

NO. 35647-7-III

COURT OF APPEALS STATE OF WASHINGTON  
DIVISION III

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IN RE THE MARRIAGE OF:

JESSICA N. ROBINSON,

Respondent,

v.

RYAN M. ROBINSON,

Appellant.

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BRIEF OF RESPONDENT

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Michael B. FitzSimons, WSBA No. 25054  
Attorney for Respondent, Jessica N. Robinson

JAQUES SHARP  
205 3rd Street  
Hood River, OR 97031  
(541) 386-1311

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## I. INTRODUCTION

Respondent, Jessica N. Robinson, the mother of the parties' two minor children, (hereinafter "Mother") disagrees with Petitioner, Ryan Robinson (hereinafter "Father") that the Child Relocation Act (CRA) does not apply in this case when the trial court made a determination that the children resided the majority of time with Mother and the Final Parenting Plan entered on September 8, 2014 unequivocally stated "the children reside the majority of time with mother." Additionally, Mother asserts that the trial court properly denied Father's *Motion to Reconsider*. Mother respectfully requests that this court affirm the trial court's decision on both its August 7, 2017 *Final Order and Findings on Objection about Moving with Child and Petition about Changing a Parenting/Custody Order* and its September 26, 2017 *Order on Motion for Reconsideration Denying the Motion for Reconsideration*.

## II. RESTATEMENT OF THE CASE

The parties in this matter followed an agreed Parenting Plan and Final Order entered on September 8, 2014 wherein Mother was designated as the custodian. *See Clerk's Papers (CP)*

at 1-6 (2014 Parenting Plan at Section 3.12) Section 3.12 of the original parenting plan stated in relevant part:

### 3.12 Designation of Custodian

The children named in this parenting plan are scheduled to reside the majority of the time with mother. This parent is designated the custodian of the child(ren) solely for the purposes of all other state and federal statutes which require designation or determination of custody. This designation does not affect either of the parents' rights and responsibilities under the parenting plan. *See CP at 3(2014 Parenting Plan, Section 3.12)*

On August 1st, 2017 the trial court held a hearing regarding Father's objection to Mother's relocation with the parties' two minor children. *See August 1, 2017 Verbatim Report of Proceedings (VRP)*. The trial court concluded in its finding:

The original Parenting Plan provided for a 50/50 plan alternating each week; however, prior to the mother's securing employment and moving to Goldendale to be closer to her work, the children had resided primarily with her from Wednesday to Sunday each week and with Father from Sunday to Wednesday. *See CP at 52 (August 7, 2017 Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Order.)*

On August 7, 2017, after the trial court analyzed the case under the eleven factors of the CRA, the trial court permitted

Mother to relocate and entered a new parenting plan. *See CP at 37-49 (2017 Parenting Plan on Relocation).*

On August 17, 2017 Father moved the trial court for reconsideration. The trial court denied Appellant, Father's motion for reconsideration stating that "Father's effort to argue a new theory of the case comes too late" *See CP at 107*

### III. ARGUMENT

#### A. First Assignment of Error – Application of CRA

##### 1. Standard of Review -

The court reviews errors of law to determine the correct legal standard de novo. *In re Marriage of Kinnan*, 131 Wn. App 738, 751, 129 P.3rd 807 (2006). The court reviews challenges to a trial court's actual findings for substantial evidence. *In re Marriage of McDole*, 122 Wn. 2d 604, 610, 859 P.2d 1239 (1993). The court upholds findings that are supported by substantial evidence *Id.* at 610. The court reviews conclusions of law to determine whether factual findings that are supported by substantial evidence that in turn support the conclusions. *In re Marriage of Myers*, 123 Wn. App. 889, 893, 99 P.3rd 398 (2004). The court will defer to the trial court's relocation ruling unless it is

manifested unreasonable or based on untenable grounds or untenable reasons under the abuse of discretion standard. *In re Marriage of Horner*, 151 Wn. 2d 884, 893-894, 93 P. 3rd 124 (2004). The court reviews trial court's decision dealing with the welfare of children for abuse of discretion. *Id.* Abuse of discretion occurs "when the trial court's decision is manifest unreasonable or based upon untenable grounds or reasons" *Id quoting State v. Brown*, 132 Wn. 2d 529, 572, 940 P.2d 546 (1997).

