

FILED
Court of Appeals
Division II
State of Washington
5/14/2020 8:00 AM

NO. 54162-9-II

IN THE COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

AMY LYNN CANN (SOLIS), Appellee/Petitioner

v.

HERNANDO MARTINEZ SOLIS, Appellant/Respondent.

OPENING BRIEF OF APPELLANT

Trial Court No. 19-3-00062-16

Submitted by:
William Payne, WSBA # 38933
Attorney for Appellee/Petitioner

Payne Law, PS
544 N Fifth Ave.
PO Box 390 (mailing)
Sequim, WA 98382
(360) 683-4212 (tele)
(360) 682 -8324 (fax)

I. TABLE OF CONTENTS

I. Table of Contents.....	ii
II. Table of Authorities.....	iii
III. ASSIGNMENTS OF ERROR.....	1
Assignments of Error	
No. 1.....	1
No. 2	1
Issues Pertaining to Assignments of Error	
No. 1.....	1
No. 2.....	1
No. 3	1
No. 4	1
No. 5	1
III. Statement of the Case.....	2
IV. Argument	3,4
1. Did the Trial Court Fail to Find that the Detrimental Effect of the Relocation Outweighs the benefit of the Change.....	4
2. Did the Trial Court Err in Considering Failure to Give Proper Notice as a Factor in Denying a Relocation	8
3. Did the Trial Court Err in Determining the Relocation was in Bad Faith	9
4. Did the Trial Court Err by modifying the parenting plan even if the petitioner withdrew her relocation.....	12
5. Did the Trial Court Abuse its Discretion when it did not Recuse itself based on bias or impartiality.....	14
V. Conclusion.....	18

II. TABLE OF AUTHORITIES

Washington State Cases

<u>In re Marriage of Wehr</u> , 165 Wash. App. 610, 613, 267 P.3d 1045 (2011).....	3
<u>In re Marriage of Fahey</u> , 164 Wash. App. 42, 262 P.3d 128, 134 (2011)	3
<u>In re Marriage of Kinnan</u> , 131 Wash. App. 738, 129 P.3d 807 (2006)).....	3
<u>In re Marriage of McDole</u> , 122 Wash.2d 604, 610, 859 P.2d 1239 (1993)	3
<u>In re Marriage of Griswold</u> , 112 Wash.App. 333, 339, 48 P.3d 1018 (2002)	4
<u>In re Marriage of Myers</u> , 123 Wash.App. 889, 893, 99 P.3d 398 (2004).....	4
<u>In re the Marriage of Horner</u> , 151 Wash.2d at 893, 93 P.3d 124	4
<u>In re the Marriage of McNaught</u> , 189 Wash. App. 545, 556, 259 P.3d 811 (2015).....	7
<u>In re Marriage of Raskob</u> , 183 Wash. App. 503, 334 P.3d 340 (2014).....	13, 16
<u>In re Marriage of Meredith</u> , 148 Wash. App. 887, 903, 201 P.3d 1056 (2011).....	14
<u>Wolfkill Feed & Fertilizer Corp. v. Martin</u> , 103 Wash. App. 836, 14 P.3d 877 (2000)...	14
<u>West v. State, Wash. Ass’n of County Officials</u> , 162 Wash. App. 120, 252 P.3d 406 (2011).....	17

Statutes & Judicial Canons

RCW 26.09.187	7
RCW 26.09.260.....	12, 16
RCW 26.09.440	9, 15
RCW 26.09.470	11, 16
RCW 26.09.520	4, 5, 8, 11
Judicial Canon 2, Rule 2.2	14
Judicial Canon 2, Rule 2.3	14

III. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred by denying a relocation petition brought under RCW 26.09.520.
2. The trial court abused its discretion when it did not recuse itself due to bias or impartiality pursuant to Judicial Canon 2, Rule 2.3.

Issues Pertaining to Assignments of Error

1. Did the Trial Court Err when it denied the relocation without finding that the detrimental effect outweighed the benefit of the change?
2. Did the Trial Court Err when it found that the Petitioner moved for relocation in bad faith?
3. Did the Trial Court Err when it considered failure to give proper notice as a factor?
4. Did the Trial Court Err when it did not allow the Petitioner an opportunity to maintain the current parenting plan by not relocating?
5. Did the Trial Court Abuse its Discretion when it did not recuse itself due to impartiality or bias pursuant Judicial Canon 2, Rule 2.2 and Rule 2.3?

