

NO. 53725-7-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

In re the Matter of

Sadie Engebretson

Appellant,

vs.

Sheldon Sanders

Respondent.

---

APPELLANTS REPLY BREIF

---

Kurt A. Anagnostou  
Attorney for Appellant

Daggy and Anagnostou, P.S.  
WSBA #17035  
1801 First Avenue, Suite 4-A,  
P.O. Box 1793  
Longview, WA 98632  
(360) 425-6500

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS .....	i
INDEX OF AUTHORITIES .....	ii
Table of Cases .....	ii
Table of Statutes .....	iv
Table of Court Rules .....	iv
I.    INTRODUCTION.....	1
II.   ATTORNEY FEES.....	6
II.   CONCLUSION .....	8
 Affidavit of Mailing/Service .....	 9

## INDEX OF AUTHORITIES

### Table of Cases

*In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644  
(2014)..... 1

*In re Marriage of Tomsovic*, 118 Wn.App. 96, 105, 74 P.3d 692  
(2003).....2, 3, 4

*In re Morinaga v Vue*, 85 Wash.App. 822, 831, 935 P.2d 637  
(1997).....3

Table of Statutes

RCW26.09.191(3)(g).....1

Table of Court Rules

CR89(a)(4) .....3

CR 59.....7

## I. INTRODUCTION

Respondent Sheldon Sanders (herein after Sanders) responsive brief surprisingly supports the finding of adequate cause. He first sights In re Marriage of Chandola, 180 Wn.2d 632, 642, 327 P.3d 644 (2014). That case centered on restrictions imposed in a parenting plan, not a motion for adequate cause. Specifically, the court ruled as follows:

“Before imposing RCW 26.09.191(3)(g) restrictions, a trial court must find “more than the normal...hardships which predictably result from a dissolution of marriage.” *cites omitted* While the court “need not wait for actual harm to accrue before imposing restrictions,” it may impose restrictions only where substantial evidence shows “that a danger of .... *damage* exists.” *cites omitted*.

Sadie Engebretson, Appellant (herein after Engebretson) is not seeking to limit or restrict Sanders time under the parenting plan. In fact, her proposal increases the amount of time Sanders would spend with his son because it eliminates time when he is at work. By switching residential time when Sanders is at work to time when he is off work, Sanders would

have more time with his son-not less. In re Marriage of Chandola supra, does not support Sanders position.

Next Sanders sights re Marriage of Tomsovic, 118 Wn.App. 96, 105, 74 P.3d 692 (2003), in that case is on point. One party brought a petition for minor modification and the court found no adequate cause to go forward. However, the facts of Tomsovic are substantially different than here. In Tomsovic the court specifically ruled at page 107, “No argument was made here that Ms. Tervonen’s remarriage had any effect on the children or on the residential schedule beyond causing her to relocate.” Such is not the case here. Engebretson, with the support of school counselors and child therapist, submitted evidence that the current parenting plan is causing detrimental and psychological harm to Aiden. Requesting a modification without any loss of time to Sanders, Engebretson petitioned for his residential time to occur when Sanders is available to protect his son. These facts are substantially different that the facts in

Tomsovic where the parties had anticipated moving different distances from each other and the parenting plan had made provisions in advance of those occurrences. As such, the court appropriately ruled there was no change in circumstances.

In Tomsovic the court went on to discuss reconsideration. Specifically, at page 109, the court ruled as follows:

“Reconsideration is warranted if the moving party presents new material evidence that could not have been produced at trial. CR89(a)(4). However, evidence presented for the first time in a motion for reconsideration without a showing that the party could not have obtained the evidence earlier does not qualify as newly discovered evidence. *See Morinaga v Vue*, 85 Wash.App. 822, 831, 935 P.2d 637 (1997).

Here the Memorial Day weekend extended to Monday.

The hearing on the motion for adequate cause was Tuesday, the day after Aiden returned. Aiden’s emotional turmoil from spending the weekend with his uncle continued through the following week. Engebretson timely filed a motion to reconsider with this new evidence. This is substantially

different from Tomsovic where the Petitioner could have presented his new relationship in his original motion.

Next, Sanders makes the following false statement: “All of these claims were either present at the time the final parenting plan was entered or shown not to actually be issues at the time of hearing.” This is not an accurate representation of the facts presented to the Court.

Although Sanders’ work schedule had changed prior to the entry of the final parenting plan, the effects of the change had not been known to Engebretson. The facts presented were that Engebretson was talked into “trying” this parenting plan. The emotional, physical and mental problems suffered by the child occurred thereafter. The Court was provided with current counselors and teachers recommendations showing the significant issues Aiden was having with the instituted parenting plan. The problems were not known at the time of entry of the final parenting plan and could not have been known. Sanders

statement that his work schedule had been the same “long before the final parenting plan was entered” is not supported by the record. In any event, Aiden’s reaction to being left without his father up to four days during a visit in the care of a significant other and her abusive son caused the problems over time and could not have been known at the time of the entry of the final parenting plan.

