No. 97120-0
COA No. 77654-1-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of

MOUAD EL BOUKHARI,
Appellant

and

ERZSEBET REIKO DORNAY,
Respondent

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

PETITION FOR REVIEW

Yasmeen Abdullah
Attorney for Appellant
10550 Lake City Way NE, Suite E
Seattle, WA 98125
(206) 363-0455

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES AND RULES

A. IDENTITY OF PETITIONER

Mouad El Boukhari, appellant below and father of the child at issue in this case, asks this court to accept review of the Court of Appeals' decision terminating review. See Part B a Copy of Division I Appeal Decision that is included in the appendix.

B. COURT OF APPEALS DECISION

Appellant Mouad El Boukhari seeks review of the Court of Appeals' decision entered on January 22, 2019 and the decision denying reconsideration entered on March 20, 2019, affirming the trial court order that the court had personal jurisdiction over the husband, despite the fact that the lower court held that the service of the divorce petition was invalid, the husband's first appearance in the case was his motion to vacate the default final orders for lack of jurisdiction and no valid service, the wife entered default orders that exceeded the relief requested in the petition, and the wife never filed nor served a proposed parenting plan nor proposed child support worksheets or amounts before entering a default parenting plan and child support order.

C. ISSUES PRESENTED FOR REVIEW

1. **Where The Court Affirms A Parenting Plan and Other Default Orders That Exceed The Relief Plead In The Petition, Should This Court Reverse Where This Conflicts With Other Decisions of The Court of Appeals & The Supreme Court and Where It Violates Procedural Due Process?**

2. **Where A Petitioner Never Files A Proposed Parenting Plan Prior To Entry Of Final Orders, Do The Final Default Orders Exceed The Relief Requested?**

3. **Can Bringing A Motion To Vacate Default Orders And Raising Lack Of Proper Service And Lack Of Jurisdiction Be Construed To Impliedly Consent To Jurisdiction?**

4. **Is A Motion To Vacate Default Orders Timely Where The Default Orders Exceeded The Relief Requested And The Husband Did Not Have Immediate Notice Of The Default Orders As He Was Never Served Them?**

5. **Is It A Matter of Substantial Public Interest Where The Lower Courts Held That Merely Filing A Motion To Vacate Final Orders Was Enough To Waive Constitutional Procedural Due Process Rights**

D. STATEMENT OF THE CASE

Ms. Dornay filed a legal separation petition in 2011 when Mr. El Boukhari was in Morocco. CP at 1, 152. The parties have one child, who was three years old at that time. *Id*. Ms. Dornay claimed that she had the legal separation petition served on Mr. El Boukhari's mother,

and Mr. El Boukhari disputed that there was service on his mother. CP at 153, 220. Ms. Dornay later filed a divorce petition, and both the superior court and Division I held that Ms. Dornay never properly served her divorce petition on Mr. El Boukhari. CP at 425. Because the final orders were entered on default and the motion to vacate was decided on written submissions, the superior court never took nor considered live testimony in this case when it decided credibility of the parties and witnesses. CP at 112, 152-156; RP Vol. I pg 4. Ms. Dornay never filed nor served a proposed parenting plan nor a proposed child support worksheet or child support amount prior to obtaining default orders and having a default parenting plan and child support order entered. CP at 49-50. Ms. Dornay's default parenting plan puts severe restrictions on Mr. El Boukhari, severing the father-son relationship and giving Mr. El Boukhari no residential time with the child. CP at 94-100. Because Mr. El Boukhari was never served the divorce petition nor the default orders, he did not learn of them until Ms. Dornay pursued criminal charges against Mr. El Boukhari for alleged custodial interference that she claimed occurred in 2011. CP at 155. The jury in that case considered both Ms. Dornay's and Mr. El Boukhari's live testimony at trial, and found Mr. El Boukhari credible, acquitting Mr. El Boukhari of the charges brought by Ms. Dornay. CP at 155. The jury

returned a not guilty verdict in 2016, but Mr. El Boukhari spent six months in jail on the charged before the acquittal. CP at 155. After being released from jail, Mr. El Boukhari saved his money and hired a family law attorney. Id. Within three months of the criminal trial judge entering the acquittal, Mr. El Boukhari filed a motion to vacate the default final orders in this case. CP at 103, 155. Mr. El Boukhari's first pleading in the King County divorce case was to file a motion to vacate the default orders and contest jurisdiction. CP at 103-151. Despite finding that the divorce petition was never properly served, the superior court refused to vacate the default final orders, incorrectly holding that the legal separation petition service was sufficient for the subsequent divorce petition.

Mr. El Boukhari appealed and Division One affirmed on different grounds than the superior court, holding that Mr. El Boukhari's motion to vacate the default orders was implied consent for jurisdiction, and without addressing the default orders exceeding the relief requested in the petition. Division One mistakenly ruled that Mr. El Boukhari had only requested that part of the default orders be vacated, and that he had not also requested that all of the default orders be vacated at the superior court level. In fact, Mr. El Boukhari's motion and his attorney's oral argument made it clear that he requested that all

of the default orders be vacated, but that in the alternative, he was willing to partially vacate the default orders. CP at 109, 113; RP Vol I pg 4, ln. 6-14.

Mr. El Boukhari seeks review in this court.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. Review Should Be Accepted Under RAP 13.4(b)(1) and 13.4(b)(2) Because Default Final Orders Cannot Exceed The Relief Requested In The Petition.

Division One's ruling in this case conflicts with long standing precedent of this court and other appellate decisions that default orders that exceed the relief requested in the petition must be vacated. This court has repeatedly held that any portion of a default judgment is void to the extent it exceeds the relief pled in the petition. *In re Marriage of Leslie*, 112 Wn.2d 612, 617, 777 P.2d 1013 (1989); *Ware v. Phillips*, 77 Wn.2d 879, 844, 468 P.2d 444 (1970); *Stablein v. Stablein*, 59 Wn.2d 465, 466, 368 P.2d 174 (1962); *Sheldon v. Sheldon*, 47 Wn.2d 699, 702-03, 289 P.2d 335 (1955).

The appellate courts have applied this rule consistently in other cases, and vacated judgments in full or in part where the default order exceeded the relief requested in the petition. *In re Marriage of Markowski*, 50 Wn. App. 633, 635, 749 P.2d 754 (1988); *In re Marriage of Hardt*, 39 Wn. App. 493, 496, 693 P.2d 1386 (1986).

Here, Ms. Dornay conceded and never disputed that she never filed a proposed parenting plan, child support worksheet, nor a specific number request for the child support transfer payment prior to entering final default orders. CP at 40-50.

Both the Superior Court and Division One ignored Mr. El Boukhari's requests to vacate the default parenting plan and child support orders that were not part of the petition and exceeded the requests in the petition. They made no rulings on the default orders exceeding the relief requested. The Superior and Division One courts also ignored RCW 26.09.181 that requires a proposed parenting plan to be filed and served. They did not apply the well-established law that default orders cannot exceed the relief requested in the petition. For this reason, this case merits review under RAP 13.4(b)(1) and RAP 13.4(b)(2).

2. Review Should Be Accepted Under RAP 13.4(b)(1) and RAP 13.4(b)(4) Where The Appellate Court Committed An Error Of Law When It Barred The Husband's Motion To Vacate The Default Orders Based On Timeliness

The court of appeals ignored this Court's precedent that where there was no proper service of a petition, and the default orders exceed the relief requested in the petition, a motion to vacate default orders is not barred by the mere passage of time.

Just as in the case of *In re Marriage of Leslie* where the lower court was reversed, the court of appeals held that the court could not vacate the orders because the motion was not timely brought and that the respondent unreasonably delayed bringing the motion to vacate the default orders. The Court of Appeals held that the husband "had waited at least eight years after learning of this requirement before taking action and concluded that this was not a reasonable time as contemplated by CR 60(b)(5)." *In re Marriage of Leslie*, 112 Wn.2d at 617 (internal quotation marks omitted).

This court **reversed** the court of appeals in the case of *Leslie*, holding that waiting the eight years to request relief from the orders did not bar the husband from having the court vacate the void portions of the order. *In re Marriage of Leslie*, 112 Wn.2d at 617-619. Specifically, this court held that to "the extent a default judgment exceeds relief requested in the complaint, the void portion of the original decree can be attacked at any time." Id. at 621.

Here, the Court of Appeals made the same ruling as it did in the case of Leslie, which this court reversed on appeal. Further, Mr. El Boukhari actually waited less time than the husband in Leslie, once he had notice of the final orders in this case before filing a motion to vacate. In *Leslie*, the husband waited at least 8 years after learning of the orders.

In this case, Mr. El Boukhari learned of the orders in 2016, and filed his motion to vacate the orders in 2017. CP at 103-113. Other cases have found that a motion to vacate orders were timely when multiple years have passed. *See In re Marriage of Hardt*, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985) (A 5 year time lapse from entry of decree until husband's motion to vacate). For this reason, this court merits review under RAP13.4(b)(1) and RAP 13.4(b)(2), as the Court of Appeals decision in this case contradicts this court's ruling in *Leslie* and other appellate decisions.

3. Review Should Be Accepted Under RAP 13.4(b)(1), RAP 134.4(b)(2), RAP 13.4(b)(3) and RAP 13.4(b)(4) Where The Appellate Court Ruled Contrary to Prior Case Law, The Constitution, and the Public Interest By Finding That Bringing A Motion To Vacate Orders Is Implied Consent To Jurisdiction.

The Court of Appeals ruled contrary to long standing precedent that where there is no proper service of a petition, there is no jurisdiction over the respondent to enter default orders. Proper service of the summons and petition are required to invoke the court's jurisdiction over the Respondent. *Interior Warehouse Co. v. Hays*, 91 Wash. 507, 158 P. 99 (1916); *Lee v. Western Processing Company*, Inc. 35 Wn. App. 466, 469, 667 P.2d 638 (1983); RCW 4.28.020; RCW 4.28.080; CR 4. A default judgment entered without jurisdiction over the respondent is

void. *Lee*, 35 Wn. App. at 469. The trial court has a "nondiscretionary duty" to vacate a default judgment that is void. *In re Marriage of Markowski*, 50 Wn. App. 633, 635, 749 P.2d 1087 (1988) (citing *Kennedy v. Sundown Speed Marine, Inc.*, 97 Wn.2d 544, 549, 647 P.2d 30, *cert. denied*, 203 S.Ct. 449 (1982).

Here, both the Superior Court and Division One ruled that Ms. Dornay's service of the divorce petition was insufficient and not proper. CP 425. While the Superior Court incorrectly found that service of a prior legal separation petition was sufficient for a subsequent divorce petition, Division One recognized that the divorce petition needed its own separate, proper service. Yet, Division One still did not vacate the default orders, even after holding that there was no valid service of the divorce petition on Mr. El Boukhari. Without proper service, there is no jurisdiction. *In re Marriage of Logg*, 74 Wn. App. 781, 784, 875 P.2d 647 (1994). Because the lower courts improperly found jurisdiction and procedural due process where there was no legal service of the divorce petition, this case merits review under RAP 13.4(b)(1) and RAP 13.4(b)(2) as it is contrary to this court's precedent and other appellate cases. It further merits review under RAP 13.4(b)(3) as the lower court ruling violated the constitutional procedural due process. It is also a matter of substantial public interest where the lower courts allow default

orders to be entered against a parent that severs the parent-child relationship when there is no jurisdiction over that parent as there was no valid service.

The Court of Appeals also created new law that is contrary to prior precedent of this Court when it ruled that filing a motion to vacate default orders is enough to impliedly consent to jurisdiction when there was no proper service. This court has held that a respondent can waive procedural due process and consent to jurisdiction when there has been no valid service, only when the respondent takes some affirmative action to consent to jurisdiction. *Grange Ins. Asso v. State*, 110 Wn.2d 752, 765-66, 757 P.2d 933 (1988) (reversing appellate court to find lack of jurisdiction as requests that were part of motion to vacate were not affirmative action or consent to jurisdiction); *See also In re Marriage of Steele,* 90 Wn. App. 992, 998, 957 P.2d 247 (1998) (husband jointly sought to modify support order before he later raised jurisdictional issue).

Here, Mr. El Boukhari's first pleading in the Superior Court was his motion to vacate the default orders, and asserting lack of service and lack of jurisdiction. CP at 103-113. In his motion, Mr. El Boukhari's attorney requested that the default orders be vacated in full, or in the alternative to vacate part of the default orders. CP at 109, 113; Vol I pg

4, ln. 6-14. In all of his pleadings to the superior court and appellate court in this case, Mr. El Boukhari consistently raised the lack of jurisdiction and improper service in this case. Nor do the default orders in any way benefit Mr. El Boukari as they imposed a severe parenting plan that severed his relationship with his son and afforded him no residential time, and a child support order that imposed child support based on fabricated income numbers for Mr. El Boukhari and created financial hardship for him. Mr. El Boukhari did not get remarried and therefore pursued the default orders to be vacated in full or in part, at the trial court's discretion. Additionally, many cases allow for default orders to be vacated in part. After numerous hours of research, we have found no case to support Division One's ruling in this case that requesting that default orders be vacated in full or in part and asserting lack of jurisdiction in the very first pleading and consistently is enough to implied consent to jurisdiction.

If Division One's ruling in this case is left to stand or if it is applied in other cases, then any time a respondent files a motion to vacate default final orders, this would be enough for the court to find the respondent impliedly consented to jurisdiction even where there was no proper service of the petition on the respondent, and even where the default final orders exceeded the relief pled in the petition. Accordingly,

this case merits review as the lower court ruling is contrary to this court's precedent, contrary to constitutional due process, and contrary to the substantial public interest of being able to vacate default orders where the petition was never properly served and exceed the relief requested in the petition.

F. CONCLUSION

This court should accept review and vacate the default final orders as there was no implied consent to jurisdiction, no proper service of the petition, and the default orders exceeded the relief requested in the petition.

Dated this 19th day of April, 2019.

RESPECTFULLY SUBMITTED

YASMEEN ABDULLAH
WSBA #38832
Attorney for Appellant

CERTIFICATE OF FILING AND SERVICE

I certify I caused the foregoing and its attachments, if any, to be

☒ Filed with the court on April 19, 2019 via

☒ Electronic filing;

And ☒ served on Opposing Counsel by the following means:

☒ Via Electronic Service if Opposing Counsel is registered through the court or agrees to electronic service, or

☒ Via Legal Courier if Opposing Counsel is not registered through the court for electronic service or if she does not agree to electronic service.

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct to the best of my knowledge.

Signed at Seattle, Washington, on April 19, 2019.

Erin Handley

Erin Handley
Paralegal

APPENDIX

A Court of Appeals' Decision

B Court's Decision Denying Mr. El Boukhari's Motion for Reconsideration

C Appellant's Brief

D Respondent's Brief

E Appellant's Reply Brief

F CR 4

G RAP 13.4

H RCW 4.28.020

I RCW 4.28.080

J RCW 26.09.181

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of	)	No. 77654-1-I
ERZSEBET REIKO DORNAY,	)	DIVISION ONE
Petitioner,	)	UNPUBLISHED OPINION
and	)	
MOUAD AIMEME ELBOU,	)	
Respondent.	)	FILED: January 22, 2019

LEACH, J. — In 2011, Erzsebet Dornay obtained a default decree dissolving her marriage to Mouad Aimeme Elbou[1] and associated orders providing for the care and support of their young child. Six years later, El Boukhari asked the court to vacate the order of child support, parenting plan, and a continuing restraining order included in the decree of dissolution. He claimed that the trial court could not exercise personal jurisdiction over him because Dornay did not properly serve him with the lawsuit. The court denied his motion. By acceding to the validity of the decree and challenging only certain aspects of the final orders, El Boukhari implicitly waived his personal jurisdiction defense. We affirm.

[1] The record also refers to Mouad Aimeme Elbou as Mouad Harissi El Boukhari. We will refer to him as El Boukhari throughout our opinion.

FACTS

Mouad El Boukhari and Erzsebet Dornay married in Washington in 2006 and resided in Washington during the marriage. Dornay gave birth to the parties' son in 2007.

In December 2010, the family traveled from Seattle to Morocco to visit El Boukhari's family. They planned to stay for 18 days. While in Morocco, the family stayed at the Casablanca home of El Boukhari's mother.

On January 10, 2011, the day before the family's scheduled return flight to Seattle, El Boukhari told Dornay that he intended to remain in Morocco indefinitely. He "forbade" Dornay from leaving Morocco with their son. For the next several days, El Boukhari's family restricted Dornay's access to the child and prevented her from communicating with her family in the United States.

Upon learning of Dornay's situation, her family hired an attorney in Washington to represent her. Around January 15, 2011, Dornay's brother and her brother-in-law arrived in Morocco in the hope of persuading El Boukhari to voluntarily relinquish the child to Dornay and to allow her to return home with the child.

On January 18, 2011, Dornay filed a petition for legal separation in King County Superior Court. In addition to seeking a decree of separation, Dornay requested entry of a child support order, a parenting plan, and a continuing

restraining order. The same day, the court issued a temporary order directing El Boukhari to allow and facilitate the child's return to the United States. The order stated that the child would reside with Dornay until the next court hearing.

The next day, on January 19, Dornay's brother and brother-in-law went to El Boukhari's mother's home. El Boukhari's mother does not speak English but communicated that El Boukhari was not available. The two men then served the summons, petition for legal separation, and a motion and declaration for a temporary restraining order on El Boukhari's mother. El Boukhari's mother angrily refused to accept the papers and attempted to shove them underneath Dornay's brother's shirt. Dornay's brother set the papers on a sofa, and the two men left the home. El Boukhari's mother yelled at the men, followed them to the door, and threw the papers into the street behind them as they left.

About thirty minutes later, the two men returned to the home with Dornay. The papers were no longer in the street. They saw additional cars belonging to family members and to the family's attorney parked outside the home. One of El Boukhari's brothers answered the door and told Dornay's brother that United States law does not apply in Morocco.

Dornay and her brother spoke with United States Consulate staff in Casablanca and a Moroccan attorney. El Boukhari allowed United States diplomatic agents to conduct a welfare check on the child at his mother's home

on January 21, 2011. El Boukhari was present during the welfare check. He showed the agents his son's newly furnished bedroom and discussed his plans to enroll the child in an American school in Casablanca.

Dornay returned to Seattle for a brief period in late January 2011. When she returned, Dornay discovered that El Boukhari had removed his personal property from their home and sold her vehicle. Dornay returned to Morocco in February. Although she had to leave periodically and reenter Morocco for visa purposes, she stayed in Casablanca for the remainder of the year.

On January 24, 2011, Dornay filed an amended petition for dissolution of marriage in King County Superior Court. On February 4, the court granted Dornay's request to serve process by mail or by consular or diplomatic officer. On the same day, the court entered an order encompassing the terms of the January 18 temporary order requiring El Boukhari to relinquish custody of the parties' child and to facilitate the child's return to Washington with Dornay.

On February 7 and on February 12, Dornay mailed the summons and amended petition to El Boukhari's mother's home. This service did not comply with CR 4(c), which requires that a nonparty mail the summons and complaint.[2]

On March 4, 2011, the court entered a temporary order placing the child with Dornay pending trial, ordering El Boukhari to release the child and his

[2] CR 4(c) permits service of summons to be completed by either (i) "the sheriff of the county wherein the service is made," or (ii) "any person over 18 years of age who is competent to be a witness in the action, other than a party."

passport to Dornay, and restraining El Boukhari from removing the child from Washington.

Dornay retained counsel in Morocco who arranged for the translation of her Washington court documents into Arabic and, in March 2011, initiated Moroccan court proceedings on her behalf. These proceedings asked the Moroccan court to recognize and enforce the Washington court's temporary orders and to provide for Dornay's access to the child in the interim. The Moroccan court granted Dornay visitation rights on March 17. El Boukhari refused to obey the court's order.

El Boukhari did not respond or appear in the Washington proceeding. In May 2011, the Washington court entered an order granting Dornay's motion for default and then entered a decree of dissolution, order of child support, findings of fact and conclusions of law, and a final parenting plan.

The Moroccan court ultimately decided that it was required to cede jurisdiction to Washington and ordered that the child be returned. El Boukhari unsuccessfully appealed the Moroccan court's decision. On December 24, 2011, United States regional security officers took Dornay and the child into protective custody and assisted their return to Washington.

El Boukhari returned to Washington at some point. In 2016, a jury acquitted him of a criminal charge of custodial interference. In June 2017, El

Boukhari filed a CR 60 motion to vacate, challenging the orders entered six years earlier. Specifically, he sought to vacate the final parenting plan and order of child support entered by default in 2011. As to the decree of dissolution which the court entered at the same time, El Boukhari sought to invalidate only a continuing restraining order provision of the order but did not challenge the provisions terminating his marriage or those dividing assets and liabilities.

El Boukhari claimed that he first became aware of the final orders in October 2016 when he received a notice of garnishment from the Division of Child Support.[3] He contended that the restraining order, the parenting plan, and the child support order were void under CR 60(b)(5) due to improper service and voidable under CR 60(b)(4) because Dornay obtained the orders by means of fraud, misrepresentation, or other misconduct.

After a hearing, the court denied his request. The court concluded that El Boukhari failed to establish any of the elements of fraud and the doctrine of laches otherwise barred his claims under CR 60(b)(4). For his claim under CR 60(5), the court concluded:

> 3. The non-movant's mail service of the amended Petition for Dissolution on movant in February, 2011 was insufficient as original process as not in compliance with the alternate service order and CR 4(c) as it was done by a party (Petitioner). However, this mailing is sufficient to provide the Respondent with constructive notice of the WA proceeding under RCW 26.27.201(3) and RCW 26.27.081 for purposes of child custody jurisdiction.

[3] He later admitted he knew about the orders in 2015.

> 4. The court finds that [Dornay's brother and brother-in-law] effectuated proper substitute service of all necessary original process on January 19, 2011 by serving the legal separation papers on the movant's mother. At that time, the non-movant had no knowledge of any other residence, temporary or permanent, of the movant, other than his mother's residence in Casablanca.

At the hearing to present a written order, El Boukhari argued for the first time that even assuming the effective substitute service of Dornay's petition for legal separation, Dornay had to serve a new summons after filing the amended petition for dissolution. He relied on a decision of Division Three of this court, In re Marriage of Markowski.[4] The court declined to consider El Boukhari's new argument.

El Boukhari asked the court to reconsider. Among other issues, he argued, based on Markowski, that service of Dornay's petition for legal separation did not confer jurisdiction for the court to enter a decree of dissolution and the other final orders. The trial court denied this request. El Boukhari appeals.

ANALYSIS

El Boukhari primarily claims that the court lacked personal jurisdiction over him because Dornay did not properly serve him with a new summons and the amended petition for dissolution.[5]

---

[4] 50 Wn. App. 633, 749 P.2d 754 (1988).

[5] The trial court found that Dornay's brother "effectuated proper substitute service" on El Boukhari's mother at her home on January 19, 2011. The court further found that El Boukhari's mother's "one-line affidavit" denying service of

CR 60(b)(5) authorizes the court to relieve a party from a final judgment if that judgment is void. A default judgment against a party is void if the court did not have personal jurisdiction over that party.[6] Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party.[7]

Although this court normally reviews a decision under CR 60 for abuse of discretion, a trial court must vacate a void judgment.[8] Thus, this court reviews de novo whether a trial court should have vacated a judgment alleged to be void.[9]

A party waives any claim of lack of personal jurisdiction if, before the court rules, he or she asks the court to grant affirmative relief or otherwise consents, expressly or impliedly, to the court's exercising jurisdiction.[10] Even when a

---

process in any manner in 2011 was not credible. These unchallenged factual findings are verities on appeal. See Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611 (2002). El Boukhari nevertheless suggests that the court exhibited bias by crediting the testimony of American-born witnesses over those of Moroccan descent. However, the court explained the basis for its credibility determinations, and the record substantiates the court's findings. See In re Marriage of Rideout, 150 Wn.2d 337, 350-51, 77 P.3d 1174 (2003) (when the trial court makes findings of fact and credibility determinations based on affidavits alone, we must determine whether substantial evidence supports those findings and whether the findings support the conclusions of law). There is nothing in the record to support the position that cultural bias underlies the court's findings and its decision.

[6] Ahten v. Barnes, 158 Wn. App. 343, 349, 242 P.3d 35 (2010).

[7] Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014); Ahten, 158 Wn. App. at 349.

[8] Dobbins v. Mendoza, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997).

[9] Dobbins, 88 Wn. App. at 871; Delex Inc. v. Sukhoi Civil Aircraft Co., 193 Wn. App. 464, 469, 372 P.3d 797 (2016).

[10] In re Marriage of Steele, 90 Wn. App. 992, 997-98, 957 P.2d 247 (1998).

decree is void, a party who procures this decree or consents to it is estopped from questioning its validity when he has obtained a benefit from it or has concurrently invoked the court's jurisdiction in order to gain affirmative relief.[11] Stated another way, if a party wishes to assert lack of personal jurisdiction as a defense, he or she must do so (a) as soon as reasonably practicable and (b) consistently.[12]

As he did in his request for reconsideration, El Boukhari relies on Markowski to argue that the court was required to grant his motion to vacate after finding that Dornay properly served him with only the initial petition for legal separation. Markowski involved parties who were married in Oregon and resided there during the marriage.[13] After the parties separated, the mother moved to Washington and filed a petition for legal separation.[14] When the father came to Washington to visit the children, the wife personally served him with a summons, the petition, and a motion to appear and show cause.[15] The father did not respond or appear, and the Washington court entered temporary orders related to child support, custody, and visitation.[16] Several months later, the mother filed a new petition seeking dissolution and mailed the new petition to the father's

---

[11] Markowski, 50 Wn. App. at 638.
[12] Steele, 90 Wn. App. at 998.
[13] Markowski, 50 Wn. App. at 634.
[14] Markowski, 50 Wn. App. at 634.
[15] Markowski, 50 Wn. App. at 634.
[16] Markowski, 50 Wn. App. at 634.

