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COA No. 35331-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In re

ROBERT W. PARRISH, JR.,

Respondent,

v.

ALAXANDRIA M. VON HELL,

Respondent.

BRIEF OF RESPONDENT

Kenneth H. Kato, WSBA # 6400
Attorney for Respondent
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

TABLE OF CONTENTS

I. COUNTER-STATEMENT OF ASSIGNMENTS OF ERROR.....1

 A. Cases 353311 and 354032

 1. The trial court had authority and jurisdiction to modify a parenting plan when the plan, filed December 13, 2016, expressly provided that a finding Ms. Von Hell has failed to comply with either the forensic evaluation addressing her mental health or any recommended treatment shall be adequate cause for Mr. Parrish to move the court to change the primary custodian of the child and that compliance with these conditions will be addressed at a review hearing on April 11, 2017.....1

 2. As for the remaining assignments of error, Mr. Parrish accepts counsel’s statement.....1

 B. Case 355900

 1. The trial court had jurisdiction over this case.....1

II. COUNTER-STATEMENT OF THE CASE.....1

III. ARGUMENT.....14

 A. The trial court had authority to modify the parenting plan (cases 353311 and 354032).....14

 B. The court had jurisdiction to enter notices, orders, and to make a custody determination (cases 353311, 354032, and 355900).....20

IV. CONCLUSION.....24

TABLE OF AUTHORITIES

Table of Cases

Humbert v. Walla Walla County, 145 Wn. App. 185, 185 P.3d 660 (2008).....17, 18, 19

In re Marriage of Chandola, 180 Wn.2d 632, 327 P.3d 644 (2014).....16

In re Marriage of Katare, 175 Wn.2d 23, 283 P.3d 546 (2012).....16, 19

In re Marriage of Shryock, 76 Wn. App. 848, 888 P.2d 750 (1995).....19

In re Marriage of Watson, 132 Wn. App. 222, 130 P.3d 915 (2006).....18, 19

McIntyre v. Fort Vancouver Plywood Co., 24 Wn. App. 120, 600 P.2d 619 (1979).....21

State v. Romero, 95 Wn. App.323, 327, 975 P.2d 564, *review denied*, 138 Wn.2d 1020 (1999).....23

State v. Studd, 137 Wn.2d 533, 973 P.2d 1049 (1999).....18

State ex. rel. Shafer . Bloomer, 94 Wn. App. 246, 250, 973 P.3d 1062 (1999).....20

United Nursing Homes, Inc. v. McNutt, 35 Wn. App. 632, 669 P.2d 476, *review denied*, 100 Wn.2d 1030 (1983).....14, 15

Statutes

RCW 26.09.191.....15

RCW 26.09.191(3)(g).....15

RCW 26.27.201(1)(a).....22

RCW 26.27.201(1)(b).....22

RCW 26.27.211.....21, 22

RCW 26.27.261.....21, 22

RCW 26.27.441.....21

RCW 26.27.511(1).....23, 24

Rules

RAP 2.2(a).....18

RAP 7.2.....20

RAP 7.2(e).....20

RAP 18.1.....23

I. COUNTER-STATEMENT OF ASSIGNMENTS OF ERROR

A. Cases 353311 and 354032

1. The trial court had authority and jurisdiction to modify a parenting plan when the plan, filed December 13, 2016, expressly provided that a finding Ms. Von Hell has failed to comply with either the forensic evaluation addressing her mental health or any recommended treatment shall be adequate cause for Mr. Parrish to move the court to change the primary custodian of the child and that compliance with these conditions will be addressed at a review hearing on April 11, 2017.

2. As for the remaining assignments of error, Mr. Parrish accepts counsel's statement.

B. Case 355900

1. The trial court had jurisdiction over this case.

II. COUNTER-STATEMENT OF THE CASE

A. Cases 353311 and 354032 (citations to the clerk's papers in these cases are designated "CP")

On December 16, 2014, Robert Parrish and Alexandria Von Hell entered into a stipulated order registering out of state custody determination pursuant to RCW 26.27.441. (CP 1). Among other things, the order provided:

The Respondent [Ms. Von Hell] hereby waives service of notice and is in agreement with the registered determination.

