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Court of Appeals
Division II
State of Washington
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No. 54162-9-II

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

AMY LYNN CANN (SOLIS), Appellant/Petitioner

v.

HERNANDO MARTINEZ SOLIS, Appellee/Respondent

Brief of Respondent/Appellee
Jefferson County Cause No. 19-3-00062-16

Submitted by:
Lorraine Rimson, WSBA 22468
Attorney for Hernando Martinez Solis

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I. ASSIGNMENTS OF ERROR

Amy identifies two assignments of error in her opening brief.

First, she asserts that the trial judge was wrong because he denied “a relocation petition brought under RCW 26.09.520.” She provides no specifics; she fails to assign error to a single finding of fact.

Second, Amy asserts that the judge committed error by not recusing himself “pursuant to Judicial Canon 2, Rule 2.3.” Amy filed an untimely Affidavit of Prejudice pursuant to RCW 4.12.050, and the trial court properly denied it. Nowhere in that document was a single reference to Judicial Canon 2, Rule 2.3.

II. STATEMENT OF THE CASE

A. FACTUAL AND PROCEDURAL BACKGROUND¹

On January 22, 2019, Amy Lynn Cann [hereinafter Amy] and Hernando Solis [hereinafter Hernando] were divorced in Kitsap County, Washington. They have one child, FLS, who was three years old at the time of the divorce; she is now four. RP 67 The divorce case was at times cooperative and at times contentious; the combativeness peaked after Amy communicated a desire to move,

¹ Inexplicably, Amy provided little to no factual background in her Opening Brief leaving it entirely up to Respondent to provide this information in his Brief.

with FLS, to Maple Falls in Whatcom County. Hernando did not agree to the relocation.² RP 73, 177

Shortly after discussions began about Amy's desired move, Amy made unfounded allegations against Hernando claiming he had spanked FLS and harmed her; she made other, more severe, allegations as well. RP 75 Amy then asked the court to require that Hernando have supervised visitation. RP 75-77 During this time, Amy also filed a CPS complaint against Hernando, but the case was closed after the allegations were determined to be unfounded. RP 74-75.

After a motion hearing on November 9, 2018, the Kitsap County court denied Amy's request for supervised residential time, but appointed a Guardian ad Litem, at Hernando's request, to investigate the allegations made by Amy against Hernando, as well as the motivation behind the allegations. RP 75-77 After the court hearing, Amy suggested to Hernando that they go to Hernando's home to work on an agreed Final Parenting Plan. RP 77, 177

² Hernando shares a 50/50 residential schedule with his son's mother, and they have an excellent co-parenting relationship; she lives within minutes of Hernando's home. RP 166

Amy and Hernando reached an agreement, and their divorce was finalized and an Agreed Final Parenting Plan was entered in Kitsap County Court on January 22, 2019; Amy registered this Parenting Plan in Jefferson County on May 30, 2019. CP 2

Despite the allegations made by Amy against Hernando, the agreed Parenting Plan had no 26.09.191 restrictions. CP 2 It included joint decision making for various things including education. CP 2 The parties discussed and agreed that the children would go to school in the Kitsap School District where Elijah, Hernando's son from another marriage, and Grace, Amy's daughter from another relationship, were students, so that they all could remain close. RP 178

The Parenting Plan had a "pre-school" and a "school schedule," yet the parties followed the "school schedule" even though FLS was not yet school age. RP 96.

The schedule they followed provided for FLS to be with her father five overnights every two weeks as follows:

Sun	Mon	Tues	Wed	Thurs	Fri	Sat
Father	Mother	Mother	Father	Father	Mother	Mother
Mother	Mother	Mother	Mother	Mother	Father	Father

Neither party disputed that they followed this schedule after the divorce was finalized. RP 96 Hernando also had regular telephone and Facetime contact with FLS, and he saw her at other times throughout the week, as well. RP 80

In April 2019, Hernando, Amy, FLS, Grace (Amy's other daughter) and some others went on a camping trip together. (RP 81) After the camping trip, Hernando had his regularly scheduled residential time with FLS. RP 81-81 After that, Amy denied Hernando further contact with FLS; this included telephone contact. RP 81-82 Amy ignored his attempts to communicate.

