

FILED  
Court of Appeals  
Division III  
State of Washington  
1/5/2018 8:00 AM

Nos. 353311 and 354032

COURT OF APPEALS, DIVISION III,  
OF THE STATE OF WASHINGTON

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Robert W. Parrish, Jr, Respondent,

v.

Alaxandria M. Von Hell , Appellant.

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BRIEF OF APPELLANT

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## I. Introduction

This is an appeal from orders of the Superior Court which, following one trial on a petition for modification of a parenting plan which resulted in a finding of no grounds for modification, nevertheless entered a new parenting plan with a limitation requiring a psychological evaluation, then vacated the parenting plan without a new petition for modification having been filed.

## II. ASSIGNMENTS OF ERROR

### Assignments of Error

No. 1 The trial court had no authority to order a psychological evaluation of Ms. Von Hell as a limitation on her residential time with the child.

No. 2 . The trial court had no authority to enter a new final parenting plan after finding there were no grounds to modify the existing plan.

No. 3 The trial court had no authority on April 11th, 2017, to find adequate cause for a petition to modify the final parenting plan entered December 13th, 2016, when Mr. Parrish had not petitioned to modify that parenting plan.

No. 4 The record does not support adequate cause to modify the parenting plan entered December 13th, 2016.

No. 5 The trial court erred by vacating the Final Parenting Plan and the Findings and Order entered December 13th, 2016.

No. 6 The trial court violated RAP 7.2, by entering the June 9th, 2017 orders as to what authority the trial court has after review is accepted.

No. 7 The trial court had no subject matter jurisdiction.

#### Issues Pertaining to Assignments of Error

No. 1 Did the trial court have the authority, after finding there were no grounds to modify the parenting plan under RCW 26.09.261(1)(2), to order a psychological evaluation of Ms. Von Hell as a limitation on her residential time with the child?

No. 2 Did the trial court have the authority to enter a new final parenting plan after finding there were no grounds to modify the exiting plan?

No. 3 Did the trial court have the authority on April 11th, 2017, to find adequate cause for a petition to modify the final parenting plan entered December 13th, 2016, when Mr. Parrish had not petitioned to modify that parenting plan and no adequate cause hearing had

been held or noted for the same date as the review hearing on the psychological evaluation? Or, did the trial court have advance authority to determine there will be a finding of adequate cause, after a trial on a petition that already required a finding of adequate cause?

No. 4 Does the record support adequate cause to modify the parenting plan entered December 13th, 2016?

No. 5 Did the trial court have authority to vacate the Final Parenting Plan and the Findings and Order entered December 13th, 2016, based on its finding of adequate cause arising from the failure to comply with the psychological evaluation?

No. 6 Is the order entered June 9th, 2017 void since the trial court had no permission from the Court of Appeals to enter the order?

No. 7 Does the Superior Court have subject matter jurisdiction to make custody decisions regarding the child of the parties?

### III. Statement of the Case

Robert Parrish commenced a petition to modify a parenting plan in the Superior Court of Benton County. CP 433-41. Following a trial, the Superior Court Judge found there was no basis to change

primary custody, including the following remarks in his oral decision on August 4<sup>th</sup>, 2016:

It's is a difficult case but I find on this record applying the law as I must that there's not enough in this record to change custody to overcome the inherent harm caused by a change in environment. ... The attention to detail and the evidentiary rulings by both of your attorneys have been made at the highest order. They have provided me everything I needed to make my decision they left nothing on the table. Again it's my decision." CP 492, 494.

But he ordered Ms. Von Hell to undergo a psychological evaluation, at her expense, and that a review hearing would be held later. CP 493-94, 496.

In an Order on Final Documents, entered October 17<sup>th</sup>, 2016, the Court indicated that it would maintain the residential schedule, but it was conditioned on Ms. Von Hell's affirmative conduct to address concerns about whether her "potential mental health issues" affected the best interests of the child, i.e., a forensic evaluation. And that a new parenting plan would be entered with that condition. And that her failure to comply would be "good cause" for Mr. Parrish to move to change the primary custodian. CP 41-43.

A Final Order and Findings on Petition to Change a Parenting Plan was entered December 13<sup>th</sup>, 2016. CP 73-75. The findings

indicate no minor changes were requested and that a major change is denied. "The reasons (factual basis) for the requested major change do not qualify under the law." CP 74. It is ordered that the Petition is denied. Part 11, CP 75. Under part 10, "other findings," and part 12, "other orders," the Court indicated it had ordered the psychological evaluation as a condition of Ms. Von Hell being maintained as the primary custodian. CP 75.

