No. 96831-4

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 77583-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

EVE H. SNIDER ANDERSON,

Petitioner,

and

JUDAH STROUD,

Respondent.

PETITION FOR REVIEW

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A. Identity of Petitioner.

The petitioner is Eve Snider Anderson, appellant in the Court of Appeals.

B. Court of Appeals Decision.

Petitioner seeks review of the Court of Appeals' December 3, 2018 decision affirming the trial court's decision dismissing her petition to relocate with the children to North Carolina without a hearing on the merits of the change in the parenting plan necessitated by petitioner's planned move, on the grounds the parents had agreed to a 50/50 plan. Division One's decision is published at *Marriage of Snider & Stroud*, ___ Wn. App. 2d ___, 430 P.3d 726 (2018); citations in this petition are to the decision as attached in Appendix A. The Court of Appeals denied petitioner's timely motion for reconsideration on January 4, 2019. (App. B)

C. Issue Presented for Review.

How should the intended relocation of a parent that will make a 50/50 parenting plan impracticable to follow be resolved in the courts?

D. Statement of the Case.

When the parties divorced in April 2015, they agreed to a 50/50 parenting plan for their children, then ages 6 and 8. (CP 37-

38) The children attended elementary school near the mother's residence in Mill Creek; the father lived in Marysville. Under the schedule, each parent had the children every other weekend, with another transfer midweek each week. (CP 84)

Two years after the parents agreed to this 50/50 plan, the mother learned that her position in Everett was being eliminated. She had the opportunity for a comparable position in Winston-Salem, North Carolina, where she could live with her new husband, who had been transferred to North Carolina by his employer. In June 2017, relying on the provisions of the Child Relocation Act ("CRA") (which by statute must be recited in every parenting plan filed in this State; *see* RCW 26.09.490), the mother filed and served a notice of intent to move with the children, now ages 8 and 11, to North Carolina. (CP 137) She asked the court to allow the children to relocate with her, and to enter a new plan reflective of any geographic distance between the parents.[1] (CP 137-38)

The father objected and filed a motion to temporarily restrain the relocation, arguing, among other factual issues, that there was no

[1] The father had "portable" employment opportunities; he had tentatively expressed his amenability to moving to North Carolina if the mother and the children lived there, in which case modification of the 50/50 plan might not have been necessary. (CP 91-92)

presumption the mother could move because the parties had "a shared 50/50 parenting plan." (CP 116) The father recognized, however, that "if the mother elects to still relocate to North Carolina without the children, a new parenting plan needs to be adopted." (CP 133) Nevertheless, the trial court summarily dismissed the mother's petition based on Division Two's decision in *Marriage of Ruff/Worthley,* 198 Wn. App. 419, 393 P.3d 859 (Mar. 28, 2017), which held that "the CRA does not apply when the children's residential time is designated equal or substantially equal in the parenting plan when the proposed relocation would result in a modification of this designation." 198 Wn. App. at 424, ¶ 6. (CP 4, 15)

The mother appealed. While the appeal was pending, she filed a petition for modification of the parenting plan (CP 140-47), and argued on appeal that if the CRA does not apply when a parent with a 50/50 plan seeks to relocate with the children, the modification criteria of RCW 26.09.260(5),[2] and not the provisions for

[2] RCW 26.09.260(5), the "minor" modification provision, applies when the current plan is impracticable because of a parent's changed residence. Unlike the "major" modification provision, RCW 26.09.260(1), it does not require a threshold adequate cause hearing or an allegation that the "present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child."

modification in RCW 26.09.260(1),[3] should apply. The father's position was that the major modification provisions of RCW 26.09.260(1) apply, that the fact that a parent needs to move could not provide adequate cause for a major modification, and that a parent with a 50/50 plan has no choice but to move without the children, in effect making the parent who is not relocating the primary residential parent by default, and without a mechanism for court review.

On December 3, 2018, Division One affirmed the trial court's dismissal of the mother's relocation petition in a published decision, adopting the holdings of Division II in *Ruff/Worthley* and of Division III in *Marriage of Jackson/Clark,* 4 Wn. App. 2d 212, 421 P.3d 477 (June 28, 2018) that the CRA does not apply to 50/50 plans. Division One also held that in order for a parent with a shared 50/50 parenting plan to relocate with the children, she must prove grounds for a major modification under RCW 26.09.260 (1), and not a minor modification under RCW 26.09.260 (5). (Opinion ¶ 23)

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[3] RCW 26.09.260(1), the "major" modification provision, requires that the petitioning parent show a substantial change in circumstances of the other parent or child, *and* that the modification is agreed, the child has already been integrated into the petitioning parent's household in deviation of the parenting plan, the present environment is detrimental to the child, or the other parent has been held in contempt at least twice in the previous three years. RCW 26.09.260(2).

