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67923-6

No. 67923-6-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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JOSH RASKOB,

Respondent

v.

NANAKO RASKOB (k/n/a Tsujimoto),

Appellant

FILED  
JAN 11 2011  
CLERK OF COURT  
JAMES DOERTY  
COURT OF APPEALS  
DIVISION I  
SEATTLE, WA

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE JAMES DOERTY

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BRIEF OF RESPONDENT

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## I. INTRODUCTION

A starting point for consideration of this appeal is the orders that are being appealed and the two parenting evaluations in this case.<sup>1</sup> They describe a mother: whose distorted thinking made parenting of the parties' children unnecessarily difficult; who ignored the parties agreed parenting arrangements and her joint decision making responsibilities; who disregarded the law concerning her relocation of the children and who sought to marginalize the father's parenting of their children. They describe the mother's intransigence and insistence that significant parenting be done only her way.

The orders are supported by substantial evidence and are a proper application of the law.

This appeal is a continuation of the mother's problematic behavior.

In this appeal, the mother asks this Court to second guess the trial Court's factually supported decisions that she improperly relocated the parties' children by not complying with the relocation statute. The mother also attempts to challenge the remedial action taken by the Court and the Court's sanctions and award of attorney fees to the father.

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<sup>1</sup> Appendices C-H; Trial Exhibits 1 and 8.

The parties have two daughters, Mayuko (“Mayu”), age 5 at the time of the trial, and Misako (“Misa”), age 2.

The mother, without giving the required notice, relocated the parties’ children in violation of the relocation statute and an agreed Parenting Plan designed to promote proximity between the children and their parents. The mother’s unilateral action was consistent with her mental health vulnerabilities, paranoia and disruptive reluctance to co-parent the children with their father.

The father, who is very active in the children’s lives, properly objected to the relocation.

In response and following a three day trial, the Court:<sup>2</sup>

- Modified the Parenting Plan to change the residential schedule in view of the mother’s move,<sup>3</sup> adjusted the Plan to eliminate inconsistencies and sought to promote the parents’ prior expression that they should live near each other. The resulting Parenting Plan kept the mother as the custodial parent and provides that the children will reside more with their father in part because of the change in

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<sup>2</sup> See generally, CP 422, 519, 529, 548; RP 239-40; 313-14.

<sup>3</sup> The father recognized the situational impracticality of restraining the relocation because it might be viewed as destabilizing the children’s residential and educational arrangements and punish them for the acts of their mother. RP 10, 468-69.

circumstances caused by the relocation and because it is in their best interest; and

- Assessed sanctions and attorney fees against the mother consistent with RCW 26.09.470(1), RCW 26.09.550 and other applicable authorities, because of her intransigence and failure to give the required statutory relocation notice to the father.<sup>4</sup>

## II. STANDARD OF REVIEW—ABUSE OF DISCRETION

The principal standard of review of a relocation matter is abuse of discretion. *In re Marriage of Horner*, 151 Wn.2d 884, 886, 93 P.3d 124 (2004). The Appellate Court defers to the trial Court's ultimate rulings unless they are manifestly unreasonable or are based on untenable grounds or untenable reasons under the abuse of discretion standard. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 688-89, 230 P.3d 583 (2010).

An Appellate Court will not substitute its judgment for the trial Court's judgment, nor will it weigh the evidence, or adjudge witness credibility. *In re Marriage of Greene*, 97 Wn.App. 708, 714, 986 P.2d 144 (1999).

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<sup>4</sup> See, e.g., RP 324.

It upholds trial Court findings that are supported by substantial evidence. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *In re Marriage of Griswold*, 112 Wn.App. 333, 339, 48 P.3d 1018 (2002).

Unchallenged findings are verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

As to relocation matters, the Appellate Court reviews any errors of law de novo to determine the correct legal standard. *In re Marriage of Kinnan*, 131 Wn.App. 738, 751, 129 P.3d 807 (2006).

The Court reviews conclusions of law to determine whether factual findings that are supported by substantial evidence support the conclusions. *In re Marriage of Myers*, 123 Wn.App. 889, 893, 99 P.3d 398 (2004).

Within the confines of these standards, the trial Court has discretion to grant or deny a relocation after considering the RCW 26.09.520 relocation factors and the interests of the children and their parents. *In re Marriage of Horner*, 151 Wn.2d 884, 893–94, 93 P.3d 124 (2004); *Bay v. Jensen*, 147 Wn.App. 641, 651, 196 P.3d 753 (2008).

The trial Court's award of attorney fees is reviewed for an abuse of discretion. *See generally, In re Marriage of Mattson*, 95 Wn.App. 592, 604, 976 P.2d 157 (1999).

### III. COUNTER STATEMENT OF THE CASE

Despite the modest resources of the parties,<sup>5</sup> this case has been unusually contentious—and expensive. The original dissolution action was filed in May, 2009. After difficult negotiations,<sup>6</sup> the final Parenting Plan was entered February 23, 2011<sup>7</sup> and the Decree on April 5, 2011. The original Parenting Plan provided, over the father's objection, that the children “shall attend the same public school, through middle school/junior high school where the mother obtains her teaching position or where she resides.”<sup>8</sup>

The trial judge observed this was a “rather peculiar provision,”<sup>9</sup> and that the Parenting Plan contained an “internal contradiction.”<sup>10</sup>

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<sup>5</sup> CP 213, 169-72; RP 140; 206-07; 252-54; Trial Exhibits 31, 222.

<sup>6</sup> RP 67.

<sup>7</sup> CP 1.

<sup>8</sup> CP 9; RP 58; 87-88; 92.

<sup>9</sup> RP 95; 241-44.

<sup>10</sup> RP 340. The father asked the Court to look at this provision in relation to the joint decision making provision in the Parenting Plan. RP 97; 159; 239-40.

Both parents are very involved in their children's lives.<sup>11</sup> After separation, the father purchased a house near the family home in Bothell, Washington, so he could be close to the children.<sup>12</sup>

The original and current Parenting Plans designate the mother as the children's primary residential parent and attempt to create an environment where both parents will share parenting<sup>13</sup> and reasonably interact with their children to carry out their parental responsibilities.<sup>14</sup> When the original Parenting Plan was entered, the children resided in the Everett School District.<sup>15</sup> The parents, however, provided in their Parenting Plan that the Notice requirements (and related provisions) of the Child Relocation Act ("CRA")<sup>16</sup> would not apply if the mother (and the children) moved within the Northshore and Everett School Districts or within *30 minutes average drive time* from the father's residence.<sup>17</sup> More specifically, the Parenting Plan provided: (1) the children shall attend the same public school through middle school/junior high school where the mother obtains her teaching position or where she resides<sup>18</sup> and (2) the

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<sup>11</sup> The father is a businessman, RP 139; the mother is a teacher, RP 93.

<sup>12</sup> CP 425; RP 37; 137.

<sup>13</sup> RP 145-47.

<sup>14</sup> See RCW 26.09.002.

<sup>15</sup> They lived about one block away from the Northshore School District, where their father lived. RP 12.

<sup>16</sup> RCW 26.09.405-.560. See *In re Marriage of Horner*, 151 Wn.2d 884, 886, 93 P.3d 124 (2004).

<sup>17</sup> CP 7.

<sup>18</sup> CP 9.

mother shall reside in the Northshore or Everett School Districts or within 30 minutes average drive time from the father's current residence in Bothell. If she moved from this geographical area, she was required to provide the statutory notice of relocation.<sup>19</sup>

This 30 minutes average drive time was not intended to be a hypothetical drive time; it was to be actual drive time.<sup>20</sup> Therefore, it was not a concept that could be satisfied by a mere belief that the move was within the 30 minutes drive time limit.<sup>21</sup>

It was also designed to implement the parties' understanding that the mother would obtain a new residence that was convenient to her teaching near the father's new home—in Duval, for example.<sup>22</sup>

The parties' original Parenting Plan involved the negotiation (and arbitration) of the above area within which the mother would live to facilitate both parents' parenting functions and contact with their children.<sup>23</sup> This was especially important because the family home was to

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<sup>19</sup> CP 7. After an arbitration, the father *reluctantly* agreed to the two school districts and 30 minute provisions in order to try and amicably resolve the parenting issues. CP 425; RP 156-58; 259.

<sup>20</sup> CP 425-26; RP 158. The mother admits it was a "30 minutes average *drive time*." (Emphasis added.) Appellant's Brief ("A. Br."), page 9.

<sup>21</sup> *See, e.g.*, CP 273; RP 511-13.

<sup>22</sup> CP 240, 425; RP 96, 157-58; 251; 331-33; 355-56; 438; 517-18.

<sup>23</sup> For about a year, the parties attempted to negotiate the terms of their Parenting Plan. In this process, they had the help of a parenting evaluator, Margo Waldroup, and an arbitrator, Judge Larry Jordan (Ret.). There was also a CR 2A hearing on June 1, 2010 before Judge James Doerty.

be sold and the mother and children would have to find another home.<sup>24</sup>

The parents concluded they should live relatively near each other to promote the parenting of their children.<sup>25</sup> This recognized the quality of the relationship the children should have with both of their parents which was in part manifested by the father being with the children for about eight of every 14 days.<sup>26</sup>

The parties also agreed the children should be raised with both English and Japanese language capabilities.<sup>27</sup>

Margo Waldroup was the parenting evaluator in this matter. In her December 31, 2009 evaluation, she observed that the mother had a history of mood fluctuations, paranoia and had threatened “to hurt or kill herself and others.”<sup>28</sup> The evaluator noted the clearly deleterious effect of this on the children—even if the threats were not serious. She recommended that the mother undergo psychiatric and other therapy—a concept that is stated

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<sup>24</sup> RP 81.

<sup>25</sup> CP 7, 425; RP 67, 137, 158.

<sup>26</sup> Under the original Parenting Plan schedule, when the mother gave “notice” of her move, the children were with their father about one-third of the time. However, much of the time the children were with their mother was “sleep time.” As to “wake time,” out of a 14 day period, the children were with their father eight days and the mother six. *See* RP 146-47.

<sup>27</sup> CP 9; RP 66, 147.

<sup>28</sup> Trial Exhibit 1, pages 14, 15, 17; RP 38-42. This evaluation was updated. Trial Exhibit 8. The mother objected to any update of the original evaluation. RP 42. The updated evaluation “strongly” recommended that the mother continue with her therapy. Exhibit 8, page 7. This was memorialized in the various Parenting Plans. CP 13-14, 560-61.

in the original Parenting Plan,<sup>29</sup> and the parenting arrangements under review in this appeal.<sup>30</sup> Ms. Waldroup also expressed concern about the mother creating conflict with the father.<sup>31</sup> In a follow-up evaluation in July, 2010, Ms. Waldroup commented about the mother's continued distorted thinking and mental health vulnerabilities.<sup>32</sup>

The mother made it unnecessarily difficult for the father to co-parent with her. For example: during the trial, the mother still had not decided if she would exchange parenting times with the father so he could attend a business meeting out of state,<sup>33</sup> she did not promote the children's observation of Father's Day,<sup>34</sup> and she interfered with the children's involvement at the Shyne School.<sup>35</sup>

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<sup>29</sup> CP 13-14.

<sup>30</sup> CP 13-14, 560-61.

<sup>31</sup> RP 41; Trial Exhibit 1, page 17.

<sup>32</sup> RP 14; Trial Exhibit 8, page 7.

<sup>33</sup> RP 69-72; 143-44; 202-03; 334-35.

<sup>34</sup> RP 76; 153; 275-76; 333-34.

<sup>35</sup> The children attended Suginoko School, a Japanese language based pre-school and the eldest child also attended Shyne School, an English based pre-school. Trial Exhibit 21; RP 162-63; 210-11; 213. The mother sought to increase the children's time in Japanese-oriented schooling and reduce their time in English-oriented schooling, RP 187. She also objected to sending the youngest child to Shyne because it was too far from her new Seattle home. RP 150; 205.

The parties had difficulty communicating with each other for general parenting,<sup>36</sup> and for decision making.<sup>37</sup> There was little collaboration: typically the mother would tell the father what she wanted concerning the children—without regard for what the father wanted.<sup>38</sup> His wishes, and even requests to discuss issues, would often “fall on deaf ears.”<sup>39</sup> At best, communication was difficult.<sup>40</sup>

However, because the parenting evaluator recommended, and the resulting Parenting Plan adopted, a largely shared residential arrangement, the evaluator also recommended joint decision making because she did not believe it was feasible to have “an almost shared parenting plan” without joint decision making.<sup>41</sup>

On February 15, 2011, the mother emailed the father about her intent to move with the parties’ two pre-school children, Mayuko and

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<sup>36</sup> RP 142-44

<sup>37</sup> *See generally*, Trial Exhibits 13, 15, 16, 21, 22, 24, 25, 26, 33. Decision making was to be joint. Trial Exhibit 5, page 8. This included educational decisions, RP 44; RP 54-55, which the mother generally refused to allow. RP 54-59. She even refused to tell the father what school the children would be attending after the move. Trial Exhibits 13, 15; RP 60-63; 165-66; 172-73; 197-99; 444-45. She further complained about the father’s effort to email her saying it just started “email wars” and was not productive. RP 89-90; 271-72. The Parenting Plan had a mechanism for resolving parental disputes, but the father delayed invoking it to see if time would yield improvements in communication and because of the expense of doing so. RP 155; 295.

<sup>38</sup> RP 42; 207.

<sup>39</sup> RP 143; 155-56; 200; 206; 208.

<sup>40</sup> RP 261-62; 294-95.

<sup>41</sup> Trial Exhibit 8, page 6.

Misako.<sup>42</sup> This was the only relocation “notice” ever given to the father.<sup>43</sup>

The father immediately expressed his belief that the move would be outside the 30 minutes average drive time limit,<sup>44</sup> and wanted to discuss the move. The mother refused to discuss it and told the father to “take me to court,” claiming she was following the Parenting Plan so there was nothing to discuss.<sup>45</sup>

The mother’s “notice” was statutorily inadequate for relocation purposes.<sup>46</sup> The mother testified that before giving the notice she checked with Google Maps and satisfied herself that the move was within the 30 minute limitation.<sup>47</sup> It was not. Before signing a lease for her new Seattle residence on February 20, she had never driven the distance between the new home and the father’s residence.<sup>48</sup>

The mother moved to Seattle on March 6, 2011, arguably to enroll the children in the Japanese emersion program in the John Stanford International School.<sup>49</sup>

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<sup>42</sup> RP 47; Trial Exhibit 10, page 10; Appendix A. The mother planned the move even before the Parenting Plan was entered by the Court on February 23, 2011. RP 154. The family home was subsequently sold. Events leading up to the sale are discussed at RP 175-79; 353.

<sup>43</sup> The “notice” did not comply with RCW 26.09.470. Moreover, under RCW 26.09.440(3) the mother could have “updated” her “notice,” but never did.

<sup>44</sup> RP 163.

<sup>45</sup> RP 163-64; 171.

<sup>46</sup> See RCW 26.09.470.

<sup>47</sup> RP 86; 358; Trial Exhibit 201.

<sup>48</sup> RP 50-54.

<sup>49</sup> RP 37, 60, 438-39.

On March 10, 2011 the father timely filed his Objection to Relocation/Petition for Modification of Parenting Plan, pursuant to RCW 26.09.470(3).<sup>50</sup> The trial was set for July 12, 2011.

There were numerous pre-trial motions. For example, the father moved to preclude the testimony of a late noticed expert. This motion was denied.<sup>51</sup> The mother moved to have the Court take judicial notice of the Google Maps travel-time evidence and similar internet map and travel-time information as part of her proof that the relocation did not contravene the 30 minutes drive time limit.<sup>52</sup> The father objected;<sup>53</sup> the Court granted the motion.<sup>54</sup>

The trial was held July 12, 13 and 20, 2011, after which the Court expressed its oral rulings.<sup>55</sup>

Before and following several post-trial motions and a dispute over what it was that the Court had ruled,<sup>56</sup> the trial Court entered its Order on Objection to Relocation/Modification of Parenting Plan; its final Parenting

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<sup>50</sup> CP 237; Trial Exhibit 10; RP 165. It would have done no good to ask the Court to hold the mother in contempt because (1) the move was already a *fait accompli*, (2) the family house was being sold, and (3) it would have only added gasoline to an already overheated situation.

<sup>51</sup> CP 114.

<sup>52</sup> CP 18.

<sup>53</sup> CP 569.

<sup>54</sup> CP 116; RP 358-59.

<sup>55</sup> CP 279; 477; 510-18; RP 511-27.

<sup>56</sup> *See, e.g.*, CP 18, 410, 519, 696, 852-55, 885-90, 894-99, 901-14

Plan; and its final Order for Attorney Fees/Sanctions.<sup>57</sup> It denied the mother's fee motion.<sup>58</sup>

The Notice of Appeal was served and filed on November 11, 2011.

#### IV. ARGUMENT

##### A. Appellant's Assignments of Error do Not Comply with RAP 10.3(g) and 10.4(c)

RAP 10.3(g) requires that each challenged fact "must be" referenced "by number" in the Order from which the appeal is taken. Appellant has largely failed to comply with this requirement.<sup>59</sup>

Giving the mother the benefit of the doubt as to her assignments of error, her exceptions<sup>60</sup> are to:

- Finding No. 1 to the Amended Order Granting Motion For Attorney Fees/Sanctions CP 520; Appendix G.<sup>61</sup>
- The finding that the mother's move was beyond the 30 minute average drive time limit at page 4 of the Order On

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<sup>57</sup> CP 403, 548, 519.

<sup>58</sup> CP 522.

<sup>59</sup> A. Br. page 2. This defect cannot be remedied in the Reply Brief. *St. Luke's Evangelical Lutheran Church of Country Homes v. Hales*, 13 Wn. App. 483, 485, 534 P.2d 1379 (1975).

<sup>60</sup> Appendices items C-H are the Clerk's copies of the Orders from which the mother appeals. They are marked on the right hand margin by double vertical lines to show what parts of the Orders are designated by the mother in accordance with RAP 10.3(g) and 10.4(c). The rulings to which the mother did not object are the law of the case. *See Horwath v. Washington Water Power Co.*, 68 Wn.2d 835, 845, 416 P.2d 92 (1966).

<sup>61</sup> A. Br. page 10. The mother argues the finding that the mother relocated without providing the required notice is a "conclusion."

Objection to Relocation/Modification of Parenting Plan;  
CP 406; Appendix D.<sup>62</sup>

- Court’s characterization of some of the Parenting Plan changes as an adjustment – Order on Objection to Relocation. CP 391, 394,<sup>63</sup> Appendix D.
- Parenting Plan residential changes – Amended Order Granting Motion for Attorney Fees. CP 521,<sup>64</sup> Appendix G.
- Practical adjustment of the Parenting Plan as a sanction – Revised Amended Order Granting Motion for Attorney Fees/Sanctions. CP 520; Appendix G.<sup>65</sup>
- Various findings. CP 407, 408, 409; Appendix D.<sup>66</sup>
- Requiring application of the relocation standards if the mother moves outside the John Stanford School attendance

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<sup>62</sup> A. Br. page 15. The mother does not specifically claim this is a “finding” to which she appeals, nor is it designated by its applicable section number.

<sup>63</sup> A. Br page 19. The mother does not specifically claim this is a “finding” to which she appeals, nor is it designated by its applicable section number. The Parenting Plan was adjusted by some “Adjustments” and some “Modifications.”

<sup>64</sup> A. Br 20. The mother does not specifically claim this is a “finding” to which she appeals, nor is it designated by its applicable section number.

<sup>65</sup> A. Br. page 23.

<sup>66</sup> A. Br. page 24. It is not clear whether the mother actually objects to these findings about difficulties caused by the move, sanctions and the need to change the Parenting Plan. This is the problem with the vagueness of the mother’s Assignments of Error in not specifically disclosing each of the exact findings and other rulings to which she is objecting. This deliberate vagueness should operate against, and not for, the mother in this appeal.

area- Amended Revised Parenting Plan. CP 554; Appendix H.<sup>67</sup>

- Intransigence Revised Amended Order Granting Motion for Attorney Fees/sanctions. CP 520; Appendix G.

This procedural defect should be fatal to all other aspects of the mother's appeal. The mother's lack of specificity makes it difficult to impossible to reasonably apply the principle that unchallenged findings of fact are verities on appeal and to make related arguments in opposition to the appeal.

Lengthy provisions of the Order on Objection to Relocation/*Modification* of Parenting Plan,<sup>68</sup> Revised Amended Order Granting Motion for Attorney Fees/Sanctions and the Amended Revised Parenting Plan are not referenced with any specificity in the mother's Assignments of Error. One example, of many, is the Parenting Plan's actual parenting schedule.<sup>69</sup> Since she does not "reference" these provisions in her Assignments of Error, they are presumably the law of this case.

The mother should not be allowed to transfer her burden of persuasion in this appeal to the father by making him guess at what

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<sup>67</sup> A. Br. page 2.7.

<sup>68</sup> Emphasis added.

<sup>69</sup> CP 549, 51.

specific findings, conclusions and rulings (or parts of findings, conclusions and rulings) are, and are not, the subject of her appeal.<sup>70</sup> RAP 10.3(g) and 10.4 (c), specifically assigns that burden to the mother.

Here, the mother appears to be attempting to finesse her appeal in the hope that this Court may somewhere find a point of reversible error. This should not be permitted. This approach to an appeal encourages abuse and protracted litigation.

**B. The Mother's Paranoia and Distorted Thinking Contributed to Her Effort to Marginalize the Father With the Children and Made Communication over Parenting Issues More Difficult**

Trial evidence included the mother's emotional problems and their effect on communication about the children with their father.<sup>71</sup> The mother objected to—what she called—an “email war” with the father,<sup>72</sup> when there was none.<sup>73</sup> She refused to tell the father in what school the children would be enrolled after she relocated.<sup>74</sup> She refused to timely

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<sup>70</sup> For example, Finding 2.1 in the Order on Objection to Relocation/Modification of Parenting Plan, CP 403, characterizes the mother's relocation as a *fiat accompli*, and that refusing the relocation would punish the children for the mother's errors. It is not clear whether the mother appeals from this finding. If she does not, then it would be a verity” that the relocation constituted a *fiat accompli* and the mother had erred in relocating.

<sup>71</sup> See, e.g., RP 38-42.

