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STATE OF WASHINGTON
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NO. 99967-8

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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Marriage of

PHILIPPE CHAINIER

Respondent

and

KELLIE ANN CHAINIER

Petitioner

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# ANSWER TO PETITION FOR REVIEW

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## A. IDENTITY OF RESPONDENT.

The respondent is Philippe Chainier, who was the petitioner in the superior court and the appellant in the court of appeals.

## B. RESTATEMENT OF THE ISSUES.

1. The trial court does not have discretion to value a property without any evidence to support that value or by use of a bogus valuation method, which is what the court did here.

2. The Court of Appeals did not reweigh evidence because there was no other evidence of value than that offered by Philippe – an expert valuation, French accountants and bookeepers, thousands of pages of documentation, etc.

3. The trial court's determinations of credibility are not dispositive where only one side presents evidence and, in any case, the court's credibility findings were based on its mistaken understanding of the evidence.

4. Kellie Ann declined to present evidence of value, with our without the use of appraisals, despite having the ability to do so.

5. An adverse inference does not relieve a party of their burden of production.

6. The court was wrong to use an "adverse inference" as a sanction for supposed discovery violations, especially as it did not conduct the analysis required before imposing a discovery sanction.

7. A court does not have discretion to effectively and without justification eliminate a parent's time with his children by imposing limitations not reasonably calculated to protect the children from harm.

**C. RESTATEMENT OF THE CASE.**[1]

Both parties in this case are part owners of family businesses. Kellie Ann's family (Cox) has a holding company, meaning it owns real estate. Philippe's family (Chainier) has an operating company, which owns real estate used in the business of producing and selling wine. The parties are not owners of the real properties owned by these businesses; they own interests in the businesses. The only real property owned by the parties was their marital residence. In discovery, each party asked the other to disclose their interests in real property and each disclosed their interest in the marital residence. Elsewhere, in response to a question about other financial interests, they disclosed their interests in the family businesses. Only late in discovery did Kellie Ann ask for information regarding the location of the Chainier properties.

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[1] Because of the sheer volume of the record citations supporting each of the factual assertions below, citations are supplemented by reference to Philippe's briefs.

In preparation for trial, the parties obtained appraisals of the marital residence. Neither party obtained appraisals of all the various parcels of real property owned by either family business. To do so would have been very expensive and appraisals, while preferred, are not essential to value businesses. RP 1423-1424.

To value the businesses, Philippe hired an expert, a certified public accountant (Steven Kessler). Kessler valued both businesses using an acceptable accounting method called the "asset approach" to obtain a "fair value" of the family businesses. A "fair value" is not the same as a "fair market value" because the latter requires appraisals, which neither party obtained. However, a fair value is a current value and is based on all kinds of other evidence and is derived, as mentioned, by use of an accepted accounting method. See Br. Appellant, at 14-28; Reply Br., at 3-19.

Kellie Ann accepted Kessler's "fair value" for her family business but vigorously disputed the "fair value" for the Chainier business, despite each business being valued by the same accounting method (asset approach) and same accountant.

Kellie Ann did not produce any evidence of value for the Chainier business. She offered a witness (CPA Kevin Grambush) who critiqued CPA Kessler's work, mainly for not using appraisals to obtain a fair market value. However, Kellie Ann was as well-positioned as Philippe to

obtain appraisals if she wanted to prove a different value by a different method. She claimed not to have the information necessary to obtain appraisals (i.e., property locations) when, in fact, she did have the information, as her own witness attested (RP 1413-14, 1419-1424; Ex. 421). She simply chose not to use it. However, she succeeded in confusing the judge on this point, resulting in the judge erroneously faulting Philippe for violating discovery and, as a sanction, applying an adverse inference to value the Chainier property. The court also found him intransigent, a finding based almost entirely on the false accusation that Philippe violated discovery rules and other factual errors. CP 279-282; Reply Br. 23-29.

In other words, Kellie Ann could have obtained appraisals to establish a "fair market value" but chose instead merely to attack the "fair value" Philippe proved. She led the judge to find Philippe intransigent for not providing Kellie Ann the information necessary to obtain appraisals when the record shows she had the information. Moreover, and despite having provided Kellie Ann volumes and volumes of information in response to requests she made only after retaining her fourth attorney, Philippe suggested a continuance so that she could obtain appraisals. RP 1576-1577.