The Superior Court for the State of Alaska Third Judicial District at Anchorage no longer has exclusive, continuing jurisdiction under RCW 26.27.211 and Benton County Superior Court is a more convenient forum under RCW 26.27.261. The child subject to this action and the Respondent do not presently reside in Alaska and are currently residents of Benton County, Washington. The Petitioner is currently a resident of State of West Virginia. (CP 2).

Mr. Parrish filed a petition to modify parenting plan in February 2015. (CP 433). The basis for jurisdiction was that the mother, Ms. Von Hell, and the child, Tiernan, lived in Benton County, Washington. (CP 434). An order appointing guardian ad litem (GAL) was entered on May 24, 2016. (CP 450). Adequate cause having been found, the case proceeded to trial in 2016. (CP 474-89).

The court then entered a parenting plan on December 13, 2016, providing in relevant part:

4. Limitations on a parent

The following limits or conditions apply to Alaxandia Von Hell.

Be evaluated for: forensic evaluation.
This forensic evaluation addressing Respondent's mental health will be done by Dr. Mabee by November

14, 2016 and paid for by Respondent.

Respondent will begin any recommended treatment by an individual qualified by training and experience (as determined by Dr. Mabee) by December 16, 2016.

Dr. Mabee will be provided with the three GAL reports and any attachments by Respondent's counsel or if Respondent is not represented then by Petitioner's counsel. Dr. Mabee may request any additional medical records or collateral information if he wishes and if the Respondent objects then the court will decide if the information will be released to Dr. Mabee.

Any resulting evaluation will be provided to both parties (through counsel) and the GAL and will be filed under Sealed Confidential Reports in this matter. The resulting evaluation will not be further disclosed or discussed with anyone absent leave of the Court. Any treatment notes or progress reports will be provided, filed and kept from further disclosure under the same conditions.

A finding that Respondent has failed to comply with either the evaluation or any recommended treatment shall be adequate cause for Petitioner to move the Court to change the primary custodian of the child. Compliance with these conditions will be addressed at a review hearing on April 11, 2017 with Judge Ekstrom as long as he is still presiding. (CP 63).

The child was to reside with the mother while Mr. Parrish had visitation. (CP 65). The father also had regularly-scheduled Skype time with the child. (CP 70).

The trial court had previously entered an order on final documents on October 17, 2016, in which it expressly conditioned the parenting plan "upon the successful completion of affirmative

conduct by the Respondent to address concerns how Respondent's potential mental health issues affect the best interests of the child for whom she has primary custody." (CP 41). Notwithstanding later reducing the provisions to a final document, the court stated the order was effective immediately. (CP 42). The contingent nature of the parenting plan was recognized and understood by Ms. Von Hell and her counsel and memorialized in a memorandum of law regarding proposed finals, filed on October 14, 2016:

It is understood that the court's condition on this ruling was that Ms. Von Hell participate in a psychological evaluation to rule out the possibility that she has any mental health issues that would negatively impact the child. This requirement does not modify the residential terms of the parenting plan. *This could easily be included in the formed [sic] Order on Modification as an automatic basis for the father to re-open litigation (or the parenting plan) should Ms. Von Hell fail to follow through with the evaluation and any resulting recommendations.* (Emphasis added; CP 34).

At an earlier hearing on September 29, 2016, Ms. Von Hell had also acknowledged maintenance of the existing parenting plan was contingent on her following through with the evaluation. (9/29/16 RP 188).

In the parenting plan filed in December 2016, the court followed Ms. Von Hell's suggestion of including the language that her failure to comply with either the evaluation or to follow up on

any recommended treatment would be an automatic basis for adequate cause for the father to re-open litigation to change the primary custodian of the child. (CP 63).

