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No. 92991-2

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SUPREME COURT OF THE STATE OF WASHINGTON

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In re: the Marriage of  
Raluca Vetrici,

Respondent,

v.

Grigore Vetrici,

Appellant.

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BRIEF OF RESPONDENT

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## **I. INTRODUCTION**

Appellant (“Mr. Vetrici”), *pro se*, seeks direct review of orders issued by the trial court in regards to his attempt to hold his ex-wife, Respondent (“Ms. Vetrici”), in contempt of court based on final dissolution orders executed in 2010. There is no ground for this appeal to be heard directly by the Supreme Court. Regardless, Mr. Vetrici’s Motion for Contempt was frivolous and an attempt to relitigate matters already ruled on in Ms. Vetrici’s favor in Canadian courts. The sanctions issued against him were well justified. As to his appeal, it is defective before reaching the merits for the reasons articulated below. And even if reaching the merits, the appeal has zero chance of success.

## **II. RESTATEMENT OF THE ISSUES**

- 2.1. Whether the Trial Court Erred in Denying Mr. Vetrici’s Motion for Contempt? No.
- 2.2. Whether the Trial Court Erred in Ordering Mr. Vetrici to Pay CR 11 Sanctions to Ms. Vetrici? No.

## **III. ISSUE #1 RESTATED**

Whether the Trial Court Erred in Denying Mr. Vetrici’s Motion for Contempt?

### **3.1. Issue #1 Restatement of the Relevant Facts and Procedural History**

In June 2009, Mr. Vetrici prepared a separation agreement which the parties signed, whereby they would share joint custody of the children,

both parties would retain all investments and bank accounts in their respective names, Ms. Vetrici would receive \$10,000, and Mr. Vetrici would not pursue litigation, i.e., a claim for adultery, against Ms. Vetrici's new partner. (CP at 71, Canadian Order). The effect of the agreement was that Mr. Vetrici retained the lion's share of the parties' assets. (CP at 71, Canadian Order). Notably, Ms. Vetrici would retain the Registered Education Savings Plan ("RESP") because it was an account in her name. (CP at 71, 78, Canadian Order).

During the summer of 2009, the parties' children moved to Canada. (CP at 71-72, Canadian Order).

In May of 2010, Ms. Vetrici filed for dissolution with Thurston County Superior Court. (CP at 6-15, Petition). She sought a court order that would award her "All personal property and household items currently in her possession" and would award Mr. Vetrici "All personal and household items currently in his possession." (CP at 8, Petition). Under the heading "Jurisdiction Over the Children" she stated "The Canadian Courts have jurisdiction over the children at the present time, due to the children residing in Canada." (CP at 11-12, Petition).

Mr. Vetrici did not contest the dissolution proceedings; rather, he joined the petition. (CP at 15, Petition). On August 6, 2010, the trial court issued a formal Decree of Dissolution. (CP at 35-41, Decree of Dissolution).

In addition to dissolving the parties' marriage, that order contained the following relevant provisions:

3.2 Property to be Awarded to Husband

The husband is awarded . . . all personal and household items currently in his possession.

3.3. Property to be Awarded to the Wife

The wife is awarded . . . all personal and household items currently in her possession.

3.7. Maintenance.

Does not apply.

3.10 Jurisdiction Over the Children

The court has no jurisdiction as they reside in Canada with father.

(CP at 36-40, Decree of Dissolution).

The Findings of Fact and Conclusions at Law issued with the Decree contain the following provisions:

2.8 Community Property

The parties have the following community property:  
See Exhibit 1.<sup>1</sup>

Other: The [RESP] Educational account for the children is not part of this action.

2.9 Separate Property

The husband has the following real or personal property:  
Personal and household items currently in his possession.

The wife has the following real or personal property:  
Personal and household items currently in her possession.

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<sup>1</sup> Exhibit 1 states: The parties have the following real or personal property: All property acquired during the marriage except property acquired by gift or inheritance.

(CP at 27, Dissolution Findings of Fact and Conclusions of Law).

The transcript of the presentation hearing provides in pertinent part the following:

THE COURT: Have you set forth a division of your property and debts in the final pleadings?

MS. VETRICI: Yes.

THE COURT: Do you feel that's fair and equitable?

MS. VETRICI: Yes.

MR. VETRICI: I -- I have a concern with that. One of the --

THE COURT: Okay.

MR. VETRICI: One of the assets that we have is a registered education savings plan - I don't know - in the name of the kids. Does this Court take jurisdiction over that? My -- that was -- that was (inaudible).

THE COURT: The decree indicates this Court has no jurisdiction over the children as they reside in Canada.

MR. VETRICI: That's correct, so would that be a fund with the children, not with the property division then?

THE COURT: There is nothing in the findings or the decree that discussed this educational fund.

MR. VETRICI: That's correct.

THE COURT: So there's nothing that mentions it at all, so the Court isn't dealing anything with it. I'm guessing Canada can do that.

MR. VETRICI: Okay. Thank you.

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THE COURT: And there are two children, Maria and Sophia, that jurisdiction is going to be in Canada on these children; is that correct?

