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STATE OF WASHINGTON
COURT OF APPEALS DIVISION III
COA NO. 346463-III

SERGIO E. HERRERA,

APPELLANT,

and

SANDRA VILLANEDA,

RESPONDENT.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION:

Parties¹ were involved in an intimate relationship before Sandra was divorced from her first husband; their son, IH, is born in 2006. Pursuant to a Judgment and Order of Parentage entered in Benton County Superior Court in March 2007, Sergio is IH's father; Sandra is awarded custody and primary residential placement; Sergio is awarded visitation at an unspecified schedule. Under the UCCJEA, Washington has continuing and exclusive control over IH's custody matters, having made the initial custody determination.

Parties marry in 2011; parties separate in 2013.

Sandra moves to Portland, Oregon, taking 7-year-old IH with her. Sandra becomes pregnant, and commutes from Portland to the TriCities for her prenatal care; by design, parties' daughter, EH, is born in Kennewick, WA in April 2014. Under the Washington Uniform Parentage Act ["UPA"] Sergio is the legally presumed father: parties are married; he is identified as father on her birth certificate and EH is given Sergio's last name as her own. The birth certificate is filed with the Washington State Department of Vital Statistics.

¹ Sergio Herrera ["Sergio"] is the petitioner/appellant. Sandra Villaneda ["Sandra"] is the respondent/respondent.

Sandra returns to Portland with EH shortly thereafter, where she continues to reside with both children. Under the UCCJEA, Oregon has jurisdiction over EH.

Sandra files for Unlimited Separation to dissolve the marriage in Oregon in December 2014.

In March 2015 Sergio files a Petition for Residential Schedule in Benton County Superior Court² to establish a visitation schedule for IH, not for custody.

Sandra files two motions under varying theories of the UCCJEA, challenging Washington's jurisdiction over IH; each is denied.

In June 2014, the Washington Court enters a Temporary Parenting Plan for IH establishing visitation on alternating weekends, Fridays to Sundays; extended summer visitation; rotating holidays; and provides that visitation can be exercised in Washington. Sergio never misses a visit.

In August 2015 the Court hears argument on Sandra's motion [her third challenge] to decline Washington jurisdiction, this time pursuant to RCW 26.27.261 for inconvenient forum. The Court makes detailed findings on each of the statutory criteria, concluding

² The Petition for Residential Schedule modifies the 2007 Judgment and Order of Parentage entered regarding IH.

that the weight of the evidence is either “neutral” or “favors Washington”; no evidence supports Oregon. The Court denies declining jurisdiction; the substantial evidence supports Washington as the more convenient forum. A proposed detailed written order is presented December 2015. Before signing the Order Denying to Decline, *sua sponte*, the Commissioner inserts a sentence under Factor No. 7 [RCW 26.27.261(2)(g)] “*Father denied paternity for the youngest child; Paternity has not yet been established.*”³

A month later, in January 2016, Sandra files a *fourth* motion to decline, again under RCW 26.27.261 for inconvenient forum. The Court reverses itself and orders Washington to decline jurisdiction.

The Commissioner did not consider the statutory factors set forth in RCW 26.27.261(2). Rather, the decision is based on the Court’s determination that “EH’s parentage has now been established” by virtue of a copy of DNA test report undertaken in Oregon and filed by Sandra concluding that Sergio “cannot be excluded as the father of EH”. This report is nothing more than cumulative information.

Under the UPA, Sergio has been EH’s presumed father since

³ The sentence is factually and legally incorrect, but carries no weight in changing the Court’s decision to deny declining Washington’s jurisdiction.

her birth; this presumption of parentage continues until an adjudication proceeding is filed and a Court Order is entered saying *he isn't EH's father*. No such adjudication proceeding is ever filed in Oregon or any other court from which such a Court Order would issue. There is no dispute between the parties: Sergio has been EH's father.

The Court on Revision finds that the parentage results for EH “dramatically changes” the court’s analysis of the statutory factors without explaining the dramatic change by analyzing and making findings under the statutory factors.

In the absence of making findings under each of the statutory factors set forth in RCW 26.27.261(2) by the Revision Court, the reviewing court on appeal can look to the findings made by the Commissioner. In this instance, the Commissioner’s decision to decline jurisdiction is also attained without an analysis or findings for each of the statutory factors. Therefore, the reviewing court is left to examine the December 2015 Order Denying to Decline, wherein specific and detailed findings were made for each statutory criteria; and to the record in search of any substantial evidence.

In this case, the Superior Court’s decision on revision is insupportable, and should be reversed and remanded.

II. ASSIGNMENTS OF ERROR:

1. The Revision Court erred in entering an Order Declining Washington's jurisdiction as an inconvenient forum without first *considering and making findings under each of the mandatory statutory criteria set forth in the UCCJEA at RCW 26.27.261(2)*;
2. The Revision Court erred when it failed to consider and apply the provisions of the Washington Uniform Parentage Act [UPA] at Chapter 26.26 RCW to the facts and circumstances;
3. The provisions of RCW 26.26 define the parameters of parentage for children born in this state. Although EH is under Oregon's exclusive jurisdiction under the UCCJEA, she was born in Washington. The Court erred in failing to apply the provisions of RCW 26.26 in "characterizing" Sergio's legal relationship with EH as anything other than "Presumed Father." The provisions of RCW 26.26.116 as applied to the facts confirms that legally Sergio is EH's Presumed Father. This presumption has not been rebutted. RCW 26.26.101. No court in either Oregon or Washington had entered an order declaring non-parentage; and therefore, Sergio's as the presumed father remained the presumed father.
4. The Commissioner erred in finding, in the December 2015 Order Denying to Decline, that: *"Father denied paternity as to the youngest child and that paternity is not yet established"* as another fact under Criteria No. 7, which required consideration of *"the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present evidence"*.
5. The Revision Court erred by failing to comply with the UCCJEA and the UPA, when it made the following findings as its basis to decline Washington's jurisdiction as an inconvenient forum:
 - a. the establishment of Ian's *[sic]* parentage dramatically changes the analysis of the factors set forth in RCW 26.27.261(2);
 - b. while they may have been neutral before parentage was established, and they do not all support the request to litigate the issues of the parenting plan and child support

- in the State of Oregon, they strongly support that position now;
- c. essentially the same witnesses would be called to testify regarding the parenting plans for the two children;
 - d. many would have to travel regardless of whether the issues are tried in Washington or Oregon;
 - e. financially, it makes most sense for the parties to only have one set of attorneys each;
 - f. one court would be most familiar with all of the relevant facts and circumstances, and therefore, be best equipped to formulate complementary and coordinated parenting plans.
6. The Revision Court erred by making a parentage determination for another child [EH] living in another state over whom Washington has no jurisdiction, and then using that parentage determination for that other child, to order to decline Washington's jurisdiction as an inconvenient forum for the child [IH] over whom Washington actually had exclusive and continuing jurisdiction, contrary to the provisions of the UCCJEA and the UPA.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR:

1. Was it error for the trial court to order to decline Washington's jurisdiction as an inconvenient forum without considering and make findings for each of the statutory criteria set forth in RCW 26.27.261(2);
2. Was it error for the trial court to disregarded the provisions of the Washington Uniform Parentage Act [UPA] at Chapter 26.26 RCW in ordering to decline Washington's jurisdiction as an inconvenient forum under the UCCJEA, by making the following findings:
 - a. the establishment of Ian's *[sic]* parentage dramatically changes the analysis of the factors set forth in RCW 26.27.261(2);
 - b. while they may have been neutral before parentage was established, and they do not all support the request to litigate the issues of the parenting plan and child support

- in the State of Oregon, they strongly support that position now;
- c. essentially the same witnesses would be called to testify regarding the parenting plans for the two children;
 - d. many would have to travel regardless of whether the issues are tried in Washington or Oregon;
 - e. financially, it makes most sense for the parties to only have one set of attorneys each;
 - f. one court would be most familiar with all of the relevant facts and circumstances, and therefore, be best equipped to formulate complementary and coordinated parenting plans?
3. Was it error for the Washington Court to establish parentage for EH based on its review of a copy of a DNA test report; and then use that parentage determination as a basis to order Washington to decline its jurisdiction as an inconvenient forum over IH's custody matters?

IV. STATEMENT OF FACTS

Appellant, Sergio Herrera [hereinafter "Sergio"], became intimately involved with Respondent, Sandra Villaneda [hereinafter "Sandra"], while Sandra was separated but not yet divorced from her first husband. CP 84,146, SN 1⁴. Sandra became pregnant and their son, IH, was born in February 2006 in the TriCities, WA. CP 49, SN 1. Their son's birth occurred within 300 days of the Decree ending her first marriage [CP 146, SN 1], and the State filed a paternity action in Benton County Superior Court under Cause No.

⁴ "SN __" is the reference to Clerk's SubNo. 013, Exhibit 1 ["SN"], Pages 1-4 ["SN 1"], a copy of which is included in Appendix A.

06-5-00176-0 in August 2006. CP 32-33, SN 1. The DNA test results identified that Sergio was IH's biological father [CP 146, 235, SN 1], and the Court entered a Judgment and Order of Parentage in March 2007 [CP 234-237] which adjudicated that Sergio is IH's father [CP 85, 235 SN 1]; confirmed WA State to be the child's home state [CP 85, 236, SN 1]; named Sandra as the custodial parent and awarded primary residential placement of IH to her [CP 85, 235-236, SN 1]; and granted unspecified visitation between Sergio and IH [CP 33, 49, 236, SN 1].