Lacking any evidence of value other than Philippe's evidence, which the court chose not to believe, and confused about what that

evidence proved, the court could not value the property. That's when Kellie Ann concocted a valuation method, one unrecognizable as such and unsubstantiated by any evidence, yet the court adopted it, relying solely on misapprehension of the trial evidence and applying an "adverse inference."

The Court of Appeals, after careful review of the voluminous record, identified these errors, vacated the intransigence finding (which Kellie Ann does not challenge) and properly remanded for valuation based on an acceptable accounting method and on the actual evidence.

Similar problems afflict the parenting plan's residential time limitations, which the court imposed based on its domestic violence finding. The evidence showed Philippe to be an involved and loving father who shares a deep attachment with his children. See, e.g., Ex. 1 (parenting evaluator), at 37, 39, 40. Even Kellie Ann testified Philippe is "one of the more caring fathers" and made no request pending trial for temporary limitations, meaning the children spent five of 14 days with Philippe. Br. Appellant, at 9, 11-12, 64-67; Reply Br. At 38-47.

The court's parenting plan changed all that, reducing Philippe's time with the children to one afternoon and one overnight pending completion of numerous treatment requirements: nine months of weekly sesssions with Seattle-based ACT&T followed by an indeterminate

number of monthly sessions while also being enrolled in DV Dads as well as taking 12 sessions of parent coaching and a step parenting class. The court also ordered him to abstain from alcohol, despite there being no evidence of alcohol abuse and despite that ACT&T requires abstinence for the duration of its program. CP 153-154. Only if Philippe accomplishes all of these requirements will he be allowed to return to any semblance of his former life with the children. CP 143. Although the court included a "long distance plan," should Philippe and/or Kellie Ann relocate, these provisions did not solve the problem of how Philippe could complete Seattle-based programs if he lived in France. See, e.g., Br. Appellant, at 8.

## D. ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED.

This case involves a concerted effort by Kellie Ann to confuse and prejudice the trial court, an effort that played out in vigorous pretrial motions practice and a 16 day trial, followed by more motions practice. Here, as at trial and in the Court of Appeals, Kellie Ann again seeks to sow confusion by misrepresenting the facts and the law.

### 1. THE COURT OF APPEALS PROPERLY APPLIED THE SUBSTANTIAL EVIDENCE STANDARD TO THE VALUATION ISSUE.

The Court of Appeals did not usurp the trial court's fact-finding function or tread on its authority to make credibility determinations.

Rather, on review of the record, it found there was no evidence to support the trial court's valuation findings. Slip. Op., at 6-11.

First, credibility determinations were not dispositive of the valuation problem. Having found CPA Kessler and all of Philippe's many witnesses to lack credibility, and having found CPA Grambush credible in his critique of Kessler's valuation, the trial court had no other evidence of value, as Kellie Ann admits. Petition, at 1, 18-19 (discounting all of the Chainier evidence left the court with no "credible valuation").

Accordingly, Kellie Ann concocted a valuation method out of whole cloth, a method that depended on a misreading of two lines on two pages of one financial statement among the thousands of pages comprising the evidence of the Chainier family business, two lines suited to Kellie Ann's purposes but otherwise meaningless. Reply Br., at 5-6. Grambush did not propose or use her "per hectare" method, nor is it recognized as acceptable in the financial community, as our law requires. *Eagleview Techs., Inc. v. Pikover*, 192 Wn. App. 299, 309–10, 365 P.3d 1264 (2015). No one testified that the information Kellie Ann extracted meant what she claimed it to have meant: it did not prove a sale of hectares, rather than a change in use of the hectares and it did not prove, if there was a sale, that the purported value of those hectares could be applied to the other 248 other hectares owned by the business (and put to many uses). Kellie Ann

proved nothing about value. When the trial court made its credibility determinations, it was left with nothing else establishing the value of the Chainier business.

