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NO. 52509-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

ANGELA K. SCOUTTEN nka SCHREINER,

Appellant,

v.

MICHAEL J. SCOUTTEN,

Respondent.

RESPONDENT'S RESPONSE BRIEF

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A. Statement of the Case

This is an appeal brought by Angela K. Schreiner, formerly Scoutten, relative to a relocation action whereby Pierce County Superior Court Judge Susan Serko, after a 3-day trial, found Michael Scoutten, would be allowed to relocate with the parties' minor child to Wales/UK.

This present appeal is a continuation of Ms. Schreiner's relentless attempt to regain residential placement of the parties' daughter. As this Court reviews the trial transcripts it will become apparent Ms. Schreiner refuses to acknowledge and accept the findings and decisions of the lower courts. In her Statement of the Case she goes all the way back to the 2015 custody trial, again misstating facts. This Court should keep in mind Ms. Schreiner already appealed the rulings of Judge Arend from the 2015 custody trial and her appeal was denied.

The lower courts, first Judge Stephanie Arend and then Judge Susan Serko, have found allegations made by Ms. Schreiner are not accurate and her testimony has been less than credible. Ms. Schreiner has created situations and then embellished them in her efforts to force changes to the residential schedule for her own best interests. She has been held in contempt of court on at least

two occasions and has initiated numerous actions before the court which have failed because they were all based on false and misleading statements/information.

This relocation action was initially commenced as a result of an Objection filed by Ms. Schreiner prior to Mr. Scoutten actually receiving his formal transfer orders; thereby commencing the relocation action prematurely. Then, as a result of some issues with military paperwork, Mr. Scoutten had to withdraw his request to relocate before the scheduled trial date. Once the military paperwork was clarified the relocation action was refiled. Ms. Schreiner filed her objection and the court set a trial date.

After a 3-day relocation trial, Judge Serko rendered a very detailed ruling on August 3, 2018. Her decision on the relocation issue was based upon her review of transcripts from the 2015 custody trial and RCW 26.09.520; specifically addressing all ten (10) of the requirements.

Judge Serko thoroughly reviewed the facts and circumstances of the relocation and ruled the presumption had not been overcome; the factors weighing in the father's favor for relocation; and she allowed the relocation.

After Judge Serko rendered her decision in open court, a small obstruction occurred when Ms. Schreiner refused to sign the child's passport documents, which culminated in a statement by the Judge that Ms. Schreiner would be held in contempt of court if she did not comply and sign the appropriate documents. Only after arguing from her attorney did Ms. Schreiner comply and sign the documents. Thereafter presentation dates were set for entry of final orders.

Presentation and entry of the Final Parenting Plan on Relocation was set for October 19, 2018. Judge Serko agreed that the 2015 restrictions put in place by Judge Arend should continue and those restrictions were included in the Final Parenting Plan despite Ms. Schreiner's objections to the contrary. The behaviors Ms. Schreiner had exhibited which necessitated the restrictions in 2015, were still present. These behaviors only got worse and exhibited themselves during the trial in 2018.

Since the issue of long-distance transportation was in dispute and the parties had a change in incomes it was determined child support needed to be modified as part of the relocation action. After thorough argument, Judge Serko entered a modified Order of Child Support on December 7, 2018.

B. Argument

Ms. Schreiner has been found not to be credible. That has occurred during at least three (3) separate court hearing: (1) the 2015 trial before Judge Arend on modification of custody; (2) the contempt hearing of February 28, 2017 before Commissioner Kiesel, [which was also appealed by Ms. Schreiner and only partially overturned as to fees but not as to Ms. Schreiner being found in contempt]; and (3) the July 24, 2018 trial before Judge Serko on relocation [RP 673-696]. Mr. Scoutten does not make this statement to be malicious but only as a statement of the facts regarding his ongoing struggle with Ms. Schreiner and in support of his request for fees as a result of Ms. Schreiner's bad faith and intransigence, as explained in further detail below.

In responding to Ms. Schreiner's allegations, Mr. Scoutten will address Assignments of Error 1-3, 4-9 and 10-12 inclusively. This is done for the purpose of helping to clarify the issues presented by Ms. Schreiner.

i) Assignments of Error 1-3: Ms. Schreiner in her Assignment of Errors 1-3 states Judge Serko failed to consider her request for a change in the child's residence.

Regarding the alleged substantial change of circumstances allegation, Ms. Schreiner is misguided. When Judge Serko took over the case in May 2018, there was no relocation action pending because of the military mix-up [Mr. Scoutten had withdrawn his Notice of Intent to Relocate on 5/9/2018]. If no relocation is pending and a Petition to modify is filed it would take a substantial change in circumstance to warrant adequate cause to continue on with a modification of custody. On May 14, 2018 Judge Serko entered an Order Dismissing Relocation/Modification [CP_____]. The Order allowed Mr. Scoutten to refile his Notice at a later date which he did after issues with his military orders had been resolved. Ms. Schreiner then filed her 2nd Objection [CP 928-960].

