No. 899843

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

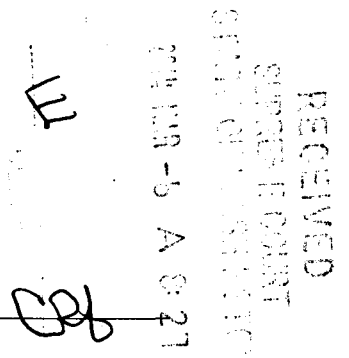
ELIZABETH KIM,

Respondent,

v.

ANATOLE KIM,

Petitioner.



PETITION FOR REVIEW-Amended

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I. IDENTITY OF PETITIONER.

A. Petitioner Anatole Kim asks this Court to accept review of the decision terminating review designated in Part II, a copy of which is Appendix A and is denoted as "Slip Op," or "Decision".

II. COURT OF APPEALS DECISION.

On January 31, 2014, Division III affirmed the Yakima Superior Court's grant of relocation of the two teen-age children for the start of their 7th and 10th grade years from Yakima, where they were raised and the only place they had gone to school, to Los Angeles, an enormous city 1,000 miles away where they would not live near any family or friends, would have extremely limited visitation with their father during the school year, and would have a largely absent single parent without assistance who was re-engaging into a demanding professional career; they would essentially go from the familiar boundaries and activities of Yakima to being on their own in Los Angeles. Critically, they would also be without their usual sports and art and dance and scout activities and friends. All this without any finding by the trial court that the children would be benefited in any way by the relocation; and without the trial court actually engaging in the required statutory balancing. The core of the Decision is that, contrary to the express terms of the statute, the relocating residential parent has an irrebuttable presumption the desired move will benefit the children.

III. ISSUES PRESENTED FOR REVIEW.

A. Division III's Decision significantly changed the relocation standards beyond what the Legislature provided for in the relocation addition to the Parenting Act in a way that is inconsistent with the Legislature's directives and which ultimately is not good for the children at issue by failing to promote their best interests or to protect them from harm. The Decision sanctions the trial court's deviation from the statutory factors in RCW 26.09.520, and also sanctions the trial court's deviation from the tests specified in *In re Marriage of Horner,* 151 Wn.2d 884, 93 P.3d 124 (2004) (*see* Opening Brief, pp. 17 – 40, esp. pp. 21 - 26). Review should be granted because the published decision conflicts with *Horner,* the statute, and affects all future children and non-residential parents when the primary residential parent seeks relocation. RAP 13.4(b)(1), (3) and (4).

B. The Court of Appeals dramatically expanded the standard for allowing relocation of children beyond that provided for in the relocation statute, and beyond that permitted by the underlying purposes of the Parenting Act. It provides as a practical matter that if a primary residential parent presents to the trial court that the proposed relocation is to that parent's benefit then, automatically, it is to the children's benefit and

relocation is to be allowed, thus either eliminating the 11 factors, or allowing the presumption to trump the 11 factors without even engaging in the statutorily-required weighing process. The Decision's effect makes it virtually impossible for a parent to oppose relocation by a primary residential parent, in conflict with the express terms of the RCW 26.09.520, *Marriage of Horner,* and the overall Parenting Act which requires decisions in the best interests of the child. This case should be reviewed because there is a substantial public interest in whether the carefully crafted relocation statute, and its placement within the Parenting Act with its underlying requirement of promoting the best interests of the children, may be eviscerated by the trial and intermediate appellate courts. These factors favor review pursuant to RAP 13.4(b)(1), (3), and (4).

C. Division III's refusal to follow the relocation statute's requirements of balancing the benefits and harms to the children at issue with the benefits to the relocating parent remove the relocation decision from its protection against being a constitutional abridgment of the non-residential, fit parent's rights to raise their children, by essentially removing the non-residential parent from regular daily or weekly contact where they are relocated over 1,000 miles away to

new schools where they know no other children or classmates. This supports review under RAP 13.4(b) (3).

D. Division III upheld the trial court's failure to comply with the statutory requirement to consider the relocation factors against the facts of the case by enunciating a new standard of "presumption" that cannot be overcome by the facts of the case and which, therefore, in effect nullified the Relocation Act and the requirements established by the Legislature, also violating the separation of powers by creating a new test. It misapplied the *Marriage of Horner* decision, demonstrating the lack of proper understanding by the appellate and trial courts on this issue. Should review be granted pursuant to RAP 13.4(b)(1) since the lower courts seem to misunderstand *Horner*, this Court has not addressed relocation since *Horner* in 2004, and *Horner* itself did not involve a fully contested appeal of the underlying, critical issues but was, in fact, moot as the father in that case did not file any briefs. *See Marriage of Horner,* 151 Wn.2d at 898-99 (Sanders, J. dissenting), discussed in Opening Brief, p. 24, fn. 15. An issue of this importance deserves full briefing and consideration from all parties and perspectives.

E. Petitioner requests that review include review of the fee award on appeal where the appeal was not frivolous and the

trial court found that both parties could pay for their own fees given the overall marital estate that was divided.

F. Petitioner also requests review include the other issues he raised below, including the disproportionate property division which failed to compensate him for contributions to Respondent's professional degree and training, required by *Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984), Respondent's younger age, longer future work life, and higher future earning potential; and the trial court's prevention of his applying maintenance income to his tax deductions for Jan – August 2012, contrary to his rights under the federal tax code rights.

IV. STATEMENT OF THE CASE.

A. Introduction.

This case asks the Court to determine: can a divorcing parent granted primary residential status make a series of unilateral decisions that "requires" relocation outside the city of the two minor, teenage children's lifelong upbringing and schooling based solely on the parent's own desires or preferences, when such a move was not in the best interests of the children; was deemed harmful to the children by the neutral guardian ad litem and court-appointed forensic child psychiatrist; and cannot be shown to provide any benefit to the children?

Specifically, does Washington Law permit a residential parent to relocate simply because he or she wants to resume a career elsewhere than where the teen-age children have been raised? Or if out of town re-training is desired or required for one year, must the trial court re-engage in an examination under the Relocation and Parenting Acts to determine whether the statutes require a return to the children's home town where the re-trained parent is eligible for numerous job opportunities in that area that would permit the children to return to the lives, other parent, and extended family they had been forced to leave for one year?

