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DIVISION II

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

DARCIA DAVIS,

Appellant,

v.

GEORGE PATECEK

Respondent.

AMENDED BRIEF OF APPELLANT

Stephen L. Olson
Olson & Zabriskie, Inc.
104 West Marcy Avenue
Montesano, WA 98563
(360) 249-6174

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I. INTRODUCTION

In the present case, Darcia Davis was living in Westport, Washington with her son, Doriahn Davis. She had primary custody and the father had visitation rights. The father filed a Petition for Modification alleging that the present environment was detrimental to the physical or emotional well-being of the child. The father's visitation rights at the time consisted of alternate weekend visitation, alternating two week periods during the summer, along with certain holidays. The father seldom exercised his visitation weeks because his work schedule prohibited it. His days off were usually Wednesday and Thursday so he was unable to have overnight visits. A Guardian ad Litem was appointed and the father's allegations were investigated. The Guardian ad Litem concluded that his allegations were unfounded and that the mother was a good caring mother who provided a good stable home for her son. He further found that her son was thriving in school and was bright, cheerful and happy.

This matter proceeded to trial and two days of trial were held on July 25th and July 26th of 2013. After the two day trial was completed, the Court implemented a visitation schedule that placed the child with Darcia Davis with the father being allowed to pick up the child after school on Wednesday and return him after dinner.

Darcia Davis then filed a Notice of Intended Relocation to Bellingham, Washington after the hearing. A Motion for Temporary Relocation was made and granted by the Court on October 7, 2013.

This matter resumed trial on October 7, 2013. Evidence was presented which revealed that Darcia Davis had a strong bond with her child and had been the primary parent of Doriahn throughout his entire life. Evidence was further presented that Doriahn was doing well in the Bellingham School District and the Guardian ad Litem testified that there were no detriments evident as a result of the move to Bellingham. The evidence further revealed that many opportunities were present for Doriahn in Bellingham including swimming, taekwondo, and other activities.

At the end of the hearing, the trial court allowed the relocations, but expressed its frustration with the parties and indicated that the Court wished that both parties were wealthy so he could place the child in a private school on the East Coast with the only contact they would have would be holidays or when they flew out to see him. The Court then went on to express its dissatisfaction with all of the parties herein and ordered that Doriahn spend one school year with one parent and the next with the other. The summers and holidays would then be alternated.

II. ASSIGNMENT OF ERROR

Assignment of Error No. 1: The trial court committed error when it failed to enter Findings of Fact and Conclusions of Law regarding the request for relocation and by failing to fully grant the relocation request to relocate to Bellingham, Washington.

Issues Re Assignment of Error No. 1:

a) Did the trial court abuse its discretion when it refused to grant the relocation to Bellingham as requested by Darcia Davis

b) Did the trial court abuse its discretion by failing to enter specific findings regarding the relocation factors set forth in RCW 26.09.260 or by failing to orally articulate the factors on the record?

Assignment of Error No. 2: The trial court committed error in granting an order modifying the parenting plan which ordered that the child should move to Clallam Bay to live with his father during every other school year.

Issues Re Assignment of Error No. 2: Did the trial court abuse its discretion when it refused to allow Darcia Davis to relocate to Bellingham with her son and instead granted a major modification of the parenting plan ordering the parties' son to reside full-time with the father in alternate years, instead of keeping the mother as the primary parent as per the existing parenting plan?

Assignment of Error No. 3: The trial court committed error when it calculated the amount of refund due for overpayment of child care expenses and entered a judgment, without taking into consideration the child support arrearages owing at the time, and the daycare expense during the period she lived in Bellingham.

Issues Re Assignment of Error No. 3: Did the trial court abuse its discretion when it failed to properly calculate the amount of overpayment of daycare, by failing to give Darcia Davis credit for the arrearage owed by George Patecek, and by failing to consider daycare expenses she incurred from November of 2013 through April of 2014?

III. STATEMENT OF CASE

On January 13, 2010, Darcia Davis filed a Petition for Modification of the parties Parenting Plan that had been entered on December 12, 2008. She was the primary parent of the previous plan and she was requesting that Mr. Patecek pick up the child on Thursday evenings for his weekend instead of on Friday because she needed to work. She also sought to have her son alternate every two weeks during the summer. Clerk's Papers 1-12.

