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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

Robert W. Parrish, Jr,

RESPONDENT,

vs.

Alaxandria M. von Hell,

APPELLANT.

REPLY BRIEF OF APPELLANT

Alaxandria M. von Hell

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I. INTRODUCTION

Contrary to Mr. Parrish's arguments, the Superior Court did not have the authority and jurisdiction to modify the existing Alaska parenting plan/custody order when there was no compliance in any form with the applicable provisions of the Parent Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJEA). The Superior Court then entered a new plan following one trial on a petition for modification of a parenting plan that found no basis for the requested modification then entered a new plan on December 13, 2016 modifying the existing plan. The court then vacated the parenting plan without a new petition for modification having been filed and entered yet another plan in October 2017.

The Uniformed Child Custody Jurisdiction and Enforcement Act (UCCJEA), chapter 26.27 RCW, governs jurisdiction in an interstate child custody dispute. It is detailed, specific and mandatory. In this case, a Washington Superior Court assumed jurisdiction of an interstate custody dispute after a Alaska superior court had exercised jurisdiction. While the Alaska case was still pending Mr. Parrish filed this simultaneous case, now on appeal in

Washington. Alaska never relinquished jurisdiction of the case.

II. RESPONSE TO RESPONDANTS COUNTER-STATEMENT OF ASSIGNMENTS OF ERROR

The referenced Clerks Papers are from Appeal No. 355900 Vol. 1 filed on March 13, 2018 and Appeal No. 355900 and Supp. Clerks papers filed 6/28/2018.

Both Washington and Alaska have adopted the UCCJEA. Chapter 26.27 RCW; Alaska Statute AS 25.30. The UCCJEA is “a pact among states limiting the circumstances under which one court may modify the [child custody] orders of another.” *In re Custody of A.C.*, 165 Wn.2d 568, 574, 200 P.3d 689 (2009) (citing Unif. Child Custody Jurisdiction & Enforcement Act (UCCJEA), prefatory note, 9 pt. IA U.L.A. at 649-51 (1997)). It is “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.” (citing UCCJEA prefatory note, 9 pt. IA U.L.A. at 651; UCCJEA § 101 cmt., 9 pt. IA U.L.A. at 657). In sum, the UCCJEA aims to prevent conflicting custody orders by determining when a state can

modify a custody order entered in another state.

The comments to the UCCJEA make clear the intent to limit subject matter jurisdiction: “It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.” UCCJEA § 201 cmt., 9 pt. IA U.L.A. at 673.

Contrary to Mr. Parrish’s assertions, the Superior Court lacked subject matter jurisdiction as a matter of law at the time of commencement of this case, insofar as jurisdiction was exclusively vested in the State of Alaska and there was no compliance in any form with the applicable provisions of the Parent Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJEA).

As aptly noted in In re Marriage of Ieronimakis, 66 Wn. App. 83, 831 P. 2d 172 review denied, 120 Wn. 2d 1006 (1992), jurisdiction cannot arise or be created after the fact. Although Leronimakis dealt with the UCCJEA’s predecessor, In re Marriage of Hamilton, 120 Wn. App. 147, 884, P. 3d 259 (2004), makes clear that the principle remains sound in all respects. In sum, at the time this

matter was commenced in Washington on August 4, 2014, there was ongoing and simultaneous litigation over custody pending in Alaska whereas Alaska was exercising exclusive jurisdiction, thus the child's subsequent residency as argued in respondents brief on page 2 was entirely irrelevant and did not empower Washington with any subject matter jurisdiction after the fact. The "Home State" is only determined at the initial commencement of the proceedings.

UCCJEA Article 1, Section 102 (4) "Child-custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue." (5) "Commencement" means the filing of the first pleading in a proceeding." (7) "Home State" means the State in which the child lived with a parent or person acting as a parent for at least 6 consecutive months immediately before the commencement of a child custody proceeding."

