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No. 52509-7-II

Superior Court

No. 11-3-03452-5

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Angela K. Scoutten/Schreiner

Appellant,

v.

Michael J. Scoutten

Respondent.

APPELLANT'S BRIEF

On Appeal from the Superior Court of Pierce County

Angela Schreiner

5420 60th Ave Ct. W

University Place, WA 98467

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B. ASSIGNMENTS OF ERROR

1. The court below erred by failing to consider Ms. Schreiner’s request for a change in the child’s residence where they reside a majority of the time. The request for a change in custody was incorporated within the Objection to relocation, section 4 of Form FL Relocate 702, CP 928-960.
2. The court below erred by applying the wrong legal standard to Ms. Schreiner's Objection/Petition to Modify. The trial court stated Ms. Schreiner was required to “prove a substantial change of circumstances”, other than the relocation itself to request a modification. This error prejudiced the outcome of the trial and subsequent judgements.
3. The trial court erred by law, admitting evidence indicating Mr. Scoutten would forego relocation if the court did not allow his relocation request, in violation of RCW 26.09.530.

4. The court below erred in entering the findings and conclusions underlined in the Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Oder (Relocation), CP 1225-1231, (Factors 1-10).
5. The court below erred in entering the findings and conclusions underlined in the Parenting Plan, CP 532-543, (.191 Findings #1-5 & Restrictions).
6. The court below erred in entering the findings and conclusions underlined in the Judgment, CP 544.
7. The court below erred by failing to identify the method it used to calculate the attorney fees it awarded at trial. The court erred by not separating attorney's fees, and failing to calculate hours by hourly rate.
8. The court below erred by abuse of discretion and error of law when it ordered Ms. Schreiner pay 100% long-distance transportation costs and placed geographical restrictions upon her visitation to take place if she's in "the Wales area", in violation of RCW 26.19.080 and In re Marriage of Katare.
9. The court below erred in entering the findings and conclusions underlined in the Child Support Order (Final), CP 1286-1314.
10. The trial court erred by conducting it's own research outside of the scope of evidence, by making rulings based on information not presented

at trial or found in exhibits, and by scheduling meetings take place off the record at Remann Hall and outside of the presence of either party.

11. The court below erred by failing to provide an appearance of fairness or recuse itself, testified to the truth of the matter, and failed to disclose potential bias before the commencement of trial.

12. The trial court erred by threatening to hold Ms. Schreiner in contempt of court if she refused to sign a Federal Document under duress and ordering Mr. Scoutten had “full custody”. The trial courts order on it’s own would’ve sufficed for purposes of issuing a minor’s passport.

13. Attorney's fees on Appeal RAP 9.11. The fee request is based on RCW 26.09.140.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Are the court’s conclusions supported by sufficient findings?
2. Are the court’s findings supported by substantial evidence?
3. Did the court make an adequate record for review?
4. Where the restrictions placed upon Ms. Schreiner reasonably calculated by the trial court? Was there a nexus between .191 findings and restrictions? Were the restrictions in violation of law?
5. Did Mr. Scoutten testify that nothing had occurred since the 2015 modification that would warrant the re-entry of Judge Arend's findings?
Did the trial court state it would not be considering any evidence occurring

before the 2015 modification?

6. Did the trial court understand that Ms. Schreiner's burden was not to "prove a substantial change of circumstances" in a relocation proceeding?

7. Is it proper to award attorney fees for which there is no proper basis or identified method of calculation?

8. Should this case be remanded to a different judge due to the trial judge's prejudice?

D. STATEMENT OF THE CASE

Ms. Schreiner was previously married to Michael Scoutten, with whom she had a daughter, M.S. Ms. Schreiner originally had primary custody of M.S. But in 2015, Ms. Schreiner filed an intent to relocate with M.S. to Mercer Island for her job located 45 min. away from her residence where she lived with her parents with M.S. in University Place. Mr. Scoutten objected the relocation and requested a change in the residence where the child is scheduled to reside the majority of the time, incorporated with his Objection to Relocation. Mr. Scoutten claimed that all of the child's relationships were located in Pierce County. Mr. Scoutten claimed that he could provide more stability for M.S. because he was an Officer in the United States Army stationed at JBLM, that he was "non-deployable", and indicated that he would not be moving from Pierce

County for the duration of his military career.

Although Ms. Schreiner stated she would not be moving without M.S., on July 24, 2015, Mr. Scoutten successfully obtained a modification to the parenting plan giving him custody of M.S., with Ms.Schreiner's visitation occurring on alternating weekends and Tuesday evenings. Judge Arend agreed with Mr. Scoutten that all of the child's relationships were in Pierce County and that he could provide more stability. Paragraph 4.2 of the parenting plan vests Scoutten with all major decision-making authority. Judge Arend signed an affidavit of prejudice, filed with the Superior Court on November 2nd, 2015.

The week after the parenting plan was finalized, Mr. Scoutten executed a special power of attorney, granting power of attorney to his new wife Monica whenever he is on active duty as a result of his military service (EX. 11). Mr. Scoutten testified in the most recent trial that he was never in fact, "non-deployable" or an officer, and actually deployed less than 5 months after receiving custody of M.S.(EX 9) , leaving her in the care of his new wife. Through the power of attorney, Scoutten granted to Monica his decision-making authority under paragraph 4.2 of the parenting plan. He also granted Monica "full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and

purposes as [Scoutten] might or could do if personally present”.

Mr. Scoutten never filed or served the Power of Attorney to Ms. Schreiner, but successfully obtained contempt against Ms. Schreiner based on this POA. The Appellate Court reversed the trial court's determination of contempt based on Schreiner's alleged violations of the residential and health care provisions of the parenting plan and remanded for attorney's fees. *Scoutten v. Scoutten (In re Marriage of Scoutten)*, No. 50159-7-II (Wash. Ct. App. Feb. 26, 2019).

Despite Mr. Scoutten's testimony that he would stay in Pierce County for the duration of his career, in January 2018, Mr. Scoutten filed an intent to relocate M.S. to Wales, U.K. The reason he provided was that he requested the position. Mr. Miller claimed his client would be “training MI-6” (RP 19) but provided no proof of this false claim. Mr. Scoutten testified it was a simple liaison position. Judge Schwartz recused himself from the case, citing Judge/Mr. Miller (Mr. Scoutten's attorney) had represented Judge Schwartz in his own divorce. Mr. Scoutten revoked his intent to relocate. The case was moved next door to Judge Serko after Judge Schwartz recusing himself. Judge Serko immediately dismissed Ms. Schreiner's Objection/Petition to modify and request to change the residence where the child is scheduled to reside the majority of the time. The trial court expressed confusion, stating there was no relocation action

being pursued, despite Mr. Miller's assertion that he would file another intent to relocate after Mr. Scoutten obtained permission from the Army to take his family with him (RP 20, 27).

On June 1st 2018, Mr. Scoutten filed a second intent to relocate M.S. to Wales, U.K. Expecting the same rights as Mr. Scoutten was afforded in 2015, Ms. Schreiner again filed an Objection to relocation and requested a change to the residence where the child is scheduled to reside the majority of the time incorporated into her Objection to relocation, (CP 928-960). Instead, Judge Serko ruled that Ms. Schreiner was required to prove a "substantial change of circumstances". Judge Serko maintained that she did not consider Ms. Schreiner's Objection a Petition for Modification, and stated Ms. Schreiner needed to file a separate Petition for modification, summons, and obtain a finding of adequate cause to request a change in custody.

The trial court admitted to knowing the step mother Monica Scoutten and mutual friend Morgan Donnelly from Rotary 8 on the last day of trial, but failed to recuse itself from the case. The stepmother, Monica, admitted on record to meeting Judge Serko before trial, knowing the trial court's daughter Alice, and their mutual friend Morgan Donnelly, but again failed to disclose any of this information before trial.

On August 3rd, 2018 the trial court granted Mr. Scoutten's

relocation request to move the child to Wales, U.K. The trial court agreed with Judge Arend's prior ruling that all of the child's closest relationships were in Washington. Yet, instead of reaching the same conclusion as Judge Arend that the first relocation factor weighed in favor of denying relocation, Judge Serko instead found the first factor "neutral". The trial court found Ms. Schreiner objected in good faith at the conclusion of trial and placed no restrictions upon Ms. Schreiner. Ms. Schreiner was ordered to sign her consent for a minor's passport under threat of contempt, although no such order yet existed requiring her signature.

On September 7th, 2018, the trial court entered the Final Order and Findings on Objection about moving with children and Petition about changing parenting/custody order (relocation), indicating that a child support modification "does not apply", (CP 1225-1231) .

On October 19th, 2018, almost three months later, the trial court adopted several restrictions proposed for the first time by Mr. Miller and incorporated them into the Final Parenting Plan order, (CP 532-543). The trial court failed to provide a basis for the restrictions. The trial court also incorporated into written orders that Ms. Schreiner pay 100% long-distance transportation costs for visitation purposes besides once per year, placed geographical restrictions upon Ms. Schreiner's visitation, and adopted six .191 factors proposed by Mr. Miller, for the first time.

On October 19th the trial court reversed it's prior ruling that the mother had objected in "good faith" on August 3rd, 2018, and entered a judgement against Ms. Schreiner, citing "bad faith" for failing to "prove a substantial change of circumstances". Ms. Schreiner was ordered to pay \$21, 833.00 in Mr. Scoutten's attorney's fees. The trial court ruled Ms. Schreiner had a need for Mr. Scoutten to pay.

On December 7th, 2018 the trial court reversed it's prior ruling on Sept 7th, 2018 indicating that a child support modification "does not apply" and modified the parties final child support order, (CP 1286-1314). The trial court used a singular incorrect paystub to determine Mr. Scoutten's income, and failed to include his BAH, OHA, COLA, Parachute Pay, and two rental property incomes or assets. The trial court more than doubled the child support obligation. The trial court back dated the child support order to October, 1st, 2018 without cause. The court admitted she knew Monica Scoutten, referred to her as M.S. "mother" and Ms. Schreiner as "the biological mother" throughout proceedings, yet Judge Serko specifically took continuing jurisdiction over the case.

E. ARGUMENT

1. The court below erred by abuse of discretion, failing to consider Petitioner's request for a change in the child's residence where they reside a majority of the time, incorporated in her Objection (CP 928-960) prejudicing the outcome of the trial and subsequent judgement.

A superior court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A superior court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard. Id. at 47. It is based on untenable grounds if the factual findings are unsupported by the record, and it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. Id. The Court of Appeals may determine whether substantial evidence supports the findings of fact, and if so, whether the findings support the superior court's conclusions of law. Id. The Court of Appeals may review the superior court's conclusions of law de novo. In re Marriage of Wehr, 165 Wn. App. 610, 613, 267 P.3d 1045 (2011).

Mr. Scoutten was awarded custody of M.S. in 2015 after objecting Ms. Schreiner's relocation with M.S. to Mercer Island. Division II upheld the plan on appeal in an unpublished opinion. In re Marriage of Scoutten v. Scoutten, No. 48027-1, slip op. at 196 Wn. App. 1039 (Wash. Ct. App.)

(October 25, 2016) <http://www.courts.wa.gov/opinions/pdf/480271.pdf>.