<sup>72</sup> RP 89-90; 271-72.

<sup>73</sup> RP 515.

<sup>74</sup> See, e.g., RP 444-45, 517-20.

respond to requests by the father to exchange residential times when business required him to be away when it was his time to be with the children, etc.<sup>75</sup>

During the trial, the father complained about the mother's effort to marginalize him in the eyes of their children,<sup>76</sup> and that her attitude about parenting was inflexible.<sup>77</sup>

The mother's failure to give the proper relocation notice, and her problems with communicating with the father, are manifestations of her psychological problems and examples of her disregard for Court Orders and the father's rights. They are also some of the reasons why the mother was ordered to seek psychiatric and other mental health therapy.<sup>78</sup>

The mother's difficulty with collaborative parenting also continued after the trial.<sup>79</sup>

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<sup>75</sup> RP 69-72; 202; 335.

<sup>76</sup> *See, e.g.*, CP 169.

<sup>77</sup> CP 408; RP 207.

<sup>78</sup> CP 13-14, 560-61.

<sup>79</sup> CP 701-70, 357-58.

**C. There is Substantial Evidence That the Mother Relocated Beyond the 30 Minute Average Drive Time from the Father’s Residence as Defined by the Parties’ Agreed Parenting Plan as a “Relocation”**

The 30 minute average drive time limit was not some hypothetical determination. It was a concrete and important compromise the father made in settling his divorce.<sup>80</sup>

Prior to deciding to move to Seattle, the mother looked only at Google Maps to determine whether the move would be within the 30 minute drive time limit.<sup>81</sup> She relied on Trial Exhibit 201.<sup>82</sup> She understood the computer programs that calculate distance and speed use algorithms,<sup>83</sup> and were not based on actual driving times.<sup>84</sup> Despite the father’s objection to the admission into evidence of the Google (and other travel-time maps—of which the Court took judicial notice),<sup>85</sup> the Court allowed their admission.<sup>86</sup>

The Google map itself is ambiguous in stating the travel time is “up to 35 min *in traffic*.”<sup>87</sup> (Emphasis added.) According to the map,<sup>88</sup> it

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<sup>80</sup> RP 259.

<sup>81</sup> Trial Exhibit 201; RP 86; 446; 453-54.

<sup>82</sup> RP 450.

<sup>83</sup> RP 452.

<sup>84</sup> RP 452.

<sup>85</sup> RP 358-59, RP 99-102; 130-32.

<sup>86</sup> CP 116.

<sup>87</sup> Emphasis added.

<sup>88</sup> Trial Exhibit 201.

is subject to actual travel conditions.<sup>89</sup> The times in Exhibit 201 were also inconsistent.<sup>90</sup>

When measured against actual driving conditions, even the mother's "expert" testified it took longer than the stipulated 30 minutes.<sup>91</sup> The father found that it took much longer.<sup>92</sup>

Based on this substantial evidence, and the mother's own "expert" witness, the Court found the move was beyond the 30 minute limit.<sup>93</sup>

**D. The Mother Improperly Asks This Court to Weigh the Evidence and Find that the Mother had Not Relocated Outside the 30 Minute Average Drive Time Limit**

The trial Court found that the mother had moved beyond the 30 minute limit and was, therefore, required to give the statutory relocation notice which she failed to do.<sup>94</sup> Despite this evidence, the mother now asks this Court to conclude the move *was* within the 30 minute limit and the trial Court erred in making the *factual* decision that the move to Seattle was beyond the 30 minute limit.

The mother also persists in claiming that the father's objection to

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<sup>89</sup> RP 447-48; Trial Exhibit 201.

<sup>90</sup> RP 449-50.

<sup>91</sup> CP 98; RP 111; 113; 123.

<sup>92</sup> RP 167; 219-39; 249; 330-31; 365; 424-26.

<sup>93</sup> CP 423-24. The Court noted the mother also failed to seek a school residence exception so she could live closer to the father and still obtain admission of the children in the John Stanford school. CP 424; RP 520.

<sup>94</sup> CP 423, 425-26, 520; RP 511-13.

her relocation was made in bad faith.<sup>95</sup>

These arguments are tone deaf, frivolous and should be subject to an award of attorney fees to the father under RCW 4.84.185 and RAP 18.1.<sup>96</sup> It is the mother who acted in bad faith.<sup>97</sup>

First, there is substantial evidence of the trial Court's finding.<sup>98</sup> To hold to the contrary, on the record before this Court, will turn decades of law on its head regarding the role of an Appellate Court in reviewing findings of fact.

Second, this Court will not substitute its judgment for the trial Court's, nor will it weigh the evidence, or adjudge witness credibility. *In re Marriage of Greene*, 97 Wn.App. 708, 714, 986 P.2d 144 (1999).

Third, in relocation matters, the Appellate Court defers to the trial Court's ultimate relocation ruling unless it is manifestly unreasonable or is based on untenable grounds or untenable reasons under the abuse of discretion standard. *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93

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<sup>95</sup> A. Br. pages 2, 7.

<sup>96</sup> By this we do not mean the mother's entire appeal is frivolous—as "frivolous" is defined by this Court—only that *these* arguments are frivolous, and not reasonably debatable.

<sup>97</sup> The trial Court's contrary oral ruling was subsequently changed, based on post-trial motions. CP 385-89, 403-09, 422-28, 519-21, 522-23, 701-70, 826-51, 852-55, 901-07. There was nothing "summary" about this change. *Compare* A. Br. at page 32. Moreover, an oral opinion has no final or binding effect unless it is formally incorporated into the findings, conclusions and judgment. *Wagner v. Wagner*, 1 Wn.App. 328, 331, 461 P.2d 577, 579 (1969).

<sup>98</sup> *See, e.g.*, CP130-35, 142-44.

P.3d 124 (2004); *Bay v. Jensen*, 147 Wn.App. 641, 651, 196 P.3d 753 (2008).

The mother disagrees with the lower Court's rulings. This does not mean they were manifestly unreasonable or untenable.

**E. The Mother Relocated the Children Without Giving the Father the Required Statutory Notice**

A "relocation" is change in principal residence either permanently or for a protracted period of time. RCW 26.09.410(2). The Court found the mother had relocated as defined by the statute and the parties' Parenting Plan.<sup>99</sup>

Therefore, the mother was required to give the father the relocation notice required by RCW 26.09.430 and .440. She did not do so.<sup>100</sup> She did not even substantially comply with the notice requirement as dictated by RCW 26.09.440.<sup>101</sup>

At the same time the mother was agreeing to the Final Parenting Plan, she announced her move to a residence in Seattle that was more than

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<sup>99</sup> *See, e.g.*, CP 520; RP 513.

<sup>100</sup> RCW 26.09.006 requires parties in a Chapter 26 proceeding to utilize the "approved" forms. The mandatory approved Parenting Plan form<sup>100</sup> provides, in the required relocation summary at section 3.14, that "If the move is outside the child's school district, the relocating parent must give [the statutory] notice . . . ." The statute and mandatory form do not provide flexibility concerning when the notice is required if a relocation is contemplated. A copy of the mother's "notice" is included as Appendix A to this Brief.

<sup>101</sup> CP 526.

30 minutes average drive time from the father's home.<sup>102</sup> She did not even drive the distance herself before telling the father of her interest to move.<sup>103</sup> Instead, she relied on an unreliable Google Map.<sup>104</sup> In view of the Parenting Plan, common sense dictated that she experience the drive time before committing to the move. Common sense was not applied.

**F. Despite the Mother's Failure to Follow the Relocation Statute, and the Father's Reluctant Agreement to the Relocation *fait accompli*, the Trial Court Reviewed the 11 Factors in RCW 26.09.520 and Other Authority in Ruling on the Relocation and Resulting Parenting Plan**

The father reluctantly agreed to the relocation. This is because the father recognized the situational impracticality of restraining the relocation because it might be viewed as destabilizing the children's residential and educational arrangement and punish them for the acts of their mother.<sup>105</sup>

However, the request to relocate remained "pending"<sup>106</sup> and was not abandoned. The case remained, and was tried, as a relocation matter.<sup>107</sup> The Court certainly thought the request to relocate was still being litigated, for at least two reasons: first, it had to deal with the parenting consequences of the relocation and second, the Court had an

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<sup>102</sup> The mother "signed off" on the Parenting Plan at least by February 16, 2011. It was entered on February 23, her "notice" of relocation was given to the father on February 15. RP 45-47.

<sup>103</sup> RP 50-52.

<sup>104</sup> RP 51-52.

<sup>105</sup> See, e.g., footnotes 3 and 50, *supra* and footnote 120, *infra*; CP 129, 520.

<sup>106</sup> See RCW 26.09.260(6).

<sup>107</sup> See, e.g., Trial Exhibits 34, 225; CP 292-301, 563-68.

independent duty to determine the terms of a Parenting Plan for the children.<sup>108</sup> Therefore, to determine the best interests of the children, and in view of the substantial change in circumstances created by the relocation *fait accompli*, the trial Court actually reviewed the statutory factors in RCW 26.09.520.<sup>109</sup>

Entry of the Parenting Plan on February 23, after the mother's ineffective notice of relocation on February 15, 2011, is not dispositive because: the move was not certain; the notice was inadequate; the mother did not sign the lease for her new residence until February 20; she did not move until March 6—and the father filed his Objection on March 10, within 30 days of the “notice.” Consequently, the relocation was a change in circumstances unknown by the Court at the time the original Parenting Plan was entered.<sup>110</sup> And, the resulting modified Parenting Plan was consistent with RCW 26.09.187. Indeed, the Court made the Parenting Plan more consistent insofar as it made functional the decision making provisions and eliminated other problematic elements.<sup>111</sup>

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<sup>108</sup> Kenneth W. Weber, 20 WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW, §33.11 (Supp., 2011); *see, e.g.*, RCW 26.09.187(2)(a), and other statutes describing the *Court's* responsibilities in creating a Parenting Plan such as RCW 26.09.182, .184, .187, .191.

<sup>109</sup> RP 216-18; Trial Exhibits 34, 225, RP 420-21; RP 513-14.

<sup>110</sup> *See, e.g., In re Marriage of Timmons*, 94 Wn.2d 594, 600, 617 P.2d 1032 (1980) (where decree is not contested, pre-decree facts were “unknown”); *In re Marriage of Shyrook*, 76 Wn.App. 848,850, 888 P.2d 750 (1995) (where decree is entered by consent, without a hearing, Court may consider pre- and post-decree facts).

<sup>111</sup> CP 548; RP 54-59, 158-61, 163-64, 511-26.

**G. The Trial Court Properly Adjusted and Modified the Parenting Plan to Reflect the Children's Best Interest in View of the Mother's Relocation In Part to Accommodate the Substantial Change in Circumstances that the Relocation**

**1. The Trial Court properly made adjustments to the non-residential aspects of the Parenting Plan pursuant to RCW 26.09.260(10)**

Pursuant to RCW 26.09.260(10) the trial Court: struck the 30 minute travel provision in the Parenting Plan; struck the provision that the children shall go to school where the mother lives or teaches; and identified the children's school-district for relocation purposes.<sup>112</sup>

In doing so, the Court found that the failure of the original Parenting Plan to work as anticipated, the relocation and the communication problems they experienced, constituted a substantial change in circumstances.<sup>113</sup> Among other things, the trial Court intended to make meaningful joint decision making about educational issues. It also sought to continue the parents' desire, as expressed in their original

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<sup>112</sup> RP 522-23. The mother's reference, at A. Br. page 27, to *In re Marriage of Katare*, 125 Wn.App. 813, 105 P.3d 44 (2004) is not applicable to a relocation and the CRA.

<sup>113</sup> CP 406; RP 522.

Parenting Plan, that it was in the best interest of the children that they live relatively near each other.<sup>114</sup>

Moreover, the argument by the mother against being confined to the John Stanford school attendance area is specious. The mother testified at length about the parties' agreement that their children would be raised "truly bilingual" in English and Japanese.<sup>115</sup> She also testified that the Stanford school is the only public school in *the state* she is aware of that offers "no-cost" instruction in English and Japanese.<sup>116</sup> The Court took her at her word. It let her move to the Stanford school attendance district, despite her disregard of the existing Parenting Plan and the CRA. However, the Court required that if she moved outside the Stanford attendance area, she would have to follow the relocation statute.

Ultimately, however, this issue may be moot. If the residential provisions of the Parenting Plan adopted by the Court are upheld, it is likely the notice provision of the relocation act will not apply to an arrangement whereby the children's residential time with their parents are about equal.<sup>117</sup>

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<sup>114</sup> CP 469-75, especially 471.

<sup>115</sup> RP 376-79.

<sup>116</sup> RP 67, 384; A. Br. page 6.

<sup>117</sup> RCW 26.09.410 provides that a "relocation" is a change in the "principal residence." RCW 26.09.430 addresses where "the child resides a majority of the time." In an equal, or nearly equal, residential plan, there is no principal residence where the children reside a majority of the time. *See also* the colloquy at 1 HOUSE JOURNAL, 56<sup>th</sup> Leg. Reg.

**2. The trial Court properly modified the Parenting Plan residential time provision in accordance with RCW 26.09.260(6) and for less than 24 “full days”**

Among other things, the father asked the Court to modify the Parenting Plan to give the children more time with him in view of the relocation.<sup>118</sup> This relief was consistent with the Court’s authority under RCW 26.09.260(6).

Under RCW 26.09.260(6), if the non-relocating party petitions for a modification of the Parenting Plan, the trial Court can determine if the relocation will be permitted. If so, “the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.” Under the statute, a finding of adequate cause is explicitly unnecessary.

The father petitioned for a modification.<sup>119</sup> The mother relocated. The father reluctantly acquiesced in this relocation for the good of the children—and despite the mother’s obdurate behavior.<sup>120</sup> He did not

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(cont.) Sess., 551 (Wash. 2000): “Representative Carroll: How does this act apply in situations in which the child resides an equal amount of time with each parent? Representative Constantine: Under such circumstances, the notice requirements apply to both parties and the presumption to neither.” Even the parenting evaluation viewed the parties’ initial Parenting Plan as being an “almost shared” parenting plan. Trial Exhibit 8, page 6.

<sup>118</sup> RP 239-40; 316; 319; 324; 335-37; 441-43.

<sup>119</sup> CP 237.

<sup>120</sup> The Court expressly found it was inappropriate to sacrifice the best interest of the children because of the mother’s misconduct. CP 422, 427, citing *In re Marriage of Murphy*, 48 Wn.App. 196, 200, 732 P.2d 1319 (1987).

abandon in his request for related relief.<sup>121</sup> The trial Court found the relocation was a substantial change in circumstances.<sup>122</sup> The trial Court had the discretion to modify the Parenting Plan and give the children more residential time with their father—while maintaining the mother as their primary custodial parent. This was proper, so long as it was in the best interest of the children, which the trial Court found it to be.<sup>123</sup>

The mother points out that a Parenting Plan adjustment—or minor modification—in a residential schedule may “not exceed twenty-four full days in a calendar year.”<sup>124</sup> Depending on the meaning of “full days” the added residential time exceeded or did not exceed “twenty-four full days in a calendar year.”

In *In re Marriage of Hansen*, 81 Wn.App. 494, 499, 914 P.2d 799 (1996), Division III of the Court of Appeals equated “full days” to a change in the residential schedule over any 24 hour period. Under this definition, the added residential time given to the father in this case exceeded 24 days.

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<sup>121</sup> CP 422, 520. Any argument that the relief granted the father was different from the relief he sought in his Objection (A. Br. page 18) is resolved by CR 15(6) and because this objection was not adequately raised before the trial Court and is waived.

<sup>122</sup> CP 406.

<sup>123</sup> CP 408, 422-28, 520.

<sup>124</sup> A. Br. page 19; RCW 26.09.160(5)(a). The father maintains the Court had authority to modify the Parenting Plan to give him an additional 24 full days with the children under the facts of this case and RCW 26.09.260(6).

However, this construction of “full days” is not consistent with the Legislative intent behind RCW 26.09.260, which was amended when the CRA was adopted.

In 2000, when the Legislature adopted the “full days” language, it also referred to “days,” “over nights” and “full days,” in the same legislation.

The CRA was introduced as House Bill No. 2884.<sup>125</sup> It provided, for example, at:

- Sec. 6(1)(b)(i)<sup>126</sup> “Sixty *days*” notice, 6(b)(ii) “five *days*” notice in some situations;
- Sec. 6(2)(a)(iii) objection to be filed “within thirty *days*,”<sup>127</sup>
- Sec. 8(1)<sup>128</sup> delay of notice for “twenty-one *days*” in certain situations;
- Sec. 10(1)<sup>129</sup> filing and service of objection to be “within thirty *days*,” hearing may be within “fifteen *days*,”
- Sec. 12(1)<sup>130</sup> objection “within thirty *days*;
- Sec. 19(5)(a)<sup>131</sup> adjustments not to “exceed twenty-four *full days* in a calendar year;”

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<sup>125</sup> See Appendix 2—1 HOUSE JOURNAL, 56<sup>th</sup> Leg. Reg. Sess., 544ff (Wash. 2000)

<sup>126</sup> See RCW 26.09.440(1). (Emphasis added to all examples).

<sup>127</sup> See RCW 26.09.440(2)(a).

<sup>128</sup> See RCW 26.09.460(1).

<sup>129</sup> See RCW 26.09.480(1).

<sup>130</sup> See RCW 26.09.500(1).

- Sec. 19(5)(c)<sup>132</sup> does not “result in a schedule that exceeds ninety overnights per year in total . . . .”

The doctrine of *expressio unius est exclusio alterius* is a canon of statutory construction. Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*—specific inclusions exclude implication. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999). That rule, like all other rules of statutory construction, is to be used as a means of ascertaining the legislative intent. *Swanson v. White*, 83 Wn.2d 175, 183, 517 P.2d 959, 964 (1973). Here the Legislature obviously intended that “full days” be something different from “days.”

Moreover, a Court assesses the plain meaning of a statute viewing the words of a particular provision in the context of the statute in which they are found, together with related statutory provisions, and the statutory scheme as a whole. *Tesoro Ref. & Mktg. Co. v. State, Dept. of Revenue*, 164 Wn.2d 310, 319, 190 P.3d 28 (2008).

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<sup>131</sup> See RCW 26.09.260(5)(a).

<sup>132</sup> RCW 26.09.260(5)(c).

Trial Courts need not define words and expressions that are of ordinary understanding or self-explanatory. *State v. Brown*, 132 Wn.2d 529, 611–12, 940 P.2d 546 (1997). Whether a word is technical in nature is a question within the discretion of the trial court. *State v. Guloy*, 104 Wn.2d 412, 417, 705 P.2d 1182 (1985). Where a term is defined, the Court will use that definition. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 813, 828 P.2d 549 (1992). Only where a term is undefined will it be given its plain and ordinary meaning. *United States v. Hoffman*, 154 Wn.2d 730, 741, 116 P.3d 999, 1004 (2005)

To determine the ordinary meaning of an undefined term, our courts may look to standard English language dictionaries. *See, e.g., Safeco Ins. Co. of Am. v. Davis*, 44 Wn.App. 161, 165, 721 P.2d 550 (1986).

In the CRA, the legislature used terms such as “days,” “overnights,” and “full days.” Presumably, the legislature intended that these terms would mean something different. *Webster’s New Universal Unabridged Dictionary* 510 (2<sup>nd</sup> ed. 2001), defines “day” as the interval of light between two successive nights” or a “division of time equal to 24 hours . . . during which the earth makes one rotation on its axis.” The *Oxford American Dictionary* 774 (1980) adds the concept that a “day” is

the time for one rotation of earth—“especially from one midnight to the next.” “Full” means “complete, entire, maximum.”

We believe “a “full day” is not a fraction of a day, or a combination of two days, but a full calendar day of 24 hours—beginning at midnight.

While there were sanctions applied to the mother because of her behavior, it is clear the residential changes ordered by the trial Court resulted largely because of the relocation, the consequences of the relocation, and the Court’s desire to promote the children’s best interest in having appropriate time with their father.<sup>133</sup>

Even the mother appears to agree that the Court did not abuse its discretion to modify the Parenting Plan under RCW 26.09.060 if it found that the mother relocated beyond the 30 minute average drive time and the father did not “abandon” his relocation objection.<sup>134</sup> Therefore, the holding in *In re Marriage of Grigsby*, 112, Wn.App. 1, 57 P.3d 1166 (2002) does not apply because the relocation in that case was withdrawn and no longer “pursued.” Here it was pursued to completion.<sup>135</sup>

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<sup>133</sup> Trial Exhibit 34. RP 519-22; CP 430-434, 477-81. Both sides proposed a review by the trial Court of the RCW 26.09.520 factors. Trial Exhibit 34; CP 430-34; RP 514-22; Trial Exhibit 225.

<sup>134</sup> A. Br. pages 17-19.

<sup>135</sup> Even the mother concedes this was a “relocation proceeding.” A. Br. page 33.

It is logical that the Court be authorized to modify a Parenting Plan after a relocation. This is because relocation can be a substantial change in circumstances. Then, if necessary and in the children's best interest, the Parenting Plan may be changed in view of the new situation.

**3. Any adjustment or modification errors created in the final Orders are "harmless"**

The mother argues that the trial Court modified the Parenting Plan as a sanction arising due to her bad behavior.

The Court modified the Parenting Plan under its discretionary authority under RCW 26.09.260(6), following a trial of this matter, and because it was necessary to accommodate the best interest of the children.

The test for harmless error of non-constitutional magnitude is whether, within reasonable probabilities, the outcome of trial would have been materially affected if the error had not occurred. *State v. Braham*, 67 Wn.App. 930, 841 P.2d 785 (1992). See, e.g., *In re Marriage of Zahm*, 91 Wn.App. 78, 84, 955 P.2d 412 (1998) *aff'd*, 138 Wn.2d 213, 978 P.2d 498, (1999) (harmless error to list social security benefits under community property).

In addition, this Court may affirm the trial Court on alternate grounds that are supported by the record. *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 696, 49 P.3d 860, 865, (2002);

*State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004) (Appellate Court may sustain a trial Court on any correct ground).

Even if the trial Court erroneously modified the Parenting Plan as a sanction, or termed a modification an adjustment, the error was harmless because the modification was otherwise authorized, for example, by RCW 26.09.260(6).