The mother petitions for review of Division One's published decision.

E. This Court Should Grant Review To Address The Issue of Significant Public Importance (And Constitutional Significance) How Parents With 50/50 Plans Can Access The Courts To Resolve Relocation Disputes.

1. Division One's decision treats parents with a 50/50 parenting plan differently than other parents, limiting their access to the courts to resolve residential schedule disputes.

All three Divisions of the Court of Appeals have now concluded that the CRA, which governs the consideration of proposed relocation of a child who lives primarily with one parent, has no application *at all* to 50/50 parenting plans, because the child has no "principal residence" and resides with neither parent "a majority of the time." Division One's decision now goes even further, holding that when there is a 50/50 parenting plan, a parent who wishes to relocate to a location that makes the 50/50 parenting plan impracticable must first prove adequate cause for a major modification under RCW 26.09.260 (1) before a full hearing will be granted for consideration of a parent's petition to modify the parenting plan to accommodate relocation. (*See* Opinion ¶ 23) This is true regardless whether or not the relocating parent seeks to relocate the child and become the primary residential parent.

The intermediate appellate courts' conclusion that 50/50 parenting plans are not controlled by the CRA may be a rational reading of the statute, since the CRA relies upon a presumption that it is in the child's best interest to relocate with the parent with whom they reside the majority of the time, and promulgates notice and hearing requirements premised on that presumption. *See, e.g.*, RCW 26.09.430, .520. But in conjunction with Division One's conclusion that changes to a 50/50 plan to address a parent's proposed relocation are subject only to major modification, the intermediate courts' decisions in effect prevents families with a 50/50 plan from having meaningful access to the courts to resolve parenting plan disputes caused by a parent's proposed relocation.

Division One's decision creates a serious problem, affecting many families in this State, which warrants review and resolution by this Court under RAP 13.4(b)(4). When the CRA was enacted twenty years ago, relatively few parents agreed to 50/50 plans; even fewer were imposed by the courts after trial. Indeed, there was a deliberate decision made by the individuals who helped draft the legislation, which was enacted in response to this Court's decision in *Marriage of Littlefield*, 133 Wn.2d 39, 940 P.2d 1362 (1997), *not* to attempt to

address 50/50 plans in the CRA.[4] These plans, which are practical only if the parents live near one another, have become much more common over the two decades since the CRA was enacted.[5] Such a plan should not prevent either parent from moving for the duration of the child's majority, however. Yet that is the practical effect of Division One's decision in this case if one parent objects to the other parent moving.

Family circumstances change, and there are legitimate reasons why a parent may need to move. It is also true that sometimes, objections to a parent's relocation are unreasonable. (*See, e.g.* CP 83-92) The fact that the parents had initially agreed to, or been ordered to abide by, a 50/50 plan, should not mean that the

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[4] That was in part because there was great resistance on the part of some drafters to imposing a notification requirement on the parent who did not have the children the majority of the time, in part because at the time 50/50 plans were relatively uncommon, and in part because the CRA also was drafted in light of RCW 26.09.187(3)(b), which limits use of 50/50 plans "for facile avoidance of child care disputes," because "[s]uch temporizing arrangements may be harmful to the child." Commentary, Parenting Act at 27-28, quoted at *Littlefield,* 133 Wn.2d at 53.

[5] Based on the 2016 Residential Time Summary Report by the Washington State Center for Court Research, when the parents have no risk factor over 24% of the parenting plans entered in 2016, were 50/50 parenting plans, an increase from 22.6% of the parenting plans entered just two years earlier, in 2014. 2014 Residential Time Summary; https://www.courts.wa.gov/subsite/wsccr/docs/ResidentialTimeSummaryReport2016.pdf; https://www.courts.wa.gov/subsite/wsccr/docs/ResidentialTimeSummaryReport2014.pdf

family be denied access to the courts to decide which parent is better suited to become the "primary residential parent" if the parents will no longer live near one another.

As Division One recognized, the only "remedy" of a parent who must relocate now is to move without having a modified parenting plan in place, and wait for the other parent to file a petition under RCW 26.09.260(1) for a major modification based on the substantial change in circumstances due to relocation. (Opinion ¶ 27) In effect, Division One's decision places an implicit geographic restriction in all 50/50 plans, preventing either parent from relocating. But as this Court recognized in *Littlefield*, 133 Wn.2d at 56, a court does not have authority to restrict a parent from moving away from the child, or away from the other parent. While enactment of the CRA was intended to supersede *Littlefield,* the Legislature did so by providing a statutory avenue for families to have their relocation disputes heard. Laws of 2000, ch. 21, § 1. The Legislature clearly did not intend to leave a class of parents without any ability to modify a parenting plan simply because they have a 50/50 residential schedule.