The review hearing was held on April 11, 2017. (4/11/17 RP 1). Mr. Parrish argued the court should find adequate cause to change custody to him because of Ms. Von Hell's failure to follow the court's orders under the parenting plan. (*Id.* at 10-11, 20). Ms. Von Hell argued Dr. Mabee did a psychological, not a forensic, evaluation as he was supposed to do and gave a snapshot of how she was then functioning, and at the time. (*Id.* at 11-16). But the court stated it contemplated a forensic evaluation and Dr. Mabee's was not, thus making his report unhelpful. (*Id.* at 25). When asked if it was finding adequate cause for a major modification to the parenting plan based on a substantial change of circumstances of the mother, the court responded:

I indicate, okay, so we indicated that it would constitute adequate cause to reconsider the parenting plan. So, yes, it would be major and it would be on both of those grounds, yes. Fairly stated. . .

Alright, I believe that Ms. Von Hell having had it been made abundantly clear the nature of the evaluation that I wish to have occur through action or inaction led the reviewer to believe, that he was conducting an evaluation far different than the one requested by the Court. I find that her statements during the course of – some of her

statements during the course of the evaluation were factually inaccurate and that those are inaccurate based on, I think, even the testimony of the trial and that – and that the way in which the evaluation was conducted and the fact that she played a part in that, led to a report that was frankly, not helpful to the Court. (4/11/17 RP 27-28, 29-30).

Ms. Von Hell's motion for reconsideration was denied on May 17, 2017. (CP 212). In the order denying reconsideration, the court stated:

Here, Respondent raises the concern that this Court, rather than confining itself to this provision [for a forensic evaluation], found adequate cause to exist based on later occurring behavior unrelated to the provision or based its decision on the acts or omissions of counsel. To be clear, this Court does not based [*sic*] its finding a failure to comply with the evaluation based on the acts of Respondent's counsel, nor on any later occurring acts that are alleged to be not directly connected to this provision, rather this Court finds that Respondent affirmatively mislead the evaluator in reciting her personal history by making demonstrably untrue statements during her interview. Simply, by way of example, and it is one of many, Respondent failed to disclose the existence of her former spouse, Mr. Sullivan. She did this despite the fact that he was listed as a witness on Respondent's witness list, called as a witness in the trial on August 2, 2016, and the fact of this marriage was the subject in part of police reports, police reports in which Respondent confirmed the existence of this marriage. The court finds that this and other omissions are, on the facts, intentional misstatements, and constitute a "failure to comply with . . . the evaluation," as indicated above. (CP 213).

Ms. Von Hell appealed this order. (CP 246).

On May 19, 2017, Mr. Parrish filed an amended petition for modification. (CP 215). It alleged as a basis for jurisdiction over the proceeding that “[t]his state is the home state of the child because Washington was the home state of the child within six months before the commencement of this proceeding and the child is not absent from the state and a parent or person acting as a parent continues to live in this State.” (CP 216).

On June 2, 2017, Mr. Parrish filed a motion to enter an amended order on adequate cause, to vacate the parenting plan and final order and findings entered on December 13, 2016, vacate the order entered on February 23, 2017, and for temporary custody of the child. (CP 303). On June 9, 2017, the court entered an amended order on adequate cause to change a parenting plan. (CP 374). It found adequate cause and gave its reasons:

The court found adequate cause at the review hearing on April 11, 2017 because of Respondent’s failure to comply with the provisos set forth in the final parenting plan entered on December 13, 2016. The Respondent was given the notice necessary in regards to a finding of adequate cause on April 11, 2017. The notice was in the form of the oral ruling of the court August 4, 2016, and final parenting plan entered on December 13, 2016.

...

The court can decide adequate cause because: The court ordered a review hearing (for April 11, 2017) to determine if Respondent failed to comply with either

the evaluation or any recommended treatment as set forth in the final parenting plan entered on December 13, 2016. Notice of this review hearing was given to Respondent when the final parenting plan was entered on December 13, 2016, and through oral ruling of the court on August 4, 2016. (CP 374-75).