Just before trial in this matter and confirmed at trial by Amy, at precisely the time that Amy denied Hernando's time with FLS in April 2019, Amy transferred her older daughter, Grace, out of her school in Kitsap County to a school in Maple Falls (Whatcom County) . RP 83-85 This was unknown to Hernando at the time. RP 176

On May 10, 2019, Hernando brought a Motion for Contempt in Kitsap County Superior Court based on the fact that Amy had denied him in-person and telephone contact with FLS for an extended period beginning in mid-April and extending until the date

of the May 10 hearing. RP 89-90 The Kitsap court did not find Amy in contempt because of procedural errors; however, the court ordered that Hernando's residential time was to immediately resume. The court also ordered FLS to begin counseling. RP 83 Because Amy was living in Jefferson County at the time, FLS was enrolled at Jumping Mouse, a therapeutic setting for children in Jefferson County. Amy was told to follow the residential schedule. Hernando's residential time under the "school schedule" resumed. RP 83

On May 30, 2019, Amy transferred the case to Jefferson County. RP 92 Hernando was not notified of the change in venue. RP 92 Amy agreed that there was nothing in the case pending at that time; however, she testified:

Well, you're very aware that I was planning – it was an option for me to be moving to Maple Falls, so an intent to move was imminent at some point.

RP 93

On or about June 28, 2019, Amy filed a Notice of Intended Relocation and mailed it to Hernando. RP 94 She asserted that she intended to move on July 15. RP 95 She asserted that she was unable to provide the sixty days' notice because the move was a sudden one (even though her desired relocation to Whatcom

County had been discussed and rejected during their divorce process less than six months earlier, and even though she testified that she changed venue to Jefferson in late May because her intent to move was imminent). (RP 180-181, 93) Though her Notice stated she would be moving on July 15 she actually signed her lease on July 1, the same day Hernando received the Notice. RP 94

After Hernando received the Notice of Intended Relocation on July 1, Amy denied Hernando the July 4th holiday with FLS even though they had traded Memorial Day Weekend for the July 4th holiday. RP 91 Well known to Amy, Hernando had extended family coming from out of state to participate in a family gathering over the July 4th weekend, and the family was looking forward to spending time with FLS and FLS with them. RP 180

At trial, Amy alleged that she denied the residential time over the July 4th holiday because FLS was "adamant" that she did not want to see her Dad. RP 94

Hernando was forced to return home early from a long-planned Alaska cruise in order to timely participate in the objection

hearing he had noted³. RP 182 Amy was aware that Hernando was going to be on this cruise. RP 95 At his objection hearing in Jefferson County, Hernando asked the court to restrain Amy from taking FLS to Maple Falls pending trial. RP 8

On July 12, 2019, the trial court granted Hernando's request to stop Amy from taking FLS to Whatcom County prior to trial. CP

23 In its findings, the Court stated:

Ms. Solis, 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....

[A]nd this order will remain in effect until further order of the court.

So if you want to do something about this relocation in either trying to get it approved or dropping it or contesting it or whatever, you guys are going to have to file further paperwork with the court and proceed with this case one way or another.

But in short, Ms. Solis, 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?

RP 14-15

³ Hernando initially traveled to Kitsap County to file his objection, as he had not realized the case had been moved to Jefferson County. Though he was dealing with this act of gamesmanship, concern about his daughter (because he was denied his residential time once again), managing family, a holiday weekend, and an upcoming, long-planned cruise, he was able to timely file his objection in the proper court. Hernando incurred \$800 in costs to return early from his vacation.

Because Amy had communicated to the court that she had no place to live in Jefferson County, the court ordered that FLS would be transferred to Hernando, and the court ordered Amy to return with FLS to Jefferson County and deliver her to Hernando's care. RP 14-15

Amy hired counsel and filed a Motion for Reconsideration. RP 96 Hernando also hired counsel. RP 96 On July 22, 2019, the trial court affirmed its denial of the relocation, but reinstated the Final Agreed Parenting Plan (with the child primarily with Amy) when Amy communicated her intention to reside in her mother's apartment in Port Townsend. RP 55 The court was very clear that FLS needed to be residing in Jefferson County.

FLS resumed residing primarily with Amy after the Motion for Reconsideration, and Amy asserted for the first time her intention to limit Hernando's residential time to the "pre-school schedule" even though she knew and agreed that they had never followed the pre-school schedule. RP 96

On August 14, 2019, the court set the trial date in this matter. CP 38 The court set a two-day trial on either (first option)

October 20-21, 2019 or (back up option) November 4-5, 2019. CP

38

Hernando had residential time with FLS on the weekend of August 16. RP 97 After the residential time was over and Amy had picked FLS up, Amy texted Hernando to express concern over the fact that FLS was "wincing" when she put her down in the car seat. RP 97, 98

Amy asked if something had happened while FLS was at Hernando's house. RP 97-98 Hernando said that nothing had happened, and she was fine at his house; however, he told her that if she were concerned about FLS's well-being, she should take her to the doctor immediately. RP 98-100 Amy chose not to take FLS to the doctor for eleven days. RP 120

