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Court of Appeals  
Division I  
State of Washington

No. 72963-2-I

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

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In re Marriage of:

CHANDLER H. RIKER

Respondent,

and

MONIQUE RIKER,

Appellant.

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**AMENDED BRIEF OF RESPONDENT**

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## INTRODUCTION

Although Monique Riker assigns error to the Honorable Douglass A. North's contempt order, she does so only to the extent that Judge North relied on that order to change the Parenting Plan. BA 2. Monique thus concedes that she contemptuously violated the Parenting Plan's RCW 26.09.191(3) restrictions. And it was those violations – not the contempt order itself – that caused Judge North to revisit his primary placement decision.

Indeed, Judge North had expressly reserved jurisdiction to monitor compliance with those restrictions, warning Monique that this was her last chance. Washington law is uniform that he acted appropriately, including under Monique's cited cases. She violated three § .191(3) restrictions multiple times within just four months. Judge North properly did what he promised to do.

And in any event, Chandler Riker sought a modification, Judge North held a show cause hearing on proper notice, and he entered a modification order. Monique's contrary arguments are frivolous. Nor did Monique ask the court (a) to hold an evidentiary hearing, or (b) to apply the relocation statute. Those issues are not properly before this Court.

The Court should affirm.

## RESTATEMENT OF ISSUES

1. Does the trial court have inherent authority to retain jurisdiction for a reasonable period of time in order to monitor the primary residential parent's compliance with RCW 26.09.191(3) restrictions in a parenting plan, where the court had unequivocally made the initial placement decision conditional on that parent's compliance with those conditions, but she nonetheless repeatedly violated those conditions?
2. Does the trial court have inherent and statutory authority to modify the initial primary residential placement within four months after entering the parenting plan, where the court had unequivocally made its initial primary parental placement decision conditional on the mother's compliance with the express § .191 conditions, but she repeatedly violated those conditions?
3. Did the trial court abuse its discretion by modifying the residential placement of the children pursuant to the father's Motion to Modify, where the court entered unchallenged findings that the mother repeatedly violated § .191 restrictions that the court had unequivocally warned her would result in primary placement of the children with the father (finding a substantial change in circumstances), and where the trial court expressly found that those

many violations were harmful to the best interests of the children (finding that the value of the change outweighed any detriment)?

4. Did the trial court abuse its discretion by giving proper notice and holding a show cause hearing on both contempt and modification, where the mother never asked for an evidentiary hearing?

5. Did the trial court abuse its discretion by not considering the relocation statute, where the appellant did not ask the trial court to consider it, and neither parent relocated?

## STATEMENT OF THE CASE

- A. **The trial court entered a parenting plan in August 2014, placing the parties' three children primarily with Monique Riker, making it abundantly clear that if she did not "shape up," the court would designate Chandler the primary residential parent.**

Appellant Monique Riker and Respondent Chandler Riker have three children, 8-year old C., and 5-year old twins, N. and A. CP 18, 199. Monique<sup>1</sup> correctly points out that Chandler moved back east when she was pregnant with the twins. BA 4. She neglects to mention, however, that at the time, the parties contemplated that Monique would join Chandler out east with the children. CP 85. She never did so, and the parties separated in 2011. *Id.*

The Honorable Douglas North entered Chandler's proposed parenting plan for the three children in August 2014, awarding primary residential parentage to Monique. CP 18-19. The children are all in school, so Chandler, who lives in Connecticut, had residential time during school breaks. CP 19-22. This included a seven-week visit during the summer, every other spring break, and the majority of winter breaks. *Id.* The court also granted him liberal

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<sup>1</sup> We use first names solely for convenience, intending no disrespect.

residential time in Washington, including overnights, so long as it did not disrupt school. CP 20.

The only record Monique has designated from the 2014 proceedings is Judge North's oral ruling<sup>2</sup> and parenting plan. CP 18-31, 83-96. From this scant record, Monique selectively quotes Judge North's comment that during the dissolution, Chandler was "not as sympathetic and concerned about his family as he should have been." BA 4 (quoting CP 85). She ignores, however, the trial court's statement that both parties were at fault: "there was fault on both sides in terms of how they got into this mess." CP 85.

The court observed that in the prior year, Monique "and her family had made every effort to try and alienate the children from" Chandler. CP 85. Particularly disturbing was the "unusual" degree to which Monique's mother had become "heavily invested" in doing so. CP 90. For example, Monique's mother referred to the children's two-week visit with Chandler as "the horrific event." CP 87. Monique's brother, who was present during the court's oral ruling, agreed that the grandmother's behavior was "not at all appropriate," and claimed that he would be able to influence her to stop. CP 88.

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<sup>2</sup> The transcript of this oral ruling is attached as Appendix A.

Regarding Monique's comment that she was *pro se* (BA 3-4),  
the court had this to say (CP 85-86):

[Y]ou may be representing yourself. It was done exactly in the way that I would expect it to be done by a highly unethical experienced family law attorney. That is, if you had been represented by a family law attorney who really knows the ins and outs, how you really manipulate the system and you don't care about ethics at all, you don't care who the heck you screw in the process of doing it. They would have done exactly what you did: bringing false claims of stalking, harassment, refusing to show up or provide the children when that was supposed to be done, filing at the last minute for a protection order just because you're unhappy with a visitation provision that's coming up.

The court nonetheless designated Monique the primary residential parent, based in part on Chandler's agreement that Monique should be given one last chance to "shape up." CP 86, 211. The court made it very plain that if Monique continued alienating the children from Chandler and manipulating the legal system, then the court would transfer primary placement to Chandler (CP 86):

I want to make it clear to you that this is basically your last chance to shape up, because if you don't, I'm going to end up transferring the children to [Chandler]. Because you can't continue with this process of trying to repeatedly alienate the children from their father and manipulating the legal system.

**B. The trial court entered RCW 26.09.191(3) findings outlining the conditions Monique needed to meet to retain primary parentage, and retained jurisdiction to enforce the parenting plan.**

The court found that Monique's troubling behavior had "an adverse effect on the children's best interests," where, (1) her abusive use of conflict created a danger or serious damage to the children's psychological development; (2) she withheld the children from Chandler for protracted periods without good cause; and (3) she alienated the children from Chandler, harming them. CP 19; RCW 26.09.191(3)(e),(f), and (g). Based on these .191 findings, the court explained to Monique that he would change primary placement to Chandler unless she did the following:

- ◆ Undergo a psychological evaluation at her own expense, by a psychologist chosen by the court-appointed parenting coordinator;
- ◆ Refrain from allowing the children to stay overnight with Monique's mother;
- ◆ Notify Chandler, in advance, of medical appointments and appointments with other professionals; and
- ◆ Refrain from allowing family other than Chandler to participate in education and medical decisions for the children.

CP 22-23. Just as in the oral ruling, a "violation of any of these restrictions shall be a basis for [Chandler] to seek primary residential

placement.” CP 23. And “[t]his court shall retain jurisdiction and said request shall be made to this court.” *Id.*

In addition to these .191 limitations on Monique, the trial court also ordered both parties to take certain measures to lessen conflict and improve communication. CP 24, 27-29. The court prohibited the parents from making derogatory comments about the other parent, or allowing anyone else to do so in the children’s presence. CP 24, 29. The court ordered the parties to provide the “unimpeded and unmonitored” phone contact and Skype access to the other during residential visits. CP 27-28. And the court ordered the parties to use “FamilyWizard” software to allow the parties to track the children’s appointments and similar information. CP 24.

**C. Over the next four months, Monique violated nearly every restriction the court had imposed her on continued residential placement.**

**1. Monique failed to obtain a psychological evaluation, violating the parenting plan ¶ 3.10.1.**

Monique does not disagree that she failed to obtain a psychological exam as ordered. BA 9-10; RP 11; CP 109-10. She arrived in court for the contempt/modification hearing, claiming that she was on the way to the psychiatrist’s office with a check in hand. RP 11. That was at least several months too late.

**2. Monique continues to allow the children to stay overnight at her mother's house, violating the parenting plan ¶ 3.10.3.**

Monique did not deny that she and her daughters stayed overnight in her mother's home. CP 111-12. She claimed that these overnights were caused by conditions in her home and that her mother had slept elsewhere to avoid violating the court's order. *Id.*

Chandler had firsthand knowledge that the girls were living at their grandmother's home. CP 33-34; RP 21. All of the children's pets live at their grandmother's house. CP 33. And every FaceTime call Chandler had with the children was at their grandmother's house – Chandler can plainly see her house during the call. *Id.*

During a residential visit in Washington in October 2014, the children told Chandler that they slept at their grandmother's house, often without Monique present. CP 33-34. Chandler did not question or press the girls, but their living situation came up in the natural course of conversation. *Id.* N told Chandler that she sleeps in the same bed as "Nana." CP 35-36. C detailed that sometimes Monique sleeps at Nana's house, and sometimes she returns to "her house." CP 34. N explained that Monique returns to her mother's in the morning to take the girls back to her house to catch the bus so that the bus driver would not know that they "sleep at Nana's." *Id.*

Deeply concerned, Chandler hired a private investigator to determine where the girls were living. CP 34-35. The investigator never observed Monique or the children at the home she claims they live in. CP 35, 40-45. He observed them coming and going from the grandmother's house, and observed Monique and two children walk from her mother's house in the morning to the bus stop directly in front of the house in which she claims to live. CP 41-42, 44.