B. Basic Facts of the Relocation Case.[1]

In this relocation case of two physician parents, the mother, Respondent Betsy Kim, wanted out of the 20-year marriage, and out of Yakima. It is Petitioner Anatole Kim's position that the record shows that Betsy did not take the children's interests into account but made the decision to restart her career in only Los Angeles even though she could have taken steps to pursue options that would have allowed the children to remain in Yakima with her while she got re-credentialed through programs sponsored through either the

[1] Petitioner will not belabor and re-argue the facts from below, or the law by repeating the Court of Appeals briefs, which put the matter in full context. Suffice it to say that Petitioner disagrees with the Court of Appeals' characterization of the facts and evidence as presented in the Slip Op., and believes they are more accurately set out in the Opening and Reply briefs, as is the law. The Court is directed to them, and to the record. One example stands out, where the Decision states the guardian ad litem recommended primary custody for Betsy. In fact, by the end of trial the GAL's recommendation was changed to joint custody. *See* CP 403-05 (confidential); Opening Brief, pp. 14-16.

University of Washington or the University of Oregon; but she never explored them. Betsy could have done that handily (demonstrated by job opportunities discussed *infra*) without totally disrupting the children and destroying the lives they had known since infancy. Betsy's actions, as sanctioned by the trial and appellate courts, essentially erased the children as sentient, important, primary humans in this equation - quite the opposite of the Legislature's intent when enacting the Relocation Act. The Act explicitly rejected the courts' efforts to do just that, as had been permitted by *Marriage of Littlefield*, 133 Wn.2d 39, 940 P.2d 1362 (1997), *superseded in part by statute*, Laws of 2000, Ch. 21, § 1, and *Marriage of Pape*, 139 Wn.2d 694, 989 P.2d 1120 (1999). *See* Opening Brief, pp. 23-26.

As for this case, although relocation has occurred, genuine relief can be afforded by review and reversal, which would benefit those who are supposed to be the primary concern of the courts: the children. Review could be expedited, the relocation reversed, and the case remanded once Betsy completes her fellowship in Los Angeles in July since she would then be qualified for one of the many local pathology opportunities she could seek that are either in or within commuting distance of Yakima, permitting the children to return to their hometown and father, paternal grandmother, friends, activities, and schools for the 11th and 8th grades.

There are many pathology jobs available in the greater Yakima/Central Basin area, and throughout the Northwest, which would provide professional work for Betsy while letting her live in or near Yakima so the children could be re-integrated with the life they have known since infants.[2] Many are locum tenens postions, which often lead to permanent positions, and which facilitate licensing issues. They are a typical avenue for re-entering or re-locating one's medical practice. They are plentiful. Others are openings as some people move on to different hospitals or practices, or different parts of the country, or into research from clinical work.

The point is that there are ample pathology positions in or near Yakima that would allow Betsy to continue her professional re-integration while also letting the children regain their childhood friends, activities, and schools, and social development. More important, such a return would permit the children to re-engage more regularly with their father Anatole, and their maternal grandmother who has been a central figure in their lives since they were infants.

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[2] *See, e.g.,* http://www.doccafe.com/jobs/physician/pathology/503182/great-pathology-job-opportunity-with-a-national-clinical-research-company.html (Soliant Health pathology job for research company seeking Washington physicians able to work a flexible schedule for 12-month period); http://www.locumtenens.com/pathology-jobs/wa/locum-tenens/job-597689 (locum tenens pathology work with Soliant Health in WA); http://www.doccafe.com/jobs/physician/pathology/341649/boise-idaho (locum tenens position with Pacific Companies in Boise Idaho on "ongoing" basis, **with "Travel, Overnight accommodations and Malpractice are all paid**." Listing updated 2/06/2014); http://www.doccafe.com/specialties/1/physician/353/pathology-jobs.html (five pages of pathology listings around the country with AMN Healthcare company, locum tenens staffing). Emphasis added.

What is required by the statutes is, at a basic level, that the children are put first. They cannot simply be dragged along as a necessary afterthought, as occurred here. All the statutory factors must be applied and balanced in favor of the children; as must the cultural factors required by the parenting plan statute, [3] which the trial court ignored in both contexts. The analysis applied by the trial judge was: of course they will be harmed, it's relocation; but they will get over it. They are kids, good kids who have had two good parents. They will survive without too much detriment.

But that approach hardly meets the "best interests" standard, much less constitutes the balancing of interest factors required by RCW 26.09.520.

Betsy had given up her part-time pathology practice after the birth of their second child because she decided she wanted to be a stay-at-home mom. This precluded an academic career for Anatole, but he went to work in cardiology, providing for the entire family. They moved to Yakima shortly thereafter and Anatole's long hours supported the family while Betsy focused on the three kids.

Late in the 25-year marriage, Betsy decided she wanted a divorce (partly culture clash ignored by the trial court)[4] when the

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[3] *See* RCW 26.09.184(3) and Opening Brief at 34-38.

[4] Betsy is a third generation Japanese-American; Anatole is first generation Korean-American. Both they and their parents very high performing: Brown and Yale undergrad, and Michigan Brown medical schools for Betsy and Anatole, respectively; their parents who were physicians and professors.

boys were in 7th and 10th grades, their daughter in 4th. It took a while for trial and Betsy looked for pathology fellowships – but only in the LA area, where she had kept up her license, never seeking opportunity or reciprocity in Washington, despite graduating from a top-ten medical school. While the Los Angeles area is where her family was from, she did not go anywhere near any of them. The two teen-age kids under 18 are now in 7th and 10th grades in schools with total strangers and a mom who works long hours as a fellow re-learning her field, and without time to run them to the myriad activities they had been plugged into their entire lives; they are effectively on their own in LA, nowhere near any relatives.

Betsy never sought reciprocity for a license in Washington, nor a training program in Seattle, Portland, or the Tri-Cities, of any sort that would allow her to get re-geared professionally while maintaining stability for the kids.[5] The undisputed evidence is that it was not a move that was in any interest of the kids, harming them by taking away their many developmental activities: scouting, tennis and piano for LK; art, ballet, and piano for CK. These activities do not just develop "skills" and friends, they also develop character and leadership abilities. The relocation made no provision for these genuine needs of the children. Their needs were an afterthought.

[5] The Decision incorrectly states Betsy was not eligible for a Washington medical license, as reciprocity is readily obtained. *See* Opening Brief, p. 13, fn.3. The point is, Betsy never applied, so was never rejected.

Despite the statute that is supposed to require the trial judge to "balance" the benefits to the moving parent with the benefits or detriments or harms to the children, and which is phrased in terms of whether the children will be allowed to relocate, the decision was made by the trial judge, and affirmed by the Court of Appeals in Spokane, based on the "presumption" they all found conclusive that Betsy would only act in the best interests of the children; so, this move must be okay. Except that, in this case, the guardian ad litem recommended against the relocation, it saying it would be harmful to the children. So did the court-appointed forensic psychiatrist. There is no evidence of ***any*** benefit to the children from the move.