Sergio has always been involved in IH's life, even though his relationship with Sandra had been "on again/off again". SN 1. Parties' reconciled and married in November 2011. CP 33, SN 1. Sergio is a military veteran, having served his country with the United States Army, doing two tours in Iraq. His sustained injuries are significant, and he has a 100% disability rating from the US Veteran's Administration, for which he receives disability benefits; he also receives disability benefits from Social Security. CP SN 3. IH has been receiving SSDI dependent disability benefits from Social Security based upon Sergio's disability since April 2011⁵.

⁵ After EH was born in April 2014, application was made to Social Security and her claim was approved, based upon Sergio's veteran's disability, in October

CP 96, SN 3. During the marriage, Sandra completed her degree from Columbia Basin College in radiologic technology and became certified, trained and licensed as Radiologic Technologist working in the medical field. CP 85, 95, 151, SN 1. Her annual income for 2012 was \$43,570 [according to DCS records]. CP 85, 95, 151, SN 1. She left her job at the end of 2012 CP 85, 95, SN 1.

In January 2013, parties separated and Sergio moved into another residence nearby in the TriCities. SN 1. Sergio continued to financially support Sandra and provide for IH's expenses and needs. Parties also continued to jointly parent IH. SN 1. Sergio would take IH to school every morning [CP 85, SN 1]; take him to his soccer practices and games [CP 85, SN 1]; take IH with his friends to outings, to parks; take IH to visit and participate with family gatherings, dinners, birthday parties, holiday celebrations where IH socialized with his extended paternal family residing in the area, since IH was close to his aunts, uncles, and cousins; and otherwise continue to meet his daily nurturing and needs. CP 85-86, 100-113, SN 1.

In June 2013, Sandra relocated to Oregon, taking 7-year-old IH with her, claiming the job opportunities in her field were far better

2014; so that both children each continue to receive SSDI dependent disability benefits paid to them. CP 145.

there than in the TriCities. CP 49, 85, 95, SN 1. Sergio remained living in the Tri-Cities. CP 86, 95.

IH had established significant contacts with Washington during the first 7 years of his life that he lived here; IH grew up in the TriCities and attended kindergarten and 1st grade at Southgate School in Kennewick. SN 2. IH was actively involved in the community, particularly enjoying and participating in playing soccer here in Washington State. CP 97, SN 2. He was also closely bonded with his extended paternal family residing in the TriCities. He maintained those contacts and relationships, even after being taken to Oregon by his mother. CP 96-97, 100-113.

Sergio continued providing financial support for Sandra and IH after she moved to Portland [CP 95, SN 1]; Sergio also continued to be involved in his son's life and his activities. CP 97, SN 2.

Sandra became pregnant again. CP 49, 146, 245, SN 2. Sandra wanted her prenatal care to be provided by her doctor in the TriCities [CP 146, 245, SN 2]; Sergio supported her during this prenatal period, shuttling her and IH from Portland to the TriCities, which also provided additional opportunities for Sergio to visit with his son. SN 2. At Sandra's insistence, the baby was a planned delivery; and their daughter, EH, was born at Kennewick General

Hospital in April 2014. CP 146, SN 2.

EH's Washington State Birth Certificate names Sergio as EH's father; and EH was given Sergio's last name as her own. SN 2. Sergio is legally EH's Presumed Father. SN 2.

Shortly after EH's birth, Sandra returned to Portland and continued to reside there with both children [CP 146]; remaining unemployed. CP 49. Sergio continued residing in the TriCities and visiting his children. CP 97,146. However, Sandra would not allow Sergio any meaningful visitation with EH; when he visited IH, Sandra would allow Sergio a few minutes to a few hours with EH. Sandra would never allow Sergio to visit EH alone; and never allowed Sergio to take EH with him when he visited with IH out in the community. CP 146.

Sergio continued to be involved with IH, taking every opportunity to visit, including attending IH's soccer games on a near weekly basis. SN 2. Sandra's increased insistence that his visitation with IH be exercised only in Oregon was designed to affect IH's ability to integrate into his father's home in Washington; and to maintain the relationships and interactions that IH had enjoyed with his closely connected extended paternal family residing in the TriCities. CP 97, 100-113, 152, SN 2.

In June 2014, while living in Portland, Sandra filed for child support administratively for both children with WA State Division of Child Support ["DCS"]. CP 96-97, SN 2. After a hearing in September 2014, the ALJ's Final Decision and Order of Child Support [CP 15-30] identified Sergio as the father of both IH and EH [CP 16]; and established Sergio's transfer support obligation for both children. CP 86-87, SN 2. The ALJ also gave Sergio credit for his long distance transportation costs related to traveling to Oregon to visit the children twice per month. CP 19, 96. Sandra moved for reconsideration, challenging the frequency of visitation and objecting to the transportation credit, alleging she, too, incurred costs travelling to the Tri-Cities for the children to visit with Sergio⁶. CP 146, 153. The ALJ denied Sandra's Motion for Reconsideration in November 2014. CP 12-14.

A month later, in December 2014, Sandra filed for Unlimited Separation in Oregon. CP 49, 87, SN 2. She misrepresented to the Oregon court that both children "were born of the marriage", that "no other court had jurisdiction over the children" [CP 51, 163, SN

⁶ Sandra told the ALJ that she had made 4 trips to Washington already in 2014 to facilitate Sergio's visitation with IH in the TriCities. CP 153.

4], and requested that custody of both children be awarded to her⁷. Sandra falsely alleged that Sergio committed acts of domestic violence and abuse against her and IH [CP 97,146-147, 153], asserting father's visitation for both children should be supervised and occur in Oregon at mother's sole discretion and direction." CP 163.

In March 2015, Sergio filed a Petition for Residential Schedule in Benton County to establish a visitation schedule for IH. CP1-9, SN 3. At the same time, Sergio wanted assurance that he was EH's biological father⁸; and in order for him to obtain DNA testing, he concurrently filed a separate Petition to Dis-Establish Parentage of EH in Benton County. CP 146-147, SN 3-4.

The Washington Court dismissed the Parentage action outright, and the request for genetic testing along with it, as Washington had no jurisdiction over EH⁹. CP 147-148; Appendix B. Sergio did not re-file a parentage action in Oregon; nor was there any action to

⁷ IH was not born of the marriage; Washington had exclusive and continuing jurisdiction over him; Sandra already was awarded custody of IH.

⁸ Sandra's inexplicable refusal to allow Sergio any meaningful visitation with EH raised doubts; Sergio wanted to put to rest through genetic testing. CP 98, 146-148; SN 3-4; APPENDIX B.

⁹ Oregon had exclusive and continuing jurisdiction over EH's custody matters.

adjudicate EH's parentage pending before any Court of law.¹⁰

The Court refused to dismiss the Petition for Residential Schedule, finding that WA had exclusive and continuing jurisdiction over IH's custody matters since 2007 [CP 32-34] and the WA Court restated its intent to continue exercising that jurisdiction for purposes of entering a visitation schedule between IH and Sergio. CP 87.

On June 4, 2015 the Court entered a written Order Denying to Dismiss the petition for Residential Schedule [CP 32-34]; and then issued a decision denying Sandra's second motion challenging jurisdiction, the handwritten Order Denying Motion to Stay provided:

"WA state has had exclusive and continuing jurisdiction over Ian since 2007, and therefore his custody does not fall within the guidelines of a dissolution or separation. Regardless of what Oregon proceedings have been filed, WA State has exclusive and continuing jurisdiction for all custody determinations regarding Ian, including the father's Petition for Residential Schedule. Washington has not declined its jurisdiction and father's petition shall proceed before this court for custody determinations. Respondent's motion to stay and for courts to "confer" under UCCJEA is DENIED..."
CP 35-36, 57.

The Court then granted Sergio's motion and entered a

¹⁰ Parties privately agreed to undertake DNA testing in Oregon. The results were sent to the parties in late August 2015, and confirmed that Sergio was EH's father. CP 147. Sandra included a copy of the results along with other documents filed in support of her motion for reimbursement of medical costs in October 2015 in Washington. CP 147

Temporary Parenting Plan [CP 37-45] establishing his visitation with IH, to occur in Washington State on alternating weekends, Fridays to Sundays [CP 38], with extended summer visitation [CP 39] and rotating holidays. CP 40-41, 60-63. Counsel for both parties amended a proposed written Temporary Parenting Plan that expanded the Court's decision to include other parenting plan provisions, agreeing that: no parental restrictions applied [CP 37-38]; there was no basis to limit visitation or decision-making [CP 41]; provided for joint decision-making of major decisions for IH [CP 43]; allowed for mediation [CP 43-44]; and itemized additional rights to access records, keep each other informed, and the like, under "Other Provisions". CP 44-45.

The Court considered and rejected Sandra's allegations of domestic violence and abuse against Sergio [CP 59, 73-74, 89-90, 97]; the Court found there was no evidence of any domestic violence or abuse. CP 189-190. The single police report that Sandra presented was disallowed as a one-sided narrative of events, noting that Sandra later refused to cooperate with any prosecution. CP 77-79, 97, 153.

Sandra filed a third motion, this time squarely asking to have Washington state decline its jurisdiction as an inconvenient forum

under RCW 26.27.261. CP 65-71, 83. Sergio's responsive pleadings included declarations from his family members attesting to the close involvement that IH had enjoyed with his extended paternal relations living in the TriCities, and also attesting to the relationship that IH and Sergio savored. CP 100-113, 148.

At the August 13, 2015 hearing, the Court's ruling made detailed findings as to each statutory factor, ruling that the substantial evidence was either "neutral" or "favored" Washington's continuing jurisdiction, and concluded that the overwhelming evidence weighed in favor of Washington as the more convenient forum, ordering that Washington would not decline its jurisdiction over IH. CP 189-192. After issuing its oral decision denying declining jurisdiction, the Court addressed and rejected Sandra's argument to consolidate parenting issues for both children in Oregon:

"...there was not substantial evidence by which this court would determine that there is a basis to change jurisdiction to the State of Oregon. Argument is made that well the other child lives in Oregon and there's pending actions in Oregon and their divorce is pending in Oregon and that affects that particular child. There's been no establishment of paternity and that's why I asked the question in regards to that matter [VRP 14:19-25] because in that particular situation, if the father is determined not to be the father of the youngest child, then that becomes a moot issue. Okay. So, we don't have to try to have paired parenting plans between the two parties, and that can still be done even though we may have two jurisdictions operating in regards to these particular

children. So, Washington will retain jurisdiction in this particular matter and this matter will go forward according to the case scheduling order.” CP 192.

