

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

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In re the Marriage of:

LAWRENCE PATRICK FAHEY

Appellant

v.

LISA MARIE FAHEY

Respondent

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DIVISION II

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

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APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION ..... 1

II. ASSIGNMENTS OF ERROR..... 3

III. STATEMENT OF THE CASE ..... 8

    A. THE PARTIES WERE MARRIED FOR NINE YEARS AND  
    LAST LIVED TOGETHER IN EDMONDS. .... 8

    B. THE ORIGINAL PARENTING PLAN, ENTERED BY  
    AGREEMENT, PROVIDED FOR EQUALLY SHARED  
    RESIDENTIAL TIME..... 9

    C. THE PLAN INCLUDED NO CLAIM OF PARENTING  
    DEFICIENCIES OR NEED FOR RESTRICTIONS..... 11

    D. THE CHILDREN LIVED A 50/50 PLAN UNTIL 2006..... 13

    E. LISA'S RELOCATIONS HAD CONSEQUENCES FOR THE  
    GIRLS..... 14

    F. GROWING UP HALF THE TIME IN EDMONDS, THE GIRLS  
    DEVELOPED RELATIONSHIPS WITH FAMILY, FRIENDS, AND  
    CHURCH. .... 18

    G. BEGINNING IN 2006, THE GIRLS SPENT MORE  
    RESIDENTIAL TIME WITH THEIR FATHER. .... 20

    H. IN THE AFTERMATH OF ADDITIONAL RELOCATIONS BY  
    LISA, LARRY PETITIONED TO MODIFY. .... 21

    I. THE REASONS BEHIND LISA'S RELOCATIONS. .... 25

    J. THE COURT APPLIED THE RELOCATION ACT,  
    PERMITTED LISA TO MOVE THE GIRLS, AND SEVERELY  
    RESTRICTED LARRY'S TIME WITH THE GIRLS. .... 27

IV. SUMMARY OF ARGUMENT .....	29
V. ARGUMENT .....	30
A. THE RELOCATION ACT DOES NOT APPLY.....	30
B. NOR DOES THE STANDARD FOR DETERMINING ORIGINAL PARENTING PLANS APPLY HERE. ....	31
C. THE MODIFICATION STANDARD APPLIES HERE.....	32
1) THIS IS THE ONLY STANDARD THAT MAKES SENSE, UNDER THE STATUTE’S TEXT AND UNDER WASHINGTON POLICY.....	33
2) THE CHILDREN WERE INTEGRATED INTO THE FATHER’S HOME WITH THE MOTHER’S PERMISSION BEGINNING IN 2006. ....	33
D. THE COURT IMPROPERLY CONSIDERED SEX AND DISABILITY, FACTORS IRRELEVANT IN THIS CASE BASED ON THE FACTS AND ON THE LAW.....	34
E. THE BIAS OF THE COURT.....	37
F. THE COURT RADICALLY RESTRICTED THE TIME BETWEEN FATHER AND CHILDREN. ....	40
G. THE COURT SHOULD HAVE APPOINTED A GUARDIAN AD LITEM.....	42
H. EVEN UNDER THE RELOCATION ACT, THE COURT’S DECISION IS UNTENABLE.....	43
VI. CONCLUSION.....	45

TABLE OF AUTHORITIES

**Washington Cases**

*Donaldson v. Greenwood*, 40 Wn.2d 238, 242 P.2d 1038 (1952) . 35

*Guardianship of Palmer*, 81 Wn.2d 604, 503 P.2d 464 (1972)..... 32

*In re Combs*, 105 Wn. App. 168, 19 P.3d 469, 472 (2001) ..... 32

*In Re Custody of R.*, 88 Wn.2d 746, 947 P.2d 745 (1997). ..... 40

*In re D.F.-M*, 157 Wn. App. 179, 236 P.3d 961 (2010)..... 34

*In re Marriage of Cabalquinto*, 100 Wn.2d 325, 669 P.2d 886  
(1983). ..... 34

*In re Marriage of Crosetto*, 82 Wn. App. 545, 918 P.2d 954 (1996)  
..... 37

*In re Marriage of Katare*, 125 Wn. App. 813, 105 P.3d 44 (2004). 41

*In re Marriage of Littlefield*, 133 Wn.2d 39, 940 P.2d 1362 (1997)  
..... 37, 45

*In re Marriage of Taddeo-Smith and Smith*, 127 Wn. App. 400, 110  
P.3d 1192 (2005)..... 34

*In re Matter of Stell*, 56 Wn. App. 356, 783 P.2d 615 (1989)..... 41

*Tucker v. Tucker*, 14 Wn. App. 454, 456, 542 P.2d 789 (1975) .... 34

**Statutes, Rules & Other Authorities**

Const. Art. 31, § 1 ..... 34

RCW 26.09.002..... 32

RCW 26.09.187.....	30
RCW 26.09.260.....	6, 30, 31, 32
RCW 26.09.410.....	30
RCW 26.09.430.....	30
RCW 26.09.520.....	42, 43, 44

## I. INTRODUCTION

This case reminds us why legal standards matter so much in family law, where the risk of imposing subjective preferences is heightened. In 2002, the mother and father agreed to share equally in residential time in respect of their two children, and they did so until 2006, when the father's residential time increased. The father maintained a stable home in the community where his extended family lives and where his children have developed strong bonds with family, friends, church, and community. The mother moved nine times in nine years, repeatedly uprooting the children from schools, activities, and friendships. The father devoted himself to the children, involving himself extensively in their schools to alleviate the effects of the mother's dislocations, whereas the mother could not remember the names of the children's teachers. Yet the trial court declared the father to be more of a "team member" than a parent and allowed the mother to move the children to Omak, so she could follow her boyfriend. The court reduced the father's residential time to 25% and limited where he could spend that time, though there was no basis for restrictions of any kind. Among the reasons the court gave for placing the children primarily with the mother is that they are girls and,

therefore, need their mother and that the father has a disability, though no evidence supported that either sex or disability impaired the father's parenting. Indeed, both girls expressed a desire to live with the father, desires the court simply dismissed.

Washington law and policy strongly favors continuity in children's lives and the disruption caused here violates that principle in a number of ways. First, the trial court applied the wrong legal standard when it applied the relocation act to this case, then, also applied the standards for original parenting plans. In fact, because of the need for stability in children's lives, the standard that applies is the modification standard, and it applies to the father's petition. By applying the wrong standard, the court reached the wrong result. The court also considered sex and disability, again contrary to Washington law, which treats parents equally without regard to sex or disability and focuses instead on whether a parent meets the children's needs. Here, only one parent has a history of placing the children first and that is the father. This case should be remanded for a new trial on modification before a new judge with appointment of a guardian ad litem and an injunction against consideration of any irrelevant fact.

## II. ASSIGNMENTS OF ERROR

### *Assignments of Error*

1. The trial court erred when it applied the relocation act to this case and, especially, when it gave the mother the rebuttable presumption in favor of relocation.

2. The trial court erred when it applied, in the alternative, the standard applicable when an original parenting plan is entered.

3. The trial court erred when it failed to apply the modification standards to the father's petition.

4. Even under the relocation act, the trial court erred because the children lived principally with the father during the preceding three to four years, and erred further when it found in favor of relocation. Specifically, the court erred by entering the following findings of law, as well as in its Memorandum Ruling (CP 28-31):

2.3.1 The children have a very close relationship and bond with both parents, however, the nature and quality of the bond is most parent/child like with Mother.

Father's involvement, although stable and extensive like the Mother's, is that of an added team member. The direction of the children's lives have by and large been focused and guided by Mother.

Father has had special rights with respect to schooling, but schooling is directed by Mother in the first instance.

2.3.2. [Finding the parties' prior agreement does not apply.]

2.3.3. [Failing to find disrupting contact between children and father more detrimental than disrupting contact between children and mother.]

2.3.5 Mother's reasons for relocating are sound and in good faith, i.e., a better job and benefits than she has had and the opportunity of upward advancement are sound reasons for relocation.

Additional sound reasons for relocation are lots of extended family in the area where she intends to relocation. This is also the community where she was raised and has a significant other with whom she has had an ongoing relationship.

... the court finds that Father does not properly account for and weigh the needs of his daughters.

2.3.6 The children will benefit from continuing to reside with their Mother as the primary guide of their lives and behavior.

The Court has some concerns for Father's ability to provide for the girls' needs at this stage of life given his short-term memory issues and his lack of executive function capability.

The Father's testimony does not give the Court confidence of his parenting ability.

2.3.7 The statistics presented by the Father concerning youth problems in Omak is skewed because of the smallness of the sample. The Court

also finds that these very same issues happen and could happen in Edmonds.

No advantage is sufficient to upset the primary bond and advantages between the Mother and daughters was found in Edmonds. [sic]

The Court finds that smaller schools often make for more confidence and experience as leaders than would be available in a larger more competitive school.

2.3.8 Father's circumstances allow him the opportunity to foster and continue his relationship with the children. This would not be available to the Mother if the relocation were not granted.

With skype-type [sic] computer visits, telephone calls, and his freedom with respect to visitation, the Father can remain in the children's daily lives despite the relocation.

The Mother's work schedule would interfere with a similar schedule for her.

2.3.9 In either case the girls will be relocating either to Omak with their primary parent or to Edmonds where they have had significant contacts.

Also, perhaps not desirable, it is feasible for the Father to relocate to Omak where his cost of living would be less, since the Father does not work and does not have work parameters.

2.3.10 The financial impact and logistics of the relocation are better income and expectations for the Mother and the children.

The prevention of the relocation could return Mother to Puyallup where she no longer has a job, or change custody such that Mother would not have time, as

Father does, to visit frequently, and her expense to see the children would be increased infinitely over the pre-location status quo.

2.4 [Re Proposed Parenting Plan] The adjustment does not include a change in the residence in which the child resides the majority of the time.

CP 177-181. (The findings, memorandum ruling, and final parenting plan are attached.)

5. The trial court erred by considering the father's sex as a factor disfavoring him from being primary residential parent.

6. The trial court erred by considering the father's disability as a factor disfavoring him from being primary residential parent because there was no evidence the disability affected the father's parenting.

7. Because of the trial court's apparent biases regarding sex and disability, this case should be remanded to a new judge.

8. The trial court erred by denying appointment of a guardian ad litem and erred by ignoring the expressed desires of the children.

9. The trial court erred when it severely curtailed both the time the children spend with the father and the manner and place in which it must be spent, which it did without any basis for restrictions or any findings of any basis for restrictions.

*Issues Pertaining to Assignments of Error*

1. Does the relocation act apply where parents share residential time equally or where the children's principal residence is not, in fact, the residence of the relocating parent?
2. Can the court apply the standards for determining an original parenting plan where an original parenting plan was determined eight years earlier, or does the court have to comply with the modification statute?
3. Should the court have analyzed this case under the standards of RCW 26.09.260, the modification statute?
4. Did the court err when it relied in part on the father's sex to determine the children's primary residence, meaning, when the court held that the children, being daughters, should be with their mother?
5. Did the court err when it declared the father a mere "team member" and disfavored him as primary residential parent because of disability, where there was no evidence that the father's parenting was impaired by his disability?

6. Is the court's decision based impermissibly on sex and disability bias?

7. Did the court err in restricting the father's time from up to 50% in the original parenting plan to 27%, at most?

8. Did the court err in restricting where the father might spend residential time with the children?

9. Because of the trial court's bias, when this case is remanded for a new trial, should it be remanded to a new judge?

### III. STATEMENT OF THE CASE

#### A. THE PARTIES WERE MARRIED FOR NINE YEARS AND LAST LIVED TOGETHER IN EDMONDS.

Lisa and Larry were married for nearly ten years, beginning in 1993. RP 12. During their marriage, they had two daughters, Nichole, now twelve (d.o.b. 06/01/98), and Shannon, now nine (d.o.b. 07/09/01). The parties separated in 2001 and divorced in 2002. RP 12-13.

Early in the marriage, the parties lived in Edmonds, where Larry's family has deep roots. RP 31, 69-73. They moved to Pullman, so Lisa could finish school. RP 31. After she received her degree, they moved to Omak, where Lisa grew up and where much of her family remains. RP 32, 227- 230. After approximately two and one-half years, the parties moved with their one-year-old

daughter back to Edmonds, where they bought a house and lived until they separated (i.e., for nearly three years). RP 32. Their second daughter was born in Edmonds. RP 176.

