

No. 49839-1

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

In re the Marriage of

JOHN MASON,

Appellant,

and

TATYANA MASON,

Respondent.

AMENDED BRIEF OF APPELLANT

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INTRODUCTION

This Court previously decided *Marriage of Mason*, No. 45835-7-II (July 7, 2015) (Appendix A). The Court affirmed the trial court's order modifying the parties' parenting plan, holding that substantial evidence supported the trial court's rulings giving sole custody to John Mason due to Tatyana Mason's abuse of the children. It also affirmed the trial court's denial of reconsideration.

After remand, Tatyana began a nightmare onslaught of vexatious *pro se* litigation. Although she had agreed to the Order of Child support entered in 2013, and she did not appeal from it, she now brought a series of repetitive motions seeking its vacation. Her first motion was denied and became final, but she filed many more. On her third try, even though a judge denied reconsideration of the denial of her motion to revise the denial of her motion, he set the same motion on for trial under CR 60(b)(11).

The sole issue for trial was whether the trial judge who entered the 2013 Child Support Order "should have" considered an I-864 affidavit signed in 1999, even though Tatyana's lawyer failed to proffer that single piece of evidence at trial. The trial court erred in holding that this justified vacating the 2013 order, and made numerous other prejudicial errors. This Court should reverse.

ASSIGNMENTS OF ERROR

1. The trial court erred as a matter of law in repeatedly considering a motion that had been denied (three times) – final rulings never appealed.
2. The trial court erred as a matter of law in using CR 60(b)(11) to set aside the 2013 Child Support Order. CP 124-25 (Findings & Conclusions attached as Appendix C).
3. The trial court erred in entering findings E & H. CP 123-24.
4. The trial court erred in entering its orders dated November 23, 2016 (CP 122-25); December 9, 2016 (CP 208); December 13, 2016 (CP 1367-68); and December 15, 2016 (CP 225-26).
5. The trial court erred in denying reconsideration, and in reaching issues far beyond the pleadings and the proof. CP 124, 208.
6. The trial court erred in granting “Attorney Fees and Costs,” and in “sanctioning” John under CR 11. CP 1367-68.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the trial court err as a matter of law in again considering a motion that already had been denied three times in final rulings that were not appealed?
2. Did the trial court err as a matter of law in concluding that CR 60(b)(11) “is an appropriate method to raise the issue of the failure

of the [first] trial court setting child support to consider the [I-864] affidavit and that the 2013 Child Support Order “should be vacated because the [2013] Court was not informed of the existence of the [1999] I-864 affidavit at the time of the entry of the [2013] order,” where the court made no finding of “extraordinary circumstances” under CR 60(b)(11) and these are legal errors?

3. Did the trial court err in finding that Tatyana is not able to work due to her current immigration status and that her child support arrears would likely prevent her from removing her conditions to permanent resident status, where even her lawyer/“expert” testified to the contrary?

4. Did the trial court err in denying reconsideration, and in entering unsupported findings that went far beyond the sole issue set for hearing and tried?

5. Did the trial court err in granting “Attorney Fees and Costs” for Tatyana’s so-called expert-witness fees, and in “sanctioning” John under CR 11, without the necessary findings or a tenable legal basis?

6. Is John entitled to an award of attorney fees and costs on appeal due to Tatyana’s intransigence?

STATEMENT OF THE CASE

A. This Court's July 2015 Opinion provides necessary factual background for this appeal.

Two years ago, this Court set forth the factual background for this appeal in *Marriage of Mason*, Washington State Court of Appeals No. 45835-7-II (July 7, 2015) ("July 2015 Opinion") (copy attached as Appendix A). It is set forth here verbatim, with headings added to assist the Court.

1. The parties married in 1999, had two children, and John filed for dissolution in 2007.

John and Tatyana married in 1999. They had two children, G.M. and D.M. John filed for divorce in 2007, and the parties engaged in mediation, agreeing upon final orders including a parenting plan. The orders specified that John and Tatyana would share custody of their children. Contemporaneously with John's 2007 dissolution filing, Tatyana filed a petition for a domestic violence protection order. A court commissioner granted the petition.

July 2015 Opinion at 2.

2. Concerning allegations arose in 2011, including Tatyana's abusing the children, who expressed fear of Tatyana.

After the dissolution [in 2008], G.M. and D.M. participated in counseling with social worker Stephen Wilson. During this time, John became concerned about Wilson's treatment of G.M. following an incident in which G.M. hit his younger brother. When the parties could not agree on a new counselor, John filed a motion to the trial court to appoint one. The court appointed Sandra Hurd to assume responsibility for the Mason family's counseling needs. The court also ordered both

John and Tatyana to undergo counseling with Hurd, which they each did initially.

In February 2011, G.M. made disclosures to John alleging physical and emotional abuse by Tatyana. D.M. corroborated G.M.'s allegations. John responded by taking the children to Hurd and by contacting Child Protective Services (CPS). The Mason children again made disclosures of abuse. G.M. and D.M. also expressed fear about returning to their mother's care.

July 2015 Opinion at 2.

3. John sought a modification, a GAL found that Tatyana has a "tendency for violence," and she failed to cooperate with an evaluation of that tendency, which was suspended.

John then filed a petition to modify the parenting plan, obtaining an emergency order granting custody of G.M. and D.M. in his favor in the meantime. The order limited Tatyana's time with the children to professionally supervised visits. The trial court also appointed Ralph Smith to serve as guardian ad litem (GAL).

Smith conducted an investigation into the children's allegations and generated a report of his findings. Smith concluded that Tatyana used fear and physical force against G.M. and that her actions rose to the level of abuse. Smith recommended that the children remain with John and that Tatyana maintain her supervised visitation. Smith also recommended that Tatyana undergo a parenting evaluation regarding her "tendency for violence." Ex. 12 at 9.

Tatyana initially complied with the supervised visit requirement, but later ceased attending the visits for extended periods of time. Following a number of reported incidents during the visitations, Hurd composed a recommendation letter in which she determined that the visits were stressful for G.M. and D.M. Smith then filed a motion urging the court to suspend Tatyana's visitation rights until she obtained the recommended parenting evaluation.

Rather than suspending Tatyana's visitation rights entirely, the trial court ordered that Tatyana's visits be therapeutic in nature, but Tatyana never arranged or coordinated such visits. Tatyana claimed she could not afford to pay for the therapeutic visits or other supervised visitation time because she had lost her home and she had no income.²

² Tatyana was generally uncooperative when asked about her finances or her living arrangement at the time of the hearing. She admitted that she was living with a person with whom she was in a relationship, but refused to tell the court where she was living.

Tatyana also failed to obtain the recommended parenting evaluation, instead filing a motion asking the trial court to order an evaluation for both parents. Tatyana and John agreed that Dr. Loren McCollom would conduct the evaluation, but Tatyana did not inform John when she began the evaluation process. In light of Tatyana's domestic violence allegations and when he became aware of the court's order to evaluate both parents, Dr. McCollom suspended the evaluation process.

July 2015 Opinion at 2-4.

B. The July 2015 Opinion also provides necessary procedural background, including .191 restrictions against Tatyana.

The Court's July 2015 Opinion also sets forth relevant procedure, which is again set forth verbatim, with added headings.

1. The modification trial included a CPS report finding that the children's allegations regarding Tatyana's abuse are "founded."

The parties proceeded to trial on the modification petition absent Dr. McCollom's report. There, John urged the court to adopt a modified parenting plan according to which he would have sole custody of the children with therapeutic visitation sessions for Tatyana. The basis of John's proposed

modification was Tatyana's physical and emotional abuse of G.M. and D.M.

Tatyana opposed the modification at least insofar as the trial court would grant John's request without first obtaining Dr. McCollom's evaluation report. The trial court heard testimony from John, Tatyana, Hurd, Dr. McCollom, and Smith, among others. The trial court found credible the testimony regarding Tatyana's abuse of the children. Notwithstanding that determination, however, the trial court granted Tatyana's request to continue the hearing so that the parties could complete the parenting evaluation with Dr. McCollom. The trial court ordered John and Tatyana to share the cost of the evaluation.

Dr. McCollom conducted the parenting evaluation. John complied with the court's order and paid his portion of the evaluation cost, but because Tatyana did not do so, Dr. McCollom would not release the report, so the trial court again continued the hearing on two additional occasions. By October 2013, Tatyana still had not remitted payment, but the trial court refused to continue the matter further.

The trial court heard additional testimony and considered new evidence, including a **CPS report finding that the allegations of abuse by Tatyana were "founded."** The court made an oral ruling during which it noted that there had been a previous finding of domestic violence against John, but concluded that there was no evidence to support an additional finding to that effect and, in the court's view, there were no concerns about future domestic violence from John.

July 2015 Opinion at 4-5 (emphasis added).

2. The trial court modified the parenting plan, including RCW 26.09.191 restrictions against Tatyana, who appealed.

The trial court entered findings of abuse by Tatyana pursuant to RCW 26.09.191 and granted John's request to modify the parenting plan under RCW 26.09.260. The court expressed concern that Tatyana had not exercised all of

her visitation rights pursuant to the former court orders and that at one time, **she let nearly one year pass without contacting the children.**

As part of its order, the court also remarked that the goal of the modified final orders was to establish a system whereby Tatyana and the children can develop a healthy relationship through the development and implementation of a reunification plan with a new counselor. The court assigned a case coordinator to make sure that the reunification plan progressed satisfactorily. The trial court also entered a restraining order, enjoining Tatyana from contacting G.M. and D.M. at their school or day care.

Following the entry of the modified parenting plan, Tatyana entered into a payment agreement with Dr. McCollom so that she could obtain the parenting evaluation report. Tatyana then filed a motion for reconsideration. The trial court declined to reconsider its earlier ruling. Tatyana appeals the trial court's order modifying the parenting plan and its order denying Tatyana's motion for reconsideration.

July 2015 Opinion at 4-5 (emphases added).

3. But Tatyana did not appeal from the November 2013 Child Support Order to which she agreed.

Concomitant to the proceedings described *supra*, the trial court entered a Child Support Order on November 25, 2013. CP 9-18. Tatyana's income was imputed at \$2,080 per month because she was voluntarily unemployed. CP 10. Her transfer payment was set at \$412.04 per month. CP 12. Tatyana did not request a deviation. *Id.* at ¶ 3.8. Indeed, she agreed to this order. CP 405, 444-45. Thus, she did not appeal from this order (which will be the subject of many motions underlying this appeal).

C. The July 2015 Opinion affirmed the trial court’s (a) findings based on substantial evidence, (b) order restraining Tatyana, and (c) order denying reconsideration.

1. This Court found substantial evidence of Tatyana abusing the children.

This Court held that “the trial court heard ample testimony, which it found credible, from various professionals who determined that Tatyana abused G.M. and D.M.,” so it affirmed the trial court’s decision modifying the parenting plan. July 2015 Opinion at 6-8. This was supported by the “founded” abuse finding from CPS; the therapist’s confirmation regarding G.M.’s disclosure of Tatyana’s abuse, including bruising on G.M.; the GAL’s confirmation that Tatyana “instilled a fear of harm in the children”; and the GAL’s recommendation that the children continue to live with John, having “no concerns about the children living with John.” *Id.* at 8.

2. This Court affirmed the restraining order.

The trial court found that modification – including restraining Tatyana – was in the children’s best interest, where the existing plan was detrimental to their physical, mental, or emotional health. *Id.* at 7. This too was supported by the substantial evidence discussed above. *Id.* at 7-8. This Court affirmed. *Id.* at 8.

3. This Court also affirmed the trial court's order denying reconsideration.

Tatyana obstructed her own evaluation, and she failed to pay for it until after the trial court had ruled against her. *Id.* at 8-10. Her failure was no-doubt tactical, as the report largely confirmed the conditions in the trial court's modification orders. *Id.* at 10 n.3. This Court affirmed the order denying reconsideration based on allegedly "new evidence." *Id.* at 8. And Tatyana had no argument that the report would have changed the outcome. *Id.* at 10.

D. Following the appeal, the trial court thrice refused to excuse or modify Tatyana's unpaid back child support, or to vacate the 2013 Order of Child Support to which she had agreed in 2013 and never appealed.

On or about September 1, 2015, Tatyana filed a Motion to Dismiss Full Amount of Child Support, requesting vacation of her entire child support obligation since 2013. CP 333-39.¹ On September 10, 2015, a Commissioner entered Findings & Conclusions and an Order denying her motion as lacking any legal basis (CP 1594-95, emphasis added):

3. . . . the Motion of Ms. Mason is without merit . . .

¹ The Court should be aware that the trial court record in this case spans at least seven large three-ring binders. Counsel has been sparing, whenever possible, not designating many, many repetitious filings. To give the Court the flavor, however, the docket is attached as Appendix B.

4. Ms. Mason's Motion to Dismiss is essentially a request to vacate the Order of Child Support issued November 25, 2013. Ms. Mason does not state a legal basis to set aside an Order that is now almost 22 months old. Her time for appeal of the Order is passed. Her time for reconsideration has passed. She cites no basis under **Civil Rule 59 or 60** for her motion. Additionally, her request would constitute an improper retroactive modification of child support.
5. If Ms. Mason's request is a prospective Motion for Modification of Child Support, she has failed to use the correct mandatory form and she has not supplied the documentation required by the statute in support of such a Motion.

