

FILED
Court of Appeals
Division III
State of Washington
4/23/2018 3:58 PM

NO. 35647-7-III

COURT OF APPEALS STATE OF WASHINGTON
DIVISION III

IN RE THE MARRIAGE OF:

JESSICA N. ROBINSON,

Respondent,

v.

RYAN M. ROBINSON,

Appellant.

APPELLANT'S OPENING BRIEF

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A. ASSIGNMENTS OF ERROR

1. Assignments of error.

Appellant Ryan Robinson assigns error to the following findings of fact & conclusions of law from the trial court's August 7, 2017 Final Order and Findings on Objection about Moving with Children and Petition about Changing Custody Order (Relocation):

- finding of fact / conclusion of law no. 4 (re: Factors for / against move with children);
- finding of fact / conclusion of law no. 5 (re: Changes to parenting / custody order);
- finding of fact / conclusion of law no. 11 (re: Decision – move is “Allowed” and Parenting Plan to “Change”)

Appellant Ryan Robinson also assigns error to the trial court's August 7, 2017 Parenting Plan, including the residential schedule portions of the Plan, any findings that the Plan is in the best interests of the children, and the authority of the trial court to Modify a 50% / 50% residential time parenting plan absent a finding of Adequate Cause;

Appellant Ryan Robinson also assigns error to the trial court's

September 26, 2017 Order Denying Reconsideration.

2. Issue pertaining to assignments of error.

Where the parties operated under a Parenting Plan where the children's residential time was split equally between the parties, and the Child Relocation Act (CRA) therefore does not apply to the case, did the trial court err by modifying the Parenting Plan absent any allegations of detriment to the children at all, and without a finding of adequate cause to modify the Plan?

B. STATEMENT OF THE CASE

The parties in this matter previously operated under a Parenting Plan where the children's residential time was split equally between the parties. See CP 1-6 (2014 Parenting Plan). This fact is wholly undisputed. See August 1, 2017 Verbatim Report of Proceedings (VRP) at 13 (both mother and father agreeing they were operating under a 50% / 50% residential schedule). On August 1, 2017, the Court held a hearing permitting Petitioner Jessica Robinson to relocate with the parties' two children. The Court analyzed the case under the 11 factors of the CRA, RCW 26.09.405, et seq. See August 1, 2017 VRP at 63; Clerk's Papers (CP) at 51-53 (Final Order and Findings on Relocation).

On August 7, 2017, the trial court granted relocation. See CP 50-56. The Final Order and Findings were based on the 11 factors of the CRA. Id. The Court permitted the mother to move and made her primary custodial parent. See CP 37-49 (2017 Parenting Plan on Relocation). Appellant Robinson moved for reconsideration. The trial court denied reconsideration. See CP 106-07. Mr. Robinson appeals.

C. ARGUMENT

1. Standard of review.

Generally speaking, where “the trial court has weighed the evidence, the scope of review on appeal is limited to ascertaining whether the findings of fact are supported by substantial evidence and, if so, whether the findings support the conclusions of law and judgment.” Jones v. Best, 134 Wn.2d 232, 239-240, 950 P.2d 1 (1998). “A mere scintilla of evidence,” however, will not support the trial court’s findings; it requires “believable evidence of a kind and quantity that will persuade an unprejudiced thinking mind of the existence of the fact to which the evidence is directed.” Hewitt v. Spokane, Portland & Seattle Railway Company, 66 Wn.2d 285, 286, 402 P.2d 334 (1965). Additionally, this Court reviews questions of

law, such as the application of a statute to a case, de novo. See, e.g. Chavez v. Chavez, 80 Wn. App. 432, 435, 909 P.2d 314 (1996).

2. The trial court erred by modifying the Parenting Plan absent allegations of detriment & without finding adequate cause, given the CRA does not apply because the children’s residential time was split equally.

Generally speaking, the Child Relocation Act is the statute under which issues relating to relocation of a child or children in a custody dispute are analyzed. See generally RCW 26.09.405, et seq. This Court, however, recently carved out an exception to this rule in In Re: Marriage of Ruff v. Worthy, 198 Wn. App. 419, 393 P.3d 859 (2017). In that case, the Court made it very clear that when children’s residential time is split equally between parents, the trial court does not have authority to enter relocation orders under the CRA.

This is because “the CRA does not apply to a relocation that would necessarily modify a parenting plan from an existing joint and equal residential time designation to something other than joint and residential time.” Id. at 437. Instead, when there is a parenting plan that provides for equal residential time, “a parenting whose desired relocation would necessarily terminate the existing joint and equal

residential schedule must show adequate cause under the modification statute.” Id.

That is the exact situation here. It is entirely undisputed that the parties had a parenting plan with shared residential time, see CP 1-6 (2014 Parenting Plan), and that at the time Ms. Robinson sought to relocate, they were actually operating under a 50/50 Plan:

MS. ROBINSON: And the children remained in full custody with me until the early 2016, when we decided to go back to a 50/50 schedule. The 50/50 schedule was not Monday through Monday type schedule, it was the Respondent received the boys Sunday through Wednesday and I received the boys Wednesday evenings through Sunday.

See August 1, 2017 VRP at 13. As such, the Relocation Act has no application here, Respondent Jessica Robinson was required to file and serve a Petition for Modification of the Parenting Plan, and she was also required to first demonstrate Adequate Cause. Because she did not do so, relocation was not permitted as a matter of law, Ruff, 198 Wn. App. at 437, and this Court should reverse.

On reconsideration, the trial court held Mr. Robinson should have made this argument at trial. This Court should reject the argument. Both parties were pro se in this matter, and the trial court’s

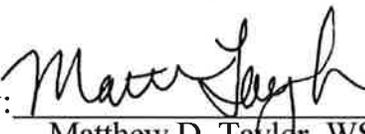
denial of reconsideration tasked a pro se litigant in August 2017 to know and comprehend a May 2017 appellate court ruling navigating the finer details of the interplay between the Relocation and Modification statutes. This makes no sense, and the Court should reject the premise given Mr. Robinson did indeed raise the legal issue below with the trial court on reconsideration.

D. CONCLUSION

For the reasons stated herein, Appellant Robinson respectfully requests this Court reverse the trial court. Here, the CRA does not apply because the children's residential time was split equally. Ruff, 198 Wn. App. at 437. The trial court thus erred by applying the CRA and modifying the Parenting Plan absent any allegations of detriment, and without a finding of adequate cause. We ask this Court to reverse the trial court.

RESPECTFULLY SUBMITTED this 23rd day of April, 2018.

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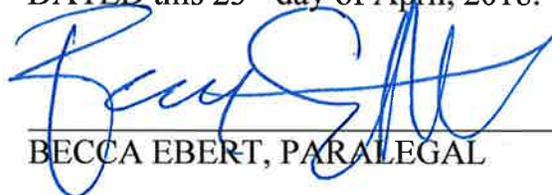
CERTIFICATE OF SERVICE

I certify that on April 23, 2018, I caused to be served a true and correct copy of the foregoing Appellant's Opening Brief to Division III of the Court of Appeals on the following parties via electronic service, First Class US Mail, and e-mail:

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April 23, 2018 - 3:58 PM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 35647-7
Appellate Court Case Title: In re Marriage of Jessica N. Robinson and Ryan M. Robinson
Superior Court Case Number: 14-3-00579-7

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