74569-7

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No. 74569-7

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

In re the Marriage of:

NATHAN CHOI,

Appellant,

v.

JOSEPHENE CHOI,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY,

The Honorable William H. Downing

OPENING BRIEF OF APPELLANT

Nathan Choi
pro se

12819 SE 38th Street #262
Bellevue, WA 98006
nchoi@hawaii.rr.com

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A. SUMMARY OF ARGUMENT

In this combined dissolution/relocation trial, the trial court committed legal error by failing to protect the children by denying mandatory RCW 26.09.191(1) and (2)(a)(ii) restrictions on the wife (Josephene Choi) after it found that she had put a sock in their son J.C.'s mouth then hit him several times with a stick on his bottom, such that he experienced significant pain and had bruises and injuries; hit J.C. with a shoehorn 4-5 times per month, sometimes 10 to 20 blows at a time, such that he sometimes had bruises, welts, pain, and discoloring that lasted a week and a half and it hurt for him to sit down; hit their daughter H.C. with a shoehorn and repeatedly with a ruler; and threatened J.C. with an aluminum bat, saying she would rather he was crippled than have a bad attitude. The trial court failed to impose the required restrictions, even knowing and giving credibility to all of these assaults, and also knowing that Josephene's[1] ABH domestic violence assessment found her to be dishonest about her domestic violence, found her denials to be unbelievable, and found her to be not amenable to treatment. In spite of

[1] Solely to enhance readability, the parties shall be referred to in this brief by their first names. No disrepect to either party is intended or should be inferred from this practice.

finding all this information credible, the trial court did not even restrict Josephene from using corporal punishment on the children.

Further, the trial court abused its discretion by denying Nathan's relocation request when its findings on relocation failed to mention four of the RCW 26.09.520 relocation factors, and it entered five relocation findings which are contrary to and unsupported by the record and the trial court's other findings. In addition, the trial court abused its discretion by failing to acknowledge or apply the statutory presumption permitting Nathan to relocate the children. Finally, the trial court used the incorrect relocation standard, the "best interests of the children" standard.

This Court should reverse the trial court's denial of .191 restrictions on Josephene and remand for impositions of both (1) and (2)(a)(ii) restrictions. Further, given her chronic assaults on the children, this Court should reverse the denial of Nathan's relocation request and direct the trial court to enter an order permitting relocation, or, in the alternative, remand for retrial on relocation with directions to enter .191. restrictions on Josephene in the parenting plan, to apply the relocation presumption in Nathan's favor, to apply the correct standard, and to articulate all ten relevant factors.

B. ASSIGNMENTS OF ERROR

1. The trial court abused its discretion by entering as part of Finding of Fact 12 that "consideration of the statutory factors does not produce a conclusion in favor of relocation," denying relocation in its Findings of Fact and Conclusions of Law. CP 214.

2. The trial abused its discretion by entering a Final Parenting Plan that does not allow Nathan to relocate with the children.

3. The trial court abused its discretion by entering Finding of Fact 11 "Accordingly, the Court is today entering a Final Parenting Plan consistent with its view of the children's best interests." CP 211.

4. The trial court abused its discretion by entering as part of Finding of Fact 12 that "the Court concludes that the detrimental effect of the proposed relocation would outweigh any benefit of the change to the children and the father." CP 214-15.

5. The trial court abused its discretion by failing to acknowledge or apply the presumption permitting relocation to Nathan.

6. The trial court abused its discretion by failing to enter findings on relocation factors 3, 6, 8, or 9. CP 214-15.

7. The trial court abused its discretion by entering as part of Finding of Fact 12 "The Court has given consideration to all the factors enumerated in RCW 26.09.520." CP 214.

8. The trial court abused its discretion by entering Finding of Fact 5 that the children are well-bonded with both parents. CP 210.

9. The trial court abused its discretion by entering as part of Finding of Fact 12 that "it would be devastating for them to have the bond with their mother severed." CP 214.

10. The trial court abused its discretion by finding as part of Finding of Fact 12 that the father's desire to move back to Hawaii "would disregard the children's wishes and their best interests." CP 214.

11. The trial court abused its discretion by finding as part of Finding of Fact 12 that the father's request to move back to Hawaii "is not one made in good faith." CP 214.

12. The trial court abused its discretion by finding as part of Finding of Fact 12 that a move to Hawaii would not result in any enhancement of the children's opportunities and quality of life over what they have in their present circumstances. CP 214.

13. The trial court abused its discretion by finding as part of Finding of Fact 12 that Nathan can find employment (likely self-employment as in the past) here that is more favorable than the purported low-pay job offer in Hawaii. CP 214.

14. The trial court committed legal error by finding as part of

Finding of Fact 12 that there are no RCW 26.09.191 restrictions on Josephene. CP 214.

15. The trial court committed legal error by entering Parenting Plan Section II Basis for Restrictions finding that neither RCW 26.09.191(1) nor (2) nor (3) apply to Josephene, and all other provisions that flowed from that error. CP 219.

16. The trial court committed legal error by entering Parenting Plan, Section 3.10 finding there are no limiting factors in Paragraphs 2.1 or 2.2, and all other provisions that flowed from that error. CP 221.

17. The trial court committed legal error by entering Section 3.8 of the Decree terminating all temporary restraining orders and not imposing any restraining order upon Josephene restraining her from using corporal punishment against the children. CP 230.

18. The trial court abused its discretion by entering Decree paragraphs 3.2 and 3.3 and awarding all five Hawaiian condos to Josephene, and concomitantly Decree paragraphs 1.2.3, 1.2.4, 1.2.5, 1.2.6, & 1.2.7. CP 227-29.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The trial court failed to make findings on four of the relocation factors, failed to find that Josephene had RCW 26.09.191 restrictions on her time despite finding that she committed repeated physical abuse

against the children, failed to mention or apply the relocation permitting presumption to Nathan, and entered relocation findings that were both unsupported in the record and contrary to its other findings. Did the trial court abuse its discretion by finding that "consideration of the statutory factors does not produce a conclusion in favor of relocation"? (Assignments of Error 1, 2, 4, 7.)

2. In Kim,[2]This court held that the Child Relocation Act shifts the analysis away from only the best interests of the child to an analysis that focuses on both the child and the relocating person. Here, the trial court focused solely on the best interests of the children. Did the trial court abuse its discretion by entering findings under the wrong legal standard ? (Assignment of Error 3.)