Moreover, the trial court's credibility determinations were based on the court's own misapprehension of the evidence. See, e.g., CP 269-270. Kessler did not value the Chainier property at book value. He used book value and many other metrics to arrive at fair value. Reply Br., at 6-8, 10-11. Neither Kessler nor Grambush testified fair market value was the only acceptable value. Rather, they agreed on the acceptability of the asset approach as establishing a fair value, which our law also recognizes. RP 344, 1303. *See, e.g., Marriage of Hall,* 103 Wn.2d 236, 247, 692 P.2d 175 (1984) (good will in a professional practice); *Marriage of Berg*, 47 Wn. App. 754, 756–59, 737 P.2d 680 (1987) (closely held corporations). There was no effort made by either party to establish a "fair market value" because acquiring the property appraisals necessary to do so was prohibitively expensive.

Right out of the gate, Kellie Ann's petition misrepresents these facts, claiming, falsely, that Kessler's "fair value" represented the "acquisition price" not the "current worth or fair market value." Petition, at 1, 8. In fact, a fair value is a current value. Unfortunately, the trial court's credibility determination rested on these and other factual (and

mathematical) errors. In recognizing this, the Court of Appeals did not engage in fact-finding or credibility determinations; it engaged in record review, with the result being that no substantial evidence supported the cockamamie values Kellie Ann urged the court to adopt.

2. THE COURT OF APPEALS PROPERLY APPLIED WASHINGTON LAW REGARDING ALLEGED DISCOVERY VIOLATIONS, WHICH INCLUDES A REQUIREMENT TO ANALYZE THE "BURNET" FACTORS.

Kellie Ann also sold the trial court on the idea it could dispense with evidence altogether by way of making an adverse inference. Petition, at 18-19. Adverse inferences are used sparingly, since the speculation they invite "creates a substantial danger of unfair prejudice." *Morris v. Union Pac. R.R.,* 373 F.3d 896, 903 (8th Cir. 2004). They encourages the fact-finder to rely on what it thinks missing evidence <u>might</u> have proven rather than relying on actual evidence. *Morris,* 373 F.3d at 900–01. With an adverse inference, "[c]onjecture or ambiguity is often present." 2 *McCormick On Evidence* § 264 (8th Ed., 2020 Online Update). As the trial court in *Morris* said, an adverse inference is "'like cow crap; the more you step in it, the more it stinks.'" *Id.* That is what the court did here.

As the Court of Appeals noted, the trial court's valuation was not based on evidence or an acceptable valuation method. Slip Op., at 6-11. In her petition, Kellie Ann concedes as much, since she does not point to any

evidence of value, only to Grambush's critique of Kessler's valuation. Petition, at 6-8, 18-19. Still, she argues the court's valuation fell "within the range of that evidence" (Petition, at 20), ignoring there was no "range" of evidence, only Kessler's valuation and the witnesses and documentation supporting it. Essentially, she argues the trial court's discretion is so broad as to justify "resolv[ing]" the problem of no-evidence by picking a number out of a hat. Id.

Not only are the facts unsupportive of this position, as discussed above, so is the law. In our judicial system, trials are a search for truth, with discovery rules "'designed to enhance" that search, insuring a fair trial to all. *State v. Boyd*, 160 Wn.2d 424, 433, 158 P.3d 54, 59 (2007) (internal citation omitted). Similar rules (constitutionally enhanced) operate in a criminal context. *See, e.g.,* CrR 4.7. Indeed, modern discovery procedures have diminished the "justification and the need" for the adverse inference, properly elevating certainty over speculation by facilitating the production of actual evidence. 2 *McCormick On Evidence* § 264 (8th Ed., 2020 Online Update).

As the Court of Appeals here noted, Kellie Ann could have moved to compel information she thought Philippe had not produced (i.e., the location of the real properties owned by the Chainier family business). Slip. Op., at 9, 23. She chose not to do so. *See Jenkins v. Bierschenk*, 333

F.2d 421, 425 (8th Cir. 1964) (trial court correct not to draw adverse inference where, among other things, no discovery effort was made to obtain evidence).

Certainly, where a party actually obstructs the discovery process, and its truth-seeking goal, the court may impose sanctions. For example, the civil rules governing discovery violations permit the court to make orders to remedy the violation, including to order that "designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order." CR 37(b)(2)(A). This is what Kellie Ann asked the court to do. However, the court could not grant this relief without first engaging in a three-factor analysis, including whether a less severe sanction will work. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997) (also whether the violation was willful and whether it caused substantial prejudice to the other party). This analysis furthers the truth-seeking purpose of trial.