Nevertheless, the trial judge chose to disregard those opinions which were based on facts and their observations. The appellate court said, in effect – that's okay, the trial judge is entitled to ignore that evidence if he wants, and he stated each of the statutory factors, albeit he did not in fact balance them. There was no genuine exercise of discretion in the consideration of the statutory factors.

But as a practical matter, following the law now can still do much good in this case, as well as provide needed guidance throughout the state. When Betsy's fellowship is over in LA in July, since there are plenty of pathology positions either in Yakima or easy commuting distance from there, she and the kids should return so the children can resume their friendships and activities and

schools in Yakima after being gone only one school year (like a year abroad), see their dad more than 2-3 times per quarter, and resume their regular relationship with their paternal grandmother, a board certified psychiatrist who moved to Yakima to help raise the children from infancy. After all, one of the underlying goals of the Parenting Act is to foster the continuing relationship with both parents. RCW 26.09.002.[6] That is hard to do when one moves 1,000 miles away.

There is no proper reason the children should suffer the dislocation from their home town for more than one year. If promptly corrected by reversal and remand. This year can be more like a "year abroad" to a dramatically different setting and routine, rescued by the return to the familiar and the friends. On remand, the trial court could be directed to determine living arrangements so the children can return to their schools and friends and activities.

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[6] The statute states: "the state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that ***the relationship between the child and <u>each</u> parent*** should be fostered unless inconsistent with the child's best interests.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

A. This Court Should Accept Review To Definitively Address Whether the Statutory Factors Under the Relocation Act Must In Fact Be Addressed and Balanced, or Whether They are Trumped by the New Standard Stated by Division III: The Presumption That the Custodial Parent's Proposed Move Will Benefit the Children is Conclusive and Cannot be Overcome with Facts Demonstrating There are No Benefits to the Children, but Only Severe Harm to Them.

If facts and undisputed evidence cannot overcome the presumption that the relocating parent is allowed to take the children where they want to go, then there is no point to the Act and its statutory factors which nominally permit the non-relocating parent to challenge the presumption that the relocation is in the children's best interests. By ruling on this record that the facts do not overcome the presumption that the residential parent is acting in the children's best interests, the Decision nullified the Relocation Act, also violating the constitutional rights at risk the statute is designed to protect. *See* Opening Brief, pp. 26-27.

Review should be granted per RAP 13.4(b)(1), (3), and (4).

B. The Point of the Statutory Factors is to Balance the Harms and Benefits of the Residential Parent Who Wants to Relocate With Those of the Children, Because the Focus is on the Children; Whether They Should be Allowed to Relocate Because A Move Will Benefit Them. The Residential Parent Does Not Get a Free Pass Simply Because They Want to Leave The Area When That Move: 1) Has No Benefit to the Children; or 2) Is Harmful to the Children. Relocation for One Year to Obtain Training That Allows the Residential Parent to Secure Appropriate Professional Employment in the Children's Home Town May be Appropriate for That Training Period, if Not Harmful to the Children.

As noted, there are many pathology positions available in the greater Yakima/Central Basin area, and throughout the Northwest, which would provide professional work for the new re-trained Betsy while letting her live in or near Yakima so the children could be re-integrated with the life they have known since infants.[7] The locum tenens positions can both facilitate immediate licensing and lead to permanent employment positions. *Id.*

The point is, genuine relief by the appellate court enforcing the statute is both possible and realistic because there are ample pathology positions that would allow Betsy to continue her professional re-integration and career while also permitting the children to regain their childhood friends, activities, and schools. Even more important, such a move back to the children's hometown

[7] *See, e.g.,* sources collected in fn. 2, *supra.*

would permit the children to re-engage more regularly with their father Anatole, and their maternal grandmother, who was a central figure in their lives since they were infants.

What is required is, at a basic level, that the children are put first, not simply dragged along as a necessary afterthought, as in fact occurred here. The analysis applied by the trial judge was: Of course they will be harmed; but they will get over it. They are kids, good kids who have had two good parents. They will survive.

But the legal standard is not that the children will "survive"; it is that their ***best interests*** are to be served (RCW 26.09.002); that their relationships with ***both*** parents are to be fostered (*id.*); and that relocation is not to be granted where, as here, the objecting parent overcomes the presumption the move will benefit the children. RCW 26.09.520. Under the fullness of the statutory scheme, the childrens' best interests are to be ***balanced*** with the interests of the relocating parent, not perfunctorily trumped by them. But they are in no way to be harmed if it can be avoided, even if one or both parents' wants must be put off for a short while.

C. If Review is Granted, the Other Issues Should Also be Reviewed, Including the Fee Award on Appeal.

If the Court accepts review it should also review the fee award made by the Court of Appeals (and the other issues raised by Anatole). While the rules provide that fee requests made at the Court of Appeals are considered continuing, *see* RAP 18.1(c), they

do not similarly provide that objections made at the Court of Appeals are continuing. Given Anatole's arguments over the propriety of the relocation analysis, and the apparent grant of fees due to the flawed relocation analysis, the fee issue should be considered as part of any further appeal.

VI. CONCLUSION.

The Court should grant review and schedule argument on an expedited basis for the reasons given above. Betsy and the children could return to the children's home town and their friends and activities after an absence of only one year. There are ample employment opportunities for her in her field near enough for them to resume the lives they have enjoyed since birth. Betsy has ample time to continue working away from the Yakima area after the youngest child turns 18, in less than five years, and move to the location of her choice.

But the statutory structure of the Parenting Act, and the balancing requirements of the Relocation Act, means she has a legal obligation to put her children's interests before her own in circumstances like these where she has legitimate, proper professional options in their native city, so long as she chooses to pursue them. But under the circumstances of this case, where there is benefit only to Betsy from the relocation and, according to the unrebutted opinions of the guardian ad litem and the forensic

psychiatrist (and according to the rest of the unrebutted evidence), genuine harm to the children from the relocation, that harm needs to be halted at the earliest opportunity. That can be done here without compromising Betsy's professional career.

Review is appropriate because, under the facts here, for the underlying purpose of the Parenting Act in RCW 26.09.002 (to foster the children's relationships with both parents) and the balancing exercise in the Relocation Act in RCW 26.09.520 (which requires a careful examination of the detrimental effect of the proposed relocation on the children[8]) to mean anything, the statutes must require that Betsy return the children to their native town pending their age of emancipation or later order of the court based on supported findings that the relocation has genuine benefits to them, benefits that outweigh the disruption of leaving their home town. This only means, at most, that Betsy would have to remain in Yakima for a few years until the youngest teen reaches the age of majority and the court loses jurisdiction.[9] Review should be granted because, contrary to the statutes and *Horner*, there has been ***no***

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[8] RCW 26.09.520 states (emphasis added): "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."

