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COURT OF APPEALS
IN AND FOR THE STATE OF WASHINGTON-
DIVISION III
(Spokane County Superior Court, Cause # 19-3-02276-1)

In re the Registration Final Foreign Custody Decree:

AARON SURINA
Petitioner/Appellant

v.

SIRINYA SURINA,
Respondent/Appellee

BRIEF OF APPELLEE/RESPONDENT
Sirinya Surina

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I. SYNOPSIS OF ARGUMENT

Aaron Surina's Opening Brief, where he appeals the dismissal of his registration of a foreign judgment under RCW 26.27 and sanctions under CR11: (a) fails to challenge any of the trial court's factual findings, (b) fails to indicate the standard of review or explicate how the court abused its discretion, (c) fails to cite properly to the record, and (e) raises many issues that are unrelated and irrelevant. The appeal is frivolous and displays intransigence, and fees are requested on appeal under RAP 18.9.

II. STATEMENT OF THE CASE

This is an appeal from the trial court's ruling on Respondent's motion to dismiss a registration of a foreign decree under RCW 26.27 and motion and order for CR11 sanction.

Appellant, Aaron Surina became dissatisfied with the court's various rulings in his ongoing 2017 Spokane County Superior Court dissolution case (Spokane County Superior Court Case No. 17-3-01817-0) and the court's scheduling progress towards its conclusion. Mr. Surina took it upon himself, more likely than not against advice of his Washington State Superior Court dissolution attorney, to file a divorce and custody action in approximately March 2018 and enter, by default, a final divorce and custody Decree in Thailand on November 29, 2018. These action were done during the pendency of the Spokane County Superior Court divorce case.

His stated purpose for doing so was “an attempt to stop an international abduction.” (February 22, 2019 Verbatim Report of Proceeding before Judge Tony D. Hazel, Page 8, Line 15, Hereinafter “VBT”). The court dismissed the registration of the frivolous Thailand Order and imposed CR 11 sanctions.

III. LAW AND ANALYSIS:

A. Thailand Order

The Court reviews questions of subject matter jurisdiction de novo. (In re Custody of A.C., 137 Wn. App. 245, 253 (2007)). Subject matter jurisdiction cannot be stipulated to, conceded or waived and the lack thereof may be raised at any time. Id. Jurisdiction over a dissolution with children is established by statute. RCW 26.27.201 & .211, RCW 26.09.030 See, In re Marriage of Robinson, 159 Wn. App. 162, 167 (2010). “Home state” means the state in which a child lived with a parent ... for at least six consecutive months immediately before the commencement of a child custody proceeding.” RCW 26.27.021(7).

RCW 26.27.441 requires detailed notice of the registration and rights given to the other persons named so they can contest the registration. He also filed a Petition to enforce the order. A person contesting enforcement must request a hearing. Id. at (4) At the hearing, the person contesting the registration must establish that the order has been stayed, vacated or

modified; that the rendering state did not have jurisdiction; or that all parties did not receive notice. Id at (4)(a-c)

Following entry of the default divorce and custody order in Thailand, pursuant to RCW 26.27.441, on January 17, 2019 Appellant filed the Thailand Final Decree as a foreign judgment. Attorney Richard Kuck represented appellant, Mr. Aaron Surina, in the dissolution of marriage including children in Spokane County Superior Court Cause Number 17-3-01817-0. The case was filed on August 7, 2017. Temporary Family Law Orders were entered September 27, 2017 which ordered Appellant to pay family expenses including but not limited to the mortgage payment, an auto payment and child support. A Temporary parenting plan was entered November 8, 2017. These events all occurred prior to the Thailand Petition and Orders. Appellant did not object to the jurisdiction of the Washington Superior Court. The Washington Superior Court has proper subject matter jurisdiction over the dissolution of the parties marriage because both parties were residents of Washington when the dissolution was filed, and continued to be residents of Washington through finalization of the dissolution. The Washington Superior Court had proper subject matter jurisdiction to make an initial child custody determination because Washington State was the home state of the Surina children at the commencement of the dissolution action.

