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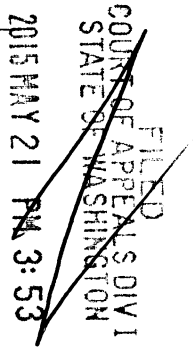
NO. 72562-9-I

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



SOLOMON MEKURIA,

Appellant/Cross-Respondent,

v.

ASTER MENFESU,

Respondent/Cross-Appellant.

BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

This case involves an appeal brought by Mr. Mekuria and a cross-appeal brought by Ms. Menfesu. Mr. Mekuria argues the court erred when it did not find her to be a negligent parent because she is blind, despite the fact that his major modification based on that allegation was dismissed and his subsequent appeal was denied as without merit. He argues that the court erred when it ordered sole-decision making to Ms. Menfesu for non-emergency and educational decisions even though the court found the parties cannot communicate and the court previously ordered sole decision-making to Ms. Menfesu for educational decision making in 2010. He also appeals the decision to move the exchange point a five minute drive down the road to a location near Ms. Menfesu's home where she can wait inside, even though he agreed with the change at trial. He appeals the allocation of payment of tuition between the parties arguing the court made no findings, when the court did make findings on reconsideration. Ms. Menfesu argues his appeal is without merit and asks that it be denied.

Ms. Menfesu cross-appeals arguing that the court abused its discretion when it entered an order allowing Mr. Mekuria to modify

educational decision-making two years in the future without a showing of adequate cause when the record does not support such a modification, the court found the parties cannot communicate, and the court did not follow the proper procedures on modification. She also appeals the court's order placing the child's passport in the custody and control of the father based on an assumption that the mother is flight risk when it made no such finding and the record does not support such a finding and based its decision on a comment made by the father in closing argument about a conversation he allegedly overheard prior to the parties dissolution trial in 2010. She asks the court to reverse the court's decision on these issues.

II. ASSIGNMENTS OF ERROR ON CROSS-APPEAL

A. ASSIGNMENTS OF ERROR

1. The court erred when it ordered the non-custodial parent may in the future seek modification of the custodial parent's sole education decision-making authority without showing a substantial change in circumstances.

2. The court erred when making modifications to the parenting plan it considered and relied upon evidence of Ms. Menfesu's medical condition prior to the dissolution in 2010.

3. The court erred when it misstated the record in its findings that the mother would be unable to adequately provide educational assistance to the child in the future.

4. The court erred when it based its decision to allow modification the educational decision-making in the future on the mother's blindness.

5. The court erred when it ordered possession and control of the child's passport by the non-custodial parent based on an unsupported assumption that the custodial parent was a flight risk.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the court abuse its discretion when it's order allows the father to file an action to modify educational decisions two years in the future without a showing of adequate cause, when it found that the parties cannot communicate effectively and the mother should have sole decision-making now for both educational and non-emergency medical decisions. (Assignments of error 1-4)

2. Did the court abuse its discretion when, over the mother's objection, it relied upon pre-decree facts relating to the mother's blindness when the issue of whether her blindness interfered with her parenting functions was litigated in the dissolution trial and there was no new evidence or argument presented that her blindness had worsened or in any way interfered with her parenting functions now and the issue of her blindness was only of limited relevance to the issues in the minor modification before the court. (Assignment of error 1-4)

3. Did the court abuse its discretion when it placed possession and control of the child's passport with the father, based on an assumption that the mother was a flight risk, without making a finding that the mother was a flight risk, without a showing of adequate cause that the mother was a flight risk, based on a comment made during closing argument about a pre-decree conversation that was not subject

to cross-examination and no other evidence to support the ruling. (Assignment of error 5)

III. COUNTER STATEMENT OF THE CASE

The parties were divorced after trial in August 2010. A Final Amended Parenting Plan was entered on September 17, 2010. CP 654. The parties have one child, Eden who was almost six years old at the time of the modification trial in March and April 2014. RP 316.

In March 2013 Mr. Mekuria filed an action for a major modification of the parenting plan. He requested a change of custody and limitations on Ms. Menfesu based on his allegation that she could not adequately parent because she is blind. See In re Marriage of Mekuria and Menfesu, 130 Wn.App. 1016 (2014) (unreported decision involving the parties). His petition was dismissed by the trial court on March 30, 2013, and he appealed. On April 1, 2014, the Court of Appeals affirmed the trial court's dismissal based on its finding that Ms. Menfesu's blindness was not a basis for modification of the parties' parenting plan because it had already been litigated by the court in 2010. Id.

Shortly after Mr. Mekuria filed his major modification, Ms. Menfesu cross-petitioned for a minor modification of the parenting plan on April 4, 2013. CP 666. Trial was held in Ms. Menfesu's minor modification on March 24-27, 2014, and April 7, 2014. The court issued

final orders on July 11, 2014. CP 404, 369, 379, 383. Mr. Mekuria filed a Motion for Reconsideration regarding the issue of payment for the child's private school tuition. CP 525. The court then entered an order on reconsideration with specific findings to support its decision to allocate school tuition between the parties in the event tuition increases over 25% or Ms. Menfesu is no longer eligible for a scholarship. CP 523. Mr. Mekuria filed a timely appeal of all orders entered in this minor modification action. Ms. Menfesu filed a timely cross-appeal.

Ms. Menfesu filed this minor modification action in large part because the parenting plan entered in the 2010 dissolution action was unclear, hard to follow, and one entire page was missing from the document. CP 654. The minor modification addressed several issues in the parties' parenting plan: decision-making for non-emergency medical care, the transfer location for the child, several very minor changes to the residential schedule, and more specific provisions for telephone contact and travel. Ms. Menfesu also requested a finding of abusive use of conflict by Mr. Mekuria. She further requested a modification of child support. CP 664. The court found adequate cause to proceed with Ms. Menfesu's proposed changes to the parenting plan on May 10, 2013. CP 676. The father conceded to adequate cause on the mother's petition. CP 678.