**3. Monique failed to use software to improve communication and otherwise to work with Chandler on non-emergency medical decisions, violating the parenting plan ¶ 3.13.4.**

The trial court ordered both parties to use Family Wizard software to communicate about the children's events and appointments. CP 24, 36. Chandler signed up on August 19, 2014. CP 36. When he filed his contempt motion in late November 2014, Monique had not signed up, plainly violating the court's order. *Id.*

This is far more problematic than just failing to implement the software, where Monique continues to make non-emergency medical decisions for the girls without involving Chandler. CP 37. Since Monique is unwilling to communicate with Chandler about the children's medical issues, he has to obtain information directly from their providers. *Id.* In doing so, Chandler learned that C is medicated

for Asthma and ADHD without Chandler's knowledge or consent. *Id.* Chandler has repeatedly voiced his concern that C may not need these medications and that it is dangerous for her to be taking medications that are unnecessary. CP 37, 38.

Chandler's concern is that Monique seems to feel "that something needs to be wrong with the children." CP 37. As an example, she repeatedly refers to raising three "special needs" children, who are not special needs. CP 38. Again, treating children for nonexistent conditions is dangerous. *Id.*

**4. Monique (and her mother) continued to coach the children to fear Chandler, also violating the parenting plan.**

Monique and her mother have also continued to disparage Chandler, specifically coaching the children to fear him. CP 35-36. Monique claims that Chandler is just speculating, but the children talk opening about being coached to fear Chandler and his partner Karen Vital. *Compare id. with* CP 118.

During residential time with Chandler, the girls talked about "Mommy and Nana telling them not to forget that Karen hit them." CP 36. N told him that when she sleeps with her grandmother, it is hard to fall asleep because she and Nana talk about Vital. CP 35-36. And

they plainly had been told that they should be afraid to go with Chandler and Vital, who were going to “take them away.” *Id.*

During one FaceTime conversation, C told Chandler that Vital had spanked the girls during their recent residential time with Chandler. CP 35. When Vital, who was present, asked C whether she knew that was untrue, C lowered her head and admitted that she was lying. *Id.* Monique immediately disconnected the call. *Id.*

In short, the children revealed that Monique continues to coach the girls into fearing their father. CP 35-36.

**D. After just four months, the Court was forced to hold Monique in contempt for multiple failures to comply with the restrictions in the parenting plan.**

Just over three months after the court entered the amended parenting plan giving Monique “one last chance,” Chandler filed a motion to show cause and declaration detailing how Monique violated § .191(3) and other restrictions. CP 11-31, 32-39, 83. On December 1, the court entered a show cause order, setting a December 17, 2014 hearing. CP 47. The next day, Chandler refiled the same motion (likely because the first was unsigned) and filed a motion to modify the parenting plan. CP 49-69, 70-76, 77-82. Monique responded on December 11. CP 107-42. The court heard both motions on December 17. RP 3, 9, 20-23.

- 1. The court found that Monique failed to make a good faith effort to obtain a parenting evaluation, intentionally depleting funds in her possession and then claiming she could not afford the evaluation.**

Though Monique admitted that she did not obtain a psychological evaluation as ordered, she takes no personal responsibility for her contemptuous behavior. BA 9; RP 11; CP 109-10. Instead, Monique blames the parenting coordinator for failing to act quickly enough to facilitate Monique's psychological evaluation, and blames Chandler for failing to immediately release funds from his 401k to Monique so that she could pay for the evaluation. BA 6-9; RP 11; CP 109-10. Monique omits much.

Parenting coordinator Karin Ballantyne gave Monique the names of providers who could perform the psychological evaluation in August, 2014. CP 77. In early September, Ballantyne told Monique that she would set up an intake appointment for Monique when she received payment for her portion of the parenting coordinator's fee. CP 124. There is no indication Ballantyne was awaiting anything from Chandler. *Compare* BA 9 *with* CP 124.

This exchange occurred weeks before Ballantyne was even officially appointed. CP 1. Monique delayed Ballantyne's

appointment by refusing to sign the proposed order appointing Ballantyne, which Ballantyne had requested. Sub No. 149.

Aside from blaming the delay on Ballantyne, before the trial court, Monique argued that the primary issue had been “financial.” RP 11. The trial court rejected that excuse, finding that Monique’s “financial problems are largely of [her own] making.” RP 12.

When the parenting plan was entered, the trial court ordered Monique to immediately sell the marital home, awarding her 100% of the proceeds if she sold the home within 30 days. CP 89. Monique’s percentage of the proceeds would decrease over time, depending on how long it took her to sell the house. The court made the urgency very clear: “to get this straightened out,” the house must be sold. *Id.*

Monique sold the house, receiving nearly \$13,000 in proceeds. CP 33, 111, 187. But instead of using the funds to obtain the psychological evaluation that she was ordered to obtain at her own expense, Monique promptly gave her mother \$12,000, claiming that she owed “back rent.” CP 111, 125. In short, Monique had plenty of money to obtain a psychological evaluation, but gave it away (RP 12):

She had the money from the sale of the house that would have allowed her to go ahead with this, and then of course she immediately goes and gives all the money to her mother so

that then she can claim poverty and say that she doesn't have anything to do it with – anything to pay for it with.

The court also rejected Monique's blaming Chandler for failing to quickly distribute funds from his 401k, noting that he was not required to do so until after the house sale closed in November. RP 11-12.

The trial court found that Monique had failed to make any good faith effort to obtain a psychological evaluation as ordered. RP 20. Monique lied about when the parenting coordinator gave her the names of psychiatrists to choose from for the evaluation. *Id.* She "purposefully deprived herself of a means to pay for the evaluation," by paying "back rent." RP 20-21. The court even doubted the amount Monique supposedly owed her mother, particularly in light of the "deplorable condition" of the rental, and amounts already paid. *Id.*

The court was unpersuaded by Monique's claim that she would finally follow through and obtain an evaluation, where Monique's history had proven her untrustworthy (RP 20):

[W]e have no guarantee based on what's happened in the past four months that she is going to move forward with this evaluation, and then we're going to be back here again in a couple months and she is going to have more excuses. Because that's what she does. She makes excuses as to why she doesn't want to follow a court's order.

**2. The trial court correctly found that Monique and the children were living with Monique's mother.**

As discussed above, Monique admits that she and the children stayed overnight at her mother's house, but claims that these infrequent overnights were necessitated by conditions in her own home and that her mother always spent the night elsewhere. BA 10, CP 110-11. Monique does not attempt to explain the children telling Chandler that they were sleeping at their grandmother's house, much less N telling Chandler that she sleeps with her grandmother. CP 34-36.

The trial rejected Monique's explanations:

[I]t's clear [Monique] is in violation of the Court's order under 3.10.3. She and the children are living with her mother in her mother's home. That's clear from what [Chandler] has seen and heard on the FaceTime calls about where the children say they are sleeping, where their belongings are, where their pets are. It's clear from the detective's surveillance . . .

RP 21; *see also* CP 176. The court found that Monique lied to Chandler and parenting coordinator Ballantyne about where the children were living. CP 171. The court found "no question that the maternal grandmother has [a] negative and detrimental effect on the children." *Id.*

**3. The court correctly found that Monique had not made a good faith effort to engage in joint decisionmaking.**

Acknowledging that she did not sign up for FamilyWizard software until November 2014, Monique claimed she could not pay the \$99 annual fee. CP 114. She acknowledged at the contempt/modification hearing she was not using the program. RP 15. And Monique never proved any efforts to communicate with Chandler, only defending her medical decisions for the children. CP 114-17.

The court found that Monique's failure to use FamilyWizard is part of her larger failure at joint decisionmaking:

[Monique] has not made a good-faith attempt to engage in joint decision-making regarding medical care. She didn't sign up for the Family Wizard until late November, at least two and a half months late, she hasn't posted anything on it. She has made no attempt to respond to [Chandler's] attempt to engage her in a discussion about whether C[,] actually needs medicine for ADHD.

RP 21-22; *see also* CP 176. The court went on to explain that Monique might be correct that C needs the medication, but that the issue is not the medication itself, but the continued unwillingness to involve Chandler in medical decisions for the children. RP 22.

**4. The court correctly found that Monique continued to make disparaging remarks about Chandler and allowed her mother to do so in the children's presence.**

The court also found that Monique has continued her efforts to alienate the children from Chandler. CP 176. She fails to provide unimpeded and unmonitored telephone and Skype access, coaches the children during Skype calls with Chandler, and ended at least one call. *Id.* She disparages Chandler in the children's presence, and allows her mother to do so as well. *Id.*

In a final note on Monique's credibility, the court addressed Monique's claim during trial that Seattle Children's Hospital had made a report to CPS after Monique brought the children in for domestic abuse screening upon their return from residential time with Chandler. RP 23. On August 6, one week before the parenting plan was entered, Monique took the children to Children's Hospital, reporting her supposed concern that Chandler was abusing them. CP 193-95. The examining physician unequivocally concluded that there was no basis for a CPS referral. CP 195.

Monique nonetheless called CPS the next day. CP 192, 199-202. The CPS investigator concluded that Monique's report did not

warrant an investigation, noting six prior CPS reports that were all “screened out”; that is, did not warrant an investigation. CP 200, 202.

Monique lied at trial, claiming that Children’s Hospital made the CPS report. RP 23. This latest example of Monique’s lack of credibility contributed to the court’s conclusion that “there is just no attempt by [Monique] to try and comply with the Court’s order here.” *Id.*

**E. Consistent with its unequivocal warning when entering the parenting plan, the court designated Chandler the primary residential parent, under its contempt powers and its statutory and common-law authority to modify the parenting plan.**

The court found Monique in contempt for violating the following parenting plan provisions:

- ◆ § 3.10.1, ordering Monique to obtain a psychological evaluation;
- ◆ § 3.10.3, restricting Monique from allowing the children to stay overnight with the maternal grandmother;
- ◆ § 3.13.3, restricting Monique from making disparaging remarks, or negative comments about Chandler, and from allowing others to do the same;
- ◆ § 3.13.4, ordering Monique to use FamilyWizard to keep track of all appointments and important information for the children;
- ◆ § 4.2, ordering joint decisionmaking for non-emergency medical care; and
- ◆ § 6.1, ordering unimpeded and unmonitored telephone and Skype access for reasonable amounts of time.