MS. VETRICI: Yes.

THE COURT: Okay. So these are children from another relationship you have?

MR. VETRICI: No, it's our marriage. It was from our marriage.

MS. VETRICI: Yeah.

THE COURT: All right. But they reside in Canada with you?

MR. VETRICI: They reside in Canada with me.

They're currently visiting with their mom for the summer.

THE COURT: All right.

MR. VETRICI: They are actually down here right now.

THE COURT: All right. Okay. So any issue, the parties agree, regarding child support or the parenting plan of these children will be dealt with in Canada.

(RP (August 6, 2010) at 5-8).

Mr. Vetrici never moved under CR 60, or any other authority, to correct any perceived mistake in the parties' final orders.

In June 2011, Ms. Vetrici filed a Notice of Family Claim in a Canadian Court, located in Vancouver, British Columbia. (CP at 73, Canadian Order). She sought an order that the children move with her to Olympia. (CP at 73, Canadian Order).

Mr. Vetrici filed a Response and counterclaim opposing this move. (CP at 73, Canadian Order). Specifically, he sought that the Canadian court issue an order that continued the "Current parenting arrangement of sole custody and guardianship," with Ms. Vetrici to have access on alternate weekends and other specified occasions. (CP at 73, Canadian Order). He also sought an order requiring Ms. Vetrici to pay him child support. (CP at 73, Canadian Order).

In December 2011, Ms. Vetrici closed the RESP account and used the funds to finance her move to Metro Vancouver, British Columbia. (CP at 73, Canadian Order). She moved to an apartment close to where Mr. Vetrici and the children resided. (CP at 73, Canadian Order). After the move, Mr. Vetrici would not permit Ms. Vetrici to exercise equal parenting time with the children. (CP at 73-74, Canadian Order). Rather, he would

only agree to increase her access to the children one night per week and alternate weekends. (CP at 73, Canadian Order).

In January 2013, Ms. Vetrici filed an Amended Notice of Family Claim seeking joint custody, joint guardianship and equal parenting time with the children. (CP at 74, Canadian Order).

Following a four-day trial at a Canadian court, Ms. Vetrici was successful and that court ordered she have joint guardianship and equal co-parenting time. (CP at 74-76, Canadian Order). The Canadian court also found that Ms. Vetrici was not delinquent on child support, that Mr. Vetrici had remained deliberately unemployed, and that Ms. Vetrici had the right to close out the RESP account and use the funds the way that she did. (CP at 74-76, Canadian Order).

Mr. Vetrici appealed this Final Order, issued by the Canadian trial court, in May of 2013, to a Canadian court of appeals. (CP at 63-81, Canadian Order). Mr. Vetrici contended that the trial judge erred in awarding equal parenting time and joint guardianship, and erred by not having Ms. Vetrici re-pay the RESP funds to him. (CP at 63-81, Canadian Order). The appeal was heard on March 16, 2015, and Written Reasons dismissing Mr. Vetrici's appeal were released on April 7, 2015. (CP at 63-81, Canadian Order).

Mr. Vetrici then applied to re-open his appeal, a request that was denied by the Canadian court of appeals on April 17, 2015. On May 27, 2015 Mr. Vetrici filed a request to the Canadian court of appeals that the appeal panel who heard his case be disqualified on the basis of bias. He sought a re-hearing of his appeal. On June 12, 2015, the Canadian court of appeals issued a memorandum indicating they would not re-open Mr. Vetrici's appeal.

On June 8, 2015, Mr. Vetrici filed a Notice of Application to the Supreme Court of Canada for leave to appeal the judgment from the Canadian court of appeals. Mr. Vetrici's request for leave was dismissed on January 14, 2016.

The number of interim applications and applications for reconsideration filed by Mr. Vetrici since the pronouncement of the Final Order on May 1, 2013, are too many to list, however two bear mentioning: First, on January 22, 2016, Mr. Vetrici moved the original Canadian trial court to change the first order he appealed. This paperwork requested the same relief Mr. Vetrici sought, and was denied, on appeal. The Canadian trial court denied Mr. Vetrici's request. Second, in February of 2016, Mr. Vetrici moved the Canadian trial court to terminate the original Final Order. This too was unsuccessful.

Meanwhile, in 2015, while all his attempts to vacate the Canadian trial court's Final Order at all levels of the Canadian court system had been or were about to be exhausted, Mr. Vetrici pursued litigation in Washington State. (CP at 43-47, Motion for Contempt). His motion for contempt was filed on December 3, 2015. (CP at 43-47, Motion for Contempt). In his motion, Mr. Vetrici essentially requested Thurston County Superior Court do what he was unsuccessful in getting the Canadian court's to do—revert the parenting arrangement back to what he enjoyed prior to May 2013, and find Ms. Vetrici in contempt of having liquidated the RESP account. (CP at 43-47, Motion for Contempt).

The trial court denied Mr. Vetrici's motion for contempt on December 24, 2015. (CP at 90, Commissioner's Order on Contempt). Mr. Vetrici moved for reconsideration, and that motion was denied. (CP at 109-110, Commissioner's Order on Reconsideration).

