100414-1

No. 37585-4-III
(consolidated with
No. 37586-2-III;
No. 37683-4-III)

WASHINGTON STATE COURT OF APPEALS
DIVISION III

HANNAH LAWSON,

Appellant,

vs.

ALEX ANDERSON, TODD ANDERSON,
and DIANA ANDERSON,

Respondents.

APPELLANT'S PETITION FOR DISCRETIONARY REVIEW RAP 13.4

Stephen Kerr Eugster
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I. IDENTITY OF PETITIONERS

Hannah Lawson, the Appellant, and Stephen Kerr Eugster, Hannah's attorney, who has been ordered by the Court of Appeals to personally pay several thousand dollars in attorney fees to Respondent, are the Petitioners.

II. CITATION TO COURT OF APPEALS DECISION

Petitioners seek review of the decision of the Court of Appeals Division III, *In the Matter of the Visits with: S.A.A [†] T.A. and D.A.,Petitioners, and H.E.L., Appellant, and A.A.A., Respondent. In the Matter of the Parenting and Support of: S.A.A. A.A.A., Respondent, and H.L., Appellant,* 37585-4-III (Wash. Ct. App. Sep. 28, 2021).

No motion for reconsideration was filed. Two motions for publication were filed. Both were denied on October 26, 2021.

III. ISSUES PRESENTED FOR REVIEW

Two issues are presented for review:

A. The first has to do with the meaning of the dismissal with prejudice of a third party action under RCW 26.11 Nonparental Child Visitation—Relatives. Order to Dismiss Petition for Relative Visits with Prejudice. SN # 51, CP 86 - 87. In his findings, Judge Michael Price said, "[t]he legislature intended for third parties not to be able to hold these

cases over Respondents, which is why RCW 26.11.020 (4) is written so clearly in the order." *Id.* CP 86 - 87. Judge Price further said "[d]ue to the provisions of RCW 26.11.020 (4) the dismissal is with prejudice." *Id.*

B. The second has to with application of inherent fundamental constitutional rights of a mother of a child concerning the upbringing of her child which include third party visitation in any form. Hannah asserts that she has right to prevent S.A.A. from visitation with her paternal adoptive parents, of A,A.A. Respondent.

This issue was extensively discussed in Appellant's Opening Brief. This issue is the critical issue in this appeal. For example, this issue should have been addressed by the Court. If it had, the Court's citation to *In re Marrige of Magnusson,* 108 Wn. App. 109, 112-113, 29 P.3d 1256 2001) would have been different. The Court's statement "[b]oth the mother and father have equal rights to direct S.A.'s upbringing. Neither parent has veto rights over how the other spends their residential time. Under the terms of the 50/50 parenting plan, the mother and father must each defer to the other's normal right of parental decision-making, including who S.A. has contact with during residential time" would not have been made because it violated the mother's inherent fundamental right to raise her child. Decision at 3.

IV. STATEMENT OF THE CASE

Hannah Lawson does not want her daughter SAA to be visited by the adoptive parents of A.A.A. Hannah has a right to require this for two reasons: First, this is required by the Order of Dismissal with Prejudice entered in the Nonparent Visitation action of Diana and Todd Anderson joined in by Alex. SN # 51, CP 86.

Second, Hannah has fundamental constitutional rights to prevent nonparent visitation in the Parenting Plan action A.A.A. commenced actively and directly supported by his adoptive parents.

Hannah met Alex when she was 17 and living with her mother and father on Spokane's South Hill. Hannah had an intimate relationship with Alex in 2012 and SAA was conceived. They were not dating. SN # 184, CP 1747. Hannah gave birth to SAA on February 7, 2013. Alex, in 2012, told Hannah he was not ready to be a father. SN # 184, CP 1747. Alex is the adopted child of Todd Anderson and Diana Anderson. They wanted Alex to take a paternity test. SN # 184, CP 1747. Hannah and Alex refused. Diana Anderson accepted the decision. *Id.*

A. Nonparent Petition RCW Ch. 26.11, Superior Court Cause No. 18-3-01951-4.

On August 8, 2018, over five years after SAA's birth, Todd Anderson and Diana Anderson petitioned the Spokane County Superior Court under RCW Ch. 26.11 for relative visitation of SAA – Superior

Court Cause No. 18-3-01951-4. SN # 1, CP 1 - 13. Alex joined in the petition. *Id.* CP 12 - 13. Hannah was the Respondent to the petition.