Amended Domestic Case Schedule Orders were entered on August 30, 2018 and June 6, 2019, which set the trial date for June 24, 2019.

Mr. Surina failed to report to the Thailand court the ongoing Washington Superior Court case. The Thailand court record is deplete of any mention of the Washington court. (See Thailand Final Decree Certification, which was filed without Exhibits referenced throughout the document). The Washington court has ongoing jurisdiction whether Appellant agrees with its rulings or not. The Thailand Court has no jurisdiction in this matter due to the ongoing jurisdiction of the Washington Court. Appellant's attempt to circumvent the Washington court's jurisdiction is frivolous as found by Judge Hazel. (VBT, Page 31 Line 12)

Respondent, Ms. Sirinya Surina received no notice of the Thailand legal action and had no interaction with the Thailand court and so declared under penalty of perjury on February 5, 2019 in her motion to Dismiss Registration of Out-of-state Custody Order and Notice of Hearing. She further declared under penalty of perjury that she had not been in Thailand for several years and in fact, as the record reflects, she the last time she was in Thailand is 2015. (VBT; Page 10 Line 13 -24)

Petitioner, Aaron Surina failed to prove at trial by preponderance of evidence that actual notice was given to Respondent. Judge Hazel repeatedly asked for Appellant's evidence of notice to Respondent. (VBT Page 24

Line 25 through Page 25 Line 23 and Page 27 Line 23 through Page 28 Line 9). Aaron has further failed on appeal to show that Respondent received actual notice as required under RCW 26.27.081.

Respondent, Sirinya Surina filed a Motion for CR11 sanctions against Petitioner for filing the Registration without legal basis. While Petitioner alleged "I didn't even see his motion," (VBT Page 31 Line 15) he attested he had read the CR11 sanctions and saw "no evidence attached to back up any single claim on that motion." (Page 2 Paragraph 3 of Responsive Declaration of Aaron Surina Re: Motion CR11 Sanctions and Thailand Signatory of Hague) Appellant's Declaration refutes the veracity of his assertion that he had not seen the motion.

B. CR 11 Violations & Sanctions

Aaron Surina did not present the standard of review for CR11 violations and sanctions in his Opening Brief, and it is rational to infer he wished to evade it.

The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system. See Business Guides, Inc. v. Chromatic Communications Enters., Inc., ___ U.S. ___, 112 L. Ed. 2d 1140, 1160, 111 S. Ct. 922 (1991). Both the federal rule and CR 11 were designed to reduce "delaying tactics, procedural harassment, and mounting legal costs." 3A L. Orland, Wash. Prac., Rules Practice § 5141 (3d ed. Supp. 1991). CR 11 requires attorneys to "stop,

think and investigate more carefully before serving and filing papers." See Fed. R. Civ. P. 11 advisory committee note, 97 F.R.D. 165, 192 (1983).

The Appellate court's decision to overturn a trial court's decision regarding CR11 violation and sanctions is reviewed for manifest abuse of discretion.

This Court (Division III) has adopted an abuse of discretion standard to be applied when reviewing a trial court's decision regarding whether there has been a CR 11 violation. Cooper v. Viking Ventures, 53 Wn. App. 739, 742, 770 P.2d 659 (1989).

CR 11 provides in pertinent part: The signature of a party or of an attorney constitutes a certificate by him that he has read the pleading, motion, or legal memorandum; that to the best of his knowledge, information, and belief, FORMED AFTER REASONABLE INQUIRY IT IS WELL GROUNDED IN FACT and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the

filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

Here the court ruled that the registration of the Thailand default dissolution was frivolous and was offered improperly after it was obtained without notice to Respondent during a pending US dissolution and custody cause of action in the Washington State Superior Court.

The appropriateness of the sanction imposed is also reviewed for an abuse of discretion. Miller, 51 Wn. App. at 303.

A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds or reasons. State Ex Rel. Carroll V. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Once a violation of CR11 occurs, imposition of sanctions is mandatory and the trial court retains broad discretion to tailor an "appropriate sanction" and to determine against whom the sanction should be imposed. See Miller, 51 Wn. App. at 303.