Judge Christine Schaller denied revision of this Order on October 9, 2015. CP 25-26. Tatyana did not appeal. This order is final.

But the same day (October 9), Tatyana filed the same motion again. CP 349-66. On October 13, 2015, the Commissioner modified Tatyana's income to \$0, and imposed the statutory minimum prospective child support of \$50. CP 27-33. The same day (October 13), the Commissioner entered a new Child Support Order reflecting this modification. CP 34-43. For the second time, he denied Tatyana's motion to vacate her back child-support. CP 44, 49. Tatyana did not appeal this order. Again, this order is final.

On October 21, 2015, Tatyana again filed a petition to modify, including another request to vacate her back child-support. CP 986-1001. On November 6, 2015, John provided the Commissioner with

a portion of the 2013 trial transcript in which Tatyana – through her trial lawyer – conceded the entry of the 2013 Order of Child Support. CP 1596-1604. On November 10, 2015, the Commissioner awarded John \$1,987.50 in attorney fees, but refused to bar Tatyana from filing further pleadings, noting that if Tatyana “continues to fail to follow CR 11 the court will reconsider this request.” CP 367-68. He also entered a third order denying Tatyana’s petition to modify parenting plan, motion for temporary orders, and motion to vacate the child-support arrears/2013 Order of Child Support. CP 369-70. On December 15, 2015, he again denied reconsideration. CP 371.

On December 22, 2015, Tatyana sought to revise this third denial of reconsideration. CP 1605-09. John objected that her underlying motion previously had been denied – twice – and that it lacked any legal basis. CP 1610-17. Nonetheless, on January 15, 2016, Judge Christine Schaller granted revision and remanded the motion for reconsideration to the Commissioner because he had refused to reconsider on incorrect timeliness grounds. CP 397-98. The Judge interlineated, however, that “there is no legal basis for the court to do anything with the child support arrears.” CP 398.

On February 1, 2016, the Commissioner again denied reconsideration. CP 1004. Tatyana again sought revision the next

day. CP 1005-10. After many more filings and continuances, the trial court again denied revision on March 4, 2016. CP 1013-16.

E. Tatyana sought reconsideration of the order denying revision of the order denying reconsideration of the third order denying her motion to vacate the 2013 Child Support Order that was entered with her consent and not appealed in 2013.

Yet again Tatyana sought reconsideration, this time of the order denying revision of the order denying reconsideration of the third order denying her motion to vacate the 2013 Child Support Order that was entered with her consent and not appealed in 2013. CP 1618-19. After many more pleadings and continuances (Tatyana often did not appear, see CP 401) the trial court continued the hearing on her reconsideration motion to April 29, 2016. CP 1011.

On that date, the court continued the reconsideration hearing to July 8, 2016. CP 1012. During this April 29 hearing, Tatyana argued that John had allegedly signed an immigration document in 1999 (called an I-864, discussed *infra*) which Tatyana had not produced in the 2013 trial, but which “should have been” obtained and offered during that trial. CP 1074. John denied having any recollection of signing this form. CP 1075. The trial court continued the reconsideration hearing to allow Tatyana to produce the actual form, if she could. CP 1012. John subsequently laid out the many

legal reasons the trial court could not and should not reconsider its order denying revision of Tatyana's third motion to vacate the 2013 Child Support Order. CP 1063-73.

F. The trial court denied Tatyana's motion to reconsider the order denying revision of the order denying reconsideration of the third order denying her motion to vacate the 2013 Child Support Order that was entered with her consent and not appealed in 2013, and yet set it for trial as a CR 60(b)(11) motion.

On July 8, 2016, the trial court denied Tatyana's motion to reconsider the order denying revision of the order denying reconsideration of the third order denying her motion to vacate the 2013 Child Support Order entered with her consent and not appealed. CP 1141, 1149.

At the same time, however, the trial court set the same motion it was denying on for trial under CR 60(b)(11). *Id.* It entered no order on these decisions. *Id.* On July 26, 2016, Tatyana filed yet another series of pleadings seeking to vacate the 2013 Child Support Order, or to modify the parenting plan. CP 1017-62. Many more motions, responses, continuances, etc. ensued (copy of Thurston County Case Summary attached as Appendix B).

On August 10, 2016, the trial court entered a letter ruling reflecting its decision to deny Tatyana's final motion for

reconsideration of the trial court's denial of revision of the Commissioner's ruling denying reconsideration of its third order denying her motion to vacate the 2013 Child Support Order. CP 1149. Tatyana again failed to appeal from this final ruling. The same letter says that the court has "on its own motion elected to treat [her] motion as a motion to vacate under Civil Rule 60." *Id.* It also noted that issues of credibility required a trial. *Id.*

On August 23, 2016, John sought sanctions for all of Tatyana's frivolous and harassing filings. CP 1150-87. He also responded to her motions. CP 1188-1235. The trial court denied her motion to modify, finding no adequate cause, and awarded John \$1,500 in sanctions. CP 1237-38.

On September 29, 2016, the trial court entered a Pretrial Order, setting a two-day trial on "child support" (really the back child-support under the 2013 Child Support Order) and noting (*inter alia*) some possible discovery disputes that required a discovery conference. CP 1239-40.

G. The trial commenced on October 17, went two days, and then continued to November 2.

The trial commenced on October 17, 2016, for two days. CP 1142. It continued on November 2, 2016, for one day. CP 1295. Over

the course of the trial, the court admitted 26 of Tatyana's 39 proffered Exhibits, and 16 of the 17 John proffered. CP 1241-46.

1. Tatyana put her interpreter on "stand-by."

At the outset of the trial, Tatyana placed the court-provided interpreter on "stand-by" in case she needed help understanding "legal language". RP 5-6. The trial court instructed her to ask if she needed time with the interpreter, to which she agreed. RP 6.

2. Tatyana agreed to trial by affidavit, but when she realized her so-called "expert" might be excluded, she reneged and demanded a trial.

During preliminary matters, the Judge asked the parties whether the CR 60(b) motion could be heard on affidavits. RP 6-7. Tatyana immediately agreed that it could. RP 7. John replied that most of Tatyana's materials filed four months earlier were based on hearsay, to which John objected, so the court had ordered a trial. *Id.* But John also again agreed to a trial by affidavit. RP 7-8.

But Tatyana then changed her story. RP 9-11. John had objected to her so-called "expert" (discussed *infra*) so Tatyana tactically insisted on a trial. RP 8-11. John left it to the trial court's discretion, and the court decided to hear testimony. RP 8.

3. Tatyana introduced her so-called “witness” as her attorney, but he denied that he was there to represent her, and was treated as a witness.

The court then noted that Tatyana had said (the prior Friday) that she would bring her trial attorney with her, but he was not in the courtroom. RP 11-12. Tatyana then brought in her attorney, Jay Gairson. RP 12. The court asked attorney Gairson if he would be representing Tatyana, and he said no. *Id.* He would instead be a “witness.” *Id.* As a witness, he was then excluded from the courtroom until it was time for him to “testify.” *Id.*

4. Tatyana called the person whom she had introduced as her lawyer as her “expert.”

Tatyana first called her attorney as an “expert.” RP 20-21. John objected that Gairson was Tatyana’s immigration attorney, so he should not be allowed to testify, and if he does testify, she will be waiving the attorney-client privilege. *Id.* Gairson immediately *acted as her attorney*, arguing the objection while on the stand! RP 21. John conducted a *voir dire*, objecting that Gairson is simply a retained attorney, not an expert. RP 25-32. During John’s objection, Gairson continued to argue the motion while under oath. RP 32-33. The trial judge noted, “I have very little knowledge in this area, to be honest with you.” RP 34. Thus, the court said the lawyer’s knowledge would be helpful and is admissible under ER 702. *Id.*

Gairson speculated about what might have happened way back in 1999. RP 50-53. Then he speculated about what might happen to *other* immigrants, which was plainly irrelevant. RP 53-54.

The Court then interrupted Gairson's speculations with questions. Tatyana received conditional permanent-residence status when she came to this country. RP 54. She had two years to remove the conditions, but she did nothing. RP 54-55. To remove the conditions at that time, she and John would have had to sign and file a form. RP 56. Once the two years passed, it became more difficult to remove the conditions. RP 55. Indeed, it is "exceedingly unusual for an immigrant [like Tatyana] to have not removed conditions for what in this case would be over a decade." *Id.*

Gairson testified that Tatyana's 2014 and 2015 requests for naturalization were denied because she failed to file a form I-751. RP 60. He then opined about what the law is regarding the I-864 form. RP 61-65. Based on his legal analysis, he concluded that John still owes Tatyana support under that form. RP 64-65. He even testified about how the trial judge should interpret this Court's decision in ***Marriage of Khan***, 182 Wn. App. 795, 332 P.3d 1016 (2014). RP 67-68. He also interpreted a federal decision. RP 68.

On cross, Gairson admitted that after the 2008 divorce, Tatyana could – by herself – seek a waiver of the breached conditions and file the I-751 form. RP 82-83, 104. Indeed, after the divorce, John *could not* sign-off on the I-751. RP 104.

As to her “inability” to work, many employers do not check immigration status. RP 83-84. Her driver’s license and social security card are sufficient to obtain employment. RP 84-85.

Gairson further admitted that even without the back child-support, the protection order and RCW 26.09.191 restrictions entered against her in 2013 provide INS with sufficient reason to deny her naturalization. RP 87-88, 95-96, 103-04. And he admitted that regardless of John’s alleged I-864 support obligation, Tatyana still had the obligation to pay the child support. RP 89-90.

The court also extensively questioned Gairson about his charges as an “expert.” RP 107-09. Gairson said he would “love to get paid.” RP 107. He charged his “standard hourly rate” of \$300. *Id.* He did “realize that’s high.” *Id.* It took him “about twice as long as it normally would” because Tatyana was *pro se*. *Id.* His total charge (including trial) was \$12,225. RP 109.

5. Tatyana testified that her goal is to vacate the 2013 Child Support Order and the “protection order” against her so she can gain citizenship.

Tatyana testified that the purpose of this action is to vacate the 2103 Child Support Order and her back child-support, and to vacate the “protection order” (presumably the .191 restrictions) against her so that she can become a U.S. citizen. RP 134. She admitted that she previously appealed the .191 restrictions. *Id.* Because she claims to have no money, she cannot otherwise succeed. RP 134-35. She digressed quite a bit, and the court reminded her that the only issue he was considering is whether the 2013 trial court should have considered the evidence presented for the first time by Gairson. RP 138. After more digressions, the court again stated that the “only thing that I’m to decide is whether or not the judge who enter [*sic*] the child support order should have considered your immigration status.” RP 140.

6. Lisa Seifert rebutted most of Gairson’s testimony, but confirmed that if Tatyana simply files a 751 form – which she alone can do – she will receive permanent status.

Lisa Seifert had practiced immigration law for 26 years at the time of trial. RP 167-69. She disagreed that John still owes Tatyana support under the I-864. RP 171-72. It terminated because she had at least 55 quarters of income (35 during the marriage, and 20 since),

and the work condition is met at 40 quarters. RP 175-76, 220, 225. Thus, any obligation John had ended by 2013. RP 176-77. Seifert also testified that Tatyana can work. RP 178-79.

As to Tatyana's current status, Seifert said it would not be difficult for her to file the required form any time in the last 10 years. RP 179-80. Although Gairson had rarely seen it during his few years in practice, Seifert has successfully helped clients to do so who were 15-or-more-years beyond termination of their conditional status. RP 180. Tatyana's support obligations have nothing to do with removing the conditions. RP 181. If Tatyana simply files her I-751 form – as even Gairson admitted she alone may do – she can become a legal permanent resident for 10 years. *Id.*; RP 183.

As to Gairson's bill, Seifert said what he did should have taken two hours, not 37. RP 185-86.

7. During a great deal of irrelevant testimony, the trial court acknowledged that Tatyana failed to raise the I-864 during the first trial.

Much testimony in this record simply rehashes things that happened during the 2012 trial. As to one of these collateral matters, John's counsel pointed out (yet again) that all of this was addressed in the earlier trial, and the court responded, "All of it except for the I-864." RP 320-21. Counsel responded, "Because she [Tatyana] didn't

raise it.” RP 321. And the court acknowledged, “I’ll grant you that. I don’t think there’s any argument about that.” *Id.*

8. John testified that Tatyana agreed to the 2013 Child Support Order, that he fully supported the family during the marriage, and that after the marriage, Tatyana falsified an I-864 form.

John testified that the parties married in 1999, and divorced in 2008. RP 337-38. The parties separated in July 2007, and Tatyana continued to live in the family home for another year. RP 338. The divorce was contentious, and Tatyana was represented by counsel. *Id.* They mediated with Judge Berschauer for seven or eight hours, and resolved the final orders, which were entered on June 24, 2008. RP 339. Tatyana agreed to use \$12 an hour for the purposes of imputing income and child support. RP 345. Tatyana later moved to vacate those orders, which was denied. RP 341.