3. The Child Relocation acts requires the court to apply a presumption that relocation will be allowed, and places a burden of production and persuasion on the objecting party. Here, the trial court neither mentioned nor applied the relocation presumption nor the objecting party's burdens. Did the trial court abuse its discretion by deciding relocation without reference to the correct legal standard? (Assignment of Error 5.)

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[2] In re Marriage of Kim, 179 Wn. App. 232, 240, 317 P.3d 555 (2014).

4. Our Supreme Court has held that when a trial court fails to articulate its specific findings regarding each factor, it abuses its discretion.[3] Here, the trial court failed to articulate specific findings on factors 3, 6, 8, and 9. Did the trial court abuse its discretion by entering a relocation decision in the absence of articulated findings on these factors? (Assignments of Error 1, 6, 7.)

5. The trial court found that Josephene regularly was violent toward the children, such that her abuse left marks and pain, and that J.C. was worried that if he spent more time with his mother, she would be more violent toward him. Is there evidence of sufficient quantity to persuade a fair-minded, rational person that the children are well-bonded with their mother and that it would be devastating for them to relocate away from her? (Assignments of Error 5, 9, 12, 14.)

6. It is undisputed that the parenting plan proposed by Nathan for relocation contained provisions for Josephene to have a relationship with the children. Here, one of the trial court's relocation findings was that it "would be devastating for [the children] to have the bond with their mother severed." Did the trial court abuse its discretion by deciding

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[3] In re Marriage of Horner, 151 Wn.2d 884, 894, 93 P.3d 124 (2004).

relocation without reference to the correct legal standard? (Assignments of Error 4, 9.)

7. It was undisputed that the children have over 100 relatives in Hawaii and only two here, whom they almost never see. In addition to finding that Josephene was routinely violent toward the children, the trial court also found that the children had improved in every way under Nathan's care for the past year. Does the record contain substantial evidence to support the trial court's finding that a a move to Hawaii would not result in any enhancement of the children's opportunities and quality of life over what they have in their present circumstances? (Assignment of Error 12.)

8. It is undisputed that Nathan made his millions by investing in Hawaiian real estate, not from practicing law. Here, the trial court made a finding that Nathan could find better-paying employment here than he could in Hawaii. Is there evidence of sufficient quantity to persuade a fair-minded, rational person that Nathan can make more money here than the millions he made in Hawaii? (Assignments of Error 11-13.)

9. In Finding of Fact 9, the trial court found that "there is no challenging the statements clearly, repeatedly and voluntarily made by all the children to the GAL." These statements detailed a history of chronic abuse, some of which caused lasting marks and pain. Further, Josephene's

domestic violence evaluation found that she was lying to cover up her abuse and that she was not amenable to treatment. Is there evidence of sufficient quantity to persuade a fair-minded, rational person that mandatory restrictions under RCW 26.09.191(1) and (2)(a)(ii) should not have been imposed by the trial court? (Assignments of Error 14-17.)

10. Along with denying Nathan's relocation to Hawaii, did the trial court abuse its discretion in awarding all the Hawaii condos to Josephene when she has no intention of living in Hawaii? (Assignment of Error 18.)

D. STATEMENT OF THE CASE

The parties married in 1997 in Hawaii. CP 208. They lived in Hawaii for 12 years until they moved to Bellevue in 2009, and separated on December 12, 2014, the date the Petition For Dissolution was filed. CP 208, 217, 236. In March, 2015, Nathan filed a declaration stating Josephene regularly physically abused their 3 children under the guise of "discipline." CP 313. A Guardian ad Litem was appointed for the children and Commissioner Kahan ordered the same month that the children reside primarily with Nathan. CP 309-10. The Guardian ad Litem's April, 2015 interim report recommended placement with Nathan, as did his final report. CP 296, 331.

On May 18, 2015, Nathan filed a Notice of Intended Relocation of Children to Hawaii, and On June 12 Josephene filed an Objection. CP 107, 298 . On December 12, 2015, at the conclusion of a 4 day trial, the court entered a parenting plan providing for the children to reside primarily with Nathan, and denied Nathan's request for relocation. CP 219. Nathan's Notice of Appeal timely followed. CP 232.

Relevant facts will be included at the beginning of each argument.

E. ARGUMENT

1. THE TRIAL COURT COMMITTED LEGAL ERROR BY FAILING TO IMPOSE RCW 26.09.191(1) AND (2)(a)(ii) RESTRICTIONS ON JOSEPHENE DUE TO HER HISTORY OF DOMESTIC VIOLENCE AGAINST THE CHILDREN

a. Standard of review. This court reviews a trial court's denial of .191 restrictions *de novo*. In re Marriage of Herridge, 169 Wn.App. 290, 297, 279 P.3d 956 (2012). The questions for *de novo* review are whether the denial is supported by the trial court's findings and whether the findings, in turn, are supported by substantial evidence.

b. Relevant Facts. The GAL reported and testified that the children disclosed routine physical abuse by their mother. CP 326. The trial court expressly found that the episodes of physical violence the children disclosed to the GAL did occur, and that the GAL's assessment of

Josephene's physical violence toward the children was credible. Id. The court found "[t]here is no challenging the statements clearly, repeatedly and voluntarily made by all the children to the GAL." CP 212-213. The childrens' disclosures included:

- Josephene put a sock in J.C.'s mouth and hit J.C. several times with a stick on his bottom, such that he experienced significant pain and had bruises and injuries as demonstrated in Exhibit 209. The GAL specifically testified that he believes that Josephene did this to J.C.. 3 RP 550.

- In September, 2015, after the temporary prohibition on corporal punishment was in place, both J.C. and H.C. told the GAL that Josephene had hit J.C. on the back of the head. CP 327.

- J.C. reported to the GAL that "his mother had hit him with the stick on his rear and that it happened approximately once a month." ... "He said the riding whip hurt less than the stick." CP 314.

- J.C. reported to the GAL that he was hit by his mother with the shoehorn approximately four to five times a month. On some occasions she would hit him ten to twenty times on his rear end. Sometimes he was struck on the arm. He admitted that sometimes he got bruises or welts and that the pain and discoloring sometimes lasted a week or a week and a half. J.C. said that it sometimes would hurt when he sat down and he would wince. (Emphasis added.) CP 289, 315.

- Hd.C. told the GAL that she had been hit once with the shoehorn. She said that her mother would sometimes hit her with a ruler on her arms but usually spanked her with her hand. She said that J.C. got hit the most. CP 314.