FLS was in Amy's residential care for the next twelve nights; during this time in Amy's care, she had baths, and she did not see Hernando. RP 121-122 On August 30 when Hernando was next to have FLS in his care, Amy denied him residential time with her. RP 99-100 Though it was eleven days after FLS had last seen her father, on August 29, Amy took FLS to a doctor in Sumas, Washington, and she asked the doctor to give FLS a medical

evaluation that included a culture of her private parts and STD testing. RP 121, 127 On August 30, Amy took FLS to the Sexual Assault Unit in Kitsap County for an interview. RP 125-127 She had also called CPS and made a report against Hernando. RP 125-126

Hernando, again, filed a Motion for Contempt based on the denial of his residential time. The hearing was set for September 13. RP 106 On September 9, Amy went to CPS. RP 102 She received a Safety Plan, but the adult listed as the person of concern had the first name ALFRED and not Hernando. RP 103-104. Amy testified that she had written Hernando's name over ALFRED, and she testified that the CPS worker had told her to do that when she called to say the wrong name had been listed. RP 103-104

On September 11, two days before she was to appear in court for the motion for contempt, Amy filed a Petition for Order of Protection on behalf of FLS seeking to deny residential time between FLS and Hernando. RP 106 This request was denied.

On September 13, 2019, Amy requested a continuance of one week due to her new attorney's need to get up to speed.⁴

After the court denied Amy's request for a protection order on September 11, Amy called in a wellness check to law enforcement. RP 123 Law enforcement went to Hernando's home, found that there was nothing awry, and determined that FLS was safe and well. RP 123-124 Amy testified at trial that she had made two wellness checks to law enforcement while FLS was in Hernando's care, and neither call resulted in any concern by law enforcement. 122-124

The contempt motion was heard on September 20, 2019, and the court found Amy in contempt for failure to comply with the residential schedule. Though her personal appearance was required and she and FLS should have been in Port Townsend at her mother's condominium, Amy failed to appear at the hearing asserting, through counsel, that she and FLS were sick with the flu. RP 108-109 Make up time was awarded to commence after court at 3:00 p.m.; this timeline would have been easily met had Amy

⁴ Amy initially hired attorney Peggy Ann Bierbaum. After the hearing on July 22, 2019, Ms. Bierbaum went on vacation. Upon her return, a Motion for Contempt was pending. She withdrew from the case. Amy then hired attorney William Payne.

been in Jefferson County as ordered; however, she did not deliver FLS until after 6:00 p.m. because she and FLS had to travel back from Maple Falls. Hernando picked up FLS at the ferry terminal in Kingston, Washington. RP 109-110

Trial took place on October 22, 2019.

The court entered its oral findings and ruling on November 1, 2019. The ruling included a denial of Amy's request to relocate to Maple Falls with FLS, and a transfer of FLS's primary placement from Amy to Hernando based on the court's serious concerns about the likelihood of significant harm to FLS if she were to remain in Amy's primary care. The court's oral findings and order were incorporated in written findings and a written order entered on December 20, 2019. As required by RCW 26.09.520, the trial court weighed all eleven factors.

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B. THE TRIAL COURT'S ANALYSIS OF THE ELEVEN FACTORS IN RCW 26.09.520 CLEARLY SUPPORTS ITS DECISION TO DENY AMY'S REQUEST TO RELOCATE FLS TO MAPLE FALLS, WHERE AMY HAD ALREADY RELOCATED IN JULY 2019.

The trial court went into great detail explaining its findings in both its oral and written rulings, and Amy does not assign error to a single finding. Thus, they are verities on appeal.

Applying the first factor (relative strength, nature and quality of child's relationship with each parent, siblings, significant persons in child's life), the court found that Hernando's relationship with the child was far more stable. The trial court detailed Amy's multiple moves in the prior year. It detailed the numerous false allegations made by Amy against Hernando, and the poor decisions that resulted in the child having two (unnecessary) invasive medical exams, interviews by Sexual Assault Units, and CPS investigations. The trial court identified Amy's pattern of denying residential time to Hernando.

At the same time, while Amy was attacking and disparaging Hernando, he supported Amy and FLS emotionally and financially above and beyond the requirements of the court orders. Hernando

ensured that the residential schedule for FLS resulted in her being with Hernando when his son, Elijah, was with him, so they could maintain their strong bond. Despite Amy's repeated false and baseless accusations against him, he never retaliated in any way, but rather he continued to be supportive of Amy and FLS. This included taking them on camping trips, buying them meals, and providing additional money (beyond child support) to Amy.

Amy, on the other hand, was making selfish decisions that disregarded her children's best interest. Amy's decision to move her older daughter, Grace, to Whatcom County in April 2019 and then move, with FLS, to Whatcom County at the beginning of July, 2019 prior to getting permission from the court, put her relationship with her children in an incredibly unstable predicament.