This Court of Appeals, Division II wrote in it's 2015 opinion:

“RCW 26.09.260(6). The plain language of this statute provides the legal authority for Michael to include in his relocation objection a request for a major modification, including a change in primary residence. In re Marriage of Raskob, 183 Wn. App. 503, 513, 334 P.3d 30 (2014) (quoting RCW 26.09.260(6)).” (In re Marriage of Scoutten v. Scoutten, No. 48027-1, slip op. at 196 Wn. App. 1039 (Wash. Ct. App.) (October 25, 2016).

Expecting to receive the same right as Mr. Scoutten in 2015, Ms.

Schreiner incorporated into her Objection about moving Children and Petition about changing a Parenting/Custody Order a request for a change in primary residence where the child normally resides, checking the box found at number 4 in Form FL Relocate 721(CP 928-960). However, the trial court dismissed Ms. Schreiner's first Objection/Petition to relocation, even after Mr. Miller told the court he was going to refile another intent to relocate the child to Wales, U.K. on May 14, 2018:

MR. MILLER: Yeah. And then because Mike, he's a doer, he kept knocking on doors, he kept going up the chain of command. And they said to him -- and I'm relaying hearsay from what Mr. Scoutten has advised me -- that they made a mistake, they were confused. And so he's gotten that orally but not in writing yet. THE COURT: That it was a mistake, that they really do want him to go to Wales? MR. MILLER: They do want him to go there because he's training MI 6 people over there, so it's a big deal for him. THE COURT: Okay. (RP 19). MR. MILLER: That's fine with me too. I mean, we're going to file; I'm just telling -- I'm giving you notice. MR. BERRY: But we would prefer to go forward today. MR. MILLER: I'm giving a notice saying we will file a notice to relocate... (RP 28).

MR. BERRY: ...But in this context, if the relocation, they've dropped it or whatever, again as we said here, you know, again, in the Scoutten case, **the**

relocation was no longer being pursued; nonetheless, the court went forward with the modification, and that's what should occur here (RP 15).

And in direct contradiction to the Appellate Court's prior Opinion in this case, and In re Marriage of Raskob, 183 Wn. App. 503, 513, 334 P.3d 30 (2014) (quoting RCW 26.09.260(6)), the trial court instead dismissed Ms. Schreiner's Objection and Petition to modify custody that same day.

On June 1st, 2018 Mr. Scoutten refiled his second intent to relocate. Again, Ms. Schreiner filed an Objection and incorporated with her request a change in custody. Despite being told on numerous occasions that Mr. Scoutten received custody by Objecting to Ms. Schreiner's Intent to relocate in 2015, the trial court states on the first day of trial that it did not consider Ms. Schreiner's Objection, a Petition to Modify:

THE COURT: **I don't want to cut you off right away, but that was an interesting issue that I looked at in the file. I don't see a petition for modification, a summons, a finding of adequate cause**, so I'm a little confused on that and the procedure.

MR. BERRY: Okay. Under the law, when someone files an objection to relocation they can mark in the objection that they're also seeking to modify the residential schedule. And because it's taking place in the course of a relocation proceeding, there is no need to -- adequate cause is not required. The Court may recall, we argued this issue before the Court before...

THE COURT: All right. And this is going to be an ongoing issue --

MR. BERRY: Yes.

THE COURT: -- **so I want you to know that it continues to be an ongoing issue in my mind that there's no petition for modification filed.** (RP 52-54).

The trial court erred when it failed to consider Ms. Schreiner's Petition to Modify incorporated in her Objection, prejudicing the outcome of

the trial and subsequent judgements.

2. The court below erred by applying the wrong legal standard to Ms. Schreiner's Objection and request for a change in the child's residence. The trial court stated Ms. Schreiner was required to "prove a substantial change of circumstances". The correct legal standard is proving "the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person" based on consideration of 11 child relocation factors. RCW 26.09.520." The court erred by not providing equal protections under the constitution.

A trial court abuses its discretion in making evidentiary rulings if those rulings are unsupported by the record or result from **applying the wrong legal standard**. Salgado-Mendoza, 189 Wash.2d at 427, 403 P.3d 45. Errors of law to determine the correct legal standard are reviewed de novo. In re Marriage of Kinnan, 131 Wash.App. 738, 751, 129 P.3d 807 (2006).

The Court of Appeals, Division II ruled in 2015 that Mr. Scoutten was not required to "prove a substantial change of circumstances" other than the relocation itself, citing Marriage of Raskob, 183 Wn. App. At 513, ruling:

"This means in the context of a relocation request, "it is not necessary for the court to consider whether there is a substantial change in circumstances other than the relocation itself, or to consider the factors contained in RCW 26.09.260(2)." Marriage of Raskob, 183 Wn. App. at 513." (In re Marriage of Scoutten v. Scoutten, No. 48027-1, slip op. at 196 Wn. App. 1039 (Wash. Ct. App.) (October 25, 2016).

"Second, a party may object to the relocation by demonstrating that "the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person" based on consideration of 11 child relocation factors. RCW 26.09.520." In re Marriage of Scoutten v. Scoutten, No. 48027-1, slip op. at 196 Wn. App. 1039 (Wash. Ct. App.) (October 25, 2016).

Instead, Judge Serko applied a different legal standard, and ruled Ms.

Schreiner must “prove a substantial change of circumstances”:

THE COURT: We have to consider what's happened since then. If there's a modification, it's a substantial change of circumstance since that last parenting plan was entered, okay? (RP 56).

And after trial, the trial court reiterated again that Ms. Schreiner failed to prove a substantial change of circumstances:

THE COURT: ... I went back through the transcript of my oral decision on this case which was August 3rd; and you're correct, Mr. Berry, on behalf of your client that I do find that the objection to relocation was done in good faith. **But with regard to whether there was a substantial change in circumstance which would support a petition for modification, I find that that was in bad faith.** MR. BERRY: **Well, how can that be, Your Honor, because there's no requirement to show substantial change of circumstances when there's a relocation.** THE COURT: Counsel, I don't need further argument on this issue, but I thank you. I appreciate that you want to be an advocate... (867).

The equal protection clauses in our state and federal constitutions guarantee that similarly situated persons must receive like treatment under the law. U.S. CONST. amend. XIV; WASH. CONST. art. I, § 12. Mr. Scoutten and Ms. Schreiner's Objection to Relocation/Petition to Modify custody were treated differently by the trial courts in this case. In 2015, Mr. Scoutten's objection/petition to modify moved forward even after Ms. Schreiner declared she would not relocate. Ms. Schreiner's Objection/Petition to Modify was dismissed after Mr. Scoutten revoked his first intent to relocate, even after Mr. Miller indicated Mr. Scoutten would still be relocating. Similarly, when Mr. Scoutten filed his second Intent to relocate,

the court stated it did not consider Ms. Schreiner's Objection/Petition to Modify a Petition to Modify custody, and applied the incorrect legal standard.

3. 11. The trial court erred as a matter of law, by admitting evidence indicating Mr. Scoutten would forego relocation if the court did not allow relocation, in violation of RCW 26.09.530.

RCW 26.09.530 reads in part: Factor not to be considered. In determining whether to permit or restrain the relocation of the child, **the court may not admit evidence on the issue of whether the person seeking to relocate the child will forego his or her own relocation if the child's relocation is not permitted ...**"

Mr. Miller argued that Mr. Scoutten would forego his own relocation if the child's relocation was not permitted from the first day of trial:

MR. MILLER: And he's not going to Wales if he can't take his family (RP 51).

The trial court admitted argument, military orders and testimony that

Mr. Scoutten would forego relocation if not allowed to take M.S.:

(Exhibits Number 4 and 6 were admitted into evidence.)

BY MR. MILLER:

Q. Those are your orders, right? A. Yeah, those are the orders and the amendment. Specifically, that is the amendment allowing the family to accompany me. Q. All right. I'm showing you what's been marked again as Exhibit 5; can you identify that, please? A. Okay. This is the updated intent to relocate dated 31 May; and it also has a copy of my orders attached to it as well as an E-mail that I sent on the 18th of May to my ex-wife indicating that it was still my intent to move to Wales, even though we had withdrawn the original petition to relocate. (RP 74-75). BY MR. MILLER: Q. Let's assume hypothetically, Ms. Schreiner, that the Court says Mr. Scoutten cannot relocate with Memphis and Memphis then stays here; and assume very hypothetically that Mike says, okay, I'm going to go anyway with my family -- which he's already testified to he won't do that, so just hypothetically. Are you with me? (RP 459).

4. The court below erred in entering the findings and conclusions

underlined in the Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Oder (Relocation), CP 1225-1231, (Factor 1, 2, 3, 4, 5, 6, 7, 8, and 10). Reserved for appeal, objections to written findings on these factors are found (CP 1204-1210), (CP 519-531).

In re Marriage of Horner, 151 Wn.2d 884, 894, 93 P.3d 124 (2004). The Court of Appeals may review findings of fact to see if they are supported by substantial evidence in civil cases. E.g., Wilson, 165 Wn. App. at 340. Marriage of Stern, 57 Wn. App. 707, 789 P.2d 807 (1990), review denied, 115 Wn.2d 1013, 797 P.2d 513 (1990)).

Factor 1, Enumerated as 4(a): Relationships: The written finding reads: "...There are also significant relationships with father, father's family and of course with her two half-brothers."

However, the trial court's oral ruling is inconsistent with the written order:

THE COURT: ...With that said, I think that there is significant relationships with father and father's family; **certainly with mother, no question**, and the two half brothers that Memphis now has a relationship with. So, frankly, this factor in my view weighs neutrally (RP 689).

Mr. Miller eliminated the trial court's oral ruling "certainly with mother, no question", and added the words "and of course with her" two half brothers to written orders. And contrary to the written findings, the trial courts oral ruling found Ms. Schreiner to be a significant person in the child's life (RP 687-689). Written findings are contradictory and inconsistent to the trial Court's oral ruling regarding who has the closest relationship with M.S.

THE COURT: Well, in any case, it convinced me that the bond, the strongest bond was with the **maternal grandparents; that that is the closest relationship with this child.** (RP 687).

The written findings state Dawn Breikss had the closest relationship with the child, despite failing to testify at trial, and no one testifying to the

nature of their relationship. Besides step-mother who testified: “Yes, the visits have gotten further apart as of recently” (RP 597). Substantial evidence does not support the court’s written ruling that Dawn Breikss has the closest relationship with M.S. Moreover, even if the Appellate Court upholds Dawn Breikss had the closest relationship with M.S., both Dawn Breikss and the maternal grandparents **all reside in the State of Washington**. This factor weighs in favor of denying relocation.

THE COURT: ...I also looked a little bit at the unpublished opinion; but, frankly that didn't carry too much weight with me (RP 675).

Judge Arend’s prior order on relocation found this factor weighed in favor of denying relocation because all of the child’s relationships were in Pierce County (CP 797-800), upheld on Appeal in 2016. Those relationships had only strengthened. The trial court concluded this factor was “neutral”.

Even Mr. Scoutten admitted it would be detrimental for M.S. to be separated from relationships in Pierce County:

Q. Okay. And in addition, you acknowledge as you – I mean, you've acknowledged today, as you were arguing at the time that you filed an objection to the relocation, that those bonds are very important to Memphis and those would be disrupted by a move and that would be damaging to Memphis?

A. Yes, I argued that; or I said that.

Q. And you would agree that that would be the case today if she's taken out of Pierce County?

A. Yes, I would say that there -- you know, those relationships would be affected. I mean, anybody who is looking at it objectively would have to admit that (RP 84).

Factor 2, Enumerated as 4(b) Agreements, the court found: “There were no agreements with the parents/custodian about moving with child.”