John sought to modify the orders in March 2011, due to the children’s disclosure of Tatyana’s child abuse. RP 341-42. Tatyana had counsel for the trial, which resulted in the modification, the 2013 Child Support Order, and an appeal, all as discussed *supra*; Ex 56. During that trial, both sides offered testimony regarding Tatyana’s status as an immigrant in this country. RP 350.

John testified that (as explained above) after her appeal Tatyana brought a motion to dismiss the 2013 Child Support Order she agreed to and did not appeal, which a Commissioner denied on September 10, 2015. RP 351-52. She argued that she could not work and that the Order interfered with changing her immigration status. RP 352. She sought revision, which was denied. *Id.* She filed a petition to modify on the same grounds. RP 352-53. The Commissioner modified her ongoing support, but refused to vacate the back child-support. RP 353. Those orders were neither revised nor appealed. RP 354. Tatyana filed a third motion to vacate the back child-support for the same reasons, which was again denied; but Judge Schaller revised and remanded (albeit while finding no legal basis to vacate the 2013 Child Support Order); and the Commissioner again denied reconsideration. RP 354-57.

John also testified that he fully supported his family during the marriage. RP 359-60. During the dissolution process, he paid the mortgage on the home (where Tatyana lived) and spousal maintenance. RP 360.

John did not remember filling-out the I-864 form when he filled-out the I-134 form for the fiancée visa. RP 361-62. He did not recall what forms he signed when they went to immigration to change

Tatyana's status during the marriage. RP 362. Tatyana maintained those records, and during the divorce proceedings, John had no access to them. RP 362-63. After the divorce, those documents were gone from the home. RP 363.

During the 2015 hearings, Tatyana proffered a document she claimed to be an I-864 form that John signed, though it was incomplete and had typos. RP 364-65. She later presented the same document, with the same typos, but with "Department of Justice" stamps on it, which John believes she falsified. RP 365; Ex 79. This is not the valid I-864 form Tatyana eventually obtained from INS. *Compare Ex 33 with Ex 79.* RP 365-66. John did try to obtain a copy of the valid I-864, but the INS refused to give it to him. RP 366-67.

H. The trial court vacated the 2013 Child Support Order under CR 60(b)(11), and denied reconsideration.

The trial court vacated the 2013 Child Support Order under CR 60(b)(11). CP 122-25, 225-26. The court did not enter a finding of extraordinary circumstances justifying relief. *Id.* John sought reconsideration, which was denied. CP 157-71, 208.

ARGUMENT

A. The trial court erred as a matter of law in repeatedly considering a motion that had been denied (three times) – final rulings never appealed.

The trial court erred as a matter of law in repeatedly considering a motion that had been denied three times – final rulings never appealed. *Supra* Fact §§ D-E. Finality must count for something. This chapter of John’s long nightmare should have ended long ago.²

“Whether collateral estoppel applies to bar relitigation of an issue is reviewed *de novo*.” ***Christensen v. Grant County Hosp. Dist. No. 1***, 152 Wn.2d 299, 96 P.3d 957 (2004). “Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties.” *Id.* at 306 (citing 14A Karl B. Tegland, WASH. PRAC.: CIV. PRO. § 35.32, at 475 (1st ed. 2003) (“Tegland”)). The doctrine’s purpose “is to promote judicial economy by avoiding relitigation of the same issue, afford the parties the assurance of finality of judicial determinations, and to prevent harassment of and inconvenience to litigants.” ***Lemond v. State***

² John leads with this argument because it logically comes first. But the CR 60(b)(11) argument is likely the simpler way to dispose of this appeal.

Dept. of Licensing, 143 Wn. App. 797, 833, 180 P.3d 829 (2008) (citing **Hanson v. City of Snohomish**, 121 Wn.2d 552, 561, 852 P.2d 295 (1993));³ see also **Christensen**, 152 Wn.2d at 306-07 (collateral estoppel “promotes judicial economy and serves to prevent inconvenience or harassment of parties. Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation” (citations omitted)):

For collateral estoppel to apply, the party seeking application of the doctrine must establish that

- (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding;
- (2) the earlier proceeding ended in a judgment on the merits;
- (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and
- (4) application of collateral estoppel does not work an injustice on the party against whom it is applied.

³ See also Tegland § 35:32 (“The purpose of the rule is to encourage respect for judicial determinations by ensuring finality, and to conserve judicial resources by discouraging the same parties from re-litigating the same issues time and again”); Philip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 WASH. L. REV. 805, 806 (1985) (collateral estoppel “seek[s] to put an end to litigation”; it “limits the vexation and harassment of other parties; lessens the overcrowding of court calendars ... free[s] the courts for use by others; and, by providing for finality in adjudications, encourages respect for judicial decisions”).

Each of these elements is established here.⁴ Three times Tatyana brought the same motion to set aside the 2013 Child Support Order. *Supra* Fact §§ D-E. The trial court denied each of her motions and reconsiderations, and when revision was sought, it also denied those. *Id.* Each of those orders became final for purposes of collateral estoppel as a final order on the merits; but Tatyana failed to appeal from them. See, e.g., ***Barlindal v. City of Bonney Lake***, 84 Wn. App. 135, 142, 925 P.2d 1289 (1996) (issue precluded where the prior “proceeding ended with a final judgment on the merits” and the “order was not appealed”); ***City of Des Moines***, 87 Wn. App. 689, 702-03, 943 P.2d 669 (1997) (“a judgment becomes final for res judicata [and collateral estoppel] purposes at the beginning, not the end, of the appellate process”); ***Lejeune v. Clallam Cy.***, 64 Wn. App. 257, 265-66, 823 P.2d 1144 (1992) (same); see also RESTATEMENT (SECOND) OF JUDGMENTS § 13 cmt. f (1982) (“[A] judgment otherwise final remains so despite the taking of an appeal”).

⁴ This Court has held that *res judicata* does not bar a CR 60(b)(11) motion. See, e.g., ***Shandola v. Henry***, 198 Wn. App. 889, 895, 902-03, 396 P.3d 395 (2017); ***Union Bank, NA v. Vanderhoek Assocs.***, 191 Wn. App. 836, 846, 365 P.3d 223 (2015); ***Marriage of Flannagan***, 42 Wn. App. 214, 223-24, 709 P.2d 1247 (1985). But in those cases, the holding was that *claim preclusion* cannot bar a CR 60(b)(11) motion *against the order on which preclusion is based* (here, the 2013 Child Support Order). John’s argument is instead that a different, unappealed final order bars further litigation on this *issue* – a holding crucial to finality.

“The policy underlying this rule is that a party is entitled to one but not more than one fair hearing.” **Des Moines**, 87 Wn. App. at 702 (citing **Lejeune**, 64 Wn. App. at 266). Simply put, “a party is precluded from relitigating issues previously determined [even] while an appeal as to those issues is pending.” *Id.* at 703. *A fortiori*, Tatyana is precluded from relitigating issues not even appealed. The *first* order (September 10, 2015) – which denied her motion to vacate the 2013 Child Support Order specifically under CR 60 – is final and bars further litigation in this Court. CP 1594-95.⁵

As to the final element, applying collateral estoppel “works no injustice where the party being estopped had an opportunity in the first proceeding to present evidence and arguments to the trial court on the issue.” **Barlindal**, 84 Wn. App. at 144. The first trial court expressly considered and rejected CR 60. Yet Tatyana got three more bites at the apple, and John was left with a bitter taste in his mouth. That is the flavor of injustice. This Court should reverse.

⁵ This order should also be viewed as the “law of the case.” RAP 2.5(c).

B. The trial court erred as a matter of law and abused its discretion in *sua sponte* converting Tatyana’s fourth motion into a CR 60(b)(11) motion, and in ruling in her favor under that subdivision.

Even though retired Judge Wickham denied Tatyana’s final motion to reconsider the order denying her motion to revise the Commissioner’s ruling denying reconsideration of its order denying her motion to vacate the unappealed Child Support Order that she agreed to in 2013, he *sua sponte* decided to hear *the same motion* as a CR 60(b)(11) motion. CP 1149. He erred as a matter of law and abused his discretion in using this rule, where no extraordinary circumstances justify setting aside the 2013 Child Support Order, and no findings support it. This Court should reverse and dismiss.

1. Legal standards & ruling.

“Motions for vacation or relief of a judgment under CR 60(b) are within the discretion of the trial court and will not be disturbed absent a clear abuse of discretion.” ***Marriage of Flannagan***, 42 Wn. App. 214, 222-23, (1985) (citing ***Morgan v. Burks***, 17 Wn. App. 193, 197, 563 P.2d 1260 (1977)). A court abuses its discretion when its decisions are manifestly unreasonable, or based on untenable grounds or reasons. ***Marriage of Wright***, 179 Wn. App. 257, 261-62, 319 P.3d 45 (2013). And an error of law is always an abuse of discretion. See, e.g., ***Marriage of Sprute***, 186 Wn. App. 342, 357,

344 P.3d 730 (2015) (citing **Marriage of Choate**, 143 Wn. App. 235, 240, 177 P.3d 175 (2008)).

In relevant part, Court Rule 60(b) provides:

On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

...

(11) Any other reason justifying relief from the operation of the judgment.

Retired Judge Wickham concluded that CR 60(b)(11) "is an appropriate method to raise the issue of the failure of the [first] court setting child support to consider the [I-864] affidavit" and that the 2013 Child Support Order "should be vacated because the [2013] Court was not informed of the existence of the [1999] I-864 affidavit at the time of the entry of the [2013] order." CP 124. These conclusions are incorrect as a matter of law.

Relief under CR 60(b)(11) "should be confined to situations involving extraordinary circumstances not covered by any other section of the rule." **Flanigan**, 42 Wn. App. at 221 (quoting **State v. Keller**, 32 Wn. App. 135, 140, 647 P.2d 35 (1982)). The circumstances must relate to "irregularities which are extraneous to the action of the court or go to the question of the regularity of its proceedings." *Id.* (quoting **Keller**, 32 Wn. App. at 141, quoting

Marie's Blue Cheese Dressing, Inc. v. Andre's Better Foods, Inc., 68 Wn.2d 756, 758, 415 P.2d 501 (1966)) (cites omitted). Thus, legal errors “are not correctable through CR 60(b); rather, direct appeal is the proper means of remedying legal errors”:

Appellant's arguments are directed chiefly to errors of law which are thought to have been committed in entering the original judgment now sought to be vacated. We have too often held that such a proceeding as this cannot be used as a means for the court to review and revise its own final judgment

...

Keller, 32 Wn. App. at 140 (quoting **Hurley v. Wilson**, 129 Wash. 567, 568, 225 P. 441 (1924)). In short, (b)(11) is “intended to serve the ends of justice in extreme, unexpected situations and when no other subsection of CR 60(b) applies.” **Shandola v. Henry**, 198 Wn. App. 889, 895, 396 P.3d 395 (2017).

That is not the case here. Tatyana argued that the trial judge in the 2013 proceedings (whom this Court affirmed in rejecting Tatyana's prior appeal) “should have” considered the I-864 form that John allegedly signed in 1999, even though her lawyer did not proffer or otherwise raise or argue about that form during the prior trial. At most, this is an alleged legal error – and *not* one committed by the prior judge – that is not subject to CR 60(b)(11) as a matter of law. See, e.g., **Keller**, *supra*. This rule is not a means by which to correct

Tatyana's lawyer's failure to raise a piece of evidence. Indeed, it should not be lost on the Court that her trial counsel may have withheld the I-864 affidavit as a trial tactic. CP 1258.

2. CR 60(b)(11) is not a means to correct Tatyana's lawyer's failure to present the I-864 form in 2013.

Generally, attorney negligence (much less a trial tactic) is no basis to vacate an order. See, e.g., *Lane v. Brown & Haley*, 81 Wn. App. 102, 104, 912 P.2d 1040 (1996) ("attorney negligence does not provide grounds for vacation of the judgment"); accord 47 AM. JUR. 2d *Judgments* § 812 (1995); *Haller v. Wallis*, 89 Wn.2d 539, 547, 573 P.2d 1302 (1978) (same); *Winstone v. Winstone*, 40 Wash. 272, 274, 82 P. 268 (1905) (same); *In re Burkey*, 36 Wn. App. 487, 490, 675 P.2d 619 (1984) (same); but see *Graves v. P.J. Taggares Co.*, 25 Wn. App. 118, 125, 605 P.2d 348 (exception where attorney acted without authorization), *aff'd in part, rev'd in part*, 94 Wn.2d 298, 616 P.2d 1223 (1980). Tatyana presented no evidence that her attorney acted without her authorization; rather, she alleged that he just did not know the law. This Court should continue to follow *Haller*:

We follow *Haller* and apply its well-reasoned logic to this case:

- (1) the law favors finality, 89 Wn.2d at 544. . . ;
- (2) erroneous advice of counsel, error of counsel, surprise, or excusable neglect are not grounds to set

aside a consent judgment (a settlement approved in court), 89 Wn.2d at 544. . . ;

. . .