From August 17, 2018, until May 16, 2019, Hannah represented herself *pro se*. On May 16, 2019, Stephen Kerr Eugster (herein "Eugster") appeared on Hannah's behalf. SN # 39, CP 52 - 54.

On August 2, 2019, Lindsay Paxton, the lawyer for Todd and Diana Anderson, filed on their behalf a motion to dismiss the petition for relative visitation without prejudice. SN # 44, CP 62 - 64. Declarations in support of the Motion to Dismiss Without Prejudice were filed by Diana Anderson and Todd Anderson. The Declaration of Todd Anderson was filed on August 2, 2019 in which he said:

> 3. First, we paid our own attorneys fees up to this point, but we do not have funds available to pay Ms. Moore's (formerly Lawson) attorney fees if she were to make this request. We would have to borrow money to pay her fees, and I'm not sure how we would do that.

SN # 42, CP 55 - 57.

The Declaration of Diana Anderson was signed on July 30, 2019, in which she said:

> 4. Another reason we would like to dismiss this action at this time is because of the risk of having to pay attorney fees for Ms. Moore (formerly Lawson). We have not received a request to pay her attorneys fees but understand this request could come at any time. We are not financially able to pay our own attorney fees, plus Ms. Moore's attorney fees, and attempt to assist Alex in his request for a temporary parenting plan. That we would rather shift our financial support to Alex instead of to Ms. Moore's attorney

fees.

SN # 43, CP 58 - 61.

On August 16, 2019, Attorney Eugster, filed on behalf of Hannah, a response to the Motion to Dismiss Petition for Relative Visitation. In it, Hannah asserted the case; because of its unique character, it could only be dismissed with prejudice. SN # 50, CP 78 - 85.

On August 23, 2019, Judge Michael Price signed his Order to Dismiss Petition for Relative Visits with Prejudice. SN # 51, CP 86 - 87. In his findings, Judge Price said, "[t]he legislature intended for third parties not to be able to hold these cases over Respondents, which is why RCW 26.11.020 (4) is written so clearly in the order." *Id.* CP 86 - 87. Judge Price further said, "[d]ue to the provisions of RCW 26.11.020 (4) the dismissal is with prejudice." *Id.*

B. Parenting Plan Petition of Alex Anderson, Superior Court Cause No. 19-3-01385-32.

On June 7, 2019, six years after SAA was born, Alex filed a Petition for Parenting Plan Residential Schedule and Child Support. Alex filed the action *pro se*. Superior Court Cause No. 19-3-01385-32. SN # 2, CP 530.

On August 14, 2019, Joseph Linehan filed his Notice of Appearance for Alex. SN # 21. CP 554. Mr. Linehan's appearance in the action occurred 12 days after Lindsay Paxton filed the Motion to Dismiss

in the Nonparent Petition on August 2, 2020. SN # 44, CP 62. The Notice of Appearance in the parenting plan action was filed on August 14, 202,1 (SN # 51, CP 86 - 87) nine days before the Order of Dismissal with Prejudice on August 23, 2019. SN # 51, CP 86 - 87.

On October 2, 2019, Mr. Linehan presented Eugster with an order he proposed to file. Eugster approved the order with an understanding that it was for "reunification" of Alex with SAA. On October 2, 2019, the order was entered. It provided:

> The father and child shall begin reunification counseling at Spokane Family Services. Session shall occur according to providers recommendations. Either party may note a review hearing based on reunification counselor's recommendations.

SN # 27, CP 589.

So began the plan by which Todd and Diana Anderson and their adopted son, Alex, were able to have the court allow the residential time of Alex with SAA along with his parents.

C. Trial.

In his decision of May 8, 2020, Judge Fennessy said "the dismissal of this 26.11 action does not bar Alex Anderson from allowing visitation contacts between the child and Diana and Todd Anderson during his parenting time in a separate parenting plan action." SN # 71, CP at 494.

