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2019 JAN 28
STATE COURT
J. S. [Signature]

NO. 70995-0-1

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

WILLARD GIBSON

APPELLANT

v.

MARIE-CLAIRE PAGH

RESPONDENT

APPELLANT'S BRIEF ON APPEAL

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I. ASSIGNMENTS OF ERROR

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O. Whether a retired Judge can sit as judge *pro tem* without the agreement of parties in a matter where trial has concluded (i.e., what does it mean for a case to be "pending"?).

II. STATEMENT OF THE CASE

2.1 Background and Procedure: An attorney fee award vacated by this court for lack of facts to support it was remanded for findings consistent with that decision. The trial court instead reinstated the fee award, adding "findings of fact" that are not borne out in the trial court record, nor which were present or argued in the post-trial Motion for Fees. The new Findings are not consistent with the appellate court decision and this second award of fees should be vacated also. The court punishing a party who litigated his position in order to avoid being cut out of his child's life does not serve public policy in allowing parents to oppose extreme relief requested by a parent in possession of a child. This was not an "extreme" case procedurally, but interstate

jurisdictional issues added a layer of complexity—the Father’s participation, through counsel primarily because he lived out of state, did not warrant the fees awarded at trial, nor in this remand which contradicts the appellate decision vacating that award.

2.2 Statement of Facts:

Appellant Willard Gibson and Respondent Marie-Claire Pagh were engaged, but never married. CP 101. They resided in Nevada when their son BRITTON LAWRENCE PAGH GIBSON was born on June 23, 2008. RP 69. CP 16. Following a holiday visit in December 2009, at the invitation of Pam Gibson, Will’s mother (RP¹ 28, 72. CP 101, CP 758), Will returned to Nevada to take care of a real estate transaction, with plans to return to WA before their return flight in mid-January. CP 17. Supp. CP ___ [05-2 cause number, 2/18/2010 Reply Declaration], CP 101. RP 27. CP 820.

Upon Will’s departure, Marie-Claire took Britton to her sister’s home. RP 27, 35. CP 17. In person she told Will’s mother she was keeping the child and would not allow Will access until certain

¹ Unless otherwise identified by a different date, RP refers to the trial transcript from 2/1/2011.

conditions were met. CP 104. RP 44. Will told Marie-Claire he would take legal action (CPS). CP 18. CP 820. CP 941.

On January 14, 2010, Marie-Claire filed a Petition for Domestic Violence Protection Order in King County, Washington, stating that she was a resident of King County. CP 726. Five days later, on January 19, 2010, Will filed a paternity action in Clark County, Nevada, the child's home state. CP 711. Six days later, on January 25, 2010, Marie-Claire filed a Petition for Residential Schedule in Washington. CP 1-12. Four days after that (ten days after his NV filing), Will was served with Mother's Declaration in the WA action, on 1/29/2010 in Nevada. CP 753-754.

Will continually objected to Washington State asserting jurisdiction over him or the child. CP 31-33, Supp CP__ (05-2 case Reissuance Orders)

To make a long and procedurally complex story short, after a series of telephonic UCCJEA² conferences (with minute entries in Nevada, but not in Washington, CP 766, 767, 778) Washington assumed jurisdiction on the basis of Nevada, the child's home state,

² Uniform Child Custody Jurisdiction and Enforcement Act, codified in RCW 26.27.

relinquishing jurisdiction. RP 100. (The Nevada record was added to the Washington file in the Father's CR 60 Motion. CP 875-876, 878-881, 883-912, 914-917, 919-920, 922)

Here is a visual summary of the hearing history (all but the pretrial hearings came from motions filed by Mother):

Date	Nature	Father present?	Outcome	CP
1/28/2010	DVPO	Not served	Reissued	CP 1014
2/12/2010	DVPO	Appeared	Reissued by agreement	Supp
2/19/2010	DVPO	Counsel for Fa	Reissued by agreement to allow oral examination	Supp
3/2/2010	DVPO	Counsel for Fa	Agreed Reissuance	Supp
3/11/2010	DVPO; Counsel, UCCJEA	Counsel for Fa	Assignments to J. Doerty; UCCJEA promised; Reissued to 6/11/2010	Supp
3/12/2010	Tel/UCCJEA	None	No record	778
3/18/2010	(NV) UCCJEA	Counsel in NV	Briefing due/NV retain jdn	906
4/1/2010	(NV) Order		Order from 3/18 hearing	
4/7/2010	(NV) UCCJEA	Counsel in NV	NV declines in favor of WA	808, 919
6/1/2010	Consolidate; Reissue DVPO	Counsel for Fa	Consolidated; Reissued to 6/28; Fees reserved	80-86
6/28/2010	DVPO	Counsel for Fa	Reissued to January 2011	177-181
11/30/2010	Pretrial	Counsel for Fa	Cont'd to 1/31/2011; new case schedule	193, 195
1/18/2011	Pretrial	Counsel for Fa	trial set, 1/31/2011 1:30 PM	
2/1/2011	Trial	Counsel for Fa	Orders on 2/15/2011	637-640

Father changed counsel on February 9, 2010 (before his Response was filed), Supplemental CP ___; on April 27, 2010 (no

hearings pending), CP 41, and October 22, 2010 (a month before the pretrial hearing), CP 188. Mother's counsel withdrew on November 19, 2010. Supplemental CP _____. Only a limited appearance is of record after that point. Supplemental CP _____.

Both the DVPO Petition and the Petition for Residential Schedule were consolidated in Washington in June 2010 (CP 80-81), and the DVPO was reissued without reaching the merits—due to lack of service, later by agreement, and other times by court order due to jurisdictional issues and finally until the January 31, 2011 trial date Supp CP __ (05-2 case number Docket #20); Supp CP __ (05-2 case Docket #24) Supp CP __ (05-2 case Docket #25); Supp CP __ (05-2 case Docket #28); Supp CP __ (05-2 case Docket #31); CP 82-86, 177-181, 267.

One hearing in June was continued from 6/1/2010 to 6/28/2010 at Father's counsel's request. RP 3, 7 (6/1/2010). Fees were reserved to the continued hearing date, but not raised or ordered. RP 1-17 (6/28/2010). At the pretrial hearing when the Mother was *pro se*, the Father's request for a trial continuance was unopposed, and a 30-day trial continuance was granted. CP 193, 195. After the trial

continuance, both parties conducted discovery: the Mother submitted Interrogatories to the Father on December 1, 2010 (CP 606); the Father deposed the Mother on 12/31/2010. CP 924. When filed, the original Case Schedule had set the discovery cut-off date as November 22, 2010. Supplemental CP _____. The amended Case Schedule discovery cut-off date was 1/1/2011. CP 193.

Trial before Judge Doerty occurred on February 1, 2011. The Father did not appear for trial because he feared arrest. RP 4. A continuance request from counsel was denied and trial proceeded on the basis of the Mother's testimony only. RP 5.

