

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

In re the Marriage of:	
SIMON PEDERSEN,	Respondent,
vs.	
LONE PEDERSEN,	Appellant.

CASE # 69265-8-1

[Snohomish County Superior Court
Case # 06-3-01300-1]

APPELLANT'S OPENING BRIEF

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I. Introduction

The parties had a two trial on relocation in October 2011. An Order on Objection to Relocation and a modified Parenting Plan were entered on November 17, 2011. The relocation was allowed but delayed until July 2012. The court entered an order on June 13, 2012, which includes two paragraphs that impose a blanket denial of access to the court upon the mother after the child's relocation to Oslo, Norway. On this appeal the mother asks that those provisions be vacated and stricken from the order.

II. Assignments of Error

Assignments of Error

No. 1: The trial court erred in entering paragraph 7 of the order of June 13, 2012 which denies appellant Lone Pedersen access to the courts:

“No further proceedings shall be brought in this court after Nora relocates to Norway on July 5, 2012.”

No. 2: The trial court erred in entering paragraph 8 of the order of June 13, 2012 which denies respondent Lone Pedersen access to the courts:

“Upon filing proof/documents that verifying (sic) that Norway will assume primary jurisdiction over parenting plan / child support issues involving these parties and Nora, Snohomish County will decline to hear any further motion in this case, as the parties

and the child will have no connection to Washington State.

Issues Relating to Assignments of Error

No. 1 Did the trial court have a valid factual and legal basis for including paragraphs 7 and 8 in the order of June 13, 2012, which amount to a blanket denial of access to the court? Did the trial court abuse its discretion? (Pertains to Assignments of Error No. 1 and No. 2)

III. Statement of the Case

A trial on Simon Pedersen's ("Simon") objection to Lone Pedersen's ("Lone") Notice of Intended Relocation of their daughter Nora to Oslo, Norway, was held in Snohomish County Superior Court, Hon. Kenneth L. Cowser presiding, on October 5 & 6, 2011. (CP 369 l. 12 – 13)

The Order on Objection to Relocation (CP 369 – 382) and the modified Parenting Plan (CP 357 – 368) were entered on November 17, 2011.

The trial court considered and balanced the relocation factors set forth under RCW 26.09.520 and entered detailed findings on each factor. (CP 369 – 382)

The relocation order provides that Nora's relocation to the mother's home in Norway is allowed but delayed until July 5, 2012.

The mother's request for relocation of the child is granted *subject to page 12 lines 12 to 14* but the date when the child's relocation to Norway will occur is delayed, as stated below.

The parenting plan submitted by the mother on November 10, 2011, is consistent with the court's decision on relocation and should be approved.
(CP 379 lines 7 – 12):

The relocating party is permitted to relocate the child.

Other: The child's relocation is delayed until July 5, 2012, which is two weeks after school is out for the summer of 2012. On that date Nora will relocate to Norway and thereafter be in the mother's care.
(CP 381 lines 9 -12)

The new parenting plan signed by the court on this date of November 17, 2011 is approved and incorporated as part of this order. This parenting plan supersedes all previous parenting plans.
(CP 381 lines 13 – 15)

The Parenting Plan entered November 17, 2011 (CP 357 – 368) provides, in relevant part, that:

At page 1, lines 12 – 14:

This parenting plan is:

The final parenting plan signed by the court pursuant to an order signed by the court on this date which modifies a previous parenting plan or custody decree.

At Page 2, lines 10 – 13, § **3.2 School Schedule**

The child shall reside with the father effective November 1, 2011, until the child relocates to Norway as provided in this parenting plan

The mother relocated to Norway effective November 1, 2011. Her periods of residential time are defined under other sections of this parenting plan.

At Page 5, lines 10 – 13, § 3.12 Designation of Custodian

The child named in this parenting plan is scheduled to reside the majority of the time with the petitioner (father) until the child relocates to Norway. After the child's relocation to Norway, the child will be scheduled to reside the majority of the time with the respondent (mother). This parent is designated the custodian of the child solely for purposes of all other state and federal statutes which require a designation or determination of custody. This designation shall not affect either parent's rights and responsibilities under this parenting plan.