On February 1, 2016, Mr. Vetrici filed a "Amended Motion to Amend a Clerical Mistake" on an ex-parte basis. (CP at 101-102, Amended Motion for Clerical Mistake). The trial court determined that the motion was in fact a CR 60 motion, and set a hearing for February 19, 2016. (CP at 107, Show Cause Order). The trial court reserved the request of Ms. Vetrici's lawyer to seek attorney's fees for having him appear for at the ex-parte hearing. (CP at 107, Show Cause Order).

On February 5, 2016, Mr. Vetrici filed a motion to revise the order denying reconsideration. (CP at 114-124, Motion to Revise). The motion to revise was denied after a contested hearing on March 4, 2016. (CP at 174, Judge's Order Denying Revision). The trial court took the request for Ms. Vetrici's attorney fees under advisement. (CP at 174, Judge's Order Denying Revision).

On March 14, 2016, Mr. Vetrici filed a motion for reconsideration of the order denying revision. (CP at 175-181, Motion for Reconsideration of Revision). The motion was denied without oral argument on March 30, 2016. (CP at 231, Judge's Email Order Denying Reconsideration of Revision Order).

On May 19, 2016, the trial court issued its Findings of Fact and Conclusions at Law Supporting Order to Deny Motion to Revise and Award of Attorney Fees. (CP at 284-288, Revision Findings of Fact). The trial court affirmed the court commissioner's ruling that the motion for contempt be denied, and also issued a letter order. (CP at 289-290, Letter Order from Judge). The trial court's reasoning, in pertinent part was as follows:

- a. The matter involving the RESP account had been fully litigated in Canada;
- b. There is no Washington order for which Ms. Vetrici was in contempt;

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- c. The parties stipulated to the entry of the Decree of Dissolution and Findings of Fact and Conclusions of Law, including a provision that RESP account is not part of this action;
- d. The trial court lacked jurisdiction over the parties' children as they lived in Canada at the time of the dissolution;
- e. The remaining issues raised by Mr. Vetrici in his motion for contempt were without merit; and
- f. This action was a violation of Civil Rule 11 as is more particularly set forth in the written decision filed separately. Ms. Vetrici was awarded a judgment of \$4,808 for her reasonable attorney fees against Mr. Vetrici.

(CP at 284-288, Revision Findings of Fact; CP at 289-290, Letter Order from Judge).

Mr. Vetrici now appeals directly to the Supreme Court.

### **3.2. Issue # 1 Standard of Review**

The decision to punish a party in contempt of court, or not, is within the sound discretion of the trial court. In re Marriage of Humphreys, 79 Wn. App. 596, 599, 903 P.2d 1012, 1013 (1995). “Unless there is an abuse of a trial court's exercise of discretion,” such order “will not be disturbed on appeal.” Id.

“The trial court's findings of the underlying facts supporting or not supporting jurisdiction are reviewed by the same deferential standard that applies to other factual findings.” In re Marriage of Donboli, 128 Wn. App. 1039 (2005) (citing Schoenberg v. Exportadora de Sal, S.A. de C.V., 930

F.2d 777, 779 (9th Cir.1991) (upholding factual findings underlying a jurisdictional issue because they were not clearly erroneous); Bruce v. United States, 759 F.2d 755, 758 (9th Cir.1985) (holding that trial court's factual findings on the jurisdictional issue must be accepted unless they are clearly erroneous, but that the ultimate legal conclusion is subject to de novo review).

“If substantial evidence supports [a trial court’s non-jurisdictional] finding, it does not matter that other evidence may contradict it, because credibility determinations are left to the trier of fact and are not subject to review.” See In re Marriage of Donboli, 128 Wn. App. 1039. “Appellate courts do not weigh conflicting evidence.” Id.

### **3.3. Issue # 1 Summary of Argument**

Attempting to distill meaning from Mr. Vetrici’s, lengthy, *pro se* appeal regarding the denial of his Motion for Contempt, he appears to find error with (1) the trial court’s finding that it had no jurisdiction over the parties’ children when it entered its Decree of Dissolution in 2010, (2) the trial court’s finding that the Decree of Dissolution did not address the RESP account, (3) the trial court’s finding that the RESP account had been fully litigated in Canada, and (4) the trial court’s finding that Ms. Vetrici was not in contempt regarding any Washington State court order.

Each of these sub-issues on the merits is addressed in the argument below; however, this is after threshold arguments are made by Ms. Vetrici that limit and/or bar hearing Mr. Vetrici's appeal on the merits.

First, as a threshold matter needing to be addressed before the merits, is the issue of inadequate briefing on appeal. Mr. Vetrici has provided nineteen assignment of errors. Many are difficult to understand, not relevant, and/or not adequately briefed. Consequently, Ms. Vetrici objects to those assignments of errors not adequately briefed, as those should not be considered on appeal.

