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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY 
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NO. 46525-6-II

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

In re the Marriage of:

IAN QUINONES,

APPELLANT

and

SUSAN QUINONES,

RESPONDENT.

APPEAL FROM PIERCE COUNTY SUPERIOR COURT

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	<u>Page</u>
I. Restatement of the Case.....	1
A. During the marriage.....	1
B. Procedural history.....	2
C. Relocation hearing testimony	3
D. Post-trial.....	10
II. Argument.....	11
A. Standard of Review	11
B. The trial court did not abuse its discretion in finding that Mr. Quinones failed to meet his burden of rebutting the statutory presumption in favor of relocation.....	12
1. The first factor weighs in favor of the mother	14
2. The third factor weighs in favor of the mother	18
3. The fifth factor weighs in favor of neither party.....	19
4. The seventh factor weighs in favor of the mother.....	22
5. The eighth factor weighs in favor of the mother.....	24
6. The ninth factor does not weigh in favor of either party.....	26

7. The tenth factor does not weigh in favor of
either party..... 28

C. Appellant’s appeal is frivolous, and Respondent
should be awarded attorneys’ fees and costs..... 31

VI. Conclusion..... 32

V. Exhibit A..... 33

TABLE OF AUTHORITIES

	<u>Page No</u>
<u>Washington Cases:</u>	
<i>Bay v. Jensen</i> , 147 Wn. App. 641, 196 P.3d 753 (2008).....	14
<i>In re Estate of Palmer</i> , 145 Wn. App. 249, 187 P.3d 758 (2008).....	21, 29
<i>In re Marriage of Fahey</i> , 164 Wn. App. 42, 262 P.3d 128 (2011).....	14, 29, 30
<i>In re Marriage of Horner</i> , 151 Wn.2d 884, 93 P.3d 124 (2004).....	11, 12, 17
<i>In re Marriage of Kim</i> , 179 Wn. App. 232, 317 P.3d 555 (2014).....	11, 12, 14, 17, 18
<i>In re Marriage of Landry</i> , 103 Wn.2d 807, 699 P.2d 214 (1985).....	11
<i>In re Marriage of Meredith</i> , 148 Wn. App. 887, 201 P.3d 1056 (2009).....	30
<i>In re Osborne</i> , 119 Wn. App. 133, 79 P.3d 465 (2003).....	16, 17
<i>Momb v. Ragone</i> , 132 Wn. App. 70, 130 P.3d 406 (2006).....	12, 16, 17
<i>State v. Brown</i> , 132 Wn.2d 529, 940 P.2d 546 (1997).....	12
<i>Streater v. White</i> , 26 Wn. App. 430, 613 P.2d 187 (1980).....	32
<u>Revised Code of Washington</u>	

RCW 26.09.405-.520.....	12
RCW 26.09.520.....	10, 12, 13, 14, 16, 23, 28, 31
 <u>Other</u>	
RAP 18.9.....	31, 32

I. RESTATEMENT OF THE CASE

This case is about a mother asking for permission to relocate with the parties' then 3 year old child¹ from Washington to Arizona.

A. During the marriage.

Ian and Susan Quinones² were married in Arizona on April 15, 2008. RP 105. Mr. and Mrs. Quinones initially lived in England, but moved to Washington in September 2008 when Ian received a job offer from the Federal Aviation Administration (FAA). RP 105.

The parties had a child early in this marriage - a son, C.Q., who was born on December 31, 2009. RP 106.

When C.Q. was a year and a half old, Ian, a Reservist for the Air Force, was deployed to Afghanistan. RP 108-09. Ian remained in Afghanistan for the next seven months. RP 109. During this time, Susan was the primary, and often only, parent raising C.Q., but she made sure that Ian was able to maintain his relationship with C.Q. through frequent use of Skype. RP 93, 109, 272. It was during those seven months that Susan first expressed her desire to move back to Arizona. RP 143, 225-26. At that time, Ian did not object to Susan's proposed move, but rather

¹ The child is now 4 years old.

² For ease of reference, the parties are referred to herein as Ian and Susan. No disrespect is intended.

expressed his intent to accompany the family to Arizona. RP 159, 164-65; Exhibits 24-26.

B. Procedural history

In July 2012, not long after he returned from Afghanistan, Ian petitioned for dissolution. CP 397-402. After a long period of negotiation, the Final Parenting Plan was entered on August 7, 2013. CP 88-112, Exhibit 4. The Plan provided for Susan to be the primary residential parent for C.Q. CP 89. Ian was provided visitation from 3 p.m. to 6 p.m. every Monday through Friday and every other weekend from Friday to Monday. CP 89. Certain holidays and summer vacation time with the child were delineated so that they could each share special times like these. CP 89-90.

The Decree of Dissolution, primarily addressing property distribution between the parties, was entered on December 13, 2013. CP 403-411. This Decree incorporated the Parenting Plan previously entered on August 7, 2013. CP 404.

On February 4, 2014, Susan filed the relevant Notice of Intended Relocation, the results of which are the subject of this appeal. CP 44-48. In the Notice, Susan stated that she intended to move to Peoria, Arizona for a variety of reasons, including better job opportunities, a better climate for her and C.Q.'s health problems, and to be closer to friends and family.

CP 44-48. With her notice, Susan submitted a Proposed Parenting Plan granting Ian visitation for 60 hours in Arizona and one week in Washington each month, in addition to the existing holiday and summer vacation schedule. CP 114, Exhibit 36. Under the proposed plan, Ian would receive more overnight visitations and more total hours than under the existing Parenting Plan while everyone one was in Washington. CP 89-90, 144-45.

Ian filed his objection to the proposed relocation on March 6, 2014. CP 124-34. Accordingly, a hearing to address the matter was scheduled for June 2, 2014. CP 199. It is noteworthy that Ian never proposed a Parenting Plan that addressed the relocation possibility; that is, he did propose a Parenting Plan resisting the relocation and asked that the Court grant him primary residential care, CP 141-50, but there was never a Proposed Parenting Plan that anticipated the trial court granting the relocation.

C. Relocation hearing testimony

At the relocation hearing, the trial court heard testimony from Scott Adams, Aida Perez, Penny VanVleet, Leann Watzlawick, Ian Quinones, Carol Spiller, and Susan Quinones. These individuals are identified below and testified as follows.

Scott Adams is a regional intake area administrator at the Department of Social and Health Services (DSHS). RP 40. Mr. Adams testified that Susan had been terminated from DSHS in November 2013 for “abandonment of position,” or excessive unexcused absences. RP 44-45. Mr. Adams assumed that Susan would still be employed with DSHS had she not incurred those excessive unexcused absences. RP 53. However, Mr. Adams admitted that he was not Susan’s direct supervisor, did not conduct any performance evaluations, and never discussed performance evaluations with Susan during her employment at DSHS. RP 42. In fact, no DSHS employees or agent who had direct personal knowledge about Susan’s employment or had supervisory decision making were called to testify by the petitioner.