Mr. Parrish commenced the child custody proceedings in Alaska in 2010 and continued with repeated filings nearly every month for the next 4 years. It has never been suggested that the Alaska child custody case was vacated, stayed or dismissed. In fact on December 11, 2014 the Alaska Appeals Court issued an order dismissing the appeal and remanding the case back to the Alaska trial courts. This was 5 months after Mr. Parrish was unhappy with the outcome of the Alaska proceedings, again

commenced filing of simultaneous child custody proceedings in Washington.

UCCJEA Article 2 Section 202. Exclusive, Continuing Jurisdiction. Comments p.28 “The use of the phrase “a court of this State” under subsection (a)(1) makes it clear that the original decree State is the sole determinant of whether jurisdiction continues. A party seeking to modify a custody determination must obtain an order from the original decree State stating that it no longer has jurisdiction.”

By the same measure, and contrary to Mr. Parrish’s arguments, a party cannot in any way consent to, waive, or otherwise be estopped, on the issue of subject matter jurisdiction or the lack thereof. See, Rust v. W. Washington State College, 11.Wn. App. 410, 419, 524 P.2d 204 (1974). See also, A.C. at fnnt 8 supra. The court either has jurisdiction or it does not. Stated differently, a parties putative consent to in personam jurisdiction is of subject not a substitute for or a lack of subject matter jurisdiction. The Washington Supreme Court endorsed this comment in A.C. with the statement “that to permit waiver of the jurisdictional provisions of the UCCJEA would undermine the goals of avoiding conflicting proceedings.” A.C. 165 Wn.2d at 577 n.8 (citing UCCJEA § 201 cmt., 9 pt. IA U.L.A. at 673).

Since the Alaska Court was exercising jurisdiction since 2009, and issued a divorce decree and final custody

orders and parenting plan on February 4, 2011 and further modified those orders on January 10, 2013 (EX 15) and again on July 24, 2013 (355900 CP 131-132) and there was ongoing open and simultaneous litigation regarding the custody of the child, the Washington Court, as a matter of law, lacked co-extensive jurisdiction to rule on any matter of custody. Hence, Mr. Parrish's claims of consent, waiver, estoppel are not well-taken and entirely inapposite. See also, Walsh, supra. Uniform Child Custody Jurisdiction and Enforcement Act sec 201 cmt, 9 Part 1A U.L.A. 673 (1999).

On August 5, 2014, Mr. Parrish filed a declaration in support of registration of out of state custody order where he declared under the penalty of perjury "Subsequent to the finalization of our dissolution action **both parties and the child relocated to Washington State.**" (Emphasis added) 355900 CP 84, lines 23-24. He further stated, "To the best of my knowledge the January 10, 2013 order has not been modified and is in full effect." 355900 CP 85 lines 3-4. The orders that he sought to register had been modified on July 24, 2013 (355900 CP 131-132) notably, Mr. Parrish has never lived in Washington State.

Mr. Parrish's claim on page 2 of his brief that he "filed a petition to modify parenting plan in February 2015", is a

red herring attempt to make this court believe that the child custody proceedings began in 2015, where in fact the child custody proceedings were *commenced* in Franklin County, WA on July 30, 2014 (355900 CP 95, 111-112, 114), continued on August 14, 2014 (EX 46) and transferred to Benton County Superior Court on September 23, 2014 (355900 CP 116-117) when there was ongoing simultaneous litigation in Alaska. 355900 CP 106,118-119. The Alaska Supreme Court addressed jurisdiction when it issued the following ruling:

“In accordance with Appellate Rule 507(b) and 512(a), jurisdiction of this case is returned to the trial courts effective 11/5/14.” 355900 CP 130.