Thus, when applying the CR 37(b)(2)(A) sanction, the court must engage in the Burnet analysis. Because the trial court here failed to do so, the Court of Appeals rightly reversed. *See Keck v. Collins,* 184 Wn.2d 358, 369, 357 P.3d 1080, 1085 (2015) (reversing exclusion of evidence absent consideration of *Burnet* factors).

Kellie Ann claims we can ignore this express authority – CR 37 and *Burnet* – because the trial court did. Petition, at 21. But that is precisely the problem. The trial court did not reflect at all before accepting Kellie Ann's adverse inference and its global effects on the only evidence of value. The court did not consider whether Philippe wilfully withheld the locations of his family's properties (vineyards, etc.), an especially difficult bridge to cross since Kellie Ann had that information, presumably derived from the mountains of material Philippe produced in discovery.

Nor did the trial court consider what prejudice Kellie Ann suffered, or it would have concluded she suffered none, since she could have obtained appraisals if she wanted and appraisals were not, in any case, essential to value the business.

Nor did the court consider whether less drastic sanctions would resolve the "problem" of the missing appraisals, such as allowing more time for Kellie Ann to obtain them, as Philippe suggested, since she argued they were necessary for valuation purposes.

This *Burnet* analysis is what Judge Barbara Mack illlustrated in pretrial discovery motions practice when Kellie Ann asked the court to sanction Philippe's alleged discovery violations, not only by allowing an adverse inference be drawn, but by having his expert witness Kessler excluded. (The Hon. Theresa Doyle presided over trial.) Judge Mack

reserved on the first issue, to allow factual development at trial. She denied the motion to exclude Kessler but granted Kellie Ann time to depose him and ordered Philippe to pay for it. CP 58.[2]

In short, as Judge Mack demonstrated, our law requires sanctions take aim at the truth-seeking goal and, so, requires judges to consider lesser sanctions before the court takes a drastic action, such as excluding an important witness, let alone take an action as it did here, i.e., a global rejection of all evidence of value and substitution of a value based on nothing.

Kellie Ann wants to sidestep these requirements, so she argues the adverse inference was not a sanction. To do this she has to ignore the plain language of CR 37(2)(b)(A) and claim the rule has "nothing to do" with what the court did here. For support, she offers a misleading discussion of *Diaz v. Washington State Migrant Council,* 165 Wn. App. 59, 84–85, 265 P.3d 956, 969–70 (2011). Petition, at 21-22.

*Diaz* dealt with a missing witness problem in the context of corporate officers claiming the Fifth Amendment protected them from disclosing information sought by the other party. The *Diaz* court walked its way through these complex issues, with their particularized Fifth

[2] Despite having been granted time to depose CPA Kessler at Philippe's expense, nowhere in the record does it appear that she took that opportunity.

Amendment aspects, but in the end acknowledged the court may use an adverse inference as a sanction under CR 37(2)(b)(A) to "punish[…] a discovery violation," so long as the court abides by the *Burnet* rule. 165 Wn. App. at 87.[3]

In short, consistent with Division One's analysis in this case, Division Three in *Diaz* recognized the adverse inference as an available discovery sanction subject the *Burnet* analysis.[4] In this case, Kellie Ann asked the court to apply the adverse inference to punish what she alleged to be Philippe's withholding of information requested in discovery. It is disingenous at best to now claim she was not seeking a sanction.[5]

The cases cited by Kellie Ann, supporting general propositions about the trial court's discretion, do not help her out of the fix she's in. Petition, at 12-14, 19-20. For example, a court faced with two experts offering proof of different values may choose a "compromise" value if

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[3] Kellie Ann concedes the Fifth Amendment makes *Diaz* distinguishable. Petition, at 24. *See McCormick, supra*, § 74.1

[4] Likewise, the adverse inference is recognized as a discovery sanction in a criminal context. *State v. Orlinski*, 200 Wn. App. 1004 (2017) (affirming trial court's decision not to give adverse inference instruction as discovery sanction). Pursuant to GR 14.1(a), this unpublished case is cited for its persuasive value only.

