No. 100781-7

SUPREME COURT OF THE STATE OF WASHINGTON

In re the Marriage of:

VANESSA M. WEAVER,

Petitioner,

v.

RICHARD J. WEAVER,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

In a lengthy, careful, published opinion, the Court of Appeals unanimously affirmed the trial court's ruling denying Vanessa Weaver's proposed relocation of her children, who have significant special needs, to the Hoquiam area far from family and necessary resources. Hoquiam is hours from Wenatchee, the only place the boys had ever lived and where they were thriving, surrounded by Richard's large and supportive extended family.

After carefully considering the factors in RCW 26.09.520, and applying a presumption favoring Vanessa's relocation, the trial court concluded that Richard had rebutted the presumption by showing that the detrimental effects of relocation outweighed its benefits to the children and Vanessa. More than ample evidence supported the trial court's findings, including that the older son preferred to live with his father, that the younger son with autism required consistency, and that Vanessa made irresponsible decisions that Richard would

rectify, greatly enhancing the boys' stability and securing their emotional and educational well-being. The denial of relocation was supported by substantial evidence, well within the trial court's discretion, and properly affirmed by the Court of Appeals.

Review is not warranted under RAP 13.4. In an attempt to demonstrate otherwise, the petition for review mischaracterizes the rulings below. The Court of Appeals' decision affirming the trial court's ruling is fully consistent with this Court's and its own precedent. Nothing suggests the Court of Appeals gave weight to facts inherent in *any* relocation, as Vanessa contends, thereby "inverting" the presumption favoring relocation. To the contrary, the Court of Appeals—like the trial court—explicitly applied a presumption favoring Vanessa's relocation. The Court of Appeals did not, as Vanessa claims, hold that a relocating parent must always present evidence a child will succeed after relocating. The Court of Appeals, like the trial court, simply considered the

unique facts of this case—including the children's special needs and the greater stability and consistency Richard provided, which would be diminished if the children were hours away—and concluded that the trial court had properly determined that Richard had successfully rebutted the presumption. The petition presents no issue under RAP 13.4 and review should be denied.

II. RESTATEMENT OF ISSUES RAISED BY PETITIONER

1. Did the Court of Appeals apply the presumption favoring relocation to Vanessa Weaver, as its opinion explicitly and repeatedly states?

2. Did the Court of Appeals correctly conclude that Richard met his burden to show that the proposed relocation would harm the children's medical, developmental, and emotional needs where evidence showed his greater consistency and stability enhanced the children's well-being, even when they were not spending residential time with him, and where Richard testified to the resources available to meet the

children's needs in Wenatchee, stated he was not aware of similar services near Hoquiam and that the children would need to travel to Seattle, and where Vanessa's own argument and testimony corroborated Richard's?

3. Did the Court of Appeals correctly affirm the trial court's finding that, in light of all the evidence, including the children's significant special needs and Richard's greater stability, that Richard had rebutted the presumption favoring relocation?

III. RESTATEMENT OF THE CASE

A. Following the Weavers' 2017 Dissolution, the Children Reside Primarily with Vanessa

The Weavers' marriage was dissolved in 2017, when the couple's sons were four and six years old. CP 2–5. The boys have complex special needs. RP 39. The older son, David, has asthma and, like his father, has Li-Fraumeni syndrome (LFS), a paternal genetic syndrome predisposing him to cancer. CP 37, 378; RP 350, 385. The younger, Jesse, son has autism. CP 221.

Under the agreed parenting plan, Richard and Vanessa had joint decision-making; the boys spent most residential time with Vanessa, residing with Richard one or two weekday evenings per week, every other weekend, and longer periods over holidays and vacations. CP 18, 19–21, 25.

B. In 2018, Vanessa Decides to Relocate to an Unspecified Location in Western Washington Without Providing Statutory Notice

Vanessa resigned from the position she'd held in Wenatchee for six years in spring 2018, about a year after the divorce. CP 2–5, 159; RP 69–70. In late August, she informed Richard that she planned to move to the west side of the state by September 10, 2018, and that she planned to live in a fifth wheel with the children while her mother cared for them. CP 307; *see* Ex. 1. She had not provided the required notice under RCW 26.09.430, CP 307, which is itself grounds for sanctions including contempt, RCW 26.09.470(1).