Contrary to the written finding, Mr. Scoutten had previously agreed to stay in Pierce County for the duration of his military career.

By MR. BERRY (reading from Mr. Scoutten’s deposition): ANSWER: It would be a difficult decision. I don't know if I would choose it. The problem with going down that road as far as being a commissioned officer is that I would give up one of the very good things about working in the **Ranger Regiment in which I don't have to move around**. If I became an officer, I'd give up that right, and they move stations at least every three years.

QUESTION: So when you say that you're here, you're here in Pierce County?

ANSWER: Yes.

QUESTION: For the duration?

ANSWER: Yes.

Was that your testimony?

A. Yes.

Q. And so now in the summer of 2017, you asked – you requested to be relocated for this LNO position in Wales, correct?

A. I asked to be considered for the position (RP 116-117).

Factor 3, Enumerated as 4(c) of the order, the court found:

THE COURT: This child by all accounts is doing fabulously well since custody, primary residential care has been switched to father and father's family. Disrupting that relationship would clearly, in my opinion, be more detrimental than disrupting the relationship with the biological mother and the others who remain in the State of Washington (RP 690).

Testimony at trial is inconsistent with the court’s finding on this factor:

Q. –the reality is that it didn’t go great for Memphis, did it? The reality is, within three weeks you had taken Memphis in to see Dawn Breikss, correct?

A. **That’s correct** (RP 134, Mr. Scoutten). Q. You were asked; what do you hope to accomplish through therapy? And your response was: **Coping skills to deal with turbulent period after custody change**, and continued confusion about divorce. That’s why you were taking Memphis in to see this counselor? A. **Yes** (RP 141, Mr. Scoutten).

Additionally, the step-grandfather testified that Memphis cried, went

and hid under her bed and refused to go with Monica:

A: I'm trying to think of the dates when that happened. There was one time, and I think that was before this last trial date that I gave Mr. Miller a video of what happened in the house at the time. He said he couldn't see it because he couldn't get it to work, I don't know. Q. What did the video show? A: It showed Memphis standing at the door at the time **crying that she didn't want to go, she didn't want to go...** And this one time, I heard some yelling and screaming downstairs, Memphis, Memphis come, we've got to go, we've got to go. And Memphis ran up the stairs and hid in her bedroom. Q. Who was saying, come on Memphis, we've got to go—A. That would be **Monica...**" (RP 241, Hector Agosto, step-grandfather).

Substantial Evidence does not support that the child had transitioned fabulously into the father's home since the change in custody. After the custody change, M.S. was diagnosed with an Adjustment disorder with emotional disturbances by Dawn Breikss (EX.12-14), and refused to go with Monica (RP 241). M.S. was "having daily nightmares" and "had a theme of abandonment in her play" (EX. 14). M.S. had developed at least eight cavities from "dental decay" (EX.22). M.S. became below grade level in reading, writing, and spelling (RP 124). Mr. Scoutten was deployed a majority of the time (EX. 8, 9). No other Judge would have reasonably concluded that M.S. had transitioned "fabulously" into father's household.

Factor 4, Enumerated by 4(d), the court found: THE COURT: "Stress when at mother's home, per the counselor; abusive use of conflict involving caregivers, teachers and others and involving them in the family dynamics; false reports; and encouraging the child to speak untruths" (RP 682).

First, the trial courts .191 findings on this factor are drastically inconsistent with the trial court's .191 findings listed in the final parenting plan. Second, counseling records indicated the child was happy with her real mother, and unhappy with her step-mother:

MR.BERRY: Then I invite the Court to look at her report of January 18, 2016, when Angela is allowed to attend her one and only session. How did Memphis respond then? She's so excited that her mom is here. And let me just point the Court's attention to one that I thought was -- that was really so

sad. Well, first of all, March 17, 2016 she's saying: You're not the real mom, you're a jerk, I just want to die. From a seven-year-old little girl? And then this one got me too, this is on February 26, 2018: The client – I guess that's referring to Memphis -- said she was worried that people would get mad at her for not loving one person more than another. She wants to love everyone the same. She thinks her dad and stepmom would be mad at her and not love her anymore. I just think that's so sad. You know, there's nothing like this about her real mother who she knows loves her unconditionally. This is what Memphis is saying about her father and stepmother, she's afraid they won't love her. And again April 25, 2018, about her own mother, she appeared to be happy and spoke in a positive manner about her mom, school and home (RP 666).

Third, the trial court itself read evidence on record that support no one told the child to speak untruths, directly contradicting the written finding:

THE COURT: Social worker even asked if anyone had told her that is what happened to her. **She stated no...**" (682).

Similarly, there was no evidence of false reports, medical examiners referred the child's complaints to CPS, not Ms. Schreiner.

By all accounts, there was no evidence of stress in the mother's home, and that is not how the court's oral ruling framed their relationship:

THE COURT: Now with regard to other witnesses, I found all of them credible, kind, supportive, **they all spoke well of the relationship between Ms. Schreiner and Memphis.** I have no doubt that that was true, none (RP 687)...there's no question **that Memphis loves her mother and loves to have her mother participate in classes** (680). **There is no question in my mind that both of these parents love this child** (686).

MR. BERRY: And more specifically, there's no evidence that the child experiences any stress in the mother's home. I know the Court said -- or you said, well, per the counselor --THE COURT: Per the counselor. MR. BERRY: **The counselor didn't find it;** and if she had, if she had, if she had made some allusion to her -- frankly, I didn't see it in the counselor's record -- but even if she had, **the overwhelming evidence from everyone who**

testified at this trial who actually saw the mother and child interact, there was no stress. I asked every witness that question. And so if the Court's basing that -- I didn't see it at all in the counselor's record. If the Court is basing that on some hearsay comment in her records, I think that that's inappropriate. There was no evidence of abusive conflict involving caregivers, teachers and others. **When Mike refuses to let my client have access to medical and educational records, which the statute and the parenting plan provided her, said she was entitled to it; and she has to, you know, get in a hu-hu because Mike is gaslighting her about getting them. That's not her engaging in abusive use of conflict, that's Mike** because he is setting her up. This is something that she's entitled to and he's the one that's blocking it. There's no evidence of that otherwise. And the fact that, I mean, the Court -- I think it's really inappropriate for the Court to have left her role as a judge and become an advocate for Mike by bringing up, well, somebody at the doctor's office said she had trouble making appointments with her. Big whoopee. That wasn't even something that Mr. Miller brought up, and that's hardly a basis for finding abusive use of conflict. **Also, there's no evidence that the mother made any false reports, and there's no evidence that the mother encouraged the child to speak untruths.** There's not one instance of that whether you're looking at Dawn Briekss' or anything else. There's no false reports. What were the false reports? THE COURT: Thank you. **I'm adopting the language as proposed** (RP 729-730).

Moreover, the trial court made .191 findings referencing “mother”, but referred to Monica Scoutten as the child’s “mother” and “mom” throughout trial, making the findings unclear:

On pg. 676 the trial court makes clear that it was referring to Ms. Schreiner and Mr. Scoutten as “two parents”, and Monica as “stepmother”. THE COURT: As I said I think yesterday, there is a winner in these kinds of cases and there's a loser. And I hate to put it in such terms especially when I'm talking about a child and **two parents** who love her **and a stepmother** who loves her as well (676).

But in the next statement, the trial court refers to both parents and then refers to Monica simply as “mother” and “mom”:

THE COURT: There is no question in my mind that **both of these parents**

love this child and so it is difficult for me to even say these words because I know **that they** love this child and I know **that mother** loves this child. I also was impressed with the bond that this child has with her maternal grandparents, including her step grandfather. The night --this made an impact on me -- the night of the incident at the Agosto home **with Monica** -- and I apologize for using first names but it's easier for me -- trying to retrieve Memphis from the home when it was time to go back to the **Scoutten home**, Memphis ended up staying that night at the grandparents' house, **not with mom** (RP 686).

Factor 5, Enumerated as 4(e) in the order, the court found “Father is moving in good faith to promote his career.”

Despite the trial court’s ruling that Mr. Scoutten was moving in good faith to “promote his career”, Mr. Scoutten specifically testified that the position he was seeking was “not essential for promotion”:

Q. Okay. And isn't it also fair to say that, as a result of the promotions and achievements that you already have, the LNO position that you're talking about, while it's nice...**it's not essential for your promotions?** A. **You could say that** (RP 122).

There was no evidence presented that Mr. Scoutten was moving to promote his career. The trial court determined Mr. Scoutten’s pay went from \$10,000 per month in the 2015 child support order(CP 780-796) to a little over \$5,000 per month in the current support order (CP 1286-1314). The trial court determined Mr. Scoutten was an E-7 in it’s child support determination, but public record shows that Mr. Scoutten was selected for promotion to E8 in April 2018, before he ever filed his second intent to relocate.

https://partner-mco-archive.s3.amazonaws.com/client_files/1523468546.pdf

Substantial evidence does not support the trial court’s finding that Mr.

Scoutten was moving to “promote his career”, evidence shows a decrease in his pay, he was already selected for promotion before filing, and Mr, Scoutten testified moving to Wales was not essential/required for promotion.

Factor 6, Enumerated by 4(g): Age, developmental stage, and needs of the child, and the likely impact of the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.

“Relocation factor RCW 26.09.520(6) suggests that the trial court is required to review the parenting abilities of each parent. . . .Implicit to relocation factor RCW 26.09.520(6) is an analysis of each parent’s ability to parent and care for his/her children based on their age, developmental stage, and needs in each of the new and current geographic settings.” In re Marriage of Fahey, 164 Wn. App. 422, 64, 62 P.3d 128 (2011).

The trial court erred by failing to consider education, medical care and needs in each of the new and current geographical settings on this factor altogether. By all accounts, removing M.S. from St. Patrick’s and her medical care was detrimental to M.S (RP 86), (RP 208).The court erred when the trial court failed to compare M.S’ educational, medical, age and needs in Wales to Washington. This is because Mr. Scoutten failed to provide even basic information about M.S.’ circumstances in Wales. He failed to provide a home address, school or medical enrollment, or any resources/opportunities available for M.S. in Wales. This in violation of RCW 26.09.440(2)(a) which requires a Specific street address of the intended new residence, home phone number, Name and address of the child’s new school, and a proposed parenting plan for a revised schedule. Mr. Scoutten’s intent to relocate lacked

all of the required information (RP 5-15). The only information regarding Wales provided during trial was that it is a high crime or terrorism location (RP 215), (EX. 25).

Factor 7, Enumerated by 4(h), The trial court erred by failing to consider this factor, simply referring back to Factor 6:

THE COURT: “Quality of life, resources, opportunities available to the child and to the relocating party in the current and proposed geographic locations. **I think I've pretty much addressed that with Factor Number 6.** I think Factor Number 7 weighs in favor of the move” (RP 692).

In relocation cases the trial court must consider each of the factors in RCW 26.09.520 and document its findings in the findings of fact or, failing that, the record must reflect that substantial evidence was entered on each factor and the court’s oral ruling must reflect that the court considered each factor. Bay v. Jensen, 147 Wn. App. 641, 654-56, 196 P.3d 753 (2008).

The trial court erred by failing to consider this factor or reflect that substantial evidence was entered on each factor.

Factor 8, Enumerated by 4(i), the trial court erred by failing to find that this factor weighed for or against relocation.

