NO. 314260-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF:

ELIZABETH KIM,
Respondent

and

ANATOLE KIM,
Appellant

BRIEF OF RESPONDENT

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I. INTRODUCTION

This is a dissolution of marriage case with permanent parenting plan and child relocation issues. Although appellant Anatole Kim ("Anatole") appeals most property and financial issues, his primary focus on this appeal pertains to the parenting plan and relocation.

In determining parenting issues, a trial court must render a parenting decision which first meets the objectives of the parenting act and the criteria for establishing a permanent parenting plan. RCW 26.09.184; RCW 26.09.187. Then, under standards set by the Legislature, it must evaluate the child relocation request by the application of the specific statutory criteria expressed in its decision. RCW 26.09.520.

As an essential part of the first step, the trial court makes its decision with the best interests of the children foremost in mind. RCW 26.09.002; RCW 26.09.184(1). Once having decided what residential placement is in the best interests of the children in this primary inquiry, courts undertake the factual and legal analysis of the relocation request with the presumption that the parent with the majority of the residential time will act on her relocation

request in accordance with the best interests of the children - which determination was made as a result of the first inquiry. RCW 26.09.520, first paragraph; *In re Marriage of Horner,* 151 Wn.2d 884, 93 P.3d 124 (2004).

The trial court in this case has acted fully in accordance with these authorities, and arrived at a parenting decision which must be affirmed. Anatole futilely attempts to draw all focus to a few select words and phrases used by the trial court, to evade the obvious: that the parenting decision is based on substantial evidence in this record. The trial court first analyzed the permanent parenting plan under the seven criteria in RCW 26.09.187(3) and concluded that it was in the best interests of the children to reside primarily with respondent, Elizabeth Kim-Akiyama ("Betsy"). Only then did it undertake a thorough and rigorous factual analysis of Betsy's and the children's relocation to the Los Angeles, California area under the ten remaining criteria required in RCW 26.09.520 (factor 11 was not discussed because it applies only to temporary orders). To read the Opening Brief's Introduction, one would think the trial court randomly uttered the thought tha relocation was appropriate. No legal error attaches to the word "appropriate," when the trial court made such a complete analysis of the

statutory factors before it.

In a parenting case such as the case at bar, the trial court is placed in one of the most challenging positions a judge may ever face: s/he has to decide the primary placement of children between two good parents, against the wishes of one. Compounding this conundrum is the prospect of relocation, which necessarily removes some physical access between one parent and the children. Our Legislature addressed this challenge with the Relocation Act, L. 2000, Ch. 21, RCW 26.09.405 through 26.09.560. The relocation case is controlled by these statutes, not by RCW 26.09.002, which was addressed in the first phase of the parenting decision.

The evidence amply supports the trial court decision and the findings of fact, conclusions of law, and parenting plan, as well as the grant of the relocation request. The children will adapt well and be in excellent care with their mother in Los Angeles, and their father will be able to be in close continuous contact, and will see them for most of the summers and other holidays throughout the year. CP 389 - 396, Parenting Plan - Final Order. The father did not rebut the presumption for allowing the relocation as provided by law.

The division of property ordered by the trial court is well within its

ordinary discretion. Sixty percent - forty percent property divisions are quite common in favor of a stay-at-home mother and homemaker as against a successful physician, especially after a marriage of virtually twenty-five years. Anatole's reliance on *In re Marriage of Washburn,* 101 P.2d 168, 677 P.2d 152 (1984) is extremely misplaced. Finally, the court's child support worksheet is properly calculated according to the facts before the trial court and its analysis. There are no errors with respect to property or financial matters in this case.

II. RESTATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly apply the standards for a permanent parenting plan under RCW 26.09.002, RCW 26.09.004, and RCW 26.09.184 and .187?

2. Did the trial court properly apply the legal standards in making its determination regarding relocation under RCW 26.09.405, *et. seq.*?

3. With respect to Issues 1 and 2, were the findings made by the trial court on the issues of primary child placement and relocation to Los Angeles supported by substantial evidence?

4. Did the father rebut the presumption in favor of the request of the primary parent, the mother, to relocate with the children?

5. Must the trial court follow recommendations by a guardian ad litem when there is other substantial evidence in the record, including evidence within the professionals' reports themselves, which contradicts those recommendations?

6. Are the best interests of the children the primary or over-riding consideration in a relocation analysis and decision?

7. Regarding the distribution of property, is the *Marriage of Washburn* case even applicable to this case?

8. Are the property and debt distribution, and the child support orders, supported by substantial evidence?

III. STATEMENT OF THE CASE

Factual Background Supplement.

Betsy's complete engagement in the raising of the children is well-outlined in her testimony which appears extensively at RP (9/4/12) 12-48; 60-108; RP (9/5/12) 148 - 155; and RP (9/10/12) 399 -418. The fact that she has always been the much more emotionally connected parent with the children is not really disputed. Although he ostensibly objects to certain findings relevant to the parenting decision, (findings of fact 11 through 15, 18 and 19), and the relocation decision (findings of fact 20, 22, 24, 26 through 32, 34, 37 and 38,), the following findings of fact are not disputed as stated at CP 177 - 179: 2 through 9, 16, 17, 23, 25, 33, 35, and 36. These findings of fact establish the following as verities on appeal: the mother primarily cared for the children in the past, and managed all of their emotional and physical needs on a day-to-day basis, while father was the

primary breadwinner, and also served as an instructor and coach to the children; the mother managed the day-to-day affairs of the children; the children have demonstrated a stronger attachment and affection toward the mother; the parties oldest child Ethan had a psychological or psychiatric event in 2010 for which he had received medication and counseling; Ethan is estranged from his father; Ethan's school work is more productive when he is with his father; the father works many hours but does focus on the academic achievements of the children; the children have expressed a preference to be with their mother; the trial court considered the mother's petition to relocate to Los Angeles, California and considered the eleven statutory factors in determining her petition for relocation; there are no prior agreements as to relocation; there are no limiting factors as to either parent; the quality of life is similar in the current community and the community mother is proposing, however, mother's employment opportunities are greatly enhanced in Southern California; the mother's proposed parenting plan pursuant to the relocation is reasonable; the financial impact of relocation, given the income levels of the parties, can be accommodated.

In his Assignments of Error, Anatole assigns error to finding of fact 2.19.29. See Anatole Kim's Opening Brief, page 4, paragraph II. A. 3. This

is the finding that the father's opposition to relocation was made in good faith.