IV. STATEMENT OF THE CASE

1. The Petitioner mailed Notice of Relocation to the Respondent on June 27, 2019. The Notice of Relocation stated the intended move date was July 15, 2019.
2. The Respondent filed an objection to relocation and the hearing was held on July 12, 2019. The Court entered an Order changing custody from the Respondent to the Petitioner, in part because of the failure to give proper notice.
3. A Motion to Reconsider was held on August 9, 2019, where the Court reversed its initial Order. The Court then entered a new Order temporarily denying the relocation and stating that the new temporary parenting plan with Respondent as the custodial parent would be in place if Petitioner did not return to Jefferson County. Petitioner stated that she is returning to Jefferson County.
4. On October 22, 2019, there was a non-jury trial on the issue of the relocation.
5. On November 1, 2019, the Court entered its decision orally on the record. The Court denied the relocation, entered a new parenting plan changing custody from Petitioner to

Respondent, and Ordering the change regardless of whether Petitioner decided to forgo relocation or not.

6. On December 20, 2019, the Court entered its Order after presentation by the parties and over the objection of counsel for the Petitioner.

V. ARGUMENT

a. Standard of Review

Where the challenge on appeal is to a question of law, the reviewing Court, “review[s] de novo alleged errors of law to determine the correct legal standard.” In re Marriage of Wehr, 165 Wash. App. 610, 613, 267 P.3d 1045 (2011) (citing In re Marriage of Fahey, 164 Wash. App. 42, 262 P.3d 128, 134 (2011), In re Marriage of Kinnan, 131 Wash. App. 738, 129 P.3d 807 (2006)).

The reviewing Court then reviews factual determinations stating, “[w]e review challenges to a trial court's factual findings for substantial evidence.” *Supra* Fahey, 134, (citing In re Marriage of McDole, 122 Wash.2d 604, 610, 859 P.2d 1239 (1993)). The reviewing Court will, “uphold trial court findings that are supported by substantial evidence.” *Id.* (citing McDole, *Supra* at 610). “Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth

of the declared premise.” *Id* (citing In re Marriage of Griswold, 112 Wash.App. 333, 339, 48 P.3d 1018 (2002), review denied, 148 Wash.2d 1023, 66 P.3d 637 (2003)).

The reviewing Court then considers both of these factors and will, “review conclusions of law to determine whether factual findings that are supported by substantial evidence in turn support the conclusions.” *Id* (citing In re Marriage of Myers, 123 Wash. App. 889, 893, 99 P.3d 398 (2004)). The reviewing Court will, “defer to the trial court's ultimate relocation ruling unless it is manifestly unreasonable or based on untenable grounds or untenable reasons under the abuse of discretion standard.” *Id* (citing In re the Marriage of Horner, 151 Wash.2d at 893, 93 P.3d 124).

b. Analysis and Argument

1. Did the Trial Court Erred when it Denied a Petition for Relocation without finding that the detriment to the child outweighed the potential benefits?

The Trial Court erred when it denied the Petition for Relocation without finding that the detriment to the child outweighed the potential benefits of a relocation pursuant to RCW 26.09.520. This is a question of law that should be reviewed de novo.

The Court denied the Petition for Relocation brought under RCW 26.09.520 even though the statute provides “[t]here is a rebuttable

presumption that the intended relocation of the child will be permitted.”

The statute then states that, “A person entitled to object to the relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based on the following factors.” *Id.* (Underline added).

At trial, the respondent did not meet his burden to show that any detriment of the relocation, outweighed the benefits. He did not put on any evidence of the detrimental effect the relocation would have on the child if permitted.

