

FILED

APR 27 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 356566

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

PATRICK CRAIN,

Petitioner/Appellant,

and

SIRI CRAIN

Respondent.

APPELLANT'S BRIEF

Robert R. Cossey
WSBA No. 16481
902 North Monroe St.
Spokane, WA 99201
(509) 327-5563
Attorney for Appellant

TABLE OF CONTENTS

A. ASSIGNMENT OF ERROR.....2
B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR.....2
C. STATEMENT OF THE CASE.....2
D. ARGUMENT.....7
E. CONCLUSION.....23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>In re Marriage of Worthley</i> , 198 Wn.App 419, 393 P.3d 859 (Div. 2 2017).....	4, 12 – 19, 23, 24
<i>In re Marriage of Fahey</i> , 164 Wn.App. 42, 262 P.3d 128 (Div. 2 2011).....	20, 21, 24

Statutes

RCW 26.09.520.....	3, 4, 14
RCW 26.09.002.....	17
RCW 26.09.260.....	19

A. ASSIGNMENT OF ERROR

The trial court erred in applying the Child Relocation Act to a parenting plan which designates both parents as equal residential custodians, which resulted in an erroneous presumption in favor of relocation contrary to *In re Marriage of Worthley*.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Did the trial court abuse its discretion in ruling that the Respondent is the custodial residential parent, and was therefore entitled to presumption in favor of relocation?

C. STATEMENT OF THE CASE

i. Procedural History

The parties married in 2007. There was one child born to the marriage in 2011, Elliot Crain. The parties divorced in 2014, when Elliot was approximately 3 years of age. The Court entered a parenting plan naming both parties as “co-parents,” with “approximately equal time” in custody of Elliot. (*See, Agreed Final Parenting Plan*, 13-3-01125-3, Spokane County, March 31, 2014, “2014 Parenting Plan” herein.)

In December 2016, a fire caused Ms. Crain to lose power in her home in Elk, Washington. Vol. I p. 31:7-12 (No exact date is given in the testimony, nor in the findings). Ms. Crain chose to temporarily stay with her boyfriend who lived in Hayden, Idaho. Vol

I p. 33:13. Mr. Crain only heard of the move unofficially on January 13, 2017. Appellant filed a Motion for Contempt on February 9, 2017, based upon the lack of notice regarding the relocation, and objected to the relocation itself. Mr. Crain also filed a Motion for Contempt regarding the lack of notice concerning Elliot's doctor's appointment. The contempt motion regarding the doctor visit is not part of this appeal. Respondent never attempted mediation prior to relocating, and never formally responded to the objection to the relocation. Vol I p. 25:13.

The trial court ordered the parties to undergo mediation in April of 2017. Appellant asserted that the Respondent relocated Elliot without notice and without mediating a school schedule, as called for in the Parenting Plan. Appellant also believed that Respondent failed to show adequate cause to modify the parenting plan. Respondent asserted that she qualified as the primary custodial parent and thus qualified for the presumption that the relocation be permitted as set forth in RCW 26.09.520. Respondent believed the parenting plan would be modified to accommodate the relocation as well as the school year.

The parties went before the assigned family law commissioner on May 18, 2017 regarding temporary relocation. Court Commissioner Rugel held that Washington Appeals Court Case *In re Worthley* barred the application of the CRA and

dismissed the pending objection to relocation. *See Order on Motion to Relocate* dated May 18, 2017. According to the Commissioner, the parties to this action demonstrated their intent to share equal time and custody of Elliott and therefore, the Respondent could not avail herself of the presumption in RCW 26.09.520. *Id.* Commissioner Rugel dismissed the *Motion to Relocate*, as well as the *Objection*, holding the matter over for trial on the issue of adequate cause for modification. *Id.*

Respondent moved to revise Commissioner Rugel's ruling, which was heard before Superior Court Judge Harold Clarke. Judge Clarke overruled Commissioner Rugel's order and findings. *See Order on Motion to Revise Commissioner's Ruling*, June 29, 2017. Judge Clarke wrote:

The decision of *Ruff v. Worthley* makes clear that the Relocation Act applies so the matter shall be remanded back to the Commissioner to analyze the matter under the Relocation Act. The previously dismissed objection is revised by this order and the trial date shall be reinstated should the court have availability.