Extensive evidence in the record shows that the children are not only primarily bonded to Betsy as found by the trial court, but that often interaction with the father is extremely difficult for the children. *E.g.*, RP (9/4/13) 83. With respect to Ethan, the court finding that he is estranged from Anatole is unchallenged. Finding of Fact 2.19.6. See also, an attachment to the final report of the guardian ad litem by Richard S. Adler, M.D., which includes the "Parent-Child Observations, G. Andrew H. Benjamin, J.D., Ph.D., ABPP, Consulting Forensics Psychologist." CP 347 - 351. With respect to the other children, Luke and Caroline, they were not evaluated by Dr. Adler (CP 341, 363). Consistent with the testimony about inter-relationships with their father as described with Ethan in Dr. Adler's report, *Id. supra,* both Caroline and Ethan show reluctance to emotionally engage with their father under various circumstances. This is corroborated even by Anatole's own testimony. RP (9/6/12) 321 - 322; 325 - 326. In these descriptions by Anatole, he shifts the blame for the children's behavior to Betsy, which is consistent with some of the findings by Dr. Adler, with respect to his MMPI-2 profile which states:

> "Overall, the profile produced is consistent with someone who is '[O]verly sensitive and easily hurt, this individual may remain somewhat detached and aloof. He is concerned that others might take advantage of him. He may also be occasionally touchy and argumentative and somewhat moralistic and rigid in his approach to life. He tends to externalize blame and sees other people as responsible for his problems.' Furthermore: '[H]e may become oppositional and he tends to harbor grudges for a long time'
>
> The scale elevation was felt to be 'too high to be fully accounted for by feelings of anger concerning the present [litigation-related] situation. . . These personality factors should be taken into consideration when developing plans in which his cooperation is needed.' "
> Caroline often shows reluctance to visit Anatole. RP 83;

While the parties disagreed about boarding school, there was an understanding - at Anatole's urging - to explore having the two boys attend a school called Lakeside in the Seattle area. RP (9/5/12) 217. Part of the arrangement would have been that Betsy and the children would move to Seattle and live there while Anatole would commute from Yakima to Seattle to be with the family when he could. *Id.*

With respect to the commencement of the divorce in 2010, see RP (9/6/12) 348 - 349 and RP (9/10/12) 407 - 408. Anatole called a family meeting with Betsy and the two younger children, right after he was served. Ethan was at summer school in Massachusetts at the time. Betsy testified

that Anatole did the following at this meeting:

> "And he said to the children, younger children, that they need to learn what it means to be accountable for your actions, and then he went into this lecture that during the time I could see the younger children becoming more and more upset. So, he said, mommy wants to remove daddy from the family, and he said, that means mommy and daddy have to hire lawyers and fight in the courts, and he said looking at the younger kids, that means there won't be any money for this house or for Riverside Christian school, or tennis lessons or ballet lessons. He said, don't you think it's bad that mommy wants the court and the police to make daddy -- make daddy move out, and then he turned to Luke, and this is sometimes his style of lecturing them. He said, Luke, don't you think its bad that mommy wants daddy removed, and so – what could Luke say, just looked down in his lap and he said, yeah. And I interrupted, I said, that's so they don't have to hear this from you, and Anatole said, but they have to hear this. They need to know how to be accountable for what you're doing. They are the beneficiaries of what you are doing, and I said, don't make them take sides. And he just continued. He said, they have to take sides, and he said, you kids have to help mommy stop this. . . ."

This lecturing style was noted extensively in the report of Dr. Adler, CP 347 - 351.

In Dr. Adler's review of out-patient psychiatric treatment by one Bonnie Hartman, M.D., it is noted that Ethan said he wanted to be left alone and be allowed to "kill myself by myself," saying that "it's one thing I won't fail at." CP 352. In an early 2011 session between Dr. Hartman and

Ethan, her notes state:

> "stressful. being around my Dad . . . doesn't want any relationship with him . . . always planning what he's going to do to meet his own ends . . . doesn't want to go to boarding school." CP 353.

In February 2011 notes, on meeting with Ethan, Dr. Hartman noted that Ethan indicated:

> . . . dad took her [Betsy's] credit cards and driver's license and cut them up. Dad will says [sic] that patient's mom [Betsy] committed murder . . . . dad says patient [Ethan] is stupid and would never amount to anything. Dad thinks patient's brother [Luke] is lazy with no respect for authority. Dad thinks sister [Caroline] is fat." CP 354.

When questioned by Dr. Adler, Dr Hartman considered "parental alienation." She was asked about whether the father was encouraging Ethan to have "bad feelings" toward his mother.

Then the report states "Dr. Hartman indicated there was nothing in the notes or in her recollection about this." CP 355 - 356. This despite those notes in Dr Hartman's handwriting noted immediately above.

Dr. Adler's report and evaluation did not deal with either Luke or Caroline. CP 59, 341 and 363. His opinions regarding "relocation of the children" really relates only to Ethan. CP 363.

When Anatole's parents gave them $100,000.00 to purchase the

family home in Yakima, the parents and both parties signed the "Gift Letter" dated April 26, 2002, which states in pertinent part as follows:

> "This letter will certify that Won Bok and Chung Hi Lyou Kim are making a gift in the amount of $100,000.00 to assist our (relationship) son and daughter-in-law to purchase the property located at 3170 Naches Heights Road, Yakima, Washington 98908. Funds for this gift are coming from our account number [omitted] at [name of financial institution] Fleet Bank located at 1 Washington Street, Rocky Hill, New Jersey 08553 . . .
>
> There is no obligation that this gift be repaid in any form either by cash or by work performed."

Ex. P-14; RP (6/14/12) 3-28-3-29. Although Anatole and his mother claimed the $100,000.00 to both of them was a "loan," RP (9/6/12) 312 - 313, not a penny has been paid back to Anatole's parents. *Id.*

IV. ARGUMENT

A. Standard of Review.

In addition to the authorities referred to by Anatole's brief, the following authorities are pertinent with respect to review in this case. Our Supreme Court recently stated in *In re Marriage of Katare,* 175 Wn.2d 23, 35, 283 P.3d 546 (2012):

"A trial court's parenting plan is reviewed for an abuse of

> discretion. *In re Marriage of Littlefield,* 133 Wash. 2d 39, 46, 940 P.2d 1362 (1977). An abuse of discretion occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Id.* at 46 - 47, 941 P.2d 1362. The trial court's findings of fact will be accepted as verities by the reviewing court so long as they are supported by substantial evidence. *Ferree v. Doric Co.,* 62 Wash. 2d 561, 568, 383 P.2d 900 (1963). Substantial evidence is that which is sufficient to persuade a fair-minded person fo the truth of the matter asserted. *King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.,* 142 Wash. 2d 543, 561, 14 P.3d 133 (2000)."

