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NO. 69260-7-I

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON

HANAA GOMAA

RESPONDENT

v.

ABDELKRIM (A.K.) ZEBDI

APPELLANT

RESPONDENT'S BRIEF ON APPEAL

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TABLE OF CONTENTS

Page No.

ARGUMENT

I.	TRIAL COURT’S DIVISION OF ALL ASSETS WAS FAIR AND EQUITABLE UNDER RCW 26.09.080 AND MUST BE AFFIRMED.....	1
A.	TRIAL COURT’S REFERENCE TO WRONG DATE OF RESTRAINING ORDER IN FINDINGS RELATING TO HUSBAND’S SALE OF THE WIFE’S VAN WAS HARMLESS ERROR.....	1
B.	DISPARATE PROPERTY AWARD TO WIFE WAS FAIR AND EQUITABLE UNDER ALL OF THE CIRCUMSTANCES OF THE CASE, AND UNDER RCW26.09.080 AND RCW 26.09.090.....	5
II.	TRIAL COURT’S DETERMINATION THAT ABDELKRIM ZEBDI HAD A PATTERN AND HISTORY OF DOMESTIC VIOLENCE WITH HIS FAMILY THAT MANDATED RESTRICTIONS IN THE PARENTING PLAN IS SUPPORTED BY SUBSTANTIAL EVIDENCE.....	10
A.	MR. ZEBDI’S ACTIONS AGAINST HIS WIFE AND SONS WERE VIOLENT, CONTROLLING, DEMEANING AND REPETITIVE.....	10
B.	CULTURAL FACTORS WERE CONSIDERED BY BOTH THE GAL AND THE COURT WHEN DETERMINING WHETHER MR. ZEBDI HAD PERPETRATED A PATTERN OF DOMESTIC VIOLENCE ON HIS FAMILY.....	12

C.	COURT’S IMPOSITION OF RESTRICTIONS IN THE PARENTING PLAN WAS APPROPRIATE UNDER RCW 26.09.191.....	21
D.	COURT’S DECISION TO NOT REQUIRE THE CHILDREN TO LEAVE MICHIGAN AND MOVE BACK TO SEATTLE WAS REASONABLE AND SUPPORTED BY SUBSTANTIAL EVIDENCE.....	24
III. TRIAL COURT’S ATTORNEY FEE AWARD SHOULD BE AFFIRMED, AND AN ADDITIONAL AWARD SHOULD BE ORDERED FOR COSTS OF APPEAL.....		30
A.	AWARD OF \$15,000 PURSUANT TO RCW 26.09.140 SHOULD BE AFFIRMED.....	30
B.	AWARD OF \$15,000 IN FEES TO WIFE DUE TO HUSAND’S INTRANSIGENCE AND VIOLATIONS OF CR 11 SHOULD BE AFFIRMED.....	38
C.	WIFE IS ENTITLED TO AN ADDITIONAL FEE AWARD ON APPEAL.....	41
IV. APPELLANT HAS FAILED TO MEET HIS BURDEN; ALL ASPECTS OF TRIAL COURT’S DECISION SHOULD BE AFFIRMED BY THIS COURT AND ADDITIONAL FEES AWARDED TO WIFE.....		41

TABLE OF AUTHORITIES

Table of Cases

<i>Abel v. Abel</i> , 47 Wn.2d 816, 819, 289 P. 2d 724 (1955).....	31, 37
<i>Crosetto v. Crosetto</i> , 82 Wn. App. 545, 918 P.2d 954 (1996).....	40
<i>Custody of Salerno</i> , 66 Wn. App. 923, 925-26, 833 P.2d 470 (1992).....	37
<i>Davis v. Davis</i> , 13 Wn. App. 812, 813, 537 P.2d 1048 (1975)	9
<i>Dependency of A. A.</i> 105 Wn. App 604, 610, 20 P. 3d 492 (2001).	21
<i>Eide v. Eide</i> , 1 Wn. App. 440,445, 462 P.2d 562 (1969).....	40
<i>Fite v. Fite</i> , 3 Wn. App. 726, 479 P.2d 560 (1970) <i>review denied</i> , 78 Wn. 2d 997 (1971).....	31
<i>Fleckenstein v. Fleckenstein</i> , 59 Wn.2d 131, 366 P.2d 688 (1961).....	40
<i>Friedlander v. Friedlander</i> , 58 Wn.2d 288, 362 P.2d 352 (1961).....	31, 34
<i>Holm v. Holm</i> , 27 Wn.2d 456, 463, 178 P. 2d 725 (1947).	9
<i>In re Marriage of Eklund</i> , 143 Wn. App. 207, 212, 177 P. 3d 189 (2008).....	21
<i>In re Marriage of Horner</i> , 151 Wn.2d 884, 887, 93 P.3d 124 (2004).	29
<i>In re Marriage of Katare</i> , 125 Wn. App. 813, 826, 105 P. 3d 44 (2004)..	23
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 46, 940 P.2d 1362 (1977)..	24
<i>In re Marriage of Mahalingam</i> , 21 Wn App. 28, 232, 584 P. 2d 971 (1978).....	12

<i>In re the Marriage of Mansour</i> , 126 Wn. App. 1, 10; 106 P.3d 768 (2005).....	21
<i>In re Marriage of Marzetta</i> , 129 Wn.App. 607, 625, 120 P.3d 75 (2005) rev. den. 157 Wn.2d 1009 (2006).....	33
<i>In re Marriage of Nelson</i> , 62 Wn. App. 515, 521, 814 P.2d 1208 (1991).....	36
<i>In re Marriage of Pennamen</i> , 135, Wn. App. 790, 146 P.3d 466 (2006).....	30
<i>In re Marriage of Rockwell</i> , 141 Wn. App. 235, 242-243, 170 P. 3d 572 (2007).....	10
<i>In re Marriage of Zahm</i> , 138 Wn. 2d 213, 226, 978 P. 2d 498 (1999).....	10
<i>Kruger v. Kruger</i> , 37 Wn.App. 329, 333, 679 P.2d 961 (1984).....	37
<i>Marriage of Greenlee</i> , 65 Wn. App. 703, 829 P.2d 1120 (1992).....	40
<i>Marriage of Steadman</i> , 63 Wn. App. 523, 821 P. 2d 59 (1981).....	35
<i>Marriage of Tower</i> , 55 Wn. App. 697, 704-705, 780 P. 2d 863 (1989).....	37
<i>Parentage of R.F.R.</i> , 122 Wn. App. 324, 93 P. 3d 951 (2004).....	29
<i>Schumacher v. Watson</i> , 100 Wn. App. 208, 216, 997 P.2d 399 (2000).....	38

State ex rel. Carroll v. Junker, 79 Wn. 2d 12, 27, 482 P. 2d 775
(1971).....10

State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182
(1985).....5

State v. Ralph Williams' North West Chrysler Plymouth, Inc., 87 Wn.2d
298, 315, 553 P.2d 423 (1976).....5

Statutes

RCW 26.09.080.....1, 5, 6, 9

RCW 26.09.090.....5, 6, 8

RCW 26.09.140.....30, 33, 34, 36, 41

RCW 26.09.187.....25, 28

RCW 26.09.191.....21, 23, 26, 27, 28

RCW 26.09.191(2)(a).....11, 21

RCW 26.09.191(2)(m)(i).....22

RCW 26.09.520.....27, 29

RCW 26.50.010.....11

RCW 26.50.010(1).....11

Rules

CR 11.....	38, 39, 41
KCLFLR 10.....	34
RAP 7.2(d).....	41
RAP 18.1(c).....	41
RAP 18.9.....	41

ARGUMENT

I.