Discretion is abused when a court bases its decision on untenable grounds or untenable reasons. Olver v. Fowler, 161 Wn.2d 655, 663, 168 P.3d 348 (2007).

As the court said in Haller v. Wallis:

A motion to vacate a judgment is to be considered and decided by the trial court in the exercise of its discretion, and its decision should be overturned on appeal only if it plainly appears that it has abused that discretion. Martin v. Pickering, 85 Wash.2d 241, 533 P.2d 380 (1975).

Haller v. Wallis, 89 Wash. 2d 539, 543, 573 P.2d 1302, 1305 (1978).

IV. Aaron Surina's Assignments of Error

A. No Findings of Fact Are Challenged

Aaron Surina challenges none of Judge Hazel's findings of fact. On review, unchallenged findings of fact are considered verities. In re Interest of J.F., 109 Wn. App. 718, 722, 37 P.3d 1227 (2001).

B. Appellant's "Listed Errors by Judge Hazel Are Not Abuses of Discretion – It is Merely a List of Appellant's Disagreements and Questions Posed to the Appeals Court"

None of the list of Assignments of Error in the Opening Brief at pages 7-15 are formulated as abuses of discretion. The Issues Pertaining to Assignments of Error at pages 15-27 are rambling explanations of past rulings by the dissolution court. The appeal appears to be a mere disagreement with the judge's rulings in the dissolution action.

The issues are not formulated properly as an appeal of an order of a CR11 violation. The UCCJEA enforcement issues, are not properly formulated. Both the CR11 and UCCJEA appeals are frivolous under RAP 18.9.

Another problem is that Mr. Surina's presentation in his Opening Brief is chaotic, making organization of the Response Brief difficult. Sirinya has addressed the *CR11 and RCW 26.27* standards, above.

C. Responses to Aaron Surina's Listed "Errors"

Alleged Error No. 1 re: "Hague Convention": Aaron states that Judge Hazel erred when he was persuaded by Sirinya's attorney, Mr. Keith

Glanzer's argument regarding the law and facts surrounding Mr. Surina's registration among many other items not discussed in this appeal. He asserts that Thailand is a signer of the Hague Convention i.e. the Hauge Convention on the Civil Aspects of International Child Abduction, which is true. However, there has been no child abduction. The Surina children have not been abducted. In fact, the youngest child has never been outside the United States. Mr. Surina enjoyed visitation with his sons pursuant to an enforceable Superior Court ordered temporary parenting plan during the pendency of the dissolution matter. Further, the court made no findings regarding the Hague Convention.

There are other Hague Conventions that more readily apply to Aaron's default dissolution and custody order filing in Thailand. For example, The Hague Convention on Celebration and Recognition of the Validity of Marriages or Hague Marriage Convention, which is a multilateral treaty developed by the Hague Conference on Private International Law that provides the recognition of marriages. It was signed in 1978 by Portugal, Luxembourg and Egypt, and later by Australia, Finland and the Netherlands. It entered into force more than 10 years after opening for signature after ratification by Australia, the Netherlands (for its European territory only) and Luxembourg, and no countries have acceded to the convention since then.

Alleged Error No. 2: Restates argument that failed at trial that Sirinya was served, which he was unable to prove by a preponderance of the evidence.

Alleged Error No. 3: Aaron again raises the issue of not seeing Sirinya's motion for CR11 motion which is refuted by the VBT. It further raises frivolous irrelevant unrelated issues not before the court

Alleged Error No. 4: Discusses conspiracies of involuntary servitude and financial bondage and felony activities, which are irrelevant and frivolous.

Alleged Error No. 5: Raises RCW 26.09.191 parenting plan issues which were not before the trial court.

Alleged Error No. 6: Issues not before the Appellate Court.

Alleged Error No. 7: No allegation of abuse of discretion.

Alleged Error No. 8: Alleges court's acceptance of Sirinya's sworn statement included in her motion to dismiss the registration as an insufficient oath and affirmation of her allegations.

Once again, the list of Assignments of Error in the Opening Brief the forgoing Alleged Errors fail to be formulated as abuses of discretion. The alleged errors are rambling explanations of past rulings by the dissolution court, are frivolous and not properly before the court.