In determining the sufficiency of evidence, an appellate court need only consider evidence favorable to the prevailing party. *Bland v. Mentor*, 63 Wn.2d 150, 155, 385 P.2d 727 (1963). In evaluating the persuasiveness of the evidence and the credibility of witnesses, the appellate court must defer to the trier of fact. Credibility determinations are solely for the trier of fact and cannot reviewed on appeal. *In re Marriage of Akon,* 160 Wn.App. 48, 57, 248 P.3d 94, (2011).

The reason for the abuse of discretion standard was cogently explained by Justice Brachtenbach in *In re Marriage of Landry,* 103 Wn.2d 807, 809 - 10, 699 P.2d 214 (1985), as follows:

> "We once again repeat the rule that trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The

> emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. . . . The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion." (Citations omitted).

The standard of proof for rebutting the presumption in favor of relocation was discussed and decided by *In re Marriage of Wehr,* 165 Wn.App. 610, 267 P.3d 1045 (2011), where the court ultimately held that the correct standard of proof to apply is the preponderance of evidence standard.

Appellant review is limited to orders properly before the court based on a timely notice of appeal. RAP 5.2(a). Appellate courts consider only the evidence that was before the trial court at the time the decision was made. RAP 9.1; RAP 9.11. This is because a function of ultimate fact finding "is exclusively vested in the trial court." *Edwards v. Morrison-Knudsen Co.,* 61 Wn.2d 593, 598, 379 P.2d 735 (1963). Appellate courts do not weigh conflicting evidence or substitute their judgment for that of the trial court. *In re Marriage of Rich,*, 80 Wn.App. 252, 259, 907 P.2d 1234 (1996). *See, also, In re Marriage of Fahey,* 164 Wn.App. 42, 262 P.3d 128, *review denied,* 173 Wn.2d 1019, 272 P.3d 850 (where parent's

challenge to a relocation decision was based on arguments about the court's credibility determinations and the weight it placed on evidence, the Court of Appeals will not review credibility determinations or weigh evidence). Findings of fact that are unchallenged are verities on appeal. *In re Marriage of Brewer,* 137 Wn.2d 756, 766, 976 P.2d 102 (1999).

Appellate courts generally will not consider claims that are not supported by citation to authority, references to the record, or meaningful analysis. RAP 10.3(6); *Cowiche Canyon Conservancy v. Bosley,* 118 Wn.2d 801, 809, 828 P.2d 549 (1992), *Saunders v. Lloyd's of London,* 113 Wn.2d 330, 345, 779 P.2d 249 (1989).

The meaning of a statute is inherently a question of law and the review by the appellate court is *de novo*. The primary goal of statutory interpretation is to ascertain and give effect to the Legislature's intent and purpose. This is done by considering the statute as a whole, giving effect to all that the Legislature has said, and by using related statutes to help identify the Legislative intent embodied in the provision in question. If, after this inquiry, the statute can reasonably be interpreted in more than one way, then it is ambiguous and it is appropriate to resort to principals of statutory construction to assist in interpretation. Strained, unlikely, or

absurd consequences resulting from a literal reading are to be avoided. If, among alternative constructions, one or more would involve serious constitutional difficulties, the court will reject those interpretations in favor of a construction which will sustain the constitutionality of the statute. *In re Parentage of J.M.K.,* 155 Wn.2d 374, 386 - 387, 119 P.3d 480 (2005). (Citations omitted).

With respect to trial court rulings in property, debt, and maintenance matters, a trial court's paramount concern is the economic condition in which the decree leaves the parties. *In re Marriage of Williams,* 84 Wn.App. 263, 270, 927 P.2d 679 (1996). Findings of fact are reviewed under the substantial evidence standard. Substantial evidence exists where there is evidence of a sufficient quantum to persuade a fair-minded person of the truth of the declared premise. *State v. Halstien,* 122 Wn.2d 109, 129, 857 P.2d 270 (1993). Mixed questions of law and fact are reviewed in terms of the substantial evidence test for quantitative determinations and *de novo* as to the legal aspects to the issue. *Harris v. Urell,* 133 Wn.App. 130, 137, 135 P.3d 530 (2006). Issues involving the discretion of the court are reviewed for an abuse of discretion. *State v. Bourgeois,* 133 Wn.2d 389, 406, 945 P.2d 1120 (1977). A court abuses its discretion when it acts on

untenable grounds or for untenable reasons. *In re Marriage of Gillespie,* 89 Wn.App. 390, 398 - 99, 948 P.2d 1338 (1997). The trial court exercises broad discretion in distributing assets in a dissolution proceeding. *In re Marriage of White*, 105 Wn.App. 545, 549, 20 P.3d 481 (2001); and *Marriage of Brewer*, *supra,* 137 Wn.2d at 769.

Trial courts are not bound by guardian ad litem recommendations. *In re Marriage of Magnuson,* 141 Wn.App. 347, 350, 170 P.3d 65 (2007); *In re Marriage of Swanson,* 88 Wn.App. 128, 138, 944 P.2d 6 (1997); *Fernando v. Neiswandt,* 87 Wn.2d 103, 107, 940 P.2d 130 (1997). As stated in *McDaniels v. Carlson,* 108 Wn.2d 299, 312, 738 P.2d 254 (1987):

> ". . . Yet, we must stress, the trial judge is not bound by the guardian ad litem's recommendations. Rather the court must balance the interests of all parties involved, while keeping in mind that the child's interests are paramount."

B. The Trial Court Properly Applied the Standards for Determining the Permanent Parenting Plan Under RCW 26.09.002, 26.09.184, and 26.09.187.

Anatole's entire argument on parenting is really directed at the decision to allow the relocation of the children with Betsy to California. See Anatole Kim's Opening Brief, throughout. Thus, although there are scattered references in the Opening Brief to some of the trial court's

findings and conclusions regarding the initial parenting decision, Anatole's entire thrust is directed at a confusing misunderstanding of the Relocation Act and the importance of the decision initially placing the children with Betsy. Even the GAL recommended this. CP 339, item 1. The trial court made thoughtful and detailed findings regarding the permanent parenting plan under all the applicable statutes, including RCW 26.09.002, 26.09.004, 26.09.184(1), and 26.09.187(3). All factors were considered in light of the conflicting evidence before the court.

With respect to 26.09.002, which Anatole erroneously maintains is controlling over and above the Relocation Act, there is this statutory statement which clearly was on the mind of the trial judge:

> ". . .The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health, and stability, and physical care." RCW 26.09.002, part.

It is significant to note the following statutory considerations which are pertinent here. RCW 26.09.184(1) sets forth the objectives of the permanent parenting plan. These objectives are:

a. Provide for the child's physical care;

b. Maintain the child's emotional stability;

c. Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the parenting plan;

d. Set forth the authority and responsibilities of each parent with respect to the child . . .;

e. *Minimize the child's exposure to harmful parental conflict;*

f. Encourage the parents . . . to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

g. To otherwise protect the best interests of the child consistent with RCW 26.09. 002.