The court made these other findings:

Respondent affirmatively misled the evaluator in reciting her personal history by making demonstrably untrue statements during her interview and thus did not comply with the evaluation as ordered by this court in the final parenting plan entered on December 13, 2016.

The court retained jurisdiction in this matter to determine whether Respondent's compliance with the provisos set forth in the final parenting plan. (CP 375).

The court ordered the final parenting plan that was entered on December 13, 2016, and order on reconsideration entered on February 23, 2017, to be temporary orders remaining in place until further court order. (CP 375). Having found adequate cause, it set trial for September 2017. (*Id.*). On June 9, 2017, the court also entered an amended order on reconsideration that was in pertinent part essentially the same as the original order denying reconsideration. (CP 377). Ms. Von Hell appealed the orders entered on June 9, 2017. (CP 505).

B. Case 355900 (citations to the clerk's papers in this case are designated "355900 CP")

Ms. Von Hell and the child admittedly lived in Washington. (Pro Se Brief of Appellant, p. 5). Subsequent to the proceedings appealed in cases 353311 and 354032, the court entered an order on August 11, 2017, striking show cause contempt hearing, granting motion for temporary parenting plan, and granting motion for continuance. (355900 CP 255). As to the show cause contempt, the court noted Ms. Von Hell had "admitted to recording the August 8, 2017 proceedings on her cell phone." (*Id.*). It nonetheless struck the show cause and admonished Ms. Von Hell that she "would do well to review the rules applicable to court proceedings, as well as the statutes previously recited to her in open court." (*Id.* at 256).

Addressing the motion for temporary parenting plan, the court recited applicable case law and RCW 26.09.260. It noted "the Court made clear at the time of the original trial that it was concerned that [Ms. Von Hell] was not an accurate historian and found that she had attempted to subvert the GAL process, making baseless accusations against the GAL and refusing to cooperate with the investigation: that alone was not sufficient to change

custody.” (355900 CP 256-57). The court went on to make

additional findings:

Further, while non-compliance and deceit by the Respondent through obvious omission during the evaluation ordered by the Court was concerning: that again was not sufficient to meet the above standard on the above basis. Now the Court is presented with what appears violations of statutes listed above, submission by the Respondent of a CPS report that appears to the most charitable eye to be woefully misleading, if not forged in part itself, as well as police reports that are consistent with the narrative of the Respondent as an individual who cannot give reliable statements. But crucially, the Court now has before it evidence, not sufficiently rebutted at this stage, that Brady Overmyer is a half-brother of Tiernan, with whom Tiernan would from time to time reside. Further, this new information, in light of the trial testimony, leads the Court to conclude, at this stage for purposes of this motion, that there is sufficient evidence that Tiernan was asked, ordered, directed or compelled by Respondent, through act or omission, to conceal information regarding the existence of this sibling from others. Discounting any actions Respondent is alleged to have asked others, such as Ms. De Ochoa, to have undertaken, which are not relevant to this analysis, these actions with respect to Tiernan are sufficient evidence to find a change in circumstances. Tiernan’s best interests are served by temporary custody by Petitioner, as continued placement with Respondent creates a risk of mental or emotional harm such that any harm likely to be caused by the change of environment is outweighed by the advantage of the change.

Therefore, pending final determination, Tiernan

shall remain with Petitioner and shall enroll in school in Petitioner's community of residence. . . (355900 CP 257).

Ms. Von Hell obtained a stay in the Court of Appeals of the trial court's August 11, 2017 order. (355900 CP 27).