In fact, during closing argument, after petitioner’s attorney argued that there was no evidence shown by the respondent of any detriment to the child and the respondent had not met his burden to show detriment. (See Report of Proceedings, page 231)

After trial in October, the Court, on November 1, 2019, orally entered its order denying the relocation. On November 1, 2019, when the court denied the relocation, it discussed the 11 factors in the relocation statute, RCW 26.09.520, but the court did not find that, in considering the 11 factors, the detrimental effect of the relocation outweighed the benefit of the relocation to the child and the relocating parent. The court did not make any finding as to whether there was a detriment to the child because of the

relocation.

On December 20, 2019, the final order on relocation and new parenting plan was entered and mother's/petitioner's attorney argued to the court that the final order did not recite the court's findings because the court did not make a finding of any detriment to the child. Over the objection of mother's attorney that the court did not make that finding, the court entered the order as presented by the respondent who had added language about the detriment to the child, but that evidence was never presented at trial. (See Report of Proceedings, page 262 through 269).

After the order was entered, this appeal followed.

The Court referenced the statute at the beginning of the ruling stating, "[t]o rebut the presumption, the father must show the detrimental effect of a relocation....outweighs the benefit of the change to the child and the plaintiff relocating parent. And this is determined.... by looking at these 11 factors." (Report of Proceedings, page 244. The Court then went through the 11 factors and stated his displeasure with the actions of the mother that had nothing to do with the detriment and/or benefits from the relocation. The court simply stated the mother's actions were fabricated and exaggerated, he did not believe her stated intention for the relocation. (See Report of Proceedings, page 258).

Where a Trial Court does not set out specific facts of each of the 11

factors which support the determination that the detriment outweighs the benefit, then the standard needed to rebut the presumption has not been met.

In In re the Marriage of McNaught, from Division 1, the Court held:

A trial court must consider all 11 statutory factors in child relocation matters to determine if a detrimental effect outweighs the benefits to both the child and the parent wishing to relocate. Each factor has equal importance, and they are not weighted or listed in any order but rather provide a balancing test between the competing interests and circumstances that exist when a parent wishes to relocate. The trial court must enter specific findings on each factor, or parties must have presented substantial evidence on each factor with the trial court making findings and oral articulations that reflect its consideration of each. A trial court abuses its discretion when it fails to consider each factor. 189 Wash. App. 545, 556; 259 P.3d 811 (2015).

In the current case, the Court failed to list specific facts of each of the 11 factors as the facts pertain to the determination of the detriment of relocation outweighing the benefit of the relocation.

The Court instead addressed the factors, as if making findings based on RCW 26.09.187 which sets out criteria for determining a Final Parenting Plan. (See Report of Proceedings, pages 244-256). The difference is that the Court made a determination of each factor as if it were relitigating the original determination that the Petitioner should be the residential parent; instead of whether the objecting party can rebut the presumption that the relocation be allowed.

In fact, in the Trial Courts oral findings, the Trial Court does not state

any detriment to relocation other than the difficulty of transporting the child between the two locations; then, the Trial Court goes on to enter a Final Parenting Plan that contains exactly the same transportation provisions.

Therefore, the reviewing Court should reverse the Trial Court's decision and deny parenting plan and enter new Orders allowing the relocation.

2. Did the Trial Court Abuse its Discretion when it Found that the Petitioner had filed the Petition for Relocation in Bad Faith?

This reviewing Court reviews factual findings for an abuse of discretion. The Trial Court found under RCW 26.09.520(5), that the Petitioner had acted in bad faith by bringing the Petition for Relocation. The reviewing court should review this factual determination for an abuse of discretion by the Trial Court.

A reasonable person would not determine that the Petitioner had acted in bad faith when they petitioned for relocation. The facts support the good faith of the Petitioner in making the relocation. The Court is aware that the Petitioner had signed a lease in Whatcom County. (See Report of Proceedings, page 246, lines 9-13). The Court is further aware that the Petitioner's previous housing in Jefferson County was only obtained with the assistance of the Respondent, which does not create a sustainable independent lifestyle. (See Report of Proceedings, page 247, lines 16-19). The Court is aware that she has a support person in Whatcom County. (See

Report of Proceedings, page 251, lines 24-25). The Petitioner intended to attend school to get her Master's Degree in Whatcom County, and the Court stated that she can pursue this online instead but does not consider this a good faith reason to want to relocate and states that she can pursue her degree online instead. (See Report of Proceedings, page 254, lines 11-12). The Court is further aware that when it entered the Order that denied the initial and Ordered that the child remain in Jefferson County, the Petitioner followed that Order and kept her home and other child in Whatcom County, making tremendous efforts to maintain her connection in both counties during the temporary upheaval of these relocation proceedings (as opposed to just forgoing the move to Whatcom County). (See Report of Proceedings, page 246-247).