Oregon address.[17] The court entered an order of default and decree of dissolution.[18] A year later, the father asked the court to vacate the decree. The trial court denied the motion.[19]

Division Three reversed. It concluded that service of the petition for legal separation did not adequately notify the father that if he failed to respond, the court could dissolve the marriage by default.[20] The court held that the mother had to serve a new summons because dissolution and separation have "distinctly different consequences" and the petition for dissolution asserted "'new or additional claims for relief'" not previously asserted in the petition for separation.[21] The court rejected the mother's argument that the father consented to entry of the decree and waived his jurisdictional defense by attempting to comply with the provisions for a year before filing his motion to vacate.[22] The court also noted that because the father lacked minimum contacts with Washington State, the court could not constitutionally exercise personal jurisdiction over the father without his consent.[23] Accordingly, the court concluded the trial court was required to grant the father's motion to vacate.[24]

---

[17] Markowski, 50 Wn. App. at 634.
[18] Markowski, 50 Wn. App. at 634.
[19] Markowski, 50 Wn. App. at 634.
[20] Markowski, 50 Wn. App. at 637.
[21] Markowski, 50 Wn. App. at 637.
[22] Markowski, 50 Wn. App. at 637.
[23] Markowski, 50 Wn. App. at 637 n.2.
[24] Markowski, 50 Wn. App. at 638.

Unlike the father in Markowski, El Boukhari consented, albeit impliedly, to the court's exercise of personal jurisdiction. When he filed a motion asking the court to invalidate only the restraining order provision of the decree, he elected to treat all other provisions of the decree as valid. El Boukhari maintained this position consistently. When he moved for reconsideration and shifted the focus of his argument to the "distinct" legal consequences of dissolution versus separation, he still did not challenge the decree but sought to strike only the continuing restraining order. In doing so, El Boukhari implicitly accepted the decree itself, including the marital status and property division provisions. And, contrary to El Boukhari's assertion on appeal, the court did not deny his claim under CR 60(b)(5) because it was untimely but because he waived the defense of personal jurisdiction.[25] As a result, the decree and associated orders are not void. The trial court did not err in denying his motion under CR 60(b)(5).[26]

El Boukhari also challenges the denial of his motion under CR 60(b)(4).[27] He contends that the court failed to acknowledge his proof that Dornay made

---

[25] See Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323-24, 877 P.2d 724 (1994) (motions to vacate void judgments under CR 60(b)(5) may be brought at any time and are not subject to a reasonable or one-year time limit).

[26] Because we conclude that El Boukhari waived his jurisdictional defense, it is unnecessary to address his challenge to the court's finding that a Washington trial court has authority to enter a decision regarding child custody under RCW 26.27.201 regardless of personal jurisdiction over the parties.

[27] CR 60(b) states, "The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken."

material omissions and misrepresentations when she obtained the default orders. But the trial court concluded that El Boukhari's motion to vacate under CR 60(b)(4), brought six years after the entry of the final orders, was "dilatory and barred by the doctrine of laches."

A party must bring a CR 60(b)(4) motion within a "reasonable time." What constitutes a reasonable time depends on the facts of the case.[28] Failure to act within a reasonable time under CR 60 has been equated to laches. Relevant considerations in determining timeliness include (1) whether the delay prejudices the nonmoving party and (2) whether the moving party has a good reason for failing to act sooner.[29]

El Boukhari maintains that he made his request within a reasonable time because he first became aware of the default orders in 2016 and had limited financial resources after being incarcerated pending criminal prosecution. The trial court did not believe him and found that his assertion was not "credible." The 2011 Moroccan litigation involved the jurisdiction of the Washington court and enforcement of its orders. Counsel represented El Boukhari in that litigation, and he acknowledged that he and Dornay were in court together in Morocco "several times." In light of the court's essential credibility determination, El

---

[28] In re Marriage of Thurston, 92 Wn. App. 494, 500, 963 P.2d 947 (1998); see also State ex rel. Campbell v. Cook, 86 Wn. App. 761, 766, 938 P.2d 345 (1997).

[29] Thurston, 92 Wn. App. at 500.

Boukhari fails to establish that the court abused its discretion in denying his motion under CR 60(b)(4) based on alleged misrepresentations.

Finally, El Boukhari also appears to challenge the substantive provisions of the 2011 orders. It is well settled, however, that our review is limited to the decision denying the motion to vacate the orders, not the underlying orders.[30]

We affirm.

Leach, J.

WE CONCUR:

Chun, J.

Dwyer, J.

[30] Bjurstrom v. Campbell, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980).

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of ERZSEBET REIKO DORNAY, Petitioner, and MOUAD AIMEME ELBOU, Respondent.	No. 77654-1-I ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Mouad Aimeme Elbou, having filed a motion for reconsideration herein, and the hearing panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

Leach, J

Judge

NO. 77654-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MOUAD EL BOUKHARI,
APPELLANT,
v.
ERZSEBET REIKO DORNAY,
RESPONDENT.

AMENDED BRIEF OF APPELLANT

MOUAD EL BOUKHARI
APPELLANT
PO BOX 1691
SNOQUALMIE, WA 98065
(206) 643-1564
mouadelbou8@gmail.com

Table of Contents

Page

TABLE OF AUTHORITIES

PAGE(S)

CASES

STATUTES AND RULES

SECONDARY AUTHORITIES

I. ASSIGNMENTS OF ERROR

1. The trial court erred in entering the order dated October 3, 2017 denying the father's motion to vacate all default orders entered on May 23, 2011.
2. The trial court erred in entering the order of November 1st, 2017, denying motion for reconsideration to vacate default orders entered on May 23, 2011.
3. The trial court erred in concluding that alleged service of a legal separation petition could substitute as service for a later filed dissolution petition.
4. The trial court erred in failing to vacate all of the default orders that were entered by the court in 2011, and the trial court erred in later finding while denying the reconsideration motion that the father had asked to vacate only part of the default orders and that this was a basis to deny the motion to vacate.
5. The trial court erred in finding and concluding that it had jurisdiction over the father for default dissolution orders when there had never been service of the dissolution petition on the father, and after the

court found that the mail service was "insufficient" and not incompliance with the law.

6. The trial court erred in finding and concluding that the mother had not committed misrepresentation or there was not a mistake or other grounds under CR 60 to void or vacate the default orders.

7. The trial court erred when it concluded that the father's motion to vacate default orders had to be brought within one year, when there was no jurisdiction over the father or personal service.

8. The trial court erred in finding that the father had notice and service of the dissolution petition through the Moroccan court process when the trial judge admitted it did not know the foreign court process and the documents presented to the court did not show personal service on the father, and the mother admitted that she did not have the father personally served in Morocco.

9. The trial court erred when it found that the father's motion to vacate the final default orders was barred by the doctrine of laches.

10. The trial court erred in making findings about the father and mother's behavior towards the child as part of a motion to vacate default orders, without the father having the opportunity to be heard with live testimony and present evidence at a trial regarding the best interests of the child.

11. The trial court erred when it held that it did not need personal jurisdiction over the father to enter default final orders that included a default parenting plan, when the dissolution petition was never served on the father, also when the final parenting plan was never proposed nor served prior to the court making it a final order.
12. The trial court erred when it entered final orders on default that exceeded the relief requested in the initial petition for legal separation and when the dissolution orders were never served on the father.

II. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Whether the trial court abused its discretion or committed errors in law when it refused to vacate default orders where the court lacked jurisdiction over the father?
2. Whether the father's constitutional rights to due process were violated thereby rendering the default orders entered on May 23, 2011 void for failure of process of service?

3. Whether the Findings in the Parenting Plan and Findings of Fact and Conclusions of Law were based on sufficient

evidence and/or exceeded the scope of relief requested in the petitions?

III. STATEMENT OF FACTS

A. Procedural History

Erzsebet Dornay filed for a legal separation on January 18, 2011 in King County Superior Court against Mouad Elbou (now El Boukhari), while both parties were in Morocco and after she had previously started a custody case in Morocco about the parties' child. CP 1-6. On the same day, Ms. Dornay sought an ex-parte restraining order in King County, though this restraining order was never personally or validly served on Mr. El Boukhari. CP 18-24. Ms. Dornay claimed that she had her brother personally serve Mr. El Boukhari's mother the legal separation petition, though the declaration from Mr. El Boukhari's mother contradicted this claim. CP at 153, 220.

On January 24, 2011, Ms. Dornay filed a petition for dissolution of marriage in King County, no longer pursuing the legal separation. CP 30. Ms. Dornay made no attempts to personally serve the dissolution petition and summons on Mr. El Boukhari. CP 217, 425. Ms. Dornay later admitted that she did not want to serve Mr. El Boukhari the dissolution petition and chose not to do so. CP at 383. Ms. Dornay and her attorney had Mr. El Boukhari's email address, but neither ever sent the marriage dissolution

petition or restraining order to Mr. El Boukhari's email. CP at 316. Ms. Dornay never filed a proposed parenting plan prior to entering a final parenting plan during her motion for default. CP at 49-50 (declaration of Ms. Dornay that includes a list of what she had filed prior to her default motion); *see also* Exhibit A (court docket).

Ms. Dornay falsely told the court that she had properly served the marriage dissolution petition and restraining orders by mail, and the King County court entered default dissolution orders while both parties were still in Morocco that included a restraining order against Mr. El Boukhari, a parenting plan that granted relief that was not requested in either of Ms. Dornay's petitions and completely "no contact" at all with their son unless Mr. El Boukhari permanently resides within the U.S. and completes six months of DV therapy and then to only ever have professional supervised contact with their son for the rest of his childhood, as well as financial benefits to Ms. Dornay such as giving her the full income tax refund from Mr. El Boukhari's work. CP 63, 66-100; *See also* CP 65 (motion for default signed by Ms. Dornay in Morocco).

Mr. El Boukhari first learned of the case brought by Ms. Dornay and that there were default orders in 2016 when he received a notice from DCS about child support and was charged criminally for alleged custodial

interference based on the default orders Ms. Dornay had obtained. CP at 155. Mr. El Boukhari was acquitted of the criminal charges. CP at 216.

Mr. El Boukhari was not immediately able to file a motion to vacate the default orders after he learned of them in 2016, because he was incarcerated for six months before being acquitted by a jury. CP at 313. Mr. El Boukhari also had limited financial resources (especially while he was incarcerated for the charge he was acquitted on) and incurred significant legal fees for the criminal case, so he filed a motion to vacate the default orders as soon as he was financially able to and the criminal case was completed. CP at 155, 216, 313. After Mr. El Boukhari filed a motion to vacate the default orders for the marriage dissolution, the court found that Ms. Dornay's mail service of the dissolution petition was "insufficient as original service of process as not in compliance with the alternate order and CR 4(c) as it was done by a party (Petitioner)." CP 425. The court still refused to vacate the default orders, by finding that the alleged service of the prior, and different legal separation petition on the respondent's mother was sufficient service on Mr. El Boukhari to enter default marriage dissolution final orders. CP 425. Mr. El Boukhari appealed the trial court's refusal to vacate the default orders.

B. Parenting and Marriage History

The parenting plan and marriage dissolution orders in this case were decided purely on Ms. Dornay's written statements because of the default with no service of the dissolution petition, without the trial court ever considering any live testimony nor considering any evidence that the father presented about the child, or marriage, or finances and incomes of the parties. CP 66-67, 87.

In 2011, when Ms. Dournay filed a petition for legal separation and later filed a dissolution petition, the parties had a 3 year old son, Yussuf, who was with both of them in Morocco. CP 1, 152. The parties had initially traveled to Morocco to stay with Mr. El Boukhari's family and renew their vows. CP 4, 152. Mr. El Boukhari has dual citizenship with the United States and Morocco, and the parties frequently traveled to Morocco together. CP at 152, 320. During the marriage, Mr. El Boukhari and Ms. Dornay argued about the differences in their religions and whether their son should be raised Catholic or Muslim. CP at 314. Ms. Dornay had thought that Mr. El Boukhari would convert to Catholicism for her, and Mr. El Boukhari assumed that they would both share their different religious beliefs and their different heritages with their son. Id. When they first arrived in Morocco in 2011, Mr. El Boukhari had intended that they stay a short time with his family, but soon after they arrived Ms. Dornay confessed

to Mr. El Boukhari that she had been unfaithful and had been having an affair. CP at 314. Mr. El Boukhari was shaken and informed Ms. Dornay that he wanted to be near his family and he intended to stay in Morocco for a time. CP at 152, 314. Mr. El Boukhari asked that Ms. Dornay not take their son from Morocco at that time, as he thought Ms. Dornay would take Yusef and would never let Mr. El Boukhari see their son again. Id. During this time, Mr. El Boukhari and Ms. Dornay thought they might still be able to work out their marriage, and Ms. Dornay actually moved in with Mr. El Boukhari in Morocco a few months later while they tried to work on their marriage. CP at 314, 317. Ms. Dornay lived with Mr. El Boukhari at his apartment in Morocco off-and-on throughout 2011. CP at 317, 395. Mr. El Boukhari did not know that while she was living with him in Morocco, Ms. Dornay was also pursuing a divorce in Washington State where she had default final orders entered that restrained him from seeing their son. CP at 314, 317. Mr. El Boukhari was notified of one of the legal proceedings that Ms. Dornay brought against him in a Moroccan case, but at that time the court had ruled that Yusef should stay with his father. CP at 317. Mr. El Boukhari was not served regarding the second case in Morocco that Ms. Dornay brought against him, and ultimately the court in Morocco did not have a full hearing or trial as it deferred to the default orders entered in

Washington State that Mr. El Boukhari also did not know about until some years later. CP at 317-19.

Much of the parenting and relationship history currently in the record in this case shows only the story put forth by Ms. Dornay, because the final orders entered in this case were obtained by default after there was no proper service. CP 112. While Ms. Dornay's story paints Mr. El Boukhari as an abusive husband and negatively portrayed him to the court, the marriage dissolution and all final orders are all based on only Ms. Dornay's requests, without a trial and without any of the testimony that Mr. El Boukhari intends to present at trial. CP 112; *see also* CP 113, 152-56. In a related criminal case, where charges were sought and pursued by Ms. Dornay, there was a full trial and Mr. El Boukhari was able to present live testimony and substantial evidence showing that Ms. Dornay was not telling the truth. CP 216-218. The jury in that case considered Mr. El Boukhari's evidence at trial and did not find Ms. Dornay credible. *Id.* Thus, Mr. El Boukhari sought to vacate the default marriage dissolution orders where there was no service of the dissolution petition and no jurisdiction in the case, so that Mr. El Boukhari could present live testimony and substantial evidence regarding their son, their finances, and their marital history, to request fair and true orders for the parenting plan, child support, and asset division of the marriage. CP at 66-67, 313-321.

IV. ARGUMENT

A. Standard of Review

While this court reviews a trial court's refusal to vacate default orders for an abuse of discretion, this court reviews matters regarding jurisdiction and errors of law *de novo*. *See In re Marriage of Kastanas,* 78 Wn. App. 193, 197, 896 P.2d 726 (1995). *See also In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011) (citing In re Marriage of Kinnan, 131 Wn. App. 738, 751, 129 P.3d 807 (2006) (errors of law are reviewed de novo).

Thus, this court should review de novo the superior court's error of law and reverse the ruling that found the alleged substitute service of the legal separation petition sufficient for the lack of service of the marriage dissolution petition. The superior court's ruling that there was jurisdiction over Mr. El Boukhari is also an error of law that should be reviewed de novo and reversed.

B. The Decree of Dissolution, final Order of Child Support and final order of Parenting Plan are void because the court lacked personal jurisdiction over Mr. El Boukhari. Proper service of the summons and petition for dissolution is essential to invoke personal jurisdiction over a party, and all of the default orders should be vacated.

"CR 60(b)(5) permits vacation of a judgment which is void." *Lee v. Western Processing Company, Inc.*, 35 Wn. App. 466, 469, 667 P.2d 638 (1983). Proper service of the summons and complaint is necessary to invoke the court's jurisdiction over the Respondent. *Id.*, (citing RCW 4.28.020, RCW 4.28.080, CR 4; *Interior Warehouse co. v. Hays*, 91 Wash. 507, 158 P. 99 (1916)). "A judgment entered without jurisdiction over the parties is void." *Id.* (citing *Bergren v. Adams Cy.*, 8 Wash.App 853, 509 P.2d 661 (1973)). "[W]hen a judgment is void, the trial court has a **nondiscretionary** duty to grant relief" and vacate the judgment. *In re Marriage of Markowski*, 50 Wn. App. 633, 635, 749 P.2d 1087 (1988) (emphasis added) (citing *Kennedy v. Sundown Speed Marine, Inc*. 97 Wn.2d 544, 549, 647 P.2d 30, *cert denied*, 459 U.W. 1037, 203 S.Ct 449, 74 L.Ed.2nd 603 (1982)); *See also Leen v. Demopolis*, 62 Wn. App. 473, 478, 815 P.2d 269 (1991). Thus, if the court of Appeal finds that service on El Boukhari was not proper and

that there was no jurisdiction over El Boukhari, the final default orders CP 68-100 entered against El Boukhari are void and must be vacated.

In this case at hand, the Trial Court correctly and indisputably concluded that the service of the summons, petition for dissolution is not proper finding that, "The non-movant's mail service of the amended Petition for Dissolution on movant in February 2011 was insufficient as original process service as not in compliance with the alternative service order or CR 4(c) as it was done by a party "Petitioner." Conclusion of Law No. 3, CP 425. Despite finding that there was never any valid or proper service of the marriage dissolution petition, the trial court erroneously found that the alleged service of the legal separation petition was sufficient to enter default orders on the separate marriage dissolution petition.[1] CP 419, 425-27.

The trial court committed an error of law when it found that the court could enter default orders against Mr. El Boukhari based on in rem jurisdiction. While in rem jurisdiction gives the court authority to enter

[1] Mr. El Boukhari disputes that there was any service of the legal separation petition on his mother in Morocco, but for purposes of appeal believes this issue not to be relevant since the trial court found that there was never any service of the subsequent, separate marriage dissolution petition. Mr. El Boukhari also understands that the appeals court defers to the trial court's determination of credibility regarding any alleged service of the legal separation petition, but would like the court to note that the credibility determinations were made based on only declarations as there was no trial or live testimony presented in this case due to the improper default orders, and that the superior court judge appeared to discredit any witness declarations that were translated into English or where the witness was from Morocco.

orders when there is not personal jurisdiction over a parent based on that parent's location, it does **not** affect or waive the due process and constitutional requirements to enter default orders in a marriage or parenting case. *In re Marriage of Tsarbopoulos* is clear that "the due process requirements of notice and opportunity to be heard apply regardless of whether the asserted jurisdiction is classified as in personam or in rem. *In re Marriage of Tsarbopoulos*, 125 Wn. App. 273, 284, 104 P.3d 692 (2004) (citing 20 Kenneth W. Weber, Washington Practice: Family & Community Property Law § 30.5 at 20 (1997)). If in rem jurisdiction was sufficient for all parenting plans without any valid service before default orders were entered as the court found in Mr. El Boukhari's case, then there would be no procedural due process and thousands of parents could have default orders entered against them restricting their time with their children without any valid service or chance to present evidence at trial.

Proper service of the summons and complaint is essential to invoke personal jurisdiction over a party and a default judgment entered without proper jurisdiction is void. *In re Marriage of Markowski,* 50 Wash.App. at 633 (citing *Mid–City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wash. App. 480, 674 P.2d 1271 (1984); *Lee v. Western Processing Co.*, 35 Wash.App.466, 469, 667 P.2d 638 (1983)). Here, the trial court found that the marriage dissolution petition and summons was never properly

served on Mr. El Boukhari. Without proper service, there is no jurisdiction. *In re Marriage of Logg*, 74 Wn. Appp. 781, 784, 875 P.2d 647 (1994). Accordingly, the default marriage dissolution orders are void and the law requires the default orders be vacated.

C. Substitute Service of the Summons and Petition for Legal Separation Cannot Confer the Court with Jurisdiction to Enter the Subsequent and Separate Decree of Dissolution and Order of Parenting Plan and Child Support.

It was an obvious error of law for the trial court to conclude that the petitioner's brother effected proper substitute service of all necessary original jurisdiction by serving the legal separation papers on the movant's mother and that the marriage dissolution orders that were entered on default should not be vacated. Conclusion of Law No. 4, CP 425. The Petition for Dissolution of Marriage is a separate cause of action from the legal separation petition and required new personal service upon the Respondent. *In re the Marriage of Markowski*, 50 Wn.App. 633, 749 P.2d 754 (1988).

The Court of Appeals addressed this issue on point in the Markowski case. *Id.* In that case, Ms. Markowski initially filed and served Mr. Markowski with a Summons and Petition for Legal Separation. Sometime later she filed a Petition for Dissolution of Marriage and mailed it to Mr. Markowski at his address in Oregon without ever properly serving

the husband, just as Ms. Dornay did in the present case. Mr. Markowski failed to respond and the court entered an order of default along with a decree of dissolution. Mr. Markowski filed a motion to vacate the decree of dissolution pursuant to CR60(b). Just at the trial court did to Mr. El Boukhari, the trial court denied Mr. Markowski's motion to vacate the default orders and he appealed. Mr. Markowski argued that the Decree was void because the court lacked personal jurisdiction over him because he was not properly serviced with the Summons and Petition for Dissolution. Ms. Markowski countered that the Petition for Dissolution was merely an amendment of the original Petition for Legal Separation which was properly served on the Respondent and that under CR15(a) there was no requirement that a new summons be filed and served when pleadings are amended. The Court of Appeals rejected this argument, reasoning that a Petition for Legal Separation and a Petition for Dissolution of Marriage are different causes of action and have distinctly different consequences. *Id.* The Court of Appeals concluded that Ms. Markowski was required to properly serve a new Summons because the Petition for Dissolution asserted new or additional claims for relief not previously asserted and having failed to properly serve Mr. Markowski with the Summons and Petition for Dissolution, the court lacked personal jurisdiction. *Id.*

In the case before this court, even if we presume for legal arguendo that the substitute service on El Boukhari's mother of the Summons and Petition for Legal Separation was proper, this service simply did not confer the court with jurisdiction to enter the Decree of Dissolution and other final orders entered pursuant to that Decree. As the Court of Appeals concluded in Markowski, the Amended Petition for Dissolution seeks a different remedy (dissolution of the marriage as well as having differences between the relief requested in the two petitions) and requires new proper service to confer personal jurisdiction over the Respondent. In addition, Ms. Dornay's own pleadings make it clear that she was aware of the need to obtain original process service of the Petition for Dissolution and that service of the Summons and Petition for Legal Separation was not sufficient to give the court jurisdiction to enter a Decree of Dissolution. On February 4, 2011, she filed a Motion to Serve by Diplomatic Agent or Mail and for Alias Show Cause Order. In her motion, Ms. Dornay moved the court for an order" Allowing Service by Mail…." CP 40-41. As presented above, the trial court concluded that Ms. Dornay's mail service of the amended petition for Dissolution on El Boukhari in February of 2011 was **insufficient and improper**. "The non-movant's mail service of the amended Petition for Dissolution on movant in February 2011 was insufficient as original process

service as not in compliance with the alternative service order or CR 4(c) as it was done by a party "Petitioner." Conclusion of Law No. 3, CP 425.

The court clearly erred when it found that the alleged service of the legal separation petition was enough to confer jurisdiction and substitute as service of the subsequent marriage dissolution petition and default orders. The marriage dissolution petition clearly requested relief that was never pled in Ms. Dornay's legal separation petition. For instance, Ms. Dornay requests "RCW 26.09.191" restrictions against the father in her marriage dissolution, but this was new language added in the relief requested section that was not in her legal separation petition. CP 5, 36. It is of paramount importance that a father be properly served a marriage dissolution petition and request to place RCW 26.09.191 restrictions against him before a default order is entered, so that he will be able to present evidence to the court. This is a procedural and constitutional right. If the trial court's orders remain, then all parents may not be properly served and have default orders against them that sever the relationship between the parent and child, without the court ever hearing testimony or having a trial.

D. The Trial Court Erred When It Decided That It Had to Find Intentional Fraud by Ms. Dornay to Vacate The Default Orders, When There Was Also Misrepresentation by Ms. Dornay and her Attorney or Misconduct to Obtain the Default Orders.

The superior court found that there was not enough evidence to find that Ms. Dornay had intentionally committed fraud when she and her attorney made statements to obtain the default orders that were not true to obtain the default final orders. CP 425. But, even if the court does not find fraud, it is clear the Ms. Dornay and her attorney made misrepresentations to the trial court to obtain the default orders. For example, Ms. Dornay and her attorney failed to disclose that she had not made a single attempt to personally serve the dissolution petition and summons before moving the court for mail service, and that Ms. Dornay had multiple chances to have him personally served in Morocco. CP 28, 246. They also failed to disclose during the default motion and hearing that Ms. Dornay had violated the mail service order and that there was no valid mail service. CP 64,153-54. These are clear misrepresentations and misconduct by Ms. Dornay and her attorney. In addition to the fraud basis, Mr. El Boukhari's attorney requested the default orders be vacated on the basis of misrepresentation or misconduct. CP 110; *see also* CR 60. Yet, the trial court focused on its finding that there was not enough evidence of intentional fraud by Ms.