(4) attorney mistake or negligence does not provide an equitable basis for relief for the client, 89 Wn.2d at 547.

. . . ;

. . .

Lane, 82 Wn. App. at 109.

3. No findings of extraordinary circumstances.

Nor did former Judge Wickham enter any findings supporting even an inference that Tatyana’s lawyer’s failure to raise a single piece of evidence constitutes an extraordinary circumstance justifying relief. **Flanigan**, 42 Wn. App. at 221. There is nothing extraordinary about a represented litigant like Tatyana failing to raise evidence or issues. As this Court is well aware, even highly experienced counsel – and even judges – sometimes miss evidence or legal issues. Such oversights are not extraordinary circumstances under CR 60(b)(11). **Lane**, 82 Wn. App. at 109.

Judge Wickham did conclude that the I-864 affidavit “is such a *significant factor* in this case that to set child support without its consideration creates an *unjust result*.” CP 124 (emphases added). This conclusion is irrelevant because there is no “significant factor” test under CR 60(b)(11).

It is also both factually and legally wrong. It is factually wrong because the 2013 Child Support Order (to which Tatyana agreed and never appealed) is not unjust – it is a final and proper order of child support. It is legally wrong because this Court has held that a family court need not enforce an I-864 affidavit. **Khan**, 182 Wn. App. at 801 (“a maintenance order need not include enforcement of a person's I-864 obligation”). Since child support *belongs to the children*, **Khan** applies with even greater force here.

Ultimately, the trial court simply ignored the injustice of setting aside a valid child support order after many years and after Tatyana's serial motions were denied.

4. Failing to raise evidence is not extraneous to the proceedings.

Nor can failing to raise evidence during trial be “extraneous to the action of the court,” or go “to the question of the regularity of its proceedings.” **Flanigan**, 42 Wn. App. at 221. Presentation of evidence is integral to the action of the court. An omitted piece of evidence or issue is sometimes a legal error, but that does not affect

the regularity of the proceedings. Evidentiary errors cannot be extraneous irregularities. They must be appealed.⁶

5. Tatyana did not move in a “reasonable time.”

Finally, even if relief under (b)(11) was not barred as a matter of law for the above reasons, Tatyana plainly did not bring her arguments within a “reasonable time.” CR 60(b).⁷ Whether a motion is filed within a reasonable time depends on the facts and circumstances of each case. *Ha v. Signal Elec., Inc.*, 182 Wn. App. 436, 454, 332 P.3d 991 (2014), *rev. denied*, 182 Wn.2d 1006 (2015). The court considers whether the moving party has a good reason for failing to act sooner and whether the delay prejudiced the nonmoving party. *Tatham v. Rogers*, 170 Wn. App. 76, 98-99, 283 P.3d 583 (2012).

The trial court entered no “reasonableness” finding for Tatyana’s delays in bringing forth the I-864 affidavit for roughly 18 years (from the 1999 affidavit to her 2016 motion) or for roughly 8 years (from the 2008 dissolution to her 2016 motion) or even for

⁶The 1999 I-864 form is not “newly discovered evidence” under CR 60(b)(3), which is limited to one year in any event. CP 1255-57; CR 60(b) (“The motion shall be made . . . for reasons (1), (2) or (3) not more than 1 year after the . . . order was entered”). No other ground applies either, as Judge Wickham tacitly ruled, solely relying on CR 60(b)(11). CP 124.

⁷ Indeed, at most Tatyana alleges a mistake or inadvertence under CR 60(b)(1), which had to be brought within one year. She is thus *very* late.

roughly 3 years (from the 2013 Child Support Order to her 2016 motion). CP 123-24. By contrast, the prejudice to John is overwhelming, as he was already subject to one trial and appeal lasting many years and costing many thousands of dollars, and yet he has since been subject to an onslaught of vexatious litigation, repetitive filings, frivolous arguments, and all of the enormous costs associated therewith. App. B. The trial court's failure to address any of this is at best an abuse of discretion requiring reversal.

In sum, CR 60(b)(11) is the wrong vehicle, Tatyana is the wrong driver, and Judge Wickham failed to provide the necessary findings to fuel an affirmance. This Court should reverse, vacate the orders vacating the 2013 Child Support Order, and dismiss. If the Court believes a remand is necessary, John asks that the Court make very clear that further litigation on this issue is barred.

C. The evidence contradicts finding H.

The trial court erred in entering finding H, where the evidence contradicts it (CP 123-24):

Respondent is not able to work due to her current immigration status. Further, the arrears which have accrued under the 2013 Order of Child Support would likely prevent her from removing the conditions on her current resident status and obtaining permanent residency in the United States.

Tatyana's own "expert" – a/k/a her attorney – admitted under oath that none of this is true.

On her "inability" to work, Gairson admitted that many employers do not check immigration status. RP 83-84. He agreed that her driver's license and social security card are sufficient for her to obtain employment. RP 84-85. And he admitted that after the 2008 divorce, Tatyana could – by herself – simply obtain a waiver of the breached conditions by filing the I-751 form. RP 82-83, 104; *see also* RP 178-83 (attorney Seifert explains that Tatyana can work and that she can lift any conditions simply by filing that form). Gairson admitted that Tatyana's 2014 and 2015 requests for naturalization were denied because she failed to file the form I-751. RP 60. Contrary to the trial court's finding H, the "experts" agreed that she is solely responsible for her alleged "inability" to work.

As to whether her child-support arrears "would likely prevent her from removing the conditions," this finding is irrelevant. Gairson admitted that even without the back child-support, the protection order and RCW 26.09.191 restrictions entered against her in 2013 provided INS with ample basis to deny her naturalization. RP 87-88, 95-96, 103-04. And he admitted that regardless of John's alleged I-

864 support obligation, Tatyana still had the obligation to pay the child support. RP 89-90.

This finding was entered in the context of the CR 60(b)(11) ruling, discussed *supra*. Under the standards explained there, this finding is both unsupported and irrelevant. It provides no support for the trial court's improper use of CR 60(b)(11).

D. The trial court erred in denying reconsideration.

The trial court abused its discretion in denying John's motion for reconsideration.⁸ He timely sought reconsideration. CP 157-66. He re-raised all of the reasons that Judge Wickham could not use CR 60(b)(11) – discussed *supra*. CP 158-62. He also pointed out that the court had overreached in making findings about the binding nature of the I-864 affidavit, an issue the trial court repeatedly ruled was not before it. CP 163-65. This Court should reverse.

On CR 60(b)(11), John specifically briefed ***Marriage of Tang***, which held that using CR 60(b)(11) to vacate a dissolution decree due to an error of law was an abuse of discretion. 57 Wn. App. 648, 655-56, 789 P.2d 118 (1990). CP 161-62. While John had thoroughly

⁸ See, e.g., ***Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC***, 139 Wn. App. 743, 752 n.1, 162 P.3d 1153 (2007) (reconsideration reviewed for abuse of discretion).

briefed this issue in his trial brief, this motion left no doubt that Judge Wickham erred as a matter of law in using CR 60(b)(11). He abused his discretion in denying reconsideration.

John further challenged the trial court's expansion of Tatyana's motion to "find" that the I-864 affidavit is enforceable. CP 163-65. As the trial court repeatedly stated, the only issue before it was whether to vacate the 2013 Child Support Order – enforceability of the I-864 affidavit was for other proceedings. See, e.g., RP 140. Tatyana never filed a petition to adjudicate the I-864 affidavit. CP 163.

"It is well settled that the court cannot, over the objection of a party, adjudicate matters outside the issues." *Chapman v. Allen*, 11 Wash. 627, 40 P. 219 (1895); *Ludwig v. Hollingsworth*, 153 Wash. 654, 280 P. 60 (1929); *Boyer v. Paine*, 60 Wash. 56, 110 P. 682 (1910); *Beadle v. Barta*, 13 Wn.2d 67, 73, 123 P.2d 761 (1942). In *Dewey v. Tacoma Sch. Dist. No. 10*, the court rejected such insufficient pleadings:

Under the liberal rules of procedure, pleadings are intended to give notice to the court and the opponent of the general nature of the claim asserted. *Lewis v. Bell*, 45 Wn. App. 192, 197, 724 P.2d 425 (1986). Although inexpert pleading is permitted, insufficient pleading is not. [*Id.*] at 197. . . .

95 Wn. App. 18, 23, 974 P.2d 847 (1999). The **Dewey** court also held that pleadings like Tatyana's are insufficient (*id.* at 23-24):

A pleading is insufficient when it does not give the opposing party fair notice of what the claim is and the ground upon which it rests. **Lewis**, 45 Wn. App. at 197 (citation omitted); **Molloy v. City of Bellevue**, 71 Wn. App. 382, 385, 859 P.2d 613 (1993) (complaint must apprise defendant of the nature of plaintiff's claims and legal grounds upon which claim rests). A complaint for relief should contain: (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which he deems himself entitled." CR 8(a).

Moreover, a "party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along." **Molloy**, 71 Wn. App. at 385-86 (rejecting plaintiffs "veiled attempt" to amend his complaint by raising a theory of wrongful termination in response to defendant's summary judgment motion); see *also* **Dewey**, 95 Wn. App. at 26 (rejecting attempt to add new claim in reply to motion to dismiss).

The trial court's "findings" regarding the I-864 affidavit are thus invalid and should be stricken. CP 123.

For the same reasons, the trial court's "finding" of domestic violence by John should be stricken. *Id.* While a civil Protection Order was entered in 2007 after the parties separated, the final orders did

not find DV by John or impose any .191 restrictions against him. *Id.* Besides, the 2013 Child Support Order that was the sole subject of Tatyana's motion had nothing to do with any DV allegations. *Id.* This Court should strike those findings.

E. The trial court erred in granting Tatyana's so-called expert-witness fees, and in "sanctioning" John under CR 11, all without required findings or tenable reasons.

The trial court erred in granting "attorney fees and costs" in precisely the amount of Tatyana's so-called expert-witness fees, where Tatyana claimed she was *pro se*. CP 1367-68. It further erred in "sanctioning" John under CR 11, where it entered no findings supporting sanctions. *Id.* This Court should reverse.

Fee and cost awards are reviewed for an abuse of discretion. ***Marriage of Bobbitt***, 135 Wn. App. 8, 29-30, 144 P.3d 306 (2006) (citing ***Fluke Capital & Mgmt. Servs. Co. v. Richmond***, 106 Wn.2d 614, 625, 724 P.2d 356 (1986)). "The trial court must provide sufficient findings of fact and conclusions of law to develop an adequate record for appellate review of a fee award." ***Bobbitt***, 135 Wn. App. at 30 (citing ***Mahler v. Szucs***, 135 Wn.2d 398, 435, 957 P.2d 632 (1998)). The proper remedy for failure to do so is to vacate the fee award and remand for a new hearing. *Id.*

The trial court awarded Tatyana \$8,533 in “Fees and Costs,” and \$4,267 in “CR11 [*sic*] Sanctions” against John. CP 1367. Its “Basis” is as follows:

THIS MATTER having come before the Court this date on the Respondent’s Motion for Attorney’s Fees and Costs and for Sanctions under Civil Rule 11, the Court having heard the argument of counsel and Ms. Mason, having reviewed the records and files herein . . .

CP 1368. Its order reads (*id.*):

IT IS ORDERED that:

The Respondent is awarded Attorney’s Fees and Costs against Petitioner in the amount of \$8,533 based on the respective financial circumstances of the parties and in accordance with RCW 26.09.140; and

IT IS FURTHER ORDERED

That Respondent is awarded additional Costs against Petitioner in the amount of \$4,267 based on Petitioner and his counsel’s violation of Civil Rule 11.

That is the entirety of the trial court’s order. It entered no findings supporting this decision, and no conclusions beyond these. This Court should vacate both awards for lack of findings.

There was a hearing, however. See 12/9/16 RP 1-21. The Court expressly acknowledged that it could *not* award attorney fees to a *pro se* litigant. *Id.* at 15.

But it felt that it *could* award attorney Gairson’s “expert” fees. *Id.* The Court acknowledged that Gairson spent too much time (37

hours) but nonetheless took his \$12,800 request⁹ as “reasonable.” *Id.* at 16. The Judge then said he would award 2/3^{ds} of that based on Tatyana’s “need” (summarily finding she is unemployed) and John’s “ability” to pay (summarily finding he grosses \$4,500 a month, with no deductions for child care costs he alone must bear, or for the litigation costs Tatyana has forced upon him). *Id.* at 17.

Again, this is insufficient to sustain the award of \$8,553 in costs. ***Bobbitt***, *supra*. The court did not explain why he thought Gairson’s exorbitant fees were reasonable (other than his client’s alleged struggles with English) or how John can afford them. Moreover, Tatyana should not prevail for all the reasons stated above, so this award must fall. The Court should vacate this award.

As to the “remaining” 1/3 of Gairson’s “fees,” the trial court also imposed that on John:

under Civil Rule 11, and I’m doing that based on a declaration that was filed by Ms. Robertson on July 6th. It’s a statement of Mr. Mason, and I’m going to read in pertinent part. This is from the first page of that declaration.