From the beginning, Mr. Parrish was very much aware that Alaska had exclusive, ongoing jurisdiction of the custody matter as evidenced by the affidavit he filed in the Alaska Supreme Court after he had asked to reinstate the a previously filed Alaska appeal that had been dismissed. Mr. Parrish stated,

“Based on information that I received after I filed the above-captioned appeal, I believed jurisdiction in the underlying custody case would be transferred to Washington state. Therefore, I asked my counsel to dismiss the appeal. 355900 CP 119 lines 1-3. He further states, “I contacted the clerk of court in Washington and was told that if a case was opened in Washington, jurisdiction would “automatically transfer” to Washington because of the length of time the child had lived there.” 355900 CP 119 lines 9-13.

The Superior Court registered Alaska custody orders that had been modified without entering the modified Alaska orders with the registration and then subsequently entered a modified parenting plan in Washington on December 13, 2016 and another modified plan in October 2017.

Regardless of the orders entered, the Superior Court did not have subject matter jurisdiction to make or modify the Alaska Courts valid child custody orders. It is a cardinal rule under In re Marriage of Ieronimakis, 66 Wn. App. 83, 831 P.2d 172, review denied, 120 Wn. 2d 1006 (1992), jurisdiction cannot arise or be created after the fact. Mr. Parrish's argument on page 8 of his brief that the "Superior Court retained jurisdiction in this matter . . ." does not hold up. Simply put, Mr. Parrish has no license whatsoever to ask this court to do other than follow the accepted federal and state law and practice governing the exercise of subject matter jurisdiction.

Mr. Parrish uses "Straw Man" arguments on pages 9-12 of his brief when he references a show cause contempt hearing that was not before argued and that there was a finding made that Ms. Von Hell had absconded with Tiernan and that finding was unchallenged. The two hearings

referenced were separate and distinct – one having nothing to do with the other.

1) On August 8, 2017 a hearing, was held on Mr. Parrish's request for temporary custody after the hearing the parties were all dismissed from the courtroom. Ms. Von Hell left the courthouse and was almost to her car in the parking lot when she was confronted by two court bailiffs acting on the judges directions after the hearing had closed and dragged her back into the courtroom with her hands cuffed behind her back. The judge then berated her for recording the proceedings on her cell phone and set a show cause hearing on contempt. This is yet another example of the extreme prejudice that the judge displayed against Ms. Von Hell, as he continued to treat her as a criminal. The judge later struck the hearing after Ms. Von Hell opposed the show cause in an attempt to correct course once again. He then entered another temporary parenting plan that was stayed by the court of appeals on September 5, 2017. Later on September 18, 2017 the superior court found yet a different reason to grant Mr. Parrish temporary custody of Tiernan in an ex-parte hearing and ruling.

2) It should be explicitly noted that the finding that Ms. Von Hell had "absconded" was made at an ex-parte hearing

that Ms. Von Hell was not made aware of. Ms. Von Hell relocated to Wisconsin for work after the court gave custody to Mr. Parrish despite the stay the appeals court had entered, at that point all parties had left Washington State. The Superior Court then entered an order giving Mr. Parrish custody of the child.

III. ARGUMENT

The trial court violated RAP 7.2, by entering the August 11th, 2017 order, as to what authority the trial court has after review is accepted.

In *In re Custody of Halls*, 126 Wn. App. 599, 109 P.3d 15, (2005), the Court of Appeals said that Halls violated RAP 7.2(e) by what happened in this case, entry of an order changing custody, pending appeal. Ms. Arden had been found in contempt and the trial court entered various orders temporarily changing custody. And, although Halls had not yet petitioned to modify the plan, the court granted him sole custody of the children. Arden appealed. Three days after the Notice of Appeal was filed, Halls petitioned to modify the original parenting plan. The trial court entered a new final parenting plan and an order labeled as a temporary restraining order that the Court of Appeals found was part of a change in custody. There was a second appeal, consolidated with the first. While, as discussed below, the trial court was reversed

for the complete failure to abide by the procedural and substantive requirements for custody modification, the Court also stated:

Halls also violated RAP 7.2(e). Arden had appealed the first modification Before Halls presented his second modification. Under RAP 7.2(e), the trial court could not enter an order that affected the appeal without first obtaining our permission. It did not.