Dornay when it refused to vacate the default orders, without giving the misrepresentations and misconduct by Ms. Dornay appropriate consideration to vacate the final orders. Where there is clear misrepresentation by a party and that misrepresentation allowed her to obtain default orders when she had not performed valid service nor followed the court's prior court order regarding the requirements for mail service, the court should vacate the default orders. Mr. El Boukhari understands that the judicial system sometimes has so many cases that judges are overworked and underpaid, which may encourage trial judges to uphold invalid default orders to avoid and entering orders severely restricting a father from spending time with his son, when there has been serious misrepresentation, misconduct, no proper service, and no opportunity for the father to present evidence at trial should be of paramount importance. Mr. El Boukhari requests only that Ms. Dornay be required to follow the law and when the court found that there was never valid service of the marriage dissolution, to vacate the final orders so that Mr. El Boukhari can have a fair trial and the court can consider testimony and evidence about their son.

E. The Trial Court Erred When It Refused To Vacate The Default Orders Because More Than One Year Had Passed, Even Though There Was No Valid Service Nor Jurisdiction Over The Respondent.

The trial court erred when it found that Mr. El Boukhari had to bring his motion to vacate the default orders within one year of the orders being entered, or that there was a time limit to bring the motion. Mr. El Boukhari was never served the default final orders. CP 107. Mr. El Boukhari was also charged with custodial interference in the first degree in August of 2011 and spent six months in jail before being acquitted in a jury trial. CP at 155.While the jury returned a not guilty verdict in 2016, the trial judge in that case did not enter the acquittal until March 23, 2017. CP 155. Less than three months after being acquitted, Mr. El Boukhari filed a motion to vacate the default final orders. CP 103.

Under CR 60(b)(5) and case law, a motion to vacate default final orders may be brought any time after entry of the judgment. *In re Marriage of Maxfield*, 47 Wn. App. 699, 702, 737 P.2d 671 (1987); *In re Marriage of Hardt*, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985). Here, the trial court improperly found that the default orders should not be vacated because Mr. El Boukhari did not immediately file a motion to vacate, within one year of the default orders. When there has been no personal service of a petition, a motion for default may be brought at any time. *Id.* The trial court made

several statements that show it was unaware or disregarded the case law that a motion to vacate default orders should not be barred based on an arbitrary one year standard, especially when the court did not have jurisdiction to enter default orders. See CP at 413. The superior court judge made multiple statements showing the judge was uncertain of the laws that applied and even made statements contrary to appellate case law, such as "even the failed mail service could be presume to be sufficient. I don't know that there is any case that has addressed whether the could trump the case law and the normal court rule." CP at 413. This is contrary to numerous cases, such as *In re the Marriage of Markowski*, 50 Wn.App. 633, 749 P.2d 754 (1988). The superior court judge also stated, "In terms of waiver of laches, again, I'm not aware of any court cases that talk about whether you waive jurisdictional service by failure to assert in a timely fashion." CP at 413. In the present case, the superior court judge's statements that jurisdiction and procedural due process are waived merely by the passage of time are directly contrary to the law. *See In re Marriage of Maxfield*, 47 Wn. App. 699, 702, 737 P.2d 671 (1987) (holding that the "court has a non-discretionary duty to grant relief" regarding void judgments where there was no procedural due process, regardless of the amount of time that has passed*); see also In re the Marriage of Markowski*, 50 Wn.App. at 637-638 (the passage of more than a year from the default final orders did not estop

or effect the respondent's right to vacate the final orders when there was no proper service and therefore no personal jurisdiction over the respondent).

In Mr. El Boukhari's case, the superior court judge also made oral statements that the case in Morocco somehow estopped or prevented him from challenging the King County Superior Court jurisdiction and default orders. CP at 413. At the same time, the judge also admitted that she did not understand Moroccan courts or law, and that she did not know what happened in the two Moroccan cases that Ms. Dornay had filed. CP at 412. In fact, Mr. El Boukhari presented evidence to the court that Ms. Dornay had filed two separate Moroccan court cases, and that he did not get notice and Ms. Dornay did not serve him for some time on the second Moroccan case that she filed. *See* CP at 314, 317-319. Where the superior court judge made oral rulings and statements that she did not know the law about personal jurisdiction, valid service, or procedural due process, but was going to refuse to vacate the default final orders on these grounds no matter what, it is clear that the judge made up her mind about the case that had nothing to do with the law. Whether this is because the judge feels the court has too many cases and does not want to add to its case load, or because the judge was prejudiced against the father and witnesses who were of Moroccan decent and therefore wanted to rule against the father on any grounds it could come up, the judge refused to follow the law and refused

to give Mr. El Boukhari procedural due process and his legal right to present evidence and testimony at trial. Therefore, this court should find that the judge committed an error of law when she refused to vacate the default final orders when there was no service of the marriage dissolution petition, and there was no personal jurisdiction nor due process for the father.

F. The Trial Court Erred When It Granted Relief In The Default Dissolution Orders That Was Not Pled In The Petition Nor Served On The Father.

The trial court incorrectly found that Ms. Dornay's dissolution petition and her default orders requested the same relief as her legal separation petition. CP 488, 489; RP Volume II p. 67-70. Mr. El Boukhari's trial attorney notified the superior court judge that marriage dissolution petitions and legal separation petitions request different relief and therefore require separate original service for each petition. CP 432, 435; RP Volume II p. 68, 69. Contrary to the facts, Ms. Dornay's attorney argued that her legal separation petition included the same relief requested as her marriage dissolution, and the final default orders entered included only requests that were in the first legal separation petition. CP 469.

In actuality, Ms. Dornay's legal separation petition had several requests that were different than the marriage dissolution petition, and the final orders entered on default included relief that was not requested in

either petition. For instance, the legal separation petition did not make any specific requests about property, while Ms. Dornay's dissolution petition listed property requests including her requests about jewelry and specific property. CP 2, 32. The two different petitions were also substantially different regarding Ms. Dornay's requests about debts and relief requested. CP 2-5, 33-37. Additionally, the legal separation petition requested that the court approve a "proposed parenting plan" and child support but did not file a proposed parenting plan nor a child support worksheet with either her legal separation petition nor her marriage dissolution petition. CP 49-50 (declaration of Ms. Dornay that includes a list of what she filed prior to her default motion); *See also* Exhibit A King County Superior Court Docket showing no proposed parenting plan filed with either petition. RCW 26.09.181 required Ms. Dornay to file and serve the proposed parenting plan, regardless of whether she was seeking a default order or whether she had properly served her marriage dissolution petition. RCW 26.09.181 (each party "shall" file and serve a proposed permanent parenting plan).

Mr. El Boukhari has found an unpublished case from 2012 that is identical to this case, and where the court vacated the default dissolution petition against the wife because the husband never filed a proposed parenting plan before the default orders were entered. Because it his understanding that Mr. El Boukhari cannot cite to this case under the court

rules as it is currently unpublished, he does not further brief this case or cite to it, but he wanted the court to be aware of this case that is exactly on point to this appeal, and he would certainly provide the case cite and further information upon request of the court.

The final parenting plan that the court entered on default at Ms. Dornay's request, with no attempt by Ms. Dornay to ever serve it as a proposed parenting plan nor as a final default order, and with no opportunity for Mr. El Boukhari to present testimony or evidence, Ms. Dornay had the court find that Mr. El Boukhari had "a pattern of physical and emotional abuse of the child." CP 94. Yet, in both her legal separation petition and in her marriage dissolution petition, Ms. Dornay nowhere alleges that Mr. El Boukhari had ever physically and emotionally abused their son. CP 1, 30. Nor does Mr. El Boukhari know of anywhere in the record that was presented to the court during the motion to vacate the default orders and responses from Ms. Dornay, where she ever alleges that Mr. El Boukhari had assaulted their son. To have the court make a finding that a father assaulted a son in the final default parenting plan, when Ms. Dornay never even alleged this in her legal separation petition, never filed nor served a proposed parenting plan, and never alleged it in her marriage dissolution petition is clear error and violation of the law that Ms. Dornay has committed. The final default orders are rife with this. For example, Ms.

Dornay had the court enter a final default parenting plan that found Mr. El Boukhari had a "long-term emotional impairment which interferes with the performance of parenting functions as defined in RCW 26.09.004" and that there was a "substantial impairment of emotional ties between the father and child." CP 95. Ms. Dornay never made these claims in either her legal separation petition nor her marriage dissolution petition, nor did she file such an alleged proposed parenting plan when she filed her petitions. CP 1, 30. In fact, Ms. Dornay's legal separation petition contradicts the findings she had the court make and enter on default, since she stated in her legal separation petition that the father and child did have a relationship and did have emotional ties to each other. CP 3.

Where Ms. Dornay's legal separation and subsequent marriage dissolution petition never included a proposed final parenting plan and did not include much of the relief she had entered as part of the final default orders, this court should reverse the lower court and order the default orders be vacated. When a petition does not specify the relief sought in the default orders, any parenting plan and default orders go beyond the relief requested and must be vacated. *See In re Marriage of Thompson*, 32 Wn. App. 179, 183-184, 646 P.2d 163 (1982). This is even more concerning when Ms. Dornay's legal separation petition differed from her subsequent marriage dissolution petition, and the court entered default orders on the separate

marriage dissolution petition, even though the court found that Ms. Dornay never performed any valid service of the marriage dissolution petition. Accordingly, this court should reverse and remand for the default orders to be vacated.

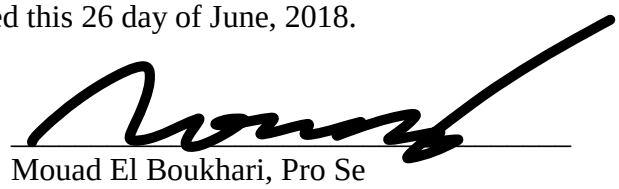
V. CONCLUSION

Because Ms. Dornay never properly served the marriage dissolution petition and summons, and the trial court found that there was no proper service of the dissolution petition, this court should reverse and remand for the final default orders to be vacated. The marriage dissolution petition clearly requests relief that is different than the legal separation petition. In addition to the lack of any valid service of the dissolution petition, Ms. Dornay's default orders should not have been entered since she violated the law and never filed the required proposed parenting plan prior to final orders being entered. The final orders that Ms. Dornay had entered on default exceeded the relief requested in both her legal separation petition, as well as exceeding the relief requested in her marriage dissolution petition. Therefore, the Decree of Dissolution, Order of Child Support and Parenting Plan are void. The court lacked personal jurisdiction over Mr. El Boukhari and the default orders need to be vacated. Proper service of the summons and petition is essential to invoke personal jurisdiction over a party. In

addition, service of the Petition for Legal Separation, even if the substitute service was proper for arguendo, did not confer jurisdiction for the Amended Petition for Dissolution. Consequently, the trial court did not have personal jurisdiction over Mr. El Boukhari, making entry of the Decree of Dissolution, order of parenting plan and child support void and must be vacated under CR 60(b)(5). Mr. El Boukhari requests the opportunity to present evidence and testimony at trial, especially regarding their son. Everyone in America, regardless of whether they have dual citizenship with another country, should have procedural due process and the constitutional right to a trial, especially when it comes to court orders obtained without service or notice to a father that severe the parent-child relationship for the son's entire childhood. Ms. Dornay's default orders were extreme and restrain Mr. El Boukhari from ever having a parent-child relationship with their son, all without a trial or service of the marriage dissolution petition on Mr. El Boukhari. When Mr. El Boukhari was afforded the opportunity of a trial in the criminal case that Ms. Dornay brought against him, the jury found that Ms. Dornay was not credible and acquitted Mr. El Boukhari. Mr. El Boukhari should have the opportunity to respond to the marriage dissolution petition and allegations against him, and present evidence at trial about the marriage and parenting. This is a constitutional right and a basic moral consideration that should be extended to all parents, especially before

indefinitely severing a parent-child relationship. Thus, it is imperative for their son and for the rights of all parents in this country that this court reverse the lower court, and remand to vacate the default final orders.

Respectfully submitted this 26 day of June, 2018.



Mouad El Boukhari, Pro Se
Appellant

CERTIFICATE OF FILING AND SERVICE

I certify I caused the foregoing and its attachments, if any, to be

☒ Filed with the court on ☒ June 27, 2018 via

☒ Electronic filing;

☐ Depositing the same in the U.S. Mail, first-class postage prepaid; or

☐ Hand delivery

And ☒ served on Janet Watson, Respondent's attorney by the following means:

☒ Via ECF Filing [LCR 5 (b)] on ☒ June 27, 2018

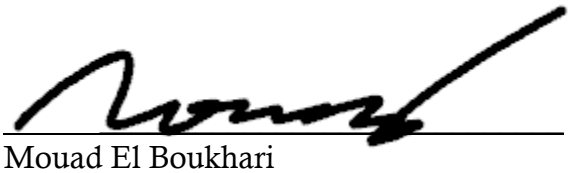
☐ Deposit into the U.S. Mail, first-class postage prepaid

☐ Via electronic mail with permission pursuant to GR 30; or

☐ Hand delivery on ☐ _____

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct to the best of my knowledge.

Signed at Seattle, Washington, on ☒ June 27, 2018.



Mouad El Boukhari
Appellant, Pro Se

EXHIBIT A

Superior Court Docket of Case No. 11-3-00724-7 SEA, showing no proposed parenting plan filed by Petitioner Erzsebet Dornay with the court prior to entry of Default Final Orders, including Final Parenting Plan.

Superior Court Case Summary

Court: King Co Superior Ct
Case Number: 11-3-00724-7

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	01-18-2011	PETITION FOR LEGAL SEPARATION	Petition For Legal Separation	
2	01-18-2011	SET CASE SCHEDULE JDG0036	Set Case Schedule Judge Jean Rietschel, Dept 36	12-19-2011ST
3	01-18-2011	COURT DESIGNATED ASSIGNMENT AREA LOCS	Court Designated Cause Of Action Original Location - Seattle	
4	01-18-2011	CONFIDENTIAL INFORMATION FORM	Confidential Information Form	
5	01-18-2011	SUMMONS	Summons	
6	01-18-2011	RESTRAINING ORD & ORD TO SHOW CAUSE EXP0001	Restraining Ord & Ord To Sc/issd Ex-parte, Dept	02-08-2011FM
7	01-18-2011	MTN/DCL FOR EXPARTE RO AND ORDSC	Mtn/dcl For Exparte Ro And Ordsc	
8	01-18-2011	DECLARATION	Declaration Of Erzsebet Dornay	
9	01-18-2011	DECLARATION	Declaration Of Peter Dornay	
10	01-18-2011	SEALED CONFIDENTIAL RPTS CVR SHEET	Sealed Confidential Police Report	
11	01-18-2011	NOTE FOR MOTION DOCKET	Note For Motion Docket /tro	02-08-2011
11A	01-18-2011	MOTION HEARING EXP0001	Motion Hearing Ex-parte, Dept	
-	01-18-2011	VIDEO LOG	Video Log 325-2	
12	01-24-2011	AMENDED PETITION	Amended Petition For Diss	
13	01-24-2011	SUMMONS	Summons	
14	02-04-2011	DECLARATION	Declaration E Dornay	
15	02-04-2011	MOTION AND AFFIDAVIT/DECLARATION	Motion And Affidavit/pet	
16	02-04-2011	ORDER RE: SERVICE EXP0001	Order Re: Service By Mail Ex-parte, Dept	
17	02-04-2011	RESTRAINING ORD & ORD TO SHOW CAUSE EXP0001	Restraining Ord & Ord To Sc/issd Ex-parte, Dept	03-04-2011FM
18	02-17-2011	DECLARATION OF MAILING	Declaration Of Mailing	
19	02-18-2011	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Show Cause/tro Return/temp Custody	03-04-2011FM
20	03-04-2011	MOTION HEARING FAM0001	Motion Hearing Family Law, Dept 1	
-	03-04-2011	AUDIO LOG	Audio Log Dr W276	
21	03-04-2011	TEMP RESTRAINING ORDER FAM0001	Temp Restraining Order /issued	

About Dockets

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

King Co Superior Ct
516 3rd Ave, Rm C-203
Seattle, WA 98104-2361
Map & Directions
206-477-1400[Phone]
206-296-0986[Fax]
[Office Email]
Visit Website

Disclaimer

What is this website? It is a search engine of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. The search results can point you to the official or complete court record.

How can I obtain the complete court record?
You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

			Family Law, Dept 1	
22	03-07-2011	DECLARATION OF MAILING	Declaration Of Mailing	
23	05-18-2011	MOTION FOR DEFAULT	Motion For Default /petitioner	
24	05-19-2011	ORDER OF DEFAULT EXP0007	Order Of Default Ex-parte, Dept. Seattle - Clerk	
25	05-23-2011	RESIDENTIAL TIME SUMMARY REPORT	Residential Time Summary Report	
26	05-23-2011	DECREE OF DISSOLUTION EXP0001	Decree Of Dissolution /issd Ex-parte, Dept Velategui	
27	05-23-2011	ORDER FOR SUPPORT EXP0001	Order For Support Ex-parte, Dept	
28	05-23-2011	FINDINGS OF FACT&CONCLUSIONS OF LAW EXP0001	Findings Of Fact&conclusions Of Law Ex-parte, Dept	
29	05-23-2011	MOTION HEARING EXP0001	Motion Hearing Ex-parte, Dept	
-	05-23-2011	AUDIO LOG	Audio Log W325-3	
30	05-23-2011	PARENTING PLAN (FINAL ORDER) EXP0001	Parenting Plan (final Order) Ex-parte, Dept	
31	05-23-2011	CERTIFICATE OF COMPLIANCE	Certificate Of Compliance	
32	05-23-2011	DECLARATION	Formal Proof Declaration	
-	06-20-2011	CERTIFICATE MAILED TO OLYMPIA	Certificate Mailed To Olympia	
33	06-23-2011	CORRESPONDENCE	Correspondence /hon Jdg Fleck	
34	06-27-2011	LETTER	Letter Frm Court Date 02-17-2011	
35	07-07-2016	ORDER	Order Grant /deny Certain Motions	
36	06-02-2017	MOTION	Motion Re Show Cause/vacate/fees	
37	06-02-2017	DECLARATION	Declaration /resp	
38	06-02-2017	DECLARATION	Declaration /gilbert H. Levy	
39	06-02-2017	DECLARATION	Declaration /halima Douma	
40	06-02-2017	ORDER TO SHOW CAUSE EXP0007	Order To Show Cause Ex-parte, Dept. Seattle - Clerk	06-22-2017FM
41	06-09-2017	ORDER TO SHOW CAUSE EXP0007	Order To Show Cause Re Contempt Ex-parte, Dept. Seattle - Clerk	06-29-2017FM
42	06-15-2017	NOTICE OF APPEARANCE	Notice Of Appearance /pet	
43	06-15-2017	AFFIDAVIT	Affidavit Of Patricia Baugher	
44	06-15-2017	AFFIDAVIT	Affidavit Of Patricia Baugher	
45	06-16-2017	ACCEPTANCE OF SERVICE	Acceptance Of Service	
46	06-16-2017	STIPULATION	Stipulation Re Electronic Service	
47	06-20-2017	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
48	06-20-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
49	06-23-2017	MOTION TO CHANGE TRIAL DATE	Motion To Change Trial Date/pet	
50	06-23-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
51	07-12-2017	DECLARATION	Declaration /gellert Dornay	

Click **here** for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website?
No. You must consult the local or appeals court record.

How do I verify the information contained in the search results?
You must consult the court record to verify all information.

Can I use the search results to find out someone's criminal record?
No. The Washington State Patrol (WSP) maintains state criminal history record information. Click **here** to order criminal history information.

Where does the information come from?
Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The search engine will update approximately twenty-four hours from the time the clerks enter the information. This website is maintained by the Administrative Office of the Court for the State of Washington.

Do the government agencies that provide the information for this site and maintain this site:

- **Guarantee that the information is accurate or complete?**
  NO
- **Guarantee that the information is in its most current form?**
  NO
- **Guarantee the identity of any person whose name appears on these pages?**
  NO
- **Assume any liability resulting from the release or use of the information?**
  NO

52	07-12-2017	DECLARATION	Declaration /shane Chester	
53	07-12-2017	DECLARATION	Declaration /pet	
54	07-12-2017	BRIEF	Brief /pet	
55	07-12-2017	DECLARATION	Declaration /janet Watson	
56	07-12-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
57	07-14-2017	DECLARATION	Declaration Of Mouad El Boukhari	
58	07-14-2017	AFFIDAVIT	Affidavit Of Abdellah Elfenne	
59	07-14-2017	AFFIDAVIT	Affidavit/kardadi Abdel Rhany	
60	07-14-2017	SEALED PRSNL HEALTH RCDS CVR SHEET	Sealed Prsnl Health Rcds Cvr Sheet	
61	07-14-2017	REPLY	Reply /memo Pet	
62	07-18-2017	MOTION HEARING FAM0001	Motion Hearing Family Law, Dept 1	
-	07-18-2017	AUDIO LOG	Audio Log Dr W275	
63	07-18-2017	ORDER DENYING MOTION/PETITION FAM0001	Order Denying Mtn W/out Prejudice Family Law, Dept 1	
64	07-20-2017	NOTICE OF HEARING	Notice Of Hearing Judge Rietschel/9am/with Argument	08-31-2017
			Sc/vac Finals/sched/fees	
65	08-31-2017	MOTION HEARING JDG0036	Motion Hearing Judge Jean Rietschel, Dept 36	
-	08-31-2017	AUDIO LOG	Audio Log Dr W331	
66	09-25-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
67	09-25-2017	TRANSCRIPT	Transcript	
68	09-28-2017	MOTION HEARING JDG0036	Motion Hearing Judge Jean Rietschel, Dept 36	
-	09-28-2017	AUDIO LOG	Audio Log Dr W331	
69	10-04-2017	ORDER DENYING MOTION/PETITION	Ord Deny Mtn To Vacate Final Ord	
70	10-13-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
71	10-13-2017	NOTICE OF HEARING	Notice Of Hearing /reconsideration	10-23-2017
72	10-13-2017	MOTION FOR RECONSIDERATION	Motion For Reconsideration/rsp	
73	10-13-2017	DECLARATION	Declaration Of Patricia Baugher	
74	10-17-2017	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
75	10-17-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
76	10-20-2017	DECLARATION	Declaration Of Patricia Baugher	
77	10-20-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
78	10-23-2017	ORDER ON MTN FOR RECONSIDERATION	Order On Mtn For Reconsideration /denied	
79	10-23-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
80	10-23-2017	BRIEF	Brief /petitioner	
81	10-25-2017	REPLY	Reply / Rsp	
82	10-25-2017	AFFIDAVIT/DCLR/CERT OF	Affidavit/dclr/cert Of	

		SERVICE	Service	
83	11-02-2017	ORDER ON MTN FOR RECONSIDERATION	Order On Mtn For Reconsideration /denied	
84	11-17-2017	NOTICE OF WITHDRAWAL OF ATTORNEY	Notice Of Withdrawal Of Attorney	
85	11-17-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
86	11-27-2017	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal	
87	11-27-2017	APPELLATE FILING FEE	Appellate Filing Fee	290.00
88	11-27-2017	APPEARANCE PRO SE	Appearance Pro Se Elbou, Mouad Aimane	
89	12-13-2017	SHERIFF'S RETURN OF SERVICE	Sheriff's Return Of Service	
90	12-19-2017	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls /77654-1	
91	12-26-2017	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers 77654-1/elboukhari Pgs 503-505(sealed) Pgs 1-502 Trans Coa 2/16/18	
92	12-26-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
93	12-26-2017	STATEMENT	Statement Of Arrangements	
94	12-27-2017	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
95	12-27-2017	DECLARATION	Declaration /resp	
96	12-27-2017	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
97	12-27-2017	DECLARATION OF MAILING	Declaration Of Mailing	
98	12-27-2017	DECLARATION OF MAILING	Declaration Of Mailing	
99	12-27-2017	NT RE: DEPENDENT OF MILITARY PERSON	Nt Re: Dependent Of Military Person	
100	12-27-2017	NOTE FOR MOTION DOCKET ACTION	Note For Motion Docket Adjust Support	02-07-2018FS
101	12-27-2017	MT TO ADJUST CH SUPPORT ORDER	Mt To Adjust Ch Support Order/state	
102	12-27-2017	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
103	12-27-2017	FINANCIAL DECLARATION OF PET	Financial Declaration Of Pet	
104	12-27-2017	DECLARATION	Declaration /resp	
105	01-05-2018	INDEX	Index Clks Pprs Pgs 1-502	
106	01-05-2018	INDEX	Index Clks Pprs Pgs 503-505	
107	01-24-2018	DECLARATION OF MAILING	Declaration Of Mailing	
108	01-24-2018	FINANCIAL DECLARATION	Financial Declaration /resp	
109	01-26-2018	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	
110	01-26-2018	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
111	01-29-2018	DECLARATION OF MAILING	Declaration Of Mailing	
112	01-29-2018	COPY	Copy Of Doc Submitted By State	
113	02-01-2018	COMMENT ENTRY	Clks Pprs Pgs 1-502	
114	02-01-2018	COMMENT ENTRY	Clks Pprs Pgs 503-505	
115	02-01-2018	SEALED FINANCIAL DOCUMENT(S)	Sealed Financial Document(s)	

116	02-01-2018	FINANCIAL DECLARATION OF PET	Financial Declaration Of Pet
117	02-01-2018	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service
118	02-05-2018	DECLARATION OF MAILING	Declaration Of Mailing
119	02-05-2018	DECLARATION	Declaration Of Rsp
120	02-07-2018	MOTION HEARING FAM0001	Motion Hearing Family Law, Dept 1
-	02-07-2018	AUDIO LOG	Audio Log Dr W278
121	02-09-2018	ORDER ON MT TO ADJ CHILD SUPP ORD FAM0001	Order On Mt To Adj Child Supp Ord Family Law, Dept 1
122	02-09-2018	ORDER FOR SUPPORT FAM0001	Order For Support Family Law, Dept 1

S2

MOUAD ELBOUKHARI - FILING PRO SE

June 27, 2018 - 9:39 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77654-1
Appellate Court Case Title:	Erzsebet Dornay, Respondent v. Mouad Harissi Elboukhari, Appellant
Superior Court Case Number:	11-3-00724-7

The following documents have been uploaded:

- 776541_Briefs_20180627213637D1623333_7775.pdf
  This File Contains:
  Briefs - Appellants - Modifier: Amended
  The Original File Name was Amended Appeal Brief_ElBoukhari. 6.27.18.pdf

A copy of the uploaded files will be sent to:

- info@seattlefamilylaw.net

Comments:

Amended Appellants Brief

Sender Name: Mouad ElBoukhari - Email: mouadelbou8@gmail.com
Address:
POBOX 1691
Snoqualmie, WA, 98065
Phone: (206) 643-1564

Note: The Filing Id is 20180627213637D1623333

NO. 77654-1-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION 1

MOUAD EL BOUKHARI,
APPELLANT,
v.
ERZSEBET REIKO DORNAY,
RESPONDENT

BRIEF OF RESPONDENT

JANET WATSON, WSBA 15442
ATTORNEY FOR RESPONDENT
108 S. WASHINGTON STREET SUITE 304
SEATTLE, WA 98101
(206) 340-1580
info@seattlefamilylaw.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

STATUTES

REGULATIONS AND RULES

Washington Civil Rules of Superior Court

Washington Rules of Evidence

Washington Rules of Appellate Procedure

Washington Superior Court Rules of Criminal Procedure

OTHER AUTHORITIES

INTRODUCTION

Appellant ("El Boukhari") appeals from the trial court's denial of his CR 60(b)(1), (4) and (5) and CR 59 reconsideration motions to vacate the May 23, 2011 order of default on which the final divorce orders (marital status, property division, restraining order, parenting plan and child support) were based.