The visitation schedule and the relocation matter were tried before Judge Clarke on August 14, 2017, two weeks prior to the start of a normal school year. Respondent had already enrolled Elliott in school in Idaho. Vol I p.40:6-10. The trial court upheld Ms. Crain's relocation, and specifically cited the presumption established within the Child Relocation Act, as well as the factors cited in RCW 26.09.520. *See Decision Letter*, September 6, 2017. The findings

resulted in Mr. Crane losing his status as a ‘substantially equal time parent’, one who saw his daughter three and a half days a week, to an ‘every other weekend dad’.

Mr. Crain makes this appeal from the decision granting the relocation and drastically reducing his residential time with his daughter. In particular, Mr. Crain appeals Judge Harold Clarke’s conclusion of law regarding applicability of the CRA and *In re Worthley*.

A. Factual History

Appellant Patrick Crain is a commissioned police officer working at Sacred Heart medical center. Vol I p. 79: 9. Appellant notes his substantial and involved relationship with his daughter under the parties 2014 plan. Vol I p.74:19-23. Elliott lived half-time with Patrick and Patrick’s wife, his thirteen-year-old daughter and Elliott’s half-sister Mayleigh. *Id* at p.77:12. Elliott had chores as a regular member of the household, including feeding the dogs, the cat, the rabbit, before having breakfast with the family. *Id* at p. 75:12-17. Elliott enjoyed her own bedroom and was an integral part of the family, having spent approximately half her life with her father. *Id*.

Elliott enjoyed such status with the family because Mr. Crain retained equal residential custody and joint decision making, as

agreed to by both parties in the Parenting Plan entered on March 31, 2014. (2014 Parenting Plan). Under the original terms of the 2014 Parenting Plan, Appellant-Father enjoyed seeing Elliot three days a week from Sunday afternoon until Tuesday evening one week, and then four days a week the next, from Saturday afternoon until Tuesday evening. *Id.* Therefore, in any given two-week period, Appellant had custody of Elliott for seven out of fourteen days. The arrangement matched the stated purposes set out in section 3.12 of the 2014 Parenting Plan, heading “Designation of Custody”:

The child named in this parenting plan is scheduled to spend approximately equal time with her parents. Siri Crain shall be designated custodial parent **solely** for the purposes of all other state and federal statutes which **require** a designation or determination of custody. **This determination does not affect either parent’s rights and responsibilities under this parenting plan nor be construed in favor or against either parent.** Each party shall designate the other as contact person for all requests for contacts, including emergency contacts. For purposes of child support residential schedule credit, this designation does not infer the mother to be the primary parent.

(Emphasis added). Additionally, the 2014 Parenting Plan called for joint decision-making with respect to education, all non-emergent medical care, spiritual-religious training, as well as notification if the child (Elliott) were to be taken on vacation or out of the area for more than a week. Lastly, the Parenting Plan ordered the parties to formally mediate all disputes that might arise out of the Parenting Plan, including the school residential schedule. *Id.*

From 2014 until 2016, the parties lived in close proximity in the north Spokane area, Appellant in Deer Park and then the North Spokane area, Respondent in Elk and Chatteroy. *See Testimony of Siri Crain Generally*, Vol I p 17-25. The parties agreed to *add* an overnight for Appellant starting as early as April of 2016 but no later than November of 2016 (Judge Clarke made no findings on when the change occurred, nor did Judge Clarke factor the additional night into the determination of “primary custodial parent”). Vol I p 25 ll 10-19. Though testimony conflicted as to the degree of deviation from the Parenting Plan, there is no doubt that the additional night resulted in a schedule that more closely matched the joint custody set forth in section 3.12 of the 2014 Parenting Plan. Vol I p. 26 ll 5-10. Appellant enjoyed six overnights with Elliott, but more importantly, he enjoyed three and a half days each week, equating to half of Elliot’s waking hours.