Following trial, the Mother brought a Motion for Attorney Fees. CP 548-551. The Father responded and objected to the absence of any billing records to support the requested sum. CP 559-578. The Mother submitted billing records in Reply only. CP 580-617. The court ordered the Father to pay over \$45,000 in attorney's fees to the Mother on 2/15/2011. CP 637-640. Findings of Fact and Conclusions of Law were signed on 2/15/2011. CP 656-659.

The DVPO that was entered with an expiration date of 2111—100 years later (CP 642) was reversed on appeal—the court finding that

the Order expired one year from the date of entry. CP 1061.

On December 3, 2012, the Court of Appeals denied the Father's appeal in part and granted it in part. CP 1026-1066. Review to the Washington State Supreme Court was denied on July 9, 2013. This matter was remanded to King County Superior Court on July 31, 2013, CP 1024-1025, and Judge Fleck assigned it to retired Judge Doerty as a *pro tem*, on August 13, 2013. CP 1067.

After written materials were submitted, Judge Doerty signed the Second Amended Findings of Fact and Conclusions of Law from which this appeal was timely made. CP 1359-1364.

Substantive facts that pertain to legal issues:

The Mother filed for relief in Washington, knowing that Nevada was the child's home state. Washington's assertion of temporary jurisdiction on an emergency basis required a series of contacts between courts in WA and NV under the UCCJEA, until Nevada ultimately declined its home state jurisdiction in favor of Washington on the grounds of non-convenient forum on April 7, 2010. The Mother and child were present Washington until April 2011, a few months after trial; the Father at all times remained a resident of Nevada.

The Father was served with the Mother's pleadings in Nevada on January 29, 2010, which gave him a 60-day response period for out-of-state service. Hearings occurred in WA within that response period. The Father, through counsel, asserted at every opportunity his objection to the WA court assuming jurisdiction.

No acts of domestic violence involving the child were alleged in the Mother's Declaration in Support of Petition for Protection Order dated 1/12/2010, filed 1/26/2010 (using the paternity cause number, 10-3-00907-1 SEA). CP 13-18. The Mother left the child in the Father's care on 12/28-30/2009. CP 103. Judge Doerty noted on 3/11/2010, that the evidence regarding the child and allegations of abuse was "extremely scant." RP 22 (3/11/2010).

The Mother's requests at trial were different from those plead in her Petitions—she requested total suspension of the Father's contact with the child (the proposed Parenting Plan filed with the Petition had requested just supervised visitation, CP 22). RP 12 (2/1/2011). Her pleadings contain no request for attorney fees.

As a courtesy to the court, a summary timeline of events contained in the record is provided as **Appendix A**.

III. LEGAL ARGUMENT

3.1 Standard of Review.

Award of attorney fees reviewed de novo. Whether there is a statutory, contractual or equitable basis for an award of attorney fees is a question of law that this court reviews de novo. **Kelly v. Moesslang**, 170 Wash. App. 722, 287 P.3d 12 (2012). The reasonableness of an award of fees is reviewed for abuse of discretion. *Id.*

3.2 The court failed to indicate on the record the method used to calculate the fee award.

The trial court must indicate on the record the method it used to calculate the award. **Marriage of Knight**, 75 Wn. App. 721, 800 P.2d 71 (1994). The only available means for calculating the fee award were the billing statements that were first filed in reply only in the Mother's post-trial Motion for Fees. CP 580-617. The Father objected in his Response to any subsequent filing that gave him no opportunity to address or respond. CP 560, 565. Thus the Father had no opportunity to review or respond the evidence submitted in reply. The proper remedy was to "not consider over objection of counsel" any evidence not properly submitted with the Motion. King County

Local Rule 7(b)(4)(G).³ No terms or other orders addressing the objection were made to authorize consideration of this late evidence.

The remand to the trial court did not allow for a reopening of factual evidence. In the event the trial court on remand did review the reply-only submissions over the Father's objections, the Father prepared a rebuttal to identify examples of overbilling, double-billing and other questionable items. CP 1351-1358. The court still made no findings to quantify how, if at all, the Father's actions caused any increase in the Mother's fees or costs, nor which fees were incurred "in the normal course" and without regard to any of the Father's conduct. Normal litigation expenses in an interstate custody case would have been incurred by the Mother no matter what, since she filed her case in a state that was not the child's home state. The itemized list of new "findings" either (a) are not intransigence or (b) did not cause an increase in the Mother's attorney fees.

3.3 The record does not support an award of fees based on intransigence.

³ KCLR 7(b)(4)(G)

(G) Terms. Any material offered at a time later than required by this rule, and any reply material which is not in strict reply, will not be considered by the court over objection of counsel except upon the imposition of appropriate terms, unless the court orders otherwise.

3.3.1 Failure to attend the court-required parenting seminar is not intransigence.

On remand, the first of the court's new findings, under ¶ 2.10 Other, lists "failure to attend the court-required parenting seminar." King County Local Family Law Rule 13(c)⁴ requires parents to complete a seminar prior to finalizing a Parenting Plan. There are bases for waiver and a built-in remedy for failure: A parent who fails to attend

shall be precluded from presenting any final order affecting the parenting/residential plan or finalizing the parenting plan in this action, until the seminar has been successfully completed. The court may also refuse to allow the non-complying party to seek

⁴ (c) Seminar for Parenting Plans.

(1) Applicability. ...

(2) Parenting Seminars; Mandatory Attendance. In all cases referred to in Section (1) above, both parents and such other parties as the court may direct shall participate in and successfully complete an approved parenting seminar within sixty (60) days after service of a petition on the responding party. Successful completion shall be evidenced by a certificate of attendance filed with the court by the provider agency.

(3) Special Considerations/Waiver....

(C) The court may waive the seminar requirement for one or both parents in any case for good cause shown.

(4) Failure to Comply. Delay, refusal or default by one parent does not excuse timely compliance by the other parent. Unless attendance at the seminar is waived, a parent who delays beyond the 60 day deadline, or who otherwise fails or refuses to complete the parenting seminar, shall be precluded from presenting any final order affecting the parenting/residential plan or finalizing the parenting plan in this action, until the seminar has been successfully completed. The court may also refuse to allow the non-complying party to seek affirmative relief in this or subsequent proceedings until the seminar is successfully completed. Willful refusal or delay by either parent may constitute contempt of court and result in sanctions imposed by the court, or may result in the imposition of monetary terms, default, and/or striking of pleadings.

affirmative relief in this or subsequent proceedings until the seminar is successfully completed. Willful refusal or delay by either parent may constitute contempt of court and result in sanctions imposed by the court, or may result in the imposition of monetary terms, default, and/or striking of pleadings.

No sanctions, contempt or default were requested at trial, nor was the Father's failure to attend the seminar even raised in testimony. The court file did contain a notice of noncompliance, but that was not submitted as an exhibit for trial, nor was this addressed anywhere in the trial record. This is an entirely new issue raised for the first time on remand. It was never mentioned in the Mother's post-trial Motion for Fees. CP 660-663. This was not part of the record on appeal from which remand was issued.

