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**Court of Appeals, Div. II,
of the State of Washington**

In re Parentage of C.M.:
Cassandra Weisenberger,
Appellant,
v.
Tyler Mittge,
Respondent.

Brief of Respondent

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1. Introduction

This appeal arises from denial of Weisenberger's petition to modify the parties' parenting plan. The original parenting plan contemplated that Mittge's employment would take him out of state for weeks at a time. During times when Mittge was able to be home long term, the plan provided for 50/50 coparenting of the minor child, C.M.

Mittge changed employment and moved to Chehalis, in part to be closer to C.M. and have more time with him. Weisenberger did not cooperate, arguing that the parenting plan did not provide a visitation schedule for Mittge's new situation. Weisenberger petitioned for a modification of the parenting plan.

The primary contest between the parties was the question of whether the original parenting plan applied to Mittge's new situation. The trial court resolved that conflict by finding that the original intent of the parenting plan was to provide 50/50 coparenting so long as Mittge lived within a reasonable distance of Weisenberger's residence in Raymond. Finding that Mittge's new home in Chehalis was within a reasonable distance, the trial court held that Phase Three of the parenting plan applied, and, therefore, there was no substantial change in circumstances warranting a modification.

This Court should affirm.

2. Statement of the Case

2.1 The parties' parenting plan contemplated 50/50 coparenting while Mittge was at home rather than out-of-state.

Tyler Mittge and Cassandra Weisenberger are the parents of C.M., a minor child. *See* CP 10-11. The parties obtained a court-ordered parenting plan on March 6, 2017. CP 23-33. The parenting plan was at least in part the result of agreement of the parties. CP 39.

At the time, Mittge's work schedule kept him out-of-state for weeks or months at a time, after which he would return home to Pacific county and have a few weeks or months off. *See* CP 25-26, 39, 66. In order to accommodate Mittge's schedule, the parenting plan placed C.M. primarily with Weisenberger and granted Mittge broad visitation when he returned home, according to a schedule of three Phases. CP 25-26, 39.

Under the plan, "When the father is off work, and/or in Pacific County, his visitation with the minor child shall be broken down into three time frames." CP 25. In Phase One, the first two weeks of his return home, Mittge would have visitation with C.M. from 8pm the day he returns to Pacific County until 8pm the following Friday. CP 25. After spending the weekend with Weisenberger, C.M. would spend the next week with Mittge until the following Friday night. CP 25.

If Mittge was still in town after those two weeks, Phase Two would begin. CP 25. In Phase Two, C.M. would spend the third and fourth weeks alternating between the two parents, with Mittge for four days, then with Weisenberger for three days. CP 25-26.

If Mittge was still in town beyond the fourth week, Phase Three would begin. CP 26. In Phase Three, “the parties share time equally with the minor child,” following a pattern of four days with Mittge, four days with Weisenberger, three days with Mittge, three days with Weisenberger. CP 26. This pattern continues until Mittge travels again for work. CP 26. If Mittge is gone for more than two weeks at a time, the plan reverts to Phase One on his return. CP 26.

2.2 Mittge quit his out-of-state job and returned home.

Months after the parenting plan was entered, Mittge quit his out-of-state job and moved back home to Pacific County to be closer to C.M. CP 61. According to Weisenberger, since returning to Pacific County, Mittge only asked to have C.M. every other weekend. CP 70-71. According to Mittge, Weisenberger would not cooperate with the 50/50 parenting schedule of Phase Three. CP 61. Mittge chose to take whatever contact he could get without having to spend money going to court to fight for his equal time under the plan. RP 17.

2.3 Weisenberger petitioned to modify the parenting plan based on Mittge's new employment and residence.

Weisenberger filed a petition to modify the parenting plan. CP 34-35. Although she stated she was seeking a minor modification under RCW 26.09.260(5), (7), or (9), her petition sought to limit Mittge to every-other-weekend visitation. CP 35. Her petition stated, "The current parenting/custody order is difficult to follow because [Mittge] has moved." CP 35. In a declaration, Weisenberger opined that "the current plan does not apply," and the parties had come up with their own, alternative arrangements. CP 40. She requested the trial court modify the plan "to reflect the status quo" of Mittge's every-other-weekend visitation. CP 40.

In response, Mittge asserted that the parenting plan **did apply**, and that the parties were in Phase Three because he was now home for the long term. CP 61. He noted that he had obtained new employment in Aberdeen and would soon be moving to Chehalis. CP 62. He emphasized that Phase Three entitled him to 50/50 time with C.M., but Weisenberger would not allow it. CP 61.