CP 176. The court found that Monique had the present ability to comply, but was unwilling to do so. CP 176-77. The court ordered

that Monique could purge her contempt by obtaining a psychological evaluation and following the recommendations. CP 178. Monique does not challenge the contempt findings, arguing only that the contempt is not a basis for modification. BA 2.

The court also entered an order modifying the parenting plan, and an amended parenting plan. CP 156-69, 170-74. As addressed below, the trial court was unsure whether a substantial change in circumstances was required, given the case's unique posture. *Infra*, Argument § B. But the court ruled that Monique's multiple failures to comply with the parenting plan amounted to a change in circumstances, finding (CP 171-73):

- ◆ Monique has not obtained a psychological evaluation as ordered;
- ◆ Monique has provided false information to Chandler and to the parenting coordinator about the children's residence;
- ◆ The children have been residing with Monique's mother;
- ◆ There is no question that the maternal grandmother has a negative and detrimental effect on the children;
- ◆ Monique continues to try to alienate the children from Chandler;
- ◆ Monique refuses to engage in joint decision making; and
- ◆ Within 3 years Monique has been found in contempt in an order entered on this date and in an order with multiple counts for failing to comply with the residential time provisions in the parenting plan.

Thus, the court found that the children’s environment with Monique (and her mother) was detrimental to their physical, mental, or emotional health and that the potential harm caused by a residential change was outweighed by the advantage of the change. CP 171. The Court then entered a parenting plan placing the children with Chandler the majority of the time. CP 156-69.

The court denied Monique’s subsequent motion for reconsideration. CP 143-52; 181-82. Monique appealed. CP 153.

## **ARGUMENT**

### **A. The standard of review is abuse of discretion.**

“Certainly, superior courts have broad discretion over matters involving the welfare of children.” *In re Parentage of C.M.F.*, 179 Wn.2d 411, 427, 314 P.3d 1109 (2013) (citing *Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993) (citing *Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993)); *Marriage of Cabalquinto*, 100 Wn.2d 325, 327-28, 330, 669 P.2d 886 (1983)). As Monique acknowledges, appellate courts review a trial court’s rulings on the provisions of a parenting plan for an abuse of discretion. BA 15-16; *Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997) (citing *Kovacs*, 121 Wn.2d at 801).

A court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Littlefield*, 133 Wn.2d at 46-47 (citing *Kovacs*, 121 Wn.2d at 801). A decision is manifestly unreasonable if, based on the facts and the applicable legal standard, the decision is outside the range of acceptable choices. *In re Parentage of Schroeder*, 106 Wn. App. 343, 349, 22 P.3d 1280 (2001) (citing *Littlefield*, 133 Wn.2d at 47).

**B. The trial court properly reserved jurisdiction to monitor the specific § .191 restrictions it ordered, so the hearing four months later to enforce those restrictions was not a modification.**

Making a purely procedural argument, Monique essentially claims that this case is “more like” *C.M.F.*, *supra*, than it is like this Court’s decision in *Marriage of Possinger*, 105 Wn. App. 326, 19 P.3d 1109 (2001). BA 18-22. While both of these cases may be relevant here, not only is *Possinger* more apposite than *C.M.F.*, but a third decision of this Court is more apposite than either. See *Marriage of True*, 104 Wn. App. 291, 16 P.3d 646 (2000). But before reaching that issue, this case is distinguishable from all of those cases, and is materially quite unique.

1. In this case of first impression, a trial court must be able to retain jurisdiction to monitor compliance with specific RCW 26.09.191(3) restrictions for a reasonable period of time, as Judge North did.

There are no cases like this. Judge North's original Parenting Plan gave primary residential placement to Monique, yet imposed six unchallenged RCW 26.09.191(3) restrictions on her to protect the children, and expressly stated that "a violation of any of these restrictions shall be a basis for the father to seek primary residential placement." CP 23.<sup>3</sup> Judge North retained jurisdiction to monitor her compliance with these six restrictions, requiring Chandler to bring any request for primary custody to him. *Id.* Within only four months, the trial court found violations of each of the restrictions, held Monique in contempt, and changed primary residential placement. CP 170-74.

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<sup>3</sup> Monique never challenged this Parenting Plan, or these restrictions. Nor has she raised any issue about them here. They are the law of the case. See, e.g., ***Augerson v. Seattle Elec. Co.***, 73 Wash. 529, 531, 132 P. 222 (1913) ("As the plaintiff has not appealed, that portion of the order . . . has become the law of the case and cannot be reviewed").

Existing cases involving § .191(3) restrictions solely involve restricting the non-residential parent.<sup>4</sup> The one (arguable) exception is ***Marriage of Kinnan***, 131 Wn. App. 738, 129 P.3d 807 (2006), which Monique discusses elsewhere in her brief. BA 27-28. ***Kinnan*** is only an arguable exception because the primary residential placement is unclear and because that parenting plan did not identify the restriction on the primary residential parent as a § .191 restriction. 131 Wn. App. at 747-48 (finding that it nonetheless was a § .191(2) restriction). But in any event, ***Kinnan*** is wholly inapposite for reasons discussed *infra*. This case is unique.

It thus presents a question of first impression: may a trial court retain jurisdiction to supervise the primary residential parent's compliance with § .191(3) restrictions in order to serve the best interests of the child? The answer must be yes. See, e.g., ***Ronken v. Bd. of Cnty. Comm'rs***, 89 Wn.2d 304, 312, 572 P.2d 1 (1977)

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<sup>4</sup> See ***Marriage of Chandola***, 180 Wn.2d 632, 327 P.3d 644 (2014); ***Marriage of Katare***, 175 Wn.2d 23, 283 P.3d 546 (2012), *cert. denied sub nom.*, ***Katare v. Katare***, \_\_ U.S. \_\_, 133 S. Ct. 889 184 L. Ed. 2d 661 (2013); ***Marriage of Rostrom***, 184 Wn. App. 744, 757, 339 P.3d 185 (2014); ***Marriage of Fahey***, 164 Wn. App. 42, 68, 262 P.3d 128 (2011); ***Marriage of Chua***, 149 Wn. App. 147, 155, 202 P.3d 367 (2009); ***Marriage of Mansour***, 126 Wn. App. 1, 106 P.3d 768 (2004); ***Marriage of Burrill***, 113 Wn. App. 863, 56 P.3d 993 (2002); ***Kirshenbaum v. Kirshenbaum***, 84 Wn. App. 798, 929 P.2d 1204 (1997); ***Marriage of Wicklund***, 84 Wn. App. 763, 770, 932 P.2d 652 (1996).

(“every court has inherent power to enforce its decrees and to make such orders as may be necessary to render them effective”).

This is born out in *Possinger*. That trial court also adopted a father's parenting plan, while providing for review after one year; it simply could not foresee with any certainty how the relatively young parties' fast-changing circumstances would resolve over time. 105 Wn. App. at 329. The trial court modified the residential provisions at the end of the year, applying the criteria for establishing a permanent parenting plan under RCW 26.09.187, rather than the criteria for a modification under RCW 26.09.260. *Id.* at 331-32.

This Court affirmed, holding that “the authority of the superior courts over matters relating to the welfare of minor children is not derived from statute alone but also from common law”:

[Equity courts] have always possessed the power, in whatever manner the question arose, of protecting and controlling the property and custody of minors. That power is broad and plenary and is not derived from statute. . . .

. . . .

“ . . . In cases involving the custody of minor children, whether it be by divorce or separation proceeding . . . the court . . . [i]s thus exercising its inherent power and jurisdiction in equity . . . .”

. . . .

“ . . . We are of the opinion that the action between father and mother in respect to custody of their minor children is not one

born of the statute – rather the statute is declaratory of the law which already existed in the equity courts."

***Chandler v. Chandler***, 56 Wn.2d 399, 403-04, 353 P.2d 417 (1960).

***Possinger***, 105 Wn. App. at 333-34. As a result, in light of the uncertainties of the situation before him, Judge North had inherent authority to monitor compliance with his .191(3) restrictions for a reasonable period of time. He did not err.

**2. *Possinger* and *True* are apposite, but *C.M.F.* is not.**

In ***True***, the parties agreed to a "Parenting Plan Final Order" that nonetheless reserved many issues until the parenting plan could be reviewed, an order that this Court referred to as "really a temporary peaceful coexistence plan." 104 Wn. App. at 294. The husband then asked the trial court to retain jurisdiction until after the last date by which the plan could take effect. *Id.* at 295. The trial court agreed to retain jurisdiction to a date 17 months into the future (from March 1999, to August 2000). *Id.* The mother appealed, but this Court affirmed: a "court may retain jurisdiction over the matter for a limited period of time in order to review the efficacy of its decision and to maintain judicial economy following its order." *Id.* at 298 (citing ***Marriage of Ochsner***, 47 Wn. App. 520, 527, 736 P.2d 292 (1987)).

This Court also rejected the argument that such a reservation is subject to a threshold determination. *Id.*

This case is much like *Possinger* and *True*. As in those cases, Judge North was uncertain of the future, but wanted to ensure that Monique followed through on his orders and restrictions in the best interests of the children – and *soon*. See, e.g.:

Court to Monique: “this is basically your last chance to shape up, because if you don’t, I’m going to end up transferring the children to Mr. Riker. Because you can’t continue with this process of trying to repeatedly alienate the children from their father and manipulating the legal system. Because as I said, for the last year, you’ve been playing the legal system like a pro, an unethical pro who doesn’t care what the impact is on the children” (App. A, CP 86);

“So what I’m going to do is . . . order that the . . . home be sold . . . . [Monique,] if you can sell it within 30 days, you get 100 percent of the proceeds of . . . whatever is net . . . . If it takes 45 days, you’re going to get 90 percent. If it takes 60 days, you’re going to get 80 percent. It’s going to go down 10 percent and the other part is going to go to” Chandler. (App. A, CP 89).