[9] Betsy testified at length about her numerous friendships and how integrated she was into the local community, particularly through the kids. She did not paint a picture of a place she loathed and hoped to never see again.

benefit shown of the relocation as to either of the children and this Court needs to authoritatively state how the statute is to be applied in these circumstances – or whether it is a nullity. Where the statute is carefully written in terms of the relocation of the ***children***, not the relocation of the parent (who the legislature recognized has an independent right to relocate, a right that may result in the children not going with him or her, *see* RCW 26.09.530[10]), this Court must speak and emphasize the focus is on the children.

Only then will this mean children are no longer the pawns between divorced parents, but instead must remain the center of the parents' concerns and energies for the short remaining time they are children. Legally, parents' responsibility for children ceases at age 18. Parents are then free to pursue their own muse, their own individual lives as they see fit. But until that time, when parents divorce and they and their children are subject to the courts, both parents must balance their own desires and goals with the needs and best interests of their children; at times, they must subordinate what they want to what is best for the children. Divorcing parents thus do

[10] The statute provides that trial court is not to admit evidence on the issue of whether the person seeking to relocate will do so or not depending on whether the children are permitted to go; the decision as to placement of the children is to be independent of whether the parent would defer his or her relocation if relocation of the children were denied. In fact, this statute was violated by the fact of Betsy's failed relocation effort in 2011 (when her petition based on a fellowship office in L.A. was denied by the commissioner, she chose to not relocate, facts which were in the record at trial in 2012), as well as the clear statements at trial that Betsy only intended to relocate if she could take the children.

not have complete freedom. The court must insure the child's best interests, and that is done via the parents. Otherwise, the Parenting Act and Relocation Act provisions designed to protect and promote the best interests of the children mean nothing.

Review should be granted to determine the public interest question of whether the Court will permit the relocation and parenting statutes to be applied such that the children's interests and well-being will continue to come second to that of the divorcing parents; or whether by divorcing and subjecting themselves to the jurisdiction of the courts under Ch. 26.09 RCW and the courts' inherent role of *parens patriae* to protect the children, the children's interests really do come first and can sometimes outweigh a parent's desired relocation, particularly when, as here, the parent's relocation plan has no benefit to the children but only harm by subtracting from the children's lives all the material relationships, activities, and surroundings they know.

DATED this 4th day of March, 2014.

CARNEY BADLEY SPELLMAN, P.S.

By _____
Gregory M. Miller, WSBA No. 14459
Attorneys for Petitioner

NO. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

In re Marriage of: ELIZABETH KIM, Respondent, vs. ANATOLE KIM, Petitioner.	CERTIFICATE OF SERVICE

I declare under penalty of perjury that I caused copies of the *PETITION FOR REVIEW (Amended), APPENDIX A,* this Certificate of Service, a Corrected Certificate of Service for the March 3, 2014 filing, and Mr. Miller's March 4, 2014, letter to the Clerk's Office to be served on the 5th day of March, 2014 as follows:

Peter S. Lineberger 14930 N. Little Spokane Dr. Spokane, WA 99208-9569 Phone: 509-869-1084 Email: psline@pslinelaw.com	☒ U.S. Mail, postage prepaid ☐ Messenger ☐ Fax ☒ Email ☐ Other_____
Howard N. Schwartz 413 N 2nd Street Yakima, WA 98901-2336 Phone:509-248-1100 Email: howard@rbhslaw.com	☒ U.S. Mail, postage prepaid ☐ Messenger ☐ Fax ☒ Email ☐ Other_____

Dated this 4th day of March, 2014.

Gregory M. Miller

NO. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

In re Marriage of: ELIZABETH KIM, Respondent, vs. ANATOLE KIM, Petitioner.	CORRECTED CERTIFICATE OF SERVICE

I declare under penalty of perjury that on the 3rd day of March I caused copies of the *PETITION FOR REVIEW,* a Certificate of Service, and a letter from Mr. Miller in the above-named case, to be e-filed with the Supreme Court and served as follows:

Peter S. Lineberger 14930 N. Little Spokane Dr. Spokane, WA 99208-9569 Phone: 509-869-1084 Email: psline@pslinelaw.com	☒ U.S. Mail, postage prepaid ☐ Messenger ☐ Fax ☒ Email ☐ Other_____
Howard N. Schwartz 413 N 2nd Street Yakima, WA 98901-2336 Phone:509-248-1100 Email: howard@rbhslaw.com	☒ U.S. Mail, postage prepaid ☐ Messenger ☐ Fax ☒ Email ☐ Other_____

Dated this 7th day of March, 2014.

Catherine A. Norgaard, legal assistant

APPENDIX A

FILED
JAN. 30, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In re the Marriage of:	)	No. 31426-0-III
	)	
ELIZABETH KIM,	)	
	)	
Respondent,	)	
	)	PUBLISHED OPINION
and	)	
	)	
ANATOLE KIM,	)	
	)	
Appellant.	)	

KULIK, J. — This is a bitterly contested dissolution and custody case following a marriage of 25 years. The father, Anatole Kim, appeals the trial court's order granting the mother's, Elizabeth Kim's, petition to relocate their children to California. Mr. Kim contends the trial court abused its discretion by failing to follow the correct legal standard and erred by disregarding cultural factors in evaluating relocation. He also maintains that the 60 percent/40 percent property division was inequitable and that the trial court erred by failing to include maintenance in the child support worksheets.

We conclude that the trial court did not err and did not abuse its considerable discretion. Finally, the findings made by the court are supported by substantial evidence.

Accordingly, we affirm the trial court.

FACTS

Anatole Kim and Elizabeth Shizuoko Kim are both physicians. Mr. Kim is a cardiologist and Ms. Kim is a pathologist who, at the time of separation, had not practiced medicine for 14 years. The Kims met as students at Brown University during the 1982-83 school year and were married on August 3, 1985, in Los Angeles, California. After numerous moves around the country for residency programs and Mr. Kim's work, the family settled in Yakima in 2002.

The Kims have three children: E.K. (date of birth April 19, 1995), L.K. (date of birth June 26, 1998), and C.K. (date of birth December 11, 2000). The parties played different roles in raising the children. When E.K. turned two years old, Ms. Kim, who had been reducing her part time hours as a pathologist, resigned from her job and became a full-time, stay-at-home mother. Mr. Kim was the primary wage earner and worked long hours, while Ms. Kim performed the majority of parenting duties, including supervising the children's extensive activities and social networks.

Ms. Kim filed a petition for dissolution in July 2010. Upon separation, Ms. Kim was awarded temporary primary residential placement of the children. In April 2011, Ms. Kim filed a notice of intent to relocate to Los Angeles in order to update her skills in

pathology. The University of California at Los Angeles (UCLA) had offered her a surgical pathology fellowship beginning July 1, 2011. Because Ms. Kim had been out of the work force for well over two years, she was not eligible for a medical license in Washington State. In May 2011, a Yakima County court commissioner denied Ms. Kim's motion to relocate.