**B. THE ORIGINAL PARENTING PLAN, ENTERED BY AGREEMENT, PROVIDED FOR EQUALLY SHARED RESIDENTIAL TIME.**

The parties, both represented by counsel, negotiated an agreed parenting plan, which was entered in May 2002. RP 13; Exhibit 1. At the time, Lisa was living on the east side of the Olympic Peninsula and Larry in Edmonds. RP 12, 26. The plan contemplated a somewhat lengthy commute across the Sound to make exchanges. Exhibit 1, ¶ 3.11 (re transportation arrangements); RP 179-180.

During the preschool years, the plan provided for a 50/50 residential split. The children were to reside with Lisa Mondays and Tuesdays, with Larry on Wednesdays and Thursdays, and alternating parents on the weekends. RP 13. The parties were to split holidays and weekends.

When the children started school, the plan provided that Larry would relinquish his weekdays “unless he can facilitate school attendance.” Exhibit 1, ¶ 3.1. If he did relinquish days, the plan provided for additional weekend and holiday time for him. Exhibit 1,

¶¶ 3.1 & 3.4 (spring break). During summers, the schedule would revert to the 50/50 preschool schedule. Exhibit 1, ¶ 3.5.

The plan also provided that each parent would have the right to residential time if the other parent was unable to provide care. Exhibit 1, § VI, ¶ 3. In the event a parent declined to exercise this option, it was permitted that the grandparents provide care. *Id.*, ¶ 4.

The plan designated the mother the custodial parent, only for purposes of other state and federal statutes. ¶ 3.12. The plan also confirmed that the “Father shall have full involvement in the school activities and extracurricular activities of the children.” VI, 2. The plan provided for joint decision-making. ¶ 4.2. However, the parents expressly committed themselves to raising the children in the Catholic faith and required that the children would attend Catholic school if the costs were covered. See ¶ 4.2 (children “will attend” Catholic school).

Expressly in the plan, the “Mother consent[ed] to allow Father to have access to [the] children up to 50% of the time to the best it can be worked out.” *Id.*, ¶ 7. It was the intent of the plan that the parents have substantially equal residential time.

Deposition of Lisa Fahey, at 7.

**C. THE PLAN INCLUDED NO CLAIM OF PARENTING DEFICIENCIES OR NEED FOR RESTRICTIONS.**

The agreed parenting plan made no mention of any deficiency on the part of either parent, contrary to Lisa's insinuation, made for the first time at trial, and then unsupported by any evidence, that she had concerns about Larry. RP 240. Notably, Lisa had nearly two decades to mention such concerns, since Larry suffered a head injury in a motorcycle accident in 1985, years before he met and married Lisa. RP 175. He also suffered an industrial accident in 2001, shattering the bones in both his wrists. RP 139. This accident left his hands weaker, and left him unable to play sports or to resume his former job detailing boats. *Id.*, 143.

Larry recovered from the head injury, but it left him with a seizure disorder, a problem he controls with medication. RP 139-140. The medication causes some impairment of executive function, such as short-term memory, mainly causing him difficulty in expressing his thoughts. RP 138-140. He is considered disabled for purposes of social security. *Id.*, at 141.

Larry has devised various means to compensate for the medication side effects, including by taking notes when under stress, which is when his memory is most affected. He also has some trouble with numbers and accounting. RP 141-142.

Accordingly, the social security disability he receives is managed by a custodian, his mother. *Id.*, at 142. However, apart from medical insurance and house expenses paid automatically from the disability account, Larry manages his day-to-day financial needs with funds provided by his parents, who are able to help him. *Id.*

The girls also receive benefits as part of Larry's disability, all of which he provides to Lisa, though he has the girls as often or more of the time. RP 94-95. In 2006, when Larry qualified for disability, Lisa received a lump sum for both girls of approximately \$24,000. RP 22.<sup>1</sup> She receives \$476 monthly for them as well. Exhibits 7 and 9.

Despite his disability, Larry completed his college degree at Washington State University. RP 174-175. He also completed a certificate program in Early Childhood Development in 2005, though he has not been able to find employment. RP 141. Larry acknowledges feeling frustrated at being disabled, including how it limits his ability to work. RP 195. He felt particularly resentful of Lisa's accusation that he inadequately supported his children (see, e.g., RP 23-25, given that she gets all the disability payment and that he shares residential responsibility for the girls, provides for

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<sup>1</sup> At deposition, she recalled receiving only \$17,000. Deposition of Lisa Fahey, at 36-37

them during that time, and has borne most of the costs of their transportation. RP 195, 218. He knows he is lucky to have the help of his parents in meeting his daughters' needs. RP 217-218. As Larry explained when Lisa's counsel impugned him again about supporting his children and his employability, "I have a disability. There is really no other alternative. I'm working my best to get past that." RP 218-219.

D. THE CHILDREN LIVED A 50/50 PLAN UNTIL 2006.

Lisa married Larry eight years after his head injury and had children with him. She describes him as a "great dad." RP 251-252; Deposition of Lisa Fahey, at 138. When they divorced, she agreed to share parenting with him equally. True to this intent, the children spent half their time in the residential care of each parent. RP 25-26; Deposition of Lisa Fahey, at 7. Even after the children started school, this schedule continued, since Larry was able to make sure their school attendance was unaffected.

His efforts in that regard were complicated by Lisa's frequent relocations, which tended to take her further from Larry's home in Edmonds. In the first five years after separation, Lisa moved within the Puget Sound area seven times. Exhibit 3. She transferred the girls out of school mid-term in 2005, and attempted to do so again

in 2009, an effort the court restrained. CP 14-17. By the date of trial, the girls had attended numerous schools, five schools through grade 6 for Nichole and four schools through grade 3 for Shannon. CP 143-144; RP 47.

Twice, when, as a consequence of Lisa's moves, the girls were going to have to change schools again, Larry arranged for them to attend Catholic school, first in Bremerton (Our Lady Sea of the Star) and, later, in Puyallup (All Saints). RP 97-98, 103. Had he received notice earlier of Lisa's move to Puyallup, he would have enrolled the girls in All Saints; instead, they attended a school in Graham, which they had to leave at the end of the school year. RP 45-46, 102-103; RP 189-190. Larry then enrolled them in All Saints. *Id.*

#### E. LISA'S RELOCATIONS HAD CONSEQUENCES FOR THE GIRLS.

These constant disruptions naturally caused difficulties for the girls, academic and otherwise. They were unable to develop and maintain friendships in the neighborhoods where they lived with their mother or with their school friends. See, e.g., Deposition of Lisa Fahey, at 119-120. Lisa could not even remember the names of the girls' friends, though Larry could. See, e.g., *Id.*, at 51; RP 53-54, 193-194. They likewise had no continuity in

extracurricular activities, for example, having to constantly change sports teams. And they experienced academic problems, to which the parents responded very differently.

For example, Lisa testified that she assisted the girls with their homework and attended parent-teacher conferences (see, e.g., RP 236-237), but she had considerable difficulty remembering the names of the girls' teachers over the years or specific instances where she had attended parent-teacher conferences. See, e.g., RP 54 ("I forgot a few names" at deposition); Deposition of Lisa Fahey, at 111-116, 120, 124. She compared remembering parent-teacher conferences to remembering what she had for lunch eight years earlier. *Id.*, at 112.

Teachers likewise had trouble remembering Lisa. For example, Nichole's kindergarten teacher (Silverdale) did not remember any contact with Lisa. CP 53. By contrast, Larry was more involved than most parents, so much so that the teacher thought the children lived with him primarily. *Id.* During the time the girls attended school in Silverdale, after Larry could no longer work, he was active in their lives every day of the week. RP 179-180, 184. The only period of exception to his involvement in their schooling was during the half-year Nichole attended Renton Park

Elementary School, while Larry was working on his Early Childhood Development Certificate. RP 180-181.

From Renton, Lisa moved back to Silverdale and re-enrolled Nichole in her previous school mid-year. Exhibit 3. Shannon began school in Silverdale, but at the end of that school year, Lisa moved to Bremerton, which necessitated another school change. However, Shannon was not prepared to advance to the next grade. Larry arranged for Shannon to be tutored over the summer and enrolled both girls in Our Lady Sea of the Star in Bremerton. RP 99-100, 186.<sup>2</sup> Larry also worked with her himself, applying what he had learned in obtaining his Early Childhood Development Certificate and he volunteered at their school. Id., 186-187; Exhibit 23. Likewise, Nichole struggled for awhile to catch up to her grade level and, again, Larry assisted her. RP 99-100; Deposition of Lisa Fahey, at 116-120.

Shannon's third grade teacher (All Saints) said she had "never experienced a mother that has been as absent as" Lisa. CP 58. Though the teacher reached out to Lisa via email, the address became inoperative and she had no way to contact her. CP 59; RP 113-114. Though she hoped Lisa would contact her, no attempt

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<sup>2</sup> Lisa did not know it was Shannon who went to tutoring; she thought it was Nichole and thought Shannon had "no issues." Deposition of Lisa Fahey, at 118.

was ever made. Id. Larry, however, “has proven to be one of the most dedicated fathers I have seen.” Id.; RP 114, 117.

Nichole’s sixth grade teacher (All Saints) had the same lack of response from Lisa and the same observation of Larry’s involvement in the girls’ education. RP 124. At trial, Lisa declared she saw no need to have contact with the teachers. RP 256.

Given this history, Larry believes the girls’ relationship to him is crucial to their continued academic success. RP 206.

Larry made similar efforts with respect to the girls’ extracurricular activities, including trying to maintain the girls’ participation in school-based programs even on his weekends. RP 182, 190-191. Eventually, the girls asked him to participate in programs in Edmonds, in order to spend time with friends they had made in community activities and in religious education provided there through Holy Rosary Parish. Id., 182-183, 190-192. Larry wanted to enroll them in school at Holy Rosary, but Lisa would not permit it. Id., 183. He did enroll them in sports associated with the parish, and their teams excelled. However, when Nichole’s team advanced a league, Nichole could not advance with them because, for whatever reason, Lisa did not bring them to the tryout. Id., 183-

184. Generally, Lisa did not attend their events in Edmonds. RP 191-192.

F. GROWING UP HALF THE TIME IN EDMONDS, THE GIRLS DEVELOPED RELATIONSHIPS WITH FAMILY, FRIENDS, AND CHURCH.

Shannon was born while the parties lived in Edmonds and she and Nichole lived with their father half of the time in that same neighborhood. Their grandparents live nearby, as do aunts and uncles and cousins. RP 73-77. The family is close-knit, enjoying vacations, holidays, and family events together, and the girls are full integrated into the Fahey family. Id.; Exhibit 14. With one of her cousins, Shannon is practically as close as if they were sisters, playing on the same sports team, etc. RP 193, 76.

In addition to family, the girls have developed friendships and community in Edmonds, making friends first through preschool and then through religious education, church activities, and summer camp. RP 80-81, 205-206. They play sports with some of the friends they made in preschool, including sports sponsored by Holy Rosary Parish, where they receive religious education and where they received their First Holy Communion. RP 80-84.

By contrast, the girls do not know Lisa's family well. It was Larry's impression, certainly during the marriage, that Lisa herself

had little relationship with her family. RP 198, 215. Likewise, he believed the girls have had no relationship with Lisa's family, except for becoming acquainted in the aftermath of Lisa's move to Omak. RP 200-201.

At trial, Lisa recited a long list of family members in Omak and then declared she had close relationships with all of them and denied any friction with anyone. RP 231-232. She did not say whether her daughters had close relationships with her family members, only that they knew them. RP 231. She conceded the distance made it difficult to develop relationships. RP 231. As just one example, dozens of Faheys traveled to Omak for Nichole's baptism. RP 77-78. By contrast, only one of Lisa's relatives came to Shannon's baptism in Edmonds. *Id.*, at 80.

This difference in involvement of the girls with the two families was consistent with the observation of the girls' counselor, who reported the girls could and did identify and talk more about more Fahey family members than family members in Omak. RP 163-165. Moreover, on cross-examination, Lisa conceded she had seen one of these close relatives only once, accidentally, since returning to Omak. RP 246-257. At her deposition, when she had difficulty remember specific instances of contact between her

relatives and her daughters, she said she had photographs and would look for them. Deposition of Lisa Fahey, at 152-153. At trial, she said she had brought the photographs the day before but left them in the restroom. RP 253. She admitted being estranged from her father awhile, but was unclear regarding how long. RP 253-254. In general, she seemed to have considerable difficulty with her memory. See, e.g., Deposition of Lisa Fahey, at 164.