In re Custody of Halls, 126 Wn. App. at 612, fn. 3.

The August 11th, 2017 order changes decisions under review by the Court of Appeals, in the following ways: 1) The Superior Court previously found that Ms. Von Hell's supposed failure to comply with a psychological exam was adequate cause for Ms. Parrish to move to modify the parenting plan entered in December of 2016. Now, the Superior Court finds that would not be a basis to change custody and has found a different basis for adequate cause. The validity of the psychological exam condition and of any findings of a violation thereof, and various issues relating to adequate cause and the proper procedure for modification are under review. How can they be effectively reviewed given this new order? 2) The orders entered in December of 2016 were final orders, and primary residential placement remained with Ms. Von Hell. The June 9th, 2017 order changed the December parenting plan to a temporary parenting plan, but the child remained residing with Ms. Von Hell, despite a request at that time by Mr. Parrish to change temporary custody. That has clearly been changed by the August 11th, 2017 order. The change of a final parenting plan to a temporary parenting plan on June 9th is under review, and

whether there is any adequate cause at all for any modification of custody is under review. There is no actual new petition for modification. The change of a final parenting plan to a temporary parenting plan is under review, now we have a whole new basis for adequate cause, with no new petition, with no review reserved regarding the supposed new facts, as there had been with the psych exam, so the Superior Court has somehow changed the whole environment once again, with appellate review pending. For the first time ever, Mr. Parrish has been granted any sort of primary custody, in the midst of appellate review.

The trial court counsel for Mr. Parrish played “beat the clock” with an August 23rd, 2017 argument having already been in this Court on Ms. Von Hell’s motion for a stay, apparently thinking if a stay would be granted, then it was better for Mr. Parrish to have a stay granted with temporary custody to him. RAP 7.2(e) is designed to prevent such gamesmanship and lack of respect for a litigant’s right to appeal. The trial court’s actions here effectively gut the protections of RAP 7.2(e).

Ms. Von Hell filed a notice of appeal from the September 18, 2017 order and subsequently she filed a notice of appeal from the October 17, 2017 parenting plan that was entered.

Referencing the claim on page 21 of his brief, there cannot be an issue of forum non conveniens under RCW 26.27.261 since no lawful basis existed from the onset for

Washington to exercise jurisdiction coextensively with the State of Alaska. Clearly, jurisdiction cannot be conferred after the fact. Marriage of Ieronimakis, supra.; see also, In re Marriage of Hamilton, 120 Wn. Ap0p. 147, 884 P.3d 259 (2004) and In re Ruff v. Knickerbocker, 275 P.3d 1175 (Wash.App., 2012).

It is mandated by RCW 26.27.251 (1)(2), and except as otherwise provided in RCW 26.27.231 (ie., pertaining to emergency jurisdiction), a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to RCW 26.27.281. Mr. Parrish requested emergency jurisdiction pursuant to RCW 26.27.231 on September 24, 2013 while there was ongoing simultaneous custody litigation regarding the child in Alaska. 353311 Supp. CP 165-167. The mother notified the Superior court that there was simultaneous litigation regarding custody of the child in Alaska. Supp. 353311 CP 169 lines 13-19. Furthermore the mother notified the Superior Court that “As recently as January of 2014, the courts in Alaska affirmatively stated that they retained sole jurisdiction in this matter.” 353311 Supp. CP 169, Lines 19-20.

If the court determines that a child custody proceeding has been commenced in a court of another state having jurisdiction substantially in accordance with this chapter, the court of this state is legally obligated and required to stay its proceeding and immediately communicate with the other state having jurisdiction. After having done so, if the court of the state having jurisdiction (ie., Alaska). After having done so, if the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state (ie., WA) is a more appropriate forum, then the court of this state is legally bound to dismiss the proceeding before it. RCW 26.27.231 (4). The superior court was notified that there was simultaneous litigation and chose to simply ignore the Alaska Courts jurisdiction. CP 169.