If a person is petitioning for relocation in bad faith, they would not make such great efforts and be in the process of setting down roots in the new location.

Therefore, this reviewing Court should find that the Trial Court abused its discretion, that in determining no rational person would find that the Petitioner was acting in bad faith when they petitioned for relocation.

3. Did the Trial Court Err when it Considered Petitioner's Failure to Give Notice when Making its Determination if the Detriment outweighed the Benefits of the Relocation?

The Petitioner did not give proper notice of the relocation pursuant to RCW 26.09.440. The Court improperly considered the failure to give proper notice multiple times, including as a basis for its analysis of the 11 factors considered by the Trial Court in granting or denying the relocation petition. The Court erred in its application of the law as to whether the failure to give proper notice can be considered as a factor in determining if the detriment outweighs the benefit of the relocation; therefore this reviewing Court should review the Trial Court's decision de novo.

The Court discussed the fact that the Petitioner gave notice and then relocated 5 days later. The parties were in Court on July 11, 2019 and the Court ordered that the child could not be relocated pending trial. (See Report of Proceedings, page 14-15). There is no allegation that the Petitioner absconded with the child or withheld the child from father.

The Petitioner mailed the Notice of Relocation to the Respondent on June 27th, 2019 and stated that their intended date of Relocation was July 15th, 2019. (See Report of Proceedings, page 94, line 3-10). The Respondent filed their objection and the Motion to issue a temporary order denying the relocation pending trial was heard on July 12, 2019; where the Court erred and entered a parenting plan that changed custody from mother to father. (See Report of Proceedings, page 14). This was eventually overturned on a Motion to Reconsider. (Report of Proceedings, page 55-56).

At Trial, the Trial Court then changed the custodial provisions, without allowing the Petitioner to forego the relocation, and used the failure to give notice as a basis for its decision. Despite the fact that the objecting party has not stated any way in which this premature relocation negatively affected the minor child, the Court mentions that the Petitioner relocated without Court Order three different times in its discussions of the 11 factors set out in RCW 26.09.520; the discussion is under factors (1), (3), & (5), (Report of Proceedings, page 246, 248, 250-251). The discussion does not reference directly or specifically how the premature relocation is a detriment outweighing the benefits, other than to say there was upheaval in the child's life. This is true for any relocation and is not, by itself, a reason that a relocation is more detrimental than beneficial.

Failure to give proper notice is not listed as a factor under RCW 26.09.520. However, Failure to Give Notice is addressed under RCW 26.09.470 which states that the Court can impose sanctions for failure to give notice. At no point do the RCWs state that Failure to Give Notice can cause a residential parent to lose custody of a minor child. Even here, if sanctions were imposed, they would be moderate where the notice was given but without enough time (as opposed to having relocated without any notice at all).

The reviewing Court should consider *de novo* whether the Trial Court

erred by using the failure to give proper notice as a basis to deny the relocation. As such, the reviewing Court should reverse the Trial Court's decision and enter new Orders to permit the relocation and change the parenting plan back to mother being custodial parent.

4. Did the Trial Court Err when it modified the Parenting Plan regardless if the Petitioner decided to Forgo her Relocation?

The Trial Court Erred when it modified the parenting plan without giving the Petitioner an opportunity to forego relocating and to maintain the current parenting plan. This is an error in the application of the law and therefore this reviewing court should review this issue *de novo*.

When the Court entered its Order changing custody of the minor child, Counsel for the Petitioner asked the Court:

MR. PAYNE: The Court's – is the Court changing the parenting plan if the mother doesn't relocate?

THE COURT: No, I'm changing it. I'm changing it. The parenting plan is what I just ordered. So that's it.

