

No. 75420-3-I

COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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Christien Freeman, Appellant

v.

Steven Wallace, Respondent

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BRIEF OF APPELLANT

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COURT OF APPEALS  
DIVISION ONE  
STATE OF WASHINGTON

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## I. ASSIGNMENT OF ERRORS

NO. 1: The court erred when it denied Ms. Freeman's CR60(b)(5) motion to hold the Tennessee orders void for lack of jurisdiction and violation of the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).

No. 2: The court erred when it denied the mother's CR(60)(b)(5) motion to hold the Tennessee order of support void for lack of personal jurisdiction and violation of the Uniform Interstate Family Support Act (UIFSA).

No. 3: The court abused its' discretion when it failed to consider the provisions of CR60(b)(6) when it denied Ms. Freeman's motion to vacate.

No. 4: The court abused its' discretion when it failed to consider the provisions of CR 60(b)(11) when it denied Ms. Freeman's motion to vacate.

## II. ISSUES PERTAINING TO THE ASSIGNMENT OF ERRORS

**Issue No. 1:** Did the court err when it denied the mother's motion to vacate based on Tennessee's lack of jurisdiction and violation of the UCCJEA, where Tennessee entered an order of custody over a child who had been in that state for two or three weeks and where no "immediate danger" existed that would warrant the assumption of emergency jurisdiction? (Assignment of Error 1.)

**Issue No.2:** Did the court err in denying the mother's motion to vacate all portions of the order relating to child support based on Tennessee's lack of personal jurisdiction and violation of UIFSA when Tennessee entered an order of support modifying a Washington administrative order of support, where support had not

been requested in the petition, the Washington order was not registered in Tennessee, and the orders were entered by default?

(Assignment of Error 2.)

**Issue No.3:** Did the court abuse its' discretion when it allowed the Tennessee order of support to have prospective application where the father twice sought orders of support from different jurisdictions without following proper modification procedures and the mother has amassed massive support arrearages under two competing orders? (Assignment of Error 3.)

**Issue No.4:** Did the court abuse its' discretion when it rejected the mother's argument that extraordinary circumstances exist to warrant judicial intervention where the mother lost custody of her child and is currently limited to seeking 48 overnights per year and no court has passed on the best-interest of the child with regards to residential placement? (Assignment of Error 4.)

### **III. STATEMENT OF THE CASE**

The parties met in Washington and conceived a child. Their daughter was born and raised in Washington. She is now seven-years old. The father relocated to Tennessee sometime after the child's birth. The child remained with the mother in Washington. An affidavit of paternity is on file with the Department of Health. Washington Department of Social and Health Services entered an

order of support for the child in 2009, listing Ms. Freeman as the custodial parent. CP 86<sup>1</sup> The parties never had a parenting plan in Washington and were never married.

In February of 2011, the mother took the child to Tennessee. While the father had the child for visitation, he went to a Tennessee court and petitioned for custody on February 22<sup>nd</sup>, 2011. CP 30 pp. 152-153. The father was granted temporary custody on February 22<sup>nd</sup>, 2016. CP. 47, pp. 210 – 211. An order of support was entered on March 3<sup>rd</sup>, 2016. CP. 47, pp 206-207. The court granted the father exclusive custody on March 7<sup>th</sup>, 2011, and an order of support was entered. CP 47, pp. 206-207. The mother never appeared in that case.

The parties all returned to Washington within a few months of the order. The father petitioned DSHS for another order of support in 2012 and a Notice of Finding of Financial Responsibility was entered on November 21<sup>st</sup>, 2012. CP 86<sup>2</sup>.

The mother filed a petition for modification in King County Superior Court in November of 2015. CP 1. A hearing was held on January 4, 2016, to determine whether there was adequate cause to

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<sup>1</sup> This is a citation to the mother's affidavit submitted in support of her CR60(b) motion, CP 86. Exhibit A to that affidavit is the 2009 Washington order of support. As the Index to Clerk's Papers for CP 79-91 has not yet been received by counsel, all references to these documents are submitted without page numbers.

<sup>2</sup> This is a citation to the mother's affidavit submitted in support of her CR60(b) motion. CP 86. Exhibit C to that affidavit is the 2011 Washington order of support.

proceed with the petition. The court found it had jurisdiction to modify the Tennessee order under RCW 26.27.221, as all of the parties now lived in Washington. CP 60(A). It also found that there was adequate cause to proceed with a minor modification, but not a major modification. See *Id.* The court entered a temporary residential schedule. CP 55.

The mother moved for revision. CP 61(B). The court denied that motion on February 9<sup>th</sup>, 2016. CP 71. A notice of appeal from the revision was filed with this court. The court converted the notice of appeal to a motion for discretionary review.

While that motion for discretionary review was pending, the mother filed a motion for relief under CR 60(b), covering many of the same UCCJEA and jurisdictional issues raised at the revision. CP 83. The lower court denied the mother's motion to vacate Tennessee's orders and the mother appeals. CP 90.

At the time of the hearing for the motion for discretionary review, the mother's appeal had already been filed. The commissioner denied the mother's motion for discretionary review with regards to adequate cause and appointment of a guardian ad litem and allowed the challenge to Tennessee's jurisdiction to proceed as an appeal under this cause number.

#### IV. SUMMARY OF ARGUMENT

Tennessee lacked jurisdiction to enter an order regarding custody of the child and doing so violated provisions of the UCCJEA. The Tennessee court also lacked personal jurisdiction over the Appellant to enter an order of support. Further, Washington retained exclusive continuing jurisdiction to modify the Washington order of support and Tennessee violated the Uniform Interstate Family Support Act when it entered an order on child support.

In the alternative, the superior court abused its' discretion when it rejected Ms. Freeman's argument that it would be inequitable to allow these orders to have prospective application and that the extraordinary circumstances of the case warrant judicial intervention.

#### V. ARGUMENT

##### A. Standard of Review

A trial court's denial of a motion to vacate under CR 60(b) is reviewed by the appellate court for a "manifest abuse of discretion". *Haley v. Highland*, 142Wn.2d 135, 156, 12P.3d119 (2000). A trial court has abused its' discretion when the determination is manifestly unreasonable or based on untenable grounds. *Davis v. Globe Mach. Mfg. Co.*, 102 Wn.2d 68, 684 P.2d

692 (1984).

Since the court has a nondiscretionary duty to vacate void judgments, denial of a CR60(b)(5) motion is reviewed de novo. *Dobbins v. Mendoza*, 88 Wn. App. 862, 871, 947 P.2d 1229 (1997). Whether a court has the authority to enter a child custody determination under the UCCJEA is a mixed question of law and fact. See *In Re McDermott*, 175 Wn.App.467, 485, 307 P.3d 717 (2013) (citing *In re Parentage, Parenting, & Support of A.R.K.-K.*, 142 Wn.App. 297, 302 n.1, 174 P.3d 160 (2007)).

The mother argues that the lower court erred when it refused to vacate the Tennessee order under CR 60(b)(5) and it abused its' discretion when refused to vacate the Tennessee orders under CR 60(b)(6) & (11).

**B. The Court Erred When it Failed to Hold the Tennessee Order Void for Lack of Jurisdiction and for Entering an Order in Violation of the UCCJEA.**

i. Discussion of “jurisdiction” under the UCCJEA

Superior Court Rule 60(b)(5) provides that upon a motion to vacate, a court may relieve a party from a final judgment, order, or proceeding if that judgment, order, or proceeding is void. A judgment entered without jurisdiction is void, as are judgments entered in violation of the UCCJEA. *In re the Parentage of Ruff*, 168 Wn.App. 109, 115-18, 275 P.3d 1175 (2012). It is the right and duty of a Washington court to examine whether a sister state had

jurisdiction to enter a custody order. See *In re Hamilton*, 120 Wn.App. 147, 84 P.3d 259 (2004)(recognizing Washington cannot give full faith and credit to an order entered in violation of the UCCJEA).

The concept of voidness is narrow. A court order is void only when the court lacks personal or subject matter jurisdiction over the claim. *Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 541, 886 P.2d 189 (1994). Void judgments may be vacated irrespective of the lapse of time. *In re Leslie*, 112 Wash.2d 612, 618, 772 P.2d 1013 (1989) (The court granted relief eight years after entry of the default order).

Superior courts have subject matter jurisdiction in all cases in which jurisdiction shall not have been granted exclusively in some other court, by an explicit act of congress or the legislature. *In Re McDermott*, 175 Wn.App. 467, 307 P.3d 717 (2013). Both Tennessee and Washington have adopted the UCCJEA, making this the “exclusive jurisdictional basis” to determine jurisdiction of this case. RCW 26.27.201(2); T.C.A. 36-6-216(b).

In 2009, the Washington Supreme Court noted that the UCCJEA refers to “exclusive venue”, not subject matter jurisdiction, but continued to use the term “jurisdiction” for consistency. See *In re the Custody of A.C.*, 165 Wn.2d 568, 582 n.3, 200 P.3d 689 (2009). The case was returned to the superior

court with instruction to dismiss for lack jurisdiction. *See Id* at 582. Despite the change in terms used, it appears that an order entered in violation of the UCCJEA remains void and may be challenged and vacated in the same manner as any order entered without jurisdiction. *See Id.*

Division One and Division Three of the Court of Appeals appear to disagree about whether the UCCJEA limits jurisdiction or defines exclusive venue. *See In Re McDermott*, 175 Wn.App. 467, 307 P.3d 717 (discussing *In re Custody of A.C.*, 165 Wn.2d 568, 200 P.3d 689 (2009)); *See also In re Ruff*, 168 Wn.App. 109, 275 P.3d 1175 (2012). In 2012, Division Two held that a lack of jurisdiction under the UCCJEA is a lack of subject matter jurisdiction, not exclusive venue. *See In re Ruff*, 168 Wn.App. 109 at 118. One year later, Division One phrased the question not as one of subject matter jurisdiction but as a court's authority to exercise its' subject matter jurisdiction and enter a given order. *See In re McDermott*, 175 Wn.App. 467 at 721.