2. The Trial Court Correctly Applied CRA Because The Children Resided The Majority Of The Time With Mother.

The Child Relocation Act (CRA) is the statutory structure in which the parent with whom the children reside the majority of the time may seek to relocate the parties' minor children. *See generally* RCW 26.09.405 *et seq.* Under the CRA, a person "with whom [a] child resides a majority of the time" must provide notice of an intended relocation to every person entitled to residential time with the child. RCW 26.09.430. If a person entitled to have residential time objects to the proposed relocation, then the person seeking to relocate may not relocate the child without a court order. RCW 26.09.480. If presented with an objection to a

relocation, a trial court must conduct a hearing on the proposed relocation. RCW 26.09.520. At a hearing on a proposed relocation the “relocating parent benefits from a rebuttable presumption that the relocation will be allowed.” *In re Marriage of Fahey*, 164 Wn. App 42, 56, 262 P.3 128,135 (2011). The person objecting to the relocation may rebut the presumption by showing that, with regard to the child and the relocating person, the detrimental effects of relocating outweigh the benefits. *Id.* By the terms of the statute it is the party “with whom a child resides a majority of the time” that has the benefit of the rebuttable presumption. *Id.*

Father contends that the 2014 Parenting Plan in this matter is an approximate equal parenting plan and therefore CRA does not apply. Father relies on *In re Marriage of Ruff v. Worthley*, 198 Wn. App 419, 393 P.3 859 (2017) for Father’s contention that the CRA does not apply. The reasoning in *In re Marriage of Ruff v. Worthley* does not apply in this matter because in *Ruff v. Worthley* the parties were designated joint legal and physical custodians of their minor children with equal decision-making authority. In *Marriage of Ruff v. Worthley* the specific language of the Ruff and Worthley parenting plan is not identified in the appellate decision, but it is reasonable to assume that the plan did not identify one

party as the custodial or primary residential parent as the 2014 original parenting plan in the present case and the parenting plan identified in *In re Marriage of Fahey*, 164 Wn. App 42, 262 P. 3 128 (2011).

*In re Marriage of Fahey*, the trial court reviewed the permanent plan entered in Kitsap County Superior Court in 2002 to identify the primary residential parent. The *Fahey* 2002 parenting plan stated “the children named in this parenting plan are scheduled to reside the majority of the time with mother” *In re Marriage of Fahey* at 57. Based on portions of the parenting plan and the substantial evidence at the trial court hearing, the *Fahey* court affirmed the trial court’s finding that the 2002 parenting plan established the mother as the residential parent. Further, since the *Fahey* court established Mother as the primary residential parent, it properly applied the CRA and rebuttable presumption favoring the mother’s relocation decisions.

Similar to the *Fahey* court, the original 2014 parenting plan, at section 3.12 identified Mother as the custodian *See CP at 3 (2014) Parenting Plan, Section 3.12*. Further, the parenting plan specifically stated “the children named in this parenting plan are

scheduled to reside the majority of the time with mother.” CP at 3. This was an agreed parenting plan entered by pro se litigants and signed by the court on September 8, 2014. CP at 1-6. The parties, by agreement, designated Mother as the primary residential custodial parent. CP at 1-6. Additionally, the trial court after hearing from the parties confirmed that on a weekly basis the children spent four days with Mother and three days with Father:

The court: Okay. Because Sunday night, Monday and Tuesday night is three nights. Wednesday to Sunday is four nights. So, are—who—do you want to summarize the nights?

Ms. Robinson [Mother]: Correct. It was Wednesday evenings they come back to me [Mother] and then I return them to Ryan [Father] on Sunday evenings. So, it was basically- - on Wednesday evenings, it was after school when we would make the switch.

The Court: So, Wednesday evening to Sunday evenings and then Sundays to Wednesdays.

*See August 1, 2017 VRP at 16-17*

The court then made its final findings in its August 7, 2017 *Final Order and Findings and Objection about Moving with the Children* at section 4(c) on page 3 that:

The Original Parenting Plan provided for a 50/50 plan alternating each week; however, prior to the mother’s [sic] securing employment and moving to Goldendale to be closer to her work, the children resided primarily with her

from Wednesday to Sunday each week and the father from Sunday to Wednesday. CP at 53.

Under the facts in this case, the trial court's finding that Mother was the children's primary residential parent is supported both by the 2014 parenting plan and the information the court received at trial and is therefore supported by substantial evidence. As such, the trial court correctly applied the rebuttable presumption of the CRA in favor of Mother's request to relocate and further appropriately applied the statutory relocation factors of the CRA in favor of Mother for the relocation.

