PETITION FOR REVIEW
WASHINGTON STATE SUPREME COURT

93873-3

ON APPEAL FROM
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
APPEAL NO. 48027-1-II
Issued: October 25th, 2015

Angela K. Scoutten kna Schreiner

Appellant/Petitioner,

v.

Michael J. Scoutten

Respondent

Angela K. Scoutten kna Schreiner
Petitioner, Pro Se
1505 Grand Loop Way
#602
Tacoma WA 98407

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C. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals Division II erred in upholding the trial court's ruling that father had rebutted the Presumption in Favor of Relocation, Claimed Error #14 in Appellant's Brief. The trial court failed to apply the Presumption at the conclusion of trial and opted to apply a "best interest of the child" standard instead. This decision is in conflict with *Marriage* of *McNaught,* No. 72343-0-1, 2015 Wash. App. **LEXIS** 1938 (Aug. 17, 2015), *In Re Marriage* of *Rostrom,* 184 Wn. App. 744, 339 P.3d 185 (2014). Additionally, the Presumption in Favor of Relocation requires that the trial court consider the interests of not only the child, but the relocating party when considering each of the 11 child relocation factors. (26.09.520).

and *In re Marriage of Horner,* 151 Wn.2d 884, 93 P. 3d 124, (2004). The record is devoid of the trial court considering the best interests of the relocating party on all 11 Factors.

2. RCW 26.09.530 (Factor not to be considered). The Appellate upheld the Trial Courts decision to restrict the mother from relocating with or without the child. Claimed Error #11 and 25 in Appellate's Brief. The Appellate Court upheld the ruling of the trial court determining that the mother should forego her own relocation before denying the relocation in direct conflict with the Legislative intent of RCW 26.09.530, and by violating the mother's **constitutional rights to travel**. The court specifically found that the only alternative to relocation was that the mother be restricted from moving without the child. The trial court ordered mother to "continue to commute"(RP 244) when ruling on relocation Factor 9 (RCW 26.09.520(9).

3. Appellate Court neglected to address Assigned Error #13 in Appellants Brief. The trial court stated on record that it had the

discretion to weigh the relocation factors in conflict with RCW 26.09.520.

4. The trial court made the decision to modify the parenting plan *before* denying the relocation in conflict with the Legislative intent outlined in RCW 26.09.260(6) and *In re Marriage of Horner,* 151 Wn.2d 884, 93 P. 3d 124, (2004).

5. The Appellate Court upheld the trial courts Adequate Cause ruling, in direct conflict with The Supreme Court Decision of *In re Marriage of Grigsby* 112 Wn.App. 1, 7-8, 57 P. 3d 1166 (2002).

C. Statement of the Case

Angela Schreiner petitions the Supreme Court of the State of Washington for review of the decision issued on Oct. 25th, 2015 by Court of Appeals Division II (48027-1-II). A trial court's decision regarding the relocation of children is reviewed for a manifest abuse of discretion. Horner, 151 Wash.2d at 893, 93 P.3d 124; Bay, 147 Wash. App. at 651, 196 P.3d 753. A trial court manifestly abuses its discretion when our review of the record shows that its decision is

based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1997). A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the **applicable legal standard**; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an **incorrect standard** or the facts do not meet the requirements of the correct standard. State v. Rundquist, 79 Wash.App. 786, 793, 905 P.2d 922 (1995) (citing Washington State Bar Ass'n, Washington Appellate Practice Deskbook § 18.5 (2d ed.1993)), review denied, 129 Wash.2d 1003, 914 P.2d 66 (1996).

Argument

1. PRESUMPTION

The Appellate Court, Division I upholds in *Marriage* of *McNaught,* No. 72343-0-1, 2015 Wash. App. **LEXIS** 1938 (Aug. 17, 2015), and *In Re Marriage* of *Rostrom,* 184 Wn. App. 744, 339 P.3d 185 (2014) that The Child Relocation Act does not apply a "**best**

interest of the child" standard; instead, it applies 11 specific factors for the court to consider. [NOTE: The recent decisions of These cases implicitly overrule the prior relocation decisions of *In re Parentage of R.F.R.*, 122 Wn. App. 324, 328, 93 P.3d 951 (2004) and *In re Marriage of Grigsby*, 112 Wn. App. 1, 7, 57 P.3d 1166 (2002), which stated in dicta "The Relocation Act of 2000...gives courts the authority to allow or disallow relocation based on the best interests of the child." (*Grigsby*) *In re Marriage of Momb*, 132 Wn. App. 70, 79, 130 P.3d 406 (2006); *In re Marriage of Horner,* 151 Wn.2d 884, 895, 93 P.3d 124 (2004). The relocation statute applies where the primary residential parent seeks to move with the child. RCW 26.09.430, **there is a presumption in favor of relocation**. ***Horner,*** 151 Wn.2d at 887. As this Court recently reiterated, "**the presumption in favor of relocation operates to give particular importance to the interests and circumstances of the relocating parent, not only the best interests of the child.**" ***Marriage* of *McNaught,*** No. 72343-0-1,2015 Wash. App. LEXIS 1938, at *9 (Aug. 17, 2015) (emphasis added) (quoting ***Horner,*** 151 Wn.2d at

887). As this Court noted in ***McNaught,*** the 11 relocation factors "provide a balancing test between the competing interests and circumstances that exist when a parent wishes to relocate." ***McNaught,*** at * 10 (emphasis added). Indeed, the factors weigh the benefit the move holds for the relocating parent and the child, "focus[ing] on both the child and the relocating person." *Id.* at *7(quoting ***Horner,*** 151 Wn.2d at 887). **Factors 7, 9, and 10 in particular "focus on the family and its material needs," while factor 5 "considers the reasons of the relocating and objecting parties." *Horner,* 151 Wn.2d at 894 n.9.**

When ruling on Factor 5 the court stated: "So I don't see, on balance, how that is to Memphis' **best interest.**"(Court's Oral Ruling, RP 434).

FACTORS 7, 9, 10 and 5 require that the trial court apply the presumption in favor of relocation and consider the benefit the move holds for the relocating party. ***Horner,*** 151 Wn.2d at 894 n.9.

The Appellate court in this case upheld the Trial court's decision to not issue a specific finding on Factor 2.3.10. This factor requires the trial court apply the Presumption in Favor of relocation. ***Horner,*** 151 Wn.2d at 894 n.9.

10) The financial impact and logistics of the relocation or its prevention.

The Appellate Court improperly affirms the trial court stating "Because the location is 40 to 60 minutes away the financial impact would likely be minimal, which would explain the lack of evidence regarding this factor."(Pg. 15, 48027-1-II).