Rather than create barriers to access to the courts to have relocation disputes heard, the Legislature reduced, if not removed,

those barriers. This was true regardless whether it was the primary residential parent seeking to relocate, or the non-primary residential parent. For instance, under RCW 26.09.260(6), a parent objecting to the relocation of a child with the primary residential parent can obtain a hearing without first proving adequate cause for modification of the parenting plan. And if a non-primary residential parent's change of residence "makes the residential schedule in the parenting plan impractical to follow," he or she can seek a hearing on their request to modifying the parenting without proving a basis for adequate cause under RCW 26.09.260(2) and .270. RCW 26.09.260(5)(b).

Division One's decision erects needless barriers to access to the courts to resolve disputes over a parent's relocation that the Legislature saw fit to remove, solely because the parents agreed to or were ordered to follow a 50/50 parenting plan. "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection." *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 979, ¶ 6, 216 P.3d 374 (2009) (*quoting Marbury v. Madison,* 5 U.S. (1 Cranch) 137,

163, 2 L.Ed. 60 (1803)). This Court should accept review of Division One's published decision pursuant to RAP 13.4(b)(3) and (4).

2. Division One's decision wrongly rejected the solution the Legislature has already provided to resolve relocation disputes in 50/50 parenting plans, in conflict with *Bower/Reich*.

The "solution" proposed by the father, and in effect adopted by Division One in holding that a parent with a shared 50/50 parenting plan who needs to relocate must prove grounds for a major modification under RCW 26.09.260 (1), is no solution at all. (Opinion ¶ 27) While there is no doubt relocation can work a significant change in a 50/50 residential schedule, the Legislature intended such a change to be considered under the "minor" modification standards.[6] Division One itself recognized as much in *Bower v. Reich*, 89 Wn. App. 9, 964 P.2d 359 (1997).

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[6] Division One concluded that because the children's relocation would in effect create a residence where the children reside the majority of the time, when there was previously none, it "takes such decision out of RCW 26.09.260(5), and places it under RCW 26.09.260(1) (major modification)." (Opinion ¶ 23) This logic, anticipating the consequence of a parent's move without a parenting plan that accommodates the move to decide which subsection of the modification statute should apply, is inconsistent with Division One's conclusion that the CRA does not apply to a 50/50 plan because it "does not designate a parent with whom the children reside a majority of the time." (Opinion ¶ 16) A request to relocate with the children does not, in fact, "change the residence the child is scheduled to reside the majority of time." To the contrary, under the terms of the modification statute, such a request would be a "minor" modification: The plain language of RCW 26.09.260(5) provides that the first question that must be answered to determine whether a modification

When *Bower/Reich* was decided, a minor modification was defined in part as a modification of the residential schedule "based upon a change of residence or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow." *Former* RCW 26.09.260(4)(b)(iii). The mother in *Bower/Reich* was the primary residential parent; she sought to relocate with the child to California under this provision. The father objected, claiming that the mother's petition was not for a "minor" modification because it would result in a "major reduction in his residential time," and that the mother therefore should be required to meet the standard for a major modification. *Bower/Reich,* 89 Wn. App. at 16. In rejecting the father's argument, Division One held that the statute "unambiguously provides that a change of residence is a minor modification," and that the requirements listed under the statute

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is "minor" is whether it will "change the residence the child is schedule to reside in the majority of the time." RCW 26.09.260(5). The second question that must be answered to determine whether a modification is "minor" is whether the requested modification is "based on a change of residence of the parent with whom the child does not reside the majority of the time . . . which makes the residential schedule in the parenting plan impractical to follow." RCW 26.09.260(5)(b). The answer to that question in 50/50 cases is "yes," because the child does not reside the majority of the time with either parent, and one parent's relocation would make the 50/50 schedule in the current parenting plan impractical.

"explain what the Legislature considered to be minor modifications." *Bower/Reich,* 89 Wn. App. at 16.

The same is true here under the current modification statute – which continues to apply, since the CRA does not. RCW 26.09.260(5) unambiguously provides that a modification that does not "change the residence the child is scheduled to reside the majority of time" based on a "change of residence of the parent with whom the child does not reside the majority of the time" is a "minor" modification. Thus, a requested relocation with the children in a 50/50 plan is a minor modification.

Division One's decision in this case conflicts with *Bower/Reich*. The Court of Appeals erred in rejecting the clear application of the minor modification provisions in this circumstance, compelling a parent who must move to do so without the children, perhaps leaving them with a parent who is not well-suited to be the primary caregiver, when the modification statute provides a mechanism for addressing this situation. This Court should accept review of Division One's published decision pursuant to RAP 13.4(b)(2).

3. Division One's decision will make it less likely that parents will agree to 50/50 parenting plans and more likely that primary parent status will be litigated.