The trial court found adequate cause existed for a modification. Clerk's Papers 23-25. A new Final Parenting Plan was entered on April 7, 2010, but changed the pickup time to Thursday evening by 6:00 p.m. at the day care on the father's weekends and gave the father one-half of the school breaks and summer breaks plus one-half of the holidays. Clerk's Papers 49-57. A child support order was also entered at this time and the father was ordered to pay \$582.12 per month, \$269.50 of which constituted child care. Clerk's Papers 33-48.

On August 31, 2012, George Patecek filed a Petition for Modification of a Custody Decree/Parenting Plan. Clerk's Papers 58-63. The Petition alleged that the child's environment under the custody decree/parenting plan was detrimental to the child's physical, mental or emotional health and the harm likely to be caused by a change in environment was outweighed by the advantage of a change to the child. The father alleged that the mother could not provide a stable household and alleged that she left the child in long term care of others and that she refused to communicate to him about the whereabouts of the child. The

Petition further alleged that the parties had substantially deviated from the parenting plan for an extended period of time and contended that the mother appeared to be under the influence of controlled substance or having mental health issues that interfered with her ability to adequately parent the child. The Petition contended that the child was exhibiting regular negative behavior and should be protected from the abusive language found in the mother's home. Clerk's Papers 58-63.

A Petition for Modification of Child Support was filed. The Petition contended that the day care expenses were not actually incurred. Clerk's Papers 64-66. A response to the Petition for Modification of Adjustment Custody Decree/Parenting Plan was filed by Darcia Davis on September 24, 2012. Clerk's Papers #67-70. Darcia Davis denied that adequate cause existed and denied that the parenting plan should be modified. She also denied that child support should be modified. Clerk's Papers 67-70. Darcia Davis stated in her response that the allegations made by the father are false and that there was no factual basis for any of the allegations. She contended that she had been the sole care provider for the child since the child was eight months old and contended that she always provided a stable home. She denied that she had any history of mental health issues and contended that she continued to communicate with the father through the person the father selected as the intermediary, Gina Karlson. She contended that she always responded to their emails, texts, and phone calls whenever they were provided. She denied that she ever withheld visitation from Mr. Patecek for his scheduled residential time. She contended that there was no profanity, negative language or

physical discipline used in her household. She contended that the father had a history of forfeiting his scheduled residential time. Clerk's Papers 67-70.

Darcia Davis also filed a Response to Petition for Modification of Child Support. Clerk's Papers 71-72.

This matter proceeded to trial on Mr. Patecek's petition to modify the parenting plan on July 25, 2013. At that time, the Guardian ad Litem, David Rothschild testified. Mr. Rothschild's recommendations were that the child remain in the primary residential care of the mother and that once Mr. Patecek obtained a stable residence or proper place, more residential time, that he should have the child from Friday after school until Sunday, every other weekend until such time as Mr. Patecek had a stable residence, he was to have every other weekend visits during the day in Westport. Report of Proceedings, July 25, 2013, Page 16, Lines 1-14. The Guardian ad Litem concluded that Mr. Patecek has been less able to put Doriahn's interests first as Miss. Davis has. He concluded that it was more Mr. Patecek's fault than Miss. Davis. Report of Proceedings, July 25, 2013, Page 20, Lines 6-11.

The Guardian ad Litem, Mr. Rothschild, investigated the allegations that Mr. Patecek made against Darcia Davis' parenting abilities. These included the allegation that Miss Davis used abusive language in her home, Miss Davis was under the influence of controlled substances or had mental health issues. The Guardian ad Litem testified that "I couldn't find anything that supported those allegations, at least in

terms of it being an issue of this sort that would justify a modification”.
Report of Proceedings, July 25, 2013, Page 43, Lines 6-16.

When asked about the allegation Mr. Patecek made that the mother was unable to provide a stable household for the child, he also found that unfounded. When asked if the father provided a stable household suitable for the child’s permanent place of residence, he responded “I don’t believe that I would say that, no. He has had many, many addresses, and places of residence over the last several years, and so, no, I could not”. Report of Proceedings, July 25, 2013, Page 45, Lines 7-17.