Second, also a threshold matter needing to be addressed before the merits, is the issue of waiver. Mr. Vetrici accepted the language in the parties' final dissolution orders from 2010, stating all issues regarding the parties' children would be the province of Canadian courts. Subsequently, he never moved to correct any perceived defect in those orders after they were entered, and he did not request relief from Washington courts when Ms. Vetrici petitioned the Canadian courts for orders pertaining to the parties' children. Instead, Mr. Vetrici fully litigated all issues regarding the children in Canada. Thus, he has waived any ability to change the plain language of the final dissolution orders, and cannot hold Ms. Vetrici in contempt on the basis that those orders should state something other than what they do in fact say.

Third, also a threshold matter needing to be addressed before the merits, is the issue of preservation of error. Mr. Vetrici makes arguments not made to the trial court below, such as invoking the UCCJEA. These arguments have no merit. Nevertheless, they were not preserved and should not be reviewed on appeal.

Fourth, also a threshold matter needing to be addressed before the merits, is the issue of the invited error doctrine. When entering the final dissolution orders, Mr. Vetrici stipulated that the issues regarding the children would be addressed in Canadian courts. Years later, in the case at hand, he erroneously claims he made no such stipulation and that trial court erred in not addressing issues regarding the children in the final dissolution orders. He does so in a frivolous attempt to hold Ms. Vetrici in contempt based on this alleged error that he invited. Under the invited error doctrine, Mr. Vetrici may not induce an (alleged) error and then complain about it on appeal.

Fifth, as to the merits of Mr. Vetrici's appeal, plainly the trial court did not have jurisdiction over the parties' children when it entered the final dissolution orders in 2010. This is because the children moved to and resided in Canada a year before the parties petitioned for dissolution in Washington State. Mr. Vetrici stipulated to this fact both in the final dissolution orders as well as at the presentation hearing on those orders.

Moreover, after the final dissolution orders were entered, he fully litigated all issues regarding the children in Canada. Thus, the trial court's findings that jurisdiction over the children has always been in Canada are well supported.

Sixth, also addressing the merits of Mr. Vetrici's appeal, the RESP educational account, has never been under the jurisdiction of the trial court, and it was never addressed in any Washington State court order. Rather, the final dissolution orders state the RESP account was specifically not addressed and not a part of the Washington State action. Mr. Vetrici stipulated to this fact in the final dissolution orders as well as at the presentation hearing. Thus, the trial court's finding that the final dissolution orders did not address the RESP account is well supported by the evidence.

Finally, addressing the main issue on appeal, based on all of the above, there is no Washington State court order that Ms. Vetrici can be held in contempt. This is because all issues regarding Mr. Vetrici's Motion for Contempt had to do with the parties' children and the final dissolution orders do not address any issue having to do with the parties' children. Furthermore, the doctrines of collateral estoppel and *res judicata* bar any relief for Mr. Vetrici because all issues regarding the parties' children were fully litigated in Canada. In sum, he may not attempt to relitigate these issues in Washington via his Motion for Contempt.

### 3.4. Issue #1 Argument

#### 3.4.1. *Mr. Vetrici Failed to Adequately Brief Assignments of Errors.*

Mr. Vetrici's *pro se* appeal includes nineteen assignment of errors and two issues pertaining to those assignments of errors. Many of these assignments of errors, which are too numerous to list, address, and/or understand, are not adequately briefed and this Court may refuse to consider them. See Hiatt v. Walker Chevrolet Co., 120 Wash. 2d 57, 64, 837 P.2d 618, 622 (1992) (citing RAP 12.1(a); State v. Mayes, 20 Wash.App. 184, 194, 579 P.2d 999, review denied, 91 Wash.2d 1001 (1978)). Ms. Vetrici hereby objects to any assignment of error that is not adequately briefed.

#### 3.4.2. *Mr. Vetrici Has Waived Any Ability to Modify the 2010 Final Dissolution Orders, and Cannot Now Change the Language of Those Orders to Try to Hold Ms. Vetrici in Contempt in 2015.*

Waiver is an intentional abandonment or relinquishment of a known right. Mid-Town Ltd. P'ship v. Preston, 69 Wn. App. 227, 233, 848 P.2d 1268, 1272 (1993). It may be shown by unequivocal acts or conduct. Id.

Here, Mr. Vetrici did not object to any language in the final dissolution orders at the time they were entered. He never moved under CR 60, or under any other authority, within any reasonable amount of time after the final dissolution orders were entered in 2010. Furthermore, he did not request any relief in Washington after Ms. Vetrici petitioned the Canadian

court for orders pertaining to the children. Instead, Mr. Vetrici consented to jurisdiction in Canada and litigated all of the issues regarding the children in Canadian courts.

Thus, any arguments based on the final dissolution orders' plain language (that issues regarding the parties children would be heard in Canadian courts)—in an attempt to hold Ms. Vetrici in contempt in 2015—have been waived. See Mid-Town Ltd. P'ship v. Preston, 69 Wn. App. at 233.

3.4.3. *Mr. Vetrici Makes New Arguments on Appeal That Should Not Be Heard.*

Mr. Vetrici's *pro se* appeal includes arguments that were not made to the trial court below, such as invoking the UCCJEA. Ms. Vetrici hereby objects to arguments not preserved below. See Krenov v. W. Coast Life Ins. Co., 48 Wash. 2d 180, 187, 292 P.2d 209, 213 (1956) (holding where objection made at trial is on a ground different from that urged upon appeal, court will not consider); Olmsted v. Mulder, 72 Wash.App. 169, 183, 863 P.2d 1355, 1362 (1993) (holding if it is not clear from the record that an issue was properly preserved, the appellate court will ordinarily decline to review the claimed error). Consequently, such arguments should not be heard on appeal.

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3.4.4. *Mr. Vetrici Should Not Be Allowed to Set Up an Alleged Error and then Complain About that Error on Appeal.*

Under the invited error doctrine, a party may not set up an alleged error and then complain about the error on appeal. Angelo Prop. Co. v. Hafiz, 167 Wn. App. 789, 823, 274 P.3d 1075 (2012); In re the Matter of the Estate of Donald C. Muller, 47013-6-II, 2017 WL 193290, at \*8-9 (Wash. Ct. App. 2017).

Here, Mr. Vetrici has done the following: (1) he joined Ms. Vetrici's petition for dissolution in 2010 that specifically acknowledged all issues regarding the children were the province of Canadian courts, (2) he executed final orders to that effect, and (3) he explicitly acknowledged this reality at the presentation hearing. Then, five years later, he brings a contempt motion against Ms. Vetrici based on his belief that the trial court should have addressed issues regarding the parties' children in 2010 (when the children were living in Canada).

This argument is meritless. Based on the invited error doctrine, any error the trial court, *arguendo*, made in 2010 regarding the parties' children was invited by Mr. Vetrici because he agreed any such issues regarding the children would be resolved in Canadian courts. See Angelo Prop. Co. v. Hafiz, 167 Wn. App. at 823; In re the Matter of the Estate of Donald C. Muller, 47013-6-II, 2017 WL 193290, at \*7.

Accordingly, Mr. Vetrici has no basis to hold Ms. Vetrici in contempt based on what he—now—wants the 2010 final dissolution orders to say, when he induced the trial court to have them say otherwise at the time they were entered. See Angelo Prop. Co. v. Hafiz, 167 Wn. App. at 823; In re the Matter of the Estate of Donald C. Muller, 47013-6-II, 2017 WL 193290, at \*7.

3.4.5. *The Trial Court Did Not Have Jurisdiction Over the Parties' Children When It Entered Its Decree of Dissolution.*

Subject matter jurisdiction is “the authority of the court to hear and determine the class of actions to which the case belongs.” In re Adoption of Buehl, 87 Wn.2d 649, 655, 555 P.2d 1334 (1976). But a superior court always has jurisdiction to determine whether it has subject matter jurisdiction and whether it should exercise its jurisdiction. In re Marriage of Kastanas, 78 Wn. App. 193, 201, 896 P.2d 726, 730 (1995).

The child's home state is defined as the following: “the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding. . . .” In re Marriage of Donboli, 128 Wn. App. 1039. Under the UCCJEA, there are limited circumstances in which a state may exercise jurisdiction to make initial child custody determinations:

- (1) [A] *court of this state has jurisdiction to make an initial child custody determination only if:*
  - (a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
  - (b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271;
  - (i) The child and the child's parents, or the child and at least one parent ..., have a significant connection with this state other than mere physical presence;
  - (ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

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- (2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.
- (3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

RCW 26.27.201 (emphasis added).

Here, during the summer of 2009, the parties' children moved to Canada, where they have resided ever since. (CP at 71-72, Canadian Order). A year later, Ms. Vetrici filed for dissolution in Washington. (CP at 6-15,

Petition). In her petition, she acknowledged that Canadian courts had jurisdiction over the parties' children. (CP at 6-15, Petition). Mr. Vetrici did not contest the dissolution proceedings and signed the joinder on her petition. (CP at 6-15, Petition). The parties' final decree of dissolution was agreed and explicitly acknowledged the Washington trial court "ha[d] no jurisdiction [over the parties' children] as they reside in Canada with father." (CP at 35-41, Decree of Dissolution). At the presentation hearing for this final order, Mr. Vetrici specifically acknowledged that Canadian courts had jurisdiction over the parties' children:

THE COURT: The decree indicates this Court has no jurisdiction over the children as they reside in Canada.

MR. VETRICI: That's correct. . . .

RP (August 6, 2010) at 6).

Later, starting in 2013, Mr. Vetrici fully litigated—at all levels of the Canadian court system—all issues regarding the parties' children in Canada. (CP at 63-81, Canadian Order). In 2015, after it was clear that he would not be granted the relief he wanted in Canada Mr. Vetrici brought suit regarding the parties' children in Washington. (CP at 43-47, Motion for Contempt).

Accordingly, the trial court correctly stated in its letter order, dated May 19, 2016, as well as in its Findings of Fact and Conclusions of Law,

that it did not have jurisdiction over the children. See RCW 26.27.201; In re Marriage of Donboli, 128 Wn. App. 1039.