**H. The Mother's Intransigence Was a Proper Basis for Sanctions and the Award Was Not an Abuse of Discretion<sup>136</sup>**

The trial Court found the mother was intransigent because of her disregard of the law concerning relocation, notice and her difficulty in reasonably communicating with the father about the parenting of their children.<sup>137</sup>

The mother also repeatedly maintained the father's objection to her relocation was asserted in bad faith.<sup>138</sup> The trial Court rejected this untenable position.<sup>139</sup>

Failure to provide the *required* notice may be a basis for sanctions. RCW 26.09.470 and .550.

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<sup>136</sup> The mother's contention that the trial Court's ultimate Orders are different from his oral rulings is addressed at CP 529. See also footnote [82-CHECK], *supra* re: being frivolous.

<sup>137</sup> CP 422-28; 519-21.

<sup>138</sup> RP 24, 504; A. Br. pages 2, 7.

<sup>139</sup> CP 422, 425.

Not only did the mother fail to provide the required relocation notice, she made the trial more difficult through her rigid attitude toward the litigation and parenting issues.<sup>140</sup> This required the father to litigate the relocation issues.<sup>141</sup>

As a sanction in this matter, the mother was ordered to pay a small portion of the father's attorney fees and expenses in this relocation action.<sup>142</sup>

A Court may award attorney fees when one parent's intransigence causes the other parent to incur additional legal services, regardless of financial abilities. *In re Marriage of Foley*, 84 Wn.App. 839, 846, 930 P.2d 929 (1997). Intransigence—refusal to compromise, may be “bad faith” but it is not synonymous with “bad faith.”<sup>143</sup> Here, the trial Court found the mother was “intransigent.”<sup>144</sup> That was a sufficient basis for an award of sanctions.<sup>145</sup>

The mother's rigidity, foot dragging and obstruction is well documented and consists of, for example:

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<sup>140</sup> See, e.g., CP 520, 772; CP 826-38, 839-51.

<sup>141</sup> A. Br. page 7 states it was the mother's primary contention at trial that the father acted in bad faith by objecting to the mother's relocation. Given the result of the trial, this view of the facts demonstrates the mother's distorted thinking and how it increased the expense of this action to the father who had to counter the mother's “primary contentions at trial”—and now this appeal.

<sup>142</sup> CP 519-21; see also CP 771..

<sup>143</sup> A. Br. page 9.

<sup>144</sup> CP 520. A party's RCW 26.09.140 need and ability to pay attorney fees is irrelevant to a sanctions analysis. *In re Marriage of Foley*, 84 at Wn.App. 846.

<sup>145</sup> CP 422, 520.

- Her persistent communication problems in dealing with the father;
- Her refusal to reasonably co-parent;
- Her failure to give the required Notice for her relocation;
- Her frivolous contentions at trial;
- This appeal in which she persists in asserting that the father's objection was frivolous.<sup>146</sup>

Here, the trial Court made findings about the mother's intransigence that are sufficient to support its attorney fee award.<sup>147</sup> It should be affirmed.

**I. The Father Should Be Awarded Attorney Fees on Appeal Pursuant to RAP 18.1**

While RCW 26.09.140 provides for attorney fees on appeal, the merits of the arguable appeal are also a consideration. *In re Marriage of Booth*, 114 Wn.2d 772, 779-80, 791 P.2d 519 (1990). The mother's continued insistence that the father acted in bad faith<sup>148</sup> is frivolous in its explicit request that this Court second guess the trial Court's related discretionary rulings.

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<sup>146</sup> A. Br. pages 2, 7.

<sup>147</sup> CP 519-21.

<sup>148</sup> A. Br. 2, 35.

Since this appeal requires the father to defend his position in this appeal and the children's best interest as determined by the trial Court, the father is entitled to attorney's fees on appeal under RCW 4.85.150 and because of the mother's intransigence as evidenced, in part, by this appeal.

## V. CONCLUSION

The mother is not a bad person. However, she makes poor decisions about parenting. More than that, she seems unable to selflessly parent her children in recognition of their best interest to have a healthy relationship with *both* of their parents as anticipated by RCW 26.09.002.

Contrary to the policy of RCW 26.09.003 discouraging litigation, when confronted by the possibility that she had made a mistake in deciding to relocate, the mother stubbornly told the father to "take me to court."

After three days of trial, the Court judiciously sanctioned the mother and reasonably exercised its discretion in tailoring an individualized resolution of parenting issues. In doing so, the Court repaired the "internal contradiction" in the parties' original Parenting Plan and supported the parents' original agreement that they should live relatively close to each other—for the benefit of the children. It also

augmented the existing “almost shared parenting plan” to give the children more time with their father because of their relocation and related distancing from their father.

What did the mother do in response? She filed this appeal—and caused more litigation. She claims, even in this appeal, that the father’s objection to the relocation was asserted in bad faith. She challenges the substantial evidence against the legitimacy of her relocation. She challenges the discretionary rulings of the trial Court and the exercise of its authority under, for example, RCW 26.09.260 (6) and (10).

In short, the mother confirms the accuracy of Margo Waldroup’s observations about her distorted thinking and its deleterious effect on the children.

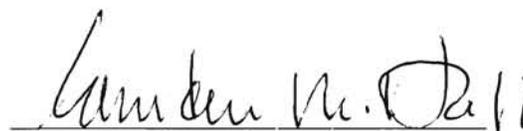
“Take me to court,” the mother demanded to the father. And so he did. In the process he abjured his right to demand that the mother move back to the area proscribed by the original Parenting Plan. Instead, he demurred because that was in the children’s best interest. He also asked the Court to adjust and modify the Parenting Plan in view of the mother’s relocation and the facts proved at trial.

In granting relief after the trial, the Court reasonably exercised its discretion in favor of the best interest of the children—not the best interest of the mother, or the father. Its orders should be affirmed.

DATED: June 14, 2012.

Respectfully submitted,

CAMDEN HALL, PLLC

A handwritten signature in black ink that reads "Camden M. Hall". The signature is written in a cursive style and is positioned above a horizontal line.

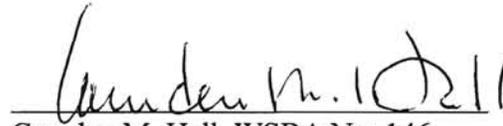
Camden M. Hall, WSBA No. 146  
Attorney for Respondent

1001 Fourth Avenue, Suite 3312-13  
Seattle, WA 98154  
(206)749-0200

DATED: June 14, 2012.

Respectfully submitted,

CAMDEN HALL, PLLC

A handwritten signature in black ink, appearing to read "Camden M. Hall", written over a horizontal line.

Camden M. Hall, WSBA No. 146  
Attorney for Respondent

1001 Fourth Avenue, Suite 3312-13  
Seattle, WA 98154  
(206)749-0200

**DECLARATION OF SERVICE**

I declare under penalty of perjury under the laws of the state of Washington, that by the end of the day on June 14, 2012, I will have served, or had served, this Respondent's Brief and Declaration of Service upon the following individuals in the manner indicated below:

Philip C. Tsai  
2101 Fourth Avenue, Suite 1560  
Seattle, WA 98121

**Via Messenger**

DATED: June 14, 2012 at Seattle, Washington.

  
\_\_\_\_\_  
Michael A. Overlie

----- Original Message -----

From: Nanako Raskob

To: [josh@owenadam.com](mailto:josh@owenadam.com)

Sent: Tuesday, February 15, 2011 10:16 PM

Subject: Moving

Josh,

We will be moving in the second week in March.

New address is: 4049 Latona Ave NE #C, Seattle 98105

Since I will be going to Duvall on Tuesdays and Thursdays, I will meet you at Shyne school at 9:00 a.m. for exchange.

I will start boxing up small stuff and move them to garage. I am taking only a few furniture with me and other furniture will stay during the listing of the house (I plan to get rid of them when the house is sold).

I had a meeting with Sue to discuss about the staging and I'd like to start decluttering the house by moving things into garage. Would you start removing your stuff from the garage and the house?

I also asked her opinion about the kitchen floor and she suggested to go with a big sheet of vinyl instead of vinyl tile. I can go check the prices for that in a couple of days.

I can decluttered the house to be ready for listing on March 1st but we will be moving in the middle of the listing. I'm not sure if you are okay with that or want to wait to list the house until we are completely out of the house.

Thanks.

Nanako

# HOUSE JOURNAL

OF THE  
FIFTY-SIXTH LEGISLATURE  
OF THE  
STATE OF WASHINGTON  
AT  
OLYMPIA, THE STATE CAPITOL

2000 Regular Session  
Convened January 10, 2000  
Adjourned Sine Die March 9, 2000  
2000 First Special Session  
Convened March 10, 2000  
Adjourned Sine Die April 7, 2000  
2000 Second Special Session  
Convened April 24, 2000  
Adjourned Sine Die April 27, 2000

VOLUME I



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**Clyde Ballard, Co-Speaker**  
**Frank Chopp, Co-Speaker**  
**John Pennington, Co-Speaker Pro Tempore**  
**Val Ogden, Co-Speaker Pro Tempore**  
**Timothy A. Martin, Co-Chief Clerk**  
**Cynthia Zehnder, Co-Chief Clerk**

Compiled and edited by House Workroom Staff

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Voting yeay: Representatives Alexander, Anderson, Ballasiotes, Barlean, Benson, Boldt, Buck, Bush, Cairnes, Campbell, Carlson, Carrell, B. Chandler, G. Chandler, Clements, Cody, Constantine, Conway, Cooper, Cox, Crouse, DeBolt, Delvin, Dickerson, Doumit, Dunn, Dunshee, Edmonds, Edwards, Ericksen, Esser, Fisher, Fortunato, Gombosky, Grant, Haigh, Hankins, Hatfield, Huff, Hurst, Kagi, Kastama, Keiser, Kenney, Kessler, Koster, Lambert, Lantz, Linville, Lisk, Lovick, Mastin, McDonald, McIntire, McMorris, Mielke, Miloscia, Mitchell, Morris, Mulliken, Murray, O'Brien, Ogden, Parlette, Pennington, Pflug, Poulsen, Quall, Reardon, Regala, Rockefeller, Romero, Ruderman, Santos, Schindler, Schmidt, Schoesler, Schual-Berke, Skinner, D. Sommers, H. Sommers, Stensen, Sullivan, Sump, Talcott, Thomas, Tokuda, Van Luven, Veloria, Wensman, Wolfe, Wood, Woods, Mr. Speaker Ballard and Mr. Speaker Chopp - 95.

Excused: Representatives Eickmeyer, Radcliff and Scott - 3.

Engrossed House Bill No. 2609, having received the constitutional majority, was declared passed.

HOUSE BILL NO. 2884, by Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen

Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.

The bill was read the second time. There being no objection, Substitute House Bill No. 2884 was substituted for House Bill No. 2884 and the substitute bill was placed on the second reading calendar.

Substitute House Bill No. 2884 was read the second time.

Representative Constantine moved the adoption of the following amendment (502):

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** By this act, the legislature intends to supersede the state supreme court's decisions *In Re the Marriage of Littlefield*, 133 Wn.2d 39 (1997), and *In Re the Marriage of Pape*, Docket No. 67527-9, December 23, 1999.

**NEW SECTION. Sec. 2. DEFINITIONS.** The definitions in this section apply throughout sections 2 through 18 of this act and RCW 26.09.260 unless the context clearly requires otherwise.

(1) "Court order" means a temporary or permanent parenting plan, custody order, visitation order, or other order governing the residence of a child under this title.

(2) "Relocate" means a change in principal residence either permanently or for a protracted period of time.

**NEW SECTION. Sec. 3. APPLICABILITY.** (1) The provisions of this act apply to a court order regarding residential time or visitation with a child issued:

(a) After the effective date of this act; and

(b) Before the effective date of this act, if the existing court order does not expressly govern relocation of the child.

(2) To the extent that a provision of this act conflicts with the express terms of a court order existing prior to the effective date of this act, then this act does not apply to those terms of that order governing relocation of the child.

**NEW SECTION. Sec. 4. GRANT OF AUTHORITY.** When entering or modifying a court order, the court has the authority to allow or not allow a person to relocate the child.

NEW SECTION. Sec. 5. NOTICE REQUIREMENT. Except as provided in section 8 of this act, a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. Notice shall be given as prescribed in sections 6 and 7 of this act.

NEW SECTION. Sec. 6. NOTICE--CONTENTS AND DELIVERY. (1) Except as provided in sections 7 and 8 of this act, the notice of an intended relocation of the child must be given by:

(a) Personal service or any form of mail requiring a return receipt; and

(b) No less than:

(i) Sixty days before the date of the intended relocation of the child; or

(ii) No more than five days after the date that the person knows the information required to be furnished under subsection (2) of this section, if the person did not know and could not reasonably have known the information in sufficient time to provide the sixty-days' notice, and it is not reasonable to delay the relocation.

(2)(a) The notice of intended relocation of the child must include: (i) An address at which service of process may be accomplished during the period for objection; (ii) a brief statement of the specific reasons for the intended relocation of the child; and (iii) a notice to the nonrelocating person that an objection to the intended relocation of the child or to the relocating person's proposed revised residential schedule must be filed with the court and served on the opposing person within thirty days or the relocation of the child will be permitted and the residential schedule may be modified pursuant to section 12 of this act. The notice shall not be deemed to be in substantial compliance for purposes of section 9 of this act unless the notice contains the following statement: "THE RELOCATION OF THE CHILD WILL BE PERMITTED AND THE PROPOSED REVISED RESIDENTIAL SCHEDULE MAY BE CONFIRMED UNLESS, WITHIN THIRTY DAYS, YOU FILE A PETITION AND MOTION WITH THE COURT TO BLOCK THE RELOCATION OR OBJECT TO THE PROPOSED REVISED RESIDENTIAL SCHEDULE AND SERVE THE PETITION AND MOTION ON THE PERSON PROPOSING RELOCATION AND ALL OTHER PERSONS ENTITLED BY COURT ORDER TO RESIDENTIAL TIME OR VISITATION WITH THE CHILD."

(b) Except as provided in sections 7 and 8 of this act, the following information shall also be included in every notice of intended relocation of the child, if available:

(i) The specific street address of the intended new residence, if known, or as much of the intended address as is known, such as city and state;

(ii) The new mailing address, if different from the intended new residence address;

(iii) The new home telephone number;

(iv) The name and address of the child's new school and day care facility, if applicable;

(v) The date of the intended relocation of the child; and

(vi) A proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation with the child, if any.

(3) A person required to give notice of an intended relocation of the child has a continuing duty to promptly update the information required with the notice as that new information becomes known.

NEW SECTION. Sec. 7. NOTICE--RELOCATION WITHIN THE SAME SCHOOL DISTRICT.

(1) When the intended relocation of the child is within the school district in which the child currently resides the majority of the time, the person intending to relocate the child, in lieu of notice prescribed in section 6 of this act, may provide actual notice by any reasonable means to every other person entitled to residential time or visitation with the child under a court order.

(2) A person who is entitled to residential time or visitation with the child under a court order may not object to the intended relocation of the child within the school district in which the child currently resides the majority of the time, but he or she retains the right to move for modification under RCW 26.09.260.

**NEW SECTION. Sec. 8. LIMITATION OF NOTICES.** (1) If a person intending to relocate the child is entering a domestic violence shelter due to the danger imposed by another person, notice may be delayed for twenty-one days. This section shall not be construed to compel the disclosure by any domestic violence shelter of information protected by confidentiality except as provided by RCW 70.123.075 or equivalent laws of the state in which the shelter is located.

(2) If a person intending to relocate the child is a participant in the address confidentiality program pursuant to chapter 40.24 RCW or has a court order which permits the party to withhold some or all of the information required by section 6(2)(b) of this act, the confidential or protected information is not required to be given with the notice.

(3) If a person intending to relocate the child is relocating to avoid a clear, immediate, and unreasonable risk to the health or safety of a person or the child, notice may be delayed for twenty-one days.

(4) A person intending to relocate the child who believes that his or her health or safety or the health or safety of the child would be unreasonably put at risk by notice or disclosure of certain information in the notice may request an Representative(s) \* was/were excused. parte hearing with the court to have all or part of the notice requirements waived. If the court finds that the health or safety of a person or a child would be unreasonably put at risk by notice or the disclosure of certain information in the notice, the court may:

(a) Order that the notice requirements be less than complete or waived to the extent necessary to protect confidentiality or the health or safety of a person or child; or

(b) Provide such other relief as the court finds necessary to facilitate the legitimate needs of the parties and the best interests of the child under the circumstances.

(5) This section does not deprive a person entitled to residential time or visitation with a child under a court order the opportunity to object to the intended relocation of the child or the proposed revised residential schedule before the relocation occurs.

**NEW SECTION. Sec. 9. FAILURE TO GIVE NOTICE.** (1) The failure to provide the required notice is grounds for sanctions, including contempt if applicable.

(2) In determining whether a person has failed to comply with the notice requirements for the purposes of this section, the court may consider whether:

(a) The person has substantially complied with the notice requirements;

(b) The court order in effect at the time of the relocation was issued prior to the effective date of this act and the person substantially complied with the notice requirements, if any, in the existing order;

(c) A waiver of notice was granted;

(d) A person entitled to receive notice was substantially harmed; and

(e) Any other factor the court deems relevant.

(3) A person entitled to file an objection to the intended relocation of the child may file such objection whether or not the person has received proper notice.

**NEW SECTION. Sec. 10. OBJECTION TO RELOCATION OR PROPOSED REVISED RESIDENTIAL SCHEDULE.** (1) A party objecting to the intended relocation of the child or the relocating parent's proposed revised residential schedule shall do so by filing the objection with the court and serving the objection on the relocating party and all other persons entitled by court order to residential time or visitation with the child by means of personal service or mailing by any form of mail requiring a return receipt to the relocating party at the address designated for service on the notice of intended relocation and to other parties requiring notice at their mailing address. The objection must be filed and served, including a three-day waiting period if the objection is served by mail, within thirty days of receipt of the notice of intended relocation of the child. The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief.

(2) Unless the special circumstances described in section 8 of this act apply, the person intending to relocate the child shall not, without a court order, change the principal residence of the child during the period in which a party may object. The order required under this subsection may be obtained

Representative(s) \* was/were excused. parte. If the objecting party notes a court hearing to prevent the relocation of the child for a date not more than fifteen days following timely service of an objection to relocation, the party intending to relocate the child shall not change the principal residence of the child pending the hearing unless the special circumstances described in section 8(3) of this act apply.

(3) The administrator for the courts shall develop a standard form, separate from existing dissolution or modification forms, for use in filing an objection to relocation of the child or objection of the relocating person's proposed revised residential schedule.

**NEW SECTION. Sec. 11. REQUIRED PROVISION IN RESIDENTIAL ORDERS.** Unless waived by court order, after the effective date of this act, every court order shall include a clear restatement of the provisions in sections 5 through 10 of this act.

**NEW SECTION. Sec. 12. FAILURE TO OBJECT.** (1) Except for good cause shown, if a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, then the relocation of the child shall be permitted.

(2) A nonobjecting person shall be entitled to the residential time or visitation with the child specified in the proposed residential schedule included with the relocation notice.

(3) Any person entitled to residential time or visitation with a child under a court order retains his or her right to move for modification under RCW 26.09.260.

(4) If a person entitled to object to the relocation of the child does not file an objection with the court within thirty days after receipt of the relocation notice, a person entitled to residential time with the child may not be held in contempt of court for any act or omission that is in compliance with the proposed revised residential schedule set forth in the notice given.

(5) Any party entitled to residential time or visitation with the child under a court order may, after thirty days have elapsed since the receipt of the notice, obtain Representative(s) \* was/were excused. parte and file with the court an order modifying the residential schedule in conformity with the relocating party's proposed residential schedule specified in the notice upon filing a copy of the notice and proof of service of such notice. A party may obtain Representative(s) \* was/were excused. parte and file with the court an order modifying the residential schedule in conformity with the proposed residential schedule specified in the notice before the thirty days have elapsed if the party files a copy of the notice, proof of service of such notice, and proof that no objection will be filed.

**NEW SECTION. Sec. 13. TEMPORARY ORDERS.** (1) The court may grant a temporary order restraining relocation of the child, or ordering return of the child if the child's relocation has occurred, if the court finds:

(a) The required notice of an intended relocation of the child was not provided in a timely manner and the nonrelocating party was substantially prejudiced;

(b) The relocation of the child has occurred without agreement of the parties, court order, or the notice required by this act; or

(c) After examining evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will not approve the intended relocation of the child or no circumstances exist sufficient to warrant a relocation of the child prior to a final determination at trial.

(2) The court may grant a temporary order authorizing the intended relocation of the child pending final hearing if the court finds:

(a) The required notice of an intended relocation of the child was provided in a timely manner or that the circumstances otherwise warrant issuance of a temporary order in the absence of compliance with the notice requirements and issues an order for a revised schedule for residential time with the child; and

(b) After examining the evidence presented at a hearing for temporary orders in which the parties had adequate opportunity to prepare and be heard, there is a likelihood that on final hearing the court will approve the intended relocation of the child.

**NEW SECTION. Sec. 14. BASIS FOR DETERMINATION.** The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

- (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
- (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
- (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
- (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) The financial impact and logistics of the relocation or its prevention; and
- (11) For a temporary order, the amount of time before a final decision can be made at trial.

**NEW SECTION. Sec. 15. FACTOR NOT TO BE CONSIDERED.** In determining whether to permit or restrain the relocation of the child, the court may not admit evidence on the issue of whether the person seeking to relocate the child will forego his or her own relocation if the child's relocation is not permitted or whether the person opposing relocation will also relocate if the child's relocation is permitted. The court may admit and consider such evidence after it makes the decision to allow or restrain relocation of the child and other parenting, custody, or visitation issues remain before the court, such as what, if any, modifications to the parenting plan are appropriate and who the child will reside with the majority of the time if the court has denied relocation of the child and the person is relocating without the child.

**NEW SECTION. Sec. 16. OBJECTIONS BY NONPARENTS.** A court may not restrict the right of a parent to relocate the child when the sole objection to the relocation is from a third party, unless that third party is entitled to residential time or visitation under a court order and has served as the primary residential care provider to the child for a substantial period of time during the thirty-six consecutive months preceding the intended relocation.

