my ability, except for any changes made by the trial judge reviewing the transcript;

3. I am in no way related to or employed by any party in this matter, nor any counsel in the matter; and

4. I have no financial interest in the litigation.

Dated this 18th day of March, 2017.

AURORA J. SHACKELL, RMR CRR
Official Court Reporter
CCR No. 2439

Appendix 5

[ ] EXPEDITE
[ ] No hearing set
[X] Hearing is set
Date: November 21, 2016
Time: 1:30 p.m.
Judge/Calendar: Family Law

Superior Court of Washington, County of THURSTON

In re: Petitioner: JOHN MASON And Respondent: TATYANA MASON	No. 07-03-00848-0 Order: Granting Motion to Vacate (OR) Order of Child Support

Order: Granting Motion to Vacate

1. The Respondent made a *Motion to Order to Vacate full amount of Child Support Urgently* to vacate the Order of Child Support entered November 25, 2013, by the Hon. Anne Hirsch. After various motions and hearings, the court set Respondent's motion for oral testimony.

2. The Court heard testimony and argument from both the Petitioner and Respondent on October 17, 18 and November 2, 2016.

3. The Court has considered the *Motion*, oral testimony, exhibits entered with the court and argument of both parties.

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The Court makes the following FINDINGS:

A. This Motion was brought pursuant to CR 60 as a Motion to Vacate a final order. Respondent has requested the court vacate the Order of Child Support entered by the Hon. Anne Hirsch on November 25, 2013.

B. The basis of Respondent's motion was that in setting the child support in 2013, the court was not made aware of the I-864 Affidavit regarding continuing support which had been signed by the Petitioner in 1999 as part of his sponsorship of Respondent's immigration to this country.

C. The Respondent came to the United States under a fiancé visa. The parties were married August 19, 1999. The Petitioner signed an I-864 Affidavit shortly after the parties' marriage as part of the process to convert the visa to a permanent residency.

D. The parties had two years following issuance of documents granting Respondent conditional residence status within which to remove the conditions.

E. The parties did not act to remove the conditions; shortly after the issuance of the conditional residence status to Respondent, Respondent was the victim of domestic violence from Petitioner and Petitioner lost his incentive to support permanent residency for Respondent.

F. The parties separated July 18, 2007. The divorce was final June 24, 2008. The parties have two minor children.

G. There is no evidence that any other court has considered the I-864 Affidavit in the proceedings in this case. Respondent has not had interpretative services in this case prior to this evidentiary hearing. The Court is persuaded that Respondent has difficulty understanding and communicating in English. During this hearing she clearly benefited from the provision of interpretive services.

H. Respondent is not able to work due to her current immigration status. Further, the arrears which have accrued under the 2013 Order of Child Support would likely prevent

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her from removing the conditions on her current resident status and obtaining permanent residency in the United States.

Having entered the above Findings of Fact, the Court makes the following Conclusions of Law:

A. The I-864 affidavit created a continuing obligation of Petitioner to support Respondent.

B. The obligation terminates on the occurrence of any of the following: (1) death of the sponsor; (2) the person being sponsored becoming a US citizen; (3) the sponsored immigrant being credited with 40 quarters of gainful employment in excess of 125% of the federal poverty level; (4) the permanent departure of the sponsored individual from the country.

C. None of the terminating events have occurred.

D. Respondent has earned sufficient income for one quarter during the marriage; Petitioner's earnings during the marriage could provide an additional 29 quarters of qualifying employment. These earnings do not meet the requirement of 40 quarters such as would terminate the obligation.

E. Although Respondent did leave the country, it was to attend her mother's funeral and was for two weeks, after which she returned.

F. Although *Khan v Khan*, 182 Wn App 795 (2014), does not require a Court determining spousal maintenance to enforce the obligation created by the I-864 affidavit, it recognizes the appropriateness of the trial court's consideration of the affidavit.

G. The 1-864 affidavit is such a significant factor in this case that to set child support without its consideration creates an unjust result.

H. A Motion to Vacate under CR 60 is an appropriate method to raise the issue of the failure of the court setting child support to consider the affidavit.

I. CR 60 (b) (11) will allow the motion to be filed later than one year from the date of entry of the Order of Child Support. It is therefore an appropriate basis under which to bring a motion to vacate in this case.

J. The Order of Child Support entered November 25, 2013 should be vacated because the Court was not informed of the existence of the I-864 affidavit at the time of the entry of the order.

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Now, Therefore, It Is Hereby Ordered:

The Order of Child Support entered by the Hon. Anne Hirsch on November 25, 2013, is vacated. Any remaining arrears due and owing under that order are likewise vacated.

Petitioner may seek entry of a new order to replace the order of November 25, 2013.

The court will consider the request for expert fees on November 21, 2016.

11 | 23 | 16
Date

Chris Wickham, Superior Court Judge

Petitioner and Respondent or their lawyers fill out below.

This order:
Is presented by me

32521
Petitioner lawyer signs here + WSBA #

Laurie G. Robertson
Print Name

This order:

Respondent signs

Tatyana Mason
Print Name

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Appendix 6

SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY FAMILY & JUVENILE COURT	
JOHN A MASON **Petitioner,** **and** **TATYANA IVANOVNA MASON** **Respondent.**	**NO. 07-3-00848-0** **ORDER VACATING OCTOBER 13, 2015 ORDER OF CHILD SUPPORT** ☒ **CLERK'S ACTION REQUIRED**

I. BASIS

This matter came before the Court upon a motion to vacate the October 13, 2015 Order of Child Support. Neither party appeared. The Court having reviewed all relevant pleadings, makes the following:

II. FINDINGS/CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear this matter. A previous order vacated CW Respondent's child support obligation but inadvertently failed to include this order.

Based upon the foregoing Findings/Conclusions of Law, the Court enters the following:

III. ORDER

IT IS ORDERED that:

1. The Order of Child Support entered on October 13, 2015 by Court Commissioner Jonathon Lack is hereby vacated;

THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT
Mail: 2000 Lakeridge Dr SW Olympia WA 98502
Location: 2801 32nd Ave SW, Tumwater WA 98512
Phone: (360) 709-3201 - Fax: (360) 709-3256
CLERK'S OFFICE: (360) 709-3260

2. Any and all back child support due and owing as a result of the October 13, 2015 Order of Child Support shall be vacated as well;

3. The Petitioner may seek a support order to replace the October 13, 2015 Order of Child Support.

DATED this on this the 14th day of December, 2016.

JUDGE CHRIS WICKHAM

THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT
Mail: 2000 Lakeridge Dr SW Olympia WA 98502
Location: 2801 32nd Ave SW, Tumwater WA 98512
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CLERK'S OFFICE: (360) 709-3260

IN THE SUPREME COURT OF THE STATE OF WHASHINGTON

In re the Marriage of TATYANA MASON, Appellant in this Court/ Respondent in the COA-II vs. JOHN MASON. Respondent in this Court/ Appellant in the COA-II	No. 964386 TATYANA MASON'S AFFIDAVIT OF SERVICE. COA-II case No. 49839-1-II *[Clerk's action required]*

Tatyana Mason, appellant in this Court declare under penalty of perjury, under law of Washington State that she served John Mason, Respondent in this Court, through his attorney with her Petition for Review on October 22, 2018 through the via e-mail ken@appeal-law.com as we previously agreed in this case.

RESPECFULLY SUBMITED this day 22 of October, 2018

Tatyana Mason