Aida Perez testified; she is Ian’s sister. RP 56. Ms. Perez testified that as of 2007, Susan had a close relationship with her father, but not her mother. RP 57. Ms. Perez’s relationship with Susan ended in 2007, and she has never had the opportunity to observe Susan with C.Q. RP 61. Although her knowledge was limited to very few personal observations, Ms. Perez described Ian as a “completely involved” father, and that both Ian and C.Q. would be “devastated” if separated. RP 59-60.

Leann Watzlawick also testified; she is Ian’s girlfriend. RP 65. Ms. Watzlawick met Ian in March 2012 and moved in with him in

December 2012. RP 65. Like Ms. Perez, Ms. Watzlawick described Ian as a very involved father. RP 67. On the other hand, Ms. Perez never observed C.Q. with Susan and, in fact, has never met Susan. RP 67, 72.

Penny VanVleet is a daycare provider who took care of C.Q. from 2010 to 2012. RP 89-90. While Ian was deployed in Afghanistan, Ms. VanVleet would set up Skype calls so that Ian could speak with his son. RP 93. Despite C.Q.'s young age, Ian was able to interact with C.Q. for up to 45 minutes at a time, on a weekly basis. RP 93. Ms. VanVleet described the Skype conversations as "beautiful", and was able to tell that C.Q. and Ian "enjoyed each other" regardless of the lack of in-person contact. RP 93. Ms. VanVleet testified that she believes that both Ian and Susan are good parents, and even wrote a note describing Susan's strong bond with C.Q. RP 92, 95, Exhibit 47. Ms. VanVleet claimed to have a very close bond with C.Q., RP 91; however, Susan later testified that Ms. VanVleet has never contacted her to arrange a visit with C.Q. RP 274.

Carol Spiller is Susan's mother and resides in Tucson, Arizona. RP 229. Ms. Spiller testified that she has a strong relationship with her daughter, and that she speaks to C.Q. several times a week over the phone. RP 230-31. Ms. Spiller had seen C.Q. a total of nine times over his short life span, including visits in both Arizona and Washington. RP 230. Ms.

Spiller also testified that she would be able to assist with C.Q.'s care if Susan moved to Arizona. RP 231.

Ian also testified on his own behalf. Ian testified that it would be impractical for him to relocate to Arizona, because there were no FAA jobs available in the area.³ RP 142. Ian believed that he would not be able to sustain a normal relationship with C.Q. if Susan were permitted to relocate. RP 145. Ian testified about his participation with his son, including reading, playing, dancing, and going to the YMCA. RP 141. Ian testified that he could not do these activities over Skype, and that it would be too expensive to make frequent visits to Arizona. RP 141.

Ian attempted, at multiple times throughout the proceedings, to claim that Susan was acting in bad faith. For example, one of Ian's primary arguments was that Susan had lost her job with DSHS on purpose. CP 127; RP 338. Ian also alleged that Susan deliberately withheld C.Q. from him; however, this was disputed by Susan, and Ian never attempted to initiate contempt proceedings against her. RP 147. In fact, Ian admitted to having missed a few visits due to work trips and a family wedding in Puerto Rico. RP 135.

In contrast to the testimony of Appellant's witnesses, Susan articulated the many benefits that relocation would have for both her and

³ Notably, Ian produced no independent evidence of any attempts to search for or locate employment.

C.Q. Almost all of Susan's family is located in Arizona, most especially her mother and sister. RP 181. Susan and C.Q. had been visiting Arizona on a regular basis to see these relatives and friends of Susan. RP 216. In Arizona, Susan's mother and sister would be able to provide child care services, saving Susan money that would otherwise be spent on daycare. RP 310. Susan's father lives in Texas, which, while still some distance, is closer to Arizona than to Washington. RP 181, 301. C.Q. has an existing relationship with many of these relatives, whereas he lacks the same connection with Ian's extended family.⁴ RP 181, 265.

Many of Susan's friends also live in Arizona; in contrast, she made and has very few connections, let alone friends, in Washington, none of them life-long friends like those in Arizona. RP 216-17. C.Q., only three years old at the time, had only about three friends, who no one could identify by name. RP 68, 151, 273. There was no evidence of the length or significance of any such relationship with his friends either.

Another benefit described by Susan was the expected alleviation of her allergies and her son's asthma. Susan testified that while she has had allergies all of her life, they became much more severe after moving to Washington. RP 224, 239. Susan also developed asthma after moving to Washington. RP 225. For her allergies, Susan is required to take an oral

⁴ With the possible exception of Ms. Perez, who lives in Texas, near Susan's father. RP 55.

medication daily, Flonase twice daily and eardrops, and also needed to have tubes inserted into her ears. RP 224-25, 237. Susan testified that her allergies would not be nearly as problematic in Arizona because there is no grass and no humidity for pollens and mold to grow. RP 239. She was able to testify to these facts based on personal knowledge and personal experience in both locations. CP 236-39.

Their son, meanwhile, has additional but similar issues. C.Q. is allergic to cats, dogs, and environmental pollens such as grass. RP 182, Exhibit 49. C.Q. is also asthmatic, which is triggered by exercise and cold air. RP 191. C.Q. was prescribed both albuterol and Flovent to control his asthma. RP 220, Exhibit 49. While albuterol is a rescue inhaler, Flovent is a maintenance inhaler that C.Q. is required to use twice daily. RP 220. Susan testified that if not given this medication, there is a chance that C.Q. could die. RP 221. Despite directives from qualified health care providers who have examined C.Q., Ian resisted and often disagreed with the treatment, in one case writing a letter to C.Q.'s doctor stating "I do not believe there is a need to provide him with two puffs of his inhaler per day." Exhibit 49. Ian also owns both a dog and a cat. RP 286.

Although Susan admitted that she had lost her job with the Department of Social and Health Services, she testified that it was not because she refused to show up to work, as Ian had alleged. Rather, Susan

testified that an “unexcused absence” is any absence that is unpaid, regardless of whether the employer had notice. RP 187. Susan testified that she had to take multiple days of unpaid leave in order to appear in court or at mediations connected with her dissolution. RP 186.

At the time of the hearing, Susan was not employed, opting instead to take care of C.Q. full-time. RP 183. However, Susan had already received an offer of employment in Arizona from BrushFire Barbecue. RP 201-02, Exhibit 30. Although the job did not pay as much as her previous position at DSHS, the position did allow Susan to telecommute for most of the month. RP 206. Susan testified that the lower salary would not have a detrimental effect on her, as the cost of living in Arizona is lower than in Washington.⁵ RP 182, 247. Susan had received other job offers in the social work field at a higher salary, but she was unable to accept them due to the ongoing relocation proceedings due to Ian’s objections. RP 218, 240-41, Exhibit 31. Additionally, Susan testified that she had multiple networking contacts in Arizona, including a former supervisor who she keeps in regular contact with. RP 283.

In sum, the benefits of relocation were described by Susan as follows:

⁵ Moreover, Susan testified that she had already reached the maximum level of pay available for her former position at DSHS, and thus she would have limited opportunity for upward mobility if she remained in Washington. RP 247.