Alarmed, the following day Richard moved for an order to restrain the relocation, which the trial court granted, setting a

hearing within the next couple weeks. CP 152–54, 309. Vanessa moved to dissolve the restraining order and sought an order requiring the children to be enrolled in an online school. CP 325.

At the hearing, Vanessa indicated that she "wanted to substitute teach [the 2018-19 school] year so that [she] could explore … the geographic area that [she] wanted to live," asserting that substitute teaching would give her "an opportunity to network." RP 19. While observing that "the custodial parent has a rebuttable presumption to be able to move," the trial court was troubled by Vanessa's whimsical plans:

> The problem is . . . there's no real plan. . . . There's no plan for a – I think I can get a job if I move over there. I think – I'm trying to decide if I'm going to home school or I'm going to put them in this school or that school. I don't know exactly where we're going to live. We might live in a fifth wheel, we might not. And it doesn't sound like there's a big support system.

RP 25. The trial court again precluded relocation. CP 343; RP 28–29.

C. The Trial Court Denies Temporary Relocation

About a week after Richard obtained the restraining order, Vanessa finally served Richard with the required relocation notice, to which Richard objected, requesting primary custody. CP 27, 28. He observed that Vanessa's plan to enroll the children in online education was inconsistent with his youngest child's special education plan (IEP), which was not designed to be implemented through virtual education. *See* CP 29.

Vanessa moved pro se for a temporary order allowing her to move with the children to an unspecified location. CP 338. She sought to limit Richard's access to his children due to what she claimed to be a "history of alcohol abuse" and "emotional/mental instability," CP 340, 347–48, despite having previously acknowledged in the final parenting plan entered the year before (when she was represented by counsel) that Richard had no such problems impacting his parenting under RCW 26.09.191, CP 18, 26; RP 222–23. She requested that Richard

have only limited supervised visitation and no decision-making authority. CP 349. Vanessa requested appointment of a guardian ad litem (GAL). CP 360. Richard roundly denied these accusations as spurious and welcomed GAL involvement. CP 364, 367–68.

Richard denied that he was somehow uninvolved or incapable of caring for the children, pointing to multiple school meetings he alone attended. CP 365. Richard's large extended family in the area agreed to help with the children. CP 366.

The trial court denied temporary relocation, expressing concerns that housing, school, and employment were still up in the air. CP 47–50; RP 44–45 ("[T]his isn't just a normal move. You're moving kids with special needs, and it just seems like there's just not been a solid plan . . . ."). The trial court also appointed GAL Ruth Esparza to investigate. RP 45; *see also* CP 51–54.

D. The Trial Court Again Denies Temporary Relocation, Placing the Children with Richard if Vanessa Elects to Move Without Them

The GAL's report described her surprise visits to both parents' homes, interviews with school personnel and medical providers, interviews with the children, observations, and contacts with the parents over the prior months. CP 374–389. She recommended "[t]hat the children's primary placement should be with the father as he is the parent who is most likely to provide consistency in the children's education and well-being." CP 388. She opined it was "clear" that Vanessa "lacks the ability to make sure the children transition from home to school smoothly" in light of their "chaotic" daily routine with her. CP 562. The report stated that Vanessa "wants to experiment" with Jesse's education but lacked "a clear plan." CP 562; *see also* CP 563 ("[T]he mother lacks the ability to handle raising the children[.]").

In July 2019, Vanessa moved for a temporary order allowing her to relocate to Hoquiam, again seeking to remove

Richard's educational and medical decision-making authority. CP 259, 328–29. At the hearing, she acknowledged that she lacked family or other connections to Hoquiam; her mother lived more than an hour away. RP 69. The GAL addressed the trial court, recommending against relocation. RP 80–85.

The trial court denied the motion for temporary relocation, explicitly finding that Richard had rebutted the presumption favoring relocation. CP 333; RP 99. The trial court also ordered that if Vanessa chose to relocate by herself, a temporary parenting plan would place the children primarily with Richard pending trial. CP 333.

E. The Trial Court Finds Vanessa in Contempt

After Vanessa unilaterally enrolled the older son in a different school in violation of the parenting plan's joint decision-making provisions, Richard moved for contempt orders. CP 278–79. He also objected that Vanessa had moved to Hoquiam without placing the children primarily with Richard as the trial court had ordered. CP 278–79. Instead of allowing

Richard to care for his children, Vanessa had her mother stay in Wenatchee to watch them during the week. CP 278. Vanessa denied having relocated, claiming she merely "commuted" 240 miles to Hoquiam, where she also stayed overnight. RP 129; *see also* RP 287; CP 298.

