

No. 45042-9-II  
Grays Harbor County Superior Court No. 07-3-00208-1

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

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JAMES ERNEST DUNN,  
Petitioner-Respondent,

v.

MELISSA JO DUNN,  
Respondent-Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable Gordon Godfrey, Judge

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RESPONDENT'S BRIEF

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**David B. Zuckerman**  
Attorney for Respondent  
1300 Hoge Building  
705 Second Avenue  
Seattle, WA 98104  
(206) 623-1595

**TABLE OF CONTENTS**

I. INTRODUCTION.....1

II. COUNTER-STATEMENT OF THE CASE.....2

III. ARGUMENT .....4

    A. THE TRIAL COURT’S ORAL FINDINGS REGARDING  
    RELOCATION ARE SUFFICIENT BECAUSE THEY  
    ADDRESS ALL OF THE RELEVANT STATUTORY  
    FACTORS AND SUBSTANTIAL EVIDENCE WAS  
    PRESENTED TO SUPPORT EACH FACTOR .....4

    B. BECAUSE MS. DUNN FILED FOR RELOCATION, THE  
    TRIAL COURT HAD AUTHORITY TO MODIFY THE  
    PARENTING PLAN WITHOUT A FINDING OF ADEQUATE  
    CAUSE.....20

IV. REQUEST FOR ATTORNEY FEES AND COSTS.....22

V. CONCLUSION.....23

## TABLE OF AUTHORITIES

### Cases

<i>Leslie v. Verhey</i> , 90 Wn. App. 796, 954 P.2d 330 (1998), <i>rev. denied</i> , 137 Wn.2d 1003, 972 P.2d 466 (1999).....	23
<i>Marriage of Grigsby</i> , 112 Wn. App. 1, 57 P.3d 1166 (2002).....	9, 22
<i>Marriage of Horner</i> , 151 Wn.2d 884, 93 P.3d 124 (2004).....	1, 5
<i>Marriage of Raskob</i> , 183 Wn. App. 503, 334 P.3d 30 (2014).....	1, 20

### Statutes

Child Relocation Act (CRA), RCW 26.09.405-.560 .....	4
RCW 26.09.140 .....	23
<b>RCW 26.09.191</b> .....	12
RCW 26.09.260 .....	20
RCW 26.09.520 .....	4

### Rules

RAP 18.1.....	23
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**I.**  
**INTRODUCTION**

Ms. Dunn has raised only two assignments of error: that the trial court allegedly failed to address all of the required factors relating to relocation; and that the trial court improperly modified the parenting plan without first making a finding of adequate cause. She has not assigned error to any of the Court's factual findings.

Neither claim has merit. The Washington Supreme Court has found it *preferable* for trial courts to make written findings on the 11 relocation factors, but has found oral findings sufficient if they address all the factors and there is substantial evidence to support each factor. *See Marriage of Horner*, 151 Wn.2d 884, 93 P.3d 124 (2004). In this case, the trial court's detailed oral findings did address all of the relocation factors and there was ample evidence to support those findings.

Further, when a party pursues relocation, the trial court has authority to modify the parenting plan. There is no need for a finding of adequate cause. *See Marriage of Raskob*, 183 Wn. App. 503, 334 P.3d 30 (2014). In this case, Ms. Dunn offered to move back to the child's home county on a temporary basis while the Court considered the proposed relocation, but never renounced her desire to move to a new county.

**II.**  
**COUNTER-STATEMENT OF THE CASE**

Melissa and James Dunn have one child together, a girl whose initials are D.L.D. On May 11, 2007 Mr. Dunn filed for divorce. Supp. CP<sup>1</sup> \_\_\_ (Dkt. 1). A parenting plan was entered on November 30, 2007. CP 95-105. On January 19, 2012, Ms. Dunn's boyfriend, Robert Enriquez threatened Mr. Dunn with a loaded gun. Supp. CP \_\_\_\_ (Dkt. 36, Declaration of James Dunn). As discussed below, this led to a charge of assault in the second degree. On February 3, 2012, Ms. Dunn filed a motion to modify the parenting plan. CP 106-110. As the motion noted, both parties lived in Grays Harbor County at the time. After much litigation, the parties entered a negotiated parenting plan on June 8, 2012. CP 121-128.