**NEW SECTION. Sec. 17. SANCTIONS.** The court may sanction a party if it finds that a proposal to relocate the child or an objection to an intended relocation or proposed revised residential schedule was

made to harass a person, to interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation with the child, or to unnecessarily delay or needlessly increase the cost of litigation.

**NEW SECTION. Sec. 18. PRIORITY FOR HEARING.** A hearing involving relocations or intended relocations of children shall be accorded priority on the court's motion calendar and trial docket.

**Sec. 19.** RCW 26.09.260 and 1999 c 174 s 1 are each amended to read as follows:

(1) Except as otherwise provided in subsections (4), (5), ~~((7))~~ (6), (8), and ~~((9))~~ (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the ~~((nonprimary residential))~~ child and the parent ~~((and a child))~~ with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the ~~((nonprimary residential))~~ parent ~~((at the time the petition for modification is filed))~~ with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the ~~((nonprimary residential))~~ parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the ~~((motion))~~ petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in sections 2 through 18 of this act. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A ((nonprimary residential)) parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

~~((7))~~ (8) If a ((nonprimary residential)) parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

~~((8))~~ (9) A ((nonprimary)) parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

~~((9))~~ (10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

~~((10))~~ (11) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

**Sec. 20.** RCW 26.26.160 and 1992 c 229 s 8 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section the court has continuing jurisdiction to prospectively modify a judgment and order for future education and future support, and with respect to matters listed in RCW 26.26.130 (3) and ~~((4))~~ (5), and RCW 26.26.150(2) upon showing a substantial change of circumstances. The procedures set forth in RCW 26.09.175 shall be used in modification proceedings under this section.

(2) A judgment or order entered under this chapter may be modified without a showing of substantial change of circumstances upon the same grounds as RCW 26.09.170 permits support orders to be modified without a showing of a substantial change of circumstance.

(3) The court may modify a parenting plan or residential provisions adopted pursuant to RCW 26.26.130~~((6))~~ (7) in accordance with the provisions of chapter 26.09 RCW.

(4) The court shall hear and review petitions for modifications of a parenting plan, custody order, visitation order, or other order governing the residence of a child, and conduct any proceedings concerning a relocation of the residence where the child resides a majority of the time, pursuant to chapter 26.09 RCW.

**Sec. 21.** RCW 26.10.190 and 1989 c 375 s 24 are each amended to read as follows:

~~(1) ((The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or the custodian and that the modification is necessary~~

~~to serve the best interests of the child. In applying these standards, the court shall retain the custodian established by the prior decree unless:~~

~~(a) The custodian agrees to the modification;~~  
~~(b) The child has been integrated into the family of the petitioner with the consent of the custodian; or~~  
~~(c) The child's present environment is detrimental to his or her physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child-))~~ The court shall hear and review petitions for modifications of a parenting plan, custody order, visitation order, or other order governing the residence of a child, and conduct any proceedings concerning a relocation of the residence where the child resides a majority of the time, pursuant to chapter 26.09 RCW.

(2) If the court finds that a motion to modify a prior custody decree has been brought in bad faith, the court shall assess the attorney's fees and court costs of the custodian against the petitioner.

NEW SECTION. Sec. 22. Captions used in this act are not any part of the law.

NEW SECTION. Sec. 23. Sections 2 through 18 of this act are each added to chapter 26.09 RCW and codified with the subchapter heading "Notice requirements and standards for parental relocation.""

Correct the title.

Representatives Constantine and Carrell spoke in favor of the adoption of the amendment.

The amendment was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Constantine, Carrell, Carlson and Kastama spoke in favor of passage of the bill.

### COLLOQUY

Representative Carrell: Does the presumption created in section 14 of this act apply to any other sections of RCW title 26?

Representative Constantine: No. The presumption created in section 14 of this act is intended to apply exclusively to section 14 of the act and is not intended to apply by analogy to any other sections of RCW title 26.

Representative Carrell: How does this act apply in situations in which the child resides an equal amount of time with each parent?

Representative Constantine: Under such circumstances, the notice requirements apply to both parties and the presumption to neither.

Representative Lambert spoke against the passage of the bill.

Speaker Ballard stated the question before the House to be final passage of Engrossed Substitute House Bill No. 2884.

## ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 2884 and the bill passed the House by the following vote: Yeas - 91, Nays - 4, Absent - 0, Excused - 3.

Voting yea: Representatives Alexander, Anderson, Ballasiotes, Barlean, Benson, Boldt, Buck, Bush, Cairnes, Campbell, Carlson, Carrell, B. Chandler, G. Chandler, Clements, Cody, Constantine, Conway, Cooper, Cox, Crouse, DeBolt, Delvin, Dickerson, Doumit, Dunn, Dunshee, Edmonds, Edwards, Ericksen, Esser, Fisher, Gombosky, Grant, Haigh, Hankins, Hatfield, Huff, Hurst, Kagi, Kastama, Keiser, Kenney, Kessler, Lantz, Linville, Lisk, Lovick, Mastin, McDonald, McIntire, McMorris, Mielke, Miloscia, Mitchell, Morris, Mulliken, Murray, O'Brien, Ogden, Parlette, Pennington, Pflug, Poulsen, Quall, Reardon, Regala, Rockefeller, Romero, Ruderman, Santos, Schmidt, Schoesler, Schual-Berke, Skinner, D. Sommers, H. Sommers, Stensen, Sullivan, Sump, Talcott, Thomas, Tokuda, Van Luven, Veloria, Wensman, Wolfe, Wood, Woods, Mr. Speaker Ballard and Mr. Speaker Chopp - 91.

Voting nay: Representatives Fortunato, Koster, Lambert and Schindler - 4.

Excused: Representatives Eickmeyer, Radcliff and Scott - 3.

Engrossed Substitute House Bill No. 2884, having received the constitutional majority, was declared passed.

HOUSE BILL NO. 2946, by Representatives Conway, Clements, Wood, Regala and Hurst

Allowing local planning and zoning of gambling activities.

The bill was read the second time.

Representative Conway moved the adoption of the following amendment (489):

Strike everything after the enacting clause and insert the following:

**"NEW SECTION. Sec. 1.** A new section is added to chapter 9.46 RCW to read as follows:

Nothing in this chapter shall be construed as limiting the authority of any city, town, city-county, or county to exercise its land use and zoning powers granted or recognized under the law with respect to the location of any gambling activities authorized under this chapter."

Correct the title.

Representatives Conway and Clements spoke in favor of the adoption of the amendment.

The amendment was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Conway and Clements spoke in favor of passage of the bill.

## COLLOQUY

**NOTE: The information on this page is current as of 12:32 AM Pacific Time on 7/8/2011, but is subject to change. Check online for the latest information.**

**HISTORY OF BILL: HB 2884  
Friday, July 8, 2011 12:32 PM**

**Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.**

Sponsors: Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers, Stensen

**2000 REGULAR SESSION**

Jan 21 First reading, referred to Judiciary.  
Feb 3 **JUDI - Majority; 1st substitute bill be substituted, do pass.**  
Minority; do not pass.  
Feb 4 Passed to Rules Committee for second reading.  
Feb 11 Placed on second reading by Rules Committee.  
Feb 14 **1st substitute bill substituted (JUDI 00).**  
Floor amendment(s) adopted.  
Rules suspended. Placed on Third Reading.  
Third reading, passed: yeas, 91; nays, 4; absent, 3.

**IN THE SENATE**

Feb 16 First reading, referred to Judiciary.  
Feb 25 JUD - Majority; do pass.  
Passed to Rules Committee for second reading.  
Feb 28 Made eligible to be placed on second reading.  
Feb 29 Placed on second reading by Rules Committee.  
Mar 1 Rules suspended. Placed on Third Reading.  
Third reading, passed: yeas, 43; nays, 0; absent, 6.

**IN THE HOUSE**

Mar 2 Speaker signed.

**IN THE SENATE**

Mar 3 President signed.

**OTHER THAN LEGISLATIVE ACTION**

Mar 6 Delivered to Governor.  
Mar 17 Governor signed.  
Chapter 21, 2000 Laws.  
Effective date 6/8/2000.

# HOUSE BILL ANALYSIS

## HB 2884

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**Title:** An act relating to relocation of children.

**Brief Description:** Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.

**Sponsors:** Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen.

### Brief Summary of Bill

- Requires a person entitled to court-ordered residential time or visitation with a child to notify every other person entitled to such time when the person intends to relocate.
- Creates a presumption that relocation will be permitted unless an objecting party meets a certain standard.
- Establishes factors the court must consider when determining whether to permit or prohibit relocation of the child.

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### HOUSE COMMITTEE ON JUDICIARY

**Staff:** Trudes Hutcheson (786-7384).

#### Background:

Whether a parent may relocate a child away from the other parent who is entitled to residential or visitation time is an issue that has been heavily litigated in recent years. Washington's laws do not explicitly address when a parent may or may not relocate a child and whether the parent must notify the other parent before relocation occurs.

In the 1997 case, In re the Marriage of Littlefield, the state supreme court held that Washington's statutes do not give courts the authority to impose geographical restrictions on a parent when entering an initial parenting plan unless relocation would harm the child. The court explained that the harm to the child must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships normally associated with dissolution.

In December 1999, the state supreme court issued its opinion in In re the Marriage of Pape, in which it held that a parent may modify the residential schedule of a parenting plan under the "minor modification" statute.

The minor modification statute allows for "adjustments" to the parenting plan if: (a) there has been a substantial change in circumstances of either parent or the child; (b) the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time; and (c) the proposed modification is based on a change of residence or an involuntary change in work schedule by a parent that makes the residential schedule impractical to follow.

The court reasoned that the child's best interests were considered when the court made the initial residential placement of the child. Therefore, in a subsequent modification action there is a presumption that the best interests of the child require the primary placement of the child to remain intact.

Under Pape, the relocating parent must demonstrate a bona fide reason for the relocation. The other parent may object to the move by showing that either no bona fide reasons exist that the move will be detrimental to the child using the Littlefield standard of detriment.

#### **Summary of Bill:**

The Legislature intends to supersede the state supreme court's decisions of In re the Marriage of Littlefield and In re the Marriage of Pape.

#### **Notice:**

Any person entitled to residential time or visitation with a child under a court order must notify every other person entitled to such time when that person intends to relocate.

Notice must be given by personal service or any form of mailing requiring a return receipt no less than 60 days before the intended relocation. Notice must contain certain information, including an address where service of process may be accomplished, the reasons for the intended relocation, and a notice to the non-relocating party that an objection to the intended relocation of the child must be filed with the court within 30 days or the relocation will be permitted.

When available, the notice should also contain information such as the new mailing address and phone number, the address of the child's new school or day care, and a proposal for a revised schedule of residential time or visitation.

If the intended relocation will be within the same school district in which the child currently resides the majority of the time, the person intending to relocate need only provide actual notice by any reasonable means.

**Limitation of Notices:**

The time frames for notice and the requirements in the notice may vary under limited circumstances. If a person is entering a domestic violence shelter or is relocating to avoid a clear, immediate, and unreasonable risk to his or her health or safety, or the child's health or safety, then notice may be delayed for 21 days.

If the person believes that his or her health or safety would be at risk by disclosure of some information in the notice, the person may obtain an ex parte court order to have some or all of the notice requirements waived.

Failure to give notice could result in sanctions and a finding of contempt, if applicable.

**Objection:**

A party objecting to the intended relocation of the child or to the proposed revised residential schedule must file an objection with the court and serve the objection on the relocating party and all other persons entitled to notice.

The objection must be filed and served within 30 days of receipt of the notice of intended relocation. The objection must be in the form of a petition for modification of the parenting plan or other court proceeding adequate to provide grounds for relief.

The person intending to relocate the child shall not, without a court order, change the child's principal residence during the 30-day objection period. If the objecting party notes a hearing to prevent relocation for a date not more than 15 days following timely service of the objection, the party intending to relocate may not change the child's principal residence pending the hearing unless special circumstances apply.

**Failure to Object:**

If a person does not object within 30 days, the relocation will be permitted and the non-objecting person is entitled to the residential time or visitation specified in the proposed revised residential schedule that was included in the notice of intended relocation.

Any party entitled to court-ordered residential time or visitation with the child may, after the 30- day objection period has passed, obtain ex parte an order modifying the residential schedule in conformity with the proposed revised residential schedule

specified. A party may obtain such an order before the 30-day objection period elapses if the party presents proof that no objection will be filed.

**Temporary Orders:**

A court may grant a temporary order restraining relocation of a child, or ordering the return of a child who has already been relocated, if the court finds:

- (a) that the required notice was not provided and the non-relocating party was substantially prejudiced;
- (b) the relocation has occurred without agreement of the parties, court order, or notice; or
- (c) after examining evidence presented at a hearing, the court finds that there is a likelihood that on final hearing the court will not approve the intended relocation.

The court may grant a temporary order permitting the relocation of a child if the relocating party complied or substantially complied with the notice requirements, and the court determines that there is a likelihood on final hearing that it will approve the relocation.

**Presumption and Standard:**

The person intending to relocate with the child must give his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation will be permitted. The objecting party may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person. Whether the detrimental effect outweighs the benefit must be based on the following factors:

- (1) the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings, and other significant persons in the child's life;
- (2) whether disrupting the contact between the child and the person with whom the child primarily resides would be more detrimental to the child than disrupting contact between the child and the person objecting;
- (3) whether either parent or a person entitled to residential time with the child is subject to limitations based on the person's conduct;

- (4) the reasons of each person for seeking or opposing relocation and the good faith of each party;
- (5) the age, developmental state, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development;
- (6) the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographical locations;
- (7) the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (8) the alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (9) the financial impact and logistics of the relocation or its prevention; and
- (10) for a temporary order, the amount of time before a final decision can be made at trial.

The court may not consider as a factor whether or not the person intending to relocate will forego his or her relocation if the child's relocation is prohibited.

Once the court determines whether to permit or restrain the relocation of the child, the court shall determine what modification should be made, if any, to the parenting plan.

**Objections By Third Parties:**

A court may not restrict the child's relocation when the sole objection to the relocation is from a third party, unless the third party is entitled to court-ordered residential time or visitation time and has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

**Sanctions:**

The court may sanction a party if his or her proposal to relocate or objection to relocation was made to harass a person, delay or increase the cost of litigation, or to interfere in bad faith with the other person's relationship with the child.

**Minor Modification:**

The minor modification statute is amended to remove the ability to seek a minor modification based on a change of residence.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

Office of Program Research

# SENATE BILL REPORT

## ESHB 2884

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As Reported By Senate Committee On:  
Judiciary, February 25, 2000

**Title:** An act relating to relocation of children.

**Brief Description:** Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen).

**Brief History:**

**Committee Activity:** Judiciary: 2/23/2000, 2/25/2000 [DP].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Thibaudeau and Zarelli.

**Staff:** Lidia Mori (786-7755)

**Background:** In a recent case, *In re the Marriage of Pape*, the Supreme Court held a parent may modify the residential schedule of a parenting plan under the "minor modification" statute. The court reasoned that the child's best interests were considered when the court made the initial residential placement of the child. Therefore, in a subsequent modification action, there is a presumption that the best interests of the child require the primary placement of the child to remain intact.

Under *Pape*, the relocating parent must demonstrate a bona fide reason for the relocation. The other parent may object to the move by showing that either no bona fide reasons for the relocation exist or that the move will be detrimental to the child. The degree of detriment to the child must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships which predictably result from a relocation following dissolution.

**Summary of Bill:** Notice: When the person with whom a child resides a majority of the time intends to change the principal residence of the child, notice must be given to those entitled to visitation or residential time within 60 days before the date of the intended relocation. However, if the person who desires to relocate does not know the information required to be contained in the notice and it is not reasonable to delay the relocation, he or she must provide the notice within five days after the date the person knows the information.

The notice must state the reasons for the relocation of the child and a statement that any objection to the relocation and proposed new residential schedule must be filed and served within 30 days or the relocation will be permitted. The new address, telephone number, name and address of the child's new school, and a proposed revised schedule of visitation or residential time should also be included, if available.

If the person desiring to relocate the child is entering a domestic violence shelter, notice may be delayed for 21 days. The person intending to relocate may seek an ex parte order waiving all or part of the notice requirements if the person believes his or her health or safety or that of the child would be unreasonably put at risk by giving notice. Without a court order, the person desiring to relocate may not change the principal residence of the child during the period in which a party may object, unless the relocation is due to danger posed by another person. The court order to allow relocation during the time allotted for a party to object may be obtained ex parte.

Determining Whether to Allow Relocation: There is a rebuttable presumption that the intended relocation of the child will be permitted. A person who objects to the relocation of the child may rebut this presumption by showing that the detrimental effect of relocation outweighs the benefit of the relocation to the child and the relocating person.

The following factors are delineated for the court to consider and no factor is given greater weight than another:

- (1) The strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons;
- (2) Prior agreements of the parties;
- (3) Whether disrupting the contact between the child and the person whom the child resides with a majority of the time would be more detrimental than disrupting contact between the child and the person objecting to the move;
- (4) Whether a person entitled to residential time is subject to limitations based on the person's conduct;
- (5) The reasons and good faith of each person for seeking or opposing the relocation;
- (6) The age, developmental stage, and needs of the child;
- (7) The quality of life, resources, and opportunities available to the child and the relocating party in the current and proposed geographic locations;
- (8) The availability of alternative arrangements to continue the child's relationship with and access to the other parent;
- (9) Alternatives to relocation and whether it is feasible and desirable for the other party to also relocate;
- (10) The financial impact and logistics of the relocation or its prevention.

The court may not consider as a factor whether the person intending to relocate will forego the relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

Objections By Third Parties: A court may not restrict the child's relocation when the sole objection to the relocation is from a third party, unless the third party is entitled to court-ordered residential time or visitation time and has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

Sanctions: The court may sanction a party if his or her proposal to relocate or objection to relocation was made to harass a person, delay or increase the cost of litigation, or to interfere in bad faith with the other person's relationship with the child.

**Appropriation:** None.

**Fiscal Note:** Requested on February 21, 2000.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** There have been two Supreme Court cases recently which dealt with the issue of the primary residential parent wishing to relocate with the child. There have also been two bills that have tackled this issue from opposite points of view. This bill represents a compromise and each side will get a fair hearing. The facts will decide the case, not the law. It is not a perfect bill but we probably won't ever get a perfect bill due to so many competing views. This bill provides sufficient protections for domestic violence victims.

**Testimony Against:** None.

**Testified:** PRO: Representative Constantine, prime sponsor; Douglas Becker, Family Law Section, King County Bar Assn.; Rick Bartholomew, Family Law Section, WSBA; Bill Harrington, American Fathers Alliance; Lisa Scott, Taking Action Against Bias in the System; Majken Ryherd, Northwest Women's Law Center; Lonnie Johns-Brown, National Organization for Women.

# HOUSE BILL REPORT

## HB 2884

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As Reported By House Committee On:  
Judiciary

**Title:** An act relating to relocation of children.

**Brief Description:** Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.

**Sponsors:** Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen.

**Brief History:**

**Committee Activity:**

Judiciary: 2/1/00, 2/3/00 [DPS].

**Brief Summary of Substitute Bill**

- Requires a person entitled to court-ordered residential time or visitation with a child to notify every other person entitled to such time when the person intends to relocate.
- Creates a presumption that relocation will be permitted unless an objecting party meets a certain standard.
- Establishes factors the court must consider when determining whether to permit or prohibit relocation of the child.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Dickerson; Esser; Kastama; Lantz; Lovick and McDonald.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Lambert, Republican Vice Chair; Cox and Schindler.

Staff: Trudes Hutcheson (786-7384).

**Background:**

Whether a parent may relocate a child away from the other parent who is entitled to residential or visitation time is an issue that has been heavily litigated in recent years. Washington's laws do not explicitly address when a parent may or may not relocate a child and whether the parent must notify the other parent before relocation occurs.

In the 1997 case, In re the Marriage of Littlefield, the state supreme court held that Washington's statutes do not give courts the authority to impose geographical restrictions on a parent when entering an initial parenting plan unless relocation would harm the child. The court explained that the harm to the child must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships normally associated with dissolution.

In December 1999, the state supreme court issued its opinion in In re the Marriage of Pape, in which it held that a parent may modify the residential schedule of a parenting plan under the "minor modification" statute.

The minor modification statute allows for "adjustments" to the parenting plan if: (a) there has been a substantial change in circumstances of either parent or the child; (b) the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time; and (c) the proposed modification is based on a change of residence or an involuntary change in work schedule by a parent that makes the residential schedule impractical to follow.

The court reasoned that the child's best interests were considered when the court made the initial residential placement of the child. Therefore, in a subsequent modification action there is a presumption that the best interests of the child require the primary placement of the child to remain intact.

Under Pape, the relocating parent must demonstrate a bona fide reason for the relocation. The other parent may object to the move by showing that either no bona fide reasons exist that the move will be detrimental to the child using the Littlefield standard of detriment.

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**Summary of Substitute Bill:**

The Legislature intends to supersede the state supreme court's decisions of In re the Marriage of Littlefield and In re the Marriage of Pape.

Notice:

Any person entitled to residential time or visitation with a child under a court order must notify every other person entitled to such time when that person intends to relocate.

Notice must be given by personal service or any form of mailing requiring a return receipt no less than 60 days before the intended relocation. Notice must contain certain information, including an address where service of process may be accomplished, the reasons for the intended relocation, and a notice to the non-relocating party that an objection to the intended relocation of the child must be filed with the court within 30 days or the relocation will be permitted.

When available, the notice should also contain information such as the new mailing address and phone number, the address of the child's new school or day care, and a proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation.

If the intended relocation will be within the same school district in which the child currently resides the majority of the time, the person intending to relocate need only provide actual notice by any reasonable means.

Limitation of Notices:

The time frames for notice and the requirements in the notice may vary under limited circumstances. If a person is entering a domestic violence shelter or is relocating to avoid a clear, immediate, and unreasonable risk to his or her health or safety, or the child's health or safety, then notice may be delayed for 21 days.

If the person believes that his or her health or safety would be at risk by disclosure of some information in the notice, the person may obtain an ex parte court order to have some or all of the notice requirements waived.

Failure to give notice could result in sanctions and a finding of contempt, if applicable.

Objection:

A party objecting to the intended relocation of the child or to the proposed revised residential schedule must file an objection with the court and serve the objection on the relocating party and all other persons entitled to notice.