A final parenting plan was entered December 13th, 2016, which includes the provision:

3. Reasons for putting limitations on a parent (under RCW 26.09.191)

a. Abandonment, neglect, child abuse, domestic violence, assault, or sex offense.

Neither parent has any of these problems.

b. Other problems that may harm the child's best interests:

Neither parent has any of these problems.

CP 62.

It then sets forth the psychological evaluation requirement as a limitation on Ms. Von Hell and the review hearing was set for April 11th, 2017. A finding that Ms. Von Hell did not comply would be

adequate cause for Mr. Parrish to move the Court to change the primary custodian of the child. CP 63.

At the review hearing, April 11th, 2017, the Judge said he did not consider the evaluation performed by Dr. Mabee to be a “forensic evaluation” that he would “read every day on the criminal docket.” RP 4/11/17, p. 25, lines 4-8. “Adequate cause has been established and that is --- that is my ruling.” RP 4/11/17, p. 25, lines 15-16. In response to a question by Mr. Parrish’s counsel, the judge stated the adequate cause finding was that there was a substantial change of circumstances in the circumstances of the mother, and it would be for a major modification. RP 4/11/17, p. 27, line 19 to p. 28, line 2.

Ms. Von Hell timely moved for reconsideration, CP 161-207, which was denied in an order May 17th, 2017, CP 212-14, and from which a Notice of Appeal was timely filed on June 1st, 2017. CP 246-301.

The Superior Court set a trial date in September of 2017. CP 249.

On June 2nd, 2017, Mr. Parrish filed a motion to vacate the Parenting Plan and Final Order and Findings that had been entered December 13th, 2016, and for temporary custody to Mr. Parrish, and to amend the original order on adequate cause. CP 303-05. His counsel, Ms. Ellerd represented in the motion that the trial court still

had authority “to act until an appeal is accepted by the Court of Appeals pursuant to RAP 7.1” CP 305. The Court of Appeals had accepted review as of June 1<sup>st</sup>, 2017.

On June 9th, 2017, the Superior Court entered “An Amended Order on Adequate Cause to Change a Parenting Plan/Custody Order.” It found there was “adequate cause to hold a full hearing or trial” in September 2017. RP 374-76. The Order also provides that the parenting plan entered December 13th, 2016 and the Order on Reconsideration entered February 23rd, 2017 would be temporary orders and remain in place until trial. The order also provides the parties to pay the guardian ad litem an additional \$2,000, \$1,000 each. The Superior Court also entered an amended Order Denying Reconsideration of its April 11<sup>th</sup>, 2017 ruling. CP 377-79.

The Court set a five day trial to being in September of 2017.

Ms. Von Hell also filed a Notice of Appeal from the June 9th, 2017 orders. CP 505-12. The Court of Appeals accepted review of that appeal as of the date of filing, June 23<sup>rd</sup>, 2017.

Mr. Parrish filed another motion for temporary custody, based on Ms. Von Hell moving with the child to Wisconsin and based on alleged failure of Ms. Von Hell to provide him with Skype time with

the child. Supplemental CP \_\_\_\_\_. The Superior Court granted the motion, and entered an order on September 19<sup>th</sup>, 2017, without permission from the Court of Appeals. Supplemental CP \_\_\_\_\_.

On September 18<sup>th</sup>, 2017, Ms. Von Hell, whose trial attorney was in the process of withdrawing, filed a response for the hearing, objecting to the Court proceeding because of lack of subject matter jurisdiction; an Alaska Court having had jurisdiction which has not been relinquished to a Washington Court. Supplemental CP \_\_\_\_\_.

In December of 2014, an order was entered registering an Alaska order with the Benton County Superior Court for enforcement purposes, but not for modification purposes. CP 1-13.

Ms. Von Hell's attorney briefly argued the issue of subject matter jurisdiction, and the Superior Court ruled against Ms. Von Hell on the jurisdiction issue without having seen the document filed by Ms. Von Hell on the issue. RP 9/18/17, p. 6, p. 7, lines 1-16. The matter then proceeded to trial on a later date, the result of which is the subject of separate appeals.