Less than two months later, Ms. Dunn filed ex parte for relocation and requested to waive notice to Mr. Dunn. CP 129-131 and 8-10. The Court denied both requests. Supp. CP \_\_ (Dkt. 91, Order Denying Motion for Relocation) and CP 11-12. Shortly after receiving notice, Mr. Dunn filed an objection to relocation. CP 16-22. The Court promptly set a hearing on August 1, 2012, for temporary orders.

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<sup>1</sup> A supplemental designation of clerk's papers is being filed today with the Grays Harbor County Superior Court.

At the hearing on August 1, 2012, Ms. Dunn admitted she had taken a job in Bremerton in May (before the agreed parenting plan was signed) and that she had been staying in the home of her boss in Kitsap County. 8/1/12 RP 21. She also admitted that she relocated before serving Mr. Dunn with notice. *Id.* at 6. She further testified, contrary to her relocation notice, that she and D.L.D. would be living with Mr. Enriquez. *Id.* at 12. The Court entered a temporary order denying the relocation, placing D.L.D. primarily with Mr. Dunn, and requesting a new investigation from Jamie Bates, the same GAL who had worked on the modification action. CP 161-162.

The Court held a relocation trial on January 24 and 30, 2013. D.L.D. was eight years old at this time. Judge Gordon Godfrey presided over the trial as well as the hearing for a temporary order. He also presided over the two trials of Mr. Enriquez. (The first ended in a hung jury.) Prior to the relocation trial, Judge Godfrey suggested that the parties might wish to switch judges because he was intimately familiar with the facts of the criminal case, and would consider those facts when deciding on relocation. Both sides asked the judge to stay on and expressly waived any objection to consideration of evidence presented at the criminal trial. 1/24/13 RP 55-58.

At the end of the relocation trial, the judge set out his findings orally. 1/30/13 RP 64-74. He denied relocation and placed D.L.D. primarily with Mr. Dunn. For reasons not apparent from the record, the new parenting plan was not entered until April 8, 2013. CP 204-211.

Ms. Dunn filed a notice of appeal on the 30<sup>th</sup> day following the final order. Supp. CP \_\_\_\_ (Dkt. 134, Notice of Appeal). After many extensions of time, she filed her opening brief on September 30, 2014, about 17 months after filing the notice of appeal. Mr. Dunn, who was not sure the appeal was being pursued, then had to make arrangements to hire a lawyer for a response. Undersigned counsel was forced to request more time because Ms. Dunn did not timely provide the trial transcript.

At this point, D.L.D. has been living primarily with Mr. Dunn for two and a half years.

Additional facts are set out in the relevant sections of argument.

### **III. ARGUMENT**

#### **A. THE TRIAL COURT'S ORAL FINDINGS REGARDING RELOCATION ARE SUFFICIENT BECAUSE THEY ADDRESS ALL OF THE RELEVANT STATUTORY FACTORS AND SUBSTANTIAL EVIDENCE WAS PRESENTED TO SUPPORT EACH FACTOR**

The Child Relocation Act (CRA), RCW 26.09.405-.560, creates a rebuttable presumption that relocation will be permitted. RCW 26.09.520.

To rebut this presumption, an objecting party must demonstrate “that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person,” based upon 11 factors. *Id.* The trial court’s ruling is reviewed for abuse of discretion. *Marriage of Horner*, 151 Wn.2d at 893.

“Ideally, trial courts will enter findings of fact on each factor.” *Id.* at 895. But written findings are not mandatory.

When this court considers whether a trial court abused its discretion in failing to document its consideration of the child relocation factors, we will ask two questions. Did the trial court enter specific findings of fact on each factor? If not, was substantial evidence presented on each factor, and do the trial court’s findings of fact and oral articulations reflect that it considered each factor?

*Id.* at 896. If the record does not reflect that the trial court considered all factors, the appellate court must remand for additional findings.