Appellant's CR 60(b) motion did not seek to vacate the final orders ending the marriage or dividing property. He sought relief only from the final restraining, child support and parenting plan orders.

His CR 6(b)(5) motion is made on the grounds that the court lacked personal jurisdiction over him due to insufficient and/or inadequate process service.

Appellant's Brief argues that the May 23, 2011 order of default violated his substantive right to an equitable division of marital

property. The parties had little marital property then (CP 26 and 53) and none remains now.

Respondent ("Dornay") who has now remarried, does not cross-appeal and requests that this court affirm the lower court's denial orders.

This Responsive Brief reframes Appellant's "Issues Pertaining to Assignments of Error" below in more succinct form **(RAP 10.3(b))** and in the required "question" format **(RAP 10.3(g))** to facilitate more orderly responsive briefing.

1. ASSIGNMENT OF ERROR

Dornay does not make any assignments of error.

II. RESPONSE: ISSUES PERTAINING TO *APPELLANT'S* ASSIGNMENTS OF ERROR

1. Do the unchallenged Findings of Fact, taken with the *challenged* findings of Fact which the appellate court finds to be supported by substantial evidence, support the trial court's Conclusion of Law that El Boukhari was personally served with

original process by substitute service on his mother at her home in Casablanca on January 19,2011?

2. Did the trial court err in concluding that El Boukhari's CR 60(b)(1) motion to vacate the default order of May 23, 2011 is barred as untimely because the claim was not filed within one year?

3. Did the trial court err in denying El Boukhari's CR 60(b)(4) motion on the basis that he failed to sustain his burden of proof that Dornay perpetrated fraud or misrepresentation on him or on the court, resulting in entry of the Order of Default on May 23, 2011?

4. Did the trial court err in concluding that El Boukhari's claims for relief based on CR60(b)(4) are time-barred on the basis of the doctrine of "*laches*"?

5. Did the trial court err in holding that personal jurisdiction over a child's parent(s) is not required in order for the court to exercise child custody jurisdiction?

6. Did the trial court err by concluding that El Boukhari had actual notice of the Washington child custody proceeding for

purposes of RCW 26.27.241(1) through his participation in the Moroccan child custody court proceedings?

7. Did the trial court err by denying El Boukhari's CR 59 motion to vacate the CR 60(b) denial order based on "new" legal argument on reconsideration that he had not been personally served with the *amended summons and petition for divorce* rather than merely the initial summons and petition for legal separation?

III. STATEMENT OF THE CASE

On December 10, 2010 the parties and their then 3-year old son Joseph Dornay (f/k/a Yussef El Bou) flew from Seattle to Casablanca, Morocco with round-trip tickets to return home to Seattle January 11, 2011. The ostensible purpose of the trip was "to renew [their wedding] vows" while visiting El Boukhari's Moroccan family of origin **(Appellant's Brief ["AB"] p. 7)**. The plan included the parties and their child residing as guests in the Casablanca family home of El Boukhari's mother, Halima Douma. **A-1, Finding of Fact ["FF"] 9).** El Boukhari took vacation leave from his local

employment with Motorola, and Dornay was a stay-at-home mother **(CP 53).**

On January 10, 2011 El Boukhari informed Dornay that he was not going to return to Seattle, but instead would remain indefinitely in Casablanca. He forbade her from returning their child to the U.S. **(A-1/FF#10)**. El Boukhari told Dornay that she would take the child home "over [his] dead body." **(CP 53).** El Boukhari explains his decision to detain the child in Morocco in his *pro se* Appeal Brief: "[I] thought that Ms. Dornay would take Yusef and never let [me] see [my] son again", confirming his continuing belief that he was free in 2011 to make this international child relocation decision unilaterally. **(AB p. 8).**

El Boukhari claims to be a dual Moroccan/U.S. citizen **(AB p. 8).** Dornay is a U.S. citizen and lifelong resident of Washington. It is not disputed that the parties' child was born and had been resided all of his life in Washington prior to this "vacation" **(CP 53).**

El Boukhari knew that his sudden child relocation decision was against Dornay's will and without her consent **(A-1/FF 9-11)**.

Instead of returning to Seattle as planned on January 11, 2011 Dornay moved out of her mother-in-law's residence into Casablanca hotel(s), which became her primary residence for the rest of 2011. After a brief return to Seattle, Dornay returned to Casablanca with her father in February **(CP 53).** She remained in Casablanca, although because of Moroccan immigration law she had to re-enter Morocco every 90 days to preserve her status, until December, for the sole purpose of being reunited with and able to return the child home with her to the United States **(CP 53).**

On January 18, 2011, from her hotel in Casablanca and through Seattle counsel, Dornay filed a verified Petition for Legal Separation[1] in King County Superior Court. **(CP 1, 53).**

On January 14, 2011 Dornay's brother, Gellert Dornay, and brother-in-law Shane Edwards flew from Seattle to Casablanca on

[1] Dornay initially filed a petition for legal separation **(CP 1)** rather than for divorce. She later amended her petition to request divorce. **(CP 12).** The reason for the amendment was simply that when the action was commenced, Dornay, who was then residing in a Casablanca hotel, asked her parents to act as her agent to meet with Seattle counsel. Her parents did not know at that time whether Dornay wanted a divorce, only that she wanted to immediately retrieve her little boy from Casablanca and come home. When she was later able to communicate in person with her Seattle attorney, Dornay confirmed that she indeed wanted a divorce, resulting in the amended petition for divorce **(CP 55).**

an emergency basis, to assist Dornay in trying to persuade El Boukhari to voluntarily return the child and allow mother and child to return to Seattle, or if he did not agree to voluntarily relinquish custody, to serve El Boukhari with the Washington summons, petition, motion, declaration for show clause and the emergency custody order **(A-1/FF 14)**. El Boukhari refused to speak to or meet with his brothers-in-law **(A-1/FF 15)** so Dornay and her brother and brother-in-law went to Ms. Douma's home, uninvited. Ms. Douma denied Dornay and her brother access to El Boukhari or the parties' the child, but did allow them brief entrance into her home, where Gellert Dornay was able to accomplish substitute service on her **(A-1 2/FF 14-19).**

After service on Ms. Douma, Dornay and her brother proceeded immediately to the U.S. Consulate in Casablanca to seek U.S. citizens' assistance. After speaking with Dornay, U. S. Consular Officer Seth Snyder telephoned El Boukhari, who agreed to allow a U.S. Embassy "child welfare" home visit **(A-1/ FF 20).** The official U.S. Embassy visit occurred two days later. The U.S. State Department reported the visiting U.S. officials' observation that the

child appeared to be settling into permanent residency, to Dornay via email **(A-1/FF 20, 22)** and **(A-5).**

Dornay retained counsel, Mustafa Brio, in Casablanca to assist her in enforcing the U.S. emergency child custody order in Moroccan court under the 1980 Hague Convention on the Civil Aspects of International Child Abduction **(A-1/FF 23)** and **(A-6)**. To this end, Mr. Briou initiated a civil "*exequatur*" action which is a legal proceeding to have the Moroccan court recognize and enforce a foreign judgment **(A-1/FF 24)**. Before filing this action, Mr. Brio had to have Dornay's initial Washington pleadings translated in Arabic, the official language of the Moroccan court, which caused delay of a few weeks in commencing the *exequatur* proceeding. **(CP 53)** and **(A-1 #2/FF 1, 29)**.

Exequatur proceedings could not be *completed* by the Casablanca court until that court received a *final* custody order from the Seattle court **(CP 55).**

El Bouhkari did not respond or appear following substitute service on January 19, 2011. The Washington final decree and

parenting plan were entered *ex parte* on May 23, 2011 upon entry of the order of default. **(A-1, 1 and 2**).

The Moroccan court issued an emergency temporary visitation order on March 17, 2011 **(CP 53)** which El Boukhari repeatedly violated over the course of 2011, resulting in his being jailed **(CP 53).** On June 23, during a rare visitation allowed by El Boukhari, Dornay, with child in arms, tried to run away from El Boukhari and various members of his family who surrounded the child and her during the visitation. The mother/child meeting was conducted in a public park that El Boukhari had selected for the occasion since Dornay was not permitted to enter Ms. Douma's home **(CP 53).** Dornay tried to run to the U.S. Consulate with the hope of placing her child under U.S. protection **(CP 53).** El Boukhari and his relatives reacted by assaulting Dornay and forcibly wrenching the child from her arms, after which the police arrived, took both parents to the police station and then released them. El Boukhari's sister removed from the scene before the police arrived. **(CP 53)** Subsequently, the Moroccan court modified the temporary

visitation order to require that El Boukhari's sister bring the child to the police station for child exchanges **(CP 53).**

El Boukhari did not dispute the June 23 events in his CR 60 *reply* declaration. Instead he declared that Dornay had been arrested and jailed at an unspecified date in Morocco, for trying to abduct their child across the Morocco-Turkish border. **(CP 57).**

After the translated *final* May 23, 2011 U.S. orders were submitted to the Moroccan court, that court issued its' initial *exequatur* order of July 5, 2011. **(A-1, 9)**. This order denied Dornay's request for Moroccan recognition and enforcement of the U.S. (Washington) child custody judgment, holding that the provisions of the U.S. custody order[2] prohibiting father from *all* contact with the child was contrary to substantive Moroccan family law.

---

[2] Morocco did not accede to the Hague Convention until 2010 and the U.S., did not accept the accession until 2012. Understandably, the July 2011 findings of the Moroccan Court take no cognizance of the Convention. Further , that court's analysis of the U.S. custody order is not fully accurate. The findings overstate the nature and duration of the restraint against father's contact with the child under WA. law. The order correctly quotes the "stay 1000 feet away" language of the WA. restraining order, but does not quote provisions of the Parenting Plan imposing RCW 26.09.191 restrictions based on the father's international civil child abduction and history of domestic violence. Nor did that court have knowledge that WA. statutory law allows Plan modification (RCW 26.09.260). Contrary to Appellant's argument that the restrictions are "permanent" and this akin to parental rights termination, the Plan's child safety restrictions are both reasonable and avoidable by father's compliance.

Dornay appealed from the *exequatur* denial decision with the assistance of her private counsel and with the intervention of the Moroccan "King's Procurer" who sought a declaratory judgment on behalf of Morocco's Hague Convention "Central Authority"[3] that the Kingdom of Morocco must recognize and enforce this U.S. child custody order under the Hague Convention **(CP 53).**

On August 29, 2011 the Moroccan court reversed its initial *exequatur denial* decision of July 5, 2011, holding that the United States has exclusive jurisdiction over custody of this child **(A-1/FF 30) and (A-5).**

El Boukhari appealed from this order **(CP 53).** The Moroccan court denied El Boukhari's appeal, and affirmed its' August 29, 2011 decision to cede jurisdiction to the United States by final order issued December 12, 2011. **(A-1/FF 30-32)**.

The December 12, 2011 final order also ordered El Boukhari to immediately return the child to Dornay and authorized Dornay to remove the child from Morocco. **(A-1/FF 10)**.

---

[3] Morocco's Central Authority under the Hague Convention is the Office of the Ministry of Justice in the capital city of Rabat. *Exequatur* proceedings occurred in Casablanca. **(A-1 9, 10).**

Although he denies that he was a party to the Moroccan *exequatur* proceeding, El Boukhari admits the proceeding ended with Morocco ceding Hague jurisdiction to the United States in his Brief [4].

With the legal authority of this final Moroccan order mother and child were able to leave Morocco and immediately did so with the assistance of Casablanca Police, Casablanca Port Authority security and United State Consular security officers, and without El Boukhari's consent or cooperation. Mother and child arrived home to Seattle on December 24, 2011. **(A-1/FF 33)**.

The child is now 11 years old and has not had contact with his father since the child left Morocco, although El Boukhari denies knowing that there was a Washington restraining order and parenting plan in place since 2011 until 2016.

---

[4] Appellant's Brief declares: "Mr. El Boukhari was not served regarding the second case in Morocco that Ms. Dornay brought against him, and ultimately the court in Morocco did not have a full hearing or trial as it referred to the default orders entered in Washington State that Mr. El Boukhari also did not know about until some years later". **AB 8-9**.

El Boukhari's whereabouts between December 2011 and November 2016 are not of record because this information was not disclosed below by El Boukhari nor known to Dornay.

El Boukhari declared in his CR60(b) moving affidavit that he did not become aware that King County Superior Court had entered final divorce orders on May 23, 2011 until October 23, 2016, when he received a first notice of garnishment and lien from Washington Division of Child Support seeking to collect support arrearages from 2011 through 2016[5] **(CP 37).** The court did not find this testimony credible. **(A-1/Conclusion of Law ["CL"] 8).**

Dornay responded with multiple affidavits detailing the specific circumstances of (substitute) personal service which the court found credible **(CP 51, 52, 53)** and **(A-1 1/FF 14-19).** El Boukhari also submitted his mother's affidavit in reply to Dornay's response. Ms. Douma declared that she had "received no service or mail from the United States in 2011". **(CP39).** The trial court did not find her "one-line" declaration credible. **(A-1 2/FF 28).**

[5] Dornay confirms that letter El Boukhari relies is dated October 24, 2016, and that Conclusion of Law # 7 (A-1 2) contains a scrivener's error stating that the year was 2015.

El Boukhari replied, through multiple non-party affidavits as well as his own reply declaration **(CP 57, 58, 59 and 60)** that the parties had lived together in "his apartment", apparently separate from his mother's home, throughout 2011. One reply affiant, identifying himself as the child's 2011 Casablanca pediatrician, declared that both parents had accompanied the child to an office visit that year **(CP 60).** Another affiant identified himself as a neighbor living in a unit of a Casablanca condominium next to El Boukhari's, and declared that he had often seen Dornay there during 2011 **(CP 58).**

El Boukhari did not provide copies of *any* Moroccan court orders to the court below on either of his motions, nor did he object to the authenticity, translation accuracy or truthfulness of the translated Moroccan court orders Dornay submitted. **(A-1/FF 9, 10).**

The final Moroccan *exequatur* judgment includes a finding of fact that El Boukhari (f/k/a El Bou) received notice of hearing on December 12, 2011. **(A-1/FF 10).**

Dornay's attorney objected at CR 60(b) motion that El Boukhari's reply declarations should be stricken as not being in strict reply thus leaving Dornay with no opportunity to defend against new allegations of fact. The trial court did not rule on that objection.

IV. SUMMARY OF ARGUMENT

The trial court's findings of fact are based on legally sufficient evidence. The trial court did not abuse its' discretion by concluding that El Boukhari was personally served and denying his motion to vacate the final orders of May 23, 2011.

El Boukhari waived his right to raise the affirmative defense of lack of service of the a*mended p*etition of divorce in his CR 59 motion in two ways: (1) by dilatory and inconsistent action to preserve the right, that is, by failure to assert this *specific* service defect in his CR 60(b) motion and (2) by denying that he wants the provisions of the final divorce decree terminating the marriage declared void.

The Parenting Plan must be affirmed even if this court rules that the trial court lacked personal jurisdiction over El Boukhari and vacates the denial orders.

Lack of personal jurisdiction over El Boukhari is not a defense against this court's exercising exclusive child custody jurisdiction, since Washington is the child's U.C.C.J.E.A. "home state" and Hague Convention "habitual residence". Reasonable efforts were made to provide father with actual notice of a WA custody proceeding under RCW 26.27.241. The court did not abuse its' discretion by concluding that father received actual and timely notice of the Washington child custody proceeding.

V. ARGUMENT

1. Do the unchallenged Findings of Fact, taken with the *challenged* findings of Fact which the appellate court finds to be supported by substantial evidence, support the trial court's Conclusion of Law that El Boukhari was personally served with original process by substitute service on his mother at her home in Casablanca on January 19,2011?

An unchallenged finding of fact becomes a verity on appeal. *Mueller v. Wells, 185 Wn. 2d 1, 9 (2016)*. Appellant's Brief does not assign error to the trial court's findings of fact #1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 20, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34 and 35 in

support of the denial order **(A-1)**. Accordingly, these findings of fact are verities on Appeal.

If a finding of fact is challenged, the standard of review on appeal is whether the finding is supported by substantial evidence on the record. The appellate court reviews such challenges to determine whether substantial evidence supports the court's findings and whether those findings support the trial court's conclusions of law. *Columbia State Bank v. Invicta Law Group, PLLC, 199 Wn.App. 306,*

A party challenging a finding of fact bears the burden of showing that the record does not support the trial court's finding. *Scott's Excavating Vancouver, LLC v. Winlock Props., LLC,* 176 Wn. App. 335, 342 (2013). "Substantial evidence" is " the quantum of evidence sufficient to persuade a fair-minded person of its truth. *Endicott v Saul, 142 Wn. App. 899, 909 (2008).*

El Boukhari argues that the trial court erred by finding Dornay's detailed responsive affidavits more credible than El Boukhari's mother's affidavit denying service and his CR 60 reply declarations. He urges this court to apply a *de novo* standard of

review to the sufficiency of the evidence and to reweigh the credibility of the affiants since the hearings below did not include oral testimony.

Dornay concedes that the Appellate court need not give deference to findings of fact based solely on documentary evidence submitted below. *In re Estate of Reilly, 78 Wash.2d 623, 1970.* However, this court applies the "abuse of discretion" standard of review to CR 60(b) decisions. *Morin v. Burris*, 160 Wn.2d 745, 753 (2007*); Haller v. Wallis, 89 Wash.2d 539, 543 (1978).*

"Abuse of discretion" means that a trial court exercised its discretion on untenable grounds or for untenable reasons, or that a discretionary act was manifestly unreasonable. *Coggle v. Snow,* 56 *Wash. App. 499, 507 (1990).*

A trial court's CR 60(b) decision is not subject to *de novo* review. Instead, a CR 60(b) decision is:

> "a discretionary judgment of a trial court of whether to vacate a judgment is a decision upon which reasonable minds can sometimes differ. For this reason, if the discretionary judgment of the trial court is based upon tenable grounds and is within the bounds of

reasonableness, it must be upheld". *Lindgren v. Lindgren 58 Wn. App. 588, 596 (1990)*

Appellant's Brief argues that the trial court's credibility determinations were erroneously based on cultural bias against him, which he imputes to the Judge. This supposition is baseless and not supported by any evidence on the record. In support of the bias proposition[6] the Appeal Brief notes Judge Rietschel's comment that she "did not have "any knowledge of Moroccan law. The Brief takes this remark out of context, which was that the Judge could not make a finding, as El Boukhari urged, that he was not a party and as such had no notice of the Moroccan custody proceeding. No reasonable inference of cultural bias can be derived from this straightforward factual statement. A *reasonable* inference would simply be that El Boukhari, as the party urging entry of this "finding of fact" had the burden of proof and failed to meet it. Indeed, he produced *no* evidence[7] to prove that there were *parallel* Moroccan judicial proceedings related to child custody, nor that he was not made a party to one of the dual proceedings. Instead the claim of dual

---

[6] Appellant's Brief, page 12, footnote 1 and p. 22

[7] CR 9(k)(2) imposes several requirements on a party pleading foreign law, none of which El Boukhari met.

Moroccan child custody proceedings is based solely on his counsel's argument at CR 60 motion hearing, as though this were admissible evidence.

The trial court's credibility determinations here are easily substantiated. In addition to detailed process service affidavits[8], Dornay's response **(A-1/FF 5)** included an email from Jamal Jones, a U. S. State Department Office of Children's Issues official,[9] confirming that U.S. Embassy officials had made a "child welfare" home with El Boukhari's consent, on January 21, 2011 at his mother's home, two days after substitute service. The visit was instigated by Dornay's visit to the Casablanca Consulate immediately after substitute service on January 19. **(A-1 2/FF 20).** The email reports that the Embassy officials had observed father and child and spoken with El Boukhari, who essentially assured the visiting U.S. Consular agents that father and child were settling comfortably into their new permanent residence **(A-1/FF 11).** El

---

[8] The issue before the court in a post-judgment CR 60(b)(5) motion is not the sufficiency of the original service affidavits but rather on what in fact happened, which may be supported by supplemental affidavits, Brennan v. Hurt, 59 Wn.App. 315, 319, (1990).

[9] According to this email, the teleconference occurred on the date of substitute service, which is consistent with Dornay's responsive declarations.

Boukhari's reply declaration does not dispute the authenticity or truthfulness of this email.

El Boukhari complains that the court did not accord proper weight to his CR 60 reply declarations. El Boukhari's non-party reply declarations imply that the parties were not even separated while they both lived in Casablanca during 2011. His Appellant's Brief declares outright that "Ms. Dornay actually moved in with Mr. El Boukhari...and lived with [him] at his apartment in Morocco off-and-on throughout 2011." **(AB, 8)**

El Boukhari's Reply declaration asserts that Dornay was arrested at the Morocco-Turkish border and jailed for trying to abduct their child from Morocco, though particulars of this event, such as date, location and official criminal records, are not disclosed. **(CP 57)**. He also provides no explanation as to why the parties were involved in Moroccan child visitation litigation all at if they were at the same time also living together in his Casablanca apartment, as his reply declarations portray.

Given the obvious contradictions within his own testimony and the terse and unpersuasive affidavit of Ms. Douma (CP 39) the trial

court did not abuse its' discretion by finding his evidence not credible nor by concluding that El Boukhari had been personally served by substitute service on Ms. Douma at her Casablanca home on January 19, 2011 Substitute personal service is authorized and has the same effect as personal service on a party within Washington under **RCW 4.28.080(16).** Valid service within Washington is also valid when made on a party (with sufficient connections to Washington) in a foreign jurisdiction. **RCW 4.28.180.**

2. Did the trial court err in concluding that El Boukhari's CR 60(b)(1) motion to vacate the default order of May 23, 2011 is barred as untimely because the claim was not filed within one year?

The court did not err by treating El B's CR 60(b)(1) motions as time barred under CR 60(b)(1):

> **CR 60(b)(1) "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;...
>
> ***The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken."*** *(emphasis added).*

The standard of review of a trial court's denial of a CR60(b)(1) motion is abuse of discretion. "Discretion is abused when it is exercised on untenable grounds or for untenable reasons." *Luckett v. Boeing Co. 98 Wn.App. 307 (1999). In Luckett,* Division 1 upheld the trial court's denial of the plaintiff's CR 60(b)(1) motion to vacate a default judgment based on "untimeliness" even though the motion to vacate was filed only four months after entry:

> "We hold that a motion brought under CR 60(b)(1) may be untimely if it is not made within a reasonable time even if it is filed within one year from the date of the judgment, order, or proceeding from which relief is sought. Although we prefer the resolution of cases on their merits, we affirm the trial court's denial of Luckett's motion to vacate because it was not an abuse of discretion to find that the motion was untimely." *Luckett, supra.*

The *Luckett* court extensively reviewed the history of time limitation on commencing CR 60(b)(1) show cause actions, as to both this Rule and its federal counterpart and held that the plain meaning of the Rule is that a motion to vacate under CR 60(b)(1) must comply with *both* the "reasonable time" *and* "one year" time limits, making "one year" the first prong with "reasonableness" being a second prong that must be met *within* the one-year limit cap. The *Luckett* court weighed

the conflicting interests of *res judicata* against the equitable preference for judicial decisions on the merits and explained the rationale for its' decision:

> "We recognize that Washington law shows a strong preference for deciding cases on the merits...We do not seek to degrade that principle here but recognize that weighted against this principle is the need for a structured, orderly judicial system. *Luckett, supra, 314.*

Appellant's Brief argues that the court failed to consider the best interest of the child by affirming the validity of a parenting plan determined by default rather than on the merits. Assuming *arguendo* that a CR 60 motion can be treated as a custodial determination, **RCW 26.09.002** articulates the "best interest" standard as public policy of the state of Washington:

> " The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. 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. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed

> relationship of the parents or as required to protect the child from physical, mental, or emotional harm."