#### IV. Summary of Argument

Respondent, Mr. Parrish, filed a petition for modification resulting in a trial at which the Superior Court judge ruled there was no statutory grounds for modification proven. That should have resulted in no relief, and dismissal of the petition. The Superior Court improperly imposed a new parenting plan with a limitation on Appellant, Ms. Von Hell, in the form of a forensic psychological evaluation. The Superior Court predetermined failure to comply would constitute adequate cause and allow Mr. Parrish to move to modify the parenting plan. Ms. Von Hell underwent the psychological evaluation and at review hearing found Ms. Von Hell did not comply because the evaluation was not "forensic," that the evaluator spent only four hours reviewing the GAL reports and that Ms. Von Hell did not disclose a marriage to the evaluator. The Superior Court without any new petition to modify filed, found adequate cause, ruled that the prior orders were only temporary, in response to a motion by Mr. Parrish to vacate them and ordered a trial on the new modification proceeding. The Superior Court had no grounds under CR 60 to vacate the prior order nor grounds to find adequate cause.

## V. Argument

### 1. The trial court had no authority to order a psychological evaluation of Ms. Von Hell as a limitation on her residential time with the child.

RCW 26.09.191 (3) provides a list of factors that may limit provisions of a parenting plan.

(3) A parent's involvement or conduct may have an adverse effect on the child's best interests, and the court may preclude or limit any provisions of the parenting plan, if any of the following factors exist: ...

Under part 3. of the Final Parenting Plan entered December 13th, 2016, the Superior Court found there were no problems that were “Reasons for putting limitations on a parent (under RCW 26.09.191).” CP 62. The Final Order and Findings said that as to “Limitations ... ” “Does not apply.” CP 74. So the statutory factors for limitations are irrelevant.

Part. 4 of the Parenting Plan then places the forensic evaluation as a limit or condition upon Ms. Von Hell. CP 63.

A Final Order and Findings on Petition to Change a Parenting Plan was entered December 13th, 2016. The findings indicate no

minor changes were requested and that a major change is denied. “The reasons (factual basis) for the requested major change do not qualify under the law.” CP 74.

In the absence of substantial evidence establishing a nexus between [the father’s] “involvement or conduct” and the impairment of his emotional ties with [the child], the trial court erred in imposing visitation restrictions under RCW 26.09.191(3)(d).

*In re Marriage of Watson*, 132 Wn. App. 222, 234, 130 P.3d 915 (2006). (Trial court exceeded authority by imposing limitations after finding the basis for the petition to modify was unproven.)

We conclude the court may not impose limitations or restrictions in a parenting plan in the absence of express findings under RCW 26.09.191. We also conclude that any limitations or restrictions imposed must be reasonably calculated to address the identified harm.

*In re Marriage of Katare*, 125 Wn. App. 813, 826, 105 P.3d 44 (2004). (Trial court’s imposition of limitations reversed for abuse of discretion.)

The Court found there was no basis to change the primary placement of the child with Ms. Von Hell, but imposed a condition upon that. No harm was found, so there can be no nexus between any unproven allegations in the petition, and the limitation then used to support a subsequent modification proceeding.

After finding the petition was factually unproven, the Court made its own sua sponte determination that a psychological exam should

hover over Ms. Von Hell's head as a condition of continuing the existing parenting plan. "Upon denying Boling's modification petition, the court lacked authority to modify the parenting plan sua sponte on grounds that neither party had contemplated or argued." *In re Marriage of Watson*, 132 Wn. App. at 233. While the guardian ad litem had recommended it, it was sua sponte in the sense that once the Superior Court found no grounds for modification, then there should have been no further conditions coming from the Superior Court, no party had the right to request conditions to be imposed if there was a finding of no basis for modification.

There is simply no explanation of how, if the factual grounds for the petition were unproven, of how a limitation was justified. "In the absence of substantial evidence establishing a nexus between Watson's 'involvement or conduct' and the impairment of his emotional ties with M.R., the trial court erred in imposing visitation restrictions under RCW 26.09.191(3)(d)." *In re Marriage of Watson*, 132 Wn. App. at 234.

The Court of Appeals in *Watson* held: "The trial court abused its discretion when it imposed continued visitation restrictions after

concluding that the sexual abuse allegations were unproven.” 132 Wn. App. at 235.

The invalid limitation upon Ms. Von Hell was then used as a catapult for the rulings on April 11th, 2017 that set in motion this appeal. It is submitted that an alleged lack of compliance with an invalid limitation cannot be used as the basis for a subsequent modification.