TRIAL COURT'S DIVISION OF ALL ASSETS WAS FAIR AND EQUITABLE UNDER RCW 26.09.080 AND MUST BE AFFIRMED.

A. TRIAL COURT'S REFERENCE TO WRONG DATE OF RESTRAINING ORDER IN FINDINGS RELATING TO HUSBAND'S SALE OF THE WIFE'S VAN WAS HARMLESS ERROR.

Hanaa Gomaa and Abdelkrim Zbedi and their three children are not wealthy. They did not own their own home. Verbatim Report of Proceedings, July 23, 2012, Volume I, pages 50-51; 126 (hereinafter RP 7/23/12 I 50-51; 126). In December, 2010, Mr. Zebdi had forty-four thousand dollars in Bank of America in his name alone, of which he testified about twenty thousand had been borrowed from his friends. RP 7/23/12 I 50. In August, 2011, shortly after this dissolution action was filed, Mr. Zebdi withdrew twenty-two thousand dollars from this account to pay back loans. RP 7/23/12 I 53. He paid ten thousand dollars to his attorneys, Helsell Fetterman. RP 7/23/12 I 54. He did not provide any funds to Ms. Gomaa for her attorney fees. RP 7/23/12 I 55. He testified he spent \$10,000 to pay for tickets for the wife and children to travel to Cairo, her home town. RP 7/23/12 I 52. Ms. Gomaa and the children left

for Egypt the last day of February, 2011. RP 7/24/12 II128 He also deposited the parties' joint income tax refund of \$3,974 on April 22, 2011 into his Bank of America account. RP 7/23/12 I 52.

Aside from the savings and household furnishings, the other major assets in this case were each party's respective vehicles. Mr. Zebdi primarily drove the Subaru and Hanaa Gomaa primarily drove the Honda Odyssey. RP 7/23/12 I 55. On September 21, 2011, Mr. Zebdi sold Hanaa Gomaa's Honda Odyssey on Craigslist for \$16,000 after the Court had ordered that neither party was to transfer, remove, encumber, conceal or in any way dispose of any property....RP 7/23/12 I 56; Ex 111; CP 892. In addition to awarding her judgment for \$15,000, which represented half of the savings which had been consumed by Mr. Zebdi, the trial court awarded Ms. Gomaa judgment against Mr. Zebdi for 100% of the value of the proceeds he obtained by selling her vehicle. Clerk's Papers 922-923; 890; 892 (hereinafter CP 922-923; 890; 892).

Mr. Zebdi urges this Court to find that the trial court committed reversible error by awarding Ms. Gomaa judgment for 100% of the cash generated from his wrongful sale of her vehicle because the court erroneously referenced the second restraining order date, instead of the

first restraining order, which was the one he actually violated. Appellant's Brief at page 18.

This dissolution action was filed by Ms. Gomaa on August 19, 2011, shortly after she and the children moved to the State of Michigan upon their return to the U.S. from Egypt, where they had resided with the husband's agreement for approximately five months. CP 1-6; RP 7/24/12 II 134, 155. Mr. Zebdi was personally served the initial dissolution pleadings, along with a letter from Ms. Gomaa's counsel attempting to negotiate some agreed interim orders. CP 24; 64-65; RP 7/26/12 IV 541. Ms. Gomaa did not want to create conflict with Mr. Zebdi, and hoped to minimize court involvement. RP 7/24/12 II 136.

In response, Mr. Zebdi filed a motion for temporary orders on August 31, 2011. CP 27-28. In addition to demanding the immediate return of the children from Michigan to Washington, his motion requested, in pertinent part:

Based on the declaration below, the undersigned moves the court for a temporary order which:....Restrains or enjoins both parties from transferring, removing, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life and requiring each party to notify the other of any extraordinary expenditures made after the order is issued.....

CP 27.

Mr. Zebdi's proposed Temporary Order was entered by the court on September 14, 2011. CP 201-203. The order contained the identical language he had sought in his motion, which restrained the "parties from transferring.....or in any way disposing of any property....." CP 201-203. One week later, on September 21, 2011, he sold Ms. Gomaa's van on Craigslist. Ex. 111. At Ms. Gomaa's request, a second temporary order was issued on October 6, 2011 which included the same prohibition against disposal of assets. CP 335-340. In the findings, the trial court referenced the second restraining order date (October 6, 2011) instead of the first restraining order date (September 14, 2011), which was Mr. Zebdi's requested order and the one he actually violated on September 21, 2011. CP 201.

The trial court's reference to the incorrect restraining order date is harmless error. Both restraining orders issued in this case, the September 14, 2011 order and the October 6, 2011 order, contained the same prohibition against liquidation of assets. Mr. Zebdi's sale of the Odyssey van on September 21, 2011 violated the first order, not the second order. There is a distinction, but no material difference between the two orders

that would require a reversal of the trial court's decision. This clerical error had no effect on the outcome of the case and did not prejudice the parties in any way. See *State v. Ralph Williams' North West Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 315, 553 P.2d 423 (1976) where the court found the citation to the erroneous statute number in the complaint was harmless and did not prejudice the parties when the rest of the paragraph clearly gave notice of the penalties sought. In criminal cases, an error, even one of constitutional magnitude, is harmless when there is overwhelming evidence of the defendant's guilt. *State v. Guloy*, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). This was a scrivener's error, not a reversible error.

B. DISPARATE PROPERTY AWARD TO WIFE WAS FAIR AND EQUITABLE UNDER ALL OF THE CIRCUMSTANCES OF THE CASE, AND UNDER RCW 26.09.080 AND RCW 26.09.090.

The trial court awarded Mr. Zebdi his Subaru Outback, all of the household furnishings (except for the wife's and daughter's personal effects and clothing, the wife's personal papers, including her dissertation, and the children's Arabic books), his consulting business (Ghalia Enterprises, LLC), and all of the bank accounts in his name. CP 891-893.