In the Final Order and Findings for a Parenting Plan SN # 184, CP 1738 - 1751), under *Section 14.03.09*, "he [h] is clear that Alex is in the

parent position. He understands that his relationship with Sophia is dependent on whether that is allowed by Alex." SN # 184, CP 1741. Judge Fennessy further stated at *Section 14.12.01* as follows:

> Mr. Eugster's approach in this matter is that Mr. Anderson cannot permit Sophia to be around his parents due to the dismissal of the grandparent visitation petition. There is no legal support for this position. If Alex is permitted to have residential time, Mr. Anderson would have to have a limitation to prevent this time of conduct. CP 1748. At Section 14.12.16, the court said "there is no longer a right of first refusal." SN # 184, CP 1749.

The parenting plan named Hannah as the custodian of SAA. The parenting plan and schedule (residential provisions) said that the plan is "an equally shared 50-50 parenting plan. Under the plan and the ruling by the court, AAA can allow his parents to have all of his residential time with SAA. SN # 181, CP 1714. There was little testimony of AAA's parenting experience or skills as a parent. Prior to his filing of the Parenting Plan action, he had never even had SAA in his care overnight.

V. ARGUMENT

Review should be accepted under one or more of the tests established in RAP 13.4 (b).

A. Third Party Visitation Decision.

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

Minium v. Schmilenko (*In re Custody M.W.*), 185 Wash. 2d 803

(2016):

> Yu, J. The question in this case is whether a third party—here, a step-grandfather with no legally established relationship to his step-grandson—can petition for visitation rights through a custody proceeding pursuant to chapter 26.10 RCW or under some equitable doctrine. Stated simply, does a right to third-party visitation exist under Washington law? We hold that it does not. ¶ 2 Washington's third-party visitation statutes were invalidated as facially unconstitutional because they infringed on a parent's fundamental liberty interests. Unless and until the legislature amends chapter 26.10 RCW, there is no statutory basis for third-party visitation. Furthermore, we decline to recognize a right to petition for third-party visitation in equity. We therefore reverse and remand for dismissal and consideration of the award of attorney fees.

Minium v. Schmilenko (*In re Custody M.W.*), 185 Wash. 2d 803, 811-12 (2016) ("This court has repeatedly held that absent a valid statute, there is no right to third-party visitation under our existing laws. We invalidated Title 26 RCW's third-party visitation provisions, RCW 26.10.160(3) and RCW 26.09.240, as facially unconstitutional in *In re Custody of Smith*, 137 Wash. 2d 1, 969 P.2d 21 (1998), *aff'd on other grounds sub nom. Troxel v. Granville* , 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), and *In re Parentage of C.A.M.A.* , 154 Wash. 2d 52, 109 P.3d 405 (2005). We determined that the sweeping scope of the third-party visitation provisions, which enabled any party to petition for third-party visitation rights at any time, impermissibly interfere[d] with a parent's fundamental interest in the 'care, custody, and companionship of the child.' " *Smith* , 137 Wash.2d at 21, 969 P.2d 21 (quoting In re *Welfare*

of Sumey, 94 Wash. 2d 757, 762, 621 P.2d 108 (1980)). We reaffirmed this holding in *In re Parentage of L.B.*, 155 Wn.2d 679, 709-10, 122 P.3d 161 (2005): [O]ur recent decision in *In re Parentage of C.A.M.A* [.] makes clear that Washington's current third party visitation statutes are unconstitutional and inoperative and thus unavailable as an alternative ground on which to seek visitation. . . . .")

In re Custody Smith, 137 Wash. 2d 1, 21 (1998) ("Parents have a right to limit visitation of their children with third persons. The law's concept of the family rests "on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment . . . ."

Troxel v. Granville, 530 U.S. 57, 62-63 (2000) ("The Washington Supreme Court granted the Troxels' petition for review and, after consolidating their case with two other visitation cases, affirmed. The court disagreed with the Court of Appeals' decision on the statutory issue and found that the plain language of § 26.10.160(3) gave the Troxels standing to seek visitation, irrespective of whether a custody action was pending. 137 Wash. 2d, at 12, 969 P.2d, at 26-27. The Washington Supreme Court nevertheless agreed with the Court of Appeals' ultimate conclusion that the Troxels could not obtain visitation of Isabelle and Natalie pursuant to § 26.10.160(3). The court rested its decision on the Federal Constitution, holding that § 26.10.160(3) unconstitutionally infringes on the fundamental right of parents to rear their children. In the