The parties' dissolution trial took place over several days in June 2012 and resumed in September 2012. The trial was bifurcated due to the guardian ad litem's (GAL's) failure to complete his report for the June trial. The court heard testimony from a number of witnesses on Ms. Kim's relocation request. At the conclusion of the trial, the court acknowledged that while it had considered the testimony of all the witnesses, it found the testimony of the parents the most significant.

Ms. Kim testified that she was working part time for a pathology group in San Antonio, Texas, when E.K. was born in 1995. She stated that she did 98 percent of the hands-on work of parenting and that when E.K. turned two, she resigned from her job. During that time, Mr. Kim was working about 80 to 100 hours per week, and Ms. Kim performed the majority of the childcare. This pattern continued after L.K. was born. She recalled that Mr. Kim could not remember holding L.K. because he was working well over 100 hours per week. When asked to describe her early caretaking of C.K., she

answered that she did "[p]retty much everything. [C.K.] nursed for two years and he was not home." Report of Proceedings (RP) (Sept. 4, 2012) at 35.

Ms. Kim continued to have primary responsibility for the day-to-day care of the children as they grew older. Ms. Kim described a typical preseparation school day as follows:

> I would wake up first. I would prepare breakfast and I always make their lunch, so I would get that out because I make it the night before. I would make sure the children got out of bed. I would make sure Anatole got—was awake. I'd prepare him what he usually had in the mornings. The children and I would have breakfast together. Anatole would usually walk through the kitchen.

RP (Sept. 4, 2012) at 46. Ms. Kim could not recall Mr. Kim ever taking the children to school or picking them up. Ms. Kim also testified that she volunteered in the children's school, drove them to their extracurricular activities, prepared dinner, and helped with homework.

Mr. Kim's testimony centered on the differences in the parents' respective parenting styles. He testified that he was more direct and that Ms. Kim tended to be more indulgent. He testified, "I do tend to suggest to the children and try and explain if I have a suggestion or advice. I think if [Ms. Kim] wants the children to do something, she mentions it in kind of an oblique way and then that's about it." RP (Sept. 5, 2012) at 206. He testified that Ms. Kim designated him the disciplinarian and deferred to him when the

children misbehaved.

Mr. Kim testified that the parties had conflict over some of the children's extracurricular activities and that Ms. Kim would disallow some activities if she found them "inconvenient." RP (Sept. 5, 2012) at 207. For example, Mr. Kim believed it was important to get the boys involved in Boy Scouts, but that Ms. Kim refused to meaningfully participate. Mr. Kim also testified that he thought the children should be given more responsibility, but that Ms. Kim found it easier to do household chores herself.

Mr. Kim asked for primary residential placement, stating that he alone was concerned about the children's best interests. Mr. Kim described his preseparation relationship with E.K. as "[v]ery close," and his current relationship with L.K. and C.K. as "stable" and "very warm," but noted that both were exhibiting some teenage rebellion. RP (Sept. 6, 2012) at 321-22. He also expressed his concern that Ms. Kim's move to California would effectively eliminate him as a parent.

The court appointed a GAL to evaluate residential placement provisions. The GAL recommended that the mother be awarded primary residential placement. However, as to relocation, the GAL concluded:

> [A] move by the mother is not best for the children. The mother would have to demonstrate an overwhelming need for her to do so. The issue here is the mother's occupational benefit of a move versus the needs of the children. The children need the involvement and balance of both parents, the benefit of both attachment and limits.

Clerk's Papers (CP) at 340.

The court also appointed Dr. Richard Adler, a child and adolescent psychiatrist, to conduct a forensic evaluation of E.K., who had experienced some serious psychiatric problems in December 2010. Dr. Adler concluded that relocation was "ill-advised" as it related to E.K.'s best interest, noting, "[t]his has been high-conflict divorce, marked by contested custody issues and prominent father-son alienation. [A] disposition that would only further hamper the likelihood of repairing the father-son relationship seems contraindicated." CP at 363.

After considering the appropriate statutorily mandated relocation factors and entering detailed findings of fact for each, the court granted Ms. Kim's petition to relocate. The court's findings of fact will be discussed in detail below as they relate to Mr. Kim's assignments of error.

ANALYSIS

Relocation. Mr. Kim appeals the trial court's grant of Ms. Kim's petition to relocate the children to California. He contends the trial court abused its discretion

because it applied an incorrect legal standard in analyzing the relocation issue.

We review the trial court's decision to grant or deny a petition for relocation for an abuse of discretion. *In re Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004); *Bay v. Jensen*, 147 Wn. App. 641, 651, 196 P.3d 753 (2008). 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. *Horner*, 151 Wn.2d at 894 (quoting *In re Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997)). We emphasize that trial court decisions in dissolution actions will be affirmed unless no reasonable judge would have reached the same conclusion. *In re Marriage of Landry*, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985). "The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court." *Id.* at 809.

In 2000, the legislature passed the child relocation act, RCW 26.09.405-.560 ("relocation act" or "the act"), which shifts the analysis away from the best interests of the child to an analysis focusing on the best interests of the child and the relocating person. LAWS OF 2000, ch. 21, §§ 1, 14; *Horner*, 151 Wn.2d at 886-87. RCW 26.09.520 provides the legal standard for determining a relocation issue. *Horner*, 151 Wn.2d at 895.

The trial court must consider the 11 factors listed in the relocation statute on the record to determine whether the detrimental effect of the proposed relocation outweighs its benefits. *Id.* at 894-95. The act creates a rebuttable presumption that the relocation will be allowed, which may be rebutted when the objecting party proves that "the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the [11 child relocation] factors." RCW 26.09.520. The factors are:

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

> (10) The financial impact and logistics of the relocation or its prevention; and
>
> (11) For a temporary order, the amount of time before a final decision can be made at trial.

RCW 26.09.520.

These factors are not listed or weighted in any particular order. RCW 26.09.520; *Horner*, 151 Wn.2d at 887. The trial court must find by a preponderance of the evidence that they 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.

Mr. Kim contends the trial court "created a novel legal standard" by analyzing the relocation issue in terms of the mother's "entitlement" and whether relocation was "appropriate." Appellant's Br. at 28. Pointing to RCW 26.09.002, which states that "the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities," and *In re Marriage of Combs*, 105 Wn. App. 168, 19 P.3d 469 (2001), he contends a relocation analysis should focus on the best interests of the children and that "the relocating parent's individual interests must be subordinated to those of the children." Appellant's Br. at 27.