The reason why, one of the most important reasons to me that Arizona is important is because of my ancestry there. My mother and my whole maternal family were born and raised in Arizona. It's also where my maternal grandmother emigrated from when they came to the United States from Ireland. There was a copper mine in Bisbee, Arizona, and that's where they immigrated to, so our family history and roots and ancestry is all in Arizona.

And it's also medically beneficial to both myself and [C.Q.] for my allergy purposes and his asthma purposes. I also would have a lower cost of living there. Um, there's multiple benefits for Arizona.

RP 236.

D. Post-trial

At a hearing following the presentation of all evidence and argument by counsel, the trial court took the case under advisement and announced the oral ruling at a hearing with all parties present, making findings as to all factors listed under RCW 26.09.520. The court described, in detail, all of the evidence that it found persuasive in determining whether the factor weighed in favor of the mother, father, or neither.⁶ After reviewing all the factors, the trial court determined that Ian had not met his burden to rebut the statutory presumption in favor of permitting the relocation. CP 380. Accordingly, the trial court entered an Order on Objection to Relocation permitting Susan to relocate

⁶ For the sake of brevity, the trial court's findings are not quoted in the Statement of Facts. The findings may be found at pages 2-11 of the June 13, 2014 Report of Proceedings, and are also attached hereto as Exhibit A.

immediately to Arizona, and entered a new Final Parenting Plan to reflect the geographical change.⁷ CP 376-93.

Between the time of the court's oral ruling on June 13, 2014 and the presentation hearing on June 27, 2014, Susan filed the proper notices for presentation of the orders. CP 283-303. On June 25, 2014, Ian only submitted a cover letter with a few attachments, but most importantly, lacked any Proposed Parenting Plan recognizing the granting of the relocation. CP 304-38.

II. ARGUMENT

A. Standard of Review

This Court reviews a trial court's decision to grant a petition for relocation for an abuse of discretion. *In re Marriage of Kim*, 179 Wn. App. 232, 240, 317 P.3d 555 (2014). "The emotional and financial interests affected by [dissolution action] decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court." *In re Marriage of Landry*, 103 Wn.2d 807, 809, 699 P.2d 214 (1985). "Abuse of discretion occurs 'when the trial court's decision is manifestly unreasonable or based upon untenable grounds or reasons.'" *In re*

⁷ The Parenting Plan entered by the Court substantially reflected the Proposed Parenting Plan the mother filed on or about March 6, 2014, with some adjustments. CP 382-93; Exhibit 36.

Marriage of Horner, 151 Wn.2d 884, 893, 93 P.3d 124 (2004) (quoting *State v. Brown*, 132 Wn.2d 529, 572, 940 P.2d 546 (1997)). “Manifestly unreasonable” means that no reasonable judge could have reached the same conclusion. *Kim*, 179 Wn.2d at 240. “A trial court’s decision to permit relocation is necessarily subjective” and this Court may not “reweigh the evidence.” *Id.* at 244.

B. The trial court did not abuse its discretion in finding that Mr. Quinones failed to meet his burden of rebutting the statutory presumption in favor of relocation.

Post-dissolution relocations involving minor children are governed by the Child Relocation Act, RCW 26.09.405-.560. Under the Act, there is a rebuttable presumption that relocation will be permitted. RCW 26.09.520. In order to rebut this presumption, the party opposing relocation must prove that the detrimental effect of relocation outweighs the benefits to the child and the relocating parent. RCW 26.09.520. This standard “requires proof that the relocation decision of the presumptively fit parent will be so harmful to the child as to outweigh the presumed benefits of the change to the child and the relocating parent.” *Momb v. Ragone*, 132 Wn. App. 70, 79, 130 P.3d 406 (2006).

In determining whether the opposing party has rebutted the presumption, the trial court must consider each of the following 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;
- (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 26.09.520. No single factor is dispositive. *Id.*; *Kim*, 179 Wn. App. at 241. Further, the trial court must make specific findings, on the record, as to each factor. *Kim*, 179 Wn. App. at 240.

Here, the trial court entered findings of fact on all ten⁸ factors in both its oral and written rulings.⁹ Appellant contends, however, that the trial court abused its discretion because its findings are not supported by substantial evidence. “‘Substantial evidence’ exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011). For the reasons that follow, all of the trial court’s findings are supported by substantial evidence and should be upheld by this Court.

1. The first factor weighs in favor of the mother.

In its oral and written rulings, the trial court found that the first factor, 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, weighed in favor of the mother. With respect to this factor, the trial court specifically found,

⁸ The eleventh factor is relevant only for temporary orders, and thus has no application here.

⁹ Indeed, the trial court’s findings on the factors take up ten pages of hearing transcript. Exhibit A. *Bay v. Jensen*, 147 Wn. App. 641, 196 P.3d 753 (2008), cited by Appellant, is therefore inapposite.

Now, there's no doubt in my mind that both parents love this child. Why this factor favors the mother is because she has been primarily responsible for raising this child because of the career choice that Mr. Quinones had for a number years, he ended up being deployed to Afghanistan, and he had other – he had other employment that interfered with his time with the child even after he got out of active military service.

Mother has been more concerned about and responsible for the child's health care, especially his asthma and allergy therapy. Father has, in fact, discounted the child's need for asthma therapy, so factor number one favors mother.

6/23/14 RP 2-3.¹⁰ These findings are supported by substantial evidence.

The original Final Parenting Plan entered on August 7, 2013, gave primary residential custody to Susan. CP 89. The trial court heard testimony from multiple witnesses about Ian's seven month deployment, and Ian himself testified that he had missed visits due to trips he is required to take for work. RP 92, 109, 135, 268. Although testimony was offered that C.Q. had a close relationship with Penny VanVleet and children from his play group, RP 91, 151, other testimony revealed that Ms. VanVleet has never contacted Susan to arrange visits with C.Q. RP 274. Additionally, no one could actually name any of children in the play group, despite their supposed strong bonds with C.Q. RP 68, 151, 273.

Further, the trial court heard testimony from Susan that Ian exhibits a lack of concern for C.Q.'s health problems, including that he

¹⁰ While the Report of Proceedings is consecutively paginated for all three days of the trial, the pagination begins again at 1 for the final hearing on June 23, 2014.

does not believe that C.Q. needs his prescribed two puffs per day of Flovent, and that he keeps a dog and a cat in his home even though C.Q. is allergic to both. RP 286. Susan's testimony is supported by documentary evidence, including a letter written by Ian to C.Q.'s doctor, stating that he does not believe C.Q. needs his medication. Exhibit 49.

Ian's argument focuses on a supposed lack of evidence about Susan's bond to C.Q. This argument is an attempt to incorporate an improper burden of proof into the relocation analysis. RCW 26.09.520 places the burden of proof on Ian to rebut the presumption. Susan is not required to prove the benefits to her and C.Q.; the statute already presumes that a fit parent will act in the best interests of her child. *Momb*, 132 Wn. App. at 78. It was Ian's responsibility to prove that the detriment was so great as to outweigh this presumption. *Id.* at 79. He may not attempt to shift the consequences of his failure to do so to the relocating parent.