The need for a "structured, orderly judicial system" is far more pronounced when the *res* the court must adjudicate is whether it has child custody jurisdiction over a child whose parents are living halfway round the world from one another, *albeit* both in Hague Convention countries.

3. Did the trial court err in denying El Boukhari's CR 60(b)(4) motion on the basis that he failed to sustain his burden of proof that Dornay perpetrated fraud or misrepresentation on him or on the court, resulting in entry of the Order of Default on May 23, 2011?

The heightened standard of proof that a CR 60(b)(4) fraud or misrepresentation claimant must meet is "clear, cogent and convincing" evidence on *each* of the nine elements of fraud. *North Pac. Plywood, Inc. v. Access Road Builders, Inc., 29 Wn. App. 228, (1981).* El Boukhari does not argue on appeal that he met this heightened burden nor does his Brief point to evidence below that would support his claim that the court's conclusion of law is not based on sufficient findings. **(A-1/CL 1).**

El Boukhari based his CR 60(b)(4) motion on his claim that Dornay had fraudulently withheld the "fact" of concurrent foreign

(Moroccan) custody litigation from the Washington court when filing her initial Petition on January 18, 2011 **(CP 37).** Dornay responded that she did not initiate the Moroccan proceeding until *after* commencing the Washington action **(CP 53).** El Boukhari's reply does not provide any documentary or other evidence as to when the Moroccan proceeding was actually commenced and did not, even minimally, comply with the requirements of pleading foreign law **(CR 9(k)(2)).**

Further, in response, Dornay pointed out that the record of the court below reflects that once both the U.S. and Moroccan actions *were* filed, Dornay *did* disclose the existence of "dual" proceeding to Chief UFC Judge Deborah Fleck **(A-1 2/FF 34)** Consistent with the court's duty to communicate as set forth in RCW 26.27.461, Judge Fleck reacted to the disclosure by writing to her counterpart judicial officer in Casablanca requesting recognition and enforcement of the U.S. final child custody order. **(A-1/FF 34).**

In reply, El Boukhari shifted the factual basis of his CR 60(b)(4) fraud allegation from "*no* notice to the court" to improper *ex*

parte contact with the court, despite the fact that he was in default at the time **(CP 24).**

In addition to substitute personal service, Dornay mailed initial process to El Boukhari **(A-25, 26, 27).** Dornay concedes that the *ex parte* default order of May 19, 2011 erroneously relied on a finding of proper statutory mail service **(A-1/FF 26)** However, on review, this court may sustain a trial court's decision on any sufficiently proven, alternative factual grounds. *In re Marriage of Rideout, 150 Wn.2d. 337, 358 (2003).* Service is not invalidated by late filing of an affidavit of service on CR 60; service may be proved by affidavits submit to the CR 60 court. *Brennan v. Hurt 59 Wn.App. 315 (1990).*

The court below did not abuse its' discretion by concluding that El Boukhari was properly served by substitute service on January 19, 2011. The trial court's decision denying the CR 60(b)(5) motion on this basis must accordingly be sustained.

4. Did the trial court err in concluding that El Boukhari's claims for relief based on CR60(b)(4) are time-barred on the basis of the doctrine of "*laches*"?

The trial court did not error in applying the equitable doctrine of "*laches*" to bar El Boukhari's CR 60(b)(4) claim **(A-1/FF 25-27 and CL 3).** El Boukhari's assertion that he did not have knowledge of the Washington divorce proceeding until 2016 was found not credible by the trial court.

The record does not provide any evidence to support a legal excuse for El Boukhari's first *five years* of delay in commencing a CR 60(b)(4) fraud or misrepresentation action to void the default decree. Nor does El Boukhari explain how his loss of physical custody of the child in December 2011 pursuant to the Moroccan *exequatur* judgment did not provide him with actual notice of the existence of Washington child custody proceedings.

El Boukhari's Brief *does* provide evidence to support an excuse for his delay in commencing the CR 60(b) action, beginning October 23, 2016, which is when he asserts that he first discovered the Washington dissolution proceeding. He commenced the CR 60 show cause proceeding on June 2, 2017, more than seven months after his first admitted knowledge of default **(CP 39,40).** He argues that this 7-month delay is reasonable because he spent six of those

months in jail in King County pending his criminal trial for custodial interference[10]. This excuse is without merit. His in-custody status during some of the time in question cannot excuse dilatory filing of a civil CR(6)(b) proceeding. His in-custody status did not bar him from access to counsel or deprive him of the right to initiate a civil action *pro se*. Further, El Boukhari had to have chosen to waive his "speedy trial" right in order to spend more than 60 days in custody pre-trial. CrR 3.3(b)(1).

5. Did the trial court err in holding that personal jurisdiction over a child's parent(s) is not required in order for the court to exercise child custody jurisdiction?

The court did not err in holding that personal jurisdiction over a parent is *not* necessary to give the trial court subject matter jurisdiction over child custody when Washington is the child's

[10] El Boukhari repeatedly points out that he was found "not guilty" of criminal custodial interference and opines that this verdict was based on his proof at criminal trial that the Dornay was not a credible witness. There is no evidence in this record as to why the jury rendered its' verdict nor does that verdict equitably estop Dornay, who of course was not a party to the criminal proceeding, from defending against El Boukhari's subsequent CR 60(b) civil motion.

UCCJEA "home state" (RCW 26.27.201) when a parent is outside this state.[11] RCW 26.27.201(3) clearly states:

> *"Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination."*

Nevertheless, **RCW 26.27.041** expressly recognizes the constitutional due process right of parents to reasonable "notice and an opportunity to be heard" in child custody proceedings, and **RCW 26.27.081** provides a non-exclusive list of ways that requisite notice may be provided to a parent outside Washington. The list includes mailing, and without restriction against a party personally mailing notice. **(RCW 26.27.081(2).** Dornay's affidavit of mailing of initial process to El Boukhari (CP 22) was sufficient to provide notice to El Bouhkari of the Washington child custody proceeding.

6. Did the trial court err by concluding that El Boukhari had actual notice of the Washington child custody proceeding for purposes of RCW 26.27.241(1) through participation in the Moroccan child custody court proceedings?

---

[11] Decisions of both the Moroccan court **(A-1 #10)** and the U.S. custody order (WA Permanent Parenting Plan of May 23, 2011) are premised on the undisputed fact this this child's "habitual residence" for Hague Convention purposes, and his legally consistent UCCJEA "home state", was the United States **(A-1 #4).**

The trial court did not err by treating El Boukhari's participation in the Moroccan legal proceeding as having provided him with additional actual notice of Washington's assertion of child custody jurisdiction by "other" means under **RCW 26.27.081**.

El Boukhari's argument below, that he had not participated in the Moroccan court proceedings is belied by his declaration that he and Dornay were frequently "in court" in Casablanca, together, during 2011. **(CP 57).**

Further, the July 17, 2011 initial *exequatur* denial order **(A-1 9)** specifically quotes the *exact r*estraint language from the US final restraining order:

> "Whereas after the court has reviewed the document in the file, **especially the divorce asked for enforcement**, it was clarified in court, it is contrary to the general order of Morocco and the provisions of the Family Code in the side on guard because the judgment mentioned above prohibits the child's father YUSSEF *(sic)* away from his son, **a distance of 1000 feet of his home, his school and the home of his custody until the child reaches the age of 18**. Whereas this result, it should declare *(sic)* that the application has no legal basis, it must therefore be reject it *(sic)*." (Emphasis added.)

The Moroccan court's August 29 reversal of the initial July 5 decision **(A-10)** recites that El Boukhari was served with notice of that hearing

at his mother's address and failed to appear.[12] El Boukhari appealed from that order, delaying final decision until December 12, 2011. **(CP 35).** Appellant admits that he had notice of "one of the legal proceedings brought against him in a Moroccan case"[13] It strains credulity to the breaking point to believe that El Boukhari did not come to realize during the year-long Moroccan *exequatur* litigation that Washington had asserted child custody jurisdiction.

7. Did the trial court err by denying El Boukhari's CR 59 motion to vacate the CR 60(b) denial order based on "new" legal argument on reconsideration that he had not been personally served with the *amended summons and petition for divorce* rather than merely the initial summons and petition for legal separation?

The trial court's CR 59 denial order **(A-1/FF 13)** correctly notes that El Boukhari presented no excusably late "new evidence" or other basis for reconsideration except the claim his counsel first articulated in oral argument at CR 60 presentation that process service of January 19, 2011 was inadequate because it did not

[12] Ms. Douma's address, sworn to by Dornay in her Affidavit of Mailing original process, is the same address as the father's address recited by the court in its' final order of December 12, 2011. **(A-1 2/FF16 and 31) and (A-1, 10)**

[13] Appellant's Brief, page 8.

include the *amended* summons and petition for dissolution. **(A-1, 3 and 4)**.

Appellant relies on *In Re Marriage of Markowski, 50 Wn. A-1. 633 (1988)* for the proposition that an amendment to the pleadings to request divorce rather than legal separation creates a new cause of action entitling the responding spouse to new personal service. The CR 59 court below declined to reconsider its' CR 60(b) decision on this basis, reasoning that service of initial separation process had given El Boukhari adequate notice that Dornay was seeking property division, child support, parenting plan and restraining order (although not divorce) since each of these remedies is segregable and equally available through legal separation or divorce proceedings. **(RCW 26.09.050).**

Nor did the trial court abuse its discretion by declining to consider remanding the sole issue of marital status for trial when El Boukhari did not plead or argue in his CR 60 motion that he sought the relief of having the final order granting divorce status vacated. **(A-1 2/FF 3).**

Dornay concedes that proper service of the summons and complaint is required to invoke personal jurisdiction over a party. *Scanlan v. Townsend, 181 Wn.2d 838, 847 (2014).* Consequently, however, insufficient service of process is an affirmative defense. *Lybbert v. Grant County, 141 Wn.2d 29, 38-39, 2000.* A respondent may waive the affirmative defense of insufficient service in two ways: first, by being dilatory in asserting the defense or second, by proving assertion of the defense is inconsistent with the defendant's previous behavior. *Lybbert, supra,* 39. In order to preserve the jurisdictional question of lack of personal jurisdiction, a party must proceed to assert the defense "without equivocation, precisely and with dispatch." *Sanders v Sanders, 63 Wn.2d 709 (1964).* In Sanders, the husband had made a CR 12(b) motion to change venue, without also joining a motion to dismiss on the basis of lack of personal jurisdiction. The *Sanders* court held that if one Rule 12(b) defense is raised by motion, the movant waives objection to a CR 12(b) jurisdictional challenge by not joining that objection with his motion to change venue or making the dismissal motion first, noting that the purpose of CR 12(b) is to reduce the number of pretrial motions.

Similarly, a party should not have to defend multiple motions to vacate a judgment when the claimant was aware of all claims at the time of making the first motion.

Dornay submits that the trial court did not abuse its' discretion by treating El Boukhari as having waived this adequacy of process service argument by not timely raising the issue in his CR 60(b) motion.

Even if the CR 59 court had considered El Boukhari's new inadequacy of process service argument, Dornay argues that *Markowitz* is distinguishable from the instant case.

Although the *Markowitz* court based its' decision to vacate the default decree for lack of personal service of the amended "divorce" petition, the equities of these cases are inapposite. In *Markowitz*, the parties were married for 12 years and had two children. Neither had remarried. They resided in Oregon throughout the marriage until separation, when wife left and took the children with her to live with her parents in Yakima. Husband continued to reside in Oregon. Wife filed for legal separation in Washington. Husband was personally served with the summons and petition for legal separation while

merely physically present in Washington to spend time with the children. He did not appear or respond. Several months later, wife filed an amended petition to request divorce. The amended summons and petition were not personally served. A default divorce decree was subsequently entered *ex parte* and without notice to the husband.

Mr. Markowitz complied with the final order of support and parenting plan for a year. Then on November 14, 1985, exactly one year after the default order was entered, he initiated a CR 60(b)(5) show cause proceeding to vacate the default order because he had not been served with the amended "divorce" pleadings. The trial court denied his motion. The Court of Appeals (Div. 3) reversed, holding:

> There is good reason to require new service of a summons and petition because the two actions (separation and dissolution) have **distinctly different consequences.** Without notice in the summons that default will be entered unless a response is received before a certain date, CR 4.1(b), the party is not afforded adequate notice to protect his rights. **Mrs. Markowski was required to serve a new summons because the petition for dissolution asserted "new or additional claims for relief" not previously asserted.** CR 5(a). Service of process was deficient;

> therefore, the trial court lacked personal jurisdiction. «2» (Markovitz) (*Emphasis added).*

Neither the Markowski decision nor the Appellant's Brief articulate any specific "distinctly different consequences" between legal separation and divorce, other than the obvious "new or additional issue" of *termination* of marital status. Indeed, under Washington law, all other marital issues (property division, child support, parenting plan and restraining orders) are determined under the same statutory law in legal separation as in divorce proceedings. **RCW 26.09.020**. In the instant case, the CR 59 court correctly concluded that the initial summons and petition for legal separation provided adequate notice and opportunity for El Boukhari to defend *all* issues ancillary to divorce or legal separation proceedings *except* the resulting marital status of the parties.

The court did not abuse its' discretion by declining to address El Boukhari's CR 59 motion based on inadequacy of "divorce" process, since the movant did not request the relief of reinstatement of the marriage in his CR 60 motion.

Dornay further argues that even if El Boukhari wanted in 2011 or wants now to remain married, there is no basis in law or fact for him to successfully object, on the sole issue of his opposition to divorce, even if this severed issue were remanded for trial.

Among the few undisputed facts in this case are:

(1) El Boukhari and Dornay have been living completely apart from one another since *at least* December, 2011,

(2) Dornay has had exclusive custody of the child in Washington since December 24, 2011,

(3) the parties have not communicated or had any contact with one another since 2011 except through this and the related criminal litigation referred to in Appellant's Brief.

For the past seven years, El Boukhari has enjoyed the benefit of not having any of his earnings and property acquisitions subject to characterization as community property, and was otherwise afforded the status and rights of a single person, following coverture of only four years **(CP 28).**

Dornay further argues that even if El Boukhari had wanted or now wants to preserve the marriage without Dornay's consent, it

was, is not possible in the issue is remanded for trial, for him to submit sufficient evidence to support a judgment denying Dornay a divorce, since there is *no* legal basis for a trial court to deny divorce under these circumstances. **RCW 26.09.030** articulates this state's "no fault" divorce policy under which Washington courts must grant divorce if *either* spouse so requests.

It is not disputed on this record that Dornay at least, continues to want to be divorced from El Boukhari. Thus *all* proffers of evidence at trial on remand to determine whether divorce should be granted, when there is no factual dispute that at least one spouse wants a divorce, would be irrelevant under **ER 401**. Irrelevant "evidence" must be excluded by the trial court under **ER 402**. In effect, a Washington spouse requesting divorce is afforded an irrebuttable presumption that divorce should be ordered. The clear, specific and limited grounds for divorce expressed in **RCW 26.09.030** thus begs the question of what "opportunity to defend" at trial, then or now, El Boukhari was not afforded due to lack of service of amended pleadings for divorce when the most the court could do if one spouse does not want a divorce, is to require the parties to

attempt reconciliation through court ordered counseling before the divorce is granted. Clearly in this case, such "counseling", even if King County had the judicial resources to provide marital counseling, would be a useless act.

Material residency facts of this case also distinguish it from the equities balanced in *Markowitz*. In this case, both spouses were undisputedly Washington residents until the Casablanca "vacation", after which Dornay remained a Washington resident. El Boukhari did not disclose his own residency between December, 2011 until 2016 to the trial court. One year after he unilaterally caused the relocation of the child to Morocco, the child was, in effect, adjudicated by the Moroccan court to be an habitual resident of the U.S. under the Hague Convention **(A-1/FF 6,10)**. The Moroccan Hague Convention based *exequatur* proceeding gave El Boukhari a unique, concurrent opportunity to defend and challenge the validity of the U.S. final custody order in the Moroccan as well as the Washington court.

In contrast, the *Markowitz* court, although holding order of default and thus all final, orders void on the basis of lack of personal service of the amended pleadings, expressed concern in *dicta* that

the original service of legal separation process itself may have been unconstitutional, since there was no evidence on the record that Mr. Markowitz had the constitutionally required "minimum contacts" with this state to establish personal jurisdiction. In footnote <2>, the *Markowitz* court commented:

> **«2» Though not necessary for our disposition of this matter, we note the trial court could not have obtained personal jurisdiction over Mr. Markowski to adjudicate the child support and property division portions of the action in any event without his consent. No minimum contacts with Washington were present**. KULKO v. SUPERIOR COURT, 436 U.S. 84, 56 L. Ed. 2d 132, 98 S. Ct. 1690 (1978); IN RE MARRIAGE OF JOHNSTON, 33 Wn. Ap. 178, 179-80, 653 P.2d 1329 (1982). In addition, although the issue was conceded by Mr. Markowski, we note the service on him in the legal separation action was likewise deficient; we have previously held service on one who is merely "present", without more, does not withstand the minimum contacts/fundamental fairness scrutiny required by SHAFFER v. HEITNER, 433 U.S. 186, 53 L. Ed. 2d 683, 97 S. Ct. 2569 (1977) and INTERNATIONAL SHOE CO. v. WASHINGTON, 326 U.S. 310, 316, 90 L. Ed. 95, 66 S. Ct. 154, 161 A.L.R. 1057 (1945). (*Additional quoted citation not included and emphasis added.)*

El Boukhari does not dispute that he was a Washington resident prior to December 10, 2011. Thus, unlike *Markovitz,* there is no constitutional *nexus* issue in this case.

Markowitz footnote <2> continues by distinguishing the different basis for *child custody* jurisdiction:

> However, minimum contacts are not required to adjudicate child custody, given reasonable attempts to furnish notice of the proceedings. *SEE HUDSON v. HUDSON, 35 Wn. A-1. 822, 670 P.2d 287 (1983).*

The Markowitz court concluded as to child custody[14] that:

> if the matter should again be brought in Washington, the trial court must consider the criteria in RCW 26.27.030 to determine whether a basis exists to assume jurisdiction over the custody issue. *Markowitz*, supra, 635.

Although the issue of *child custody* is legally segregable from a CR 60(b)(5) motion seeking to vacate an order of default under RCW 26.27.201(3) the issue of the validity of final orders of marital

---

[14] Dornay respectfully submits that the Appellate Court should not have vacated the *Markowitz* final parenting plan along with the other orders. Voiding the order of default was based on lack of personal jurisdiction over Mr. Markowitz. However, personal jurisdiction over parent(s) however, was then and is not now, required *per se* to establish Washington child custody jurisdiction. The former U.C.C.J.A., superseded by the U.C.C.J.E.A in 2001 (R.C.W. 26.27.921), included the former R.C.W. 26.27.030, which is the statute referred to in this *Markowitz dicta*. Likewise, the current RCW. 26.27.201(3) does not require the court to acquire of personal jurisdiction over parent(s) in order to establish child custody jurisdiction.

status (and property division) cannot be adjudicated separately. If the order of default is *void ab initio* as Appellant's Brief points out, the final order based on it must also, necessarily, fail.

Consequently, Dornay submits that El Boukhari's attempt to exclude the final divorce order from the rest of the final decree he wants vacated under CR 59 or 60(b)(5), constitutes waiver inasmuch as he asks the court to provide him with an impossible remedy. Dornay further submits that it is inequitable for the court to allow El Boukhari to choose, after years of silence, which part of the allegedly void 2011 judgment of divorce he wants to continue to enjoy and which parts he wants to discard.

VI. Conclusion

El Boukhari had the burden of proof that the 2011 order of default should be vacated on the basis of one or more of his CR 60(b)(1)(4) and/or (5) motions. He failed to meet his burden.

The CR 60(b)(1) motion is time barred.

His CR 60(b)(4) motion was properly denied on the basis of both *latches,* and substantively, by movant's complete failure to

establish *any* of the required nine elements of fraud by the higher "clear, cogent and convincing" evidentiary standard.

Appellant's CR 60()(b)(5) motion is based on claimed lack of personal service. Substantial evidence supports the trial court's determination that El Boukhari was personally served by substitute service on January 19, 2011. The court below did not abuse its' discretion in concluding on the basis of those findings that personal jurisdiction over El Boukhari was established on that date.

El Boukhari's CR 59 (new) process service deficiency argument, which if accepted by the trial court, would also require that the underlying order of default be declared void *ab initio.* The argument is based on El Boukhari having not been personally served with the *amended* summons and petition requesting divorce rather than just the initial pleadings for legal separation. The court properly denied this CR 59 motion since it was not possible for the trial to provide the movant with any remedy, and because he waived the defense by failure to state it as a basis for his CR 60 motion.

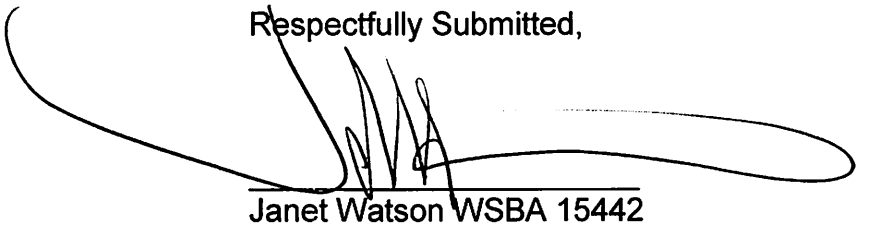
The trial court did not err in concluding that Appellant failed to meet his CR 60(b) burden of proof. The bizarre, internal

inconsistencies of his own declarations alone support the trial court finding his testimony not credible. Further, there are obvious gaps in his evidence, including for example *any* documentary evidence that he did was not a party to Moroccan child custody proceedings; any official document(s) establishing that Dornay was jailed for international child abduction in Morocco in 2011 or a lease agreement supporting this reply declaration(s) suggesting that the parties continued to live together in a Casablanca condominium during 2011. El Boukhari's most significant silence as the party bearing the burden of proof as a CR 60 movant, is the absence of any explanation as to how, given that the parties do not dispute that he lost *actual physical custody* of the child immediately after entry of the Moroccan final order, he could have failed thereby, to take notice of the existence of a U.S. child custody proceeding. Morocco's final *exequatur* judgment ordered El Boukhari to *immediately return* the child to the mother in August, 2011. El Boukhari appealed and lost **(A-1/FF 32)**, which delayed finality of the order until the December 12, 2011 hearing, which El Boukhari had notice of but did not attend. **(A-10).** The Appellant claims complete lack of knowledge of the

Washington proceeding until 2016. But what parent whose child has been taken from him by governmental action would not immediately and thoroughly investigate the legal cause of such calamity?

There are more than sufficient findings of fact to support the court's denial of El Boukhari's motions to vacate the appeal.

Respectfully Submitted,



Janet Watson WSBA 15442
Attorney for Respondent Dornay

APPENDIX TO RESPONSE BRIEF

1. October 3, 2017 CR 60(b) Denial Order (CP 69)

2. January 21, 2011 email from U.S. State Department to Dornay (CP 33 Exh 6)

3. October 25, 1980: complete text of the 1980 Hague Convention on the Civil Aspects of International Child Abduction

4. July 5, 2011 Moroccan Court Order Denying Exequatur (CP 53 Exh 9)

5. August 29, 2011 final Order of the Moroccan Court ceding Hague jurisdiction to the U.S. and ordering immediate return of the child to mother (CP 53 Exh 10)

6. November 2, 2017 Order Denying CR 59 Motion (CP 83)

ADDENDUM 3

HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –
a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –
a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

---

[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions" or under the "Child Abduction Section". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.
The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.
The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.
However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.
Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.
However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.
Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force –

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

ADDENDUM 4

KINGDOM OF MOROCCO
MINISTRY OF JUSTICE
COURT OF APPEAL OF CASABLANCA
COURT OF FIRST INSTANCE OF CASABLANCA
SECTION OF THE JURISDICTION OF THE FAMILY
File No. 3960/11
Given on 05/07/2011
ON BEHALF OF HIS MAJESTY THE KING

As of July 5, 2011, the Court of First Instance in Casablanca in open court delivered the ruling in the following terms:
BETWEEN: Ms. MARIA ERZSEBT REIKO DORNAY,
Represented by Mr. LAHSSOUK AHMED, lawyer practicing in Casablanca.

Plaintiff on the one hand

AND: Who of law.

Defendant on the other

FACTS

Considering the application initiating and amendment submitted by the plaintiff to the Secretariat of the Registry of this court dated 20/06/2011 and 4 / 7 / 2011, by which she seeks. to take enforcement of the divorce decree issued by the Washington's highest court dated 23/05/2011, file No. 11-3-00724-7 SEA.

Since the case was referred to the hearing on 28.6.2011, to which the representative of the applicant was absent.

And under sections 1-32-50-120-430-431-432 Code of Civil Procedure;

Whereas the General Prosecutor's Office has requested application of the law, the case was referred for deliberation to the hearing on 05/07/2011.

AFTER DELIBERATION AND IN ACCORDANCE WITH THE LAW

1) IN THE FORM: Whereas the application was made in accordance with legal requirements, it is appropriate to declare its admissibility.

EXHIBIT 9
P. 1 OF 2
CP53

2) Basically: Whereas the application is to coat the foreign judgment of the enforcement order.

Whereas the General Prosecutor's Office has requested application of the law;

Whereas after the court has reviewed the documents in the file, especially the divorce asked for enforcement, it was clarified in court, it is contrary to the general order of Morocco and the provisions of the Family Code in the side on guard because the judgment mentioned above prohibits the child's father YUSSUF away from his son, a distance of 1000 feet of his home, his school and the home of his custody until the child reaches the age of 18.
Whereas this result, it should declare that the application has no legal basis, it must therefore be reject it.