- J.C. disclosed to the GAL that his mother had never actually hit him with the aluminum bat but that she had threatened to hit him. According to J.C., she said that she would hit him with the bat and that preferred that he be handicapped to having a "bad attitude." CP 289.

- J.C. told the GAL that he is concerned if he spends more time with his mother than alternate weekends for fear that she will hit him more. CP 327.

(Emphases added.) The Associated Behavioral Health domestic violence evaluator reported to the GAL that Josephene was generally untruthful to him, and that her domestic violence evaluation responses were so untruthful as to be worthless. 3RP 543-44. The evaluator specifically found Josephene's denials of domestic violence against the children "not credible," especially her denial of hitting J.C.. Supp. CP __ (Exhibit 208, p.2.)[4] He noted "it appears that her fear of losing the children drives her to deny, avoid, or minimize the truth." Id. at 3. The ABH evaluator reported to the GAL that Josephene is "not amenable" to treatment for domestic violence. 3 RP 545.

The trial court found that the childrens' claims of repeated physical violence from their mother was credible, and that the mother's denials of domestic violence against the children are not credible:

> [The mother] has significantly underreported and minimized her use of physical discipline with the children. Despite being in therapeutic environments where honesty

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[4] The Associated Behavioral Health report on Josephene is supplementally designated concurrently with this brief.

> and moving on are emphasized, she has resisted such support and encouragement and continued to avoid confronting the issue honestly.

CP 211.

> According to the professional evaluating her for Associated Behavioral Health [for domestic violence], her objective test scores corroborated his clinical impression that she was not being candid with him.

CP 212.

> The wife's established pattern and practice of using corporal punishment on the children elevated itself to become the primary concern of the Guardian ad Litem and this, in turn, was the concern that underlay the temporary orders in the case placing the children primarily with their father. It is a concern that justified that treatment. .... <u>there is no challenging the statements clearly, repeatedly and voluntarily made by all the children to the GAL. One child reported bruises or welts with pain and discoloration lasting a week or more. The physical discipline unquestionably occurred and its seriousness has not yet been fully appreciated by the mother who has yet to complete the anger management/parenting classes that have been urged upon her</u>. Thus, this remains as a dominant concern.

CP 212-13. (Emphasis added.) The trial court found that Josephene has an "established pattern and practice" of "using corporal punishment on the children" that was significant enough for her to lose primary custody. CP 212-13.

c. <u>The court's denial of RCW 26.09.191(1) and (2)(a)(ii) restrictions on Josephene is unsupported by its findings and contrary to some of its findings</u>. The trial court's findings not only fail to support

the denial of RCW 26.09.191(1) and (2)(a)(ii) restrictions on Josephene's time with the children, they compel such restrictions.

§ 26.09.191 provides specific criteria for imposing restrictions:

> (1) The permanent parenting plan shall not require mutual decision-making or designation of a dispute resolution process other than court action if it is found that a parent has engaged in any of the following conduct:
>
> (a) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
>
> (b) physical, sexual, or a pattern of emotional abuse of a child; or
>
> (c) a history of acts of domestic violence as defined in *RCW 26.50.010(1) or an assault or sexual assault which causes grievous bodily harm or the fear of such harm.
>
> (2) (a) The parent's residential time with the child shall be limited if it is found that the parent has engaged in any of the following conduct:
>
> (i) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting functions;
>
> (ii) physical, sexual, or a pattern of emotional abuse of a child;

(Emphasis added.) In In re Marriage of C.M.C., 87 Wn. App. 84, 88, 940 P.2d 669 (1997), the trial court found that the father had a history of domestic violence during the marriage but declined to impose a restriction based on subsection (1)(c). The father's argument was that the (1)(c) phrase "which causes grievous bodily harm or the fear of such harm" modified "a history of acts of domestic violence" and thus it was possible

to deny restrictions if the history of domestic violence had not caused grievous bodily harm or fear of such harm. C.M.C., 87 Wn. App. at 87.

This Court disagreed, holding that the (1)(c) phrase "which causes grievous bodily harm or the fear of such harm" modifies only "an assault or sexual assault." Accordingly, this Court held that the history of domestic violence does not have to comprise instances "which cause[] grievous bodily harm or the fear of such harm" in order to form the basis for restrictions under RCW 26.09.191(1)(c). 87 Wn. App. at 88. Similarly, the Court noted that a single incident that causes grievous injury or fear of such injury triggers mandatory RCW 26.09.191(1)(c) restriction. 87 Wn. App. at 88.

The childrens' disclosures, which both the trial court and the GAL found to be credible, establish both a pattern of physical domestic violence as well as at least one incident of domestic violence that caused grievous bodily injury. Further, the GAL and trial court believed J.C.'s report that he feared that Josephene would hit him more if he spent more time with her. The GAL told the court that "[t]he overriding concern about Josephene is her history of physically disciplining and abusing the children on a fairly routine basis." (Emphasis added.) CP 326. The court's findings therefore satisfy the physical abuse requirement, the history of acts of domestic violence requirement, and the fear of grievous bodily

harm requirement of RCW.09.191(1) and (2). On all three of these prongs, each individually, restrictions are mandatory.

The trial court's findings are so at odds with the evidence in this case, evidence to which it gave credence, that the parenting plan the court wrote does not even prohibit Josephene from administering corporal punishment to the children. This omission is not reasonable. These children need protection and the trial court failed to provide it.

The trial court's denial of RCW 26.09.191(1) and (2)(a)(ii) restrictions on Josephene is therefore unsupported by and directly contrary to its findings. The evidence the trial court found credible mandates restrictions under both RCW 26.09.191(1) and (2).

Because of the overwhelming evidence of the mother's domestic violence against the children, the trial court committed legal error in failing to impose RCW 26.09.191(1) and (2)(a)(ii) restrictions on Josephene. Reversal is required for imposition of restrictions against Josephene.

2. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING RELOCATION WHEN ITS FINDINGS AND CONCLUSIONS FAIL TO MENTION FOUR OF RCW 26.09.520's RELOCATION FACTORS, IT ENTERS FINDINGS ON FIVE FACTORS WHICH ARE UNSUPPORTED IN THE RECORD AND CONTRADICT ITS OTHER FINDINGS, IT FAILS TO ACKNOWLEDGE OR APPLY THE PRESUMPTION PERMITTING NATHAN TO

RELOCATE, AND IT APPLIES THE BEST INTERESTS OF THE CHILDREN STANDARD. REVERSAL IS REQUIRED

a. Standard of Review. On review, this court determines whether the court's findings are supported by the record and whether they, in turn, reflect consideration of the appropriate factors. In re Marriage of Horner, 151 Wn.2d 884, 896, 93 P.3d 124 (2004). This court defers to the trial court's ultimate relocation ruling unless it is manifestly unreasonable or based on untenable grounds or untenable reasons under the abuse of discretion standard. Horner, 151 Wn.2d at 893. A court abuses its discretion where the court applies an incorrect standard, the record does not support the court's findings, or the facts do not meet the requirements of the correct standard. Id. at 894. Trial court findings are upheld if they are supported by substantial evidence. In re Marriage of McNaught, 189 Wn. App. 545, 561-62, 359 P.3d 811 (2015). 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 Fahey, 164 Wn.App. 42, 55, 262 P.3d 128 (2011).

b. Relevant Facts. Nathan testified that he sought relocation for many reasons: up until 2009, Hawaii was his lifelong home. CP 236. He has no relatives in the Puget Sound area but he has over 100 relatives in Hawaii who are ready to assist him and the children. 3 RP 559,

4 RP 589. Josephene also has extended family in Hawaii; her only relatives here are her parents, whom the children do not see often. 3 RP 452; 4 RP 594. Nathan told the court that with his family's help, food, lodging, and work in Hawaii are now all set up for him and the children. 4 RP 589.

His primary source of income is real estate deals, from which he made millions in Hawaii and which he does with the Korean community, to which he has much better access in Hawaii. 1 RP 67-68. Josephene described their successful advertising efforts in Hawaii and described Nathan as "very famous there." 2 RP 202-03. He described his real estate dealings to the court. 1 RP 69-80.

As Josephene's attorney admitted in opening arguments, Nathan made several million dollars in the Hawaii real estate market. 1 RP 13. Practicing law was not his main source of income; it was in Hawaiian real estate that Nathan made his millions. 1 RP 71. As Nathan told the court, he knows how to make money in the Hawaii real estate market. 1 RP 67. He described his Hawaii real estate deals for the trial court. 1 RP 70-72. Nathan has not made any money in the mainland real estate market; only in the Hawaiian market. Id.

Further, Nathan explained at length that Hawaii has a very strong Korean culture and he wants the children to be in that culture. 4 RP 599.

Nathan described with the particular strengths of the Hawaiian Korean culture and the numerous prominent Koreans in and from Hawaii. 4 RP 596-98. He believes that Hawaii can provide more successful Korean American role models for the children, and listed many of those role models for the court. 4 RP 599.

The GAL told the trial court that he did not know of any reason why Josephene couldn't move back to Hawaii. 2 RP 346-7. Josephene admited "there is no reason" she cannot move back to Hawaii, but she simply prefers Bellevue. 3 RP 466-67. She said that she does not know if she would move to Hawaii if Nathan relocates, even though she has no job, because she wants "to be happy." 3 RP 457, 467. Nathan told the court that he believes Josephene's objection is in bad faith because that her main concern is staying with her boyfriend who lives in this area. 2 RP 283; 3 RP 561.

Josephene chose not to see the children at all from December 20 until Valentine's Day, and chose to spend the previous Christmas and New Year's Eve with her boyfriend instead of her children. 2 RP 291, 4 RP 584. According to the GAL report, she chose to have "limited in-person contact with the children from December 22, 2014" onward, as of the report date in April 2015. CP 271. Nathan allows children to text and call their mother when they're with him. 3 RP 551.

Nathan testified that while the children love and are bonded with both parents, he believes they are more strongly bonded with him, largely because "they know they're not going to be hit" 3 RP 559. He disciplines them by taking away their phones: "They really don't like that." 3 RP 559.

The Guardian ad Litem told the court that "if the physical disciplining of the children is as bad as has been portrayed, it would be worse for them to be separated from their father." 2 RP 342-43. He did not specifically evaluate the case for relocation, nor did he apply the relocation presumption in Nathan's favor or analyze the eleven relocation factors. Nevertheless, he offered an opinion based primarily on the "best interests of the children." 3 RP 545-47. According to the GAL, "the children didn't express to me an overriding desire to go back to Hawaii. They like Hawaii. But from my conversations and reading the materials, it's Mr. Choi's decision and desire to go back to Hawaii. 2 RP 324. J.C.'s best friend Aaron Kim lives in Hawaii and they have been to Disneyland and other places together. 2 RP 373. J.C. loves to travel. 2 RP 374.

Both Nathan and Josephene testified that they have been devoted churchgoers and that now it is uncomfortable because the whole church community knows about the divorce. Id., 3 RP 466. Nathan explained that the children are being ostracized at church because of the divorce and that they have very few Korean friends here now. 3 RP 592; 4 RP 592.

The childrens' grades improved when they went to live with Nathan. Exhibit 105. Nathan testified that he is the one who helps them with their schoolwork and teaches them how to do it: "there's just no way they're going to get the kind of grades they're getting without my assistance." 3 RP 558-59. Nathan told the court that he thinks Bellevue schools are slightly better than the Hawaii school the children would attend. 3 RP 558.

The trial court found that ..."for the past year, the children have been primarily residing with their father and they have been thriving. They are doing extremely well in school where their tardiness and unexcused absences have been greatly curtailed." "... the father seems to be doing an admirable job providing care for them. In apparent recognition of this fact, the mother has neither sought to increase her time with the children nor to fully utilize the time available to her. (It is noteworthy that, alone or with her new friend, she took five trips to Korea during the past twelve months.) CP 213.

The trial court also found that "the mother has neither sought to increase her time with the children nor to fully utilize the time available to her." CP 213. The trial court made no oral findings on relocation. It entered the following written findings on relocation.

> Accordingly, the Court is today entering a Final Parenting Plan consistent with its view of the children's best interests." ... "Implicit in the above is that the father's request to relocate to Hawaii with the children will be denied. The Court has given consideration to all the factors enumerated in RCW 26.09.520. As was noted by the GAL, the father's desire to move to Hawaii reflects his own personal desire and would disregard the children's wishes and their best interests. The request is not one made in good faith if good faith is taken to encompass consideration of those factors. The children have equally strong bonds with both parents and it would be devastating for them to have the bond with the mother severed. There has been no prior agreement of the parties that such a move would be made. There are no RCW 26.09.191 restrictions on either of the parties. A move to Hawaii would not result in any enhancement of the children's opportunities and quality of life over what they have in their present circumstances. The Court is convinced that Mr. Choi can find employment (likely self-employment as in the past) here that is more favorable than the purported low-pay job offer in Hawaii. It is true that Skype and Facetime have improved the quality of transoceanic communications (just as it is true that President Obama hails from Hawaii and that the Aloha State offers better surfing than the Evergreen State) but consideration of the statutory factors does not produce a conclusion in favor of relocation. To the contrary, the Court concludes that the detrimental effect of the proposed relocation would outweigh any benefit of the change to the children and the father.