From the record, it appears Larry made more efforts to acquaint the girls with their relatives, on Lisa's side, in Omak. RP 197-198. When Larry learned the children's great grandfather was ill, and not in touch with the girls, he arranged for them to see each other. RP 199. Likewise, he keeps in touch with Lisa's aunt, CeCe, who has a "deep concern for the children." *Id.* (This is the aunt Lisa has seen only once since moving to Omak, and then by chance meeting.)

#### G. BEGINNING IN 2006, THE GIRLS SPENT MORE RESIDENTIAL TIME WITH THEIR FATHER.

During summers, beginning in 2006, with Lisa's consent, the girls began to spend more time in Edmonds in Larry's care, so they could attend a summer camp in that community. Deposition of Lisa Fahey, at 8-10; Exhibit 15; RP 85-88. Lisa saw the children every other weekend during the six to eight weeks of camp, commuting

with them from Edmonds to her homes in Bremerton or Silverdale. Deposition of Lisa Fahey, at 9. Inconsistent with her deposition testimony, Lisa denied that the girls spent more time with their father as a result of the change in the summer schedule and she belittled the chart Larry offered illustrating the residential time. RP 257-259. However, she did not offer any evidence to refute the chart, which was derived from Larry's Day-Timer. Id.; RP 176.

H. IN THE AFTERMATH OF ADDITIONAL RELOCATIONS BY LISA, LARRY PETITIONED TO MODIFY.

When Lisa moved to Puyallup, Larry sought to modify the parenting plan, but the move had happened and the girls were already in school at Centennial and his petition was dismissed without prejudice. CP 110.<sup>3</sup> Just over a year later, on October 18, 2009, Lisa wrote and mailed Larry a short note saying she was moving to Omak the following month because “money has become a huge issue” and she could not afford to continue living in Puyallup. CP 9. She also said the move would allow her and the children “to live closer to family.” Id.

Larry filed an objection to her relocating the girls and a petition to modify. CP 1-8. He alleged that moving the girls would

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<sup>3</sup> Lisa did not comply with statutory notice requirements under the relocation act, apparently for any of her moves. RP 40-45.

have detrimental effects, particularly in light of the fact that the children have been residing with him for more than half time “in substantial deviation from the parenting plan.” CP 4. He alleged the mother’s numerous moves meant that the children had no stability or roots in any location other than where the father resides and that the children have suffered specific negative effects from the mother’s moves. CP 4-7. In November, the court temporarily restrained Lisa from moving the children to Omak and they completed the school year in Puyallup while residing with their father. CP 14-17. The court’s order allowed Lisa to spend two weekends a month with the children, but she did not see them that often. RP 87-88, 259-260.

At trial in April, Larry expressed generalized concerns about the girls changing school yet again, and the effect on their grades, and particular concerns about whether the girls would be challenged academically in Omak. RP 202-203, 205. He felt certain the girls would suffer setbacks. RP 206. He is also concerned that Lisa will simply move again. RP 203.<sup>4</sup>

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<sup>4</sup> The house she is renting in Omak is up for sale. RP 250, 263. Her boyfriend moves from place to place for the construction work he does. RP 29-30.

The girls made clear their desire not to move to Omak. Nichole confided in her sixth grade teacher, "Please don't tell anybody, but I want to live with my dad." RP 125. Shannon's third grade teacher, observing uncharacteristically argumentative behavior in Shannon, asked why she was upset and was told "because of the move." RP 115. Shannon told her teacher that she did not want to move. Id.; CP 58. Likewise, the children's counselor described how Shannon had trouble comprehending the distance and expressed a desire to live in both Edmonds and Omak. RP 159-160. However, she also said Shannon does not want to leave her friends and school and family in Edmonds. RP 160. Nichole also said she did not want to leave her school and friends and family in Edmonds and, more particularly, expressed a desire to live with her dad and "do the weekends" with her mom. RP 160.<sup>5</sup>

Some of the girls' teachers and their counselor also testified to concerns about the relocation. Shannon's teacher did not agree

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<sup>5</sup> After trial, both girls expressed to their counselor "that they do not want to move and they avoid thinking about it in hopes that it will not happen." CP 63. In the aftermath of the decision, the girls stopped calling their mother and she stopped calling them. CP 64. In the counselor's opinion, the children's emotional health would be better served by allowing them to remain primarily with their father and disrupting their relationship with their father would be more detrimental "than disruption of the already strained relationship between the mother and children." CP 64.

that Shannon could be described as “very resilient,” in terms of moving from school to school. RP 120. In fact, the teacher said that if Shannon was going to be in a different school, “it needs to be where there is a strong support system.” Id., 121. Nichole’s teacher observed that “it’s always difficult at first to switch schools because you have to make new friends and get into the swing of how things are going in any school.” Id., 126. The girls’ counselor agreed “that it’s difficult when children have big changes....it’s a hard adjustment,” especially on top of dealing with separated parents.” Id., 161. “[T]o add one more thing ... would not be in [Shannon’s] best interest.” Id. Yet, of the two girls, Shannon was likely to have the easier time making another adjustment, because she is more outgoing. Id., 170. For Nichole, “it would be more difficult for her to keep making new friends.” Id. If the girls do have to change schools, it would be good for them to go to Edmonds, since “they’re not starting over completely.” Id., 171, 173.

Lisa dismissed any and all concerns about the effect of past or prospective relocations on the girls. She denied that the girls had ever expressed anxiety about having to move or go to a new school. RP 243. She described them as both being outgoing. Id. She described the girls as being “kind of excited” about moving to

Omak, though “maybe a little nervous.” Id., 245. She saw no need for them to have the counseling Larry had arranged for them. Id., 243.

#### I. THE REASONS BEHIND LISA'S RELOCATIONS.

The reasons for Lisa's many relocations and her many jobs varied. At trial, Lisa suggested they were the consequence of events beyond her control, such as being fired for staying home with a sick child or having to leave rental property when the rent was raised. RP 67; RP 237. She blamed moving on having to work full-time, saying “if someone had bought me a house and a car and paid all my bills, I could have stayed in the same spot this whole time.” RP 237.

However, she conceded she left a job in Bremerton and moved to Renton to take a job in the same company as her boyfriend at the time. RP 254. The relationship did not last and she also discovered the neighborhood into which she had moved was undesirable, having done little research in advance. Deposition of Lisa Fahey, 78-84. This was the second time she moved into a neighborhood without researching it only to discover the neighborhood was undesirable, forcing another move. Id., at 75-76. Also, though at trial she argued her move to Omak was

motivated, in part, at least, by the lower cost of living, the previous year she moved from Bremerton to Puyallup with the consequence of more than doubling her rent, and did so to be near her current boyfriend. Deposition of Lisa Fahey, at 87 and 97; RP (04/01/10) 255.<sup>6</sup> The move did not improve her commute but did increase Larry's and the girls' commute. Deposition of Lisa Fahey, at 88-91. She agreed there was no reason she could not have remained in Bremerton, where it was less expensive. Deposition of Lisa Fahey, at 90.

Though Lisa sought to portray herself as a struggling single mother, Larry did not think Lisa's moves were motivated by employment or financial concerns, but were motivated by boyfriends. RP 216. Lisa conceded she moved to Puyallup for that reason, and that same boyfriend relocated to the Omak area shortly before Lisa decided to move. RP 29-30. Certainly, the job she took did not make a compelling case for the move, since it was no better pay, some of it on commission (so, variable), and had completely unpredictable hours. RP 36-38, 232-233.

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<sup>6</sup> The two times she lived in Bremerton, she paid rent of \$650 and \$500, compared to \$1250 in Puyallup. Deposition of Lisa Fahey, at 74, 87, 97. When she lived in Silverdale the first time, she paid \$450-460. *Id.*, at 78,

J. THE COURT APPLIED THE RELOCATION ACT,  
PERMITTED LISA TO MOVE THE GIRLS, AND SEVERELY  
RESTRICTED LARRY'S TIME WITH THE GIRLS.

After a trial in March/April, 2010, the court determined the relocation act applied because Lisa "was intended to be the primary parent" in the original parenting plan. CP 28. The court called the original parenting plan's provision for Larry to share equally in residential time a "special right." CP 29. The court found the children's relationship with their mother was "most parent/child-like," and described the father's involvement, "although stable and extensive like Mother's, is that of an added team member." The court declared the children's bond with their mother to be stronger and that "[t]he direction of the children's lives have [sic] by and large been focused and guided by Mother." The court repeatedly focused on the fact that the children are girls entering their preteen years. Lisa had testified the girls needed to be with their mother because of "female stuff," that is, getting bras and stuff that "no girl" would ever want to talk to her father about. CP 28-31, 177-181; RP 240.

The court also made much of Larry's disability. CP 29-30. The court found Larry's testimony "did not give the court confidence" in his parenting ability as the children advanced

developmentally.<sup>7</sup> The court expressed “some concerns” for Larry’s ability to meet the girls’ needs given his “short term memory issues and his lack of executive function capability,” meaning, apparently, his communication skills. The court also faulted Larry for exercising his optional weeknight residential time because it involved a long commute, but said nothing of the impact of the mother’s multiple moves, which necessitated the commuting if Larry wanted to maintain his involvement in the girls’ lives. The court dismissed the expressed desire of one of the daughters to remain with the father, suggesting, without any basis in the record, that the child may see her role as taking care of the father. And though the other child had also proclaimed, in an emotional outburst to her teacher, that she did not want to move from her father’s, the court declared “a split among the siblings.” The court also dismissed comparisons between Edmonds and Omak in terms of academic quality and rates of high-risk behavior in youthful populations (e.g., pregnancy, alcohol and drug abuse), declaring the data “skewed.”<sup>8</sup>

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<sup>7</sup> Larry’s verbal expression is noticeably affected by his disability, as he admitted. There was, however, no evidence that this caused communication problems with his children. It did appear that Lisa’s relatives sneered and laughed during his testimony. RP 271.

<sup>8</sup> The exhibit was obtained from the Okanogan County website, which makes public the unusually high risks to teen health in the county. RP 132-134. See [www.okanogancounty.org/ochd/TeenHealth.pdf](http://www.okanogancounty.org/ochd/TeenHealth.pdf).

The change in the children's lives wrought by the new parenting plan is radical. Having lived with their father the majority of the time in the past four years, including 95% of the time in academic year 2009-2010, and 50% of the time prior to 2006, the children now will see him only on alternate weekends, some holiday time, and for less than half of summer, approximately 27% of the time. His deep involvement in their schools necessarily will end because the court did not include any provision for exercise of optional time, as had been in the original parenting plan. Likewise, their involvement with their extended family, their church, and their community in Edmonds will radically diminish because the court prohibited Larry from bringing the girls to Edmonds on his weekends, requiring him to stay in and around Omak. The court simply deleted other provisions of the prior agreed plan, including regarding the children's religious education. And the court made no provision for what would happen if mother moved again.

#### IV. SUMMARY OF ARGUMENT

The relocation act does not apply to this case because the relocating parent's is not the principal residence. Rather, because the mother's relocation to Omak makes it impossible to continue

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with the parenting plan entered by the parties' agreement in 2002, and because the children have been, since 2006, integrated into their father's residence as the primary residence, and because the mother's instability is detrimental to the girls, the court should have granted the father's petition to modify. Certainly, the court should in no way have disqualified the father because of his sex or his disability, especially where neither is proven to have any relevance to his ability and demonstrated history of meeting the children's needs, in stark contrast to the mother.

## V. ARGUMENT

### A. THE RELOCATION ACT DOES NOT APPLY.

The trial court erred when it applied the relocation act to this case, giving Lisa the benefit of a rebuttable presumption in favor of modifying the parenting plan so that she could move the children. By its plain language, the relocation act does not apply to 50/50 parenting plans. Rather, the act turns on whether there is a "principal residence" (RCW 26.09.410) and whether a relocation is sought by "a person with whom the child resides a majority of the time ..." (RCW 26.09.430).<sup>9</sup> Here, the original parenting plan contemplates equal residential time. Moreover, to the extent this

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<sup>9</sup> The statutes are in the appendix, excerpted in pertinent part.

plan was not followed in recent years, the children resided “a majority of the time” with Larry. Accordingly, the act would apply only if Larry was intending to relocate.

**B. NOR DOES THE STANDARD FOR DETERMINING ORIGINAL PARENTING PLANS APPLY HERE.**

The trial court erred as well when it analyzed the case alternatively as one involving an original parenting plan, applying RCW 26.09.187(3). This is wrong because Washington law does not permit the modification of “a prior custody decree or a parenting plan” unless the statutory criteria for modification are met. RCW 26.09.260(1). The statute’s language is mandatory (“the court shall not modify” unless the standard is satisfied). *Id.* Thus, the court should not have evaluated this case as if determining a parenting plan for the first time.