The Appellate Court's Opinion that the location of the relocation **excuses** the trial court from issuing a specific finding on this Factor is improper. The CRA requires specific findings on **each** of the 11 relocation Factors(RCW 26.09.520) and *In re Marriage of Horner,* 151 Wn.2d 884, 93 P. 3d 124, (2004).

Because the trial court did not make an express finding on this factor, the basis for it's decision is unclear.The Order on Objection

states: "The court finds that very little evidence was presented regarding the financial impact of the relocation or it's prevention" (CP 242-245). Additionally, the record shows that there *was* substantial evidence in the record to make a finding on this Factor. In fact, employment and logistics were specifically listed as the two main reasons in the Notice of Intended Relocation (EX 1). Specific testimony was given on how the commute would negatively impact both herself and the child. (Schreiner, A. –Direct by Ms. Hosannah, VRP 20). (Schreiner, A.-Cross by Mr. Miller, VRP 47).

Finding of Fact 2.3.3

(3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

The trial court did not reach a conclusion on this factor, failing to apply the Presumption in Favor of Relocation and opting only to consider third parties. Without express findings regarding whether

disruption of contact with the father or the mother would be more detrimental to the child, the trial court's basis is unclear.

The Appellate Court cited the Courts Finding on Factor 1 to justify the lack of findings on Factor 3. The Appellate Court stated "The trial court found M.S.'s "relationship with her father and extended family who all reside in Pierce County would in fact be disrupted by mother's relocating the child to Mercer Island." CP at 243. The trial court further found "the disruption in contact would be detrimental to [M.S.]." Id."(Pg. 11). The trial court **did not make these findings on Factor 3**, and did not reach a conclusion or make an expressing finding whether disrupting contact with dad or mom would be more detrimental to the child on Factor 3. The trial court must make express finding on EACH FACTOR.

RCW 26.09.520(5) Finding of Fact 2.3.5

The reasons of each person for seeking or opposing the relocation and the good faith of <u>each</u> <u>of</u> <u>the</u> <u>parties</u> in requesting or opposing the relocation;

The trial court did not make an express finding of the good faith of Mr. Scoutten. Here again, the trial court applied the wrong legal standard and referred to "a best interest of the child" standard instead of the presumption in favor of relocation.

THE COURT stated: "Weekly visits with Dad in Pierce County versus three or so medical appointments a month are going to mean more time on the freeway for visits with Dad than medical appointments. So I don't see, on balance, **how that is to Memphis' best interest**"(RP 434).

No. 9) The trial court erred on Finding of Fact 2.3.7

The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations.

Instead of using the Presumption in favor of relocation and considering the cost the mother incurred commuting to work 2 hours per day, the trial court actually imposed a financial penalty upon mom and ordered her to continue to commute to work as an

alternative to relocation. There was substantial evidence to support the negative logistical and financial impact the commute to the mother's workplace and Seattle Children's Hospital had(EX 1).

The trial court erred on Finding of Fact 2.3.8

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

The ORDYMT or ORGRRE states: "This Court finds no evidence of any feasible alternative arrangements to foster and continue the child's relationship with the father and extended family if allowed to relocate" (CP 242-245).

Without express findings of alternative arrangements, the trial Courts basis is unclear. There is substantial evidence provided to support alternative arrangements to foster and continue the child's relationship with and access to the other parent. The intended relocation did not propose a change to the parenting plan (EX 1).

Finding of Fact 2.3.9

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

THE COURT: So it seems to me like the alternative, in this particular case, to relocation is that Ms. Schreiner continues to commute (RP 439).

"I didn't hear any evidence of any other alternatives to relocation, and I certainly didn't hear anything from Mr. Scoutten that would indicate it was feasible for him to also relocate. Then how one determines that that weighs in favor of or against relocation is really more a personal choice than something that the Court can analyze and weigh...although I'm always in favor of putting the **burden on the parents and not on the children**, so --" (RP 439).

If the trial court would have applied The Presumption in Favor of relocation, it would not put have put the burden on the relocating party and order mom to commute, it would consider the benefits of the relocation to the relocating party and the child and the benefit of not having to commute to work 2 hours per day and be on the freeway for "three or so medical appointments per month." (RP

435). Moreover, the trial court did not consider it an alternative that Mr. Scoutten could have relocated. It was a possibility, as the Appellate Court stated on Factor 10 "It was only 40-60 minutes away" The Appellate Court found that commuting to work wouldn't have had any logistical or financial impact (48027-1-II, Pg. 15).

The trial court erred by not considering Finding of Fact 2.3.11. (11) For a temporary order, the amount of time before a final decision can be made at trial.

The trial court did not make a specific finding on this factor. Mr. Scoutten failed to file a hearing to restrict mother from moving within 15 days or note a hearing to provide adequate cause for relief under RCW 26.09.480.

Conclusion at trial

Courts interpret statutory presumptions to give them the force intended by the legislature. The significant yet surmountable hurdle the legislature established for the opposing party supports the view that the presumption does not disappear upon a party' s production of evidence. If it disappeared as suggested, the presumption would

do little to further the legislature' s apparent purpose of generally favoring relocation. As we apply the presumption, it provides the standard the trial court uses ***at the conclusion of trial*** to resolve competing claims about relocation. This approach furthers the legislature' s policy reflected in the presumption. Larson, 2015 WL 4204116, at * 7. Horner, 151 Wn.2d at 894. The trial court applied the "best interest standard instead of the Presumption in favor of relocation to the factors, therefore **the trial court failed to apply the presumption at the conclusion of trial.**

2 .RCW 26.09.530 Factor not to be considered, Constitutional violation.

"In determining whether to permit or restrain the relocation of the child, the court may not admit evidence on the issue of whether the person seeking to relocate the child **will forego his or her own relocation if the child's relocation** is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The court may admit and **consider such evidence after it makes the decision to allow or restrain relocation** of the

child and other parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time **if the court has denied relocation of the child and the person is relocating without the child**" (RCW 26.09.530).

The Appellate court upheld the trial court's ruling that "the only alternative to the relocation is that the mother continues to commute." (CP at 244), (RP 439).

Freedom of movement under United States law is governed primarily by the Privileges and Immunities Clause of the United States Constitution which states, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." As far back as the circuit court ruling in *Corfield v. Coryell,* 6 Fed. Cas. 546 (1823), the Supreme Court recognized freedom of movement as a fundamental Constitutional right. In *Paul v. Virginia,* 75 U.S. 168 (1869), the Court defined freedom of movement as "right of free ingress into other States, and egress from them."

3. Appellate Court neglected to address Assigned Error #13 in Appellants Brief. The trial court stated that it had the discretion to weigh the relocation factors in conflict with RCW 26.09.520.