Factor 10, Enumerated by 4(k), Financial aspect: The court found this factor “neutral”, despite contrary evidence of Mr. Scoutten’s pay being reduced by half according to child support worksheets. Moreover, the long-distance transportation costs made it virtually impossible for Ms. Schreiner to afford to see M.S. The court’s conclusions are not supported by the evidence.

5. The court below erred in entering the findings and conclusions underlined in the Parenting Plan, CP _532-543, (.191 Findings #1-5, & Restrictions).

- a. On Sept. 7th, 2018, the trial court erred by entering a “Final Order and Findings on Objection about moving with children and Petition about changing a Parenting/Custody order” indicating a parenting plan was entered that same day (CP 1225-1231). Enumerated by number eleven of that order, the trial court checked the box “Change-The court signed the new parenting plan or residential schedule filed separately today”. The final parenting plan wasn’t entered until October 19th, 2018, the plan was not filed by Sept. 7th as the order indicates.
- b. The parenting plan entered in this case does not comply with RCW 26.09.184, crafting a parenting plan “in a way that minimizes the need for future modifications”. The current parenting plan requires the need to modify the parenting plan again after the “18-24 month” assignment in Wales is complete (RP 120). Mr. Scoutten testified that he would ultimately “be up to the needs of the Army” and unsure where he would be stationed after Wales, U.K. (RP 125).
- c. The parenting plan is not in compliance with RCW 26.09.187(3)(a), (3) RESIDENTIAL PROVISIONS (a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances. Instead, the trial court adopted a parenting plan where Ms. Schreiner is obligated to pay 100% long distance transportation costs besides once per year and restricting her residential time “in the Wales area” besides once per year. Ms. Schreiner does not have the resources to pay 100% long distance transportation costs, making it nearly impossible for her to exercise any residential time at all with M.S with the geographical restrictions.
- d. The court below erred by abuse of discretion and error of law when it ordered Ms. Schreiner pay 100% long-distance transportation costs and placed geographical restrictions upon her visitation.

Long distance travel expenses are considered extraordinary expenses not accounted for in the basic child support obligation. RCW 26.19.080(1).

Under RCW 26.19.080(3), “[t]hese [extraordinary] expenses shall be shared by the parents in the same proportion as the basic child support obligation.”

This statutory language is mandatory. In re Paternity of Hewitt, 98

Wash.App. 85, 988 P.2d 496 (1999). Once the trial court determines that

extraordinary expenses are “reasonable and necessary,” it is required to

allocate them in proportion with the parents' income. Murphy, 85 Wash.App.

at 349, 932 P.2d 722.”

Division I reversed and remanded where the trial court “entered inconsistent and contradictory findings regarding its concerns about the risk of abduction. We remand to the trial court to clarify its intent in imposing the passport and foreign-travel restrictions and if appropriate to enter findings to justify limitations it imposed. We conclude the provision in the parenting plan that prohibits Brajesh from removing the children from a two-county area in Florida was an abuse of discretion. We reverse that restriction and remand to amend the parenting plan to allow Brajesh to take the children to Orlando. We remand for the trial court to clarify its intent and if appropriate amend the child support order to include findings that support a deviation requiring Brajesh to pay the travel expenses.” *In re Marriage of Raskob*, 183 Wn. App. 503, 513, 334 P.3d 30 (2014) (quoting RCW 26.09.260(6))”.

In this case, the trial court made no findings about risk of abduction, yet imposed the same types of passport, foreign-travel and geographical restrictions upon Ms. Schreiner, limiting most of her visitation to “the Wales area” and ordered her pay 100% long distance transportation costs. The trial court failed to justify the geographical limitation, and failed to provide findings that support a deviation requiring Ms. Schreiner to pay 100% of travel expenses.

- e. The findings made at the conclusion of trial and enumerated by number 4(d) of the “Final Order and Findings on Objection about moving with children and Petition about changing a Parenting/Custody order” (CP 1225-1231), are inconsistent with the additional .191 findings enumerated by number 3 of the parties final parenting plan order (CP 542-543).
- f. The trial court erred by adopting additional .191 findings after it ruled it would not be accepting any evidence occurring before the July 24th, 2015 modification because it “wasn’t relevant”. Mr. Scoutten testified that nothing had occurred since the July 24th modification that would warrant the re-entry of prior findings. Substantial evidence from trial does not support any .191 findings.

THE COURT: And I also want to caution both sides that **I am not considering relevant anything that happened** -- whether there is a petition for modification or not and whether that's a proper procedure -- **we're not revisiting everything that happens before July 24th, 2015. We have to go forward from that date** (RP 56).

THE COURT: ...**But I will assure you, Mr. Miller, that if we start getting into a whole bunch of pre-July 2015 issues during trial, I will sustain objections as to relevance. In my opinion, it's not relevant** (RP 57).

Mr. Scoutten admitted nothing had occurred since the last parenting plan that would warrant re-entry of .191 findings:

BY MR. BERRY:Q. Let me ask you about something else here. The parenting plan, the last parenting plan that was entered, there were some findings -- 091 findings made, RCW 26.09.091--... There were some findings made against Angela, correct? A. Yes, that's correct. **Q. And I asked you, did I not, in your deposition whether Angela had engaged in any conduct since the modification which you thought would warrant those findings today. Do you remember I asked you those questions?** A. I think so, yeah. Q. And your response was **that you really couldn't think of anything** other than there were still -- from your perspective, there still seemed to be stress in the relationship between Memphis and her mother; is that correct? **A. Uh-huh, yes.** Q. But that's all -- in response to my question that's all you said? **A. Yes.** Q. **And for the Court, that appears at Deposition 150 to 159.** Okay. And you also, did you not, acknowledge in your deposition testimony **that the stress that you saw Memphis experiencing could be a result of stress because of what was being created on your side of the family?** **A I remember giving a very objective answer to that, yes (RP 133).**

g. .191 Restrictions and Findings lack substantial evidence
.191 Restrictions(1)(2) Abandonment, Neglect, child abuse, domestic violence, assault or sex offense:

The written finding states the mother created "emotional child abuse".

MR.BERRY:...**And we have a serious objection with the language that Mr. Miller proposed where he's saying that the mother's abusive use of conflict creates emotional child abuse. There is no such finding by the Court about that;** and the serious danger and adverse effect on the child's best interest. Again, there is no evidence to support that and that was not the Court's finding. I think to some extent, you know, the respondent is estopped to come in and say this when **this was not something that was requested at trial; it's not consistent with what the parenting plan that he submitted to the Court at the time of relocation; and it doesn't comport with the Court's findings..**(RP 738-739). MR. BERRY: Well, let me just say this. **There's nothing in the Court's ruling or any other time that uses the words "emotional child abuse".** THE COURT: Make your record. MR. BERRY: I'm making it. All right (RP 739).

The trial court found no abuse:

THE COURT: These records are the CPS records and of course Mr. Berry argued about these records that they proved a number of things including domestic violence, neglect, **abuse of this child; and it was in my opinion quite the opposite what these records showed...** (682).

Similarly, the child's counselor reported no child abuse of any kind.

Findings #1-5:

1. The absence or substantial impairment of emotional ties between the child and the mother. Evidence at trial was overwhelming that the child does not want to return to her mother at conclusion of residential time with father.

The trial court failed to provide an adequate record for review to explain the basis for this finding, simply stating "I am finding number 2", enumerated as #1 (RP 741). The court failed to make this findings at the conclusion of trial, and the court's oral ruling is in direct contradiction:

THE COURT: So I am leaving in place Number 2. Number -- MR. BERRY: That the evidence at trial was overwhelming that the child does not want to return to her mother? What was the evidence of that? THE COURT: Mr. Berry -- MR. MILLER: What are you reading? THE COURT: -- we're not going back through -- MR. BERRY: I understand but -- THE COURT: -- all the evidence or my oral ruling, and don't interrupt me, okay? Please don't interrupt me. You've been interrupting Mr. Miller and it's inappropriate, Counsel; it's inappropriate. MR. BERRY: I don't believe I've been interrupting. If I have, I apologize. THE COURT: You have. MR. BERRY: But the point is that the Court can't come in here and fabricate findings; and this would be a fabricated finding. There's no -- THE COURT: **Thank you. Thank you. I am finding Number 2, I am finding Number 3, I am finding Number 4, I'm finding Number 5, and I'm finding Number 6. You have options open to you. If you think that there was insufficient evidence to support the Court's findings, please appeal. Division II will be happy to hear it** (RP 741).

The trial court's oral rulings and counseling records indicate there

were substantial emotional ties between the child and Ms. Schreiner, and the trial court found Ms. Schreiner was a substantial person M.S. life:

THE COURT: ... With that said, I think that there is significant relationships with father and father's family; **certainly with mother, no question**(RP 689).THE COURT: ...**there's no question that Memphis loves her mother and loves to have her mother participate in classes** and that's what she's talking about in that November 1st entry (RP 680). THE COURT: Now with regard to other witnesses, I found all of them credible, kind, supportive, **they all spoke well of the relationship between Ms. Schreiner and Memphis. I have no doubt that that was true, none** (RP 687). MR. BERRY: ...**And again April 25, 2018, about her own mother, she appeared to be happy and spoke in a positive manner about her mom, school and home** (RP 666), (EX. 15).

Every witness at trial testified M.S. was excited and happy returning to Ms. Schreiner after the conclusion of residential time with father:

Q. Okay. Now how would you describe what you observed as the relationship between Angela and Memphis? A. I would say lovingly. **When we used to pick her up, she'd always come out, hug her mother and, you know, kiss her and Mama, and get ready to go into the car and get into the car as soon as possible. And then afterwards, she would sit by her mother and always hugging her and holding her hand or doing something with Angela.** Q. Have you ever seen any occasion in which Memphis felt uncomfortable being with her mother or -- A. No, no, no, I have never seen that (RP 240, Hector Agosto, stepgrandfather). **A. I've seen them -- it appears very supportive and loving. Memphis always runs for mom, mom, runs to her when it's time for pickup. She's happy to see her mom. I have no concerns, they're very happy** (Tami Kamalu, Sunday School Teacher and child psychologist, RP 151). **A. I would--I've observed Angela with Memphis after school because she would pick her up every other Tuesday; and then she volunteers as a classroom parent so she planned our Halloween party and our Valentines Day party; she volunteered on a field trip to the Tacoma Nature Center...**Q. And what have you observed about her relationship and response towards her mother, Angela? A. **In my experience, she was excited to see her. She'd be excited to see her mother.** Q. Okay. And would that be whenever she was going to pick her up she'd be excited about that or volunteer in the

classroom? A. Yeah, if she knew she was coming. Sometimes Angela would ask to come in for lunch sometimes as well, and meet her down in the lunchroom. And so Memphis would be happy to see her"(RP 433, Ms. Kelly, M.S. 2nd grade teacher at St. Patricks). Each of these witnesses were found credible by the trial court.

2. The abusive use of conflict by the mother which creates the danger of serious damage to the child's psychological development.

The court failed to make an adequate record for review regarding this finding, simply stating "I am finding number 3" (RP 741). Substantial evidence does not support this finding. Mr. Scoutten testified stress the child experienced could be coming from his household (RP 133). On the other hand, Monica Scoutten, the step-mother, physically assaulted Ms. Schreiner on two separate occasions. On page 69-72 of her deposition, Monica Scoutten admits to kicking Ms. Schreiner (CP 417-500). Police reports at entered at trial document that both of the assaults happened in front of M.S. (EX. 36-38). Evidence was presented that Mr. Scoutten denied Ms. Schreiner access to M.S. educational and counseling records (RP 192-193).