Following the December 2016 fire next to Ms. Crain’s home that caused a loss of power, Respondent moved in with her then-paramour Brandon Reed. Respondent had been dating Mr. Reed off and on for four months, seeing each other once a week or so. Vol I p.48:4-10. She took Elliott and went to stay at Brandon’s apartment (with his two daughters) in Hayden Idaho. Vol I p.34:5-8. Respondent did not notify Appellant of the change at the time she moved. *See Jdg. Clarke Decision Letter*.

Respondent did not request that her landlord return power to her home, despite the fact that the landlord was able to secure power through a generator to the landlord's own residence. Vol I p. 31:18-20, Vol I, p. 32-33:22-4. Instead, Respondent determined (on her own, according to her testimony) that because the power ran through underground lines, frozen ground would not allow power to be returned until March of 2017. *Id.* The March estimate matches the date that Respondent testified she determined she would relocate permanently, March 31, 2017, when Respondent filed her first court response in this matter. *See Letter Decision Judge Clarke.* The March 2017 time period also matches the expiration of Respondent's renters' insurance benefits. Vol I p 65:8-10.

Respondent's parents lived 20 (twenty) minutes away from her residence at the time of the fire, and much closer to Appellant. Vol I p 33:10. But Respondent chose to move to Hayden without considering locations closer to Elliot's pre-school, despite being required to consult Appellant in all education decisions. *Id.* at p. 33, ll 10-16.).

Respondent's move to Idaho occurred during a period in which she was unable to make her share of the payment for Elliott's pre-school expenses. (Vol I p 38:4). Mr. Roy allowed Respondent to live with him rent free for the first several months, Respondent then contributed \$400 in rent starting in or around February "or so." Vol

I p.21:22-24. In July 2017, Respondent and Mr. Reed rented a home in the Coeur D' Alene area with Respondent's name on the lease, despite the fact that the trial would not occur for another month. Vol I p.22:1-12. Respondent also testified that they chose the Idaho location despite the fact that Mr. Reed works for a construction company based in Spokane and goes out to jobs throughout the entire area, and that non-unilateral mediation possibilities could have been explored. Vol I p.22:22-25.

The entire dispute occurred in the half year prior to Elliott entering Kindergarten. Under the 2014 Parenting Plan, both parents had decision-making authority over education. The parties were to consult with each other and come to an agreement if possible concerning education. *See 2014 Final Parenting Plan*. Appellant wanted to discuss sending Elliott to Christian school at the Spokane Christian Academy but Respondent rejected the idea during mediation. Vol I p 35 ll 12-15. Meanwhile, without consulting Appellant, the Respondent enrolled Elliott in school in Dalton Elementary School in Couer D' Alene in July, prior to trial. Vol I p 39:14. The following question-answer demonstrates the lack of regard Respondent had for Appellant's inclusion in critical educational decisions for his child, as well as solidifying Elliot's residential status before the Court's ruling.

A. But I'm requesting a transfer to Hayden Meadows, which is where Brandon's kids go to school. They don't decide on that until the 17th. So I'm waiting. Either one of those is close to our house.

Q. Okay. And did you notify Mr. Crain that you enrolled her in Dalton Elementary?

A. I did not. Because I only did it to be prepared, not necessarily that she would have to go there. But I needed to get her in there so it was ready.

Q. Did you have a court order authorizing you to enroll her in a school in Idaho?

A. No.

Q. Okay. And you knew that under the plan, that this was a joint decision to be made?

A. Yes. But I knew that we were going to be coming into this situation. I just needed to be prepared no matter what the outcome was.

Q. Okay. Did you make a motion at any time to seek authorization to enroll her in a school in Idaho?

A. I don't know.

See Vol I, p.39-40

The trial court wrote its decision in the form of a letter to counsel. Judge Clarke noted that the Parenting Plan called for Elliott to spend 9 (nine) nights out of fourteen with Respondent, but then also noted that testimony unequivocally demonstrated that Appellant had obtained an extra night per week with his daughter, ensuring that Appellant had custody of his daughter for a minimum of three and a half days each week. *See Decision Letter*. Critically, Judge Clark's opinion does not cite section 3.12 of the 2014 Parenting Plan, which named both parents equal residential custodians. *See 2014 Parenting Plan*.