A Guardian ad Litem (GAL), Lisa Barton, was appointed to investigate both the major modification filed by Mr. Mekuria and the minor modification filed by Ms. Menfesu. CP 673, 676, RP 266. After the major modification was dismissed, the GAL proceeded to finish her investigation of the issues involved in the minor modification only. CP 683. The parties agreed to extend the time for the GAL to conduct her investigation. CP 679. The GAL recommended that Ms. Menfesu be awarded sole-decision-making for non-emergency medical decisions (and educational decisions even though that had previously been awarded by the court in 2010), changes to the telephone contact and travel provisions, and other minor changes to the plan. CP 685-687. (The GAL report was admitted as Exhibit 1). The GAL indicated that none of the information she reviewed supported the father's position that the mother was unable to parent. RP 298. None of the witnesses interviewed by the GAL expressed any reservations about the mother's parenting abilities. RP 295-296. All of Ms. Menfesu's witnesses reported how capable and loving a parent she was. CP 691-694. These witnesses detailed and praised what she does with Eden academically. Even two of Mr. Mekuria's witnesses described Ms. Menfesu as a good parent. RP 295-296. Mr. Mekuria's witnesses generally described him as taking good care of Eden and a loving parent. CP 694-697. However, Batanesh Tinahun described how Mr. Mekuria

"acts like a teenager" at exchanges. CP 692. Jeannie Chase described how Eden would come home from visits with her father constipated and with dirty hair, clothes and teeth. CP 693. In her observations about Mr. Mekuria, the GAL noted he seemed unwilling to take advice or direction and that he wanted to keep his conflict with Ms. Menfesu going. RP 303.

At trial, Mr. Mekuria renewed his request for a major modification and argued that Ms. Menfesu was incapable of parenting due to her blindness. CP 80. He continued to maintain his position that Ms. Menfesu was both lying about her blindness, and that she was unable to perform parenting functions because of her blindness. RP 497-498. Despite the limited relevance of Ms. Menfesu's blindness to the issues presented in the minor modification, the court questioned Ms. Menfesu extensively about the particulars of her day to day activities in relation to her eyesight. RP 439-467. The court questioned Ms. Menfesu about her medical condition and the particulars of her treatment from 1999 to the present. RP 426-427, 431-438. In overruling the mother's objections to this line of questioning, the court was very clear that notwithstanding the fact that this issue was considered by the trial court in 2010, and that Mr. Mekuria's major modification petition had been dismissed, it felt it had an "obligation" to investigate the question of whether Ms. Menfesu's eye sight interfered with her parenting functions. RP 426-428. The court, on

its own motion, and over Ms. Menfesu's objection, requested that Ms. Menfesu produce the medical records Ms. Menfesu submitted to the Social Security Administration in 2006 before it determined she was legally blind and eligible for disability benefits. RP 480, 572-575. The court did not feel that it had a duty to similarly inquire into the domestic violence that occurred prior to the divorce in 2010 (the basis for the Order for Protection entered before trial in 2009 and which remained in place until after the trial). RP.453-455. Ms. Menfesu submitted a Memorandum mid-trial renewing her objection to consideration of facts related to her blindness that had been previously litigated. CP 765-784. This memorandum argued that the scope of the minor modification petition before the court limited its extensive inquiry into Ms. Menfesu's blindness insofar as the inquiry related to her requests. The medical records were submitted after trial on May 8, 2014. CP 557-628.

Ms. Menfesu raised the issue of child support modification in her petition. CP 664. Ms. Menfesu paid for the child's school tuition at a discounted rate. RP 42. She requested the parties share in the educational costs if those costs increased more than 25% or if the scholarship was no longer available. CP 39. Mr. Mekuria raised no objection to this request. Both parents indicated their desire that the child attend a private religious school, albeit different ones. RP 347, 227. Mr, Mekuria indicated a desire

to send the child to private school in his interview with the Guardian ad Litem. CP 689. Paster Seyoum, one of Mr. Mekuria's witnesses, stated that Mr. Mekuria wanted Eden to attend private school and that education was very important in his culture. CP 695. The court entered findings to support this order on reconsideration. CP 447.

Ms. Menfesu was awarded sole-decision-making regarding educational decisions in the parties' 2010 parenting plan. She did not request a modification of this provision in her minor modification action from which this appeal is taken. CP 664. When the child was ready to enter Kindergarten, she enrolled the child in a private school within walking distance from her home that was highly regarded in the community. RP 347. She informed the father of the enrollment and provided him with information about the school. RP 98, 347-348. Prior to the first day of school, both parents attended an open house and pot luck. RP 98, RP 348-350. This event was an opportunity for the child to meet her teacher and for the parents to learn about the school policies such as school uniforms, lunches, school day start and end time, the volunteer requirement for parents and other information. RP 98, 348. Mr. Mekuria originally maintained that he attended the orientation (RP 94), but he changed his testimony at trial, stating that he did not attend the orientation, that his new wife did. RP 99. He also stated that he had no information

about the school and knew nothing about what was going on with the school. RP 98. Mr. Mekuria met with the school principal, Mr. Michael Cantu, two or three times. RP 92. He did not know the names of any of the parents of the children who attend school with his daughter despite meeting them at drop-offs and pickups. RP 237, 240. Principal Cantu testified that Mr. Mekuria did not volunteer at the school. RP 41.[1] He also testified that Eden was doing extremely well in school, that Ms. Menfesu was very involved in the school, and volunteered on a regular basis. RP 35-39, 41. Mr. Mekuria wanted the child to attend a different school nearer to his home. RP 227. He was neither concerned nor mindful of the difficulty the location of the school would pose for Mr. Menfesu to travel to and from with the child. RP 227.

Ms. Menfesu was very active in her child's educational progress. Jean Chin, a friend of Ms. Menfesu, came into Ms. Menfesu's home at least once a week, sometimes more, to assist Ms. Menfesu with Eden's homework assignments and other tasks. RP 184-185. She read with the child, but also went over the homework assignments for the week so that Ms. Menfesu could memorize what she needed to do to assist Eden. RP

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[1] Mr. Mekuria objects to the testimony of Mr. Cantu. Ms. Menfesu requested at the beginning of trial to substitute Mr. Cantu for Ms. Frederick, the child's teacher, who had been on Ms. Menfesu's witness list, because she was unable to appear. The court authorized the substitution and Mr. Mekuria did not object. RP 8-9.