3. Instability which the court finds detrimental to the child.

The trial court failed to make an adequate record for review regarding this finding, simply stating "I am finding number 4" (RP 741). Substantial evidence does not support this finding. Contrary evidence proves Mr. Scoutten's instability. Mr. Scoutten testified he was deployed four-and-a-half years of M.S. life, and admitted to committing perjury about being non-deployable to gain custody:

Q. So contrary to what you told the Court about being on a non-deployable status, you've never actually been on a non-deployable status; is that correct?
A. That is correct as far as a technicality referring to the military... (RP 99).

Q. Okay. But what we see just on the ones for combat is that you have been gone on those deployments for a total of 53 months? A. Since I entered the military, yes. Q. And that's four-and-a-half years, right, approximately? A. I would have to do the math but I'll take your word for it. Q. So about half of Memphis' life? A. Sure, total (RP 108).

4. The mother's failure to communicate and engage in joint decision making and co-parenting.

The court failed to make an adequate record for review regarding this finding, simply stating "I am finding number 5" (RP 741). Mr. Scoutten was granted all major decision making rights for M.S. in the 2015 parenting plan. Substantial evidence cannot support this finding because Ms. Schreiner wasn't granted the joint-decision making rights she was found to have violated.

5. The court finds mother has engaged in making untrue statements, including untrue allegations against the father.

The court failed to make an adequate record for review regarding this finding, simply stating "I am finding number 6" (RP 741). Substantial evidence does not support this finding.

h. Restrictions/Limitations

Any limitations or restrictions that the court imposes must address the identified harm. In re Marriage of Katare [I], 125 Wn. App. 813, 826, 105 P.3d 44 (2004). **RCW 26.09.191(3)(g) requires a particularized finding of a specific level of harm, and the restrictions must be reasonably calculated to prevent physical, mental, or emotional harm to a child. Marriage of Chandola, 180 Wn.2d 632, 327 P.3d 644 (2014). The trial court erred by failing to find any restrictions at the conclusion of trial, and failed to provide a basis for the restrictions adopted**

in the parenting plan.

MR. BERRY: In Number D, this Court did not find any limitations. And I mean, for counsel to come in and put in Judge Arend's objections, including she didn't call about the child's birthday, something that happened five years ago? That's not what happened in this trial. And I think that what's significant particularly is that Mike himself testified that since the entry of the limitations in Judge Arend's order, Angela had not done anything which would warrant their reentry. That was his testimony (RP 729).

The court erred when it failed to reasonably calculate restrictions and address identified harm. Restrictions in this case strongly resemble the restrictions in the case of Katare, where the Appellate Court ruled: “We also conclude that any limitations or restrictions imposed **must be reasonably calculated to address the identified harm.** The trial court entered findings and conclusions regarding the specific RCW 26.06.191 sections Lynette raised, including RCW 26.09.191(1)(b) and RCW 26.09.191(3)(a), (d) and (e), but it did not address the risk of abduction under RCW 26.09.191. **We conclude the two-county limitation was based on untenable grounds.** On remand, the court shall allow Brajesh to take the children to Orlando during his visits with them in Florida.” Similar to the case of Katare, the parties parenting plan limits Ms. Schreiner’s residential time to occur **“if mother is in the Wales area”**, yet allows Ms. Schreiner to take M.S. to Washington in the summer. The trial court did not explain it’s reasoning for adopting this limitation, or any of the passport and long-distance transportation restrictions.

- i. **The trial court erred when it failed to find a nexus between the parental conduct that is found to support the limitation and an actual or likely**

adverse impact of the conduct on the children that justifies the restriction.

The trial court adopted the proposed language placing restrictions upon Ms. Schreiner's decision making authority, access to M.S. educational and medical records and providers, geographical limitations on her residential time, and passport and long-distance travel limitations. The trial court failed to find any restrictions at the conclusion of trial and failed to provide nexus between parental conduct that supports the limitations. “RCW 26.09.191(3)'s first sentence and RCW 26.09.191(3)(g) expressly provide that the best interests of the child control whether restrictions may be placed on a parent's residential time with children. Importantly, the statute also provides that the particular factor or condition that justifies the restriction must be adverse to the children's interests. And when a limitation is placed in a parenting plan, the trial court must find a nexus between the parental conduct that is found to support the limitation and an actual or likely adverse impact of the conduct on the children that justifies the restriction.” In re Marriage of Watson, 132 Wn. App. 222, 233-34, 130 P.3d 915 (1996). Thus, substantial evidence—evidence sufficient to persuade a fair-minded person that Ms. Schreiner posed a risk to the child regarding limitations to education and medical records, geographical limitations, passport requirements, and paying 100% long-distance travel costs,—failed to justify the restrictions under Watson. The trial court failed to identify how any of the .191 factors specifically applied to

the restrictions found in the parties parenting plan.

- j. **The trial court erred when it reversed its prior ruling regarding the mother's "equal" access to educational and medical records. The Court's Order Regarding Relocation, (CP 517-518) and the court's oral ruling regarding RCW 26.09.255, are inconsistent to restrictions found in the Final Parenting Plan, CP (532-543).**

At the conclusion of trial, and as the court's written and oral rulings show, on August 3rd, 2018, the trial court ordered that the mother be given equal protections to the child's records and providers consistent with RCW 26.09.255 (CP 517-518). Yet, number 4 of the final parenting plan places limitations upon Ms. Schreiner's contact with the child's school, medical providers and counselors to no more than one email per month. The court's orders are contradictory and inconsistent.

- k. **The trial court erred by abuse of discretion when it completely eliminated the "Other Provisions" section of the Parenting Plan, on the basis that RCW 26.09.225 gave Ms. Schreiner equal access to educational and medical records, it ruled: THE COURT: "I am removing section 6"Other Provisions" because I believe that the statutes adequately protect mother's rights to be in contact with schools and health care providers." (RP 694).**

The court's ruling memorialized in the Order of Court Regarding Relocation signed on August 3rd, 2018 gives Ms. Schreiner access, enumerated by number 4, it reads in part: "(4) Sec 6, other provisions shall not be included because the court finds that the statutory protections are sufficient to give mother access to educational and medical records and providers," (CP 517-518) . The trial court erred by eliminating the **seventeen "Other Provisions"** gave Ms. Schreiner rights to stay involved in the child's life that had no relation to access to records. The trial court fails to provide an

adequate record for review explaining it's basis for eliminating all 17 of the "Other Provisions", in the attached pages A.-C. of the July 24th, 2015 parenting plan, (CP 780-796).

6. The court below erred in entering the findings and conclusions underlined in the Judgment, (CP 544).

In general, trial courts must segregate fees caused by intransigence from those fees incurred for other reasons. Crosetto, 82 Wn. App. at 565. Generally, intransigence occurs where a party engaged in foot -dragging and obstruction, filed unnecessary or frivolous motions, refused to cooperate with the opposing party, refused to comply with discovery requests, or engaged in any other conduct that made the proceeding unduly difficult or costly. Greenlee, 65 Wn. App. at 708; Chapman v. Perera, 41 Wn. App. 444, 456, 704 P. 2d 1224 (1985). The trial court failed to segregate fees caused by intransigence from fees incurred for other reasons.

A. Ms. Schreiner was not intransigent.

There aren't any specific facts in the record to support a finding that Ms. Schreiner was intransigent. The trial court set the trial for three days (RP 143). Ms. Schreiner simply asserted her right to go to trial, which is not a basis for intransigence. See} Greenlee, 65 Wn. App. at 708. The record does not demonstrate that Ms. Schreiner' s actions surrounding any one issue resulted in increased litigation, and Mr. Scoutten presented evidence on the same issues. Because no specific facts in the record support a finding of Ms.

Schreiner's intransigence, the trial court abused its discretion in so finding.

- B. The court erred by abuse of discretion when it found “bad faith” and intransigence of Ms. Schreiner, after the trial court had already ruled that Ms. Schreiner had objected in “good faith” , specifically referencing Mr. Millers attorney’s fees brief. The trial court’s oral ruling is inconsistent and contrary to the written finding.**

The trial court specifically references Mr. Miller’s attorney’s fee affidavit when finding Ms. Schreiner objected in “good faith:

THE COURT: ...Reasons of each person for seeking or opposing relocation and the good faith of each of the parties in requesting or opposing the relocation. While I received a brief this afternoon from Mr. Miller which would suggest bad faith on the part of the mother – MR. MILLER: It's attorney's fees affidavit. THE COURT: I appreciate that, but I'm going to just tell you that I think that mother objected in good faith. This is an extraordinary relocation, moving to another country. This is going to impact mother's time with this child and relationship with the child, at least in the short term. So there's no question that this is in good faith (RP 690-691).

- 7. The court below erred by abuse of discretion when it failed to identify the method it used to calculate the attorney fees it awarded at trial. The court erred by not separating attorney's fees, failed to calculate hours*hourly rate, and the court’s written findings do not support the court’s oral conclusions regarding Need v. Ability to Pay.**

A. Method Used to Calculate Attorney’s Fees

The Appellate Court will review an attorney fee award for abuse of discretion and will reverse if the decision is untenable or manifestly unreasonable. Spreen, 107 Wn. App. at 351. The trial court must indicate on the record the method it used to calculate the award. Knight, 75 Wn. App. at 729. The court erred by not separating attorney's fees, and failing to calculate

hours*hourly rate. The trial court failed to "state on the record the method it used to calculate such award." McCausland, 2002 WL 1399120, at *5 n.7, 2002 Wash. App. LEXIS 1499, at *15 n.7, *13.

B. Need V. Ability to Pay. The trial court erred by awarding fees to Mr. Scoutten after finding Ms. Schreiner had the need. The trial court failed to analyze if Ms. Schreiner had the ability to pay, and never found Mr. Scoutten had the need.

RCW 26.09.140. In determining whether it should award fees, “the court considers the parties’ relative need versus ability to pay.” In re Marriage of Spreen, 107 Wn. App. 341, 351, 28 P.3d 769 (2001).

THE COURT: ... And I should also say that with regard to the analysis of need and ability to pay, certainly Ms. Schreiner may have the need -- although I question that somewhat based on her travel and the fact that she doesn’t work but she is able to support herself, that others support her, so perhaps there is a need -- but in this case I absolutely find that there is not the ability to pay. (RP 870).

The trial court found Ms. Schreiner had the need (RP 870). The trial court’s oral ruling that Ms. Schreiner had the need, fails to support the trial court’s written finding that Ms. Schreiner pay Mr. Scoutten \$17, 507 in fees, enumerated by number 5 in the Order of Judgement. It is clear from financial declarations entered as evidence at trial that Mr. Scoutten has the ability to pay (CP 1006-1011), and Ms. Schreiner does not (CP 815-820).

C. The trial court failed to separate fees, or identify which fee’s or hours it was awarding to which attorneys or paralegal.

“Courts must take an active role in assessing the reasonableness of fee

awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel.”