The objection must be filed and served within 30 days of receipt of the notice of intended relocation. The objection must be in the form of a petition for modification of the parenting plan or other court proceeding adequate to provide grounds for relief.

The person intending to relocate the child shall not, without a court order, change the child's principal residence during the 30-day objection period. If the objecting party notes a hearing to prevent relocation for a date not more than 15 days following timely service of the objection, the party intending to relocate may not change the child's principal residence pending the hearing unless special circumstances apply.

Failure to Object:

If a person does not object within 30 days, the relocation will be permitted and the non-objecting person is entitled to the residential time or visitation specified in the proposed revised residential schedule that was included in the notice of intended relocation.

Any party entitled to court-ordered residential time or visitation with the child may, after the 30-day objection period has passed, obtain ex parte an order modifying the residential schedule in conformity with the proposed revised residential schedule specified. A party may obtain such an order before the 30-day objection period elapses if the party presents proof that no objection will be filed.

Temporary Orders:

A court may grant a temporary order restraining relocation of a child, or ordering the return of a child who has already been relocated, if the court finds:

- (a) that the required notice was not provided and the non-relocating party was substantially prejudiced;
- (b) the relocation has occurred without agreement of the parties, court order, or notice; or
- (c) after examining evidence presented at a hearing, the court finds that there is a likelihood that on final hearing the court will not approve the intended relocation, or no circumstances exist to warrant a relocation prior to final determination at trial.

The court may grant a temporary order permitting the relocation of a child if the relocating party complied or substantially complied with the notice requirements, and the court determines that there is a likelihood on final hearing that it will approve the relocation.

Presumption and Standard:

The person intending to relocate with the child must give his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation will be permitted. The objecting party may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person. Whether the detrimental effect outweighs the benefit must be based on the following factors:

- (1) the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings, and other significant persons in the child's life;
- (2) whether disrupting the contact between the child and the person with whom the child primarily resides would be more detrimental to the child than disrupting contact between the child and the person objecting;
- (3) whether either parent or a person entitled to residential time with the child is subject to limitations based on the person's conduct;
- (4) the reasons of each person for seeking or opposing relocation and the good faith of each party;
- (5) the age, developmental state, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development;
- (6) the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographical locations;
- (7) the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (8) the alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (9) the financial impact and logistics of the relocation or its prevention; and
- (10) for a temporary order, the amount of time before a final decision can be made at trial.

The court may not consider as a factor whether the person intending to relocate will forego his or her relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

Once the court determines whether to permit or restrain the relocation of the child, the court shall determine what modification should be made, if any, to the parenting plan.

Objections By Third Parties:

A court may not restrict the child's relocation when the sole objection to the relocation is from a third party, unless the third party is entitled to court-ordered residential time or visitation time and has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

Sanctions:

The court may sanction a party if his or her proposal to relocate or objection to relocation was made to harass a person, delay or increase the cost of litigation, or to interfere in bad faith with the other person's relationship with the child.

Minor Modification:

The minor modification statute is amended to remove the ability to seek a minor modification based on a change of residence.

**Substitute Bill Compared to Original Bill:** The substitute bill added provisions that would: (a) allow courts to deny a temporary order for relocation of the child if there are no circumstances warranting a relocation of the child prior to final hearing; (b) require that a relocating parent's revised residential schedule be in the form of a proposed parenting plan; and (c) prohibit the court from considering as a factor whether the party opposing relocation will relocate if the court allows the child to relocate.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill represents numerous compromises from many different interest groups.

**Testimony Against:** The presumption in favor of moving is antagonistic to the parenting act. The burden should be on the person intending to move. The bill does not take into consideration any existing agreement between the parties. The Legislature should revisit what it intended when it first passed the parenting act.

**Testified:** (In support) Representative Constantine, prime sponsor; and Rick Bartholomew, Washington State Bar Association.

(Opposed) Karl Bower and Lisa Scott, Taking Action Against Bias in the System (TABS); Joe Parr, President, Shared Parenting; and Bill Harrington, American Fathers Alliance.

# FINAL BILL REPORT

## ESHB 2884

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C 21 L 00

Synopsis as Enacted

**Brief Description:** Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation.

**Sponsors:** By House Committee on Judiciary (originally sponsored by Representatives Constantine, Carlson, Grant, Radcliff, Kastama, Mastin, Keiser, Ruderman, Kessler, Dickerson, Tokuda, D. Sommers and Stensen).

**House Committee on Judiciary**  
**Senate Committee on Judiciary**

### **Background:**

Whether a parent may relocate a child away from the other parent who is entitled to residential or visitation time is an issue that has been heavily litigated in recent years. Washington's laws do not explicitly address when a parent may or may not relocate a child and whether the parent must notify the other parent before relocation occurs.

In a 1997 case, In re the Marriage of Littlefield, the state supreme court held that Washington's statutes do not give courts the authority to impose geographical restrictions on a parent when entering an initial parenting plan unless relocation would harm the child. The harm to the child must be more than the normal distress suffered by a child because of travel, infrequent contact with a parent, or other hardships normally associated with dissolution.

In December 1999, the state supreme court issued its opinion in In re the Marriage of Pape, in which it held that a parent may modify the residential schedule of a parenting plan under the "minor modification" statute.

The minor modification statute allows for "adjustments" to the parenting plan if: (1) there has been a substantial change in circumstances of either parent or the child; (2) the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time; and (3) the proposed modification is based on a change of residence or an involuntary change in work schedule by a parent that makes the residential schedule impractical to follow.

The court reasoned that the child's best interests were considered when the court made the initial residential placement of the child. Therefore, in a subsequent

modification action there is a presumption that the best interests of the child require the primary placement of the child to remain intact.

Under Pape, the relocating parent must demonstrate a bona fide reason for the relocation. The other parent may object to the move by showing that either no bona fide reasons exist or the move will be detrimental to the child using the Littlefield standard of detriment.

### **Summary of Bill:**

The Legislature intends to supersede In re the Marriage of Littlefield and In re the Marriage of Pape. Notice requirements and other procedures are created to determine relocation cases.

#### **A. Notice.**

The person with whom the child resides a majority of the time must notify every other person entitled to residential time or visitation with the child when the person intends to relocate.

Notice must be given by personal service or any form of mailing requiring a return receipt no less than 60 days before the intended relocation. Notice must contain certain information, including an address where service of process may be accomplished, the reasons for the intended relocation, and a notice to the non-relocating party that an objection to the intended relocation of the child must be filed with the court within 30 days or the relocation will be permitted.

The notice must also contain, when available, information such as the new mailing address and phone number, the address of the child's new school or day care, and a proposal in the form of a proposed parenting plan for a revised schedule of residential time or visitation.

If the intended relocation will be within the same school district in which the child currently resides the majority of the time, the person intending to relocate need only provide actual notice by any reasonable means.

#### **B. Limitation of Notices.**

The time frames for notice and the requirements of the notice may vary under limited circumstances. If a person is entering a domestic violence shelter or is relocating to avoid a clear, immediate, and unreasonable risk to his or her health or safety, or the child's health or safety, notice may be delayed for 21 days.

If the person believes that his or her health or safety would be at risk by disclosure of some information in the notice, the person may obtain an ex parte court order to have some or all of the notice requirements waived.

Failure to give notice may result in sanctions and a finding of contempt, if applicable.

C. Objection.

A party objecting to the intended relocation of the child or to the proposed revised residential schedule must file an objection with the court and serve the objection on the relocating party and all other persons entitled to notice.

The objection must be filed and served within 30 days of receipt of the notice of intended relocation. The objection must be in the form of a petition for modification of the parenting plan or other court proceeding adequate to provide grounds for relief.

The person intending to relocate the child may not, without a court order, change the child's principal residence during the 30-day objection period. If the objecting party notes a hearing for a date not more than 15 days following timely service of the objection, the party intending to relocate may not change the child's principal residence pending the hearing unless special circumstances apply.

D. Failure to Object.

If a person does not object within 30 days, the relocation will be permitted and the non-objecting person is entitled to the residential time or visitation specified in the proposed revised residential schedule that was included in the notice of intended relocation.

Any party entitled to court-ordered residential time or visitation with the child may, after the 30-day objection period has passed, obtain an ex parte order modifying the residential schedule in conformity with the proposed revised residential schedule specified. A party may obtain such an order before the 30-day objection period elapses if the party presents proof that no objection will be filed.

E. Temporary Orders.

A court may grant a temporary order restraining relocation of a child, or ordering the return of a child who has already been relocated, if the court finds that:

- (1) the required notice was not provided and the non-relocating party was substantially prejudiced;

- (2) the relocation has occurred without agreement of the parties, court order, or notice; or
- (3) after examining evidence presented at a hearing, there is a likelihood that on final hearing the court will not approve the intended relocation, or no circumstances exist to warrant a relocation prior to final determination at trial.

The court may grant a temporary order permitting the relocation of a child if the relocating party complied or substantially complied with the notice requirements, and the court determines that there is a likelihood on final hearing that it will approve the relocation.

F. Presumption and Standard.

The person intending to relocate with the child must give his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation will be permitted. The objecting party may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person. Whether the detrimental effect outweighs the benefit must be based on the following factors:

- (1) the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings, and other significant persons in the child's life;
- (2) prior agreements between the parties;
- (3) whether disrupting the contact between the child and the person with whom the child primarily resides would be more detrimental to the child than disrupting contact between the child and the person objecting;
- (4) whether either parent or a person entitled to residential time with the child is subject to limitations based on the person's conduct;
- (5) the reasons of each person for seeking or opposing relocation and the good faith of each party;
- (6) the age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development;

- (7) the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographical locations;
- (8) the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
- (9) the alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
- (10) the financial impact and logistics of the relocation or its prevention; and
- (11) for issuing a temporary order, the amount of time before a final decision can be made at trial.

The factors are not weighted, and no inference may be drawn from the order in which the factors are listed. The court may not consider as a factor whether the person intending to relocate will forego his or her relocation if the child's relocation is prohibited, or whether the opposing party will relocate if the child's relocation is permitted.

Once the court determines whether to permit or restrain the relocation of the child, the court must determine what modification should be made, if any, to the parenting plan.

#### G. Objections By Third Parties.

A court may not restrict the child's relocation when the sole objection to the relocation is from a third party, unless the third party is entitled to court-ordered residential time or visitation time and has served as the primary residential care provider to the child for a substantial period of time during the 36 consecutive months preceding the intended relocation.

#### H. Sanctions.

The court may sanction a party if his or her proposal to relocate or objection to relocation was made to harass a person, delay or increase the cost of litigation, or to interfere in bad faith with the other person's relationship with the child.

#### I. Minor Modification.

The existing minor modification statute applies when a parent with whom the child does not reside the majority of the time has a change in residence that makes the residential schedule impractical to follow.

**Votes on Final Passage:**

House 91 4

Senate 43 0

**Effective:** June 8, 2000

**FILED**  
KING COUNTY, WASHINGTON

OCT 18 2011

SUPERIOR COURT CLERK  
BY Victor Bigornia  
DEPUTY

SUPERIOR COURT OF WASHINGTON  
COUNTY OF KING

In re the Marriage of:

NANA KO TSUJIMOTO (fka Raskob)  
Petitioner,

and

JOSH RASKOB Respondent.

NO. 09-3-04363-2 SEA

*Denying NO*  
~~ORDER GRANTING~~  
PETITIONER'S MOTION AND  
DECLARATION FOR  
RECONSIDERATION

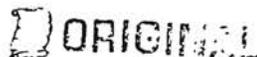
THIS MATTER came on regularly before the undersigned Judge upon the Motion for Reconsideration of the Petitioner, Nanako Tsujimoto, appearing by and through her attorney of record, Philip C. Tsai of TSAI LAW COMPANY, PLLC, the Respondent, Josh Raskob, appearing by and through his attorney of record, Camden Hall, the Court having reviewed the motion, NOW THEREFORE:

1. The Motion for Reconsideration is ~~granted~~ *denied NO*

2. ~~The mother's proposed Order on Objection to Relocation entered on this date shall be the Order of this Court. The September 12, 2011 Order on Objection to Relocation shall have no further force or effect.~~  
*To the extent the final parenting plan on relocation differs from the oral decision from the bench at trial the oral decision is rescinded and modified as per the final orders summary signed NO*

ORDER ON MOTION FOR RECONSIDERATION  
Page 1

TSAI LAW COMPANY, PLLC  
ATTORNEYS AT LAW  
2101 FOURTH AVENUE, SUITE 1560  
SEATTLE, WA 98121  
206-728-8000

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~~3. The father's "Amended" Parenting Plan which modifies the non residential provisions of the final Parenting Plan entered on February 23, 2011 but does not modify the residential provisions shall be the Order of this Court. The "Revised" Parenting Plan entered on September 12, 2011 shall have no further force or effect.~~

4. The Court reconsiders the Order on Motion for Attorney's Fees and Sanctions entered on September 12, 2011 *corrects some in an order entered* and here by vacates that Order in its entirety. The Court denies

*D This date deleting sanction against counsel which were entered in error*  
the motion to sanction the mother as she did not act in bad faith.

5. \_\_\_\_\_  
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\_\_\_\_\_  
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Dated this 18 day of ~~September~~, 2011.

*James Doerty*  
\_\_\_\_\_  
Judge James Doerty

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Presented by:

Approved for Entry.

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Philip C. Tsai, WSBA #27632  
Attorney for Petitioner

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Camden Hall, WSBA #146  
Attorney for Respondent

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**FILED**  
KING COUNTY, WASHINGTON

**SEP 12 2011**

SUPERIOR COURT CLERK  
GARY POVICK  
DEPUTY

SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Marriage of:

NANAKO TSUJIMOTO RASKOB,

Petitioner,

and

JOSH IAN RASKOB,

Respondent.

The Honorable James Doerty

NO. 09-3-04363-2 SEA

ORDER ON OBJECTION TO  
RELOCATION/MODIFICATION OF  
PARENTING PLAN

**I. Basis**

This order is entered pursuant to a trial on the Objection to Relocation which was held before the undersigned Judge on July 12, 13 and 20. Witnesses included the parties and petitioner's witness, Brad Lincoln.

**II. Findings**

*The Court finds:*

**2.1 Adequate Cause**

The relocation of children was pursued based on the petitioner Mother's erroneous belief that statutory notice and a finding of adequate cause were unnecessary. Despite the respondent Father's reasonable objection to the relocation, the Father in recognition of the best interests of the children, has consented to the relocation since it is a *fait accompli*; under the circumstances. Refusing the relocation will unnecessarily punish the children for the errors and mistakes of their Mother. In doing so, the Father did not waive any right he may have to sanctions and terms for the Mother's errors in this matter, including without limitation, the consequences for the Mother's failure to give statutory notice as required by RCW 26.09.440. Because of the Father's position in this matter, the Court proceeded to address the merits of the case as if adequate cause had in fact been found.

**2.2 Jurisdiction**

This court has jurisdiction over this proceeding for the reasons below:

*Ord re Obj to Reloc/Mod P Plan/Res Schd (ORDYMT or ORGRRE)*  
*WPF DRPSCU 07.0900 Mandatory (6/2008) -*  
*RCW 26.09.520, .260(6), 26.10.190, 26.26.160-1*

**CAMDEN HALL, PLLC**  
1001 FOURTH AVENUE, SUITE 3312-13  
SEATTLE, WASHINGTON 98154 ♦ 206-749-0200

1 This court has exclusive continuing jurisdiction. The court has previously made a  
2 child custody, parenting plan, residential schedule or visitation determination in  
3 this matter and retains jurisdiction under RCW 26.27.211.

4 This state is the home state of the children because the children have lived in  
5 Washington with a parent or a person acting as a parent for at least six consecutive  
6 months immediately preceding the commencement of this proceeding.

7 The children and the parents or the children and at least one parent or a person  
8 acting as a parent have significant connection with the state other than mere  
9 physical presence, and substantial evidence is available in this state concerning the  
10 children's care, protection, training and personal relationships, and the children  
11 have no home state elsewhere. Further, no other state has jurisdiction.

### 9 2.3 Findings Regarding Objection to the Relocation

10 Based upon the following statutory factors established by RCW 26.09.520, and despite the  
11 reasonableness of the Father's objection, the benefits the move by the children is agreed  
12 to by the Father because he believes it is in the children's best interest to maintain the  
13 status quo forced upon him by the Mother. Nonetheless, the Court makes Findings in this  
14 matter, including the following ones, in resolution of this matter:

#### 13 3.7.1 *The relative strength, nature, quality, extent of involvement, and stability of the 14 children's relationship with each parent and each other.*

15 The children love their parents and each other. The bond between the children and  
16 their parents is strong. The issues suggested by this factor are discussed in the  
17 parenting evaluations of Margo Waldroup in this matter [trial exhibits 1 and 8].  
18 The Father is appropriately and significantly involved in the children's lives.  
19 However, the Mother's difficulty working with the Father has made parenting of  
20 the children problematical. The Mother seems generally unable to work  
21 consistently and cooperatively with the Father in, for example, making "joint"  
22 educational decisions. This has a negative effect on the children and their well  
23 being.

#### 20 3.7.2 *Prior agreements of the parties:*

21 As determined in Arbitration and incorporated into the parties' Parenting Plan, if  
22 the Mother moved with the children outside of the Northshore and Everett  
23 School Districts or outside of a 30 minute average driving time from the Father's  
24 current residence in Bothell, Washington, the relocation statute would be  
25 implicated and a Notice of Relocation required. The Mother has moved to 4049  
26 Latona Avenue NE, No. C in Seattle, Washington. This is not in the Northshore  
or Everett School Districts or within 30 minutes average drive time between the  
Father's current residence in Bothell, Washington and the Latona address. The  
Father timely objected to this move. The required notification of the move was  
not given by the Mother in violation of the relocation statute.

1 3.7.3 *Disrupting contact between the child and the objecting parent is more*  
2 *detrimental to the child than disrupting contact between the child and the person*  
3 *with whom the child resides a majority of the time:*

4 The Parenting Plan addresses the geographical area where the Mother shall live  
5 without implicating the relocation statute. The Mother's move from that area  
6 violates the living proximity provision in the parties' Parenting Plan and  
7 interferes with the children's existing pattern of planned and spontaneous  
8 interaction with their Father and the Father's planned and spontaneous access to  
9 the children and their activities.

10 3.7.4a *The objecting parent is not subject to limitations under RCW 26.09.191.*

11 Agreed.

12 3.7.4b *The Mother who is entitled to residential time with the children is not subject to*  
13 *limitations under RCW 26.09.191.*

14 3.7.5 *The reasons and good faith of each person seeking or opposing the relocation.*

15 The reasons for opposing the relocation are:

- 16 • The disclosure of relocation within days of her agreement to the Parenting  
17 Plan is evidence of the Mother's difficulty in cooperating with the Father.
- 18 • *Seen generally* in this Order

19 3.7.6 *The age, developmental stage, and needs of the child, and the likely impact the*  
20 *relocation or its prevention will have on the child's physical, educational, and*  
21 *emotional development, taking into consideration any special needs of the*  
22 *children:*

23 There are no special needs. The children need reasonable interaction with both  
24 parents. This is a reason for the relocation provisions in the Parenting Plan and  
25 related geographical limitations. The educational opportunities for the children  
26 are enhanced by the move.

3.7.7 *The quality of life, resources, and opportunities available to the child and to the*  
*relocating party in the current and proposed geographic locations:*

The bilingual education made possible by the relocation increases the resources  
and opportunities for the children

3.7.8 *The availability of alternative arrangements to foster and continue the child's*  
*relationship with and access to the other parent:*

- The Parenting Plan should be changed as indicated in the accompanying  
Amended Parenting Plan.
- The Mother did not inquire about or pursue a school residence address  
exception.

1 3.7.9 *Alternatives to relocation and whether it is feasible and desirable for the other*  
2 *party to relocate:*

3 *See above.*

4 3.7.10 *The financial impact and logistics of relocation or its prevention:*

5 Increased travel time and expense; reduced ability of the Father to participate in  
6 the children's activities; increased arterial and traffic hazards of the new route  
7 between the parents' homes.

8 **2.4 Findings Regarding Objection to Relocating Party's Proposed Parenting**  
9 **Plan/Residential Schedule**

10 The Father's request for an adjustment of the Parenting Plan should be granted as  
11 shown in the accompanying Amended Parenting Plan. The adjustment does not  
12 include a change in the residence in which the child resides the majority of the  
13 time. || ?

14 **2.5 Protection Order**

15 Does not apply.

16 **2.6 Other**

17 **In further elaboration on the Court's consideration of the eleven statutory**  
18 **factors contained in RCW 26.09.520 and, as necessary, in RCW 26.09.187:**

19 Contrary to the Mother's claims in this litigation, the Father did not assert his  
20 objection to relocation to annoy or harass the Mother. It was brought in good  
21 faith.

22 As a threshold matter, the Mother's decision to relocate (the family home was  
23 sold and she had to move somewhere), and her relocation, was outside the  
24 Northshore and Everett School Districts and in excess of the 30 minutes average  
25 drive time proscribed by the parties then existing Parenting Plan—provisions that  
26 were likely established in contemplation that the Mother would be teaching in  
Duvall, Washington—which she does not now intend to do. ||

These actions by the Mother constitute a substantial change in circumstances not  
in the contemplation of the parties when the original Parenting Plan was agreed  
to and entered.

The Father purchased a home in Bothell in part because he thought this would be  
relatively close to the children's home with their Mother. This is consistent with  
his being an especially involved Father to the children.

The finding that the move is beyond the 30 minute average drive time (a  
provision that was at best a "stretch" for the Father) is supported by averaging  
the actual drive time evidence provided by the parties to the Court and other  
evidence of which the Court took judicial notice. (Computer generated

1 information was problematical insofar as much of it did not appear to  
2 contemplate actual driving conditions.).

3 The Mother's move outside the 30 minute limit frequently requires the children  
4 to be transported between their parents' homes during rush hours or at other  
5 times when traffic is likely to be heavy and inherently more hazardous. It is not  
6 in the children's best interest to spend more time than absolutely necessary  
7 commuting between their parents' homes.

8 The move makes it more difficult for the Father to parent the children. It makes  
9 it more difficult for the children and their Father to address school matters and  
10 emergencies that affect each other and to be appropriately spontaneous in their  
11 relationship.