184-185, RP 190-192. Ms. Menfesu helped her daughter with her homework. RP 343. Ms. Chin helped Ms. Menfesu gather supplies for Eden's school projects. RP 185. Ms. Chin also introduced Ms. Menfesu to an afterschool program staffed by local high school students were Eden received assistance with reading and writing. RP 186. Ms. Menfesu was involved with the afterschool program, and oversaw what Eden was learning. RP 187. Eden attended this program on Wednesdays and Fridays afterschool. RP 186. Sometimes she would go on Thursdays when there was a school project. RP 343. Eden did not go to this program on the Fridays she was picked up by her father. RP 343. Ms. Menfesu took Eden to the library where they listened to books on tape and Eden read along. RP 344. She had learning programs for Eden on the computer as well. RP 342. She took a parenting class. RP 346.

Ms. Chin began coming over to help on Tuesdays, rather than on Mondays, because Eden was so tired after returning from her father's house that she went to sleep almost immediately after coming home from school. RP 187. The child's homework assignments were not generally completed over the weekend when Eden was with her father. RP 186, 351. Occasionally, he marked off a book that he had read to the child. RP 186. Eden complained that she didn't have the proper supplies. RP 351. When Ms. Menfesu asked Mr. Mekuria about the need to complete homework he

responded that the school only concerns her and that he had no authority over it. RP 352.

Ms. Chin also assisted Ms. Menfesu with bills, and occasionally grocery shopping, and explained that other people (friends, neighbors, church members) also periodically assisted Ms. Menfesu with tasks. RP 184. Ms. Chin testified that Ms. Menfesu was a very good mother, a very good cook, and regularly cooked healthy meals for Eden to take for lunch. RP 188. In addition to being a good cook, Ms. Chin noted that Ms. Menfesu sometimes cooked for her, and has no difficulties with food preparation. RP 199. Ms. Menfesu's mother often came over to Ms. Menfesu's home on weekends to see her daughter and granddaughter, and did laundry or other tasks to help out around the house. RP 463. They would cook together. RP 463. Most of the routine and daily tasks Ms. Menfesu performed herself without assistance. RP 463.

Mr. Mekuria testified that he enlisted the assistance of his wife with Eden's homework. RP 526. He also stated that his wife helps with the household tasks, and that she regularly drives the child to and from the transfer point. RP 526. Before he was remarried, he had a friend take care of Eden while he was at work. RP 72 After he remarried, his wife took care of Eden while he was at work. RP 83.

Ms. Menfesu requested a modification of the joint decision-making provision for non-emergency medical decisions. CP 666-672. CP 24-47. After she left the marriage in 2009, Ms. Menfesu moved to Renton, where she began taking the child to the doctor near where she resided. RP 174-175, 354. Mr. Mekuria also continued to take the child to the doctor in Everett. RP 354-357. Ms. Menfesu did not know that Mr. Mekuria was taking the child to the Everett clinic for her yearly physical examinations. RP 354. Ms. Menfesu contacted the clinic to find out about Eden's immunizations, but later, when she contacted them to get updates, the clinic refused to provide her with any information and instructed her to speak with Mr. Mekuria about it. RP 360. In April 2013, Mr. Mekuria informed her that he was taking the child for her fifth year checkup. Because it would have taken her three to four hours to get there by bus, she enlisted the help of a friend to drive her to the appointment. RP 355. Mr. Mekuria was unconcerned about Ms. Menfesu's inability to travel to Everett for appointments, and did not believe this was an important consideration in the determination of where the child should see the doctor. RP 171-175. He insisted that the child should continue to go to the doctor in Everett even though she resides the majority of time with her mother in Renton. RP 174. The GAL recommended that Ms. Menfesu be awarded sole decision-making regarding non-emergency medical

decisions and educational decisions. CP 686. The court awarded her sole decision-making for non-emergency medical decisions and educational decisions citing the inability of the parties to communicate. CP 404, 369.

Eden was about two and a half at the time of the parties' dissolution trial in 2010. RP 317. After the trial, Mr. Mekuria began visits with Eden again after not visiting her for a year. RP 318. Mr. Mekuria could not remember how long it had been since he had last seen his daughter prior visits resuming in 2010. RP 213-214. Mr. Menfesu had obtained an Order for Protection which was still effect through trial, and expired on August 20, 2010. RP 320. Ms. Menfesu was apprehensive about having to see Mr. Mekuria when visitation exchanges resumed after the dissolution and after her Order for Protection expired. RP 320-321. The exchanges were tense affairs (as noted by Pastor Seyoum who witnessed several exchanges RP 141), and Ms. Menfesu testified Mr. Mekuria often said she was fat, sick, and blind during exchanges. RP 335-336. These comments were made in front of the child. RP 336. The parties could not communicate effectively. RP 293.

The parties parenting plan entered in 2010 provided that once school started, the regular pickup and drop-off for visitation would take place at school. CP 654. The transfer location for when the child was not in school continued to be at the police station on Myrtle Street in Seattle's

Beacon Hill area. CP 658. Ms. Menfesu requested changing the transfer location from the police station to the Renton WalMart when school was not in session because Walmart is within walking distance of her home. CP 664. She testified the trip to and from the police station often took about 30 to 40 minutes each way. RP 319. In addition to the time spent in transit, sometimes she and Eden would have to wait for the bus to come at the Renton transfer station or at the bus stop in Seattle. RP 319. They had to walk to and from the bus stop down the street to the police station. RP 319. The police station was not always open. RP 321. This location was difficult for her to navigate, especially at night, due to her blindness, and it was uncomfortable for the child in cold and inclement weather. RP 339. Often, Eden would be returned without the coat that Ms. Menfesu sent her with to her father's, and Eden was cold and sometimes wet on the bus ride home. RP 339. Ms. Menfesu had to buy four new coats during the year prior to the trial because the coats were never returned. RP 339. Mr. Mekuria was routinely late to visitation exchanges. RP 322. Usually, he was about 45 minutes late, and sometimes Ms. Menfesu had to wait one, two or three hours for him to arrive. RP 323. She filed a motion for contempt due to the routine late arrivals, and he was found in contempt. RP 324-325. After the contempt hearing he continued to be 30 to 50 minutes late to the exchanges. RP 325. She requested a transfer location

for the exchanges that would occur when school was not in session within walking distance from her home, where she could safely wait inside in a lighted area with other people around. She proposed the WalMart in Renton. CP 666. She provided MapQuest printouts which showed the time difference between the drive from Mr. Mekuria's home in Everett to the police station and the Renton WalMart was 5 minutes. Ex. 24. Mr. Mekuria agreed to use WalMart as the new exchange location when the child was not in school. RP 564-565.