Whereas the loser of the proceedings shall bear the expense;

FOR THESE REASONS
The court ruling publicly, in the first instance and contradictorily,

IN THE FORM: receives the request
BASICALLY: Rejects the request and put the costs against the plaintiff.

Well judged and pronounced the day, month and year above

follows the composition of the court.

ADDENDUM 5

KINGDOM OF MOROCCO

MINISTRY OF JUSTICE

CASABLANCA COURT OF APPEAL

COURT OF FIRST INSTANCE CASABALANCA

SECTION MARRIAGE

ORDER ORIGINAL COUNTERPART TO REGISTRY OFFICE

THE COURT OF FIRST INSTANCE CASABALANCA

File No. 419/4/11

Order of 08/29/11

ON BEHALF OF HIS MAJESTY

The trial court Casablanca, matrimonial section, by discussing urgent matters on 29.08.2011, delivered the following Judgement:

Between the public prosecutor to the court above,

On the one hand,

And Mr. Ayman Elbou Mouad, a resident of Villa Ayman Bd Mekka, Lot Kulthum Street 3, No. 49, California, Casablanca, the other defendant,

Considering the complaint from the Prosecutor of the King of 19.08.2011, which indicated that Ms. Erzsebet Dornay, a U.S. citizen, married to Mr. Ayman Elbou Mouad, a Moroccan citizen, was born of this relationship the child in Elbou Mazen Youssef the matrimonial home in the United States, the couple came to Morocco for a holiday together, following a misunderstanding, the father takes the child into possession, and cuts off the relationship with the mother and banned him from seeing his son and refuses to return to their usual place of residence.

Because of the Hague Convention of 25.10.1980 on the Civil Aspects of International Child Abduction dated 25.10.2011, ratified by both countries to litigation. For these reasons the application is accepted in form and substance, immediately and accordingly decide the order to return in the shortest possible time, the child Mazen Youssef Elbou in his usual place of residence in Washington, United States. A copy of the protocol of the police, two minutes of execution, and a letter from the Minister of Justice.

At the meeting of 8/25/2011 is the wife appeared Dornay Ms. Erzsebet, she assured that she could not see his son for six months despite his attempts through the bailiff, the defendant does not appear despite its convocation, and given the urgency of the case, it was fixed for 29.08.2011.

After reflection by law,

And seen / ... / (reasons given above)

For these reasons

EXHIBIT 10 :-
P. 1 OF 2

The court in its public meeting in the first instance, gives contradoirement the following Judgement:

We order the return of the child's habitual residence in the city of Washington, United States of America.

We call on Mr. Ayman Mouad Elbou to return the child to his mother Mrs. Erzsebet Reiko Dornay to execute the order above.

Judgement is an outlet immediately.

And is pronounced the order date and the month and year mentioned above.

The Court consisted of:

Mr. Asrar Chairman Ben Daoud, signature

Mr. Ahmed Aouissa Registrar signature

Seal of the court.

For certified translation.

Casablanca, 30.08.2011

ADDENDUM 6

APPENDIX TO RESPONSE BRIEF

1. **October 3, 2017 CR 60(b) Denial Order (CP 69)**

2. **January 21, 2011 email from U.S. State Department to Dornay (CP 53 Exh 6)**

3. **October 25, 1980: complete text of the 1980 Hague Convention on the Civil Aspects of International Child Abduction**

4. **July 5, 2011 Moroccan Court Order Denying Exequatur (CP 53 Exh 9)**

5. **August 29, 2011 final Order of the Moroccan Court ceding Hague jurisdiction to the U.S. and ordering immediate return of the child to mother (CP 53 Exh 10)**

6. **November 2, 2017 Order Denying CR 59 Motion (CP 83)**

APPENDIX 1

APPENDIX TO RESPONSE BRIEF

1. October 3, 2017 CR 60(b) Denial Order (CP 69)

2. January 21, 2011 email from U.S. State Department to Dornay (CP 33 Exh 6)

3. October 25, 1980: complete text of the 1980 Hague Convention on the Civil Aspects of International Child Abduction

4. July 5, 2011 Moroccan Court Order Denying Exequatur (CP 53 Exh 9)

5. August 29, 2011 final Order of the Moroccan Court ceding Hague jurisdiction to the U.S. and ordering immediate return of the child to mother (CP 53 Exh 10)

6. November 2, 2017 Order Denying CR 59 Motion (CP 83)

Superior Court of Washington
County of King

In re the Marriage of: **Erzsebet Reiko Dornay,** **Petitioner,** **And** **Mouad Aimeme Elbou(n/k/a Mouad Harissi El Boukhari),** **Respondent.**	**No. 11-3-00724-7SEA** **ORDER DENYING RESPONDENT'S CR 60 MOTON**

This motion came on regularly before U.F.C. Chief Judge, Hon. Jean Rietschel for hearing without oral testimony, on August 31, 2017 on the motion of the Respondent, Mouad Harissi El Boukhari. Both parties submitted affidavits in evidence and both were present with counsel for the motion hearing.

Having heard and considered the evidence submitted, as well as the legal briefing and argument of both parties, this court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The parties were divorced by final order (decree) on May 19, 2011 and a final parenting plan and child support order were simultaneously entered.

2. All final orders were entered May 19, 2011 based on a default order entered the same date.

3. On June 17, 2017, Mr. El Boukhari filed a motion to vacate the 2011 final parenting plan, restraining order and child support order. The motion does not seek to set aside the change of the parties' marital status from married to divorced, nor the property and debt division provisions of the final order (decree).

4. This motion is based on:

(a) CR 60(4); specifically, that Ms. Dornay committed fraud or misrepresentation on this court, resulting in unlawful issuance of May 19, 2011 default orders and/or

(b) CR 60(5), that the final orders are void *ab initio* based on lack of personal service on Respondent.

5. Mr. El Boukhari was not personally served.

6. Mr. El Boukhari's moving affidavit declares that he was not residing with his mother when substitute service was made on her at her home on January 19, 2011 and that Ms. Dornay knew this. The court does not find this testimony credible.

7. Mr. El Boukhari declared in his moving affidavit that he did not have actual notice of the entry of the final default orders by this court until he received a license suspension warning letter and notice and statement of lien from DCS on October 24, 2015. He also provided the court with written notice from DCS dated May 18, 2017 advising him that his wages were going to be garnished in the amount of $1,200 per month to pay for current monthly support of $900, with the balance applied to pay

principal on his arrears retroactive to the support start date in 2011. The court does not find Mr. El Boukhari's declaration that he had no notice of the U.S. family law proceeding until 2014 credible.

8. Movant provides no evidence to explain why he waited from October 24, 2015 until June 17, 2017, to seek a CR 60 show cause order.

9. The parties purchased tickets for an 18-day round-trip vacation to Casablanca, from December 24, 2010 through January 11, 2011, for themselves and their then three-year-old child. As planned, the parties and child resided with movant's mother, Halima Douma, at her residence in Casablanca during the vacation.

10. On January 10, 2011, Mr. El Boukhari informed Ms. Dornay that he intended to remain in Morocco indefinitely and forbade Ms. Dornay from returning the parties' child with her to the U.S.

11. Ms. Dornay never agreed to move to Casablanca, relinquish her claim to primary custody, nor to the child's relocation to Casablanca. Mr. El Boukhari nevertheless retained the child in Casablanca.

12. On her return to the marital residence in Redmond later in January, 2011 Ms. Dornay discovered that her husband had surreptitiously sold her car, failed to pay their January rent and removed his personal property from their shared home.

13. Ms. Dornay filed this underlying family law action on January 18, 2011.

14. On January 14-15, 2011 Ms. Dornay's brother, Gellert Dornay, and brother-in-law Shane Chester, flew from Seattle to Casablanca to attempt to persuade Mr. El Boukhari to release the child to Ms. Dornay for return to the United States.

15. On January 19, 2011, after several failed attempts to communicate with Mr. El Boukhari, Messrs. Dornay and Shane attempted personal service of original process in this underlying case on Mr. El Boukhari at the residence of Respondent's mother in Casablanca.

16. On January 19, 2011, Mrs. Halima Douma's residence address was:

Villa Aimane, Boulevard de law Meque,
Lotissement Keltoum Ruie 3 Numero 49,
California-Casablanca-Morocco

This was the only address known to Ms. Dornay as the residence of the Respondent and their child at that time.

17. Gellert Dornay served the summons, petition for legal separation, declaration in support of ex parte TRO and emergency child custody order and the TRO/custody order issued in this cause, on Halima Douma in her home in Casablanca on January 19, 2011.

18. Halima Douma refused to accept the papers in hand and reacted in anger after which Messrs. Dornay and Shane left the process papers on the table in her home and immediately exited her house. Halima Doumau followed them out and threw the service paper packet into the street behind them.

19. Approximately a half hour after Halima Doumawas served, Ms. Dornay, together with Messrs. Dornay and Shane, returned to Mrs. Douma's residence and noted

that the papers were no longer in the street. Gellert Dornay again knocked on the residential wall gate door. Zakaria Elbou, movant's adult brother who speaks some English, opened the door slightly but refused to give the location of the movant and the baby, informing Mr. Dornay that U.S. law does not apply in Morocco. Mr. Elbou refused to disclose Mr. El Boukhari's and the child's whereabouts. Additional Elbou family members' cars, including a Moroccan attorney, were parked outside the compound when the Dornays and Mr. Chester returned.

20. Ms. Dornay and her brother immediately proceeded to the U.S. Consulate office in Casablanca and spoke to a diplomatic agent, Seth Snyder, who reacted by successfully telephoning Mr. El Boukhari. Mr. El Boukhari agreed to allow the U.S. Consulate to make a "child welfare check" at the residence of Halima Douma and scheduled the visit to occur two days later, on January 21, 2011.

21. Mr. El Boukhari was present at his mother's home during the child welfare visit, as were two U.S. State Department agents, the child and several other Elbou family women and children.

22. During that visit, Mr. El Boukhari informed the U.S. agents that the child would be attending an "American" school in Casablanca in the fall, was receiving private lessons in Arabic, and allowed the agents to inspect the newly-furnished sleeping quarters he had arranged for the child in his mother's residence.

23. On January 19, 2011 Janet Watson, as mother's attorney in Seattle, emailed the summons, petition, temporary order and other service papers to Ms. Dornay's attorney

Mustafa Brio in Casablanca, requesting that he arrange process service in Casablanca. Mr. Brio was retained by the mother to assist her in retrieving the child from the father in order to return the child with her to the U.S.

24. Mr. Brio did not respond to Ms. Watson's service request. However, he did have the U.S. family law documents translated into Arabic and filed in the family law court in Casablanca, initiating an *"exequatur"* action there. The purpose of this action was to request that the court confirm and enforce the U.S. emergency child custody order, and allow the mother to have emergency temporary contact with her son until child custody could be finally adjudicated.

25. In order to assure sufficient service or actual notice to movant after substitute service, on February 4, 2017, Ms. Dornay moved for an order authorizing alternative service by mail to the movant at his mother's residence in Casablanca or via personal service by U.S. State Department agent(s). The order was granted. However, U.S. State Department agents subsequently declined to serve U.S. process, informing Petitioner that federal diplomatic regulations prohibited State's involvement in private litigation between U.S. and Moroccan citizens.

26. By mistake, Petitioner herself (rather than a non-party as required by CR 4(c) and by express terms of the alternative service order) mailed the summons, petition and emergency custody order addressed to Halima Douma at her residence in Casablanca.

27. Ms. Dornay's declaration of mail service, filed February 11, 2011 includes two USPS mailing receipts, one for certified and the other for plain mail service of a "7 oz. package" addressed to the movant's mother in Casablanca.

28. Halima Douma's moving declaration denies both the process service on her and receipt of any mail service in 2011. The court does not find her one-line affidavit credible.

29. On July 5, 2011, the Casablanca court entered an order denying the mother's request for enforcement of the U.S. final orders on the basis that the specifically-referenced restraints in the U.S. orders on the father's contact with the child, are contrary to substantive Moroccan family law.

30. On August 29, 2011 the Casablanca court reversed this decision and ruled that Morocco, as a 2010 signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, is required to cede exclusive child custody jurisdiction to the United States.

31. The August 29, 2011 order states the father's address. This address is the same as his mother's address in Casablanca as stated by Ms. Dornay in her February 11, 2011 declaration requesting mail service.

32. Father appealed the Moroccan court's August 29, 2011 decision. His appeal was denied by final ruling issued December 12, 2011. Father was ordered to return the child to the mother immediately, for the child's return with mother to the U.S.

33. Mother and child returned to Seattle on December 24, 2011 with assistance of U.S. Consular security officers and Moroccan law enforcement, based on the December 12, 2011 final order of the Moroccan court.

34. At request of Ms. Dornay's Moroccan counsel, in order to obtain the Moroccan *exequatur* order, Petitioner requested then Chief U.F.C. Judge Deborah Fleck to write to her counterpart "Le President" of the Moroccan court requesting that court to recognize as valid and enforce the U.S. temporary and then the final child custody order(s).

35. Judge Fleck's final letter, written June 23, 2011, was sent to the Moroccan *exequatur* court and is filed as part of this court's record by Judge Fleck's bailiff.

Conclusions of Law

1. The movant has failed to prove any of the nine elements of fraud required to make his case under CR 60(4) by the required standard of clear, cogent and convincing evidence.

2. The movant's June, 2017 assertion of CR 60(4) affirmative defense against the May, 2011 final orders, is dilatory and barred by the doctrine of *laches.*

3. The non-movant's mail service of the amended Petition for Dissolution on movant in February, 2011 was insufficient as original process service as not in compliance with the alternate service order and CR 4(c) as it was done by a party (Petitioner). However, this mailing is sufficient to provide the Respondent with constructive notice of the WA proceeding under RCW 26.27.201(3) and RCW 26.27.081 for purposes of child custody jurisdiction.

4. The court finds that Messrs. Dornay and Shane effectuated proper substitute service of all necessary original process on January 19, 2011 by serving the legal separation papers on the movant's mother. At that time, the non-movant had no knowledge of any other residence, temporary or permanent, of the movant, other than his mother's residence in Casablanca.

5. An action for child custody is a proceeding *in rem* and as such does not require personal jurisdiction over either parent or the child. RCW 26.27.201(3), and *In Re Marriage of Tsarbopoulos, 125 Wn. App. 273 (2004).*

6. Washington has exclusive original child custody jurisdiction over this child now and has had exclusive continuing jurisdiction since January, 2011. Morocco had and exercised temporary emergency jurisdiction during 2011 while the child was held by the father there against the mother's will. RCW 26.27.231.

7. In January, 2011, when the non-movant unilaterally refused to allow the child to return to the U.S., he knew or should have known that Washington was the child's "home state" under the Uniform Child Custody Jurisdiction Act, RCW 26.27.201 and the "habitual residence" of the child for purposes of the 1980 Hague Convention, to which Morocco became a signatory in 2010.

8. The court does not find movant's assertion of lack of actual notice until October 24, 2015, credible. The movant had actual notice of this proceeding in 2011. He availed himself of the opportunity to litigate child custody in Morocco by detaining the child in Morocco without the other parent's consent. He challenged the validity and

enforceability of the U.S. orders in Moroccan courts throughout 2011 and lost. He had counsel in Morocco, and at least since November, 2015, has also had counsel in Washington who was aware of the 2011 divorce and custody proceedings of this court.

ORDER DENYING MOTION:

Based on the foregoing findings of fact and conclusions of law:

1. Respondent's motion to vacate the final orders of restraint, child support and parenting plan entered in this cause on May 19, 2011 is denied with prejudice, and

2. Movant's request for CR 60 motion attorney fees is also denied with prejudice.

3. This order has no effect on the right of either party to petition this court for modification of the May 19, 2011 final parenting plan under RCW 26.09.260, or to seek modification or adjustment of the final child support order under RCW 26.09.170.

Dated: ~~September 28~~ 10/3, 2017.

Chief U.F.C. Judge Jean Rietschel

Prepared and Presented by:

Janet Watson WSBA 15442
Attorney for Petitioner

Copy received:

Patricia Baugher WSBA 31447
Attorney for Respondent

enforceability of the U.S. orders in Moroccan courts throughout 2011 and lost. He had counsel in Morocco, and at least since November, 2015, has also had counsel in Washington who was aware of the 2011 divorce and custody proceedings of this court.

ORDER DENYING MOTION:

Based on the foregoing findings of fact and conclusions of law:

1. Respondent's motion to vacate the final orders of restraint, child support and parenting plan entered in this cause on May 19, 2011 is denied with prejudice, and

2. Movant's request for CR 60 motion attorney fees is also denied with prejudice.

3. This order has no effect on the right of either party to petition this court for modification of the May 19, 2011 final parenting plan under RCW 26.09.260, or to seek modification or adjustment of the final child support order under RCW 26.09.170.

Dated: September 28, 2017.

Chief/U.F.C. Judge Jean Rietschel

Prepared and Presented by:

Janet Watson WSBA 15442
Attorney for Petitioner

Copy received:

Patricia Baugher WSBA 31447
Attorney for Respondent

APPENDIX 2

Gmail by Google

Law Office of Watson & Toumanova <info@seattlefamilylaw.net>

Fwd: Elbou - 21JAN2011 Welfare Report.docx

erzsi dornay <dornayerzsi@gmail.com> Thu, Feb 10, 2011 at 10:41 AM
To: Law Office of Watson & Toumanova <info@seattlefamilylaw.net>, "msbriou@gmail.com" <msbriou@gmail.com>, "dornay@gmail.com" <dornay@gmail.com>, "st1bern@yahoo.com" <st1bern@yahoo.com>

---------- Forwarded message ----------
From: "Jones, Jamal M" <JonesJM2@state.gov>
Date: Feb 10, 2011 10:30 AM
Subject: Elbou - 21JAN2011 Welfare Report.docx
To: <dornayerzsi@gmail.com>
Cc: "Ellis, Cheyenne V" <EllisCV@state.gov>

Dear Ms. Dornay,

I work in the State Department's Office of Children's Issues. Attached, please find the welfare report of the Embassy's visit with your son Yussuf. This visit took place on January 21, 2011, and the Embassy employees were able to report on what they saw during their visit.

There may be some unfamiliar terms in this report. The term ACS refers to the American Citizen Services section of the Embassy; LES means Locally Employed Staff; and Conoff refers to the Consular officer working in American Citizen Services.

Please contact me directly if you have questions about this information, or if you would like to discuss some of the options available to you at this time. If you are not able to reach me, you can also contact my colleague Ms. Cheyenne Ellis at (202) 736 9123.

EXHIBIT C PS3#6
P. 1 OF 3

Kind regards,

Jamal Jones

Office of Children's Issues

Phone: 202 663 3746

Fax: 202 736 9132

Email: JonesJM2@state.gov <mailto:JonesJM2@state.gov>

Elbou - 21JAN2011 Welfare Report.docx
12K

Welfare Report
Yussuf Mazin Elbou
January 21, 2011

ACS Chief and LES visited Yussuf Mazin Elbou at his father's residence in Casablanca on January 21, 2011, at the request of Yussuf's mother, Erzsebet Reiko Maria Dornay.

Post contacted Mr. Elbou on January 19 and requested that he appear at the Consulate to discuss the case. He came to post and discussed the case with ACS Chief. He expressed a willingness to discuss issues with his wife but was reluctant to meet with her brother. He agreed to a consular visit on January 21, 2011. He also expressed to Conoff that all Mrs. Dornay's needs could be met in Morocco. He stated that he lives in a wealthy neighborhood and that she would be entitled to all privileges including freedom of travel.

ACS Chief and LES visited Yussuf at Mr. Elbou's residence on Friday, January 21, 2011. The house is located in a privileged neighborhood of Casablanca. Conoff was directed to Yussuf in the basement. He was playing with three young children in a large carpeted playroom that included toys and a television. Two nannies were also in attendance. At the time Conoff entered, Yussuf was drawing at a table with two of the children, assisted by a nanny. He appeared healthy and playful with no apparent signs of abuse or neglect. He was well dressed except for bare feet and exhibited typical three-year old exuberance, running and jumping around and playing with a toy guitar. Conoff also visited Yussuf's room where there was a Cars movie-themed bed, couches, a play table and toys scattered about.

Mr. Elbou stated that Yussuf is being tutored in Arabic a couple of times per week. He also stated that he intends to send Yussuf to an American school in Casablanca in the fall. At the conclusion of the visit, Mr. Elbou stated his willingness to fund travel for Mrs. Dornay to come visit her son.

APPENDIX 3

HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

---

[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under "Conventions" or under the "Child Abduction Section". For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.
Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.
However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.
Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

APPENDIX 4

KINGDOM OF MOROCCO
MINISTRY OF JUSTICE
COURT OF APPEAL OF CASABLANCA
COURT OF FIRST INSTANCE OF CASABLANCA
SECTION OF THE JURISDICTION OF THE FAMILY
File No. 3960/11
Given on 05/07/2011
ON BEHALF OF HIS MAJESTY THE KING

As of July 5, 2011, the Court of First Instance in Casablanca in open court delivered the ruling in the following terms:
BETWEEN: Ms. MARIA ERZSEBT REIKO DORNAY,
Represented by Mr. LAHSSOUK AHMED, lawyer practicing in Casablanca.

Plaintiff on the one hand

AND: Who of law.

Defendant on the other

FACTS

Considering the application initiating and amendment submitted by the plaintiff to the Secretariat of the Registry of this court dated 20/06/2011 and 4 / 7 / 2011, by which she seeks, to take enforcement of the divorce decree issued by the Washington's highest court dated 23/05/2011, file No. 11-3-00724-7 SEA.

Since the case was referred to the hearing on 28.6.2011, to which the representative of the applicant was absent.

And under sections 1-32-50-120-430-431-432 Code of Civil Procedure;

Whereas the General Prosecutor's Office has requested application of the law, the case was referred for deliberation to the hearing on 05/07/2011.

AFTER DELIBERATION AND IN ACCORDANCE WITH THE LAW

1) IN THE FORM: Whereas the application was made in accordance with legal requirements, it is appropriate to declare its admissibility.

EXHIBIT 9
P. 1 OF 2
CP53

2) Basically: Whereas the application is to coat the foreign judgment of the enforcement order.

Whereas the General Prosecutor's Office has requested application of the law;

Whereas after the court has reviewed the documents in the file, especially the divorce asked for enforcement, it was clarified in court, it is contrary to the general order of Morocco and the provisions of the Family Code in the side on guard because the judgment mentioned above prohibits the child's father YUSSUF away from his son, a distance of 1000 feet of his home, his school and the home of his custody until the child reaches the age of 18.
Whereas this result, it should declare that the application has no legal basis, it must therefore be reject it.

Whereas the loser of the proceedings shall bear the expense;

FOR THESE REASONS
The court ruling publicly, in the first instance and contradictorily,

IN THE FORM: receives the request
BASICALLY: Rejects the request and put the costs against the plaintiff.

Well judged and pronounced the day, month and year above

follows the composition of the court.

APPENDIX 5

KINGDOM OF MOROCCO

MINISTRY OF JUSTICE

CASABLANCA COURT OF APPEAL

COURT OF FIRST INSTANCE CASABALANCA

SECTION MARRIAGE

ORDER ORIGINAL COUNTERPART TO REGISTRY OFFICE

THE COURT OF FIRST INSTANCE CASABALANCA

File No. 419/4/11

Order of 08/29/11

ON BEHALF OF HIS MAJESTY

The trial court Casablanca, matrimonial section, by discussing urgent matters on 29.08.2011, delivered the following Judgement:

Between the public prosecutor to the court above,

On the one hand,

And Mr. Ayman Elbou Mouad, a resident of Villa Ayman Bd Mekka, Lot Kulthum Street 3, No. 49, California, Casablanca, the other defendant,

Considering the complaint from the Prosecutor of the King of 19.08.2011, which indicated that Ms. Erzsebet Dornay, a U.S. citizen, married to Mr. Ayman Elbou Mouad, a Moroccan citizen, was born of this relationship the child in Elbou Mazen Youssef the matrimonial home in the United States. the couple came to Morocco for a holiday together, following a misunderstanding. the father takes the child into possession, and cuts off the relationship with the mother and banned him from seeing his son and refuses to return to their usual place of residence.

Because of the Hague Convention of 25.10.1980 on the Civil Aspects of International Child Abduction dated 25.10.2011, ratified by both countries to litigation. For these reasons the application is accepted in form and substance, immediately and accordingly decide the order to return in the shortest possible time, the child Mazen Youssef Elbou in his usual place of residence in Washington, United States. A copy of the protocol of the police, two minutes of execution, and a letter from the Minister of Justice.

At the meeting of 8/25/2011 is the wife appeared Dornay Ms. Erzsebet, she assured that she could not see his son for six months despite his attempts through the bailiff, the defendant does not appear despite its convocation, and given the urgency of the case, it was fixed for 29.08.2011.

After reflection by law,

And seen / ... / (reasons given above)

For these reasons

EXHIBIT 10
P. 1 OF 2

The court in its public meeting in the first instance, gives contradoirement the following Judgement:

We order the return of the child's habitual residence in the city of Washington, United States of America.

We call on Mr. Ayman Mouad Elbou to return the child to his mother Mrs. Erzsebet Reiko Dornay to execute the order above.

Judgement is an outlet immediately.

And is pronounced the order date and the month and year mentioned above.

The Court consisted of:

Mr. Asrar Chairman Ben Daoud, signature

Mr. Ahmed Aouissa Registrar signature

Seal of the court.

For certified translation.