3.3.2 Failure to submit a Financial Declaration or other financial disclosures is not intransigence where no financial issues were addressed at trial.

This is the second new "finding" under ¶ 2.10. This cannot be a basis for intransigence because the court did not address any financial related relief. LFLR 10 requires submission of a Financial Declaration and supporting records when financial matters are before the court.⁵

⁵ (1) Each party shall complete, sign, file, and serve on all parties a financial declaration for any motion, trial, or settlement conference that concerns the following issues:
(A) Payment of a child's expenses, such as tuition, costs of extracurricular activities, medical expenses, or college;
(B) Child support or spousal maintenance; or

Trial proceeding on the Mother’s Petition for Residential Schedule in which attorney fees were not plead until the opening statements at trial and objected to immediately. CP 8. RP 10-12 (2/1/2011). The Petition, which frames the issues for trial, identified a request for child support, but there was no discussion of finances in any trial testimony. The issue of attorney fees was raised in opening statements and in closing argument briefly—when prompted by the court—then deferred to a post-trial motion. RP 107. (Fees based on intransigence do not, however, require any consideration of the parties’ financial positions.)

Intransigence includes resistance to discovery, including “incremental disclosure of income” and less than candid portrayal of contract termination with employer. *In re Marriage of Mattson*.⁶ Child support was not addressed at trial in any form. [An uncontested provision of the Judgment states: “child support is being established through the Department of Social and Health Services.” CP 634.] Intransigence includes willful concealment of property. *Seals v. Seals*.⁷ No objections or concerns were raised about the lack of financial information or property information produced by either party. This is a brand-new “finding” on remand not remotely related

(C) Any other financial matter, including payment of debt, attorney and expert fees, or the costs of an investigation or evaluation.

⁶95 Wn. App. 592, 976 P.2d 157 (1999)

to the record available at trial, nor included in the post-trial Motion for Fees. It cannot be a basis for a finding of intransigence to justify fees now. (This is a bad-faith inclusion by the Mother in her materials, included for the first time on remand to Judge Doerty. CR 11 sanctions should apply, there being no remote basis for suggesting such a finding on this record!⁸)

3.3.3 No evidence at trial supports any finding related to discovery as a basis for intransigence.

Counsel argued an inability by the Father to participate in discovery (RP 10) but no testimony or other evidence at trial developed or addressed this concern, either factually or legally. CR 26 directs the process for discovery failures or abuses, including a requirement that counsel confer (CR 37) before bringing a Motion to Compel. No such steps were taken by Mother's counsel. On remand, the Father pointed out that no timely discovery requests were made by the Mother until after the initial Case Schedule deadline (November 22, 2010) had passed. CP 1346. Only under the

⁷,22 Wn. App. 652, 654, 658, 590 P.2d. 1301 (1979)

⁸ In applying CR 11, a filing is "baseless" when it is (a) not well grounded in fact or (b) not warranted by (i) existing law or (ii) a good faith argument for the alteration of existing law. **Stiles v. Kearney**, 168 Wn. App. 250, 261, 277, P.3d 9 (2012). **Lee v. Kennard**, 310 P.3d 845 (2013).

continued trial order (CP 193, 195) did both parties do some minimal discovery—a deposition taken by the Father and Interrogatories sent by the Mother. No deficiencies were addressed in trial testimony upon which the court could find either intransigence or the basis for an award of fees. In the Motion for fees, counsel alleged the Father “has refused to take even the simplest steps to participate in discovery,” but identified no facts to support this blanket assertion. CP 549. That the Father did in fact give cooperate in providing information before the discovery cut-off is evidenced by the Mother’s Motion in Limine, at CP 218.⁹ That the Mother’s attorneys (who never filed a formal Notice of Reappearance) waited to contact the Father’s witnesses until January 25, 2011, almost a month later and the weekend before trial (CP 231-233), is not due to any noncompliance by the Father.

3.3.4 Nothing in the record identifies any Case Schedule deadlines the Father failed to meet which would support a finding of intransigence.

There was no argument or evidence presented at trial on this

⁹ “On December 29, 2010, two days prior to the discovery cut-off, the respondent served the petitioner, who was pro se at the time, with his primary and rebuttal witness list at the law office where she worked.” CP 218.

issue. The Motion for Fees said, cursorily: “he...has failed to comply with a single case scheduling deadline,” (CP 549) but cites no examples. The Motion in Limine, mentioned above, affirms the Father’s compliance with the disclosure of Primary Witnesses two days before the Case Schedule Deadline that accompanied the Order Continuing Trial. CP 193, 195. There is no evidence to support this finding or in turn, to support an award of fees.

3.3.5 Father’s failure to attend hearings did not delay or cause increased costs or otherwise amount to intransigence.

The Father’s absence at court hearings was brought up by the trial judge in issuing his oral decision: “I need to be able to see this guy ... I need to evaluate credibility.” RP 100. The court concluded this was a “risk factor” (RP 101) in support of reissuing the DVPO. It doesn’t follow that there is any court order or rule that the Father violated in failing to attend either a hearing or trial. When the Father, a resident of Nevada, was not present at proceedings in Washington, he had counsel present for him after he had been served. RP 3 (2/19/2010); RP 3 (3/11/2010); RP 3-4 (6/1/2010); RP 3 (6/28/2010); RP 3 (1/18/2011); RP 4 (2/1/2011).

3.3.6 Father’s failure to clear up warrants for arrest in cases

not related to Parentage action cannot be a basis for intransigence.

A party's actions in an unrelated case cannot be a basis for further sanctions or punishment in this case. Whatever crime the Father was charged with has its own remedies under the criminal code (including possible restitution or payment of fees; but the Mother was not a party to the criminal case, just a witness, RP 27-28). Failure to clear warrants gave the court a basis for granting the restrictive parenting relief requested by the Mother—denying contact between the Father and child. It did not delay the case unnecessarily nor create additional fees for the Mother. None are identified in the trial record. One continuance of a single hearing was requested by Father's counsel in June—fees were reserved for that request until the conclusion of the extended hearing (RP 7, 6/1/2011), but never pursued or ordered (CP 177-181), thus the court can conclude either the request was waived by abandonment of the court did not find it appropriate to award fees. The existence of warrants was not mentioned in the Mother's post-trial Motion for Fees.

The court on its own speculated that the Father's participation might be limited "my sense is until Mr. Gibson gets his warrants dealt

with, he's not going to be wanting to participating in some of this stuff because there's Fifth Amendment issues." RP 14 (6/28/2010). But Father's counsel put that speculation to rest "we would not be opposed...to a guardian ad litem." *Id.* Nothing else was raised until the pretrial hearing in late November.