These and other statements show that Judge North intended either to resolve the outstanding issues in a short period of time, or else to place the children with Chandler.

And within just four months, Judge North had its answer: Monique committed at least six distinct and contemptuous violations of his direct orders. CP 176. These violations created an environment that “is detrimental to the children’s physical, mental or emotional

health and the harm likely to be caused by a change in environment is outweighed by the advantage of a change.” CP 171-72. The children’s best interests absolutely required the care and caution this Judge exhibited. He acted quickly to protect the children.

Under *Possinger* and *True*, and consistent with the Parenting Act and with Supreme Court precedent,<sup>5</sup> Judge North properly retained jurisdiction to revisit the parenting plan without the necessity of a modification proceeding. *Possinger*, 105 Wn. App. at 336-37. Such inherent authority is essential to protect the best interests of the children in these unique circumstances. He did not err.

By contrast, *C.M.F.* is nothing like this case. There, a court entered an order establishing a man’s parentage, designating the mother as the child’s custodian solely for purposes of other state and federal statutes, and allowing either parent to move to establish a residential schedule. 179 Wn.2d at 416. The father sought to establish a parenting plan for the child, but the mother objected that the original parentage order was a “custody decree” under RCW

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<sup>5</sup> *Possinger* at 335-36 cites, *inter alia*, *Phillips v. Phillips*, 52 Wn.2d 879, 884, 329 P.2d 833 (1958) (court may defer final determination of issues in a custody modification action until after a trial period); and *Potter v. Potter*, 46 Wn.2d 526, 528, 282 P.2d 1052 (1955) (court has equitable power to postpone final custody decision for a specified period to determine whether a mother with a history of mental instability could function as a custodial parent). These opinions also support the trial court’s procedure in this case.

26.09.260, so the father had to show adequate cause. *Id.* at 416-17. The trial court entered the plan, and the appellate court affirmed. *Id.*

But the Supreme Court reversed (albeit while reinstating the prior temporary orders to ensure that the child was not removed from the father until after a remand for a hearing on adequate cause and possibly modification). *Id.* at 433. The Court held that because many indigent people rely on parentage orders as “custody decrees” for purposes of obtaining state aid and other services, holding that they were not custody decrees could be very socially disruptive. *Id.* at 432-33. None of these factors or large societal consequences are presented here.

**C.M.F.** does not create any bright-line rule, but simply distinguished **Possinger** and **True** “because the family law court in each case retained jurisdiction for only about a year after the entry of the parenting plan.” *Id.* at 427. In fact, the **True** court retained jurisdiction for 17 months. 104 Wn. App. at 295. And even in **C.M.F.**, the father did not bring his parenting-plan action for roughly 18 months. 179 Wn.2d at 427 n.6. Bright-line rules that turn on very specific timeframes are counterproductive, particularly where the polestar is the best interests of the children.

This Court should hold that Judge North's clearly expressed intention was to retain jurisdiction in order to monitor a reasonably quick compliance with his very specific orders, not to retain jurisdiction indefinitely, or even for more than a few months. In any event, he acted within a reasonable time. The Court should affirm.

**C. The trial court properly modified the parenting plan.**

Monique argues that Judge North could not modify the parenting plan for various reasons. BA 23-26. As discussed above, this was not a modification, but simply a reservation of jurisdiction "to review the efficacy of its decision and to maintain judicial economy following its order." *True*, 104 Wn. App. at 298. That disposes of Monique's modification arguments. The Court should affirm

**1. Chandler did file a motion to modify, and the trial court did enter an Order on Modification supported by unchallenged and amply supported findings.**

In any event, taking a belt-and-suspenders approach, Chandler did file a Motion to Modify Final Parenting Plan in addition to his motion for contempt. CP 70-76. The trial court entered an Order Modifying the Plan. CP 170-74. Judge North found that a substantial change in circumstances has occurred because the "children's environment under the . . . [existing] parenting plan/residential schedule is detrimental to the children's physical, mental

or emotional health and the harm likely to be caused by a change in environment is outweighed by the advantage of a change to the children.” CP 171. Judge North also found as follows (CP 173):

The Respondent’s failure to follow the terms and conditions and requirement in the final Parenting Plan including refusing to advise the father and the Parenting Coordinator that the children are residing with the maternal grandmother, makes her home a detrimental environment to the children.

The mother has failed to obtain a psychological evaluation and follow any recommended treatment. Her unresolved mental health issues create a detrimental environment for the children.

The mother’s continued efforts to alienate the children from the father are emotionally damaging to the children.

Monique assigns no error to these (or any) findings (BA 2) – indeed, she fails to even mention them. BA 23-26. In any event, they are well supported by the evidence discussed in the Statement of the Case. They amply support his substantial-change-circumstances finding.

The Court also found “the following facts, supporting the requested modification, have arisen since the decree or plan/schedule [and] were unknown to the court at the time of the decree or plan/schedule,” unchallenged findings well supported by the record, and ample for modification (CP 171-72):

Respondent has failed to obtain a [court ordered] psychological evaluation. ...

Respondent has provided false information to the Petitioner and the Parenting Coordinator about the residence of the children.

The children have been residing with the maternal grandmother [in violation of a direct court order].

The Respondent continue[s] to seek to alienate the children from the father.

The Respondent refuses to engage in joint decision making with the Petitioner regarding non-emergency health care of the children.

[Respondent] has been found in contempt of court at least [holographic: in one order with multiple counts in order entered this date] within three years because the person failed to comply with the residential time provisions in the court-ordered parenting plan.

Somewhat focusing on one adequate cause finding, which she has not challenged, Monique suggests that it “merely parrots the language of the statute.” BA 23. She also suggests that there is “no new evidence to support” that finding or a substantial change in circumstances. BA 24. Monique’s arguments are terribly indistinct and confused at this point. But she is wrong in any event.

The trial court’s above-quoted unchallenged findings identify *three* things that have arisen since the entry of the parenting plan. CP 173. Each of them – and certainly the collection – constitutes a substantial change in circumstances that has arisen since the decree and plan/schedule were entered. CP 171. Since they have happened

since that entry, they must have been unknown to the court at the time that entry. Not even Judge North can see into the future.

Since this is obvious, Monique attempts to argue – without any citation to apposite authority – that “mere violations of the parenting plan alone cannot be a basis for modification.” BA 24-25 (citing *In re Custody of Halls*, 126 Wn. App. 599, 607 ¶ 21, 109 P.3d 15 (2005); see also *Schroeder*, 106 Wn. App. at 350). Neither logic, nor these cases, nor any other case, supports Monique’s assertion.

Logic recoils. Judge North **ordered** Monique to get a psychological evaluation; to stop letting the children reside with her mother (who is “practically delusional” in her efforts to alienate the children from the father, CP 87); to stop her own efforts to alienate the children from him; and to cooperate on joint decision making; all on pain of losing primary custody of her children. Surely, it must be new information to the Judge – arising after the decree or plan – when he finds out that she is going right on ahead with those behaviors, orders be damned. No valid authority disputes this logic.

Nor does *Halls*. There, under an existing Washington parenting plan, the mother had primary residential placement, and the father had frequent residential time. 126 Wn. App. at 602. The

mother was evicted, so she took the kids to Minnesota. *Id.* The father missed his scheduled visit. *Id.* He sought a contempt order. *Id.*

The trial court threw the unrepresented mother in jail. *Id.* at 603. The court later let her out, but ordered her to show cause at the next scheduling hearing why the father should not become the primary residential parent. *Id.* At that next hearing, the court found the mother in contempt and ordered her to turn over the children within 24 hours or be thrown back in jail. *Id.* She was still unrepresented. *Id.* The court also gave the father sole custody. *Id.* He had never petitioned to modify the parenting plan. *Id.*

At the next hearing, the court asked the father, "Want me to put her in jail or are you satisfied?" *Id.* at 603. He was satisfied; the newly-appointed public defender withdrew. *Id.* at 603-04. The court then modified the parenting plan. *Id.* at 604. Still no motion to modify. *Id.* Reconsideration was also denied, and the mother appealed. *Id.*

While the appeal was pending, the father again brought contempt, this time because she had not returned the children on time. *Id.* at 604-05. He also asked for a new parenting plan "that doesn't leave any room for error." *Id.* The court found her in contempt again, entering a "temporary" order restraining her in various ways for 10 years. *Id.* at 605. Without seeking leave under RAP 7.2, the

court again amended the parenting plan to further favor the father, based on her “two contempts.” *Id.* A second appeal followed. *Id.*

Unsurprisingly, Division Two reversed this travesty of justice. No motion; no findings of a substantial change; no best interests of the child analysis. *Id.* at 606-09. And no due process. *Id.* at 609-10. One holding is, “contempt findings alone will not support a parenting plan modification.” *Id.* at 611 (emphasis added).

**Halls** is inapposite. Judge North did not rely on contempt findings alone. Rather, he relied on six violations of express § .191 restrictions, the violation of which (he warned Monique) would be grounds to change primary residential parentage, and over which he retained jurisdiction. **Halls** does not help Monique.