Casablanca, 30.08.2011

ADDENDUM 6

APPENDIX 6

FILED
KING COUNTY, WASHINGTON

NOV 02 2017

SUPERIOR COURT CLERK
BY April Cortes
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KING

ERZEBET DORNAY, Petitioner, v. MOUAD AIMEME ELBOU, Respondent.	Case No. 11-3-00724-7 SEA **ORDER DENYING MOTION FOR RECONSIDERATION**

THIS MATTER came before this Court on Respondent's Motion for Reconsideration. The Court has considered Respondent's Motion for Reconsideration and the Petitioner's response, and the Respondent's reply brief, and being fully advised, the court finds as follows:

Respondent advances three legal arguments that have been briefed and argued previously by the parties. The Court declines to reconsider those arguments. Respondent advances one new legal argument: that the substitute service did not confer the court with jurisdiction to enter the Decree of Dissolution. The problem with this argument is that Respondent does not seek to vacate the Decree of Dissolution. The Motion sought to vacate the Parenting Plan, the Order of Child

Judge Jean Rietschel
516 3rd Avenue
Seattle, WA 98104
206-477-1543

Support, and the restraining order portion of the Decree of Dissolution. "Statement of Issues C. Whether the Court Should Enter a New Trial Date and Case Schedule So That a Parenting Plan, Child Support Order and Continuing Restraining Order May Be Resolved on the Merits?" Respondent's brief.

Respondent does not seek to avoid the change of status provisions or the property division portions of the final decree. If Respondent had so moved, the Court could consider partial relief. However, the original substitute service gave notice of the claim for the restraining order. The court has jurisdiction to enter a restraining order in a legal separation case. Under all the facts of this case, as recited in the findings of fact previously entered, the Markowski decision is not controlling.

IT IS HEREBY ORDERED that the Motion for Reconsideration is Denied.

DATED: November 1, 2017.

HONORABLE JEAN RIETSCHEL

Judge Jean Rietschel
516 3rd Avenue
Seattle, WA 98104
206-477-1543

August 29, 2018 - 3:42 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77654-1
Appellate Court Case Title:	Erzsebet Dornay, Respondent v. Mouad Harissi Elboukhari, Appellant
Superior Court Case Number:	11-3-00724-7

The following documents have been uploaded:

- 776541_Briefs_20180829154211D1621981_4217.pdf
  This File Contains:
  Briefs - Respondents
  The Original File Name was Respondents Brief.pdf

A copy of the uploaded files will be sent to:

- mouadelbou8@gmail.com

Comments:

Sender Name: Janet Watson - Email: info@seattlefamilylaw.net
Address:
108 S WASHINGTON ST STE 304
SEATTLE, WA, 98104-3406
Phone: 206-340-1580

Note: The Filing Id is 20180829154211D1621981

NO. 77654-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

MOUAD EL BOUKHARI,
APPELLANT,
v.
ERZSEBET REIKO DORNAY,
RESPONDENT.

REPLY BRIEF OF APPELLANT

MOUAD EL BOUKHARI
APPELLANT
PO BOX 1691
SNOQUALMIE, WA 98065
(206) 643-1564
mouadelbou8@gmail.com

TABLE OF CONTENTS

Page

I. TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES AND RULES

II. ARGUMENT

A. THE FINAL DEFAULT ORDERS MUST BE VACATED AS MS. DORNAY HAS CONCEDED SHE EXCEEDED THE RELIEF REQUESTED IN HER PETITIONS

Because the final default orders included relief that was never pled by Ms. Dornay in neither her legal separation nor dissolution petition, the default orders must be vacated. While the opening appeal brief pointed out that the trial court erred in finding that the default orders exceeded the relief requested by Ms. Dornay, **nowhere** in Ms. Dornay's response brief does she contest the fact that she never filed nor served a proposed final parenting plan prior to having the court enter a final parenting plan on default. The opening appeal brief noted and cited to the record numerous findings and relief in the default orders that was never requested in either petition, yet **nowhere** in her response brief does Ms. Dornay contest the fact that she requested different relief in her dissolution petition that the trial court found was never served on the father than in her legal separation petition, nor does she contest the fact that her final orders exceed the relief requested in either petition. Ms. Dornay violated statutes, court rules, and case law when she entered default orders that exceeded the relief she requested in either of her

two petitions, and when she never filed nor served a proposed parenting plan or child support worksheet prior to entry of default orders.

The law is clear that a default order cannot exceed the relief requested in the petition, and a parenting plan cannot be entered on default unless it was proposed and served prior to the default. *In re Marriage of Thompson*, 32 Wn. App. 179, 183-184, 646 P.2d 163 (1982); *see also* RCW 26.09.181 (each party "shall" file and serve a proposed permanent parenting plan). In unpublished opinions, Division One has held that failing to file a proposed parenting plan prior to default is not a mere technicality nor small mistake and the default parenting plan must be vacated. RCW 26.09.181 states "shall" and the case law is well established that all default orders that exceed the relief requested in the petition are void.

As Ms. Dornay does not dispute her violation of RCW 26.09.181 and does not dispute that her final orders exceeded the relief requested in her two different petitions, this court should vacate all of the final orders and remand for a trial. While the undersigned appellant is not an attorney, and therefore does not know all of the different types of relief on appeal the court may order, he did find an unpublished Division I case that was nearly identical to the current case where the court vacated the decree except the portion dissolving the marriage of the parties, and the order completely vacated the parenting plan, order of child support, findings of fact and

conclusions of law, and other relief requested in the default orders. If the court did the same in this case, it would preserve the marriage dissolution that Ms. Dornay wants since she is now re-married, while complying with the law by vacating all other portions of the orders as they exceeded the relief requested in the petitions and the marriage dissolution was never served on the father.

Ms. Dornay tries to argue that that the father did not ask for all of the default orders to be vacated, and that this court should deny vacating any orders on this basis. But, Ms. Dornay's argument is contrary to the record and the father's motion to the lower court. The father's attorney was clearly stated in both the motion and the oral argument that the father was leaving it at the discretion of the court to vacate either all of the default orders as void, or some of the default orders. Thus, Ms. Dornay's argument fails when she claims the father did not make a request to vacate all of the default orders. Ms. Baugher as the father's attorney told the lower court and explained the relief requested in his motion, when she said, "I want to make sure as an initial matter, to be clear, that Mr. Elboukahri is not requesting that the court vacate **the entirety of the decree of dissolution or to make nil the dissolution unless it's procedurally necessary to do so**. He is requesting that the court vacate the final parenting plan, the order of child support and the continuing restraining order, and the decree of

dissolution." (RP Vol. I pg 4, ln. 6-14) (emphasis added). In the cases found by the father and cited in this brief, the court sometimes vacates all void default orders, and other times vacate all the orders except to the extent that the marriage remains dissolved while all other relief must be decided by the lower court. While Mr. El Boukhari requested all or some of the default orders be vacated depending on the court's discretion, Ms. Dornay has conceded that she never plead a parenting plan or child support worksheet prior to entry of the default orders, and that both those default orders exceed the relief in her petitions. Thus, this court should exercise its discretion and either vacate all of the void default orders, or vacate all but the order dissolving the marriage and remand for a trial on the parenting plan and financial issues.

B. THERE IS NO ONE YEAR REQUIREMENT TO CHALLENGE VOID ORDERS AND THE MOTION TO VACATE WAS NOT TIME-BARRED

Ms. Dornay and the trial court incorrectly argue that the motion to vacate the default orders was barred because more than one year had passed. There are many decades of Washington Law establishing that when there was no personal service of a petition or the terms of the default orders

exceeds the relief in the petition, there is no one year time bar to vacate default orders.

When there has not been personal service of a petition, the default orders are void, and a motion to vacate can be brought at any time after judgment. *In re Marriage of Markowski*, 50 Wn. App. at 635; see also *In re Marriage of Hardt*, 39 Wn. App. 493, 496, 693 P.2d 1386 (1985); *In re Marriage of Maxfield*, 47 Wn. App. 699, 702, 737 P.2d 671 (1987). Here, the trial court found that Ms. Dornay never had her divorce petition personally served on Mr. El Boukhari. CP 425. Additionally, when the relief granted in default orders exceeds the relief requested in a petition, including when no proposed parenting plan is filed, the default orders are also void. *In re Marriage of Thompson*, 32 Wn. App. at 183-184; *see also* RCW 26.09.181

Thus, the default orders are void on multiple grounds and a motion to vacate can be brought at any time. It is contrary to decades of Washington law and cases dating back at least to the early 1900s to time bar a motion to vacate when there was no personal service or where the relief in default orders exceeded the relief requested in the petition. Ms. Dornay also does not dispute that she failed to file a proposed parenting plan or child support worksheets prior to entering default orders and she does not dispute in her response brief that the default orders exceed the relief she requested in her

two different petitions. Accordingly, the default orders are void on multiple grounds, and there are no time bars to a motion to vacate.

Ms. Dornay cites the case of *Luckett* where there were no jurisdiction or relief exceeding petition issues, to argue that a motion to vacate default orders must be brought within one year and can be time barred. But, *Luckett* is vastly different from the present case and completely different than the on-point case of *Markowski*. In *Luckett*, default was entered to dismiss the discrimination case brought by the petitioner, not the respondent, so there was never an issue of the petitioner being served or the petitioner not having notice. *Luckett v. Boeing Co.,* 98 Wn. App. 307, 308, 989 P.2d 1144 (1999). *Luckett* is as opposite a case as possible compared to our present case. Here are just a few of the facts and legal differences: (1) The default was against the Petitioner in Luckett, compared to the opposite in the present case where Mr. El Boukhari was the Respondent; (2) there was no issue of personal service in Luckett as everything was properly served and the petitioner had notice of her own case and the hearings, compared to the opposite in this case where the trial court found that Mr. El Boukhari had never been served the divorce petition; (3) there were no default orders in Luckett that exceeded the relief requested in the petition or response as the case was dismissed after Ms. Luckett just failed to pursue her own case and her attorney did not show up to court hearings, compared

to the present case where Ms. Dornay had a parenting plan entered on default that was never filed nor served as required by statute and case law and her default orders greatly and in numerous areas exceeded the relief requested in Ms. Dornay's petitions; and (4) in Luckett the court dismissed the case without prejudice after Ms. Luckett's attorney failed to pursue her own case, allowing Ms. Luckett to file the case again if she chose, compared to the present case where final orders were entered on default that will forever prevent Mr. El Boukhari and his son to have a normal parent-child relationship, as well as other prejudicial findings and outcomes previously listed in the appellant's opening brief. *Luckett v. Boeing Co.,* 98 Wn. App. at 308.

Thus, Ms. Dornay asks the court to follow the case of Luckett that has none of the issues of lack of personal service, nor jurisdiction, nor default orders exceeding the relief requested, nor default orders against a respondent, nor misrepresentation and irregularity in obtaining default orders, nor default orders that effect the well being of a child and a parent-child relationship. Ms. Dornay does not cite a single case that has the actual issues in the present case that support her arguments. She asks the court to disregard well-settled law regarding personal service, jurisdiction, and default orders not exceeding the relief requested in the petition. In other

words, Ms. Dornay requests this court to disregard the law. Accordingly, this court should apply the law and vacate the default orders.

C. ALLEGED SERVICE OF A LEGAL SEPARATION PETITION DOES NOT SATISFY PERSONAL SERVICE AND JURISDICTION REQUIREMENTS FOR A LATER FILED DIVORCE PETITION THAT WAS NEVER SERVED

Contrary to the law and without any cases to support her position, Ms. Dornay argues that her alleged service on Mr. El Boukhari's mother of a legal separation petition is sufficient for personal service and jurisdiction for a subsequent filed (and never served) divorce petition. Ms. Dornay does not dispute that her divorce petition was never personally nor legally served on Mr. El Boukhari. Ms. Dornay also does not dispute that her divorce petition requested different relief than what was in her legal separation petition.

The law is clear and well-established: Default orders for a divorce petition must be vacated when there has been no personal service of the divorce petition. *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 349 P.2d 1073 (1960); *see also In re Marriage of Markowski*, 50 Wn. App. at 633 (citing *Mid–City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wn. App. 480, 674 P.2d 1271 (1984); *Lee v. Western Processing Co.*, 35 Wn. App. 466, 469,

667 P.2d 638 (1983)). Here, the trial court found that there was no personal service no other valid legal service of Ms. Dornay's divorce petition on Mr. El Boukhari. Even though Ms. Dornay now tries [1] argue that her alleged mail service of the divorce petition is sufficient service, Ms. Dornay has not assigned error to the judge's finding that her alleged mail service is invalid. Thus, the trial court's finding that Ms. Dornay's alleged mail service was invalid and does not suffice for personal service of the divorce petition is verity on appeal.

For the sake of argument, assuming that the legal separation petition was served on Mr. El Boukhari's mother, this is insufficient as a matter of law for personal service of a subsequent filed divorce petition. *In re the Marriage of Markowski*, 50 Wn. App. 633, 749 P.2d 754 (1988). While there are numerous cases holding that each petition must be personally served and service of one petition does not substitute as service for a subsequent petition, Ms. Dornay cites zero cases that hold that substitute service of a legal separation petition satisfies the requirement that a subsequent divorce petition be personally served. In fact, Ms. Dornay completely ignores the fact that she filed two different petitions that

[1] Ms. Dornay contradicts herself in her appeal brief at one point arguing that her alleged mail service that the court found invalid was "sufficient" notice and valid service; and other times, she concedes that the trial court was correct that her mail service was not valid and did not comply with the law and she makes no assignments of error. See Respondent's Brief at 27, 30.

requested different relief and that she only attempted substitute service for her legal separation petition but entered default orders for a divorce petition that was never served, and the orders exceeded the relief requested in either petition. Where the trial court found that the divorce petition was never personally served on Mr. El Boukhari, the trial court erred in refusing to vacate the divorce default orders. Vacating a default order where there has been no personal service of the divorce petition is non-discretionary. *In re Marriage of Maxfield*, 47 Wn. App. 699, 702, 737 P.2d 671 (1987). This court should find that the trial court erred, and vacate the parenting plan, child support order, and all other default orders where the relief exceeded what was requested in the legal separation petition.

D. THE DEFAULT ORDERS ARE HARMFUL TO THE FATHER-SON RELATIONSHIP, HAVE CAUSED EXTREME PREJUDICE TO THE FATHER, AND ARE FINANCIALLY HARMFUL TO THE FATHER

Ms. Dornay argues that the court should ignore the laws about personal service, jurisdiction, and vacating default orders, because her default orders allegedly benefit Mr. El Boukhari. First, there was no evidence nor findings by the judge that Ms. Dornay's default orders somehow benefited Mr. El Boukhari. CP 87-92. Second, the default orders

on their face obviously do not benefit either Mr. El Boukhari or their son, as they alienate the son from his father (including changing the child's name so he no longer shares any name with his father), and Ms. Dornay used the default orders to pursue criminal charges against Mr. El Boukhari that he was later exonerated from. Ms. Dornay had orders entered without personal service on Mr. El Boukhari and that exceeded what she requested in both of her petitions, that forever sever and preclude any normal father-son relationship. CP 66-100. As previously noted, Ms. Dornay's default parenting plan that was never filed nor served prior to her entering as a court order, makes findings that Mr. El Boukhari allegedly engaged in behavior that Ms. Dornay never even alleged in her petition. CP 1-6. She also had this improperly filed parenting plan place final restrictions on the father and make it so that he will never be allowed, under any circumstances, to have any regular residential time with their son. CP 94-99. Not only does Ms. Dornay's default parenting plan violate the law as it was never filed nor proposed prior to the default and exceeds the relief she requested in her petitions, but it is the most prejudicial and severe parenting plan possible against the father. Such a parenting plan clearly does not benefit either Mr. El Boukhari or the child in this case. Because there was never a trial, no judge has ever considered testimony nor evidence about the best interests of their son Yussuf. This court should find that Ms. Dornay's

unsubstantiated claim that it should disregard the law about personal service and jurisdiction because Mr. El Boukhari somehow benefits from her default parenting plan that forever restricts him from having unsupervised residential time with their son or participating in their son's school activities, or in decision making about their son, is contrary to common sense and the law.

The most important thing in this case to Mr. El Boukahri is Yussuf and being able to have a father-son relationship with him, and so if the court chooses to only vacate some of the default orders, then vacating the default parenting plan should be the court's priority. Also, this court should find that Ms. Dornay's argument that the court should disregard the law about personal service and jurisdiction because Mr. El Boukhari has allegedly financially benefited from the improper default orders is contrary to the court record and the law. Mr. El Boukhari has suffered financial harm and prejudice as well. Ms. Dornay used the default orders in this case to bring criminal charges against Mr. El Boukahari, resulting in him spending six months in jail before a jury found him not guilty. CP 313. Because he had to spend time in jail while waiting for the trial that led to his acquittal, Mr. El Boukhari lost his job, lost wages, and had to spend more than $40,000 in attorney fees to defend himself. Ms. Dornay also entered a default child support order without ever proposing child support worksheets ahead of

time and exceeding the relief she requested in her petition. Ms. Dornay came up with fictitious and unsupported income numbers for the father that she says she "imputed to him" without any basis such as tax returns or paystubs. CP 82. Because Ms. Dornay made up income numbers for the father, she had child support set artificially high to a level that he cannot afford to pay and that result in his wages being garnished at an amount that prejudices him and effects his ability to pay for basic living expenses. Thus, Ms. Dornay's default parenting plan and child support orders that were never proposed nor served before the default and exceed the relief she requested in her petitions, clearly extremely prejudice the father.

E. DEFAULT ORDERS ARE DISFAVORED AND IT IS AN ERROR OF LAW AND NONDISCRETIONARY TO REFUSE TO VACATE A VOID DEFAULT ORDER

Contrary to the law for default void orders, Ms. Dornay argues that this court should apply an abuse of discretion standard to the lower court's decision not to vacate the default orders in this case, even where Ms. Dornay has conceded that her default orders exceed the relief she requested in her petitions and conceded that she never personally served her divorce petition.

Ms. Dornay argues that there cannot be de novo review of a CR 60 motion, but this is not what the Washington courts hold. In fact, where there

is no valid service or where the orders exceed the relief requested, it is an error of law not to vacate the default orders. *In re Marriage of Markowski*, 50 Wn. App. at 635; *see also In re Marriage of Maxfield*, 47 Wn. App. 699, 702, 737 P.2d 671 (1987) ("court has a non-discretionary duty to grant relief" regarding void judgments). Because Ms. Dornay never filed a proposed parenting plan nor child support worksheets, and never requested much of the relief in her petition that she later added to her default orders, it is "nondiscretionary" for the court to vacate the void orders. *In re Marriage of Markowski*, 50 Wn. App. at 635, 749. Errors of law are reviewed de novo, not on a discretionary basis. *In re Marriage of Kastanas*, 78 Wn. App. 193, 197, 896 P.2d 726 (1995). Whenever the default orders exceed the relief requested in the petition, that portion of the order is void. *In re Marriage of Leslie*, 112 Wn.2d at 617.

The abuse of discretion standard only applies to default orders when the orders are not void for lack of jurisdiction or when the orders do not exceed the relief requested. But even if this court applied the incorrect standard of abuse of discretion to the lower court's refusal to vacate the void orders, this court should find that the lower court's ruling was an abuse of discretion. Because default orders are obtained without any trial or testimony or the court hearing from both sides, the courts disfavor default orders. *Griggs v. Averbeck Realty*, 92 Wn.2d 576, 582, 599 P.2d 1289

(1976). In fact, "Abuse of discretion is less likely to be found if the default judgment is set aside." *Griggs*, 92 Wn.2d at 582, 599 (*citing White v. Holm*, 73 Wn.2d 348, 351-52, 438 P.2d 581(1968); *Agricultural & Livestock Credit Corp. v. McKenzie*, 157 Wash. 597, 289 P. 527 (1930)). Thus, under either review standard, the default orders should be vacated. But, this court should apply the correct standard for errors of law and the many years of case law and hold that the parenting plan, child support order, and all those portions of the orders that exceed the relief requested in the first petition are void and must be vacated. The default orders are void due to both lack of personal jurisdiction and exceeding the relief requested in the first petition.

F. DOCTRINE OF LACHES DOES NOT APPLY TO VOID DECREES WHERE THE RELIEF EXCEEDS THE PETITION AND WHERE THERE WAS NO PERSONAL SERVICE

Without any citation to authority, Ms. Dornay argues that the doctrine of laches bars the motion to vacate the default orders. In her brief, Ms. Dornay does not cite a single case to support her argument that the doctrine of laches somehow bars vacating default orders. While the undersigned party does not have a legal degree, he has paid attorney fees to search cases about this issue, and the attorney could not find a single case

holding that a motion to vacate was barred by the doctrine of laches or by the mere passage of time.

In fact, the only case about the doctrine of laches that the attorney found that had anything common with the present case, held that the doctrine of laches did not apply. In the case of *Leslie*, the court found that the "laches claim is without merit in this case because the void portion of the original decree can be attacked at any time." *In re Marriage of Leslie*, 112 Wn.2d 612, 620, 777 P.2d 1013 (1989).

Thus, when a default decree is void, the doctrine of laches does not apply. *See In re Marriage of Leslie*, 112 Wn.2d at 617 (a default judgment is void to the extent that it exceeds the relief requested in the complaint and the doctrine of laches does not apply to void orders). Here, the default orders are void on multiple grounds, including that they exceeded the relief requested in the petition and the divorce petition was never personally served on Mr. El Boukhari. Because the doctrine of laches does not apply to void decrees, this court should vacate the default orders in this case.

G. MS. DORNAY'S OWN PLEADINGS AND REQUESTS OF THE TRIAL COURT SHOW CLEAR MISREPRESNTATIONS TO OBTAIN DEFAULT ORDERS AND THE FATHER DID NOT HAVE ACTUAL NOTICE OF THE DEFAULT ORDERS IMMEDIATELY AFTER THEY WERE ENTERED

Ms. Dornay's own pleadings and the trial court's findings show that Ms. Dornay made misrepresentations to the court to obtain default orders that are void. For instance, Ms. Dornay told the trial court that her default orders did not exceed the relief requested in her petition, when they clearly did as her petition never had a proposed parenting plan and there are findings and requirements in the orders that were never requested in either of her petitions. Due to the reply page limits, the father cannot detail all of the many parts of the default orders exceeded the relief requested in the petitions, but many examples and cites to the record were included in his opening brief. While Ms. Dornay makes a big deal of the trial court finding that she did not commit fraud to obtain the default orders, fraud was not the only basis for the request to vacate the default orders. In fact, the default orders are clearly void under multiple grounds without ever reaching the fraud issue. While the father does believe that Ms. Dorney committed fraud, it is not necessary for this court to decide the fraud issue as the law is clear

that Ms. Dornay never validly served the father her divorce petition, and her orders are also void for exceeding the relief requested.

Ms. Dornay argues that this court should not vacate the void default orders if the father had actual notice of the orders, even though there was no valid service of the divorce petition and the default orders exceeded the relief requested. Ms. Dornay does not cite any cases that hold that some prereferral knowledge of a petition or default orders somehow waives the right to personal service or makes void orders suddenly valid. In fact, the cases in Washington hold the opposite of Ms. Dornay's argument. The cases find that even if a party knows of a petition or default orders, the default orders are still void if they exceed the relief requested in the petition. *See Thompson*, 32 Wn. App. at 183-184. Also, even if a party has actual knowledge or otherwise knows of default orders, if the petition was never personally served, those orders are still void and subject to later motion to vacate the orders. *See Dlouhy*, 55 Wn.2d at 719-720 (holding that even though husband had some notice of hearings and appeared at one hearing on a restraining order, default orders must be vacated as there was no valid personal service).

This court should also know that the father did not have immediate actual notice of the divorce petition or default orders that Ms. Dornay obtained in this case, as Ms. Dornay admitted she chose not to personally

serve the divorce petition on him. CP 217, 316, 383, 425. She also chose never to send him the default orders, not even by email even though her attorney had the father's email address. *Id.* But even if the father did know about the default orders prior to 2016, under Washington law knowledge of a potential petition or default orders does not waive personal jurisdiction, nor procedural due process, nor the right to be personally served, nor the requirement that default orders cannot exceed the relief requested in the petition.

Ms. Dornay falsely claims that the Moroccan court proceedings gave the father notice of the default orders and divorce petition in King County. But, Ms. Dornay leaves out the important distinction that there were two separate Moroccan cases, and the father did not have knowledge of the second case. CP 317-19. Of great concern is that Ms. Dornay did not serve the father in the second Moroccan case, and in the second case the Moroccan court did <u>not</u> have a trial or make any findings except to enter the orders Ms. Dornay presented from King county. In other words, neither the Moroccan court nor the King County court had a trial or took evidence about the best interests of the child. Also, the trial judge in King County made multiple statements that she did not understand or have knowledge about Moroccan law or the two different court cases that were brought there. Ms. Dornay says that the quotes from the trial judge saying she has no

knowledge of Moroccan law are taken out of context, but the trial judge was very clear on more than one occasion during the hearings that she did not know about Moroccan law or the cases, and she did not what laws may apply. Importantly, the Moroccan court has Sharia law and there are no due process or constitutional rights for divorces that require personal service. *See* https://www.state.gov/j/drl/rls/hrrpt/2000/nea/804.htm (overview of Moroccan laws). Nor has Ms. Dornay shown any evidence that there was any personal service of the divorce petition on the father as part of the Moroccan case, because he was never served the divorce petition, and Moroccan law does not require personal service or due process. Thus, this court should vacate the void default orders that do not comply with Washington law, as the Moroccan court did not have an independent trial or make independent findings, it only adopted the void default Washington orders.