In this case, there is substantial evidence regarding each relevant factor, and the trial court’s oral ruling covers all of those factors. First, Mr. Dunn, through counsel, set out the legal standards and addressed the relevant factors in the Objection to Relocation. CP 142-148. In paragraph 3.7 counsel set out the statutory standard for denying relocation: that “the detrimental effects of allowing the children to move with the relocating person outweigh the benefits of the move to the child and the relocating

person.” Then in paragraphs 3.7.1 through 3.7.10 Mr. Dunn set out the evidence supporting his position on all relevant factors. CP 144-147.

Thus, there is no question that the Court and the parties were fully aware of the need to address the statutory factors during the trial. That they did so can best be shown by setting out each factor along with the evidence and rulings that apply. As in many relocation cases, some of the evidence and findings are relevant to more than one of the factors.

- (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.**

*Evidence:*

Mr. Dunn testified that D.L.D. attended McCleary Elementary School from preschool through second grade except for a short stint in Elma. 8/1/12 RP 40. He plans to remain in McCleary and keep her in school there. *Id.* The GAL testified that D.L.D. was doing very well after moving back with Mr. Dunn in Grays Harbor County and was back in third grade with the same teacher she had last year. She also had lots of friends and family in McCleary. 1/24/13 RP 67. D.L.D. did state that she wanted to live with her mom. *Id.* at 67-68. But she said both parents were great and things were going well at her dad’s house. She also gets along with her step-siblings there. *Id.* at 68. In particular, she enjoys activities with Tracey Wolfe’s daughter. *Id.* at 79. In the GAL’s view, the best

scenario for D.L.D. would be for Ms. Dunn to return to Grays Harbor County so that D.L.D. could have more time with her mother. 1/24/13 RP 69. But the bottom line was that it was in D.L.D.'s best interest to stay in McCleary. *Id.* at 70.

Ms. Dunn testified that her own parents lived in McCleary and Mr. Dunn's parents lived just outside of Grays Harbor County in Summit Lake. 8/1/2012 RP 20. D.L.D. had no family residing in Kitsap County. *Id.* at 21.

Tracey Wolfe, Mr. Dunn's fiancée, testified that she lives with Mr. Dunn in McCleary, along with her teenaged daughter K.W., her son C.W., and her soon-to-be stepdaughter, D.L.D. 1/30/2013 RP 25-26. D.L.D. is very happy living with them and she adores K.W. *Id.* at 27. Sometimes D.L.D. sleeps on a futon in K.W.'s room. *Id.* at 28. James takes D.L.D. to her numerous orthodontia appointments, and to her doctor's appointments. While living with Ms. Dunn, D.L.D. missed three years of well-child checkups. *Id.* at 29. D.L.D. eats healthy food at their house. *Id.* at 30. Ms. Wolfe noted that D.L.D. was upset when her mother missed some appointments for visitation. *Id.* at 32. Mr. Dunn has always allowed Ms. Dunn's family to visit with D.L.D. *Id.* at 33.

Mr. Dunn confirmed these points. He also noted that D.L.D. was late for her orthodontia appointments by the time she was returned to him. *Id.* at 41-50.

D.L.D. was getting top grades in school while living with Mr. Dunn. 1/30/13 RP 14.

*Court's Findings:*

The Court considered it very important for D.L.D. to remain in McCleary in the interest of stability. “[L]et’s take a look at the child. Basically born and raised in McCleary, goes to school in McCleary, lived their [sic] entire life.” 1/30/13 RP 66.

Number 1, stability. This child was born and raised in McCleary. She goes to the same school, has the same friends . . . That’s where she’s going to keep going to school. I am not going to change the program to allow this child to be relocated to a strange community to live in the basement of Mr. Enriquez’s home.

*Id.* at 73. The Court also recognized that both parents were now in long-term relationships with their fiancé(e)s. *Id.* at 66.

Ms. Dunn acknowledges in her brief that the Court addressed this factor, but she suggests that the Court focused only on school and friends rather than other significant persons in D.L.D.’s life. But the Court’s concern about D.L.D. moving to a “strange community” obviously

included the fact that she would be away from all her relatives, including those on the maternal side.