D. Standard of Review Revisited: Burden on Aaron

The burden was on Aaron to show an abuse of discretion by Judge Hazel, and Aaron instead chose to formulate his Opening Brief as a

character assassination of Sirinya, and her attorney Keith Glanzer. To restate Aaron's burden on appeal (emphasis added):

We review a trial court's evidentiary rulings for an abuse of discretion. State v. Finch, 137 Wash.2d 792, 810, 975 P.2d 967 (1999). A court abuses its discretion when its evidentiary ruling is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." State v. Downing, 151 Wash.2d 265, 272, 87 P.3d 1169 (2004) (quoting State ex rel. Carroll v. Junker, 79 Wash.2d 12, 26, 482 P.2d 775 (1971)).

The burden is on the appellant to prove an abuse of discretion. State v. Hentz, 32 Wash.App. 186, 190, 647 P.2d 39 (1982), *reversed on other grounds*, 99 Wash.2d 538, 663 P.2d 476 (1983). We may uphold a trial court's evidentiary ruling on the grounds the trial court used or on other proper grounds the record supports. State v. Powell, 126 Wash.2d 244, 259, 893 P.2d 615 (1995).

State v. Williams, 137 Wash. App. 736, 743, 154 P.3d 322, 326 (2007).

E. RAP 18.9 Request for Fees and Costs

Sirinya Surina requests that the court award her fees and costs of this appeal as Aaron's appeal was so devoid of merit as to be frivolous. Wagner v. Wheatley, 111 Wash. App. 9, 19, 44 P.3d 860, 865 (2002). Sirinya was also harmed and suffered additional costs due to Aaron's failure to follow the rules, as he did not properly cite to the record, nor properly present the standard of review, *supra*, and RAP 18.9(a). As the court said in State ex rel. Quick-Ruben v. Verharen:

We have repeatedly noted:

An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so

totally devoid of merit that there [is] no reasonable possibility of reversal.

Presidential Estates Apartment Assocs. v. Barrett, 129 Wash.2d 320, 330, 917 P.2d 100 (1996) (quoting Fay v. Northwest Airlines, Inc., 115 Wash.2d 194, 200–01, 796 P.2d 412 (1990)); State v. Rolax, 104 Wash.2d 129, 136, 702 P.2d 1185 (1985).

State ex rel. Quick-Ruben v. Verharen, 136 Wash. 2d 888, 905, 969 P.2d 64, 73 (1998).

Aaron's briefing presented no reasonable possibility of reversal of Judge Hazel's decisions to dismiss the registration and enforcement of the default dissolution and custody order from Thailand and to finding his actions to be frivolous. Further due to Judge Hazel's finding of Aaron's frivolous filing of the defaulted Thailand orders, it follows that no there is reasonable possibility of to have the Court of Appeals reverse the trial court's rulings ruling of a violation of CR11 and subsequent sanctions against Appellant Aaron Surina. RAP 18.9 fees and costs are requested.

V. CONCLUSION

It is well-established that:

Registration of a foreign order under RCW 26.27 requires due process in its state of origin, including, but not limited to actual notice of an order.

Further, the parties were in the middle of a dissolution action in the Washington State Superior Court where Aaron Surina accepted the

jurisdiction of the court when it entered various orders related to primary placement of the children and visitation. Further, there was no mention of the Washington State case in the defaulted Thailand orders. This omission exacerbated the invalidity of the defaulted Thailand orders under RCW 26.27 and supports Judge Hazel's finding that Aaron's registration of the defaulted Thailand was frivolous and warranted an award of fees and CR11 sanctions.

Aaron did not formulate his appeal in terms of the standard of review (abuse of discretion) and Aaron did not properly cite to the record. His legal citations were casual and inapt. Sirinya has responded as best as she could to this largely ad hominem appeal.

This court should deny Aaron's appeal and award fees and costs.

Respectfully submitted on 1/16/2020

A handwritten signature in black ink, appearing to read "Keith A. Glanzer", written over a horizontal line.

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