Mahler v. Szucs, 135 Wn.2d 398, 434–35, 957 P.2d 632, 966 P.2d 305 (1998). The trial court failed to provide an adequate record for review to provide which hours, days, or persons the trial court awarded fees. The total hours an attorney has recorded for work in a case is to be discounted for hours spent on “unsuccessful claims, duplicated effort, or otherwise unproductive time.” Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193(1983). The trial court awarded some fee’s to Ms. Schreiner but it is unclear if it awarded the same days and hours to Mr. Scoutten. Similarly, the trial court failed to segregate fees. The fee affidavit Mr. Miller filed charged for himself “JAM”, his paralegal “L.N” and there’s a separate affidavit for attorney Jeffrey Whalley. Most entries include both “JAM” and “L.N.” billing for the same days and hours, duplicating fees. Normally, a fee award that is unsupported by an adequate record will be remanded for the entry of proper findings of fact and conclusions of law that explain the basis for the award. See Mahler, 135 Wn.2d at 435; Eagle Point Condo. Owners Ass'n v. Coy, 102 Wn.App. 697, 715–16, 9 P.3d 898 (2000) (remanded because trial court “simply announced a number”). Similarly, in this case the trial court simply announced a number. We do not know if the trial court considered if there were any duplicative or unnecessary services.

We do not know if the hourly rates were reasonable. Mahler, 135 Wn.2d at 435. It's unclear from the record if the trial court thought the services of two different attorneys and a paralegal charging the same hours and days were essential to the successful outcome, or which hours and days were included in the award.

9. The court below erred in entering the findings and conclusions underlined in the Child Support Order (Final), CP(1286-1314).

A. The trial court erred by modifying it's own decree or provision regarding child support after the deadline passed for a motion for reconsideration. The trial court's rulings are inconsistent.

On Sept. 7th, 2018, the trial court entered a "Final Order and Findings on Objection about moving with children and Petition about changing a Parenting/Custody order" (CP 1225-1231). Enumerated by number six of that order, the trial court checked the box indicating a child support order modification "does not apply", and enumerated by number eleven, checked a box stating "No change-The current child support order remains in effect". More than 10 days passed between the Final Order and Findings on Objection, and the Order of child support to bring a motion for reconsideration. CR 59(b). It was exactly three months later on December 7th, 2018 (CP 1286-1314) that the trial court modified child support. A trial court does not have the authority to modify even its own decree or its provisions regarding support orders in the absence of conditions justifying the reopening

of the judgement. RCW 26.09.170(1); *Kern v. Kern*, 28 Wn.2d 617, 619, 183 P.2d 811 (1947).

B. The court erred by reopening child support after the trial court ruled there was not a substantial change of circumstances.

The trial court failed to provide a basis to reopen child support. Mr. Scoutten failed to file or serve a Petition for modification of child support, and the trial court ruled there was not a substantial change of circumstances in this case to justify a modification in this case.

THE COURT: ...But with regard to whether there was a substantial change in circumstance which would support a petition for modification, I find that that was in bad faith (RP 867).

C. The trial court erred by failing to follow the Washington State Child Support Schedule requirement of using 12 months of paystubs to determine income when income varies. Instead, the court used a singular “October 2018”, incorrect pay stub to calculate Mr. Scoutten’s income, after Mr. Scoutten admits his October paystub is inaccurate.

MONTHLY INCOME VARIES

Mr. Scoutten’s monthly income varies. The superior court erred, as a matter of law, when it failed to calculate Mr. Scoutten’s income using the Washington State Child Support Schedule’s directions using an average of “12 months of paystubs” to determine gross income, which reads in part: ”Income Standard #3 “Monthly Average of Income: **If income varies during the year, divide the annual total of the income by 12**” (Washington State Child Support Schedule). Mr. Scoutten’s income varies each month. Financial source documents filed before trial on July 17th, 2018 under seal

indicate that Mr. Scoutten's income varied throughout the year, he made anywhere **from \$7198.29 to \$8556.42** per month from January 2018-June 2018, (CP 643-766). MR. BERRY: And by the way, I pointed out too that in his LES that he provided us of February 2018, it showed his income as \$8,558.00 for that month (RP 903). Instead, the court's Child Support worksheets indicate Mr. Scoutten made \$5,451. The trial court admits it failed to include any other sources of income or special pays Mr. Scoutten receives:

THE COURT: ...What I did was I took the amount that he nets at the end of the month and added the mid-month amount net, and came up with 5451 as a net income for Mr. Scoutten (RP 885). THE COURT: And I think this document is consistent with the worksheets that were prepared by the Court. They are rudimentary at best. They simply show, you know, very little information, only the nets imputed for her **and using the October pay stub for him**, which I came out with 5451. I had the legal technician downstairs run the numbers. That came out with \$337.59 for Ms. Schreiner's obligation. It also came out with the percentages to be 31 percent, 69 percent" (RP 894).

INNACURATE PAYSTUB

In his declaration filed on November 27th, 2018, Mr. Scoutten indicates that the LES statements he provides **"are not accurate for the determination of support"** (CP 1233-1250). On December 5th, 2018 Mr. Scoutten filed another declaration admitting his paystubs were still incorrect: It reads in part...**"there is nothing I can do about the military's timeline for correction of my pay and when I might receive any corrected back pay."** (CP 1280-1283, pg. 2, lines 2-3). The trial court knew Mr. Scoutten

indicated his October 2018 paystub was incorrect.

D. The trial court erred as a matter of law when it failed to require Mr. Scoutten disclose all of his assets in accordance with RCW 26.19.071, and by denying Ms. Schreiner's right to come back and correct child support when the statutory requirements were met.

“A trial court must first determine the income of each parent, considering monthly gross income **from all sources**” (RCW 26.19.071(1) (3)). “From the monthly gross incomes, the court makes deductions to arrive at each parent's monthly net income” (RCW 26.19.071(5)).

RCW 26.19.071(1) dictates that all income and resources of each parent's household shall be disclosed and considered by the court when determining child support obligations for each parent. The statute also demands the provision of **tax returns** and current paystubs to verify income and deductions. RCW 26.19.071(2). Mr. Scoutten reported **\$114,350** in other “**business income**” on his 2017 tax returns (643-766). This income was not included on child support worksheets. Mr. Scoutten failed to provide his 2018 Tax returns per statute, so it is unclear what his income and deductions were.

OBJECTIONS

MR. BERRY: ... and **so I object to the Court just running this through without -- with what Mr. Scoutten has already admitted is incomplete and inaccurate information.** (RP 888).

MR. BERRY: And is the Court also willing to set another hearing date where we can get a final order of child support entered **with the information required by the statute?**

THE COURT: This is the final order of the Court. So this is not --

MR. BERRY: So the answer's -- the answer is no?

THE COURT: **So the answer is no.**

MR. BERRY: Wow (RP 897-898).

HOUSING ALLOWANCE, UTILITIES, COLA

Mr. Miller and Mr. Scoutten **admitted** the court's child support worksheets were incorrect determining Mr. Scoutten's housing allowance.

MR. MILLER: Yeah, \$0.30. Mr. Scoutten knows that that's not accurate; I know that's not accurate; **everybody knows it's not accurate**... (RP 891).

MR. BERRY: Under the most recent one, he's saying his housing allowance is \$0.30? We know that that's not true under this most recent LES. We know from the DOD web site that some of these -- that he should be getting \$1766.54 for rental allowance in Wales; \$595.19 for utilities; and COLA of \$510.25 per pay period. Now, if he's getting something different he needs to tell us, but the point is that these are all items of income (RP 889).

The trial courts final child support worksheets indicate that Mr. Scoutten only receives \$0.30 for monthly housing allowance, using his incorrect October paystub. Yet, on page 3 of Mr. Scoutten's financial declaration filed on July 17th, 2018, he indicates his Housing Allowance is \$2,379.00 per month (CP 1006-1011). And according to the DOD exhibit entered at trial, his Wales, U.K. housing allowance should have been \$1766.54, COLA was \$510.25, and utilities allowance was \$595.19 (**EX 25**).

RENTAL PROPERTIES

Petitioner's attorney's request for proof of Mr. Scoutten's rental incomes and expenses were denied by the trial court. THE COURT: ...And I'm not ordering a bunch of bank statements (RP 859). Mr. Scoutten failed to provide the required 2018 tax returns or requested bank statements to prove rental incomes per statute. Mr. Miller and his client indicated Mr. Scoutten's rental incomes were \$1500.00 and \$1800.00 on record (RP 858), but failed to provide evidence to corroborate the claim, failed to include both rental incomes on child support worksheets, and failed to justify his deduction.

MR. MILLER: And the other thing is the rental, he wanted bank statements. And, you know, it takes time to transport from here to Wales to back to wherever. But Mike sent in a statement; he says he gets \$1500.00 for the Ferdinand property; he gets \$1800.00 respectively for the North 8h property, that's where he was residing; the mortgages are roughly \$1290.00 and \$1400.00 each. So that could be a \$210.00 increase plus another \$400.00; \$600.00 increase, you know (RP 859-860).

MR. BERRY: ... Moreover, moreover he has -- you know, as the Court knows and the statute requires, RCW 26.19.071, all of the income and resources of each parent's household shall be disclosed. Mr. Scoutten has acknowledged and admitted that he has rental income from two properties, but he's not provided us any evidence of that other than transparently bogus rental agreements. He claims that, oh, I have expenses that basically are eaten up by the rent. Again, RCW 26.19.071(2) requires that the provision of tax returns or current pay stubs to verify income and deductions must be provided. He has not provided us with that information (RP 887).

The trial court erred by failing to justify the \$1500 deduction listed on child support worksheets. Pursuant to INCOME STANDARD #5:

Determination of net income, "justification shall be required for any business expense deduction about which there is a disagreement" (Washington State Child Support Schedule). And despite Mr. Miller's misrepresentation of supposed mortgage payments on the properties, page 5 of 6 of Mr. Scoutten's financial declaration filed on July, 17th, 2018 indicates that he is mortgage free on at least one of his properties (CP 1006-1011), it is recurring income.

SAVINGS AND CHECKING ACCOUNTS

Mr. Scoutten indicates on page 4 of 6 of his financial declaration that he has a tax savings account with \$70,000+ (CP 1006-1011). His bank

statements show over \$100,000 in checking and savings accounts (643-766). Mr. Scoutten fails to report any money in checking and savings accounts on his financial declaration, marking this section “minimal”. None of these assets are included on Child support worksheets and were not considered.

E. The trial court erred by matter of law when imputing income to Ms. Schreiner. The trial court failed to justify “under-employment” written finding and failed to follow the order of priority outlined in RCW 26.19.071(6).

THE COURT: The median net monthly income for a woman 25 to 34 is 2446. MR. BERRY: Well -- THE COURT: And that's net. MR. BERRY: I know, but that's not the first place you go. THE COURT: I'm sorry? MR. BERRY: That's the first place you go, under the schedules if she's been working minimum wage, that's the one that gets imputed. THE COURT: Right. But 1436 net is not an appropriate wage in my opinion (RP 839). MR. BERRY: And just for the record, again we'll object to using the median income because I think the rule requires that that's like the second or third choice that the Court makes, but -- THE COURT: Okay (RP 840).

The child support statute directs the superior court to make two inquiries when considering whether to impute income. Peterson, 80 Wn. App. at 153. First, the superior court evaluates the parent's work history, education, health, age, and any other relevant factor to determine whether that parent is voluntarily unemployed or underemployed. RCW 26.19.071(6). The trial court failed to orally make the determination that Ms. Schreiner was under-employed as the written order states. It would be impossible for her to be voluntarily under-employed when Ms. Schreiner testified she's unemployed (RP 351) and financial source documents indicate

she was not working (RP 616-642).