In October 2015, Sandra was held in contempt of the joint decision-making provisions of the June Temporary Parenting Order by unilaterally enrolling IH in soccer, when his games fell during Sergio’s residential time. CP 149. The Order on Contempt [CP 118-122] found that Sandra “*had the ability but didn’t have the willingness to comply*” with the Parenting Plan Order. CP 120.

A proposed written Order Denying to Decline Jurisdiction was presented December 2015 incorporating the detailed findings of the Court’s August oral decision, and concluding substantial evidence weighed in favor of Washington as the more convenient forum, denying to decline. CP 124-128. *Sua sponte* the Commissioner handwrote: “*Father denied paternity as to the youngest child and that paternity is not yet established*” as one more fact under statutory criteria No. 7, which provides for consideration of “*the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present evidence*”; before signing and entering the Order. CP 127.

A copy of the Oregon General Judgment dissolving the marriage was filed with the WA court on December 14, 2015 [CP

132-138]. Nowhere in that Oregon Decree is there mention of DNA testing, nor mention of EH's parentage having been challenged, established or adjudicated. CP 172-177. Rather, paragraph 5 of the Findings states:

...There have been two joint children born between the parties, namely IH (DOB: 1996 sic) and EH (DOB: 2014)...The State of Washington has made determinations regarding the support, but declined jurisdiction regarding the custody and parenting time of and for EH... CP 173.

And, paragraph 2 of the Order states:

...Wife is awarded sole legal custody of the minor child, EH, (DOB:2014)... CP 174

Even though Sandra had the DNA test results confirming Sergio to be EH's father since August 2015, she refused to allow him any visitation with EH. CP 149. The Oregon Decree includes a minimal schedule for Sergio's visitation with EH, for a half hour increasing to a couple of hours, being supervised only, which "dovetailed" with IH's alternating weekend visitation under the WA parenting order. CP 134, 137, 172-177. This pairing of schedules is consistent with the oral comments made by the Commissioner at the hearing in August: "*two jurisdictions overseeing two schedules for two children -- it can be done.*" CP 309.

In January 2016 Sandra filed a fourth motion for Washington to

decline jurisdiction, again as an inconvenient forum [CP 139]; this time, asserting that EH's "paternity had now been established," and urging the Court to transfer jurisdiction over IH's custody matters to Oregon, by relying upon a copy the genetic testing report filed with the Court in October 2015. CP 116-117.

The Commissioner's oral decision at the January 2016 hearing [CP 294-296] did not address the statutory factors in RCW 26.27.261, but ruled to decline jurisdiction:

... We now know that Mr. Herrera is in fact the father of Eliana which he denied for most of the term during this particular action. And so my decisions have been because until there was determination of parentage in regards to Eliana there was no need to move this case to Oregon ... CP 295.

In regards to witnesses there are witnesses on both sides of the border witnesses here witnesses in Oregon and while there may be witnesses in regards to Ian in the State of Washington all of the witnesses with regards to Eliana live in Oregon where she has resided since her birth. CP 295.

The Commissioner signed an Order Declining Jurisdiction that recited the identity of the parties and simply ordered:

"...pursuant to RCW 26.27.261, the court, in exercising its discretion, has determined that Oregon is the more appropriate jurisdiction for this proceeding and, therefore, orders that Washington is an inconvenient forum." CP 185-186; 205.

Sergio filed a Motion for Revision. CP 200-222.

On April 7, 2016 Judge Spanner signed an Order on Revision

that “affirmed” and “revised” the Commissioner’s decision [CP 298-299], attaching a letter ruling. CP 300-301. The Judge’s letter ruling approved the Commissioner had “*properly exercised his discretion*” in declining WA state jurisdiction. Without making findings for each of the statutory factors, the Judge found:

“the establishment of Ian’s¹¹ [sic] parentage dramatically changes the analysis of the factors set forth in RCW 26.27.261(2)... CP 300.

the same witnesses would be called to testify regarding the parenting plans for the two children. Many would have to travel regardless of whether the issues are tried in Oregon or Washington... CP 300.

Financially, it makes most sense for the parties to only have one set of attorneys each.... CP 300-301.

One court would be most familiar with all of the relevant facts and circumstances, and therefore, be best equipped to formulate complimentary and coordinated parenting plans...” CP 301.

On July 13, 2016 Judge Spanner entered a written Amended Order Declining Jurisdiction Pursuant To RCW 26.27.261 And Denying Motion For Revision consistent with his April 7th letter, but striking the “child support” issues, which remain viable before the Benton County Court. CP 312-313.

Subsequently, Sergio filed his Notice of Appeal of the July 13, 2016 Amended Order Declining Jurisdiction entered by Judge Spanner. CP 342-345. Sergio had also filed motions to vacate the

¹¹ It was actually EH’s parentage that the Court believed had just been established; IH’s parentage had been established in 2007.

July 13, 2016 Amended Order Declining Jurisdiction [CP 315-327, 373-374] on the basis that it was improperly presented for signature, entry; that the purposes for which the Order was entered could not be fulfilled [CP 328-341, 375-376]; and to stay the Order pending appeal. CP 349-366, 377.

Judge Spanner denied all three motions in a single handwritten Order entered September 2, 2016. CP 378-379. The Commissioner of the Court of Appeals denied Sergio's motion to stay proceedings pending appeal. A Judgment Dismissing the Residential Schedule portion of the Petition squarely putting Sergio's appeal before the Court of Appeals as a matter of right. CP 380. The child support issues for IH remain pending before the Benton County Superior Court. CP 380.

V. LEGAL AUTHORITY AND ARGUMENT

A. THE REVIEW ON APPEAL IS FROM THE TRIAL COURT'S DECISION DENYING REVISION; AND THE STANDARD OF REVIEW IS ABUSE OF DISCRETION:

This is an appeal of Commissioner Schneider's ruling at the January 2016 hearing declining Washington's jurisdiction as an inconvenient forum under RCW 26.27.261; which Judge Spanner affirmed on revision, his letter ruling in April 2016 reiterating the oral findings made by Commissioner Schneider. Therefore, both the

Commissioner's findings, conclusions and rulings and the Revision Court's letter ruling are presented for review in this appeal.

As provided in *State ex rel. J.V.G. v. Van Guilder*, 137 Wn.App. 417, 423, 154 P.3d 243 (Div. 1 2007)

¶ 9 Generally, we review the superior court's ruling, not the commissioner's. [3] But when the superior court denies a motion for revision, it adopts the commissioner's findings, conclusions, and rulings as its own.

In *Williams v. Williams*, 156 Wn.App. 22, 27-28, 232 P.3d 573 (Div. 3 2010):

¶ 8 On a revision motion, a trial court reviews a commissioner's ruling de novo based on the evidence and issues presented to the commissioner (citations omitted)...

¶ 9 ... A revision denial constitutes an adoption of the commissioner's [156 Wn.App. 28] decision and the court is not required to enter separate findings and conclusions. *In re Dependency of B.S.S.*, 56 Wash.App. 169, 171, 782 P.2d 1100 (1989). The commissioner's oral findings adopted by the revision court are sufficient for review.

The Commissioner's decision to decline Washington's jurisdiction as an inconvenient forum under RCW 26.27.261, as affirmed by the Revision Court's decision, is reviewed for an abuse of discretion.

In re Marriage of Luckey, 73 Wn.App. 201, 208, 868 P.2d 189 (Div. 3 1994)

In matters dealing with the welfare of children, trial courts are given broad discretion. *In re Marriage of Cabalquinto*, 100

Wash.2d 325, 327, 669 P.2d 886 (1983). ... The trial court's disposition of a case involving rights of custody and visitation will not be disturbed on appeal unless the court manifestly abused its discretion. *Cabalquinto*, 100 Wash.2d at 327, 669 P.2d 886.

In re Marriage of Payne, 79 Wn.App. 43, 54, 899 P.2d 1318

(Div. 2 1995)

The determination of whether to decline to exercise jurisdiction is reviewed for an abuse of discretion. *Greenlaw*, 123 Wash.2d at 608-09, 869 P.2d 1024. The trial court abuses its discretion by exercising it on untenable grounds or for untenable reasons. *Coggle v. Snow*, 56 Wash.App. 499, 507, 784 P.2d 554 (1990).

In re Marriage of Greenlaw, 123 Wn.2d 593, 607-609, 869 P.2d

1024 (1994) the Supreme Court explained:

Consistency and clarity are important to this area of law and the UCCJA was "designed to bring some semblance of order into the existing chaos" of pre-UCCJA decisions. [26]

Interpreting the UCCJA to allow an automatic shift in modification jurisdiction simply because a child establishes a new home state would not further the purposes of the Act as it would permit forum shopping and instability of custody decrees. [27] 123 Wn.2d 608 ...

RCW 26.27.070 provides that a court which has jurisdiction to determine custody or to modify a custody order may decline to exercise its jurisdiction if it is an inconvenient forum to make a custody determination under the circumstances of the case and the 869 P.2d 1034 court of another state is a more appropriate forum. [30]

In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors ... 123 Wn.2d 609 ...