The trial court found Vanessa in contempt for changing David's school in violation of the parenting plan. RP 146–47; CP 296–97. The trial court allowed Vanessa two weeks to return to Wenatchee and retain primary residential placement if she preferred, ordering that if she elected to remain in Hoquiam, the children would be placed with Richard. *See* RP 149–50; CP 298 (ordering that "if the mother is continuing to work in Hoquiam . . . the children shall be placed with the father").

F. Vanessa Chooses to Relocate; the Children Reside Primarily with Richard Through Trial, Where He Rebuts the Presumption Favoring Vanessa's Relocation

Vanessa chose to move to Hoquiam, so the children resided primarily with Richard beginning in September 2019

through trial in August 2020 (trial was twice continued at Vanessa's request). CP 76, 123, 433; RP 188–89, 522.

At trial on Vanessa's request to relocate and Richard's petition to modify the parenting plan, the testimony showed that Richard had often helped Vanessa through recent crises caused by her chronic lack of planning. *E.g.*, RP 265–66. She was late to David's important appointment at the National Institute of Health for his LFS, though her hotel was across the street. RP 240–41. She then flew back from the East Coast to Seattle with the boys (having refused to take Richard's flight because she claimed he causes conflict), but could not rent a car to drive them home to Wenatchee. RP 241. After she texted Richard that she was stranded with the boys, he got off the plane in Seattle, abandoned his connecting flight to Wenatchee, rented a car, and drove Vanessa and the boys back, arriving around 3:00 a.m. RP 241–42.

There were many similar incidents in evidence. For example, Vanessa was late to the parties' settlement conference

and to an IEP meeting. RP 265–68. She declined Richard's offer to pay for a hotel so she could get her tire fixed, unsafely driving hours over two mountain passes on her spare. RP 267. At Jesse's IEP meeting after Vanessa had relocated, Vanessa advocated against him learning Richard's phone number for fear that might help "establish permanency for the boys being here in Wenatchee," though Richard was the local parent who could promptly respond to an incident. RP 268–69.

Before Vanessa had moved away, David's school had put him on probation after 19 tardy arrivals in Vanessa's care, threatening to revoke his placement if tardy arrivals continued and to call the police if the boys were picked up late again. RP 235–36, 418; Ex. 2. David told teachers he was tardy because he had to get Jesse ready for school while Vanessa slept in. RP 359, 418. The teachers told the GAL he would come to school disheveled, sometimes wearing the same clothes as the day before. RP 359. Jesse, who has autism, was often left waiting

for Vanessa after school, but Richard was always on time when he did pick-up. RP 419.

Richard also ensured educational stability; in spring 2019 when Vanessa sought to transfer David to a different school because she could not find child care, Richard made arrangements so David could continue attending his familiar school after his teacher told Richard the transfer would be devastating. RP 238.

The GAL opined that Vanessa was more responsible for any conflict and demonstrated more controlling and passive-aggressive behavior, including through her unsubstantiated accusations against Richard of alcohol abuse and child abuse. RP 364, 414–15. She opined Richard was the more stable parent, CP 366, describing how Vanessa did not eat meals at the table with the children, RP 380, and how David had to help parent Jesse while in Vanessa's care, RP 358, 366–67. Given David's asthma, the GAL was troubled by the filthy condition of Vanessa's home. RP 348–50 (Vanessa's home was "in

disarray, chaotic, dirty" with "pet hair everywhere").[1]

The GAL was trained in autism, and agreed with Jesse's teachers that an online virtual academy, which Vanessa had proposed, would be a poor choice. RP 358–59. She opined that Richard was by far the more stable parent and that this stability and routine was particularly important for a child with autism like the younger son. RP 361–63. She testified that Richard's home was orderly and neat, and that he engaged with the boys very nicely out in public when Richard was unaware he was being observed. RP 350–54. She also testified that David expressed that he liked his father's house more than his

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[1] While the Court of Appeals noted that Richard did not explain why he did not tidy the home "when Vanessa lived therein," Op. 13, the clutter and filth at issue related to Vanessa's time in the family home following the dissolution. *See, e.g.*, RP 232 (describing condition in fall 2018 and "after the dissolution"). Richard could not tidy a home he did not reside in.

mother's and that he preferred to live with his father. RP 361, 415.