Division One's decision will lead to absurd and unjust results, putting children at risk. The truth is that many a parent who is adequate for purposes of a 50/50 plan because the other parent is close by, should not be the parent with whom the children primarily reside when the parents are not close enough to have a 50/50 plan. Yet Division One's decision illogically presumes – and, in fact, compels – a parent who must relocate to leave the children with a parent who might not be fit for primary residential care.

Split residential 50/50 plans are usually reached by agreement.[7] As a result of the intermediate courts' decisions, and in particular Division One's decision in this case, it is less likely that parents will agree to a 50/50 parenting plan, because as a practical

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[7] 25.3% of agreed parenting plans are 50/50 plans, whereas only 9.3% of parenting plans entered after a contested hearing are. 2016 Residential Time Summary Report. Undoubtedly many of those agreed plans have been reached based on the recital in every parenting plan of the provisions of the CRA (and the implication the statute applies), and on advice that the parties' agreement is only one factor to be considered in deciding whether relocation should be allowed. *See* RCW 26.09.520. Contrary to every expectation a parent (or counsel) negotiating such a 50/50 plan might have, however, Division One has also recently declared unenforceable the parties' express agreement in a 50/50 plan that the CRA's procedure and factors should be utilized if either parent seeks to relocate. *Bergerson v. Zurbano*, ___ Wn. App. 2d ___, 432 P.3d 850 (Dec. 24, 2018).

matter they will be agreeing to a geographic limitation, and tied to the other parent's residential decisions for the child's minority. This will likely increase the number of parenting disputes that will end up in the courts. It will also encourage a parent who needs to move to deploy the "nuclear" option of RCW 26.09.260(1), alleging harm in the current schedule or unfitness of the other parent. Division One's decision will hinder, not help, the move toward co-parenting. This Court should accept review of Division One's published decision pursuant to RAP 13.4(b)(4).

F. Conclusion.

This Court should accept review to address how families with 50/50 plans can access the courts to resolve relocation disputes.

Dated this 4th day of February, 2019.

SMITH GOODFRIEND, P.S.

By: _____
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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 4, 2019, I arranged for service of the foregoing Petition for Review, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 4th day of February, 2019.

Andrienne E. Pilapil

430 P.3d 726
Court of Appeals of Washington, Division 1.

In the MATTER OF the MARRIAGE
OF Eve H. SNIDER, Appellant,
and
Judah STROUD, Respondent.

No. 77583-9-I

FILED: December 3, 2018

Synopsis

Background: Former wife filed notice of intended relocation under Child Relocation Act (CRA), seeking to move with children to another state. The Snohomish Superior Court, No: 14-3-00468-2, Eric A. Lucas, J., denied former wife's motion to revise commissioner's ruling denying request to relocate. Former wife appealed.

Holdings: The Court of Appeals, Appelwick, C.J., held that:

[1] CRA does not apply to a proposed relocation when there is a schedule providing for equal residential time with each parent;

[2] trial court was not required to determine whether former wife demonstrated adequate cause to modify parenting plan;

[3] proposed modification of parenting plan was subject to major-modification standard, not minor-modification standard;

[4] application of CRA's standard and major modification standard for parenting plans to former wife did not interfere with former wife's fundamental right to travel; and

[5] CRA's factors are not appropriate to consider once adequate cause is shown for a hearing on a petition to modify a parenting plan.

Affirmed.

West Headnotes (11)

[1] **Courts**
⇐ Number of judges concurring in opinion, and opinion by divided court

One division of the Court of Appeals is not bound by the decision of another division.

Cases that cite this headnote

[2] **Courts**
⇐ Number of judges concurring in opinion, and opinion by divided court

One panel of the Court of Appeals is not bound by another panel, even in the same division.

Cases that cite this headnote

[3] **Courts**
⇐ Intermediate appellate court

Trial courts are bound by published decisions of the Court of Appeals. Wash. Rev. Code Ann. § 2.06.040.

Cases that cite this headnote

[4] **Child Custody**
⇐ Removal from jurisdiction

Child Relocation Act (CRA) does not apply to a proposed relocation when there is a schedule providing for equal residential time with each parent. Wash. Rev. Code Ann. § 26.09.430.

Cases that cite this headnote

[5] **Child Custody**
⇐ Issues, proof and variance

Trial court was not required to determine whether former wife demonstrated adequate cause to modify parenting plan after court denied former wife's motion to revise commissioner's ruling denying request to relocate under Child Relocation Act (CRA),

although former wife and former husband asked court to modify parenting plan in former wife's notice of intent to relocate and former husband's objection; former wife had not filed motion to modify parenting plan, and court was not entitled to grant modification to parenting plan sua sponte. Wash. Rev. Code Ann. §§ 26.09.260, 26.09.405 et seq.