A hearing was held on September 18, 2017, after which the court entered a contempt order. (355900 CP 34). The court found Ms. Von Hell did not allow Mr. Parrish Skype calls and reasonable telephone calls and texts as previously ordered and she had relocated without notice. (355900 CP 35). It further determined her failure to follow the order was intentional and in bad faith. (*Id.*). The court ordered her to immediately disclose to Mr. Parrish's counsel the current address, location, and current school of the child, with whom she had absconded. (355900 CP 37; see Declaration of Heidi Ellerd in Support of Respondent's Response to Petitioner's Motion for Emergency Stay and to Vacate Order with attachments, filed October 12, 2017, in case 355900).

Ms. Von Hell's lawyer had filed a motion to withdraw on September 13, 2017, but was present at September 18 hearing. (355900 CP 31, 33; 9/18/17 RP 3). Ms. Von Hell's defense was the court had no subject matter jurisdiction because Alaska remained the home state of the child and had not declined jurisdiction.

(9/18/17 RP 7). The court denied her “motion to dismiss” based on prior orders finding adequate cause and allowing the case to proceed to trial. (*Id.*). Furthermore, the court found from information before it that she had absconded with Tiernan, a finding unchallenged on appeal by Ms. Von Hell. (*Id.* at 8, 14; Declaration of Heidi Ellerd, Ex. N, *supra*).

The court then entered a temporary family law order on September 19, 2017, making these specific findings:

On September 18, 2017, the court is making a finding that mother has refused to allow Skype calls between father and child as previously ordered by the court.

The new evidence before this court supports a finding that mother has absconded with the child to Wisconsin. This was an unauthorized relocation of the child from Washington State. (355900 CP 49-50).

The court further ordered:

The court is granting father’s motion for temporary custody of Tiernan Parrish, d/o/b 8/9/09.

The mother is to deliver Tiernan to father immediately. If mother fails to do so voluntarily, father may ask the Winnebago County Sheriff’s Office to assist father, Robert Parrish, in the transfer of the child to his Immediate custody. . .

The trial date in this modification of parenting plan action will be set for approximately 30 days from the date of this order as may be accomplished by court administration. (355900 CP 50).

A notice of trial date was filed on September 28, 2017, setting trial for October 16, 2017. (355900 CP 53). Ms. Von Hell moved for dismissal based on lack of subject matter jurisdiction. (*Id.* at 56-80). She had previously filed declarations stating she had moved to Washington with Tiernan since May 2012. (355900 CP 119, 127, 129, 171-79). Ms. Von Hell did not appear for trial. (*Id.* at 269).

The court entered a parenting plan on October 17, 2017. (355900 CP 262). It found:

Child Abuse – Alexandria Von Hell “(or someone Living in that parent’s home) abused or threatened to abuse a child. The abuse was: repeated emotional abuse. . .

Abusive use of conflict – Alexandria von Hell uses conflict in a way that endangers or damages the psychological development of a child listed in **2**.

Withholding the child – Alexandria Von Hell has kept the other parent away from a child listed in **2**, for a long time, without good reason. (355900 CP 262-63).

Other restrictions were put on Ms. Von Hell in this parenting plan:

14. Other

Respondent shall have no other contact with the minor child outside of supervised visitation and Skype calls. This is to include no contact through third parties (other than approved supervisors), email, mail, text, or by any other electronic means. . .

Respondent will not go within 1000 feet of the child's daycare and school, Petitioner's home and Petitioner's work. Respondent will not cyberstalk Petitioner or child. Respondent will not send third parties in violation of this provision. (355900 CP 267, 268).

Ms. Von Hell filed a notice of appeal from the September 19, 2017 temporary order. (355900 CP 134). She did not file a notice of appeal from the October 17, 2017 parenting plan. It appears, however, the prior notice was considered premature and this appeal proceeds now that a final order was entered.

III. ARGUMENT

A. The trial court had authority to modify the parenting plan (cases 353311 and 354032).

Ms. Von Hell has not assigned error to any findings of fact made by the trial court in support of its orders. These findings are therefore verities on appeal. *United Nursing Homes, Inc. v. McNutt*, 35 Wn. App. 632, 634, 669 P.2d 476, *review denied*, 100 Wn.2d 1030 (1983).