It is well established that pursuant to RCW 26.27.421(1), “[a] court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter.”

Here, there was no communication and certainly no immediate communication as mandated under the forgoing provisions of RCW 26.27, despite the clear fact that there

was no impediment whatsoever for such communication. The facts are also clear, contrary to the forgoing mandate, that a stay was never issued by the Superior Court nor was the Washington proceeding dismissed at any time since the commencement of the Washington Superior Courts action in recognition of Alaska's jurisdiction. Contrary to the Superior Court's erroneous treatment of this case, there is nothing in the record to suggest that the Alaska court could not adequately address any issue related to custody and thus the Superior Court was entirely without jurisdiction to intercede in this matter under the governing provisions of the UCCJEA or PKPA.

"Subject matter jurisdiction "is the power and authority of the court to act." *Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003)(quoting 77 Am. Jur. 2d Venue § 1 at 608 (1997)). It "refers to the court's authority to entertain a type of controversy, not simply lack of authority to enter a particular order." *In re Marriage of Schneider*, 173 Wn.2d 353, 360, 268 P.3d 215 (2011) (citing *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). "If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction." *Marley*,

125 Wn.2d at 539 (quoting Robert J. Martineau, Subject Matter Jurisdiction as a New Issue on Appeal: Reining in an Unruly Horse, 1988 BYU L. Rev. 1, 28)). An order entered by a court without subject matter jurisdiction is void. Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn.2d 542, 556, 958 P.2d 962 (1998). The parties cannot consent to subject matter jurisdiction nor can they waive objection to it. Id.; Wampler v. Wampler, 25 Wn.2d 258, 267, 170 P.2d 316 (1946). Again, the question is whether the courts of Washington had jurisdiction over this child custody dispute, given the open proceedings in Alaska at the time proceedings commenced here in Washington. See Deschenes v. King County, 83 Wn.2d 714, 716, 521 P.2d 1181(1974)(“The rule is well known and universally respected that a court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal.” (citing 21 C.J.S. Courts § 118 (1940)). By the clear language of the UCCJEA, they did not. The Alaska courts had exclusive jurisdiction when it first entered the custody order; that jurisdiction continues and includes the exclusive jurisdiction to modify its order.

RCW 26.27.461 (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. [2001 c 65 § 306.]”

Not only can the parties not stipulate to jurisdiction, registration of a child custody order is a means for enforcement and not modification. The Superior Court modified the Alaska order by entering the stipulation to register the Alaska custody orders when it subverted the UCCJEA and WA statutes and inserted language that conferred jurisdiction in an order for registration under RCW 26.27.441.

On page 7 of his brief, Mr. Parrish argues that he filed an amended petition for modification on May 19, 2017 and any error that the trial court may have made was then cured (Respondants brief page 19) However on June 9, 2017 the courts handwritten order *states “** The Amended Petition filed on 5/19/17 is stricken.”* Case No. 353311 Vol. I Supp. CP 376 line 8.

The trial court had no authority to change the basis for adequate cause in its order of August 11th, 2017, with no new petition or motion for adequate cause before it.

In entering the August 11th, 2017 order, the trial judge made the same types of errors that had gone on since the April 2017 review hearing. Still no petition to modify the last parenting plan, and now a new basis for “adequate cause” without those bases being

pleaded in a petition, and no actual nexus to harm to the child. “[T]he trial judge failed to follow the procedures RCW 26.09.260 requires, we reverse the two modifications.” *In re Custody of Halls*, 126 Wn. App. 599, 601, 109 P.3d 15, (2005). In *Halls*, the trial court twice entered temporary orders changing custody from Ms. Arden to Mr. Halls, despite the fact that: “Nothing in the record shows that Halls petitioned to modify the Original Parenting Plan.” *In re Custody of Halls*, 126 Wn.App. at 604. Here, there is no petition to modify the last Final Parenting Plan entered in December of 2016.

It is as though Mr. Parrish’s trial counsel and the trial court judge tried to emulate the pattern in *Halls*, there are so many striking parallels.