The court found that this factor weighed in favor of denying the relocation.

Applying the second factor, the court found that the parties had reached agreements. Specifically, when their Agreed Final Parenting Plan had been entered in January 2019 – a mere six months before Amy's proposed relocation – they had agreed that they would jointly make education decisions, among other

decisions. Hernando testified that they had discussed and agreed that the children would go to school in the Kingston School District where Elijah and Grace, Amy's daughter, attended school. They agreed that they would follow the calendar for that school district even though FLS was not yet in school, and they agreed that FLS would attend school in that school district. Amy did not dispute this.

Also, both parties testified that Amy had communicated a desire to relocate to Whatcom County during their divorce in the latter part of 2018. They both confirmed that Hernando did not agree to the move, and the agreement that they reached in their Final Parenting Plan anticipated that Amy would be living in Port Ludlow – in a house that they found for her together. Hernando testified at trial that when the Final Agreed Parenting Plan was entered in January 2019, he believed the “move to Whatcom County” issue was behind them.

The court found that this factor weighed in favor of denying the relocation.

Applying Factor 3, the court concluded that disrupting FLS's contact with Amy would not be more harmful than disrupting her contact with Hernando.

The court found that the child had a pattern of spending significant time with each parent every week, and that this pattern had been a part of her entire life. The court found that this would not continue if the relocation were permitted.

The court found that Amy had a pattern of denying residential time to Hernando and of creating other disruptions in FLS's life – including the disruption that occurred when she relocated to Whatcom County without permission, and then made the decision to drive back and forth multiple times per week.

Hernando had been consistent throughout FLS's life, and had been the adult who provided constancy and stability for her. Reducing the consistent and frequent weekly residential time that FLS had with Hernando would result in a disruption that far exceeded that which would occur if FLS's time with Amy were disrupted.

The court found this factor to weigh in favor of denying the relocation with FLS.

Factor 4 did not apply.

The trial court found that Amy's reasons for moving were not made in good faith, and this factor (5) weighed in favor of denying the relocation.

In her Notice of Intended Relocation, Amy stated her reasons for moving were lower rent, a good job (in Whatcom County), and to be near "extended family." She said that she needed the support of "extended family" because Hernando was not exercising his residential time. The court found that none of these were true.

The rent at Amy's home in Port Ludlow was \$1,200 per month; the monthly rent at her home in Whatcom County was \$1,200.

Amy did not get the "good job" she asserted she would be getting and one of the reasons for her move. She ultimately got a job at "a package store" (like UPS Store). But this job was not remotely location specific.

Amy had no extended family in Maple Falls. She had a good friend who was "like a sister" to her. She knew no one else in the area.

At trial, Amy asserted that she moved Grace to Whatcom County based on claims that Elijah had said things about Amy in school, and this was very upsetting to Grace. The court found these claims to not be credible, as Amy had never raised this with Hernando, nor did she know any of the particulars of what was allegedly said. Hernando testified that, had he known this, he would have talked with his son – and talked with Grace and Amy, too – to figure out what had occurred and to address it.

The trial court found that Amy had forum shopped by moving the case from Kitsap County to Jefferson County without giving notice to Hernando. The trial court found her assertion that it was less expensive to travel to Jefferson County Courthouse instead of Kitsap County Courthouse to be less than credible.

Amy signed a one-year lease on a residence in Whatcom County before Hernando had an opportunity to object even though she knew he would not agree to the relocation having voiced his clear objection less than 9 months prior during their dissolution.

Amy needlessly called CPS and law enforcement for welfare checks based on unfounded claims.

Amy waited eleven days to take FLS to the doctor after calling Hernando and accusing him of harming the child. Amy asserted that FLS was in pain, and Hernando told her to take the child to the doctor. Instead, she waited eleven days, and then – though FLS had not seen her father in eleven days – she asked the doctor to subject the child to an invasive medical exam and verbal questioning.

Amy was not candid with the court when she sought a No Contact Order against Hernando two days before she was to appear in the same court on a Motion for Contempt for denying Hernando his residential time.

The court finds that this factor weighs in favor of denying the relocation with FLS because Amy has not acted in good faith, and she has no legitimate reason to relocate. The court further finds that her “reasons” for relocating are constantly changing.

Per Factor 6, the court found that Hernando’s objection to relocation were made in good faith. The court determined that Hernando’s actions were based on a desire to have regular, meaningful time with FLS, and that he wants her to have stability and constancy in her life. The court found that Hernando, unlike

Amy, would make sure that FLS would attend day care/preschool for socialization, and she would attend counseling for her well-being. The trial court also commended Hernando on his efforts to create a residential schedule that provided for FLS to spend time with Elijah. Estella Ferre, Elijah's mother, also testified to Hernando's commitment to the children.