Ms. Menfesu also requested more detailed provisions for travel because the prior plan did not set out specific provisions for notice of travel, exchange of itineraries, or who would hold the child's passport. CP 664. The GAL recommended Ms. Menfesu maintain custody and control of the child's passport and made recommendations for a provision to protect a parent if the other parent objected to travel in bad faith. CP 700. The court entered the proposals requested by Ms. Menfsu, except with regard to the child's passport. CP 369. Based on an allegation by Mr. Mekuria that Ms. Menfesu was a flight risk and a comment made by Mr. Mekuria in his closing argument about a phone call he claimed to have overheard when the parties still lived together, prior to 2009, the court ordered that Mr. Mekuria be the parent to hold the child's passport CP 404.

There were other minor changes to the parenting plan that are not raised in this appeal.

IV. ARGUMENT

A. ARGUMENT IN RESPONSE

1. Mr. Mekuria's argument that the allocation of decision-making infringes upon his constitutional liberty interest as a parent is based on a fundamental misunderstanding of the facts and circumstances in this case and the law applicable to this minor modification.

This modification involves the allocation of decision-making between two parents. A trial court's decision concerning parental decision-making is ordinarily reviewed for an abuse of discretion. In re Marriage of Jensen-Branch, 78 Wn. App. 482, 490, 899 P.2d 803, 808 (1995 citing Munoz v. Munoz, 79 Wn.2d 810, 813–14, 489 P.2d 1133 (1971); see also In re Marriage of Kovacs, 121 Wn.2d 795, 801, 854 P.2d 629 (1993).

Mr. Mekuria argues the parents should have joint decision-making for both educational decisions and non-emergency medical decisions. Sole decision-making for educational decisions was awarded to Ms. Menfesu at trial in 2010. CP 654. Ms. Menfesu did not request a change to educational decision-making in the minor modification that was before the court in this case. CP 684. Mr. Mekuria did not present any

evidence to support a change to the educational decision-making, although he continued to insist during trial that he wanted to have "equal responsibility like the mother." RP 96. He could not articulate a substantial change of circumstances that would support a modification of educational decision-making. RP 247. The court's order allowing Mr. Mekuria to seek a modification of educational decision-making in the future without a showing of substantial change of circumstances (CP 406) is addressed below in Ms. Menfesu's argument on cross-appeal.

In 2010, the final parenting plan allocated non-emergency medical decision-making to the parents jointly. CP 661. Ms. Menfesu requested a modification of the non-emergency medical decisions based on a substantial change in circumstances that existed since the entry of the final parenting plan. CP 664. Adequate cause was found on her petition. CP 676. Mr. Mekuria conceded to adequate cause on her petition. CP 679. Both the expert hired by Ms. Menfesu, Seth Ellner, and the Guardian ad Litem, Lisa Barton, recommended to the court that Ms. Menfesu have sole decision-making regarding non-emergency medical care and the court found that the parties could not communicate well enough to have joint decision-making. CP 406. The court awarded her sole decision-making for non-emergency medical care and education based on the parties' inability to communicate. CP 406, 375. Mr. Mekuria does not challenge the court's

finding with respect to the parties' ability to communicate. Unchallenged findings of fact are verities on appeal. Zunino v. Raiewski, 140 Wn.App. 215, 220, 165 P.3d 57 (2007), citing Davis v. Dep't of Labor & Indus., 94Wn.2d 119, 123, 615 P.2d 1279 (1980).

Mr. Mekuria's argument on appeal claims that the court's order of sole decision-making to Ms. Menfesu is a constitutional infringement upon his fundamental parenting rights. To support his argument, Mr. Mekuria mistakenly relies upon and misconstrues the holdings in Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000), and the line of U.S. Supreme Court cases cited in Troxel. Troxel addressed the rights of parents versus non-parents. While the U.S. Supreme Court cases cited in Troxel do for the most part support the proposition of a fundamental liberty interest with respect to parenting, they are inapposite to the facts of this case. None of these cases hold that all parents have a constitutional right to joint decision-making. Unlike these Supreme Court cases, this case involves the permissible determination by the court of the allocation of decision-making between two parents. Mr. Mekuria does not make an argument as to why the statutory framework adopted by the legislature in the State of Washington regarding parenting plans and the court's authority to allocate decision-making between parents is unconstitutional.

The law does not distinguish between litigants who elect to proceed pro se and those who seek assistance of counsel. In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Both must comply with applicable procedural rules, and failure to do so may preclude review. Id. at 626; State v. Marintorres, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). An appellant must provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record." RAP 10.3(a)(6). The appellate court generally will not consider arguments that are unsupported by pertinent authority, references to the record, or meaningful analysis. Cowiche Canvon Conservancy v. Boslev. 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

The Washington State Legislature has set forth a statutory framework for the courts to apply to the allocation of decision-making between parents in Washington State. In fashioning a parenting plan, the trial court seeks to maintain the child's emotional stability, to clearly establish the parents' responsibilities and to minimize the child's exposure to harmful parental conflict. RCW 26.09.184(1)(b); (d); (e).

To reach these objectives with regard to allocating decision-making authority between the parents, "[t]he plan *shall* allocate decision-

making authority to one or both parties regarding the children's education, health care, and religious upbringing". (emphasis added) RCW 26.09.184(4)(a). The trial court "shall order" sole decision-making authority to one parent if one parent is opposed to joint decision-making and that opposition is reasonable under RCW 26.09.187(2)(c). RCW 26.09.187(2)(b) . Among the factors the trial court must consider in RCW 26.09.187(2)(c) are:

> The history of participation of each parent in decision-making in each of the areas of RCW 26.09.184(4)(a);
>
> Whether the parents have a demonstrated ability and desire to cooperate with one another in decision-making in each of the areas in RCW 26.09.184(4)(a)[.]
>
> RCW 26.09.187(2)(c)(ii); (iii).

The court was well within its discretion to award non-emergency medical decision-making to the mother in this case on the basis that the parties cannot communicate. This finding is amply supported by the record. There was no substantial change of circumstances to warrant a change to the 2010 allocation of educational decisions to the mother. Religious decision-making is not affected by this order.

2. The trial court properly exercised its discretion to order the exchange of the child to be at the WalMart in Renton near the mother's home when school is not in session.