The trial court decided to approve the relocation and granted Appellant visitation rights to "every other weekend." *Id*. The decision noted that it was "only" an hour drive between the parties and that Skype, Facebook and phone contact can "mitigate" any loss the father might suffer. *Id*.

It is not possible to read the section 3.12 clause agreed to in 2014 regarding equal parenting with substantially equal time and square the result in this case. The clause, which was the basis for Commissioner Rugel's dismissal of the relocation action on May 18, 2017, went unaddressed by Judge Clarke and must be the focus of this appeal.

D. ARGUMENT

The 2014 Final Parenting Plan between the parties unequivocally names both as joint residential custodians. *See 2014 Parenting Plan, Sec. 3.12*. The Respondent in this matter was allowed to use the Child Relocation Act in the precise manner attempted by the Plaintiff in *In re Marriage of Worthley*, 198 Wn.App. 419, 393 P.3d 859 (Div. 2 2017). Division II manifestly struck down just such an attempt in *Worthley*, and this honorable Court should rightly do the same. Respondent unilaterally diminished the Appellant's time with his daughter from roughly half-time, to two weekends a month. Such a result would be inconceivable outside the "adequate cause" statutes, as noted by the Court in *Worthley* as well as Commissioner Rugel in this case on May 18, 2017.

The parties to this action could not have drafted a clearer statement of intent than that found in their Parenting Plan. The parties addressed custody of their daughter as equals, who "shared" the responsibility, the joys and burdens. Indeed, the parties expressly *excluded* the idea of Siri Crain as "primary parent" for purposes of the CRA in section 3.12 of the parenting plan. Siri Crain was to be considered "primary" custodial parent, *only with respect* to certain statutes – such as applicable I.R.S. code – that *require* one

parent be named. *See Final Parenting Plan, Sec. 3.12.* The trial court left section 3.12 of the parenting plan unaddressed, instead finding that “Ms. Crain is entitled to the presumption the benefit of the relocation outweighs the detriment.” *See Decision Letter, page 2.*

In accord with section 3.12 as set out above, the parties created a schedule which afforded Mr. Crain three days with Elliot one week, and four the next. The parties then added an overnight each week. Testimony confirmed that, by decree, and by action, the parties shared equal and joint custody with substantially equal time. The trial court counted nine (9) overnights to emphasize Respondent’s primary residential-parent status, but later referred to the extra **weekly** overnight with Appellant which would bring the overnights to seven (7).

The trial court could only find Respondent as the “majority” custodial parent with “9 overnights” by ignoring the express *disclaimer* of such entitlement in Section 3.12. The finding overlooked that Section 3.12 matched the evidence as to how the parties shared custody of their daughter on seven out of fourteen days, even prior to the “additional overnight.” Last, the trial court did not adhere to the holding in *Worthley* which expressly found that “substantially” equal time suffices to defeat utilization of the

presumption in the CRA to effectuate wholesale, relationship-altering changes to the parenting plan.

The CRA does not apply when the child's residential time is designated equal or substantially equal in the parenting plan and when the proposed relocation would result in a modification of this designation and substantial reduction in time for one parent. This case fits the facts in *Worthley* and carries the same significant public policy concerns and issues. This matter also matches *Worthley's* drastic results to a completely innocent parent, absent appellate reversal. Though *Worthley* is a Division II case, the reasoning is highly persuasive and reflects the legislature's intent and policy with respect to these critical child-rearing issues. The same result should follow here.

- a. The Appellant Court should reverse the lower court's ruling on relocation in this case because both parents shared equal residential time with the child, making the presumption in favor of relocation inapplicable pursuant to the holding in *Worthley*.