Under RCW 26.09.187(3), the trial court analyzed each of the seven factors in great detail, again commenting on the application of each factor to each parent and the children. CP 185 - 194.

As is well known, the factor to be given the greatest weight under this statute is the first factor which is the "the relative strength, nature, and stability of the child's relationship with each parent." RCW 26.09.187(3)(a)(i). There can be no doubt that this factor weighed very heavily in favor of Betsy.

The trial court pointed out that almost all of the focus on the children was on the oldest child, Ethan. The two younger children, Luke and Caroline, were "largely overlooked in this case." CP 187. All the studies by collateral professionals upon which the guardian ad litem relied were taken strictly with regard to Ethan, and the other children were not included in any significant way. The reason this is significant is at the time of trial Ethan was 17 and ½ years old. He became a legal adult on his birthdate in the late spring of 2013, three months after the trial court entered the final orders.

The primary evidence in the father's favor at trial regarding Luke was that Luke and the father participated together in Boy Scouts. Given all the other factors involved under the statutes, this one factor alone, highly emphasized by Anatole and his experts, is hardly the over-riding consideration.

The trial court found that the children's primary emotional attachment is to the mother and that was not seriously disputed by the father. CP 185 - 188. The court clearly found upon the evidence that Betsy is more consistent in encouraging and maintaining a loving, stable, and nurturing relationship with the children consistent with their developmental

level and their social and economic circumstances. CP 188 - 189. Indeed, she remained at home and did not pursue her medical career in order to fulfill this role. In analyzing each parent's past and potential for future performance of parenting functions under RCW 26.09.004(2) (defining parenting functions), the court again meticulously went through those factors and found that the mother provided the bulk of the past parenting functions. CP 189 - 192. The court did consider the father's past exercise of parenting functions. CP 192. With respect to the potential for future performance of parenting functions, the court reasonably found that under all of the evidence it was clear that it was the mother who was agreed by both parents to be providing more of the future parenting functions had the parties stayed together. CP 192 - 194. This is particularly and very coherently articulated by the trial court at CP 193 where the issue of the Lakeside school enrollment plan is discussed. The trial court could plainly see that first, the father was lobbying for the two older children to go to private boarding schools; and second, the plan for Lakeside was that the children and the mother would move to Seattle and father would commute from Yakima. So, as the trial court stated:

"What that means to me is that there was an understanding

> that it was mother's role to be with the children. She was the trusted person and the one who would discharge that role or obligation to the children and that it would be father who would defer essentially to mother."

Commenting on Anatole's efforts to enroll the children in any other boarding school in the country, clearly against the wishes of Betsy, the court stated:

> "I think it was an effort or at least reflective of a feeling that at least as between father and the children that they don't need to be always with him. That it is a – that they are – can be on their own and in a different and strange environment. I think the children have expressed their feelings by their conduct and Ethan has clearly has – and I think there is no question his relationship with his father is estranged. The text messages [by the children in evidence] . . . showed to me a preference for time with their mother over their father." CP 193.

In addition, the court considered Anatole's employment schedule and it would be more difficult for him to parent on a full-time basis than it would be for Betsy. The trial court also determined that the three siblings should not be separated. CP 192.

Thus, the court considered all of the issues which had to be considered under the applicable statutes for a permanent parenting plan. Although there may be conflicting testimony from the father, there is no contradiction between the trial court's finding and this other evidence. The

trial court focused primarily on the children and the testimony of the parents. CP 185. The decision is supported by substantial evidence.

C. The Trial Court Properly Applied the Legal Standards in Making its Determination Regarding Relocation of Betsy and the Children Under the Relocation Act.

At CP 194 through 199, the trial court meticulously analyzed the relocation request under the enumerated factors in RCW 26.09.520. The trial court found that factor number 1 was covered in his ruling under RCW 26.09.187(3), and that that factor regarding a relative strength, common nature, quality and extent of involvement, and the stability of the children's relationship with the mother was the stronger. That factor favors Betsy "to a substantial degree." CP 194.

With respect to the children's attachment to various friends in the community and their school, the trial court met this issue head on by stating the following:

> "I guess I have to acknowledge that Dr. Adler, Dr. Hartman, Mr. Kenney all said that relocation is bad, and I accept that. I think that's true, relocation is bad. It is – that's why we have a relocation statute. It's not a good thing for kids to move, perhaps from one house to another within – on the same block it can be disruptive, but relocation is a legal reality and the fact that somebody would say it's bad is coffee table talk . . ."

The court then went to on address the remaining outstanding nine factors. There were no prior agreements between the parties; disrupting the contact between the children and the mother would be more detrimental to the children because of the role she has occupied in the children's lives. CP 195. As to the fourth factor, whether there are any limitations on parental contact, the trial court made a very telling observation. Anatole was trying to get a limitation on the mother's parenting time based on repeated accusations of her attempting to "alienate the affections" of the children toward him. The trial court plainly found that this did not apply to her. Although he did not order limitations or restrictions, he did say the following:

> "Frankly, the incident in the way the case started, that family conference [called by Anatole on the day he was served] is what I believe is – falls under the term of abusive use of conflict. I'm not finding that either parent is subject to that [limitations] but that's an example of what took place. . . . "CP 195.

This refers to the incident outlined in our factual background supplement and Betsy's testimony at RP (9/10/12) 407 - 408. CP 195 - 196, *supra,* pp 9 - 10.

With respect to Betsy, the court made the following observation:

> "I will tell you there is inconsistency in some of the argument [of alienation on the part of Betsy] that on the one level mother is destroying dad's relationship, which would suggest that she is aggressive, adversarial, decisive, manipulative. And the other is – and the same argument is made is that she is passive, indecisive, and lax, I think is the term that was used. Those are inconsistent and, frankly, I look at that – the argument on both sides of the coin and it doesn't work. The fact is is [sic] I don't think either of you maybe likes each other very much any more, but I can't find that either of you has engaged in any kind of ongoing effort or ongoing conduct that is determined to – that would allow for any limitations. So there are no limitations." CP 196.

As to factor number 5 the court found that both parties were acting in good faith in this relocation litigation. CP 196 - 197.

Regarding factor 6, the trial court discussed the developmental levels of the children, stating as all witnesses agreed, that the children are very well adapted, very mature. He concluded that:

> "any damage created by relocating, any uncertainties they're going to have are going to be easily resolved by their various – their respective personalities. I think they are both – all three of the children are going to be able to handle it.
>
> The physical, educational, and emotional development I don't think is going to be impaired by a move. I think the educational level is frankly something that I think comes as much from – from home as it does outside of the home. I think both parents in this case have pursued the importance of education, both in their own lives and with their children, they have just done it differently and I think – I don't see that there will be any negative impact on the children by

allowing them to move." CP 197-198.

The trial court clearly recognized the fact that some of the statutory factors on relocation deal with the interests of the parents as well as with the children, consistent with *Osbourne, Horner,* and *Momb*. The court stated with regard to the quality of life, resources and opportunities available to the child and the relocating party:

> "The quality of life, at least as I heard the testimony would be unchanged between Yakima and Torrence, California. The resource is [sic] available, at least as to the mother, are going to be – together with opportunity – employment opportunities are greatly enhanced. I think there are certain benefits to the children. Mother will be working, providing a solid role model, and that is, again, not to denigrate what she has done for the last 16 years but I think both have a useful – are useful tools for the parents, so I think the quality of life available to each is going to be relatively similar with exception of the employment opportunities available to the mother." CP 198.

Factors 8 and 9 deal with alternative arrangements to foster the children's relationships and alternatives to relocation. The court did not find it credible that there was any reasonable alternative in either situation. The father did not want to relocate to Southern California because of his well-established career in Yakima as a cardiologist. Although disputed by Anatole, Betsy gave a great deal of credible testimony that her only viable

option for the resumption of her career after a long hiatus, while still parenting the younger children, was to relocate again in Southern California where she had previously received her training and still had friends, family and professional contacts. RP (9/4/12) 92 - 106. The trial court was entitled to accept her testimony over his.

Under factor 10, it was clear to all concerned that the financial impact of the relocation could be accommodated by these parties, both of whom are educationally and professionally competent. CP 199.

Once again, the trial court made specific reference to the Lakeside school plan initiated by Anatole, and very sensibly expressed the clear implication of those plans. Anatole has a perfectly understandable desire to have his children receive the best education; and he thinks the best education is at a private school. His willingness to promote the children's residence away from both parents at a distant school was obviously an indication that he did not feel that their close or daily type of contact with him was of primary concern.

D. The Findings Made by the Trial Court On the Issues of Primary Child Placement and Relocation Were Supported by Substantial Evidence.

The factual statements and the two sections above refer to the

evidence in the record which is more than enough to convince any fair-minded person that the decision of the trial court is amply supported by the evidence. This is all that is required to affirm the trial court under the standards and authorities set forth under the "Standard of Review" section preceding in this Brief.

E. The Father Did Not Rebut the Presumption in Favor of the Request of the Primary Parent to Relocate With the Children.

Anatole's Brief is in infected with the gross misconception that the best interests of the child standard is really the only standard which matters in a relocation analysis. He relies heavily on the case of *In re Combs,* 105 Wn.App. 168, 19 P.3d 469 (2001), as a rationale for this position, presumably in part because it was decided by this court in 2001. However, *Combs* was decided in the trial court before the effective date of the Relocation Act so the analysis in *Combs* is inapplicable to the Relocation Act. Anatole's argument leads to the absurd result that no parent could ever relocate with children unless the other parent was subject to severe RCW 26.09.191 limitations or restrictions. As our case law indicates, this is not a proper reading of the entire parenting act with its inclusion of the child relocation act.

The instant case is controlled by firmly established authority from this Division, other Courts of Appeal, and the Washington Supreme Court. The analysis began with *In re Osborne,* 119 Wn.App. 133, 79 P.3d 465 (2003). A relocation issue made it to the Supreme Court in 2004 in *In re Marriage of Horner,* 151 Wn.2d 884, 93 P.3d 124. *Osbourne* and *Horner* were followed by this Court in *In re Marriage of Momb,* 132 Wn.App. 70, 130 P.3d 406 (2006). While all these cases are nominally acknowledged by the Opening Brief, Anatole's argument does not come to grips with the meaning of these cases. The clear and unequivocal meaning of these cases is stated by our Supreme Court very clearly. The pertinent reasoning is set forth in *Horner* at 151 Wn.2d 894 - 895:

> "In reviewing whether the trial court abused its discretion, we first consider whether trial courts must consider all the child relocation factors. We hold that they must. The factors are conjunctive because "and" separates factors 10 and 11. The factors are equally important because they are neither weighted nor listed in any particular order. RCW 26.09.520. Finally, consideration of all the factors is logical because they serve as a balancing test between many important and competing interests and circumstances involved in relocation matters. *Particularly important in this regard are the interests and circumstances of the relocating person.* Contrary to the trial court's repeated references to the best interests of the child, the standard for relocation decisions is not only the best interests of the child. As stated by Division One of the Court of Appeals:

'Rather than contravening the traditional presumption that a fit parent will act in the best interests of the child, . . . the relocation statute establishes a rebuttable presumption that the relocation of the child will be allowed. *Thus, the act both incorporates and gives substantial weight to the traditional presumption that a fit parent will act in the best interests of her child.* The burden of overcoming that presumption is on the objecting party, who can prevail only by demonstrating that the detrimental effect of the relocation upon the child outweighs the benefit of the change to the child and the relocating person. RCW 26.09.520.

Moreover, the relocation statute provides specific guidance for trial courts considering orders restraining or permitting relocation of the child. Rather than containing a general statement of the "best interests of the child" standard . . ., RCW 26.09.520 contains 11 specific factors for the trial court to consider at a hearing to determine whether relocation of the child will be permitted. FN10.

FN 10. Many of the child relocation factors refer to the interests and/or circumstances of the relocating person. *See, e.g.,* RCW 26.09.520(2) ("Prior agreements of the parties"); (4) ("Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191"); (5) ("The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation"); (7) ("The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations"); and (10) ("The financial impact and logistics of the relocation or its prevention").'

We adopt this reasoning and hold that trial courts must determine whether the "detrimental effect of the relocation outweighs the benefit of the change to the child and the

> relocating person." RCW 26.09.520. We further require that trial courts must consider each of the child relocation factors. *These requirements will ensure that trial courts consider the interests of the child and the relocating person within the context of the competing interests and circumstances required by the CRA."* (Emphasis supplied).

As for *Combs,* a reasonable analysis shows that it does not apply after the effective date of the Relocation Act in 2000. Hence the parenting plan criteria under RCW 26.09.187 applied rather than the more specific relocation factors later enacted. To the extent that factors in RCW 26.09.187 do not correspond to the 11 factors enumerated in RCW 26.09.520, and are inconsistent therewith, the *Combs* case has been abrogated by the passage of the Relocation Act.

Although Anatole does not come right out and claim that the Relocation Act is unconstitutional as applied to him in this case, see Fn16 of the Opening Brief, and he acknowledges the clear constitutionality of the act in the cases previously mentioned, particularly the *Marriage of Momb, supra,* he continue to forge ahead with the argument that the best interests of the child trump everything else using constitutional principles enumerated in *Troxel v. Granville,* 530 U.S. 57 (2000). Opening Brief pp.

26 - 27.

What Anatole is actually complaining about is that the trial court weighed the evidence and found in favor of Betsy based upon all the proper statutory criteria from beginning to end. This is a disagreement about the result, not about the legal standard applied nor the quantum of evidence presented to the trial court.

Anatole cites to some legal and social science literature in Fn17, but these discuss issues which were addressed to the Legislature during the debate over the passage of the parenting act in 1999 and 2000. This Court is no place to change the policy decisions which have been made by the Legislature and re-affirmed by the Court of Appeals and the Supreme Court.

Because the trial court analyzed the relocation issue under the appropriate statute and its fact finding was supported by reasonable and substantial evidence in the record, Anatole did not rebut the presumption in favor of the relocation.

F. A Trial Court Need Not Follow the Recommendations of a Guardian ad Litem, Whether or Not that GAL Supports His Recommendation With Other Evidence, Especially When That Evidence is Faulty.

We have already mentioned the cases which clearly hold that a trial

court need not follow a recommendation made by a guardian ad litem. *E.g., Marriage of Magnuson,* 141 Wn.App. 347, *supra.* Anatole cannot accept this fact. Therefore, he points to isolated statements and conclusions of the GAL and the other professionals consulted. The problem with the professional opinions relied upon by the GAL, and with the opinion of the GAL himself, is this: their comments and recommendations betray a complete misunderstanding of the relocation law in Washington. It is easy to see why the trial court was not particularly overwhelmed by these reports and stated at the beginning of his oral decision that he could have decided this case with the testimony of the parents alone. CP 185.

First of all, the guardian ad litem's main report recommended that primary residential placement be with Betsy. He also stated interestingly, "Visitation [Anatole] shall remain the same for the time being, to be increased or modified based on family treatment." The words "the same" refer to the temporary parenting plan, which Anatole now is critical of by saying that the trial court simply extended the temporary order. None of this is actually accurate, and in fact, Anatole's only offering to the trial court was that he should have primary placement of the children (with an aside that maybe it should be fifty-fifty), along with his request for sixty percent

of the community property, discussed below.

Both the GAL and Dr. Adler talked about the importance of the cultural and family factors in this case, but did not really explain why these observations would have significant influence, other than to say that Ethan should be instructed in these matters. CP 344, item 10. The most that could be gleaned from this and the testimony of Dr. Park is that in Korean families the men are disciplinarians and interested in education. This is not a compelling reason to count the trial court's disregard of that testimony (which it all heard over objection of Betsy) as of significance in the overall analysis of this parenting case.

The flaw in the GAL's conclusions regarding relocation are clearly stated in his recommendation at CP 340, paragraph 5. He opines that relocation is "not best for the children." Then he says "The mother would have to demonstrate an overwhelming need for her to do so." This demonstrates the lack of understanding of the relocation statute which has been discussed at length. The statute does not require her to demonstrate an overwhelming need, nor does it necessarily subordinate her and the children's needs to one parent's opinion as to what is in the best interests of the children.

Dr. Adler's opinion about relocation is equally unhelpful. In the first place, he knows only Ethan and really has no business opining about relocation as to the other children. Remember that it is only the other two children who now are permitted by the court's order to relocate to Southern California; Ethan is now an adult. Dr. Adler acknowledges that this has been a high conflict divorce, marked by contested custody issues and prominent father - son alienation, but does not address the statutory factors which the court did consider, particularly the removal of the children from exposure to harmful parental conflict. RCW 26.09.184(1)(e). This error bleeds into the GAL's opinion and report.

Quite a bit was made about some notes and a telephone interview with a Dr. Hartman. It would seem apparent that the trial court had little trouble disregarding much of what Dr. Hartman said in her telephone interview because she claimed to Dr. Adler that she did not see anything in her notes or recollection which would indicate that the father was encouraging Ethan to have bad feelings towards his mother. Yet, in that same report by Dr. Adler, reviewing Dr. Hartman's notes, Ethan clearly reported to Dr. Hartman his complaints that Anatole took Betsy's credit cards and driver's license and cut them up; that Anatole said that Betsy

committed murder; that Anatole said that Ethan himself is stupid and would never amount to anything; that Anatole said he thinks Luke is lazy with no respect for authority; and that Anatole thinks that Caroline is fat. CP 354. We do not know whether Dr. Hartman was biased or simply forgetful, but in either case her report was worth nothing.

For all these reasons and those stated above, there is no error by the trial court in making a finding on relocation different from the misguided recommendations of the GAL and others.

G. The Best Interests of the Children are Considered In the Initial Parenting Plan Decision, and They Are Not the Primary or Over-riding Consideration in a Relocation Analysis and Decision.

In Section IX. B. and C. above, we have addressed this question thoroughly. Anatole's argument would lead to the absurd conclusions which he advances, namely, that it could *never* be to the benefit of the children and to Betsy that the relocation go forward. The holdings in *Horner, Osbourne, and Momb* are controlling, so this court need not be concerned with any constitutional arguments.

A word about the trial court's use of certain terms. Anatole grasps onto the judge's use of the word "appropriate" when ruling on the relocation

issue and the phrase "super-parent" in discussing his decision about the best interests of the children. Anatole isolates part of the trial court's decision as if to show that the court's comment is a holding that it always is bad for children to leave their friends and schools, RP (9/13/12), pp 12 - 13, CP 194 - 195. By highlighting a few statements out of the context of a multiple-day trial, Anatole attempts to extrapolate that the statutory factors were not met. This is as misleading as possible considering the fact that the trial court in fact weighed every factor carefully in its decision.

Finally, there is the mention of the cultural factors. The statute relied upon by Anatole is discretionary, not mandatory as stated and implied throughout his materials. RCW 26.09.184(3) simply states:

> "In establishing a permanent parenting plan, the court *may consider* the cultural heritage and religious beliefs of a child." (Emphasis supplied).

This statute is not a mandate that this trial should have been based upon some opinions about Korean or Japanese people. The trial court was absolutely correct when it stated at the beginning of its oral decision:

> ". . . Frankly, I wouldn't know whether somebody from Seoul is the same as somebody from Busan or somebody from Tokyo is the same as somebody from Nagasaki. I wouldn't have any clue about that. They certainly aren't in this country, and I think what we have is a husband from

> New Jersey and a wife from Southern California, and I can no more balance these two states than I can Korea and Japan. What I think we are left with is, frankly, Washington residents and Washington children, and that's the way I analyzed it. I don't think there is any room for ethnicity here. I think the fact is that you, the Kim family, has been a fairly traditional family in a lot of different levels and culture has perhaps some subtle impact that you all might want to wrestle with individually, but I don't think it's got any place in the courtroom." CP 184 - 185.