Mr. Kim's argument fails. First, his reliance on *Combs* is misplaced. *Combs* was decided in the trial court before the effective date of the relocation act. In that case, we held that a mother's statement that she might move out of state was relevant to at least

three of the factors considered under RCW 26.09.187(3) in establishing a parenting plan. We stated:

> Relocation of a child to a different state certainly will affect his or her physical surroundings and thus would be directly relevant to factor (v). Depending on the circumstances, such a move also may be relevant to other factors, particularly (iii) and (iv). A plan to relocate a child to another state thus would be directly relevant to a determination of the child's best interests.

Combs, 105 Wn. App. at 175-76.

The three parenting plan factors identified by *Combs* to which relocation is, or might be, relevant are:

> (iii) Each parent's past and potential for future performance of parenting functions as defined in RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
> (iv) The emotional needs and developmental level of the child; [and]
> (v) The child's relationship with siblings and with other significant adults.

RCW 26.09.187(3)(a).

Because *Combs* involved a dissolution trial conducted prior to the effective date of the relocation act, it applied the parenting plan criteria under RCW 26.09.187 rather than the more specific relocation factors later enacted under RCW 26.09.520. To the extent the three factors pointed to in *Combs* do not correspond to those reflected in RCW 26.09.520 or must be weighed against countervailing considerations, *Combs* has

been abrogated by RCW 26.09.520.

Moreover, the language of the relocation statute undermines Mr. Kim's argument. Rather than articulating a general "best interests of the child" standard, the statute identifies 11 factors that must be considered in a relocation analysis. 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.'" *Horner*, 151 Wn.2d at 895 (quoting *In re Custody of Osborne*, 119 Wn. App. 133, 144-45, 79 P.3d 465 (2003)). 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.

Here, the trial court evaluated the 11 factors and concluded the detrimental effect of the proposed relocation did not outweigh its benefits. Accordingly, it applied the correct legal standard to the relocation issue.

Relocation—Best Interests of Children. Applying the best interests of the child standard, Mr. Kim next argues that "the evidence does not support that it is in the children's best interests to lose both parents' participation during their critical middle and high school years." Appellant's Br. at 32. He contends that the trial court's decision permitting relocation disregarded the harm caused by severing the children from their father and extended family support system, their school programs, friends, and extracurricular activities. He also points out that Ms. Kim's work schedule will preclude her from giving the children full-time attention and keeping them engaged in their extracurricular activities.

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.

A trial court's decision to permit relocation is necessarily subjective. *In re Marriage of Grisgby*, 112 Wn. App. 1, 14, 57 P.3d 1166 (2002). Our task on review is limited to determining whether the court's findings are supported by the record and whether they, in turn, reflect consideration of the appropriate factors. *Horner*, 151 Wn.2d at 896. We do not reweigh the evidence. *In re Marriage of Kovacs*, 121 Wn.2d 795, 810, 854 P.2d 629 (1993).

We uphold trial court findings if they are supported by substantial evidence. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993). "'Substantial evidence' exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011).

The trial court here entered findings of fact for each of the 11 factors listed in the relocation statute. Mr. Kim assigns error to all of the court's findings of fact in the court's oral decision "to the extent they provided for relocation and denied shared parenting." Appellant's Br. at 4. However, Mr. Kim does not offer argument on all the assignments of error. We will not review assignments of error not supported by legal argument. *Herring v. Dep't of Soc. & Health Servs.*, 81 Wn. App. 1, 13, 914 P.2d 67 (1996).

The first relocation factor requires the court to consider "[t]he 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." RCW 26.09.520(1). Here, the court found that Ms. Kim "clearly has the stronger relationship with the children." CP at 188.

Mr. Kim assigns error to related findings of fact 11 through 15, and 18 and 20, but does not seriously dispute them. These findings stated that the mother tended to the daily needs of the children in their day-to-day care, the mother did not neglect E.K.'s mental health issues, the mother provided the bulk of the parenting functions in the past, the father's past exercise of parenting functions was more limited due to his career, the mother was more involved in the emotional needs of her children, the father's work schedule would have made it difficult for him to have been the primary residential parent, and the mother had the stronger relationship with the children.

Mr. Kim does not explain how these findings are deficient. In fact, in his brief he admits that he worked long hours while Ms. Kim was "home-based" and "more emotionally supportive." Appellant's Br. at 10. Ms. Kim's testimony, detailed above, sufficiently supports these findings. Moreover, the unchallenged findings of fact relating to the initial residential placement issue, state that the mother was the primary caretaker

for the children and attended to all their physical and emotional needs; the father was the primary wage earner; the mother managed the day-to-day affairs of the children; the children demonstrated a stronger attachment to the mother; that E.K. is estranged from his father; and that the father works many hours, but does focus on the academic achievements of the children. The court's findings are easily supported by the record, and the court's unchallenged findings are verities on appeal.

Mr. Kim next challenges the court's finding regarding the third relocation factor. This factor requires that the court consider "[w]hether 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." RCW 26.09.520(3). The court found that "disrupting contact between the children and their mother would be more detrimental than disrupting contact between the children and their father." CP at 178.

Mr. Kim contends the court improperly gave preference to Ms. Kim because of her position as the primary residential parent. He argues the trial court may not draw a presumption from a temporary parenting plan when entering a permanent parenting plan, and that the court effectively zeroed out Mr. Kim's role based on what it deemed the mother's success in being more comforting to the children during the stressful time of

separation. However, Mr. Kim fails to show us how the court's ruling favored one parent over another.

The fifth relocation factor requires that the court consider "[t]he 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." RCW 26.09.520(5). In its oral ruling, the court found that Ms. Kim was going to need retraining after being out of her profession for 16 to 17 years. It also noted that the UCLA job offer "provides financial resources for the family and for herself and a career for her." CP at 196. Additionally, the court observed that relocation was consistent with the family's history of relocating many times for Mr. Kim's employment related issues: "In the past it was relocating for—to accommodate husband's career, father's career, and it is now an effort by her to get her career back on track. The alternative would be to require her to [stay] in Yakima where she has no employment opportunities." CP at 197.

Mr. Kim assigns error to the court's following findings of fact related to this issue:

> 27. The court finds that as mother is not licensed to practice medicine in Washington, and is in need of retraining and has a job offer in southern California, where she is licensed that will provide for her financially that the relocation is not in bad faith.
> 28. The court further finds that there is no certainty of the mother finding employment in Washington.
> 29. The court finds that the father's opposition to relocation is made in good faith.

> 30. The court finds that the best place for mother to pursue employment is in southern California.

CP at 178.