CP 214.

c. <u>The trial court's findings and conclusions do not indicate consideration and balancing of factors 3, 6, 8, or 9 of the eleven RCW 26.09.520 child relocation factors</u>. That statute contains

eleven factors,[5] yet the trial court did not indicate its consideration of the following statutory factors:

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[5] 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

(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. The trial court made no finding on this factor and its findings evinced no consideration or balancing of this factor, which weighed heavily in favor of Nathan's relocation as he was the primary parent and the trial court found that Josephene "has neither sought to increase her time with the children nor to fully utilize the time available to her." CP 240. Further, the Guardian ad Litem opined that "if physical disciplining of the children is as bad as has been portrayed, it would be worse for them to be separated from their father." 3 RP 342-43. Upon later learning that Associated Behavioral Health had evaluated Josephene for domestic violence and found her "not amenable to treatment," the GAL indicated that it "strengthen[ed] my recommendation that the children live with their father." 3 RP 545.

(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. The trial court made no

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(11) For a temporary order, the amount of time before a final decision can be made at trial.

reference to this factor. It is simply unknown how this factor weighed in the outcome.

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. In addition to reference to Skype and Facetime improving the quality of transoceanic communications, which would weigh in favor of relocation, the trial court's findings do not indicate whether any alternative arrangements were available in this case or how this factor weighed in its relocation decision. The trial court did awarde Josephene 5 condos which she can reside in or use to visit. She has numerous relatives in Hawaii, and she was found to travel 5 times to Korea within a year for nonbusiness related reasons. Thus she would be more than capable to visit the children..

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also. The trial court made no mention of this factor, which weighs heavily in Nathan's factor, as Josephene testified that there was no reason she could not relocate.

d. When a trial court fails to make findings sufficient to review its relocation decision, the decision must be reversed and remanded. In relocation cases the trial court must consider each of the factors in RCW 26.09.520 and document its findings in the findings of fact or, failing that, the record must reflect that substantial evidence was entered on each factor and the court's oral ruling must reflect that the court considered each factor. In re Marriage of Horner, 151 Wn.2d 884,

894, 93 P.3d 124 (2004). The trial court must find by a preponderance of the evidence that the factors show that relocation would be more detrimental than beneficial, and it must make findings on the record regarding each of the factors. Horner, 151 Wn.2d at 895-97. In re Marriage of Kim, 179 Wn. App. 232, 240-42, 317 P.3d 555 (2014). When it fails to articulate its specific findings regarding each factor, a trial court abuses its discretion. Horner, 151 Wn.2d at 894.

In Horner, our Supreme Court confronted an argument that "there is nothing in the statute or in the legislative history supplied by [the mother] that requires a court to orally address *each and every statutory factor on the record.*" [citing Court of Appeals decision] (Emphasis in original.) Our Supreme Court emphatically rejected this argument: "In reviewing whether the trial court abused its discretion, we first consider whether trial courts must consider all of the child relocation factors. We hold that they must." Id. at 894.

Continuing, the Supreme Court explained: the factors are "conjunctive" and "equally important" and consideration of "all the factors is logical because they serve as a balancing test between many important and competing interests and circumstances involved in relocation matters." p. 894. The Supreme Court underscored that "all" means "all":

> We further require that trial courts must consider each of the child relocation factors. These requirements will ensure that trial courts consider the interests of the child and the relocating person within the context of the competing interests and circumstances required by the CRA. We next consider the manner in which trial courts must document their consideration of each child relocation factor. Ideally, trial courts will enter findings of fact on each factor. Findings of fact play a pivotal role upon review: "[t]he purpose of findings on ultimate and decisive issues is to enable an appellate court to intelligently review relevant questions upon appeal, and only when it clearly appears what questions were decided by the trial court, and the manner in which they were decided, are the requirements met."

Id. at 895-96.

When a trial court fails to enter specific findings on each factor, the trial court looks to see if substantial evidence was presented on each factor and whether the "trial court's findings of fact and oral articulations reflect that it considered each factor." Horner, 151 Wash.2d at 896. A trial court abuses its discretion if it does not satisfy either of these methods of documenting its consideration of the child relocation factors. Id.; In re Marriage of McNaught, 189 Wn. App. 545, 556, 359 P.3d 811 (2015) at 556.

To drive home this point, the Supreme Court explained how to analyze a case in which the factors have not been clearly articulated by the trial court:

> When this court considers whether a trial court abused its discretion in failing to document its consideration of the child relocation factors, we will ask two questions. Did the trial court enter specific findings of fact on each factor? If not, was substantial evidence presented on each factor, and do the trial court's findings of fact and oral articulations reflect that it considered each factor? Only with such written documentation or oral articulations can we be certain that the trial court properly considered the interests of the child and the relocating person within the context of the competing interests and circumstances required by the CRA. The trial court abused its discretion because it failed to satisfy either of these methods of documenting its consideration of the child relocation factors. It failed to satisfy the first method because it did not enter specific findings of fact on each child relocation factor. It failed to satisfy the second method because the record does not reflect that substantial evidence was presented on each child relocation factor, and the trial court's written findings and oral ruling do not reflect that it considered each factor. Without a discussion of each child relocation factor in the trial court's findings or oral opinion, the trial court's conclusory findings that "the detrimental effects of the relocation outweigh the benefit of the change to the child and Petitioner," and "[a]fter analysis of the factors for consideration outlined in RCW 26.09.520, the court has determined Respondent has rebutted the presumption that the relocation should be permitted" are insufficient because we cannot review the trial court's application of the facts to the child relocation factors. In other words, we cannot review the trial court decision because its basis is unclear. We reverse the Court of Appeals."

Id. at 896-97. (Emphasis added.)

Horner thus requires this Court to ask two questions. Did the trial court enter specific findings of fact on each factor? If not, was substantial

evidence presented on each factor, and do the trial court's findings of fact and oral articulations reflect that it considered each factor?

Here, it is indisputable the the trial court's findings of fact omitted four of the 10 necessary factors, thus the answer to the first question is no. (factor 11 is not necessary as it is not a temporary order).