Nor does **Schroeder**. There, an adjudicated father sought to modify a parenting plan and to obtain custody of his child, on the bases (a) that the mother had committed at least two contempts within the preceding three years for interfering with the father's visitation rights, and (b) that she was continuing to prevent him from exercising his rights under the plan. 106 Wn. App. at 346-47. The mother apparently believed that he had molested the children, despite an absence of evidence. *Id.* The trial court found contempt, but refused to modify the plan, both of which Division Two affirmed.

*Id.* at 348-52. Its allegedly relevant holding is, “absent a finding that modification is in the best interests of a child, the mere violation of the parenting plan cannot, per se, require a change in custody when such change is contrary to the best interests of the child.” *Id.* at 351.

**Schroeder** thus did not hold, as Monique represents, that “mere violations of the parenting plan alone cannot be a basis for modification.” BA 24-25. Rather, it held that where, unlike here, the trial court *refused* to find that a change was in the best interests of the child, two contempt findings cannot *compel* a change. 106 Wn. App. at 351-52. Like **Halls**, **Schroeder** is no help to Monique.

At the end of her unsupported assault on logic and precedent, Monique lists four even less supported<sup>6</sup> (and less relevant) assertions (all on BA 26):

- (1) “absent a petition for modification, the trial court had no authority to modify the parenting plan”;  
- but there was a petition (CP 70-76).
- (2) The “trial court could not modify the parenting plan . . . because her contempt was not related to the ‘residential provisions’ as is required under RCW 26.09.260(2)(d)”;

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<sup>6</sup> Since Monique cites no authority for these four assertions, this Court need not even address them. **Cowiche Canyon Conservancy v. Bosley**, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

- but lying about the children's residence and flouting the prohibition on residing with the mother are related to those provisions (CP 171-72);

- and that is two contempts (*id.*)

(3) "she was only found in contempt *once* since the final parenting plan was entered, not twice as required under RCW 26.09.260(2)(d)" (emphasis in original);

- again, not so (CP 171-72);

(4) "there was no evidence that could support a finding that changing the daughters' primary residence . . . would be in the daughters' best interest."

- *but see* the unchallenged findings (CP 171, 173).

On that last point, Monique admits that Chandler expressly relied upon arguments he made, and evidence that he presented, during the dissolution trial. BA 23 (citing CP 72). He also reaffirmed his trial testimony that he was ready to accept custody. CP 80. But she claims (without citing any authority) that Judge North could not rely on evidence presented to him only a few months earlier. BA 23. While that evidence would not – and did not – support the substantial change in circumstances (Monique's later contemptuous conduct did that), there is no reason why it could not support a finding that changing residences is in the daughters' best interests. Since Monique, as appellant, has failed to bring that evidence forward, this Court must accept Judge North's judgment on the matter.

**2. The mother did not ask for a hearing, so she is not “entitled” to one.**

Monique argues she was entitled to an evidentiary hearing. BA 26-29. She cites some statutes and some cases. *Id.* What she does not cite is more important.

She does not mention that she was represented by counsel at the contempt and modification hearing. See RP 3, 11-18. She does not cite anywhere that she asked for an evidentiary hearing (because she did not). BA 26-29. She does not cite any cases that require an evidentiary hearing when none is requested. *Id.*

She does cite *Kinnan*, *supra*. BA 27-28. There, the mother asked to remove a parenting-plan restriction against her now-husband ever being alone with her children. 131 Wn. App. 742. The now-husband had pleaded guilty to communication with a minor for immoral purposes some time ago, and had served his time. *Id.* The mother found the restriction an inconvenience. *Id.* She produced an expert to say that he is a “low risk offender.” *Id.* at 742-43.

The father, however, objected to removing the restriction. *Id.* at 743. He sought either to terminate the mother’s visitation or to require that all visits with the offender present must be supervised. *Id.* The parties disputed various aspects of the issue. *Id.*

The trial court asked the parties to try mediation, which failed. *Id.* at 742. At the modification hearing, the trial court said, “[w]hen I sent the parties to mediation [I] said that they needed now to start functioning like parents rather than having to rely on the Court.” *Id.* at 743. The court even asked the mediator to come to the hearing, and he instructed the parties to “get it talked out and figured out, and if we couldn’t get to an agreement, then I would make a ruling on the issue.” *Id.* at 743-44.

Unlike here, the father’s counsel objected, saying “I think we also said that we would have an evidentiary hearing.” *Id.* at 744. The court denied it, but then “implied that an evidentiary hearing would be necessary only in the event that the issues were not resolved.” *Id.* The trial court wound up swearing-in the mediator, who opined that the restriction was no longer needed. *Id.* at 744-45. After making some seemingly controversial comments about what the Court of Appeals might do (*id.* at 745) the trial court said, “let’s move on. We don’t need to have a hearing. If you want to send this to the Court of Appeals and if they want us to have a hearing, we can do that, but I don’t think so.” *Id.* Seeking reconsideration, the father again asked for an evidentiary hearing, but the court denied reconsideration. *Id.*

As in *Halls*, *supra*, it is little surprise that the Court of Appeals reversed. Division Two rejected the mother's argument that because the restriction was not expressly labeled a § .191 restriction in the parenting plan, the trial court did not have to follow § .191 procedures for removing it. *Kinnan*, 131 Wn. App. at 748. The court found that the father had moved for modification under RCW 26.09.260, which requires an adequate cause determination that the trial judge (unlike Judge North) never made. *Id.* at 750. Also unlike Judge North, that court "failed to set a date for hearing on an order to show cause why the requested order or modification should not be granted." *Id.* (quoting RCW 26.09.270). The trial court also failed to give the parties adequate notice. *Id.* at 751. The appellate court pointedly – and *sua sponte* – remanded to another judge. *Id.* at 756 n.17.

While the above is more than sufficient to distinguish *Kinnan*, Division Two went on to say, "we are **not** holding that all motions for adjustment or modification of a parenting plan require a hearing." *Id.* at 751 (emphasis added). Thus, *Kinnan* contradicts Monique's assertion that the "trial court's failure to set an evidentiary hearing before permanently modifying the parenting plan requires reversal." BA 27 (citing only *Kinnan*). Monique sought no hearing. She cannot argue here for the first time that she was "entitled" to one.

**D. The trial court did not err in failing to consider the relocation statute, where Monique did not raise it, and where neither parent relocated.**

Placing the children in the home where Chandler has lived for four years, and where the children have residential time, is a major modification, not a relocation. Monique provides no authority for her contrary assertion that the relocation statute applies where, as here, the children change primary residences, but neither parent moves. BA 29-30. And Monique neglects to mention that she never asked the trial court to apply the relocation statute. This Court need not consider this argument raised for the first time on appeal, but should affirm in any event. RAP 2.5.

The statute governing modification of parenting plans, RCW 26.09.260, differentiates between major and minor modifications. ***Marriage of Tomsovic***, 118 Wn. App. 96, 103-04, 74 P.3d 692 (2003) (citing ***Bower v. Reich***, 89 Wn. App. 9, 14-15, 964 P.2d 359 (1997)). A modification is “major” if it changes the children’s primary residence. ***Tomsovic***, 118 Wn. App. at 104; RCW 26.09.260(1), (2) & (5). To make a major modification, the court must, as it did here, find that there has been a substantial change in the circumstances of the child or the nonmoving parent and that the modification is

necessary to serve the children's best interests. 118 Wn. App. at 104; RCW 26.09.260(1), (2); CP 171-73.

A modification is "minor" if it does not change the children's primary residence, and (a) does not exceed 24 days per year, or (b) is based on the noncustodial parent's change of residence or a parent's involuntary change in work schedule that makes the current residential schedule impractical; or (c) does not result in a schedule that exceeds 90 overnights per year. 118 Wn. App. at 104; RCW 26.09.260(5). The requirements for obtaining a minor modification are more relaxed than those for obtaining a major modification. *Id.*

As addressed above, the proceeding at issue was not a modification, but a revision of the parenting plan under the court's retained jurisdiction. *Supra*, Arg. § B.

But in any event, Monique confounds a major modification and relocation, stating that "the effect of the modification was to require the children to relocate to Connecticut from Washington." BA 29. The "effect" of the modification was to change the children's primary residence. That is not a relocation in the sense used under the relocation statutes.

The relocation statute applies where the primary residential parent seeks to move with the child. RCW 26.09.430. The primary

residential parent initiates the relocation process by serving notice to all persons entitled to residential time or visitation with the child. **Marriage of Horner**, 151 Wn.2d 884, 888, 93 P.3d 124 (2004); RCW 26.09.430. There is a presumption in favor of relocation. **Horner**, 151 Wn.2d at 887. As this Court recently reiterated, “the presumption in favor of relocation operates to give particular importance to the interests and circumstances of the relocating parent, not only the best interests of the child.” **Marriage of McNaught**, No. 72343-0-1, 2015 Wash. App. LEXIS 1938, at \*9 (Aug. 17, 2015) (emphasis added) (quoting **Horner**, 151 Wn.2d at 887).

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

In short, the relocation plainly involves the primary residential parent moving with the children. That is not what happened here. Chandler left Washington in 2009, and lives in Connecticut where he has lived since 2009. CP 204-05. He did not “relocate” since the December 2014 Parenting Plan was entered, or while the dissolution proceedings were pending.

The authorities Monique relies on are inapposite. BA 30. ***Marriage of Wehr***, like the statute it quotes, says nothing other than that a relocation is “a change in principal residence either permanently or for a protracted period of time.” 165 Wn. App. 610, 612, 267 P.3d 1045 (2011) (quoting RCW 26.09.410(2)). Neither ***Wehr*** nor RCW 26.09.410(2) addressed whether a relocation occurs when only the children change residences.

Finally, the relief Monique seeks is entirely improper. BA 31. If this Court holds, for the first time, that the relocation statute applies where neither parent moves, then the Court should remand to Judge North for entry of findings.