When Mr. Rothschild, Guardian ad Litem, was asked if he would say that Darcia Davis was an actively-involved parent in Doriahn’s life on a regular basis, with extracurricular activities, Little League, and his taekwondo, the Guardian ad Litem responded “Yes I would say that it very accurate”. Report of Proceedings, July 25, 2013, Page 48, Lines 1-5.

Darcia Davis testified that “Almost every day I picked Doriahn up from school. Report of Proceedings, July 26, 2013, Page 94, Lines 15 & 16. She also testified that Doriahn is doing great in school. Report of Proceedings, July 26, 2013, Page 97, Lines 23-25. She also testified that he is in Little League and he thoroughly enjoyed it. Report of Proceedings, July 26, 2013, Page 98, Lines 2 & 3.

Linda Barnes testified that she has lived in Westport for 31 years and that she ran the day care/preschool at the South Beach Christian Center for 26 years. Report of Proceedings, July 26, 2013, Page 141, Line 25 & Page 142, Lines 1. She stated that Doriahn has been in their

preschool since he was 14 months. Report of Proceedings, July 26, 2013, Page 142, Lines 9-14.

Linda Barnes testified that “Doriahn is very charming, bright, caring considerate, and I do agree with George that he is very, very bright, brilliant young man. He has a good heart, very respectable and kind to others loves and enjoys his friends. Very playful. Has a great imagination, and has a very sweet heart. Report of Proceedings, July 26, 2013, Page 142, Lines 20-25. Ms. Barnes testified that Mr. Patecek treated her employees disrespectfully and belligerently. Report of Proceedings, July 26, 2013, Page 144, Lines 24 & 25.

Linda Barnes further testified that “Doriahn is successful when he comes to us and he has done well in school and has a lot to do with we are the same”. She felt that Doriahn was in a good place in Darcia Davis’ residence. Report of Proceedings, July 26, 2013, Page 147, Lines 9-16.

Linda Barnes also testified that Doriahn had some of his best friends at the day care. Report of Proceedings, July 26, 2013, Page 151, Lines 4 & 5.

Mr. Patecek testified that at the time of the hearing, his work schedule was from 1:30 in the afternoon to just after 10:00 in the evening and that sometimes he got mandatory overtime which would entail him staying at work until 6:30 in the morning. Report of Proceedings, July 26, 2013, Page 117, Lines 14-20.

During the summer when he had the two week on, two week off periods, he was able to spend his days off with his son. Report of Proceedings, July 26, 2013, Page 117, Lines 24-25, Page 118, Lines 1 & 2.

Mr. Patecek verbally abused Ms. Davis' boyfriend, Jake, when Jake told him that his son was not present when he called. He told Jake "eff you". Report of Proceedings, July 26, 2013, Page 135, Lines 13-20.

At the conclusion of the day's testimony, the Court left Doriahn with his mother during the school year. Report of Proceedings, July 26, 2013, Page 160, Lines 2-4. The Court concluded that "The success of a case, in my opinion as a judge, is when both people leave a courtroom unhappy, because that way you never favored anybody. So, you are unhappy, and you are unhappy, I succeeded in coming to the proper resolution". Report of Proceedings, July 26, 2013, Page 160, Lines 14-18.

The Guardian ad Litem requested that the parties submit to psychological evaluations. Report of Proceedings, April 18, 2014, Page 30, Lines 823-25, Page 31, Line 1.

Darcia Davis told him that she could not afford a psychological evaluation. Report of Proceedings, April 18, 2014, Page 31, Lines 2-4.

The Guardian ad Litem, David Rothschild, was recalled to testify on April 18, 2014. He was asked if he had any serious concerns about Darcia Davis' psychological state. He stated "No". He was asked if he witnessed any behaviors on her part that would lead him to have concerns about her ability to parent the child. He also state "No". Report or Proceedings, April 18, 2014, Page 31, Lines 10-16.