Ms. Schreiner continued to push for modification even after the 1st relocation had been withdrawn and prior to the 2nd Notice being filed despite being fully aware and versed in the fact that no action was pending. That whole exercise was done in bad faith and was intransigence. *In re Rostrom* 184 Wn. App. 744, 752 (2002).

As for Ms. Schreiner's argument that she was not afforded the same treatment as Michael Scoutten was afforded during the 2015 trial, she knows the circumstances are entirely different. Judge Arend stated what occurred:

The matter proceeded to Trial....At the start of the trial the trial court stated on the record that there were two actions being tried. There was not an objection....The trial court acknowledged that proceedings normally end without a modification to the existing parenting plan once a parent informs the court he or she will not relocate, but since Michael filed a Petition for Modification that was tried along with the relocation trial the proceedings would continue.

In re: Scoutten 196 Wn. App. 1039 unpublished slip opinion
Pgs. 4, 9.

In re: Grigsby 112 Wn. App. 1 (2002) answers Ms. Schreiner's argument regarding substantial change of circumstances by stating "that adequate cause is excused as long as relocation is being pursued." It was initially withdrawn. Citing RCW 26.09.260(6); *Grigsby* pgs. 15, 16. When the 2nd relocation was filed and objected to by Ms. Schreiner the burden of proof was a rebuttable presumption. Judge Serko stated:

"I turn to RCW 26.09.520 statute, which of course I've read many times and given that Mr. Scoutten has proposed relocation and has given notice; we start with a rebuttable presumption that the intended relocation of the child would

be permitted. The objection party may rebut that presumption by demonstrating that the detrimental effect of relocation outweighs the benefit of the change to the child and the relocating person based on certain factors.” [RP 689-695].

In 2015 Ms. Schreiner filed a relocation action. Mr. Scoutten filed his own Petition for modification of the parenting plan at the same time based on changes that had occurred and which were not known at the time the initial dissolution pleadings were entered.

The transfer of custody was not solely based upon Ms. Schreiner’s request to relocate; it was based on various facts and circumstances which Judge Arend found to be detrimental to the minor child. Ms. Schreiner appealed Judge Arend’s rulings and her appeal was denied.

In this current relocation action Ms. Schreiner was unable to overcome the burden of presumption. There was no adequate cause based on any substantial circumstances other than his relocation. Her request to remove the child from father’s custody had no basis in law or fact and was denied. The trial Judge has wide discretion to review the facts and draw her own conclusions.

Said conclusions are not to be overturned unless Ms. Schreiner can show it was an abuse of discretion.

Ms. Schreiner cites to *In re: the Marriage of Littlefield*. This case actually supports Mr. Scoutten's position that it was in the Court's discretion to make the rulings it made because those rulings are not unreasonable and are in fact supported by the record. *In re: Marriage of Littlefield*, 133 Wn.2d 39 (1997).

ii) **Assignments of Error 4-9**: Ms. Schreiner feels the trial court erred with regard to the inclusions of restrictions and limitations in and entry of the final orders relative to the relocation.

Final Order and Findings: The Final Order and Findings were filed on September 7, 2018 based on the rulings of Judge Serko as detailed in the Oral Decision [RP 732-738].

While Ms. Schreiner may have objected to the relocation in good faith her push to regain custody and her methods of doing so were not done in good faith as was explained by Judge Serko [RP 697-706]. It was her bad faith actions that increased the attorney's fees for both parties. It should have been a simple relocation action to adjust the residential schedule, but as a result of Ms. Schreiner's efforts to regain custody by any means there was a lot of time spent re-hashing the 2015 trial decision as well as rebutting Ms.

Schreiner's false claims. In re Morrow, 53 Wn. App. 579,590,
[1989]

At the time the Final Order and Findings was prepared the parties were waiting on information from the military as to Mr. Scoutten's future pay and attempting to work out child support issues on their own through their respective counsel. Thus, the issue of child support was not fully addressed at the time the Final Order was entered; however, it was addressed at a later hearing and a Final Order of Child Support was finally entered in December, 2018 almost 4 months post trial. Judge Serko utilized testimony given at trial and new information provided at time of hearing to determine support.

The Court had before it several declarations from both counsel regarding attorney's fees. The declarations of John A. Miller for Mr. Scoutten clearly set forth the hours associated with the case between January 1, 2018 and the trial date, his hourly rate and that of his staff [CP 503-515; 1211-1215]. The Judge's decision to award attorney's fees is at her discretion and were based on the evidence and testimony presented during trial and pleadings and argument at the subsequent hearing. There was no error in the

method of calculation as claimed by Ms. Schreiner. *In re Greenlee*, 65 Wn.App. 703,708, (1992).