Ms. Menfesu requested a transfer location of the child for visitation when the transfer does not take place at school under RCW 26.09.260(10). The evidence in the record supports the court's decision to make that location the WalMart in Renton. For most exchanges, the father picks up and drops off the child at school, in Renton, near the mother's home as set forth in the 2010 parenting plan. CP 654. After school started, the parties continued to use the police station at Myrtle Street in Seattle's Beacon Hill area as their secondary exchange location. Ms. Menfesu asked for the secondary exchange location to be at WalMart because it is difficult for her to get to and from the police station. That location requires her to take a long bus ride, and she and the child often spend forty minutes or more if they have to wait for the bus. RP 319. It was also difficult for the child to travel to and from the transfer point in the rain and cold because the bus does not drop off passengers near the police station. RP 339. Sometimes the police station was not open, and Ms. Menfesu was afraid of the father. RP 320-321. She asked to have the transfer point moved to the WalMart in Renton because it is within walking distance from her home, where she and the child can wait inside to escape the

weather and where there are other people. RP 333-334, CP 664. The court entered an order specifying the WalMart in Renton as the exchange location when the child is not in school. CP 369. While the court did not make any findings regarding this provision, the record supports it. In addition, the father agreed to the change. RP 564-565.The new location is five minutes from the previous location, making the change in the father's travel time minimal. Exs. 24, 35, RP 53-55.

3. Ms. Menfesu's blindness was not properly before the court and is not a basis for limitations.

Mr. Mekuria argues the court erred when it did not make findings that Ms. Menfesu has either willfully or neglectfully failed to perform parenting functions with respect to education and medical care and attending to the child's needs under the statute setting forth definitions used in RCW 26.09. He cited nothing in the record to support his claim that such findings should have been made. He also fails to present argument or authority as to why the court should ignore its previous ruling in this case. His petition for major modification based on essentially the same arguments, was dismissed by the trial court. That dismissal was affirmed on appeal, and Mr. Mekuria's arguments were found to be without merit. Mekuria and Menfesu at 131. Despite these rulings against him, Mr. Mekuria again wants an affirmative statement from the court that

Mr. Menfesu cannot parent because she is blind. Not only is the issue not before the court in Ms. Menfesu's minor modification, Mr. Mekuria presented no new evidence at this trial to support a conclusion that a substantial change in circumstances exists to support any limitation on Ms. Menfesu's parenting related to her blindness. He simply repeats the same arguments time and time again without citing anything in the record to support them.

Mr. Mekuria refers to Ms. Menfesu's disability as her "alleged blindness excuse" and argues that because she cannot drive, and seeks assistance from friends and neighbors for some tasks she is "refusing" to perform parenting functions. That argument is akin to saying that he "abandons" the child when he goes to work and "refuses" to perform parenting functions when his wife does household chores or drives the child to exchanges, or when she or others take care of his daughter. When asked if he had anything positive to say about Ms. Menfesu's parenting, Mr. Mekruia admitted that he "cannot witness about Ms. Menfesu," and that he hasn't "been in her home." RP 233. The mother's enlistment of others to assist her with certain tasks is far from neglectful; it is a sign of strength and good parenting. She is a responsible parent who makes sure her child's needs are being met. Mr. Mekuria's request for findings against Ms. Menfesu on the basis of her blindness is without merit.

4. The court properly allocated payment of school tuition fees to both parents.

The mother proposed a sharing of tuition costs if the cost were to increase more than 25% or if the child were to lose her scholarship. CP 39. The father did not object to these proposals. He brought up this issue for the first time in his motion for reconsideration. CP 408.

Both In re Marriage of Van der Veen, 62 Wn.App. 861, 815 P.2d 843 (1991) and In re Marriage of Stern, 57 Wn. App. 707, 789 P.2d 807 (1990), cited by Mr. Mekuria in support of his argument, articulate the need for the trial court to make findings related to an order requiring payment of private school tuition. The list of factors to consider is non-exclusive.

> There is no prohibition against the award of private school tuition for a minor child. Factors such as family tradition, religion, and past attendance at a private school, *among others*, may present legitimate reasons to award private school tuition expenses in favor of the custodial parent. Vander Veen at 865-866 citing Stern at 720. (emphasis added)

The record in this case supports proper findings for an allocation of private school expenses. Mr. Mekuria expressed a preference to have the child attend a different Christian school nearer to his home (CP 227). The mother clearly wanted the child to attend private school, and enrolled

Eden at St. Anthony's, a private Catholic school near the child's primary residence in Renton. RP 347. She chose this school because it was highly recommended by other parents as one of the best schools available. RP 347. Both parents had decision-making authority regarding exposure of the child to religion. CP 661. The mother had sole decision-making authority with regard to education. CP 661. The child had been attending St. Anthony's prior to trial. The child was doing well in school. RP 35-39.

The father clearly stated a desire that the child attend private school, albeit a school of his choosing (Concordia, a private Lutheran school in Seattle, some distance from the child's primary residence). RP 227. Pastor Seyoum indicated that Mr. Mekuria wanted Eden to attend a private school, and that education was very important in his culture. CP 695. The father also expressed his desire to send Eden to private school in his interview with the GAL. CP 689. She noted that the father stated that he "could send Eden to a good private school." CP 689. In arguing for the child to be enrolled in a school of his choosing in one of his motions before the court in this case, he stated "The child will have friends there, in a safe, loving environment with high ethical standards and a strong policy against bullying, teasing or other problems that are almost epidemic in some public schools." CP 487.

Mr. Mekuria states in his brief that Ms. Menfesu placed Eden in St. Anthony's "without his knowledge, permission nor consent." However, Mr. Mekuria was notified about the school in advance of the start of school. RP 98, 347-348. Ms. Menfesu did not require his permission or consent as she had sole decision-making regarding education. CP 661. The father did not raise an objection to the school at the time the child was enrolled, or at any time before trial. He did not object to the allocation of tuition between the parties until after trial.

In her response to the Motion for Reconsideration filed by Mr. Mekuria objecting to the provision regarding tuition, Ms. Menfesu agreed proper findings needed to be made in order to support the allocation of payment of expenses, and she further argued the record before the court provided support for those findings. CP 447. The court entered an order on reconsideration which included specific findings in support of its ruling[2]. CP 523. The court properly exercised its discretion when it made the child's school tuition the responsibility of both parents if the tuition should increase by 25% or more.