Cases that cite this headnote

[6] **Child Custody**
Issues, proof and variance

Trial court is not entitled to grant a modification to a parenting plan sua sponte.

Cases that cite this headnote

[7] **Child Custody**
Parent or custodian's relocation of home

Former wife's proposed modification of parenting plan so that she could relocate to another state with children was subject to major-modification standard, not minor-modification standard; parenting plan provided for equal residential time with each parent, and proposed modification would have resulted in children residing with former wife the majority of the time. Wash. Rev. Code Ann. § 26.09.260(1, 5).

1 Cases that cite this headnote

[8] **Child Custody**
Removal from jurisdiction

Child Custody
Parent or custodian's relocation of home

Application of standard set forth in Child Relocation Act (CRA) and major modification standard for parenting plans to former wife regarding her request to relocate with children to another state did not interfere with former wife's fundamental right to travel; court could prevent former wife from relocating with children but could not prevent former wife from traveling or relocating, and standards had not changed since former wife entered into schedule providing for equal residential time with each parent. Wash. Rev. Code Ann. §§ 26.09.260(1), 26.09.405 et seq.

Cases that cite this headnote

[9] **Child Custody**
Materiality of change

Substantial change in the circumstances of the moving party alone is not adequate to satisfy the adequate cause burden for a major modification of a parenting plan. Wash. Rev. Code Ann. § 26.09.260(1).

Cases that cite this headnote

[10] **Child Custody**
Welfare and best interest of child

Statute governing modification of parenting plans does not emphasize one parent's best interests but focuses on the child's best interests. Wash. Rev. Code Ann. § 26.09.260.

Cases that cite this headnote

[11] **Child Custody**
Parent or custodian's relocation of home

Factors set forth in Child Relocation Act (CRA) are not appropriate to consider once adequate cause is shown for a hearing on a petition to modify a parenting plan based on a parent's proposed relocation that would modify a schedule providing for equal residential time with each parent. Wash. Rev. Code Ann. §§ 26.09.260, 26.09.520.

1 Cases that cite this headnote

*727 Appeal from Snohomish Superior Court, Docket No: 14-3-00468-2, Honorable Eric A. Lucas, Judge

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PUBLISHED OPINION

Appelwick, C.J.

¶ 1 The parenting plan for the parties' children allocates residential time equally with each parent. Anderson filed a notice of intended relocation. Stroud successfully moved to prevent Anderson from relocating with the children. Anderson argues that the trial court erred by interpreting the child relocation act [1] (CRA) in a manner that prevents parents that share equal residential time from having a procedural mechanism to address the intended relocation of one parent. She also argues that the trial court should have made an adequate cause determination under the modification statute and that her proposed relocation is a minor modification. We affirm.

FACTS

¶ 2 On April 22, 2015, the trial court entered a final agreed parenting plan while dissolving the marriage of Eve Snider Anderson [2] and Judah Stroud. Under the plan, Anderson and Stroud agreed to evenly split residential time with their two children with an "alternating 2-2-5-5 schedule" (50/50 residential schedule [3]). Each parent had the children every other weekend, and they transferred the children midweek every week.

¶ 3 On July 5, 2017, Anderson filed a notice of intended relocation under the CRA, [4] seeking to move the children with her to Winston Salem, North Carolina. She then filed a proposed ***728** parenting plan reflecting the intended relocation. Anderson planned to move to North Carolina to live with her new husband, who has resided there for nine years. She was also offered a job there.

¶ 4 Stroud opposed Anderson's intended relocation with the children. He filed an objection to the notice and a proposed parenting plan, in the event Anderson was permitted to move with the children. He also filed a motion for temporary orders to prevent Anderson from moving with the children.

¶ 5 On August 10, 2017, a commissioner denied Anderson's request to relocate. The order stated,

> The court finds that the case [I]n re Marriage of Worthley[, 198 Wn. App. 419, 393 P.3d 859 (2017)] is persuasive in that there is no presumption in a 50/50 parenting plan and that neither parent can pursue relocation under the CRA and supporting case law. Petitioner shall not relocate the children.

(Italics added.) Anderson then filed a motion for reconsideration of the commissioner's ruling. The motion was denied.

¶ 6 Anderson next moved to revise the commissioner's ruling. In her motion, Anderson asked the trial court to find that the CRA applies to a 50/50 residential schedule, and that either parent to a 50/50 residential schedule may pursue relocation of the children. She argued that this court's decision in Worthley, "has stripped both parents and the children of statutory remedy to address the relocation of either parent and it actually interferes with the moving parent's fundamental right to travel and to parent the children." The trial court denied her motion.

¶ 7 On March 6, 2018, Anderson filed a petition to modify the parties' parenting plan to reflect her intent to relocate with the children to North Carolina.