If the UCCJEA defines exclusive venue and not jurisdiction, the question becomes whether orders entered in violation of the UCCJEA are *void* due to that violation or, in the alternative, merely *voidable*. It could be argued that relief under CR60(b)(5) is not available as a remedy for a violation of the UCCJEA. Even with the new interpretation of the use of

“jurisdiction” in the UCCJEA, the Washington Supreme Court has indicated that orders entered in violation of the UCCJEA are void and it is appropriate to offer the same remedy as a court would for an order entered without subjected matter jurisdiction. See *In re A.C.* 165 Wn.2d. 568 (The Court held the order was entered without subject matter jurisdiction and remanded for dismissal). Ms. Freeman submits that even if these orders are not void for lack of subject matter jurisdiction, they are void for violating the UCCJEA or, in the alternative, voidable under CR60(b)(6) and (11).

ii. UCCJEA

Both Tennessee and Washington have adopted the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), RCW 26.27, *et seq.*; T.C.A. 36-6, *et seq.*, making this the “exclusive jurisdictional basis” to determine jurisdiction of this case. RCW 26.27.201(2); T.C.A. 36-6-216(b).

The UCCJEA provides:

(1) ... a court of this state has jurisdiction to make an initial child custody determination only if:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person Uning as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction ..., or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum ..., and:

(i) The child and the child's parents, or the child and at least one

parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) All courts having jurisdiction ... have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child ...; or

(d) No court of any other state would have jurisdiction under the criteria [above].

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Under the UCCJEA, a state only has jurisdiction to make an initial custody determination if it is the “home state” of the child. RCW 26.27.201(1); T.C.A. 36-6-216(a). If there is a home state, the home state must decline to exercise jurisdiction before another state may do so. *In re McDermott*, 175 Wn.App at 485. Pursuant to the UCCJEA, the home state is the state in which the child lived with a parent for at least six consecutive months immediately preceding the commencement of the custody proceeding. T.C.A. 36-6-205(7); RCW 26.27.021(7). Temporary absences are included in this six-month period.

At the time of the Tennessee order, Washington was the home state of the child. She had lived in Washington with her mother since birth and had only been in Tennessee for about two weeks. The father acknowledged in his affidavit and petition that the mother lived in

Washington. CP 83<sup>3</sup>. The mother also submitted the child’s medical records showing a history of visits to a pediatrician located in Washington, the most recent visit being a month before traveling to Tennessee. CP 84. Accordingly, under the plain language of the UCCJEA, Washington was clearly the home state at the time Tennessee entered its’ orders.

Since Washington was the home state and did not decline jurisdiction, Tennessee could not exercise jurisdiction under T.C.A. 36-6-216(a)(1) or (2). See *In re McDermott*, 175 Wn.App. at 489 (Kansas was the “home state” and Kansas would have to decline jurisdiction in order for Washington to make a custody determination). Tennessee’s assumption of jurisdiction must have been grounded in T.C.A. 36-6-219(a) which states:

“ A court of this state has temporary emergency jurisdiction if the child is present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subject to or threatened with mistreatment or abuse.”

In his Tennessee petition, the father does not allege abuse, abandonment or any facts sufficient to establish a compelling emergency that would justify Tennessee’s exercise of emergency jurisdiction. “Emergency” is not defined in the UCCJEA but this court may rely on the definition established under its’ predecessor, the UCCJA. The UCCJA provide that emergency jurisdiction was appropriate where the child had been subjected to or threatened with mistreatment or abuse. See *In re Ruff*,

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<sup>3</sup> This cite is a reference to the CR60(b) motion. CP 83. The father’s Tennessee petition and affidavit are exhibit C and D to that motion.

168 Wn.App. at 120 (citing RCW 26.27.030(1)(c)). There must be allegations that would qualify as an immediate threat or danger. See *Id* at 121 (citing *In re Marriage of Greenlaw*, 67 Wash.App. 755, 762, 840 P.2d 223 (1992), *rev'd on other grounds*, 123 Wash.2d 593, 869 P.2d 1024 (1994); See also *Button v. Wait*, 208 SW 3d 366, 370 (Tenn. 2006).

The father states that he is “fearful that his daughter may become a ward of the state” if the mother returns to Washington. CP 83<sup>4</sup>. He makes no allegations that the child has been abused, mistreated, or that there is an immediate threat or danger. The father refers to the mother’s pending misdemeanor case. He states that she has been arrested three times. See *Id*<sup>5</sup>. The mother submitted her criminal history to disprove this allegation. CP 86<sup>6</sup>. The father claimed that failure to appear at the February 2011 hearing was a felony. CP 83<sup>7</sup>. The mother was charged with Theft 3 under 9A.56.050 which is a gross misdemeanor. CP 58, pp 260 – 264; See also RCW 9A.56.040. Failing to appear at a subsequent court date is a misdemeanor, not a felony as Mr. Wallace represented to the Tennessee court. See RCW 9A.76.16.

Under the UCCJEA, “Abandoned” is defined as being left without provision for reasonable and necessary care or supervision. RCW 26.27.021(1); T.C.A. 36-6-205(a). The use of “has been” in the statute clearly indicates that the abandonment must have already occurred.

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<sup>4</sup> Reference to Exhibit C of CP 83.

<sup>5</sup> See *Id*.

<sup>6</sup> Reference to Exhibit B of CP 86.

<sup>7</sup> Reference to Exhibit C of CP 83.

Further, it must have occurred in the state of Tennessee. In *P.E.K. v. J.M. & C.Y.M.*, the Tennessee Court of Appeals found that the court could only issue an emergency order if the child had been abandoned *in the state* or a child, parent or sibling was threatened with abuse *in the state*. 52 S.W.3d 653 (2001)(emphasis added).

The father states in his supporting affidavit that the mother dropped the child off and did not tell him how long she planned to be in Tennessee. CP 83<sup>8</sup>. It can be assumed that since the father was claiming he was the appropriate custodian, he was able to provide the child with the necessary care. Therefore, he could not be alleging the mother “had abandoned” the child when she dropped the child off for visitation. The father seems to be predicting, based on false information about her criminal case, a future abandonment or neglect if the mother returns to Washington and is arrested which would potentially leave the child in foster care.

While circumstances may be troubling, that does not amount to emergency jurisdiction for Tennessee. *In re Ruff*, 168 Wn.App. at 120. On the record available, it is clear that the father’s petition did not establish a basis for emergency jurisdiction. His fear of what might happen should the mother return to Washington with the child is not an allegation of an actual emergency. See *P.E.K. v. J.M.*, 52 S.W.3d 653, 658 (Tenn.Ct.App. 2001). There were no factual allegations of specific threats to the child’s

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<sup>8</sup> See Exhibit D to CP 83.

well-being and therefore there was no basis for emergency jurisdiction.

See *Id.*

It is important to note that the court has not made any written factual findings in this case and refused to consider the appellant's jurisdictional challenges to the Tennessee orders. Additionally, the father has not submitted any factual evidence to the superior court. Appellant's allegations regarding the child's home state, time in Tennessee, and lack of abuse or mistreatment all remain unchallenged. Further, the mother's allegations are supported by the statements the father made in his Tennessee petition.

The Tennessee court also violated the UCCJEA by entering a custody order that was in effect until the mother appeared in that court. A custody order entered under emergency jurisdiction must be a temporary one. If no custody proceeding has been started in the home state, the order entered under emergency jurisdiction may become final if it so provides and the issuing state becomes the home state of the child. RCW 26.27.231(2); T.C.A. 36-6-219(b); See also *In re Ruff*, 168 Wn.App. at 123 (discussing *S.C. v. J.T.C.*, where a trial court with only emergency jurisdiction erred by granting a permanent custody order, 47 So.3d 1253, 1257-58 (Ala.Civ.App.2010); see also *Button v. Waite*, 208 SW 3d 366 (Tenn. 2006) (The Court of Appeals properly vacated a trial court's order that improperly extended its' emergency jurisdiction for any and all purposes).

If the issuing state does not become the home state, the order does not become final and is only in effect until an order is obtained from the home state. RCW 26.27.221(2); T.C.A. 36-6-219(b). The Tennessee court should have set a deadline for the father to seek a custody order from the child's home state or an order declining jurisdiction. Even if the exercise of temporary emergency jurisdiction was proper, the order violated the UCCJEA because the court left it in effect until the mother appeared before that court. The impact of this on the mother was that she believed that she had received a final order and that she could not challenge the order in Washington courts.

Tennessee had no valid state interest in custody of this child and it did not obtain jurisdiction by entering a wrongful custody order in violation of the UCCJEA. A Washington court *cannot* give full faith and credit to a sister state's custody order that is contrary to the jurisdictional provisions of the UCCJEA. See *In re Hamilton*, 120 Wn.App. 147, 157, 84 P.3d 259 (2004). The mother has a right to raise the jurisdictional issues at any time and the court had a non-discretionary duty to hold an order entered without jurisdiction void. See *Id.*

On January 4<sup>th</sup>, the court at the motion for adequate cause rejected Ms. Freeman's efforts to challenge the jurisdiction of Tennessee to enter the custody order, stating "Counsel, I'm not sure how Tennessee exercised jurisdiction is relevant to a modification at all. They've exercised jurisdiction; therefore, they have the case. See Appendix A, Official

Report of Proceedings, pp. 8-9. On February 9<sup>th</sup>, the court on revision also rejected the mother's ability to challenge the jurisdiction of Tennessee to enter a custody order, stating "...if there's a challenge to the validity of the order, it has to be challenged in that state. I don't have any basis to look at another state's order and determine that it was void for lack of jurisdiction." See Appendix B, Official Report of Proceeding, at p.19. When the same issue was raised in the CR 60(b) motion, the court stated in its' oral ruling that it did not find the motion was brought within a reasonable time. RP, p.8. It further stated that any motion to vacate must be brought in the original jurisdiction. RP, p. 8.