In this case, substantial evidence was presented on each factor; yet the trial court did not render oral findings. "What I will do is prepare written orders." 4 RP 680. Neither do the trial court's findings of fact in general reflect that it considered each factor or all of the substantial evidence presented relevant to each factor. Relocation factors were not addressed apart from one page of the findings and two lines on the following page, and relocation was not mentioned anywhere else in the final orders (other than the mandatory recitation in the parenting plan). CP 241-42. Therefore the answer to the second question must also be no.

The Supreme Court has clearly stated that when the answer to both these questions is "no," reversal is required. 151 Wn.2d at 896-97. Accordingly, Horner compels reversal here.

This Court has proven itself willing to apply Horner strictly. In Bay v. Jensen, 147 Wn. App. 641, 655, 196 P.3d 753 (2008), the trial court neither issued written findings on the 11 relocation factors nor on the presumption favoring relocation, though the court made oral statements

that arguably addressed the seventh and tenth factor. Relying on Horner, the Court of Appeals held that because the other nine factors were unaddressed, it was an abuse of discretion to decide on relocation without addressing all 11 statutory factors on record. Accordingly, this Court reversed. 147 Wn. App. at 655. The same analysis and conclusion should result here.

A recent unpublished citable case reversed denial of relocation under remarkably similar circumstances to those in this case. In re Marriage of Dunn, 45042-9-II (July 28, 2015) reversed the denial of a relocation request by a primary parent because the trial court did not enter any written findings of fact and failed to address several of the child relocation factors. The trial court instead stated that it was basing its decision entirely on two factors: (1) "stability [of the child], " and (2) "honesty with the [c]ourt." This Court held that the trial court failed to address the third, seventh, eighth, and ninth factors.

"Moreover, the trial court ignored the presumption in favor of relocation, which should have been in [primary parent's] favor because she was the primary residential parent under the June 2012 parenting plan, and instead relied on a "best interest" of the child standard rather than balancing whether the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person."

"Because the trial court failed to address each of the relevant factors, failed to acknowledge the presumption in favor of relocation, and applied the incorrect legal standard, it abused its discretion. Accordingly, we reverse its denial of [primary parent's] relocation request and remand for a new hearing on this matter."

Dunn is remarkably similar to the instant case. As in Dunn, the trial court failed to make findings regarding four of the relocation factors. And as in Dunn, the trial court failed to acknowledge or apply the presumption in favor of relocation by the primary parent. Just as in Dunn, the trial court relied on the erroneous "best interest of the children" standard. While only persuasive authority, Dunn provides useful guidance about how to resolve this case.

e. **Five of the trial court's six findings are not supported by the record.** Five of the trial court's six findings are unsupported in the record, and reflect a failure to consider the substantial evidence presented. Several of the findings are contrary to other findings made by the trial court.

(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. On this factor, the trial court found "The children have equally strong bonds with both parents and it would be devastating for them to have the bond with the mother severed." CP 214.

This finding flies in the face of the considerable evidence of chronic domestic violence against the children by the mother; domestic violence which undeniably impacts the quality and stability of childrens' relationship with the violent parent. "J.C. told me that he is concerned if he spends more time with his mother than alternate weekends for fear that she will hit him more." CP 327.

Further, this relocation finding contradicts the trial court's finding that "the mother has neither sought to increase her time with the children nor to fully utilize the time available to her." CP 213. She chose not to see the children at all from December 20 until Valentine's Day, and chose to spend the last Christmas and New Year's Eve with her boyfriend instead of her children. 2 RP 291, 3 RP 584. According to the GAL report, she chose to have "limited in-person contact with the children from December 22, 2014" as of the report date in April 2015. CP 271.

The evidence shows that the trial court's finding that "it would be devastating for them to have the bond with the mother severed" is unsupported in the record insofar as relocation is concerned. Nathan did not request that Josephene's bond be severed, nor would relocation sever the bond. The devastation in Josephene's relationship with her children that has occurred has been due to domestic violence and her lack of

willingness to spend time with them. A finding that the children are equally bonded with both parents is simply unsupported in the record.

(2) Prior agreements of the parties - the trial court correctly found that the parties did not have a specific agreement to return to Hawaii.

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191. The trial court found that neither parent was subject to such limitations. Yet this finding is directly contrary to the trial court's other findings on domestic violence, which have been discussed in detail in the previous section.

Accordingly, the trial court's finding that neither parent was subject to .191 limitations was unsupported by its own findings that it gave credibility to the childrens' claims of regular physical violence, bruises, welts, and lasting pain. Further, the trial court found that the mother minimizes her violence toward the children and had not completed treatment to resolve this problem. The evidence and findings on domestic violence will be discussed in more detail below. The mother properly should have been subject to .191 limitations; therefore the trial court's finding on the factor is unsupported by substantial evidence.

(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. The trial court found that "the father's desire to

move to Hawaii reflects his own personal desire and would disregard the children's wishes and their best interests. The request is not one made in good faith if good faith is taken to encompass consideration of those factors." CP 214. The trial court fails to apply the correct standard to Nathan's wish to relocate.

Nathan testified that he sought relocation for many reasons: he has approximnately 100 relatives in Hawaii ready to assist him and the children, and none here; he can make money easily there but not here; the children are being ostracized here; and other reasons.

As Josephene's attorney admitted in opening arguments, Nathan made several million dollars in the Hawaii real estate market. 1 RP 13. Practicing law was not his main source of income; it was in Hawaiian real estate that Nathan made his millions. 1 RP 71.

In Kim, this Court held that the parent proposing relocation need only offer their reasons for relocating; the parent is "under no obligation to prove an 'overwhelming' basis for the move." 179 Wn. App. 249-50. Further, in determining the interests of the relocating party, the court may consider the availability of extended family. McNaught, 189 Wn. App. at 561-62. And our Supreme Court has found that even a relocating parent's "interests" can be sufficient reason for relocating: "particularly important

in this regard are the interests and circumstances of the relocating person." Horner, 151 Wn. 2d at 894.

Given the guidelines set forth in Kim, McNaught, and Horner, it is clear that the trial court misapplied the law on this factor. Further, the trial court erroneously conflated this factor with a "best interest of the children" standard. The availability of Nathan's very large extended family in Hawaii, his preference for Hawaii, his lifelong roots in the state, and his superior comfort level with business operations in Hawaii, and his proven track record of his ability to make millions in Hawaii strongly contradict the trial court's finding that Nathan's desire to move is not in good faith. The trial court's finding is unsupported in the record.