This barrier is of particular significance here, where the two parties agreed to the parenting plan entered in 2002. This parenting plan, in explicit terms and as understood by the parties, intended for these parents to enjoy equal time with their children. By interposing a specific procedural barrier to modification, the Legislature deliberately extended protection to those original parenting plans, which the court simply bypassed.

C. THE MODIFICATION STANDARD APPLIES HERE.

The only standard that does apply to the circumstances here is the modification standard. Thus, the court was required to determine whether, upon new or previously unknown facts, “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.” RCW 26.09.260. Here, two provisions of the modification statute apply and were pled by Larry. CP 1-8. They authorize modification where:

(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

RCW 26.09.260(2)(b) and (c).

Thus, the court should have looked to the circumstances of the mother's frequent moves, with their dislocating effects on the children and harms to their academic and social lives, and to the integration of the children into the father's household over the past four years.

- 1) This is the only standard that makes sense, under the statute's text and under Washington policy.

By ignoring this statutory framework, the trial court ignored Washington law and policy on the best interests of children, which views the children's interests as presumptively served by continuity in their care. That is, for reasons bearing directly on a child's well-being, Washington law strongly favors continuity in a child's life. See, e.g., RCW 26.09.002 (best interests ordinarily served by retaining existing pattern of interaction). By "continuity" is meant "custodial" continuity..." *In re Combs*, 105 Wn. App. 168, 174, 19 P.3d 469, 472 (2001). Here the court simply ignored how the children have actually lived, relying instead on a hypothetical construct of the mother as the "intended" primary parent under the parenting plan. Even the mother agreed the parenting plan intended for both parents to share equally in residential time. The court cannot ignore the law or the facts, yet, here, it ignored both..

- 2) The children were integrated into the father's home with the mother's permission beginning in 2006.

It is undisputed that the parents lived the 50/50 plan they intended in their 2002 agreement and it is unrefuted that, since 2006, when Lisa agreed Larry could enroll the girls in summer camp in Edmonds, the girls have spent more residential time in

their father's home. Deposition of Lisa Fahey, 129-131. Moreover, after the mother peremptorily moved to Omak, the children were in the father's residence from November 2009 through May 2010.

**D. THE COURT IMPROPERLY CONSIDERED SEX AND DISABILITY, FACTORS IRRELEVANT IN THIS CASE BASED ON THE FACTS AND ON THE LAW.**

When analyzing the facts of this case, albeit under improper standards, the court improperly considered sex and disability as *per se* affecting placement of the children. Washington law strongly prohibits such considerations, and rightly so. Parents are not *per se* better or worse for being one sex or another or being possessed of some abilities and not others. Nor may trial courts indulge subjectively held preferences and biases in making decisions regarding the needs of the children.

This rule was made clear by our Supreme Court when it reversed a trial court where the court's expressed antipathies toward the father, who was homosexual, may have been the basis for the court's decision. *In re Marriage of Cabalquinto*, 100 Wn.2d 325, 669 P.2d 886 (1983). The court declared, "homosexuality in and of itself is not a bar to custody or to reasonable rights of visitation." *Id.*, at 329. This principle applies with equal force to sex and to disability. See Const. Art. 31, § 1("Equality of rights and

responsibility under the law shall not be denied or abridged on account of sex.”); see, e.g., *In re Marriage of Taddeo-Smith and Smith*, 127 Wn. App. 400, 110 P.3d 1192 (2005) (quadraplegic mother); *Tucker v. Tucker*, 14 Wn. App. 454, 456, 542 P.2d 789 (1975) (race). It is the parenting relationship that matters. *In re D.F.-M*, 157 Wn. App. 179, 193, 236 P.3d 961 (2010) (rejecting state’s concerns about square footage in father’s home as “nonsense”).

Here the mother testified that sex should be a factor in determining the children’s primary residence, as if only mothers could buy bras and as if she would be completely out of the picture if the girls did not move to Omak with her. Both propositions are nonsensical. Not even Lisa took this seriously, since she moved to Omak after the oldest daughter’s onset of puberty (in approximately 2008). Yet the court repeatedly emphasized the sex of the children in its ruling, making clear its view that the father, by virtue of his sex, was not in the running to be the primary residential parent, despite the stability he had established for the children and despite the expressed desires of the children themselves.

Likewise, the court repeatedly referred to the father’s disability as disqualifying him from being the primary residential

parent though there was no evidence in the record that his parenting was affected by these conditions, without which evidence the court was not in a position to draw such conclusions. See *Donaldson v. Greenwood*, 40 Wn.2d 238, 252-253, 242 P.2d 1038 (1952) (court cannot make a factual finding out of thin air). Indeed, one of the teachers testified explicitly that she observed no impact on his parenting. RP 119. Significantly, Lisa married Larry after his brain injury, had children with him, then agreed to a parenting plan intending that he share parenting responsibility equally. In deposition, she described Larry as “a great dad” and said she trusts the girls are cared for when with him. Deposition of Lisa Fahey, 138. At trial, she manufactured some vague “concerns” about Larry’s disability, contradicting her deposition testimony and her conduct of the past 17 years, but presented no evidence to substantiate her concerns. RP 240. (The Department of Motor Vehicles has approved Larry for driving. Deposition of Larry Fahey, at 12.) Lisa also expressed concerns about Larry’s memory problems (RP 240), but Lisa’s memory problems are legion; she could not remember the names of teachers or friends or former boyfriends, or instances of taking the children to Omak, or when

she reconciled with her father, or even when she applied for the job she took in Omak. Insinuations are not evidence.

Nevertheless, the court leapt to a conclusion that the father's disability affected his parenting. Indeed, the court indulged in outright speculation that the daughter who expressed her desire to stay with her father did so out of some caretaking impulse, rather than some more straightforward impulse to take care of herself. This is wrong. There is no evidence that the father's parenting ability was affected by either of these qualities, sex or disability, or that he was in any way unable to meet the children's needs. Rather, he stepped up to the plate consistently through the years to provide the girls with unstinting love and support, a stable community of friends and relatives, academic opportunities, etc. Over and over again, he placed the children's needs above his own. Yet the trial court diminished the father's role in his children's lives to that of a "team member" and seemed, indeed, to fault him for his devotion. This grossly diminishes and distorts the father's role to the detriment of his children

#### E. THE B IAS OF THE COURT.

The court's bias seems further manifest in its view of the evidence more generally, which view the record simply does not

support. See *Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (decision is based on “untenable reasons” if the facts are unsupported by substantial evidence); see, also, *Marriage of Crosetto*, 82 Wn. App. 545, 556, 918 P.2d 954 (1996) (“Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the declared premise”).

The court found the mother’s bond with the children to be primary, though the record does not explain why. Indeed, both children resisted the move, apparently not sharing the disrespectful view of Larry that Lisa and her supporters demonstrated in open court by mocking him. Ironically, the court placed enormous import on Larry’s lack of verbal skill, yet ignored the mother’s testimonial demeanor, which was skilled, but evasive, inconsistent, sarcastic, and even scornful.

The court also faulted the father for going to great lengths (and driving great distances) to spend as much time as possible with his children, despite that his efforts redounded to the children’s benefit, especially academic benefit, while ignoring that the mother relinquished much of her time over the past four years, including almost entirely the past year. The court also completely ignored Lisa’s apparent disregard for the effects on the children of her

residential instability, and, certainly, in her relocation decisions, the fact that she demonstrated no interest in facilitating Larry's contact; rather, the contrary. Yet the court faulted Larry for not properly accounting for the mother's time with the children in objecting to her relocation. In short, the court applied a stark double standard to the two parents.

The court also ignored that Lisa's claim to family and community support in Omak appeared specious, apart from the boyfriend, with implications for supervision of the girls when they were not in school and for the support they need to navigate yet another upheaval. And the court seemed unconcerned that Lisa might easily up and move again and unconcerned about her employment history and unconcerned that Lisa's new job seemed worse than her last job, including with respect to its unpredictable hours. Here was Lisa, with an unpredictable work schedule and two daughters in a new town whose father was no longer accessible to them, both because of distance and because of the court's order eliminating his optional time. Against this backdrop, the court dismissed the evidence of high risks to teens in rural and impoverished Okanagon County and ignored the evidence of the professionals (counselor and teaches) regarding the specific

detriments to the children from disruption and regarding the extent to which their well-being could be attributed to their father's efforts.<sup>10</sup>

Granted, this case is not a contest between cities (Edmonds or Omak) or environments (urban or rural) or economic status (wealthy or not) or between extended families (involved or not). Still, these are facts that affect the children's lives in a demonstrable fashion. Yet the court ignored these facts, substituting instead speculation about sex and disability. This actual proof of bias both undermines the result reached and requires a change of judge on remand. *In Re Custody of R.*, 88 Wn.2d 746, 947 P.2d 745 (1997).

#### F. THE COURT RADICALLY RESTRICTED THE TIME BETWEEN FATHER AND CHILDREN.

The trial court's bias is evident further in the parenting plan it ultimately adopted. The trial court not only allowed the mother to move the children again, but replaced a 50/50 parenting plan with

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<sup>10</sup> In general, the risks to youth in rural, particularly impoverished rural, communities are beyond dispute. See, e.g., Mink, et al, Violence and Rural Teens: Teen Violence, Drug Use, and School-Based Prevention Services in Rural America, 2005 (significantly greater risk of using cigarettes, chewing tobacco, crack/cocaine, and steroids). ([http://rhr.sph.sc.edu/report/\(4-5\)%20Violence%20and%20Rural%20Teens.pdf](http://rhr.sph.sc.edu/report/(4-5)%20Violence%20and%20Rural%20Teens.pdf)). Methamphetamine and inhalant use is particularly concerning, as is driving while intoxicated, risks exacerbated by poverty, which affects availability of services. <http://www.srph.tamhsc.edu/centers/rhp2010/11Volume2substanceabuse.pdf>.

an extremely disproportionate plan. The court made no effort to rebalance the plan, even allowing for the relocation, so as to allow for the children and father to spend as much time with one another as practicable. From spending the majority of time with their father, the children now enjoy no more than 27% percent of the time with their father. The court simply eliminated agreed upon provisions in the prior plan that allowed for the father to exercise optional time with the children. Nor even did the court attempt to compensate with holiday and summer vacation time, as the prior plan did and as might be expected given the history of equal parenting. Rather, the court seemed determined to curtail the father's involvement, despite justifying its decision on the speculation that the father could exercise residential time in Omak more freely than the mother could here. See, e.g., CP 29-30. The court left no means for the father to do so.

Not only did the trial court, in this case, turn the children's lives upside down by drastically curtailing their time with their father, the court imposed restrictions on how that limited time is spent. Specifically, the court required that father's weekend residential time, which includes three-day weekends, be spent in Omak, or a short distance from Omak. CP 82. The court

articulated no basis for this restriction. In fact, the court expressly found there was no basis for restrictions. CP 82 (¶¶ 2.1 & 2.2).

Because none of these limitations are justified by findings or by evidence, indeed, quite the contrary, they must be vacated. *In re Marriage of Katare*, 125 Wn. App. 813, 105 P.3d 44 (2004).

G. THE COURT SHOULD HAVE APPOINTED A GUARDIAN AD LITEM.

Early and late in these proceedings, the father requested appointment of a guardian ad litem. CP 36; CP 184-185. A court should appoint a G.A.L. "if it would assist the court in determining the custody issue." *In re Matter of Stell*, 56 Wn. App. 356, 783 P.2d 615 (1989). Here, as in *Stell*, the failure to appoint a guardian led the court to adopt "a position virtually unsupported by anything but the most speculative and conclusive testimony." 56 Wn. App. at 371. Here, significantly, in the absence of a guardian, the court ignored or dismissed the evidence about the children's own desires. CP 30. The court even admitted not knowing why one of the children wanted to live with her father, "hoping" it was not from a desire to take care of him. CP 30. Oddly, the court went on to urge the parents to "carefully listen" to the children's expressed wishes. *Id.* The court needed to do the same, which a guardian ad litem would have facilitated.