¶ 8 Before petitioning to modify the parties' parenting plan, Anderson appealed the trial court's order on relocation, order on reconsideration, and order on revision.

DISCUSSION

¶ 9 Anderson makes three main arguments. First, she argues that Worthley is not binding on this court. Second, she argues that even if this court finds Worthley persuasive, the trial court should have determined whether

her proposed relocation "demonstrated adequate cause to modify the parenting plan." Third, she argues that the appropriate standard for analyzing a petition to modify a 50/50 residential schedule to allow relocation is the minor modification standard.

¶ 10 Statutory interpretation is a question of law that this court reviews de novo. State v. Gray, 174 Wash.2d 920, 926, 280 P.3d 1110 (2012). Our fundamental objective in interpreting a statute is to ascertain and carry out the legislature's intent. Smith v. Moran, Windes & Wong, PLLC, 145 Wash. App. 459, 463, 187 P.3d 275 (2008). Where the meaning of a statute is plain on its face, we give effect to the plain meaning. Id. If a statute is ambiguous, we look to outside sources, such as legislative history, to determine legislative intent. Id. at 463-64, 187 P.3d 275. We will not interpret a statute in such a way as to render any portion meaningless or that results in strained meanings or absurd consequences. Id. at 464, 187 P.3d 275.

I. Interpretation of CRA

¶ 11 Anderson argues that the trial court erred by interpreting the CRA in a manner that prevents parents from having a procedural mechanism to address the intended relocation of one parent. To do so, she argues first that Worthley, a Division II decision, is not binding on this court.

[1] [2] [3] ¶ 12 One division of the Court of Appeals is not bound by the decision of another division. In the Matter of the Pers. Restraint of Arnold, 190 Wash.2d 136, 154, 410 P.3d 1133 (2018). Nor is one panel of the Court of Appeals bound by another panel, even in the same division. See, e.g., Grisby v. Herzog, 190 Wash. App. 786, 810-11, 362 P.3d 763 (2015) (stating a holding inconsistent with a panel in the same division). However, trial courts are bound by published decisions of the Court of Appeals. RCW 2.06.040; see also *729 In re Pers. Restraint of Arnold, 198 Wash. App 842, 846, 396 P.3d 375 (2017) ("Under vertical stare decisis, courts are required to follow decisions handed down by higher courts in the same jurisdiction."), rev'd on other grounds, 190 Wash.2d 136, 410 P.3d 1133 (2018). The trial court properly followed Worthley below.

¶ 13 The CRA defines "relocate" as "a change in principal residence either permanently or for a protracted period of time." RCW 26.09.410(2). Under the statute, "a person with whom the child resides a majority of the time" must provide notice of a proposed relocation. RCW 26.09.430. The person proposing the relocation must provide his or her reasons for the intended relocation, and "[t]here is a rebuttable presumption that the intended relocation of the child will be permitted." RCW 26.09.520. A person entitled to object to the relocation may rebut this 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 eleven factors. RCW 26.09.520.

¶ 14 In Worthley, Division II held that the CRA does not apply to a proposed relocation that would modify a 50/50 residential schedule "to something other than joint and equal residential time." [5] 198 Wash. App. at 422, 393 P.3d 859. It looked at the plain and ordinary meaning of undefined terms, and defined " 'principal' " as " 'most important' " or " 'influential,' " and " 'majority' " as " 'a number greater than half of a total.' " Id. at 426-27, 393 P.3d 859 (quoting WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1802, 1363 (2002)). It reasoned that these definitions exclude 50/50 residential schedules, "because there is no 'most important or influential' or 'principal' residence and there is no person with whom the child resides 'greater than half' or the 'majority of the time.' " Id. at 427, 393 P.3d 859.

¶ 15 Worthley also agreed with the argument that "it is consistent with the CRA and its statutory scheme to require a parent to prove adequate cause under the modification statute" when a proposed relocation will change a 50/50 residential schedule. Id. at 428, 393 P.3d 859. First, it explained that the policy section for chapter 26.09 RCW states that "the best interests of the child are served by parenting arrangements that best maintain a child's emotional growth, health, stability, and physical care." Id. at 428, 393 P.3d 859. Second, it found that the high burden of adequate cause under the modification statute, RCW 26.09.260(1), "fulfills the policy to maintain the existing pattern of the parent-child relationship to protect the best interest of the child." Id. at 429, 393 P.3d 859. Third, it found that when a proposed relocation would modify a 50/50 residential schedule, the focus should be on the child's best interest. See Id. at 431, 393 P.3d 859. Fourth, it found that the modification requirements protect both parents. See id. at 432, 393 P.3d 859. Similar to the CRA, "nonrelocating parents have rights under the modification statute." Id. They can

pursue sanctions or contempt if the relocating parent removes a child from their school district, can object to the relocating parent's decision by filing a petition for modification, and can move for a temporary order requiring the child to return. Id. at 432-33, 393 P.3d 859.