The court validated a custody determination that violated the UCCJEA and in its' oral ruling improperly imposed a requirement that the mother must bring a 60(b)(5) motion within a reasonable time. This is not only legally incorrect; it is against the goals of the UCCJEA.

**C. The Court Erred When it Rejected the Mother's Argument That Tennessee Lacked Jurisdiction to Enter an Order of Support.**

The Tennessee orders were entered by default. A court has no jurisdiction to grant relief beyond what is sought in the complaint; to grant relief without notice and opportunity to be heard denies due process. U.S.C.A. Const. Amend 14. To the extent that a default judgment grants relief exceeding that requested in the petition, it is void. *In re Leslie*, 112 Wash.2d at 617. Void judgments may be vacated irrespective of the lapse of

time. *In re Leslie*, 112 Wash.2d at 618 (The court granted relief eight years after entry of the default order).

The petition filed by the father requests custody of his daughter. Under section IV of his petition the father requests the following relief: that he be allowed to file the petition; that proper process be served on the mother requiring her to appear and answer this petition; that he be given exclusive custody and control of the child and; for other and further relief that he may be entitled to. CP 83<sup>9</sup>. The father filed an affidavit along with his petition. The affidavit lacks any request for child support. His petition also states that child support was already established in Washington. Tennessee was aware it was modifying an out-of-state order of support. See *Id.*

The mother never received notice that the father would be seeking child support or a modification of the Washington order. If mother had appeared in that case, vacation of the child support provisions would not be available to her because the rule for nondefault judgments would apply. CR 54(c) provides, “*Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings*”. (Emphasis added). Had mother appeared, the father would have been entitled to child support as part of the “other and further relief” he would be entitled to. Since the order was entered by default, when Tennessee entered the provisions relating to child

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<sup>9</sup>Exhibit C to CP 83.

support, it denied the mother due process and that portion of the order should be vacated.

There was an administrative order of support from Washington State Department of Social and Health Services already in place when the Tennessee orders were entered. CP 86<sup>10</sup>. Under the Uniform Interstate Family Support Act, a tribunal of a state that has issued an order of support has exclusive continuing jurisdiction to modify that order. RCW 26.21A.120; T.A.C. 36-5-36-5-2611(a); see also *Rodriquez v. Price*, No. E2007-02178-COA-R3-CV, 2008 WL 4457233, at 3 (Tenn. Ct. App., 2008). “Tribunal” is defined to include administrative agencies. RCW 26.21A.010(29); T.C.A. 36-6-2101(22). Since the father never registered the Washington order of support with Tennessee, Tennessee infringed on Washington’s exclusive continuing jurisdiction over that issue. See RCW 26.21A.120; See also *Scanlon v. Witrak*, 110 Wn.App. 682, 42 P.3d 447 (2002).

For Tennessee to have the authority to modify Washington’s order of support, the requirements of TAC 36-5-2611(a) must be met.

It provides:

- (a) After a child support order is issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if after notice and hearing it finds that:
  - (1) The following requirements are met:
    - (i) The child, the obligee, and the obligor do not reside in the issuing state.

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<sup>10</sup> Exhibit A to CP 86.

- (ii) A petitioner who is a nonresident of this state seeks modification; and
- (iii) The respondent is subject to the personal jurisdiction of the tribunal of this state.

Here, the conditions of section 2611(a) are not met because the order was never registered in Tennessee. Nor are the conditions of subsections (a)(1)(i) or (ii) met because Ms. Freeman was a resident of Washington and the petitioner, Mr. Wallace, was a resident of Tennessee. Since the Tennessee court violated the UIFSA's restrictions on modifications, it did not have authority to enter an order of support. See *In re Schneider*, 173 Wn.2d 353, 360-361, 268 P.3d 215 (2011). On these grounds, the court should have granted Ms. Freeman's motion to vacate.

**D. The Court Abused Its' Discretion When it Found That Ms. Freeman Was Not Entitled to Relief u=Under CR 60(b)(6).**

CR 60(b)(6) allows relief from judgment when it is no longer equitable that it have prospective application. Here, we have three orders of support. The first was entered in Washington in 2009. CP 83<sup>11</sup>. The second was entered in Tennessee in 2011. CP 47, p 48-49. The third order was entered in 2012 when the father requested support from the State of Washington. CP 83<sup>12</sup>.

The second order of support was obtained by fraud and procedural irregularities, including the UIFSA violation. After the Tennessee order, the parents reconciled for about five months. CP 30. P. 147. The child actually

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<sup>11</sup> See Exhibit A to CP 83.

<sup>12</sup> See Exhibit C to CP 83.

lived with the mother when they returned to Washington. CP 30, p.148. When the father petitioned DCS for support in 2012, he did not register or even reveal the existence of the Tennessee order to DSHS and mother accrued arrearages under two competing orders. Due to the father's fraud and irregularity in obtaining both orders, as well as the temporary reconciliation of the parties, it is inequitable to allow prospective enforcement. While the court did not state a reason for allowing prospective enforcement, there is no tenable ground to allow the father to collect support under an order he obtained in this manner. Denying the mother's request to vacate the Tennessee order of support was an abuse of discretion and should be reversed.

**E. The Court Abused its' Discretion When it Found Ms. Freeman Was Not Entitled to Relief Under CR 60(b)(11).**

This case presents extraordinary circumstances that warrant judicial intervention. Under Civil Rule 60(b)(11), relief is confined to situations involving extraordinary circumstance not covered by any other section of the rule. *Summers v. Dep't of Revenue for State of WA*, 104 Wn.App. 87, 93, 14 P.3d 902 (2001). This rule vests power in courts adequate to enable them to vacate judgments when ever such action is appropriate to accomplish justice. *Flannagan v. Flannagan*, 42 Wn.App. 214, 221, 709 P.2d 1247 (1985). The extraordinary circumstance must relate to the irregularities in the court's proceedings or circumstances extraneous to the court's proceedings. *In re Flannigan*, 42 Wn.App. 214 (1985). An "irregularity" as contemplated by

this rule is regarded as a more fundamental wrong, a more substantial deviation from procedure than an error of law. *In re Marriage of Furrow*, 115 Wn.App. 661, 674, 63 P.3d 821 (2003).

In this case, the extraordinary circumstances are the complete loss of custody and accrual of massive support arrears under two orders. It was the irregularities in the Tennessee proceeding, namely violation of the UCCJEA and UIFSA, that created these disastrous results for Ms. Freeman. Justice demands that this mother be allowed to seek more than the limited number of overnights with the child that are available to her if she cannot meet the stringent modification standards.

A parent should not be able to cite a pending misdemeanor case in the child's home state and thereby terminate the mother's right to parent her child in another state's court. This is a fundamental wrong and substantial deviation from the intent and procedures of the UCCJEA. It was detrimental to the child, who lost a parent, and the mother, who lost four years with her daughter. It was not harmless error. Second, the father should not be able to seek competing orders of support in different states without disclosing the existence of prior court orders concerning support or following proper modification procedures. The effect on the mother was nearly \$15,000 in support arrears under the combined support orders.

Requiring a parent to meet modification standard due to a wrongfully obtained default order entered while she was visiting another state would violate public policy and the goals of the UCCJEA. This has already caused

permanent and substantial infringement of the fundamental and inalienable right of the Petitioner to parent her child. The protection of this right, and the protection of the best interest of the child, warrant judicial intervention.

The superior court stated at each hearing in this case that any challenge to the Tennessee order must be made in that state and that it had no authority to challenge Tennessee's jurisdiction. Motions for relief of judgment under CR 60(b) are within the discretion trial the trial court and will not be disturbed unless based on untenable grounds or reasons. See *Flannagan*, 42 Wash.App. at 222-223. The denial of Ms. Freeman's motion was based on the failure of the court to acknowledge its' power and duty to consider challenges to Tennessee's authority to enter orders of custody and support over the child. Since Ms. Freeman has a right to challenge Tennessee's jurisdiction or authority under the UCCJEA and UIFSA, this decision was untenable and should be reversed. See *In re Hamilton*, 120 Wn.App. 147.

The mother should be afforded an opportunity to file a petition to establish a parenting plan and order of support. Anything less than the relief requested will reward father's fraud and forum shopping and violate public policy. There would also be a disparate impact on low-income families, many of whom cannot afford to remain in another state due to a custody case and cannot afford legal representation. Ms. Freeman has no financial means to go to Tennessee and engage in a custody battle. Since the mother and

child have always resided in Washington, it is untenable that she not be granted relief in our courts.

## **VI. CONCLUSION**

For the reasons discussed above, the mother requests that the trial court's denial of her CR60(b) motion be reversed.

Respectfully submitted,



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Kirstyn Palmisano, WSBA # 41386

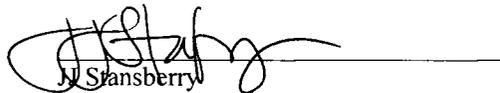
DECLARATION OF MAILING/EMAIL

I am an employee of the law firm Port Gardner Law Group, over eighteen years of age and competent to be a witness herein. On the date written below, copies of the foregoing document were sent by email to Jeffrey S. Floyd at [jeff@jsfloydlaw.com](mailto:jeff@jsfloydlaw.com), and per agreement for reciprocal service by email and to his office address listed below.