“She claimed in part that I have filed an I-864 support affidavit when she came to this country, and, therefore, I should have been supporting her, and she never should have been required to pay child support. Nothing could be further from the truth.”

⁹ Contrary to this “finding,” Gairson testified to only \$12,225 fees. RP 109.

That's his statement.

Then on the second page, "I believe the I-864 was a document I may have started to complete, but it was not what I was required to file and so I did not complete or file the document."

And then later on that page,

"Respondent claims that I would have had to complete I-864 as part of the fiancée visa application, but that is not true."

And then on page three,

"Respondent's representation that I had to have filed the I-864 form is simply not true."

Those statements raise the issue of the existence of the I-864, which is what required this court to have a three-day trial over whether or not that document existed. Now, clearly clients are entitled to aggressive advocacy, but I believe the advocacy in this case presented an untrue presentation to the court which created unnecessary litigation.

And I believe that that is a violation of the portion of CR 11 which says that the signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion or legal memorandum and that, to the best of the party's or attorney's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (1), it is well grounded in fact; (2), it is warranted by existing law or a good faith argument; (3), it is not interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." I believe those statements were made for that purpose, and, therefore, I believe CR 11 does apply here.

The remaining one-third of Mr. Gairson's fee, I will assess to Mr. Mason because of CR 11 violations. So I will grant judgment for the entire cost of Mr. Gairson's services.

Id. at 17-19 (paragraphing altered for readability).

In short, the Judge read CR 11, but failed to apply the alleged facts of the case to the rule, or otherwise to explain why John was being sanctioned. The court apparently blamed “aggressive advocacy,” but sanctioned the client. The court erred.

An appellate court reviews CR 11 sanctions for abuse of discretion. **Biggs v. Vail**, 124 Wn.2d 193, 197, 876 P.2d 448 (1994); **Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.**, 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). The “court must make explicit findings as to which pleadings violated CR 11 and as to how such pleadings constituted a violation of CR 11. The court must specify the sanctionable conduct in its order.” **N. Coast Elec. Co. v. Selig**, 136 Wn. App. 636, 649, 151 P.3d 211 (2007). A court abuses discretion if its order is manifestly unreasonable or based on untenable grounds or reasons. **Fisons**, 122 Wn.2d at 339.

Not only did the trial court’s orders omit the necessary findings and analysis, and not only should this award fall in any even due to reversal of the orders on bases stated *supra*, but the trial court’s partial recitation of John’s July 6 declaration also omitted the following qualifications regarding John’s memory:

At the hearing in April, 2016, I objected to the alleged I-864 Affidavit that Respondent presented. The document was not notarized or dated. I recalled filing an I-134 Affidavit as part of

the application for Respondent to come to the US as my fiancé **but I did not recall filing the I-864. The application was made in 1999; 17 years ago.** I recall **I was given a lot of documents** when I was making the application and had started to complete some, but those did not apply and were not filed. **I believe** the I-864 was a document I may have started to complete but it was not what I was required to file and so I did not complete or file the document.

CP 403 (emphasis added). There is nothing false in this paragraph.

The trial court also omitted the following, explaining John's reasonable investigation and good-faith assertion of his belief:

Respondent claims that I would have had to complete an I-864 **as part of the fiancé visa application** but that is not true. The fiancé visa is what is called a K-1 visa application. It requires the completion of the I-134 form, **not** the I-864 form. With her most recent submission, Respondent provides 2015 instructions for the I-864 form, which states it is used for family based immigration. But, **Respondent did not come to the US as a family based immigrant**, she came here on a fiancé visa.

I have attached as Exhibit A **several websites which address different forms of immigration and which show the I-134 would have been the required affidavit for a fiancé visa.** I have attached as Exhibit B the actual current I-134 form and the instructions. The liability of said affidavit is repayment of any TANF or financial aid the sponsored person receives but there is not a continuing obligation to support the person. The obligation is not to the sponsored person but to the agency which has provided assistance.

...

Respondent's representation that I had to have filed the I-864 form is simply not true. In fact, **in filing the application for a fiancé visa** I would not have filed the I-864 form.

CP 403-04 (emphasis added). No evidence contradicts these assertions – John did not have to file the I-864 as part of the fiancée visa application.

And indeed, John even made extensive efforts to retrieve the I-864 that he did not believe he had signed (CP 404-05) (emphasis added):

Per the court's instruction from the April 2016 hearing, *I submitted my own request for the immigration documents under the Freedom of Information Act*. I received a letter stating that *I was not eligible to receive the requested documents*. See application and letter attached as Exhibit E. In fact, *I specifically requested only documents that I had signed and submitted, which would have included any affidavit signed by me*. I was *not* seeking the Respondent's current immigration information, but the application documents that I had submitted back in 1999. *My request was denied*.

The only way I can get those documents is if Respondent signs the request form allowing for the release of those documents.

...

I do believe *the only way the court will know for certain* is if the Respondent signs off on a request to USCIS for the release of the requested documents so that said documents can be sent to me or my attorney. Again, I am only seeking documents in the immigration file which I have signed.

This hardly sounds like a person who is flatly denying the existence of the key document. Sanctioning someone because he

cannot remember one of many documents he may have signed nearly 20 years ago lacks any tenable ground or basis.

So does sanctioning John for “aggressive advocacy.” The trial court did not sanction John’s trial counsel, so it must not have felt that she overstepped the bounds of ethical advocacy. See CP 1367. But he did – for some unknown reason – seem to sanction John for counsel’s “aggressive advocacy,” which “presented an untrue presentation to the court which created unnecessary litigation.” 12/9/16 RP 18. That ruling too is untenable.

F. This Court should award John his appellate fees and costs based on Tatyana’s intransigence.

It is well settled that a “court may consider whether additional legal fees were caused by one party’s intransigence and award attorney fees on that basis.” *Bobbitt*, 135 Wn. App. at 30 (quoting *Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992)). “When intransigence is established, the financial resources of the spouse seeking the award are irrelevant.” *Id.* (quoting *Marriage of Morrow*, 53 Wn. App. 579, 590, 770 P.2d 197 (1989)). “Intransigence includes . . . filing repeated unnecessary motions, or making the trial unduly difficult and costly by one’s actions.” *Id.* (citing *Greenlee*, 65 Wn. App. at 708).

It would be difficult to overstate the extent of Tatyana's intransigence in this case. Filing repeated failed motions; making truly outrageous allegations against John, the courts, and everyone who stands in her way; repeatedly contacting the trial court and this Court *ex parte*; repeatedly failing to serve counsel with pleadings; the litany is seemingly endless. To discourage further such behavior, this Court should award John his fees on appeal.

CONCLUSION

For the reasons stated, this Court should reverse, vacate the trial court's orders, and remand for orders consistent with this opinion. If the Court does so, it should make extremely clear that further filings on this issue are barred. It should also award John his fees on appeal to discourage further intransigent conduct.

RESPECTFULLY SUBMITTED this 12th day of October 2017.

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CERTIFICATE OF SERVICE

I certify that I caused to be mailed, a copy of the foregoing **AMENDED BRIEF OF APPELLANT**, via U.S. mail with postage pre-paid or via email, on the 12th day of October 2017, to the following counsel of record:

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APPENDIX A

July 2015 Opinion

Marriage of Mason, Washington State Court of Appeals No. 45835-7-II (July 7, 2015)

FILED
COURT OF APPEALS
DIVISION II

2015 JUL -7 AM 8:45

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In Re the Matter of the Marriage of
JOHN ARTHUR MASON,

Respondent,

and
TATYANA IVANOVNA MASON,

Appellant.

No. 45835-7-II

UNPUBLISHED OPINION

JOHANSON, C.J. — Tatyana Mason appeals from a trial court order modifying a parenting plan in which the trial court ordered that John Mason assume responsibility as the primary parent of the parties' children. Tatyana¹ argues that (1) the trial court's ruling was not based on substantial evidence, (2) the trial court erred by denying her motion for reconsideration based on the existence of new evidence, (3) this court should reverse the trial court's entry of the restraining order, and (4) this court should award her attorney fees. We hold that substantial evidence supports the trial court's ruling, the trial court did not err by denying Tatyana's motion for reconsideration nor by entering the restraining order, and neither party is awarded attorney fees. We affirm.

¹ We refer to the Masons by their first names for clarity, intending no disrespect.

FACTS

I. BACKGROUND

John and Tatyana married in 1999. They had two children, G.M. and D.M. John filed for divorce in 2007, and the parties engaged in mediation, agreeing upon final orders including a parenting plan. The orders specified that John and Tatyana would share custody of their children. Contemporaneously with John's 2007 dissolution filing, Tatyana filed a petition for a domestic violence protection order. A court commissioner granted the petition.

After the dissolution, G.M. and D.M. participated in counseling with social worker Stephen Wilson. During this time, John became concerned about Wilson's treatment of G.M. following an incident in which G.M. hit his younger brother. When the parties could not agree on a new counselor, John filed a motion to the trial court to appoint one. The court appointed Sandra Hurd to assume responsibility for the Mason family's counseling needs. The court also ordered both John and Tatyana to undergo counseling with Hurd, which they each did initially.

In February 2011, G.M. made disclosures to John alleging physical and emotional abuse by Tatyana. D.M. corroborated G.M.'s allegations. John responded by taking the children to Hurd and by contacting Child Protective Services (CPS). The Mason children again made disclosures of abuse. G.M. and D.M. also expressed fear about returning to their mother's care.

John then filed a petition to modify the parenting plan, obtaining an emergency order granting custody of G.M. and D.M. in his favor in the meantime. The order limited Tatyana's time with the children to professionally supervised visits. The trial court also appointed Ralph Smith to serve as guardian ad litem (GAL).

Smith conducted an investigation into the children's allegations and generated a report of his findings. Smith concluded that Tatyana used fear and physical force against G.M. and that her actions rose to the level of abuse. Smith recommended that the children remain with John and that Tatyana maintain her supervised visitation. Smith also recommended that Tatyana undergo a parenting evaluation regarding her "tendency for violence." Ex. 12 at 9.

Tatyana initially complied with the supervised visit requirement, but later ceased attending the visits for extended periods of time. Following a number of reported incidents during the visitations, Hurd composed a recommendation letter in which she determined that the visits were stressful for G.M. and D.M. Smith then filed a motion urging the court to suspend Tatyana's visitation rights until she obtained the recommended parenting evaluation.

Rather than suspending Tatyana's visitation rights entirely, the trial court ordered that Tatyana's visits be therapeutic in nature, but Tatyana never arranged or coordinated such visits. Tatyana claimed she could not afford to pay for the therapeutic visits or other supervised visitation time because she had lost her home and she had no income.²

Tatyana also failed to obtain the recommended parenting evaluation, instead filing a motion asking the trial court to order an evaluation for both parents. Tatyana and John agreed that Dr. Loren McCollom would conduct the evaluation, but Tatyana did not inform John when she began the evaluation process. In light of Tatyana's domestic violence allegations and when he became

² Tatyana was generally uncooperative when asked about her finances or her living arrangement at the time of the hearing. She admitted that she was living with a person with whom she was in a relationship, but refused to tell the court where she was living.

aware of the court's order to evaluate both parents, Dr. McCollom suspended the evaluation process.

II. PROCEDURE

The parties proceeded to trial on the modification petition absent Dr. McCollom's report. There, John urged the court to adopt a modified parenting plan according to which he would have sole custody of the children with therapeutic visitation sessions for Tatyana. The basis of John's proposed modification was Tatyana's physical and emotional abuse of G.M. and D.M.

Tatyana opposed the modification at least insofar as the trial court would grant John's request without first obtaining Dr. McCollom's evaluation report. The trial court heard testimony from John, Tatyana, Hurd, Dr. McCollom, and Smith, among others. The trial court found credible the testimony regarding Tatyana's abuse of the children. Notwithstanding that determination, however, the trial court granted Tatyana's request to continue the hearing so that the parties could complete the parenting evaluation with Dr. McCollom. The trial court ordered John and Tatyana to share the cost of the evaluation.

Dr. McCollom conducted the parenting evaluation. John complied with the court's order and paid his portion of the evaluation cost, but because Tatyana did not do so, Dr. McCollom would not release the report, so the trial court again continued the hearing on two additional occasions. By October 2013, Tatyana still had not remitted payment, but the trial court refused to continue the matter further.

The trial court heard additional testimony and considered new evidence, including a CPS report finding that the allegations of abuse by Tatyana were "founded." The court made an oral ruling during which it noted that there had been a previous finding of domestic violence against

John, but concluded that there was no evidence to support an additional finding to that effect and, in the court's view, there were no concerns about future domestic violence from John.

The trial court entered findings of abuse by Tatyana pursuant to RCW 26.09.191 and granted John's request to modify the parenting plan under RCW 26.09.260. The court expressed concern that Tatyana had not exercised all of her visitation rights pursuant to the former court orders and that at one time, she let nearly one year pass without contacting the children.

As part of its order, the court also remarked that the goal of the modified final orders was to establish a system whereby Tatyana and the children can develop a healthy relationship through the development and implementation of a reunification plan with a new counselor. The court assigned a case coordinator to make sure that the reunification plan progressed satisfactorily. The trial court also entered a restraining order, enjoining Tatyana from contacting G.M. and D.M. at their school or day care.