In sum, the trial court's factual findings on jurisdiction regarding the parties' children were not in error. All such findings were well supported by substantial evidence, such as the parties' agreed statements made in the Dissolution Decree as well as that order's presentation hearing. See In re Marriage of Donboli, 128 Wn. App. 1039.

*3.4.6. The Trial Court's Decree of Dissolution Did Not Address the RESP Account.*

Here, Mr. Vetrici essentially argues that the RESP account was under the jurisdiction of the trial court. (Opening Brief at 3-5, 31-32, 40-43). However, the parties' Dissolution Decree from 2010, specifically states that the RESP, i.e., the educational account for the children, was "not a part of th[e] action." (CP at 25-34, Dissolution Findings of Fact and Conclusions of Law).

Mr. Vetrici did not contest this fact when entering the Dissolution Decree. Rather, at the presentation hearing Mr. Vetrici explicitly agreed that the RESP account was the province of the Canadian courts:

MR. VETRICI: One of the assets that we have is a registered education savings plan - I don't know - in the name of the kids. Does this Court take jurisdiction over that? My -- that was -- that was (inaudible).

THE COURT: The decree indicates this Court has no jurisdiction over the children as they reside in Canada.

MR. VETRICI: That's correct, so would that be a fund with the children, not with the property division then?

THE COURT: There is nothing in the findings or the decree that discussed this educational fund.

MR. VETRICI: That's correct.

THE COURT: So there's nothing that mentions it at all, so the Court isn't dealing anything with it. I'm guessing Canada can do that.

MR. VETRICI: Okay. Thank you.

(RP (August 6, 2010) at 6).

Thus, the trial court correctly stated in its letter order, dated May 19, 2016, as well as in its Findings of Fact and Conclusions of Law regarding the contempt action, that it did not have jurisdiction over the RESP account. (CP at 35-41, Decree of Dissolution; CP at 25-34, Dissolution Findings of Fact and Conclusions of Law).

3.4.7. *Ms. Vetrici Was Not in Contempt of Any Washington State Court Order.*

“Contempt of court is defined in part as intentional disobedience of a lawful court order.” In re Marriage of Humphreys, 79 Wn. App. at 599.  
“In the context of a dissolution order, there must be evidence the parent's

failure to comply with an order was in bad faith.” Id. “In determining whether the facts support a finding of contempt, the court must strictly construe the order alleged to have been violated, and the facts must constitute a plain violation of the order.” Id.

“Filing two separate lawsuits based on the same event—claim splitting—is precluded in Washington.” Ensley v. Pitcher, 152 Wn. App. 891, 898–99, 222 P.3d 99, 102–03 (2009). “The doctrine of *res judicata* rests upon the ground that a matter which has been litigated, or on which there has been an opportunity to litigate, in a former action in a court of competent jurisdiction, should not be permitted to be litigated again.” Id.

“*Res judicata* bars such claim splitting if the claims are based upon the same cause of action.” Id. (citing 14A Karl B. Tegland, *Washington Practice: Civil Procedure* § 35.33, at 479 (1st ed.2007) (distinguishing collateral estoppel's requirement that the issue be actually litigated from *res judicata's* more lenient standard where issues that could have been litigated and resolved are barred). “It puts an end to strife, produces certainty as to individual rights, and gives dignity and respect to judicial proceedings.” Ensley v. Pitcher, 152 Wn. App. at 898–99. “The threshold requirement of *res judicata* is a valid and final judgment on the merits in a prior suit.” Id.

“Collateral estoppel, or issue preclusion, bars relitigation of an issue in a subsequent proceeding involving the same parties.” Christensen v.

Grant Cty. Hosp. Dist. No. 1, 152 Wn.2d 299, 306, 96 P.3d 957, 960–61 (2004). “It is distinguished from claim preclusion in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of *issues* between the parties, even though a different claim or cause of action is asserted.” Id. (emphasis in original) (some internal punctuation omitted).

Finally, the doctrine of equitable estoppel bars a party from making a claim that contradicts or repudiates his or her earlier statement, admission, or conduct on which another has reasonably relied. Schoonover v. State, 116 Wn.App. 171, 179–80, 64 P.3d 677 (2003).

Here, Ms. Vetrici could not have been found to have violated any court ordered provision regarding the parties’ children—let alone willfully—as no Washington court order has ever applied to the parties’ children. See In re Marriage of Humphreys, 79 Wn. App. at 599. This includes the RESP account, as all issues regarding the parties’ children were the province of the Canadian court system.

Furthermore, the doctrine of equitable estoppel bars any relief being granted to Mr. Vetrici because he stipulated that Canada had jurisdiction over the parties’ children when he executed the final dissolution orders in 2010.

Finally, all issues regarding the parties' children were actually litigated in Canada, and the doctrines of collateral estoppel and *res judicata* also bar any relief being granted to Mr. Vetrici. See Ensley, 152 Wn. App. at 898–99; Christensen, 152 Wn.2d at 306.

Accordingly, there is no Washington court order for which Ms. Vetrici can be held in contempt.