The Child Relocation Act, or Washington Statute RCW 26.09.405 - .560, governs child relocation in family law cases. The Child Relocation Act, hereafter referred to as CRA, grants a 'primary' parent a rebuttable presumption in favor of relocation. *See* RCW 26.09.520. In 2017, Division II of the Washington Court of Appeals ruled that **no** presumption in favor of relocation exists

when parents share joint custody. *See In re Marriage of Worthley*, 198 Wn.App. 419, 426, 393 P.3d 859 (Div. 2 2017). “A plain reading of the CRA's language supports the conclusion that the CRA does not apply to proposed relocations that would modify joint and equal residential time under a joint parenting plan to something other than joint and equal residential time.” *Id* at 428.

In *Worthley*, the parenting plan dictated that the children to “reside equally or substantially equally with both parents” on an alternating weekly schedule (a joint parenting plan). *Id* at 422. The parties in *Worthley* were designated joint legal and physical custodians of their minor children and had equal decision-making authority. *Id*. The mother in *Worthley* attempted to file a relocation motion to move the children to Missouri. The Court’s analysis centered on the plain meaning of the CRA statute:

“Under the plain language of the CRA's relocation definition and its notice provision, a "relocation" is a change in principal residence, and the person with whom the child resides the majority of time shall give notice of any intended change in principal residence. The CRA does not define "principal residence" or "majority." *See* RCW 26.09.410. In the absence of statutory definitions, we give these terms their plain and ordinary meaning ascertained from a standard dictionary. The ordinary meaning of "principal" is "most important" or "influential" and the ordinary meaning of "majority" is a number greater than half of a total." Webster's Third New International Dictionary 1802, 1363 (2002).”

Id at 426, (citing *Watson*, 146 Wn.2d at 954 regarding plain meaning). The *Worthley* court noted that these definitions

necessarily exclude joint parenting plans because there is no ‘most important or influential’ or ‘principal’ residence in a joint custody home. *Id.*

Here, the trial court ruled that the 2014 Parenting Plan called for 9 overnights with Respondent every fourteen days, yet also noted the extra “night” granted in November of 2016. *See Decision Letter, September 6, 2017.* The “extra night” ensured that Appellant had custody of his child for a minimum of three and a half days a week, qualifying as “substantially equivalent time” according to the plain meaning of the CRA as interpreted by the Court in *Worthley*.

More importantly, the trial court ignored and gave no effect to Sec. 3.12 of the 2014 Parenting Plan, which expressly noted that the parties allocated time as equally as they could (with employment, pre-school and all other things considered). The parties entered into a Parenting Plan that *specifically rejected* the notion of a primary custodial or residential parent. Indeed, the Parenting Plan designated Siri Crain as custodian *only* in situations where statutes *required* one parent be deemed primary, such as the I.R.S. statutes allocating child tax credits, or the dependent care credit. *See 2014 Parenting* Washington’s CRA does not “require” that one parent be considered primary or the “majority” time parent. *Supra* at 426. As noted in *Worthley*, the CRA is silent and compels

no such designation in joint custody parenting plans with equal or substantially equal time. *Id.*

The *Worthley* court noted that the best interests of a child are served when “the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.” *Id.* at 428, citing RCW 26.09.002. Disputes regarding a child’s “best interest” are inherently fact-dependent and each case is unique, but “continuity of established relationships is a key consideration.” *Id.*

In this matter, however, the order permitting the relocation abolished much of the “continuity” established between Elliott and her father. The trial court’s parenting plan deprives the child, Elliot Crain, of seventy-five percent of her residential time with her father. This circumstance was precisely what the Court in *Worthley* sought to abolish in its ruling. The moving parent in a joint custody parenting plan must proceed with a petition to modify the final parenting plan and show adequate cause, as opposed to enjoying a presumption under the CRA. *Supra* at 436.

A similar parallel is seen in the *Worthley* holding and this matter with respect to the best interest of the child analysis. With joint-parenting plan cases, children are best served by requiring parties to meet adequate cause and other requirements before

making a change from an equal residential time designation to something other than equal residential time. *In Re Worthley*, at 430. “Otherwise the preservation of the existing equal parent-child interaction could be disturbed for reasons other than those necessitated by the parent's changed circumstances or as required to protect the child from harm.” *Id.*

The trial court evaluated the impact upon Elliott by accepting that the move was a ‘done deal’ and that her mother would either “move or not.” *See Letter Memorandum Decision*. Such language rewards the Respondent for putting the cart in front of the horse in this matter, having everything a “done deal” by the time she filed, even determining she would move on the day she replied to Appellant’s objection. As a matter of public policy, the Appellate Courts in this state should not allow trial courts to essentially “reward” a parent who created a domestic situation too difficult to “unwind” by the time trial came about. As the court in *Worthley* noted, “such a result would be contrary to RCW 26.09.002”.