3.3.7 Unproven allegations about contact in violation of DVPO do not support intransigence finding.

Counsel stated in opening statements that there had been a violation of the current DVPO. RP 9-10. Yet there was no Motion for Contempt or to Enforce before the court at trial. Nor was there evidence presented of any criminal prosecution resulting from those allegations. The Petition at trial had nothing to do with violations and the court had no authority to consider an award of fees as a remedy to that assertion. The only alleged violation for which there was an open case was not a violation of the Order in the case number consolidated for trial, but a 2006 Order, from four years prior (two years before the birth of the child in this case).¹⁰ RP 25, 27. The Mother gave testimony about police reports (hearsay) she made,

¹⁰ That arrest came about when the parties were together and were hit by a drunk driver. In running the background checks, an undismissed DVPO from years prior

which were never offered or admitted as exhibits for the court at trial.

RP 25. CP 544-545. DVPO violations were not mentioned in the Mother's post-trial Motion for Fees.

3.3.8 Substitutions of counsel did not increase Mother's costs or amount to intransigence.

Mother's post-trial Motion for fees mentions "a string of attorneys" but does not identify a single increase in cost to the Mother as a result. One hearing continuance was granted (discussed above) and fees were reserved, but then not pursued. One 30-day trial continuance was granted while the Mother was *pro se*, enabling both parties to conduct discovery neither had pursued before the pretrial hearing. No other hearings were postponed or continued, nor was the case preparation otherwise delayed or thwarted due to any changes in Father's counsel. (Mother's counsel never formally re-appeared prior to trial—the last Notice of Limited Appearance filed on 11/29/2010 was to allow Helsell Fetterman to file the Mother's Notice of Intention to Offer Documents. Supplemental CP ____.) On the contrary, in the billing records submitted for the first time in reply (thus not available to the Father before the court's decision on fees

was discovered. RP 24-25.

was issued), show the Mother was not charged on 5/14/2010 for work done as a professional courtesy to the Father's new attorney who requested a copy of pleadings. (CP 600) The Father's change of counsel did not cost her money.

3.3.9 There was no failure to identify witnesses for trial and there was no prejudice to Mother when Father did not call any witnesses for trial; this is not intransigence.

There are two problems with this finding. First, the Father did not timely identify witnesses for trial before the discovery cut-off, as conceded in the Mother's Motion in Limine. CP 218. Second, the Mother waited nearly a month to attempt to contact those witnesses (between December 29, 2010 and January 25, 2011). As it turned out, the Father did not call any witnesses, so there was no testimony offered for which the Mother might not have had adequate time to prepare cross-examination. There was no prejudice to the Mother. Counsel conceded that her Motion in Limine was moot at trial. RP 7.

3.3.10 Father's failure to appear for trial may have been intransigent if it resulted in increased costs to Mother, but did not, so is not intransigence.

Intransigence includes ... failing to appear for trial. **State ex**

rel. Stout v. Stout.¹¹ Will's failure to appear for trial is the only possible category of "intransigence" supported by this record and case law. If his failure to appear had resulted in a trial continuance that would have cost the Mother additional fees to pay an attorney to appear a second time, a finding of intransigence might be justified. But that's not what happened. His attorney appeared, requested a continuance under the circumstances (RP 5), but that continuance request was denied (RP 5) and trial was not delayed. The punitive consequences to Will for his failure to appear were that the court heard only the Mother's side of the story and granted the equitable relief she had requested. Thus the Father's failure to appear resulted in substantive sanctions to him in the content of the court's orders. There was no increase in fees to the Mother as a result of Will's failure to appear—in fact, trial was shorter and her fees lessened as a result. The amount of fees requested at the opening of trial (RP 11) is the same the court granted, without regard to the actual length of trial, so it was not tied to the Father's failure to appear. The Father's failure to appear did not "cost" the Mother anything.

¹¹89 Wn. App. 118, 123, 948 P.2d 851 (1997)

3.3.11 Father did not request multiple continuances, nor did reasonable requests which were granted result in increased costs to Mother supporting a finding of intransigence.

Intransigence includes “litigious behavior, bringing excessive motions, or discovery abuses” *Marriage of MacGibbons*,¹² or pursuing meritless appeals for the purpose of delay and expense. *In re Marriage of Wallace*.¹³ There were no excessive motions here. No discovery abuses. The Court of Appeals did not find the Father’s position to be meritless on the record—but vacated the award of fees, ruling in his favor. The record at trial said nothing about continuances and any potential related costs to the Mother were not itemized or discussed.

The court file shows a single hearing continuance in June 2010 (fees reserved, then not pursued), and a single continuance of the trial, while the Mother was *pro se*, which mutually benefited the parties in allowing an additional 30 days for discovery. The final continuance request on the day of trial was denied. This is not a string of multiple continuance requests or delays. There is no

¹²139 Wn.App. 496, 506, 161 P.3d 441 (2007).

¹³111 Wn. App. 697, 710, 45 P.3d 1131 (2002), *review denied*, 148 Wn.2d 1011 (2003); *Gamache v. Gamache*, 66 Wn.2d 822, 829-30, 409 P.2d 859 (1965)

evidence to support this finding.

3.3.12 Father's failures hurt only himself, not the Mother, and court decision reflected that; this is not intransigence.

Where the Father failed in clearing warrants or making his case in person, the court ruled against him. That is punishment enough. He did want he could through counsel, fearing to appear lest he be arrested in unrelated criminal matters. RP 4. That was a choice he made and it affected how the court eventually ruled, finding the Mother's testimony "unrebutted" because the Father did not appear. That in and of itself is not intransigence insofar as the Mother obtained the relief she requested without further delay due to the Father's failure to appear (that continuance was denied).

3.3.13 Failure by the court to justify basis or quantify fees requested by Mother directly resulting from any intransigence by the Father (and not her own choice to litigate outside the child's home state) should defeat the award of fees.

Counsel for Mother stated at the beginning of trial that the fees requested, over \$45,000, were those incurred "over the last year in this matter" (RP 11)—which would include fees necessarily incurred by the Mother to appropriately transfer the case from the child's home

state of Nevada to the case where she chose to litigate (Washington). Up to the point that the UCCJEA determination was made, the Mother's fees were **\$13,247.14**. CP 1354. The Father cannot be blamed for this choice or the fees needed for the Mother to follow the requirements of the UCCJEA. From there to the point of consolidation (because the Mother filed two Petitions, not one—the DVPO, then the Petition for Parentage), the Mother's fees were **\$2,027.10**. CP 1355. The Father had nothing to do with the Mother's choice to file two, rather than a single Petition. (Inexplicably, the Mother filed a "Motion for Reissuance" on 5/21/2010, CP 45-57, when there was already a Reissued DVPO Order that extended to 6/11/2010.) Work up until the first discovery cut-off, including compiling exhibit lists, was billed at **\$2,978**. CP 1356. No actions by the Father affected these billing charges. Trial preparation charge were an astounding **\$21,983.51** billed—with much duplication between attorneys and assistants, conferring, working on the same projects. CP 1356-1358. The Father's actions and the case issues did not dictate nor justify this excessive billing. Nor did the court quantify in any way the number of hours billed, the rates, the duplicate billers, etc. Post-trial billing

was **\$1,392** on the Motion for Fees, primarily. Judge Doerty was given the opportunity to review and segregate appropriate fees with this breakdown on remand; nothing in his new “Findings” indicates that he considered the type of work done at any stage in this proceeding, including work entirely unrelated to this case (criminal, Nevada). CP 1342-1344.