**E. Monique is not entitled to attorney fees.**

In light of the trial court’s basis for changing primary residential placement – contemptuous and deliberate disregard of court orders – Monique is not entitled to fees. Contrary to her argument, Judge

North's decisions were based on the *relevant* statutes. Monique's appeal is wholly without merit.

**CONCLUSION**

For the reasons stated above, this Court should affirm.

RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of October,  
2015.

MASTERS LAW GROUP, P.L.L.C.



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**CERTIFICATE OF SERVICE BY MAIL AND/OR EMAIL**

I certify that I caused to be mailed, postage prepaid, via U.S. mail, and/or emailed a copy of the foregoing **AMENDED BRIEF OF RESPONDENT** on the 6<sup>th</sup> day of October 2015, to the following counsel of record at the following addresses:

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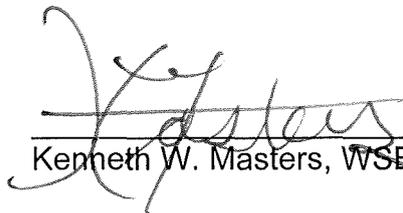
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Kenneth W. Masters, WSBA 22278

## **APPENDICES**

Appendix A — Transcript of Oral Ruling

RCW 26.09.187

RCW 26.09.191

RCW 26.09.260

RCW 26.09.270

RCW 26.09.410

RCW 26.09.430

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Marriage of	)	No. 13-3-11063-0 SEA
	)	
CHANDLER RIKER,	)	
	)	
Petitioner,	)	
	)	
and	)	
	)	
MONIQUE RIKER,	)	DISK ENCLOSED
	)	
Respondent.	)	
	)	

VERBATIM REPORT OF PROCEEDINGS

THE HONORABLE DOUGLASS NORTH, JUDGE, PRESIDING

AUGUST 11, 2014

APPEARANCES:

LAURIE ROBERTSON, for Chandler Riker  
 MONIQUE HETRICK RIKER, Pro Se

ORDERED BY:

Laurie Robertson  
 Law Office of Jason Newcombe  
 1218 Third Avenue #500  
 Seattle, WA 98101  
 (206) 624-3644

PREPARED BY:

Rose Landberg  
 Lickety Split Transcripts  
 P.O. Box 21461  
 Seattle, WA 98111  
 (206) 932-5025

COPY

1 I hereby certify that this is a true and correct record  
2 of the proceedings conducted before the Honorable Douglass  
3 North on August 11, 2014 in the matter of the Marriage of  
4 Chandler Riker and Monique Riker, King County Cause No. 13-3-  
5 11063-0 SEA. I further certify I am in no way related to or  
6 employed by any party or counsel and I have no interest in  
7 this matter.

8 Dated this 28th day of October, 2014.  
9

10 *Rose Landberg*

11 Rose Landberg

12 Court-Approved Transcriptionist

13 AAERT Certified, No. CET-D 664

14 Lickety Split Transcripts

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AUGUST 11, 2014

Start Time: 11:49:28

COURT: Well, this has been a tough case because there, while initially when the parties separated, you know, there was fault on both sides in terms of how they got into this mess. Ms. Hetrick didn't follow through on moving back east, which is what they'd originally discussed. Mr. Riker was obviously not as sympathetic and concerned about his family as he should have been, given where they were. But, you know, I guess the separation probably occurred sometime in 2011 when they were actually talking about mediating and how they were going to pay bills and things like that. I don't know that that's critical to the outcome of the case.

What is really clear though is that in the last year, Ms. Hetrick and her family have made every effort to try and alienate the children from Mr. Riker. And that's been a real problem because she's, you know, first cut off the face time, then cut off all contact, then forced all of the things that have gone on since then.

I mean, Ms. Hetrick, you maneuvered this like would be done -- you may be representing yourself. It was done exactly in the way that I would expect it to be done by a highly unethical experienced family law attorney. That is, if you had been represented by a family law

1 attorney who really knows the ins and outs, how you really  
2 manipulate the system and you don't care about ethics at  
3 all, you don't care who the heck you screw in the process  
4 of doing it. They would have done exactly what you did:  
5 bringing false claims of stalking, harassment, refusing to  
6 show up or provide the children when that was supposed to  
7 be done, filing at the last minute for a protection order  
8 just because you're unhappy with a visitation provision  
9 that's coming up.

10 In spite of all that, I'm going to adopt, at least  
11 initially, the father's proposed parenting plan that  
12 involves the children primarily remaining with Ms. Hetrick.

13 Now, Ms. Hetrick, I want to make it clear to you  
14 that this is basically your last chance to shape up,  
15 because if you don't, I'm going to end up transferring the  
16 children to Mr. Riker. Because you can't continue with  
17 this process of trying to repeatedly alienate the children  
18 from their father and manipulating the legal system.  
19 Because as I said, for the last year, you've been playing  
20 the legal system like a pro, an unethical pro who doesn't  
21 care what the impact is on the children or anything else  
22 but just trying to manipulate it to get your own way. Now,  
23 I realize that you've been pro se, but you've pulled off  
24 almost all the stunts that I've ever seen pulled off by  
25 experienced family law practitioners who wanted to screw

1 somebody over and didn't care what the heck happened in the  
2 course of doing it.

3 And Mr. Hetrick, since you're here, I'll address  
4 you. I have no ability to enter any orders directly  
5 affecting you or your mother. You're not parties to the  
6 action. But if I hear that there's going to be further,  
7 there's further efforts by you or your mother or anybody  
8 else to alienate the kids, I will order Ms. Hetrick not to  
9 allow you to come around the kids.

10 MR. HETRICK: No, I understand that.

11 COURT: Yeah. I don't think you've been doing it  
12 as much as your mother has, but, you know, Ms. Hetrick's  
13 mother has been in a practically delusional state in  
14 dealing with this. I mean, thinking that she's being  
15 stalked just because she has a weird encounter with  
16 somebody in a store. I mean, I admit it was a weird  
17 encounter, but why that should have any relationship to  
18 this proceeding or not, I don't know. And then referring  
19 to the idea of the girls going with their father for two  
20 weeks as "the horrific event." I mean, I realize that she  
21 disagreed that that was an appropriate way to do it and  
22 felt that there ought to be more, you know, sort of a I  
23 guess slow periods of time with Mr. Riker before they went  
24 off for two weeks -- and we could argue the merits of that,  
25 but it wasn't, this isn't like the Holocaust or something

1 or to her like that.

2 MR. HETRICK: Can I, can I, I just want to  
3 (inaudible).

4 COURT: Yeah.

5 MR. HETRICK: I have made it clear in the past few  
6 days to (inaudible), and I know she will listen to me  
7 (inaudible). And right away, it's not at all appropriate.  
8 And I agree with Your Honor it, it is (inaudible). It's  
9 not appropriate. And I have an influence over my mother  
10 and (inaudible).

11 COURT: Right.

12 MR. HETRICK: That will not be a problem and I can  
13 talk to her and she will listen to me.

14 COURT: Okay. Well, that's good because, you  
15 know, what we're concerned with here is the welfare of  
16 Charlotte, Audrey and Nora. And those girls need to have a  
17 good relationship with both parents. And if there's a war  
18 going on between the parents and the girls know that, even  
19 if you avoid speaking directly in front of them, if they  
20 know that there's tension in the room the moment that  
21 anybody mentions dad, they're going to, you know, it puts  
22 them in a horrible position because they can't be loyal to  
23 mom without being disloyal to dad or loyal to dad without  
24 being disloyal to mom. And you don't want to put them in  
25 that position.

1 MR. HETRICK: (Inaudible) And I hope that over the  
2 process of this trial (inaudible). I directed my family to  
3 bring all of their pain and anxiety to me so that they  
4 won't (inaudible).

5 COURT: Okay. Well, I appreciate that because  
6 it's important that, that, that whatever discord there is  
7 and someone doesn't get the kids, because the kids need to  
8 be able to have a good relationship with both parents.

9 So what I'm going to do is, in order that the, the  
10 home be sold, put Ms. Hetrick in charge of selling the  
11 home. Ms. Hetrick, if you can sell it within 30 days, you  
12 get 100 percent of the proceeds of whatever you can,  
13 whatever is net out of this thing in selling it. If it  
14 takes 45 days, you're going to get 90 percent. If it takes  
15 60 days, you're going to get 80 percent. It's going to go  
16 down 10 percent and the other part is going to go to Mr.  
17 Riker. So obviously you want to get it sold as soon as you  
18 can because you can get more out of it.

19 I'm going to intend to award you your portion of  
20 the 401K as outlined by Mr. Riker, which is \$45,000 in a  
21 QUADRO, but I'm going to hold that in suspension until we  
22 get the house sold because we got to get the house sold in  
23 order to be able to get this thing straightened out.

24 I'm not -- the one thing about the parenting plan  
25 proposed, Ms. Robertson, is it says that the girls are not

1 supposed to spend any time with Ms. DeCoy. And I'm going  
2 to say no overnight time with Ms. DeCoy, but I think she  
3 can spend time with them. I don't want to cut them off  
4 from her altogether, but I do want to dial back their  
5 spending, getting caught in this bunker mentality we've had  
6 here which Ms. DeCoy has exhibited to a surprising degree.  
7 I mean, I've seen the parents involved this much at each  
8 other, but for somebody who is a step removed, that is, Ms.  
9 Hetrick's mother, to be that heavily invested in it is  
10 really unusual, to the point where she's caught up in the  
11 battle as much as anybody. And she needs to be able to  
12 just have a relationship with her granddaughters and not  
13 get involved in a fight between Ms. Hetrick and Mr. Riker.