THE COURT: "**So the Court has the discretion to assign the weight that it deems appropriate to each of the factors**..." (VRP 424, Court's Oral Ruling).

The Courts Oral Ruling is in direct conflict with a Supreme Court Decision. When deciding if the objecting party has met this burden, the court must consider each of the relevant child relocation factors enumerated in RCW 26.09.520, which "**are equally important because they are neither weighted nor listed in any particular order**."Horner, 151 Wn.2d at 894. **The trial court denied the relocation by considering normal distress suffered by a child because of travel, infrequent contact of a parent.** In re Marriage of Littlefield, the Washington Supreme Court held that even though a trial court has authority to find that the "primary residential parent's relocation would harm the child[,]" it may bar relocation only if the consequent harm would exceed "the normal

distress suffered by a child because of travel, infrequent contact of a parent, or other hardships which predictably result from a dissolution of marriage."133 Wash.2d at 55, 940 P.2d 1362.

The trial court did not find any specific detriments the child would suffer outside of travel and infrequent contact of a parent in it's ruling to deny relocation. In fact, the trial improperly cited travel and infrequent contact as it's basis for denying most relocation Factors in this case, in conflict with Littlefield, 133 Wash.2d at 55, 940 P.2d 1362.**On Factor 1**: "Honestly, I don't see how the parenting plan is workable if the Court allows Memphis to relocate to Mercer Island with her mother.It's one thing when a child has not yet started school, but once she starts school, beyond preschool, this kind of a schedule and expecting people to **transport the child** in the morning to school usually is not workable. It requires getting the child up very, very early to endure very long periods of time in **rush-hour traffic** to get to school, and then there's the other issues of extracurricular activities. What happens with, you know, parent-teacher conferences or other events that happen in the school

in the evening hours; how does that all work out? And the ability of the **non-moving parent, if you will, much less the extended family**, which is who that comment really is addressed to, can really continue to participate in those activities."(RP 425).

On Factor 5: "Weekly visits with Dad in Pierce County versus three or so medical appointments a month are going to **mean more time on the freeway** for visits with Dad than medical appointments."(RP 432).

On Factor 3: how to factor in the **detriment to disrupting the contact with the extended people**. Again, that's part of Factor No. 1, not Factor No. 3, but **I do think those relationships would be disrupted, and I do think that that would be very detrimental to Memphis**."(RP 431)

On Factor 6: "**So disrupting the contact with Dad -- again, going back to that**" --(RP 436).

On Factor 8: "**which, in my mind, isn't really workable to be driving up and down the I-5 corridor to maintain that kind of a schedule**"(RP 438).

On Factor 10: "And what are the **logistics** of it except to, again, the extent to which the parenting plan of 2013 just seems very, very unworkable to have a Friday at 5 p.m. to Monday at 5 p.m. and three weekends a month and then one Monday a month have 4 p.m. to 7 p.m. with Dad."(RP 440).

4. RCW 26.09.260(6) In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. RCW 26.09.260(6) requires that the trial court make a decision to restrict or grant the relocation *before making decision to modify the parenting plan.* The trial Court postured the case to combine the modification with the relocation action. The trial court was already making the decision to modify the parenting plan before it made a decision to grant or restrict relocation in conflict with RCW 26.09.260(6).

THE COURT: "...And then we go to the Objection. So basically, the way I do a relocation trial is the person who is seeking to

relocate takes the stand, is sworn in and provides the reasons for the intended relocation. Then their testimony stops. That raises the rebuttable presumption, and the responding party then puts on their case.

MR. Miller: Okay. How about the Petition to Modify? So you want to do that—

THE COURT: Can we do it **all at the same time** as that—as part of your case in chief? (VRP, 7)

5. The Appellate court erred by affirming the ruling of the trial court that Adequate Cause was already satisfied, after mother withdrew her relocation request and was no longer pursuing relocation for purposes of RCW 26.09.260 (6).

The Appellate court stated: "The trial court acknowledged that proceedings normally end without a modification to the existing parenting plan once a parent informs the court he or she will not relocate, but since Michael filed a petition for modification that was tried along with the relocation trial, the proceedings would continue. The trial court then found that because "[t]he relocation of

a child [M.S.] was pursued by the mother. . . . [T]here was no need for a finding of adequate cause for hearing father's Petition for Modification." Clerk's Papers (CP) at 242.

First, the Appellate Court incorrectly states that Mr. Scoutten filed a Petition for Modification with the trial court. The trial court concluded that Mr. Scoutten only filed an Objection to Relocation(CP 444-445).

Additionally, the Appellate Courts opinion is in direct conflict with a Supreme Court Decision. "A court may not, under RCW 26.09.260(6), order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain relocation of the child if the parent that had indicated a desire to relocate has since decided not to relocate. The normal showing of adequate cause to modify a parenting plan is excused under RCW 26.09.260(6) only so long as relocation is being pursued. **Where a parent pursued relocation at trial but then decided against**

relocation following an adverse judgment, the relocation is no longer being pursued for purposes of RCW 26.09.260(6)" In re Marriage of Grigsby 112 Wn.App. 1, 7-8, 57 P. 3d 1166 (2002).

Conclusion

The Trial Court erred by Abuse of Discretion, and applied the incorrect legal standards in direct conflict with The Supreme Court. The Appellate Court did not address the presumption in favor of relocation. Additionally, the trial court's ruling on not requiring Adequate Cause is in direct conflict with the Supreme Court Decision (Grigsby). I request that the Supreme Court vacate final orders entered on July, 24th, 2015 and reinstate the Original Final Parenting Plan entered by agreement on May, 3rd, 2013 (CP 40-48).

Respectfully submitted,

Angela K. Schreiner, Pro Se

11/28/16

relocation following an adverse judgment, the relocation is no longer being pursued for purposes of RCW 26.09.260(6)" In re Marriage of Grigsby 112 Wn.App. 1, 7-8, 57 P. 3d 1166 (2002).

Conclusion

The Trial Court erred by Abuse of Discretion, and applied the incorrect legal standards in direct conflict with The Supreme Court. The Appellate Court did not address the presumption in favor of relocation. Additionally, the trial court's ruling on not requiring Adequate Cause is in direct conflict with the Supreme Court Decision (Grigsby). I request that the Supreme Court vacate final orders entered on July, 24th, 2015 and reinstate the Original Final Parenting Plan entered by agreement on May, 3rd, 2013 (CP 40-48).

Respectfully submitted,

Angela K. Schreiner, Pro Se

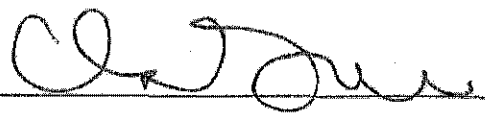
11/28/16

Proof of Service

I, Angela Schreiner, served the following Documents to: John A. Miller on 11/28/16 at 930 Tacoma Ave S, Tacoma, WA 98402 at 3pm, The Superior Court of Pierce County. An Additional Brief was also mailed to Mr. Miller to the following address: 1019 Regents Blvd, Fircrest, WA 98466 -certified mail.