The trial court awarded Ms. Gomaa her personal effects and papers, judgment for \$15,000 which represented half of the community savings consumed by Mr. Zebdi, and the entire \$16,000 in proceeds from the sale of the car she usually drove, which Mr. Zebdi sold in violation of the restraining order. CP 892-893. It was the court's opinion that this award was a disparate property award to the wife, but that it was equitable under the circumstances. CP 920-923; RP 8/1/12 V 696-697). The court considered the factors delineated in RCW 26.09.080 (the nature and extent of both separate and community property, the duration of the marriage and the economic circumstances of each spouse at the conclusion of trial, and each party's responsibilities to provide a living situation for the children.) RP 8/1/12 V 695-697. The court also carefully considered the factors in RCW 26.09.090¹. CP 920-923; RP 8/1/12 V 695-697. The trial court

¹ RCW 26.04.090 (1) In a proceeding for dissolution of marriage or domestic partnership, legal separation, declaration of invalidity, or in a proceeding for maintenance following dissolution of the marriage or domestic partnership by a court which lacked personal jurisdiction over the absent spouse or absent domestic partner, the court may grant a maintenance order for either spouse or either domestic partner. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to misconduct, after considering all relevant factors including but not limited to:

(a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him or her, and his or her ability to meet his or her needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;

was clearly cognizant of the fact that the husband had done everything he could to discourage the wife from returning to the United States, so that she would lose her eligibility to live in the U.S. He kept her in limbo as to whether or not he had divorced her under Islamic law in late 2010. RP 7/24/12 II 125 – 127. He wanted her to stay in Egypt. RP 7/24/12 III130-133. He kept demanding that she provide photos of the children which he could have used on his own Algerian passport to remove them from the mother and either take them to Algeria, or back to the United States, without her. RP 7/24/12 II 130-133. Ms. Gomaa was afraid that he would call the FBI on her, alleging that she had kidnapped the children. RP 7/24/12 II 134.

Hanaa Gomaa made the decision to return with the children to the

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his or her skill, interests, style of life, and other attendant circumstances;

(c) The standard of living established during the marriage or domestic partnership;

(d) The duration of the marriage or domestic partnership;

(e) The age, physical and emotional condition, and financial obligations of the spouse or domestic partner seeking maintenance; and

(f) The ability of the spouse or domestic partner from whom maintenance is sought to meet his or her needs and financial obligations while meeting those of the spouse or domestic partner seeking maintenance.

United States, but instead of going to Seattle, where Mr. Zebdi continued to reside, she fled to their former home of East Lansing, Michigan, where she felt she might still have some support from old friends.

RP 7/24/12 II 132-134. She and the children only had the things they had taken with them to Egypt. They had no place to live, no furnishings, no car. RP 7/24/12 II 133-134. She did not have a job. RP 7/24/12 II 137. Ms. Gomaa had never worked in the United States. Ex. 17 She was the primary caretaker of the three children. CP 921; Ex. 17. The trial court determined that she and the children lived frugally in Michigan, but that they had a need for additional financial support. CP 921; RP 8/1/12 V 696.

The trial court determined after taking into account her earnings and the child support transfer payment, that Ms. Gomaa had a need for maintenance of at least an additional \$500 per month at the conclusion of the trial. CP 921. The Court found it would be inequitable to determine that as a result of the Husband's recent temporary job loss that no maintenance should be paid by him. CP 921. However, the Court also determined that because of Mr. Zebdi's present unemployment that he lacked the present ability to pay maintenance, so no maintenance was awarded. RCW 26.09.090(1)(f); CP 922-923; RP 8/1/12 V 696.

However, Ms. Gomaa's need justified a disparate property division in her favor. CP 922-923; RP 8/1/12 V 696.

The Court also determined that Mr. Zebdi's present unemployment was a temporary condition that would most likely be rectified in the foreseeable future. CP 922-923; RP 8/1/12 V 696. Mr. Zebdi does not challenge or dispute this finding in his brief, although error was assigned to the entire paragraph 2.15 Fees and Costs, in the findings. CP 923-924.

The trial court considered all of the equities in this difficult situation and determined that a disparate property award to Ms. Gomaa, in the form of a judgment for 100% of the \$16,000 proceeds from Mr. Zebdi's wrongful sale of her van, was appropriate. CP 696-697; 890, 892; 922-923; Wide discretion and latitude rests with the trial court in making the determination that a particular division of property meets the "just and equitable" standard found in RCW 26.09.080. *Davis v. Davis*, 13 Wn. App, 812, 813, 537 P.2d 1048 (1975); *Holm v. Holm*, 27 Wn.2d 456, 463, 178 P. 2d 725 (1947). In his oral decision, Judge Ramsdell explained, "In an effort to remedy that [referring to wife's need for maintenance but husband's inability to pay due to recent unemployment], and to make what I think is a fair and equitable distribution, what I've essentially done is

skewed the property and liability distribution to account for Mr. Zebdi's current inability to pay any kind of maintenance." RP 8/1/12 V 696. Maintenance and property distribution decisions are matters left to the discretion of the trial court. *In re Marriage of Zahm*, 138 Wn. 2d 213, 226, 978 P. 2d 498 (1999); *In re Marriage of Rockwell*, 141 Wn. App. 235, 242-243, 170 P. 3d 572 (2007).

Abdelkrim Zebdi has failed to show that this disparate property award to Hanaa Gomaa was manifestly unreasonable and based on untenable grounds and for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn. 2d 12, 27, 482 P. 2d 775 (1971). The trial court's decision should be affirmed.

II.

TRIAL COURT'S DETERMINATION THAT ABDELKRIM ZEBDI HAD A PATTERN AND HISTORY OF DOMESTIC VIOLENCE WITH HIS FAMILY THAT MANDATED RESTRICTIONS IN THE PARENTING PLAN IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. MR. ZEBDI'S ACTIONS AGAINST HIS WIFE AND SONS WERE VIOLENT, CONTROLLING, DEMEANING AND REPETITIVE.

Abdelkrim Zebdi argues to this Court that because he is from Algeria and is Muslim, the trial court failed to take into account his culture

when determining whether his physical actions and emotional control toward his family constituted domestic violence under RCW 26.50.010².

A finding of a history of domestic violence requires that the perpetrator -parent's time with the children be limited. RCW 26.09.191(2)(a). Zebdi asserts that although the trial court stated in its oral opinion that cultural issues played a role, the court failed to analyze each and every instance of physical and/or emotional abuse through the lens of his culture in the opinion, and consequently failed to consider his culture in making the determination that he had a history of domestic violence. Appellant's Brief, page 21. Mr. Zebdi alleges that the acts committed by him against his wife and his children did not constitute acts of domestic violence as defined by RCW 26.50.010(1)(a) because the court failed to "consider Islamic culture and the three phases of upbringing that 'explained' Mr. Zebdi's actions." Mr. Zebdi wrongfully states that "cultural factors were not even discussed by the GAL." Appellant's Brief, page 21.

² RCW 26.50.010 (1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

B. CULTURAL FACTORS WERE CONSIDERED BY BOTH THE GAL AND THE COURT WHEN DETERMINING WHETHER MR. ZEBDI HAD PERPETRATED A PATTERN OF DOMESTIC VIOLENCE ON HIS FAMILY.

Consistent with the guidance provided in *In re Marriage of Mahalingam*, 21 Wn App. 28, 232, 584 P. 2d 971 (1978), at the inception of this matter the trial court highlighted that cultural issues could play a role in the parenting case. The Order Appointing Guardian ad Litem entered September 14, 2011 directed the GAL to consider cultural issues in her investigation of the domestic violence allegations. CP 195-200. The Guardian ad Litem, Karin Ballantyne, MSW, acknowledged receipt of the order and cited it on page two of her Interim Report dated March 22, 2012: “At issue is whether the children are at risk of domestic violence from the father, cultural issues impacting parenting and the children’s residential placement.” Ex. 49, page 2; RP 7/23/12 I 24.