The Court found the need to include in the Final Order very specific findings relative to the Ms. Schreiner:

“This Court find the mother has engaged in a pattern of emotional abuse of the child by involving the child in ongoing disputes between mother, father and stepmother; attempting to manipulate the child as it pertains to her counseling; manipulation of facts and her lack of credibility; stress at the mother’s house; making false reports and encouraging the child to speak untruths.” CP 1225 - 1231

These findings were not solely based on any one piece of information but rather on the entirety of the testimony given and evidence provided. It is within the Court’s discretion to make such findings and so she did, after going through each and every factor allowing the relocation and explaining why she would be allowing the relocation and continuing the restrictions previously put in place by Judge Arend.

Parenting Plan Restrictions: The acts and behavior of Ms. Schreiner which instigated and resulted in the transfer of custody in 2015 have not stopped. During the relocation trial in 2018 it was argued the restrictions ordered in 2015 should continue in order to protect the best interests of the child. The restrictions were not to be vacated simply because Mr. Scoutten intended to relocate.

Judge Serko is allowed by case law to review the threat of future harm, consider the past actions of the parties and determine how detriment might be lessened. *In re Katare*, 175 Wn.2d 23. RCW 26.09.191(3) obligates a trial court to consider whether “[a] parents involvement or conduct may have an adverse effect on the child’s best interest.” *Katara supra*. Thus, the .191 restrictions put in place by Judge Arend in 2015 remained and were modified based on evidence of Ms. Schreiner’s behavior and acts between 2015 and the trial date, including findings of contempt and that she was not credible. Ms. Schreiner did not overcome the restrictions or the prior findings that it was in the child’s best interest to reside with her father during the 2018 relocation trial. In addition to the .191 restrictions there were additional limitations established and set forth in Paragraph 4 of the 2018 Final Parenting Plan on Relocation [CP 532-543]. The Judge agreed those limitations were necessary to reduce conflict. As an aside, while the restrictions have cut down on Ms. Schreiner’s ability to interfere and cause conflict, she continues creating conflict and detriment to the parties’ daughter to this day.

Our Supreme Court recognizes this Court’s right and duty to impose restrictions. *In re: Chandola* 180 Wn.2d 632 states:

“the father’s parenting history had an adverse effect on the child’s best interest pursuant to RCW 26.08.191(3)(g)....It allows court’s to preclude or limit any provisions of the parenting plan in light of such other factors or conduct as the court expressly finds adverse to the best interests of the child.”

Contrary to Ms. Schreiner’s claim, the .191 restrictions listed in the Final Parenting Plan are not inconsistent with those listed in the 2015 Final Parenting Plan. The only difference between the 2015 Final Parenting Plan and the 2018 Final Parenting Plan is the addition of the limitations to reduce conflict set forth in Paragraph 4 of the 2018 Final Parenting Plan.

Order of Child Support: The Final Child Support Order [CP 1286-1314] was filed almost 4 months after the trial. The rulings of the court were based on testimony during trial, additional written declarations from the parties and argument of counsel at the time of hearing on December 7, 2018. It was clearly in the Court’s discretion to use all the information provided to make her ruling; including consideration of the .191 factors and other language contained within the Final Parenting Plan. *In Re Mattson*, 95 Wn. App. 592, 600,603, (1999).

iii) Assignments of Error 10-12: Again, Ms. Schreiner makes assertions and accusations that are false and misleading. She argues Judge Serko conducted her own research outside the scope of evidence and ruled on the required findings without foundation.

Judge Serko painstakingly went through her findings including the counselor's findings, the CPS findings and the treating physician's findings. Trial Exhibit 15 was Ms. Breikss's records. It was stipulated by both parties as accurate and complete and offered as evidence by Ms. Schreiner without objection. Incorporated within that exhibit were statements that Judge Serko found pertinent to the case, including, "...reports that she has been told to not talk about things she does with her mom in therapy." [RP 673-678]. The therapist asked if she had been told to not talk to the therapist during session about things she does with her mom and "she shook her head yes." [RP 678].

There was also an email from Ms. Schreiner to the counselor stating Respondent wishes he had a boy. The court believed these issues were concerning because there was no testimony about that at trial regarding Mr. Scoutten wanting a boy or a problem with his relationship with his daughter. The court's decision goes on

relaying the issues about Ms. Schreiner advising the parties' child not to talk in sessions [RP 679]. How the child is excited about the upcoming trip and she wants to stay with dad and Monica. The therapist states that the "child will adjust well." Ms. Schreiner denies or ignores all of this evidence.