Documents Served: Petition to the Supreme Court of Washington

I declare under penalty of perjury the the statements on this form are true:

Signed: 

At Tacoma, WA

Angela Schreiner 11/28/16

Filed
Washington State
Court of Appeals
Division Two

October 25, 2016

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In re the Marriage of ANGELA K. SCOUTTEN nka SCHREINER, Appellant, v. MICHAEL J.E. SCOUTTEN, Respondent.	No. 48027-1-II UNPUBLISHED OPINION

LEE, J. — Angela K. Scoutten (now known as Schreiner), pro se, appeals the trial court's order denying her request to relocate with her five-year-old daughter, M.S.[1] Angela[2] also appeals the trial court's order modifying her and Michael Scoutten's parenting plan and awarding primary residential custody of M.S. to Michael. Angela raises numerous assignments of error, which are consolidated into six issues: (1) whether the trial court erred in denying her request to relocate, (2) whether Michael properly served Angela with his petition for modification of the parenting plan, (3) whether the trial court erred in finding adequate cause for modification, (4) whether the trial

[1] We refer to M.S. by her initials to protect her privacy.

[2] Since the parties share the same last name, we respectfully use their first names for clarity.

court erred in modifying the parenting plan, (5) whether Angela's constitutional rights to due process, equal protection, and privacy were violated, and (6) whether the trial judge engaged in judicial misconduct. We affirm.

FACTS

A. BACKGROUND

The parties divorced in 2013. At the time, M.S. was two years old. Angela and M.S. moved in with Angela's mother, Paula Agosto, and her stepfather in University Place. Michael remained in the family home in Tacoma. Michael's new wife, Monica, also lives in the family home with Michael. Michael is an officer with the United States Army stationed at Joint Base Lewis McChord (JBLM). He is now on non-deployable status.

The parties' parenting plan provided that M.S. would live primarily with Angela except for three weekends per month when she would reside with Michael. On the weekends that M.S. was with Michael, he would pick her up on Friday at 5:00 p.m. and return her on Monday at 5:00 p.m. On the weekends M.S. did not go to Michael's, she would reside with him on Monday evenings.

Paula is M.S.'s child care provider. She takes M.S. to school and watches her when Angela is working. Michael pays Paula for this service. M.S. also spends considerable time with Michael's mother, Karen Kosa, who also lives nearby in Gig Harbor. All parties live in Pierce County.

B. NOTICE OF INTENDED RELOCATION

In January 2015, Angela filed a notice of intended relocation to move to Mercer Island based on a job change. The move would be approximately 40 to 60 minutes away. Michael filed an objection, arguing Angela was unstable, there was no guarantee the job would last, and the

commute would be difficult for M.S. with her school and child care provider residing in University Place.

C. PETITION FOR MODIFICATION

Michael also filed, in conjunction with his objection to relocation, a petition for modification to change the primary custodial parent from Angela to himself. Michael believed M.S. was living primarily with Paula and Angela was residing at a different location. He hired a private investigator who observed Angela's car at an apartment complex for extended periods of time. Michael also argued Angela was unstable, M.S. is not bonded with Angela, and Michael could provide more consistency.

D. TRIAL

The matter proceeded to trial. Angela and Michael were both represented by counsel. At the start of trial, the trial court stated on the record that there were two actions being tried. There was no objection. The trial court then set forth the procedure for a relocation matter, stating that the "person who is seeking to relocate takes the stand, is sworn in and provides the reason for the intended relocation. . . . That raises the rebuttable presumption, and the responding party then puts on their case." 1 Report of Proceedings (RP) at 7.

During trial, Angela testified she currently resided with her mother, but sometimes stayed with friends. She testified she wanted to relocate because she received a job in Mercer Island, so a relocation to Mercer Island would allow her to be closer to her new job. Angela did not think the move would affect the parenting plan.

Angela also testified that she did not work during the marriage. But after separation, she held short-term positions, working at a coffee stand, as a child-care provider, at a golf course, and

at two real estate offices. Paula's testimony confirmed that "[Angela's] never had a full-time . . . It's always been these part-time jobs." 1 RP at 154.

Angela further testified that the relocation would allow M.S. to be closer to doctors. M.S. was born with Adams-Oliver Syndrome, a rare genetic disorder, which causes M.S. to experience frequent seizures. M.S.'s medical providers are in Seattle, the Tacoma area, and one in Everett. Michael testified that M.S.'s appointments in the Seattle area are not frequent. Angela also alleged the schools were better in Mercer Island for M.S.

Angela also testified to a history of post-dissolution conflict between the parties. She accused Michael of having his house "frequented by pedophiles." 1 RP at 87. Michael's mother denied this allegation.

Michael testified that Angela makes it difficult to be involved in M.S.'s medical care. Angela's behavior at issue began after the final parenting plan was entered in May 2013. Michael testified that he and Angela came to an agreement on a date for M.S. to have scalp surgery relating to her Adams-Oliver Syndrome. Right before Michael was to deploy, the doctor's office notified him that Angela cancelled the surgery and was going to seek treatment elsewhere. Angela did not notify Michael of her decision or request his input. Michael also testified that he was frightened Angela would do something drastic without his knowledge, and he had to obtain a restraining order to prevent Angela from altering medical decisions while Michael was deployed.

Michael further testified to an incident where Angela did not let Michael speak to M.S. on her birthday. Angela was planning a birthday party for M.S., but it was Michael's year to have her, so Angela told M.S., "[Y]our dad is going to plan something for you this year . . . we can't do a birthday this year." 1 RP at 55-56. When Michael learned he would be deployed on M.S.'s

birthday, he notified Angela and arranged a time to talk to M.S. on that day. When Michael called M.S. on her birthday at the pre-arranged time, Angela did not answer the phone. Angela stayed at a friend's house that night, with M.S., in Sammamish. Michael ultimately did not talk to his daughter on her birthday because, according to Angela, her cellular phone ran out of battery. At a subsequent deposition, Angela admitted she did not know the full name of the man she stayed with that evening.

Michael noticed that M.S.'s behavior had begun to change. Michael testified that M.S. does not seem to have a warm relationship with Angela. He further testified that M.S. is "reluctant to want to return once a visitation is complete at my house." 1 RP at 121. Michael also opined that M.S. had a stronger bond with Paula than with Angela.