Mr. Zebdi complained that Ms. Ballantyne’s report was late. However, when the 34 page interim report was produced, it was clear she had spent a substantial amount of time and effort investigating the parenting history, the parties’ culture, and the children’s present relationship with each of their parents. Ex. 49. The history described numerous incidents of violence by the father against the children and

against the mother. Ex. 49, pages 7-13; 18-21. These included, in September 2008, slapping Ms. Gomaa in the face, grabbing her by the hair and throwing her down on the bed while she held their infant daughter. Ex. 49, page 3. He hit the oldest child in the face until the child fell on the floor to cover his face; his father continued to kick the child, once in the spine. He said to the boy, "I'll slaughter you with a knife like a sheep!" Ex. 49, pages 4; 10.

In February, 2009, Mr. Zebdi slapped the oldest son on the face and threw things at his head for creating a web page about a computer games, and for not reciting the Quran out loud or clear enough. Ex. 49, page 4. Mr. Zebdi threatened to slap the younger son for coughing frequently while reciting the Quran, stating, "If you cough again you'll get slapped on your head." This made the younger son very sad; he had a stomach ache and lost his appetite. The younger son told Ms. Gomaa that the older son wanted to leave, and that he (the younger son) felt suicidal. He told his mother: "I don't feel safe here. He'll hurt us very badly or kill us." Ex. 49, page 4.

When Ms. Gomaa and the children were in Cairo, Mr. Zebdi told his oldest son that if Ms. Gomaa failed to send him their photos (for

Algerian passports) that he would “have the FBI come and take her away in handcuffs.” Ex. 49, page 12.

Ms. Ballantyne interviewed the two older boys of the family. The fifteen and a half year old told her [about his father]:

.....He has mood swings. He is a jerk to my mother. He shouted a lot at her...mom is generally a bad problem....his father was physical with him “a lot of times. He mainly slapped me on the face.” The last time was when he was fourteen. He kicked me to hurt me. I’m not certain that my father can control his emotions. My dad always has to be right. It is literally impossible to win an argument against him.

Ex. 49, pages 18-20.

At the beginning of the discussion section in her report Ms. Ballantyne wrote: “In families who come from other cultures, it is important to understand how their actions can be viewed against that culture and what is unique to their family culture. In assessing whether there was domestic violence in this family, it was important to understand their point of view and what they had agreed on.” Ex. 49, page 30. Ms. Ballantyne then went on to discuss that certain cultural aspects of the family could be misconstrued by our more western view as domestic violence or control, such as the fact that Hanaa wore the hajib, did not

drive, or when she left the home, she always told her husband where she was going. Other habits of clothing, eating and sleeping on the floor were noted, and the GAL concluded that parties had adopted Middle Eastern habits and conservative “traditional Muslim” ways. The GAL explained that to an outsider, it might be perceived that clothing choices, travel restrictions, etc., might have been imposed on the wife, as distinguished from her willingly embracing such a lifestyle. Ex. 49, page 30.

Ms. Ballantyne summarized her understanding of each party’s personal philosophy as “AK held a more universal approach to spiritualism which embraced Muslim, Shamani and Sufi ideas and practices. It appears that Hanaa, over time, has moved into a more conservative stance in terms of ‘traditional Muslim’ ways.” Ex. 49, page 30.

Ms. Ballantyne also sought input from Mr. Zebdi’s therapist, who stated that “she believed that AK had a good heart and wasn’t capable of committing violence against family members. She seemed familiar with Arabic culture and thought that standards might be applied which didn’t allow for cultural practices.” Ms. Ballantyne stated in her report:

When told of the statements of the mother and the boys, she [Mr. Zebdi’s therapist] explained that it was possible that

fathers were allowed to use physical means to correct behavior. I replied that AK [Mr.Zebdi] denied using any physical means or correction except a slap on the shoulder, so the issue is not one of understanding the slaps, hits and kicks, *but rather a denial of doing so.*

(Emphasis added.) Ex. 49, page 31.

In addition to Ms. Ballantyne's exhaustive report and trial testimony, the Court had the benefit of testimony of numerous other witnesses with intimate knowledge of Mr. Zebdi's religion and culture.

Ms. Gomaa's brother, Omar Abdel Alim, an Egyptian native and resident of Australia for the past sixteen years, when asked whether religion or culture could explain Mr. Zebdi's treatment of Ms. Gomaa, testified:

....I get very worried when I hear statements that sort of indicate that if you're of a certain religion, like Muslim, for example, then you can do whatever you want. You can hit your kids and you can hit your wife. That is wrong, regardless of what religion. A human being has to have a certain kind of respect in this world, right. The fact that he is of a certain religious aspect, that doesn't give anybody the right to have a blank check to do whatever they want under the guides (sic) of my religion. That's wrong. Islamic can interpret it in so many ways. Anybody can interpret in any way, right, and they're always right. Whatever the interpretation is, they have to be right. So, if I am taking the argument that because I am deeply religious and I understand my culture and my

religion in a certain way and because I do that, then I have the right to treat my kids and my wife in whatever way I believe is right. That doesn't make it right. So the answer simply is no. There is nothing in the culture or in the religion that says that's how we should treat. You can interpret it this way, but you can interpret anything in any way. The bottom line is there is a minimum level of respect for any human being in this world.

RP 7/24/12 II 210-211.

Judge Ramsdell took the opportunity to question one of Mr. Zebdi's witnesses, Azim Stanikzy, a Muslim originally from Afghanistan, who teaches Afghan language, culture and introduction to Islam at Fort Lewis/McCord, in detail about his understanding of Islamic values and how they apply to parenting children in different age groups. RP 7/25/12 III 276-282.

JUDGE: Well, is there any connection to Islam with regard to those three phases? Is that somehow related to a religious (sic) tendency?(sic) But I'm trying to figure out if there's a religious overlay to it? Is there?

STANIZKY: No, religion is the part of the --- it's kind of basically your moral. Morality is what we teach our children and so our morality, the basis in Islam and so, you know, and if children learn the proper values, then they will be good and productive citizens, but if they don't learn the proper things, then they will become destructive citizens.

RP 7/25/12 III 280-281.

Another one of Mr. Zebdi's witnesses was twenty-nine year old Mohammed Sarhan, a software developer at Zillow who had come to the United States when he was seven years old. RP 7/25/12 III 291, 295. When asked about the idea that one should parent children differently between the ages of zero to seven, seven to fourteen and fourteen to twenty-one, he testified as follows:

WESTON: Okay, is physical discipline any part of this?

SARHAN: No.

WESTON: Okay, for you?

SARHAN: No.

WESTON: Could it be for others?

SARHAN: Of course, I mean every single person is their own person so whatever they want to make a decision for it's their problem, but Islamically, no, it's not supposed to be.

RP 7/25/12 III 296.

Another of Mr. Zebdi's friends from the Mosque who testified on his behalf was Soufiane Zeghmi, a software developer from Amazon, born

in the U.S. of Algerian parents. RP 7/25/12 III 350-355. When asked on cross-examination about disciplining children, he testified:

ZEGHMI: I was referring to the ---- to the cultural, you know, from like a North African cultural parenting, which is a little more strict compared to what I saw here and that's why I admired this style.