Such a ruling is discretionary. [32] A trial court abuses its discretion when its decision is manifestly unreasonable or

based on untenable grounds. [33]

In *Coggle v. Snow*, 56 Wn.App. 499, 504-505, 784 P.2d 554 (Div. 1 1990) the Court analyzed the meaning of "abuse of discretion":

The ruling on the motions for a continuance and for reconsideration is within the discretion of the trial court and is reversible by an appellate court only for a manifest abuse of discretion. *Turner v. Kohler*, 54 Wash.App. 688, 693, 775 P.2d [784 P.2d 558] 474 (1989); *Perry v. Hamilton*, 51 Wash.App. 936, 938, 756 P.2d 150 (1988).

The rule is simply stated, but the standard by which to determine whether a trial court has properly exercised its discretion is in disarray in this state. Thus it is necessary to review this standard.

Ruggero J. Aldisert, in *The Judicial Process* (1976) at 742, states:

Bouvier's Dictionary defines discretion as "that part of the judicial function which decides questions arising in the trial of a cause, according to the particular circumstances of each case, and as to which the judgment of the court is uncontrolled by fixed rules of law. The power exercised by courts to determine questions to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court." ... The crucial inquiry, necessarily, is the extent of the discretionary power conferred. Thus, while the recent commentators have outlined sophisticated nuances, it remains for the courts to calibrate its full measure.

Justice Benjamin Cardozo in his series of lectures collected in *The Nature of the Judicial Process* (1921), reflected on the nature of judicial discretion:

The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight-errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and

unregulated 56 Wn.App. 505 benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to "the primordial necessity of order in the social life." Wide enough in all conscience is the field of discretion that remains.

The precise meaning of discretion is affected by the reasons and the purposes for which the decision maker is to exercise his or her discretion. Discretion may mean that the decision maker is not bound by standards; on the other hand, it may mean simply that the decision-maker must exercise judgment in applying certain standards or that he or she has final authority in the matter, without review by other authority. See Dworkin, *The Model of Rules*, 35 U.Chi.L.Rev. 14, 32-34 (1967). ...

In this context, we turn to Washington case law concerning the exercise of judicial discretion. In *State ex rel. Ross v. Superior Court*, 132 Wash. 102, 107, 231 P. 453 (1924), the court, in considering a motion for change of venue, stated that "discretion in this regard is never arbitrary. It must, like discretion in other matters, be based on reason." The court in *State ex rel. Beffa v. Superior Court*, 3 Wash.2d 184, 100 P.2d 6 (1940), held ... held that "it can safely be said that abuse of judicial discretion is not shown unless the discretion has been exercised upon grounds, or to an extent, clearly untenable or manifestly unreasonable." *Beffa* at 190, 100 P.2d 6. Accord, *State ex rel. Nielsen v. Superior Court*, 7 Wash.2d 562, 579, 110 P.2d 645, 115 P.2d 142 (1941); *Holm v. Holm*, 27 Wash.2d 456, 463, 178 P.2d 725 (1947). This standard, like that articulated by the above quoted commentators, requires decision-making founded upon principle and reason.

Here, the Commissioner's and the Revision Court's decisions declining Washington's jurisdiction are not founded upon either principle or reason.

B. WASHINGTON HAS EXCLUSIVE AND CONTINUING JURISDICTION OVER IH:

It is undisputed that Washington has exclusive and continuing

jurisdiction over IH under the UCCJEA, having previously entered a Judgment and Order Determining Parentage for IH in Benton County in 2007, adjudicating Sergio to be IH's father; awarding Sandra custody and primary residential placement and allowing Sergio unspecified residential time with the child. IH resided in the Tri-Cities exclusively. Parties married in 2011 and separated in 2013. Sandra relocated to Portland, taking 7 year-old IH with her; Sergio remained living in Washington State. After separation, Sergio persevered in maintaining his father/son relationship; IH maintained his ties with friends, activities, and his large extended paternal family located in Washington.

Sergio filed a Petition for Residential Schedule in March 2015 in Benton County seeking a parenting plan, not for a change of custody. In June 2015 the Court entered a Temporary Parenting Plan that established a regular "standard" visitation schedule for Sergio and IH, to be exercised in Washington: alternating weekends, extended summer visitation, rotating holidays, joint decision-making.

In October 2015, Sandra was found in contempt of the temporary parenting order for unilaterally scheduling activities for IH during Sergio's residential time; the court found Sandra had the "ability but

not the current willingness to comply” with the Court’s orders. In December 2015, the Court entered a Temporary Order for Holiday Visitation and school breaks. Sergio never missed a day of his residential time with IH under those orders; all of it exercised in Washington State.

Under the UCCJEA, Washington has exclusive and continuing jurisdiction over IH until all parties leave and no longer reside here or until Washington declines its jurisdiction. Sergio continues to reside in Washington; and IH’s substantial connections with Washington are still maintained even after his mother took IH to Portland.¹²

In *In re Custody of A.C.*, 165 Wn.2d 568, 574-575, 200 P.3d 689 (Wash. 2009)

¶ 6 The UCCJEA arose out of a conference [4] of states in an attempt to deal with the problems of competing jurisdictions entering conflicting interstate child custody orders, forum shopping, and the drawn out and complex child custody legal proceedings often encountered by parties where multiple states are involved. UCCJEA prefatory note, 9 pt. 1A U.L.A. at 651; UCCJEA § 101 cmt., 9 pt. 2A U.L.A.

¹² Under RCW 26.27.261(2)(h) Factor #8, the Dec. 2015 Order Denying to Decline found the overwhelming evidence supported Washington as being most familiar with facts and issues pertaining to a residential schedule; the temporary parenting plan established regular and consistent visitation which father has followed to the letter; this evidence does not support the trial court’s finding in April 2016 that Factor #8 now favors Oregon based on the establishment of EH’s parentage.

at 657. ...

¶ 7 ... The UCCJEA determines when one state may modify an "initial child custody determination" made by another state. RCW 26.27.201(1), .221. ...

¶ 9 In essence, the UCCJEA provides that unless all of the parties and the child no longer live in the state that made the initial determination sought to be modified, that state must first decide it does not have jurisdiction or decline jurisdiction...

Footnote 7 at page 582 emphasizes that in deciding whether to decline jurisdiction, a Court must consider *all* of the relevant factors set forth in RCW 26.27.261:

[7] The comment to the UCCJEA also states that a party seeking to modify a custody determination must obtain an order from the original state stating that it no longer has jurisdiction. UCCJEA § 202 cmt., 9 pt. 1A U.L.A. at 674. Even when the original state continues to have jurisdiction, it may decline to exercise that jurisdiction if it determines that another state is a more convenient forum and in a better position to make a custody determination. RCW 26.27.261; UCCJEA § 207 cmt., 9 pt. 1A U.L.A. at 683. A court that declines jurisdiction under section 207 should do so only after considering all relevant factors. *Id.* [emphasis, mine].

The Supreme Court's analysis in *In re Marriage of Greenlaw*, 869 P.2d 1024, 123 Wn.2d 593, 608 (Wash. 1994), further explains that in deciding whether to decline jurisdiction, the court must consider if it is in the best interests of the child that the other state accepts jurisdiction as the more convenient forum, which is accomplished by considering statutory factors:

RCW 26.27.070 provides that a court which has jurisdiction to

determine custody or to modify a custody order may decline to exercise its jurisdiction if it is an inconvenient forum to make a custody determination under the circumstances of the case and the [869 P.2d 1034] court of another state is a more appropriate forum. [30]

In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors... [emphasis, mine].

The December 2015 Order Denying to Decline jurisdiction makes findings of facts for each statutory factor and concludes the substantial evidence supports that Washington remains the more convenient forum for IH.

After parties separated in June 2013, Sandra became pregnant. The parties' daughter, EH¹³, was born in the Tri-Cities in April 2014, and then Sandra returned with both children to continue residing in Oregon. EH's custody matters are under the exclusive jurisdiction of Oregon; and EH's custody matters have no bearing on Washington's mandate to act in IH's best interests.

In December 2014, Sandra filed a Petition for Unlimited Separation in Oregon, seeking to dissolve her marriage, including IH in the action. Yet: IH was not born of the marriage; Washington had exclusive jurisdiction over IH's custody matters; and the 2007

¹³ The birth of EH in Washington was by design; Sergio is named as her father on her birth certificate and she is given Sergio's last name to have as her own. Sergio is the Presumed Father of EH; that presumption is never rebutted.

Order and Judgment of Paternity already awarded Sandra custody of IH.

C. THE SUPERIOR COURT PROPERLY ORDERED TO DENY DECLINING WASHINGTON'S JURISDICTION OVER IH AS AN INCONVENIENT FORUM TO OREGON:

Sandra filed four separate motions in the Residential Schedule and Support action pending in Benton County, seeking to have Washington's jurisdiction over IH transferred to Oregon:

FIRST ORDER: JUNE 4, 2015: The Court Denied to dismiss the residential schedule action; a written Order Denying Dismissal was entered.

SECOND ORDER: JUNE 4, 2015: The Court Denied Washington to stay its proceedings and confer with the Oregon judge. The Court stated:

"WA state has had exclusive and continuing jurisdiction over Ian since 2007, and therefore his custody does not fall within the guidelines of a dissolution or separation. Regardless of what Oregon proceedings have been filed, WA State has exclusive and continuing jurisdiction for all custody determinations regarding Ian, including the father's Petition for Residential Schedule. Washington has not declined its jurisdiction and father's petition shall proceed before this court for custody determinations. Respondent's motion to stay and for courts to "confer" under UCCJEA is DENIED."
[emphasis, mine]

On the heels of this Order, the Court entered a Temporary

Parenting Plan providing for visitation between Sergio and IH to occur in Washington State. The Parenting Plan is the heart of the action before the Washington Court. The Court's focus in later analyzing the statutory criteria under RCW 26.27.261(2) found Washington the more convenient forum because the location of the father's visitation with IH continued to occur in Washington, and the information from that venue was "paramount" in assessing the best interests of IH; and Washington had the most information to develop a residential schedule for IH and Sergio.

THIRD ORDER: Sandra moved for Washington to decline its jurisdiction, squarely under RCW 26.27.261 as an inconvenient forum. At the August 2015 hearing, the Court made oral findings for each of the RCW 26.27.261(2) statutory factors: Nos. 1, 2, 6, 7, and 8 all "favored" Washington; statutory factors: No. 3, 4 and 5 were "neutral". No findings favored Oregon. Those findings were incorporated into the written Order Denying to Decline Jurisdiction entered December 2015, as follows: RCW 26.27.261(2)

FACTOR NO. 1: (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

FAVORS WASHINGTON: The court finds there has been no domestic abuse by the father against the mother or the child. However, if any were to occur in the future, Washington state is in a better position to address that abuse, as the father resides here and

the child's visitation with father occurs here.

FACTOR NO. 2: (b) *The length of time the child has resided outside this state;*

FAVORS WASHINGTON: The child was 7 years old at the time of this relocation, having spent the first 7 years of his life in Washington state. The Court finds this factor weighs in favor of Washington continuing its jurisdiction over the child.

FACTOR NO. 3: (c) *The distance between the court in this state and the court in the state that would assume jurisdiction;*

NEUTRAL: This factor weighs neither favorably or unfavorably, as either the father would have to travel to Oregon or the mother would have to travel the same distance to court in Washington.

FACTOR NO. 4: (d) *The relative financial circumstances of the parties;*

NEUTRAL: Both parents have adequate financial resources to participate in the court proceedings in Washington state.

FACTOR NO. 5: (e) *Any agreement of the parties as to which state should assume jurisdiction;*

NEUTRAL: ...The Court finds the father originally agreed to allow mother and child to relocate to Oregon, although he later changed his mind about relocating to Oregon himself.

FACTOR NO. 6: (f) *The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;*

FAVORS WASHINGTON: This is a proceeding for a residential schedule and child support; not a proceeding for a change of custodial placement from mother to father. Therefore, it is to where the father resides and the environment and circumstances where the child will be during his residential time with the father that is paramount in these proceedings. That evidence is to be found in Washington state, not Oregon.

FACTOR NO. 7: (g) *The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;*

FAVORS WASHINGTON: The mother filed an action for legal separation which is pending in Oregon. However, there has been no evidence presented as to how quickly matters are processed from filing to trial in Oregon. In contrast, this proceeding in Benton County is maintained pursuant to a scheduling order that maintains constant oversight to ensure that the matter is expeditiously resolved. "Father denied paternity for parties' youngest child; paternity has not yet been established."

FACTOR NO. 8: (h) The familiarity of the court of each state with the facts and issues in the pending litigation.

FAVORS WASHINGTON: Child has been under purview of Benton County Superior Court since 2006. WA is the most familiar with the facts and issues pertaining to establishing a residential schedule for father with IH, particularly since June 2015 when the temporary parenting plan was entered establishing a regular and consistent visitation which father has followed to the letter.

[underlined portions, mine].

The Court ordered to deny declining jurisdiction:

*Based upon the court's recitation in regards to those factors the court would determine in this matter that Washington will retain jurisdiction **there is not substantial evidence by which this court would determine that there is a basis to change jurisdiction to the State of Oregon.*** [emphasis, mine]

The substantial evidence supports the Court's decision refusing to decline Washington's jurisdiction. The findings for each of the eight statutory factors are founded in prior declarations filed by the parties, the pleadings, arguments of counsel and orders entered by the Court. The overwhelming evidence demonstrates that Washington is the more convenient forum and therefore in the best position to continue to address IH's custody matters: because Washington is the location of IH's visitation with his father, IH's connections here with the community, activities, extended family and friends, and the like continue; and the Washington courts have the most familiarity in addressing the issues. By the Court's thorough analysis of the statutory factors in RCW 26.27.261(2), the

best interests of IH were protected.¹⁴

D. THE WASHINGTON COURT CANNOT ESTABLISH PARENTAGE FOR EH BY REVIEWING A DNA REPORT; AND THEN USE THAT AS A BASIS TO DECLINE WASHINGTON'S JURISDICTION OVER IH AS AN INCONVENIENT FORUM:

FOURTH ORDER. In January 2016 Sandra filed a fourth motion to decline, again based on inconvenient forum under RCW 26.27.261. This time, the motion argued that Oregon was now the more convenient forum because a genetic test from Oregon reported that Sergio “*could not be excluded as EH’s father.*”¹⁵

The conclusion “*cannot be excluded as EH’s father*” does not and cannot constitute the “establishment of EH’s parentage.” Under RCW 26.26.011(7) “*Determination of parentage*” means the establishment of the parent-child relationship by the signing of a valid acknowledgment of paternity...or adjudication by the court. No such adjudication occurred.

¹⁴ The exception is the inserted sentence in Factor 7: “*Father denied paternity for parties’ youngest child; paternity has not yet been established.*” This was inserted *sua sponte* by the Commissioner before he signed and entered the Order. It is contradicted by his oral comments made in August 2015; it is also factually and legally incorrect under the provisions of the UPA, Chapter 26.26 RCW. Sergio was EH’s Presumed Father from birth, and that statutory presumption continues until such time as a Court in an action to adjudicate paternity enters an Order that says otherwise.

¹⁵ Sandra had filed a copy of these results in October 2015 related to her request for reimbursement of medical costs for EH.

The Commissioner, relying on this single page DNA report, declared that “*EH’s parentage had now been established*”; and ordered: now that EH’s paternity had been established, Washington would decline its jurisdiction as an inconvenient forum. The Commissioner explained:

We now know that Mr. Herrera is in fact the father of Eliana which he denied for most of the term during this particular action. And so my decisions have been because until there was determination of parentage in regards to Eliana there was no need to move this case to Oregon...

This explanation is manifestly unreasonable and untenable:

“We now know that Mr. Herrera is in fact the father of EH.” In fact, the Court has *always known* that Sergio was EH’s presumed father at the time each of the Court’s prior decisions were entered that refused to decline Washington’s jurisdiction over IH. Under RCW 26.26.011(21): “*Presumed parent*” means a person who, by operation of law under RCW 26.26.116, is recognized as the parent of a child until that status is rebutted or confirmed in a judicial proceeding. Under RCW 26.26.116: (1)(a)...*a person is presumed to be the parent of a child if the person and the mother of the child are married to each other and the child is born during the marriage.*

“Which he denied for most of term of this particular action...” In fact, whatever the verbal or written “denials” that the Court

perceives may have been uttered or written by Sergio or argued by his counsel are legally irrelevant. Under RCW 26.26.116(3) *A presumption of parentage established under this section may be rebutted only by an adjudication under RCW 26.26.500 through 26.26.630.*

“And so my decisions have been because until there was determination of parentage in regards to Eliana there was no need to move this case to Oregon...” In fact, not a single decision made by the Court has ever uttered this condition precedent; in fact, the Court’s prior three decisions are crystal clear as to the Court’s emphatic refusal to decline Washington’s jurisdiction. There was no evidence to be found in Oregon that pertained to establishing a residential schedule between Sergio and EH; and, in fact, establishing a residential schedule was the only custody matter pending before the Washington Court to be determined.

In fact, the Court summarily dismissed the petition Sergio filed to ‘dis-establish paternity’, summarily dismissing the only vehicle available Sergio access in Washington to confirm he was the Presumed Father. The Court finding that Washington had no jurisdiction over EH to determine custody matters because “Oregon was EH’s ‘home state’” and only Oregon could establish EH’s

parentage. In fact, the December 2015 Oregon General Judgment dissolving Sandra and Sergio's marriage mentioned nothing to suggest EH's parentage had ever been questioned, let alone resolved, in those proceedings.

Finally, the Court's suggestion that all prior orders which refused to decline Washington's jurisdiction were merely some kind of an exercise in treading water until EH's paternity was established is not founded on any evidence in the record.

Before ruling on the Fourth Motion to Decline, the Court was required to engage in another analysis of each statutory factors set forth in RCW 26.27.261(2). The evidence is that the Court's granting to decline jurisdiction was made solely on a reading of an out-of-state one-page genetic test report that the Court untenably "declared" as "establishing EH's parentage". In fact, the Court's actions in failing to consider each of the statutory factors before deciding to decline impermissibly prioritized EH's best interests above IH's best interests, which violates the Court's mandate to protect IH's best interests.

On Revision, Judge Spanner affirmed the Commissioner's decision to decline Washington's jurisdiction; his separate written ruling declared "*the establishment of EH's parentage dramatically*

changes the analysis of the statutory factors under RCW 26.27.261(2)” – yet again, a full analysis of each of the statutory factors was not made. The “findings” affirmed on revision have are not supported by the evidence; and the only “analysis” undertaken is predicated to address the best interests of EH; not protect the best interests of IH.

The overwhelming evidence supports the December 2015 Order Denying to Decline; the itemized findings made for each statutory factor set forth in RCW 26.27.261(2) support that Washington is the more convenient forum. The December Order protects IH’s best interests for visitation with his father in Washington.

The Commissioner’s reversal of that decision, a month later, is made without undertaking a separate process of making findings for each of the statutory criteria; there is no evidence in the record to illustrate what had changed since December. No rational person would have declined Washington’s jurisdiction to establish a Residential Parenting Schedule for IH based upon a DNA test report for a different child living in another state.

In the December 2015 Order Factor #7 favored Washington:

FACTOR NO. 7: (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence:

FAVORS WASHINGTON: The mother filed an action for legal separation

which is pending in Oregon. However, there has been no evidence presented as to how quickly matters are processed from filing to trial in Oregon. In contrast, this proceeding in Benton County is maintained pursuant to a scheduling order that maintains constant oversight to ensure that the matter is expeditiously resolved. *“Father denied paternity for parties’ youngest child; paternity has not yet been established.”*

Despite the Court inserting this sentence about EH’s paternity, the Court’s overwhelming findings in the 8 factors favored Washington. Even assuming the January 2016 comments about EH’s parentage based on genetic testing fall within the parameters of this Statutory Factor #7, the Court fails to explain how a change in EH’s parentage overrides the substantial evidence that this factor “favors Washington.” The January 2016 comments “find”:

- father denied paternity for most of these proceedings
- the prior orders denying to transfer this case to Oregon were based on father’s denial of paternity;
- the DNA test results are dispositive in establishing EH’s parentage that Sergio is her father

For the Court to have properly exercised its discretion, these January 2016 “findings” ostensibly would supersede the original hand-inserted sentence about EH’s parentage; leaving the rest of the “findings” for Factor #7 intact. Thus, the substantial evidence still favors Washington; not Oregon.

Additionally, these January 2016 “findings” are based upon an erroneous view of the law. As discussed in greater detail below: under the UPA at Chapter 26.26 RCW, Sergio was the Presumed

Father of EH as of her birth; that statutory presumption continues until a Court Order says otherwise; the DNA test report alone cannot “establish” parentage, or rebut the statutory presumption. There is no Court Order issued from Oregon that rebuts the statutory presumption.

Similarly, any verbal and written statements or arguments by the parties “denying” paternity have no effect on the UPA’s statutory presumption. See RCW 26.26.116(3). Even if Sergio had filed for an adjudication of EH’s parentage in Oregon, the statutory presumption continues until a Court Order is entered that says otherwise. EH’s parentage has always been “established”. The Commissioner failed to recognize the statutory presumption for the Presumed Father in this case.

The other “findings” by the Commissioner in the January 2016 decision are equally insufficient, based upon a lack of evidence, to overcome the findings as stated in the December 2015 Order Denying to Decline, which are supported by overwhelming evidence. The December 2015 Order Denying to Decline made these findings under Factor #6 regarding evidence and witnesses:

FACTOR NO. 6: (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
FAVORS WASHINGTON: This is a proceeding for a residential schedule

and child support; not a proceeding for a change of custodial placement from mother to father. Therefore, it is to where the father resides and the environment and circumstances where the child will be during his residential time with the father that is paramount in these proceedings. That evidence is to be found in Washington state, not Oregon.

Accordingly, EH's parentage is not pertinent to the identity and location of IH's witnesses. At the January 2016 hearing, the Commissioner stated that EH's witnesses all reside in Oregon¹⁶ and all of IH's witnesses reside in Washington. There is no evidence presented at the January 2016 hearing to refute the finding made in the December 2015 Order, that the information pertaining to a decision on IH's visitation issues "is to be found in Washington State, not Oregon."

In the December 2015 Order the Court found that parties had the financial wherewithal to participate in the Washington proceedings.

FACTOR NO. 4: (d) The relative financial circumstances of the parties;

NEUTRAL: Both parents have adequate financial resources to participate in the court proceedings in Washington state.

The evidence supporting this factor in December 2015 remains unchanged by the January 2016 decision "establishing EH's parentage".

¹⁶ There is no evidence in the record that identifies EH's witnesses; this "conclusion" is based on speculation or hypothetical inductive reasoning.

On Revision, Judge Spanner affirmed the Commissioner's decision; his letter ruling "finds":

- ...the establishment of Ian's *[sic]* parentage dramatically changes the analysis of the factors set forth in RCW 26.27.261(2);
- while they may have been neutral before parentage was established, and they do not all support the request to litigate the issues of the parenting plan and child support in the State of Oregon, they strongly support that position now;
- essentially the same witnesses would be called to testify regarding the parenting plans for the two children;
- many [witnesses] would have to travel regardless of whether the issues are tried in Washington or Oregon;
- financially, it makes most sense for the parties to only have one set of attorneys each;
- one court would be most familiar with all of the relevant facts and circumstances, and therefore, be best equipped to formulate complementary and coordinated parenting plans.

The trial court's decision, that the "*establishment of EH's parentage dramatically changes the analysis of all statutory factors in RCW 26.27.261(2)*" summarily ruling "*they all strongly favor Oregon now,*" does not satisfy compliance with the UCCJEA's requirement that the Court must consider and make findings for each of the statutory criteria before deciding whether to decline. Furthermore, the trial court's decision about "*the establishment of EH's parentage*" and its "*dramatically changing the analysis*" of the statutory factors to now decline Washington's jurisdiction is untenable, as it relies upon an erroneous view of the law regarding parentage.

E. EH HAD A PRESUMED FATHER AT BIRTH; THE STATUTORY PRESUMPTION WAS NOT REBUTTED:

Sergio and Sandra were married at the time EH was born in Kennewick in April 2014. Sergio is the Presumed Father, identified on EH's birth certificate as her father, and EH was given Sergio's last name. The statutory presumption that Sergio was EH's presumed father attached at her birth and has never been rebutted.

In *In re K.R.P.*, 160 Wn.App. 215, 225, 247 P.3d 491 (Div. 1 2011) the court held:

RCW 26.26.011(15), the definitions section of the UPA, defines a presumed father as: a man who, under RCW 26.26.116, is recognized to be the father of a child until that status is rebutted or confirmed in a judicial proceeding. There was no judicial proceeding pending in any court that challenged EH's parentage.¹⁷ Even if such an action were pending, the statutory presumption of a Presumed Father continues until such time as a Court Order is entered that says otherwise. See RCW 26.26.116(3). The mere filing of a petition asking for genetic testing to confirm paternity does not render a child "fatherless"; any more than a mere statement of doubt or verbalization of denial by a Presumed Father can constitute a "denial" of parentage. EH has

¹⁷ The only proceeding that challenged EH's parentage was filed in Washington by Sergio in March 2015, and was dismissed outright by the Washington Court in June 2015. See Appendix B.

always had a Presumed Father from birth; and that presumption has never been rebutted by any Court decree.

A DNA test report, in and of itself, cannot rebut or confirm the statutory presumption. Only a Court decree can accomplish that.

In *In re Marriage of Wendy M.*, 92 Wn.App. 430, 440, 962 P.2d 130 (Div. 1 1998):

... the Uniform Parentage Act establishes Michael as J.M.'s presumed father because he and Wendy were married at the time of J.M.'s birth. [21] Under RCW 26.26.040(2), this presumption may only be rebutted by clear, cogent, and convincing evidence. [22] "A blood test which conclusively demonstrates non-paternity is clear, cogent, and convincing evidence." [23] However, [962 P.2d 135] the statute clearly states that the presumption of paternity is rebutted only "by a court decree establishing paternity of the child by another man." In the absence of an order declaring non-parentage, the presumed father is still the father of the child. [24] [emphasis, mine]

The copy of the DNA test report filed with the Washington court might be "clear, cogent, convincing evidence", but the issue of EH's parentage was not before the Washington Court; and further, until and unless a Court Order is entered by a court presiding over an adjudication proceeding, the statutory presumption of paternity continues. *Id.* Washington did not have the jurisdiction to enter any such order; and therefore, the Washington Court could not look at the DNA report and "declare" that "paternity had now been established" for EH. In the absence of an order declaring non-

parentage, the presumed father is still the father of the child. *Id.*

Therefore Sergio's status as the Presumed Father of EH continues from her birth, unrebutted.

It is undisputed: Sergio is EH's presumed father from birth; the presumption continues from birth; Sergio could not "deny" paternity because the statute is quite clear that only a Court Order adjudicating parentage can rebut or "deny" the presumption; the overwhelming evidence shows that Sergio's interaction with EH, including his financial support of her as his beneficiary and recipient of his child support obligation, confirmed the continuing statutory presumption that he was her father; and a simple reading of the DNA test results concludes this report is nothing more than cumulative information about the validity and truth of the presumption: that Sergio was, is, and continues to be EH's father.

In *Robinette v. Harsin*, 136 Wn.App. 67, 73, 147 P.3d 638 (Div. 3 2006)

Under the law in effect since 2002, the only way to rebut the presumption of paternity is by a proceeding to adjudicate parentage under RCW 26.26.500 through RCW 26.26.630. See RCW 26.26.116(2). And, RCW 26.26.600(1) provides that "[t]he paternity of a child having a presumed . . . father may be disproved only by admissible results of genetic testing."

No proceeding to adjudicate parentage was pending. The genetic

testing does not “disprove” the presumption; rather it is additional evidence affirming the presumption. Therefore, the Superior Court’s hypothesis fails; and its decision to decline is without basis in fact or reason.

As stated in *Coggle v. Snow*, 56 Wn.App. 499, 508, 784 P.2d 554 (Div. 1 1990)

The primary consideration in the trial court's decision on the motion for a continuance should have been justice. ... We cannot discern a tenable ground or reason for the trial court's decision. We hold that the trial court improperly exercised its discretion in denying the motion for a continuance.

The Revision Court here improperly exercised its discretion in declining Washington’s jurisdiction as an inconvenient forum and abandoning the best interests of IH.

VI. PETITIONER’S MOTION FOR ATTORNEY FEES ON APPEAL

Sergio also should be awarded his attorney fees incurred in having to appear and pursue this appeal pursuant to RAP 18.1.

VII. CONCLUSION:

The Superior Court’s July 2016 Amended Order to Decline should be vacated and remanded, with instructions to the trial court to reinstate Washington’s continuing and exclusive jurisdiction over IH’s custody matters as the more convenient forum, not Oregon.

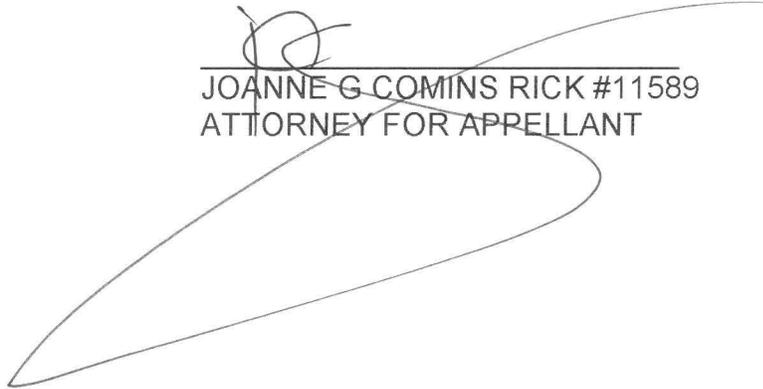
Appellant should be awarded his costs and attorney fees on appeal.

RESPECTFULLY SUBMITTED THIS 19th DAY OF MAY 2017.

HALSTEAD & COMINS RICK PS



JOANNE G. COMINS RICK #11589
ATTORNEY FOR APPELLANT



APPENDIX A

JOSIE DELVIN
BENTON COUNTY CLERK

APR 29 2015

FILED

COPY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF BENTON

In re PARENTING AND SUPPORT OF:)	
IAN VILLANEDA,	)	NO. 15-3-00269-5
<i>Child,</i>)	
	)	DECLARATION OF
SERGIO HERRERA,	)	PETITIONER
<i>Petitioner,</i>)	
and)	
SANDRA VILLANEDA,)	
<i>Respondent.</i>)	

This Declaration is made by:

NAME: SERGIO HERRERA
AGE: ADULT
RELATIONSHIP TO PARTIES IN THIS ACTION: PETITIONER

I, SERGIO HERRERA, DECLARE:

PLEASE SEE MY ATTACHED STATEMENT [EXHIBIT 1] which by this reference is incorporated herein as if set forth in full.

I DECLARE under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED AT: Pasco WA; DATED ON THIS 28th of April, 2015.

**See attached faxed signature.*
SERGIO HERRERA, PETITIONER

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the state of Washington, that on the 29th day of APRIL 2015 I caused a true and correct copy of the foregoing, together with any exhibits attached as referenced, to be served in the manner indicated below.

KIMBERLY POWELL
ASHBY LAW PLLC
8900 W TUCANNON AVE
KENNEWICK WA 99336

- U.S. Mail, first class postage prepaid, at Prosser WA
- Hand Delivery
- Supplemental copy by Fax to: 509-572-3701
- Supplemental copy by email attachment

EXECUTED on this 29 day of APRIL 2015 at Prosser, Washington.



Monica Reyes, Legal Assistant
Gretchen Rick, Legal Staff

EXHIBIT 1 TO PETITIONER'S DECLARATION

- 1 1. Sandra Villaneda was married, but separated from her husband when I met her and become intimately
2 involved with her in 2005.
- 3 2. Her divorce was finalized in December 2005. In ^{Feb} ~~May~~ 2006, she had a child, IH, who was presumed to
4 be the biological child of her ex-husband. She was receiving public assistance, and in August 2006, the
5 State filed a Petition to determine parentage. After DNA testing was done, the results showed that I
6 was IH's biological father.
- 7 3. The Judgment and Order of Parentage entered in March 2007 determined, at Paragraph 3.5
8 Washington State is decreed to be the child's home state:
9 *"This state is the home state of the child because: The child lived in Washington with a parent or*
10 *person acting as a parent for at least six consecutive months immediately preceding the*
11 *commencement of this proceeding. The primary residence of the child shall be with the mother*
12 *who is designated custodian solely for the purpose of other state and federal statutes. Sandra*
13 *Villaneda shall be designated custodian of the child, and the child shall reside with the mother at all*
14 *times."*
- 15 4. I have always been involved in IH's life, even though my relationship with Sandra has been "on
16 again/off again". In November 2011, we married. In January 2013, we separated, and I moved into
17 another residence. I continued to pay for all of Sandra's utilities and rent, including IH's expenses and
18 needs. We also continued to jointly parent IH. I would take IH to school every morning; take him to his
19 soccer practices and games; take him to his doctor appointments; continue to meet his daily nurturing
20 and needs.
- 21 5. In June 2013, Sandra decided to relocate to Oregon because the employment opportunities were far
22 better there than in the TriCities. She has educational training and employment experience as a
23 medical technician. In 2012, her gross earnings were \$43, 570 [according to DCS records]; she became
24 unemployed and was looking for work.
- 25 6. I continued paying her rent and utilities after she moved to Portland; I also continued to be involved in
26 my son's life and his activities.
- 27 7. During this time, we were still trying to work on our marriage. However, Sandra would tell me about
28 "weekend getaways" that she had with her male "friends", going to places like Spokane and the

1 Oregon Coast, etc. During these escapades, IH would either be left with me or with Sandra's mother in
2 Sunnyside.

3 8. In August 2013, we did take a trip to Montana, but IH was with us; it was a family vacation. She also
4 came with me to Georgia for a military reunion, but I don't recall the actual dates. In neither case were
5 we "trying to have another child"; and I was shocked to find out that Sandra was pregnant.

6 9. I presumed I was the father of her child, even though I was aware that Sandra was being intimate with
7 other men; and even though I thought Sandra was taking birth control during this time.

8 10. Sandra decided she wanted her OBGYN in the TriCities to provide her pre-natal care. Therefore, I
9 drove to Portland to shuttle her to/from the TriCities for all her pre-natal needs, paying for the same.
10 It gave me additional opportunities to visit with IH.

11 11. At Sandra's insistence, the baby was born in Kennewick General Hospital (KGH) in the TriCities. I was
12 with her, transporting her here from Portland, along with IH. The baby was a girl, whom she named
13 EH. As the "presumed father", because we were not divorced, my name is on the birth certificate.

14 12. Since EH's birth, Sandra has allowed me nominal time with this child. I have not had an opportunity to
15 "hold the child out as my own", due to the unilateral and arbitrary restrictions Sandra places on me. I
16 have never visited this child without Sandra being present, and then, only for a few hours.

17 13. Concurrently, Sandra has restricted my visitation time with IH, for no reason other than her own
18 arbitrary and unilateral demands.

19 14. I have made my best effort to continue to be involved with IH, including attending his soccer games on
20 a near weekly basis.

21 15. IH attended school at Southgate in Kennewick for kindergarten and 1st grade. He only enrolled in
22 Oregon for 2nd grade at Sandra's unilateral insistence. He was actively involved in soccer here in
23 Washington state, and continues playing in Oregon. Oregon is not a "more convenient forum" for IH's
24 background, development and needs; Washington state has more of IH's information: historical and
25 current.

26 16. Sandra had enough confidence in the jurisdiction of the state of Washington that within a month after
27 EH's birth, she filed for administrative child support with Washington state DSHS. The ALJ held a
28 hearing in September and the Final Order was issued October 2, 2014. Child support was determined
29 for both children, and then I was allowed credit for the SSI benefits the children receive as my

dependents.

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17. I served my country in the United States Army, doing two tours in Iraq. My injuries are significant, and I have a 100% disability rating from the VA, receiving military benefits therefore; I also receive social security disability benefits for my injuries. IH began receiving \$512 per month as dependent disability benefits from SSA in 2011; this increased to \$539 in 2012, but the benefits were cut in half in 2013 when Sandra applied and was awarded dependent spousal benefits from SSA. This reduced IH's benefits to \$269; and after EH's claim was approved, IH's benefits were reduced to \$188 per month, and EH receives \$188 per month. Sandra receives the entire half of the benefit amount while the children share the other half between them. Therefore, Sandra has reduced the "credit" to which I am allowed towards my child support obligation by claiming half of the dependent benefit amount for herself as dependent spouse.

18. Clearly, this entire exercise for Sandra is all about money.

19. Within two months of deciding Washington state had primary jurisdiction to determine child support obligations, Sandra filed a Petition for Unlimited Separation in Oregon. I was served while visiting our son in Oregon.

20. Unlimited Separation allows Sandra to continue receiving all of my military medical benefits, and the spousal dependent share of my SSA disability benefits. In contrast, I want a DIVORCE. Therefore, I filed my Petition for Dissolution in Washington state, and Sandra was served Summons while she was in Washington over spring break, visiting her mother. Through a divorce, Sandra will no longer be able to take my disability benefits for her own purposes.

21. In response to Sandra's increasingly arbitrary actions regarding my visitation with IH, I also filed a Petition for Residential Schedule/Parenting Plan in Washington State, as this is IH's "home state" under the UCCJEA for custody determinations. I am not seeking a change of custody for IH; Sandra remains his custodial parent in my proposed plan. However, contrary to the absurd proposed schedule that Sandra included in her Oregon pleadings, I am asking for a "standard" visitation schedule of alternating weekends, rotating holidays, divided summers, shared transportation, and joint decision-making.

22. Procedurally, I had no alternative but to file a separate Petition for visitation with IH.

23. Similarly, I had no alternative but to file a separate Petition asking to Dis-Establish Paternity for EH, asking that DNA testing be undertaken. I am entitled to know whether I am actually EH's biological

1 father, in light of Sandra's admitted philandering after our January 2013 separation. By statute, I
2 understand this action will be joined with the Dissolution action. Therefore, I have "reserved" the
3 inclusion of a proposed Parenting Plan and Child Support issues pending the outcome of DNA testing.

4 24. Sandra argues that the "venue" in Benton County for the Dis-Establishment petition is erroneous, but
5 in claiming Yakima County is more appropriate, she concedes that Oregon is NOT the correct
6 jurisdiction or venue for that action.

7 25. I have no doubt that Sandra filed the petition for Unlimited Separation in Oregon, hoping to get a
8 default judgment against me, due to the distance and expense of hiring an Oregon lawyer to appear
9 and defend against her charges.

10 26. She intentionally lied to the Oregon Court by misrepresenting and omitting to disclose information
11 about IH and the prior "home state" determination that Washington has exclusive jurisdiction for all
12 custody matters involving IH. If that information had been properly presented to the Oregon Court, I
13 have little doubt the proceedings there would be stayed or dismissed.

14 27. Oregon is not a "more convenient forum" than Washington. Certainly, Sandra didn't think so when she
15 sought administrative child support be determined by the Washington state courts. Her personal
16 alleged "inconveniences" of coming to Washington are not founded in statute; not to mention that
17 Sandra routinely travels here to visit her family, or while on another "weekend getaway" to Spokane or
18 beyond. IH is eight years old, and has only been in Oregon since June 2013. The rest of the
19 information about his life is found in Washington state ... as is information about child support and
20 dependent benefits for him.

21 28. I am asking that the Court deny the Respondent's motions for dismissal, and deny her motion for
22 attorney fees and costs. I am attaching a copy of the letter that my attorney sent to hers, clearly
23 identifying the law applicable to these matters, in response to her attorney's demand these matters be
24 dismissed. I should be awarded my attorney fees instead, for defending against respondent's frivolous
25 motions.

26 29. The only "jurisdictional mess" that exists is caused by respondent's failure to be truthful before the
27 Oregon Court, and for filing in Oregon rather than Washington, in the first place. Washington has
28 jurisdiction of all matters; respondent's motions to dismiss should all be denied, and my Petitions
29 should proceed forward.

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KIMBERLY POWELL
ASHBY LAW PLLC
8900 W TUCANNON AVE
KENNEWICK WA 99336

RE: SERGIO HERRERA AND SANDRA VILLANEDA
BCSC NOS: 15-5-00046-1; 15-3-00269-5; 15-3-00270-9

Dear Ms. Powell:

Thank you for your notices of appearance in the three cases regarding these parties; and the courtesy copy of the Petition for Unlimited Separation and Response initiated by your client in the state of Oregon.

I also appreciate your correspondence of April 6, 2015 wherein you request that I voluntarily dismiss these three causes on the basis that Washington state "lacks jurisdiction", so as to avoid formal motions and award of attorney fees in the event you prevail.

I respectfully disagree with your contention that Washington state "lacks jurisdiction" over these proceedings. I kindly direct your attention to a review of the petitions, particularly the sections that identify the basis for jurisdiction.

Briefly: PETITION FOR RESIDENTIAL SCHEDULE: Ian was born either before your client's prior divorce was finalized or within 300 days after the entry of the Decree. Your client's last ex-husband was the "presumed father"; and DNA testing through a paternity action filed by the Benton County Prosecutor's office resulted in finding my client to be the biological father of the child. In order to maintain the paternity action, home state jurisdiction was found to lie in Washington. As you are aware, under the UCCJEA, once a child's "home state" is identified, that state remains the child's home state for all further proceedings, so long as at least one party remains living in Washington - in this case, the father continues to reside here; or unless Washington state declines its jurisdiction in favor of another state --- that has not occurred. Therefore, in order to establish visitation for Ian, a petition has been filed in Benton County for a residential schedule under the paternity statutes. Benton County is the proper forum and Washington has jurisdiction; NOT OREGON. Your client was also served Summons in Washington state.

The subsequent marriage of the parties after the paternity was established did not "merge" or "extinguish" the prior paternity action, in such a way that Ian became "a child born of the marriage" --- he is not.

ATTACHMENT RE #28

The Petition for Residential Schedule also requests child support be determined on behalf of Ian.

PETITION FOR DISSOLUTION:

The parties were married in Washington state and resided here during the marriage; the parties separated, but continued to try "working" on saving their marriage. Your client moved to Portland for purposes of finding work; my client remained in Washington state. My client filed for Dissolution, NOT UNLIMITED SEPARATION. Washington state has jurisdiction over the marriage; and your client was also served Summons in Washington State.

The Petition reserves the issue of a parenting plan and child support for Eliana, pending the outcome of the DNA testing in the Petition to Dis-Establish Paternity.

PETITION TO DIS-ESTABLISH PATERNITY: Eliana was born in the Tri Cities; your client travelled here for prenatal care and for the child's birth. My client is the "presumed father" because the parties were separated but still married at the time of her birth; even though your client was having relations with my client and with other men during the time of conception. These "relations" occurred in Washington state. The child's birth certificate and the presumption that my client is the father occurred in Washington. Your client was also served Summons in Washington state. Washington state has proper jurisdiction to establish the true biological father of Eliana.

If you have legal authority to the contrary, which would negate Washington state's jurisdiction, kindly direct my attention to those cites for my review and consideration.

Finally:

OTHER WASHINGTON STATE ACTIONS: Your client filed an administrative petition with DCS in Washington for child support to be determined for both Eliana and Ian, in June 2014. The hearing officer's decision was issued in October 2014.

In light of your client's actions, it appears that her decision to file for Unlimited Separation in Oregon in December --- 2 months after the OAH decision was issued in Washington --- was a calculated attempt to get what she wanted in a foreign forum, hoping that the filing in Oregon would make it extremely difficult and expensive for Sergio to appear and defend himself. If there is any bad faith to be assigned, it is to your client for her "forum shopping."

Accordingly, with all due respect, I don't believe there is a basis for you to file or prevail on motions to dismiss these actions; and if I am required to appear and respond in challenge to such motions, please know that I will also seek attorney fees against your client.

If you would like to discuss these matters in further detail, feel free to contact me at your earliest convenience. I look forward to hearing from you soon.

Very truly yours,


JOANNE G COMINS RICK

cc: client/file

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SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF BENTON

In re PARENTING AND SUPPORT OF:)	
IAN VILLANEDA,	)	NO. 15-3-00269-5
<i>Child,</i>)	
	)	DECLARATION OF
SERGIO HERRERA,	)	PETITIONER
<i>Petitioner,</i>)	
and)	
SANDRA VILLANEDA,)	
<i>Respondent.</i>)	

This Declaration is made by:

NAME: SERGIO HERRERA
AGE: ADULT
RELATIONSHIP TO PARTIES IN THIS ACTION: PETITIONER

I, SERGIO HERRERA, DECLARE:

PLEASE SEE MY ATTACHED STATEMENT [EXHIBIT 1] which by this reference is incorporated herein as if set forth in full.

I DECLARE under penalty of perjury of the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED AT: pasco WA; DATED ON THIS 28 April 2015.


SERGIO HERRERA, PETITIONER

APPENDIX B

JOSIE DELVIN
BENTON COUNTY CLERK

JUN - 4 2015

FILED

COPY

SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF BENTON

In re Parentage:)	
SERGIO HERRERA,	)	NO. 15-5-00046-1
<i>Petitioner,</i>	)	ORDER GRANTING RESPONDENT'S
	)	MOTION TO DISMISS
and)	
SANDRA VILLANEDA,)	
<i>Respondent.</i>)	

THIS MATTER came before the Court on Respondent's Motion for Order of Dismissal and Request for Attorney Fees and Costs on May 21, 2015. The Court has reviewed and considered the filings, all opposition papers and briefing submitted by the Parties, the records and files herein, and the arguments of the Parties.

Being fully advised with respect to this matter, the Court hereby finds and concludes as follows:

1. Child has resided in Oregon 6 months prior to the date that father filed his Petition to Disestablish Parentage;
2. Even though the child was born in Washington state, under the UCCJEA adopted by Washington State, Oregon is the child's "home state";

ORDER GRANTING RESPONDENT'S MOTION
TO DISMISS

Page 1 of 2

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PO BOX 511
PROSSER, WA 99350
(509) 786-2200

3. Because the Petition to Disestablish Parentage involves the rights of the child, Oregon, as the "home state", has jurisdiction over the child.

NOW THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- 1. Respondent's Motion to Dismiss is GRANTED;
- 2. Father should refile for dis-establishing parentage in Oregon.
- 3. Respondent's request for attorney fees and costs are DENIED.

Joseph R. Schneider

DATED: _____

COMMISSIONER JOSEPH SCHNEIDER

PRESENTED BY, IN ACCORDANCE WITH
COURT'S DECISION:

AGREED TO BY:
NOTICE OF PRESENTATION WAIVED:

HALSTEAD & COMINS RICK PS

ASHBY LAW PLLC

JOANNE G COMINS RICK #11589
ATTORNEY FOR PETITIONER/FATHER

KIMBERLY POWELL #48774
ATTORNEY FOR RESPONDENT/MOTHER

FILED

MAY 19 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

STATE OF WASHINGTON, COURT OF APPEALS, DIVISION III

8	SERGIO HERRERA,	)	COA NO. 346463-III
9)	
	<i>Appellant,</i>	)	CERTIFICATE OF SERVICE OF
10	and	)	APPELLANT'S OPENING BRIEF
11	SANDRA VILLANEDA,)	
	<i>Respondent.</i>)	

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date stated below, I caused to be delivered in the manner indicated a copy of the foregoing *APPELLANT'S OPENING BRIEF*, and this *CERTIFICATE OF SERVICE* on the following parties:

Attorney for Respondent:

[] U.S. Mail@ PROSSER WA
[] Overnight Mail
[x] Hand Delivery
[] by Fax transmission (509) 545-3019

ED SHEA JR
KUFFEL, HULTGRENN,
KLASHKE, SHEA & ELLERD LLP
1915 SUN WILLOWS BLVD
PASCO WA 99301

DATED ON THIS 19th DAY OF MAY 2017

SIGNED: 
JOANNE G COMINS RICK

CERTIFICATE OF SERVICE

Page 1 of 1

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