At the hearing on Weisenberger's motion for adequate cause, she clarified that her opinion that the plan did not apply was based on a narrow reading of the phrase, "When the father is off work, and/or in Pacific County." *See* RP 15-16, 25.

Weisenberger argued that the plan “didn’t contemplate Mr. Mittge living closer, but still not within Pacific County.” RP 15-16. Weisenberger’s position was that the language of the plan applies the phases only when Mittge is in Pacific County and because he was not, the phases did not apply. RP 25.

Weisenberger could not explain what Mittge should be entitled to under the plan, arguing in essence that it was a hole in the plan that could only be filled by an order modifying the plan. RP 15-16.

2.4 The trial court interpreted the original intent of the parenting plan and determined that the parties were in Phase Three and there was no substantial change in circumstances to justify a modification of the plan.

The trial court observed that the parenting plan contemplated 50/50 coparenting as the status quo when Mittge was home. RP 6. The court took notice of the fact that Mittge’s new home in Chehalis was closer to Weisenberger’s residence in Raymond than if Mittge lived in other parts of Pacific County. RP 25. The trial court ruled, “I’m not going to find adequate cause. I think he’s in Phase Three. The fact that he lives slightly outside Pacific County doesn’t change what I see to be the intent. If he’s able to be around on a regular basis, he’s entitled to the 50 percent.” RP 29.

The trial court's written order denied adequate cause for modification of the parenting plan. CP 79. The trial court ordered the parties to follow the parenting plan as written, with clarifications intended to resolve the conflict between the parties over the meaning of the plan. CP 79-80. Specifically, the trial court clarified that for purposes of determining which Phase is in effect, "the terms 'home' or 'Pacific County' shall include any residential location within 85 miles of Raymond, WA." CP 80.

Weisenberger moved for reconsideration. CP 82. She argued that the trial court had overstepped its bounds and modified, rather than clarified, the parenting plan. CP 88. Mittge responded that Weisenberger, having requested a minor modification to account for Mittge's new employment and residence, should not be heard to complain when the court made clarifications to do just that. CP 104. The trial court denied the motion for reconsideration. CP 120.

3. Summary of Argument

The trial court did not modify the parenting plan. The parties came to the trial court with a disagreement over the meaning of the terms of the plan. The trial court correctly discerned the original intent of the plan and clarified the meaning of the terms. Applying the clarified terms to the facts, the parties were in Phase Three of the plan. Because the

circumstances were within the terms of the plan, there was no unanticipated, substantial change in circumstances to justify a modification of the plan. The trial court did not abuse its discretion when it denied adequate cause. This Court should affirm.

4. Argument

4.1 This Court should review the denial of adequate cause for abuse of discretion.

“A trial court’s rulings dealing with the provisions of a parenting plan are reviewed for abuse of discretion.” *Marriage of Christel*, 101 Wn. App. 13, 20-21, 1 P.3d 600 (2000). An order modifying a parenting plan is reviewed for abuse of discretion. *Marriage of Michael*, 145 Wn. App. 854, 859, 188 P.3d 529 (2008). Interpretation of the parenting plan is reviewed de novo. *In re Marriage of Thompson*, 97 Wn. App. 873, 877, 988 P.2d 499 (1999). A trial court’s denial of adequate cause is reviewed for abuse of discretion. *Parentage of Jannot*, 149 Wn.2d 123, 128, 65 P.3d 664 (2003). A trial court abuses its discretion if its decision is manifestly unreasonable, or based on untenable grounds or untenable reasons. *Christel*, 101 Wn. App. at 21.

The trial court correctly discerned the original intent of the parenting plan to provide 50/50 coparenting when Mittge lived within a reasonable distance of Weisenberger. Given that

interpretation, it was reasonable for the trial court to conclude that there had not been a substantial change in circumstances not contemplated by the plan when Mittge did, in fact, live within a reasonable distance of Weisenberger. The trial court did not abuse its discretion in denying adequate cause for a modification of the plan. This Court should affirm.

4.2 The trial court correctly discerned the original intent of the parenting plan.

When, as in this case, the parties cannot agree on the meaning of particular provisions of a parenting plan, the trial court has authority and discretion to clarify the parenting plan “by defining the parties’ respective rights and obligations.” *Christel*, 101 Wn. App. at 22. The court cannot extend or reduce a party’s rights without following the statutory procedures for modification in RCW 26.09.260 and .270. *Id.* A permissible clarification defines the rights already given in the plan, “spelling them out more completely if necessary.” *Thompson*, 97 Wn. App. at 878.