FITZPATRICK: What do you mean? Can you describe this North African culture?

ZEGHMI: It's more strict like, you know, the parents are right and just obey the parents and listen type of thing.

FITZPATRICK: Is there any inclusion of physical correction?

ZEGHMI: That varies on the family. That varies on the upbringing of the parents. So, I mean that varies. It depends on, you know, each family has their own level of discipline and that's why I admired this way because I did (sic) see any physical abuse.

RP 7/25/12 III 355-356.

Mr. Zebdi's allegations that the Court failed to consider his religion and culture when determining whether his actions against his wife and children constituted a pattern of domestic violence is clearly not supported by the record. On several occasions where the court needed

more information on the cultural aspects of parenting, it inquired directly of the witnesses. It did the same when witnesses were questioned about lending, repayment and interest practices, and how they were influenced by religious and cultural aspects. RP 368-370; 373-376; 378; 468; 471; 477-478. There can be no question from the record that both Ms. Ballantyne and the court were very attuned to the impact of religion and culture on all aspects of this case. Judge Ramsdell explained in his oral decision:

Now, undoubtedly, cultural issues play a role here, but even acknowledging that reality, there are several things I can conclude from the evidence. Mr. Zebdi has undeniably touched his wife and his sons in ways that were offensive to them. Although Mr. Zebdi wishes to have his actions viewed as having been done with good intentions, the truth is that his actions were not solely driven by pure motives..... The incident involving the throwing of the shoe (sic) or slipper is particularly telling to me because Mr. Zebdi maintains that contrary to Ms. Gooma's version of events, he didn't throw the shoe at her. However, he testified in the Islamic culture, showing the bottom of your shoe is apparently a very insulting action. So, the whole point of the matter of throwing the shoe was to insult Ms. Gooma even if he didn't throw it directly at her.

RP 8/1/12 V 692-693.

The trial court made its own decision as to credibility of each party. The court did not find Mr. Zebdi's view of his actions credible.

That determination should not be disturbed on appeal. *In re Marriage of Eklund*, 143 Wn. App. 207, 212, 177 P. 3d 189 (2008). As the court observed in the *Dependency of A.A.*, “the trial court recognized that some cultures tolerate domestic violence to a greater degree than others. But this family is subject to the jurisdiction of Washington courts and the laws of Washington under which domestic violence is not tolerated.”

Dependency of A. A. 105 Wn. App 604, 610, 20 P. 3d 492 (2001).

C. COURT’S IMPOSITION OF RESTRICTIONS IN THE PARENTING PLAN WAS APPROPRIATE UNDER RCW 26.09.191.

But RCW 26.09.191 is unequivocal. Once the court finds that a parent engaged in physical abuse, it must not require mutual decision-making and it must limit the abusive parent’s residential time with the child. If the court is concerned about the harshness of the limitations required by RCW 26.09.191(2)(a) and their effect on the best interest of the child, in an appropriate case it may apply subsections (2)(m) and (2)(n) to temper the limitations. But the court must first conclude that RCW 26.09.191(2) applies, and then make specific findings that justify any modification of the limitations.

In re the Marriage of Mansour, 126 Wn. App. 1, 10; 106 P.3d 768 (2005).

The trial court’s decision to require Mr. Zebdi to engage in domestic violence treatment and participate in DV Dad’s program and

ordering him to choose and begin working with a reunification therapist before allowing contact with the children are clearly acceptable conditions calculated to educate and improve the relationship between the father and the children once contact resumes. This was the recommendation by a very experienced Guardian ad Litem, which the Court felt appropriate to adopt. Ex. 1; Ex. 2; RP 7/23/12 I 12; CP 930-935; RP 8/1/12 V 699. Any limitations imposed by the trial court pursuant to RCW 26.09.191(2) “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). The Guardian ad Litem testified in detail about the programs and therapy she recommended, and the reasons for each recommendation. RP 7/23/12 I 62-70. The conditions of contact set forth in the Final Parenting Plan are not punitive, but rather are designed to set the stage for a successful reunification of the father and the boys, in particular.

I am firmly convinced that Mr. Zebdi needs some assistance in understanding just how his family came to arrive at this unfortunate juncture. He needs to learn what went wrong, how it went wrong and I think he really needs some assistance in learning how to correct the problem..... Time is of the essence at this point and I just want to urge Mr. Zebdi to take whatever action he can to try and salvage this before it's too late and they start making their

own choices..... I don't want to see them become adults that are estranged from their dad.

RP 8/1/12 V 700. Instead of imposing a reunification therapist on Mr. Zebdi, the court ordered that Mr. Zebdi should select a qualified therapist from the court's list. The court also ordered that the cost for the reunification therapist should be paid by the parents in proportion to income. CP 934-935. The court protected the children from the domestic violence, but ordered a thoughtful process whereby the father and the boys, in particular, could re-establish their relationship with the help of qualified counselor(s), should Mr. Zebdi choose to avail himself of the assistance.

RP 7/23/12 I 29-35. The restrictions imposed on Mr. Zebdi are reasonably calculated to address the harm identified by the trial court. *In re Marriage of Katare*, 125 Wn. App. 813, 826, 105 P. 3d 44 (2004) (remanded for clarification regarding the legal basis for imposing restrictions because the trial court's finding in the parenting plan that there was no basis to impose restrictions under RCW 26.09.191 created an inconsistency and ambiguity). In addition, "any limitations or restrictions imposed must be reasonably calculated to address the identified harm." *Katare* 125 Wn.App. at 826. No errors were committed by the court in imposing

these conditions on Mr. Zebdi in the Final Parenting Plan. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46, 940 P.2d 1362 (1977).

D. COURT'S DECISION TO NOT REQUIRE THE CHILDREN TO LEAVE MICHIGAN AND MOVE BACK TO SEATTLE WAS REASONABLE AND SUPPORTED BY SUBSTANTIAL EVIDENCE.

Immediately after commencement of the case, Mr. Zebdi sought an order from the court requiring that the children be returned to Seattle from Michigan. CP 27-28. On September 14, 2011, the court appointed the Guardian ad Litem, ordered the GAL to investigate whether the children are at risk of DV from the father and provide the interim report within 60 days or sooner. CP 197-200.

3.9 OTHER: If, after consideration of the GAL's report, the court determines that the children are not at risk of DV from the father, the children shall be returned to Seattle on a date to be determined by the Court.

CP 200.

Due to medical problems and other issues, the GAL's interim report was not ready within 60 days. RP 7/23/12 I 2-7; 11; 14. The unedited interim report was released on December 17, 2012. RP 7/23/12 I 11; Ex. 49.

On December 7, 2011 Mr. Zebdi filed another motion to have the children returned immediately to Seattle from Michigan and to have the GAL discharged. CP 355-431. The court ordered the GAL to provide within two weeks a time frame/date by which her report would be completed and status of report. The mother's request for attorney fees was reserved. CP 478-481. The December 17, 2012 GAL Interim Report found domestic violence by Mr. Zebdi and recommended that the children be permitted to stay in Michigan. Ex. 49, page 34.