**(2) Prior agreements of the parties.**

In his Objection to Relocation, Mr. Dunn noted that this factor does not apply because there was no prior agreement regarding relocation. Ms. Dunn agrees, but maintains that the trial court was required to make a finding anyway. Opening Brief at 11. In fact, there is no need for a court to address a factor that does not apply. *See Marriage of Grigsby*, 112 Wn. App. 1, 14 n.1, 57 P.3d 1166 (2002).

**(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.**

*Evidence:*

On January 19, 2012, Robert Enriquez, Ms. Dunn's fiancée, held a gun to Mr. Dunn's head and threatened to kill him. Supp. CP \_\_\_\_ (Dkt. 36, Declaration of James Dunn). This led to a charge of assault in the second degree. 8/1/12 RP 15. Ms. Dunn acknowledged that she knew Mr. Enriquez planned to confront Mr. Dunn and that Mr. Enriquez had been drinking. 8/1/12 RP 13-14.

In a declaration filed on February 7, 2012, Mr. Enriquez's ex-wife, Jody Enriquez, confirmed that Mr. Enriquez has had a serious drinking

problem for the last ten years. Supp. CP \_\_\_\_\_ (Dkt. 37, Declaration of Jody Enriquez). Lately, she has had to come home from work and flee with the children because he was drinking and he would become enraged when she would not comply with his demands. He has pushed and “shoulder-checked” her in front of the children. Mr. Enriquez would drive with an open beer can or a can of Coke with whiskey in it. In June 2010 Mr. Enriquez left the children home alone so he could do an overtime shift. The children were 7 and 3 at the time. Mr. Dunn used to bring Mr. Enriquez home after drinking binges covered in vomit and staggering drunk. “Bob has left our home with his gun suicidal and gone to Jim for help.” He has been on anti-depressants and sleep aids since 2010. He drinks daily unless he is on shift.

A Court ordered that exchanges of the Enriquez children take place at the McCleary police station due to Mr. Enriquez’s hostile and confrontational behavior. Although the temporary parenting plan restrains Mr. Enriquez from drinking, he continues to do so. *Id.*

Mr. Enriquez testified at the Dunn relocation trial that the assault allegation caused him to have only supervised visitation in his divorce action regarding his own daughter. But he is planning to be alone with D.L.D. 8/1/12 RP 33. He refused to say where he was currently living. *Id.* at 34.

Mr. Dunn also pointed out that his time with D.L.D. would be significantly disrupted if he had to pick her up after school in Kitsap County for his mid-week time with her. He would spend much of his time commuting. CP 142-148.

*Court's Ruling:*

The Court clearly found it necessary to disrupt Ms. Dunn's contact with D.L.D. to some extent because she was living with, and planning to marry, Mr. Enriquez. Judge Godfrey presided over both trials regarding Mr. Enriquez's alleged second degree assault against Mr. Dunn. Although the jury ultimately found a reasonable doubt, the Court noted that certain damning facts were not in dispute.

I do know one thing, one of the guys [Mr. Enriquez] showed up with a loaded gun with a bullet in the chamber. I happen to know a little bit about guns . . . Very familiar with them. And I'm also familiar that you don't walk around with a bullet in the chamber of a gun. In fact, anybody whose [sic] had a revolver, you've got six rounds, you always only put five in. The hammer is always over an empty chamber.

1/30/13 RP 68. The Court noted that "[n]ot guilty does not mean innocent." *Id.* at 71-72. Further, after the "not guilty" verdict Mr. Enriquez sought an award of attorney's fees and costs. That was rejected because the jurors found by special verdict that Mr. Enriquez was not justified in his use of force. *Id.* at 72.

The Court also found it disturbing that Mr. Enriquez refused to provide his address at the August 1, 2012 relocation hearing. *Id.* at 69. The Court noted that in the parenting plan relating to his own daughter, Mr. Enriquez was permitted only two hours per week of supervised visitation. He also was required to undergo an evaluation for alcohol abuse. 1/30/13 RP 71.

“And he is not going to be allowed around that child [D.L.D.] unless you [Ms. Dunn] are present until further order. If he can’t be allowed by a Court to be around his own kids, it would be highly remiss of this Court to do otherwise.” *Id.* at 73. The Court also ordered that all firearms be locked up. *Id.* at 74.