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[2] It should be noted, however, that the court in its handwritten addition to the findings noted that the child should also attend private school because of smaller class sizes, despite the fact that there is no evidence in the record to support this finding.

B. ARGUMENT ON CROSS-APPEAL

1. The trial court's order allowing Mr. Mekuria to modify educational decision-making two years in the future without a showing of a substantial change in circumstances is an abuse of discretion.

A trial court's rulings on parenting plans are reviewed for abuse of discretion. In re Marriage of Littlefield, 133 Wn.2d 39, 46, 940 P.2d 1362 (1997). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." Littlefield, at 46-47. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. Littlefield, at 47.

a. The court abuses its discretion when it fails to follow the procedures set forth by the legislature for a modification of the parenting plan.

The court's order allowing Mr. Mekuria to seek a modification of educational decisions in the future without a showing of substantial change of circumstances, bypasses the statutory procedures required for

any modification. RCW 26.09.260 sets forth the procedures and criteria to modify a parenting plan.

> These procedures and criteria limit a court's range of discretion. In re Marriage of Hoseth, 115 Wn.App. 563, 569, 63 P.3d 164 (citing In re Marriage of Shryock, 76 Wn.App. 848, 852, 888 P.2d 750 (1995)), *review denied,* 150 Wn.2d 1011, 79 P.3d 445 (2003). Accordingly, a court abuses its discretion if it fails to follow the statutory procedures or modifies a parenting plan for reasons other than the statutory criteria. Id.

In re Custody of Halls, 126 Wn. App. 599, 606, 109 P.3d 15, 19 (2005)

Under RCW 26.09.260, the court may modify a parenting plan only if it finds "a substantial change has occurred in the circumstances of the child or the nonmoving party and ... the modification is in the best interest of the child and is necessary to serve the best interests of the child." RCW 26.09.260(1). These findings must be based on "facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan." RCW 26.09.260(1). "[T]the moving party must prove that a modification is appropriate." In re Parentage of Schroeder, 106 Wn.App. 343, 350, 22 P.3d 1280 (citing George v. Helliar, 62 Wn.App. 378, 383–84, 814 P.2d 238 (1991)). Any modification however slight, requires the independent inquiry of the trial court. In re Marriage of Coy, 160 Wn.App. 797, 804, 248 P.3d 1101 (2011).

In this case, the trial court pre-empts that inquiry in a modification to be filed two years in the future and bypasses the statutory requirement that a finding of adequate cause must be made before a parenting plan may be modified. The court's order presumes that there will be adequate cause to modify educational decision-making two years in the future, regardless of the circumstances at that time. Such speculation is not a proper substitute for the statutory procedures requiring a showing of substantial change of circumstances at the time the modification petition is filed.

RCW 26.09.181 requires a petitioning party to file and serve his motion to modify with a proposed parenting plan. Further, under RCW 26.09.270, a party seeking to modify a parenting plan must submit with his motion "an affidavit setting forth facts supporting the requested ... modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits." At a minimum, adequate cause means evidence sufficient to support a finding on each fact that the moving party must prove to modify the parenting plan. In re Marriage of Lemke, 120 Wn.App. 536, 540, 85 P.3d 966 (2004). And the court must deny the motion unless it finds adequate cause from the affidavits to hear the motion. RCW 26.09.270. Mr. Mekuria did not make a showing of adequate cause on this issue and he

could not articulate a basis for adequate cause to modify educational decision-making when asked about it at trial. RP 247.

The court has abused its discretion by entering an order allowing Mr. Mekuria to bypass the procedures set forth by the legislature to modify educational decision-making two years in the future, when the court granted the mother sole decision making for educational decisions in 2010, and the court found the parties cannot communicate.

b. The court's order allowing a modification in the future is based on untenable grounds.

The court speculation that Ms. Menfesu will not be able to provide adequate educational support for her daughter is not supported by the record. The court expressed "concerns" about the mother's ability to provide adequate educational support in the future, despite acknowledging that the child is doing well now. CP 406. Specifically, the court referenced the assistance with the child's schoolwork that Ms. Menfesu received from a friend stating "[T]he court is concerned about how Eden will fare academically when the homework is more difficult and voluminous and the limited, once per week assistance from Ms. Chin may prove insufficient." CP 406. This finding presumes, without reason, that Ms. Menfesu will not seek additional help in the future as needed and ignores the testimony of both Ms. Chin and Ms. Menfesu that she has the

child enrolled in afterschool tutoring twice sometimes three times a week. RP 186-187, 343. Other neighbors also help out with assignments sometimes. RP 385. Ms. Menfesu testified that she assists the child with reading, often listening by audio to a book the child is reading so that she can follow along. The court's ruling merely assumes that Ms. Menfesu will not be able to adjust accordingly as the child gets older in order to provide appropriate assistance. There is nothing in the record to support a conclusion that the mother is not capable of adapting as the child grows older. The court did not make such a finding, and it would be impossible for the court to speculate about what the circumstances will be in the future.

The court's statements about Ms. Menfesu's blindness are not supported by the record or any expert testimony. Without reasonable justification, the court appears to question the veracity of Ms. Menfesu's blindness when it referenced the video purported to be Ms. Menfesu driving a car in 2009, and noted that she could "walk across the courtroom confidently and without assistance," and simultaneously questions Ms. Menfesu's abilities to adequately assist her daughter with academics in the future. The court misstates the record with regard to the efforts Ms. Menfesu made to accommodate her blindness. In its memorandum of opinion the court states that:

> [Ms. Menfesu] testified that she is able to shop, clean, cook and do laundry without any assistance. She also testified that she has never had any in-home assistance by any organization governmental or private) specializing in providing services to the blind. Additionally, she testified that she did not have any low-vision products in her home to assist her in her daily living, nor was her cell phone adapted in any way. At trial, the mother was noted to move about the courtroom confidently and without any assistance.