G. The Trial Court Denies Relocation and Grants Richard Primary Custody

The trial court found that the harm from relocation outweighed any benefits to Vanessa and the children from relocating. RP 720; CP 123. The trial court explicitly addressed each of the RCW 26.09.520 factors, noting that it found the testimony of the guardian ad litem to be particularly helpful regarding Richard's stability. RP 720–21. The trial court ruled that the children could not relocate and should remain with Richard, RP 722–32; CP 122–26, which Vanessa appealed, CP 119. The Court of Appeals, like the trial court, concluded that the relocation presumption applied in Vanessa's favor, that Richard had rebutted it, and affirmed the trial court's ruling.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

The Court of Appeals' decision is consistent with the Child Relocation Act ("CRA") and governing precedent.

Under the CRA, the presumption favoring relocation is a "surmountable hurdle" which may be overcome by showing that the detrimental effects of relocation outweigh its benefits to the child and relocating person based on the RCW 26.09.520 factors.

Richard met this hurdle. Far from "inverting" the presumption as the petition contends, both the trial and appellate courts applied the presumption to favor Vanessa's relocation. Op. 25. Both courts considered each factor, as this Court has instructed, thereby having ensured "proper[] consider[ation of] the interests of the child and the relocating person within the context of the competing interests and circumstances required by the CRA." *See Marriage of Horner*, 151 Wn.2d 884, 895–96, 93 P.3d 124 (2004).

A. The Court of Appeals Properly Considered Each Relocation Factor

The petition for review incorrectly contends that the Court of Appeals "inverted" the presumption by discussing the situation of the boys at the time of trial (as opposed to a year or

more before trial) regarding the third, sixth, and eighth relocation factors. It bears noting that the trial court's own ruling and oral articulations discussed the then-current situation, and Vanessa never challenged those factual findings on that basis on appeal. *Compare* RP 723 ("[g]iven … how the children are doing currently"), 725 ("[David]'s emotional needs are better met with him remaining" with Richard, and Jesse "[i]s thriving"), 726 (relocation would "reduce[]" Richard to seeing the children "every other weekend"); CP 124 (finding Richard "meets" the children's needs), *with* App. Br. 26–30, 31–35, 37–39. The Court should decline to consider this issue, which was raised for the first time in the petition. *Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252, 961 P.2d 350 (1998).

Moreover, the courts below did *not* invert the presumption. In evaluating the relocation factors, a court properly considers "the strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent," which may impact the "detriment[] to the child" of

"disrupting contact" with each parent; how the child's special needs may be impacted by relocation; and how the child's relationship with the objecting parent may be "foster[ed] and continue[d]." RCW 26.09.520(1), (3), (6), (8). Vanessa's suggestion that the trial court should have ignored reality in evaluating these factors—and instead should have hypothesized about how those factors would have applied in a counterfactual universe where the children's development and relationships had not been impacted by Richard's care—is at odds with the plain language of the statute, which requires consideration of the "nature" and "quality" of each parent's relationship with the child and how relocation will impact the child and relocating person. Nor do the cases Vanessa cites compel a different result. Those cases involved entry of or modifications to a permanent parenting plan and required consideration of different factors from those involved in relocation decisions.

Marriage of Kovacs simply held that it was improper to impose a presumption favoring a parent with temporary

residential placement when entering a permanent parenting plan, because the factors to be considered in entering a permanent parenting plan focus on the ability of each parent "to perform the parenting functions for each child *prospectively*." 121 Wn.2d 795, 809, 854 P.2d 629 (1993) (citation omitted). In the same vein, *In re Combs* concluded that using the fact of temporary placement to break a "tie" when entering a permanent parenting plan suggested an "arguabl[e]" misapplication of a presumption and reasoned that the trial court's failure to examine the relevant statutory factors constituted an abuse of discretion. 105 Wn. App. 168, 176–77, 19 P.3d 469 (2001).

And *Marriage of Watson* similarly stands only for the proposition that temporary orders *themselves* cannot form the basis for a final determination of a parent's rights—this case does not require ignoring parental behavior displayed after temporary orders are entered. 132 Wn. App. 222, 234, 130 P.3d 915 (2006) (ruling the trial court's findings of a lack of

emotional ties were not supported by the evidence where any visitation anxiety resulted from the *litigation itself*, including the impacts of temporary orders, and *not* from any behavior by the father following those temporary orders).