12 The Mother's relocation "notice" [trial exhibit 9] was statutorily inadequate and  
13 failed to provide the Father with important relevant information such as the  
14 reasons for the move, the children's new school and a proposed new parenting  
15 plan. If this information had been timely provided to the Father, it might have  
16 eliminated or reduced the litigation that followed the notice and it might have  
17 allowed the parties to try and resolve their differences through the dispute  
18 resolution or parenting facility/coach processes already contained in their  
19 Parenting Plan. Because of the Mother's unilateral and statutorily inadequate  
20 action, one will never know if available alternate and less expensive means of  
21 resolving this matter might have been successful.

22 The Mother testified about her attitude concerning contacts with the Father.  
23 However, her testimony that communication often degenerated to "badgering"  
24 and an "email war," is not supported by the evidence. The Mother may believe  
25 she is "disrespected" in the communications, but her belief and concern is not  
26 objectively sustainable.

The Mother's inflexibility regarding parenting issues and in dealing with the  
Father is not in the best interest of the children. It should be addressed by her in  
the therapy sessions required by the original Parenting Plan and ratified by the  
~~Amended~~ new Parenting Plan. These therapy sessions should continue so long  
as necessary to help the Mother learn to better cooperate with the Father in  
parenting their children. A copy of the Orders in this matter should be given to  
the Mother's psychiatrist and therapist so that they are informed of the Mother's  
continuing parenting and communication issues and problems.

The parties desire to raise their children as bi-lingual (English and Japanese) is  
reasonable and in the best interest of the children.

The Father's reasons for objecting to the Mother's relocation actions were  
reasonable. So too is his reasonable frustration with problems he has  
encountered in trying to communicate with the Mother concerning, for example,  
gaining access to the family home to prepare it for sale when it was occupied by  
the Mother; his effort to obtain a productive response to several timely inquiries  
about a July residential exchange of the children with the Mother because of his  
need to be out of town on business; the Mother's failure to timely notify the

1 Father of her decision to enroll the children in John Stanford International  
2 School, despite his many related inquiries, ~~was~~ 9W

3 The Mother's testimony that the Father should have known she intended to enroll  
4 the children in John Stanford, without her telling him, is unreasonable. Even she  
5 was uncertain about the children's schooling during relevant times. It was not  
6 reasonable for her to ignore the Father's repeated email and other inquiries about  
7 the school issue for about three months.

8 Even under the original Parenting Plan, the Mother should have discussed with  
9 the Father her education plans for the children. This is for the benefit of the  
10 children and to try and avoid disruptive conflict—and in view of the Parenting  
11 Plan requirement that educational decisions are to be jointly made by the parents.  
12 For example, the Mother should have solicited the aid of the Father in seeking to  
13 enroll the children in John Stanford even though the Mother might not live in  
14 that school's geographical district, or she could have moved to a location closer  
15 to the Father's residence.

16 The Mother's marginalization of the Father in his parenting role is inappropriate  
17 and not in the children's best interest.

18 The provisions in the Parenting Plan providing that the children shall attend  
19 school through the eighth grade where the Mother lives or teaches is in conflict  
20 with the Parenting Plan provision concerning educational decisions being  
21 required to be jointly made. This conflict should be resolved.

22 The Mother's actions, in violation of the relocation statute should not be  
23 condoned and should be subject to sanctions. However, the Mother's actions  
24 should not be controlling considerations as to whether the relocation should be  
25 allowed. It would be inappropriate to sacrifice the best interest of the children  
26 based on the misconduct of the Mother. *Cf., In re Marriage of Murphy*, 48 Wn.  
App. 196, 200, 732 P.2d 1319 (1987).

It is in the best interest of the children to adjust the original Parenting Plan in  
order to try and make it more workable and less problematic.

### III. Order

*It is ORDERED:*

#### 3.1 Objection to Relocation

The Mother is permitted to relocate the children to her current Latona address.

#### 3.2 Parenting Plan

The ~~Amended~~ new Parenting Plan signed by the Court on this date is approved and  
incorporated as part of this Order. This Order and the ~~Amended~~ new Parenting  
Plan supersede all previous decrees or parenting plans on the subjects it covers.

*Ord re Obj to Reloc/Mod P Plan/Res Schd (ORDYMT or ORGRRE)*  
*WPF DRPSCU 07.0900 Mandatory (6/2008) -*  
*RCW 26.09.520, .260(6), 26.10.190, 26.26.160-6*

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SEATTLE, WASHINGTON 98154 • 206-749-0200

1 3.3 It is Further Ordered

2 The Order of Child Support signed by the Court dated on April 5, 2011 shall  
3 remain in effect.

4 3.4. Other

5 Because of the Mother's unilateral action, her failure to follow the requirements of  
6 the relocation statute, her difficulties in communicating with the Father and  
7 inconsistencies in the Parenting Plan itself, the original Parenting Plan should be  
8 adjusted pursuant to RCW 25.09.260(10).

9 The adjustments should recognize the public policy, and the children's best  
10 interest, inherent in the statutory scheme governing relocation, co-parenting and  
11 joint decision making of important issues by both parents.

12 The adjustment should respect the parents' decision, memorialized in section VI  
13 (f) of the Parenting Plan, to promote parenting consistency.

14 The parties should cease, at least temporarily, the use of regular email for heir  
15 communications. Instead, for at least 90 days after entry of this Order, and  
16 thereafter at the request of either party, the parties should sign-up for, and utilize  
17 for, their non-emergency communication "The Our Family Wizard" website at  
18 <http://www.ourfamilywizard.com>.

19 The respondent Father is entitled to sanctions and terms in this matter accordance  
20 with further orders of the Court.

21 DATED: September <sup>12</sup> 2011.

  
JUDGE/COMMISSIONER

22 Presented by:  
23 CAMDEN HALL, PLLC

Approved for entry:  
Tsai Law Company, PLLC

24 \_\_\_\_\_  
25 Camden M. Hall, WSBA No. 146  
26 Attorney for Respondent  
*(signed as typed, without interlineations)*

\_\_\_\_\_  
Phillip C. Tsai, WSBA No. 27632  
Attorney for Petitioner

**FILED**  
KING COUNTY, WASHINGTON

**SEP 12 2011**

SUPERIOR COURT CLERK  
GARY POVICK  
DEPUTY

SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Marriage of:

NANAKO TSUJIMOTO RASKOB

and

JOSH IAN RASKOB,

Petitioner,

Respondent.

The Honorable James Doerty

No. 09-3-04363-2 SEA

REVISED PARENTING PLAN;  
FINAL ORDER (PP)

This Parenting Plan is the Final Parenting Plan signed by the Court pursuant to a Decree of Dissolution signed by the Court on this date.

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This Parenting Plan applies to the following children:

<u>Name</u>	<u>Age</u>
Mayuko ("Mayu") Raskob	4 + years
Misako ("Misa") Raskob	2 + years

**II. Basis for Restrictions**

**2.1 Parental Conduct (RCW 26.09.191(1), (2))**

Does not apply.

**2.2 Other Factors (RCW 26.09.191(3))**

Does not apply.

PARENTING PLAN  
FINAL ORDER  
Page 1

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### III. Residential Schedule

#### 3.1 Residential Schedule for Children

Prior to enrollment in school, the children shall reside with the mother except for the following days and times when the children will reside with or be with the father:

3.1.1 **Phase I:** Beginning June 4, 2010, the children shall reside with their father from Friday at 3:00 p.m. to Sunday at 6:00 p. m. every other weekend; every other Friday at 3:00 p.m. to Saturday at 6:00 p.m. while the mother is in school and every Tuesday and Thursday from 9:00 a. m. to 6:00 p. m.

3.1.2 **Phase II:** Beginning July 1, 2011, the children shall reside with their father every other Friday from 3:00 p.m. to Monday return to school or, if there is no school, at 12:00 noon (in the summer it shall be 6:00 p.m.) and every other Wednesday after school or if no school, 12:00 noon to Friday at noon.

3.1.3 **Phase III:** Beginning July 6, 2012, the children shall reside with their father every other Thursday after school, or if there is no school from 12:00 noon to Monday return to school or, if there is no school, at 12:00 noon (in the summer it shall be 6:00 p.m.) and every other Thursday after school or at 12:00 noon if there is no school, until Friday return to school or until 12:00 noon if they are not in school.

3.1.4 In addition, the children shall reside with their father in Phase III one more overnight in odd numbered months which shall be the third or fourth Tuesday after school or beginning at 3:00 p.m. if there is no school in the month that is not an existing scheduled overnight for the children with their father—which additional overnight will end the next Thursday at 12:00 noon.

3.1.5 A diagram of these three Phases is to be prepared by the father and attached to provide clarity regarding the children's scheduled residential times with their parents. The parents may, however, mutually agree to other residential times as circumstances allow or require. However, if they cannot agree on changes, the above schedule shall be followed.

3.1.6 The remainder of the times, the children shall reside with their mother, except as provided below or as otherwise agreed in advance, and in writing, by the parties or order of the Court.

3.1.7 Given the age difference between the two children, during Phase I, the father shall occasionally be allowed one-on-one time with Mayu and other one-on-one time with Misa during his normally scheduled residential time on Tuesday and Thursday if agreed between the parties. If the parties agree to one on one residential time during Phases II and III, they may do so by mutual agreement.

1  
3  
5 **3.2 School Schedule**  
7

9 Upon enrollment in school, the children shall reside with the mother except for the following days  
11 and times when the children will reside with or be with the father:  
13

15 Same as Paragraph 3.1.  
17

19 **3.3 Schedule for Winter Vacation**  
21

23 During Winter Vacation, the children shall reside with their parents as follows:  
25

27 Same as the above schedule, except as follows:  
29

31 In 2010 and 2011, both parents shall have one additional overnight adjacent to either Christmas  
33 Eve or Christmas Day—whichever of the two they are scheduled to have in that year.  
35

37 Beginning in 2012, the Winter Vacation shall be shared 50/50 between the parents. The parent  
39 with whom the children are scheduled to reside on Christmas Eve shall have the first half of the  
41 Winter Vacation; the parent with whom the children are scheduled to reside on Christmas Day  
43 shall have the second half of the Winter Vacation. Winter vacation is defined as starting when  
45 the children are let out of school before Christmas and ending the night before they again start  
47 school after New Year's Day.  
49

51 **3.4 Schedule for Spring and Mid-Winter School Breaks**  
53

55 During Spring and Mid-Winter school breaks, the children shall reside with their parents as  
57 follows:  
59

61 In 2011, the parties shall share the mid winter and spring breaks evenly. The first half of mid  
63 winter break from Friday until Wednesday at 12:00 noon shall be with the mother and the second  
65 half beginning at 12:00 noon on Wednesday until Sunday at 6:00 p.m. shall be with the father.  
67 The first half of spring break from Friday until Wednesday at 12:00 noon shall be with the father  
69 and the second half beginning at 12:00 noon on Wednesday until Sunday at 6:00 p.m. shall be  
71 with the mother.  
73

75 Beginning in 2012, the parents shall alternate the Mid-Winter and Spring Breaks so that the father  
77 shall have residential time with the children during Mid-Winter Break in odd years and Spring  
79 Break in even years. The mother shall have residential time with the children during Mid-Winter  
Break in even years and Spring Break in odd years. Spring Break shall be defined as the Friday  
the children recess from school until 6:00 p.m. the day before school begins. Mid-Winter break

1 shall be defined as the day the children recess from school until 6:00 p.m. the day before they  
3 return to school.  
5

7 **3.5 Summer Schedule**  
9

11 Upon completion of the school year, the children shall reside with their parents as follows:  
13

15 Same as school year schedule except that, beginning July 2012, each parent shall have 3 non  
17 consecutive weeks for vacation purposes. After Misa is in 1<sup>st</sup> grade, the 3 weeks of vacation may  
19 be taken consecutively.  
21

23 Vacation proposals from each parent shall be exchanged by May 1 for each year. In cases of  
25 scheduling conflicts, the mothers' schedule shall prevail in even numbered years and the father's  
27 in odd numbered years.  
29

31 Additionally, during the summer, the mother's pick up time on Monday enumerated in the  
33 preschool and school schedules above shall be 6:00 p.m. instead of 12:00 noon.  
35

37 **3.6 Vacation with Parents**  
39

41 See Paragraph 3.5.  
43

45 **3.7 Schedule for Holidays**  
47

49 The residential schedule for the children for the holidays listed below is as follows:  
51

	With Petitioner (Specify Year <u>Odd/Even/Every</u> )	With Respondent (Specify Year <u>Odd/Even/Every</u> )
53 New Year's Day	Odd	Even
55 Martin Luther King Day	Even	Odd
57 Presidents' Day	Odd	Even
59 Memorial Day	Odd	Even
61 July 4th	Even	Odd
63 Labor Day	Odd	Even
65 Veterans' Day	Even	Odd
67 Thanksgiving Day	Odd	Even
69 Christmas Eve	Odd	Even
71 Christmas Day	Even	Odd
73 Columbus Day (If not 75 a school day)	Even	Odd

1	Easter	Even	Odd
3	Halloween	Odd	Even

5  
7 For purposes of this parenting plan, a holiday shall begin and end as follows: If the holiday is on  
9 a Monday or Friday, the children shall reside with the parent who has the children the adjacent  
11 weekend and shall begin at 9:00 a.m. on the holiday. Otherwise, holidays shall begin at 9:00 a.m.  
13 on the holiday and end at 7:00 p.m. that same day.

15  
17 Thanksgiving Day Holiday: The Thanksgiving Day holiday shall begin at 9:00 a.m. on  
19 Thanksgiving Day and end the following Saturday at 9:00 a.m.

21  
23 Christmas Eve/Christmas Day: See ¶3.3, above. Christmas Eve shall begin at 9:00 a.m. and end  
25 at 10:00 a.m. on Christmas Day. Christmas Day shall begin at 10:00 a.m. and end at 7:00 p.m.

27  
29 Note: On the day of the mother's graduation in June 2011, she shall have both children from 9:00  
31 a.m. to 7:00 p.m. Mother shall inform the father of this date as soon as she learns it.

33  
35 **3.8 Schedule for Special Occasions**

37  
39 The residential schedule for the children for the following special occasions (for example,  
41 birthdays) is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u> )	With Father (Specify Year <u>Odd/Even/Every</u> )
43		
45		
47		
49		
51	Mother's Day	Every
53	Father's Day	Every
55	Mother's Birthday	Every
57	Father's Birthday	Every
59	Mayuko's Birthday	Odd
61	Misako's Birthday	Even
63		Odd

65 Special Occasions shall begin at 9:00 a.m. and end at 7:00 p.m.

67  
69 **3.9 Priorities Under the Residential Schedule**

71  
73 Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

75  
77 Rank the order of priority, with 1 being given the highest priority:

- |    |   |                       |   |                         |
|----|---|-----------------------|---|-------------------------|
| 79 | 4 | winter vacation (3.2) | 2 | holidays (3.5)          |
|    | 3 | school breaks (3.3)   | 1 | special occasions (3.6) |

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- 5 summer schedule (3.4)
- 6 residential schedule (3.1)

**3.10 Restrictions**

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

**3.11 Transportation Arrangements**

Transportation costs are included in the Child Support Worksheets, the Order of Child Support or are otherwise provided for, and should not be included here.

Transportation arrangements for the children, between parents shall be as follows:

The receiving parent shall provide transportation, Transfer locations shall be at the children's school unless the children are not scheduled to be in school. Then the transfers shall be at the non-receiving parent's home.

**3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside primarily with the mother. The mother is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody.

This designation shall not affect either parent's rights and responsibilities under this Parenting Plan.

**3.13 Other: See §VI. Other Provisions, below.**

On the recommendation of the parenting evaluator in this matter, "decision making" for the children has been denominated as "joint." However, and because of past decision making problems between the parties, Karin Ballantyne, MSW, shall be utilized as needed, as a parenting facilitator/parenting coach for the parties to help them with decision making and information flow. This is designed to help the parties in their decision making functions and be less costly than other dispute resolution means that might otherwise be employed for the making of large and small decisions in a timely way.

The costs of the parenting facilitator shall be shared 50/50 by the parties.

**3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

1 If the person with whom the child resides a majority of the time plans to move, that person shall  
3 give notice to every person entitled to court ordered time with the child.

5 If the move is outside the child's current school district (*i.e.*, the John Stanford International  
7 School attendance area boundary in Seattle, Washington) the relocating person must give notice  
9 by personal service or by mail requiring a return receipt. This notice must be at least 60 days  
11 before the intended move. If the relocating person could not have known about the move in time  
13 to give 60 days' notice, that person must give notice within 5 days after learning of the move.  
15 The notice must contain the information required in RCW 26.09.440. See also form DRPSCU  
17 07.0500, (Notice of Intended Relocation of A Child).  
19

21 If the move is within the same school district, the relocating person must provide actual notice by  
23 any reasonable means. A person entitled to time with the child may not object to the move but  
25 may ask for modification under RCW 26.09.260.

27 Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter  
29 or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

31 If information is protected under a court order or the address confidentiality program, it may be  
33 withheld from the notice.  
35

37 A relocating person may ask the court to waive any notice requirements that may put the health  
39 and safety of a person or a child at risk.  
41

43 Failure to give the required notice may be grounds for sanctions, including contempt.  
45

47 If no objection is filed within 30 days after service of the notice of intended relocation, the  
49 relocation will be permitted and the proposed revised residential schedule may be confirmed.

51 A person entitled to time with a child under a court order can file an objection to the child's  
53 relocation whether or not he or she received proper notice.  
55

57 An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,  
59 (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential  
61 Schedule). The objection must be served on all persons entitled to time with the child.  
63

65 The relocating person shall not move the child during the time for objection unless: (a) the  
67 delayed notice provisions apply; or (b) a court order allows the move.

69 If the objecting person schedules a hearing for a date within 15 days of timely service of the  
71 objection, the relocating person shall not move the child before the hearing unless there is a clear,  
73 immediate and unreasonable risk to the health or safety of a person or a child.  
75  
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1  
3 The parties agree that both children shall attend Japanese preschool at Suginoko or at any local  
5 Japanese school a maximum of three days per week including summer sessions until  
7 Kindergarten begins for each child, subject to Paragraph 3.14, and the Relocation Statute  
9 Mayu and Misa will attend both summer school sessions at Suginoko in 2011.

11  
13 Both Children will continue Japanese education at a local school after Kindergarten has begun in  
15 order to be successfully raised as truly bilingual, if the parties can afford to pay for such  
17 schooling.

19  
21 Both children will be enrolled in Full-day Kindergarten.

23  
25 When Mayu begins Kindergarten in Fall 2011, Misa will be in a full day Japanese daycare  
27 maximum of 3 days a week. Misa will also be enrolled in another full day daycare the remaining  
29 of the days per week. Misa may be picked up earlier from the English daycare on the father's  
31 days if he desires, but not until after lunch break. Misa may also be picked up at the Japanese day  
33 care on the father's days if he desires, but not until after lunch break. The father should  
35 coordinate the pickups with the school.

37  
39 **4.3 Restrictions in Decision Making**

41  
43 Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

45  
47 **V. Dispute Resolution**

49  
51 *The purpose of this dispute resolution process is to resolve disagreements about carrying out this*  
53 *parenting plan. This dispute resolution process may, and under some local court rules or the provisions*  
55 *of this plan must be used before filing a petition to modify the plan or a motion for contempt for failing to*  
57 *follow the plan.*

59  
61 Disputes between the parties, other than child support disputes, that cannot be resolved as  
63 provided in the above Paragraph 4.3, shall be submitted:

65  
67 First to mediation by Judge Larry Jordan or other agreed mediator. If the mediation is  
69 unsuccessful, then to arbitration before an agreed arbitrator, If the parties cannot agree, then  
71 either party may move the court for the appointment of a neutral arbitrator. The mediator shall  
73 first attempt to help the parents reach an agreement on the disputed matter. If the mediator is  
75 unable to do so, the matter shall be determined in arbitration, subject to the statutory requirement  
77 of Court approval. Any resulting settlements or arbitration decision shall be in writing and  
79 provided to both parties.

1 The mediation processes shall be governed by RCW 5.60.070 and ER 408. The arbitration  
3 process shall be governed by RCW 7.04A.  
5

7 To the extent necessary in determining the best interests of the children, the arbitrator may order  
9 that Ms. Ballantyne (or her substitute), or any of the parties' health care providers provide  
11 evidence in any arbitration.  
13

15 The cost of this process shall be allocated between the parties as follows:  
17

19 50 percent petitioner/50 percent respondent. However, the mediator/arbitrator may  
21 allocate the process costs differently if one party unduly increases those costs by his or  
23 her response to the proceeding.  
25

27 The dispute resolution process shall be commenced by notifying the other party by written  
29 request delivered (with proof of delivery) to the other party.  
31

33 In the dispute resolution process:  
35

- 37 (a) Preference shall be given to carrying out this Parenting Plan.  
39 (b) Unless an emergency exists, the parents shall use the designated process to resolve  
41 disputes relating to implementation of the plan, except those related to financial support.  
43 (c) A written record shall be prepared of any agreement reached in counseling or mediation  
45 and of each arbitration award and shall be provided to each party.  
47 (d) If the court finds that a parent has used or frustrated the dispute resolution process  
49 without good reason, the court shall award attorneys' fees and financial sanctions to the  
51 other parent.  
53 (e) The parties have the right of review from the dispute resolution process to the superior  
55 court.  
57

## 59 VI. Other Provisions

61 There are the following other provisions:  
63

- 65 (a) Telephone Access. Each parent shall have liberal telephone contact with the children  
67 during his or her non-residential time, with consideration given to the children's  
69 scheduled activities, meals, homework, regular bedtime, etc. Each child shall be  
71 permitted to initiate unmonitored and unlimited telephone contact with the non-  
73 residential parent. Neither parent shall listen in, record or otherwise interfere with such  
75 telephone contact initiated by the children, or otherwise. The children may call the non-  
77 residential parent whenever they wish. This provision shall also be interpreted as  
79 providing for other reasonable means of electronic communication allowed by evolving  
technology.

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(b) Participation in Children Events. Each parent shall make an effort to keep the other informed of school, athletic and social events in which each child participates but each parent is ultimately responsible for keeping himself or herself advised of all such activities. Both parents may participate in all school activities (e.g., open house, parent-teacher meetings, attendance at athletic events, etc.) and other events for each child. Each parent shall be treated equally by the school. Each parent shall make a good faith effort to pass on timely to the other, in writing, information about the children's schedules and activities.