14 So I'll enter the child support order in  
15 accordance with what you've proposed, Ms. Robertson.

16 Now are there other things that I need to cover  
17 that I haven't covered so far?

18 MS. ROBERTSON: I don't think so. Do we need to  
19 get -- I got an e-mail from Mr. Saltvig today that he's  
20 back. I don't know if he needs to sign off on a child  
21 support order before we submit it to the court.

22 COURT: That's probably a good idea just to get  
23 there. I think as I understood it from Mr. Abusugara, all  
24 they want is to make sure that it contains the judgment for  
25 the, what is it, the 1,974 or something or other --

1 MS. ROBERTSON: Yeah.

2 COURT: -- that's out, yeah. So they obviously  
3 want to make sure that's included. But otherwise, I think,  
4 I think we're set.

5 MS. ROBERTSON: Because otherwise, we have the  
6 proposed orders we could present. I could hold the order  
7 of child support, send it to Mr. Saltvig, get him to sign  
8 it, but --

9 COURT: Okay.

10 MS. ROBERTSON: -- otherwise, we could present  
11 the orders if the court wanted me to --

12 COURT: Sure. You could show them to Ms. Hetrick,  
13 and we could either do them, you know, I mean, I don't  
14 know. She may want to review them longer than that but, I  
15 mean, I actually, I don't think I have anything this  
16 afternoon, right? Because that trial got delayed until  
17 tomorrow. But I was going to start a trial at 1:30 this  
18 afternoon. So I'm just going to be working on motions in  
19 my office, so if you want to come back with it this  
20 afternoon, I could sign the orders then.

21 MS. ROBERTSON: Okay.

22 COURT: Okay. Anything else that we need to  
23 cover? I don't know, Ms. Hetrick, is there anything else I  
24 need to clarify for you?

25 MS. HETRICK: Can I request that the children be

1 returned at 3 p.m. rather than --

2 MR. RIKER: It, it depends on -- honestly, it just  
3 depends on time in regards to what time we're done, if  
4 we're staying here to do some reviewing and signing. If,  
5 if I am able to do that, I definitely can. I can also, I  
6 don't know if you have the capability to take the children  
7 from here or my lawyer's office, but I can have my family  
8 meet here and we can, we can probably do the tran-,  
9 transfer that way.

10 COURT: Sure, I mean, you might discuss what's the  
11 most convenient place to do that. It may be rather than --

12 MR. RIKER: It, it may be that I bring them to --

13 COURT: Yeah, I mean, it may be better someplace  
14 other than downtown simply because it's easier to park  
15 other places than downtown. Downtown's a hard place to try  
16 and park a car.

17 MR. RIKER: I, I think that, I mean, they're,  
18 they'll be coming here to pick me up, but, I would assume,  
19 or I'll be taking the train to where they are and, and as  
20 long as time allows, I, I think that 3:00 would be fine.

21 COURT: Okay.

22 MR. RIKER: I think we had said yesterday 5, but.

23 COURT: Right.

24 MR. RIKER: If, if that's, if that's the case --

25 COURT: Sure.

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MR. RIKER: I'm not --

COURT: Yeah. Well, why don't you talk about that.

MR. RIKER: Sure.

COURT: I, I can, I can issue an order if you can't agree, but hopefully, you can start agreeing with each other a little bit more now because the, the main fight is over and, you know, you're going to be involved in your daughters' lives, and you need to try and, for the sake of your daughters, however much you may dislike the other person, you need to try and cooperate with regard to their care.

MS. HETRICK: Can I request that Mr. Riker be required to release my phone number?

COURT: Be required to -- oh, that, that this is -

MR. RIKER: The only, the only concern that I have with that is that the inability, inability to pay some bills. I want to make sure that I have a communication stream with my children that will not be interrupted. And so I haven't, I just haven't answered in regards to whether I'll release her number or not. Right now it's just a number on my bill that I pay. This is the, is this the 4583 number?

MS. HETRICK: This is my phone number that I've

1 had for over a decade. I don't have a problem with a  
2 different device with a different number. I'm simply  
3 asking my personal call log not be included in something  
4 that I can't access.

5 MS. ROBERTSON: Well, it's not -- no, no, wait a  
6 sec. This is a phone that's been provided for the  
7 children's use. If Ms. Riker is using this phone, she  
8 shouldn't be. That's the number we're talking about.

9 MR. RIKER: Well, she does, she does have a point  
10 that it was her number prior to this and then it  
11 transferred over as my communication stream to the  
12 children.

13 COURT: Oh.

14 MR. RIKER: I mean if, if, if she wants --

15 COURT: So, so you, you want to have that back as  
16 your personal number, --

17 MS. HETRICK: Yes.

18 COURT: -- Ms. Hetrick, and then a different  
19 number provided for the kids?

20 MS. HETRICK: It's simply a form --

21 MR. RIKER: And then I'll set up something for the  
22 children?

23 MS. ROBERTSON: And then you'll get another --

24 MR. RIKER: I'll get another device for the  
25 children.

1 MS. HETRICK: -- that he needs to fill out. I, I  
2 sent it to him because the concern of course is that I'm  
3 getting e-mails that, that security settings and stuff are  
4 changing. And the bottom line is that you can manipulate a  
5 lot from the account and I need to have control of my own  
6 personal cellphone.

7 COURT: Okay.

8 MR. RIKER: I will, I will release the phone  
9 number. The device I can change to a different phone  
10 number.

11 COURT: Okay. Well, why don't you do that because  
12 obviously --

13 MR. RIKER: And then we can use that same device  
14 with the different phone number as my communication stream  
15 that I pay for, and that's something in addition to --

16 COURT: Okay. Yeah, because, I mean, obviously  
17 you need to be able to communicate with the kids.

18 MR. RIKER: Correct.

19 COURT: But if that's the number she's had for a  
20 long time, then you ought to give her that number.

21 MR. RIKER: I have no problem releasing that  
22 number and putting a different phone number on that device.

23 COURT: Okay.

24 MR. RIKER: And I'll, I'll -- yeah. I'll, I'll  
25 talk to Sprint. I'll find out exactly how that, how that

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can occur and I'll, we'll discuss that and we'll --

COURT: Okay.

MR. RIKER: -- get that squared away.

COURT: Anything else we need to take care of?

Okay.

MS. ROBERTSON: I don't think so.

COURT: Okay. Well, thank you.

AUGUST 11, 2014

End Time: 12:04:15

## **RCW 26.09.187**

### **Criteria for establishing permanent parenting plan.**

(1) DISPUTE RESOLUTION PROCESS. The court shall not order a dispute resolution process, except court action, when it finds that any limiting factor under RCW 26.09.191 applies, or when it finds that either parent is unable to afford the cost of the proposed dispute resolution process. If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

- (a) Differences between the parents that would substantially inhibit their effective participation in any designated process;
- (b) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and
- (c) Differences in the parents' financial circumstances that may affect their ability to participate fully in a given dispute resolution process.

### (2) ALLOCATION OF DECISION-MAKING AUTHORITY.

(a) AGREEMENTS BETWEEN THE PARTIES. The court shall approve agreements of the parties allocating decision-making authority, or specifying rules in the areas listed in RCW 26.09.184(5)(a), when it finds that:

- (i) The agreement is consistent with any limitations on a parent's decision-making authority mandated by RCW 26.09.191; and
- (ii) The agreement is knowing and voluntary.

(b) SOLE DECISION-MAKING AUTHORITY. The court shall order sole decision-making to one parent when it finds that:

- (i) A limitation on the other parent's decision-making authority is mandated by RCW 26.09.191;
- (ii) Both parents are opposed to mutual decision making;
- (iii) One parent is opposed to mutual decision making, and such opposition is reasonable based on the criteria in (c) of this subsection.

(c) MUTUAL DECISION-MAKING AUTHORITY. Except as provided in (a) and (b) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

- (i) The existence of a limitation under RCW 26.09.191;

- (ii) The history of participation of each parent in decision making in each of the areas in RCW 26.09.184(5)(a);
- (iii) Whether the parents have a demonstrated ability and desire to cooperate with one another in decision making in each of the areas in RCW 26.09.184(5)(a); and
- (iv) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of parenting functions as defined in \*RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and developmental level of the child;
- (v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;
- (vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
- (vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of

the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

[2007 c 496 § 603; 1989 c 375 § 10; 1987 c 460 § 9.]

## RCW 26.09.191

### Restrictions in temporary or permanent parenting plans.

(1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct: (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions; (b) physical, sexual, or a pattern of emotional abuse of a child; or (c) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.

(2)

(a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct:

(i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;

(ii) physical, sexual, or a pattern of emotional abuse of a child;

(iii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm; or

(iv) the parent has been convicted as an adult of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (d) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (a)(iv)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (a)(iv)(A) through (H) of this subsection.

This subsection (2)(a) shall not apply when (c) or (d) of this subsection applies.

(b) The parent's residential time with the child shall be limited if it is found that the parent resides with a person who has engaged in any of the following conduct:

(i) Physical, sexual, or a pattern of emotional abuse of a child;

(ii) a history of acts of domestic violence as defined in RCW 26.50.010(1) or an assault or sexual assault that causes grievous bodily harm or the fear of such harm; or

(iii) the person has been convicted as an adult or as a juvenile has been adjudicated of a sex offense under:

(A) RCW 9A.44.076 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(B) RCW 9A.44.079 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(C) RCW 9A.44.086 if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(D) RCW 9A.44.089;

(E) RCW 9A.44.093;

(F) RCW 9A.44.096;

(G) RCW 9A.64.020 (1) or (2) if, because of the difference in age between the offender and the victim, no rebuttable presumption exists under (e) of this subsection;

(H) Chapter 9.68A RCW;

(I) Any predecessor or antecedent statute for the offenses listed in (b)(iii)(A) through (H) of this subsection;

(J) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (b)(iii)(A) through (H) of this subsection.