At Page 10 § VI. Other Provisions

The child's relocation to the mother's home in Norway is a permanent relocation. The child will remain in the mother's care in Norway through the summer of 2012 and will begin school in Norway in the Fall of 2012. [Parenting Plan, page 10, lines 16 - 18]

Upon the child's relocation to Norway, the provisions of this parenting plan shall be modified to reflect and be consistent with the change in the child's primary residence from that of the father in Snohomish County, Washington, U.S.A., to that of the mother in Norway. No additional showing of adequate cause shall be required for such modification. [Parenting Plan, page 10, lines 18 - 20]

There was disagreement over the terms of the Order for Child Support and Worksheets for the period from November 1, 2011 until Nora relocates to Norway on July 5, 2012. Lone filed an appeal of the child support issues. The appellate

case number was 68655-1-I. The appeal was settled and the dismissed upon the parties' joint motion. (CP 157)

In settlement of the appeal, the parties agreed to a Temporary Order of Child Support signed May 30, 2012, which was entered in the trial court on June 21, 2012. (CP 158 – 169). This Order of Child Support was to be in effect for the period from November 1, 2011, to June 30, 2012. It recites, in relevant part, as follows:

This order is entered pursuant to agreement of the parties in settlement of the pending unresolved issues regarding the effective date of the Order of Child Support that is to be entered pursuant to paragraph 3.3 of the ORDER RE OBJECTION TO RELOCATION/ MODIFICATION OF CUSTODY DECREE/PARENTING PLAN/RESIDENTIAL SCHEDULE (RELOCATION) entered herein on November 17, 2011.

The parties hereby agree that, upon entry of this Agreed Order of Child Support as an order of Snohomish County Superior Court, the appeal filed herein on April 30, 2012 by the respondent Lone Pedersen to the Court of Appeals, Division One, which has been assigned appellate case number 68655-1-I, shall be dismissed without an award of costs or attorney fees to either party in connection with said appeal and neither party shall be awarded costs or attorney fees in connection with the proceedings concerning the content of this Order of Child Support.

(CP 162 – 163)

The Order of Child Support further provides that

3.16 Periodic Adjustment

Other: This Order of Child Support shall be in effect through June 2012

This Order of Child Support shall be adjusted/modified prospectively only beginning July 1, 2012.

The adjustment/modification of child support shall be submitted to the court on the Commissioner's Family Law Motions Calendar pursuant to statute and local court rules. Each party shall cooperate by fully and timely filing and serving their updated financial declarations, sealed financial source documents, and by disclosing the financial information and documentation required by local court rule, statute, and reasonably requested in discovery.

(CP 164)

3.23 Other

This order is entered pursuant to agreement of the parties in settlement of all pending issues regarding the effective date of the Order of Child Support pursuant to paragraph 3.3 of the ORDER RE OBJECTION TO RELOCATION/ MODIFICATION OF CUSTODY DECREE/PARENTING PLAN/RESIDENTIAL SCHEDULE (RELOCATION) entered herein on November 17, 2011.

The parties hereby further agree that upon entry of this Agreed Order of Child Support as an order of Snohomish County Superior Court the appeal filed herein on April 30, 2012 by the respondent Lone Pedersen, to the Court of Appeals, Division One, which has now been assigned appellate case number 68655-1-I, shall be dismissed without an award of costs or attorney fees to either party in connection with said appeal and neither party shall be awarded costs or attorney fees in connection with the proceedings concerning the content of this Order of Child Support.

This Order supersedes the Orders filed/entered herein on February 17, 2012, March 30, 2012, and May 8, 2012, and

incorporates the child support worksheets entered May 8, 2012.

(CP 167 – 168)

Simon filed the following proceedings on April 25, 2012:

Motion and Declaration for Temporary Order. (CP 330 – 356)

Motion and Declaration for Order Appointing a Guardian Ad Litem. (CP 307 – 329)

Proposed Order Appointing Guardian Ad Litem (CP 295 – 299)

Lone Responded on May 2, 2012 by filing the following documents:

Response to Petitioner's Motion. (CP 279 – 288)

Responding Declaration of Lone Pedersen and Tov Skeie. CP 246 – 278)

Simon replied on May 4, 2012 with

Supplemental Reply Declaration of Simon Pedersen.. (CP 229 – 245)

Supplemental Response of Simon Pedersen to Declaration of Lone Pedersen and Tov Skeie. (CP 189 – 228)