This comment demonstrates the clear thinking of the judge on this issue and is certainly not a violation of the statute. In any event, other than repeatedly stating that culture is important in this case, Anatole offers almost no reason for that statement. The Opening Brief infers from the reports and the testimony that "the court failed to realize the role of the Asian father and the Asian family and first generation citizen, and how the children needed regular, daily contact for the purposes of discipline, accountability, role-modeling, and character development." Opening Brief, page 37. Both parents have "Asian" ancestry, so what is the point? It would appear that from the opinion of Dr. Adler the importance of culture was to transmit this "important information" *to Ethan*, not to make it a factor in decisions about parenting by the parents. In any case, the trial court heard all of the evidence over objection and actually did consider it

before making the decision to disregard it for purposes of altering his other reasons for coming to the conclusions that he did.

Finally, there is no suggestion in the record that the trial court "gave preference to Betsy under the temporary orders" as prohibited by statute and mentioned in *In re Marriage of Kovacs,* 121 Wn.2d 795, 854 P.2d 629 (1993).

H. The Property Distribution is Fair and Equitable Within the Trial Court's Discretion to Base its Decision on Substantial Evidence.

The Court heard extensive testimony on the nature and extent of the community property, the disagreement over a separate property claim regarding the $100,000.00 gift to the community (claimed to be a loan), the history and duration of the marriage, and the economic circumstances of each spouse at the time of trial and the time that the division of property is to become effective. RCW 26.09.080.

Again, Anatole focuses on a single factor with which he disagrees to try to undermine the entire decision of the court, by citing to cases such as *In re Marriage of Gillespie,* 89 Wn.App. 390, 948 P.2d 1338 (1997). His real reliance, however, is based upon *In re Marriage of Washburn, supra,* 101 Wn.2d 168.

Washburn was actually a decision about compensatory *maintenance* and "restitution" in two consolidated cases, both of which involved husband-professionals (veterinarians) who had been supported by the employment of the wives in young and relatively short-term marriages. The Supreme Court described the factual situations in those cases thus, 101 Wn.2d at 173-174:

> "The cases at bar are representative of a situation which is so familiar as to be almost a cliche. A husband and wife make the mutual decision that one of them will support the other while he or she obtains a professional degree. The educational years will be lean ones for the family not only because of heavy educational expenses, but also because the student spouse will be able to earn little or nothing. Moreover, the supporting spouse may be called upon to postpone his or her own education or forego promotions and other valuable career opportunities in order to find a job near the student spouse's school. These sacrifices are made in the mutual expectation that the family will enjoy a higher standard of living once the degree is obtained. But dissolution of marriage intervenes. Because the family spent most of its financial resources on the degree, there may be few or no assets to be distributed. The student spouse has the degree and the increased earning potential that it represents, while the supporting spouse has only a dissolution degree."

In the Washburn case, the parties were married before husband began four years of schooling at veterinary school. During his time in veterinary school, the wife worked full-time. They then moved to another

state for him to participate in an internship and he received his degree in the fourth year. The wife worked full-time for another year. Two years after that they separated. They had almost no assets at the time of their divorce. In the other consolidated case concerning the Gillettes, the husband also attended undergraduate school for four years and then attended veterinary college for another three years before the separation of the parties. During all this time the wife worked full-time contributing her income and money from a personal injury settlement. She turned down offers of job promotions so she could move with her husband for veterinary school. The parties both anticipated that they would share equally in the expected increased earning capacity of the husband. During the time the husband attended school, the parties' net worth diminished, and they had very little community property.

The Supreme Court made this observation at 101 Wn.2d, page 159:

> "We point out that where a marriage endures for some time after the professional degree is obtained the supporting spouse may already have benefitted financially from the student spouse's increased earning capacity to an extent that would make extra compensation inappropriate."

Needless to say, the facts of the case at bar bear little resemblance to the facts in the *Washburn* cases. This is a marriage which has a duration

of just two and one-half weeks short of twenty-five years. The trial court observed from the testimony that Anatole's work schedule was "grueling" (CP 194), and it is clear from the totality of the circumstances that Betsy's role as the homemaker and full-time parent to the three children allowed this cardiologist to pursue his career with energy and a great deal of time. The facts in this case simply do not warrant "compensation" from Betsy to Anatole under the community property principles of our state. It cannot be said that the trial court abused is discretion in this property division; and the assertion of Anatole should be ignored to the extent that he says *Washburn* may "require a disproportionate property award in Anatole's favor." Opening Brief, page 43.

In view of Anatole's argument on this issue, it should be remembered that Betsy's parents paid for all her tuition. Opening Brief, page 45.

Unfortunately, Anatole also launches into a fault-finding argument on the same page of the Opening Brief, referring to Betsy's "unilateral decision" to stay at home after the birth of their children. The trial court, however, reasonably found otherwise; it found that while Anatole may have disagreed with her decision, it was the arrangement they had for about

fifteen years and had to be taken as part of the community arrangement. Any attempt to assign fault on this community decision to Betsy simply reflects Anatole's personality characteristic of always assigning blame to someone else when he is unhappy about something. See report of Dr. Adler, *supra.*

Finally, on this subject, Anatole argues unconvincingly that the $100,000.00 transfer represented by Exhibit P 14 was really a "loan." Granted, Anatole and his mother testified as such, and there is an ostensible letter unilaterally made by Anatole to his father about it being a loan. Exhibit RE 18. Nevertheless, Exhibit P 14 is a written document *signed by the parties and by Anatole's parents* unequivocally denominating the sum of money as a gift. Almost a month later, Anatole attempted to change this by notating a conversation in the upper left-hand corner of the gift letter, but to no avail with the trial court. RP (6/14/12) 328, Ex. P 14.

Property acquired during marriage is presumed to be community property. *In re Estate of Smith*, 73 Wn.2d 629, 631, 440 P.2d 179 (1978); RCW 26.16.030. Generally, a gift of real property to a husband and wife under Washington law is a gift to the community and not to the spouses as tenants in common. *In re Marriage of Oliveres,* 69 Wn.App. 324, 331, 848

P.2d 1281 (1993); *disapproved on other grounds*, *In re Estate of Borghi,* 167 Wn.2d 480, 219 P.3d 932 (2010); the "other grounds" are noted at 167 Wn.2d 488 at FN6; *In re Estate of Salvini,* 45 Wn.2d 442, 448, 397 P.2d 811 (1964). In light of the gift letter, Exhibit P14, can it be said that the trial court abused is discretion by ruling that the $100,000.00 was a gift to the community based upon substantial evidence? The question answers itself.