Ms. Von Hell contends the court had no authority to order a psychological evaluation as a limitation on her residential time with the child. To the contrary, the court did not put a limitation on her residential time with the child. She had residential placement of the

child. (CP 63, 75). There was no such RCW 26.09.191 limitation, but rather a condition expressly reflected by the court's order.

Even if it did apply, the court fashioned a condition under RCW 26.09.191(3)(g) allowing it to preclude or limit any provisions of the parenting plan in light of “[s]uch other factors or conduct as the court expressly finds adverse to the best interests of the child.” The court expressly found there were sufficient concerns about Ms. Von Hell's mental health to make her designation as primary custodian contingent on the forensic evaluation and follow up treatment. (CP 63, 75, 272). The court's findings are verities on appeal as they have not been challenged. *McNutt, supra*. It made this condition clear in the order on final documents entered October 17, 2016, stating in relevant part:

While the court is maintaining the present residential schedule, the parenting plan is modified by the Court, in that the maintenance thereof is now contingent upon the successful completion of affirmative conduct by the Respondent to address concerns how Respondent's mental health issues affect the best interests of the child for whom she has primary custody. (CP 41).

The court ordered:

The court did order that Respondent undergo a forensic evaluation and any follow up recommended treatment in order to maintain Respondent as the primary custodian. The conditions placed on Respondent are set forth in the final parenting plan entered on this date. (CP 75).

The court's condition was a particularized finding of a specific level of harm so it could be imposed and there was no error. *In re Marriage of Chandola*, 180 Wn.2d 632, 646, 327 P.3d 644 (2014).

A trial court's parenting plan is reviewed for an abuse of discretion which occurs when a decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *In re Marriage of Katare*, 175 Wn.2d 23,35, 283 P.3d 546 (2012). Ms. Von Hell makes no showing the court abused its discretion.

After a trial based on adequate cause, the court entered a parenting plan on December 13, 2016. (CP 62). The conditions on Ms. Von Hell as the primary residential parent were to undergo a forensic evaluation and to follow up with any recommended treatment. (CP 63). The plan also provided "[a] finding that Respondent has failed to comply with either the evaluation or any recommended treatment shall be adequate cause for Petitioner to move the Court to change the primary custodian of the child." (*Id.*). The court's intent was to make Ms. Von Hell's status as the primary custodian contingent on her completion of the forensic evaluation and following up with recommended treatment. (CP 73). The contingent nature of primary placement was clearly indicated when

it ordered that “compliance with these conditions will be addressed at a review hearing on April 11, 2017, with Judge Ekstrom as long as he is still presiding.” (CP 63).

Ms. Von Hell was fully aware of the contingent nature of primary placement and did not object to the court’s condition. In her October 14, 2016 memorandum of law regarding proposed finals, Ms. Von Hell’s counsel proposed language reflecting the contingency and how to deal with it:

It is understood that the court’s condition on this ruling was that Ms. Von Hell participate in a psychological evaluation to rule out the possibility that she has any mental health issues that would negatively impact the child. This requirement does not modify the residential terms of the parenting plan. This could easily be included in the formed [sic] Order on Modification as an automatic basis for the father to re-open litigation (or the parenting plan) should Ms. Von Hell fail to follow through with the evaluation and any resulting recommendations. (CP 34).

The court did what Ms. Von Hell requested and she cannot be heard now to complain about the condition placed on her continued role as primary custodian. The invited error doctrine prohibits a party from setting up an error in the trial court and then complaining of it on appeal. *Humbert v. Walla Walla County*, 145 Wn. App. 185, 192, 185 P.3d 660 (2008). If there was any error at all, it was invited by Ms. Von Hell and thus cannot be a basis for

reversal. *State v. Studd*, 137 Wn.2d 533, 546, 973 P.2d 1049 (1999).