#### H. EVEN UNDER THE RELOCATION ACT, THE COURT'S DECISION IS UNTENABLE

Even if the relocation act applied here, the trial court applied it erroneously. In addition to the impermissible considerations discussed above, the court's view of the evidence lacks record support, also as discussed above. The court ignored the "relative strength, nature, quality, extent of involvement, and stability of the child's relationship" with the father, reducing him to a "team member." RCW 26.09.520(1). Likewise, the court ignored the depth and breadth of the children's relationships with the extended Fahey family and ignored the lack of relationships with Lisa's family in Omak. *Id.* The court simply cast aside the parties' agreement from 2002 to share parenting equally and, indeed, seemed to view the father's exercise of his rights under the plan as a kind of intrusion on the mother. RCW 26.09.520(2). In assessing the impact of disrupting the different relationships, the court ignored that Larry was the primary parent since 2006 and ignored the crucial role Larry had played in getting the girls back on track academically and generally providing them with a stable home and community. RCW 26.09.520(3). The court also ignored that the children had thrived during the school year after mother had left them for Omak, suggesting the relatively slight impact of disrupting

that relationship. *Id.* Lisa herself seemed to acknowledge that the girls would be fine without her, since she chose to move to Omak over being with the girls. By the same token, the court ignored the history of detrimental effects on the girls from Lisa's many relocations, and ignored the girls' own worries and desires. RCW 26.09.520(6).

Certainly, too, the court's refusal to consider the evidence of comparative standards of living makes no sense. RCW 26.09.520(7). Declaring Okanogan County's own assessment of its problems to be "skewed," the court ignored the real dangers present in poor, rural communities – dangers that are certainly heightened by the girls' lack of familiarity with the area and local family and the lack of family and community support.

Likewise, the court took no notice of Lisa's long history of instability, nor any notice of the fact that Lisa was moving again to be with a boyfriend, who remained married to a woman in Puyallup, where he also owns a home, and whose employment was erratic. RCW 26.09.520(5). The court ignored that Lisa's new job seemed less remunerative than the one she left and did not offer her stable hours and took at face value a claim to financial benefit to the move when Lisa herself had repeatedly made clear she could live in the

Puget Sound area on less than she had been living in Puyallup, if she chose to do so. RCW 26.09.520(10). See Exhibit 24 (Lisa paying more for rent in Omak than she had last paid in Bremerton). In any case, an improved cost of living does not eliminate the need to consider standard of living.

Altogether, the court's analysis of these factors, corresponding as poorly as it does with the evidence and with common sense, reveals further the extent to which the court's decision was based on impermissible assumptions about sex and disability. Certainly, even under the relocation act standards, Lisa should not have been permitted to move the girls. See *Marriage of Littlefield*, 133 Wn.2d at 47 (decision is based on "untenable reasons" if "it is based on an incorrect standard or the facts do not meet the requirements of the correct standard"). See, also, CP 151-162.

## VI. CONCLUSION

For the foregoing reasons, Larry Fahey respectfully asks this Court to vacate the parenting plan entered June 2010 and to remand to the trial court for trial on Mr. Fahey's petition for modification, before a different judge and with appointment of a guardian ad litem.

Dated this 10th day of November 2010.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

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PATRICIA NOVOTNY #13604  
Attorney for Appellant

# INDEX TO APPENDIX: APPELLANT'S OPENING BRIEF

*In re Marriage of Fahey*  
Court of Appeals, Division Two, No. 40906-2-II

<u>Number</u>	<u>Description</u>
A	Excerpts of Pertinent Statutes
B	Original Parenting Plan
C	New Parenting Plan
D	Judge's Letter Ruling
E	Order Granting Relocation (Findings)

APPENDIX A

## EXCERPTS OF PERTINENT STATUTES

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

### RCW 26.09.430 (RELOCATION)

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 [Contents and delivery] and 26.09.450 [How notice is given for relocation within the same school district].

### RCW 26.09.520 (RELOCATION)

The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

- (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and

emotional development, taking into consideration any special needs of the child;

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

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

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

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

(11) For a temporary order, the amount of time before a final decision can be made at trial.

#### RCW 26.09.260 (MODIFICATION)

(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.

APPENDIX B

APPENDIX B

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26

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MAY 15 2002

DAVID W. PETERSON

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF KITSAP**

In re the Marriage of:	)	NO. 01-3-01098-6
LISA M. FAHEY	)	PARENTING PLAN
Petitioner,	)	
and	)	FINAL ORDER (PP)
LAWRENCE P. FAHEY	)	
Respondent.	)	

This final parenting plan signed by the court pursuant to a decree of dissolution entered on this date.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

I. GENERAL INFORMATION

This parenting plan applies to the following children:

Name		Birthdate
NICHOLE	FAHEY	6-17-98
SHANNON	FAHEY	7-9-01

II. BASIS FOR RESTRICTIONS

Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the children and the right to make decisions for the children.

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 1 of 12

LAW OFFICES OF  
JOHN S. TRACY  
2011 East 11th  
Bremerton, WA 98310-0401  
(360) 479-6644  
(360) 373-0250(fax)

2 2.1 PARENTAL CONDUCT (RCW 26.09.191(1), (2)).

4 Does not apply.

6 2.2 OTHER FACTORS (RCW 26.09.191(3)).

8 Does not apply.

10

12 III. RESIDENTIAL SCHEDULE

14 The residential schedule must set forth where the children  
16 shall reside each day of the year, including provisions for  
18 holidays, birthdays of family members, vacations, and other  
20 special occasions, and what contact the children shall have  
22 with each parent. Parents are encouraged to create a  
24 residential schedule that meets the developmental needs of  
26 the children and individual needs of their family.  
28 Paragraphs 3.1 through 3.9 are one way to write your  
30 residential schedule. If you do not use these paragraphs,  
32 write in your own schedule in Paragraph 3.13.

34 3.1 SCHEDULE FOR CHILDREN UNDER SCHOOL AGE.

36 Prior to enrollment in school, the children shall  
38 reside with the mother, except for the following days  
40 and times when the children will reside with or be with  
42 the other parent:

44 While the children are in daycare/preschool years, father  
46 will have them each week, from Wednesday evening (no later  
48 than 7:00 p.m.) to Friday evening (exchange no later than  
7:00 p.m.) and on the first and third full weekends of the  
month (when Friday exchange will not occur). If a fifth  
weekend occurs in the month, Father shall have children to  
compensate for the uneven distribution of weekdays. (Mother  
3, father 2) and for the greater disparity when the children  
start grade school.

Once children start grade school, Father will relinquish  
Wednesday evening, Thursday and Friday (day) home visits,  
unless he can facilitate school attendance. He would,  
however, be allowed to spend time with them after school  
hours on those days and to pick them up after school on the  
Fridays of the first and third weekends. He would be allowed  
to care for children on all school holidays and in-service  
days not covered by the legal holiday plan. He would also be  
able to have them on any fifth Saturday and first Sunday not

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 2 of 12

LAW OFFICES OF  
JOHN S. TRACY  
2011 East 11th  
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FORM-100 12.7

2 part of a fourth full weekend of the month.  
 4 (Example: When Saturday is the last day of month and Sunday  
 is the first day of month).

6 3.2 SCHOOL SCHEDULE.

8 Upon enrollment in school, the children shall reside  
 10 with the mother, except for the following days and  
 12 times when the children will reside with or be with the  
 other parent:

14 See 3.1

16 3.3 SCHEDULE FOR WINTER VACATION.

18 The children shall reside with the mother during winter  
 20 vacation, except for the following days and times when  
 the children will reside with or be with the other  
 22 parent:

24 See 3.1

26 Winter vacations: After children begin grade school,  
 winter vacation will be split equally between parents.

28 Days before Christmas Eve go to one having the child  
 30 that night. Days after Christmas Day will be with  
 parent who has them that day. They will then go back  
 32 to parent having them for New Year's. Should either  
 parent have to work, other parent would have right  
 34 to care for children rather than placing them in  
 day care.

36 3.4 SCHEDULE FOR SPRING VACATION.

38 The children shall reside with the mother during spring  
 40 vacation, except for the following days and times when  
 the children will reside with or be with the other  
 42 parent:

44 Spring Break: After the children start grade school,  
 46 children will reside with father during spring  
 vacations to compensate for the loss of week-day  
 time.

48

PARENTING PLAN  
 WPF DR 01.0400 (9/2000)  
 RCW 26.09.181; 187; 194  
 Page 3 of 12

Form #PWS 11.7

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2 3.5 SUMMER SCHEDULE.  
4

6 Upon completion of the school year, the children shall  
8 reside with the mother, except for the following days  
and times when the children will reside with or be with  
the other parent:

10 Summer Vacations: Since it is anticipated that both  
12 parents will be working during most of summer break,  
childcare will have to be arranged for. The schedule,  
14 established while the children are of pre-school age,  
will be implemented during summer vacations. They  
16 would reside with the mother Monday, Tuesday and  
Wednesday and with the father Wednesday night,  
18 Thursday and Friday. They would continue to stay with  
him on the first and third weekends of the month. On  
20 even numbered years the mother would have first  
right to establish a two-week vacation period for  
22 travel with the father choosing a two-week time after  
mother's time is established. On odd numbered years  
24 the reverse would happen with the father choosing a  
two-week vacation time period first. Vacation  
26 schedules would start on a Friday night and end on  
a Sunday night two weeks hence. When the children  
28 are with one parent for the three consecutive week-  
ends of the scheduled vacation, the other parent  
30 will have them for the weekend prior and the weekend  
after the vacation even if it's not the normally  
32 scheduled weeks.

34 Since father is to have care of children from Wednesday  
evening to Friday evening each week until children  
36 start grade school, it is recognized that he will  
relinquish Thursday nights and Fridays when mother has  
them for three day weekends which start on Friday.  
38 Should the three-day weekend follow a weekend assigned  
to the mother, Father may start care of the children  
40 on Tuesday evening to allow him two days with children  
prior to the beginning of the three-day weekend. This  
42 arrangement would terminate when children start grade  
school, unless he can facilitate their school  
44 attendance.

46 3.6 VACATION WITH PARENTS.

48 Does not apply.

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 4 of 12

LAW OFFICES OF  
JOHN S. TRACY  
2011 East 11th  
Bremerton, WA 98310-0401  
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Form Plus 10.7

2 3.7 SCHEDULE FOR HOLIDAYS.

4 The residential schedule for the children for the holidays listed below is as follows:

6		With Mother	With Father
8		(Specify	(Specify
		Year	Year
10		Odd/Even/Every)	Odd/Even/Every)

12	New Year's Day	Odd	Even
	Martin Luther King Day	Even	Odd
14	Presidents Day	Odd	Even
	Memorial Day	Even	Odd
16	July 4th	When mid-week	Odd
		When mid-week	Even
18	Every time it is part of a three day weekend, it will be father's to offset lost Veteran's Day three day weekends.		

20	Labor Day	Odd	Even
	Halloween Night	Odd	Even
22	(Halloween set this way to reflect father having children on Wednesday nights. Mother can have them on Wednesday early evening this year, unless she wishes to take part in Edmonds Halloween event.)		

26	Veterans Day	Every (Mother's Birthday)	
28		July 4th used to compensate	
	Thanksgiving Day	Odd	Even
30	Christmas Eve	Odd	Even
	(until noon Christmas Day)		

32	Christmas Day until noon the following day*		
34		Even	Odd
36	*should exchange be necessary due to Christmas Vacation plan)		

38 New Year's Eve while children are young should be part of New Year's Day as they would be asleep anyway. After age ten, New Year's Eve alternates to New Year's Day, like Christmas)

42 Holidays which fall on Friday or Monday, will include Saturday and Sunday to allow for three-day weekend plans.

44 For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

48 Begin on the night before the holiday no later than 8:00 p.m. unless otherwise arranged, except in the

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 5 of 12

LAW OFFICES OF  
JOHN S. TRACY  
2011 East 11th  
Bremerton, WA 98310-0401  
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(360) 373-0250(fax)

2 case of Christmas Eve Day which should start no  
later than noon.

4 End on the last night of the holiday no later  
6 than 8:00 p.m. unless otherwise arranged, except for  
Christmas Day.

8 On three-day holidays involving a Friday, Children will  
10 join the parent on Thursday night no later than 8:00  
p.m.  
12 Sunday night. On three-day weekends involving Mondays,  
the children will join parent Friday night no later  
14 than 8 p.m. unless otherwise arranged and will be  
returned by 8 p.m. Monday night unless otherwise  
16 arranged.

18 Three-day weekends shall take precedence over division  
of weekends.

20 School year shall be in accordance with school  
22 schedule.

24 3.9 SCHEDULE FOR SPECIAL OCCASIONS.

26 The residential schedule for the children for the  
28 following special occasions (for example, birthdays) is  
as follows:

	With Mother (Specify Year Odd/Even/Every)	With Father (Specify Year Odd/Even/Every)
34 Mother's Day	Every	
36 Father's Day		Every
38 Mother's Birthday	Every (falls on Veteran's Day)	
Father's Birthday (6/17)		Every

40 Children's birthdays alternate years to have on birthday,  
42 other parent gets following day. When children begin school,  
father may have the child on Saturday following birthday if  
this fits school schedule better.

44 Nichole's birthday	Even	Odd
46 Shannon's birthday	Odd	Even

48

**PARENTING PLAN**  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 6 of 12

**LAW OFFICES OF  
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2011 East 11th  
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Form 1-1999 (Rev. 10-01)

3.9 PRIORITIES UNDER THE RESIDENTIAL SCHEDULE.

2  
4  
6  
8  
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48

The children will be attending day care/preschool Monday, Tuesday and Wednesday of each week while in the care of mother. One or both children may attend drop-in care on Thursdays or Fridays when cared for by father should his work schedule require it and other arrangements are not possible.

3.10 RESTRICTIONS.

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

3.11 TRANSPORTATION ARRANGEMENTS.

Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the children between parents shall be as follows:

Since travel time and ferry costs are involved, on first and third weeks of month father will pick up the children and return them to the West side of Sound. On the second and fourth weeks of the month, mother will bring the children to and pick them up on the East side of the Sound.

3.12 DESIGNATION OF CUSTODIAN.

The children named in this parenting plan are scheduled to reside the majority of the time with the mother. This parent is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

3.13 OTHER.

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 7 of 12

Form-P/fee 10.7

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2 3.14 SUMMARY OF RCW 26.09.430 - .480, REGARDING RELOCATION  
4 OF A CHILD.

6 This is a summary only. For the full text, please see  
8 RCW 26.09.430 through 26.09.480.

10 If the person with whom the child resides a majority of  
12 the time plans to move, that person shall give notice  
14 to every person entitled to court ordered time with the  
16 child.

18 If the move is outside the child's school district, the  
20 relocating person must give notice by personal service  
22 or by mail requiring a return receipt. This notice  
24 must be at least 60 days before the intended move. If  
26 the relocating person could not have known about the  
28 move in time to give 60 days' notice, that person must  
30 give notice within 5 days after learning of the move.  
32 The notice must contain the information required in RCW  
34 26.09.440. See also form DRPSCU 07.0500, (Notice of  
36 Intended Relocation of A Child.)

38 If the move is within the same school district, the  
40 relocating person must provide actual notice by any  
42 reasonable means. A person entitled to time with the  
44 child may not object to the move but may ask for  
46 modification under RCW 26.09.260.

48 Notice may be delayed for 21 days if the relocating  
person is entering a domestic violence shelter or is  
moving to avoid a clear, immediate and unreasonable  
risk to health and safety.

If information is protected under a court order or the  
address confidentiality program, it may be withheld  
from the notice.

A relocating person may ask the court to waive any  
notice requirements that may put the health and safety  
of a person or a child at risk.

Failure to give the required notice may be grounds for  
sanctions, including contempt.

If no objection is filed within 30 days after service  
of the notice of intended relocation, the relocation  
will be permitted and the proposed revised residential  
schedule may be confirmed.

**PARENTING PLAN**  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 8 of 12

**LAW OFFICES OF  
JOHN S. TRACY**  
2011 East 11th  
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(360) 479-6644  
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Form #PWS 10.7

2 A person entitled to time with a child under a court  
4 order can file an objection to the child's relocation  
whether or not he or she received proper notice.

6 An objection may be filed by using the mandatory  
8 pattern form WPF DRPSCU 07.0700, (Objection to  
10 Relocation/Petition for Modification of Custody  
Decree/Parenting Plan/Residential Schedule). The  
objection must be served on all persons entitled to  
time with the child.

12 The relocating person shall not move the child during  
14 the time for objection unless: (a) the delayed notice  
provisions apply; or (b) a court order allows the move.

16 If the objecting person schedules a hearing for a date  
18 within 15 days of timely service of the objection, the  
20 relocating person shall not move the child before the  
hearing unless there is a clear, immediate and  
22 unreasonable risk to the health or safety of a person  
or a child.

24 IV. DECISION MAKING

26 4.1 DAY-TO-DAY DECISIONS.

28 Each parent shall make decisions regarding the  
day-to-day care and control of each child while the  
30 children are residing with that parent. Regardless of  
the allocation of decision making in this parenting  
32 plan, either parent may make emergency decisions  
affecting the health or safety of the children.

34 4.2 MAJOR DECISIONS.

36 Major decisions regarding each child shall be made as  
38 follows:

40 Education decisions: joint

42 Non-emergency health  
44 care: joint

46 Religious upbringing: Shannon will be baptized into  
Catholic Faith. Both children  
48 shall be raised as Catholics.  
If costs can be covered they  
will attend Catholic Grade

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 9 of 12

LAW OFFICES OF  
JOHN S. TRACY  
2011 East 11th  
Bremerton, WA 98310-0401  
(360) 479-6644  
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2 School and (if possible  
 4 related to location), High  
 6 School.  
 8  
 10 Counseling Mother shall allow Nichole to  
 12 undergo counseling, as  
 14 recommended by Pediatrician,  
 16 while in father's care for the  
 18 purpose of dealing with  
 20 feelings related to the  
 22 separation.

14 4.3 RESTRICTIONS IN DECISION MAKING.

16 Does not apply because there are no limiting factors in  
 18 paragraphs 2.1 and 2.2 above.

20 V. DISPUTE RESOLUTION

22 The purpose of this dispute resolution process is to resolve  
 24 disagreements about carrying out this parenting plan. This  
 26 dispute resolution process may, and under some local court  
 rules or the provisions of this plan must, be used before  
 filing a petition to modify the plan or a motion for contempt  
 for failing to follow the plan.

28 Disputes between the parties, other than child support  
 30 disputes, shall be submitted to mediation. A court  
 32 process will occur only as a last resort. At all  
 34 times the best interests of the children shall be  
 36 considered first. Both parents agree to present the  
 separation in the most positive manner possible,  
 presenting it as simply an inability to live  
 together happily.

38 The cost of this process shall be allocated between the  
 40 parties based on each party's proportional share of  
 income from line 6 of the child support worksheets.

42 The counseling, mediation or arbitration process shall  
 44 be commenced by notifying the other party by

46 In the dispute resolution process:

- 48 (a) Preference shall be given to carrying out this  
 Parenting Plan.

PARENTING PLAN  
 WPF DR 01.0400 (9/2000)  
 RCW 26.09.181; .187; .194  
 Page 10 of 12

LAW OFFICES OF  
 JOHN S. TRACY  
 2011 East 11th  
 Bremerton, WA 98310-0401  
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 (360) 373-0230(fax)

- 2 (b) Unless an emergency exists, the parents shall use  
the designated process to resolve disputes  
4 relating to implementation of the plan, except  
those related to financial support.
- 6 (c) A written record shall be prepared of any  
8 agreement reached in counseling or mediation and  
of each arbitration award and shall be provided to  
10 each party.
- 12 (d) If the court finds that a parent has used or  
14 frustrated the dispute resolution process without  
good reason, the court shall award attorneys' fees  
and financial sanctions to the other parent.
- 16 (e) The parties have the right of review from the  
18 dispute resolution process to the superior court.

VI. OTHER PROVISIONS

There are the following other provisions:

- 22 1. Father will be providing for the care of the children a  
24 significant part of each week. The weekdays he has  
them will save daycare costs. He will have the  
26 financial burden of maintaining a home for them in  
Edmonds.
- 28 2. Father shall have full involvement in the school  
30 activities and extracurricular activities of the  
children.
- 32 3. At any time that one parent is unavailable to provide  
34 care for the children, the other parent shall have the  
right to provide that care.
- 36 4. Either parent may allow all grandparents access to and  
38 care of the children in their absence unless the other  
parent is able to provide personal care. Grandparent  
40 care to avoid daycare expenses is acceptable.
- 42 5. The children will be allowed to attend the Catholic  
44 school in the community where the mother resides,  
providing father, or other family members, can cover  
46 the cost.
- 48 6. Father shall be allowed to participate in all  
activities of the children up to and including coaching  
their sports teams, etc.

PARENTING PLAN  
WPF DR 01.0400 (9/2000)  
RCW 26.09.181; .187; .194  
Page 11 of 12

Form-Plur 10.7

LAW OFFICES OF  
JOHN S. TRACY  
2011 East 11th  
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2 7. Mother consents to allow Father to have access to  
 4 children up to 50% of the time to the best it can be  
 6 worked out. It is recognized that as each child enters  
 grade school, the schedule will have to be adjusted to  
 accommodate the children's school schedule.

8  
 10 VII. DECLARATION FOR PROPOSED PARENTING PLAN

12 Does not apply.

14 VIII. ORDER BY THE COURT

16 It is ordered, adjudged and decreed that the parenting plan  
 18 set forth above is adopted and approved as an order of this  
 court.

20 WARNING: Violation of residential provisions of this order  
 22 with actual knowledge of its terms is punishable by contempt  
 of court and may be a criminal offense under RCW  
 24 9A.040.060(2) or 9A.40.070(2). Violation of this order may  
 subject a violator to arrest.

26 When mutual decision making is designated but cannot be  
 28 achieved, the parties shall make a good faith effort to  
 resolve the issue through the dispute resolution process.

30 If a parent fails to comply with a provision of this plan,  
 32 the other parent's obligations under the plan are not  
 affected.

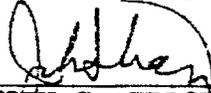
34 JAY B. ROOF

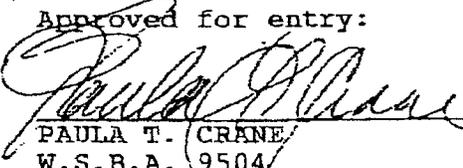
36 Dated: 5-16-02

Judge/Commissioner

38 Presented by:

Approved for entry:

40   
 42 \_\_\_\_\_  
 44 JOHN S. TRACY  
 W.S.B.A. #6670  
 Attorney for Petitioner

  
 44 \_\_\_\_\_  
 46 PAULA T. CRANE  
 W.S.B.A. 9504  
 Attorney for Respondent

48 PARENTING PLAN  
 WPF DR 01.0400 (9/2000)  
 RCW 26.09.181; .187; .194  
 Page 12 of 12

LAW OFFICES OF  
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 2011 East 11th  
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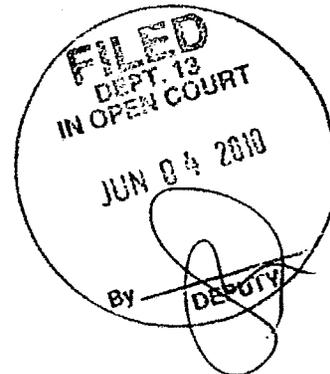
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Form # 10.7

APPENDIX C



08-3-03866-1 34427794 PP 06-04-10



**Superior Court of Washington  
County of Pierce**

In re the Marriage of:  
 In re the Domestic Partnership of:

**Lawrence Patrick Fahey,**  
and  
**Lisa Marie Fahey,**  
Pctitioner,  
Respondent.

**No. 08-3-03866-1**

**Parenting Plan**  
 Proposed (PPP)  
 Temporary (PPT)  
 Final Order (PP)

This parenting plan is:

the final parenting plan signed by the court pursuant to an order signed by the court on this date or dated \_\_\_\_\_, which modifies a previous parenting plan or custody decree.

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This parenting plan applies to the following children:

<u>Name</u>	<u>Age</u>
Nichole Fahey	11
Shannon Fahey	8

**II. Basis for Restrictions**

*Under certain circumstances, as outlined below, the court may limit or prohibit a parent's contact with the child(ren) and the right to make decisions for the child(ren).*

2.1 Parental Conduct (RCW 26.09.191(1), (2))

[X] Does not apply.

2.2 Other Factors (RCW 26.09.191(3))

[X] Does not apply.

III. Residential Schedule

The residential schedule must set forth where the child(ren) shall reside each day of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, and what contact the child(ren) shall have with each parent. Parents are encouraged to create a residential schedule that meets the developmental needs of the child(ren) and individual needs of their family. Paragraphs 3.1 through 3.9 are one way to write your residential schedule. If you do not use these paragraphs, write in your own schedule in Paragraph 3.13.

3.1 Schedule for Children Under School Age

[X] There are no children under school age.

3.2 School Schedule

Commencing the day after the end of the current school year, the children shall reside with the [ ] petitioner [X] respondent, except for the following days and times when the child(ren) will reside with or be with the other parent:

from (day and time) Friday after school to (day and time) Sunday evening at 6:00 p.m.

[ ] every week [ ] every other week [ ] the first and third week of the month

[ ] the second and fourth week of the month

[X] other: Two (2) weekends (including holiday weekends) per month in Omak.

*addition &* ~~Most~~ three-day weekends should be Father's, but unless mutually agreed, *not in* these weekends shall also be around Omak. *but father may travel short distances including Chelan*

3.3 Schedule for Winter Vacation

The child(ren) shall reside with the [ ] petitioner [X] respondent during winter vacation, except for the following days and times when the child(ren) will reside with or be with the other parent:

~~Every other year, alternating with the days the children are out of school during the week of Thanksgiving; provided, however, that winter vacation may also be divided and alternated if preferred and agreed by both parents.~~

3.4 Schedule for Other School Breaks

*Father shall have every winter break unless he chooses Thanksgiving weekend. If he does so choose, winter break will be divided evenly. In even years mother first half then Christmas Day 11 AM & father the second half. This will alternate in odd years*

The child(ren) shall reside with the [ ] petitioner [X] respondent during other school breaks, except for the following days and times when the child(ren) will reside with or be with the other parent:

*KG* Every spring vacation/~~the days that the children are out of school during Thanksgiving week~~ or winter vacation on an alternating basis; provided, however, that winter vacation may also be divided and alternated if preferred and agreed by both parents.

**3.5 Summer Schedule**

Upon completion of the school year, the child(ren) shall reside with the [ ] petitioner [X] respondent, except for the following days and times when the child(ren) will reside with or be with the other parent:

[X] Other: Father shall be entitled to five (5) weeks in the summer (not necessarily consecutive); provided, however, that in the summer of 2010, the children shall be with their mother for two (2) full weeks following the end of the current school year.

**3.6 Vacation With Parents**

[X] Does not apply.

*KG* In even numbered years Mom priority of choice of weeks and in odd years Father has priority.

**3.7 Schedule for Holidays**

The residential schedule for the child(ren) for the holidays listed below is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
New Year's Day	_____	_____
Martin Luther King Day	_____	_____
Presidents' Day	_____	_____
Memorial Day	_____	_____
July 4th	_____	_____
Labor Day	_____	_____
Veterans' Day	_____	_____
Thanksgiving Day	_____	_____
Christmas Eve	_____	_____
Christmas Day	_____	_____
_____	_____	_____
_____	_____	_____

[ ] For purposes of this parenting plan, a holiday shall begin and end as follows (set forth times):

[ ] Holidays which fall on a Friday or a Monday shall include Saturday and Sunday.

[X] Other: Holidays should be celebrated during each parent's respective weekends with the children.

**3.8 Schedule for Special Occasions**

The residential schedule for the child(ren) for the following special occasions (for example, birthdays) is as follows:

	With Petitioner (Specify Year Odd/Even/Every)	With Respondent (Specify Year Odd/Even/Every)
Mother's Day	<u>Every</u>	
Father's Day		<u>Every</u>

[X] Other: Special occasions should be celebrated during each parent's respective weekends with the children.

**3.9 Priorities Under the Residential Schedule**

[X] Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

[X] Rank the order of priority, with 1 being given the highest priority:

- |                                |  |
|--------------------------------|--|
| <u>2</u> winter vacation (3.3) | <u>n/a</u> holidays (3.7)              |
| <u>3</u> school breaks (3.4)   | <u>n/a</u> special occasions (3.8)     |
| <u>1</u> summer schedule (3.5) | <u>n/a</u> vacation with parents (3.6) |

[ ] Other:

**3.10 Restrictions**

[X] Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

**3.11 Transportation Arrangements**

 Transportation costs are included in the Child Support Worksheets and/or the Order of Child Support and should not be included here.

Transportation arrangements for the child(ren), between parents shall be as follows: *no The parties shall meet midway & share the transportation burden.*

**3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside the majority of the time with the [ ] petitioner [X] respondent. This parent is designated the custodian of the child(ren) solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

**3.13 Other: N/A****3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

*If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60 days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).*

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

**If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.**

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

**IV. Decision Making****4.1 Day-to-Day Decisions**

Each parent shall make decisions regarding the day-to-day care and control of each child while the child is residing with that parent. Regardless of the allocation of decision making in this parenting plan, either parent may make emergency decisions affecting the health or safety of the children.

**4.2 Major Decisions**

Major decisions regarding each child shall be made as follows:

Education decisions	<input type="checkbox"/>	petitioner	<input type="checkbox"/>	respondent	<input checked="" type="checkbox"/>	joint
Non-emergency health care	<input type="checkbox"/>	petitioner	<input type="checkbox"/>	respondent	<input checked="" type="checkbox"/>	joint
Religious upbringing	<input type="checkbox"/>	petitioner	<input type="checkbox"/>	respondent	<input checked="" type="checkbox"/>	joint

**4.3 Restrictions in Decision Making**

Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

**V. Dispute Resolution**

*The purpose of this dispute resolution process is to resolve disagreements about carrying out this parenting plan. This dispute resolution process may, and under some local court rules or the provisions of this plan must be used before filing a petition to modify the plan or a motion for contempt for failing to follow the plan.*

~~No dispute resolution process, except court action, is ordered (due to the geographic locations of the parties).~~ *Mother shall choose location in even years - Father in odd years.*

**VI. Other Provisions**

There are no other provisions.

**VII. Declaration for Proposed Parenting Plan**

Does not apply.

\_\_\_\_\_  
Lawrence Patrick Fahey, Pctitioner

\_\_\_\_\_  
Date and Place of Signature

\_\_\_\_\_  
Lisa Marie Fahey, Respondent

\_\_\_\_\_  
Date and Place of Signature

**VIII. Order by the Court**

It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an order of this court.

**WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

When mutual decision making is designated but cannot be achieved, the parties shall make a good faith effort to resolve the issue through the dispute resolution process.

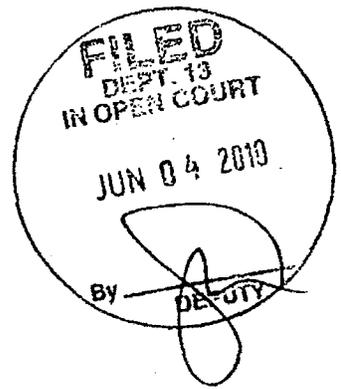
If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

Dated: 6/4/10

[Signature]  
Judge Kathryn J. Nelson

Presented by: [Signature]  
Michael D. Howe, WSBA No. 0895

Approved for entry: [Signature]  
Signature of Party or Lawyer/WSBA No. 8294



APPENDIX D

APPENDIX D



08-3-03866-1 34202139 CTD 04-28-10

**--- SUPERIOR COURT  
OF THE  
STATE OF WASHINGTON  
FOR PIERCE COUNTY**

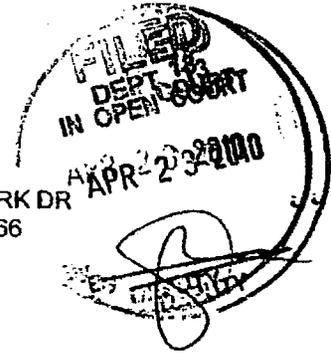
FAMILY COURT - 1, JUDGE KATHRYN NELSON  
GINELE EILERT, JUDICIAL ASSISTANT  
(253) 798-3654

334 COUNTY-CITY BUILDING  
930 TACOMA AVENUE SOUTH  
TACOMA, WA 98402-2108

April 23, 2010

JEFF ROBINSON  
ATTORNEY AT LAW  
4700 PT FOSDICK DR NW STE 301  
GIG HARBOR, WA 98335-1706

MICHAEL D. HOWE  
ATTORNEY AT LAW  
10 VALLEY VIEW PARK DR  
OMAK, WA 98841-9366



RE: LAWRENCE PATRICK FAHEY vs. LISA MARIE FAHEY  
Pierce County Cause No. 08-3-03866-1

Dear Counsel:

Thank you for your presentations at trial.

Because the court does believe that Mother was intended to be the primary parent in the parties' parenting plan, the court will first decide this case in accordance with the usual *relocation analysis*. There is a *rebuttable presumption* that the intended relocation of the children will be permitted. The burden is then on Father in this case to rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the children and the relocating person, based upon the following:

1. The children appear to have a very close relationship and bond with both parents. However, the nature and quality of the bond is most parent/child like with Mother. Father's involvement, although stable and extensive like Mother's, is that of an added team member. The direction of the children's lives have by and large been focused and guided by Mother. Father has had special rights with respect to schooling, but schooling is directed by Mother in the first instance, and later Father has been able to change schooling to the private Catholic education, for one example. The girls are bonded to and care about their grandmother and extended family. The court sees no reason for that to change in nature with the relocation, although quantity of time may be more limited.
2. There were no prior agreements on relocation outside the parenting plan which places the children with Mother for school with Father's mid-week visits to happen as may be facilitated.

3. The parents have both acted wisely to keep the children in school to minimize disruptions to the children. The children should now finish school in the status quo arrangement for this remaining portion of the year.

However, without relocation being granted, there will be a disruption in Mother/Children contact, and that disruption will be more detrimental to the children than the disruption to Father/Children. Father's circumstances allow him to maximize residential time with the children. He does not work and thus does not have work parameters. He has some *income from his disability and gifts from his parents that he uses to maximize his time.* Mother must work and would have much less ability to maximize non-residential time. Thus, in terms of quantity, the disruption in the Mother/Children bond would be more. In quality, it is the court's finding that removing the current primary adult, responsible, directing and guiding bond between Mother and pre-teen girls would be more detrimental than the effect between the Father and daughters, the quality of which would remain the same, but with some less quantity.

4. No 191 limitations.
5. *Mother's reasons for relocating are sound and in good faith. A better job and benefits than she has had and upward advancement possibilities are reasons for relocation. Lots of extended family in the area where she was raised and a significant other with whom she has had an ongoing relationship makes sense. Father's reasons for opposing the relocation are not bad faith reasons, but the court finds that Father does not properly account for and weigh his daughters' needs. This is demonstrated in his long term commuting with them, and his omission of mentioning any detriment of removing Mother from their lives given her primary direction and bond.*
6. As has been mentioned, the pre-teen ages of the girls, their transition from elementary school to high school and the testing of boundaries and exploration of identities likely to come, make this a crucial time in the children's lives. They will benefit from continuing with their Mother as the primary guide of their lives and behavior. The court had some concerns for Father's ability to provide for the girls' needs at this stage of life given his short term memory issues and his lack of executive function capability. Father's story was told through his articulate mother, who together with her husband has provided the private schooling and other benefits for the children and assisted Father. Father's own testimony did not give the court confidence of his parenting capacity with preteens *testing the boundaries of behavior and exploring their own identities, should primary custody be changed to him.*
7. In either case, the girls would be growing up in a small town, but in one case it is surrounded by one of the largest urban corridors in the country, and in the other is surrounded by a rural agricultural area. Western Washington has very different climate and characteristics on all levels than Eastern Washington. Father's evidence showed many youth problems, pregnancy, delinquency, drop outs seemingly over-represented in the Omak area population. However, the court believes the smallness of the sample skews the statistics. The very same issues happen and could happen to the girls in Edmonds. No advantages sufficient to upset the primary bond and advantages for Mother was found in Edmonds. Smaller schools often make for more confidence and experience as leaders than would be available in a larger more competitive school.

8. Also previously mentioned above, Father's circumstances give him an ability to foster and continue his relationship with the children not available to Mother if the relocation were not granted. With Skype type computer visits, telephone calls, and his freedom with respect to visitation, the Father can remain in the children's daily lives despite the relocation. Mother's work schedule would interfere with a similar schedule for her.
9. In either case the girls would relocate. Either to Omak with their primary parent or to Edmonds where they have had significant contacts. Also, perhaps not desirable, it is feasible for Father to relocate to Omak. His cost of living there would be less.
10. The financial impact and logistics of the relocation are better income and expectations for Mother and the children. Father's disability support will not change with this relocation. The costs of visitation with Father may go down or be the same as the children no longer commute to church and activities from Puyallup to Edmonds several times per week. So while a trip to Omak is more time and more expense, practically there must be less trips. The prevention of the relocation could return Mother to Puyallup where she no longer has a job, or change custody such that Mother would not have time, as Father does, to visit frequently, and her expense to see the children would be increased infinitely over the pre-relocation status quo.

Because much was made at trial that the court should view this equal time parenting plan as a decision as to custody in the first instance under 26.09.184 and 187 (3)(a)(i)-(vii), the court has also analyzed this matter under that standard.

Both parents appear to be fit and proper persons who can raise children without abuse and neglect. However, as mentioned above, the court has some concern for older preteen and teenage children's physical care, emotional stability and provision of changing needs as the child grows and matures if primarily placed with Father. Father has the assistance of his very impressive mother and extended family, but ultimately the court is evaluating Father's ability as against the Mother's with respect to these factors.

Although strong with both parents, the children's parent/child relationship is stronger with Mother. The agreement seen in the agreed parenting plan also militates against Father as primary parent. Mother is also stronger on her past and potential for future performance of parenting functions as legally defined. Again the girls' emotional needs and developmental level makes Mother's relationship crucial.

Significant adults and some significant activities are in Father's favor, but physical surroundings and school require a change in any event. This court does not see clear and certain advantages to these children's confidence and leadership development in one environment over the other. They will do well in school and be college bound in either event.

The court does recognize the expressed desire of one child to live with her Father, but has no certainty with respect to the reasons therefore. Hopefully this child does not see her role as taking care of her Father, given his memory loss or lack of executive functioning. Both parents and family would be well advised not to suggest or coach the girls to express desires in this regard, but carefully listen to and consider these expressions and the reasons for any desired change. They should then act appropriately in the future if they agree with the reasons for such a change. With only one child making such an expression, there is a split among the siblings, and the siblings should at this age stay together for years to come. Finally, Mother's employment schedule is also accommodated by this decision.

There are no 191 or 187 factors, and parental conflict should not be an ongoing concern. The parents could not resolve the differences in the opinions about the many long commutes the children had with Father in a way that the court finds would put the interests of the children first. Father did not want to give up his time and the time his parents and his family could have with the girls. Mother did not seem to have the financial ability to fight for her point. On the other hand, Mother is totally unreasonable in her case when she presented the argument that somehow Father did not fulfill his legal and moral obligation to provide financial support for the girls. *These sources of conflict should be ended with this court's findings that (1) The children should not have had the long history of very frequent long commutes, and (2) Father has done all he should financially under the present circumstances. If Father can become employed, which based upon Father's testimony, this court does not believe is likely, that may change, but is not now a consideration.*

In summary, the best interests of the children are to have Mother as the primary parent and the children shall primarily reside with her in Omak where she is employed in a job that provides benefits and advancement opportunity. The best interests of the children are fostered by the relocation to Omak with Mother as the primary parent because it preserves more of the bond with each parent, than the alternative would preserve. Residential time and financial support are equally important, and the children's residential time and financial support is maximized by primary placement with Mother. *Mother's primary parenting is most likely to best maintain the children's emotional growth, health, stability and physical care. The existing pattern of interaction is altered least, and only to the extent necessary, by the changed relationship of the parents if Mother's primary role is preserved.*

The court does not agree with Mother's proposed parent plan, in total, however. Father can and may have an average of two weekends (including holiday weekends) per month in Omak with his children and participate in their activities there. Most three-day weekends should be Father's, but unless mutually agreed, these weekends shall also be around Omak. In addition, every spring vacation, five weeks in summer (not necessarily consecutive weeks) and either an extended Thanksgiving week or winter vacation on an alternating basis should be Father's time. Winter vacation may also be divided and alternated, if preferred by both parents. Joint decision making and dispute resolution are appropriate. Special occasions should be celebrated during each parent's respective weekends with the children.

Mr. Howe shall prepare proposed final pleadings in this matter and provide them to Ms. Cook by May 7, 2010 for her review. Any objections are due to the court in writing by noon, Wednesday, May 12, 2010. Presentation of final pleadings is scheduled for May 14, 2010 at 9:00 a.m.

Sincerely,

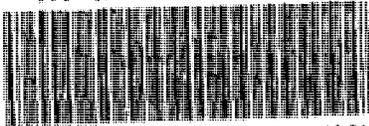


Judge Kathryn J. Nelson  
Pierce County Superior Court

cc: Pierce County Clerks Office for filing

APPENDIX E

APPENDIX E



08-3-03866-1 34427795 ORGRRE 06-04-10



**Superior Court of Washington  
County of Pierce**

In re:

Nichole Fahey and Shannon Fahey,  
Child(ren).

Lawrence Patrick Fahey,  
Petitioner(s).

and

Lisa Marie Fahey,  
Respondent(s).

No. 08-3-13866-1

**Order on Objection to  
Relocation/Modification of  
Custody Decree/Parenting  
Plan/Residential Schedule  
(Relocation)  
(ORDYMT or ORGRRE)**

**I. Basis**

This order is entered pursuant to:

- [X] A hearing on the Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule held on (date) March 30 and April 1, 2010.

**II. Findings**

**The Court finds:**

**2.1 Adequate Cause**

The relocation of children was pursued. There was no need for adequate cause for hearing this petition for modification.

**2.2 Jurisdiction**

This court has jurisdiction over this proceeding for the reasons below:

- [X] This court has exclusive continuing jurisdiction. The court has previously made a child custody, parenting plan, residential schedule or visitation determination in this matter and retains jurisdiction under RCW 26.27.211.

- [X] This state is the home state of the children because:

- the children lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

### 2.3 Findings Regarding Objection to the Relocation

Based upon the following factors, the detrimental effect of allowing the children to move with the relocating person  do  do not outweigh the benefits of the move to the children and the relocating person:

- 2.3.1 The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent  sibling  and other significant persons in the child's life.  Does apply as follows:

The children have a very close relationship and bond with both parents, however, the nature and quality of the bond is most parent/child-like with Mother.

Father's involvement, although stable and extensive like the Mother's, is that of an added team member. The direction of the children's' lives have by and large been focused and guided by the Mother.

Father has had special rights with respect to schooling, but schooling is directed by Mother in the first instance.

The girls are bonded to and care about their grandmother and their extended family.

- 2.3.2 Prior agreements of the parties.  
 Does not apply.
- 2.3.3 Disrupting contact between the child and the objecting party or parent is more detrimental to the child than disrupting contact between the child and the person with whom the child resides a majority of the time.  
 Does not apply.
- 2.3.4a The objecting party or parent  is  is not subject to limitations under RCW 26.09.191.  
 Does not apply.
- 2.3.4b The following parents or persons entitled to residential time with the child are subject to limitations under RCW 26.09.191.  
 Does not apply.
- 2.3.5 The reasons and good faith of each person seeking or opposing the relocation.  
 Does apply as follows:

Mother's reasons for relocating are sound and in good faith, i.e., a better job and benefits than she has had and the opportunity of upward advancement are sound reasons for relocation.

Additional sound reasons for relocation are lots of extended family in the area where she intends to relocate. This is also the community where she was raised and has a significant other with whom she has had an ongoing relationship.

The Father's reasons for opposing the relocation are not in bad faith; however, the court finds that Father does not properly account for and weigh the needs of his daughters.

- 2.3.6 The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.  
 Does apply as follows:

The preteen ages of the girls, their transition from elementary school to high school, and the testing of boundaries and exploration of identities likely to come make this a crucial time in the children's' lives.

The children will benefit from continuing to reside with their Mother as the primary guide of their lives and behavior.

The Court has some concerns for Father's ability to provide for the girls' needs at this stage of life given his short-term memory issues and his lack of executive function capability.

The Father's testimony does not give the Court confidence of his parenting capacity.

- 2.3.7 The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations.  
 Does apply as follows:

The girls would be growing up in a small town, either Omak or Edmonds.

Edmonds is surrounded by one of the largest urban corridors in the country and Omak is surrounded by rural agricultural area.

The statistics presented by the Father concerning youth problems in Omak is skewed because of the smallness of the sample. The Court also finds that these very same issues happen and could happen in Edmonds.

No advantage is sufficient to upset the primary bond and advantages between the Mother and daughters was found in Edmonds.

The Court finds that smaller schools often make for more confidence and experience as leaders than would be available in a larger more competitive school.

- 2.3.8 The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.  
 Does apply as follows:

Father's circumstances allow him the opportunity to foster and continue his relationship with the children. This would not be available to the Mother if the relocation were not granted.

With skype-type computer visits, telephone calls, and his freedom with respect to visitation, the Father can remain in the children's daily lives despite the relocation.

The Mother's work schedule would interfere with a similar schedule for her.

- 2.3.9 Alternatives to relocation and whether it is feasible and desirable for the other party to relocate.  
 Does apply as follows:

In either case the girls will be relocating either to Omak with their primary parent or to Edmonds where they have had significant contacts.

Also, perhaps not desirable, it is feasible for the Father to relocate to Omak where his cost of living would be less, since the Father does not work and does not have work parameters.

- 2.3.10 The financial impact and logistics of relocation or its prevention.  
 Does apply as follows:

The financial impact and logistics of the relocation are better income and expectations for Mother and the children.

Father's disability support will not change with this relocation.

The costs of visitation with Father may go down or be the same as the children no longer commute to church and activities from Puyallup to Edmonds several times per week.

So while a trip to Omak is more time and more expense, practically there must be less trips.

The prevention of the relocation could return Mother to Puyallup where she no longer has a job, or change custody such that Mother would not have time, as Father does, to visit frequently, and her expense to see the children would be increased infinitely over the pre-relocation status quo.

## 2.4 Findings Regarding Objection to Relocating Party's Proposed Parenting Plan/Residential Schedule

- The petition for modification should be granted. The objecting party's request for an adjustment of the residential aspects of the relocating party's proposed parenting plan

should be granted. The adjustment does not include a change in the residence in which the child resides the majority of the time.

**2.5 Protection Order**

Does not apply.

**III. Order**

**It is Ordered:**

**3.1 Objection to Relocation**

The relocating party is permitted to relocate the children.

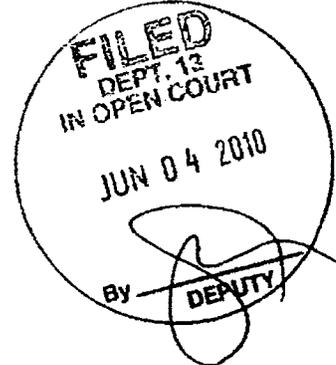
**3.2 Parenting Plan**

The new parenting plan/residential schedule signed by the court on this date or dated \_\_\_\_\_ is approved and incorporated as part of this order. This decree or parenting plan/residential schedule supersedes all previous decrees or parenting plans/residential schedules.

**3.3 It is Further Ordered**

The Order of Child Support signed by the court dated May 16, 2002 in Kitsap County shall remain in effect; however, Mother shall continue to receive all Social Security benefits provided for the children.

Other: The Memorandum Decision of the Court signed and dated April 23, 2010 is incorporated herein as though fully set forth.



Dated: 6/4/10 \_\_\_\_\_  
Judge Kathryn J. Nelson

Presented by: [Signature] \_\_\_\_\_  
Michael D. Howe, WSBA No. 05895

Approved by: [Signature] \_\_\_\_\_  
Signature of Party or Lawyer/WSBA No. 8294

5-19-10 \_\_\_\_\_  
Date

\_\_\_\_\_  
Print or Type Name Date

\_\_\_\_\_  
Signature of Party or Lawyer/WSBA No.

\_\_\_\_\_  
Print or Type Name Date

Mon 11/15/2010  
2:13 PM

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

**In re the Marriage of:**

LAWRENCE PATRICK FAHEY  
**Appellant,**

**and**

LISA MARIE FAHEY  
**Respondent.**

**No. 40906-2-II**

**DECLARATION OF  
SERVICE**

Patricia Novotny certifies as follows:

On November 15, 2010, I served upon the following true and correct copies of the Letter to Clerk (with attachments, including substitute page of brief) and this Declaration, by electronic mail ("email").

Michael D. Howe Law Office  
10 Valley View Park Dr  
Omak, WA 98841-9366  
[mhowe@ncidata.com](mailto:mhowe@ncidata.com)

Jeffrey Robinson  
4700 Point Fosdick Dr. NW, #301  
Gig Harbor, WA 98335-1706  
[jeff@robinsonlaw.com](mailto:jeff@robinsonlaw.com)

I certify under penalty of perjury that the foregoing is true and correct.

/s/ Patricia Novotny

---

Patricia Novotny  
3418 NE 65<sup>th</sup> Street, Suite A  
Seattle, WA 98115  
206-525-0711