Here, no presumption was drawn in Richard's favor as a result of temporary orders. The Court of Appeals imposed a presumption favoring Vanessa's relocation, which Richard rebutted by proving that the detriments of relocation outweighed its benefits. Indeed, when entering temporary orders the trial court had found that Richard had rebutted the presumption favoring relocation even *before* Vanessa had relocated and while she had the majority of residential time—a determination that Vanessa never appealed. RP 145; CP 333. The petition's argument that the presumption was "inverted" as a result of temporary orders is a fiction; instead, the courts below properly considered the statutory factors in evaluating the detriments and benefits that would *actually* befall Vanessa

and the children upon relocation based on the *actual* behavior of both parents.

The petition for review does not "resurface" a conflict between Division II and III as Vanessa contends, Pet. for Rev. 14, because that conflict relates to whether the relocation presumption applies to the parent with whom the child *actually* spends the majority of residential time or, instead, to the parent designated by the parenting plan as having a majority of residential time. *See* RCW 26.09.430 (relocation notice required only from "a person with whom the child resides a majority of the time" or with "substantially equal residential time"). Here, while Richard argued the presumption need not apply where he actually spent the majority of time with the children—as the trial court's unchallenged findings established, CP 123—both lower courts in fact applied the presumption in Vanessa's favor, making any Court of Appeals "conflict" moot in this case. *See* Op. 24–25 ("[W]e decline to resolve this issue

and, like the superior court, apply the relocation presumption.").

In applying that presumption, the Court of Appeals correctly concluded that the trial court weighed all statutory factors, most of which favored denying relocation, and that Richard had shown that the detrimental impacts of relocation outweighed any benefits. Op. 39–40. As there is no "split" in authority relevant to the petition, this determination presents no basis for review under RAP 13.4.

B. The Court of Appeals Never Held Relocating Parents Bear a Burden of Presenting Evidence a Child Will Succeed in the Proposed Location

The petition for review incorrectly contends that the Court of Appeals shifted a burden to Vanessa to prove that Hoquiam had "better" resources than Wenatchee. Pet. for Rev. 21. This argument relates to the sixth and seventh relocation factors, which require consideration of the impact a relocation would "have on the child's physical, educational, and emotional development, taking into consideration any special needs of the

child" and "[t]he quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations." RCW 26.09.520(6), (7).

As Richard argued on appeal, he more than met his burden by presenting evidence that while Vanessa's economic situation may improve by relocating, the boys' development would be negatively impacted by moving. *See* Resp. Br. 33–36. Vanessa's own testimony confirmed that "children with autism," like Jesse, "have tremendous difficulty with transitions." RP 618.

Richard produced ample evidence that remaining in Wenatchee would enhance the children's educational and emotional development in light of his involvement in their education, how well they were doing in school, and his close extended family. *E.g.*, RP 280 ("I've built a network for [the boys]. I have family in this greater area. I know where all the services are. We have their friends here. . . . I don't know of a great, large family [like Richard's] that Vanessa has."). Jesse

was finally thriving in school after a regression that teachers had attributed to Vanessa's educational choices, RP 377–78, 442, 453, suggesting that a transition without a solid plan would be harmful. Richard testified that he was unaware of similar services in the Hoquiam area and that he believed that to secure necessary resources "they would have to go clear to Seattle." RP 280. The evidence regarding the children's unique medical, educational, and emotional needs was properly considered, as the CRA requires. RCW 26.09.520(6).

On appeal, Vanessa argued that Richard could meet his burden of showing the detriments of relocation outweighed the benefits only by conclusively showing the boys' needs could *not* be met if they relocated. *See* App. Br. 32. But, as the Court of Appeals recognized, Richard could not be expected to definitively prove the absence of any resources. He presented evidence that the boys were thriving and that Jesse's emotional and educational needs depended on consistency, suggesting that a transition, particularly without a solid plan, would be harmful,

and he testified that he was unaware of any resources to meet the children's needs in Hoquiam. The Court of Appeals properly held that the trial court did not abuse its discretion in finding that Richard had proven this factor favored preventing relocation. Op. 36, 38.