Michael testified that his proposed modification to the parenting plan would allow M.S. and Angela quality time to work on their relationship while providing M.S. the stability she needed with him. Michael had spoken with Angela about the need to work on her and M.S.'s relationship and had informed her that Paula told Michael that M.S. said, "My mommy doesn't love me." 2 RP at 307-08.

Michael's wife, Monica, testified to an incident where M.S. was visiting with both Monica and Karen. When Angela came to pick M.S. up, M.S. started crying, did not want to leave, and clung to her grandmother, Karen. Monica also testified that she had a good relationship with M.S. and that they enjoyed going to the grocery store, baking, and cooking together.

Karen regularly visits with M.S. When Michael is deployed, Karen exercises Michael's residential time. Karen testified that she visits with M.S. at Michael's house for consistency. Karen also testified she has a close relationship with M.S.

Karen further testified that "a light switch would turn off on [M.S.] . . . her whole demeanor changed when she would see her mom at the door." 2 RP at 234. M.S. did not have problems leaving when Paula picked her up. Karen also testified that Angela seemed more interested in learning about Michael than engaging with M.S., that Michael is a parent who sets boundaries and is consistent, and that M.S. appears happy and comfortable when she is with Michael.

In the spring of 2014, while Michael was deployed in Afghanistan, he became concerned that he did not know where Angela and M.S. were living. He hired a private investigator, Michael Crockett. Crockett testified that he followed Angela on several different occasions and drove by her mother and stepfather's home at various hours. He observed Angela's car parked for extended periods at an apartment complex in Fife. He also observed one morning Angela arriving at her mother and stepfather's home, picking up M.S., and leaving. Crockett also testified, without objection, that it was his opinion that Angela was not living at her mother and stepfather's home.

Michael became concerned after hearing about an argument between Angela and Monica while he was out of town, so he installed cameras around his home when he returned from his deployment. At trial, he offered a recording of an exchange at his home. There was no objection. The video showed M.S. being upset about leaving her father's, Angela placing M.S. in her car unrestrained, and M.S. exiting Angela's car as she was about to leave.[3]

[3] The actual video is not included in this court's record.

E. COURT'S DECISION ON RELOCATION

The trial court entered findings of fact and conclusions of law denying Angela's relocation request. The trial court found that Michael rebutted the presumption that allowed Angela to move to Mercer Island by demonstrating that the detrimental effects of the move outweighed the benefits of the move. The trial court also went through the factors in RCW 26.09.520 in determining whether to permit relocation. After the trial court denied the relocation, Angela told the trial court she would not relocate alone without M.S.

The trial court acknowledged that proceedings normally end without a modification to the existing parenting plan once a parent informs the court he or she will not relocate, but since Michael filed a petition for modification that was tried along with the relocation trial, the proceedings would continue. The trial court then found that because "[t]he relocation of a child [M.S.] was pursued by the mother. . . . [T]here was no need for a finding of adequate cause for hearing father's Petition for Modification." Clerk's Papers (CP) at 242.

F. COURT'S DECISION ON MODIFICATION

The trial court entered findings of fact and conclusions of law granting Michael's request for modification. Specifically, the trial court found there had been a substantial change of circumstances because the current parenting plan was detrimental to M.S.'s physical, mental, or emotional health, and the harm caused by a change was outweighed by the advantage of the change. The trial court designated Michael as the custodial parent and ordered that M.S. would reside the majority of time with him except for every other weekend and Tuesday evenings when she would reside with Angela. The trial court also granted Michael sole decision making for major decisions such as education, day-care providers, and non-emergency health care.

Angela appeals.

ANALYSIS

A. RELOCATION

1. Legal Principles

The trial court has discretion to grant or deny a relocation after considering the RCW 26.09.520 relocation factors. *In re Marriage of Horner*, 151 Wn.2d 884, 893-94, 93 P.3d 124 (2004). We defer to the trial court's ultimate relocation ruling unless it is manifestly unreasonable or based on untenable grounds or untenable reasons under the abuse of discretion standard. *Id.* at 893.

We review challenges to a trial court's factual findings for substantial evidence. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). We uphold trial court findings that are supported by substantial evidence. *Id.* "'Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.'" *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002) (quoting *Bering v. SHARE*, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)), *review denied*, 148 Wn.2d 1023 (2003), *cert. denied*, 479 U.S. 1050 (1987). We review conclusions of law to determine whether factual findings that are supported by substantial evidence in turn support the conclusions. *In re Marriage of Myers*, 123 Wn. App. 889, 893, 99 P.3d 398 (2004).

Washington's child relocation act is codified at RCW 26.09.405-.560. The statute imposes notice requirements and sets standards for relocating children who are the subject of court orders regarding residential time. *In re Custody of Osborne*, 119 Wn. App. 133, 140, 79 P.3d 465 (2003).

"Relocate" under the act means "a change in principal residence either permanently or for a protracted period of time." RCW 26.09.410(2).

RCW 26.09.520 provides an outline for determining whether the trial court should grant a motion for relocating with a child. First, the person proposing the relocation must provide his or her reasons for the intended relocation. *Id.* There is a rebuttable presumption that the relocation will be permitted. *Id.* The basis for this presumption is that a fit parent will act in the best interests of his or her child. *Horner*, 151 Wn.2d at 895. Second, a party may object to the relocation by demonstrating that "the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person" based on consideration of 11 child relocation factors. RCW 26.09.520.

The trial court must make findings on the record regarding each of the RCW 26.09.520 factors. *In re Marriage of Kim*, 179 Wn. App. 232, 241, 317 P.3d 555, *review denied*, 180 Wn.2d 1012 (2014). The factors are equally important and are not weighted or listed in any particular order. *In re Marriage of Rostrom*, 184 Wn. App. 744, 752, 339 P.3d 185 (2014). The trial court's determination necessarily is subjective. *Id.*

2. RCW 26.09.520 Factors

Angela first contends that the trial court failed to consider the RCW 26.09.520 factors. The trial court, however, expressly addressed each factor in its order denying relocation. Thus, this contention fails.

Angela next contends that substantial evidence does not support the court's findings on each factor. We disagree.

a. Factor 1

The first relocation factor requires the trial court to consider the "relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life." RCW 26.09.520(1). The trial court found that all of M.S.'s relationships are with people who live in Pierce County, and that she is bonded with her father, stepmother, and both grandmothers. The trial court also found, "[M.S.'s] relationship with her mother does not appear to be as strong as it is with her father and maternal grandmother." CP at 204.

The evidence shows that M.S. was excited to be with Michael and appeared happy and comfortable around him. The evidence also shows M.S. spent considerable time with Paula as she was her child care provider. And Karen spent time with M.S. and exercised Michael's residential time when he was deployed. In contrast, the record shows M.S. was upset when it was time to go with Angela.