Applying factor 7, the court found that allowing the move would negatively and detrimentally affect FLS's physical, educational, and emotional development considering her age, stage, and needs.

FLS was 4 years old at the time of trial. Because of Amy's constant moving, FLS was not in regular day care/pre-school/or other activities to allow her to interact with other children her age. Earlier in the year, the Kitsap County Superior Court had ordered that FLS be in regular therapeutic counseling. She had begun this work at Jumping Mouse in Jefferson County, but then Amy moved – initially with no notice - and ended the counseling. She did not find FLS new counseling in Whatcom County. FLS did not resume counseling or pre-school until she was in Hernando's care.

Further, Amy's pattern of negative actions (e.g., false allegations against Hernando, repeated denial of residential time and contact between Hernando and FLS) was having negative effects on FLS. Amy's behavior was escalating, and this was a very real concern to the court.

Applying factor 8, the court found that both geographical areas provided comparable qualities of life. Based on the testimony presented, the court found that the schools appear to be better in the Kitsap/Jefferson area. Hernando lives in a good, safe neighborhood where children have opportunities to safely play. The court found that the job Amy asserts she has is a job she could get anywhere.

Factor 9 weighed in favor of denying relocation. Because of the distance between the two homes – four hours of travel including a ferry crossing – Hernando and Amy would not be able to maintain the cooperative parenting schedule they'd agreed to less than 9 months earlier. Hernando would be limited to Facetime and Skype calls which are not the same as in-person contact.

Factor 10 weighed in favor of denying relocation, as relocation by Hernando to the Maple Falls area was not reasonable

or feasible. Though Hernando works from home a great deal, he has been living in the same home since 2012, and he is purchasing his home. He also has another child, Elijah, who lives with him at least 50% of the time. He has an excellent relationship with Elijah's mother, who lives just minutes from Hernando.

Hernando has adjusted his work schedule to be with the children as much as possible. His home is the only home FLS has known while in his care. He has worked incredibly hard to turn his home into a "safe haven" for his children.

Amy, on the other hand, has no legitimate reason to relocate. She grew up in Jefferson County, and she testified that she has many good friends who remain here. As an adult, she has had two very good jobs in Jefferson County (at Indian Island) and then in Kitsap County (at Olive Crest) – a job that was in her field of study. Amy asserted that she would like to possibly return to school to get her Master's Degree, but she testified that it is very likely that if she were to do that, she would attend online classes. She also confirmed that the practicum she would be interested in was in Silverdale, Washington in Kitsap County.

Per factor 11, the court weighed the financial benefits of the move. The court found that Amy's claims of better financial opportunities and lower costs of living were not supported by the evidence. Additionally, the transportation costs would increase significantly due to length of travel and the need for a ferry ride. Amy claimed that she would take on the financial and time burden of the additional transportation, but this was not likely. Even when Amy and Hernando lived within twenty minutes of each other, Hernando on more than one occasion had to give Amy money to pay for gas.

III. ARGUMENT

A. STANDARD OF REVIEW

Trial courts are given broad discretion in matters involving the welfare of children. *In re Marriage of Cabalquinto*, 100 Wn.2d, 325, 327-28, 669 P. 2d 886(1983); *In re Marriage of McDole*, 122 Wash.2d 604, 610, 859 P.2d 1239 (1993.)

In cases involving relocation, a trial court's decision will not be reversed on appeal unless the court manifestly abuses its discretion. *In re Marriage of Kovacs*, 121 Wn2d 795, 801, 854 P.2d

62 (1993); *In re Marriage of Katare*, 175 Wash.2d 23, 35, 285 P.3d 546 (2012).

An appellate court defers 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. *In re Marriage of Kim*, 179 Wn. App. 232, 240, 317 P.3d 555 (2014); *In re Marriage of Fahey*, 164 Wn. App. 422, 56, 62 P.3d 128 (2011)

B. ISSUES PRESENTED

1.

The trial court properly weighed the eleven factors set forth in RCW 26.09.520 and specifically detailed the ways in which the detriment of the proposed relocation clearly outweighed the presumed benefit of the change.

Amy's argument that the trial court failed to find detriment is false. The trial court went into great detail to identify the specific facts that applied to each of the eleven factors, and the reasons why the vast majority of the factors weighed in favor of denying the relocation. RP 243-258 Amy provides no specifics to support her arguments. She cites one case for its broad application to the analysis of relocation cases generally.

Through the application of the eleven factors, Hernando needed to rebut the presumption in favor of relocation by a preponderance of the evidence. *In re Marriage of Wehr*, 165 Wn. App. 610, 615, 267 P.3d 1045 (2011) Here, the trial court found that nine of the eleven factors weighed in favor of denying the relocation; one factor was a draw; one factor did not apply. RP 243-258

Amy asserts that the trial court did not include specific facts to support its analysis of the eleven factors, and claims, instead, that the trial court “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.” (Appellant’s Brief 6) Reasonable and rational analysis must be set aside to interpret the court’s oral decision that way.