Following the entry of the modified parenting plan, Tatyana entered into a payment agreement with Dr. McCollom so that she could obtain the parenting evaluation report. Tatyana then filed a motion for reconsideration. The trial court declined to reconsider its earlier ruling. Tatyana appeals the trial court's order modifying the parenting plan and its order denying Tatyana's motion for reconsideration.

ANALYSIS

I. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S MODIFICATION ORDER

Tatyana contends that the trial court erred by entering the order granting John's motion to modify the parenting plan because the trial court's findings of fact were not supported by substantial evidence and because the court did not rule on "sufficient information." Br. of Appellant at 20-23. Because the trial court heard ample testimony, which it found credible, from various professionals who determined that Tatyana abused G.M. and D.M., we conclude substantial evidence supports the trial court's parenting plan decision.

Generally, we review a trial court's rulings on a parenting plan for abuse of discretion. *In re Marriage of Christel*, 101 Wn. App. 13, 20-21, 1 P.3d 600 (2000) (citing *In re Marriage of Wicklund*, 84 Wn. App. 763, 770, 932 P.2d 652 (1996)). We do not reverse a trial court's decision to modify a parenting plan under RCW 26.09.260 unless the trial court exercised its discretion in an untenable or manifestly unreasonable way. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

Specifically, we review a trial court's findings of fact to determine whether substantial evidence supports the findings and whether those findings of fact support the conclusions of law. *Scott's Excavating Vancouver, LLC v. Winlock Props., LLC*, 176 Wn. App. 335, 341, 308 P.3d 791 (2013), *review denied*, 179 Wn.2d 1011 (2014). "Substantial evidence" is the quantum of evidence "sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

We make all reasonable inferences from the facts in John's favor as the prevailing party below. *Scott's Excavating*, 176 Wn. App. at 342. And we do not "disturb findings of fact

supported by substantial evidence even if there is conflicting evidence.” *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). We defer to the trial judge on issues of witness credibility and persuasiveness of the evidence. *Boeing Co. v. Heidi*, 147 Wn.2d 78, 87, 51 P.3d 793 (2002).

RCW 26.09.260 governs modifications of parenting plans. It provides in pertinent part,

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. . . .

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

....
(c) The child’s present environment is detrimental to the child’s physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

Here, in support of its decision that modification of the parenting plan was in the children’s best interest, the trial court found that the children’s environment under the then-existing plan was detrimental to their physical, mental, or emotional health. The court found further that CPS had conducted an investigation resulting in a determination that abuse was “founded.” Clerk’s Papers at 207.

The trial court heard testimony from Hurd, who discussed G.M.’s disclosures that Tatyana had been abusing him physically for an extended period of time and that she did not always feed him enough. Hurd found these disclosures credible. Hurd also observed bruises on G.M. And D.M. made disclosures that corroborated G.M.’s version of the events.

The trial court also heard testimony from Smith in his role as the GAL. Smith agreed that Tatyana's action instilled a fear of harm in the children and noted that although G.M. and D.M. wanted to see their mother, they only wished to do so with supervised visits. Smith had no concerns about the children living with John and recommended that they continue to do so. The trial court found these aspects of Hurd's and Smith's testimony credible.

Tatyana takes issue with the trial court's reference to the findings and recommendations of a previous GAL in 2008 in support of what appears to be a claim that the trial court erred by relying on an outdated report. But the trial court simply mentioned that it had also reviewed [the GAL's] report from 2008. Tatyana cites no authority to support the proposition that a trial court cannot, on its own initiative, look into related material filed by an officer of the court in an earlier stage of a concomitant proceeding. And as described above, the evidence absent any mention of the earlier GAL report supports the trial court's findings.

Accordingly, we hold that substantial evidence supports the trial court's findings that modification of the parenting plan was in the best interests of the children because the existing arrangement was detrimental to their health. Therefore, we hold further that the trial court necessarily did not abuse its discretion by ordering modification.

II. RECONSIDERATION

Tatyana asserts that the trial court abused its discretion by denying her motion for reconsideration because she obtained Dr. McCollom's evaluation report, which constitutes new evidence for the purpose of a CR 59 motion. But with reasonable diligence, Tatyana could have produced the McCollom report at trial, thus it is not new evidence. Therefore, the trial court did not abuse its discretion in denying the reconsideration motion.

We review a trial court's decision granting or denying a motion for reconsideration for abuse of discretion. *City of Longview v. Wallin*, 174 Wn. App. 763, 776, 301 P.3d 45, review denied, 178 Wn.2d 1020 (2013). CR 59 governs motions for reconsideration and provides in relevant part,

(a) **Grounds for New Trial or Reconsideration.** On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

.....
(4) Newly discovered evidence, material for the party making the application, *which the party could not with reasonable diligence have discovered and produced at the trial.*

(Emphasis added.)

Here, Tatyana contends that the trial court abused its discretion because the McCollom report was newly discovered evidence previously unavailable at the time the court made its decision. But to the extent that the report was unavailable before the presentation of the final orders, this was so only because of Tatyana's failure to contribute to the cost of the evaluation per the earlier court order.

The parties were well aware that the evaluation report existed at the time of trial and the court continued the matter for nearly a year to allow Dr. McCollom to complete the evaluation and to give the parties an opportunity to present their case in light of its conclusions. Tatyana would have been able to present the evaluation report had she used reasonable diligence to satisfy her

payment obligations in the months before the hearing concluded. Moreover, any argument to the contrary is undermined by the fact that Tatyana ostensibly secured some kind of agreeable payment arrangement almost immediately following the entry of final orders, such that she could file a timely motion for reconsideration.

Significantly, Tatyana failed to inform the trial court in her motion for reconsideration how the McCollom report would change the trial court's determination that modification of the parenting plan was warranted in light of substantially changed circumstances. Nor does she make such an argument to this court.³ See *Fishburn v. Pierce County Planning & Land Servs. Dep't*, 161 Wn. App. 452, 473, 250 P.3d 146 (2011). Accordingly, we hold that the trial court did not abuse its discretion by denying Tatyana's motion for reconsideration.⁴

III. ATTORNEY FEES

RCW 26.09.140 permits this court to award appellate attorney fees on a discretionary basis. Based on the record here, we decline to award fees to either party.

³ The McCollom report's conclusions and recommendations are markedly similar to the conditions contained in the trial court's modified orders. There is nothing in the report that would cast doubt on the relief that the trial court granted John or that is particularly favorable to Tatyana.

⁴ Tatyana also argues that this court should vacate the restraining order entered against her in conjunction with the modified parenting plan. But as explained, there was substantial evidence to support the court's ruling modifying the parenting plan. The restraining order precludes Tatyana from contacting G.M. and D.M. at their schools or home, which is entirely consistent with the parenting plan's requirement that Tatyana have only supervised visits.

No. 45835-7-II

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Johanson, C.J.
JOHANSON, C.J.

We concur:

Bjorge, J.
BJORGE, J.

Maxa, J.
MAXA, J.

APPENDIX B

Thurston County Case Summary

Marriage of Mason, Thurston County Superior
Court No. 07-3-00848-0 (Filed July 18, 2007)

THURSTON
CASE SUMMARY
CASE No. 07-3-00848-0

JOHN MASON AND TATYANA MASON

§	Location:	Thurston
§	Judicial Officer:	Schaller, Christine
§	Filed on:	07/18/2007
§	Court of Appeals, Division 2	50009-4-11
§	Number:	
§	JIS/SCOMIS Case Number:	07-3-00848-0
§	SCOMIS Judgment Number:	08-9-30178-1
§		09-9-30041-3
§		09-9-30283-1
§		14-9-30186-6
§		15-9-40180-0
§		16-9-46516-4
§		17-9-49051-5

CASE INFORMATION

Statistical Closures

06/24/2008 Judgment/Order/Decree Filed

Case Type: **DIC Dissolution of Marriage with Children**

Case Status: **01/06/2017 On Appeal**

Case Flags: **Domestic Violence Recusal**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	07-3-00848-0
Court	Thurston
Date Assigned	07/18/2007
Judicial Officer	Schaller, Christine

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Respondent (WIP) MASON, TATYANA IVANOVNA

Minor (WIP) MASON, DAVID
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08/21/2009	 Declaration/Affidavit <i>192: DECLARATION TATYANA MASON;</i>	<i>Index #192</i>
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12/16/2014	 Clerk's Papers Sent <i>476: CLERK'S PAPERS P 233-258;</i>	<i>Index #476</i>
12/16/2014	 Clerk's Papers Sent <i>477: CLERK'S EXHIBIT INDEX;</i>	<i>Index #477</i>
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11/10/2015	 Order Denying Motion/Petition	Index #573
11/10/2015	Domestic (Judicial Officer: Lack, Jonathon) Comment () Monetary/Property Award Creditors: MASON, JOHN A Debtors: MASON, TATYANA IVANOVNA Signed Date: 11/10/2015 Filed Date: 11/10/2015 Effective Date: 11/10/2015 Current Judgment Status: Status: Active Status Date: 11/10/2015 Monetary Award: Fee: Attorney Fee, Amount: \$1,987.50, Interest: 12.00%, Interest Start Date: 11/10/2015 Total: \$1,987.50	
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12/30/2015	 Declaration/Affidavit <i>Tatyana Mason</i>	<i>Index #592</i>
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01/08/2016	 Statement <i>Tatyana Mason</i>	Index #600
01/08/2016	 Notice <i>of Change of Address</i>	Index #598
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01/19/2016	 Sealed Personal Health Care Records Cover Sheet	Index #618
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02/10/2016	 Statement <i>Tatyana Mason re Sandra Hurd</i>	Index #645
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03/01/2016	 Objection/Opposition <i>and request for fees</i>	<i>Index #653</i>
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03/03/2016	 Reply <i>Tatyana Mason</i>	<i>Index #655</i>
03/03/2016	 Affidavit/Declaration/Certificate/Confirmation of Service	<i>Index #656</i>
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03/25/2016	 Attachment <i>Supporting Documents</i>	<i>Index #667</i>
03/25/2016	 Notice of Issue <i>Revision</i>	<i>Index #668</i>
03/30/2016	 Declaration/Affidavit <i>of counsel re fees</i>	<i>Index #669</i>
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04/01/2016	 Motion Hearing	<i>Index #670</i>
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04/15/2016	 Affidavit/Declaration/Certificate/Confirmation of Service	<i>Index #671</i>
04/15/2016	 Sealed Confidential Reports Cover Sheet <i>re Immigration</i>	<i>Index #672</i>
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10/17/2016	CANCELED Motion to Vacate (9:00 AM) <i>Judgment/Order</i> <i>Clerical Error</i>	
10/17/2016	Motion to Vacate (9:00 AM) (Judicial Officer: Wickham, Chris ;Location: Family and Juvenile Courtroom 4) <i>Concurrent With Trial</i> Events: 07/26/2016 Order to Show Cause 10/17/2016 Reset by Court to 10/17/2016	
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10/18/2016	Motion Hearing (9:00 AM) (Judicial Officer: Wickham, Chris ;Location: Family and Juvenile Courtroom 4) <i>Atty Fees</i> Events: 10/07/2016 Notice of Issue 10/17/2016 Reset by Court to 10/18/2016	
10/18/2016	Trial Minutes <i>Day 2</i>	
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11/02/2016	Non-Jury Trial (9:00 AM) (Judicial Officer: Wickham, Chris ;Location: Family and Juvenile Courtroom 4)	
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11/17/2016	 Sealed Financial Source Document(s)	<i>Index #785</i>
11/17/2016	 Financial Declaration of Petitioner	<i>Index #778</i>
11/17/2016	 Affidavit/Declaration/Certificate/Confirmation of Service	<i>Index #780</i>
11/17/2016	 Financial Declaration	<i>Index #781</i>
11/18/2016	 Request <i>for Time to Respond</i>	<i>Index #782</i>
11/18/2016	 Response <i>Respondent</i>	<i>Index #786</i>
11/21/2016	 Motion Hearing	<i>Index #788</i>
11/21/2016	 Petition	<i>Index #787</i>
11/21/2016	Presentation of Order (1:30 PM) (Judicial Officer: Wickham, Chris ;Location: Family and Juvenile Courtroom 4) Resource: Court Reporter 34FTR Events: 11/02/2016 Court Hearing Minutes	
11/22/2016	 Response Party: Respondent (WIP) MASON, TATYANA IVANOVNA	<i>Index #789</i>
11/23/2016	 Order Vacating <i>Order of Chlid Support</i>	<i>Index #790</i>