court's view, there were at least two problems with the nonparental visitation statute. First, according to the Washington Supreme Court, the Constitution permits a State to interfere with the right of parents to rear their children only to prevent harm or potential harm to a child. Section 26.10.160(3) fails that standard because it requires no threshold showing of harm. *Id.*, at 15-20, 969 P.2d, at 28-30. Second, by allowing "`any person' to petition for forced visitation of a child at `any time' with the only requirement being that the visitation serve the best interest of the child," the Washington visitation statute sweeps too broadly. *Id.*, at 20, 969 P.2d, at 30. "It is not within the province of the state to make significant decisions concerning the custody of children merely because it could make a `better' decision." *Id.*, 969 P.2d, at 31. The Washington Supreme Court held that "[p]arents have a right to limit visitation of their children with third persons," and that between parents and judges, "the parents should be the ones to choose whether to expose their children to certain people or ideas." *Id.*, at 21, 969 P.2d, at 31. Four justices dissented from the Washington Supreme Court's holding on the constitutionality of the statute. *Id.*, at 23-43, 969 P.2d, at 32-42. We granted certiorari, 527 U.S. 1069 (1999), and now affirm the judgment.")

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

In re E.L.C., No. 49112-5-II, at *15 (Wash. Ct. App. Mar. 20,

2018) ("Washington cases have applied strict scrutiny analysis to discern whether third-party visitation rights infringe upon a biological parent's fundamental liberty interest in the care, custody, and control of his child. *In re Parentage of L.B.*, 155 Wn.2d 679, 709-10, 122 P.3d 161 (2005). However, "[n]o case has ever applied a strict scrutiny analysis in cases weighing the competing interests of two parents. Rather, in Washington, courts attempt to discern the best interests of the child." *L.B.*, 155 Wn.2d at 710. Under *L.B.*, the best interests of the child standard applied to the dispute between *Walton and Childs.* 155 Wn.2d at 710. Childs relies upon cases holding that interference with a substantive due process right must satisfy strict scrutiny. But he fails to provide any cases dealing with a dispute over a residential schedule between two biological parents. *See Washington v. Glucksberg,* 521 U.S. 702, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997); *Reno v. Flores,* 507 U.S. 292, 113 S. Ct. 1439, 123 L. Ed. 2d 1 (1993); *Planned Parenthood of Se. Pa. v. Casey,* 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992); *Griswold v. Connecticut,* 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).")

In the Matter of Dependency of I.J.S, 128 Wn. App. 108, 116-17 (2005) ("The parents rely on *In re Custody of Smith* to argue that the termination statutes are unconstitutional because the statutes do not require a threshold showing of harm and the statutes impermissibly use a best interest of the child standard. In *In re Smith,* the Washington Supreme

Court held that the third party visitation statutes did not establish a compelling state interest and unconstitutionally interfered with parental rights. The Court concluded the statutes did not require the State to show harm and the trial court could grant visitation rights to third parties whenever "'visitation may serve the best interest of the child. . . .'" "regardless of the fact that the parent's fitness is not challenged or that there has been no showing of harm or threatened harm to the child." In deciding the statute was unconstitutional, the Court contrasted the third party visitation statutes with the State's obligation to interfere with parents' rights to protect children from harm.")

In the Matter of Dependency of I.J.S, 128 Wn. App. 108, 118 (2005) ("Establishing the child is dependent under RCW 13.34.180(1)(a) and it is unlikely conditions can be remedied so the child can be returned in the near future under RCW 13.34.180(1)(e) is equivalent to finding harm to the child. We conclude that unlike the third party visitation statutes in *In re Custody of Smith*, the termination statutes are narrowly drawn because the State must prove that the relationship with the parents harms or potentially harms the child before the court can terminate parental rights.")

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

One would be hard-pressed to think a mother's inherent

fundamental right to raise her child as she sees fit would not be a significant question of law under the Constitutions of the State of Washington and the United States.

(4) If the petition involves an issue of substantial public interest that should be determined by the *Supreme Court.*

The petition involves issues of **substantial public interest that should be determined by the *Supreme Court.***

State v. Verharen, 136 Wash. 2d 888, 907 (1998) ("[T]he argument is of constitutional magnitude, debatable, and a matter of first impression for this state, and thus could not be "frivolous " as that term has been previously defined. *See Moorman v. Walker*, 54 Wn. App. 461, 466, 773 P.2d 887 (1989).")