#### **IV. ISSUE #2 RESTATED**

Whether the Trial Court Erred in Ordering Mr. Vetrici to Pay CR 11 Sanctions to Ms. Vetrici?

##### **4.1. Issue #2 Restatement of the Relevant Facts and Procedural History**

Mr. Vetrici filed his Motion for Contempt in November of 2015. (CP at 43-47, Motion for Contempt). A show cause hearing was ordered. (CP at 42, 58, Show Cause Orders). Before the hearing, Ms. Vetrici filed a declaration demonstrating the frivolity of Mr. Vetrici's Motion. (CP at 59-62, Declaration of Ms. Vetrici). At the hearing, after argument, Mr. Vetrici's motion was denied. (CP at 90, Commissioner's Order on Contempt). He subsequently moved to reconsider, and that was also denied at hearing after argument. (CP at 100, Order on Reconsideration).

Harassing Ms. Vetrici further, with no hope of success, Mr. Vetrici moved under CR 60, and then for revision. (CP at 101-102, Amended Motion on Clerical Mistake; CP at 114-124, Motion for Revision). These

motions were also denied. (CP at 109-110, Commissioner's Order on Reconsideration; CP at 174, Judge's Order Denying Revision). Mr. Vetrici moved to reconsider the motion to revise. (CP at 175-181, Motion for Reconsideration of Revision). This was motion was decided, without hearing. (CP at 231, Email from Judicial Assistant). Local court rules provide that hearings on motions for revision may be struck by the trial judge. LCR 59.

The trial court imposed sanctions against Mr. Vetrici pursuant to CR 11, reasoning that there was not a reasonable basis for the contempt motion and that Mr. Vetrici was intransigent and willfully attempting to harass Ms. Vetrici with frivolous litigation imposed for an improper purpose. (See CP at 284-288, Revision Findings of Fact; CP at 289-290, Letter Order from Judge).

On appeal, Mr. Vetrici argued that the trial court's order regarding CR 11 sanctions is "void" because it was made without "due process." (Opening Brief at 46). He also, essentially, argued that *he did make a reasonable inquiry* into the legal and factual basis of his claims when he filed for contempt against Ms. Vetrici in 2015. (Opening Brief at 45).

#### **4.2. Issue #2 Standard of Review**

An appellate court reviews an award of Rule 11 sanctions for abuse of discretion. Marina Condo. Homeowner's Ass'n v. Stratford at Marina,

LLC, 161 Wn. App. 249, 263, 254 P.3d 827, 833 (2011). A trial court abuses its discretion if its order is manifestly unreasonable or is based on untenable grounds. Id.

#### **4.3. Issue #2 Summary of the Argument**

First, Mr. Vetrici claims he was not provided due process in regards to his motion for contempt and the CR 11 sanctions imposed against him. This argument is meritless. Mr. Vetrici's motion was heard, argued, and denied. On revision, the trial court heard argument, and his motion was denied. The trial court then struck Mr. Vetrici's hearing to reconsider the revision order and issued sanctions against him. This procedure was in accordance with due process and local court rule, and was also well within the law and discretion of the trial court.

Second, Mr. Vetrici argues that he did make a reasonable inquiry into the legal and factual basis of his claims. However, no law or facts supported his frivolous Motion for Contempt. Moreover, the Motion for Contempt was just an attempt to relitigate issues he lost in litigation in Canada. Thus, sanctions were well justified.

#### **4.4. Issue #2 Argument**

Due process requires "both notice and an opportunity to be heard at a meaningful time in a meaningful manner." Prostov v. State, Dep't of

Licensing, 186 Wn. App. 795, 810, 349 P.3d 874 (2015) (quoting Mathews v. Eldridge, 424 U.S. 319, 348, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976)).

“[A] revision court has full jurisdiction over the entire case and is authorized to determine its own facts and make its own legal conclusions based on the record before the commissioner, or order *or conduct further proceedings in its discretion*.” In re Marriage of Dodd, 120 Wn. App. 638, 643, 86 P.3d 801, 804 (2004) (emphasis added). Thurston County Local Rule 59, governing Motions for Reconsideration and Revision, and it provides in pertinent part:

Each judge reserves the right to strike the hearing and decide the motion without oral argument.

Thurston County LCR 59(B).

Doctrines such as estoppel and *res judicata* “promote[] judicial economy and *serve[] to prevent inconvenience or harassment of parties*.” See Christensen, 152 Wn.2d at 306 (emphasis added). “Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation.” See *id.* at 306–07.

Civil Rules for Superior Court, Rule 11, requires every pleading (Complaint) to be:

(1) well grounded in fact; (2) warranted by existing law or a good faith argument for a change in the law; and (3) not interposed for any improper purpose. If a pleading . . . is in violation of this rule, the court . . . may impose upon the

person who signed it . . . an appropriate sanction, which may include an order to pay to the other party the amount of the reasonable expenses incurred because of the filing . . . including a reasonable attorney fee.