Citing *In re Marriage of Watson*, 132 Wn. App. 222, 130 P.3d 915 (2006), Ms. Von Hell next claims the court had no authority to enter a new final parenting plan after finding there were no grounds to modify the existing plan. What she fails to acknowledge is she fully understood the “new final parenting plan” was contingent and contained the very language she proposed to the court providing that her failure to satisfy the conditions would automatically be adequate cause for modification. (CP 34, 41, 63). Any error was invited and cannot be the basis for reversal. *Humbert, supra*.

Ms. Von Hell did not appeal the December 13, 2016 parenting plan and cannot seek review of it now. In light of the plan’s contingency for maintaining primary placement with her, the plan was not even a final order in any event. RAP 2.2(a). She recognizes this in her brief in cases 353311 and 354032. (Brief of Appellant, p. 16). The court also retained jurisdiction over the case to determine whether she was in compliance with the conditions imposed if she was to remain the primary custodian. (CP 375).

The case was ongoing and a “final” parenting plan was not entered on December 13, 2016. It was contingent on Ms. Von

Hell's compliance so the father's petition for modification was not denied. *In re Marriage of Shryock*, 76 Wn. App. 848, 888 P.2d 750 (1995), is inapplicable, as is *In re Marriage of Watson, supra*. An amended petition for modification was nonetheless filed by Mr. Parrish. (CP 215). Error, if any, was thus cured. In these circumstances, the trial court did have authority to enter a new parenting plan and did. Ms. Von Hell cannot show the court abused its discretion by doing so. *In re Marriage of Katare, supra*.

Ms. Von Hell complains the record does not support adequate cause to modify the December 13, 2016 parenting plan. But the record supports adequate cause because the court made unchallenged findings that are verities supporting the conditions imposed on her. (CP 63, 75, 272). She failed to comply with them and adequate cause was established by the court's directive. (CP 63). Moreover, Ms. Von Hell proposed the language providing her failure to comply with those conditions would automatically be adequate cause. (CP 34, 41, 63). She cannot now complain of any error she invited. *Humbert, supra*.

Ms. Von Hell argues the court erred by vacating the final parenting plan, findings, and order entered December 13, 2016. By whatever measure, the court did not vacate these orders. The

court modified the orders pursuant to the language in them that she herself proposed. She references a June 2, 2016 motion to vacate (among other things), but the filing date was June 2, 2017. (CP 303). The court's subsequent June 9, 2017 order on the motion did not vacate the December 13, 2016 orders. (CP 374-75). Rather, it provided they would be temporary and remain in place until further order of the court. (CP 375). CR 60 is thus inapplicable.

Failing that, Ms. Von Hell contends the court was without authority to enter the June 9, 2017 order and violated RAP 7.2. She argues the order changed the December 13, 2016 parenting plan. It did not as the court kept the plan in place. (CP 375). The court entertained Mr. Parrish's motion to vacate, which is allowed by RAP 7.2(e). The December 13, 2016 orders were not vacated so nothing changed requiring the permission of the Court of Appeals to enter the June 9, 2017 order. The remedy of vacating that order is unavailable as the court did not violate RAP 7.2. *State ex. rel. Shafer . Bloomer*, 94 Wn. App. 246, 250, 973 P.3d 1062 (1999).

B. The court had jurisdiction to enter notices, orders and to make a custody determination (cases 353311, 354032, and 355900).

Finally, Ms. Von Hell claims the court did not have subject jurisdiction to make custody decisions. In her pro se brief in 355900, she makes myriad assignments of error, but the common thread in all is the court had no jurisdiction. The record belies her challenge.

Ms. Von Hell acknowledges a stipulated order registering out of state custody determination pursuant to RCW 26.27.441 was filed on December 16, 2014. (CP 1). Attached to the order were documents of custody determinations by the Alaska court. (*Id.*).