In re Combs, 353 P.3d 631 (2015) ("When determining the degree of public interest involved, courts consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question. *Id.; In re Mines,* 146 Wash. 2d 279, 285, 45 P.3d 535 (2002).")

In *In re Pers. Restraint of Mattson,* 166 Wash. 2d 730, 736, 214 P.3d 141 (2009) the court tells us what matters in determining the concept of "substantial interest":

> Nevertheless, we may retain and decide a case if it involves matters of continuing and substantial interest. *Id.* We

> consider three factors when determining whether the issue presents a continuing and substantial public interest: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question.'

VI. AWARD OF ATTORNEY FEES UNDER RAP 18.9(A)

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal. *Tiffany Family Trust Corp. v. City of Kent*, 155 Wash. 2d 225, 241, 119 P.3d 325 (2005). All doubts as to whether the appeal is frivolous should be resolved in favor of the appellant. *Id.*

Advocates v. Hearings Bd., 170 Wash. 2d 577, 580-81 (2010) ("Raising at least one debatable issue precludes finding that the appeal as a whole is frivolous. Because the action was not frivolous in its entirety, the Court of Appeals should not have awarded attorney fees as sanctions.")

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

In re Miller, 162 Wn. App. 1041 (2011) ("Washington courts hold an appeal is "frivolous" if there are no debatable issues upon which reasonable minds might differ and the appeal is so totally devoid of merit

that there was no reasonable possibility of reversal. RAP 18.9(a); *See Fay v. Northwest Airlines, Inc.*, 115 Wash. 2d 194, 200-01, 796 P.2d 412 (1990).")

Bill of Rights Legal Foundation v. Evergreen State College, 44 Wn. App. 690, 698 (1986) ("In determining whether an appeal is brought for delay under RAP 18.9(a), 'our primary inquiry is whether, when considering the record as a whole, the appeal is frivolous, i.e., whether it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal.'" All doubts as to whether an appeal is frivolous should be resolved in favor of the appellant.

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the *petition involves an issue of substantial public interest.*

Marriage of Horner, 151 Wash. 2d 884, 891-92 (2004) ("A case *is moot if a court can no longer provide effective relief." Orwick* v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). As a general rule, this court will not review a moot case. *Id.* However, this court may review a moot case if it presents issues of continuing and substantial public interest. In deciding whether a case presents issues of continuing and substantial public interest: Three factors in particular are determinative: "(1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers;

and (3) whether the issue is likely to recur". A fourth factor may also play a role: the "level of genuine adverseness and the quality of advocacy of the issues." Lastly, the court may consider "the likelihood that the issue will escape review because the facts of the controversy are short-lived." [*City of] Seattle v. State,* 100 Wash. 2d 232, 250, 668 P.2d 1266 (1983) (Rosellini, J., dissenting).

VII. CONCLUSION

The Washington Supreme Court should grant this Petition for Discretionary Review.

Further, the Court should reverse the decision concerning attorney fees and order attorney fees to Petitioner and Stephen Kerr Eugster.

VIII. APPENDIX

An appendix containing a copy of the Court of Appeals decision, any order granting or denying a motion for reconsideration of the decision, and copies of statutes and constitutional provisions relevant to the issues presented for review.

Pursuant to RAP 18.17(2)(b), the foregoing is 4,242 pages.

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November 29, 2021.

Respectfully submitted,

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s/ Stephen Kerr Eugster

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CERTIFICATE OF SERVICE

On November 29, 2021, I certify that I electronically filed the preceding document with the Washington State Supreme Court ECF system, which will send notification of such filing to all counsel of record.

November 29, 2021.

s/ Stephen Kerr Eugster

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37585-4-III
Court of Appeals of Washington

In re S.A.A

Decided Sep 28, 2021

37585-4-III 37586-2-III 37683-4-III

09-28-2021

In the Matter of the Visits with: S.A.A [†] T.A. and D.A., Petitioners, and H.E.L., Appellant, and A.A.A., Respondent. In the Matter of the Parenting and Support of: S.A.A. A.A.A., Respondent, and H.L., Appellant.