At trial, Mr. Zebdi again sought the return of the children from Michigan to Seattle. The court considered and weighed all of the evidence, including the GAL's report as to her conversations with the two older boys, who told her they were feeling successful in school and were relieved they did not have to engage with their father on a frequent basis due to his history of domestic violence against them and their mother. RCW 26.09.187, Ex. 49, pages 18-22. In the oral decision the court noted that "Mr. Zebdi's actions have alienated his boys from him." RP 8/1/12 V 701. By the time the trial was over, Ms. Gomaa and the children had been living in the state of Michigan for a year, and away from Mr. Zebdi and the State of Washington for 18 months. She had obtained employment, set

up an apartment, and all of the children were doing well in school. The court ordered that the Mother may remain in Michigan, and the children shall reside with the Mother. CP 929-941, at 930. Mr. Zebdi challenges both of these rulings by denying the existence of domestic violence. He cites no other factual errors or authority to support his position that the trial court committed reversible error for these rulings. Appellant's Brief, pages 19, 23.

It is clear that an important factor to the relocation initially and again at trial was whether any RCW 26.09.191 limitations apply. The family law motions court wanted to have information on that issue before requiring the children to return to Washington. It should be noted that when the mother and children relocated from Egypt to Michigan, there was no parenting plan in place. Consequently, Ms. Gomaa did not provide Mr. Zebdi advance notice of her intended relocation. This issue was discussed at length between trial counsel and Judge Ramsdell at the conclusion of the evidence. RP 7/26/12 IV 606-615. Because there was no parenting plan in existence, the notice requirements of the relocation

statute did not apply. RCW 26.09.520³.

³ RCW 26.09.520 (Relocation) The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:

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

The trial court was very much aware it had the authority to require the children to be brought back to the State of Washington. RP 7/26/12 IV 613, line 9. Mr. Zebdi and his attorney made it clear that that was what he wanted. RP 7/26/12 IV 613, line 12. RCW 26.09.420. But in determining a parenting plan for the children, the Court was required to apply the factors of RCW 26.09.187⁴. Most of those factors are similar to

(11) For a temporary order, the amount of time before a final decision can be made at trial.

4

RCW 26.09.187 provides in pertinent part:

Criteria for establishing permanent parenting plan.

(3) RESIDENTIAL PROVISIONS.

(a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship *footnote 4, continued...* with the child, consistent with the child's developmental level and the family's social and economic circumstances. The child's residential schedule shall be consistent with RCW 26.09.191. Where the limitations of RCW 26.09.191 are not dispositive of the child's residential schedule, the court shall consider the following factors:

- (i) The relative strength, nature, and stability of the child's relationship with each parent;
- (ii) The agreements of the parties, provided they were entered into knowingly and voluntarily;
- (iii) Each parent's past and potential for future performance of parenting functions as defined in *RCW 26.09.004(3), including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- (iv) The emotional needs and developmental level of the child;

those cited in the relocation statute, RCW 26.09.520, although the relocation statute permits an analysis that focuses on both the child and the relocating person. *In re Marriage of Horner*, 151 Wn.2d 884, 887, 93 P.3d 124 (2004). The person with whom the child resides a majority of the time is entitled to a rebuttable presumption that the relocation will be allowed. *Parentage of R.F.R.*, 122 Wn. App. 324, 93 P. 3d 951 (2004). And, after making the determination that there was a history of domestic violence against both the mother and the two older children by Mr. Zebdi,

(v) The child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(vi) The wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and

(vii) Each parent's employment schedule, and shall make accommodations consistent with those schedules.

Factor (i) shall be given the greatest weight.

(b) Where the limitations of RCW 26.09.191 are not dispositive, the court may order that a child frequently alternate his or her residence between the households of the parents for brief and substantially equal intervals of time if such provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.

(c) For any child, residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.

the court was obliged to impose limitations on the father's contact with the children. This same approach would have been appropriate had the relocation statute been controlling. *In re Marriage of Pennamen*, 135, Wn. App. 790, 146 P.3d 466 (2006). The children are to continue residing with their mother, and she may remain in Michigan, where she has a job and where they have established a new life. The limitations imposed by the Court were for the purpose of protecting the children until Mr. Zebdi received treatment for his issues, and then for repairing and rebuilding that relationship. Those limitations were appropriate and reasonable, and imposed for the best interest of the children. RP 8/1/12 V 691-694; 699-703. The trial court's parenting plan should be affirmed. CP 929-941.

III.

TRIAL COURT'S ATTORNEY FEE AWARD SHOULD BE AFFIRMED, AND AN ADDITIONAL AWARD SHOULD BE ORDERED FOR COSTS OF APPEAL

A. AWARD OF \$15,000 PURSUANT TO RCW 26.09.140 SHOULD BE AFFIRMED.

The wife incurred attorney fees of \$58,265.94 and out-of-pocket costs in the amount of \$5,365.06. Ex. 46, CP 923. At the time of trial, she had been able to pay \$29,701 in fees by applying her 2011 tax refund of approximately \$3,400, borrowing the \$10,000 advance fee deposit from

her brother, by borrowing an additional \$500 from her brother every month, and making small monthly payments from child support and her salary. Ex. 46, CP 924. At the commencement of the case, she was unemployed, with no work history in the United States.

Shortly thereafter, she was able to obtain a job teaching school, for which she was to be paid \$23,750 for the 2012-13 school year. CP 921. She requested attorney fees at every hearing, including the October 6, 2011 hearing, where she asked for \$10,000 in temporary attorney fees. CP 335-340. Her need existed at the beginning of the case, and continues through the appellate process. The following cases illustrate the “need from the outset” standard: *Friedlander v. Friedlander*, 58 Wn.2d 288, 362 P.2d 352 (1961); *Abel v. Abel*, 47 Wn.2d 816, 289 P. 2d 724 (1955) and *Fite v. Fite*, 3 Wn. App. 726, 479 P.2d 560 (1970) *review denied*, 78 Wn. 2d 997 (1971).

Mr. Zebdi paid approximately \$10,000 to his first attorneys initially in August, 2011, and incurred total fees of approximately \$31,000 until they withdrew in October, 2011. RP 7/23/12 I 54. Prior to becoming unemployed the month of trial, on July 2, 2012, he was paid \$33 per hour for approximately thirty hours per week ($\$33 \times 30 = \$990/\text{wk}$).

RP 7/23/12 I 38. In addition to his former employment with the Pacific States Marine Fisheries Commission, he also has a computer consulting business, Ghalia Technologies, LLC, that generated some additional income; approximately \$5,000 - \$6,000 in 2011 and approximately \$2,000 in 2012. RP 7/23/12 I 37; 47; 88-90. He also has the ability to obtain interest-free loans from friends. RP 7/23/12 I 53-54. At the time of trial, his unemployment benefits were not known. RP 7/23/12 I 38; RP 7/26/12 IV 575. At time of trial he testified he had \$3,000-\$5,000 in the bank. RP 7/26/12 IV 575. He never submitted a current financial declaration to the trial court in violation of Local Family Law Rule 10.⁵ The wife in *In re*

⁵ **LFLR 10. FINANCIAL PROVISIONS.**

(a) *When Financial Information is Required.*

(1) Each party shall complete, sign, file, and serve on all parties a financial declaration for any motion, trial, or settlement conference that concerns the following issues:

(A) Payment of a child's expenses, such as tuition, costs of extracurricular activities, medical expenses, or college;

(B) Child support or spousal maintenance; or

(C) Any other financial matter, including payment of debt, attorney and expert fees, or the costs of an investigation or evaluation.