Judge Serko made her decision also on the CPS Report (Trial Exhibit 39), again offered by Ms. Schreiner without objection. That Report was argued by Ms. Schreiner to prove a number of things, including domestic violence, neglect and abuse of the child by Mr. Scoutten and/or his wife, but the court found just the opposite was shown by the records. The court thoroughly read the CPS Report and statements received from the family pediatrician's office that detailed "bio" mom makes it difficult for stepmother to set appointments for well-child checks." The Report regarding Michael and Monica Scoutten was that they were always appropriate [RP 683].

Judge Serko then talks about credibility of the witnesses and the parties. "Regarding the father; he was patient, calm, credible, always polite in the face of argumentative cross-examination questions ...with regard to Monica, I found that she would readily admit the errors that she made along the way in the last three years

and based on those admissions I found her testimony credible [RP 685]. With regard to Ms. Schreiner; I found that she was argumentative, amplified, foggy at times on cross-examination, could not remember, regularly wanted to explain something rather than just answer the question, but was able to tell in detail the incidents that occurred with Monica Scoutten, while she was not able to provide details on her income and expenses, appears to me to be manipulating facts and these I believe are my words; was engaging in revisionist history” [RP 685-686].

C. Attorney’s Fees:

Attorneys have a duty and obligation under RPC’s to not knowingly mislead the court nor knowingly allow testimony that we know to be false without correction. RPC 3.3

Family law matters are by nature stressful and intense and full of accusations but we as attorneys need to oversee that those actions are not misleading and false. Regarding Angela Schreiner and her attorney at trial, it was obviously apparent they both knew what they were trying to sell to the court was not accurate. The CPS reports, Ms. Schreiner and her attorney pushed as being something they were not, namely, portraying Michael Scoutten and his wife as being abusive and uncaring about M.S. was an attempt at

“gaslighting” the court to reach a decision they knew to be false. Angela Schreiner was not honest and her attorney was aware or should have been aware his client was making false claims.

Intransigence is:

(1) Foot dragging, obstructing, filing unnecessary or frivolous motions; refusing to cooperate with opposing counsel...Any other conduct that makes the proceeding unduly difficult or costly.

In re Marriage of Wixom 190 Wn. App. 719 (2015).

(2) When one party made the trial unduly difficult and increased legal costs by his or her actions:

In re Morrow 53 Wn. App. 579 (1989).

From the onset of this case, when Ms. Schreiner filed her Objection before Mr. Scoutten had even obtained orders relative to his re-positioning, through the presentation of final orders there are instances that illustrate the bad faith and intransigence of Ms. Schreiner and her counsel. The judgment filed against Ms. Schreiner in favor of Mr. Scoutten for his attorney’s fees and costs incurred is appropriate. Mr. Scoutten’s fees and costs incurred are supported by the declarations of fees and costs filed by his

attorney and are completely related to the ongoing relocation action.

SEE *Greenlee, supra* 708; *Morrow supra* 590.

D. Conclusion:

Mr. Scoutten is requesting the appeal filed by Ms. Schreiner be dismissed in its entirety and that he be awarded attorney's fees pursuant to RAP 18.1(b). Mr. Scoutten should be provided with some relief from all the attorney's fees and costs he has been forced to incur as a result of Ms. Schreiner's intransigence and continued abuse of the judicial process. This is the third appeal filed by Ms. Schreiner since 2015. She filed her appeal even before the Final Parenting Plan and Order of Child Support were determined and filed in the lower court. There is a clear pattern of Ms. Schreiner abusing the court process. She files her own appeals and writes her own appeal briefs without regard for the facts while Mr. Scoutten is forced to respond and incur substantial attorney's fees. The most efficient way to tame Ms. Schreiner's litigious behavior is by denying her appeal and awarding Mr. Scoutten his reasonable attorney's fees.

Respectfully Submitted
this 26 day of August, 2019


John A. Miller
Attorney for Respondent
WSBA 5741

DECLARATION OF SERVICE

I, Lennette Natucci, make the following declaration:

I am over the age of 18, a resident of Pierce County, and not a party to the above action.

On August 26 2019, I caused to be filed/served a true and correct copy of the foregoing: COA No. 52509-7-II RESPONDENT'S RESPONSE BRIEF by e-mail as follows:

Original e-filed with: Court of Appeals, Division II Clerk's Office 950 Broadway, Suite 300 Tacoma, WA. 98402 coa2filings@courts.wa.gov	Copy e-served: Angela Schreiner <u>angiekschreiner@gmail.com</u>
Copy e-served: <u>cnberryiii@seanet.com</u>	Via First Class Mail Angela Schreiner 5420 60 TH Ave. Ct. W. University Place, WA 98467

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 26 day of August, 2019 at Fircrest, WA.


Lennette Natucci, Paralegal

LAW OFFICE OF JOHN A MILLER

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