Mr. Kim contends that Ms. Kim did not make sufficient efforts to pursue her career in Washington and points out that she never attempted to obtain a Washington license, even though a California medical license has reciprocity in Washington.

The record undermines Mr. Kim's contention. In her affidavit to support her motion to relocate, Ms. Kim explained that UCLA had unexpectedly offered her a surgical pathology fellowship after one of the chosen residents chose to withdraw. She explained that because she had been out of the work force for 14 years, she needed to update her skills. She also stated that she had no option to resume her practice in Yakima or Washington State:

> I am not eligible for a medical license here because I have not worked for over two years. I would need to spend one year in an accredited training program; the only one in Washington is at the University of Washington. . . . [T]he U.W. Pathology Department's Academic Programs Manager informed me that only one or two surgical pathology fellowship positions are available to non-U.W. residents per year. About thirty applicants are considered. They are currently filled for July 2011 and July 2012. Furthermore, the likelihood that I would be accepted at a pathology department of U.W.'s caliber, I would say, is nil.

CP at 63.

This evidence provides ample support for the court's finding that Ms. Kim had valid reasons for moving and was not seeking to relocate in bad faith. The trial court was entitled to accept Ms. Kim's testimony as more credible than Mr. Kim's.

The sixth relocation factor requires the court to consider "[t]he 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." RCW 26.09.520(6). The court found the children were "very well adapted, very mature." CP at 197. It stated, "I think any damage created by relocating, any uncertainties they're going to have are going to be easily resolved by their various—their respective personalities. I think . . . all three of the kids are going to be able to handle it." CP at 197.

Mr. Kim challenges the following findings of fact related to this factor:

> 22. The court further finds that the children will adapt to the relocation.
>
> . . . .
>
> 31. The court finds that given the age of the children and their developmental stage, relocation would be tolerated by the children and will not have any negative impact on the children.
>
> 32. The court does not find that the physical, educational, and emotional development of the children will be impaired by relocation.

CP at 178-79.

Mr. Kim contends these findings are contradicted by the GAL's and forensic psychiatrist's opinions that relocation would be detrimental to the children. He also contends that under relocation, the children lose the benefit of a full-time mother, a meaningful relationship with their father and paternal grandparents, their friends, and school programs.

The court addressed the children's attachment to their friends and school and acknowledged that Dr. Adler and the GAL opined that relocation would be potentially detrimental. Nevertheless, the court concluded that the children were adaptable and mature and would be able to adjust to a move. Nothing in the record suggests the children will not be able to adapt to relocation. By all accounts, they are well adjusted and socially engaged. A family friend who testified for Mr. Kim characterized the children as wonderful and the GAL noted the children are "well liked by peers and excel academically." CP at 333. L.K.'s 8th grade teacher reported to the GAL that "'even in the midst of great turmoil, this young man is one who is thought of highly by his peers.'" CP at 334. C.K.'s teacher reported that outwardly she was handling the divorce well and described her as an "'amazing child'" who has "high expectations of herself and works hard to meet them." CP at 334.

Moreover, a trial court is not bound by a GAL's recommendation. *In re Marriage of Magnuson*, 141 Wn. App. 347, 351, 170 P.3d 65 (2007). As noted, the trial court acknowledged the GAL's and psychiatrist's concerns, but believed the children would be able to adapt. Moreover, the court likely found the GAL's opinion of limited usefulness. The GAL concluded that relocation was "not best for the children" and then stated, "[t]he mother would have to demonstrate an overwhelming need" to move. CP at 340. The GAL's opinion ignores the relocation statute's presumption that a proposed relocation will benefit the child and, therefore, the parent proposing relocation need only offer her reasons for relocating. RCW 26.09.520. Ms. Kim was under no obligation to prove an "overwhelming" basis for the move. And finally, Dr. Adler's opinion is limited in that his forensic evaluation was focused on E.K.'s issues and offered no analysis of the issues potentially facing the younger children.

The court addressed the appropriate factors required by the relocation statute. The challenged findings are supported by sufficient evidence and those findings in turn support the court's decision to allow relocation.

Cultural Factors. Mr. Kim next asserts that the trial court erred in disregarding cultural factors. He maintains that his strict parenting style and emphasis on the children's education is explained by his Korean heritage and that the differences between

the parenting styles of each parent are explained by the differences between the Korean and Japanese approaches to child raising and education.

RCW 26.09.184(3) provides: "In establishing a permanent parenting plan, the court may consider the cultural heritage and religious beliefs of a child." Here, the court's finding of fact 1 provided, "The court considered testimony regarding the Asian culture as it applied to the parenting of the parties['] minor children and ha[s] determined that cultural considerations are inapplicable in deciding residential provisions for these children." CP at 177.

In its oral decision, the court stated:

> I think what we have here is a husband from New Jersey and a wife from Southern California, and I can no more balance these two states than I can Korea and Japan. What I think we're left with is, frankly, Washington residents and Washington children, and that's the way I've analyzed it.

CP at 184.

The word "may" in a statute denotes discretion and is distinct from the word "shall," which indicates a mandatory action. *Pierce v. Yakima County*, 161 Wn. App. 791, 800-01, 251 P.3d 270 (2011). Because the legislature used the word, "may" in RCW 26.09.184(3), the court was not required to take the parties' cultural heritages into consideration. Mr. Kim contends that the court failed to realize the importance of the role of an Asian father and "how the children needed regular, daily contact for the purposes of

discipline, accountability, role-modeling, and character development." Appellant's Br. at 37. Both the GAL and Dr. Adler talked about the importance of the cultural and family factors in this case, but did not really explain how these observations were relevant to the relocation decision. For example, the GAL noted that the dominant value of Korean culture is to go as high as possible in education. Dr. Adler reported that E.K.'s problems needed to be understood in the context of having a first generation Korean father and a third generation Japanese mother, explaining that children of immigrants are inherently at risk of feeling alienated from their parents. However, Mr. Kim fails to explain how this information relates to the relocation issue. While it may have been helpful in E.K.'s treatment plan, it had little relevance to the relocation decision before the court. Nevertheless, the court considered the information before making a decision to disregard it for purposes of the relocation decision. The court did not abuse its discretion in doing so.

Property Division. Next, Mr. Kim contends the property division was unfair because the trial court failed to compensate him for supporting Ms. Kim through medical school. Relying on *In re Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984), he contends that our Supreme Court "established a clear rule that requires compensation in the property division for a spouse who supports the other spouse in obtaining a

lucrative professional degree where the marriage ends before that degree contributes to that community." Appellant's Br. at 41-42.