¶ 16 We agree with Worthley. In a 50/50 residential schedule, neither parent is "a person with whom the child resides a majority of the time," so neither parent is entitled to the CRA's presumption permitting relocation. RCW 26.09.430. This is the plain meaning of the language.

¶ 17 Since enactment of the Parenting Act of 1987, several policies have remained constant: RCW 26.09.002 as a policy matter favors stability for the children: RCW 26.09.187(3)(b) has allowed for substantially equal residential time with each parent under certain conditions; and RCW 26.09.260 has limited modifications of parenting plans to favor stability. See LAWS OF 1987, ch. 460, *730 §§ 2, 9, 19. Yet, in 2000 when the CRA was enacted, the legislature chose to use the language "with whom the child resides a majority of the time" as the basis for which parents could initiate the CRA process. RCW 26.09.430. There can be no doubt the legislature made a policy choice that parents who entered into 50/50 residential schedules would not be eligible to use the CRA procedures.

[4] ¶ 18 Based on its plain meaning and legislative intent, the CRA does not apply to a proposed relocation when there is a 50/50 residential schedule.

II. Refusal to Find Adequate Cause to Modify

[5] ¶ 19 Anderson argues second that even if the CRA does not apply, the trial court should have determined whether her proposed relocation demonstrated adequate cause to modify the parenting plan. She argues that the trial court had everything before it to determine whether there was adequate cause, pointing out that both she and Stroud "asked the trial court to modify the parenting plan in their notice of intent to relocate and objection." She cites RCW 26.09.260(5), the subsection governing minor modifications, as the basis for the court's ability to make an adequate cause determination.

[6] ¶ 20 Anderson had not filed a petition to modify the parties' parenting plan under RCW 26.09.260.[6] Rather, she filed a notice of intended relocation under the CRA, which is governed by RCW 26.09.405-.560. A trial court is not entitled to grant a modification to a parenting plan sua sponte. See In re Marriage of Christel, 101 Wash. App. 13, 23-24, 1 P.3d 600 (2000) (holding that the trial court abused its discretion when the language in its order amounted to a modification of a parenting plan, rather than a clarification, when a clarification rather than a modification was pending). The trial court was under no obligation absent an appropriate petition to decide whether a major modification or minor modification was being sought, whether the appropriate threshold had been met, or to proceed to the merits.

¶ 21 The trial court did not err by not making an adequate cause determination, because no petition to modify the parenting plan was before the court.

III. Minor versus Major Modification

[7] ¶ 22 Anderson argues next that if the CRA does not apply to 50/50 residential schedules, the applicable modification standard should be that of a minor modification under RCW 26.09.260(5) rather than a major modification under RCW 26.09.260(1). She asserts that a change to a 50/50 residential schedule is minor, because (1) it is based on a change of residence of the parent with whom the child does not reside a majority of the time, and (2) it will not change the residence the child is schedule to reside the majority of the time.

¶ 23 Under RCW 26.09.260(5), a minor modification to the residential schedule is one that "does not change the residence the child is scheduled to reside in the majority of the time." The parenting plan here does not designate a parent with whom the children reside a majority of the time. The parties do not allege that they do not in fact follow the 50/50 residential schedule. So the correct answer to the question, "with whom do the children reside a majority of the time," would be, neither parent. Anderson's proposed minor modification would have the court change the answer to, Mom. While that would not be a change from Dad to Mom, it would be a change in where the children reside a majority of the time. That takes such a decision out of RCW 26.09.260(5), and places it under RCW 26.09.260(1) (major modification).

[8] ¶ 24 Second, she argues that applying the major modification standard to a parent's proposed relocation interferes with the moving parent's fundamental right to travel. She asserts that if a relocating parent with a 50/50

residential schedule cannot prove a basis for a major modification, the parent will *731 be prevented from relocating, "because she is bound to a parenting plan that places the child equally in each parent's home regardless of the distance." She relies on In re Marriage of Momb, 132 Wash. App. 70, 82, 130 P.3d 406 (2006).

[9] ¶ 25 To satisfy the adequate cause burden for a major modification under RCW 26.09.260(1), the parent must make a threshold showing that, since the entry of the original plan, "a substantial change has occurred in the circumstances of the child or the nonmoving party and that 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). A substantial change in the circumstances of the moving party alone is not adequate. Anderson's desire to relocate would appear not to satisfy that threshold requirement. But, it does not mean that the modification statute or the CRA deny her right to travel.