A pro se plaintiff is also subject to CR 11 sanctions if three conditions are met: (1) the action is not well grounded in fact, (2) it is not warranted by existing law, and (3) the party signing the pleading has failed to conduct a reasonable inquiry into the factual or legal basis of the action. See CR 11; Lockhart v. Greive, 66 Wash.App. 735, 743–44 (1992); Harrington v. Pailthorp, 67 Wash. App. 901, 910 (1992); Doe v. Spokane & Inland Empire Blood Bank, 55 Wash.App. 106, 110 (1989).

Here, Mr. Vetrici’s argument that the CR 11 sanctions are “void” because they were made without “due process” is utterly meritless. Mr. Vetrici’s Motion for Contempt, for reconsideration, and revision were heard and argued, thus providing him “notice and opportunity to be heard,” i.e., due process. See Prostov, 186 Wn. App. at 810. Civil Rule 11 sanctions may be imposed any time the rule is violated, such as when filing an utterly frivolous motion. See CR 11. And the trial judge’s decision to not hear argument on his motion to reconsider the order on revision was well within his discretion. See In re Marriage of Dodd, 120 Wn.App. at 643; Thurston County LCR 59(B).

Mr. Vetrici's argument that *he did make a reasonable inquiry* into the legal and factual basis of his claims when he filed for contempt against Ms. Vetrici in 2015 is just as meritless. This is because no law or facts supported his claims, his claims espoused in his Motion for Contempt were previously and fully litigated in Canada, and he knew all of this when he decided to file his Motion for Contempt. (See e.g., CP at 35-41, Decree of Dissolution; CP at 25-34, Dissolution Findings of Fact and Conclusions of Law; CP at 59-62, Declaration of Ms. Vetrici).

#### **V. ATTORNEY FEES ON APPEAL**

Pursuant to RAP 14.2, 18.1, and 18.9 Ms. Vetrici requests to be awarded attorney fees and expenses for responding to this appeal. Rule of Appellate Procedure 14.2 allows costs to be awarded to “the party that substantially prevails on review.”

Superior Court Rule 11 is a “recognized ground in equity” and may be the basis for fees awarded on appeal when used in conjunction with RAP 18.1. Eller v. E. Sprague Motors & R.V.'s, Inc., 159 Wn. App. 180, 194, 244 P.3d 447, 454 (2010).

RAP 18.9 provides relief for a frivolous appeal. See Dave Johnson Ins., Inc. v. Wright, 167 Wn. App. 758, 787, 275 P.3d 339 (2012) (holding “An appeal is frivolous if there are no debatable issues on which reasonable minds can differ and [it] is so totally devoid of merit that there was no

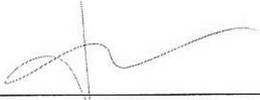
reasonable possibility of reversal.”); In re the Matter of the Estate of Donald C. Muller, 47013-6-II, 2017 WL 193290, at \*7 (holding pro se appeal was devoid of merit and granting attorney fees to respondent).

Here, under RAP 14.2, 18.1, and 18.9, this Court<sup>2</sup> has authority to grant Ms. Vetrici fees on appeal. It should do so because the appeal is utterly devoid of merit and imposed for improper reasons, and because doctrines such as estoppel and *res judicata*, that clearly support Ms. Vetrici’s positions, exist to “promote[] judicial economy . . . [,] to prevent inconvenience or harassment of parties[,]” and to prevent the waste of “resources entailed in repetitive litigation.” See Christensen, 152 Wn.2d at 306.

## VI. CONCLUSION

For the reasons stated herein, this Court should affirm the trial court and impose attorney fees and costs on Mr. Vetrici for filing this frivolous appeal.

Respectfully submitted, this 23rd day of January, 2017,

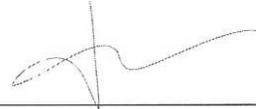
  
\_\_\_\_\_  
Drew Mazzeo WSBA No. 46506  
Attorney for Respondent

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<sup>2</sup> Obviously, this appeal should be reviewed by the Court of Appeals, Division II, and “this Court” simply refers to the court ultimately hearing this appeal. See Response to Appellant’s Statement of Grounds for Direct Review by the Supreme Court.

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing RESPONSE on Appellant, Mr. Vetrici, via email at [vetrici@hotmail.com](mailto:vetrici@hotmail.com) on this 23rd day of January, 2017.



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Drew Mazzeo

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**From:** OFFICE RECEPTIONIST, CLERK  
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**To:** 'Drew Mazzeo'; 'G Vetrici'  
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**Subject:** RE: 92991-2 - Raluca Iulia Vetrici and Grigore Cezar Vetrici, Brief of Respondent

Please find attached Ms. Vetrici's Brief of Respondent.

Best, and appreciate everyone's time,

Drew Mazzeo  
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Subject: 92991-2 - Raluca Iulia Vetrici and Grigore Cezar Vetrici

Importance: High

*Counsel:*

*Attached is a copy of the letter issued by the Clerk or Deputy Clerk on this date in the above referenced case. Please consider this as the original for your files, a copy will not be sent by regular mail. When filing documents by email with this Court, please use the main email address at [supreme@courts.wa.gov](mailto:supreme@courts.wa.gov)*

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