Obviously, it would not be practical to supervise all contact between Mr. Enriquez and D.L.D. if they were living together in the same house most of the time.

**(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191.**

It is undisputed that this factor does not apply because neither parent is subject to restrictions. *See* CP 142-148 and Opening Brief at 13. Once again, there was no need for any findings.

**(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.**

*Evidence:*

Ms. Dunn filed for modification in December, 2011 and the parties finalized an agreed parenting plan on June 8, 2012. CP 121-128. She then filed a notice of relocation ex parte on July 24, 2012, along with a motion to waive the relocation notice. CP 129-131 and 8-10. In the notice, she said she found a nice home in Kitsap County. She did not reveal that it was the home of Mr. Enriquez's mother. The Court denied the request for an ex parte order of relocation as well as the motion to waive notice. Supp. CP \_\_\_\_ (Dkt. 91, Order Denying Motion for Relocation) and CP 11-12. In her response to Mr. Dunn's objection to relocation, Ms. Dunn stated that Mr. Enriquez had "zero" to do with her move. CP 149-153.

At the hearing on August 1, 2012, Ms. Dunn admitted she had taken a job in Bremerton in May (before the agreed parenting plan was signed) and that she had been staying in the home of her boss in Kitsap County. 8/1/12 RP 21. She further admitted that she relocated before serving Mr. Dunn with notice. *Id.* at 6. She also admitted, contrary to her relocation notice, that she and D.L.D. would be living with Mr. Enriquez. *Id.* at 12. She also deceived the Court by stating in her relocation petition that she would not be living with Mr. Enriquez. She admitted at the

hearing that she was planning to live with him. *Id.* at 12. She also stated that the “woman who owns the home” would be living there, but did not acknowledge that it was Mr. Enriquez’s mother. *Id.* at 22.

Mr. Dunn testified that Ms. Dunn insisted on his taking D.L.D. for the first half of the summer. He now believes she did that to make arrangements to move in with Mr. Enriquez and his mother. Mr. Dunn had no advance notice that there were any plans for a move. *Id.* at 42-43. Only after the GAL’s investigation was it revealed that the woman who owned the home was Mr. Enriquez’s mother. 1/24/13 RP 77.

The GAL found it suspicious that the request for relocation came so soon after the parenting plan was signed. *Id.* at 65. She had no indication at the time the parenting plan was signed that there would be a request for relocation. *Id.* at RP 80.

Mr. Dunn testified that he agreed to the modified parenting plan only because he understood that Ms. Dunn would be living close by, so there would be ample opportunities for contact with D.L.D. *Id.* at 50.

*Court’s Findings:*

The Court expressly found that Ms. Dunn acted in bad faith by failing to reveal at the time she signed the parenting plan that she planned to relocate with the child. 1/30/13 RP 67. At the end of the August 1 hearing he told Ms. Dunn she had “played enough games with the system.

You are not forthright in dealing with this parenting plan.” *Id.* at 48. His final oral ruling included the following:

[Y]ou were not honest with the Court Ms. Dunn. You . . . agreed to a parenting plan, et cetara and you knew you already had a job elsewhere. You knew you weren’t going to be living in McCleary, you knew you were going up the road. So I can only conclude you knew you misled the opposing party, you misled the attorneys . . . And once that parenting plan was entered, then you went down the road to go behind everyone’s back and change things. It’s not honest.

1/30/13 RP 67.

The Court did not question Mr. Dunn’s good faith in objecting to the relocation.

Ms. Dunn agrees that the Court addressed this factor and found her to have acted in bad faith. She argues that the Court was mistaken, but she has not assigned error to any factual findings. In any event, as discussed above, there was substantial evidence to support the Court’s findings.

- (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.**

*Evidence:*

As discussed above, there was considerable evidence that D.L.D. would thrive best, academically and socially, by maintaining her

connection with her home town and all her relatives there. There was also evidence that Mr. Enriquez would not be a good influence on her.

*Court's Findings:*

The Court's comments under Factor 1, above, apply with equal force to this factor. The Court found that D.L.D.'s needs would best be met by keeping her in the community in which she had grown up. The Court also noted that it would be inappropriate for D.L.D. to live in a basement in the Enriquez home.