The stipulated order also provided:

The Superior Court for the State of Alaska, Third Judicial District at Anchorage no longer has exclusive, continuing jurisdiction under RCW 26.27.211 and Benton County Superior Court is a more convenient forum under RCW 26.27.261. The child subject to this action and the Respondent do not presently in Alaska and are currently residents of Benton County, Washington. The Petitioner is currently a resident of the State of West Virginia. (CP 2).

Ms. Von Hell has not challenged any of the factual findings contained in that provision and those findings support the conclusion of law that Benton County Superior Court is a more convenient forum and Alaska does not have exclusive, continuing jurisdiction. *McIntyre v. Fort Vancouver Plywood Co.*, 24 Wn. App. 120, 123, 600 P.2d 619 (1979).

It is true the jurisdiction issue may be raised at any time, but her challenge cannot overcome her own factual admissions that support the finding Benton County Superior Court had jurisdiction as the more convenient forum and Alaska no longer had exclusive, continuing jurisdiction. RCW 26.27.211, RCW 26.27.261. In her pro se brief in case 355900, Ms. Von Hell admitted she and Tiernan lived in Washington. (Pro se Brief of Appellant, p. 5). In various declarations, she stated on penalty of perjury that she and the child had lived in Washington since moving there in May 2012. (355900 CP 119, 127, 129, 171-79). Alaska simply was not the home state of the child as she claimed.

Benton County Superior Court had jurisdiction to make an initial determination under RCW 26.27.201(1)(a) or (b) and it further determined that court would be a more convenient forum under RCW 26.27.261. Washington was the home state of the child on the date of the commencement of the proceeding and Alaska did not have jurisdiction under RCW 26.27.201(1)(a) because it was not the child's home state. (CP 216). The facts supporting the conclusion that Benton County had jurisdiction under RCW 26.27.221 were admitted by Ms. Von Hell and were not challenged on appeal. The requirements of the statute governing jurisdiction to

modify a child custody determination made by a court of another state were met. Accordingly, the court had jurisdiction to enter all notices, orders, and to determine custody. Her challenge must fail.

In her brief, Ms. Von Hell also appears to address issues raised by her lawyer in cases 353311 and 354032. (Pro Se Brief of Appellant, pp. 33-47. But she cannot file a pro se brief in those cases when she is represented by counsel, who has already filed a brief. *Cf. State v. Romero*, 95 Wn. App.323, 327, 975 P.2d 564, *review denied*, 138 Wn.2d 1020 (1999).

C. She is not entitled to an award of attorney fees on appeal.

Ms. Von Hell contends she should be awarded attorney fees under RCW 26.27.511(1). But her request is premature. She makes no showing that she is entitled to such an award as she was not the prevailing party either below and cannot be while this appeal is still pending in this court.

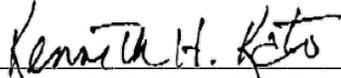
Mr. Parrish requests attorney fees and necessary and reasonable expenses as allowed under RCW 26.27.511(1) and RAP 18.1. Such an award would be clearly appropriate in light of Ms. Von Hell's absconding with the child to Wisconsin when this court's stay was in place; filing pleadings in the Wisconsin court

claiming that state had jurisdiction, while arguing here that Alaska had exclusive jurisdiction, and failing; and her continued troubling conduct during the entire pendency of this case leading to the orders she now challenges. RCW 26.27.511(1). Ms. Von Hell does not have clean hands and should not be rewarded for failing to follow court orders.

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Parrish respectfully urges this court to affirm the decisions of the trial court and award him reasonable attorney fees and expenses as the prevailing party.

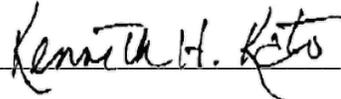
DATED this 27th day of July, 2018.



Kenneth H. Kato, WSBA # 6400
Attorney for Respondent
1020 N. Washington St.
Spokane, WA 99201
(509) 220-2237

CERTIFICATE OF SERVICE

I certify that on July 27, 2018, I served the Brief of Respondent through the Efiling portal on William Edelblute and Alaxandria Von Hell at their email addresses.



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