This subsection (2)(b) shall not apply when (c) or (e) of this subsection applies.

(c) If a parent has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter. If a parent resides with an adult or a juvenile who has been found to be a sexual predator under chapter 71.09 RCW or under an analogous statute of any other jurisdiction, the court shall restrain the parent from contact with the parent's child except contact that occurs outside that person's presence.

(d) There is a rebuttable presumption that a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection poses a present danger to a child. Unless the parent rebuts this presumption, the court shall restrain the parent from contact with a child that would otherwise be allowed under this chapter:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (d)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (d)(i) through (vii) of this subsection.

(e) There is a rebuttable presumption that a parent who resides with a person who, as an adult, has been convicted, or as a juvenile has been adjudicated, of the sex offenses listed in (e)(i) through (ix) of this subsection places a child at risk of abuse or harm when that parent exercises residential time in the presence of the convicted or adjudicated person. Unless the parent rebuts the presumption, the court shall restrain the parent from contact with the parent's child except for contact that occurs outside of the convicted or adjudicated person's presence:

(i) RCW 9A.64.020 (1) or (2), provided that the person convicted was at least five years older than the other person;

(ii) RCW 9A.44.073;

(iii) RCW 9A.44.076, provided that the person convicted was at least eight years older than the victim;

(iv) RCW 9A.44.079, provided that the person convicted was at least eight years older than the victim;

(v) RCW 9A.44.083;

(vi) RCW 9A.44.086, provided that the person convicted was at least eight years older than the victim;

(vii) RCW 9A.44.100;

(viii) Any predecessor or antecedent statute for the offenses listed in (e)(i) through (vii) of this subsection;

(ix) Any statute from any other jurisdiction that describes an offense analogous to the offenses listed in (e)(i) through (vii) of this subsection.

(f) The presumption established in (d) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, and (B) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any

was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the parent requesting residential time, (A) contact between the child and the offending parent is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the offending parent is in the child's best interest, and (C) the offending parent has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child.

(g) The presumption established in (e) of this subsection may be rebutted only after a written finding that:

(i) If the child was not the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent residing with the convicted or adjudicated person is appropriate and that parent is able to protect the child in the presence of the convicted or adjudicated person, and (B) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes such contact is appropriate and poses minimal risk to the child; or

(ii) If the child was the victim of the sex offense committed by the person who is residing with the parent requesting residential time, (A) contact between the child and the parent in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child, (B) if the child is in or has been in therapy for victims of sexual abuse, the child's counselor believes such contact between the child and the parent residing with the convicted or adjudicated person in the presence of the convicted or adjudicated person is in the child's best interest, and (C) the convicted or adjudicated person has successfully engaged in treatment for sex offenders or is engaged in and making progress in such treatment, if any was ordered by a court, and the treatment provider believes contact between the parent and child in the presence of the convicted or adjudicated person is appropriate and poses minimal risk to the child.

(h) If the court finds that the parent has met the burden of rebutting the presumption under (f) of this subsection, the court may allow a parent who has been convicted as an adult of a sex offense listed in (d)(i) through (ix) of this subsection to have residential time with the child supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between

the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(i) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who has been adjudicated as a juvenile of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the person adjudicated as a juvenile, supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(j) If the court finds that the parent has met the burden of rebutting the presumption under (g) of this subsection, the court may allow a parent residing with a person who, as an adult, has been convicted of a sex offense listed in (e)(i) through (ix) of this subsection to have residential time with the child in the presence of the convicted person supervised by a neutral and independent adult and pursuant to an adequate plan for supervision of such residential time. The court shall not approve of a supervisor for contact between the child and the parent unless the court finds, based on the evidence, that the supervisor is willing and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing or capable of protecting the child.

(k) A court shall not order unsupervised contact between the offending parent and a child of the offending parent who was sexually abused by that parent. A court may order unsupervised contact between the offending parent and a child who was not sexually abused by the parent after the presumption under (d) of this subsection has been rebutted and supervised residential time has occurred for at least two years with no further arrests or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW and (i) the sex offense of the offending parent was not committed against a child of the offending parent, and (ii) the court finds that unsupervised contact between the child and the offending parent is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treating child sexual abuse victims who has supervised at least one period of residential time between the parent and the child, and after consideration of evidence of the offending parent's compliance with community supervision requirements, if any. If the offending

parent was not ordered by a court to participate in treatment for sex offenders, then the parent shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the offender has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child.

(l) A court may order unsupervised contact between the parent and a child which may occur in the presence of a juvenile adjudicated of a sex offense listed in (e)(i) through (ix) of this subsection who resides with the parent after the presumption under (e) of this subsection has been rebutted and supervised residential time has occurred for at least two years during which time the adjudicated juvenile has had no further arrests, adjudications, or convictions of sex offenses involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW, and (i) the court finds that unsupervised contact between the child and the parent that may occur in the presence of the adjudicated juvenile is appropriate and poses minimal risk to the child, after consideration of the testimony of a state-certified therapist, mental health counselor, or social worker with expertise in treatment of child sexual abuse victims who has supervised at least one period of residential time between the parent and the child in the presence of the adjudicated juvenile, and after consideration of evidence of the adjudicated juvenile's compliance with community supervision or parole requirements, if any. If the adjudicated juvenile was not ordered by a court to participate in treatment for sex offenders, then the adjudicated juvenile shall obtain a psychosexual evaluation conducted by a certified sex offender treatment provider or a certified affiliate sex offender treatment provider indicating that the adjudicated juvenile has the lowest likelihood of risk to reoffend before the court grants unsupervised contact between the parent and a child which may occur in the presence of the adjudicated juvenile who is residing with the parent.

(m)

(i) The limitations imposed by the court under (a) or (b) of this subsection shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time. The limitations shall also be reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time. The limitations the court may impose include, but are not limited to: Supervised contact between the child and the parent or completion of relevant counseling or treatment. If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child.

(ii) The court shall not enter an order under (a) of this subsection allowing a parent to have contact with a child if the parent has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused the child, except upon recommendation by an evaluator or therapist for the child that the child is ready for contact with the parent and will not be harmed by the contact. The court shall not enter an order allowing a parent to have contact with the child in the offender's presence if the parent resides with a person who has been found by clear and convincing evidence in a civil action or by a preponderance of the evidence in a dependency action to have sexually abused a child, unless the court finds that the parent accepts that the person engaged in the harmful conduct and the parent is willing to and capable of protecting the child from harm from the person.

(iii) If the court limits residential time under (a) or (b) of this subsection to require supervised contact between the child and the parent, the court shall not approve of a supervisor for contact between a child and a parent who has engaged in physical, sexual, or a pattern of emotional abuse of the child unless the court finds based upon the evidence that the supervisor accepts that the harmful conduct occurred and is willing to and capable of protecting the child from harm. The court shall revoke court approval of the supervisor upon finding, based on the evidence, that the supervisor has failed to protect the child or is no longer willing to or capable of protecting the child.

(n) If the court expressly finds based on the evidence that contact between the parent and the child will not cause physical, sexual, or emotional abuse or harm to the child and that the probability that the parent's or other person's harmful or abusive conduct will recur is so remote that it would not be in the child's best interests to apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection, or if the court expressly finds that the parent's conduct did not have an impact on the child, then the court need not apply the limitations of (a), (b), and (m)(i) and (iii) of this subsection. The weight given to the existence of a protection order issued under chapter 26.50 RCW as to domestic violence is within the discretion of the court. This subsection shall not apply when (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this subsection apply.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist:

(a) A parent's neglect or substantial nonperformance of parenting functions;

(b) A long-term emotional or physical impairment which interferes with the parent's performance of parenting functions as defined in RCW 26.09.004;

- (c) A long-term impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting functions;
- (d) The absence or substantial impairment of emotional ties between the parent and the child;
- (e) The abusive use of conflict by the parent which creates the danger of serious damage to the child's psychological development;
- (f) A parent has withheld from the other parent access to the child for a protracted period without good cause; or
- (g) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(4) In cases involving allegations of limiting factors under subsection (2)(a)(ii) and (iii) of this section, both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.

(5) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

(6) In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of evidence, proof, and procedure.

(7) For the purposes of this section:

(a) "A parent's child" means that parent's natural child, adopted child, or stepchild; and

(b) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010.

[2011 c 89 § 6; 2007 c 496 § 303; 2004 c 38 § 12; 1996 c 303 § 1; 1994 c 267 § 1. Prior: 1989 c 375 § 11; 1989 c 326 § 1; 1987 c 460 § 10.]

## **RCW 26.09.260**

### **Modification of parenting plan or custody decree.**

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

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

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)

(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not

seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

[2009 c 502 § 3; 2000 c 21 § 19; 1999 c 174 § 1; 1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

## **RCW 26.09.270**

### **Child custody — Temporary custody order, temporary parenting plan, or modification of custody decree — Affidavits required.**

A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

[2011 c 336 § 691; 1989 c 375 § 15; 1973 1st ex.s. c 157 § 27.]

## **RCW 26.09.410**

### **Definitions.**

The definitions in this section apply throughout RCW 26.09.405 through 26.09.560 and 26.09.260 unless the context clearly requires otherwise.

(1) "Court order" means a temporary or permanent parenting plan, custody order, visitation order, or other order governing the residence of a child under this title.

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

[2000 c 21 § 2.]

## **RCW 26.09.430**

### **Notice requirement.**

Except as provided in RCW 26.09.460, a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. Notice shall be given as prescribed in RCW 26.09.440 and 26.09.450.

[2000 c 21 § 5.]