Arden argues that the trial court entered a series of orders that violated the substantive and procedural rules governing the modification of final parenting plans. Specifically, she argues that the court modified a final parenting plan without a pending petition for modification, an adequate cause hearing, or adequate consideration of the statutory criteria. We agree. *In re Custody of Halls*, 126 Wn. App. at 606.

The motion to change custody, filed August 1st and heard August 8th, 2017, does not even ask the Court to determine adequate cause! 355900 CP 142-145. Factual issues not mentioned at the time of the April 2017 review, which Mr. Parrish’s trial counsel and the GAL had months after the final parenting plan to develop until the review but did not, were suddenly all new

grounds for a change in custody. Again, with no new motion for adequate cause and no petition for modification.

The Superior Court says in part that Ms. Von Hell's "baseless accusations" about the GAL merit the current relief granted. On July 5th, 2016, an order had to be entered with the Court requiring the GAL to return medical records he improperly obtained. Language that would have exonerated the GAL was struck out of the order before it being signed by a Court Commissioner. (Language offered by Ms. Ellerd, attorney for Mr. Parrish.)

The Superior Court focuses on "information contained in the GAL reports submitted prior to the original trial." How this constitutes a change since the December 2016 order is unknown. The Court also references alleged violations of RCW Chap. 9.73, the two party consent to recording statute.

No harm to the child has been demonstrated, let alone any that would outweigh the child's interests in the stability of his current placement, which at this time involve starting school again. RCW 26.09.260 (2) (c) requires a showing that: "The child's present environment is detrimental to the child's physical, mental, or emotional health" Here, there is only supposition, no showing of harm.

At some point the Superior Court realized, that proceeding to trial on the grounds of a purported failure to comply with the psych

exam would not fly. And at the urging of Mr. Parrish's trial counsel and the GAL the judge decided to change the name of the game. And come up with new forms of "adequate cause." The Superior Court states that new information about the child of these parties being told to conceal the existence of his half-brother are new grounds, without explanation of dispensing with any new petition or notice of an adequate cause hearing. And without explanation of why the issue was not adequately explored at the first trial.

Up to that point, Mr. Parrish had temporary custody denied to him twice since the first trial, on April 11th and on June 9th. A fishing expedition continued, trolling already fished waters.

With school about to start, primary residential custody was jerked away from Ms. Von Hell, and Tiernan's mother jerked from him. Tiernan has never lived with Mr. Parrish. This is completely unstable for the boy, whom the judge noted at the end of trial over a year ago was doing well in school. In his August 4th, 2016, oral ruling the trial judge said: "Tiernan is doing well in school he's integrated in sports and there's little information in the receiving community [Mr. Parrish's community]." RP 8/4/16, p. 3, lines 15-17 and Ex. 32-36. The findings from the first trial were that Ms. Von Hell has no parenting problems.

The real status quo should be what is was before the August 11th, 2017 order, that Tieran will remain living with Ms. Von Hell, not be enrolled in school in West Virginia, living away from his mother for the first time in his life.

"There is a strong presumption in the statutes and the case law in favor of custodial continuity and against modification. RCW 26.09.260 and .270; *Anderson v. Anderson*, 14 Wn.App. 366, 541 P.2d 996 (1975); RCW 26.09.260 (2) (c) requires a showing that: “ ... the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child;” Therefore, there is harm as matter of law without a showing of an advantage to the child, which is non-existent.

On August 18th, 2017 an emergency stay was entered by the Court of Appeals pending argument on the motion for stay and on September 5th, 2017, the Commissioner entered an order continuing the stay of the temporary change in custody, but allowing the Superior Court to proceed.

The Commissioner’s Ruling entered September 5th, 2017 found that allegedly telling the eight year old to deny that he had a younger brother would not in and of itself constitute a showing of harm to the child for the purposes of constituting a substantial change of circumstances.