1. Appellant's Brief

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October 25<sup>th</sup>, 2016

A handwritten signature in black ink, appearing to read "JJ Stansberry", is written over a horizontal line.

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# APPENDIX A

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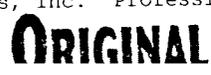
IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

|                    |   |                            |
|--------------------|---|----------------------------|
| CHRISTIEN FREEMAN, | ) |                            |
|                    | ) |                            |
| Petitioner,        | ) |                            |
|                    | ) |                            |
| v.                 | ) | Cause No. 12-1-06296-6 KNT |
|                    | ) |                            |
| STEVEN WALLACE,    | ) |                            |
|                    | ) |                            |
| Respondent.        | ) |                            |
|                    | ) |                            |

Official record of proceedings  
Held before the Honorable  
Commissioner Mark James Hillman  
Held on January 4, 2016  
In Kent, Washington

Colleen Donovan, Transcriptionist  
Flygare & Associates, Inc.  
1715 South 324<sup>th</sup> Place, Suite 250  
Federal Way, WA 98003

DISK ENCLOSED



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13 Steven Wallace, Pro Se

1 (PROCEEDINGS BEGAN AT 1:40:32 p.m.)

2 \* \* \* \* \*

3 THE BAILIFF: This is Christien Freeman versus Steven  
4 Wallace, and Ms. Freeman is appearing by phone for the  
5 hearing.

6 COMMISSIONER HILLMAN: Okay.

7 THE BAILIFF: Case No. 15-3-07020-1 KNT. I believe  
8 you can sit at the table.

9 COMMISSIONER HILLMAN: Please be seated. At least the  
10 parties can be seated at the table. Ma'am, are you a  
11 party?

12 UNKNOWN FEMALE SPEAKER: I'm the grandmother.

13 MR. WALLACE: Yeah.

14 COMMISSIONER HILLMAN: You're not a party.

15 UNKNOWN FEMALE SPEAKER: Sorry.

16 COMMISSIONER HILLMAN: That's okay. Go ahead and be  
17 seated, counsel.

18 MS. PALMISANO: Okay.

19 COMMISSIONER HILLMAN: All right. (Inaudible).

20 MS. PALMISANO: Yes.

21 COMMISSIONER HILLMAN: Okay, so this is on for the  
22 mother's petition to modify a Tennessee court order. It  
23 was continued previously to allow the father to file a  
24 response, and I didn't get a response.

25 MR. WALLACE: Yes, Your Honor, I -- I have a written

1 response right here. I was actually kind of hoping I  
2 could get a little more time with a lawyer. I wasn't  
3 able to come up with quite enough money for a retainer,  
4 but I'm close.

5 COMMISSIONER HILLMAN: Well, we've continued it once;  
6 gave you to file a response. It was continued from  
7 December 16th, so we basically gave you three weeks.

8 MR. WALLACE: Yeah. I apologize. With the holidays  
9 and everything and work, it's just been kind of hectic.  
10 I do have a written response --

11 COMMISSIONER HILLMAN: Which I can't -- I can't  
12 consider. It's too late.

13 MR. WALLACE: I just -- I just haven't had a whole lot  
14 of knowledge to how the legal system works, so I was  
15 hoping I could maybe get a -- just a little more time to  
16 get an attorney. And I do have my written response right  
17 here.

18 COMMISSIONER HILLMAN: All right. So, counsel, first  
19 your position on his request for another continuance.

20 MS. PALMISANO: Would you like me to stand when I  
21 address the Court?

22 COMMISSIONER HILLMAN: It doesn't -- it's not --

23 MS. PALMISANO: Okay.

24 COMMISSIONER HILLMAN: -- important in this Court  
25 because the seating is such that it's not real convenient

1 for anyone --

2 MS. PALMISANO: Thank you, Your Honor.

3 COMMISSIONER HILLMAN: -- so I'm not going to stand on  
4 that formality. But I appreciate the offer.

5 MS. PALMISANO: We would object to a continuance.  
6 We've had absolutely no contact from Mr. Wallace despite  
7 multiple requests. We also have some safety -- ongoing  
8 safety concerns and attempts to get information relating  
9 to the welfare of the child, but we're being denied  
10 access to that information, so I do not feel a  
11 continuance would serve a purpose other than delay and it  
12 might actually hurt the interest of the child in this  
13 case.

14 COMMISSIONER HILLMAN: All right. Well, where is the  
15 child?

16 MS. PALMISANO: She is staying with the grandmother.

17 MR. WALLACE: And myself.

18 COMMISSIONER HILLMAN: Okay. Okay. Well, I'm going  
19 to deny the request to continue. You've been given --  
20 and I need proof of service of the original summons and  
21 petition.

22 MS. PALMISANO: Yes. This is the proof of the summons  
23 and petition.

24 COMMISSIONER HILLMAN: All right. So he was served on  
25 November 23rd?

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MR. WALLACE: Yes. I believe so.

COMMISSIONER HILLMAN: Okay. Where was he served with a copy of the -- when was he served with this motion?

MS. PALMISANO: (Inaudible). That was the 28th.

COMMISSIONER HILLMAN: Okay. Thank you. Can I get these back? He's had over a month with this motion to file a response. It was his obligation to file a timely response. I will not continue it again. It would be prejudicial to the moving party, and so your motion to continue yet again is denied. We're going forth with the hearing. I have not evidence from you, nor will I hear any evidence from you. So the only evidence that I'll consider is that provided by the mother.

All right. So we're moving toward the motion, this is your motion for adequate cause and a temporary order. Correct?

MS. PALMISANO: Yes, Your Honor.

COMMISSIONER HILLMAN: All right. So I've reviewed all the documents. My question to you is: How will I have jurisdiction under the UCCJEA?

MS. PALMISANO: We do have a lot of UCCJEA issues, Your Honor, but Washington is the home state of the child and has always been so. Under 26.27.201.

COMMISSIONER HILLMAN: Well, no, no, no. It's not the home state because Tennessee has already assumed

1 jurisdiction and entered an order. So --

2 MS. PALMISANO: Your Honor --

3 COMMISSIONER HILLMAN: -- we're no longer the home  
4 state.

5 MS. PALMISANO: I believe it qualifies as the home  
6 state, but the Tennessee order was entered under  
7 emergency jurisdiction. And under 27.11, Section 1, it  
8 does not retain exclusive continuing jurisdiction,  
9 because neither the child nor the parents are domiciled  
10 in Tennessee. Everybody is residing, and has resided for  
11 years, in Washington.

12 COMMISSIONER HILLMAN: Okay. And that's part of --  
13 the Tennessee order says that it was just exercising  
14 emergency jurisdiction.

15 MS. PALMISANO: Well, it doesn't specifically say. I  
16 think there are a lot of blank spaces in that order. But  
17 it does say that because the child has been abandoned  
18 while visiting the state, they're putting this order into  
19 place. So it's recognizing the child is visiting and  
20 does not live there, and that the -- you know, the  
21 foundation for emergency jurisdiction out of state is  
22 abandonment. So it's kind of checking those boxes even  
23 though it does not explicitly say "emergency  
24 jurisdiction."

25 COMMISSIONER HILLMAN: Okay. Keep going with your

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arguments on --

MS. PALMISANO: Okay.

COMMISSIONER HILLMAN: -- UCCJEA. I'm not --

MS. PALMISANO: Yes. So they --

COMMISSIONER HILLMAN: -- I'm not persuaded yet.

MS. PALMISANO: -- they're both UCCJEA states. In Washington and Tennessee, because the child has lived here continuously for the last six months and the parents have, Washington is going to be the home state. And that's under 26.27.201 and Tennessee Annotated Code 36.6.217 Section 2. They have identical statutes under the UCCJEA in most states. So from here on out I will just cite to RCW if it's okay with the Court.

As I said, because the jurisdiction in Tennessee was emergency, it does not retain exclusive continuing jurisdiction under 27.11 Section 1. Further, all of the parties live here, so under that same statute in Section B, it would retain that type of jurisdiction.

Under the emergency statute, which is what I believe they used, when there is no previous custody determination or proceeding commenced in the home state --

COMMISSIONER HILLMAN: Right.

MS. PALMISANO: -- which was Washington, a --

COMMISSIONER HILLMAN: Counsel, I'm not sure how

1 Tennessee exercised jurisdiction is relevant to a  
2 modification at all. They've exercised jurisdiction;  
3 therefore, they have the case. Now we have to argue how  
4 I have jurisdiction.

5 MS. PALMISANO: And that is under -- so the  
6 modification statutes. It says, "The Court shall not  
7 modify a prior (inaudible) decree," like the one we have  
8 from Tennessee, unless it finds a substantial change in  
9 circumstances of the non-moving party and if the  
10 modification is in the best interest of the child and  
11 necessary to serve their interest. The change in  
12 circumstances, Your Honor, is that the father is no  
13 longer --

14 COMMISSIONER HILLMAN: Go back to jurisdiction. How  
15 do I have jurisdiction under the UCCJEA to modify it?

16 MS. PALMISANO: Well, jurisdiction to modify 27.2.21.  
17 "Except as otherwise provided in 27.2.31, you may not  
18 modify unless a court of the state has jurisdiction to  
19 make that initial determination." Initial determination  
20 is 26.27.201. And because this state is the home state  
21 of the child on the date of the commencement of this  
22 proceeding, you have that initial jurisdiction. I mean,  
23 I --

24 COMMISSIONER HILLMAN: Shaking my head negatively  
25 because there's a specific statute in the UCCJEA that

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addresses modification.