MR. PAYNE: Okay, I'm just going to object. I don't think the Court has the authority to do that. (Report of Proceedings, page 258, line 1-8)

The Court referenced RCW 26.09.260 (6) as authority to modify the parenting plan. However, the Court neglected to recognize that the provision is contingent upon modification pursuant to a relocation where it says, "In making a determination of a modification pursuant to relocation

of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification *pursuant to relocation* should be made, if any, to the parenting plan or custody order or visitation order.” (emphasis added). Where the court denied the relocation of the minor child, the Court can still modify the parenting plan if the parent still relocates. If the parent chooses not to relocate because of the Court’s decision, then the parent who wishes to modify the parenting plan must go through the regular procedures to modify the parenting plan.

This issue is properly addressed under RCW 26.09.530: Factor Not to be Considered which states, “The court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the court has denied relocation of the child and the person is relocating without the child.” The Court cannot modify a parenting plan where there has been no change of circumstances without adequate cause. The Court in In re Raskob, held that the Court could modify the parenting plan even after it denies the relocation petition only where the relocating parent does not

abandon their relocation plans. 183 Wash. App. 503.

This reviewing Court should review *de novo* the Trial Court's application of the law to the modification of the parenting plan without consideration of whether the parent would choose not to relocate. Therefore, this reviewing Court should reverse the Trial Court's decision and enter new Orders.

5. Did the Trial Court Abuse its Discretion when it did not recuse itself due to impartiality or bias pursuant Judicial Canon 2, Rule 2.3?

The Court showed improper bias and prejudice toward the Petitioner on multiple occasions before the trial by removing the child from the Petitioner as a form of sanction for failing to give proper notice; then at trial removed the child from the Petitioner referencing the petitioner's failure to give notice as grounds. Removal of custody as a sanction for failure to give notice is not based in law and therefore, the Judge should have recused himself from the case pursuant to Judicial Canon 2, Rule 2.2, "A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially," and Judicial Canon 2, Rule 2.3, "A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice."

The reviewing courts review the Trial Courts failure to recuse

themselves by a standard of Abuse of Discretion. In re Marriage of Meredith, 148 Wash. App. 887, 903, 201 P.3d 1056 (2011) (citing Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wash. App. 836, 840, 14 P.3d 877 (2000)).

In the current case, the Judge initially limited the relocation petition and removed the child from the custody of the Petitioner without a full hearing based on the failure to give proper notice. The parties were in Court for Motion Objecting to Relocation on July 12, 2019 and the Court held,

“The Court finds that Ms. Solis, (Cann) the petitioner, has already moved to Whatcom County with the child in violation of the Relocation Act, and so therefore, the order is that the child, FLS, shall reside with the respondent father starting tomorrow, July 13th 2019..... But in short, Ms. Solis (Cann), you made a mistake and made the wrong choice. And so I have absolutely no reason not to let the child be with Mr. Solis. And so she’s going to be with him until you sort this out and do it right and figure out how it should have been done, okay?” (Report of Proceedings, page 14-15).

It is clear from this holding that the Court did not base the decision on the best interests of the child or the likelihood of the Petitioner’s motion to relocate being successful, but simply as a consequence of not giving proper notice pursuant to RCW 26.09.440.

On August 9, 2019, with counsel, the parties were back in Court on a Motion to Reconsider the Court’s Ruling on the Motion Objecting to Relocation. The Court asks counsel about changing custody provisions at

the initial hearing, “The statute says in certain circumstances the Court can impose sanctions, but it doesn’t say anything about what those are or can be. [Counsel], what do you think they are or could be or what are they limited to?” (Report of Proceedings, page 47, line 23 through page 48 line 2). The Court then revises its Order to what it initially should have been, denying the temporary order to relocate the child and giving mother the opportunity to remain in Jefferson County, but again references the intent of the Petitioner stating, “So am I supposed to find that she was not acting in bad faith, or that she wasn’t in effect harassing the other parent, or anything like that and that she was acting in good faith?” (Report of Proceedings, page 53, lines 3-9). Again, making a ruling about the good or bad faith of the parents without a full hearing in making a ruling about the Order.