(c) Illness of the Children. In the event of a serious illness of either child which affects either parent's residential time, the parent who misses residential time as a result of the illness shall be granted additional time to compensate for any time lost.

(d) Promotion of Love and Affection. Each parent agrees to exert every reasonable effort to maintain free access and unhampered contact and communication between the children and the other parent, and to promote the emotions of affection, love and respect between the children and the other parent. Each parent agrees to refrain from words or conduct, and further agrees to discourage other persons from uttering words or engaging in conduct, which would have a tendency to estrange the children from the other parent, to damage the opinion of the children as to the other parent, or which would impair the natural development of the children's love and respect for the other parent. All gifts or writings from a parent to the children when the children are with the other parent shall be given unopened to the children upon receipt.

(e) Omitted.

(f) Parenting Consistency. Each parent agrees to honor one another's reasonable parenting style, rules and authority. Each parent will make ordinary day-to-day decisions about the children while the children are with him or her. Neither parent shall interfere in the reasonable parenting rules of the other. Neither parent shall make plans or arrangements that impinge upon the other parent's authority or time with the children without the express written agreement of the other parent. Each parent shall encourage the children to discuss any grievance against a parent directly with the parent in question. It is the intent of both parents to encourage a direct parent-children bond and communication.

1. Homework will be strongly encouraged and a top priority for both parents and the children. TV, video games, time on the internet, etc. will be limited in the reasonable pursuit of academic excellence.
2. Parents will support and encourage the development of the children's musical, athletic, academic and religious interests and talents.

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- (g) Information as to Welfare of the Dependent Children. Each parent timely shall provide the other parent information regarding the welfare of the children , including physical and mental health, academic performance at school, extra curricular activities, etc...
- (h) Neither Parent to Request Decisions By the Children. Neither parent shall ask the children to make decisions or requests involving the residential schedule. Neither parent shall unreasonably discuss the residential schedule with the children except for plans which have already been agreed to in advance by both parents.
- (i) Neither Parent to Use the Children for Information. Neither parent shall use the children, directly or indirectly, to gather information about the other parent or transmit messages to the other parent.
- (j) Notice. In the event of an unavoidable emergency, each parent shall give the other parent at least 48 hours' notice (or such other notice as is reasonable under the circumstances) if he or she is unable to comply with the regular parenting schedule. In the event that a parent requests an exchange of residential time, the other parent shall respond substantively to the request within five calendar days of the request.
- (k) Right of First Refusal. Each parent shall have the right of first refusal to care for the children when the other parent is going to place the children in alternate care or with a third party overnight.
- (l) Safety Rules. Each parent shall adhere to all Washington State safety rules when engaging in activities with the children (such as the use of seatbelts and life preservers).
- (m) Location of the Children. The children shall not be removed from the state of Washington without the prior written consent of both parents or order of the Court until a child is 18 years of age. When either parent travels with the children, that parent shall provide to the other parent, prior to traveling, a brief written itinerary containing information such as dates, airlines(s) and flight time(s), hotel names and phone numbers where the children can be reached in case of an emergency.
- (n) Omitted.
- (o) Parental Consent. Each parent shall have authority to give parental consent or permission as may be required concerning school, daycare, or other reasonable programs for the children while they are in his or her care.
- (p) Emergency and Other Health Care. The parent responsible for the children if emergency health care is required shall be empowered to obtain emergency health care for the

1 children without the consent of the other parent. Each parent shall notify the other parent  
3 as soon as reasonably possible of any illness requiring emergency medical attention, or  
5 any health emergency involving the children. Each parent shall have access to the  
7 children and their medical staff and care givers. The parent with whom the children are  
9 residing shall accompany the children to routine check-ups or medical appointments for  
11 minor health problems. That parent shall promptly inform the other as to the outcome of  
13 the appointment. Both parents shall be apprised of all non-emergency health care  
15 appointments and be allowed to attend all appointments for continuity of care, with 7  
17 days prior notice of all appointments made.

- 19
- 21 (q) Access to Information. Each parent shall have equal and independent authority to confer  
23 with the children's physicians, school, daycare, and other providers. Each parent shall be  
25 allowed complete access to all school, medical, and extracurricular information relating  
27 to the children.
- 29
- 31 (r) No Alienation. Neither parent shall disparage the other parent, or the other parent's  
33 significant relationship with another person, about anything in the presence of the  
35 children, or discuss in the presence of the children, dissolution-related financial issues  
37 such as children support, maintenance, or the division of property and liabilities.
- 39
- 41 (s) Transportation Delays. The children shall be picked up and returned at the designated  
43 times set forth in this parenting plan. Should a delay appear possible, the transporting  
45 parent shall immediately notify the other parent. At the time of transfer, neither parent  
47 shall express anger or make a scene in front of the children. Discussion between the  
49 parents at the time of transfer shall be limited to matters necessary for, and related to, the  
51 transfer.
- 53
- 55 (t) Children's International Travel and Passports. During the children's minority, the children's  
57 passports (they are dual citizens of the United States and Japan) shall be held in trust by the  
59 mother's current counsel or such other person upon whom the parties both agree. If they  
61 cannot agree, the Court may determine who shall hold the passports, upon the motion of  
63 either party. During their minority, the children may not travel outside the state of  
65 Washington without the prior written approval of both the mother and father or order of a  
67 Court. In addition, the children's passports may not be released to either parent or child  
69 without the prior written consent of both parents or order of a Court.
- 71
- 73 (u) Health Care Issues. The mother agrees to engage a psychiatrist to consult with on a  
75 quarterly basis and to schedule therapy sessions with her therapist, Terry Hand, MA. The  
77 frequency and duration of the mother's sessions shall be at least monthly with Ms. Hand  
79 for six months after a Decree is entered in this matter and, thereafter, as determined by  
Ms. Hand based on information necessary to make such a decision. This information can  
come from the father and others with relevant knowledge. Absent a court or arbitration

1 order, or the recommendation of the psychiatrist or Ms. Hand, the father shall not have  
3 full access to the psychiatrist or Ms. Hand or to his or her health care records; the father  
5 only needs to know that the mother has attended the required consultations and sessions  
7 and that no psychosis or other disability affecting the best interests of the children is  
9 present. This information shall be communicated in the form of letters from the  
11 psychiatrist and Ms. Hand to the father. After the mother has consulted with the  
13 psychiatrist for a period of 24 months after entry of the Decree, the engagement of a  
15 psychiatrist shall no longer be required, unless the psychiatrist or Ms. Hand recommend  
17 that it continue. The mother's engagement of Ms. Hand shall continue so long as Ms.  
19 Hand recommends that it continue.

21  
23 It is anticipated that the psychiatrist and Ms. Hand shall consult with each other in this  
25 matter.

27  
29 The expense of the above engagements and therapy shall be paid by the mother.

31  
33 (v) Grandparents. Time with both sets of grandparents is encouraged so long as the  
35 grandparents are positive about both parents and willing and able to care for the children.

37  
39 (w) Exchange of Information Between Parents. For at least 90 days after entry of this Order,  
41 and thereafter as the parties agree, they shall not directly email each other except as  
43 provided below. In order to facilitate constructive communication between the parties,  
45 they shall promptly enroll in, and exchange email through, "Our Family Wizard at  
47 [www.ourfamily wizard.com](http://www.ourfamilywizard.com).

49  
51  
53  
55 **VII. Declaration for Proposed Parenting Plan**

57  
59 Does not apply.

61  
63 **VIII. Order by the Court**

65  
67 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an  
69 order of this court.

71  
73 **WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is  
75 punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or  
77 9A.40.070(2). Violation of this order may subject a violator to arrest.

79  
When mutual decision making is designated but cannot be achieved, the parties shall make a good faith  
effort to resolve the issue through the dispute resolution process.

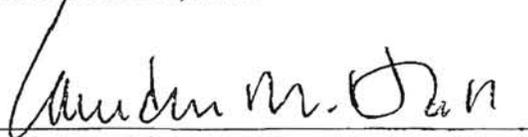
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If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are not affected.

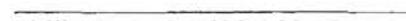
Dated: September 12 2011

  
Judge/Commissioner

Presented by:  
CAMDEN HALL, PLLC

  
Camden M. Hall, WSBA No. 146  
Attorney for Father/Respondent  
(signed as typed, without interlineations)

Approved for entry:  
TSAI LAW COMPANY, PLLC

  
Philip C. Tsai, WSBA No. 27632  
Attorney for Mother/Petitioner

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SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Marriage of:

NANAKO TSUJIMOTO RASKOB,

Petitioner,

and

JOSH IAN RASKOB,

Respondent.

The Honorable James Doerty

No. 09-3-04363-2 SEA

ORDER GRANTING MOTION  
FOR ATTORNEY  
FEES/SANCTIONS

JUDGMENT SUMMARY

Judgment Summary is set forth below.

A.	Judgment Creditor	<u>Josh Raskob/Camden M. Hall</u>
B.	Judgment Debtor	<u>Nanako Tsujimoto/Phillip C. Tsai</u>
C.	Principal judgment amount	\$ _____
D.	Interest to date of Judgment	\$ _____
E.	Attorney's fees	\$ <u>10,000.00</u>
F.	Costs	\$ <u>500.00</u>
G.	Other recovery amount	\$ _____
H.	Principal judgment shall bear interest at 12 percent per annum.	
I.	Attorney's fees, costs and other recovery amounts shall bear interest at 12 percent per annum.	
J.	Attorney for Judgment Creditor	<u>Camden M. Hall</u>
K.	Attorney for Judgment Debtor	<u>Phillip C. Tsai</u>

*End of Summaries*

*909*  
*Sept. 2nd*

This matter was heard on ~~August~~ *Sept. 2nd*, 2011 pursuant to respondent's Motion for Attorney Fees/Sanctions. Respondent was represented by Camden M. Hall of Camden Hall, PLLC. Petitioner was represented by Phillip C. Tsai of Tsai Law Company, PLLC. The Court reviewed

ORDER GRANTING MOTION FOR ATTORNEY  
FEES/SANCTIONS - I

CAMDEN HALL, PLLC  
1001 FOURTH AVENUE, SUITE 3312-13  
SEATTLE, WASHINGTON 98154 • 206-749-0200

1 all of the papers filed in connection with petitioner's moving papers, including the Motion and the  
2 accompanying attorney fee Declaration of Camden M. Hall.

3 Based upon the above, the Court FINDS:

4 1. Petitioner relocated with the parties' children without complying, or even  
5 substantially complying with the statutory relocation notice requirement.

6 2. Petitioner's failure to follow the law was consistent with her rigid attitude toward  
7 parenting issues and her difficulty in reasonably communicating with respondent regarding the  
8 parenting of the parties' children—as described in the Courts Order re Relocation, which is  
9 incorporated by this reference into this Order.

10 3. Petitioner's failure to follow the law, and her intransigence, created a *fait accompli*  
11 and *status quo* that made a denial of the relocation, however technically merited, contrary to the  
12 best interests of the children and would punish the children for the errors of the petitioner.  
13 Respondent recognized this and consented to the relocation.

14 4. Respondent is entitled to sanctions arising out of the petitioner's actions. The  
15 sanctions should include both momentary sanctions and a practical adjustment of the Parenting  
16 Plan to compensate the Father, however inadequately, for the added parenting inconvenience  
17 caused by the petitioner's unilateral relocation with the children and the resulting legal proceedings  
18 and related expense.

19 5. The ordered adjustment of the Parenting Plan is also in the best interest of the  
20 children.

21 6. The father has been substantially harmed by the relocation in his ability to parent  
22 the children spontaneously, provide practical day and emergency care, etc. Therefore,

23 It is ORDERED as follows:

24 1. Respondent's Motion for attorney fees and costs-- sanctions, is GRANTED.  
25  
26

1           2.     Petitioner and petitioner's counsel shall pay to respondent and his attorney, as  
2 sanctions, the sum of \$ 10,000. This Judgment shall be paid by respondent and counsel to  
3 petitioner within <sup>90</sup>~~30~~ days after the entry of this Order, *or by securing the debt in*  
4 *some fashion agreeable to Respondent within that time.* Respondent's Motion for a Parenting Plan adjustment and sanctions is GRANTED.

5           4.     The Parenting Plan is adjusted so that any move by petitioner with the children  
6 outside of the John Stanford International School attendance area boundary shall be a  
7 "relocation" requiring notice.

8           5.     The Parenting Plan provision that the children shall attend the same school where  
9 petitioner teaches or lives shall be removed from the Parenting Plan.

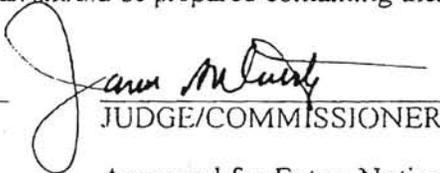
10          6.     The Parenting Plan schedule for Phase II and Phase III is adjusted as follows:

11                 Phase II: The Wednesday residential time shall end at 12 noon on Fridays.

12                 Phase III: The respondent's additional time with the children set forth in paragraph  
13 3.1.4 shall be every other Thursday to Tuesday.

14          7.     A new Amended Parenting Plan should be prepared containing these changes only.

15  
16 DATED: September 17 2011

  
JUDGE/COMMISSIONER

17 Presented by:

Approved for Entry; Notice of Presentation  
Waived:

18  
19 CAMDEN HALL, PLLC

Tsai Law Company, PLLC

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21  
22 Camden M. Hall, WSBA No. 146  
Attorneys for Respondent  
(signed as typed, without interlineations)

Phillip C. Tsai, WSBA No. 27632  
Attorneys for Petitioner

**FILED**

KING COUNTY, WASHINGTON

OCT 18 2011

SUPERIOR COURT CLERK  
BY Victor Bigornia  
DEPUTY

SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Marriage of:

NANAKO TSUJIMOTO RASKOB,

and

JOSH IAN RASKOB,

Petitioner,

Respondent.

The Honorable James Doerty

No. 09-3-04363-2 SEA

REVISED AMENDED ORDER  
GRANTING MOTION FOR  
ATTORNEY FEES/SANCTIONS

NUNC PRO TUNC TO  
SEPTEMBER 12, 2011

**JUDGMENT SUMMARY**

Judgment Summary is set forth below.

A.	Judgment Creditor	<u>Josh Raskob/Camden M. Hall</u>
B.	Judgment Debtor	<u>Nanako Tsujimoto</u>
C.	Principal judgment amount	\$ _____
D.	Interest to date of Judgment	\$ _____
E.	Attorney's fees	\$ <u>10,000.00</u>
F.	Costs	\$ <u>500.00</u>
G.	Other recovery amount	\$ _____
H.	Principal judgment shall bear interest at 12 percent per annum.	
I.	Attorney's fees, costs and other recovery amounts shall bear interest at 12 percent per annum.	
J.	Attorney for Judgment Creditor	<u>Camden M. Hall</u>
K.	Attorney for Judgment Debtor	<u>Phillip C. Tsai</u>

*End of Summaries*

This matter was heard on September 2<sup>nd</sup>, 2011 pursuant to respondent's Motion for Attorney Fees/Sanctions. Respondent was represented by Camden M. Hall of Camden Hall, PLLC. Petitioner was represented by Phillip C. Tsai of Tsai Law Company, PLLC. The Court

AMENDED ORDER GRANTING MOTION FOR ATTORNEY  
FEES/SANCTIONS - 1

CAMDEN HALL, PLLC  
1001 FOURTH AVENUE, SUITE 3312-13  
SEATTLE, WASHINGTON 98154 ♦ 206-749-0200

1 reviewed all of the papers filed in connection with petitioner's moving papers, including the  
2 Motion and the accompanying attorney fee Declaration of Camden M. Hall.

3 Based upon the above, the Court FINDS:

4 1. Petitioner relocated with the parties' children without complying, or even  
5 substantially complying with the statutory relocation notice requirement.

6 2. Petitioner's failure to follow the law was consistent with her rigid attitude toward  
7 parenting issues and her difficulty in reasonably communicating with respondent regarding the  
8 parenting of the parties' children—as described in the Courts Order re Relocation, which is  
9 incorporated by this reference into this Order.

10 3. Petitioners' failure to follow the law, and her intransigence, created a *fait accompli*  
11 and *status quo* that made a denial of the relocation, however technically merited, contrary to the  
12 best interests of the children and would punish the children for the errors of the petitioner.  
13 Respondent recognized this and consented to the relocation.

14 4. Respondent is entitled to sanctions arising out of the petitioner's actions. The  
15 sanctions should include both momentary sanctions and a practical adjustment of the Parenting  
16 Plan to compensate the Father, however inadequately, for the added parenting inconvenience  
17 caused by the petitioner's unilateral relocation with the children and the resulting legal proceedings  
18 and related expense.

19 5. The ordered adjustment of the Parenting Plan is also in the best interest of the  
20 children.

21 6. The father has been substantially harmed by the relocation in his ability to parent  
22 the children spontaneously, provide practical day and emergency care, etc. Therefore,

23 It is ORDERED as follows:

24 1. Respondent's Motion for attorney fees and costs— sanctions, is GRANTED.  
25  
26

1 2. Petitioner shall pay to respondent and his attorney, as sanctions, the sum of  
2 \$10,500.00. This Judgment shall be paid by respondent to petitioner within 90 days after the entry  
3 of this Order, or by securing the debt in some fashion agreeable to Respondent within that time.

4 3. Respondent's Motion for a Parenting Plan adjustment and sanctions is GRANTED.

5 4. The Parenting Plan is adjusted so that any move by petitioner with the children  
6 outside of the John Stanford International School attendance area boundary shall be a  
7 "relocation" requiring notice.

8 5. The Parenting Plan provision that the children shall attend the same school where  
9 petitioner teaches or lives shall be removed from the Parenting Plan.

10 6. The Parenting Plan schedule for Phase II and Phase III is adjusted as follows:

11 Phase II: The Wednesday residential time shall end at 12 noon on Fridays.

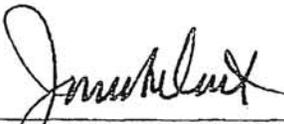
12 Phase III: The respondent's additional time with the children set forth in paragraph  
13 3.1.3 shall be every other Thursday to Tuesday.

14 7. A new Amended Parenting Plan should be prepared containing these changes only.

15 8. This Order replaces the September 12, 2011 Order Granting Motion For

16 Attorney Fees/Sanctions.

17 DATED: October 18 2011

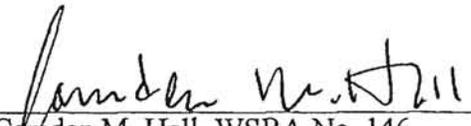
18   
19 JUDGE JAMES DOERTY

20 Presented by:

Approved for Entry; Notice of Presentation  
Waived:

21 CAMDEN HALL, PLLC

Tsai Law Company, PLLC

22   
23 Camden M. Hall, WSBA No. 146  
24 Attorneys for Respondent  
25 (signed as typed, without interlineations)

Phillip C. Tsai, WSBA No. 27632  
Attorneys for Petitioner

26 AMENDED ORDER GRANTING MOTION FOR ATTORNEY  
FEES/SANCTIONS - 3

CAMDEN HALL, PLLC  
1001 FOURTH AVENUE, SUITE 3312-13  
SEATTLE, WASHINGTON 98154 ♦ 206-749-0200

NOV 04 2011

SUPERIOR COURT CLERK  
BY ANDY GROOM  
DEPUTY

SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Marriage of:

NANAKO TSUJIMOTO RASKOB

Petitioner,

and

JOSH IAN RASKOB,

Respondent.

The Honorable James Doerty

No. 09-3-04363-2 SEA

AMENDED REVISED PARENTING  
PLAN; FINAL ORDER (PP)

This Parenting Plan is the Final Parenting Plan signed by the Court pursuant to a Decree of Dissolution signed by the Court on April 5, 2011. *This Amended Revised Parenting Plan replaces all prior Parenting Plans.*

**It Is Ordered, Adjudged and Decreed:**

**I. General Information**

This Parenting Plan applies to the following children:

<u>Name</u>	<u>Age</u>
Mayuko ("Mayu") Raskob	4 + years
Misako ("Misa") Raskob	2 + years

**II. Basis for Restrictions**

**2.1 Parental Conduct (RCW 26.09.191(1), (2))**

Does not apply.

**2.2 Other Factors (RCW 26.09.191(3))**

Does not apply.

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**III. Residential Schedule**

**3.1 Residential Schedule for Children**

Prior to enrollment in school, the children shall reside with the mother except for the following days and times when the children will reside with or be with the father:

**3.1.1 Phase I:** Beginning June 4, 2010, the children shall reside with their father from Friday at 3:00 p.m. to Sunday at 6:00 p. m. every other weekend; every other Friday at 3:00 p.m. to Saturday at 6:00 p.m. while the mother is in school and every Tuesday and Thursday from 9:00 a. m. to 6:00 p. m.

**3.1.2 Phase II:** Beginning July 1, 2011, the children shall reside with their father every other Friday from 3:00 p.m. to Monday return to school or, if there is no school, at 12:00 noon (in the summer it shall be 6:00 p.m.) and every other Wednesday after school or if no school, 12:00 noon to Friday at noon.

**3.1.3 Phase III:** Beginning July 6, 2012, the children shall reside with their father every other Thursday after school, or if there is no school from 12:00 noon to Tuesday return to school or, if there is no school, at 12:00 noon (in the summer it shall be 6:00 p.m.) and every other Wednesday after school or at 12:00 noon if there is no school, until Friday return to school or until 12:00 noon if they are not in school.

**3.1.4** In addition, the children shall reside with their father in Phase III one more overnight in odd numbered months which shall be the third or fourth Tuesday after school or beginning at 3:00 p.m. if there is no school in the month that is not an existing scheduled overnight for the children with their father—which additional overnight will end the next Thursday at 12:00 noon.

**3.1.5** A diagram of these three Phases is to be prepared by the father and attached to provide clarity regarding the children's scheduled residential times with their parents. The parents may, however, mutually agree to other residential times as circumstances allow or require. However, if they cannot agree on changes, the above schedule shall be followed.

**3.1.6** The remainder of the times, the children shall reside with their mother, except as provided below or as otherwise agreed in advance, and in writing, by the parties or order of the Court.