The trial court has not only the authority but the **duty** to clarify the meaning of a parenting plan when the parties cannot agree on its meaning. *See Goodsell v. Goodsell*, 38 Wn. 2d 135, 138, 228 P.2d 155 (1951) (“A court not only has the right, but it is its duty to make its decrees effective and to prevent evasions

thereof”). The trial court must have the power to make the parenting plan effective even if one or both parties are uncooperative. *Id.* (quoting *Robinson v. Robinson*, 37 Wn. 2d 511, 516, 225 P.2d 411 (1950)).

When such a conflict arises, as it did here, the trial court must seek to ascertain the original intent of the court that entered the parenting plan. *Thompson*, 97 Wn. App. at 878. In determining the original intent, the trial court uses the general rules of construction applicable to statutes and contracts. *Id.* The court must view the parenting plan as a whole, giving meaning and effect to each word. *Stokes v. Polley*, 145 Wn.2d 341, 346, 37 P.3d 1211 (2001). The court must also interpret the plan in a manner that avoids absurd results. *See State v. Larson*, 184 Wn.2d 843, 851, 365 P.3d 740 (2015).

Weisenberger’s interpretation of the parenting plan focuses on the term “Pacific County” in isolation and fails to consider the plan as a whole and its purpose of giving Mittge parenting time with C.M. Weisenberger’s interpretation yields the absurd result of giving Mittge no visitation at all if he resides just outside the borders of Pacific County. The trial court correctly interpreted the plan and found that Mittge’s new residence was within the plan’s original intent, putting the parties in Phase Three of the plan. The trial court’s other

clarifications were consistent with the plan and were nothing more than procedural details to resolve existing conflicts.

4.2.1 Viewed as a whole, the parenting plan's purpose was to provide 50/50 coparenting of C.M. so long as Mittge was within a reasonable distance of Weisenberger's residence.

At the time the parenting plan was entered, Mittge's residence was in Pacific County, but his employment took him out-of-state for weeks or months at a time, after which he would return home for extended periods. *See* CP 25-26, 39, 66. The plan did not impose any limits on Mittge's conduct or his residential time with C.M. CP 23-24. The plan accommodated for Mittge's schedule by distinguishing between times when Mittge was away from home on work and times when he was back at home.

When Mittge was away on work, the plan did not provide for any visitation with C.M. *See* CP 25. When Mittge was back at home, the plan provided extra, make-up time with C.M. during Phases One and Two, tapering down to an extended period of 50/50 coparenting for as long as Mittge was able to remain at home. CP 25-26.

The language used in the plan to define the stages is inconsistent and imprecise. The Phases take effect "when the father is **off work, and/or in Pacific County.**" CP 25. Phase One

starts when “he returns to Pacific County.” But Phases Two and Three start when he “remains **home**,” or “still remains **home**,” respectively. CP 25-26. Phase Three continues “until the father **returns to work**.” CP 25.

Taken as a whole, and in the context of Mittge’s then-current residence and employment, it is evident that these terms were not intended to have separate, distinct meaning. Instead, they have a common nexus: when Mittge was away from **home** on work out-of-state, he would not have visitation, but when he returned **home** to a place where he would be within a reasonable distance to exercise visitation, the Phases would take effect. The trial court was correct when it determined that the terms “home” and “Pacific County” were intended to have a common meaning. The trial court correctly discerned that meaning was connected to whether Mittge was “off work” or “return[ed] to work” out-of-state.

Other than when Mittge was working out-of-state, the plan’s default arrangement was 50/50 coparenting of C.M. Phases One and Two allowed Mittge extra time with C.M. to make up for Mittge’s extended absence while he was working, but then tapered off to Phase Three’s 50/50 time arrangement of four days on, four days off, three days on, three days off, which was to last until the next time Mittge left home for work for over two weeks at a time. This 50/50 coparenting was the status quo

of the plan. This is further evidenced by the fact that the parties had joint decision-making, CP 24, shared holidays equally, CP 26-29, and had no special provisions for school or summer schedules, CP 26. Travel with C.M. for up to 14 days at a time was allowed, but only if the other parent's missed time was made up as soon as possible. CP 32.

Viewed as a whole, the parenting plan's purpose was to provide 50/50 coparenting of C.M. so long as Mittge was within a reasonable distance of Weisenberger's residence.

4.2.2 It is absurd to suggest that the original intent of the term "Pacific County" was to require Mittge to live only within the borders of Pacific County in order to get any visitation time with C.M.