The evidence sufficiently establishes M.S.'s bond and emotional ties with her father and grandmothers in Pierce County. Thus, substantial evidence supports the trial court's finding.

b. Factor 2

The second relocation factor requires the trial court to consider prior agreements by the parties. RCW 26.09.520(2). The trial court found there were no prior agreements. Angela argues this was incorrect because the parties had a parenting plan. But this factor generally relates to agreements by the parties involving relocation. *See In re Marriage of Pennamen*, 135 Wn. App. 790, 804, 146 P.3d 466 (2006) (trial court considered parties' parenting plan under RCW 26.09.520(2) because the parenting plan contained a geographic restriction on the children and on

their primary caretaker). Here, the parenting plan does not address a relocation agreement; therefore, the trial court properly found there was no prior agreement.

c. Factor 3

The third relocation factor requires the trial court to consider "[w]hether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation." RCW 26.09.520(3). The trial court found M.S.'s "relationship with her father and extended family who all reside in Pierce County would in fact be disrupted by mother's relocating the child to Mercer Island." CP at 243. The trial court further found "the disruption in contact would be detrimental to [M.S.]." *Id.*

Substantial evidence supports the trial court's finding. As addressed above, evidence was introduced at trial that M.S. is bonded with Michael, Monica, Karen, and Paula. Additionally, there was evidence that M.S. was more bonded with Michael and was upset when she had to leave. Relocating 40 to 60 minutes away would disrupt that contact. While Angela testified the disruption would be minimal, we leave the weighing of evidence and determining of credibility to the trier of fact. *In re Welfare of A.W.*, 182 Wn.2d 689, 711, 344 P.3d 1186 (2015). Therefore, we hold that substantial evidence supports the trial court's finding on factor 3 that it would be more detrimental to disrupt M.S.'s contact with her father.

d. Factor 4

The fourth relocation factor requires the trial court to consider RCW 26.09.191 limitations. RCW 26.09.520(4). The trial court found this factor does not apply. Angela argues this is incorrect because the trial court listed limitations in the subsequent modification order. This factor generally

relates to limitations at the time of the relocation request. There were none in the parties' original parenting plan. Thus, the trial court properly determined this factor does not apply.

e. Factor 5

The fifth relocation factor requires the trial court to consider 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." RCW 26.09.520(5). The trial court found, "While the mother's reasons for the relocation are not exactly done in bad faith, the Court finds her primary motivation for relocation have [sic] to do with her obtaining employment and it is concerning to this Court that mother has a very unstable employment history." CP at 243.

Angela testified that she primarily desired to relocate to Mercer Island for a job. Angela, however, had not had a full-time job and had a history of frequent job changes. Angela also testified that the move would allow M.S. to be closer to doctors, but the record shows she also had doctors in Pierce County. Moreover, Michael testified M.S.'s appointments in Seattle were not frequent. Thus, substantial evidence supports the trial court's finding on this factor that Angela's reason for relocating do not weigh in favor of granting her motion.

f. Factor 6

The sixth factor requires the trial court to consider, "The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child." RCW 26.09.520(6). The trial court found that "relocating the child and disrupting contact with dad negatively impacts the child's development." CP at 244.

As addressed above, evidence was introduced at trial that M.S. bonded more with Michael and was upset when she had to leave with Angela. Relocating 40 to 60 minutes away would disrupt that contact. Therefore, we hold that substantial evidence supports the trial court's finding on this factor that it would negatively impact M.S.'s development to limit contact with Michael.

g. Factor 7

The seventh factor requires the trial court to consider the "quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations." RCW 26.09.520(7). The trial court found, "the quality of life, certainly for [Angela] and therefore [M.S.], would be improved by [Angela's] being gainfully employed. Again, though, this Court is concerned that [Angela's] history has not demonstrated that she has longevity in any job, and it is unclear why there was not a real emphasis to try and find full-time employment here in Pierce County." CP at 244.

Substantial evidence supports the trial court's finding. Angela testified that from 2011 until 2014, she worked at various short-term jobs. Paula testified that this is Angela's first full-time job. Angela does not have a history of long-term employment. Angela testified that a relocation to Mercer Island would allow her to be closer to her new job. But, it is questionable how long the new position will likely last. The upheaval to M.S. negatively impacts M.S.'s quality of life. And M.S.'s child-care provider, Paula, is in Pierce County. Therefore, we hold that substantial evidence supports the trial court's finding on this factor that the quality of life, resources, and opportunities available to M.S. favor not relocating.

h. Factor 8

The eighth factor requires the trial court to consider the "availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent." RCW 26.09.520(8). The trial court found, "no evidence of any feasible alternative arrangements to foster and continue the child's relationship with the father and extended family if allowed to relocate." CP at 244.

Angela testified her new job was 40 to 60 minutes away. If allowed to relocate, Angela proposed driving M.S. back to Pierce County to continue with M.S.'s day-care arrangements, school and Michael's visitation schedule. However, Angela's proposed arrangement would require M.S. to spend extended hours being shuttled back and forth between Pierce County and Mercer Island, and ultimately, would interfere with Michael's ability to exercise his visitation schedule and his relationship with M.S., especially since M.S. has begun attending school. Thus, substantial evidence supports the trial court's finding that there is no viable alternative arrangement to continue M.S.'s relationship with Michael.

i. Factor 9

The ninth factor requires the trial court to consider the "alternatives to relocation and whether it is feasible and desirable for the other party to relocate also." RCW 26.09.520(9). The trial court found, "the only alternative to the relocation is that the mother continues to commute." CP at 244.

As addressed above, Angela's employment is 40 to 60 minutes from her home in Pierce County. Commuting is clearly an alternative. Michael is stationed at JBLM, which is approximately 20 minutes south of Tacoma. If he were to relocate to Mercer Island, his commute

would be double to triple Angela's current commute. Thus, substantial evidence supports the trial court's finding on this factor that the alternatives to relocation and the potential for Michael to relocate favor not relocating.

j. Factor 10

The tenth factor requires the trial court to consider the "financial impact and logistics of the relocation or its prevention." RCW 26.09.520(10). The trial court found, "very little evidence was presented regarding the financial impact of the relocation or its prevention." CP at 244. Because the location is 40 to 60 minutes away the financial impact would likely be minimal, which would explain the lack of evidence regarding this factor.

Given the record, we hold that substantial evidence supports the trial court's findings on all 10 of the RCW 26.09.520 factors.[4] We further hold, contrary to Angela's assertion, that the trial court properly considered all factors in denying Angela's relocation request. Thus, there was no abuse of discretion in denying Angela's request to relocate with M.S. to Mercer Island.