**3.1.7** Given the age difference between the two children, during Phase I, the father shall occasionally be allowed one-on-one time with Mayu and other one-on-one time with Misa during his normally scheduled residential time on Tuesday and Thursday if agreed between the parties. If the parties agree to one on one residential time during Phases II and III, they may do so by mutual agreement.

1  
3 **3.2 School Schedule**  
5

7 Upon enrollment in school, the children shall reside with the mother except for the following days  
9 and times when the children will reside with or be with the father:

11  
13 Same as Paragraph 3.1.  
15

17 **3.3 Schedule for Winter Vacation**  
19

21 During Winter Vacation, the children shall reside with their parents as follows:  
23

25 Same as the above schedule, except as follows:  
27

29 In 2010 and 2011, both parents shall have one additional overnight adjacent to either Christmas  
31 Eve or Christmas Day—whichever of the two they are scheduled to have in that year.  
33

35 Beginning in 2012, the Winter Vacation shall be shared 50/50 between the parents. The parent  
37 with whom the children are scheduled to reside on Christmas Eve shall have the first half of the  
39 Winter Vacation; the parent with whom the children are scheduled to reside on Christmas Day  
41 shall have the second half of the Winter Vacation. Winter vacation is defined as starting when  
43 the children are let out of school before Christmas and ending the night before they again start  
45 school after New Year's Day.  
47

49 **3.4 Schedule for Spring and Mid-Winter School Breaks**  
51

53 During Spring and Mid-Winter school breaks, the children shall reside with their parents as  
55 follows:  
57

59 In 2011, the parties shall share the mid winter and spring breaks evenly. The first half of mid  
61 winter break from Friday until Wednesday at 12:00 noon shall be with the mother and the second  
63 half beginning at 12:00 noon on Wednesday until Sunday at 6:00 p.m. shall be with the father.  
65 The first half of spring break from Friday until Wednesday at 12:00 noon shall be with the father  
67 and the second half beginning at 12:00 noon on Wednesday until Sunday at 6:00 p.m. shall be  
69 with the mother.  
71

73 Beginning in 2012, the parents shall alternate the Mid-Winter and Spring Breaks so that the father  
75 shall have residential time with the children during Mid-Winter Break in odd years and Spring  
77 Break in even years. The mother shall have residential time with the children during Mid-Winter  
79 Break in even years and Spring Break in odd years. Spring Break shall be defined as the Friday  
the children recess from school until 6:00 p.m. the day before school begins. Mid-Winter break

1 shall be defined as the day the children recess from school until 6:00 p.m. the day before they  
3 return to school.

5  
7 **3.5 Summer Schedule**

9  
11 Upon completion of the school year, the children shall reside with their parents as follows:

13  
15 Same as school year schedule except that, beginning July 2012, each parent shall have 3 non  
17 consecutive weeks for vacation purposes. After Misa is in 1<sup>st</sup> grade, the 3 weeks of vacation may  
19 be taken consecutively.

21  
23 Vacation proposals from each parent shall be exchanged by May 1 for each year. In cases of  
25 scheduling conflicts, the mothers' schedule shall prevail in even numbered years and the father's  
27 in odd numbered years.

29  
31 Additionally, during the summer, the mother's pick up time on Monday enumerated in the  
33 preschool and school schedules above shall be 6:00 p.m. instead of 12:00 noon.

35  
37 **3.6 Vacation with Parents**

39  
41 See Paragraph 3.5.

43  
45 **3.7 Schedule for Holidays**

47  
49 The residential schedule for the children for the holidays listed below is as follows:

	With Petitioner (Specify Year <u>Odd/Even/Every</u> )	With Respondent (Specify Year <u>Odd/Even/Every</u> )
51		
53		
55		
57		
59		
61	Odd	Even
63	Even	Odd
65	Odd	Even
67	Odd	Even
69	Even	Odd
71	Odd	Even
73	Even	Odd
75	Odd	Even
77	Odd	Even
79	Even	Odd
	Even	Odd

1	Easter	Even	Odd
3	Halloween	Odd	Even

For purposes of this parenting plan, a holiday shall begin and end as follows: If the holiday is on a Monday or Friday, the children shall reside with the parent who has the children the adjacent weekend and shall begin at 9:00 a.m. on the holiday. Otherwise, holidays shall begin at 9:00 a.m. on the holiday and end at 7:00 p.m. that same day.

Thanksgiving Day Holiday: The Thanksgiving Day holiday shall begin at 9:00 a.m. on Thanksgiving Day and end the following Saturday at 9:00 a.m.

Christmas Eve/Christmas Day: See ¶3.3, above. Christmas Eve shall begin at 9:00 a.m. and end at 10:00 a.m. on Christmas Day. Christmas Day shall begin at 10:00 a.m. and end at 7:00 p.m.

Note: On the day of the mother's graduation in June 2011, she shall have both children from 9:00 a.m. to 7:00 p.m. Mother shall inform the father of this date as soon as she learns it.

**3.8 Schedule for Special Occasions**

The residential schedule for the children for the following special occasions (for example, birthdays) is as follows:

	With Mother (Specify Year <u>Odd/Even/Every</u> )	With Father (Specify Year <u>Odd/Even/Every</u> )
Mother's Day	Every	
Father's Day		Every
Mother's Birthday	Every	
Father's Birthday		Every
Mayuko's Birthday	Odd	Even
Misako's Birthday	Even	Odd

Special Occasions shall begin at 9:00 a.m. and end at 7:00 p.m.

**3.9 Priorities Under the Residential Schedule**

Paragraphs 3.3 - 3.8, have priority over paragraphs 3.1 and 3.2, in the following order:

Rank the order of priority, with 1 being given the highest priority:

4	winter vacation (3.2)	2	holidays (3.5)
3	school breaks (3.3)	1	special occasions (3.6)

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- 5 summer schedule (3.4)
- 6 residential schedule (3.1)

**3.10 Restrictions**

Does not apply because there are no limiting factors in paragraphs 2.1 or 2.2.

**3.11 Transportation Arrangements**

Transportation costs are included in the Child Support Worksheets, the Order of Child Support or are otherwise provided for, and should not be included here.

Transportation arrangements for the children, between parents shall be as follows:

The receiving parent shall provide transportation, Transfer locations shall be at the children's school unless the children are not scheduled to be in school. Then the transfers shall be at the non-receiving parent's home.

**3.12 Designation of Custodian**

The children named in this parenting plan are scheduled to reside primarily with the mother. The mother is designated the custodian of the children solely for purposes of all other state and federal statutes which require a designation or determination of custody.

This designation shall not affect either parent's rights and responsibilities under this Parenting Plan.

**3.13 Other: See §VI. Other Provisions, below.**

On the recommendation of the parenting evaluator in this matter, "decision making" for the children has been denominated as "joint." However, and because of past decision making problems between the parties, Karin Ballantyne, MSW, shall be utilized as needed, as a parenting facilitator/parenting coach for the parties to help them with decision making and information flow. This is designed to help the parties in their decision making functions and be less costly than other dispute resolution means that might otherwise be employed for the making of large and small decisions in a timely way.

The costs of the parenting facilitator shall be shared 50/50 by the parties.

**3.14 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child**

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

1 If the person with whom the child resides a majority of the time plans to move, that person shall  
3 give notice to every person entitled to court ordered time with the child.

5  
7 If the move is outside the child's current school district (*i.e.*, the John Stanford International  
9 School attendance area boundary in Seattle, Washington) the relocating person must give notice  
11 by personal service or by mail requiring a return receipt. This notice must be at least 60 days  
13 before the intended move. If the relocating person could not have known about the move in time  
15 to give 60 days' notice, that person must give notice within 5 days after learning of the move.  
17 The notice must contain the information required in RCW 26.09.440. See also form DRPSCU  
19 07.0500, (Notice of Intended Relocation of A Child).

21 If the move is within the same school district, the relocating person must provide actual notice by  
23 any reasonable means. A person entitled to time with the child may not object to the move but  
25 may ask for modification under RCW 26.09.260.

27  
29 Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter  
31 or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

33 If information is protected under a court order or the address confidentiality program, it may be  
35 withheld from the notice.

37  
39 A relocating person may ask the court to waive any notice requirements that may put the health  
41 and safety of a person or a child at risk.

43 Failure to give the required notice may be grounds for sanctions, including contempt.

45  
47 If no objection is filed within 30 days after service of the notice of intended relocation, the  
49 relocation will be permitted and the proposed revised residential schedule may be confirmed.

51 A person entitled to time with a child under a court order can file an objection to the child's  
53 relocation whether or not he or she received proper notice.

55  
57 An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700,  
59 (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential  
61 Schedule). The objection must be served on all persons entitled to time with the child.

63  
65 The relocating person shall not move the child during the time for objection unless: (a) the  
67 delayed notice provisions apply; or (b) a court order allows the move.

69 If the objecting person schedules a hearing for a date within 15 days of timely service of the  
71 objection, the relocating person shall not move the child before the hearing unless there is a clear,  
73 immediate and unreasonable risk to the health or safety of a person or a child.  
75  
77  
79



1  
3 The parties agree that both children shall attend Japanese preschool at Suginoko or at any local  
5 Japanese school a maximum of three days per week including summer sessions until  
7 Kindergarten begins for each child, subject to Paragraph 3.14, and the Relocation Statute  
9 *Mayu and Misa will attend both summer school sessions at Suginoko in 2011.*

11  
13 Both Children will continue Japanese education at a local school after Kindergarten has begun in  
15 order to be successfully raised as truly bilingual. if the parties can afford to pay for such  
17 schooling.

19  
21 Both children will be enrolled in Full-day Kindergarten.

23  
25 When Mayu begins Kindergarten in Fall 2011, Misa will be in a full day Japanese daycare  
27 maximum of 3 days a week. Misa will also be enrolled in another full day daycare the remaining  
29 of the days per week. Misa may be picked up earlier from the English daycare on the father's  
31 days if he desires, but not until after lunch break. Misa may also be picked up at the Japanese day  
33 care on the father's days if he desires, but not until after lunch break. The father should  
35 coordinate the pickups with the school.

37  
39 **4.3 Restrictions in Decision Making**

41  
43 Does not apply because there are no limiting factors in paragraphs 2.1 and 2.2 above.

45  
47 **V. Dispute Resolution**

49  
51 *The purpose of this dispute resolution process is to resolve disagreements about carrying out this*  
53 *parenting plan. This dispute resolution process may, and under some local court rules or the provisions*  
55 *of this plan must be used before filing a petition to modify the plan or a motion for contempt for failing to*  
57 *follow the plan.*

59  
61 Disputes between the parties, other than child support disputes, that cannot be resolved as  
63 provided in the above Paragraph 4.3, shall be submitted:

65  
67 First to mediation by Judge Larry Jordan or other agreed mediator. If the mediation is  
69 unsuccessful, then to arbitration before an agreed arbitrator, If the parties cannot agree, then  
71 either party may move the court for the appointment of a neutral arbitrator. The mediator shall  
73 first attempt to help the parents reach an agreement on the disputed matter. If the mediator is  
75 unable to do so, the matter shall be determined in arbitration, subject to the statutory requirement  
77 of Court approval. Any resulting settlements or arbitration decision shall be in writing and  
79 provided to both parties.

1 The mediation processes shall be governed by RCW 5.60.070 and ER 408. The arbitration  
3 process shall be governed by RCW 7.04A.  
5

7 To the extent necessary in determining the best interests of the children, the arbitrator may order  
9 that Ms. Ballantyne (or her substitute), or any of the parties' health care providers provide  
11 evidence in any arbitration.  
13

15 The cost of this process shall be allocated between the parties as follows:  
17

19 50 percent petitioner/50 percent respondent. However, the mediator/arbitrator may  
21 allocate the process costs differently if one party unduly increases those costs by his or  
23 her response to the proceeding.  
25

27 The dispute resolution process shall be commenced by notifying the other party by written  
29 request delivered (with proof of delivery) to the other party.  
31

33 In the dispute resolution process:  
35

- 37 (a) Preference shall be given to carrying out this Parenting Plan.  
39 (b) Unless an emergency exists, the parents shall use the designated process to resolve  
41 disputes relating to implementation of the plan, except those related to financial support.  
43 (c) A written record shall be prepared of any agreement reached in counseling or mediation  
45 and of each arbitration award and shall be provided to each party.  
47 (d) If the court finds that a parent has used or frustrated the dispute resolution process  
49 without good reason, the court shall award attorneys' fees and financial sanctions to the  
51 other parent.  
53 (e) The parties have the right of review from the dispute resolution process to the superior  
55 court.  
57

## 59 VI. Other Provisions 61

63 There are the following other provisions:  
65

- 67 (a) Telephone Access. Each parent shall have liberal telephone contact with the children  
69 during his or her non-residential time, with consideration given to the children's  
71 scheduled activities, meals, homework, regular bedtime, etc. Each child shall be  
73 permitted to initiate unmonitored and unlimited telephone contact with the non-  
75 residential parent. Neither parent shall listen in, record or otherwise interfere with such  
77 telephone contact initiated by the children, or otherwise. The children may call the non-  
79 residential parent whenever they wish. This provision shall also be interpreted as  
providing for other reasonable means of electronic communication allowed by evolving  
technology.

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- (b) Participation in Children Events. Each parent shall make an effort to keep the other informed of school, athletic and social events in which each child participates but each parent is ultimately responsible for keeping himself or herself advised of all such activities. Both parents may participate in all school activities (e.g., open house, parent-teacher meetings, attendance at athletic events, etc.) and other events for each child. Each parent shall be treated equally by the school. Each parent shall make a good faith effort to pass on timely to the other, in writing, information about the children's schedules and activities.
  - (c) Illness of the Children. In the event of a serious illness of either child which affects either parent's residential time, the parent who misses residential time as a result of the illness shall be granted additional time to compensate for any time lost.
  - (d) Promotion of Love and Affection. Each parent agrees to exert every reasonable effort to maintain free access and unhampered contact and communication between the children and the other parent, and to promote the emotions of affection, love and respect between the children and the other parent. Each parent agrees to refrain from words or conduct, and further agrees to discourage other persons from uttering words or engaging in conduct, which would have a tendency to estrange the children from the other parent, to damage the opinion of the children as to the other parent, or which would impair the natural development of the children's love and respect for the other parent. All gifts or writings from a parent to the children when the children are with the other parent shall be given unopened to the children upon receipt.
  - (e) Omitted.
  - (f) Parenting Consistency. Each parent agrees to honor one another's reasonable parenting style, rules and authority. Each parent will make ordinary day-to-day decisions about the children while the children are with him or her. Neither parent shall interfere in the reasonable parenting rules of the other. Neither parent shall make plans or arrangements that impinge upon the other parent's authority or time with the children without the express written agreement of the other parent. Each parent shall encourage the children to discuss any grievance against a parent directly with the parent in question. It is the intent of both parents to encourage a direct parent-children bond and communication.
    - 1. Homework will be strongly encouraged and a top priority for both parents and the children. TV, video games, time on the internet, etc. will be limited in the reasonable pursuit of academic excellence.
    - 2. Parents will support and encourage the development of the children's musical, athletic, academic and religious interests and talents.

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- (g) Information as to Welfare of the Dependent Children. Each parent timely shall provide the other parent information regarding the welfare of the children , including physical and mental health, academic performance at school, extra curricular activities, etc...
  - (h) Neither Parent to Request Decisions By the Children. Neither parent shall ask the children to make decisions or requests involving the residential schedule. Neither parent shall unreasonably discuss the residential schedule with the children except for plans which have already been agreed to in advance by both parents.
  - (i) Neither Parent to Use the Children for Information. Neither parent shall use the children, directly or indirectly, to gather information about the other parent or transmit messages to the other parent.
  - (j) Notice. In the event of an unavoidable emergency, each parent shall give the other parent at least 48 hours' notice (or such other notice as is reasonable under the circumstances) if he or she is unable to comply with the regular parenting schedule. In the event that a parent requests an exchange of residential time, the other parent shall respond substantively to the request within five calendar days of the request.
  - (k) Right of First Refusal. Each parent shall have the right of first refusal to care for the children when the other parent is going to place the children in alternate care or with a third party overnight.
  - (l) Safety Rules. Each parent shall adhere to all Washington State safety rules when engaging in activities with the children (such as the use of seatbelts and life preservers).
  - (m) Location of the Children. The children shall not be removed from the state of Washington without the prior written consent of both parents or order of the Court until a child is 18 years of age. When either parent travels with the children, that parent shall provide to the other parent, prior to traveling, a brief written itinerary containing information such as dates, airlines(s) and flight time(s), hotel names and phone numbers where the children can be reached in case of an emergency.
  - (n) Omitted.
  - (o) Parental Consent. Each parent shall have authority to give parental consent or permission as may be required concerning school, daycare, or other reasonable programs for the children while they are in his or her care.
  - (p) Emergency and Other Health Care. The parent responsible for the children if emergency health care is required shall be empowered to obtain emergency health care for the

1 children without the consent of the other parent. Each parent shall notify the other parent  
3 as soon as reasonably possible of any illness requiring emergency medical attention, or  
5 any health emergency involving the children. Each parent shall have access to the  
7 children and their medical staff and care givers. The parent with whom the children are  
9 residing shall accompany the children to routine check-ups or medical appointments for  
11 minor health problems. That parent shall promptly inform the other as to the outcome of  
13 the appointment. Both parents shall be apprised of all non-emergency health care  
15 appointments and be allowed to attend all appointments for continuity of care, with 7  
17 days prior notice of all appointments made.

- 19
- 21 (q) Access to Information. Each parent shall have equal and independent authority to confer  
23 with the children's physicians, school, daycare, and other providers. Each parent shall be  
25 allowed complete access to all school, medical, and extracurricular information relating  
27 to the children.
- 29
- 31 (r) No Alienation. Neither parent shall disparage the other parent, or the other parent's  
33 significant relationship with another person, about anything in the presence of the  
35 children, or discuss in the presence of the children, dissolution-related financial issues  
37 such as children support, maintenance, or the division of property and liabilities.
- 39
- 41 (s) Transportation Delays. The children shall be picked up and returned at the designated  
43 times set forth in this parenting plan. Should a delay appear possible, the transporting  
45 parent shall immediately notify the other parent. At the time of transfer, neither parent  
47 shall express anger or make a scene in front of the children. Discussion between the  
49 parents at the time of transfer shall be limited to matters necessary for, and related to, the  
51 transfer.
- 53
- 55 (t) Children's International Travel and Passports. During the children's minority, the children's  
57 passports (they are dual citizens of the United States and Japan) shall be held in trust by the  
59 mother's current counsel or such other person upon whom the parties both agree. If they  
61 cannot agree, the Court may determine who shall hold the passports, upon the motion of  
63 either party. During their minority, the children may not travel outside the state of  
65 Washington without the prior written approval of both the mother and father or order of a  
67 Court. In addition, the children's passports may not be released to either parent or child  
69 without the prior written consent of both parents or order of a Court.
- 71
- 73 (u) Health Care Issues. The mother agrees to engage a psychiatrist to consult with on a  
75 quarterly basis and to schedule therapy sessions with her therapist, Terry Hand, MA. The  
77 frequency and duration of the mother's sessions shall be at least monthly with Ms. Hand  
79 for six months after a Decree is entered in this matter and, thereafter, as determined by  
Ms. Hand based on information necessary to make such a decision. This information can  
come from the father and others with relevant knowledge. Absent a court or arbitration

1 order, or the recommendation of the psychiatrist or Ms. Hand, the father shall not have  
3 full access to the psychiatrist or Ms. Hand or to his or her health care records; the father  
5 only needs to know that the mother has attended the required consultations and sessions  
7 and that no psychosis or other disability affecting the best interests of the children is  
9 present. This information shall be communicated in the form of letters from the  
11 psychiatrist and Ms. Hand to the father. After the mother has consulted with the  
13 psychiatrist for a period of 24 months after entry of the Decree, the engagement of a  
15 psychiatrist shall no longer be required, unless the psychiatrist or Ms. Hand recommend  
17 that it continue. The mother's engagement of Ms. Hand shall continue so long as Ms.  
19 Hand recommends that it continue.

21  
23 It is anticipated that the psychiatrist and Ms. Hand shall consult with each other in this  
25 matter.

27  
29 The expense of the above engagements and therapy shall be paid by the mother.

- 31  
33 (v) Grandparents. Time with both sets of grandparents is encouraged so long as the  
35 grandparents are positive about both parents and willing and able to care for the children.  
37  
39 (w) .Exchange of Information Between Parents. For at least 90 days after entry of this Order,  
41 and thereafter as the parties agree, they shall not directly email each other except as  
43 provided below. In order to facilitate constructive communication between the parties,  
45 they shall promptly enroll in, and exchange email through, "Our Family Wizard at  
47 [www.ourfamilywizard.com](http://www.ourfamilywizard.com).

51  
53  
55 **VII. Declaration for Proposed Parenting Plan**

57  
59 Does not apply.

61  
63 **VIII. Order by the Court**

65  
67 It is ordered, adjudged and decreed that the parenting plan set forth above is adopted and approved as an  
69 order of this court.

71  
73 **WARNING:** Violation of residential provisions of this order with actual knowledge of its terms is  
75 punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or  
77 9A.40.070(2). Violation of this order may subject a violator to arrest.

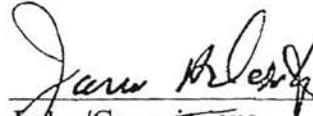
79  
When mutual decision making is designated but cannot be achieved, the parties shall make a good faith  
effort to resolve the issue through the dispute resolution process.

*AMENDED REVISED PARENTING PLAN;  
FINAL ORDER  
Page 14*

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3 If a parent fails to comply with a provision of this plan, the other parent's obligations under the plan are  
5 not affected.  
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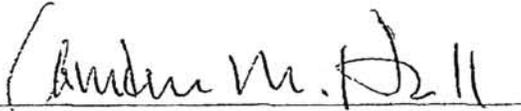
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November 4 2011

  
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Judge/Commissioner

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39 Camden M. Hall, WSBA No. 146  
41 Attorney for Father/Respondent  
43 *(signed as typed, without interlineations)*

Approved for entry:

TSAI LAW COMPANY, PLLC

\_\_\_\_\_  
Philip C. Tsai, WSBA No. 27632  
Attorney for Mother/Petitioner