The trial court violated RAP 7.2, by entering the September 18th, 2017 order, as to what authority the trial court has after review is accepted.

For the same reasons argued above as to the June 9th, 2017 and August 11th, 2017 orders, the entry of the September 18th, 2017 orders violated RAP 7.2 (e).

In *State v. Pruitt*, 145 Wn. App. 784, 187 P.3d 326 (2008) the Court's refused to grant permission under RAP 7.2(e) under similar circumstances:

The more accurate characterization is that the State, upon Pruitt's challenge on appeal to the sufficiency of evidence to support the drug court's oral ruling of guilt in the first trial, sought adjudication of guilt on a separate ground in a second trial. Here, the entry of written findings following the second trial drastically altered the issues on appeal. It effectively rendered moot both assignments of error in Pruitt's opening brief. The State's actions also raised additional procedural and substantive issues on appeal. *Pruitt*, 145 Wn. App. at 794. (Emphasis added.)

There is an appearance that the Superior Court order is "tailored to meet the issues raised" in the appeal, which is prejudicial. *Pruitt*, supra, 145 Wn. App. at 794.

There are substantive reasons permission should not be allowed, as the new order subverts the appellate process now underway, as it is tailored to avoid the issues under review.

custody decisions regarding the child of the parties?

The trial court had no authority to change the basis for adequate cause in its order of September 18th, 2017, and grant temporary custody, with no new petition or motion for adequate cause before it.

The Commissioner's Ruling entered September 5th, 2017 found that allegedly telling the eight year old to deny that he had a younger brother would not in and of itself constitute a showing of

harm to the child for the purposes of constituting a substantial change of circumstances.

The ruling made September 18th, 2017, finds yet a third new basis for adequate cause, all without any petition for modification having been filed since the last final parenting plan was entered in December of 2016.

Ms. Von Hell relocated to Wisconsin for work after the court gave custody to Mr. Parrish despite the stay the appeals court had entered, at that point all parties had left Washington State. The Superior Court then entered an order giving Mr. Parrish custody of the child. Despite Mr. Parrish's arguments they do not answer the legal issues of 1) whether she followed the relocation statute, 2) whether Ms. Von Hell allegedly violating a parenting plan, even assuming it was contempt, would support an immediate change in temporary custody and a new basis for adequate cause for an unfiled modification action.

The September 5th, 2017 ruling by a Commissioner of this Court found that the new basis for changing custody was not adequate, so now we have a third basis, since the final parenting plan was entered, as each one is shot down a new one appears.

The new one can be shot down as well. The Superior Court order suggests that Ms. Von Hell has violated court orders by not providing skype time to Mr. Von Hell and improperly relocating. (Ms. Von Hell alleges she did provide notice of relocation, due to

the emergency nature of the motion, it is unknown if that allegation is in the Superior Court record.) If we assume for argument these actions are “contempt,” RCW 26.09.260(2)(d) provides such violations are a basis for modification only as follows:

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.)

Skype is not a residential provision and there is no showing the relocation has resulted in lost time for Mr. Parrish. The effects of a failure to give notice of relocation are set forth in RCW 26.09.470, and although one effect can be a finding of contempt, there is no logical basis as to why that would be grounds for a change in custody, since the effect of contempt on custody is determined under RCW 26.09.260(d). There is no finding under RCW 26.09.260(2)(c) of detriment to the child's physical, mental, or emotional health.

IV. CONCLUSION

The court did not have jurisdiction to enter any final orders, nor did it have the authority to enter temporary order as there was no demonstration that an emergency existed. If there had been an emergency the Washington Court would have been required to communicate with the Alaska court and it did not. The Superior Court

did not follow the mandatory procedures that would allow it to exercise jurisdiction to enter a permanent order. The request for attorney fees is appropriate because Mr. Parrish was the one with unclean hands as he engaged in a protracted period of abusive litigation and engaged in forum shopping in order to obtain a more favorable ruling.

Respectfully Submitted this 26th day of August, 2018

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