2. The trial court had no authority to enter a new final parenting plan after finding there were no grounds to modify the existing plan.

Watson further argues that the court had no authority to modify the parenting plan through temporary orders after it determined that Boling's petition should be denied for failure of proof. We agree.

*In re Marriage of Watson*, 132 Wn.App. at 235.

RCW 26.09.260 sets forth the criteria and procedures for modifying a parenting plan and contains varying standards depending on the parties' circumstances and the kind of modification requested. These criteria and procedures limit a court's range of discretion. *In re the Custody of Halls*, 126 Wn. App. 599, 606, 109 P.3d 15 (2005). Thus, a court abuses its discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria. *Halls*, 126 Wn. App. at 606, 109 P.3d 15. We consider statutory construction as a question of law requiring de novo review. *In re the Marriage of Caven*, 136 Wn.2d 800, 806, 966 P.2d 1247 (1998).

*In re Marriage of Watson*, 132 Wn. App. 222, 230, 130 P.3d 915 (Div. 2 2006).

But on its own motion, the trial court ordered visitation restrictions on grounds that neither of the parties had contemplated. Once it denied the underlying modification petition, the trial court lacked statutory authority either to modify the parenting plan on its own motion or to order continued visitation restrictions as it did here in an amended temporary parenting plan.

We reverse and remand for reinstatement of the original parenting plan.

*In re Marriage of Watson*, 132 Wn.App. at 238-39

In the Division III case of *In re the Marriage of Shryock*, 76 Wn. App. 848, 888 P.2d 750 (1995), a father petitioned for modification of custody based on the child's integration into his home, with the mother's consent, in substantial deviation from the original parenting plan. 76 Wn. App. at 849. The mother opposed the petition and submitted a proposed parenting plan, as required by statute. *Shryock*, 76 Wn. App. at 849-50, 888 P.2d 750. Her proposed plan sought restrictions on the father's residential time based on both mandatory and discretionary factors under RCW 26.09.191. *Shryock*, 76 Wn. App. at 849-50.

The court rejected Shryock's petition after finding that the child was not integrated in the father's home. *Shryock*, 76 Wn. App. at 850. But rather than reinstate the original parenting plan, the court adopted most of the changes the mother requested. *Shryock*, 76 Wn. App. at 850, 888 P.2d 750. Division Three reversed, holding that the trial court lacked authority to modify the parenting plan after finding that the father's modification petition should be denied. *Shryock*, 76 Wn. App. at 852, 888 P.2d 750.

3. The trial court had no authority on April 11th, 2017, to find adequate cause for a petition to modify the final parenting plan entered December 13th, 2016, when Mr. Parrish had not petitioned to modify that parenting plan.

RCW 26.09.270 Child custody—Temporary custody order, temporary parenting plan, or modification of custody decree—Affidavits required.

*A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested*

order or modification should not be granted. (Emphasis added.)

This procedure was not followed. Instead the trial judge acted on his own, as forbidden by *In re Marriage of Watson*, 132 Wn. App. at 233.

The December 13th, 2016 parenting plan and findings and order said Mr. Parrish would be able to move (petition) to modify the parenting plan if Ms. Von Hell did not comply with the psychological evaluation. CP 63. Moving to modify precedes adequate cause, not the other way around. What those orders did not say was that the first trial was never finished and that no new petition needed to be filed. The trial court repeatedly contradicted itself, apparently seeing for itself the various errors that were going on, and attempted to correct course, all to the violation of Ms. Von Hell's rights to the proper procedure. Even interpreting the final orders in a light favorably to Mr. Parrish, the most that a finding of failure to comply at the review hearing should have resulted in, was that he could then file a new petition to modify, and note an adequate cause hearing. (Not that Ms. Von Hell concedes the provision for the exam was proper.)

The statutory framework is that adequate cause must be found to proceed to trial. In this case, the Superior Court determined that adequate cause was something to be determined after the trial held on the earlier petition to modify. There was no requested modification from Mr. Parrish pending when the Court found adequate cause.

4. The record does not support adequate cause to modify the parenting plan entered December 13th, 2016.

RCW 26.09.260 Modification of parenting plan or custody decree.

(1) ... the court *shall not modify* a prior custody decree or a parenting plan unless it finds, upon the basis of *facts that have arisen since the prior decree* or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. ...

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's *present environment is detrimental* to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070. (Emphasis added.)

There are no statutory factors for modification of a final parenting plan presented by the alleged deficiency in the psychological exam. It if wasn't detrimental on August 4<sup>th</sup>, 2016, it did not subsequently become detrimental because Ms. Von Hell allegedly did not tell the evaluator about one of her marriages, which were disclosed in the GAL reports provided to the evaluator. There is no showing that since the parenting plan was entered, Ms. Von Hell's environment for the child substantially changed so as to harm the child's physical, mental, or emotional well-being. Does allegedly not providing a psychologist, post-trial, with full information for an evaluation meet these criteria?

In *Wildermuth v. Wildermuth*, 14 Wn. App. 442, 445, 542 P.2d 463 (1975), it was stated:

We find that the controlling statute requires more than a showing of illicit conduct by the parent who has custody. There must be a showing of the effect of that conduct upon the minor child or children. See *McDaniel v. McDaniel*, 14

Wn. App. 194, 197-98, 539 P.2d 699 (1975). Unless the record contains evidence from which the trier of fact can reasonably conclude that the child's environment is detrimental to his or her physical, mental, or emotional health and, further, that the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child, the court errs in entering an order changing custody. ... While the court's prediction of probable harm to the children by their exposure to the misconduct might be accurate, the record here is deficient in that there is no evidence of the effect of the mother's living arrangement upon the children.

Tellingly, from the end of trial in August of 2016, until September of 2017, the child remained in the primary residential placement of the mother, in recognition there was no showing of harm to the child.

5. The trial court erred by vacating the Final Parenting Plan and the Findings and Order entered December 13th, 2016.

Vacating final orders is governed by CR 60. That procedure was not followed, nor were the elements required for vacating orders proven, yet that is what the Superior Court did, by providing the prior final orders were now temporary. Mr. Parrish's counsel filed a motion to vacate on June 2nd, 2016, CP 303-305, citing no authority, with no show cause order as required by CR 60 (e), which is to be required to be served in the same manner as a summons. Vacation

is largely a matter of irregularity in obtaining a judgment, which does not fit the circumstances here. See CR 60 (b).

6. The trial court violated RAP 7.2, by entering the June 9<sup>th</sup>, 2017 orders as to what authority the trial court has after review is accepted.

The June 9th, 2017 orders are in violation of RAP 7.2 (e) since they change what was ordered on April 11th, 2017, which was that there was adequate cause for a new petition for modification. Although that was an oral ruling, an order entered on a motion for reconsideration reduced it to writing on May 17<sup>th</sup>, 2017. CP 212-14. On June 9th, 2017 the Superior Court substantially changed that, striking a new petition for modification and rendering the prior final orders as only temporary orders. What had been a new modification proceeding was now apparently an extension of the first petition for modification and trial, since the June 9<sup>th</sup>, 2017 order was entered as a result of a motion to vacate the December 13<sup>th</sup>, 2016 parenting plan and associated final orders.

#### RAP 6.1 APPEAL AS A MATTER OF RIGHT

The appellate court "accepts review" of a trial court decision upon the timely filing in the trial court of a notice of appeal from a decision which is reviewable as a matter of right.

## RAP 7.2 AUTHORITY OF TRIAL COURT AFTER

### REVIEW ACCEPTED

(a) Generally. After review is accepted by the appellate court, the trial court has authority to act in a case only to the extent provided in this rule, unless the appellate court limits or expands that authority as provided in rule 8.3.

...

(e) Postjudgment Motions and Actions To Modify Decision. The trial court has authority to hear and determine (1) postjudgment motions authorized by the civil rules ... The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion.

...

RAP 7.2(e) provides that if the trial court makes a determination that " will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision." Whether a trial court violates RAP 7.2(e) turns on whether the subsequently entered order or judgment affects the outcome of any issues accepted for review. *State ex rel. Shafer v. Bloomer*, 94 Wn. App. 246, 250, 973 P.2d 1062 (1999).

The remedy for a trial court's violation of RAP 7.2(e) is vacation of the order. *State ex rel. Shafer v. Bloomer*, 94 Wn. App. at 250.