The constitutionality of the relocation statutes was considered at length in *In re Osborne*, 119 Wn. App. 133, 79 P.3d 465 (2003). In *Momb*, the court summarized the holding in *Osborne* as follows

the relocation statutes establish a rebuttable presumption that the relocation will be allowed. In this way, the statute incorporates the presumption that a fit parent will act in the best interest of the child. Moreover, the objecting person has the burden of overcoming this presumption and, to succeed, the objecting person must show that the detrimental effect of the relocation upon the child and

mother outweighs the benefit of change to the child and the relocating parent.” *Osborne*, 119 Wn. App. at 145.

Momb, 132 Wn. App. at 78-79. Therefore, the court must consider the importance of the relocating parent's interests and circumstances in the balance, not just whether relocation may be detrimental to the child.

In the case of *Kim*, the father argued that the best interests of the child was the correct standard in relocation cases and he argued that “the evidence does not support that it is in the children’s best interests to lose both parents’ participation during their critical middle and high school years.” 179 Wn. App. at 224. He further contended that the trial court’s decision permitting relocation disregarded the harm caused by severing the children from their father and extended family support system, their school programs, friends, and extracurricular activities; he also argued that the mother’s work schedule would preclude her from giving the children full-time attention and keeping them engaged in their extracurricular activities. *Id.*

In rejecting these arguments, the court stated,

Mr. Kim’s argument underscores his misunderstanding of the relocation act. He overlooks the statutory presumption that a proposed relocation will benefit the child and, therefore, will be granted. *Horner*, 151 Wn.2d at 895, 93 P.3d 124. By focusing on the best interests of the children, Mr. Kim ignores the importance of the relocating parent’s interests and circumstances in the balance. *Id.* Thus, he limits his analysis to evidence of how the children may be

harmful by a move, but ignores the benefits to Ms. Kim and the children.

Id. at 244. The father here makes the same arguments. Indeed, Ian here has ignored (and not analyzed) how a move could benefit Susan and the child.

In this case, a reasonable trier of fact could find that C.Q. has a more significant relationship with Susan and that Susan ensures thorough and attentive care of C.Q.'s given his health issues compared to Ian. Accordingly, the trial court's finding that first factor weighs in favor of Susan is supported by substantial evidence and the trial court did not abuse its discretion.

2. The third factor weighs in favor of the mother.

In its oral and written rulings, the trial court found that the third factor -- 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 -- favored the mother. With respect to this factor, the trial court specifically found,

[T]his factor favors the mother again for the reasons that I listed with respect to factor number one.

She has been primarily responsible for the child's health care and day-to-day care over the lifetime of the child, and she's been very concerned about his allergy problems and his asthma problems.

Like I had mentioned before, the father has discounted the asthma therapy, so I believe that this factor weighs in favor of the mother because of that concern she has and the attention she's made to his health, the child's health.

6/23/14 RP 3-4. These findings are supported by substantial evidence. The trial court heard testimony from Susan that Ian lacks concern for C.Q.'s health problems, including that he does not believe that C.Q. needs his prescribed two puffs per day of Flovent and that he keeps a dog and a cat in his home even though C.Q. is allergic to both. RP 286. Susan's testimony is supported by documentary evidence, including a letter written by Ian to C.Q.'s doctor, stating that he does not believe C.Q. needs his medication. Exhibit 49.

Based on these facts, a reasonable trier of fact could find that Susan is more concerned with C.Q.'s health than Ian is, and that this factor thus weighs in favor of Susan. Accordingly, the trial court's finding with respect to the third factor is supported by substantial evidence and the trial court did not abuse its discretion.

3. The fifth factor weighs in favor of neither party.

In its oral and written rulings, the trial court found that the fifth factor, 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, favored neither party. With respect to this factor, the trial court specifically found,

Well, both parties have mentioned that the other side is acting in bad faith. Mr. Quinones says that the mother acted in bad faith by losing her job here in the State of Washington and not making a real effort to seek additional employment here in the State of Washington in her chosen field.

And mother, of course, claims that the father acted in bad faith by leading the mother to believe that he would move to Arizona before he filed his dissolution action here in the State of Washington. I really don't think either side is acting in bad faith.

Mother thinks for health reasons it would be better for both her and the child to relocate to Arizona which was where she was born, where she has a lot of family and extended contacts. That's where she went to college, I believe. She got her master's degree I know in the State of Arizona. She also graduated from high school down there. There's lots and lots of reasons for her wanting to move back to Arizona. She doesn't have family here. She doesn't have a real circle of support here.

Mr. Quinones, at the same time, is acting in good faith because he now has a job here. He's starting to establish a life here because he has a girlfriend here in the State of Washington. He would like to make sure that he has more time with his child and he knows the time with his child is going to come in a different fashion if we have a long-distance parenting relationship for the child as opposed to a nearby parenting relationship with the child, so I don't think really either parent's acting in bad faith so I don't think this factor weighs in favor of either side.

6/23/14 RP 4-6. These findings are supported by substantial evidence.

Susan testified that both her allergies and C.Q.'s asthma would improve in a dryer climate like Arizona. RP 236, 239. There was no dispute that

Susan was born and raised in Arizona and lived there most of her life until she moved to England in 2007, and there was no persuasive evidence presented to challenge the evidence that most of Susan's family and close friends are in and around Arizona. Further, Susan testified that a majority of her friends and family are in Arizona, and that she has very few friends and relatives in Washington. RP 216-17. The trial court was entitled to find Susan's testimony and supporting evidence credible. *In re Estate of Palmer*, 145 Wn. App. 249, 266, 187 P.3d 758 (2008) (“[T]he trier of fact, which observes the witness's manner while testifying, alone passes on a witness's credibility and measures the weight of the evidence.”).¹¹

Based on these facts, a reasonable trier of fact could find that Susan did not act in bad faith by requesting to relocate to Arizona. Accordingly, the trial court's finding with respect to the fifth factor is supported by substantial evidence and the trial court did not abuse its discretion.

¹¹ Ian's attempt to rely on the first Notice of Intent to Relocate dated April 11, 2013 as evidence of bad faith is misplaced. That document and any subsequent proceedings related to it are irrelevant because the claim was never resolved on the merits by the Court nor by the parties. In fact, the modification petition (which is Ian's moving petition as part of his objection to the notice of relocation) was never pursued to finality by him. There was no final decision on the merits to his objection and procedurally and substantively, the claim was dropped by both parties in favor of an agreed Parenting Plan dated August 7, 2013, which made no mention of an agreement (or a decision) on relocation. Therefore, it has no bearing on the Notice of Intent to Relocate and the Objection thereto filed in 2014, which is the subject of this appeal.

Furthermore, Ian implies that there is something suspicious about the length of time between the entry of the decree of dissolution and Susan's Notice of Intent to Relocate. However, the Final Parenting Plan had been in place since August 7, 2013, not December 2013 as Appellant contends. CP 88-112.

4. The seventh factor weighs in favor of the mother.

In its oral and written rulings, the trial court found that the seventh factor, the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations, favored the mother. With respect to this factor, the trial court specifically found,

So the opportunities available to the mother. She did identify a job opportunity that she can take advantage of right away, albeit not the greatest job opportunity because there will be some commuting involved; however, it's a flexible job. Don't necessarily have to be in the office every day of the week. She'll be able to do some telecommuting.

She testified that she didn't have a job here, she did lose her job here. There was a dispute about whether she intentionally lost her job or whether she lost her job because she kept having to come to court because of the proceedings in this case over the years. No one was able to identify with any reasonable -- I'm not persuaded by the evidence that there was an intentional job loss. She lost her job because of her absences. Doesn't have another job. She has job opportunities in the State of Arizona. She has more family and contacts in the State of Arizona.

So, I think, you know, quality of life, resources, and opportunities for the child probably are going to be about the same in either location. But I think because of the better situation for the mother, and you have to look at both the -- available to the child and to the relocating party in analyzing this factor, this factor just slightly favors mother.

6/23/14 RP 7-8. These findings are supported by substantial evidence.

Susan testified that she had been offered a job in Arizona that allowed her to telecommute most days, and presented a copy of the offer letter as

evidence. RP 201-02, Exhibit 30. Susan also testified that she had received other offers in Arizona that were comparable to her job at DSHS, but that she was forced to turn them down due to uncertainty caused by the pending proceedings; i.e., she could not commit to a start date at a new job because she could not get permission to relocate without Ian's agreement and without a court order. RP 218, 240-41. Further, Susan testified that she had many friends and acquaintances in Arizona, whom she kept in regular contact with and could contact for networking purposes. RP 283.

Although Mr. Adams testified that he believed Susan would still be employed with DSHS had she not incurred excessive absences, this was only an assumption on his part. RP 53 (Question: "Mr. Adams, do you believe that but for Ms. Quinones abandoning her position she would still be gainfully employed with the state of Washington?" Answer: "I **assume** that she would be."). Mr. Adams admitted that he had no contact with Susan after she was hired. RP 42. Mr. Adams did not state the reasons for Susan's absences, and Appellant presented no evidence purporting to establish that Susan had simply decided not to come to work anymore.¹²

Based on these facts, a reasonable trier of fact could find that while the opportunities for C.Q. were roughly equal in both locations, the

¹² Again, Ian's argument focuses on Susan's supposed failure to present enough evidence about her opportunities in Arizona. As previously articulated, RCW 26.09.520 places the burden of proof on Ian to rebut the statutory presumption.

opportunities available to Susan were better in Arizona than in Washington. Accordingly, the trial court's finding with respect to the seventh factor is supported by substantial evidence and the trial court did not abuse its discretion.

5. The eighth factor weighs in favor of the mother.

In its oral and written rulings, the trial court found that the eighth factor, the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent, had not been rebutted. With respect to this factor, the trial court specifically found,

The mother claims that the father can do face time and Skype, of course can travel to the State of Arizona to see the child. Father claimed during the trial that mother has in the past interfered with his Skyping of the child when he was in Afghanistan. I think the solution here is to have a very fixed, rigid schedule that mother cannot alter so that the father can indeed Skype or have face time with his child.

Now, of course, I think both parties have to be aware of the child's age and may not have a long attention span but still I think the solution is to make sure that there's a fixed, rigid schedule that the mother may not alter unless there is some sort of emergency so that the father can have his Skype or face time with the child. So this factor, I've stated the reasons for it, there are alternative arrangements, yes. Certainly, as the child gets older, the child will be able to have other forms of communication.

6/23/14 RP 8-9. These findings are supported by substantial evidence. Ian has been geographically separated from C.Q. before, when he was deployed in Afghanistan for seven months. RP 109. Testimony from

multiple witnesses indicated that Ian was able to maintain a meaningful relationship through use of Skype, even though C.Q. was less than two years old at the time. RP 93, 109, 272. There is no indication that a relationship maintained through Skype would somehow be less meaningful than it was previously. Additionally, the eventual relocation and Proposed Parenting Plan permitted Ian to have more overnight visits than the existing Parenting Plan. RP 89-90, 144-45, Exhibit 36. The new Final Parenting Plan also permitted both Washington and Arizona visits for Ian. CP 382-88. Based on these facts, a reasonable trier of fact could find that there are sufficient alternatives for Ian to continue his relationship with C.Q.

In his opening brief, Ian asserts, as he did at trial, that Susan has a demonstrated history of interfering with his ability to Skype with C.Q.¹³ Brief of Appellant, at 29. Putting aside any lack of proof of these allegations, his concern was already addressed by the trial court when it added a provision to the Parenting Plan setting up a discrete schedule for Skype time. 6/23/14 RP 8-9, CP 391. In the event that this schedule is not adhered to, Ian may seek recourse through a contempt proceeding or other

¹³ The July 5, 2013 report of the GAL was not admitted into evidence, and Ian's reliance on it in his opening brief is improper. Respondent respectfully requests that the reference to the GAL report be stricken or, alternatively, disregarded by the Court.

means of dispute resolution outlined in the Parenting Plan. CP 389-90, 393.

Ian's speculation that his opportunities to Skype chat with his son was unsupported by the evidence and he would be able to seek enforcement even if it was. Therefore, trial court's finding with respect to the eighth factor is supported by substantial evidence and the trial court did not abuse its discretion.

6. The ninth factor does not weigh in favor of either party.

In its oral and written rulings, the trial court found that the ninth factor -- the alternatives to relocation and whether it is feasible and desirable for the other party to relocate also -- favored neither party. With respect to this factor, the trial court specifically found,

Could the father relocate? The answer is yes, but I don't think he would be most likely wanting to do that given his current employment. The fact that he's now in a relationship with another woman, he doesn't have any family here in the State of Washington, apart from some relatives that he did identify, I believe, but the bulk of his relatives are not in the State of Washington. So he's starting to develop -- he's starting to develop a community here.

So, because of his job, I think, you know, this factor probably weighs in favor of the father. I don't think there's an alternative to relocation for him.

Is there an alternative to relocation for mother? The evidence was she lost her job here. She's got a job opportunity there. She has more support there. So as far as the mother's concerned, it looks like things would be better for her there in Arizona. Things are better here for dad, so I think factor number nine doesn't favor either party.

6/23/14 RP 9-10. These findings are supported by substantial evidence. Susan testified that she has received an offer of employment in Arizona that would allow her to telecommute most of the month. RP 201-02, 206. Presumably, because Susan would be telecommuting, she would also be able to provide regular care to C.Q., her given reason for not currently working in Washington. Ms. Spiller also testified that she would be able to assist with childcare in Arizona, which would save Susan the cost of daycare. RP 231.

The trial court's statements that "this factor probably weighs in favor of the father" and "I think factor number nine doesn't favor either party" are not contradictory findings, as Ian contends. When viewed in context, the statement that "this factor probably weighs in favor of the father" was a reflection of the trial court's finding that it would not be practical for Ian to move to Arizona. Use of the phrase "probably weighs" (6/23/14 RP 9-10) only related to the issue of Ian's job and demonstrated the trial court's "out loud reasoning" on the record, which further bolsters Respondent's position here – that the trial court did not abuse its discretion and weighed the factors meaningfully.

Assuming *arguendo* that the two statements do present inconsistent findings, this would make only one factor out of ten that weighed in favor

of Ian. A single factor is not dispositive because all ten are to be balanced with each other. RCW 26.09.520. Balanced against the remaining factors, a favorable finding for Ian on a single factor does not establish that the trial court abused its discretion by concluding that Ian failed to rebut the statutory presumption. Any supposed error here is harmless.

7. The tenth factor weighs in favor of the mother.

In its oral and written rulings, the trial court found that the tenth factor, the financial impact and logistics of the relocation or its prevention, favored the mother. With respect to this factor, the trial court specifically found,

Let's talk about the prevention first. If the relocation is prevented then you have a mother who's out of work being supported by other means, can't go on very long. If she relocates, she'll have a job and other employment opportunities that she identified. She has family that can assist her in caring for the child in Arizona. Childcare here will be in the form of daycare.

Probably the more important factor to look at is going to be consideration of the transportation costs. Father will have to spend money to visit the child in Arizona. It's certainly an important consideration in my evaluation.

But, all in all, the more I think about it, when it says logistics, that part probably favors the father; but when you look at the financial impact on the mother on factor number ten and her employment opportunities, which I've mentioned over and over, it's probably a more important consideration than the transportation element. The more I think about it, the financial impact of the employment opportunities is more and more of an important factor to consider in factor number 10 than the transportation costs.

6/23/14 RP 10-11. These findings are supported by substantial evidence. As has been repeatedly noted, Susan testified that she had been offered a job in Arizona that allowed her to telecommute most of the month. RP 201-02, 206. A copy of the offer letter was admitted into evidence. Exhibit 30. Susan also testified that she had received other offers in Arizona that were comparable to her job at DSHS, but that she was forced to turn them down due to uncertainty caused by the pending proceedings. Susan testified that she had many friends and acquaintances in Arizona. RP 216-17. Finally, Ms. Spiller testified that she would be available to assist with childcare in Arizona, regardless of the distance between her home and Peoria. RP 231. The trial court was entitled to find that Susan and Ms. Spiller were credible, particularly when no contrary evidence was presented by the father to contest these statements. *Palmer*, 145 Wn. App. at 266.

In sum, the overwhelming majority of Ian's arguments pertain to the credibility of the testifying witnesses, and the weight that the trial court assigned to the various witnesses and documentary evidence. These assignments of error are similar to those asserted in *Fahey*, 164 Wn. App. 42, 262 P.3d 128. In that relocation case, the father contended that the trial court had erred by

[d]iscounting the demographic information comparing Edmonds and Omak based on perceived flaws in the data; minimizing the influence of Lawrence's asserted reasons for Lisa's previous moves; finding that Lisa's reasons for relocating the children to Omak are "sound and in good faith"; and believing Lisa's claim that moving to Omak financially benefits her[.]

Fahey, 164 Wn. App. at 62. This Court declined to review these contentions, as Courts of Appeal "do not review credibility determinations or weigh evidence on appeal." *Id.* (citing *In re Marriage of Meredith*, 148 Wn. App. 887, 891 n. 1, 201 P.3d 1056, *review denied*, 167 Wn.2d 1002, 220 P.3d 207 (2009)).

The arguments made by Appellant echo those made in *Fahey*: that the trial court minimized the bond between him and C.Q., that the trial court failed to consider whether Susan had a strong emotional bond with C.Q., that Susan's reasons for desired relocation are suspicious, that Peoria is too far from Tucson for the move to actually benefit Susan, and that the trial court discounted Susan's past behavior and the potential cost of travel between Arizona and Washington. What Ian's arguments boil down to is that he believes that the trial court should have given more weight to the evidence he presented than to the evidence Susan presented. What Ian asks is not within the province of this Court. The Court should adhere to its opinion in *Fahey* and decline Ian's request to reweigh the evidence.

Finally, Ian repeatedly asserts that Susan failed to present substantial evidence, frequently citing to a “lack of documentation” on her part. First, Susan did present substantial evidence, as outlined above. Second, Ian ignores that the burden of proof is on him; under RCW 26.09.520, the parent proposing relocation need only offer her reasons for relocation. To rebut the presumption that relocation is beneficial, the parent **opposing** relocation must show that the intended move has a more detrimental than beneficial effect on the child and the relocating parent. RCW 26.09.520. It was Ian’s burden to produce evidence and persuade the trial court that the presumption was overcome.

The trial court did not abuse its discretion by finding that Ian failed to rebut the statutory presumption, and the Order on Relocation and Final Parenting Plan should be upheld. The record supports the conclusion that Ian did not meet his burden. Therefore, this Court should affirm the decision of the trial court.

C. Appellant’s appeal is frivolous, and Respondent should be awarded attorneys’ fees and costs.

Respondent respectfully requests that she be awarded attorneys’ fees and costs, pursuant to RAP 18.9. Under this rule, the Court may award compensatory damages to a party for having to respond to a frivolous appeal. RAP 18.9(a).

An appeal is frivolous if “it presents no debatable issues and is so devoid of merit that there is no reasonable possibility of reversal.” *Streater v. White*, 26 Wn. App. 430, 434, 613 P.2d 187 (1980). All of Appellant’s assignments of error challenge the weight and credibility determinations made by the trial court. It is well-established that this Court cannot reweigh evidence and does not substitute its judgment for that of the trial court. *Id.* This is precisely what Ian is asking this Court to do – reweigh the evidence and judge credibility. Ian’s appeal is devoid of merit, and Respondent should be awarded attorney’s fees and costs.

III. CONCLUSION

A decision of a trial court granting or denying relocation is afforded great deference, to be overturned only upon a showing of an abuse of discretion. Rather than demonstrating an abuse of discretion, Appellant asks this Court to second guess the trial court’s credibility determinations and to reweigh the evidence presented in this case. As that is not within the purview of this Court, Appellant’s appeal is frivolous.

Therefore, Respondent respectfully requests that the decision of the trial court be AFFIRMED, and that she be awarded fees and costs pursuant to RAP 18.9.

Respectfully submitted this 27th day of February, 2015

VAN SICLEN, STOCKS & FIRKINS



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FILED
COURT OF APPEALS
DIVISION II

2015 FEB 27 PM 2:17

STATE OF WASHINGTON

BY _____
DEPUTY

No. 46525-6-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Marriage of:)	
)	
IAN QUINONES,)	
)	
Appellant,)	CERTIFICATE OF SERVICE
)	
and)	
)	
SUSAN QUINONES,)	
)	
Respondent.)	
_____)	

I hereby certify that on the 27th day of February, 2015, I mailed a true and correct copy of the foregoing Brief of Respondent, Verbatim Report of Proceedings and Certificate of Service to:

LAW OFFICE OF JENNIFER A. WING, PLLC
4041 Ruston Way, Suite 200
Tacoma, Washington 98402

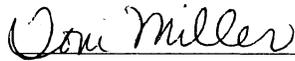
KRSTI L. SCHOLZ-O'LEARY
13921 McCutcheon Road East
Orting, Washington 98360

I arranged for the original of the foregoing document and Certificate of Service to be filed with the Court of Appeals, Division II, by sending via legal messenger service to:

The Court of Appeals, Division II
950 Broadway
Suite 300, MS TB-06
Tacoma, WA 98402

I, Toni Miller, declare under penalty of perjury under the laws of the State of Washington that the above stated statements are true and correct.