B. SERVICE OF PETITION FOR MODIFICATION

Turning to the trial court's modification decision, Angela initially argues she was not properly served with Michael's petition for modification. Our record indicates that Angela did not raise this issue below and proceeded with a three-day trial represented by counsel. A party waives the defense of insufficient service of process unless he or she asserts the defense in a responsive pleading or a CR 12(b)(5) motion. *French v. Gabriel*, 57 Wn. App. 217, 220, 788 P.2d 569 (1990),

[4] We note that there is an eleventh factor, but it relates to temporary orders and is not relevant to this appeal.

aff'd, 116 Wn.2d 584, 806 P.3d 1234 (1991). Thus, Angela cannot raise insufficiency of process for the first time on appeal.

C. MODIFICATION OF PARENTING PLAN

Angela argues the trial court erred by modifying the parties' parenting plan. We disagree.

We review a trial court's decision to modify a parenting plan for an abuse of discretion. *In re Marriage of Zigler and Sidwell*, 154 Wn. App. 803, 808, 226 P.3d 202, *review denied*, 169 Wn.2d 1015 (2010). Angela first argues that the trial court erred in finding adequate cause existed to proceed with Michael's petition for modification in conjunction with her motion to relocate. Angela next argues the trial court erred in modifying the parenting plan because (1) there has been no substantial change in circumstances, (2) the trial court's findings to support a substantial change are not supported by substantial evidence, (3) there were no settlement conferences or parenting classes attended, (4) the final parenting plan is deficient, and (5) no guardian ad litem (GAL) was appointed. Angela's challenges fail.

1. Adequate Cause

We review a trial court's adequate cause determination for a proposed parenting plan modification for abuse of discretion. *In re Parentage of Jannot*, 149 Wn.2d 123, 128, 65 P.3d 664 (2003). In general, a party moving to modify a parenting plan must show adequate cause for modification before the court will permit a full hearing on the matter. RCW 26.09.270.

RCW 26.09.260(6) governs a request for modification made as part of an objection to a petition for relocation. This statute provides in pertinent part, "The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a

relocation of the child . . . . A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued." RCW 26.09.260(6). The plain language of this statute provides the legal authority for Michael to include in his relocation objection a request for a major modification, including a change in primary residence. *In re Marriage of Raskob*, 183 Wn. App. 503, 513, 334 P.3d 30 (2014) (quoting RCW 26.09.260(6)). Moreover, the request for relocation was tried along with the request for modification without objection from the parties. Thus, the adequate cause challenge fails.

2. Substantial Change

Angela next contends the trial court erred in finding a substantial change in circumstances. She argues no substantial change occurred because Angela chose not to relocate alone after the court denied her relocation motion.

Modification of a final parenting plan is generally governed by RCW 26.09.260. Under RCW 26.09.260(1), a trial court shall not modify a final parenting plan unless the court finds "a substantial change has occurred in the circumstances of the child or the nonmoving party" and "the modification is in the best interest of the child and is necessary to serve the best interests of the child." But RCW 26.09.260(6) provides an exception. This section states that the trial court "may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child." RCW 26.09.260(6). This means in the context of a relocation request, "it is not necessary for the court to consider whether there is a substantial change in circumstances other than the relocation itself, or to consider the factors contained in RCW 26.09.260(2)." *Marriage of Raskob*, 183 Wn. App. at 513. RCW 26.09.260(2)(c) provides that the court shall retain the parenting plan's residential schedule unless:

> The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

Here, the trial court relied on this section to find a substantial change in circumstances. Angela's decision not to relocate does not impact the trial court's finding regarding M.S.'s changed environment. Angela appears to argue that only relocation would create a change in circumstances. But, as set forth by the trial court, a change in M.S.'s environment so that the child is more bonded with one parent over another, or one parent's ability to provide more stability over another parent, is also a justification under RCW 26.09.260(2)(c).

3. Findings of Fact

Angela next argues that the trial court's findings of fact in support of a substantial change in circumstances finding are not supported by the record. The trial court found:

> (1) Neglect or substantial nonperformance of parenting functions by the mother; it appears the minor spends a substantial amount of time residing with the maternal grandmother rather than with her mother.
>
> (2) The absence or substantial impairment of emotional ties between the child and the mother. Evidence at trial was overwhelming that the child does not want to return to her mother at conclusion of residential time with father. The mother has demonstrated she is not very nurturing and is somewhat cold and distant when dealing with her minor daughter.
>
> (3) The abusive use of conflict by the mother which creates the danger of serious damage to the child's psychological development.
>
> (4) Mother's residential and job instability which the court finds detrimental to the child.
>
> (5) Mother's failure to communicate and engage in joint decision making and co-parenting.

> (6) Mother has engaged in making untrue statements, including untrue allegations against the father and statements used to deprive father of his opportunities to speak with the child, including on the child's birthday. The court has significant concerns regarding the mother's credibility and veracity during the trial.

CP at 247. These findings reflect the factors set forth in RCW 26.09.191(3).

Under RCW 26.09.191(3), the trial court may preclude or limit any provisions of the parenting plan, including a parent's conduct, if the trial court expressly finds any of the seven factors exist that is adverse to the best interests of the child. RCW 26.09.191(3)(g). Thus, a trial court shall not modify a final parenting plan unless the trial court finds "a substantial change has occurred in the circumstances of the child or the nonmoving party" and "the modification is in the best interest of the child and is necessary to serve the best interests of the child." RCW 26.09.260(1).

Here, the evidence shows that Paula provides child care for M.S. frequently. M.S. appears sad when it is time to go with Angela. Angela is bonded with M.S. M.S. is more comfortable with Michael than Angela. Angela untruthfully told M.S. her father will not let her have a birthday party. Angela admitted to a history of post-dissolution conflict between the parties, which included an unsubstantiated allegation that Michael allowed a pedophile to be around M.S. Angela has had several short term, part-time jobs prior to the Mercer Island position with no history of long-term employment. An investigator opined that Angela does not live at her mother and stepfather's house with M.S. and instead stays at different locations. Angela stayed the night with M.S. at an individual's house and Angela did not know his full name. Angela prevented Michael from talking to M.S. on her birthday. Angela cancelled a surgery for M.S. without consulting with Michael. And Angela is confrontational in front of M.S. with Michael and his wife. Thus, substantial

evidence supports the trial court's finding that there has been a change of circumstances since the original parenting plan was entered and that it is in M.S.'s best interest to modify the parenting plan because M.S.'s "present environment is detrimental to [her] physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." RCW 26.09.260(2)(c).