**B. Second Assignment of Error – Order Denying Reconsideration**

1. Standard of Review- Motion to Reconsider

Appellate court's review of the trial court's denial of a motion for reconsideration is for abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. *Nichols v. Peterson Northwest Inc.*, 197 Wn. App 491, 498, 389 P.3rd 617, 621 (2006) quoting *Riverhouse Dev. Inc vs Integrus Architecture, PS.*, 167 Wn. App 221, 231, 272 P.3rd 289 (2012) "A decision is manifestly unreasonable if the trial court takes a view that no reasonable

person would take” *Id. quoting Clipse v. Commercial Driver Services. Inc.*, 189 Wn. App 776, 787, 358, P.3rd 464 (2015), *review denied*, 185 Wn. 2d 1017, 367 P.3rd 1084 (2016). If a trial court’s decision to deny a reconsideration motion is “contrary to the law”, the trial court has abused its discretion. *Id.*

2. The Trial Court’s Denial of the Motion to Reconsider was Proper

The trial court’s decision to deny Father’s *Motion for Reconsideration* was proper because Father failed to identify grounds under CR 59(a) for his motion to reconsider, and CR 59 does not permit a disappointed party to propose a new theory case in a motion for reconsideration.

*(a) Father Failed to Identify Grounds Under CR 59(a) For his Motion For Reconsideration.*

CR 59(a) identifies nine specific grounds that a party may utilize seeking reconsideration of a judgment. Father failed to identify any specific CR 59(a) grounds to support his motion for reconsideration. As such, the court properly denied Father’s Motion for Reconsideration.

*(b) CR 59(a) Does Not Permit a Disappointed Party  
To Propose A New Theory Case In A Motion For  
Reconsideration.*

“CR 59 does not permit a Plaintiff, finding a judgment unsatisfactory, to suddenly propose a new theory of a case... moreover “post-trial discovery of a new theory of recovery is not sufficient reason to either grant a new trial or reconsideration of a previously entered judgment pursuant to CR 59” *Vaughn v. Vaughn*, 23 Wn. App 527, 530, 597 P.2d 932, 935 (1979) *review denied by Vaughn v. Vaughn*, 92 Wn. 2d 1023 (1979) *quoting JDFF Corp. v. International Raceway Inc.* 97 Wn. App 1, 7, 970, P.2d 343, 347 (1999).

In the present case Father sought to change the theory of the case after the case had been heard as a relocation case. Father did not object to the case being heard by the trial court as a relocation case. As such, the trial court properly concluded:

The father did not object to the relocation provisions being applied and did not argue that there should have been an adequate cause hearing or that there was not adequate cause to support the mother moving to Goldendale with the children. Therefore, his effort to argue a new theory of the case comes too late.” CP at 107.

The trial court's decision is supported by case law, it is not based on untenable grounds or untenable reasons. As such, this court should affirm the trial court's decision denying Appellate's Motion for Reconsideration.

*(c) A Pro Se Litigant is Held to the Same Rules of Procedure and Substantive Law as Attorneys*

Father suggests in his opening brief that the reconsideration should have been granted simply because the Father was a pro se litigant and should not have been tasked "to know and comprehend a May 2017 Appellate Court ruling navigating the finer details on the interplay between the relocation and modification statutes." *Appellant's Opening Brief at page 6.*

Contrary to Appellant's assertion "pro se litigants are bound by the same rules of procedure and substantive law as attorneys" *Westburg v. All Purpose Structures, Inc.*, 86 Wn. App 405, 411, 936 P.2d 1175, 1178 (1997) *as amended* (June 13, 1997) *citing Patterson v. Superintendent of Public Instruction*, 76 Wn. App 666, 671, 887 P.2d 411, (1994), *review denied*, 126 Wn. 2d 1018, 894 P.2d 564 (1995).

Based on the foregoing a pro se litigant is held to the same standard as an attorney and therefore the motion for reconsideration was properly denied.

#### IV. CONCLUSION

For the reason stated herein, Respondent, Mother respectfully requests that this court affirm the trial court's decision on both a *Final Order and Findings on Relocation and the Order Denying the Motion for Reconsideration*.

Respectfully submitted this 8 day of June 2018.

JAQUES SHARP



Michael B. FitzSimons, WSBA 25054

Attorney for Respondent

**CERTIFICATE OF SERVICE**

I certify that on June 8, 2018, I caused to be served a true and correct copy of the foregoing Brief of Respondent to Division III of the Court of Appeals on the following parties via first class mail to:

Ryan Robinson  
30817 168th Ave SE  
Auburn WA 98092



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Arianne Baullosa,  
Legal Assistant to Michael B. FitzSimons

**JAQUES SHARP**

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