On August 2, 2013, Darcia Davis filed a Notice of Intended Relocation requesting to be allowed to move to Bellingham, Washington. Her reasons requesting the change were that the home that she was renting was going up for sale. She was recently informed that she was going to be

laid off from her job at the end of October, 2013. The employment situation in Grays Harbor County is exceedingly difficult. Her Fiancée, Jake Ewell, owns a construction business and had the ability to work in Bellingham on different constructions projects. Clerk's Papers 96-99. Mr. Patecek objected to the relocation. Clerk's Papers 100-106. George Patecek then filed a new Proposed Parenting Plan seeking that he be made the primary parent. Clerk's Papers 107-115. The Petitioner then filed an Amended Notice of Intended Relocation. Clerk's Papers 116-119. The Petitioner also filed an Amended Proposed Parenting Plan. Clerk's Papers 120-130. The Court concluded that there is a likelihood that on a final hearing, the Court will approve the intended relocation of the child. Clerk's Papers 142-143.

The Petitioner filed a Motion/Declaration for a Temporary order Permitting Relocation of Child. Clerk's Papers 131-132. The Court heard the motion for temporary relocation on October 7, 2013 and granted said motion. The Court ordered that the current visitation scheduled should remain valid. Clerk's Papers 142-143.

The Guardian ad Litem did a supplemental investigation into the reasons cited for the necessity of moving to Bellingham. The Guardian ad Litem concluded that Darcia Davis' reasons for moving were legitimate reasons for relocation. He further concluded that the move should have little impact upon Mr. Patecek's ability to exercise residential time with the child. Clerk's Papers 144-145.

Mr. Rothschild testified concerning the relocation factors, when he testified that "Looking at the factors and the law, that I would not change

my recommendation that Miss Davis be the primary residential parent”. Report of Proceedings, April 18, 2014, Page 31, Lines 23-25.

When asked if the move from Westport to Bellingham, Whatcom County area, had been detrimental to Doriahn, he testified “Not that I’m aware of”. Report of Proceedings, April 18, 2014, Page 32, Lines 13-16.

The Guardian ad Litem contacted Darcia Davis’ counselor who testified that it was her opinion at the time that the major issue of depression that she had been working on was resolved and that was not something she was concerned about. Report of Proceedings, April 18, 2014, Page 36, Lines 12-16.

The Guardian ad Litem, David Rothschild, testified that he believed the psychologicals would have cost \$2,000.00 apiece. Report of Proceedings, April 18, 2014, Page 40, Lines 1-6.

George Patecek testified that he lived in Sequim for three years and at that time he was a seasonal park ranger and he also worked in the North Cascades and they had residences in other places where he worked but maintained Sequim as a base. Report of Proceedings, April 18, 2014, Page 44, Lines 19-25, Page 45, Lines 1-5.

Mr. Patecek testified that he does not have any family in the Clallam Bay area where he resides. Report of Proceedings, April 18, 2014, Page 53, Lines 15-17. Mr. Patecek was aware of the fact that his son was attending the Y in Bellingham and taking break dance lessons, taekwondo, and swimming in Bellingham. Report of Proceedings, April 18, 2014, Page 55, Lines 1-9. Mr. Patecek testified that his son was doing great in school in Bellingham and that his reading level was above

average, that he is a compassionate and nice child. He treats people with respect. Report of Proceedings, April 18, 2014, Page 56, Lines 10-13.

Mr. Patecek testified that he had not visited the school in Bellingham.

Report of Proceedings, April 18, 2014, Page 58, Lines 17-19.

Mr. Patecek testified that his days off from work are Wednesdays and Thursdays. Report of Proceedings, April 18, 2014, Page 65, Lines 8-11.

Jeannie Paul testified that she was the mental health program manager at Shoalwater Bay Indian Tribe Behavioral Health. Report of Proceedings, April 18, 2014, Page 67, Lines 1-5. Jeannie Paul testified that she counseled Darcia Davis and she put down depressive disorder NS, which is nonspecific and she testified that as they progressed in therapy she felt that she might have been going through a little PTSD which is posttraumatic stress from some issues that she had with her ex-husband. Report of Proceedings, April 18, 2014, Page 69, Lines 6-11. She testified that these are normal things that you find when you deal with families in distress. Report of Proceedings, April 18, 2014, Page 69, Lines 12-16. She concluded that she felt like Darcia had made good progress so she liked to touch base as needed which is really healthy progression of therapy. Report of Proceedings, April 18, 2014, Page 69, Lines 20-25. She also had the opportunity to meet with Doriahn, Darcia Davis' son. She engaged in play therapy on four separate occasions. She found him to be energetic and very bright, curious and happy. Report of Proceedings April 18, 2014, Page 70, Lines 1-12. She concluded that Doriahn was a well-adjusted little boy who seem to have a good relation with his mother. Report of Proceedings, April 18, 2014, Page 71, Lines 2-6. She testified