RCW 26.19.071 (6) reads in part: “Imputation of income. The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed. **In the absence of records of a parent's actual earnings**, the court shall impute a parent's income **in the following order of priority**: (a) Full-time earnings at the current rate of pay; (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data; (c) **Full-time earnings at a past rate of pay** where information is incomplete or sporadic; (d) **Full-time earnings at minimum wage** in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a high school student; (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

Ms. Schreiner testified she had last worked at a restaurant (RP 351).

The trial court also had access to her **work history**, Ms. Schreiner’s pay stubs were entered as an exhibit at trial (RP 355), (EX. 52). Instead of using Ms. Schreiner’s historical rate of pay from paystubs or testimony, the trial court imputed her income using the last option in the order of priority. The trial court’s basis for failing to following the order of priority required was because “1436 net is not an appropriate wage in my opinion” (RP 839).

The superior court erred by abuse of discretion and as a matter of law, when it failed to determine unemployment vs. underemployment on record, failed to provide a basis for under-employment written finding, and when it

imputed Ms. Schreiner's income by using option (e). We request that the Court of Appeals reverse and remand for the superior court to recalculate Angela's child support obligation based on RCW 26.19.071(6) (d), as the 2015 child support order used option RCW 26.19.071 (d) to calculate Ms. Schreiner's income (CP 780-796), there was no basis for modification.

F. The trial court erred when it entered the child support order nunc pro tunc to October 1st, 2018.

A nunc pro tunc order is only appropriate to correct ministerial or clerical error, not judicial errors. Hendrickson, 165 Wn.2d at 479. There was no ministerial or clerical error to correct. The trial court failed to provide written findings of fact to support the basis for its decision.

G. The trial court failed to apply the increase Mr. Scoutten receives every year by the Army to the January 2019 worksheets, refused to accept evidence that Mr. Scouttens rank was E8 (not an E7 as his incorrect LES indicated), yet increased Ms. Schreiner's imputed income on 2019 worksheets.

MS. SCHREINER: He was promoted in April (RP 902-903).

MR. BERRY: They're still denying the fact that he's been promoted, this is a fraud on the Court and us (RP 890). MR. BERRY: I understand, Your Honor, it's not accurate. He's an E-8 for example, okay? And I'll provide the proof to the Court about that if you want to see it. (RP 887).

MR. BERRY: Also the other thing too I'd like to point out, the Army is going to re -- **his pay is going to go up January 1 because everyone in the military gets a 2.8 percent raise. Okay, that needs to be reflected in this order as well, particularly the Court's entering an order for 2019.** So we need to get accurate information from Mr. Scoutten as to what his income really is. So I would ask the Court to --

THE COURT: I don't need any further argument, please. So, Mr. Miller, I'm going to hand down these worksheets that I did -- hang on. Actually I didn't do them, La Vonna downstairs did them. **That's 2019 and it doesn't change**

anything other than the amount for child support, but the percentages remain the same at 31 and 69. So I would ask that you complete a child support order with that information (RP 896-898).

- H. The trial court erred as a matter of law, when it entered a child support order without providing proposed orders, child support worksheets or paystubs to Ms. Schreiner's counsel 5 days in advance of the hearing in compliance with Pierce County Local Court Rules.

MR. BERRY: I don't know, Your Honor. We were not provided with any proposed orders or worksheets in advance of this hearing. The Court Rules require that we have at least five days notice; we didn't (RP 882-883).

BERRY: Your Honor, I think we're going to have to seek a delay on that because we have not been able to get the financial information that we need from Mr. Scoutten, and apparently -- and so I think we're going to have to -- **and I would also object to the entry of any proposed order today because under the Civil Rules, we're entitled to at least five days notice of the presentation of any order (RP 855).**

MR. BERRY: ...Of course I understand the Court never wants to rule in favor of my client, but this is the reality of the situation. We have not gotten the information as required by the statute; **there's been no provision of a proposed order of child support or worksheets five days in advance of the hearing which we're entitled to; and so I object to the Court just running this through without -- with what Mr. Scoutten has already admitted is incomplete and inaccurate information.** I think it's important. This is a child support order that the parties are going to have to live with going forward, and we don't have the information from Mr. Scoutten that we need and that he acknowledges he hasn't provided to enable the Court to enter an accurate order of child support (RP 888).

MR. BERRY: ...Even he acknowledges that this is not accurate. **And give us the time that we're entitled to under the Court Rules to, you know, be able to respond to this; not just something that you're handing to me at the morning of the hearing and saying go** (RP 888).

Pierce County Local Court Rules require notice of proposed orders in advance of the hearing, and an opportunity to respond. PCLR 5 requires

confirmation of service. PCLR 7(3)(A) requires “supporting documents shall be filed with the Clerk and served on the opposing party no later than the close of business on the seventh court day before the day set for hearing.”

- I. The trial court erred by failing to include written findings of fact to support **Long-distance transportations costs** or list assets in child support worksheets.

Before ordering support that exceeds the basic child support obligation, "the trial court must determine that additional amounts are reasonable and necessary." In re Marriage of Aiken, 194 Wn. App. 159, 172, 374 P.3d 265 (2016). "The court must also determine whether the additional amounts are commensurate with the parties' income, resources, and standard of living." Aiken, 194 Wn. App. at 172. And it must support its exercise of discretion with "adequate findings." Aiken, 194 Wn. App. at 173. The parties were supposed to "identify any other special expenses and enter the average monthly cost of each" on line '11d of the worksheet." That line is blank. Line 11c is also blank regarding Long Distance Transportation Costs. Because the trial court failed to support this section of its order with the required findings of fact, we request reversal of the child support order's provision for extraordinary expenses. When a parent is ordered to pay particular expenses for the children, the record must include what those costs are generally, and the court must consider each parent's ability to share those expenses in light of their economic circumstances and in light of their total child support obligation. RCW 26.19.065(1) .075 .001; see Daubert, 124 Wn. App. at 495. The trial court's findings of fact must explain why the amount of support ordered is both necessary and reasonable. In re Marriage of Daubert and Johnson, 124 Wn. App. 483, 495-96, 99 P.3d 401 (2004), abrogated on other grounds by McCausland, 159 Wn.2d 607. t. In Daubert, the appellate court remanded for findings about the reasonableness of the support amount, stating that "[w]ithout cost estimates, the court had no basis to determine an amount to award for the opportunities sought and had no basis to make findings about the reasonableness of that amount." Daubert, 124 Wn. App. at 498.

Without child support worksheets including estimated costs of long-distance transportation, or listing Mr. Scoutten's assets in sections 20, 21, and 22 of the worksheets, there is no basis to determine whether the amount of

support is necessary and reasonable. Mr. Scoutten reported numerous assets in his financial declaration including two rental properties, vehicles, and numerous checking and savings accounts, Ms. Schreiner reports no assets. It is not reasonable or necessary to order Ms. Schreiner pay 100% of long-distance transportation costs associated with visitation. The trial court simply ruled Ms. Schreiner would be responsible for 100% of long-distance transportation costs besides once per year. Evidence does not support the court's ruling. An order for child support shall be supported by written findings of fact upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons of a party's request for deviation from the standard calculation. Written findings of fact shall then be supported by the evidence. The trial court failed to enter findings of fact to support its basis for deviating from the proportional share of long-distance transportation costs. Additionally, number 21 of the child support order requires a box to be checked to specify if the parents will be sharing the cost for "Other shared expenses", or if the expenses are covered in the basic child support obligation. Both boxes are left blank, making it unclear if the cost of long-distance transportation is covered in basic child support.

10. The trial court erred by conducting its own research outside of the scope of evidence, and by making rulings based on information not presented at trial or in evidence, in violation of RULE ER 901, and Canon

Code of Justice 2.9 (C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

1. In the court's oral ruling, it references a counseling note supposedly made on January 11th, 2016 that is not found in EX. 15 or any other exhibit:

THE COURT: ...And immediately after that, on January 11th, 2016, there is a little bit different of a note but that's what --how her notes start to read. And it says; "Client" --meaning Memphis -- "--reports that she has been told to not talk about things she does with her mom in therapy. When asked if she was worried about anything, the client responded, "I'm afraid to get someone in trouble"(RP 678).

2. Mr. Miller falsely offered EX.15 as "complete copy of the records" of Ms. Breikks, the child's counselor.

Exhibit 15 was entered by the trial court per Mr. Miller's stipulation that they were a complete record of the counseling records. This turned out to be a misrepresentation, evidenced by missing records in Ex. 15.

THE COURT: This is a complete copy of the records of --MR. BERRY: Dawn Breikss. THE COURT: -- the counselor?... MR. MILLER: Yes... (RP 676). THE COURT: Okay. So we're not going to make a copy and we're just going to mark this as an exhibit and it's going to be admitted per your stipulation. MR. MILLER: Okay. Good. THE COURT: All right. (Exhibit Number 15 was admitted into evidence)(RP 147).

3. Mr. Scoutten testified that he manipulated the evidence:

Q. Now as I understand it, the April 12th letter is a letter that you asked Ms. Breikss to write for you, correct? A. Yes. Q. Okay did you speak with her about this before she wrote it or did you help her write it? A. Yes (CP 516, Mr. Scoutten). Q. On April 25, you e-mailed Ms. Breikss to give her a "heads-up". A. I'm there. Q. And you say: Dawn, I wanted to give you a heads-up. The attorney for Angie is trying to depose you and subpoena the medical records for Memphis. If they were to depose you, I will not hold back on the nature of the relationship between Memphis and her mother. Isn't that what you wrote Ms. Breikss? A. That is what I wrote (RP 188, Mr.

Scoutten).

4. Even if certain notes that are missing had been in the record and had not been manipulated by Mr. Scoutten, it is unclear whether the child was referencing Ms. Schreiner or her step-mother as “mom” and “mother” in the notes.

To add to the confusion, Mr. Agosto testified that M.S. was told by her father and step-mother to call the step-mother mommy and Ms. Schreiner by her first name (RP 243). This creates ambiguity in both the counseling notes and the court’s findings.

5. The counselor failed to testify at trial to identify or verify her records in accordance with RULE ER 901, REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION, & RULE 1002, REQUIREMENT OF ORIGINAL:

MR. MILLER: Well, she's stipulating that she's not showing up. I could subpoena her, but -- THE COURT: The counselor? MR. MILLER: Yeah, she was not going to show up because she says she's full and this and that and the rest. (RP 146).

11. The court below erred by failing to provide an appearance of fairness, in violation of Canon Code of Justice 2.4, (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment, Canon Code of Justice 2.2, (A) judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially*., Canon Code of Justice 2.3, (A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice,. Comment [2] to Rule 2.3.

Washington's appearance of fairness doctrine not only requires a judge to be impartial, it also requires that the judge appear to be impartial. State v. Finch, 137 Wn.2d 792, 808, 975 P.2d 967 (1999). Like the protections of due process, Washington's appearance of fairness doctrine

seeks to prevent the problem of a biased or potentially interested judge. State v. Carter, 77 Wn. App. 8, 12, 888 P.2d 1230 (1995). Under this doctrine, evidence of a judge's actual bias is not required; it is enough to present evidence of a judge's actual or potential bias. Post, 118 Wn.2d at 619 n.9. “The CJC recognizes that where a trial judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating.” Sherman v. State, 128 Wn.2d 164, 205, 905 P.2d 355 (1995).

THE COURT: ...If you think that there is a problem --MR. BERRY: **I do.**
THE COURT: -- with me as a judge, you have the CJC to report to (RP 731).