3.3.14 There is no evidence in the record to support generic finding of “manipulation, harassment, intimidation, delay, failure to cooperate with court scheduling or discovery.”

At best, the Mother uses this list of behaviors to perhaps align with the case law definition: “Intransigence includes foot dragging and obstruction, filing repeated unnecessary motions, or making the trial unduly difficult and costly by one’s actions.” ***In re Marriage of Bobbitt***.¹⁴ Other case law says intransigence includes a “continual pattern of obstruction” involving refusing to cooperate with the GAL, refusing to allow visitation, interfering with court-ordered visitation, threatening administrative action against witnesses, and falsely

¹⁴135 Wn. App. 8; 30, 144 P.3d 306 (2006): Also ***In re Marriage of Greenlee***, 65 Wn. App. 703, 708, 829 P.2d 1120, *review denied*, 120 Wn.2d 1002 (1992); ***Chapman v. Perez***, 41 Wn. App. 444, 455-56, 704 P.2d 1224, *review denied*, 104 Wn.2d 1020 (1985)

alleging sexual abuse of a child. *In re Marriage of Crosetto*.¹⁵

None of these “intransigent” behaviors apply. There was no request by either party for a parenting evaluation; it was the court that suggested it, then dismissed the idea due to finances. RP 14 (6/28/2010). The Family Court Services referral generated by the court indicated that neither parent cooperated to send in materials for review. CP 182, 184. (The Mother does not have “clean hands” in this regard.) No facts or specifics about “manipulation, harassment, intimidation” appear in the record. “Delay” has been addressed above.

3.3.15 There is no evidence in the record upon which to find “deliberate intransigence” or that the court process was “frustrated or delayed” by any action on the part of the Father.

Intransigence includes “foot dragging” and “obstruction.” *Eide v. Eide*.¹⁶ See preceding analysis regarding intransigence and delay. At best, the court wished it could have seen the Father in person to weigh credibility. RP 100. That did not delay the court issuing an immediate decision in the Mother’s favor. This does not fit into this description of intransigence.

¹⁵82 Wn. App. 545, 550, 918 P.2d 954 (1996)

3.3.16 There was no necessity or requirement for the Mother to monitor or report to the court on the status of criminal matters, nor any increase in fees in this proceeding as a result.

On two occasions, the June 2010 hearing and at trial, the Mother's counsel voluntarily informed the court about criminal proceedings involving the Father. There was no obligation on the Mother's part to track the Father's criminal matters, nor should fees she incurred as a *witness* in those proceedings (not a party) be the basis for a fee award in this action. On both occasions, the Father's counsel was present and able to report on the status of those proceedings. RP 4-5 (6/1/2010). RP 7 (6/28/2010). The status of warrants came into play with regard to the Father's ability to request visitation (RP 17, 6/28/2010). It did not cost the Mother any time, inconvenience or fees.

3.3.17 There is no basis to include fees incurred by the Mother in a different proceeding in a fee award in this case.

The court's authority to issue orders pertains only to those issues in the matter before it. Whatever costs or fees incurred by the Mother in separate proceeding cannot be awarded in this case. The Father on remand pointed out some billing entries for matters in the

¹⁶1 Wn. App. 440, 445, 462 P.2d. 562 (1969)

Nevada case and in criminal matters. CP 1343, 1346. The court made no effort to exclude these from its fee award. Other flaws and overbilling specifics are outlined in the remand materials and incorporated herein by reference. CP 1330-1358.

3.3.18 Ultimately, the court did not enter findings consistent with the Court of Appeals decision dated 12/3/2012.

The 12/3/2012 opinion states: “the extraneous ‘acts and directives’ statement is irrelevant.” CP 1054.

The new findings still contain the language: “The child resides in this state as a result of the acts or directives of the respondent.” ¶ 2.1.

The opinion states: “the Washington court’s mistake in calling Washington the home state ... is immaterial.” CP 1041.

The new findings still say: “This state is the home state of the child.” ¶ 2.4.

The 12/3/2012 opinion states: Because the court made no factual findings to support its award amount and “intransigence throughout these proceedings” conclusion, we remand for entry of appropriate findings of fact. CP 1065. And “we vacate the fees and costs awarded by the trial court and remand of entry of appropriate findings of fact consistent with this opinion.” CP 1066.

The new findings still contain blanket statements of intransigence, without any factual findings to support that conclusion. ¶ 2.10.

It’s as if the court on remand did not carefully review the opinion

in order to align its findings with that of the court's opinion. Inserting Findings on issues that appear nowhere in the trial transcript provided likewise cast doubt on the thoroughness of the court's review.

The court should also correct the findings regarding the age of the child at trial—Britton was still age 2, not 4, as the new Findings state.

3.3.19 Finding that Father consent to jurisdiction based on requesting affirmative relief is not supported by the record.

The Father maintains that the finding that he consented to jurisdiction is erroneous. The Court of Appeals based this finding on the fact that counsel appeared on his behalf at trial and requested affirmative relief (a Parenting Plan). This disregards counsel's own assertions at trial—"we can't ask for affirmative relief" or "even a Parenting Plan" (due to the Father's absence). RP 13, 94 (2/1/2011).

3.4 Litigating a highly contested case is not intransigence.

Litigating and losing is not intransigence. A finding of intransigence was not supported by simply making bald assertions of intransigent behavior, even when the case was highly contested. ***In re Marriage of Wright***.¹⁷

This case was fraught with procedural challenges in regard to

jurisdiction, forcing the Father to litigate in both Nevada and Washington on issues of jurisdiction. The Mother misinformed the Washington court about the basis for jurisdiction when she filed her Petitions. CP 726-737.¹⁸ The Ex Parte Order she obtained relied on those incomplete statements and asserted jurisdiction in spite of no emergency being alleged regarding the child and in spite of Nevada being the home state. (This court later found that an allegation regarding the Mother's safety was sufficient to exercise temporary emergency jurisdiction over the child.)

It was not intransigence for the Father to oppose those misstatements and attempt to set the record straight. The Father, Mother and child had all resided exclusively in Nevada since the child was born. The Father properly filed his action in Nevada, the child's home state. The Mother did not disclose to the Washington Court that the child had a different home state. Nevada, following the first UCCJEA conference, found that the child's home state was Nevada, subject to the results of a subsequent hearing to determine

¹⁷78 Wn. App. 230, 239, 896 P.2d 735 (1995)

¹⁸ Page 2 of 2 on Child Custody Information Sheet (last page of entire submission) left blank as to child's home state, connections with the state, or other bases for

whether or not it was appropriate for Nevada to decline jurisdiction in favor of Washington. CP 875-876.¹⁹ Nevada recognized that on the surface, the Mother's filing in Washington was questionable.