that Darcia Davis had come to terms with her depressive disorder and was dealing with it appropriately. Report of Proceedings, April 18, 2014, Page 73, Lines 1-7. She concluded in terms of Darcia and Doriahn, the bond is clear, its present, and it looks like a healthy mother and son bond. Report of Proceedings, April 18, 2014, Page 73, Lines 11-14.

Darcia Davis testified that after they moved to Bellingham, Doriahn continued to do well in school. Report of Proceedings, April 18, 2014, Page 81, Lines 13-20. Darcia Davis testified that she has volunteered in his classroom and on field trips. Report of Proceedings, April 18, 2014, Lines 2-7. Darcia Davis testified that they have a nice home in Bellingham. Report of Proceedings, April 18, 2014, Page 85, Lines 8-10. Darcia Davis testified that she was unable to afford a psychological evaluation because she did not have the money to pay the psychologist. Report of Proceedings, April 18, 2014, Page 90, Lines 2-20.

Brandi Holmes testified that Darcia Davis was involved in all aspects of Doriahn's undertakings and that she was never lax in discipline or supervision of her son. Report of Proceedings, April 18, 2014, Page 109, Lines 18-24. Brandi Holmes testified that she acted as a go-between her visits and that 75% of the time, Mr. Patecek did not show up for the visit. Report of Proceedings, April 18, 2014, Page 115, Lines 21-25, Page 116, Lines 1-2. She further testified that Doriahn would sometimes react negatively when he did not show up and he was very upset. Report of Proceedings, April 18, 2014, Page 116, Lines 6-9.

George Patecek testified that if the Court were to require visitations on the weekends after the mother moved to Bellingham, that

that would not be a problem. Report of Proceedings, April 18, 2014, Page 124, Lines 19-25, Page 125, Lines 1-5.

George Patecek testified that “It was definitely tough paying for the psychological review, “definitely true hardships”. Report of Proceedings, April 18, 2014, Page 128, Lines 10-12.

George Patecek identified identification number 26 the daycare expense spreadsheet that he prepared. Report of Proceedings, April 18, 2014, Page 139, Lines 2-8.

Darcia Davis testified that since she moved to Bellingham that she was paying \$300.00 per month for day care. Report of Proceedings, April 18, 2014, Page 175, Lines 4-7. She testified that she moved there in November, 2013. Report of Proceedings, April 18, 2014, Page 175, Lines 12-17.

Prior to entry of the final papers, the mother obtained a forensic psychological report. Clerk’s Papers 157. The trial court felt the psychological report was sufficient to convince the court to allow her to affectively have joint custody of her son. The court entered a final parenting plan effectively giving one parent the school year and the other the summer and break times in one year and then alternating the schedule the next year. No restrictions regarding parental conduct or other factors were set forth by the court. Clerk’s Papers 158-166.

An Order Re Modification/Adjustment of Custody and Findings/Conclusions on Petition for Modification of Child Support were entered. Clerk’s Papers 180-183 and 177-179. The court concluded that there was an overpayment of daycare in the amount of \$10,966.53. Clerk’s

Papers 167-176. The court entered a judgment against Darcia Davis in the amount of \$10,966.53, which judgment reflected that no back support was owing at the time effectively eliminating any arrearages.

Mr. Patecek testified that he still had a support arrearage at the time of the hearing of \$5,485.00. Report of Proceedings, July 26, 2013, Page 138, Lines 18-19. Mr. Patecek further testified that he was asking the court to provide credit to him for daycare expenses that he had been paying but were not actually incurred by Ms. Davis. Report of Proceedings, July 26, 2013, Page 139, Lines 10-13.