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12/08/2016	 Attachment <i>Oral Presentation; Award Atty Fees; Moderate Means Program; CR 11; Transcript; Proposed Order</i>	Index #798
12/09/2016	Motion Hearing (9:00 AM) (Judicial Officer: Wickham, Chris ; Location: Family and Juvenile Courtroom 4) <i>Attorney Fees</i> Resource: Court Reporter 34FTR Events: 11/21/2016 Motion Hearing	
12/09/2016	 Order Denying Motion/Petition	Index #799
12/09/2016	Ex Parte Action With Order	
12/09/2016	 Declaration of Mailing	Index #800
12/09/2016	 Notice of Issue	Index #801
12/09/2016	 Motion Hearing	Index #802
12/13/2016	 Order Granting Motion/Petition	Index #803
12/13/2016	Ex Parte Action With Order	
12/13/2016	 Declaration of Mailing	Index #804
12/13/2016	Domestic (Judicial Officer: Wickham, Chris) Comment (1-4-2017 Supersedeas bond- Automatic Stay of enforcement) Monetary/Property Award Creditors: MASON, TATYANA IVANOVNA Debtors: MASON, JOHN A Signed Date: 12/13/2016 Filed Date: 12/13/2016 Effective Date: 12/13/2016 Current Judgment Status: Status: Active Status Date: 12/13/2016	

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Monetary Award:

Fee: Costs, Amount: \$8,533.00, Interest: 12.00%, Interest Start Date:
12/13/2016

Fee: Other Fees, Amount: \$4,267.00, Interest: 12.00%, Interest Start Date:
12/13/2016

Total: \$12,800.00

Comment (01-04-2017 * Automatic Stay on enforcement* Supersedeas bond)

Comment (01-05-2017 Notice of Appeal)

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12/13/2016	 Proposed Parenting Plan	<i>Index #813</i>
12/13/2016	 Notice of Issue <i>presentation</i>	<i>Index #814</i>
12/13/2016	 Notice of Issue <i>modification of parenting plan</i>	<i>Index #815</i>
12/15/2016	 Motion <i>Modify Parenting Plan</i>	<i>Index #816</i>
12/15/2016	 Declaration/Affidavit <i>Tatyana Mason</i>	<i>Index #817</i>
12/15/2016	 Order Vacating <i>Child Support Order Dated October 13, 2015</i>	<i>Index #818</i>
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12/15/2016	 Affidavit of Service by Mail	<i>Index #819</i>
12/16/2016	 Affidavit/Declaration/Certificate/Confirmation of Service	<i>Index #820</i>

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01/04/2017	 Response <i>and request for attorney fees</i>	<i>Index #824</i>
01/04/2017	 Response <i>Respondent</i>	<i>Index #825</i>
01/04/2017	 Notice <i>of Cash Supersedeas</i>	<i>Index #826</i>
01/05/2017	 Motion and Affidavit/Declaration	<i>Index #827</i>
01/05/2017	 Notice of Issue <i>Motion to Vacate</i>	<i>Index #828</i>
01/05/2017	 Notice <i>Hearing Canceled</i>	<i>Index #829</i>
01/05/2017	 Notice of Appeal to Court of Appeals	<i>Index #831</i>
01/05/2017	 Declaration of Mailing	<i>Index #832</i>
01/05/2017	 Declaration of Mailing	<i>Index #833</i>
01/06/2017	Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne ;Location: Family and Juvenile Courtroom 1) <i>Modify Parenting Plan</i> Resource: Court Reporter 34FTR Events: 12/09/2016 Notice of Issue	
01/06/2017	Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne ;Location: Family and Juvenile Courtroom 1) <i>to Vacate Child Support Order 2015</i> Resource: Court Reporter 34FTR Events: 12/13/2016 Notice of Issue	
01/06/2017	Presentation of Order (9:00 AM) (Judicial Officer: Hirsch, Anne ;Location: Family and Juvenile Courtroom 1) Resource: Court Reporter 34FTR Events: 12/13/2016 Notice of Issue	
01/06/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne ;Location: Family and Juvenile Courtroom 1) <i>Modification of Parenting Plan</i>	

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01/06/2017	 Notice of Issue	Index #836
01/06/2017	 Declaration of Mailing	Index #837
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01/09/2017	 Notice of Issue <i>Renoted -- Motion to Vacate</i>	Index #839
01/09/2017	 Notice <i>Striking</i>	Index #840
01/09/2017	 Motion <i>for Petitioner to Pay for Immigration Status Correction</i>	Index #841
01/09/2017	 Notice of Issue	Index #842
01/10/2017	 Motion and Affidavit/Declaration	Index #843
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01/13/2017	<i>CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine; Location: Family and Juvenile Courtroom 4)</i> <i>Court's Request</i>	
01/18/2017	 Notice of Continuance <i>Motion to Vacate; Motion to Compel</i>	Index #845
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01/24/2017	 Motion and Affidavit/Declaration <i>Vacate 2013 and 2008 Parenting Plans</i>	Index #853
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01/25/2017	 Statement <i>re oral presentation</i>	Index #854
01/25/2017	 Affidavit/Declaration/Certificate/Confirmation of Service	Index #855
01/25/2017	 Statement <i>Respondent's Argument</i>	Index #856
01/25/2017	 Motion Hearing	Index #857
01/25/2017	 Order Re: Service	Index #858
01/25/2017	 Order Denying Motion/Petition	Index #859
01/25/2017	 Letter <i>to Counsel from Court of Appeals</i>	Index #860
01/26/2017	 Affidavit of Prejudice	Index #861
01/27/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) <i>Court's Request</i>	
01/30/2017	 Declaration/Affidavit <i>Stacy Simpson</i>	Index #862
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01/31/2017	 Motion for Reconsideration Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #864
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01/31/2017	 Motion for Reconsideration Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #866
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02/01/2017	 Declaration/Affidavit <i>re \$20,000</i> Party: Petitioner (WIP) MASON, JOHN A	Index #868
02/01/2017	 Notice of Association of Counsel	Index #869
02/01/2017	 Affidavit of Defendant/Respondent	Index #870
02/01/2017	 Affidavit of Indigency Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #871
02/01/2017	 Letter <i>Immigration Expert's Fees for Removing Conditions</i>	Index #872
02/01/2017	 Declaration/Affidavit <i>Mary Pontarolo</i>	Index #873
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02/01/2017	 Request <i>Interpreter</i>	Index #877
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02/02/2017	 Notice <i>striking</i>	<i>Index #882</i>
02/02/2017	 Declaration of Mailing	<i>Index #883</i>
02/02/2017	 Recusal of Judge <i>Judge Hirsch</i>	<i>Index #884</i>
02/02/2017	 Declaration of Mailing	<i>Index #885</i>
02/02/2017	 Perfection Notice from Court of Appeals <i>49839-1-IIU</i>	<i>Index #886</i>
02/03/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne ;Location: Family and Juvenile Courtroom 1) <i>Motion for Petitioner to Pay Respondent to Correct Immigration Status Court's Request</i>	
02/03/2017	 Notice of Issue <i>Remove Conditions</i>	<i>Index #887</i>
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02/03/2017	 Notice of Issue <i>Reconsideration</i>	<i>Index #889</i>
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02/03/2017	Ex Parte Action With Order	
02/06/2017	 Order Striking	<i>Index #891</i>
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from Court to Respondent

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02/07/2017	 Notice of Hearing <i>Re-Noted -- Remove RCW 26.09.191</i>	Index #895
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02/09/2017	 Affidavit/Declaration/Certificate/Confirmation of Service	Index #905
02/10/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) <i>Remove Conditions</i> <i>Court's Request</i>	
02/10/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) <i>Attorney Fees</i> <i>Court's Request</i>	
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02/13/2017	 Transmittal Letter Copy Filed <i>for Notice of Appeal</i>	Index #912
02/13/2017	 Email <i>to Surpeme Court re Findings</i>	Index #913
02/13/2017	 Motion and Affidavit/Declaration <i>Amended</i>	Index #914
02/13/2017	 Proposed Order/Findings	Index #915
02/13/2017	 Notice of Hearing	Index #916
02/14/2017	 Notice <i>Striking Hearing</i>	Index #917
02/14/2017	 Affidavit of Service by Mail	Index #918
02/16/2017	 Order Denying Motion/Petition	Index #919
02/17/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne;Location: Family and Juvenile Courtroom 1) <i>Reconsideration Clerical Error</i>	
02/17/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne;Location: Family and Juvenile Courtroom 1) <i>Court's Request</i>	
02/17/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Hirsch, Anne;Location: Family and Juvenile Courtroom 1) <i>Attorney's Fees Stricken</i>	
02/17/2017	 Sealed Financial Source Document(s)	Index #920
02/17/2017	 Motion <i>Waiver of CD cost</i>	Index #921
02/21/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Thomas, Indu;Location: Family and Juvenile Courtroom 2) <i>Defense/Respondent Requested</i>	
02/21/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Thomas, Indu;Location: Family and Juvenile Courtroom 2) <i>Defense/Respondent Requested</i>	

THURSTON
CASE SUMMARY
CASE NO. 07-3-00848-0

02/21/2017	 Order Waiving	Index #922
02/21/2017	Ex Parte Action With Order	
02/22/2017	 Declaration/Affidavit of Petitioner	Index #923
02/22/2017	 Response Petitioners	Index #924
02/22/2017	 Declaration/Affidavit Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #925
02/22/2017	 Declaration of Mailing	Index #926
02/23/2017	 Declaration/Affidavit Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #927
02/24/2017	Motion Hearing (3:00 PM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) <i>Attorney Fees</i> Resource: Court Reporter 34FTR Events: 02/09/2017 Notice of Hearing	
02/24/2017	 Affidavit/Declaration/Certificate/Confirmation of Service	Index #928
02/24/2017	 Order Denying Motion/Petition	Index #929
02/24/2017	 Motion Hearing	Index #930
02/27/2017	 Declaration/Affidavit Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #931
02/27/2017	 Affidavit/Declaration/Certificate/Confirmation of Service	Index #932
02/27/2017	 Motion and Affidavit/Declaration to Waive CD Cost	Index #933
02/27/2017	 Order to Proceed In Forma Pauperis	Index #934
02/27/2017	Ex Parte Action With Order	
02/27/2017	 Order to Waive Fees of CD	Index #935
02/27/2017	 Motion and Affidavit/Declaration	Index #936
02/27/2017	 Confidential Information Form	Index #937
02/27/2017	 Summons	Index #938

THURSTON
CASE SUMMARY
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02/27/2017	 Petition/Motion to Modify	Index #939
02/27/2017	 Proposed Parenting Plan	Index #940
02/27/2017	 Sealed Financial Source Document(s)	Index #941
02/27/2017	 Motion for Adequate Cause Decision	Index #942
02/27/2017	 Proposed Order/Findings	Index #943
02/27/2017	 Affidavit/Declaration/Certificate/Confirmation of Service	Index #944
02/27/2017	 Notice of Hearing <i>change the 2013 order of parenting plan</i>	Index #945
02/28/2017	 Motion and Affidavit/Declaration	Index #946
03/02/2017	 Designation of Clerk's Papers	Index #947
03/02/2017	 Designation of Clerk's Papers	Index #948
03/02/2017	 Statement <i>Supplement of Arrangements</i>	Index #949
03/06/2017	 Letter <i>to the Parties from Supreme Court</i>	Index #950
03/06/2017	 Transmittal Letter Copy Filed <i>for Letter from Supreme Court</i>	Index #951
03/07/2017	 Index <i>to Clerk's Papers p 1-226 (49839-1-II)</i>	Index #952
03/07/2017	 Letter <i>to the Parties with Index (49839-1-II)</i>	Index #953
03/08/2017	 Designation of Clerk's Papers <i>Amended</i>	Index #954
03/09/2017	 Index <i>for Clerk's Papers p 227-431</i>	Index #955
03/09/2017	 Index <i>for Confidential Clerk's Papers p 432-440</i>	Index #956
03/09/2017	 Index <i>to Clerk's Exhibits</i>	Index #957
03/09/2017	 Letter	Index #958

THURSTON
CASE SUMMARY
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	<i>to Ms. Mason with Indexes</i>	
03/09/2017	 Order Denying Motion/Petition	Index #959
03/09/2017	Ex Parte Action With Order	
03/09/2017	 Affidavit of Service by Mail	Index #960
03/09/2017	 Letter <i>to Parties from Court of Appeal 49839-1-II</i>	Index #961
03/10/2017	 Clerk's Papers Sent <i>Amended Supp p 227-630</i>	Index #962
03/10/2017	 Index <i>Amended Confidential Supp p 631-723</i>	Index #963
03/10/2017	 Letter <i>to Parties with Indexes</i>	Index #964
03/13/2017	 Copy <i>pages 56-58 of Case Summary</i>	Index #965
03/13/2017	 Designation of Clerk's Papers <i>Amended</i>	Index #966
03/13/2017	 Letter <i>from Supreme Court Amended</i>	Index #967
03/16/2017	 Index <i>Clerk's Papers p 724-730</i>	Index #968
03/16/2017	 Index <i>to Clerk's Exhibits</i>	Index #969
03/16/2017	 Letter <i>to Parties with CLP indexes</i>	Index #970
03/17/2017	 Notice of Hearing <i>renoted - conform RCW</i>	Index #971
03/17/2017	 Notice of Hearing <i>modify parenting plan</i>	Index #972
03/17/2017	 Notice <i>Striking hearings</i>	Index #973
03/17/2017	 Notice <i>Hearing Stricken</i>	Index #974
03/24/2017	CANCELED Reconsideration (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4)	