It was not intransigent for Will to follow the necessary court processes to make this determination. (Yet the court's *carte blanche* fee award would essentially force Will to pay for all of the Mother's costs and fees for her litigation back to Day One—including the steps necessary for Washington to properly assume jurisdiction from the child's home state. The Father did not create the need for those fees.)

In March, the court specifically promised the parties that the UCCJEA hearing would come with notice and the opportunity to be heard, and would be recorded.²⁰ The hearing was not recorded,²¹ but noted in a Minute Entry by Nevada. There was no briefing to the Washington court prior to or in anticipation of that conference. (Counsel for both parties in Nevada briefed the Nevada judge.)

jurisdiction.

¹⁹ Nevada Court Minute Entry: "Both Judges agree that Nevada will retain jurisdiction in this matter without prejudice given that **Nevada is the home state of the child** and both parties have been represented on record in Nevada."

²⁰ "you'll get notice of any proposed communication between this Court and Nevada because we do that in open court on the record and you—all sides are entitled to notice." RP 20 (3/11/2010).

²¹ The Court of Appeals opinion found that a Minute Entry was a sufficient

There is no intransigence in Will later questioning this process when he was promised a recording that never happened. “A record of trial or a judicial hearing speaks for itself as of the time it was made. It should reflect, as near as may be, exactly what was said and done at the trial or hearing.” *State ex rel. Carroll v. Junker*²². The Court of Appeals decision notwithstanding,²³ the Minute Entry does not reflect “exactly what was said and done” in that conference.

The Mother on 5/21/2010 filed a Motion for a Reissuance of the DVPO when a Reissued DVPO was already in place (to 6/11/2010). That’s an unnecessary motion. The Father’s actions had nothing to do with this duplicate filing. (Rather, the Mother was likely addressing Judge Doerty’s impressions that the evidence as to the child was “scant” in her initial paperwork.)

There is no intransigence in an uncontested Motion to Continue Trial, which was granted, and from which the Mother benefited due to her own lack of prior discovery efforts. The court could have

“recording” of the conference.

²²79 Wn.2d 12, 20, 482 P.2d, 775 (1971)

²³The opinion language that a recording does not have to be “verbatim” (CP 1048) contradicts what a “record” should show: “exactly what was said and done at the trial.” (Emphasis added.)

ordered attorney's fees if the Motion was improper. It did not. There is and was no intransigence.

Intransigence includes the abusive use of discovery, including 4 days of deposition of the opposing party. *In re Marriage of Cooke*.²⁴ Counsel for the Father conducted a single deposition. CP 320-538. This is not abuse or intransigence. The deposition lasted just three hours.²⁵ There is no abuse of discovery in deposing a party this length of time. The scope of the testimony at the deposition, the issues asked of Marie-Claire resemble the same scope of inquiry and testimony she provided to the court at trial. There is no abuse or intransigence in Will's discovery methods or scope.

3.5 There are no alternate case law categories of intransigence into which the Father's conduct might fall.

3.5.1 Intransigence includes making "unsubstantiated, false and exaggerated allegations against [the other parent] concerning his fitness as a parent, which caused him to incur unnecessary and significant attorney fees."²⁶

If anything, Will would assert that these are the actions of the

²⁴, 93 Wn. App. 526, 528, 969 P.2d 127 (1999)

²⁵ Start time: 10:12 AM. CP 926

Break taken at: 11:48 AM [1:36] Dep, pg 67

Resumed at: 1:13 PM Dep, pg 67

Concluded at: 2:39 PM [1:26] Dep, pg 118

²⁶ *In re Marriage of Burrill*, 113 Wn. App. 863, 873, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007 (2003).

Mother in this case. Despite providing daily care for his son of 18 months, being the parent most at home while the Mother worked, it was the Mother who trumped up allegations in a Nevada submission that were not part of her initial DVPO Declaration, first alleging harm to the child months after her initial filing. That the Father had pinched the child. That he had spanked the child. CP 62-67. The court's initial impression in the March 11, 2010, hearing was that these assertions were "extremely scant"²⁷ as to the child (thus prompting the Mother to pad the record later). Will has been on the defense this entire case; the Mother has not had to defend against false assertions by him. There is no intransigence on Will's part under this definition.

3.5.2 Intransigence includes frivolous motions, failure to appear at deposition and refusal to read correspondence from opposing attorney.²⁸

There were no frivolous motions. Will did not fail to appear at a deposition (none was requested), and there is nothing in the record about failing to read correspondence about the case.

3.5.3 Intransigence includes making trial unduly difficult and unnecessarily increasing legal costs.²⁹

Will's failure to appear at trial did not make trial unduly difficult.

²⁷RP 22 (3/11/2010).

²⁸ *In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997)

²⁹ *In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989)

It did not increase Marie-Claire’s legal costs, but rather decreased them since there was no time spent on rebuttal witnesses or the submission of any testimony on behalf of Will. This does not support an award of fees.

3.5.4 “Intransigent” has been used to describe parties motivated by their desire to delay proceedings or to run up costs.³⁰

Delay has been alleged and addressed herein. The continuance requests (granted) were not inappropriate, and in one case not contested. Costs have not been shown to relate to the Father’s behavior resulting in an increase to the Mother, so there should be no finding of motive on the Father’s part. (Avoiding arrest was his reason for not appearing at trial—but again, the Mother was not harmed, because trial proceeded on her testimony alone.)

Strong disagreements and a highly contested case does not mean that either party is intransigent. Will is not required to “roll over” and abandon his legal claims to contest jurisdiction or the falsity of Marie-Claire’s claims about his son and his parenting. The assertions presented were “he said/she said” without witnesses to corroborate most of the details. Had the court heard from both parties, it would

³⁰*Marriage of MacGibbon*, 170 Wash. App. 722, 287 P.3d 12 (2012)

have had to make a judgment call between them. That Will did not show (faced with the threat of arrest) at trial was a decision that had far-reaching legal consequences. That does not make his opposition to Marie-Claire's petitions intransigent. Marie-Claire has to do more than make a bald assertion—she has to show where and in what category of intransigence his behavior falls. It's not there. This is more in line with what the court found in *MacGibbon* when it said found "the issues here are novel, complex and no doubt charged with a bit of emotion." In that case, the court did not affirm an award of fees and costs. Ample reason exists here to do the same.

3.6 If any intransigence is found, it should be isolated where it can be.

"Where a party's bad acts permeate the entire proceedings, the court need not segregate which fees were incurred as a result of intransigence and which were not." *In re Marriage of Burrill*.³¹ If Will had shown intransigence in several of the categories listed above, then the court might be justified in awarding a lump sum of attorney's fees. But there are no bad acts—no discovery abuses, no

³¹113 Wn. App. 863, 873, 56 P.3d 993 (2002), review denied, 149 Wn.2d 1007 (2003)

unnecessary motions, no foot-dragging. The one category of possible intransigence—failing to appear for trial—did not result in any increase in fees to the Mother. If there was an increase, that specific amount should be isolated—but there is no increase, because she would have had to give her testimony anyway.