Amy does not dispute that the court found that nine of eleven factors weighed in favor of denying relocation. In fact, Amy fails to dispute any of the court’s findings. Amy acknowledges that the court detailed a multitude of ways in which her “instability” had

“negatively affect[ed] the child...” and that her behavior had been “escalating....” RP 268 Amy hinges her entire argument on the assertion that the specific word “detriment” was not used, so the court *could not* deny the relocation. RP 268

Amy challenges the court’s written findings by asserting and claims that word “detriment” should not have been included. The trial court disagreed. RP 268-269

At the presentation of the written orders, Amy’s counsel objected to the use of the word “detriment” in the final order RP 262-267 He acknowledged the court found that the vast majority of factors weighed in favor of denying the relocation. RP 264 He did not dispute that the court found that Amy’s behavior negatively affected the child. His dispute was with the word “detriment.” RP 265-269

When the court explained that it considered use of the words “negatively” and “detrimentally” in the written findings to be proper, Amy’s attorney exclaimed: that doing so “basically blows my appeal out of the water. But I’m still going to appeal it....” (RP 267) In that moment, Amy’s attorney admits that the appeal is frivolous.

Finally, when inconsistency exists between a court's oral ruling and its written findings, the written findings control. In re *Marriage of Raskob*, 183 Wn.App. 503, 512, 334 P.3d 30 (2014) citing *Mairs v. Department of Licensing*, 70 Wn. App. 541, 545, 854 P.2d 665 (1993). There is no dispute that the court found "detriment" in Amy's actions, and that they rose to the level of sufficient concern to deny relocating FLS to Maple Falls.

2.

The trial court correctly determined that Amy requested the relocation in bad faith when the evidence showed that every reason for moving asserted in her Notice of Intended Relocation proved to be false, and when the reasons for relocation raised during the pendency of the case proved to lack credibility.

A reasonable person could determine only that Amy's request to relocate was made in bad faith. Amy's assertion otherwise is incredulous.

Amy asserts that she signed a lease in Whatcom County. PB 8 While this confirms her true desire to relocate, that is not at issue. The timing of the signing is the first of many bricks laying the solid foundation of her bad faith.

Amy asserts that Hernando's assistance to her in finding her home in Port Ludlow renders that home as an "[un]sustainable

independent lifestyle.” PB 8 This was never argued at trial and is absurd. In fact, the trial court properly saw this information as cooperative parenting whereby two co-parents worked together to find a home that is a reasonable distance from the other parent’s home. The rent at that home was \$1,200 per month (identical to the rent in Maple Falls), and Amy was able to pay that rent on her own.

Amy asserts she has a “support person” in Whatcom County, yet that “support person,” could not even make it to trial to testify as to their relationship. This “support person” is the sole impetus for the move. Amy ignores that she grew up in Jefferson County, has many close friends in Jefferson County, and she also had Hernando nearby for support in caring for FLS and for Grace, her other daughter. Hernando has a clear history of providing emotional and financial support to Amy, as well as to being available to provide care for FLS, even when it was not during his residential time, and for Grace.

Amy asserts she intended to get her Master’s Degree at Western Washington and erroneously alleges that “*the Court* stated...she can pursue this online...[emphasis added].” PB 9 In

fact, Amy is the one who stated that she would likely resume classes online. RP 117

Amy fails to address the multitude of additional issues that went into the court's belief that she acted in bad faith CP 88:

1. Her assertion that she leased the home in Maple Falls because it was less expensive when in fact the rent on both the Port Ludlow and Maple Falls homes was the same;
2. Her assertion that she had better job opportunities in Whatcom County when, in fact, she failed to get a job for some time, and then finally alleged she was employed at a "package store" (e.g., Mail Plus). While living in Kitsap and Jefferson Counties the court found that she had much better job histories: one job at Indian Island in Jefferson County, and another job at Olive Crest in Kitsap County. (RP 68)
3. False allegations of abuse against Hernando during their dissolution case in late 2018 after she communicated her desire to relocate to Whatcom County resulting in her withdrawing the request to relocate and entering an

agreed Final Parenting Plan in January 2019 that reflected the parties residing within twenty minutes of each other and having the kids attend school in the Kitsap School District;