The drastic changes to Appellant’s relationship with his daughter are of the type that only occur under the modification statutes. The modification statutes prohibit significant changes (of the type found in this matter) unless the trial court finds that facts have arisen since the prior decree or plan and that a substantial change has occurred in the circumstances of the child. *See RCW*

26.09.260. In those circumstances, modification is allowed if adequate cause is found **and** it is in the best interest of the child. RCW 26.09.260(1). The trial court failed to consider whether a party has shown adequate cause for the type of modification in which a parent can lose 75% of his visitation time. In modification cases, a petitioner can include a showing of whether the child has been integrated into the family of the petitioner in substantial deviation from the parenting plan or whether the child's present environment is detrimental. *See* RCW 26.09.260(2)(b),(c). The modification statutes and the “adequate cause” burden are the appropriate scope by which to consider changes to custody of this magnitude.

The high burden of adequate cause fulfills the policy to maintain the existing pattern of the parent-child relationship to protect the best interests of the child. The modification procedures were set up specifically to protect stability by making it more difficult to challenge the status quo. *See Worthley* at 430. Parents who are parties to a joint parenting arrangement have entered into a serious commitment to parent their children together. *Id.* This commitment should **not** lightly be undone. *Id.*, emphasis added. Appellant submits that where loss of electrical power sets in motion a series of events unilaterally directed by Respondent, events which culminated in the loss of 75% of Appellant’s residential time with

his daughter, such an action qualifies as “lightly undoing” the Parenting Plan that Appellant entered in good faith, acted in accordance to, and justly relied upon.

- b. Overnight visitation is not decisive in determining primary residential parent: rather the language of the Parenting Plan controls.

To determine whether a parent is primary, the Court must first look to the language in the parenting plan. *In re Marriage of Fahey*, 164 Wn.App. 42, 55, 262 P.3d 128 (Div. 2 2011). In *Fahey*, the decree specifically nominated the mother as having *primary custody* as well as majority of residential time. *Id* at 51. However, at trial, the father attempted to prove that he should benefit from the CRA presumption because the father believed that the children lived with him more than half time for the first four years, post decree. *Id*. The *Fahey* court determined that it was appropriate for the trial court to maintain a parent’s designation as primary *residential* parent for purposes of relocation. *Id* at 58-59. The *Fahey* court did **not** make any ruling regarding a parenting plan that designates both parents as equal residential custodians.

Here, the plain meaning of the 2014 Parenting Plan is clear: “The child named in this parenting plan is scheduled to spend approximately equal time with her parents.... This designation shall not affect either parent’s rights and responsibilities under this

parenting plan nor be construed against or in favor of either parent.”
See 2014 Parenting Plan, Sec 3.12. The parents specifically designated mutual residential custodianship, seemingly in anticipation of this exact issue in 2014 (long before relocation was ever contemplated). Whereas *Fahey* involved a parenting plan that nominated the mother as primary residential parent, and gave her majority residential time, this matter involves a Parenting Plan which expressly foreswears such a finding. If the rule is that courts look to the Parenting Plan to determine the presumption afforded the parent with “majority time”, this Parenting Plan expressly rejected a finding for either parent, *regardless of schedule*.

Moreover, Appellant sought to prove the parties acted in accord with the parenting plan by adding an extra night. If the trial court was not going to give weight to section 3.12, then the trial court should have utilized the additional overnight in factoring custodial time with Elliot and found that Appellant had Elliot 6 out of 14 nights, and three and a half days per week. The trial court should have then held that the parties acted in accord with the parenting plan and had equal custody or substantially equal time of custody, both as a matter of fact and law.