3.7 No intransigence here. At the heart of an attorney fee award is making a wronged party (one who has spent more in fees than might ordinarily be expected) whole. Marie-Claire does not come to court with clean hands in this regard—making false assertions about jurisdiction, failing to disclose the child’s home state (at best, forum shopping at worst)—issues she would have had to sort out before Washington could assume jurisdiction over a child who had never before set foot in this state! A three-hour deposition and a pretrial request for a one-month continuance of trial—these are not abuses that cost Marie-Claire any more than might be expected in an “ordinary” case. The jurisdictional question is what created the need for multiple reissuances of the Ex Parte DVPO while UCCJEA conferences took place. That’s not Will’s doing—there’s a process that must be followed (even though it was not followed strictly here).

Will should not be punished for disagreeing with Marie-Claire's actions in depriving him of contact with his son. Awarding 100% of the Mother's fees in this situation will have a chilling effect on parents faced with horrendous allegations, even if ultimately the court rules against the allegedly offending parent. The courts must remain available to litigants to solve disputes and should save its harshest sanctions for clearly egregious conduct. That is not present here.

3.8 Flaws in process as to amount of award. The court further erred in allowing the Father a due process opportunity to respond to the information presented as to the amount of fees. The Mother's billing record to support her fee request was not filed with her post-trial motion. It came in for the first time on reply to this post-trial motion for fees, giving the Father and his attorney no opportunity to review, consider, respond or object to its contents. The fee award should fail on this failure of due process alone. The court did not in its orders indicate the basis for the amount of the award and perhaps did not even review the record submitted. It made no findings about the reasonableness of the billing rate, the hours spent, the type of work done to even ensure that it related to the case at hand.

Something filed for the first time in reply should not be considered.³²

If given the opportunity the Father might have pointed out to the court:

- Multiple examples of double-billing, where up to three timekeepers are billing for the same work. See, for example MFR, MMW and VSV all billing for the same work on 1/27/2010, 1/28/2010 and 1/29/2010 and throughout—“conferring” with each other is done at almost every stage; sometimes there is a “no charge” indicated, but most of the time it is billed by each timekeeper.
- Billing by Washington counsel for work done for and concerning the *Nevada* case. This court has no authority to order fees for work done in an out-of-state proceeding. See, for example, entries on 1/28/2010 (CP 589), 2/1/2010 (CP 590), 2/3/2010 and 2/8/2010 (CP 591), 3/11/2010, 3/15/2010 and 3/18/2010 (CP 597), 4/1/2010 (CP 598), 4/7/2010 and 4/9/2010 (CP 599) and others.
- Billing in this case for work pertaining to criminal actions regarding Will. See, for example, 1/6/2011 (CP 611), 1/11/2011, 1/12/2011 and 1/13/2011 (CP 612) entries.
- The “no charge” for late discovery work defeats the claim that Will was somehow intransigent in this regard—see entries from 2/2/2010 through 12/23/2010. (CP 607)
- At least one billing for a work description that does not match this case—PERSONAL PROPERTY issues are described on 7/15/2010. (CP 604) That wasn’t an issue here.

³² By analogy: We will not consider an issue raised for the first time in a reply brief. ***Cowiche Canyon Conservancy v. Bosley***, 118 Wash.2d 801, 809, 828 P.2d 549 (1992). Any of the trial court's orders subsequent to the orders on appeal are not properly before us.

- Time of \$243 billed for completing the three-page, check-the-box form, the Confirmation of Issues. (CP 599-600)

See *Summary of Billing Charges*, **CP 1351-1358**.

The Court of Appeals did not authorize any do-over to correct this procedural oversight. The court must disregard the new information that came in on reply and find no basis in the Motion to support the amount requested.

3.9 An award of attorney fees exceeded the relief plead in the Mother's Petition.

The American judicial system is based on the premise of due process—notice and the opportunity to be heard. The Mother's Petition, at CP 8, could have included a request for various categories of fees, including attorney fees, but did not. Thus the Father was not put on notice that fees would be requested at trial. Father's counsel objected on the record to this add-on request in opening statements. RP 11-12. Without notice of this issue as a trial issue and a reasonable opportunity to address it, there are no grounds upon which to grant this relief. a court has no jurisdiction to grant relief beyond that sought in the complaint. To grant such relief without notice and an opportunity to be heard denies procedural due process.

In re Marriage of Leslie.³³

3.10 Judge pro tem Doerty should not have ruled on remand without agreement by parties.

Without the parties' consent, the judge *pro tempore* lacks jurisdiction. ***Burton v. Ascol.***³⁴ Judge Fleck gave the parties no opportunity to consent or object to her appointment of Judge Doerty (now retired) to rule on remand. The question of consent to appoint a judge pro tem may be raised at any time. ***State v. McNairy.***³⁵ The Father objected at the first opportunity—in the opening of his Legal Memorandum on Remand. This case having concluded after trial before Judge Doerty in February 2011, it was no longer “pending” in July 2013. A pending case is one in which no final judgment has been entered. Black’s Law Dictionary (1990) defines pending as “begun, but not yet completed; during; before the conclusion; prior to the completion of; unsettled...” The court did enter a final judgment

³³112 Wn.2d 612, 772 P.2d 1013(1989), citing ***Conner v. Universal Utils.***, 105 Wn.2d 168, 172-73, 712 P.2d 849 (1986); ***Watson v. Washington Preferred Life Ins. Co.***, 81 Wn.2d 403, 408, 502 P.2d 1016 (1972); ***Ware v. Phillips***, 77 Wn.2d 879, 884, 468 P.2d 444 (1970).

³⁴105 Wn.2d 344, 351, 715 P.2d 110 (1986)

³⁵ 20 Wn. App. 438, 440, 580 P.d 650 (1978).

after trial. If the case were still considered “pending,” the Father’s CR 60 motion in December 2011 would have been assigned to him. It was not. It was heard and ruled on by Judge Fleck. There is no case law defining an appeal as a “pending” case—on the contrary, unless there is a Stay, orders entered by the trial court remain final orders. RAP 8.1. CR 62. Thus consent was still required by the parties since this was not a pending case. There was no consent, therefore, his ruling is void.

3.11 Attorney fees should be paid to the Father.

There is bad faith and over-reaching in the findings the Mother submitted to the court on remand, some including issues (financial) never even raised at trial, or in the post-trial Motion for Fees—most appearing nowhere in legal authority defining “intransigence.” The court did not give the Mother a do-over pass to raise new issues for the first time on remand, nor submit new factual information outside the trial transcript. This amounts to intransigence, increasing the Father’s fees in having to appeal new erroneous findings that do not even attempt to align themselves with this court’s prior decision. RCW 4.84.185 provides a basis for fees (frivolous actions), as does

RAP 14.2 (costs, including statutory attorney fees to prevailing party).