SIGNED at Auburn, Washington on this 27th day of February, 2015.



Toni Miller, Paralegal

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

IN RE THE MARRIAGE OF:)	
)	
IAN QUINONES)	
)	
)	
)	No. 12-3-02389-1
Petitioner,)	
)	
vs.)	
)	
SUSAN QUINONES,)	
)	
Respondent.)	

VERBATIM REPORT OF PROCEEDINGS

APPEARANCES:

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Before the Honorable Brian Tollefson

June 13, 2014
Tacoma, Washington

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CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON

1 FRIDAY, JUNE 13, 2014; TACOMA, WASHINGTON

2 --oo0oo--

3 THE COURT: The first matter I want to call
4 is: In Re the Marriage of Quinones, 12-3-02389-1.

5 I believe both the attorneys in that case are
6 here.

7 MR. STOCKS: Yes.

8 THE COURT: Along with their clients.

9 MR. STOCKS: Yes.

10 THE COURT: Good morning.

11 MS. SCHOLZ-O'LEARY: Good morning.

12 MR. STOCKS: Good morning.

13 THE COURT: So today I was going to give you
14 my decision on the relocation trial. I want to thank
15 both sides for their excellent representation of their
16 clients. Both clients should feel they were very well
17 represented.

18 I want to get right to the heart of the
19 matter and that's the basis for the determination. As
20 both sides are aware, there's a presumption, rebuttable
21 presumption in favor of relocation. But in analyzing
22 that rebuttable presumption, the legislature says that
23 the Court has to go through the factors of RCW
24 26.09.520 to determine whether the detrimental effect
25 of the relocation outweighs the benefit of the change

1 to the child and the relocating person.

2 And I think Mr. Stocks, in his memorandum of
3 authority, pointed out that when you look at that
4 statute and you really take a careful look at that
5 statute, the presumption is that there is a benefit to
6 the change. I don't know if I'm saying that exactly
7 right. The presumption is that there's a beneficial
8 reason for the change that benefits both the child and
9 the relocating person, but you still have to go through
10 the factors. The case law is clear that you have to do
11 that on the record, so that's what I'm going to do.

12 The first factor, of course, is the relative
13 strength, nature, quality, extent of involvement and
14 stability of the child's relationship with each parent,
15 siblings, and other significant persons in the child's
16 life. This factor favors the mother.

17 Now, there's no doubt in my mind that both
18 parents love this child. Why this factor favors the
19 mother is because she has been primarily responsible
20 for raising this child because of the career choice
21 that Mr. Quinones had for a number years, he ended up
22 being deployed to Afghanistan, and he had other -- he
23 had other employment that interfered with his time with
24 the child even after he got out of active military
25 service.

1 Mother has been more concerned about and
2 responsible for the child's health care, especially his
3 asthma and allergy therapy. Father has, in fact,
4 discounted the child's need for asthma therapy, so
5 factor number one favors mother.

6 Fact number two is prior agreements of the
7 parties. Well, the only evidence about agreements here
8 was discussions that the parties had before the
9 dissolution action was filed by Mr. Quinones in the
10 State of Washington. Before he made that tactical
11 decision to file for dissolution here in this state he
12 was having correspondence with Ms. Quinones about the
13 idea that both of them would end up moving to the State
14 of Arizona, but that all changed once he filed his
15 dissolution action here in the State of Washington.

16 So while there's some evidence about the
17 parties moving to the State of Arizona, I can't really
18 say there's a prior agreement, so I'm going to say that
19 this factor probably doesn't weigh in favor of either
20 parent.

21 The third factor is whether disrupting the
22 contact between the child and the person with whom the
23 child resides the majority of the time would be more
24 detrimental to the child than disrupting the contact
25 between the child and the person objecting to the

1 relocation, and this factor favors the mother again for
2 the reasons that I listed with respect to factor number
3 one.

4 She has been primarily responsible for the
5 child's health care and day-to-day care over the
6 lifetime of the child, and she's been very concerned
7 about his allergy problems and his asthma problems.
8 Like I had mentioned before, the father has discounted
9 the asthma therapy, so I believe that this factor
10 weighs in favor of the mother because of that concern
11 she has and the attention she's made to his health, the
12 child's health.

13 Factor number four, whether either parent or
14 person entitled to residential time with the child is
15 subject to limitations. The answer is no. There's no
16 26.09.191 limitations, so this factor does not apply to
17 either party.

18 The next factor is the reasons for each
19 person seeking or opposing the relocation and the good
20 faith of each of the parties requesting or opposing the
21 relocation.

22 Well, both parties have mentioned that the
23 other side is acting in bad faith. Mr. Quinones says
24 that the mother acted in bad faith by losing her job
25 here in the State of Washington and not making a real

1 effort to seek additional employment here in the State
2 of Washington in her chosen field.

3 And mother, of course, claims that the father
4 acted in bad faith by leading the mother to believe
5 that he would move to Arizona before he filed his
6 dissolution action here in the State of Washington. I
7 really don't think either side is acting in bad faith.

8 Mother thinks for health reasons it would be
9 better for both her and the child to relocate to
10 Arizona which was where she was born, where she has a
11 lot of family and extended contacts. That's where she
12 went to college, I believe. She got her master's
13 degree I know in the State of Arizona. She also
14 graduated from high school down there. There's lots
15 and lots of reasons for her wanting to move back to
16 Arizona. She doesn't have family here. She doesn't
17 have a real circle of support here.

18 Mr. Quinones, at the same time, is acting in
19 good faith because he now has a job here. He's
20 starting to establish a life here because he has a
21 girlfriend here in the State of Washington. He would
22 like to make sure that he has more time with his child
23 and he knows the time with his child is going to come
24 in a different fashion if we have a long-distance
25 parenting relationship for the child as opposed to a

1 nearby parenting relationship with the child, so I
2 don't think really either parent's acting in bad faith
3 so I don't think this factor weighs in favor of either
4 side.

5 The next factor, number six, is the age,
6 developmental stage, and needs of the child and the
7 likely impact of relocation or its prevention will have
8 on the child's physical, educational, and emotional
9 development taking into consideration any special needs
10 of the child.

11 The only special need that was identified
12 that I'm aware of, of course, is the child's asthma.
13 Father says, well, his other allergies are just, you
14 know, typical allergies that you have no matter where
15 you are, but he really doesn't have any kind of
16 evidence or testimony to discount the testimony of the
17 medical records, essentially, about the child not
18 having an asthma problem. He says, well, that's just
19 because the mother told the doctor there was an asthma
20 problem but, certainly, I can't imagine a doctor would
21 put the child on the two different kinds of puffers
22 that he has if he thought he didn't have a problem.