¶ 26 Anderson relies on Momb for the proposition that this interpretation interferes with a parent's fundamental right to travel. This reliance is misplaced. In Momb, the trial court denied Momb's request to relocate with his child. 132 Wash. App. at 74, 130 P.3d 406. On appeal, Momb argued that the relocation statutes violated his right to travel. Id. at 82, 130 P.3d 406. This court disagreed. Id. It noted that the order entered by the trial court prevented the child from relocating, not Momb. Id. It explained that a child's constitutional rights may be treated differently than an adult's, "because of the peculiar vulnerability of children; their inability to make informed, mature, and critical decisions; and the importance of the parental role in child rearing." Id. Likewise here, if a trial court determined Anderson failed to meet the adequate cause burden for a major modification, it would not prevent her from traveling or relocating. Rather, it would prevent her from relocating her children.

¶ 27 The restrictions Anderson complains of were imposed by the parties on themselves when they chose to enter into a 50/50 residential schedule. The major modification standards and the CRA standards have not changed since that time. And, chapter 26.09 RCW has always promoted stability in the residential schedule for the children. See RCW 26.09.002 ("[T]he best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents."). Anderson is not left without a remedy. She can move, Stroud can file a petition to modify their parenting plan under RCW 26.09.260(1) based on Anderson's change in circumstances, and she can respond. Anderson may not like the option she has, but it flows from the agreement she made with Stroud in the final agreed parenting plan, not from an unconstitutional statute or judicial error.

¶ 28 Third, she argues that once adequate cause is shown for a hearing on a petition to modify a parenting plan, the trial court should consider the RCW 26.09.520 factors in deciding whether to allow the relocation. She argues that the factors in RCW 26.09.260, the modification statute, and the factors in RCW 26.09.520, the CRA, "require similar considerations directed at the child's best interests."

[10] [11] ¶ 29 As established above, the CRA does not apply to 50/50 residential schedules. See Worthley, 198 Wash. App. at 424, 393 P.3d 859. And, this court has found that "the focus should be on the child's best interest when a proposed relocation would result in a modification" of a 50/50 residential schedule. Id. at 431, 393 P.3d 859. The CRA factors focus on the interests of both the relocating parent and the child. See RCW 26.09.520. The modification statute "does not emphasize one parent's best interests but focuses on the child's best interests." Worthley, 198 Wash. App. at 431, 393 P.3d 859. The CRA factors are therefore not appropriate to consider when a parent's proposed relocation would modify a 50/50 residential schedule.

¶ 30 We recognize the difficult choice a parent faces when their desired relocation makes a 50/50 residential schedule impracticable. The CRA does not provide a presumption in favor of their intended relocation, and a substantial change in the circumstances of the party wishing to relocate does not constitute adequate cause for a major modification *732 initiated by that parent. These burdens flow from the agreement the parents made to evenly split residential time with their children, without also addressing the limitations in the statutes that come with that decision, not from judicial error.

¶ 31 We affirm.

WE CONCUR:

Smith, J.

Leach, J.

All Citations

430 P.3d 726

Footnotes

1 RCW 26.09.405-.560.

2 Snider has remarried and her name has changed.

3 The parties describe their residential time with the children as "50/50." Their parenting plan also describes their residential time as "50/50": "Parents shall evenly split visitation with the children 50/50." Accordingly, we refer to the parties' parenting plan, and other parenting plans where the children reside with neither parent a majority of the time, as a "50/50 residential schedule."

4 Under the CRA, "a person with whom the child resides a majority of the time" must provide notice of the proposed relocation. RCW 26.09.430. There is a rebuttable presumption that the relocation will be permitted. RCW 26.09.520.

5 Division III of this court also recently clarified that "[t]he CRA and its presumption permitting relocation apply only when the person relocating is 'a person with whom the child resides a majority of the time.' " In re Marriage of Jackson, 4 Wash. App. 2d 212, 220, 421 P.3d 477 (2018) (quoting RCW 26.09.430). Relying on Worthley, it stated that "[i]n situations where residential placement is shared, both parents are presumptively fit, and neither would be entitled to a favorable presumption." Id. at 220.

6 On March 6, 2018, after appealing the trial court's order denying her motion to revise, Anderson petitioned the trial court to modify the parties' parenting plan under RCW 26.09.260. That petition is not before the court here.

FILED
1/4/2019
Court of Appeals
Division I
State of Washington

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

In the Matter of the Marriage of EVE H. SNIDER, Appellant, and JUDAH STROUD, Respondent.	No. 77583-9-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, Eve Snider Anderson, has filed a motion for reconsideration. A majority of the panel has determined that the motion should be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

Appelwick C.J.
Judge

SMITH GOODFRIEND, PS

February 04, 2019 - 1:15 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	77583-9
Appellate Court Case Title:	In re the Marriage of: Eve H. Snider Anderson, App. and Judah Stroud, Res.
Superior Court Case Number:	14-3-00468-2

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