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CASE NO. 07-3-00848-0

	<i>Court's Request</i>	
03/24/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) <i>Remove RCW 26.09.191</i> <i>Court's Request</i>	
03/24/2017	CANCELED Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) <i>Court's Request</i>	
03/30/2017	 Response <i>Petitioner</i>	<i>Index #975</i>
03/30/2017	 Response <i>to Petition</i>	<i>Index #976</i>
03/30/2017	 Declaration/Affidavit <i>of Petitioner</i>	<i>Index #977</i>
03/31/2017	 Transcript <i>of Audio Recording</i>	<i>Index #978</i>
04/03/2017	 Declaration/Affidavit <i>in response</i> Party: Respondent (WIP) MASON, TATYANA IVANOVNA	<i>Index #979</i>
04/03/2017	 Correspondence <i>from Supreme Court</i>	<i>Index #979.1</i>
04/04/2017	Motion Hearing (9:00 AM) (Judicial Officer: Thomas, Indu ;Location: Family and Juvenile Courtroom 2) Resource: Court Reporter 34FTR Events: 03/17/2017 Notice of Hearing	
04/04/2017	Modification Hearing (9:00 AM) (Judicial Officer: Thomas, Indu ;Location: Family and Juvenile Courtroom 2) Resource: Court Reporter 34FTR Events: 03/17/2017 Notice of Hearing	
04/04/2017	 Judgment	<i>Index #980</i>
04/04/2017	 Order <i>re 2013 Restraining Order</i>	<i>Index #981</i>
04/04/2017	Domestic (Judicial Officer: Thomas, Indu) Comment () Monetary/Property Award Creditors: MASON, JOHN A Debtors: MASON, TATYANA IVANOVNA Signed Date: 04/04/2017 Filed Date: 04/04/2017 Effective Date: 04/04/2017 Current Judgment Status: Status: Active Status Date: 04/04/2017 Monetary Award: Fee: Attorney Fee, Amount: \$1,462.50, Interest: 12.00%, Interest Start	

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CASE SUMMARY
CASE NO. 07-3-00848-0

Date: 04/04/2017
Total: \$1,462.50

04/04/2017	 Motion Hearing	Index #982
04/06/2017	 Motion and Affidavit/Declaration	Index #983
04/06/2017	 Notice of Hearing <i>Motion to Pay Costs</i>	Index #984
04/12/2017	 Motion for Revision	Index #985
04/12/2017	 Notice of Hearing <i>Revision</i>	Index #986
04/13/2017	 Copy <i>Decision from Court of Appeals Denying Cover of All Costs</i>	Index #987
04/13/2017	 Letter <i>from Court of Appeals to Counsel re Motion to Modify</i>	Index #988
04/13/2017	 Letter <i>to Counsel re Clerk's Papers</i>	Index #989
04/13/2017	 Transmittal Letter Copy Filed <i>for Clerk's Papers</i>	Index #990
04/17/2017	 Copy <i>Ruling from Court of Appeals 50009-4-II Granting Extention of Time</i>	Index #991
04/19/2017	 Motion and Affidavit/Declaration	Index #992
04/19/2017	 Letter <i>from Court of Appeals</i>	Index #993
04/24/2017	 Declaration/Affidavit Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #994
04/25/2017	 Declaration/Affidavit <i>Responsive Petitioner</i>	Index #995
04/26/2017	 Declaration/Affidavit <i>in Reply</i> Party: Respondent (WIP) MASON, TATYANA IVANOVNA	Index #996
04/28/2017	 Motion for Revision <i>Amended</i>	Index #997
05/01/2017	 Declaration/Affidavit <i>of Respondent</i>	Index #998

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CASE SUMMARY
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05/01/2017	 Declaration/Affidavit <i>of Stacy Simpson</i>	<i>Index #999</i>
05/03/2017	 Response <i>and Objection by Petitioner</i>	<i>Index #1000</i>
05/03/2017	 Response <i>Declaration of Petitioner</i>	<i>Index #1001</i>
05/03/2017	 Reply <i>Respondent</i>	<i>Index #1002</i>
05/05/2017	Motion Hearing (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) Resource: Court Reporter 34FTR Events: 04/06/2017 Notice of Hearing	
05/05/2017	Revision (9:00 AM) (Judicial Officer: Schaller, Christine ;Location: Family and Juvenile Courtroom 4) Resource: Court Reporter 34FTR Events: 04/12/2017 Notice of Hearing	
05/05/2017	 Motion Hearing	<i>Index #1003</i>
05/05/2017	 Motion Hearing	<i>Index #1004</i>
05/05/2017	 Order Denying Motion/Petition <i>Revision</i>	<i>Index #1005</i>
05/05/2017	 Order Denying Motion/Petition <i>Fees</i>	<i>Index #1006</i>
05/09/2017	 Perfection Notice from Court of Appeals <i>50009-4-II</i>	<i>Index #1007</i>
05/09/2017	 Motion for Reconsideration Party: Respondent (WIP) MASON, TATYANA IVANOVNA	<i>Index #1008</i>
05/09/2017	 Notice of Hearing <i>Reconsideration</i>	<i>Index #1009</i>
05/09/2017	 Request <i>to Reconsider without Oral Presentation</i>	<i>Index #1010</i>
05/09/2017	 Affidavit/Declaration/Certificate/Confirmation of Service	<i>Index #1011</i>
05/12/2017	 Order on Assignment/Reassignment <i>Judge Schaller</i>	<i>Index #1012</i>
05/12/2017	Ex Parte Action With Order	
05/15/2017	 Declaration of Mailing	<i>Index #1013</i>

THURSTON
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05/30/2017	 Response <i>Motion for Reconsideration</i>	<i>Index #1014</i>
05/31/2017	 Response <i>Motion for Reconsideration</i>	<i>Index #1015</i>
06/01/2017	 Reply <i>to Reconsideration</i>	<i>Index #1016</i>
06/01/2017	 Order Denying Motion/Petition	<i>Index #1017</i>
06/01/2017	Ex Parte Action With Order	
06/01/2017	 Affidavit of Service by Mail	<i>Index #1018</i>
06/02/2017	Reconsideration (9:00 AM) (Judicial Officer: Schaller, Christine ; Location: Family and Juvenile Courtroom 4) Resource: Court Reporter 34FTR Events: 05/09/2017 Notice of Hearing	
06/02/2017	 Hearing Stricken: In Court Other Reason	<i>Index #1019</i>
06/15/2017	 Designation of Clerk's Papers <i>50009-4-II</i>	<i>Index #1020</i>
06/16/2017	 Copy <i>Court of Appeal Ruling re 49839-1 and 50009-4</i>	<i>Index #1021</i>
07/10/2017	 Letter <i>to Tatyana Mason re Payment of Clerk's Papers for 49839-1-II</i>	<i>Index #1022</i>
07/10/2017	 Transmittal Letter Copy Filed <i>Copy of Letter to Ms. Mason re Payment</i>	<i>Index #1023</i>
07/10/2017	 Letter <i>to Ms Mason re Designation</i>	<i>Index #1024</i>
07/10/2017	 Transmittal Letter Copy Filed <i>50009-4-II re Letter to Ms. Mason re Designation</i>	<i>Index #1025</i>
07/10/2017	 Transmittal Letter Copy Filed <i>49839-1-II re Letter to Ms. Mason re Designation</i>	<i>Index #1026</i>
07/13/2017	 Email <i>between T Mason and TC Clerk's Office</i>	<i>Index #1027</i>
07/13/2017	 Transmittal Letter Copy Filed <i>for 50009-4-II Email</i>	<i>Index #1028</i>
07/13/2017	 Transmittal Letter Copy Filed <i>for 49839-1-II for Email</i>	<i>Index #1029</i>

THURSTON
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07/14/2017

 Designation of Clerk's Papers
Amended

Index #1030

07/18/2017

 Transmittal Letter Copy Filed

Index #1031

DATE

FINANCIAL INFORMATION

Attorney Masters, Kenneth Wendell

Total Charges	257.00
Total Payments and Credits	257.00
Balance Due as of 7/25/2017	0.00

Petitioner (WIP) MASON, JOHN A

Total Charges	290.00
Total Payments and Credits	290.00
Balance Due as of 7/25/2017	0.00

Respondent (WIP) MASON, TATYANA IVANOVNA

Total Charges	567.75
Total Payments and Credits	305.50
Balance Due as of 7/25/2017	262.25

Petitioner (WIP) MASON, JOHN A

Trust, Civil Cash Bond Balance as of 7/25/2017	0.00
--	-------------

Petitioner (WIP) MASON, JOHN A

Trust, Investment Balance as of 7/25/2017	15,500.00
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APPENDIX C

CP 124-25

Findings & Conclusions

1 her from removing the conditions on her current resident status and obtaining permanent
2 residency in the United States.

3 **Having entered the above Findings of Fact, the Court makes the following**
4 **Conclusions of Law:**

- 5 A. The I-864 affidavit created a continuing obligation of Petitioner to support Respondent.
- 6 B. The obligation terminates on the occurrence of any of the following: (1) death of the
7 sponsor; (2) the person being sponsored becoming a US citizen; (3) the sponsored
8 immigrant being credited with 40 quarters of gainful employment in excess of 125% of
9 the federal poverty level; (4) the permanent departure of the sponsored individual from
10 the country.
- 11 C. None of the terminating events have occurred.
- 12 D. Respondent has earned sufficient income for one quarter during the marriage;
13 Petitioner's earnings during the marriage could provide an additional 29 quarters of
14 qualifying employment. These earnings do not meet the requirement of 40 quarters
15 such as would terminate the obligation.
- 16 E. Although Respondent did leave the country, it was to attend her mother's funeral and
17 was for two weeks, after which she returned.
- 18 F. Although *Khan v Khan*, 182 Wn App 795 (2014), does not require a Court determining
19 spousal maintenance to enforce the obligation created by the I-864 affidavit, it
20 recognizes the appropriateness of the trial court's consideration of the affidavit.
- 21 G. The I-864 affidavit is such a significant factor in this case that to set child support
22 without its consideration creates an unjust result.
- 23 H. A Motion to Vacate under CR 60 is an appropriate method to raise the issue of the
24 failure of the court setting child support to consider the affidavit.
- 25 I. CR 60 (b) (11) will allow the motion to be filed later than one year from the date of entry
of the Order of Child Support. It is therefore an appropriate basis under which to bring
a motion to vacate in this case.
- J. The Order of Child Support entered November 25, 2013 should be vacated because the
Court was not informed of the existence of the I-864 affidavit at the time of the entry of
the order.

//

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Optional Form (05/2016)
FL All Family 182

Order
p. 3 of 4

**Law Offices of Jason S.
Newcombe**
1218 Third Ave, Ste 500
Seattle, WA 98101
206-624-3644
fax 206-971-1661

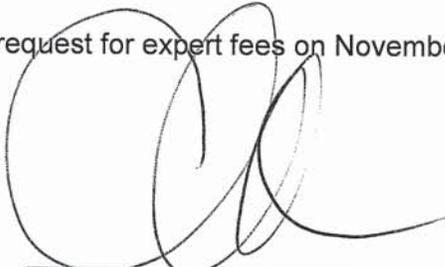
1 **Now, Therefore, It Is Hereby Ordered:**

2 The Order of Child Support entered by the Hon. Anne Hirsch on November 25, 2013, is
3 vacated. Any remaining arrears due and owing under that order are likewise vacated.

4 Petitioner may seek entry of a new order to replace the order of November 25, 2013.

5 The court will consider the request for expert fees on November 21, 2016.

6
7 11 | 23 | 16
8 _____
Date



_____ *Chris Wickham, Superior Court Judge*

9
10
11 **Petitioner and Respondent or their lawyers fill out below.**

12 This order:
13 Is presented by me

This order:

14 _____
15 32521
Petitioner lawyer signs here + WSBA #

_____ *Respondent signs*

16
17 Laurie G. Robertson
Print Name

_____ Tatyana Mason
Print Name

MASTERS LAW GROUP

October 12, 2017 - 1:47 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 49839-1
Appellate Court Case Title: John Mason, Appellant v Tatyana Mason, Respondent
Superior Court Case Number: 07-3-00848-0

The following documents have been uploaded:

- 5-498391_Briefs_20171012134438D2924274_7149.pdf
This File Contains:
Briefs - Appellants - Modifier: Amended
The Original File Name was Amended Brief of Appellant.pdf
- 5-498391_Motion_20171012134438D2924274_4965.pdf
This File Contains:
Motion 1 - Other
The Original File Name was Motion to Accept Amended Opening Brief.pdf

A copy of the uploaded files will be sent to:

- Tatyana377@gmail.com
- laurier@washingtontateattorneys.com

Comments:

Motion to Accept Amended Brief of Appellant; Amended Brief of Appellant

Sender Name: Tami Cole - Email: paralegal@appeal-law.com

Filing on Behalf of: Kenneth Wendell Masters - Email: ken@appeal-law.com (Alternate Email: paralegal@appeal-law.com)

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