On April 11th, 2017, the trial judge ruled that he was finding adequate cause for a modification. But on June 9th, 2017, he ruled that the new petition, filed May 19<sup>th</sup>, 2017, CP 215-21 was stricken, CP 376, thus changing the nature of the proceeding. Instead he has now vacated the prior final orders and ordered a new trial. The trial judge has now set proceedings, a trial on a petition to modify a parenting plan, which by their very nature could change the outcome of the prior proceedings. (Whether or not clear to the trial court judge, it could be unclear as to just what procedure is being followed in Superior Court. "Adequate cause" was found, which means the parties would be going to Court on a modification of the last parenting plan, entered December 13th, 2017. But the Superior Court also vacated that parenting plan, rendering it only a temporary plan. Failure to comply with a psychological evaluation was not part of Mr. Parrish's alleged grounds in his petition to modify the parenting plan. It was unclear whether the five day trial set to begin in September of 2017 would encompass only the impact of the problem with the psychological exam, or whether it is now "open season" as the five day trial would imply.

Arguably the Superior Court has already violated RAP 7.2 (e) by its order of June 9th, 2017. Proceeding to trial for orders that could radically change what is under review by the Court of Appeals certainly violates the spirit, if not the letter of RAP 7.2(e).

No. 7. The Superior Court does not have subject matter jurisdiction to make custody decisions regarding the child of the parties.

In December of 2014 a “Stipulated Order Registering Out of State Custody Determination Pursuant to RCW 26.27.441” was entered in the Benton County, Washington, Superior Court. Attached to said order were custody orders from the State of Alaska. CP 1-13.

RCW 26.27.441 is part of the Uniform Child Custody Jurisdiction and Enforcement Act, and provides in part:

RCW 26.27.441 Registration of child custody determination.

(1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, ...

...

(6) Confirmation of a registered determination, whether by operation of law or after notice and hearing, precludes further contest of the determination with respect to any matter that could have been asserted at the time of registration.

RCW 26.27.451 Enforcement of registered determination.

(1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify, except in accordance with Article 2, a registered child custody determination of a court of another state.

(Emphasis added.)

The relevant parts of Article 2 appear to be:

RCW 26.27.221 Jurisdiction to modify determination.

Except as otherwise provided in RCW 26.27.231, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under RCW 26.27.201(1) (a) or (b) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under RCW 26.27.211 or that a court of this state would be a more convenient forum under RCW 26.27.261; or

(2) A court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

(Emphasis added.)

RCW 26.27.201 Initial child custody jurisdiction.

(1) Except as otherwise provided in RCW 26.27.231, a court of this state has jurisdiction to make an initial child custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:

The original proceeding was commenced in the State of Alaska and there is no suggestion Washington would have been the home state of the child at that time. There is nothing in the record to suggest, and it is believed the other party cannot claim, that the “court of the other state” determined it no longer had exclusive continuing jurisdiction.

Compliance with the UCCJEA is required for subject matter jurisdiction:

We conclude then that the UCCJEA's procedural requirements are jurisdictional and Mr. Knickerbocker's consent could not have given Washington jurisdiction. Not

only is jurisdiction not something that can be consented to generally, but nowhere in the UCCJEA is there a provision for the parties to waive the jurisdiction of one state in favor of another by their conduct or their agreement. Indeed, the comments to the UCCJEA and the court's reading of those comments in A.C. suggest just the opposite.

*In re Ruff*, 168 Wn. App. 109, 118, 275 P.3d 1175, (2012).

## VI. Conclusion

The Court of Appeals should hold there is no subject matter jurisdiction to modify the prior Alaska parenting orders, and dismiss the petition for modification. Alternatively, the Court of Appeals should hold that, following the first trial on the petition, the Superior Court erred or abused its discretion by ordering a psychological exam and new parenting plan despite finding no grounds for modification, in finding that the purported failure to comply with the invalid condition of the psychological exam was adequate cause to modify the December of 2016 parenting plan, and in vacating the December 13<sup>th</sup>, 2016 parenting plan and rendering it a temporary order, and setting a trial on the “modification.”

To the extent the Superior Court orders are contradictory, in both finding grounds for a modification from the December 2016 parenting plan but also vacating the December 2016 parenting plan and

making it a temporary order, remand to the Superior Court for clarification should be ordered.

Respectfully submitted,

Dated January 4, 2018

*s/William Edelblute*

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**January 04, 2018 - 8:00 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
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**Appellate Court Case Title:** Robert W. Parrish, Jr. v. Alexandria M. Von Hell  
**Superior Court Case Number:** 14-3-00847-4

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