There was no evidence submitted at trial, no expert testimony, and no other testimony, that a blind person must have in home assistance, or specialized appliances in order to be capable of parenting. Ms. Menfesu testified that she received assistance with a range of tasks from Washington Services for the Blind in 2006, and that she was currently on a waiting list for additional services. RP 439-441, 346, 468-469. She also testified that she did not have any specialized appliances, except for a special reader for her TV and large buttons on her home telephone. RP 442, 445-447. Also she stated that she can do ordinary household tasks herself without assistance. RP 463. She walks her daughter to school without a problem. RP 468-469. She testified that she didn't need a special cell phone, and that she can dial by touch. RP 446-447. Occasionally she misdials. RP 447. She took a parenting class. RP 345. Ms. Menfesu is capable of making the necessary arrangements for assistance as she sees fit. There was no evidence that Ms. Menfesu was not capable of

performing parenting functions, and the Guardian ad Litem noted no concerns about Ms. Menfesu's abilities to parent. CP 292, 294.

c. The issue of Ms. Menfesu's blindness was litigated in 2010, and is not a substantial change of circumstances to warrant a modification.

There is no evidence that Ms. Menfesu's sight has deteriorated or that it in any way negatively impacts her ability to parent. In his petition for a major modification of the parenting plan, Mr. Mekuria alleged that Ms. Menfesu's blindness was a basis for modification. The trial court dismissed his petition finding that Ms. Menfesu's sight impairment did not constitute a change in circumstances because Ms. Menfesu's medical condition was considered during the dissolution trial in 2010. This court affirmed that dismissal finding no merit to Mr. Mekuria's arguments. "There was no evidence of any worsening of the condition. Thus, there was no change of circumstances." Mekuria and Menfesu, at 134. In the trial that is the basis for this appeal, there was no evidence presented of any worsening of Ms. Menfesu's eye condition. Further, there was no evidence presented that her eye condition negatively impacts her ability to parent.

Whether Ms. Menfesu can see a little bit out of one eye, or nothing at all, is immaterial absent a finding that her condition actually

impairs her ability to parent. There is no evidence of impairment. The court's speculation about Ms. Menfesu's future ability to assist her daughter with school due to her blindness is improper and should not be the basis of an order allowing a modification of the educational decisions in the future without a showing of adequate cause.

2. The court's order placing custody and control of the child's passport with the father is an abuse of discretion.

A trial court's rulings on parenting plans are reviewed for abuse of discretion. Littlefield at 46, as further defined above. Any modification however slight, requires the independent inquiry of the trial court. Coy at 804.

The court abused its discretion when it entered an order placing custody and control of the child's passport with the father, when no adequate cause had been found for a modification on that basis, and no evidence was offered to support a restriction on the mother's travel. If the court legitimately wished to restrict Ms. Menfesu's ability to travel it had to make a finding that she was a flight risk, and that finding had to be based upon substantial evidence that was offered during the evidentiary portion of the trial, and subject to cross-examination. Further, the issue

would have had to properly come before the court after a hearing on adequate cause to modify the parenting plan.

In her petition, the mother requested a change to the travel provisions to provide clarity to the parties and to avoid conflict. CP 676. She sought custody and control over the passport as the custodial parent, not as a means to restrict the father's ability to travel. The father conceded to adequate cause on the mother's petition for a minor modification. CP 679. The GAL recommended the mother's requested changes be implemented, and that she have custody and control over the child's passport. CP 685. The GAL also recommended a remedy should either parent object to travel in bad faith. CP 685. The court did not enter the GAL's proposed language. CP 371. Instead, the court entered an order granting the father custody and control over the child's passport basing its ruling on a statement made by the father during closing argument. RP 570. In its Memorandum of Opinion the court found:

> The father testified credibly to a telephone conversation the mother had indicating her potential plan to move out of the country at some point. Given this, the court has changed the provisions in the parenting plan with regard to the passport giving the father custody of Eden's passport.
>
> CP 407.

In his closing argument the father stated his fear that the mother was a flight risk, and related a conversation he allegedly overheard when the parties were living together in which the mother was speaking with someone in Ethiopia and talked about traveling there. RP 570. The court clearly based its order on a perception that the mother was a flight risk. It did not however, make an explicit finding that the mother was a flight risk or how the alleged conversation would support a finding that the mother was a flight risk. The trial court did not restrict either party's ability to travel in the 2010 parenting plan. CP 654-663. The court's order in the current parenting plan does not explicitly restrict either parent's ability to travel either (CP 371) but as a practical matter it does by placing the child's passport in the father's custody and control. The placement of the passport with the father is in conflict with its other findings that modifications were designed to reduce conflict and clarify the responsibilities of the parties. CP 381. This order lays the foundation for conflict in the future. The father has been highly litigious in the past bringing numerous motions that were either denied or dismissed. RP 228-229, 248-254. He has brought a frivolous appeal. Mekuria and Menfesu and Ms. Menfesu argues that his current appeal is frivolous. The father has no reservations about putting forth positions that are not substantiated by the record, and that have been determined to be without merit in the past.

RP 254-264, 292, CP 80-123, 408-420, and see Mekuira's Amended Opening Brief. It is reasonable to assume that he will cause the mother to litigate in order to travel. By granting possession and control of the passport to the father, the court lays the groundwork for continued conflict. The passport should be in the possession and control of the child's custodial parent as recommended by the GAL. CP 685.

Adequate cause was never found on the allegation that Ms. Menfesu was a flight risk. The court's decision is based on untenable reasons when it seeks to restrict Ms. Menfesu's ability to travel when Mr. Mekuria never obtained adequate cause to proceed with any modifications that would limit Ms. Menfesu's ability to travel. Under RCW 26.09.260, the court may modify a parenting plan only if it finds "a substantial change has occurred in the circumstances of the child or the nonmoving party and ... the modification is in the best interest of the child and is necessary to serve the best interests of the child." RCW 26.09.260(1). These findings must be based on "facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan." RCW 26.09.260(1). "[T]the moving party must prove that a modification is appropriate." Schroeder at 350. Mr. Mekuria made several statements about his claim that Ms. Menfesu was a flight risk but never presented any evidence to support his argument. His statement

made during closing argument is not evidence. The court abuses its discretion when it fails to follow the procedures set forth for modification actions. Halls at 606.

The court basis its decision on untenable grounds when evidence relied upon by the court is an alleged conversation related to the court by the father during his closing argument which took place when the parties were still living together prior to the entry of the 2010 parenting plan. The State Supreme court in ruling in a case involving travel restrictions ruled that such restrictions must be supported by substantial evidence, and that "Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted. King County v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 142 Wn.2d 543, 561, 14 P.3d 133 (2000)." Katare v. Katare, 175 Wn. 2d 23, 35, 283 P.3d 546, 552 (2012).