The court addressed Mr. Kim's request for compensation based on his support of Ms. Kim through medical school as follows:

> [Ms. Kim's] decision, her desire not to pursue a career is a reason why you may have wanted to get a divorce 17 years ago, but the fact is . . . that both of you followed, the fact that she . . . chose motherhood over career is not something that is entitled to compensation and I think that's a very critical part of this. The fact that you have a substantial income and she doesn't is important. . . . You have a greater financial ability and you would not be entitled to compensation and I can't imagine any judge ever granting that kind of compensation that you asked.

CP at 203.

Washburn does not help Mr. Kim. In that case, the court addressed the situation where one spouse supports the other through professional school, but the marriage is dissolved before any financial benefit from that investment is realized. *Washburn*, 101 Wn.2d at 170. The court noted that "the supporting spouse may be called upon to postpone his or her own education or forego promotions and other valuable career opportunities in order to find a job near the student spouse's school." *Id.* at 173. The court further noted that at divorce, the parties often have little or no assets to divide, so maintenance is appropriate, especially if the marriage ended soon after the student spouse finished school. *Id.* at 181.

Our facts bear little resemblance to *Washburn*. In that case, the marriage ended about two years after the student spouse finished an internship. There were almost no assets at the time of divorce. In contrast, this case involves a long-term marriage of almost 25 years and the accumulation of significant assets during those years. Additionally, Ms. Kim's parents, not Mr. Kim, paid for her medical school education. Moreover, Mr. Kim fails to acknowledge that Ms. Kim's labor as a full-time parent to the children and as a homemaker allowed Mr. Kim to vigorously pursue his career at the expense of hers. Unlike the situation in *Washburn,* Mr. Kim did not forego career opportunities to support Ms. Kim. In fact, the record establishes the opposite. The family frequently moved to accommodate Mr. Kim's career and it was Ms. Kim's sacrifices that enabled Mr. Kim to put in long work hours and achieve success in his career. Under these facts, the trial court did not abuse its discretion in disregarding Mr. Kim's request for compensation for supporting Ms. Kim through medical school.

Mr. Kim further argues that the 60 percent/40 percent property division is unjust in view of the facts that (1) Mr. Kim supported Ms. Kim through medical school, (2) Ms. Kim is six years younger than Mr. Kim and therefore has more years to work, and (3) Ms. Kim unilaterally chose not to work over Mr. Kim's objections.

In reaching a "just and equitable" property division, the trial court must consider four statutory factors: (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the property division is to become effective. RCW 26.09.080; *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). The trial court has broad discretion in distributing marital property, and its decision will be reversed only if there is a manifest abuse of discretion. *Rockwell*, 141 Wn. App. at 242-43. If the decree results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred. *Id.* at 243.

"In a long term marriage of 25 years or more, the trial court's objective is to place the parties in roughly equal financial positions for the rest of their lives." *Id.* In view of the length of the marriage, Ms. Kim's absence from the work force for 16 to 17 years, the uncertainties of relocation, and the substantial difference in the parties' relative earning capacities, the court's property division was equitable. The record reflects that Mr. Kim earns between $250,000 and $322,000 per year, while Ms. Kim will be earning $60,000 to $70,000 per year in her fellowship. Mr. Kim's argument ignores the fact that Ms. Kim will be in her late 40s by the time she has finished her training and will have significantly fewer years in the paid work force than Mr. Kim. Under these facts, the court did not

abuse its discretion in awarding Ms. Kim a larger percentage of the community's property.

Finally, Mr. Kim contends that the trial court erred in treating the $100,000 from his parents as a gift, rather than a loan. He argues that a gift requires donative intent and that both his parents testified that the money was a loan, not a gift. In characterizing the sum as a gift, the court noted, "There are no terms regarding repayment. . . . [T]here is a clear and definitive statement that it is a gift." CP at 205.

The record undermines Mr. Kim's claim. Exhibit 14 is a written document entitled "GIFT LETTER" and provides: "This letter will certify that [Mr. Kim's parents] are making a gift in the amount of $100,000 to assist our . . . son and daughter-in-law to purchase the property located at 3170 Naches Heights Rd., Yakima, WA." The letter also provided that "[t]here is no obligation that this gift be repaid in any form either by cash or by work performed." Ex. 14. In view of this evidence, the trial court did not abuse its discretion in characterizing the $100,000 as a gift.

The court's property division was equitable.

Child Support. Child support orders are reviewed for an abuse of discretion. *In re Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990).

Child support is determined by state-determined support schedules calculated on worksheets developed by the administrative office for the courts. RCW 26.19.035; *see In re Marriage of Sievers*, 78 Wn. App. 287, 305, 897 P.2d 388 (1995). The purpose of the schedule is to ensure support orders that meet children's basic needs and provide additional support commensurate with the parents' incomes and resources, and that equitably apportion the support among the parents. RCW 26.19.001.

Mr. Kim contends that the child support order should be vacated because the trial court failed to include maintenance as income to the mother and a deduction to the father in the child support worksheet. He contends the difference in his child support obligation of 65.8 percent versus 77.6 percent results in an inequitable apportionment of child expenses.

During presentment of the final documents on January 25, 2013, Mr. Kim suggested that the child support worksheets include maintenance as a deduction for Mr. Kim and an increase in income for Ms. Kim. The trial court responded:

> I don't think it's appropriate to deduct [maintenance] because what I'm going to end up doing is if it changes the numbers, I am going to increase the maintenance to make it come out. So, you either go with the numbers I've got or we kind of get into this circular argument with no particular end. [I]f I deduct maintenance, child support will go down, then that will change the total amount, so I'm going to increase it again. It being the maintenance, so I think it's appropriate just to leave it off.

RP (Jan. 25, 2013) at 40-41.

During the September 13, 2012 hearing, the trial court imputed Ms. Kim's income at the level she would be earning in California, $5,700, noting the difference between her child support and need would be made up in spousal maintenance. The trial court did not abuse its discretion in doing so. The court considered both maintenance and child support, and considered the needs of Ms. Kim and the family before and after moving to California. Mr. Kim fails to show how the court's calculation resulted in an inequitable apportionment of child support to him.

The trial court did not abuse its discretion in calculating child support.

Attorney Fees. Ms. Kim requests attorney fees on appeal under RCW 26.09.140 and RAP 18.1(a) and (b). She points out that her income is substantially less than Mr. Kim's and that she should not be required to deplete the assets she was awarded in this dissolution to defend an appeal without merit.

RCW 26.09.140 gives this court discretion to "order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." In exercising our discretion, we consider the issues' arguable merit on appeal and the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay. *In re Marriage of*

C.M.C., 87 Wn. App. 84, 89, 940 P.2d 669 (1997).

CONCLUSION

We affirm the trial court, and we award attorney fees on appeal to Ms. Kim.

Kulik, J.

WE CONCUR:

Korsmo, C.J.

Siddoway, J.