Sixty percent - forty percent property divisions are not unusual in cases with facts such as this where one spouse has been the "breadwinner" in a long-term marriage and the other spouse has been a homemaker and stay-at-home parent. See, for example, *Stacy v. Stacy,* 68 Wn.2d 573, 414 P.2d 791 (1966) (twenty-two year marriage, award increased from trial court to approximately seventy-five percent of the net assets, the wife had not worked outside of the home during the marriage and there were still three children in her care); *In re Marriage of Rink,* 18 Wn.App. 549, 571 P.2d 210 (1977) (award of two-thirds of community property to the wife in twenty-four year marriage, wife not employed steadily for the last fifteen years before the dissolution); *In re Marriage of Rockwell,* 141 Wn.App. 235, 170 P.3d 572 (2007), *review denied*, 163 Wn.2d 1055 (2008); 157

Wn.App. 449, 238 P.3d 1184 (2010), *review denied,* 176 Wn.2d 1012 (2013) (twenty-six year marriage, 60 - 40 division of community property).

In a long-term marriage of twenty-five years or more, the trial court objective is to place the parties in roughly equal financial positions for the rest of their lives; the longer the marriage, the more likely a court will make a disproportionate distribution of community property. Rockwell, *supra.*

I. The Child Support Order is Supported By Substantial Evidence and is Within the Trial Court's Discretion.

Child support orders are reviewed for abuse of discretion. *In re Marriage of Griffin,* 114 Wn.2d 772, 776, 791 P.2d 519 (1990). An appellate court will not substitute its judgment for trial court judgment if the record shows the court considered all relevant factors and the award is not unreasonable under the circumstances. *Id.*

On January 25, 2013, counsel for the parties in the trial court had a final presentation of the parties' final documents to be entered by the court that day. The order of child support was discussed by the court and counsel at RP 110 (1/25/13) 27 - 42. Maintenance was also discussed. *Id.* 40. In the context of the discussion Anatole's counsel had brought up the request that a child support worksheet include the maintenance as a deduction on

the income for Anatole and an increase in the income for Betsy. The trial court, in considering these facts, stated:

> "I don't think it's appropriate to deduct [maintenance] because what I'm going to end up doing is if it changes the numbers, I am going to increase the maintenance to make it come out. So, you either go with the numbers I've got or we kind of get into this circular argument with no particular end. It is I deduct maintenance, child support will go down, then that will change the total amount, so I'm going to increase it again. It being maintenance, so I think it's appropriate to just leave it off. Its ideal and its an approximate entry when you are making a proposal but at the end when you are trying to come up with some certain amount I think that is the best way – "

Contrary to the argument of Anatole, the use of the Washington State Child Support Schedule Worksheets, while required, is not without amenability to trial court discretion. The trial court took into consideration both maintenance and child support, and the needs of Betsy and the family before and after moving to Los Angeles. It was known that she would remain in Yakima until the 2012-13 school year and then make her move to California with the children.

Anatole's citation to *In re Marriage of Sacco,* 114 Wn.2d 1, 4 - 5, 784 P.2d 1266 (1990) is true but only on the facts of that case. In *Sacco* no worksheet was completed by the court at all. The trial court had dispensed

with it expressly, and this was the error which the Court of Appeals found to be an abuse of discretion and reversible. Anatole can cite no authority which supports his argument. In fact, he does recognize that in the case of *In re Marriage of Wilson,* 165 Wn.App. 333, 267 P.3d 45 (2011), there are exceptions to the rules regarding deductions for maintenance on the worksheet. No other case is found which is on point. In any case, as stated in *Sacco,* 114 Wn.2d at 3 - 4:

> "The trial court neither filled out a worksheet nor entered the results of the worksheet in the order. Counsel argued that inasmuch as each party submitted a worksheet, this was all that was required under the statute. We categorically reject this claim. The thrust of the statute is to require the court to set forth the basis for its calculations in order for subsequent courts to determine precisely what the underlying facts are and how the trial court reached its decision. . . ."

Based upon the trial court's oral decision in this case and the worksheet entered, this court can determine precisely the underlying facts and how the trial court reached its decision. Anatole's assignment of error to the calculation of child support serves no purpose other than to add burden to the review by this Court and expense to Betsy in having to respond to this aspect of the appeal.

J. Attorney's Fees.

RCW 26.09.140 provides in part that:

> "Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs."

This provision follows the first paragraph which suggests that the court consider the financial resources of both parties in awarding the other party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under Ch. RCW 26.09, including reasonable attorneys fees and other professional fees.

Pursuant to RAP 18.1(a) and (b), respondent asserts that she has the financial need for attorneys fees to be paid in this matter. In the first place, her income is substantially less than that of the appellant. Second, she should not be required to deplete the assets she was awarded in this dissolution of marriage case to defend an appeal which is without merit.

Third, although falling short of being frivolous, this appeal has been brought and prosecuted with little regard or the standards of appellate review or the quantum of evidence which is actually in the record. Given the disparity in the incomes of the parties, respondent requests the Court to

take these factors into consideration in its decision affirming the trial court, and award this respondent the right for reasonable attorneys' fees and expenses on appeal.

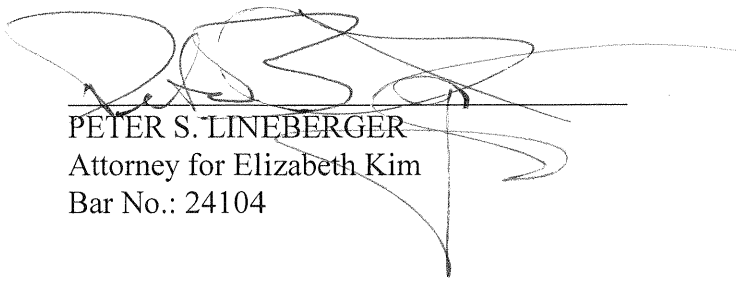
V. CONCLUSION

Appellant Anatole Kim has brought this appeal in substantial disregard of the clear rules of review of dissolution cases with respect to both parenting issues and financial issues. Anatole relies on case authorities which have been superseded by statute, and on arguments which have been clearly rejected by the courts within the past ten to fifteen years, including constitutional arguments.

The extensive record in this case is filled with substantial evidence to support every single finding of the trial court. No legal errors have been committed; the trial court followed all of the parenting statutes, the Relocation Act, and all of the case law regarding these matters as well as with reference to disproportionate property divisions and child support, in arriving at a fair and just resolution of this case in all respects.

The respondent respectfully requests this Court to affirm the decision of the trial court, and award her her reasonable costs, expenses, and reasonable attorneys fees in this appeal.

Respectfully submitted this 27th day of November, 2013.



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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on the 27th day of November, 2013, I caused a copy of the attached *Brief of Respondent,* to be filed and served upon counsel of record as follows:

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Dated November 27, 2013.

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