The *Fahey* holding should be limited to those occasions when the residential schedule set out in the *Parenting Plan* is in stark contrast to the facts. The Parenting Plan in *Fahey* specifically cited

the mother as the primary parent and custodian, while the father sought to introduce evidence demonstrating that the children resided with him a majority of the time. In those specific circumstances, giving weight to evidence as to where a child resides the majority of the time near *negates* the lawful weight of the parenting plan, a legal decree. However, where the evidence *compliments* the Parenting Plan, where the evidence demonstrates that the parents chose to grant one parent an “extra night” to reach the “substantially equal” time called for in the Parenting Plan, the validity of the decree is not threatened, but *strengthened*.

The trial court erred by not relying on Section 3.12 of the parties agreed parenting plan *and* by not factoring in the evidence of the 8th night (or “extra night”) as consistent with the language of the decree calling for substantially equal time. The trial court noted that it did not know why the parties did not reduce the extra night to “writing.” *See Judge Clarke Letter Decision*. Appellant offers that Section 3.12 makes reducing the added overnight to a near redundancy. The Parenting Plan had always recognized both parents as “equals” with substantially equal custodial time. The trial court found that the parties acted in accord with Section 3.12 of the Parenting Plan by adding an extra night and should have found that Elliot resided with both parents in substantially equal amounts of

time, thereby precluding the Respondent's use of the Child Relocation Act to enforce the drastic changes in the Parenting Plan.

E. CONCLUSION

This matter involves a father who relied upon a Parenting Plan that gave him near identical residential time with his daughter, and expressly forswore either parent as a 'majority parent'. Yet, through no fault of his own, no change in Appellant's circumstances, three-quarters of Appellant's time with his daughter was eviscerated without any modification or adjudication of adequate cause.

The change came about through a power outage that led to Respondent to act one step ahead of the Court and Appellant. Respondent had already "moved" and received the "objection" when Respondent filed her notice. She had already signed a lease, already enrolled Elliot in school, all prior to trial. Respondent did all this with knowledge that she was a co-parent, who shared substantially equal custodial time with Appellant, and had an obligation to mediate the child's school schedule coming up within the next half year.

Here, as in *Worthley*, the movants used the presumption in the CRA to disrupt continuity in ways that could not possibly have been obtained without other substantial changes in circumstances. Thus, like *Worthley*, Respondent used a "move" and the

presumption in the CRA to get a parenting plan fully to her benefit. Should the Respondent's relocation be upheld, family law attorneys throughout the state will take notice, and "moving" will become part strategy in attempts to amend parenting plans.

This Honorable Court should overrule the trial court and enforce the original parenting plan, one that created equal parents with equal rights, responsibilities and substantially equal residential time. To do so would enhance the rule of law as set forth in *Worthley*, reaffirm the primacy of the Parenting Plan as required by *Fahey*, carry out the intention of the Legislature, and restore Elliot Crain's shared future with her father as her true 'co-parent' and not an 'every other weekend dad'.

Respectfully submitted this 26 day of April, 2018

A handwritten signature in black ink, reading "Robert R. Cossey", written over a horizontal line.

ROBERT R. COSSEY

WSBA No. 16481

Attorney for Appellant

FILED

APR 27 2018

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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

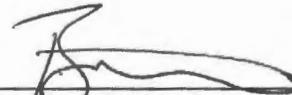
<p>In re:</p> <p>PATRICK CRAIN,</p> <p style="text-align: center;">Appellant,</p> <p>and</p> <p>SIRI CRAIN,</p> <p style="text-align: center;">Respondent.</p>	<p>No. 35656-6-III</p> <p>AFFIDAVIT OF SERVICE</p>
--	---

I, Ryan McIntyre, under penalty of perjury under the laws of the State of Washington, declare that on April 27, 2018, I personally delivered the following documents to the attorney listed in this Affidavit at the below address:

APPELLANT'S BRIEF

Jason Nelson
2222 North Monroe St.
Spokane, WA 99205

Dated this 27th day of April, 2018.



RYAN MCINTYRE
Declarant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORIGINAL