

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON
Case No. 42990-0II

JASON EHLERT
Respondent,
And
MARIA SPURIA-EHLERT,
Appellant.

Brief of Respondent Jason Ehlert

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TABLE OF CONTENTS

<u>Description</u>	<u>Page No.</u>
I. <u>ANSWERS TO APPELLANTS ISSUES</u>	
II. <u>FACTS/STATEMENT OF THE CASE</u>	
III. <u>PROCEDURAL HISTORY</u>	
IV. <u>STANDARD OF REVIEW</u>	
V. <u>ARGUMENT</u>	
A. The Trial Court Did Not Error In Splitting Primary Residential Placement Between The Parties As The Evidence Was Equal Between The Parties, And There Were Factors Undermining Placement With Maria.	
B. The Trial Court Did Not Abuse Its Discretion In Not Awarding Ms. Spuria-Ehlert Her Fees On Her Contempt Motion.	
C. Maria Is Not Entitled To Attorney Fees On Appeal, Jason is however, Pursuant to RAP 18.1, Jason Requests His Reasonable Attorney Fees Associated With This Appeal.	

VI. CONCLUSION

TABLE OF AUTHORITIES

<u>CASES</u>	<u>Page No.</u>
Fernando v. Nieswandt 107, 87 Wn. App. 103, 940 P.2d 1380. (1997)	17, 18, 25
<u>Marriage of Croley</u> , 91 Wn 2d.288 at 292, 588 P.2d 738 (1978).	17,19, 20
<u>In re Marriage of Schneider</u> , 82 Wn. App 471, 476, 918 P 2.nd 543 (1996)	17
<u>Marriage of Croley</u> , 91 Wn. 2d.288 at 292, 588 P.2d 738 (1978)	18
<u>Thompson v. Lennox</u> , 152 Wn App. 479, 484, 212 P.3d 597 (2009)	23
<u>Landberg v. Carlson</u> , 108 Wn, App. 749, 758, 33 P.3d 406 (2001),	23

STATUTES, RULES AND CASES

Page No.

RAP 18.1	23
RCW 26.09.004(3)	19
RCW 26.09.160	2, 24
RCW 26.09.160(1)	22
RCW 26.09.160(2)(b)	22
RCW 26.09.187(3)	1, 12, 14, 18, 19,10
RCW 26.09.187(3)(a)	20
RCW 26.27	9

EXHIBITS

Exhibit 67 pp12 (GAL Report)	10, 15, 20
Exhibit 8, 9, 13, 26 Ln1	24

I. ANSWERS TO APPELLANT'S ISSUES

1. The trial court did not abuse its discretion when it entered a "50/50" shared parenting plan because it did analyze all the factors required to determine a child's best interest under RCW 26.09.187(3).

2. The trial court did not abuse its discretion when it entered a "50/50" shared parenting plan as it did consider all of the factors required under RCW 26.09.187(3) even though it was not enumerated in the Finding of Facts and Conclusion of Law.

3. The trial court did not abuse its discretion by entering a "50/50" shared parenting plan where there was evidence that supported that determination under RCW 26.09.187(3), and where there was overwhelming evidence indicates favoring placement with the father and maintaining contact with the mother as well.

4. The trial court did not abuse its discretion when it refused to award attorney's fees under RCW 26.09.160 as the mother's contempt motion did not pertain to the residential/parenting plan for the children.

II. FACTS/STATEMENT OF THE CASE

This is an appeal, by the Respondent/Appellant Maria Spuria-Elhert, from a dissolution trial in Pierce County Superior Court. That Case was filed by the Petitioner/Respondent on appeal, Jason Ehlert after his wife took the children on a supposed two week vacation to see their grandfather in Australia and then did not return. Clerk's Papers ("CP") 1-8. In fact, Maria did not return the children to Washington State until she was forced to do so by Court order. Verbatim Report of Proceedings ("VRP") III p. 37, CP 50-51. After already taking the children for five months to Australia, she has filed this appeal again seeking to take the children back to Australia and deny the father any real input in the raising of the children as her proposed parenting plan provides for only short visits in the country of Australia. VRP III, CP 208-214.

The background in this case is fairly straight forward although understated or misstated by the Appellant. It is true that Jason is a citizen of Canada, but he has spent his entire adult life living in the United States except for a brief period in Australia. VRP I at pp. 100-102. After High School graduation, Jason moved to Utah, where his father lived, to attend the University there. VRP at 13. He opened and ran a second hand store that was purchased by Savers, the parent company of Value Village. VRP I at, 12-13. Savers hired Jason after purchasing his store and he became a regional representative for the company on the west coast and moved to the Federal Way area. VRP I p. 12.

While attending a companywide meeting, Jason met Maria in 2002 and they began dating. VRP I pp. 12-13, 102-103. Subsequently, the two were married in 2005 and made Washington their home and bought a house. CP 2. Jason was unable to advance further with Savers and Maria had an opportunity to transfer to Australia. VRP I at pp. 13. The parties had talked of opening their own business, so Maria took advantage of the job in Australia, while Jason stayed here to finish with refurbishing the

family home that was for sale, and to start the organization of their own independent business in the United States. VRP I at 14. In fact, Jason and they're partners did start the finance portion of their business, Anzen, before leaving for Australia in about 2006. VRP I at 14.

Maria continued to work with Savers, while Jason and their business partner worked on getting their various ideas for business opportunities off-the-ground. VRP I 17-19. There were complications in keeping the couple's business separate from Maria's job with Savers. But, the parties continued to grow the business through Jason's line of credit and his investment. VRP I pp 19-22. They continued to build a house in Australia and had their first child Jaxon. VRP I pp. 23. It took about 9 months to build the house in Australia using the \$100,000 they got from the sale of Jason's house here. However, even before they moved into the house the parties decided to move back to the United States and run their own business due to complications with Maria's family and the ongoing conflict of interest between Maria's job with

Savers and their growing company which now included Universal Clothing. VRP I pp23.

The parties came back to the United States to meet with their business partners and brought their young son. VRP I pp. 24. Due to the fact that Jason had been out of the country for a year, they were denied entry at customs. VRP I pp. 23-24. Customs at LAX told them they could wait until the following day and speak with a Judge to sanction Jason's resident alien status or he could just waive it and continue on their way. VRP I pp. 24-25. It was explained at the time that it would be no big deal to waive his status, as he had two sons from a prior marriage, and his father, and brother live in the States, beside the fact that he had lived his entire adult life in the United States VRP I pp. 23-25. So, due to his baby being ill and the thoughts of being held in detention till the following day, Jason waived his residency status and they continued on their way to Washington.

They met with their business partners here and decided to move back to the United States and headquarter their business in Pierce County. Jason later found out, when discussing this matter

with a immigration attorney, that he was given bad advice at customs and he would have to apply for an E-2 investors visa instead. VRP I pp. 23-25.

The parties returned to Australia where the younger child Phynix was born while they worked with an attorney to create a umbrella company for all their businesses, Seken Recycling Inc., to support their E-2 investors visa. Seken owns all the other business entities that either flourished or failed. VRP I pp 25-26, Exhibit 26 line 1. The parties sold their home in Australia and moved to the United States to live here and run their business from here under the Seken umbrella. VRP I pp. 30-33. The business income was used to pay the couple's expenses, including utilities, cars, etc. So, although Jason was not drawing a paycheck, he was earning an income through the business. VRP I pp. 33. Jason's and Maria's investment well exceeded \$367,000 due to the money from the sale of a portion of the UC Exports business to a German company named Soex that was pumped back into the business. VRP I pp. 33-35. The businesses run by the parties is headquartered in Fife, Washington. VRP I pp. 38. In order to do business, there is lots of