Simon had noted his motions for hearing in the wrong department of the court. The parties were redirected to Judge Cowsert's courtroom where there was brief colloquy but no substantive hearing. The matter was rescheduled for hearing on June 13, 2012 before Judge Cowsert. (CP 188 & 187) (VRP is in the clerk's papers at CP 1 – 15)

On May 8, 2012, Simon filed a Notice of Intended Relocation of Child giving notice that he intends to relocate Nora to the state of Florida on June 30,

2012, just 5 days before Nora was scheduled to relocate to Lone's home in Oslo, Norway, pursuant to the relocation order and parenting plan entered on November 17, 2011. (CP 384 – 392)

Simon filed an additional declaration for the June 13, 2012 hearing on May 30, 2012. (CP 176 – 186).

Judge Cowsert heard Simon's motions on June 13, 2012. (the June 13, 2012 VRP is in the clerk's papers at CP 59 – 113)

The court entered an order on June 13, 2012, which includes the following paragraphs which are the subject of this appeal:

Paragraph 7:

“No further proceedings shall be brought in this court after Nora relocates to Norway on July 5, 2012.”

Paragraph 8:

“Upon filing proof/documents that verifying (sic) that Norway will assume primary jurisdiction over parenting plan / child support issues involving these parties and Nora, Snohomish County will decline to hear any further motion in this case, as the parties and the child will have no connection to Washington State.

(CP 171 – 175)

Lone timely filed a motion for reconsideration of paragraphs 7 and 8 of the June 13, 2012 order. (CP 139 – 155).

Simon responded on July 3, 2012. (CP 114 – 138)

Lone replied on July 10, 2012. (CP 50 -58; CP 33 – 49)

The court entered an Order Denying Reconsideration on August 9, 2012.
(CP 31 -32)

Lone filed her Notice of Appeal on September 4, 2012. (CP 16 – 25)

The foregoing partial summary of proceedings and related clerk's papers is included to provide a sufficient record to show there was no basis for the trial court to include provisions in the order of June 13, 2012 which deny Lone access to the courts of Washington State. Doing so was an abuse of discretion which should be reversed.

Simon has neither appealed nor cross-appealed from the order of June 13, 2012.

IV. Standard of Review

A trial court's order limiting a party's access to the court is reviewed for an abuse of discretion. See *In re Marriage of Giordano*, 57 Wash.App. 74, 78, 787 P.2d 51 (1990).

V. Argument

The trial court's order denying Lone access to the court is an abuse of discretion. There is no legal or factual basis in the record for denying Lone access to the courts of this state.

Appellant cannot prove a negative, but has provided this court with transcripts of the hearings held May 9, 2012 and June 13, 2012, as well as 397

pages of clerk's papers. These show that the record is devoid of a valid legal and factual basis for denying Lone access to the courts.

At the May 19, 2012 hearing Simon discussed what he refers to as a "jurisdiction" issue. (VRP May 19, 2012 pp. 12 – 14 at CP 129 – 131)

Simon also discussed what he calls a "jurisdiction" issue at the hearing on June 13, 2012. (VRP June 13, 2012 beginning at page 41 / CP 103 et seq.) The following colloquy makes Lone's point on this appeal:

MR. KAH: * * * Norway has no basis, has no access whatsoever to Mr. Pedersen's financial information, and it would be inappropriate to now today say Norway is going to take jurisdiction of everything.

Frankly, Your Honor, I don't know whether the Court would have the power to do that.

THE COURT: I don't think I do. * * * . I just don't know."
(VRP June 13, 2012 at page 44 / CP 106)

The discussion continues to the end of the June 13, 2012 VRP. The discussion confuses jurisdiction with right of access to the court. It assumes without knowing that Norway would have jurisdiction over all issues and all parties. The discussion was nothing more than a confused colloquy between the court and pro se party Simon Pedersen. Nothing stated during that confused colloquy by the court and Simon provides a basis for denying Lone access to the court. Neither the issue of access or "jurisdiction" was properly raised. The issue was not presented in a motion and was not briefed by anyone. No-one present in

the courtroom was able to discuss the subject knowledgeably. The implications and effects of what Simon seemed to be asking the court to do were not considered or addressed.