RCW 26.09.470 sets out that, “[t]he failure to provide the required notice is grounds for sanctions, including contempt if applicable.” Case law also recognizes that awards of attorneys’ fees and monetary sanctions are applicable. In re Marriage of Raskob, 183 Wash. App. 503, 334 P.3d 30 (2014).

The Court’s are limited in using contempt as grounds to modify a parenting plan in RCW 26.09.260(2)(d) which provides as follows: (2) In applying these standards, the court shall retain the residential schedule

established by the decree or parenting plan unless: “[t]he court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.”

As set out by this statute, the court can only modify the parenting plan based on contempt where the contempt dealt with failure to comply with residential time and the Court has found contempt twice within three years; this is not present in the current case.

The Court acted improperly when it changed custody, essentially as sanctions, for a failure to give notice. The Court of Appeals Division 2 has addressed the issue of a Court showing bias after having imposed sanctions in West v. State, Wash. Ass’n of County Officials, where the reviewing court found that the Trial Court had not shown bias because it properly imposed CR 11 sanctions. 162 Wash. App. 120, 252 P.3d 406 (2011). In the current case, it is blaringly apparent that the Court improperly changed custody as an improperly imposed sanction. Therefore, the Court should review this issue as a violation of the Judicial Canon and as grounds to reverse the Trial Court’s finding.

At the time of the Motion to Reconsider, no motion was made asking

the Court to recuse themselves where the Court had revised their Order to a finding that was in line with the law. On October 11, 2019, Petitioner's attorney filed an affidavit of prejudice in an attempt to have the judge recuse himself. However that affidavit of prejudice was denied. (See clerk papers doc#66, page 124-125).

However, it is not the bias at the original hearing that raises this issue on appeal but the finding at the end of the Trial- which is nearly identical to the initial temporary parenting plan- that raises the issue of Bias and Impartiality by the tribunal as an appealable issue. The Court unexpectedly, again, made a ruling changing custody with the failure to give notice referenced three (3) times as a basis for the ruling: the discussion is under factors (1), (3), & (5), (Report of Proceedings, page 246, 248, 250-251).

This clearly shows a bias and impartiality that the Court had already determined to change custody as a form of sanction in this matter and the Court, therefore, should have recused himself.

The reviewing court should review the Trial Courts failure to recuse himself for bias and impartiality under the standard of an Abuse of Discretion, and should find that the Court did abuse their discretion by not recusing themselves from hearing the trial proceedings and this reviewing Court should reverse and remand.

#

#

#

VI. CONCLUSION

In conclusion, the Petitioner respectfully requests the reviewing Court find that the Trial Court's decision to deny the relocation after trial should be reversed and the relocation permitted, because the respondent did not meet his burden to show that there would be detriment to the child if the replication was permitted. The parenting plan should be modified to designate petitioner/mother as the custodial parent.

The Trial Court erred in its application of the law in its analysis of the 11 factors and erred in the application of the law for modifying the parenting plan, after denying the relocation based on the failure to give proper notice, therefore the reviewing court should reverse the trial court's decision.

The Trial Court further abused its discretion in finding that the Petitioner acted in Bad Faith. Finally, the Court erred in its application of the law to whether the Court could modify the parenting plan if the petitioner decided not to relocate.

The reviewing Court should also find that the Trial Court failed to recuse itself due to bias and impartiality under Judicial Canon 2 after multiple times stating the mother had made a wrong decision.

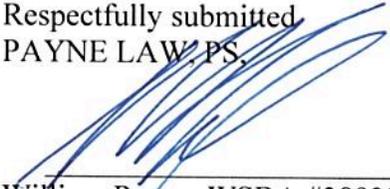
The Court did not follow the relocation statute, RCW 26.09.530 and

modified the parenting plan without inquiry of whether the mother would abandon the relocation if the court denied the relocation. The modification was clearly based on the court's imposition of an improper sanction for improper notice for intent to relocate.

Finally, the reviewing court should award the petitioner attorney fees and costs.

Dated: May 13, 2020

Respectfully submitted,
PAYNE LAW, P.S.



William Payne, WSBA #38933
Attorney for Appellant/Petitioner/Mother