MS. PALMISANO: Well, the modification statute I have from RCW 609.260. Is that the statute you're referencing?

COMMISSIONER HILLMAN: No, counsel.

MS. PALMISANO: 251?

COMMISSIONER HILLMAN: It's 909.

MS. PALMISANO: Well, that's 26.27.251.

COMMISSIONER HILLMAN: Okay. Let me look it up. Okay. So 26 -- which ones did you cite?

MS. PALMISANO: 27.251. And I also looked at the 09.260 Modification.

COMMISSIONER HILLMAN: How about 26.27.221? I'll just cut to this chase.

MS. PALMISANO: Thank you. I appreciate that, Your Honor.

COMMISSIONER HILLMAN: You still -- you don't live in Tennessee any more. Right?

MR. WALLACE: No, Your Honor.

COMMISSIONER HILLMAN: Okay. You live in Washington?

MR. WALLACE: Yes, sir.

COMMISSIONER HILLMAN: Okay. I'm ready to make my finding, so go ahead.

MS. PALMISANO: Thank you. I appreciate that. So under the jurisdiction to modify 221, which the Court

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correctly pointed me to, the court of the other state no longer has continuing jurisdiction. Because the parties and the child reside here, Washington has been the home state for quite a while now and I ask that you find jurisdiction and adequate cause to modify it.

COMMISSIONER HILLMAN: All right. So now argue that you have adequate cause to proceed.

MS. PALMISANO: I'm sorry; what?

COMMISSIONER HILLMAN: Now argue your motion, now, that we've --

MS. PALMISANO: Thank you.

COMMISSIONER HILLMAN: -- covered the jurisdiction issue.

MS. PALMISANO: Okay. So we're looking at the standard for establishing a temporary parenting plan. Under RCW 09.197, we're looking at the best interest of the child. The Court is supposed to consider the strength, nature and stability of each relationship.

COMMISSIONER HILLMAN: This is a modification.

MS. PALMISANO: So, I -- okay.

COMMISSIONER HILLMAN: Different threshold because --

MS. PALMISANO: No, Your Honor, I understand, but because it was emergency jurisdiction and that statute doesn't require modification, it just requires an order from the home state. That's what I was prepared under.

1 I'm also prepared under this. I just have to change my  
2 mindset. I'm going to do so now and proceed with the  
3 modification argument. I apologize.

4 Well was, the Tennessee order, entered years ago?

5 MS. PALMISANO: In 2011. Yes.

6 COMMISSIONER HILLMAN: Yes.

7 MS. PALMISANO: Yes.

8 COMMISSIONER HILLMAN: So we're not talking about some  
9 emergency that is expired and now we're looking at: Now  
10 we're the right court to originally decide. You filed a  
11 petition for modification.

12 MS. PALMISANO: Yes, I did.

13 COMMISSIONER HILLMAN: Not a petition for  
14 establishment of a parenting plan, which would go to the  
15 factors that you're talking about.

16 MS. PALMISANO: Mm-hmm.

17 COMMISSIONER HILLMAN: So now you have to prove to me  
18 that there's --

19 MS. PALMISANO: That (Inaudible) factors.

20 COMMISSIONER HILLMAN: -- that there's adequate  
21 cause --

22 MS. PALMISANO: Mm-hmm.

23 COMMISSIONER HILLMAN: -- to modify, and all four  
24 factors have to be met under the prima facie evidence  
25 rule --

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MS. PALMISANO: Mm-hmm.

COMMISSIONER HILLMAN: -- or something more than prima facie. And that's what I'm looking for.

MS. PALMISANO: Okay. Thank you.

The first thing I'd like to point out is that my client in the Tennessee court was defaulted. Custody is subject to modification without showing the change in circumstances because the custody decree was a default. And that comes from In re: Rankin (phonetic), 458 PTE (phonetic) 176 in 1969. So the modification statute, "The Court shall not modify unless it finds a substantial change has occurred in the circumstances of the child and non-moving party and the modification is in the best interest of the child and is necessary to serve that interest."

I would argue that we don't have to find the change in circumstances, simply because my client was defaulted out, and that's established in Washington case law. But it is rather easy to do so. The child is no longer living in Tennessee. None of the parties are in Tennessee. The basis for -- the order in Tennessee was also that one criminal arrest and that kind of hanging over my client's head, making her unavailable for parenting. That has been handled years ago now, so I think we have established a change in circumstances.

1           As far as the best interest of the child and serving  
2           that interest, I believe it is in the child's best  
3           interest to be raised by a parent. My client received a  
4           call this fall from Ms. Sheen (phonetic), the  
5           grandmother, stating that the father had moved out over a  
6           year ago.

7           COMMISSIONER HILLMAN: How can I consider that? How  
8           is that not hearsay?

9           MS. PALMISANO: It is hearsay. But we have absolutely  
10          no evidence that he is living with her, and we have  
11          alleged otherwise in our motion and petition, Your Honor.  
12          She is not being raised by a parent. We also have  
13          suspicions, which we alleged in our motion and petition  
14          that he is abusing substances and might present a danger  
15          to the child. But when it comes down to --

16          COMMISSIONER HILLMAN: Well, what evidence do I have  
17          of it, other than suspicions?

18          MS. PALMISANO: And we don't have any either yet, Your  
19          Honor. We have a lot more investigation to do and that  
20          is one of the reasons we'll be asking for a guardian ad  
21          litem. When it comes down to it, though, it is in the  
22          best interest of a child to be raised by both parents.  
23          And to serve that interest, this Court needs to enter  
24          some sort of custody order that allows my client  
25          visitation with the little girl, because she has been

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denied this child for far too long under the Tennessee order, despite multiple requests to the father and grandmother to change that.

And then we have, Your Honor, a few options under the modification statute. It says, "The Court shall retain the residential schedule established by a decree or parenting, unless it is detrimental to the child's well-being," and then you look at the harm from the change versus it staying the same. I would argue that any little girl, six-year-old, not having your mother participate in parenting when she wants to and is able to, is a harmful environment. And the father and grandmother continue to exclude my client from parenting the child.

Now, even if the Court does not find these factors, it can always change it to a plan that does not exceed 90 overnights per year total. If the decree did not provide reasonable time with a parent with whom the child does not reside. And that's under 5(C).

And it also is defined it is in the best interest of the child to increase residential time with the other parent. I believe that the Court could easily do that because the order not only does not provide reasonable time, it does not provide any time with my client. And it is in her best interest to have her mother involved in

1 her life.

2 COMMISSIONER HILLMAN: All right. Thank you. Now  
3 sir, I'm going to give you a chance to argue your case,  
4 but you can't -- I can't consider any facts you tell me.  
5 So you can't tell me you live with your child.

6 MR. WALLACE: Okay.

7 COMMISSIONER HILLMAN: You can't tell me any facts  
8 because you didn't submit a sworn declaration on a timely  
9 basis.

10 MR. WALLACE: Okay.

11 COMMISSIONER HILLMAN: So you can use her -- her facts  
12 and argue your case.

13 MR. WALLACE: I will ask that she prove that my  
14 daughter's mother tried to be a part of her life within  
15 the last four years, and -- I mean, I haven't denied her  
16 any chance to see her daughter. I've followed the order  
17 that was in place from the last court, but it meant of  
18 her seeing -- getting visitation, now I'm not against her  
19 mother seeing her daughter whatsoever. I just kind of  
20 wondered where she's been for the last four years.

21 COMMISSIONER HILLMAN: All right. So, where do you  
22 think her residential time should be then?

23 MR. WALLACE: Every other weekend. I just --

24 COMMISSIONER HILLMAN: How long has it been since  
25 you've seen this child?

1 MR. WALLACE: -- right now my daughter -- what's that?

2 COMMISSIONER HILLMAN: How long has it been since  
3 you've seen the child?

4 MR. WALLACE: She actually just went over there this  
5 weekend.

6 COMMISSIONER HILLMAN: Okay. Thank you. Anything  
7 else you want me to know?

8 MR. WALLACE: I just ask that, you know, my daughter's  
9 in a routine schedule, has been for the last four years,  
10 she's doing good in school, and you know, I just -- I  
11 find it kind of crazy to change schools on her in the  
12 middle of the year and interrupt, you know, the schedule  
13 that she's used to and has become accustomed to. And  
14 I've provided her a safe home and safe environment for my  
15 kid and I just, you know, I'm not trying to deny her  
16 mother of seeing her at all. I just -- I don't think  
17 that that's really the best thing for her right now to be  
18 ripped away from everything that she knows and forming  
19 the scenario with a bunch of strangers. You know?

20 COMMISSIONER HILLMAN: All right. Thank you.  
21 Anything else?

22 MS. PALMISANO: I'm just going to say, Your Honor, the  
23 grandmother did move the child from Auburn to Puyallup  
24 and you can see that was our reason to go ex parte in  
25 November. And they planned on changing the school of the

1 child to Puyallup, so realistically today was supposed to  
2 be her first day. We still don't know what the plan is  
3 because we don't have much information about that, but  
4 there would be a change in schools, regardless, because  
5 of the one.

6 I know you have everything we've put in our petition.  
7 I know we're early in the case. One of the things we're  
8 hoping to do is get a guardian ad litem so we can get an  
9 investigation going and provide the Court with more  
10 concrete evidence.

11 COMMISSIONER HILLMAN: All right. Thank you. RCW  
12 26.27.221 provides that this Court can exercise  
13 jurisdiction on a modification if the child and the  
14 parents do not actually reside in the other state. The  
15 parents both live in -- or no longer live in Tennessee,  
16 or the father doesn't live in Tennessee any more, and the  
17 child lives in Washington, father lives in Washington and  
18 the mother lives in Washington. Therefore, under the  
19 statute I find that this Court does have jurisdiction.