While Richard proved this factor weighed against relocation, it is also true that Vanessa failed to present *any* evidence that the boys' special needs could be adequately met during a transition that, particularly for Jesse, would be far more difficult than for a typical child.[2] Having spent nearly a year in the Hoquiam area, Vanessa was in a superior position to

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[2] Vanessa's contention that Jesse's IEP would "follow" him to a new district ignores the fact that the receiving district can decline to adopt the prior IEP and instead develop a different IEP. WAC 392-172A-03105(4)(b). It is a reality that special education services vary by district. *See, e.g.*, Eloise Pasachoff, *Special Education, Poverty, and the Limits of Private Enforcement*, 86 Notre Dame L. Rev. 1413, 1427 & n.64 (2011) (discussing studies showing discrepant services across districts).

show that their needs could be met if that were the case. By pointing to an absence of extended family (having been married to Vanessa, he had personal knowledge of her family) or connections, and no evidence of resources available to the boys, Richard showed that relocation would harm the children. The Court of Appeals did not err in noting that Vanessa "sat in the best position" to provide countervailing evidence, yet her testimony "confirmed a lack of autism services for him in Hoquiam." Op. 37.

Indeed, in closing argument Vanessa stated that her online research had revealed autism services in Seattle and Tacoma—far from Hoquiam, just as Richard had testified. RP 701–02. While Vanessa now insinuates Richard should have done more "Google" searches, Pet. for Rev. 26, she ignores the fact that her *own* online searches only confirmed Richard's testimony about the absence of local resources. The Court of Appeals properly considered the evidence Richard presented in

affirming the trial court, and there are no grounds to review that determination under RAP 13.4.

C. The Court of Appeals Properly Considered the Children's Special Needs

The Court of Appeals did not, as Vanessa contends, "invert[] the presumption in favor of relocation by affirming the denial of relocation based on facts that are inherent in any relocation." Pet. for Rev. 28. As the trial court and Court of Appeals recognized, this was not "any" relocation. It involved the fragile progress and stability of children with special needs, particularly Jesse, who has autism and would suffer from the proposed relocation. Op. 33.

Vanessa herself testified that children with autism, like Jesse, "have tremendous difficulty with transitions." *See* RP 618. For Jesse to "start over," particularly without a solid transition plan, risked the progress he had made and stability he had achieved after a regression. *See* RP 377.

As for her lack of a solid transition plan, Vanessa now argues it would have been "unrealistic" for her to be "grounded

or anchored" in her new location unless she had first been "granted permission to take the child[ren] with her," invoking *Clarke v. Clarke*, 49 Wn.2d 509, 512, 304 P.2d 673 (1956). Pet. for Rev. 30. But *Clarke* is inapt here. Unlike in *Clarke* (which in any event pre-dated the CRA by decades), where the mother had remained in Washington with her child and had not yet relocated to California to join her new spouse, here Vanessa had spent nearly a year in Hoquiam by the time of trial—with the children frequently joining her there for residential time over weekends and vacations. She therefore had every reason to have been "grounded" and oriented to that area and its offerings.

While moving will involve some upheaval for any child, the CRA explicitly acknowledges that a child's special needs require special consideration. *See* RCW 26.09.520(6) (a trial court must "tak[e] into consideration any special needs of the child"). The Court of Appeals did not generally hold that a "need to avoid 'change' is a reason to deny a request to relocate

children with special needs," as Vanessa contends. Pet. for Rev. 31. Instead, the Court of Appeals, like the trial court below, considered the evidence in *this case* about how *these* children's special needs impacted the benefits and detriments relating to *this proposed relocation*, including the children's need for the stability and consistency that Richard's proximity provided. *See, e.g.*, Op. 33, 35–37. This decision was consistent with the CRA and case law, and review is not warranted.

V. CONCLUSION

The Court of Appeals concluded that the trial court did not err in finding that Richard had demonstrated that relocation would be more harmful than beneficial for David, Jesse, and Vanessa. In an attempt to shoehorn this case into the RAP 13.4 factors, the petition for review mischaracterizes the Court of Appeals' decision as flouting the CRA and binding precedent. In fact, the Court of Appeals' decision applied well-worn precedent to the trial court's findings and articulations, which

were supported by substantial evidence and consideration of the relocation factors as this Court required in *Horner*. This Court should deny review.

I certify that this brief contains 4,964 words, excluding those words exempted from the word count, in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED this 16th day of May, 2022.

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DECLARATION OF SERVICE

On May 16, 2022, I caused to be served a true and correct copy of the foregoing document to be served on counsel of record stated below, via the Washington Courts E-Portal:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 16th day of May, 2022, at Seattle, Washington.

By: s/Thao Do
Thao Do, *Legal Assistant*

MCNAUL EBEL NAWROT AND HELGREN PLLC

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