(2) A party may use a previously-prepared financial declaration if all information in that declaration remains accurate.

(3) Financial declarations need not be provided when presenting an order by agreement or default.

(b) *Supporting Documents to be filed with the Financial Declaration.* Parties who file a financial declaration shall also file the following supporting documents:

(1) Pay stubs for the past six months. If a party does not receive pay stubs, other documents shall be provided that show all income received from whatever source, and

Marriage of Marzetta, 129 Wn.App. 607, 625, 120 P.3d 75 (2005) rev. den. 157 Wn.2d 1009 (2006) sought maintenance and attorney fees pursuant to RCW 26.09.140 based on her need. The appellate court commented that her husband's best argument on appeal, in opposition to an award of maintenance, was that as she failed to submit a monthly budget, so it could be argued that her "needs" were unknown.

Respondent's Financial Declaration, Ex. 33, was dated May 17,[sic]

2011(should be 5/17/12) and was offered by the Petitioner. Ex. 33. RP

the deductions from earned income for these periods;

(2) Complete personal tax returns for the prior two years, including all Schedules and all W-2s;

(3) If either party owns an interest of 5% or more in a corporation, partnership or other entity that generates its own tax return, the complete tax return for each such corporation, partnership or other entity for the prior two years;

(4) All statements related to accounts in financial institutions in which the parties have or had an interest during the last six (6) months. "Financial institutions" includes banks, credit unions, mutual fund companies, and brokerages.

(5) If a party receives or has received non-taxable income or benefits (for example, from a trust, barter, gift, etc.), documents shall be provided that show receipts, the source, and any deductions for the last two (2) years.

(6) Check registers shall be supplied within fourteen (14) days if requested by the other party.

(7) If a party asks the court to order or change child support or order payment of other expenses for a child, each party shall also file completed Washington State Child Support Worksheets.

(8) For additional requirements for a Settlement Conference, see LFLR 16.

(c) Documents to be filed under Seal. Tax returns, pay stubs, bank statements, and the statements of other financial institutions should not be attached to the Financial Declaration but should be submitted to the clerk under a cover sheet with the caption "Sealed Financial Source Documents". If so designated, the Clerk will file these documents under seal so that only a party to the case or their attorney can access these documents from the court file without a separate court order.

7/26/12 IV 572. He failed to offer an updated Financial Declaration, reflecting his situation after his alleged loss of employment, contrary to KCLFLR 10. He now complains about the court's decision determining that he had the ability to contribute toward his wife's attorney fees, yet he failed to provide current and accurate financial information to the trial court.

The trial court found:

The Wife has demonstrated the need for payment of her fees and costs under RCW 26.09.140. The "need" is determined as of the outset of the case, and not necessary [sic] as of the time of trial. *Friedlander v. Friedlander*, 58 Wn. 2d 288; 362 P. 2d. 352.

CP 924.

Mr. Zebdi alleges that because he lost his job with Pacific States Marine Fisheries three weeks before trial began, that the Court erred in ordering him to pay any portion of Ms. Gomaa's fees under RCW 26.09.140⁶. (footnote) He testified that he was going to receive unemployment, but he provided no information as to the amount. RP

⁶ RCW 26.09.140 Payment of cost, attorney fees, etc. 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.....

7/26/12 IV574-575.

The trial court did consider Mr. Zebdi's ability to pay the attorney fees in this case. Unlike the husband in *Marriage of Steadman*, 63 Wn. App. 523, 821 P. 2d 59 (1981) who was left with a large debt to the IRS, Mr. Zebdi had very little, if any, debt owed at the time of trial. He had liquidated the savings and paid back his friends. RP 7/23/12 I 50, 53. He had experience in data base development. RP 7/23/12 I 37. He had only been unemployed for three weeks before trial. RP 7/23 I 38. He has had his own international computer consulting business since 2007. RP 7/23/12 I 47. He had a long history of employment, and he speaks five languages. Ex. 51, RP 7/23/12 37. He testified he owed approximately \$21,000 in unpaid attorney fees, but there was no evidence of any collection action being taken against him, almost nine months after counsel had withdrawn. RP 7/23/12 I 54. He had \$3,000 - \$5,000 cash in the bank, and was going to receive unemployment, although the amount was not known. RP 7/23/12 I 38. He still had his consulting business, Ghalia Technologies, LLC. At the time of trial, he was unwilling to seek employment outside of the Seattle area. He refused to consider relocating to Michigan, even to have more contact with his children. RP 7/23/12 I

39-40. The court found that his unemployment was “a temporary condition that will most likely be rectified in the foreseeable future.” CP 922. The court also found that he failed to provide adequate evidence of what happened to the \$40,000 in the bank in December, 2010, what he did with the \$10,000 he borrowed from Dr. Wardak and others late in the summer of 2011, around the time that this action was commenced, and what he did with the \$16,000 in proceeds from the sale of the wife’s van. CP 925. Mr. Zebdi assigns error to the entire paragraph 2.12.8 of the findings of fact, but does not address the issue of his own employability and/or ability to obtain access to resources in the discussion section of his brief. Whether his unemployment was voluntary or not was not clear, although Mr. Zebdi testified it was involuntary. RP 7/23/12 I 38. All of these facts distinguish Mr. Zebdi’s ability to pay a reasonable sum for his wife’s attorney fees, from the ability of Ms. Gomaa, a newly employed elementary school teacher who has the primary burden of providing food, clothing, shelter and education for the parties’ three children, to pay her own fees. *In re Marriage of Nelson*, 62 Wn. App. 515, 521, 814 P.2d 1208 (1991).

An award of attorney fees in a dissolution proceeding is discretionary with the trial court. RCW 26.09.140.

The award will not be disturbed absent proof that the discretion exercised was clearly untenable or manifestly unreasonable. An abuse of discretion is never presumed. *Abel v. Abel*, 47 Wn. 2d 816, 816-19, 289 P. 2d 724 (1955).

Marriage of Tower, 55 Wn. App. 697, 704-705, 780 P. 2d 863 (1989).

Mr. Zebdi was relentless in his quest to force the return of the children to him. He incurred attorney fees in excess of thirty thousand dollars in the first two months of litigation. RP 7/23/12 I 54. Despite Ms. Gomaa's repeated requests for temporary fees, he paid nothing toward her fees. RP 7/23/12 I 55. He was able to retain trial counsel and appellate counsel despite his unemployment and unpaid legal fees to his first attorneys. The trial court's decision that he had the ability to pay to his wife the equivalent of 50% of the legal fees he incurred himself during just the first two months of this litigation was reasonable, supported by the evidence, was within the trial court's discretion and it should not be disturbed on appeal. *In re Custody of Salerno*, 66 Wn. App. 923, 925-26, 833 P.2d 470 (1992); *Kruger v. Kruger*, 37 Wn.App. 329, 333, 679 P.2d 961 (1984).