Pennell, C.J.

UNPUBLISHED OPINION

Pennell, C.J.

H.L. appeals various court orders regarding the residential placement of her child, S.A. We affirm and grant the father's request for attorney fees.

BACKGROUND

In 2013, A.A. (father) and H.L. (mother) had a child, S.A. The parents' relationship was acrimonious. The mother also had a difficult relationship with the father's family and did not wish for S.A. to have contact with the paternal grandparents.

In 2018, the paternal grandparents brought a petition for third-party visitation. The petition was later dismissed with prejudice. While the petition for third-party visitation was pending, the father brought a separate petition to establish a parenting plan. After a bench trial, the court awarded 50/50 custody to the mother and father. No restrictions were imposed. Because the father was living with his parents, the residential split meant the paternal grandparents would inevitably have contact with S.A. during the father's residential time.

The mother appeals.

ANALYSIS

The mother assigns error to various court orders. However, the only issue that has been argued is whether the trial court was required to preclude contact between S.A. and the paternal grandparents based on the dismissal of the third-party visitation petition and the mother's fundamental rights to parent. An issue to which a party assigns error but does not argue is waived. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). We therefore limit our analysis to the mother's arguments regarding contact between S.A. and the paternal grandparents.

Appendix 1

We agree with the trial court that the mother lacks any basis to preclude contact between S.A. and her paternal grandparents during the father's residential time. Contrary to the mother's arguments, the court's orders do not undermine the dismissal of the grandparents' third-party visitation petition by awarding them de facto visitation.[1] The grandparents were not awarded any rights. Instead, the father was awarded residential time without restrictions. This means he can decide who S.A. has contact with during his residential time. *In re Marrige of Magnusson*, 108 Wn.App. 109, 112-113, 29 P.3d 1256 2001). Both the mother and father have equal rights to direct S.A.'s upbringing. Neither parent has veto rights over how the other spends their residential time. Under the terms of the 50/50 parenting plan, the mother and father must each defer to the other's normal right of parental decision-making, including who S.A. has contact with during residential time.

[1] Given the lack of shared subject matter, neither res judicata nor collateral estoppel are at issue.

Both sides request attorney fees on appeal. We award fees to the father under RAP 18.9(a). We agree with the father that the mother's appeal is frivolous. "An appeal is considered frivolous when it presents no debatable issues and is so devoid of merit that there is no possibility of reversal." *Griffin v. Draper*, 32 Wn.App. 611, 616, 649 P.2d 123 (1982). This is a difficult standard, but it is met in this case. The mother's appeal misapprehends the nature of the trial court's orders. The court trial did not address competing rights between a parent (who enjoys constitutional rights to parent) and third-party grandparents (whose rights, if any, are limited). Instead, the court addressed competing rights of parents. It is well established in our case law that a fit parent is entitled to decide how a child spends residential time. *Magnusson*, 108 Wn.App. at 112-113; *see also In re Marriage of McNaught*, 189 Wn.App. 545, 563-65, 359 P.3d 811 (2015). The mother's briefing fails to acknowledge this authority. Because the mother presents no debatable reason for success on her appeal, we award attorney fees to the father as a sanction.

CONCLUSION

The orders on appeal are affirmed. The father (A.A.) is awarded reasonable attorney fees, pursuant to RAP 18.9(a), subject to his timely compliance with RAP 18.1(d). Such fees shall be payable by counsel for the mother (H.L.).

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR: Fearing, J., Staab, J. *In re Use of Initials or Pseudonyms for Child Victims or Child Witnesses* (Wash.Ct.App. June 18, 2012), https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber =2012_001&div=III.

App 2

Constitution of United States of America 1789 (rev. 1992)

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

App 3

Constitution of United States of America 1789 (rev. 1992)

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

App V

Constitution of United States of America 1789 (rev. 1992)

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

App IV

Constitution of United States of America 1789 (rev. 1992)

Amendment XIV

Section 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

App XIV

EUGSTER LAW OFFICE PSC

November 29, 2021 - 1:14 PM

Transmittal Information

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Appellate Court Case Title:	In re the Visitation of: S.A.
Superior Court Case Number:	18-3-01951-4

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