4. Moving her other child to school in Maple Falls in April 2019 without telling Hernando, and then denying him his time with FLS for a month requiring him to go to court in mid-May 2019 to resume his residential time;
5. Changing venue to Jefferson County on May 30, 2019 without telling Hernando and claiming the reason for the change was because it was a shorter drive to Jefferson County than to Kitsap County; the court found this to be forum shopping;
6. Filing a Notice of Intended Relocation on June 28 and mailing it to Hernando – to be received by him the same day, July 1, as she signed a lease on a home in Maple Falls;
7. Denying Hernando his residential time with FLS on the July 4 holiday when she knew he had family visiting in large part to spend time with FLS;

8. Filing her Notice of Intended Relocation at the same time that she knew Hernando would be leaving town on a cruise to Alaska, making it very difficult for him to timely file his objection;
9. Denying Hernando residential time during the pendency of the relocation case based on false allegations of harm to FLS resulting in findings of contempt;
10. Making calls to CPS and law enforcement with false and unfounded allegations about Hernando with regard to his treatment of FLS;
11. Subjecting FLS to interviews by Sexual Assault Units and invasive medical exams based on her false allegations of abuse by Hernando.

Amy's actions left the court with no choice but to find her actions in bad faith. Amy does not cite a single source to support her assertion that the court erred.

3.

The trial court did not consider “failure to give proper notice” as a factor when denying Amy’s relocation.

Amy erroneously asserts that the trial court considered her “failure to give proper notice [of her intended relocation]” as a basis for denying the relocation; that is false. The court did not do that.

Amy wrongly asserts that the trial court gave *custody* to Hernando at the motion hearing on July 12, 2019. The court did not do that. The court temporarily placed FLS in Hernando’s care, but did so only because Amy asserted she had nowhere to reside in Jefferson County. It is clear in the trial court’s ruling that Amy had put the court in an untenable position by moving with the child in violation of the Relocation Act, and the court had no choice but to place FLS with the father. The court makes it equally clear that Amy could return to court when she “sort[ed] it out” and properly handled the process. CP 19

The trial court further addresses this temporary placement of FLS with Hernando at the reconsideration hearing on August 9, 2019, when the court reinstated the Agreed Final Parenting Plan after Amy stated she would be residing in Port Townsend. CP 19

Amy asserts that the court repeatedly punished her for moving in violation of the Relocation Act. That is not true. The court held Amy accountable for her actions. Her argument that the court relied solely on her failure to give proper notice ignores the reality that Amy also repeatedly disregarded the residential schedule and the court's orders; she made false allegations against Hernando; she denied Hernando his residential time with FLS; she subjected FLS to invasive medical procedures more than once and interviews by Sexual Assault Units for no reason other than to bolster her position. Amy refuses to recognize that it was her own poor choices and disregard for FLS's well-being—and not her failure to give proper notice-- that contributed to the trial court's ultimate decision.

4.

The trial court did not err by maintaining its ruling when, after denying relocation and ordering that FLS would reside primarily with Hernando, Amy, who continues to reside in Whatcom County, queried hypothetically whether the decision would change if she were to return to Kitsap/Jefferson County.

Amy signed a lease and moved to Whatcom County on or about the same day she gave Notice of her Intended Relocation. She has continued to reside in Whatcom County since that time,

and there is nothing before the court to suggest otherwise. She continues to reside in Whatcom County at this time.

After the trial court ruled that it was denying the relocation and placing FLS primarily with Hernando, Amy's attorney asked whether the court were changing the primary placement of FLS if Amy did not relocate. (This was a hypothetical question because Amy had relocated, and there was and has been no evidence of any kind suggesting otherwise.) (RP 258)

The trial court properly confirmed that its order stood.

A parent who waits until after the court rules on a modified parenting plan pursuant to a relocation trial loses the ability to abandon the relocation proceedings. *In re Marriage of McDevitt*, 181 Wn. App. 765, 772-73, 326 P.3d 865 (2014)

Amy cites *In re Marriage of Raskob*, 183 Wash App 503, 334 P.3d 30 (2014) in support of her position, yet that case clearly supports the court's ruling here. In that case, the parent who sought to relocate argued that the trial court abused its discretion in modifying the residential schedule. The appellate court disagreed. *Id.* at 513.

Amy asserts that the court in *Raskob* held that a trial court could only modify a parenting plan after it denies a relocation request when the relocating parent does not abandon their relocation plans. It is unclear how such an assertion supports Amy, as she never abandoned her relocation and did, in fact, relocate just like the relocating parent in *Raskob*. *Id.* at 513.

5.

The trial court correctly denied Amy's request to disqualify Judge Harper, as he had previously made multiple discretionary rulings in the case, and as the request for disqualification came nearly two months after the trial date had been set and only eleven days before trial.

RCW 4.12.050(1)(a) clearly states that an Affidavit of Prejudice must be filed and called to the attention of the judge before the judge has made any discretionary ruling in the case. This is so that a party cannot "forum shop" within a county. It is undisputed that the trial judge had made multiple discretionary rulings when Amy filed her Affidavit of Prejudice on October 11, 2019.