20 With regard to a major modification, however, to  
21 establish adequate cause as required under RCW 26.09.270  
22 and the controlling case law, and this is a modification,  
23 and it does require adequate cause, regardless of whether  
24 it was by default, the party seeking the modification  
25 must prove with something more than prima facie evidence,

1 which means something more than mere allegations, the  
2 following: 1. That there's been a substantial change of  
3 circumstances with the child or the non-moving party's --  
4 non-moving party since entry of the previous order, that  
5 the modification is in the child's best interest, that  
6 the child's present environment is detrimental to the  
7 child's physical, mental, or emotion health, and -- and  
8 4. That harm likely to be caused by a change in  
9 environment is outweighed by the advantage of the change  
10 to the child.

11 While there has been a change in circumstances, that  
12 the child no longer lives in Tennessee, I can't find,  
13 based on the evidence that's been provided that's  
14 admissible and that I can consider: 1. That a major  
15 modification is in the child's best interest; 2. That  
16 the child's present environment is detrimental to the  
17 child's physical, mental, or emotional health, or that  
18 the harm likely to be caused by a change of the  
19 environment is outweighed by the advantage to the change  
20 in the child.

21 Therefore, I'm denying adequate cause on a major  
22 modification, because I don't have any evidence that the  
23 child's not residing with the father; not admissible  
24 evidence at the present time. And the Court has to look  
25 at the present circumstances, not what may or may not

1 have happened a year ago.

2 I will, however, find there's a basis for a minor  
3 modification. The mother was not allowed any residential  
4 time under the parenting plan that was entered in  
5 Tennessee, rightly or wrongly. It just is not there.  
6 Father acknowledges that the child should be able to see  
7 the mother. Therefore, I will find a basis for a minor  
8 modification and allow the mother residential time,  
9 alternating weekends, Friday after school to Sunday  
10 evening at 7:00.

11 In addition, I will provide that she has every  
12 Wednesday from after school until 7:30. Mother will  
13 provide the transportation for Wednesday visits and on  
14 the weekend visits the receiving parent will pick up.

15 So at this point I don't have any evidence the child's  
16 not residing with the father, and that's the basis for  
17 not granting the major modification.

18 MS. PALMISANO: I appreciate that. Thank you.

19 MR. WALLACE: Thank you.

20 MS. PALMISANO: I do have one question --

21 COMMISSIONER HILLMAN: You can ask.

22 MS. PALMISANO: -- and this is something I would ask  
23 agreement if we do it, they live so far apart, this  
24 little girl gets home from school at 5:30. Father --  
25 stepfather can pick the kid up, take her to Chehalis on

1 Wednesdays, no problem. I'm just worried about that much  
2 time in the car for her. If the father would agree to  
3 make that an overnight for Wednesdays, I think it would  
4 work out better for her, but it's just a request.

5 COMMISSIONER HILLMAN: Okay. So, mother lives in  
6 Chehalis?

7 MS. PALMISANO: Mm-hmm.

8 COMMISSIONER HILLMAN: Okay? She doesn't have to take  
9 the child home to Chehalis on their Wednesday nights.

10 MS. PALMISANO: Mm-hmm.

11 COMMISSIONER HILLMAN: She can come up and spend time  
12 with this six-year-old in King County --

13 MS. PALMISANO: Okay.

14 COMMISSIONER HILLMAN: -- and she's the only one  
15 driving. She doesn't have to exercise her --

16 MS. PALMISANO: She doesn't --

17 COMMISSIONER HILLMAN: -- Wednesday visits.

18 MS. PALMISANO: -- she doesn't drive, but okay, we  
19 will do everything.

20 COMMISSIONER HILLMAN: And -- but I'm not going to --  
21 I didn't anticipate the child would be traveling from  
22 Puyallup to Chehalis for a three hour visit, essentially.

23 MS. PALMISANO: Okay. Thank you.

24 COMMISSIONER HILLMAN: Four hour visit. I was trying  
25 to give the mother some additional time.

1 MS. PALMISANO: And we do appreciate it.

2 COMMISSIONER HILLMAN: if the mother can't exercise  
3 that visitation in Pierce or King County, then she  
4 doesn't get it. I'm not anticipating the child being in  
5 the car. Now, what is completely different, a weekend  
6 transporting back and forth from Chehalis is not  
7 convenient, but it's not impossible. So that's why I  
8 said the receiving parent will pick up. So your client's  
9 got to get up here and pick the child up after school.  
10 All right?

11 MS. PALMISANO: Thank you.

12 MR. WALLACE: Thank you, Your Honor.

13 COMMISSIONER HILLMAN: All right. Anything else?

14 MS. PALMISANO: Are you going to consider the motion  
15 to appoint a guardian ad litem?

16 COMMISSIONER HILLMAN: Who's going to pay for it?

17 MS. PALMISANO: My client. She can spend the money.  
18 And we have been selected, if you signed the order then  
19 money would be due by February 5th.

20 COMMISSIONER HILLMAN: Who did you select?

21 MS. PALMISANO: Debbie -- I'm sorry, it's in the  
22 order, which I have a copy of. I can look it up. But  
23 she's got 20 years of experience. She's from Tacoma, so  
24 she's kind of centrally located for everybody.

25 COMMISSIONER HILLMAN: You know, you guys can use

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Family Court Services.

MS. PALMISANO: Family Court Services?

COMMISSIONER HILLMAN: Family Court Services is who's going to be investigating this matter.

MS. PALMISANO: That's great.

COMMISSIONER HILLMAN: And since I denied major modification, we're just looking at a minor modification.

MS. PALMISANO: Okay.

COMMISSIONER HILLMAN: Okay? All right. Thank you. I'm not appointing Family Court Services; they will be appointed as a matter of course as this case goes on.

MS. PALMISANO: I appreciate that. Thank you.

COMMISSIONER HILLMAN: Okay? Thank you.

MR. WALLACE: Thank you, Your Honor.

COMMISSIONER HILLMAN: Don't leave without copies of the orders.

MR. WALLACE: Okay.

COMMISSIONER HILLMAN: Thank you.

UNKNOWN FEMALE SPEAKER: (Inaudible).

\* \* \* \* \*

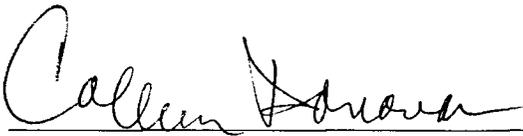
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IN RE: Christien Freeman vs. Steven Wallace  
CAUSE NO. 15-3-07020-1 KNT

AFFIDAVIT

I, Colleen Donovan, do certify that the audio recording provided to me of the proceedings held before the Honorable Commissioner Mark James Hillman in The Superior Court Of Kent for King County, Washington, was transcribed by me to the best of my ability.



Colleen Donovan,  
Transcriptionist

# APPENDIX B

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STATE OF WASHINGTON, COUNTY OF KING  
KING COUNTY SUPERIOR COURT

|                    |   |                             |
|--------------------|---|-----------------------------|
| CHRISTIEN FREEMAN, | : | Case No. 15-3-07020-1 KNT   |
|                    | : |                             |
| Plaintiff,         | : | Court of Appeals No.        |
|                    | : | 74822-0-I                   |
| v.                 | : | Kent, Washington            |
|                    | : |                             |
| STEVEN WALLACE,    | : | Tuesday, February 9th, 2016 |
|                    | : | 1:37 p.m.                   |
| Defendant.         | : |                             |
| .....              | : |                             |

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE JULIA L. GARRATT  
KING COUNTY SUPERIOR COURT JUDGE

APPEARANCES:

|                        |                                     |
|------------------------|-------------------------------------|
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|                        | By: KIRSTYN PALMISANO, ESQ.         |
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|                        | 320 West Republican, Suite 207      |
|                        | Seattle, Washington 98119           |
|                        | inquiries@aquoco.co                 |
|                        | (206) 693-2390                      |

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service. Case law/rules  
hyperlinked; table of authorities on last page.

1 This letter is to serve as notice to you that I have filed the  
2 following transcripts with the appellate court:

3 Case Name: Christien Freeman v. Steven Wallace  
4 Case No.: 15-3-07020-1 KNT  
5 Court of Appeals No.: 74822-0-I  
6 Excerpts/Dates Requested To Be Transcribed:

7 February 9, 2016

8 The transcripts were electronically filed on Friday, May 6, 2016  
9 and a hard copy mailed in follow-up to the Court of Appeals,  
10 Division I. I certify a copy of this notice was mailed by me to  
11 the following parties via USPS first-class mail on the Friday, May  
12 6, 2016:

13 Court of Appeals, Division I  
14 600 University Street  
15 One Union Square  
16 Seattle, Washington 98101

JEFFREY S. FLOYD  
Jeffrey S. Floyd & Associates,  
PLLC  
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17 Kirstyn Palmisano  
18 Shipman Uberti  
19 3631 Colby Avenue  
20 Everett, Washington 98201

21 Sincerely,

22 

23 Erica L. Ingram, Owner  
24 A Quo Co.  
25 Certified Electronic Reporter & Transcriber, AAERT  
Notary Public in the State of Washington  
320 West Republican, Suite 207  
Seattle, Washington 98119

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1 KENT, WASHINGTON, THURSDAY, FEBRUARY 9, 2016, 1:37 P.M.

2 THE CLERK: Superior Court for the State of  
3 Washington in and for the county of King is now in session,  
4 the Honorable Julia Garratt presiding.