Ms. Dunn admits that in this case the evidence relevant to Factor 1 is likewise relevant to Factor 6, although she believes the evidence favors her. *See* Opening Brief at 15.

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

*Evidence:*

Both parties challenged the other's limited income. In addition, there was evidence that D.L.D.'s quality of life would suffer because she was living in a basement room with no windows and no escape in the event of a fire. 1/24/13 RP 92.

*Court's Ruling:*

The Court expressly considered the employment of both parties. It chastised both sides for "pointing fingers" about the other's limited

income because “[a]ny body who doesn’t know what’s happening in this country since October of 2008 and jobs in America needs to have their heads examined.” 1/30/13 RP 65-66. The Court recognized that Ms. Dunn was “out working, she’s got a good job, a potential good career.” *Id.* at 74. Certainly, it was undisputed that Ms. Dunn’s subjective quality of life would improve if she moved in with her lover to his mother’s home. But, as noted above, the Court believed D.L.D.’s quality of life would suffer if she was taken away from her home town, and was forced to live in a basement with a violent and alcoholic stepfather.

Ms. Dunn acknowledges that substantial evidence was presented on this factor. She complains that the Court should have made a finding that her new job offered her a good opportunity for advancement, when in fact the judge did so. Opening Brief at 16-17.

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

*Evidence:*

Ms. Dunn admitted that if Mr. Dunn wished to have his mid-week visitation in his own town, he would spend about half of that time driving. RP 8/1/02 17-18. She suggested that he remain in Manchester, Kitsap County, while visiting D.L.D. *Id.* But that would mean that D.L.D. would

not see her stepmother, stepsister or her other friends and relatives in McCleary.

*Court's Ruling:*

Once again, the Court's concerns about separating D.L.D. from her home town (*see* Factor 1) apply equally to this factor.

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

*Evidence:*

Ms. Dunn acknowledged that she could move in with her mother in McCleary, who lived nearly next door to Mr. Dunn. 8/1/12 RP 50. That would not necessarily require her to change jobs. She testified that the commute was "over an hour" each way. 8/1/12 RP 7. Such commutes are not unusual. Surely Ms. Dunn could have endured the commute at least long enough to obtain a job in McCleary.

As discussed above, the GAL found that the best resolution for D.L.D. would be to have both parents in McCleary.

*Court's Ruling:*

The Court found that the best alternative to relocation was to make Mr. Dunn the primary parent so that D.L.D. would remain in McCleary. *See* Factor 1, above. Obviously, the Court did not find it desirable for *both* parents to move away.

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

*Evidence:*

Ms. Dunn testified that her finances improved in view of her move, particularly since she pays little rent to Mr. Enriquez's mother. 1/24/13 RP 86-87. The logistics of the move were apparently simple from her point of view. On the other hand, the logistics of living with Mr. Enriquez were complicated since he could not be alone with D.L.D.

Mr. Dunn and D.L.D. would have the inconvenience and expense of long drives for each visitation.

*Court's Ruling:*

As noted above, the Court recognized that the move would be convenient for Ms. Dunn and would give her an opportunity for financial advancement. *See* Factor 7. The Court also found, however, that D.L.D. could not be alone with Mr. Enriquez.

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

*Not applicable.*

In short, Ms. Dunn's arguments exalt form over substance. While it would have been preferable for the trial court to make written findings, with separate paragraphs for each factor, the oral rulings were sufficient. The judge made it very clear why he denied relocation, and his reasons

touched upon every relevant statutory factor. A remand for written findings would be a waste of time and money.

B. BECAUSE MS. DUNN FILED FOR RELOCATION, THE TRIAL COURT HAD AUTHORITY TO MODIFY THE PARENTING PLAN WITHOUT A FINDING OF ADEQUATE CAUSE

Under RCW 26.09.260(6), the trial court may make a major modification of a parenting plan without a showing of adequate cause “so long as the request for relocation of the child is being pursued.”

Therefore, in a relocation case, it is not necessary for the court to consider whether there is a substantial change in circumstances other than the relocation itself, or to consider the factors contained in RCW 26.09.260(2).

*Marriage of Raskob*, 183 Wn. App. at 513.