RCW 4.12.050(1)(b) clearly states that in a county with only one resident judge, the notice of disqualification must be filed not later than the day on which the case is called to be set for trial.

Jefferson County is a county with only one resident judge. Trial was set in this case on August 14, 2019. Amy filed her Ex Parte Affidavit of Prejudice on October 11, 2019.

Under either rule, Amy's Affidavit of Prejudice was untimely, and this claim is frivolous and should be sanctioned.

Regardless of the timeliness of the Affidavit of Prejudice, Amy's claims of bias are misplaced and dishonest. Amy asserts that the trial court showed "improper bias and prejudice" toward her before the trial. (Petitioner's Brief 14). This is absurd and contrary to the facts and the law. Amy relocated to Whatcom County without permission, and she provided inadequate notice to Hernando. Once Amy told the court she had a place to stay in Jefferson County, the child was returned to her primary care. Custody was never transferred to Hernando until after the trial in this matter.

Amy cites the trial court's oral ruling at the July 12, 2019 initial objection motion as evidence of the court's bias against Amy. This is simply not true. The court states in its ruling that "[FLS] is going to be with [Hernando] until you sort this out and do it right and figure out how it should have been done...." (RP 14-15) Then, at

the motion for reconsideration hearing before any argument was heard, the court stated “[q]uite frankly, I didn’t see any circumstances that justified this move when it happened prior to a full hearing on it, or a full trial.” (RP 26) Thus, the court did not rely at all on Amy’s lack of proper notice. Once she asserted she would be staying in Jefferson County, FLS was returned to her primary care.

Amy inaccurately claims that the trial judge sought to punish her for “improper notice” in his oral ruling after trial. This is an intentional misrepresentation of the court’s ruling. The trial court highlighted the way in which Amy’s decision to move first and ask permission later resulted in her having a child in Whatcom County and a child who was (supposed to be) in Jefferson County. The court found that Amy sought to force its hand by moving first, and her plan failed. She then made false claims against Hernando and improperly withheld FLS from him. These things worked against Amy, and instead of causing the court to be concerned about Hernando, the court had serious concerns about Amy. The backfiring of a manipulative plan is not a basis for requiring a judge to remove himself from a case.

IV. ATTORNEY FEES

Hernando should be awarded his attorney fees on appeal. This appeal is frivolous and without basis in law or fact. Hernando is requesting an award of attorney fees against Amy and her counsel under RAP 18.9(a). In this case, there are no debatable issues upon which reasonable minds might differ." *Presidential Estate Apartment Associates v. Barrett*, 129 Wash2d 320,330, 917 P.2d 100(1996).

But the frivolity does not end with the lack of debatable issues. Amy and her counsel make gross misrepresentations and base their arguments on clearly unsupportable claims (e.g., the judge's alleged error in not recusing himself when the statute clearly and unequivocally shows that the Affidavit of Prejudice was untimely filed; the claim that the word "detriment" was not used enough while agreeing that the court found that the vast majority of factors weighed in favor of denying relocation).

Amy acted in bad faith when she tried to force the court's hand by moving first and asking for permission later. She denied Hernando residential time in complete disregard of the court's order (and was found in contempt), and she made false allegations

against Hernando, related to FLS, all of which proved to be baseless. Amy contacted CPS, law enforcement, and medical providers – wasting all of those resources and subjecting FLS to experiences no child should have to endure. Amy did all of these things to strengthen her argument in support of her desire to relocate to a place where she had no job, one close friend, and a house for which rent was the same as the home in which she had been residing. There was *nothing* in Maple Falls for FLS.

Hernando, who had just been through these same issues in late 2018 in Kitsap County and thought they were behind them, was forced to hire counsel to address the venue change, the relocation, contempt hearings, and a trial.

Amy has failed to do any of the things required of her in the court's final order. She has paid no child support, and she has contributed nothing to FLS's counseling or activities. She has not paid the attorney fees she was ordered to pay (after two separate contempt findings occurring in the last year).

Amy had the funds to pay her attorney to go to trial to pursue her ill-conceived request to relocate FLS to Maple Falls; she had more funds to finance this baseless appeal. All the while, she

contributes nothing to her child's welfare. It is time for Amy to contribute to her child's financial well-being, and to reimburse Hernando for the attorney fees he has had to pay with funds that he would have far preferred spending on his children.

V. CONCLUSION

This Court should affirm the trial court's written Final Order and Findings, Parenting Plan, and Order of Child Support.

Hernando should also be awarded his fees on appeal.

Respectfully Submitted this 15th day of June 2020.



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