H. THE FATHER DID NOT WAIVE PERSONAL SERVICE OR JURISDICTION

Contrary to the facts in this case, Ms. Dornay argues that this court should find that the father first appeared in this case in a way that was inconsistent with preserving his jurisdictional objection. Ms. Dornay cites the case of *Sanders* to say that appearing in a case waives a person's

objection to personal jurisdiction. But Sanders is inapposite of the present case. One key difference is that the husband in *Sanders* was "personally served" with no alleged substitute nor invalid mail service. *Sanders v. Sanders*, 63 Wn.2d 709, 711, 388 P.2d 942 (1964). Other differences between *Sanders* and the present case include that default orders were not entered in *Sanders* and thus there were no default orders that exceeded the relief requested in the petition. *Id.* Additionally, the husband in Sanders had an attorney make an appearance for him in the case and file several motions prior to filing a dismissal motion for lack of jurisdiction. *Id*. In the present case, the first motion and appearance that Mr. El Boukhari made in this case was a motion to vacate the default orders on the basis of no personal jurisdiction, no valid service, fraud and misrepresentation, and exceeding the relief that was requested. Thus, the case of *Sanders* has nothing in common with the present case, and Ms. Dornay does not cite a single case that holds when the first appearance in a case is to assert no valid service or personal jurisdiction, that the motion asserting lack of jurisdiction somehow waives the right to assert the very issue it raises: no valid service and no jurisdiction. Under Ms. Dornay's argument, no one would ever be able to assert a lack of jurisdiction or lack of service argument without waiving it just by bringing the motion.

Additionally, even if for the sake of argument we assume that Mr. El Boukhari somehow appeared in the case in a way that waived his personal jurisdiction objection, the default orders in this case are still void as they exceeded the relief requested in either petition. The default parenting plan and child support order both include findings and orders that were never requested in the petitions, and neither a proposed parenting plan nor a proposed child support worksheet were filed prior to the entry of default orders which is contrary to case law and RCW 26.09.181.Thus, this court should find that Mr. El Boukhari preserved his objection to the lack of personal service and jurisdiction, as well as that the default orders are void on the separate grounds of exceeding the relief requested in the petitions.

I. JURISDICTION OVER A CHILD DOES NOT WAIVE A PARENT'S PROCEDURAL RIGHTS, NOR THE REQUIREMENTS TO PERSONALLY SERVE A PARENT, NOR WAIVE WASHINGTON LAWS TO PLEAD THE RELIEF REQUESTED PRIOR TO ENTRY OF DEFAULT ORDERS.

Ms. Dornay argues and the trial court incorrectly found that whenever a court has jurisdiction over a child, the court will have personal jurisdiction over a parent regardless of whether that parent is ever served

the petition for a divorce or parenting plan. Under Ms. Dornay's argument, whenever a court finds that it has jurisdiction over a child to enter a parenting plan, there is no longer a requirement to personally serve a parent a divorce petition. Under her argument, a parent can also put whatever she wants in a final default order, regardless of whether the relief was ever requested in the petition or prior to the entry of default.

Under Washington Law, a parent must always be served a petition and proposed parenting plan before a default parenting plan can be entered against that parent, even if that parent does not reside within the state. *In re Marriage of Tsarbopoulos*, 125 Wn. App. 273, 284, 104 P.3d 692 (2004) (due process requirements of notice and opportunity to be heard apply regardless of whether the asserted jurisdiction is classified as in personam or in rem). When a parent cannot be personally served, there are ways to get valid service through specific mail procedures or publication, none of which happened in the present case. Requiring personal service of a petition and all relief requested before it becomes a final order, is common sense and basic fairness. Ruling any other way would result in numerous parenting plans being entered by the court on default that have restrictions and findings against parents without the parents ever receiving notice and without the court ever taking testimony and evidence at trial and making independent rulings about the best interests of the child.

III. CONCLUSION

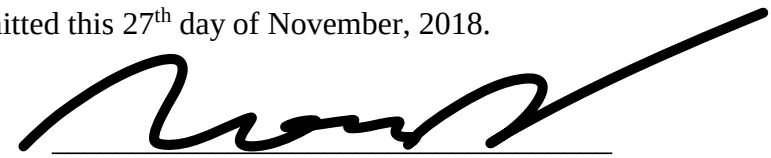
The undersigned father in this case respectfully requests this court to vacate the void default orders on any of the multiple legal grounds, such as exceeding the relief requested in the petition, no valid service of the divorce petition, alleged service of one petition not satisfying service of a subsequent different petition, or misrepresentation and irregularity in Ms. Dornay obtaining the default orders. While the court may vacate all of the default orders on any of the above grounds, at a minimum, the parenting plan and child support orders should be vacated as neither was filed nor proposed by Ms. Dornay prior to her obtaining default orders and the relief in the default orders exceeds the relief she pled in either of her two petitions.

The court should reject Ms. Dornay's argument that since the Moroccan court adopted the Washington default orders, this court should not vacate the default orders that violate Washington law. The Moroccan court also never had a trial, and the father never received notice of the second Moroccan case that Ms. Dornay brought. Ms. Dornay also alleges and says many horrible things about the father, but without a trial, the father cannot adequately defend himself or prove her wrong.

The undersigned father wishes to have a father-son relationship with Yussuf, his only child. What the parenting plan should like and what is best for Yussuf should be determined by a trial judge after a trial and after the

father has opportunity to present witnesses and evidence, and to cross-examine the witnesses of Ms. Dornay. The father is asking for the basic procedural fairness that has been afforded all other fathers in Washington State. The father is asking that the court take evidence at trial about their child Yussuf and decide what is best for Yussuf after hearing from both parents.

Respectfully submitted this 27th day of November, 2018.



Mouad El Boukhari, Pro Se
Appellant

CERTIFICATE OF FILING AND SERVICE

I certify I caused the foregoing and its attachments, if any, to be

☒ Filed with the court on ☐ 9/27/2018 via

☒ Electronic filing;

☐ Depositing the same in the U.S. Mail, first-class postage prepaid; or

☐ Hand delivery

And ☒ served on Opposing Counsel_ by the following means:

☒ Via ECF Filing [LCR 5 (b)] on ☐ 9/27/2018

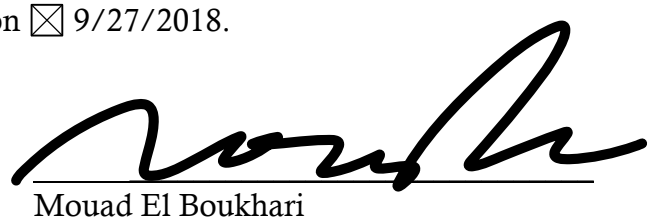
☐ Deposit into the U.S. Mail, first-class postage prepaid

☐ Via electronic mail with permission pursuant to GR 30; or

☐ Hand delivery on ☐ _____

I certify under penalty of perjury under the laws of the State of Washington the foregoing is true and correct to the best of my knowledge.

Signed at Seattle, Washington, on ☒ 9/27/2018.



Mouad El Boukhari
Appellant, Pro Se

MOUAD ELBOUKHARI - FILING PRO SE

September 27, 2018 - 11:50 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77654-1
Appellate Court Case Title:	Erzsebet Dornay, Respondent v. Mouad Harissi Elboukhari, Appellant
Superior Court Case Number:	11-3-00724-7

The following documents have been uploaded:

- 776541_Briefs_20180927234525D1948529_2282.pdf
  This File Contains:
  Briefs - Appellants Reply
  The Original File Name was Reply Brief.Appeal. El Boukhari. 9.28.18.pdf

A copy of the uploaded files will be sent to:

- info@seattlefamilylaw.net
- janetwatson181@gmail.com

Comments:

Sender Name: Mouad ElBoukhari - Email: mouadelbou8@gmail.com
Address:
POBOX 1691
Snoqualmie, WA, 98065
Phone: (206) 643-1564

Note: The Filing Id is 20180927234525D1948529

CR 4
PROCESS

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or the plaintiff's attorney, and directed to the defendant requiring the defendant to defend the action and to serve a copy of the defendant's appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of the defendant's defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or the defendant's attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

(4) No summons is necessary for a counterclaim or cross claim for any person who previously has been made a party. Counterclaims and cross claims against an existing party may be served as provided in rule 5.

(b) Summons.

(1) Contents. The summons for personal service shall contain:

(i) the title of the cause, specifying the name of the court in which the action is brought, the name of the county designated by the plaintiff as the place of trial, and the names of the parties to the action, plaintiff and defendant;

(ii) a direction to the defendant summoning the defendant to serve a copy of the defendant's defense within a time stated in the summons;

(iii) a notice that, in case of failure so to do, judgment will be rendered against the defendant by default. It shall be signed and dated by the plaintiff, or the plaintiff's attorney, with the addition of the plaintiff's post office address, at which the papers in the action may be served on the plaintiff by mail.

(2) Form. Except in condemnation cases, and except as provided in rule 4.1, the summons for personal service in the state shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON

FOR (_____) COUNTY

_____, Plaintiff,	) No. _____
v.	)
_____, Defendant.	) SUMMONS (20 days)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by _____, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of Washington.

(signed)

Print or Type Name

( ) Plaintiff ( ) Plaintiff's Attorney

P. O. Address

Dated

Telephone Number

(c) By Whom Served. Service of summons and process, except when service is by publication, shall be by the sheriff of the county wherein the service is made, or by the sheriff's deputy, or by any person over 18 years of age who is competent to be a witness in the action, other than a party. Subpoenas may be served as provided in rule 45.

(d) Service.

(1) Of Summons and Complaint. The summons and complaint shall be served together.

(2) Personal in State. Personal service of summons and other process shall be as provided in RCW 4.28.080-.090, 23B.05.040, 23B.15.100, 46.64.040, and 48.05.200 and .210, and other statutes which provide for personal service.

(3) By Publication. Service of summons and other process by publication shall be as provided in RCW 4.28.100 and .110, 13.34.080, and 26.33.310, and other statutes which provide for service by publication.

(4) Alternative to Service by Publication. In circumstances justifying service by publication, if the serving party files an affidavit stating facts from which the court determines that service by mail is just as likely to give actual notice as service by publication, the court may order that service be made by any person over 18 years of age, who is competent to be a witness, other than a party, by mailing copies of the summons and other process to the party to be served at the party's last known address or any other address determined by the court to be appropriate. Two copies shall be mailed, postage prepaid, one by ordinary first class mail and the other by a form of mail requiring a signed receipt showing when and to whom it was delivered. The envelopes must bear the return address of the sender. The summons shall contain the date it was deposited in the mail and shall require the defendant to appear and answer the complaint within 90 days from the date of mailing. Service under this subsection has the same jurisdictional effect as service by publication.

(5) Appearance. A voluntary appearance of a defendant does not preclude the defendant's right to challenge lack of jurisdiction over the defendant's person, insufficiency of process, or insufficiency of service of process pursuant to rule 12(b).

(e) Other Service.

(1) Generally. Whenever a statute or an order of court thereunder provides for service of a summons, or of a notice, or of an order in lieu of summons upon a party not an inhabitant of or not found within the state, service may be made under the circumstances and in the manner prescribed by the statute or order, or if there is no provision prescribing the manner of service, in a manner prescribed by this rule.

(2) Personal Service Out of State--Generally. Although rule 4 does not generally apply to personal service out of state, the prescribed form of summons may, with the modifications required by statute, be used for that purpose. See RCW 4.28.180.

(3) Personal Service Out of State--Acts Submitting Person to Jurisdiction of Courts. (Reserved. See RCW 4.28.185.)

(4) Nonresident Motorists. (Reserved. See RCW 46.64.040.)

(f) Territorial Limits of Effective Service. All process other than a subpoena may be served anywhere within the territorial limits of the state, and when a statute or these rules so provide beyond the territorial limits of the state. A subpoena may be served within the territorial limits as provided in rule 45 and RCW 5.56.010.

(g) Return of Service. Proof of service shall be as follows:

(1) If served by the sheriff or the sheriff's deputy, the return of the sheriff or the sheriff's deputy endorsed upon or attached to the summons;

(2) If served by any other person, the person's affidavit of service endorsed upon or attached to the summons; or

(3) If served by publication, the affidavit of the publisher, supervisor, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published; or

(4) If served as provided in subsection (d)(4), the affidavit of the serving party stating that copies of the summons and other process were sent by mail in accordance with the rule and directions by the court, and stating to whom, and when, the envelopes were mailed.

(5) The written acceptance or admission of the defendant, the defendant's agent or attorney;

(6) In case of personal service out of the state, the affidavit of the person making the service, sworn to before a notary public, with a seal attached, or before a clerk of a court of record.

(7) In case of service otherwise than by publication, the return, acceptance, admission, or affidavit must state the time, place, and manner of service. Failure to make proof of service does not affect the validity of the service.

(h) Amendment of Process. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

(i) Alternative Provisions for Service in a Foreign Country.

(1) Manner. When a statute or rule authorizes service upon a party not an inhabitant of or found within the state, and service is to be effected upon the party in a foreign country, it is also sufficient if service of the summons and complaint is made:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in

any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or a letter of request; or

(C) upon an individual, by delivery to the party personally, and upon a corporation or partnership or association, by delivery to an officer, a managing or general agent; or

(D) by any form of mail, requiring a signed receipt, to be addressed and mailed to the party to be served; or

(E) pursuant to the means and terms of any applicable treaty or convention; or

(F) by diplomatic or consular officers when authorized by the United States Department of State; or

(G) as directed by order of the court. Service under (C) or (G) above may be made by any person who is not a party and is not less than 21 years of age or who is designated by order of the court or by the foreign court. The method for service of process in a foreign country must comply with applicable treaties, if any, and must be reasonably calculated, under all the circumstances, to give actual notice.

(2) Return. Proof of service may be made as prescribed by section (g) of this rule, or by the law of the foreign country, or by a method provided in any applicable treaty or convention, or by order of the court. When service is made pursuant to subsection (1)(D) of this section, proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(j) Other Process. These rules do not exclude the use of other forms of process authorized by law.

[Originally effective March 1, 1973; amended effective January 1, 1972; July 1, 1977; September 1, 1978; July 1, 1980; September 1, 1985; September 1, 1989; September 1, 1993; September 1, 1994; April 28, 2015.]

RAP 13.4
DISCRETIONARY REVIEW OF DECISION TERMINATING REVIEW

(a) How to Seek Review. A party seeking discretionary review by the Supreme Court of a Court of Appeals decision terminating review must serve on all other parties and file a petition for review or an answer to the petition that raises new issues. A petition for review should be filed in the Court of Appeals. If no motion to publish or motion to reconsider all or part of the Court of Appeals decision is timely made, a petition for review must be filed within 30 days after the decision is filed. If such a motion is made, the petition for review must be filed within 30 days after an order is filed denying a timely motion for reconsideration or determining a timely motion to publish. If the petition for review is filed prior to the Court of Appeals determination on the motion to reconsider or on a motion to publish, the petition will not be forwarded to the Supreme Court until the Court of Appeals files an order on all such motions. The first party to file a petition for review must, at the time the petition is filed, pay the statutory filing fee to the clerk of the Court of Appeals in which the petition is filed. Failure to serve a party with the petition for review or file proof of service does not prejudice the rights of the party seeking review, but may subject the party to a motion by the Clerk of the Supreme Court to dismiss the petition for review if not cured in a timely manner. A party prejudiced by the failure to serve the petition for review or to file proof of service may move in the Supreme Court for appropriate relief.

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

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

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

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

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

(c) Content and Style of Petition. The petition for review should contain under appropriate headings and in the order here indicated:

(1) Cover. A title page, which is the cover.

(2) Tables. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with reference to the pages of the brief where cited.

(3) Identity of Petitioner. A statement of the name and designation of the person filing the petition.

(4) Citation to Court of Appeals Decision. A reference to the Court of Appeals decision which petitioner wants reviewed, the date of filing the decision, and the date of any order granting or denying a motion for reconsideration.

(5) Issues Presented for Review. A concise statement of the issues presented for review.

(6) Statement of the Case. A statement of the facts and procedures relevant to the issues presented for review, with appropriate references to the record.

(7) Argument. A direct and concise statement of the reason why review should be accepted under one or more of the tests established in section (b), with argument.

(8) Conclusion. A short conclusion stating the precise relief sought.

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

(d) Answer and Reply. A party may file an answer to a petition for review. A party filing an answer to a petition for review must serve the answer on all other parties. If the party wants to seek review of any issue that is not raised in the petition for review, including any issues that were raised but not decided in the Court of Appeals, the party must raise those new issues in an answer. Any answer should be filed within 30 days after the service on the party of the petition. A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer. A party filing any reply to an answer must serve the reply to the answer on all other parties. A reply to an answer should be filed within 15 days after the service on the party of the answer. An answer or reply should be filed in the Supreme Court. The Supreme Court may call for an answer or a reply to an answer.

(e) Form of Petition, Answer, and Reply. The petition, answer, and reply should comply with the requirements as to form for a brief as provided in rules 10.3 and 10.4, except as otherwise provided in this rule.

(f) Length. The petition for review, answer, or reply should not exceed 20 pages double spaced, excluding appendices, title sheet, table of contents, and table of authorities.

(g) Reproduction of Petition, Answer, and Reply. The clerk will arrange for the reproduction of copies of a petition for review, an answer, or a reply, and bill the appropriate party for the copies as provided in rule 10.5.

(h) Amicus Curiae Memoranda. The Supreme Court may grant permission to file an amicus curiae memorandum in support of or opposition to a pending petition for review. Absent a showing of particular justification, an amicus curiae memorandum should be received by the court and counsel of record for the parties and other amicus curiae not later than 60 days from the date the petition for review is filed. Rules 10.4 and 10.6 should govern generally disposition of a motion to file an amicus curiae memorandum. An amicus curiae memorandum or answer thereto should not exceed 10 pages.

(i) No Oral Argument. The Supreme Court will decide the petition without oral argument.

[Originally effective July 1, 1976; amended effective September 1, 1983; September 1, 1990; September 18, 1992; September 1, 1994; September 1, 1998; September 1, 1999; December 24, 2002; September 1, 2006; September 1, 2009; September 1, 2010; December 8, 2015; September 1, 2016.]

RCW 4.28.020

Jurisdiction acquired, when.

From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.

[**1984 c 76 § 2; 1895 c 86 § 4; 1893 c 127 § 15;** RRS § 238.]

RCW 4.28.080

Summons, how served.

Service made in the modes provided in this section is personal service. The summons shall be served by delivering a copy thereof, as follows:

(1) If the action is against any county in this state, to the county auditor or, during normal office hours, to the deputy auditor, or in the case of a charter county, summons may be served upon the agent, if any, designated by the legislative authority.

(2) If against any town or incorporated city in the state, to the mayor, city manager, or, during normal office hours, to the mayor's or city manager's designated agent or the city clerk thereof.

(3) If against a school or fire district, to the superintendent or commissioner thereof or by leaving the same in his or her office with an assistant superintendent, deputy commissioner, or business manager during normal business hours.

(4) If against a railroad corporation, to any station, freight, ticket or other agent thereof within this state.

(5) If against a corporation owning or operating sleeping cars, or hotel cars, to any person having charge of any of its cars or any agent found within the state.

(6) If against a domestic insurance company, to any agent authorized by such company to solicit insurance within this state.

(7)(a) If against an authorized foreign or alien insurance company, as provided in RCW **48.05.200**.

(b) If against an unauthorized insurer, as provided in RCW **48.05.215** and **48.15.150**.

(c) If against a reciprocal insurer, as provided in RCW **48.10.170**.

(d) If against a nonresident surplus line broker, as provided in RCW **48.15.073**.

(e) If against a nonresident insurance producer or title insurance agent, as provided in RCW **48.17.173**.

(f) If against a nonresident adjuster, as provided in RCW **48.17.380**.

(g) If against a fraternal benefit society, as provided in RCW **48.36A.350**.

(h) If against a nonresident reinsurance intermediary, as provided in RCW **48.94.010**.

(i) If against a nonresident life settlement provider, as provided in RCW **48.102.011**.

(j) If against a nonresident life settlement broker, as provided in RCW **48.102.021**.

(k) If against a service contract provider, as provided in RCW **48.110.030**.

(l) If against a protection product guarantee provider, as provided in RCW **48.110.055**.

(m) If against a discount plan organization, as provided in RCW **48.155.020**.

(8) If against a company or corporation doing any express business, to any agent authorized by said company or corporation to receive and deliver express matters and collect pay therefor within this state.

(9) If against a company or corporation other than those designated in subsections (1) through (8) of this section, to the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent.

(10) If against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof.

(11) If against a minor under the age of fourteen years, to such minor personally, and also to his or her father, mother, guardian, or if there be none within this state, then to any person having the care or control of such minor, or with whom he or she resides, or in whose service he or she is employed, if such there be.

(12) If against any person for whom a guardian has been appointed for any cause, then to such guardian.

(13) If against a foreign or alien steamship company or steamship charterer, to any agent authorized by such company or charterer to solicit cargo or passengers for transportation to or from ports in the state of Washington.

(14) If against a self-insurance program regulated by chapter **48.62** RCW, as provided in chapter **48.62** RCW.

(15) If against a party to a real estate purchase and sale agreement under RCW **64.04.220**, by mailing a copy by first-class mail, postage prepaid, to the party to be served at his or her usual mailing address or the address identified for that party in the real estate purchase and sale agreement.

(16) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

(17) In lieu of service under subsection (16) of this section, where the person cannot with reasonable diligence be served as described, the summons may be served as provided in this subsection, and shall be deemed complete on the tenth day after the required mailing: By leaving a copy at his or her usual mailing address with a

person of suitable age and discretion who is a resident, proprietor, or agent thereof, and by thereafter mailing a copy by first-class mail, postage prepaid, to the person to be served at his or her usual mailing address. For the purposes of this subsection, "usual mailing address" does not include a United States postal service post office box or the person's place of employment.

[**2015 c 51 § 2; 2012 c 211 § 1; 2011 c 47 § 1; 1997 c 380 § 1; 1996 c 223 § 1; 1991 sp.s. c 30 § 28; 1987 c 361 § 1; 1977 ex.s. c 120 § 1; 1967 c 11 § 1; 1957 c 202 § 1; 1893 c 127 § 7;** RRS § 226, part. FORMER PART OF SECTION: 1897 c 97 § 1 now codified in RCW **4.28.081**.]

NOTES:

Rules of court: *Service of process—CR 4(d), (e).*

Effective date, implementation, application—1991 sp.s. c 30: See RCW **48.62.900**.

Severability—1977 ex.s. c 120: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [**1977 ex.s. c 120 § 3.**]

Service of process on
*foreign corporation: RCW **23B.15.100**.*
*foreign savings and loan association: RCW **33.32.050**.*
*nonadmitted foreign corporation: RCW **23B.18.040**.*
*nonresident motor vehicle operator: RCW **46.64.040**.*

RCW 26.09.181

Procedure for determining permanent parenting plan.

(1) SUBMISSION OF PROPOSED PLANS. (a) In any proceeding under this chapter, except a modification, each party shall file and serve a proposed permanent parenting plan on or before the earliest date of:

(i) Thirty days after filing and service by either party of a notice for trial; or

(ii) One hundred eighty days after commencement of the action which one hundred eighty day period may be extended by stipulation of the parties.

(b) In proceedings for a modification of custody or a parenting plan, a proposed parenting plan shall be filed and served with the motion for modification and with the response to the motion for modification.

(c) No proposed permanent parenting plan shall be required after filing of an agreed permanent parenting plan, after entry of a final decree, or after dismissal of the cause of action.

(d) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default adopting that party's parenting plan if the other party has failed to file a proposed parenting plan as required in this section.

(2) AMENDING PROPOSED PARENTING PLANS. Either party may file and serve an amended proposed permanent parenting plan according to the rules for amending pleadings.

(3) GOOD FAITH PROPOSAL. The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(4) AGREED PERMANENT PARENTING PLANS. The parents may make an agreed permanent parenting plan.

(5) MANDATORY SETTLEMENT CONFERENCE. Where mandatory settlement conferences are provided under court rule, the parents shall attend a mandatory settlement conference. The mandatory settlement conference shall be presided over by a judge or a court commissioner, who shall apply the criteria in RCW **26.09.187** and **26.09.191**. The parents shall in good faith review the proposed terms of the parenting plans and any other issues relevant to the cause of action with the presiding judge or court commissioner. Facts and legal issues that are not then in dispute shall be entered as stipulations for purposes of final hearing or trial in the matter.

(6) TRIAL SETTING. Trial dates for actions involving minor children brought under this chapter shall receive priority.

(7) ENTRY OF FINAL ORDER. The final order or decree shall be entered not sooner than ninety days after filing and service.

This subsection does not apply to decrees of legal separation.

[**1989 2nd ex.s. c 2 § 1; 1989 c 375 § 8; 1987 c 460 § 7.**]

ABDULLAH LAW FIRM

April 19, 2019 - 11:01 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77654-1
Appellate Court Case Title:	Erzsebet Dornay, Respondent v. Mouad Harissi Elboukhari, Appellant
Superior Court Case Number:	11-3-00724-7

The following documents have been uploaded:

- 776541_Petition_for_Review_20190419105315D1248090_8971.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition Discretionary Review with Appendix. Elbou. 4.17.2019.pdf

A copy of the uploaded files will be sent to:

- info@seattlefamilylaw.net
- janetwatson181@gmail.com
- mouadelbou8@gmail.com
- yasmeen@abdullahlawfirm.com

Comments:

Sender Name: Erin Handley - Email: erin@abdullahlawfirm.com
Filing on Behalf of: Yasmeen Mufeed Abdullah - Email: info@abdullahlawfirm.com (Alternate Email: yasmeen@abdullahlawfirm.com)

Address:
10550 Lake City Way NE
Suite E
Seattle, WA, 98125
Phone: (206) 363-0455

Note: The Filing Id is 20190419105315D1248090