Furthermore, if the court finds CR 11 implicated in the nature and extent of the requests presented to Judge Doerty for the first time on remand, CR 11 sanctions are to address the amount of the reasonable expenses incurred because of the filing of the pleading, motion or legal memorandum. *Marriage of MacGibbon*, 139 Wn.App. 496, 511, 161 P.3d 441 (2007). In this case, that would be all of the Father's fees beginning with the responding brief on remand, through and included fees related to this appeal from that proceeding.

IV. CONCLUSION

The court should, upon review of the record, recognize that legitimate issues in dispute regarding jurisdiction, as well as the underlying merits of the Mother's claims, were appropriately litigated, without abuse of any kind. The final orders should reflect that there being no basis for an award of fees to the Mother on intransigent grounds, and there being no financial information before the court at trial, each person is to bear the cost of his/her own attorney's fees for trial. The court should award the Father his fees on appeal.

RESPECTFULLY SUBMITTED this 21 day of January, 2014.

MICHAEL W. BUGNI & ASSOCIATES



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Attorney for Appellant/Father

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2014, the original of the foregoing document was transmitted for filing to the Court of Appeals, Division I, by US Mail:

Via US Mail:

Clerk of Court
Court of Appeals, Division 1
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Attorneys for Petitioner via US Mail:

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Dona Harris

Appendix A

Date	Event	CP
2007	Date of accident	798-799
5/10/2007	Date of Order Terminating 7/13/2006 DVPO @ Mo's request	430
6/23/2008	Date of birth: Britton	710
12/15/2009	Flight to SEA from NV	710
1/5/2010	WG flew to NV	710
1/6/2010	MC "cut off communication with Will"	710
1/14/2010	Petition for DVPO filed by MC v WG	726-747
1/19/2010	Father filed action in Nevada	711
1/20/2010	Date of Father's motion (NV) for custody	883-897
1/25/2010	Date Mother hired by Hochberg firm in WA	862
1/26/2010	Summons & Petition for WA Residential Sched filed (WA)	01 to 12
1/26/2010	Reissued DVPO to 2/12/2010	
1/28/2010	DVPO reissued (set over to 2/12/10)/MC says	
1/28/2010	Date MC signed NV Declaration	904
1/29/2010	Initial hearing in Clark Co (NV)/Date of service on Fa (WA case)	753-754
2/8/2010	Mother filed Opposition in NV	
2/12/2010	Reissued DVPO to 2/19/2010	
2/19/2010	Reissued DVPO to 3/2/2010	
2/28/2010	Date of termination on NV lease	1006
3/2/2010	Reissued DVPO to 3/11/2010	
3/11/2010	Hearing before Judge Doerty	RP
3/11/2010	Reissued DVPO to 6/11/2010	
3/12/2010	Order on Assignment/to Doerty (both)	30
3/12/2010	Telephonic conference with Nevada	778
3/12/2010	Telephonic conference (home state = NV)	875
3/15/2010	Clark County (NV) District Court Declaration (alleging details about DV affecting child)	914-916
3/16/2010	Mother files supplemental doc's in NV	911-912
3/18/2010	Hearing in NV resulting in TempOrders	1018
3/25/2010	Mother's briefing filed in NV	905-910
3/29/2010	Response to Petition (Father's) (WA)	31-33
3/31/2010	Motion/Decl for UCCJEA Conference	36-40
4/1/2010	Date of Giuliani Order in NV (NV = jdn)	878-881
4/7/2010	Date of unrecorded UCCJEA conference w/Doerty	919-920
4/7/2010	Minute entry of unrecorded UCCJEA conference	919-920
5/21/2010	Motion to Reissue DVPO (Mo/WA)	45-47
5/21/2010	Declaration of MCP for DVPO	62-67
6/1/2010	Order Consolidating Cases for Trial	80-81
6/1/2010	DVPO Reissued to 7/12/2010 (contc granted)	82-86
6/14/2010	Date for "status check" on case in NV	879
6/24/2010	Declaration of Willard Gibson	566-574
6/25/2010	Reply Declaration of MCP re DVPO	111-144
6/28/2010	Hearing; DVPO reissued to 1/31/2011; sup'd visits	177-180
7/30/2010	Date of joint letter to court (WA)	584-585
9/10/2010	Warrant against Will addressed with arrest	RP 25
"late 2010"	MC began romantic involvement with Naji	822

Appendix A

10/26/2010	Mother's Disclosure of Primary Witnesses	185-187
11/22/2010	Original discovery cut-off date	
11/30/2010	Order Continuing Trial/New Pretrial Conference	195
11/30/2010	Declaration of WG for Continuance	
11/30/2010	Minute entry of continuance of trial (to 1/31/2011)	922
12/1/2010	Proof of service of Rogs on Father noted	606
12/14/2010	WG Dec says that MCP testified in criminal trial on this date	576
12/31/2010	Date of MC Deposition	809
12/31/2010	MC testified intent "going on a family vacation"	933, 943
12/31/2010	MC testified to conditions for Will to see his son	938
12/31/2010	MC testified as to Petition: "It's slightly miss filled out" "there are a few errors"	942
1/1/2011	New discovery cut-off date	193
1/4/2011	Father's Answers to Rogs received by Mother	581
1/18/2011	Order on Pretrial Hearing	205-210
1/21/2011	Mother became engaged to Naji	822
1/28/2011	Motion in Limine (Mo)	217-230
1/28/2011	Declaration of Attorney re Fees	234-235
2/1/2011	Declaration (Fa) Opposing Motion in Limine	283-285
2/1/2011	Trial/evidentiary hearing before J. Doerty	RP
2/1/2011	Trial Exhibit List	544-545
	Motion (Mo) for Attorney Fees	548-556
2/10/2011	Father's Response to proposed Final Documents/presentation	578-579
2/10/2011	Memorandum (Fa) re Attorney Fees	559-574
2/10/2011	Declaration of WG re fees	575-577
2/11/2011	Reply (Mo) re Fees	580-617
2/14/2011	First set of final orders signed	618-636
2/15/2011	Corrected final orders	637-359
2/15/2011	DVPO (Expires 2/1/2111)	638
3/14/2011	Date of Notice of Appeal	810
3/27/2011	Mother posts engagement photos	785-792
Apr-11	Mother moved to Nevada with child	823
6/13/2011	Mother marries Naji Mehanna in NV	795
12/16/2011	Father's OSC for CR60 motion filed	710-801
2/10/2012	Judge Fleck: "since he had counsel . . . Different than people who struggle with these somewhat complex procedures on their own without any attorney at all"	RP 15
2/10/2012	Judge Fleck: "he could not have respectfully said, 'Your Honors, you didn't make a record . . .'"	RP 14
2/10/2012	Judge Fleck: "from the first quarter of 2010 until the first quarter of 2011 when the father had an ability to do all sorts of legal--take all sorts of legal steps"	RP 29