Weisenberger's first assignment of error suggests that the term "Pacific County" has only one reasonable meaning—that is, that Mittge must be physically present within the geographic boundary of Pacific County in order to qualify for any visitation under the parenting plan. This interpretation is absurd and ignores the other terms used in the plan to describe Mittge's visitation rights.

The absurdity of the argument was evident to the trial court. At the hearing, Weisenberger expressed her position that the parenting plan no longer applied because Mittge was not residing within Pacific County. RP 15. The trial court

interrupted and asked, “Wait. Let’s go back. You mean he wouldn’t have any visitation rights if he didn’t live in Pacific County?” RP 15. The trial court was right—that is exactly the result that flows naturally from strictly defining “Pacific County” to mean only within the geographic boundary of the county.

The parenting plan provides that C.W. will live with Weisenberger except when he is scheduled to live with Mittge. CP 25. If, as Weisenberger argues, the only trigger in the plan for C.W. to live with Mittge is when Mittge is physically within the geographic borders of Pacific County, then the only possible result under the plan when Mittge lives outside the county is that C.W. would live with Weisenberger and Mittge would have no visitation rights.

Even Weisenberger herself recognized the absurdity of the result by refusing to acknowledge it. She answered the trial court’s question by saying, in essence, “no, we don’t think Mittge has no visitation rights [because that would be absurd], but we just can’t tell what they are by reading this plan.” *See* RP 15-16. Of course, if one does read the plan with Weisenberger’s overly restrictive definition of “Pacific County,” there is only one possible result: the absurd result that Mittge would have no visitation rights because he lives outside the geographic boundary of the county. Such an absurd result cannot have been

the original intent of the parties or the court in entering this parenting plan.

But “Pacific County” is not the only trigger for Mittge’s visitation rights under the plan. As noted above, the plan uses both “Pacific County” and “home” interchangeably, sharing a common meaning and a common function within the plan, to trigger the start or end of the various Phases. To treat “Pacific County” as a strict and only trigger ignores the repeated use of the term “home” to accomplish the same functional purpose and would render “home” meaningless.

Using “Pacific County” as a strict and only trigger also ignores the context in which it first appears. The plan provides Mittge with visitation, “When the father is **off work and/or** in Pacific County...” CP 25. The plain and ordinary meaning of the term “off work” has nothing to do with the location of a party’s residence. The term “and/or” does not require “and.” It only requires “or,” which is disjunctive. Thus, “in Pacific County” is not the only trigger for Mittge’s visitation under the plan. Under the plain language of the plan, “off work” is an independent, alternative trigger for visitation.

However, as noted above, this kind of isolated analysis of a single term misses the forest for the trees and renders other terms meaningless. This Court cannot leave any terms meaningless, but must give effect to all of the terms by viewing

the plan as a whole and determining the original intent of the court and the parties in entering the plan.

The trial court correctly discerned the original intent. The parenting plan distinguishes between times when Mittge was “home” and when he was not “home.” In the context of the plan as a whole, Mittge is “home” when he is residing within some reasonable distance of Weisenberger’s residence, such that the 50/50 coparenting of Phase Three could be reasonably accomplished. In this context, the geographic boundary of Pacific County becomes an arbitrary line that leads to absurd results.

The trial court was correct to clarify the meaning of the terms “home” and “Pacific County” to include any location within 85 miles of Raymond. This clarification gives meaning and effect to each word in the plan, *Stokes*, 145 Wn.2d at 346, and avoids absurd results, *Larson*, 184 Wn.2d at 851. It does not extend or reduce either party’s rights under the plan. *Christel*, 101 Wn. App. at 22. It defines the rights already given in the plan, “spelling them out more completely.” *Thompson*, 97 Wn. App. at 878. The trial court’s order was a clarification, not a modification. This Court should affirm.

4.2.3 Once the terms are correctly understood according to the original intent, the parties were, in fact, in Phase Three.

Once the original intent of the plan is understood and clarified, it becomes plain that the parties were, in fact, in Phase Three. Mittge had returned home, triggering Phase One; had remained home beyond the first two weeks, triggering Phase Two; and still remained home beyond the fourth week, triggering Phase Three. With the clarification of the term “home” to include anything within 85 miles of Raymond, Mittge was still “home” even after moving his home to Chehalis. Because Mittge did not leave “home,” the parties remained in Phase Three.