IV. ARGUMENT

A. Argument Re Assignments of Error No. 1 and No. 2

In the present case, Darcia Davis filed a Notice of Intended Relocation to Bellingham, Washington. Relocations are governed by statute. RCW 26.09.520 reads as follows:

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

(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) The financial impact and logistics of the relocation or its prevention; and
- (11) For a temporary order, the amount of time before a final decision can be made at trial.

The trial court must consider these factors in each decision involving a relocation case.

The court *In Re the Marriage of Kim* (2014) 179 Wash.App. 232, 317 P.3d 555 stated at page 240:

The trial court must consider the 11 factors listed in the relocation statute on the record to determine whether the detrimental effect of the proposed relocation outweighs its benefits. *Id.* at 894-95, 93 P.3d 124. The act creates a rebuttable presumption that the relocation will be allowed, which may be rebutted when the objecting party proves that “the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the [11 child relocation] factors.” RCW 26.09.520.

The court also stated *In Re Kim, supra.* at page 240:

A court abuses its discretion where the court applies an incorrect standard, the record does not support the court’s findings, or the facts do not meet the requirements of the correct standard. *Horner*, 151 Wash.2d at 894, 93 P.3d 124 (quoting *In Re Marriage of Littlefield*, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997)).

The court *In Re Kim*, made it clear at page 243, *supra.*, that the Washington State Supreme Court has emphasized the importance of the interests of the relocating person, noting that most of the 11 factors refer to the interests and/or circumstances of the relocating parent and that “the [relocation act] both incorporates and gives substantial weight to the traditional presumption that a fit parent will act in the best interest of . . . the child and the relocating person.” *Horner*, 151 Wash.2d at 895, 93 P.3d 124 (quoting *In re Custody of Osborne*, 119 Wash.App. 133, 144-45, 79 P.3d 465 (2003)). The *Horner* court emphasized that the interests and circumstances of the relocating parent are “[p]articularly important” and that,

“[c]ontrary to the trial court’s repeated references to the best interests of the child, the standard for relocation decisions is not only the best interests of the child.” *Id.* at 894, 93 P.3d 124.

In dealing with the relocation statute, Washington Court of Appeals in *Bay v. Jensen*, 147 Wash.App. 641, 196, P.3d 753 dealt with the procedure that the trial court is to use in implementing the relocation factors. In this regard, the court in *Bay v. Jensen*, 147 Wash.App. 641 stated at page 655 as follows:

When considering whether a trial court abused its discretion by allowing relocation, we first look to see if the trial court entered specific findings on each factor. *Horner*, 151 Wash.2d at 896, 93 P.3d 124. If the trial court did not enter the specific findings, we look to see if substantial evidence was presented on each factor and whether the “trial court’s findings of fact and oral articulations reflect that it considered each factor.” *Id.* A trial court abuses its discretion if it does not satisfy either of these methods of documenting its consideration of the child relocation factors, *Id.*

The court went on in *Bay v. Jensen*, to note that the trial court failed to satisfy either of the methods of documenting its consideration of the statutory child relocation factors. There no written findings of fact nor did the trial court address the statutory factors in its oral ruling on relocation.

In the present case, no findings of fact were entered concerning the 11 statutory factors required in the relocation statute. Further, the oral

decision of the court did not reflect that the court considered each of the factors. Further, it is unclear from the court's decision whether the court considered the presumption in favor of relocation in this case or not.

In the present case, the court mentioned the standard utilized by the court when the court stated on October 7, 2013 that this court is going to rule what is in the best interest of the child. Report of Proceedings, October 7, 2013, Page 11. There is no indication otherwise that the relocation factors were ever examined by the court nor any indication that the court recognized the presumption that exists in favor of relocation.

In the present case, it is unclear whether the court granted the Motion to Relocate or not. The court's ruling taking the child and placing him with the father during the alternate school years and during alternate holidays, make is ambiguous on whether the court actually approved the move to Bellingham, WA or not. Effectively, the court made a major modification of the Parenting Plan without stating its reasons and without stating whether there was any statutory basis for a major modification of the Parenting Plan. RCW 26.09.520 (8) allows the court to consider the availability of alternate arrangements to foster and continue the child's relationship with and access to the other parent. This statute does not however permit a major modification without meeting the statutory

requirements of RCW 26.09.260 if a relocation is determined to be appropriate.