A. The trial court failed to disclose relationships with Monica Scoutten, mutual contact Morgan Donnelly and the courts daughter Alice’s relationship with Monica Scoutten, before trial commenced or making a discretionary ruling.

(Pause in proceedings from 1:43 p.m. to 2:03 p.m.)

MR. MILLER: Your Honor, this is Mrs. Scoutten. THE COURT: Mrs. Scoutten looks very familiar to me. THE WITNESS: **Is your daughter Alice?** THE COURT: Yes. THE WITNESS: Yes. I know her just through Morgan. THE COURT: Okay. So how would I know you? THE WITNESS: I don't know that necessarily we know each other. I think I've maybe met you in person one time, maybe at a Rotary event? I know Morgan Donnelly (phonetic). THE COURT: Oh, I'm sorry. THE WITNESS: I know Morgan Donnelly. THE COURT: That's what it is. THE WITNESS: Yeah, yeah. THE COURT: That's what it is. **So just so you know, Mr. Berry, we would have shared the same Rotary meetings with Rotary Number 8.** I haven't been in Rotary for about a year now and for some period of time before that I don't think I saw you, and I'm not sure that Morgan is in it anymore. THE WITNESS: Morgan is not in it, and I haven't been in about two years since Maddox was born. THE COURT: Okay. So it would have been before that that I would have gone to Rotary Number 8 meetings and would have seen Ms. Scoutten. I did not recognize her name when it was on the witness list; but seeing you now, I recognize you from Rotary. THE WITNESS: Yes.

THE COURT: That's the extent of our relationship. If there's any problem with that, you need to put that on the record. MR. BERRY: **Well, I guess my thought is I think this would all have been great if we could have known about this before...** (RP 541-542).

- B. The trial court goes on to testify to the truth of the matter, in violation of ER 605 (the judge presiding at trial may not testify as a witness).

THE COURT: So with that, yes, you want to come all the way up. Step up, and before you take your seat, raise your right hand and be sworn. MONICA SCOUTTEN, having been called as a witness by the Respondent, being first duly sworn, was examined and testified as follows: THE COURT: Please have a seat. Mr. Miller? MR. MILLER: I just readjusted my pacemaker, Your Honor, I appreciate that. THE COURT: Sorry, I had to put that on the record. MR. MILLER: I appreciate it. THE COURT: **I should also say that Rotary Number 8 has about 400 members. This is not one of the little, tiny breakfast deals where you're with 15 or 20 people. It's a very huge club that I was involved in long before Ms. Scoutten was. Actually, I believe I was the first pregnant Rotarian in Rotary Number 8. So that tells you with my gray hair how long ago that might have been. I believe that was Alice, or maybe it was Michael, I can't remember. So it's a long time ago in -- that would have been in the 80s when I was first a Rotarian. And then I rejoined the club and so I was in it for about 20 years total, just so you know. That's probably overkill, too much information, but I want to make sure you understand** (RP 543).

Judge Serko's statements about how big Rotary 8 is, or how long she had been in it before Monica is error; See ER 605 (the judge presiding at trial may not testify as a witness); ER 602 (witness may testify only to matters as to which the evidence is sufficient to establish his or her personal knowledge). Because the trial court and Monica Scoutten failed to disclose their relationships until the last day of trial, and right before the last witness testified (Monica Scoutten), this precluded Ms. Schreiner from filing an affidavit of prejudice. Even after Mr. Berry stated that he had a problem with

Judge Serko as the judge on this case, she told him to report him to the CJC and failed to recuse herself. In addition, Monica is employed at the same address listed as Judge Serko's campaign address in 2016. It is difficult, if not impossible, to believe that Monica Scoutten immediately acquired the name "Alice" out of thin air, as if she didn't already know that was Judge Serko's daughter... Alice Serko and sister Lorean Serko are both Facebook friends with Monica Scoutten. Judge Serko is swearing Alice Serko in as an attorney on a photo appearing on her facebook page, in Judge Serko's courtroom. Canon Code of Justice 2.4, (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment. And since it's public information that Judge Serko introduced Judge Arend to Rotary 8 for a campaign fee in 2016, it is impossible to believe they did not present themselves as Judges to the Rotary 8 club. Judge Serko adopted Judge Arend's findings despite Judge Arend's affidavit of prejudice in this case. Similarly, Monica Scoutten admitted she had met the Judge before but failed to disclose it before trial.

C. The trial court showed obvious bias when it referred to Ms. Schreiner as "biological mother"(RP 690), father as simply "father"(RP 690) and step mother, Monica, as "mother" and "mom" (RP 686) during the court's oral ruling on August, 3rd, 2018. The trial court referred to father's family as "father's family"(686) and Ms. Schreiner's family as "the others"(RP 690).

The trial court tried to cover up her bias by striking the words "biological" and "fabulously" from the court's written order (RP 728). The

judge's bias towards Ms. Schreiner, calling her the "biological mother" instead of "mother", and calling Monica "mother" and "mom" shows that the judge is not impartial, but bias.

THE COURT: Okay. All right. I'm going to strike "**fabulously**" and I'm going to strike "**biological.**"... THE COURT: **And if the case goes up on appeal, the Court of Appeals will go, hmm, she did use those words but--** (RP 728).

The trial court erred by making a facial expression in agreement with Mr. Miller concerning a law firm, showing the Judge favored Mr. Miller. MR. MILLER: I don't want to burden you, I can try to rearrange. I just don't know if -- I don't know how long it will take. You know, it's McKinley Irving on one side, and who's on the other side? THE COURT: **Oh, I'm sorry. I made a facial expression** (RP 619). Comment [2] to Rule 2.3, even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice.

12. The trial court abused it's discretion by failing to follow the Supremacy Clause, and forcing Ms. Schreiner to consent to a minors passport under duress.

There are two orders that state Ms. Schreiner signed her consent for a minor's passport and that Mr. Scoutten has "full custody" (CP 516-518). Ms. Schreiner was forced to sign her consent under duress, after expressing she did not consent to the trial court. The court failed to attach the actual statement of consent to the court's orders. The Supremacy Clause is a clause within Article VI of the U.S. Constitution which dictates that federal law is the "supreme law of the land." This means that judges in every state must follow the Constitution, laws, and treaties of the federal government in matters which are directly or indirectly within the government's control.

Under section 51.28 (3) (E) of the Code of Federal Regulations, one parent may apply for a passport for a minor, with a court order. Instead, the trial court abused its discretion by forcing Ms. Schreiner to sign her Statement of consent, under threat of contempt for not producing her I.D. that she was not in possession of. No prior order required her consent. Generally, circumstances must demonstrate a person was deprived of his free will at the time he entered into the challenged agreement in order to sustain a claim of duress. *Whitman Realty & Inv. Co. v. Day*, 161 Wash. 72, 77, 296 P. 171 (1931):

MR. MILLER: Something just occurred last night. His passports were put on hold. He has the forms, we need her signature today. THE COURT: Do you have them? MR. MILLER: Yes. THE COURT: She will sign them today in my presence (695). (Mr. Miller presents forms for Ms. Schreiner's signature.) MS. SCHREINER: I'm not signing it. He didn't ask me. (696). THE COURT: Ms. Schreiner, I am ordering you to sign that document that's in front of you. MR. MILLER: And I need a copy of her license so I can take it front and back. THE COURT: If you refuse to sign it, you will be in contempt of Court. You may purge that contempt by signing and providing a copy of your license. I'm hoping we don't have to make this more difficult than it is. And it was difficult for me to get through this because I appreciate that both parties love this child (697). MR. MILLER: **And they think that it's a joint custody parenting plan; so we will change that by this order** and then maybe that'll work. THE COURT: Okay. MR. BERRY: I'm going to disagree with that. The Court can order that she sign the passport and that's it; but you shouldn't put in there that she agrees to it. She obviously doesn't agree to it. THE COURT: No, no, no – MR. BERRY: It's just a court order. THE COURT: -- **she doesn't agree.** MR. BERRY: Right, it's just a court order. THE COURT: She does not agree. MR. BERRY: Right. It's a court order that this has been done -- THE COURT: Absolutely. But what I'm saying – what I can say in this is that this is not a joint custody; it never has been since July of 2015. MR. BERRY: Well, I'm not sure about that, Your Honor. I'm pretty sure -- MS. SCHREINER: The other -- THE COURT:

Absolutely not, no. Absolutely not. This is not a joint custody situation. **Joint custody is 50/50 in my opinion**... MR. BERRY: **Now, our objection to the second order is that it is redundant to the first.** THE COURT: Order releasing passport is the second order...The Court has witnessed Angela Schreiner sign the U.S. Department of State statement of consent: issuance of a passport to a minor under age 16. The Court orders counsel for Michael Scoutten to notarize the form signed by the petitioner (RP 705-706).

Second, **the trial court abused it's discretion when it modified custody, signing an order intended to be presented to a federal agency stating that Mr. Scoutten had "full custody" of M.S.** The United States Supreme Court held that "parents with visitation rights have a right to custody and consent under the Hague Convention. After the Abbots, a married couple, moved to Chile and separated, the Chilean courts granted respondent wife daily care and control of their minor son, A. J. A., **while awarding petitioner husband visitation rights. Mr. Abbott also had a ne** **xeat right to consent** before Ms. Abbott could take A. J. A. out of the country"... (SUPREME COURT OF THE UNITED STATES ABBOTT v. ABBOTT certiorari to the United States court of appeals for the fifth circuit No. 08-645.Argued January 12, 2010—Decided May 17, 2010). The trial erred by revoking Ms. Schreiner's right to custody and consent.

13. Attorney's fees on Appeal RAP 9.11.The fee request is based on RCW 26.09.140.

Requesting fees on appeal under RAP 18.1(a) and RCW 26.09.140. RCW 26.09.140 gives discretion to the Appellate Court to "order a party to pay for the cost to the other party of maintaining the appeal and attorneys'

fees in addition to statutory costs.” “In exercising discretion, the Appellate Court considers the issues' arguable merit on appeal and the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay.” In re Marriage of Kim, 179 Wn. App. 232, 317 P.3d 555, 567 (2014). The Appellate Court may award attorney fees on appeal if "allowed by statute, rule, or contract and the request is made pursuant to RAP 18. 1(a)." Malted Mousse, Inc. v. Steinmetz, 150 Wn.2d 518, 535, 79 P. 3d 1154 (2003). Mr. Scoutten’s paystubs vary from \$7198.29 to \$8556.42 per month (CP 643-766), he reports \$114, 000 in other business income on his 2017 taxes, (CP 643-766), reports two rental properties, and at least one property he reports no mortgage (CP 1006-1011). Based on financial declarations and financial source documents, Mr. Scoutten has the ability to pay (CP 1006-1011), and Ms. Schreiner does not (CP 815-820, CP 616-642).

F. CONCLUSION

For each of the foregoing reasons, this case must be reversed and remanded to the court before a different judge.

Respectfully submitted 5/26/2019



Angela Schreiner, Appellant

DECLARATION OF SERVICE

I certify that on 5/25/2019, I caused a copy of the foregoing Opening Brief of Appellant, to be e-filed and e-served. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED THIS __25th__ day of __May__, 2019 at Tacoma, Washington.

A handwritten signature in black ink, appearing to read "ASchreiner", is centered on the page. The signature is written in a cursive style with a large initial "A".

Angela Schreiner

ANGELA SCHREINER - FILING PRO SE

May 27, 2019 - 8:21 PM

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