The portion of the order specifying that the parties are to follow Phase Three was not a change to the plan. It merely spelled out more clearly what the plan already required. Applying the meaning of the plan to the facts at hand, the parties were in Phase Three.

It makes no difference that Phases One or Two might never be triggered again. That was always the case. The Phases remain a part of the plan and remain the rights of the parties. Should Mittge ever leave “home” for more than two weeks at a time, leaving C.M. behind, Weisenberger will be entitled to all of that time with C.M. under paragraph A. Upon Mittge’s return

“home,” he will be entitled to the extra time provided to him under Phases One and Two before returning to the 50/50 schedule of Phase Three. The rights of the parties have not changed. The trial court’s clarification of the plan was proper. This Court should affirm.

4.2.4 The transportation and exchange provisions in the trial court’s order were permissible clarifications of procedural details.

In addition to explaining the rights of the parties under the provisions of an existing parenting plan, a court may also permissibly fill in procedural details that may be necessary to carry out those rights. *See Christel*, 101 Wn. App. at 23. In *Christel*, the trial court created a new consequence, if a party failed to meet a procedural deadline, the party would be deemed to have waived a substantive right. *Id.* The appellate court understandably held, “This language goes beyond explaining the provisions of the existing parenting plan. The language goes beyond filling in procedural details. The order on its face imposes new limits on the rights of the parents.” *Id.*

Unlike in *Christel*, the transportation and exchange provisions set forth in the trial court’s order here do not limit or expand the substantive rights of either party. These provisions do nothing more than fill in procedural details.

The location of exchanges is a procedural detail, not a substantive right regarding parenting time, decision-making, or dispute resolution. Placing the exchange at a halfway point between the parties carries out the rights of both parties to 50/50 time with C.M. Placing the exchange at Raymond would favor Weisenberger's rights over Mittge's.

The provision for Mittge to change the exchange point to Raymond with 24 hours notice favors Weisenberger. If Mittge exercises the option, Weisenberger gets a more convenient exchange. The 24-hour requirement ensures that Mittge cannot abuse the option to Weisenberger's detriment.

To the extent there were no limitations in the plan on who could transport the child, the trial court's order did not change anything. The plan's general provisions on transportation did not include any limitations on who could drive, providing only that the parent who is about to start parenting time "must arrange to have the children picked up." CP 29. The only limitation on drivers was part of a special provision for visitation by the paternal grandparents during times when Mittge was away on work: "One weekend per month, the child will be with the paternal grandparents from Friday at 8:00 p.m. to Sunday at 8:00 p.m. on the 2nd weekend of each month, defined by the Fridays, if [Mittge] is not in town. Lorie Mittge

shall not transport the child on pick up. Preference for p.u. will be Randy.” CP 32.¹

The trial court’s order does not address this special visitation provision. There is no indication that this special provision is changed in any way. The parties never brought this special provision to the trial court’s attention. This provision of the trial court’s order is instead a result of a conflict between the parties over Mittge’s father, Randy, picking up C.M. for many exchanges while Mittge has been in town. *See* CP 40 (Weisenberger: “For most exchanges, Mr. Mittge insists I exchange [C.M.] with Randy Mittge”), 62 (Mittge: “She has further frustrated my contact by demanding my physical presence during exchanges, which is not fair. ... I am often [commuting] and not always available to pick [C.M.] up at 6:00 p.m., which is why my father, Randy picks him up for me on days I cannot and meets me when I get off work.”).

Because the issue of Lorie Mittge was not raised in the trial court, there is no indication that the trial court’s order was intended to change that provision in any way. Additionally, this Court may disregard the argument because it was not raised below.

¹ The correct placement of all of the interlineations in this portion of the plan is not clear. This quote reflects counsel’s best attempt at interpreting what is on the page.

The transportation and exchange provisions in the trial court's order do not reduce or expand the substantive rights of the parties under the parenting plan. They are merely procedural details to give effect to the rights spelled out in the plan. The trial court did not abuse its discretion in ordering these procedural provisions. This Court should affirm.

4.3 Because Mittge's new residence was within the original intent, there was no substantial change in circumstances to warrant a modification.

“To establish that he or she is entitled to a full hearing on a petition to modify a residential schedule, the petitioner must first demonstrate that adequate cause exists. Along with the motion to modify, the petitioner must submit affidavits with specific relevant factual allegations that, if proved, would permit a court to modify the parenting plan under RCW 26.09.260.” *Marriage of Tomsovic*, 118 Wn. App. 96, 104, 74 P.3d 692 (2003). In this case, Weisenberger had the burden of demonstrating that there was a substantial change in circumstances that would justify the requested modification.