Ms. Dunn argues that her request to relocate was not “being pursued” at certain points in time. She relies on two pages of the transcript: 8/1/12 RP 11 and RP 50, both of which relate to the hearing for a temporary order. On the first of those pages, she admitted on cross-examination that she was living with her employer in Manchester. When asked whether she intended to move to a different residence in Manchester, she said: “Yes, if the judge allows it.” When asked whether she had signed a lease she said: “I can’t sign the lease until I am allowed legally to go.” There is nothing in that exchange to suggest that Ms. Dunn was no longer pursuing the relocation.

The reference to 8/1/12 RP 50 comes near the end of the hearing for temporary orders. The court had just explained how it would go about deciding whether the relocation should be allowed. This included a temporary change of primary residential time to Mr. Dunn and the appointment of a GAL. The Court asked Ms. Dunn to go ahead and set herself up in Manchester so that the GAL could report on the propriety of that residence. The Court also wanted to see how the criminal trial of Mr. Enriquez turned out. 8/1/12 RP 47-50. The following colloquy ensued:

MS. DUNN: Um, I have full custody. I would be happy to move in with my mom, which is next door to Mr. Dunn.

THE COURT: I just made a ruling.

MS. DUNN: Okay.

THE COURT: If I am going to stick this kid somewhere else in another county, you are going to go there and get set up so the guardian ad litem can visit and figure out what kind of house we got, and what the schools are like. We are not doing this again.

Ms. Dunn: Okay. Thank you, Your Honor.

8/1/12 RP 50.

Clearly, Ms. Dunn was not withdrawing her request for relocation at this point. She was simply offering to temporarily move in with her mother in the hope that the Court would then let her continue to have the majority of residential time. The trial court reasonably denied that approach because it would make it more difficult to determine the benefits

and detriments of a move to Manchester. In any event, Ms. Dunn did not seek appellate review of the temporary order.

When the trial court made its final ruling denying relocation, Ms. Dunn did not suggest that she would move back to McCleary to avoid a change in the parenting plan 1/30/13 RP 74-75.

Ms. Dunn's reliance on *Marriage of Grisby*, supra, is misplaced. In that case, unlike here, the mother immediately announced that she would not move after the trial court denied her request to relocate with the children. *Id.*, 112 Wn. App. at 6. Further, even if Ms. Dunn had made such a statement, the trial court might not have been required to believe her. *Cf. Grisby* at 17 ("We do not reach the question of whether a trial court would have the authority to modify a parenting plan when the withdrawal of the request to relocate is disingenuous or made in bad faith because these facts are not before us in this case.") As noted above, the trial court did not find Ms. Dunn credible because she obtained a previous parenting plan by failing to disclose that she was in the process of moving to a different county.

#### **IV. REQUEST FOR ATTORNEY FEES AND COSTS**

Mr. Dunn asks this Court to award him attorney fees and costs based on the relative resources of the parties and the lack of merit of Ms.

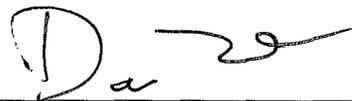
Dunn's appeal. See RCW 26.09.140; RAP 18.1; *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003, 972 P.2d 466 (1999).

V.  
**CONCLUSION**

The Court should affirm the trial court and award attorney fees to Mr. Dunn.

DATED this 9<sup>th</sup> day of February, 2015.

Respectfully submitted,



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David B. Zuckerman, WSBA #18221  
Attorney for James E. Dunn

**CERTIFICATE OF SERVICE**

I hereby certify that on the date listed below, I served by First Class United States Mail, postage prepaid, one copy of this brief on the following:

Ms. Melissa Jo Dunn  
3751 Colonial Lane SE  
Port Orchard, WA 98366

02/09/15  
Date

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**DAVID ZUCKERMAN LAW OFFICE**

**February 09, 2015 - 1:38 PM**

**Transmittal Letter**

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Case Name: James Ernest Dunn V. Melissa Jo Dunn

Court of Appeals Case Number: 45042-9

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: David Zuckerman - Email: [peyush@davidzuckermanlaw.com](mailto:peyush@davidzuckermanlaw.com)