5 THE COURT: Good afternoon. Please be seated.

6 MR. FLOYD: Thank you, Your Honor.

7 THE COURT: And even though I know who you are, can  
8 you please state your name for the record, starting with --

9 MS. PALMISANO: My name is Kirstyn Palmisano. I'm  
10 here representing the Mother and Petitioner, Chris Freeman.

11 THE COURT: Counsel?

12 MR. FLOYD: Good afternoon, Your Honor. For the  
13 record, Jeffrey Floyd, representing Steve Wallace, who is the  
14 Respondent and also the non-moving party on this motion for  
15 revision.

16 THE COURT: That's correct. And I know that you  
17 weren't present at the hearing downstairs. I recall that you  
18 were --

19 MR. FLOYD: Ironically --

20 THE COURT: -- late breaking news, so to speak.

21 MR. FLOYD: -- I had a hearing in that same  
22 courtroom in front of Judge Hillman that was right after  
23 theirs. And Mr. Wallace approached me in the hallway after  
24 what had happened. And then I gave him one of my cards and,  
25 a couple weeks later, he called me when counsel moved to  
revise. So I don't really -- obviously, I've reviewed the

1 transcripts, so I have a pretty good idea on Commissioner  
2 Hillman's decision and the basis for his decision.

3 THE COURT: Okay.

4 MR. FLOYD: And I guess it --

5 THE COURT: I noticed that you didn't file a  
6 response, so I'm assuming you're just arguing off of the  
7 pleadings as you know them.

8 MR. FLOYD: I will be arguing off of the pleadings.  
9 I can't really -- I mean, I would have liked to have  
10 submitted a declaration for my client. The problem is, he  
11 didn't submit one for the hearing, so --

12 THE COURT: Which can be problematic.

13 MR. FLOYD: Which would have been problematic, Your  
14 Honor, and I think, based on the record itself that, you  
15 know, Commissioner Hillman made the right decision, but I'll  
16 let counsel make her argument and then respond.

17 THE COURT: Very good. Well, I figured you all  
18 could take about 10 minutes each if you need that much time.

19 MR. FLOYD: Okay.

20 THE COURT: So if you want me to give you the 2  
21 minute high sign to reserve a couple minutes of your time,  
22 I'm happy to flag the peace sign at you if you --

23 MS. PALMISANO: That would be great. I don't know  
24 if that --

25 THE COURT: And you're welcome to sit at counsel  
table.

1 MS. PALMISANO: Thank you.

2 THE COURT: I don't have people stand on ceremony,  
3 so to speak. It's easy -- I can't read that far away with my  
4 eyesight, so I'd much rather sit anyway.

5 MS. PALMISANO: Yes, much appreciated.

6 THE COURT: So go ahead.

7 ARGUMENT FOR THE PETITIONER BY MS. PALMISANO

8 MS. PALMISANO: So Your Honor, as a stated, I  
9 represent the mother and Petitioner in this case. It's a  
10 complicated case with a complex background and fact pattern.  
11 And I would just very briefly like to review that the child  
12 was born in Washington to the Petitioner and Respondent.  
13 She's six years old. She has resided here her entire life.

14 At the end of January, in 2011, the Mother took the  
15 child to Tennessee for the purpose of visiting the Mother's  
16 grandfather and the Father, who was evidently residing there  
17 at the time. The Mother gave the child to the Father for  
18 visitation. Three days later, the Father filed a petition in  
19 Tennessee for emergency custody. And a few weeks later, the  
20 court granted him sole custody until the Mother appeared  
21 before the court.

22 They also entered an order establishing child  
23 support. The parties rather promptly returned to Washington  
24 State, the child moving in with the Mother and maternal  
25 grandmother for six to eight weeks until the Father removed  
her from the home. So I'm here, asking for a revision of the

1 Commissioner's orders. My legal argument really has three  
2 focuses, the validity of the order, Your Honor.

3 We are challenging the jurisdiction of Tennessee to  
4 enter the order. We are stating that the order was  
5 fraudulently obtained and lack of proper notice. Under the  
6 modification, Your Honor, two arguments -- as a temporary  
7 order that is no longer in effect, the Mother should not be  
8 required to meet the modification standards and, in the  
9 alternative, that the Mother met the standards for adequate  
10 cause for making restitution.

11 And last, Your Honor, is a simple plea to appoint a  
12 guardian ad litem because we believe it is necessary to  
13 protect the best interest of the child in this case. So for  
14 the jurisdictional issues, the UCCJEA adopted by both states  
15 with nearly identical provisions, it's on the subject matter  
16 jurisdiction of the Court and even the procedural  
17 requirements are jurisdictional.

18 So how did we get an initial custody determination  
19 from Tennessee? In order to make an initial custody  
20 determination, that state must be the home state of the  
21 child. Since the child lived in Washington and was only  
22 visiting Tennessee for a matter of days or a couple weeks,  
23 they must have been acting under the emergency jurisdiction  
24 exceptions to that requirement.

25 An emergency jurisdiction exception requires the  
child be present in the state that the child has been

1 abandoned or that there is an emergency requiring  
2 intervention to protect the child due to abuse or  
3 mistreatment. And of course, that danger must be imminent.  
4 There were no findings in the Tennessee order about these  
5 requirements. Failure by a trial court to make findings that  
6 reflect the application of each relevant factor and  
7 statutorily prescribed procedures is error. And that is from  
8 In Re: Shryock. Now, that was a modification case, Your  
9 Honor.

10 But under the UCCJEA, I believe it would apply as  
11 well because even the procedural requirements are  
12 jurisdictional. Now, if you look at the requirements for  
13 exercising emergency jurisdiction, abuse and mistreatment, I  
14 don't believe there are any allegations in the Father's  
15 paperwork submitted in Tennessee that even point to or hint  
16 to abuse or mistreatment. The Father only states, "If left  
17 in her care, I am afraid she will become a ward of the  
18 State," referring to the child.

19 First, this is not imminent. It does not meet the  
20 requirement in rough. It is also conjecture. It's something  
21 that may happen in the future. It does not rise to a level  
22 of maltreatment of the child, which is what is required. And  
23 then we have the abandonment provision. Abandonment is  
24 defined as being left without provision for reasonable and  
25 necessary care or supervision. Unless the Father was stating  
that he could not provide those things, he is not alleging

1 abandonment.

2           And in fact, he makes it clear in his position that  
3 he is the best person to provide those things. So by simply  
4 dropping the child off with the Father, the Mother cannot be  
5 said to have abandoned her under the definition required by  
6 the statute. It seems to me in the petition that what the  
7 Father is talking about is some future abandonment that will  
8 happen if mom returns to Washington and is put in jail. The  
9 kid will be a ward of the State.

10           But Your Honor, first, this harm isn't imminent and  
11 the abandonment has not occurred yet. The plain language of  
12 the statute states, "Has been abandoned." Any fear of her  
13 Father as to what something might happen in Washington at a  
14 future date does not qualify and is not sufficient to give  
15 Tennessee emergency jurisdiction. I would point the Court to  
16 the Tennessee case, P.E.K. v. J.M., where vague allegations  
17 of the Mother's actions making the Father fear for the safety  
18 of the child were insufficient for the Court to be able to  
19 exercise emergency jurisdiction.

20           And then, Your Honor, also what I believe is a  
21 jurisdictional requirement, we have the temporary nature of  
22 the order. It appears, from reading the Tennessee order,  
23 that the court entered a permanent order continuing its  
24 jurisdiction until the Mother appeared. This is a clear  
25 violation of the UCCJEA and case law, which clearly require  
emergency jurisdiction be only temporary. I would point the

1 Court to In Re: Little Bane (phonetic).

2 If an order continues its jurisdiction indefinitely  
3 and for all purposes, it should be vacated. The statute  
4 clearly contemplates the return to the home state. By  
5 entering a permanent order, it signaled to my client that she  
6 could not challenge this order unless she returned to  
7 Tennessee and appeared before that court. I believe that's  
8 part of the reason we're in this situation today. She did  
9 not realize, after reading that order, that she could come  
10 before a Washington court because the order indicated to the  
11 contrary. For these reasons, I believe the court lacked  
12 jurisdiction and that order should be before you.

13 And if the Court would like, I will move on to,  
14 briefly, fraud and notice. We made these pretty clear in our  
15 revision brief. This order was fraudulently obtained. Some  
16 of the lies are evident on the face of the Tennessee  
17 petition. We have shown that by admitting my client's  
18 criminal record and the docket from the Renton Municipal  
19 Court. Further, there were lies about her residence.

20 She was living at a stable home with her mother in  
21 Auburn. Lies about abandonment and other factors that my  
22 client has now rebutted -- further, she also made it clear  
23 that she received three days' notice for a hearing two hours  
24 away, not sufficient time to respond or hire counsel to  
25 assist her. As for modification, I'm asking the court not to  
apply the modification standard to this case if it upholds

1 the court order. There are two reasons. First, there's no  
2 order left to be modified. Under the UCCJEA, Tennessee's  
3 order is no longer in effect as soon as Washington, the home  
4 state, enters its own.

5 And we can look at In Re: McDermott, a Washington  
6 case for that, as well as the plain language of the statute.  
7 No court has passed on the best interests of the child. This  
8 is the second reason, Your Honor. This is the Court's first  
9 opportunity to do so. To require the Mother to meet  
10 modification standards would impair the Court's ability to  
11 discharge its responsibility to the child.

12 And when reflecting on this, I ask the Court to  
13 consider its broad equitable powers. This Court does not  
14 have to apply the modification statute. It has broad  
15 discretion when dealing with the welfare of a child and a  
16 choice between which standard it applies. I would point to  
17 In Re: McDole and In Re: Adler for that. Now, I believe in  
18 this case applying the modification statute does not protect  
19 the best interests of this child adequately.