4. No Alternative Dispute Resolution or Parenting Seminar

Angela next argues the trial court erred in modifying the parenting plan without first ordering the parties to use alternative dispute methods or to attend a parenting seminar. Angela cites to Pierce County Local Rule 16(4)(c), which requires parties to engage in alternative dispute resolution and Pierce County Local Special Proceedings Rule 94.05, which requires parents to attend an approved parenting seminar when filing a matter under chapter 26.09 RCW. This issue is raised for the first time on appeal. Generally, we do not consider issues raised for the first time on appeal. *In re Marriage of Knutson*, 114 Wn. App. 866, 870-71, 60 P.3d 681 (2003); RAP 2.5(a). Under RAP 2.5(a), however, we will consider issues raised for the first time on appeal if it is a "manifest error affecting a constitutional right." But Angela makes no argument, nor presents any facts, suggesting any manifest error occurred. Therefore, we do not address her arguments raised for the first time on appeal.

5. Final Parenting Plan Deficiencies

Angela next argues the trial court's final parenting plan is invalid because a proposed parenting plan was not filed first, the parenting plan conflicts with her new work schedule, and the parenting plan lacks signatures. Like the issue above, these issues are raised for the first time on

appeal and are not properly before us for review. Moreover, if Angela's work hours conflict with the parenting plan, the proper recourse is with the trial court.

6. No GAL Appointed.

Angela argues the trial court erred in modifying the original parenting plan without first appointing a GAL. RCW 26.09.220(1) authorizes a court, in considering parenting arrangements, to order an investigation and report or to appoint a GAL. The purpose of appointing a GAL is to ensure that the children's best interests are promoted through an independent investigation and recommendation. *In re Marriage of Waggener*, 13 Wn. App. 911, 917, 538 P.2d 845 (1975).

Angela did not request a GAL so it is disingenuous for her to argue the trial court erred in failing to do that which it was not asked to do. Angela contends a GAL appointment was required under RCW 26.44.053. That statute, however, concerns judicial proceedings involving abuse of the child. The modification was not requested based on abuse of M.S. Thus, we are not persuaded by her argument that a GAL was required.

Angela fails to show the trial court abused its discretion. Therefore, we hold that the trial court properly modified the parties' parenting plan.

E. CONSTITUTIONAL RIGHTS

Angela next argues several of her constitutional rights were violated during the trial. Specifically, Angela contends (1) her right to due process was violated because she did not have notice of the modification proceedings, (2) her right to equal protection was violated because she was not afforded the same opportunities as Michael during the proceedings below, and (3) her right to privacy was violated when the trial court allowed evidence of a recorded exchange outside Michael's home. We disagree.

1. Due Process

Due process requires notice and an opportunity to be heard. *In re Marriage of Tsarbopoulos*, 125 Wn. App. 273, 281, 104 P.3d 692 (2004). A judgment entered in violation of due process is void. *In re Marriage of Johnson*, 107 Wn. App. 500, 503-04, 27 P.3d 654 (2001).

Angela appears to argue she was denied due process because Michael did not serve her a copy of his petition for modification. As previously addressed, the record shows that Angela did not raise this issue below and proceeded with a three-day trial represented by counsel. In order for us to address the issue, it must be a manifest constitutional error. RAP 2.5(a). Angela was afforded notice and an opportunity to be heard. Thus, her claimed error is not manifest, so her challenge fails.

2. Equal Protection

The equal protection clauses in our state and federal constitutions guarantee that similarly situated persons must receive like treatment under the law. U.S. CONST. amend. XIV; WASH. CONST. art. I, § 12. Angela appears to argue she was denied equal protection because she did not file a response brief below. Angela contends she was denied equal protection, but does not adequately brief the contention nor does she compare groups similarly situated. Constitutional arguments that have not been adequately briefed need not be addressed on appeal. *City of Spokane v. Taxpayers*, 111 Wn.2d 91, 96, 758 P.2d 480 (1988). Therefore, this issue is not properly before us.

3. Privacy

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution protect individuals from being disturbed in his or her private affairs without authority of law. Additionally, Washington's privacy act generally prohibits intercepting and recording any private communications. RCW 9.73.030; *State v. Jimenez*, 128 Wn.2d 720, 723, 911 P.2d 1337 (1996).

Here, the trial court allowed a video of an incident where Angela was picking up M.S. from Michael's home. M.S. was reluctant to leave. Angela put M.S. in her vehicle, unsecured, and then M.S. opened the car door and got out. Angela contends this violated Washington's Privacy Act.

Angela did not object below to the admission of this video. A challenge to evidence obtained in violation of the privacy act is not an issue of constitutional magnitude that a defendant may raise for the first time on appeal. RAP 2.5(a)(3); *State v. Corliss*, 123 Wn.2d 656, 661, 870 P.2d 317 (1994) (whether Washington's privacy act has been violated requires a very different inquiry than whether the defendant's constitutional rights were violated). Therefore, we decline to review for the first time on appeal Angela's claim that the video violated the Privacy Act.

F. JUDICIAL MISCONDUCT

Angela contends the trial court engaged in judicial misconduct by addressing her in a condescending manner and entering a fraudulent child support order. Both issues are raised for the first time on appeal.

Under Canon 2, Rule 2.2 of the Code of Judicial Conduct, judges "shall perform all duties of judicial office fairly and impartially." Because judicial bias is not a "constitutional" claim pursuant to RAP 2.5(a)(3), we will generally not consider it for the first time on appeal. *State v. Post*, 118 Wn.2d 596, 618-19, 826 P.2d 172, 837 P.2d 599 (1992).

Regardless, to prevail Angela "must present evidence of actual or potential bias." *Club Envy of Spokane, LLC v. Ridpath Tower Condo. Ass'n*, 184 Wn. App. 593, 605, 337 P.3d 1131 (2014) (citing *Post*, 118 Wn.2d at 618-19). "We presume trial judges perform their functions regularly and properly, without prejudice or bias." *Club Envy,* 184 Wn. App. at 606 (citing *Jones v. Halvorson–Berg*, 69 Wn. App. 117, 127, 847 P.2d 945, *review denied*, 122 Wn.2d 1019 (1993)). Angela fails to meet this burden.

Angela points to one comment by the trial judge regarding her staying at an individual's home with M.S. and not knowing the individuals full name. This comment was to support the trial court's finding that Michael was in a position to provide a more stable environment for M.S. This comment alone does not demonstrate bias. Without evidence of actual or potential bias, a claim of judicial bias is without merit. *Post*, 118 Wn.2d at 619.

Finally, Angela argues the trial court erred in entering a "fraudulent Final Child Support Order." Br. of Appellant at 50. In addition to being raised for the first time on appeal, Angela also fails to provide meaningful argument on this contention and to provide legal authority to support her accusation. RAP 10.3(6). Without more, this issue is not properly before us.

We affirm.

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

Lee, J.

We concur:

Johanson, J.

Bjorgen, C.J.