There is no evidence in the record to support the travel restrictions requested by the father. In his closing argument, he claimed to have overheard the mother talking in the other room. RP 570. Even if this were true, the mother fled the father's home in 2009. RP 318, 320. It wasn't possible for Mr. Mekuria to overhear her on the phone in the other room after that time because the parties no longer lived together. Furthermore, the court ignored the evidence in the record that established the mother has strong ties to this country. The mother is a US Citizen receiving SSDI. RP

358, CP 557, 710, 748, Ex. 13. She has her daughter enrolled in a good school in this country. RP 347. She has ties to her church and to her friends and neighbors. RP 408, 465. Her mother lives in this country. RP 463-464, 474-475. When the mother fled the father's home in 2009, she didn't leave the country, she moved to Renton. RP 174.

Because Ms. Menfesu did not know the court would be evaluating the issue of whether she was a flight risk she did not have the opportunity to present evidence to show that she was not. Ms. Menfesu was not afforded an opportunity to cross-examine Mr. Mekuria, nor did the court offer Ms. Menfesu a chance to offer testimony in rebuttal. Due process guarantees the right to a full and fair hearing. Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wn.2d 418, 422, 511 P.2d 1002 (1973). Although the process which is due varies according to the type of proceeding, cross examination is an integral part of both criminal and civil judicial proceedings. Hannah v. Larche, 363 U.S. 420, 80 S.Ct. 1502, 4 L.Ed.2d 1307 (1960).

The purpose of the mother's proposed modification to the travel provisions was solely to create clearly defined responsibilities for the parties regarding travel and to eliminate conflict. The court found the parenting plan needed to be modified on that basis. CP 381. The court's order placing custody and control of the child's passport with the father,

based on a perception that the mother is a flight risk, when no adequate cause was found to limit the mother's travel, and on the basis of a statement made during closing argument about an alleged conversation he overheard prior to the party's divorce creates unnecessary conflict, is an abuse of discretion, and should be reversed.

C. ATTORNEY'S FEES

Respondent requests attorneys' fees under RCW 26.09.140, which provides that:

> The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.
>
> Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.
>
> The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.
>
> RCW 26.09.140

The Appellant works for Boeing and earns a yearly salary of over a hundred thousand dollars. CP 713-747. The Respondent/Cross-Appellant

is legally blind and supports herself and the child on Supplemental Security Income of $1410 per month, and a child support payment from the appellant of $787 per month. Ms. Menfesu requests an award of attorney's fees on appeal.

Even though the Respondent is represented by the Northwest Justice Project (NJP), and receives legal services free of charge, she is entitled to recovery of attorney's fees, just like any other litigant. NJP is publicly funded and incurs costs for the representation of its clients. NJP attorneys are paid salaries based on years of experience. Expenses related to free civil legal services include not only the cost of providing an attorney, but also the opportunity costs of reduced availability to represent other clients in a climate of scarce resources and significant demand for representation in family law cases.

The Northwest Justice Project, a state and federally-funded civil legal services provider, is permitted by the Legal Services Corporation ("LSC") and the Office of Civil Legal Aid ("OCLA") to pursue attorney's fees in cases where such fees are authorized by statute or case law. As a condition of representation, Ms. Menfesu agreed to assign any attorney's fees recovered as part of the action to NJP.

The plain language of RCW 26.09.140 provides for payment of costs incurred, including reasonable attorney's fees, not actual attorney's fees incurred or paid (emphasis added). "Reasonable attorney's fees" is a term of art and is differentiated from fees actually paid or incurred. It is not determined based on the amount of fees actually incurred. See Fetzer v. Weeks, 122 Wn.2d 141, 859 P.2d 1210 (1993). In awarding reasonable attorney fees, absent any expressed statutory direction, Washington courts commonly use the "lodestar" method to calculate the award. Bowers v. TransAmerica, 100 Wn.2d 581, 594, 675 P.2d 193, 202 (1983). The lodestar method first looks at the number of hours reasonably expended to obtain the result, multiplied by a reasonable hourly rate. Id. Indeed, the "reasonable hourly rate should be computed for each attorney, and each attorney's hourly rate may well vary with each type of work involved in the litigation." Id.

Regardless of the method of calculation of a fee award under RCW 26.09.140, in no event does the statute require actual payment of fees to obtain an award. The statute does not require that the petitioner have paid attorney's fees out of her own pocket to a private attorney in order to be awarded fees, nor does the statute carve out an exception for litigants who receive free legal representation. There is no support in the statute or any case law for such a presumption. On the contrary, reported case law

affirms that historically, Washington courts do not distinguish between paid private attorneys and providers of free civil legal representation in awarding attorney's fees where fees are authorized by statute.

Tofte v. Department of Social and Health Services, 85 Wn.2d 161, 531 P.2d 808 (1975) is the lead case on point. In that case, the Supreme Court held that the fundamental underpinning of the statutory provision authorizing the fee award is determinative and the petitioner's representation by a non-profit legal aid program was irrelevant to whether the successful litigant was entitled to attorney's fees. Tofte, 85 Wn.2d at 165 (citing California case holding that successful fee applicant represented by legal aid program was not required to actually incur an attorney fee to be eligible for an award). Hence, the court must look to the "fundamental underpinning of the fee award provision" in order to determine whether a litigant, in this case the respondent, is entitled to a "reasonable attorney's fees" award. Id.

V. CONCLUSION

The issues raised in Mr. Mekuria's appeal are not supported by argument and authority. His appeal should be denied. The court abused its discretion when it ordered a modification of the parenting plan in the future with respect to educational decision-making when the court ignored

the procedural requirements for a modification of the parenting plan. Ms. Menfesu's blindness was improperly considered by the trial court in its rulings and there was no evidence that her blindness interferes with her parenting abilities. Finally, the trial court abused its discretion when it purportedly limited Ms. Menfesu's ability to travel on the basis that she was a flight risk when there was no showing of adequate cause for such a ruling, no finding that she was a flight risk, and no evidence to support such a ruling. The court's orders with respect to the issues in Ms. Menfesu's cross-appeal should be reversed.

Respectfully submitted this 15 day of May, 2015.

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