One the adverse effects of the provisions denying Lone access to the court is that she has been unable to proceed with establishment of Simon's child support obligation which was to t begin on July 1, 2012.

Simon signed the AGREED ORDER OF CHILD SUPPORT ("the OCS") which was entered on June 21, 2012, on May 30, 2012. He signed it in settlement of Lone's child support appeal which was filed April 30, 2012. (CP 158 – 169) (CP 156 – 157)

Simon signed that agreed OCS three weeks after he had already raised the "denial of access to the courts" and "jurisdiction" issues at the May 9, 2012 hearing. (VRP May 19, 2012 at CP 1 – 15)

Simon signed the agreed OCS five weeks after he had already filed a NOTICE OF INTENDED RELOCATION OF CHILD on April 25, 2012 (SCOMIS sub # 227) in which he gave notice of his intention to move to Florida by the end of June 2012. (CP 384 – 392)

In his SUPPLEMENTAL REPLY DECLARATION dated May 4, 2012 at page 5 (SCOMIS sub # 224) Simon stated that:

"Due to my work situation, I will need to move to Florida the last week of June 2012. * * * ." (page 5, lines 4 - 5)

The AGREED ORDER OF CHILD SUPPORT signed May 30, 2012 and entered by the court on June 21, 2012 (CP 158 – 169) expressly provides that child support will be adjusted/modified on the Snohomish County Superior Court Family Law Motions Calendar when Nora relocates to Norway:

3.16 Periodic Adjustment

Other: This Order of Child Support shall be in effect through June 2012

This Order of Child Support shall be adjusted/modified prospectively only beginning July 1, 2012.

The adjustment/modification of child support shall be submitted to the court on the Commissioner's Family Law Motions Calendar pursuant to statute and local court rules. Each party shall cooperate by fully and timely filing and serving their updated financial declarations, sealed financial source documents, and by disclosing the financial information and documentation required by local court rule, statute, and reasonably requested in discovery.

(CP 164)

The order denying Lone access has had a detrimental effect. Nora has lived in Lone's household in Oslo, Norway, since July 5, 2012. Simon has paid no child support to Lone since Nora relocated. It is imperative that child support be determined in the manner which Simon agreed to on May 30, 2012 in settlement of Lone's prior appeal. Simon is contractually bound to have the child support issue determined as prescribed by that order of child support. It is a

simple procedure if Simon complies by providing the financial documentation and information needed. Doing so requires access to the court. Lone has counsel who practices in Snohomish County Superior Court who is very familiar with her case and has represented her since September 2011.

It is only under limited circumstances that a trial court may deny a party access to the court. None of those circumstances exist in this case. *Bay v. Jensen*, 147 Wn.App. 641, 196 P.3d 753 (Wash.App. Div. 2 2008); *Yurtis v. Phipps*, 143 Wash.App. 680, 693, 181 P.3d 849 (2008); *In re Marriage of Lilly*, 75 Wash.App. 715, 719-20, 880 P.2d 40 (1994); See *In re Marriage of Giordano*, 57 Wash.App. 74, 78, 787 P.2d 51 (1990); *Bonn v. Bonn*, 12 Wash.App. 312, 317-18, 529 P.2d 851 (1974).

Lone has no unpaid court ordered terms, attorney fees, or costs. She has never been assessed terms, fees, or costs by the court. Lone has never abused her right of access to the court or engaged in vexatious litigation.

Simon is unable to cite a single example of such conduct on Lone's part.

Lone requires access to the courts for several reasons, including:

- (1) To adjust/modify child support as provided in the agreed order of child support entered on June 21, 2012, so that she can finally begin receiving child support for her daughter Nora.
- (2) Although Nora has resided in Lone's household in Norway since the beginning of July 2012, child support still accrues against Lone as

obligor under the June 21, 2012 Order of Child Support which, by its terms, was to be in effect only until the end of June 2012.

VI. ATTORNEY FEES

Lone request an award of her attorney fees and costs on this appeal on the following grounds:

Need vs. ability to pay. RCW 26.09.140.

Simon's intransigence.

VII. CONCLUSION

Appellant respectfully asks this Court to:

1. Reverse and strike paragraphs 7 and 8 from the trial court's order dated June 13, 2012.
2. Award Appellant her expenses and reasonable attorney fees on this appeal;

Respectfully submitted this 14th day of April, 2012.



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