With regards to the Motion to Reconsideration, Sanders does not deny that Aiden had a significant emotional breakdown from the long weekend spent with his abusive uncle that ended the day before the hearing on adequate cause. It is unfathomable that Sanders now claims this is not “newly found evidence”.

Next at page 8, Sanders makes Engebretson’s case for granting adequate cause when he states “... if these claims were as substantial as Engebretson claims—she would be requesting a major change, not a change that would provide the child equal time with the other boy.” In other words, Sanders is arguing that

if the facts are true, they would support a major modification. Given that position, the same facts must support a minor modification.

One question Engebretson has presented to the Court on several occasions is why does Sanders want Aiden to be at his home when he is not there? Sanders has not answered that question. Despite Aiden's significant issues, Sanders wants residential time when he is unavailable at work. Engebretson's reasonable recommendation to resolve Aiden's significant issues does not detract one minute from Sanders time and in fact gives him more time as visitation would occur when he is off work. Sanders is improperly arguing for residential time on behalf of his significant other and her son.

## **II. ATTORNEY FEES**

Engebretson renews her request for attorneys' fees. In addition to Aiden, Engebretson has two (2) other children and is

a single mother living on minimum wage as a paraeducator. Engebretson's hours coincide with the children's school hours so that she is home and available for them all the time. She cannot afford this litigation and to protect Aiden, has been required to come to this court. In the denying the motion for adequate cause, the court prevented Engebretson from obtaining attorney fees. Her attorney's fees should be awarded at trial as well as on appeal.

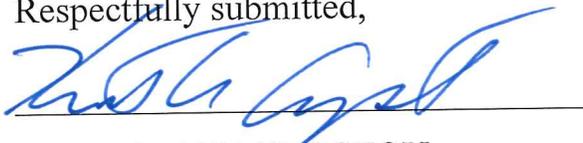
Sanders request for attorney's fees appears to be based on claiming Engebretson's motions were "frivolous" or "abuse the court rules...". In this regard, Sanders reply is frivolous. Without stating any facts, he states Engebretson "has used CR59, and the rules of appellate procedure for the purpose of delay and harassment." Without stating how she has done that, Sanders request for attorney fees is frivolous.

### III. CONCLUSION

Sound policy concerns demand a uniform standard to be applied in adequate cause hearings for minor modifications to the residential aspects of parenting plans. Engebretson prays this Court will reverse both the trial court's Order denying Respondent's Motion for Adequate Cause Decision and the trial court's Order denying Respondent's Motion for Order for Reconsideration Re Adequate Cause. Engebretson prays that this Court will remand those Orders with instructions to the trial court. Engebretson denies Sanders request for fees and requests an award of her Attorney Fees.

Dated this 23 day of JAN, 2020.

Respectfully submitted,



KURT A. ANAGNOSTOU,  
WSB#17035  
Of Attorneys for Appellant

CERTIFICATE OF PERSONAL SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 23 day of January 2020, I caused to be served upon counsel listed below, in the manner indicated therein, a true and correct copy of the Brief of Appellant together with the transcript of hearing.

Addressed to:

Carlee Bliss  
715 Broadway St,  
Longview, WA 98632

Delivered via:

Hand Delivered  
January 23 2020

Dated this 23 day of January 2020.



---

KURT ANAGNOSTOU WSBA#17035

**DAGGY & ANAGNOSTOU, P.S.**

**January 23, 2020 - 4:09 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53725-7  
**Appellate Court Case Title:** Parenting Plan of Aiden Sanders - Sheldon Sanders, Respondent v. Sadie Engebretson, Appellant  
**Superior Court Case Number:** 17-3-00227-0

**The following documents have been uploaded:**

- 537257\_Briefs\_20200123160516D2415057\_0238.pdf  
This File Contains:  
Briefs - Petitioners Reply  
*The Original File Name was Engebretson. Reply breif 1.23.20.pdf*

**A copy of the uploaded files will be sent to:**

- aj@dajustice.com
- carlee@cf-law-pll.com
- sa@dajustice.com

**Comments:**

---

Sender Name: Samuel Anagnostou - Email: anagnostousam@gmail.com

**Filing on Behalf of:** Kurt Allen Anagnostou - Email: ka@dajustice.com (Alternate Email: )

Address:  
1801 1st Avenue Suite 4A  
Longview, WA, 98632  
Phone: (360) 425-6500

**Note: The Filing Id is 20200123160516D2415057**