Mr. Zebdi bears the burden of proving that the trial court exercised this discretion in a way that was clearly untenable or manifestly unreasonable. *Abel v. Abel*, 47 Wn.2d 816, 819, 289 P. 2d 724 (1955). He

has failed to meet his burden.

B. AWARD OF \$15,000 IN FEES TO WIFE DUE TO HUSBAND'S INTRANSIGENCE AND VIOLATIONS OF CR 11 SHOULD BE AFFIRMED.

Mr. Zebdi argues that the \$15,000 fee award to Ms. Gomaa from Mr. Zebdi based upon his intransigence and violation of CR 11 should be reversed by this court. He acknowledges that the trial court recited the standards for both CR 11 and intransigence, but argues that the court “failed to make any findings as to any of the CR 11 factors.” Appellant’s Brief, page 25, RP 8/1/12 V 698, CP 925. He alleges that all of the matters he contested, were done “in good faith,” and therefore a finding of intransigence should be reversed. Appellant’s Brief 26-27. “Intransigence is the quality or state of being uncompromising.” *Schumacher v. Watson*, 100 Wn. App. 208, 216, 997 P.2d 399 (2000).

In considering Zebdi’s intransigence and the resultant effect on Ms. Gomaa’s fees, the court relied in large part on Petitioner’s Attorney Fees Declaration, Ex. 46, CP 925-926, RP 8/1/12 V 698. Other trial exhibits and testimony supported the factual recitation in the fee declaration, including that “he [Zebdi] continued to accuse the wife of the crime of kidnapping throughout the litigation....filed repeated motions to

have the GAL discharged.....refused to sign the Confirmation of Issues thereby causing Petitioner's attorney to appear before the Court (and Respondent, who was representing himself at the time, did not appear)....failed to provide timely answers to interrogatories (Ex. 34) which caused Petitioner's counsel to have to search public records (Ex. 41), subpoena employment records from his employer (Ex. 35), and subpoena bank records (Ex. 37, 40).” Some of these actions might be particularly described as a violation of CR 11⁷, such as repeated motions to disqualify the GAL. However, all of the actions support the court's finding of intransigence. A

⁷ RULE CR 11 SIGNING OF PLEADINGS, MOTIONS, AND LEGAL MEMORANDA: SANCTIONS (excerpts)

(a)A party who is not represented by an attorney shall sign and date the party's pleading, motion, or legal memorandum and state the party's address.The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) *it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation*; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.....If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.....(Emphasis added.)

judicial officer may consider the issue of whether one party incurred additional legal fees due to the intransigence of the other party. *Matter of Marriage of Greenlee*, 65 Wn. App. 703, 829 P.2d 1120 (1992). See also *Eide v. Eide*, 1 Wn. App. 440,445, 462 P.2d 562 (1969); *Fleckenstein v. Fleckenstein*, 59 Wn.2d 131, 366 P.2d 688 (1961).

If intransigence is found, the financial resources of the party seeking attorney fees does not need to be considered, and is irrelevant. *Crosetto v. Crosetto*, 82 Wn. App. 545, 918 P.2d 954 (1996). Mr. Zebdi did not wish to follow court orders, court rules or court procedures. His opinion that he had good reason to take these actions, or inactions, is without merit.

Awards of attorney fees based upon the intransigence of one party have been granted when the party engaged in "foot-dragging" and "obstruction", as in *Eide v. Eide*, 1 Wn. App. 440, 445, 462 P.2d 562 (1969); when a party filed repeated motions which were unnecessary, as in *Chapman v. Perera*, 41 Wn. App. 444, 455-56, 704 P.2d 1224, review denied, 104 Wn.2d 1020 (1985); or simply when one party made the trial unduly difficult and increased legal costs by his or her actions, as in *In re Marriage of Morrow*, supra at 591.

Marriage of Greenlee, 65 Wn. App. 703, 829 P.2d 1120 (1992).

Mr. Zebdi's refusal to cooperate in the court process caused a

dramatic increase in Ms. Gomaa's costs and legal fees. The court's decision to require him to pay an additional \$15,000 due to intransigence and/or violation of CR 11 is well-supported by the evidence and should not be disturbed on appeal.

C. WIFE IS ENTITLED TO AN ADDITIONAL FEE AWARD ON APPEAL.

Hanaa Gomaa seeks an additional award against Abdelkrim Zebdi for her costs and fees incurred in responding to his appeal. In addition to seeking this relief pursuant to RCW 26.09.140, RAP 7.2(d), she also relies on RAP 18.9 as this appeal is frivolous, and there is no reasonable possibility of reversal. Pursuant to RAP 18.1(c), her affidavit of financial need shall be filed no less than 10 days before the date this case is set for oral argument.

IV.

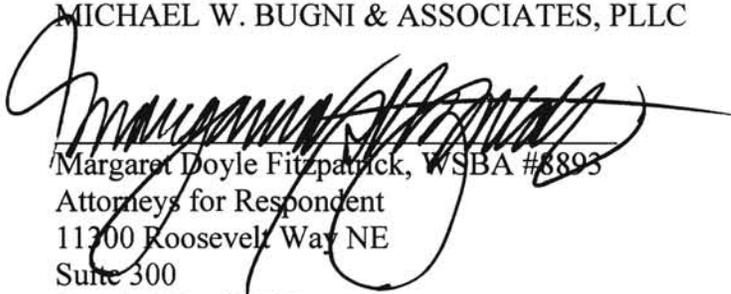
APPELLANT HAS FAILED TO MEET HIS BURDEN; ALL ASPECTS OF TRIAL COURT'S DECISION SHOULD BE AFFIRMED BY THIS COURT AND ADDITIONAL FEES AWARDED TO WIFE.

Hannah Gomaa respectfully requests this court to affirm all of the trial court's decisions and ruling in this matter. The determination that Mr. Zebdi committed domestic violence against both the wife and the

children, and the resultant restrictions in the parenting plan should be affirmed. The disparate but fair award of property to her, including all of the proceeds from the husband's wrongful sale of her van, should be affirmed. Finally, affirmation of the previous attorney fee awards, plus an additional award on appeal, is appropriate.

Dated this 3rd day of July, 2013.

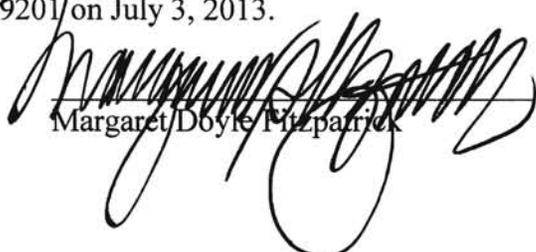
Respectfully submitted,
MICHAEL W. BUGNI & ASSOCIATES, PLLC



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CERTIFICATE OF SERVICE

I certify that I served a copy of the Brief by Respondent by first class mail, postage prepaid, on Kenneth H. Kato, Attorney for Appellant, 1020 N. Washington ST, Spokane, WA 99201 on July 3, 2013.



Margaret Doyle Fitzpatrick