[5] The court sanctioned Philippe twice for this alleged misconduct by also imposing attorney fees on a finding of intransigence. The appellate court, on review of the record, found this sanction similarly lacking support in the evidence. Kellie Ann does not challenge this holding, revealing a fundamental fallacy in her argument: if Philippe did not violate discovery, on what basis could the court make an adverse inference?

supported by evidence. *Marriage of Sedlock,* 69 Wn. App. 484, 491, 849 P.2d 1243 (1993). That is not what happened here. No evidence whatsoever supported either Kellie Ann's valuation "method" (price per hectare not an accepted accounting method) or the use her method makes of two lines on one of many financial statements in a sea of other financial documentation. Not one witness, expert or otherwise, including Kellie Ann's own CPA, Grambush, provided any support for the valuation scheme she sold to the court. Kellie Ann cannot evade her burden of production by means of the inference. 2 *McCormick On Evidence* § 264 ($8^{th}$ Ed., 2020 Online Update). Rather, she must establish an alternative value with "positive evidence." *Id.*

In short, it is the lack of evidence supporting the trial court's findings that the Court of Appeals found to be a problem. It did not "reweigh" evidence; rather, it found, after sifting through this enormous record, that there was no evidence on one side of the scales (i.e., no evidence of value other than offered by Philippe). It found further that, in key aspects, the trial court misapprehended the evidence that was in the record (e.g., Kessler's report produced a "fair value" not a "book value, as the trial court found). The appellate court found the valuation method Kellie Ann proposed at the end of trial was made up by her (i.e., not an

accepted accounting method) and the method used data Kellie Ann failed to prove meant what she claimed it to mean (e.g., sale of hectares, etc.).

The trial court's solution to the no-evidence problem talked and walked like the discovery sanction prescribed in CR 37(b)(2)(A). Even if the discovery sanction framework did not apply, the court needed to do something other than make up a number. *Donaldson v. Greenwood,* 40 Wn.2d 238, 252-253, 242 P.2d 1038 (1952) (cannot make finding out of "thin air"); *Marriage of Tulleners*, 11 Wn. App. 358, 371, 453 P.3d 996, 1003–04 (2019) (value must be supported by evidence); *Marriage of Hilt*, 41 Wn. App. 434, 442–43, 704 P.2d 672, 677 (1985) (lacking sufficient evidence to value property, court cannot just guess; it must take additional evidence).

Here, the court picked a number based on one criterion: it simply had to be higher than what all of Philippe's considerable evidence established. This random number is not "logically" drawn from the lack of appraisals or the court's credibility determinations, as an inference must be. *Diaz,* 165 Wn. App. at 85. The inference proves nothing of value. If Kellie Ann wanted to dispute Philippe's valuation, she needed to put on some evidence.

### 3. THE COURT OF APPEALS PROPERLY APPLIED THE SUBSTANTIAL EVIDENCE STANDARD TO THE PARENTING PLAN LIMITATIONS.

On appeal, Philippe did not contest that the court could, having found domestic violence, impose limitations. His challenge goes to the punitive effect of the limitations, which affect not only him but his children. By requiring Philippe to complete a series of treatment programs beyond anything anyone (including Kellie Ann) had proposed and impossible as a practical matter, the court radically disrupted the children's relationship with their loving and involved father, as well as their relationship to their extended family in France. These children went from a routine of dependable, in real life, family intimacy to indefinite tele-visitation.

The Court of Appeals correctly identified and vacated the multiple places where the trial court imposed limitations on Philippe, including a sobriety requirement and step parenting class, since neither serves the statute's purpose of protecting the children from harm. Kellie Ann does not challenge these holdings. Rather, she seeks to preserve the trial court's "prohibitive barriers" (Slip Op., at 19) to Philippe maintaining his relationship to the children.

Kellie Ann's purpose does not align with the purpose of our laws. Rather the driving force behind all aspects of a parenting plan, including

orders related to domestic violence, is to preserve, wherever and however possible, the continuity of the parent-child relationship. In fact, in order to completely sever contact between a parent and child, the court must expressly find there are no limitations adequate to protect the child from harm. RCW 26.09.191(2)(m)(i).[6]

In complementary fashion, that provision of the statute also requires any limitations the court imposes "shall be reasonably calculated to protect the child from the physical, sexual, or emotional abuse or harm that could result if the child has contact with the parent requesting residential time." RCW 26.09.191(2)(m)(i). As the Court of Appeals noted, there is no evidence the trial court even considered this requirement before constructing a wall between these children and their father too high to scale.