23 The child is four and a half now, which means
24 that the child's not entered any kind of long-term
25 friendship situation that you often see when children

1 start school. If the child were older, say in school,
2 certainly it would be more likely a detrimental impact
3 for him leaving the area, but right now it's probably a
4 better time for him to relocate than later on in his
5 life, so I don't think there's really going to be any
6 impact on the child's educational or emotional
7 development, and I believe that the child's physical
8 situation will benefit by relocating to the State of
9 Arizona for the reasons I've already mention earlier.

10 Factor number seven is the quality of life,
11 resources, and opportunities available to the child and
12 to the relocating party in the current or proposed
13 geographic locations. Okay. So the opportunities
14 available to the mother. She did identify a job
15 opportunity that she can take advantage of right away,
16 albeit not the greatest job opportunity because there
17 will be some commuting involved; however, it's a
18 flexible job. Don't necessarily have to be in the
19 office every day of the week. She'll be able to do
20 some telecommuting.

21 She testified that she didn't have a job
22 here, she did lose her job here. There was a dispute
23 about whether she intentionally lost her job or whether
24 she lost her job because she kept having to come to
25 court because of the proceedings in this case over the

1 years. No one was able to identify with any
2 reasonable -- I'm not persuaded by the evidence that
3 there was an intentional job loss. She lost her job
4 because of her absences. Doesn't have another job.
5 She has job opportunities in the State of Arizona. She
6 has more family and contacts in the State of Arizona.

7 So, I think, you know, quality of life,
8 resources, and opportunities for the child probably are
9 going to be about the same in either location. But I
10 think because of the better situation for the mother,
11 and you have to look at both the -- available to the
12 child and to the relocating party in analyzing this
13 factor, this factor just slightly favors mother.

14 The next factor, number eight, is the
15 availability of alternative arrangements to foster and
16 continue the child's relationship and access to the
17 other parent.

18 The mother claims that the father can do face
19 time and Skype, of course can travel to the State of
20 Arizona to see the child. Father claimed during the
21 trial that mother has in the past interfered with his
22 Skyping of the child when he was in Afghanistan. I
23 think the solution here is to have a very fixed, rigid
24 schedule that mother cannot alter so that the father
25 can indeed Skype or have face time with his child.

1 Now, of course, I think both parties have to
2 be aware of the child's age and may not have a long
3 attention span but still I think the solution is to
4 make sure that there's a fixed, rigid schedule that the
5 mother may not alter unless there is some sort of
6 emergency so that the father can have his Skype or face
7 time with the child. So this factor, I've stated the
8 reasons for it, there are alternative arrangements,
9 yes. Certainly, as the child gets older, the child
10 will be able to have other forms of communication.

11 The next factor, number nine, is the
12 alternatives to relocation and whether it's feasible or
13 desirable for the party to relocate also. Could the
14 father relocate? The answer is yes, but I don't think
15 he would be most likely wanting to do that given his
16 current employment. The fact that he's now in a
17 relationship with another woman, he doesn't have any
18 family here in the State of Washington, apart from some
19 relatives that he did identify, I believe, but the bulk
20 of his relatives are not in the State of Washington.
21 So he's starting to develop -- he's starting to develop
22 a community here.

23 So, because of his job, I think, you know,
24 this factor probably weighs in favor of the father. I
25 don't think there's an alternative to relocation for

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him.

Is there an alternative to relocation for mother? The evidence was she lost her job here. She's got a job opportunity there. She has more support there. So as far as the mother's concerned, it looks like things would be better for her there in Arizona. Things are better here for dad, so I think factor number nine doesn't favor either party.

Factor number 10 is the financial impact and the logistics of relocation or its prevention. Let's talk about the prevention first. If the relocation is prevented then you have a mother who's out of work being supported by other means, can't go on very long. If she relocates, she'll have a job and other employment opportunities that she identified. She has family that can assist her in caring for the child in Arizona. Childcare here will be in the form of daycare.

Probably the more important factor to look at is going to be consideration of the transportation costs. Father will have to spend money to visit the child in Arizona. It's certainly an important consideration in my evaluation.

But, all in all, the more I think about it, when it says logistics, that part probably favors the

1 father; but when you look at the financial impact on
2 the mother on factor number ten and her employment
3 opportunities, which I've mention over and over, it's
4 probably a more important consideration than the
5 transportation element. The more I think about it, the
6 financial impact of the employment opportunities is
7 more and more of an important factor to consider in
8 factor number 10 than the transportation costs.

9 So when I've added up all the factors or
10 looked at them as a whole, there's more factors that
11 favor the mother than favor the father. That means --
12 oh, also, I should mention the parenting plan of the
13 mother proposed and it really wasn't disputed by the
14 father was that he will have more time with the child
15 in the proposal that mother has put forward than the
16 current parenting plan calls for, so I'm going to grant
17 the relocation.

18 Mother's parenting plan will be adopted with
19 some minor adjustments that I think I would like to
20 save for the formal presentation in this case, but I
21 mentioned that the Skyping scheduling needs to be
22 pretty rigid and fixed so that the concern of the
23 father's can be addressed right now.

24 And I think probably there needs to be a real
25 specific, if father chooses to travel to Arizona, there

1 needs to be some real specifics about his visitation
2 schedule there that I'm not prepared to address today
3 but will be at the presentation.

4 Any questions?

5 MR. STOCKS: May we have presentation out
6 about two weeks so I can order the transcript so I can
7 prepare findings?

8 THE COURT: Any objections?

9 MS. SCHOLZ-O'LEARY: I don't. I know I'm out
10 of state next week so I would need two to three weeks
11 anyway.

12 MR. STOCKS: Your availability on the 27th?

13 THE COURT: I know I'll be here. I don't
14 know how many cases are already on the docket. It's
15 starting to fill up for the summertime. No slow
16 summers here anymore in Pierce County.

17 MR. STOCKS: Next Friday is July 4th, so.

18 THE CLERK: Morning or afternoon?

19 MS. SCHOLZ-O'LEARY: I would prefer the
20 morning.

21 MR. STOCKS: Morning.

22 THE COURT: We're looking at the 27th,
23 right?

24 MR. STOCKS: We all kind of prefer 9:00.

25 MS. SCHOLZ-O'LEARY: It's better.

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THE COURT: 9:00 it is.

Any other questions?

MR. STOCKS: No, Your Honor.

MS. SCHOLZ-O'LEARY: No.

THE COURT: Thanks very much.

(Proceedings Concluded)

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C E R T I F I C A T E

I, TIMOTHY N. REGIS, Official Court Reporter
for the Superior Court of the State of Washington, in and
for the County of Pierce, Department No. 8, in Tacoma,
Washington, do hereby certify:

That the foregoing proceedings were taken by
me, and thereafter were transcribed under my direction;

That I am not a relative, employee, attorney
or counsel of any party to this action or relative or
employee of such attorney or counsel, and I am not
financially interested in the said action or the outcome
thereof;

IN WITNESS WHEREOF, I have hereunto set my
hand this 19th day of June, 2014.

Timothy N. Regis
Official Court Reporter
Department #8
Pierce County Superior Court