A “substantial change in circumstances” is a fact that is unknown to the trial court at the time it entered the original parenting plan or an unanticipated fact that arises after entry of the original plan. *Tomsovic*, 118 Wn. App. at 105. The determinative inquiry is whether the change was anticipated at

the time of the original plan. *Marriage of Hoseth*, 115 Wn. App. 563, 571, 63 P.3d 164 (2003). If the change was anticipated, there is no adequate cause for a modification. *Tomsovic*, 118 Wn. App. at 106.

In *Tomsovic*, both parents had relocated. The father requested a modification of the parenting plan. But the original parenting plan “explicitly set out three residential schedules based on the proximity of the parents.” *Tomsovic*, 118 Wn. App. at 106. The trial court denied adequate cause. The appellate court held that the trial court did not abuse its discretion in denying adequate cause, reasoning, “Relocation was not only anticipated, but planned for.” *Id.*

Similarly, here Mittge’s relocation was anticipated at the time of the original parenting plan. Phase Three specifically plans for Mittge being “home” for an extended period of time. As the trial court correctly discerned, “home” was intended to include anywhere within a reasonable distance of Weisenberger’s residence in Raymond. Even though Mittge relocated from Raymond to Chehalis, he was still within the originally contemplated definition of “home.” The plan anticipated this possibility and assigned it to Phase Three.

As an alternative, Weisenberger argues that the plan is impractical to follow. But her motion for adequate cause did not make any argument or allegations that the Phase Three

schedule would be impractical. Her only argument in the original motion and on reconsideration was that the plan did not even apply. CP 91 (motion for reconsideration). Because Weisenberger did not argue impracticability below, this Court can disregard this argument. Additionally, because there was no evidence of impracticability of Phase Three, the trial court did not abuse its discretion in denying adequate cause for a modification.

Because the current circumstance was anticipated and falls squarely within the provisions of the parenting plan, there has been no substantial change in circumstances. The trial court did not abuse its discretion in denying adequate cause. This Court should affirm.

4.4 There is no need to consider the issue of possible judicial bias because Judge Goelz has retired.

Weisenberger's brief raises the issue of the "Fairness Doctrine on Remand," asking this Court to order remand to a new judge due to alleged bias of Judge Goelz. However, Judge Goelz has retired. After the mandate issues, this case will be assigned to a new judge. There is no need for this Court to determine whether Judge Goelz could be fair on remand.

4.5 This Court should deny Weisenberger’s request for an award of attorney’s fees because Mittge does not have any greater ability to pay than Weisenberger.

Weisenberger requests an award of attorney’s fees under RCW 26.09.140, which is based on one party’s need and the other party’s ability to pay. Mittge does not have any greater ability to pay than does Weisenberger. This Court should deny Weisenberger’s request.

4.6 This Court should award attorney’s fees to Mittge as a sanction for this frivolous appeal.

This Court may sanction a party whose appeal is frivolous or solely for the purpose of delay. RAP 18.9. “An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists.” *Marriage of Greenlee*, 65 Wn. App. 703, 710, 829 P.2d 1120 (1992).

Weisenberger’s appeal is frivolous. There are no debatable issues. Weisenberger came to the trial court because she disagreed with Mittge about the meaning of the terms of the parenting plan. The trial court properly interpreted those terms, correctly discerning the original intent of the parties and the court in entering the parenting plan. Under the trial court’s correct interpretation, there has been no substantial change in circumstances and therefore no adequate cause for a

modification. The trial court's order did not modify the rights of the parties under the plan, it merely explained those rights that already existed, spelling them out more clearly. Especially in consideration of the abuse of discretion standard acknowledged in her brief, Weisenberger should have known that her appeal had no reasonable possibility of reversal.

5. Conclusion

The trial court did not modify the parenting plan. The parties came to the trial court with a disagreement over the meaning of the terms of the plan. The trial court correctly discerned the original intent of the plan and clarified the meaning of the terms. Applying the clarified terms to the facts, the parties were in Phase Three of the plan. Because the circumstances were within the terms of the plan, there was no unanticipated, substantial change in circumstances to justify a modification of the plan. The trial court did not abuse its discretion when it denied adequate cause. This Court should affirm.

Respectfully submitted this 4th day of March, 2019.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on March 4, 2019, I caused the foregoing document to be filed with the Court and served on counsel listed below by way of the Washington State Appellate Courts' Portal.

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SIGNED at Lacey, Washington, this 4th day of March, 2019.

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