(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 trial court found that "[a] move to Hawaii would not result in any enhancement of the children's opportunities and quality of life over what they have in their present circumstances. CP 214. Here, the trial court is ignoring the quality of life, resources, and opportunities available to the relocating party, Nathan. Ample testimony supported that Nathan would experience better quality of life if he lived close to his numerous family, he would experience better business opportunities, and he would be happier. Further, as Nathan explained at length, Hawaii has a very strong Korean culture and he wanted the children to be in that culture. And

surely the children's quality of life would be enhanced by being in the presence of 100 extended relatives rather than 0, as they currently are.

The trial court made a baffling statement that "it is true that President Obama hails from Hawaii and that the Aloha State offers better surfing than the Evergreen State," but the import of this statement in its reasoning is unknowable. CP 214. Accordingly, this finding is unsupported by substantial evidence because it ignores the benefits to Nathan and does not consider the benefit to the children of living among extended family members.

(10) The financial impact and logistics of the relocation or its prevention. The trial court found that "The Court is convinced that Mr. Choi can find employment (likely self-employment as in the past) here that is more favorable than the purported low-pay job offer in Hawaii. CP 241. Yet this finding, which implies that better financial opportunities are available to Nathan here than in Hawaii, is unsupported by the record. As Nathan testified and Josephene admitted in opening, Nathan made the family' millions not by practicing law, but by engaging in real estate deals. 1 RP 13, 67, 70-72. It is undisputed that Nathan's ability to generate income is tied to his knowledge of the Hawaiian real estate market. Accordingly, this finding is unsupported in the record.

The trial court clearly abused its discretion by denying relocation when it failed to make findings on four of the relocation factors, its findings on five of the remaining six factors are unsupported in the record, it applied the incorrect "best interests of the children" standard, and failed to acknowledge or apply the presumption that Nathan will be permitted to relocate with the children. Under these circumstances, Horner, Kim, Bay and McNaught require reversal.

f. The trial court's findings and conclusions do not indicate that the court considered and applied the presumption in favor of Nathan's relocation. Nathan was entitled to the statutory presumption favoring his relocation with the children. Under the parenting plan in place at the time as well as the plan ordered at the end of trial, he is the primary parent. The parenting plan in place at the time of a proposed relocation is used to determine primary residential parenting status. In re Parentage of R.F.R., 122 Wn. App. 324, 330 93 P.3d 951 (2004). Temporary plans entered by a commissioner are sufficient to support a parent's status as primary parent and to entitle that parent to the presumption. Id. at 330.

"The [Child Relocation Act] shifts the analysis away from only the best interests of the child to an analysis that focuses on both the child and the relocating person. RCW 26.09.520; In re Marriage of Kim, 179 Wn.

App. 232, 240, 317 P.3d 555 (2014). The CRA creates a rebuttable presumption that relocation will be permitted. Horner, 151 Wn.2d at 887.

To rebut this presumption, an objecting party must demonstrate "that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following [child relocation] factors." Id. The factors are not weighted or listed in any particular order. Id."

"The Washington Supreme Court has emphasized the importance of the interests of the relocating person, noting that most of the 11 factors refer to the interests and/or circumstances of the relocating parent and that " 'the [relocation act] both incorporates and gives substantial weight to the traditional presumption that a fit parent will act in the best interests of ... the child and the relocating person.'" Kim, 179 Wn. App. 243.

The Horner court emphasized that the interests and circumstances of the relocating parent are "[p]articularly important" and that, "[c]ontrary to the trial court's repeated references to the best interests of the child, the standard for relocation decisions is not only the best interests of the child." Id. at 894. Instead, "trial courts consider the interests of the child and the relocating person within the context of the competing interests and circumstances required by the [relocation act]." Id. at 895.

In determining the interests of the relocating party, the court may consider the availability of extended family and affordability of housing. McNaught, 189 Wn. App. at 561-62.

This Court has upheld the centrality of the relocation presumption. In Kim, the nonrelocating husband argued that relocation will harm the children by severing the children from their father and extended family support system, school programs, friends, and extracurricular activities. The Court of Appeals responded by holding that "Mr. Kim's argument underscores his misunderstanding of the relocation act. He overlooks the statutory presumption that a proposed relocation will benefit the child and, therefore, will be granted. Horner, 151 Wn.2d at 895. By focusing on the best interests of the children, Mr. Kim ignores the importance of the relocating parent's interests and circumstances in the balance. Id. Thus, he limits his analysis to evidence of how the children may be harmed by a move but ignores the benefits to Ms. Kim and the children." 179 Wn. App. at 243.

Further, while the Kim GAL had concluded that relocation was "not best for the children," this Court found that the GAL's opinion was of limited usefulness as it ignores the relocation statute's presumption that a proposed relocation will benefit the child. 179 Wn. App. at 249:

Here, nowhere in the trial court's brief findings on relocation does the court refer to or apply RCW 26.09.520's presumption that the relocation of the children will be permitted. As far as the trial court's decision is concerned, it is as if the presumption does not exist. If the trial court did apply the presumption, it is impossible to know how it was applied or what factors rebutted the presumption. There is nothing to indicate whether the trial court gives any weight, let alone substantial weight, to the traditional presumption that a fit parent will act in the best interests of ... the child and the relocating person.'" Kim, 179 Wn. App. 243. This failure is an abuse of discretion. Horner, 151 Wn.2d at 887.

The GAL did not analyze relocations but used the incorrect "best interest" analysis to offer a rather offhand opinion that they should not relocate. Similar to the GAL in Kim, the GAL's opinion on relocation used the incorrect "best interests" standard and admitted in testimony that he had not considered the relocation factors or applied the presumption. Accordingly, just as in Kim, the GAL's opinion on relocation is of limited or no usefulness.

The presumption favoring relocation is vital, especially since the objecting party actually bears a double burden of overcoming it. "Even if the objecting party rebuts the presumption, the burden of persuasion remains with that party. In re Marriage of McNaught, 189 Wn. App. 545,

359 P.3d 811 (2015). "Because the relocation presumption reflects a legislative policy decision and Washington case law requires a quantum of proof to rebut it, this presumption shifts the burdens of production and persuasion to the parent opposing the relocation." 189 Wn. App. 549.