B. Argument Re Assignment of Error No. 3

In the present case, the Order for Child Support entered by the court granted a judgment in favor of George Patecek against Darcia Davis in the amount of \$10,966.53. The order reflects that the amount of the daycare overpayment was calculated from April of 2010 through July of 2014. The amount of the daycare payable by Mr. Patecek during this time was \$269.50 per month. Clerk's Papers 33-48. During the timeframe set forth in the child support order, 52 months expired meaning that the child support order required Mr. Patecek to pay \$14,014.00 as his share of the daycare expenses. The judgment of \$10,966.53 was arrived at by a determination that Mr. Patecek was responsible for \$3,047.47 of the daycare that had actually been incurred. This left a balance of \$10,966.53. If all of the child support had been paid by Mr. Patecek, then he would have been entitled to the \$10,966.53 overpayment. This however was not the case. At that time, Mr. Patecek testified that he was delinquent in his child support in the amount of \$5,485.00. Report of Proceedings, July 26, 2013, Page 138, Lines 18 & 19. At the same time that the court determined that the \$10,966.53 arrearage was owing, the court in Paragraph 3.20 of the child support order indicated that no back child

support was owed. This effectively eliminated the back support owing. The principle amount of the judgment of \$10,966.53 should be reduced by the back support that was owing at the time of entry of the order in the amount of \$5,485.00.00. This would effectively reduce the judgment from \$10,966.53 to \$5,481.53. The trial court also failed to make Mr. Patecek responsible for his 49% of the daycare incurred from November, 2013 through April, 2014. His percentage would be \$882.00. The trial court committed error when it effectively eliminated the back child support and did not take it into consideration in determining the correct amount of the judgment owing, and when the court failed to reduce the arrearage by \$882.00 for the daycare incurred in Bellingham from November, 2013 through April, 2014.

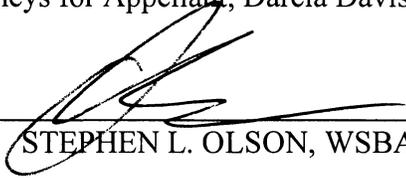
V. CONCLUSION

Darcia Davis is requesting the court to enter an order vacating the Order Re Modification of Adjustment of Custody/Decree of Parenting Plan and vacating the Final Parenting Plan that was entered by the court. Further, she is requesting that the judgment entered in the trial court's Order for Child Support be reduced from \$10,966.53 to \$4,599.53.

RESPECTFULLY SUBMITTED this 17 day of April, 2015

OLSON & ZABRISKIE, INC.
Attorneys for Appellant, Darcia Davis

By:



STEPHEN L. OLSON, WSBA #7489

FILED
COURT OF APPEALS
DIVISION II

2015 APR 20 PM 1:28

STATE OF WASHINGTON
BY _____
DEPUTY

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

DARCIA DAVIS,		
	Appellant,	COA NO. 465981
vs.		DECLARATION OF MAILING
GEORGE PATECEK,		
	Respondent.	

Julie Burke, under penalty of perjury under the laws of the State of Washington,
declares:

I am regularly employed by the law firm of Olson & Zabriskie, Inc. On April 17,
2015, I deposited a true and correct copy of the Motion to Substitute Amended Brief of
Appellant for Original with attached Amended Brief of Appellant, to the Court of Appeals,
Division II, and the attorney for Respondent, by placing the same in the United States Postal
Service, property postage prepaid, on the 17th day of April, 2015, addressed as follows:

David Ponzoha, Clerk of Court Court of Appeals, Division II 950 Broadway Suite 300 Tacoma WA 98402-4454	Benjamin Winkelman Attorney at Law P.O. Box 700 Hoquiam, WA 98550
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DATED April 17, 2015.



Julie Burke
104 West Marcy Avenue
Montesano, WA 98563
Phone: 360-249-6174

Copy to:

Attorney for Respondent

Benjamin Winkelman
Attorney at Law
P.O. Box 700
Hoquiam, WA 98550