The necessary tailoring of the solution to the problem serves the overarching goal of protecting the best interests of the children. A court lacks the discretion to punish a parent in the guise of "191" limitations. Rather, the court must exercise its duty and discretion under the statute to

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[6] The statute provides: "If the court expressly finds based on the evidence that limitations on the residential time with the child will not adequately protect the child from the harm or abuse that could result if the child has contact with the parent requesting residential time, the court shall restrain the parent requesting residential time from all contact with the child."

address the problem of intrafamily violence in a manner protective of the children and the other parent but also protective of the important relationship between the offending party and the children, unless impossible. In short, the "reasonably calculated" requirement structures the trial court's exercise of discretion.

Kellie Ann is wrong when she argues the Court of Appeals remanded this parenting plan merely because the trial court did not explain its reasons for the "prohibitive barriers" it imposed. Petition, at 24. She claims the trial court may, after finding domestic violence, impose any requirements it wants, no matter whether they are "reasonably calculated" to serve the law's purposes, i.e., unlimited discretion. Essentially, Kellie Ann argues such orders are effectively unreviewable. *See, e.g., Marriage of Horner,* 151 Wn.2d 884, 896, 93 P.3d 124 (2004) (trial court's "written documentation or oral articulations" are only means of ascertaining whether court considered statutory factors).

This sweeping grant of authority is unsupported by the statute or our most fundamental values. *See, e.g.,* RCW 26.09.002 (law to foster fundamentally important relationship between parent and child); RCW 26.09.187(3)(a) (parenting plan to be designed to maintain relationship); *Marriage of Cabalquinto,* 100 Wn.2d 325, 329, 669 P.2d 886 (1983) (residential time "must be determined with reference to the needs of the

child ….”). By making this claim to such authority, Kellie Ann renders the “reasonably calculated” provision meaningless.

Rightly, the Court of Appeals said “not so fast.” In doing so, it broke no new ground. For example, precisely the same defects required reversal where a trial court, without explanation, entered a parenting plan that “effectively would eliminate” the father’s residential time with the children. *Underwood v. Underwood,* 181 Wn. App. 608, 611, 326 P.3d 793, 794 (2014). In *Underwood,* the trial court did not expressly eliminate the father’s residential time, but left to the children, alienated from the father, the decision whether to spend residential time. Expressly or otherwise, a trial court cannot eliminate a parent’s residential time without addressing how such extreme limitations protect the children from harm. *Id.,* at 794.

The trial court’s parenting plan in this case does the same damage as in *Underwood.* Here, the trial court imposed such onerous sanctions Philippe would be unable ever to return to the kind of contact with the children to which they were accustomed. Particularly problematic, the court refused to allow Philippe to complete treatment in any location other than Seattle, despite the looming prospect that Philippe would need to move to France to assist in the family’s business in the aftermath of his mother’s death and the possibility of Kellie Ann moving, with the

children, out of state. See CP 140.[7] The court said not one word about why it took this fundamentally punitive approach, specifically, did not say how exiling Philippe from the children and the children from him was "reasonably calculated" to protect the children from harm. The Court of Appeals remanded for it to undertake this analysis.

**E. CONCLUSION.**

This case presents no issue meeting the criteria of RAP 13.4(b). The Court of Appeals ruled consistent with Washington law in respect of the fact-intensive issues in this case. Philippe respectfully asks this Court to deny Kellie Ann's petition for review and to allow this case at last to be returned to the trial court for the correction of the errors identified by the appellate court.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that pursuant to RAP 18.17(g), this Answer to the Petition for Review was produced using word processing software and the number of words contained in the document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service,

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[7] E.g., the court denied joint decision-making based, in part, on geographic proximity making joint decisions impracticable. CP 140.

signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits) is 4642.

Dated this 7th day of October 2021.

Respectfully submitted,

____________________________

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CERTIFICATE OF SERVICE

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**NOVOTNY APPEALS**

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