In McNaught, this Court confronted an objecting party who contended that the presumption favoring location could be rebutted by a mere preponderance finding of sufficient evidence. As this Court made clear, the presumption is far more difficult to overcome:

> [The objecting party] contends that this presumption has a limited purpose. It places on the opposing party the burden of producing sufficient evidence to overcome the presumption by a preponderance of the evidence. Once this occurs, the presumption disappears, and the court weighs the evidence without regard to the presumption. Implicit, but unstated, in [the objecting party]'s argument is the view that rebuttal of the presumption in this manner shifts the burden of persuasion to the person requesting the move.
>
> The significant yet surmountable hurdle the legislature established for the opposing party supports the view that the presumption does not disappear upon a party's production of evidence. If it disappeared as suggested, the presumption would do little to further the legislature's apparent purpose of generally favoring relocation. As we apply the presumption, it provides the standard the trial court uses at the conclusion of trial to resolve competing claims about relocation. This approach furthers the legislature's policy reflected in the presumption.

189 Wn. App. 555-56. From the trial court's findings, it is unclear whether or how the court held Josephene to her double burdens of production and

persuasion; and if the court held her to it, it is impossible to ascertain how she met each burden. Therefore, this court cannot review the trial court's reasoning and remand is required.

g. The trial court erroneously applied the "best interest of the children" standard to its relocation decision. The trial court stated in its findings 11 and 12:

> Accordingly, the Court is today entering a Final Parenting Plan consistent with its view of the children's best interests. Although denominated "final," there is no reason why the parties (once they have overcome their present antagonism and can focus on the joint task of seeking what's best for the kids) cannot find way to improve upon it by agreement. Implicit in the above is that the father's request to relocate to Hawaii with the children will be denied.

CP 214. (Emphasis added.) As discussed above, "best interests of the children" is the incorrect standard for relocation, and application of that standard is an abuse of discretion. Horner, 151 Wn.2d at 894. This Court has ruled similarly in Kim: "By focusing on the best interests of the children, Mr. Kim ignores the importance of the relocating parent's interests and circumstances in the balance. Thus, he limits his analysis to evidence of how the children may be harmed by a move but ignores the benefits to Ms. Kim and the children." 179 Wn. App. at 243.

The trial court here failed to apply the presumption favoring relocation to Nathan, failed to take into account the benefits to Nathan of

relocation, and instead applied the "best interests of the children" standard rather than considering the benefits to Nathan as well. Application of this erroneous standard is an abuse of discretion and requires reversal.

3. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO AWARD ANY OF THE PARTIES' FIVE HAWAII CONDOS TO NATHAN; ON REMAND, SOME OF THE HAWAII CONDOS SHOULD BE AWARDED TO NATHAN IN EXCHANGE FOR AN OFFSETTING SHARE OF TACOMA PLAZA OR THE PROFITS THEREFROM

The trial court awarded Josephene the parties' five Hawaii condos. CP 227-28. Yet Josephene testified at trial that she was not likely to live in Hawaii even if relocation was granted. Nathan is the party who is highly motivated to live in Hawaii and feels a stronger connection there, as his entire extended family is there, he grew up there, he received his education there, and he had a successful real estate business there. Accordingly, Nathan requests that he be allowed to choose two of the five Hawaii condos to be awarded to him, for himself and the children to live in and to use. The value of the two condos can be offset by awarding Josephene an increased share in the Tacoma property or the profits therefrom, if it already sold.

F. CONCLUSION

The trial court committed legal error when it failed to impose RCW 26.09.191(1) and (2)(a)(ii) restrictions on Josephene after it found

that she had: put a sock in J.C.'s mouth and hit J.C. several times with a stick on his bottom, such that he experienced significant pain and had bruises and injuries as demonstrated in Exhibit 209; hit J.C. with a shoehorn 4-5 times per month, sometimes 10 to 20 blows at a time, such that he sometimes had bruises, welts, pain, and discoloring that lasted a week and a half and it hurt for him to sit down; hit H.C. with a shoehorn and repeatedly with a ruler; and other incidents. The trial court failed to impose the required restrictions, even knowing and giving credibility to all of these assaults, and also knowing that Josephene's ABH domestic violence assessment found her to be dishonest about her domestic violence, found her denials to be unbelievable, and found her to be not amenable to treatment for her domestic violence. In spite of all this information, the trial court did not even restrict Josephene from using corporal punishment on the children.

This Court should reverse the trial court's denial of .191 restrictions on Josephene and remand for impositions of both (1) and (2)(a)(ii) restrictions.

Further, the trial court abused its discretion by denying relocation when its findings on relocation failed to mention four of the RCW 26.09.520 relocation factors and it entered five relocation findings which are contrary to and unsupported by the record and the trial court's other

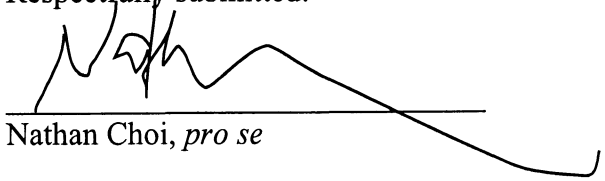
findings. In addition, the trial court abused its discretion by failing to acknowledge or apply the statutory presumption permitting Nathan to relocate the children.

Moreover, given Josephene's chronic assaults on the children, remand on relocation is not the most efficient use of judicial resources. Instead, this Court should reverse the denial of Nathan's relocation request and direct the trial court to enter an order permitting relocation. This Court has before it all the facts needed to determine on review that proper consideration of Josephene's chronic domestic violence, together with consideration of the omitted relocation factors and application of the presumption in Nathan's favor, compel a conclusion in favor of relocation.

In the alternative, this Court should remand for a new relocation trial, in which Josephene is determined to have .191 restrictions in place, the presumption permitting relocation is applied to Nathan, and in which the correct standard is applied and all ten relevant factors are articulated.

DATED this 7th day of September, 2016.

Respectfully submitted:



Nathan Choi, *pro se*

CERTIFICATION OF SERVICE

I, _____Nathan Choi___, swear under penalty of perjury of the lawas of the State of Washington that I am over eighteen and competent to testify in court. I certify that on the ___9_____ day of September, 2016, I caused a true and correct copy of of **Opening Brief of Appellant** and **Supplemental Designation of Clerk's Papers** to be served on:

Gary Taylor, WSBA # 6305
2033 6th Ave. Suite 800
Seattle, WA 98121
(206) 448-4983
gjt777@aol.com

VIA FIRST CLASS MAIL, postage prepaid.

SIGNED in ___Bellevue_____, Washington, this ____9_____ day of September, 2016.

____Nathan Choi_____

_____
[PRINT NAME]