20 But if it does, if we have to meet these standards,  
21 I believe my client met the adequate cause threshold in that  
22 January 4th hearing. First, we have a number of alleged  
23 facts, including substance abuse, parental alienation,  
24 abusive use of conflict, and the fact that she's been raised  
25 by a third party. None of these were rebutted by the Father.  
I would point out that there's no requirement that the

1 alleged that to be proven at the adequate cause hearing, just  
2 that they are relevant to each factor that the parent must  
3 eventually prove.

4           So for those standards in modification, the change  
5 in circumstances, I don't believe we need to meet, under In  
6 Re: Rankin, because it was a default order. That being said,  
7 the child has now moved back to Tennessee. Father has moved  
8 out of the house, lots of substance abuse issues. I believe  
9 we clearly meet that regardless. As for the best interest,  
10 her current environment doesn't involve her mom. She's  
11 completely excluded. So it is in the best interest of the  
12 Court to modify.

13           Further, she is being raised by a third party. We  
14 also have the allegations of substance abuse. As for the  
15 detrimental environment, Your Honor, once again, she's been  
16 raised by a third party when a fit parent is available and  
17 willing. We also have the extreme parental alienation, not  
18 only because the Father made efforts to terminate the child's  
19 relationship with the Mother, he succeeded.

20           He has denied her access to medical information,  
21 knowledge of the child's location, and all contacts at  
22 different points, and recently, too. This Court can assume  
23 that won't change because it has been ongoing for four years.  
24 And then, of course, we have the abusive use of conflict.  
25 You can see the manipulation of facts in the Tennessee  
petition, refusing to participate in this case, refusing to

1 reveal the child's location, her school, her medical  
2 providers. So last, I would ask the Court to look at benefit  
3 versus harm.

4 THE COURT: Okay. And counsel, you have two  
5 minutes left.

6 MS. PALMISANO: Thank you. Clearly, long-term  
7 benefit to being raised by the Mother, by a fit parent who  
8 can provide a stable home -- any detriment is short term.  
9 Last, Your Honor, I would just ask that we get a GAL on  
10 board. If the Court disregards her allegations about  
11 substance abuse and abandonment, we still have reunification  
12 issues. The child is under a great deal of stress with this.  
13 We need reunification counseling and other services for the  
14 family. And my client's willing to do that. Thank you.

15 THE COURT: Thank you. Counsel?

16 ARGUMENT FOR THE RESPONDENT BY MR. FLOYD

17 MR. FLOYD: Let me first expound a little bit on  
18 the argument regarding the UCCJEA and the fact that she  
19 essentially has done nothing for five years, Your Honor. I  
20 mean, this order was entered in Tennessee. Counsel, through  
21 her argument today, indicates that she was made aware of  
22 that, yet she did nothing. She did nothing here in the state  
23 of Washington. She did nothing in Tennessee. Typically,  
24 what courts will do is, if you want to file some sort of CR  
25 60 motion to set aside entry, this is somewhat like default  
entry. With a default, you have up to a year after that time

1 period in which to do that.

2           So I think this order clearly -- I mean, it was  
3 attached to their petition to file here, so clearly, they  
4 came in with the understanding knowing that this was the  
5 basis on which they would move forward with any sort of an  
6 action. It's the only order existing for this child in terms  
7 of establishing what the parenting is. The parties have  
8 worked a little bit recently and there have been some visits.  
9 And I think counsel may want to talk about reunification  
10 counseling, but that's between Mother and the child, Your  
11 Honor.

12           This Mother checked out for five years. She found  
13 somebody else, met somebody else, married somebody else, had  
14 a 10-month-old kid, and now is having second thoughts about  
15 having left the child with the son [sic]. The facts are, she  
16 left the child. No matter what she says, she left the child  
17 with this Father. If he was such a bad person, why would she  
18 leave him with this Father for this extended period of time?

19           So I think what we need to look at is, we need to  
20 look at the modification statute here in Washington in terms  
21 of the entered order and what is required in terms of doing a  
22 modification. I'm sure Your Honor is familiar with  
23 26.09.260, which talks about the elements that must be  
24 proved, essentially a prima facie case in front of  
25 Commissioner Hillman. And it talks about four factors, which  
are really kind of the main factors. One, the first factor,

1 really, is that the parties agree to the modification.

2           Obviously there's not an agreement to the  
3 modification in this case, Your Honor. The other one, part  
4 B, essentially talks about integration in the family of the  
5 Petitioner with the consent of the other parent. There's  
6 been some integration, which is why I believe Commissioner  
7 Hellman awarded every-other-weekend visits, because Mr.  
8 Wallace, on the record when they were talking, didn't mind  
9 the Mother having every-other-weekend visits.

10           So none of those really -- either one of those  
11 don't really apply to a major modification. Normally, this  
12 sort of situation in which you have a major modification  
13 would be where the custodial parent -- all of a sudden CPS  
14 calls and it ends up getting pulled into a dependency  
15 hearing. Then they look to the non-custodial parent to serve  
16 while the custodial parent works on issues.

17           And if they don't work on those issues, then you  
18 end up with a transfer or you have an agreed order. Or they  
19 just say, "I can't handle it anymore. You should have the  
20 kid." The other standards that are mentioned under C is, the  
21 present environment is detrimental to the child's physical,  
22 mental, or emotional health. Well, there's been no evidence  
23 presented, just allegations. What evidence is there that's  
24 been presented? I mean, it's great that the Mother has  
25 turned her life around.

          It's great that the Mother is working and wanting

1 to reestablish this relationship, but that doesn't justify  
2 the Mother swooping in and becoming a primary custodian and  
3 going through some sort of investigation, and that sort of  
4 thing, Your Honor. The fourth prong, which happens  
5 occasionally, is if the non-moving party doesn't follow court  
6 orders, custodial interference, refuses to let visits happen,  
7 that sort of thing, and that certainly is not the case here.  
8 There's no order in place granting her visits until we had  
9 this hearing, yet she was able to see the child before then.

10           So there's been no conduct on behalf of Mr. Wallace  
11 that he has done that. I would have much rather have been  
12 hired and been able to file a response, letting him tell his  
13 story. The Court really hasn't seen his story. But there  
14 really has not been any sort of significant change in  
15 circumstance here, Your Honor. There's no basis for  
16 appointment of a guardian ad litem. There's no adequate  
17 cause that was met. And I think Commissioner Hellman can see  
18 that in the pleadings. Certainly, if she had no visits  
19 before, his argument was, well, it makes sense, then, to do a  
20 minor modification.

21           And the reintroduction can be part of that. Mr.  
22 Wallace has already agreed to every other weekend, which the  
23 parties have practiced other than the last weekend, because  
24 this child was sick. The Mother had a 10-year-old [sic] and  
25 they agreed that it didn't make sense to send a sick child to  
hopefully expose a 10-month-old who had just gotten vaccines

1 for various diseases, to be close to this kid.

2           So I think this needs to be dismissed, Your Honor.  
3 I think a minor modification -- moving forward with a minor  
4 modification such as what Commissioner Hillman stated is  
5 appropriate and my client has all obviously already expressed  
6 a willingness and flexibility to work on that. Now, the  
7 Mother lives in Lewis County. She's not in this  
8 jurisdiction.

9           THE COURT: She's in Chehalis, isn't she? Isn't it  
10 Chehalis that she lives in?

11           MS. PALMISANO: Yes.

12           MR. FLOYD: I'm sorry, but --

13           THE COURT: I knew it was a hike. From listening  
14 to the tape, I --

15           MR. FLOYD: But it is Lewis County. Chehalis --

16           THE COURT: Is Chehalis Lewis?

17           MR. FLOYD: Yes.

18           THE COURT: Some of those --

19           MR. FLOYD: Chehalis is Lewis County. The only  
20 reason I know is, I had to have a trial there about a year  
21 and a half ago on this sort of a thing, a major modification.

22           THE COURT: Okay.

23           MR. FLOYD: So I think their motion for revision  
24 needs to be denied. Thank you.

25           THE COURT: Thank you. Any brief rebuttal,  
counsel?

1           REBUTTAL ARGUMENT FOR THE PETITIONER BY MS. PALMISANO

2           MS. PALMISANO: Well, just, Your Honor, I don't  
3 think it's fair to say that the Mother here checked out. She  
4 had orders she thought meant she had to go back for that  
5 Tennessee court. And she was living in Washington with no  
6 job and eventually a permanent disability that stopped her  
7 from earning an income.

8           As for the modification statute, I'm only talking  
9 about, you know, the subsection C, with her present  
10 environment being detrimental. And I do believe it is. As  
11 far as allegations, I wish we had more evidence. If Mr.  
12 Wallace had participated, I think we probably could have come  
13 up with it, but we still can't get the name of this girl's  
14 doctor. We can't get information from the school. We're  
15 lucky we know her address still. It's just been very  
16 frustrating.

17           I think, if the Court doesn't appoint the GAL, then  
18 at least get family services on board for investigation  
19 immediately. And as far as reunification counseling is  
20 between the mom and the child, it is, but that should also  
21 involve the Father and grandmother. And this child is under  
22 stress. She is having stomachaches. She's missing Grandma.  
23 She's waking up in the middle of the night.

24           THE COURT: Well, you're providing information that  
25 was beyond what the Commissioner heard as well.

          MR. FLOYD: Right. Right.

1 MS. PALMISANO: Well --

2 THE COURT: Okay.

3 MS. PALMISANO: -- I believe it was actually in  
4 some of my documents before the Commissioner. But  
5 regardless, I feel there is plenty of reason that the best  
6 interests support appointment of a GAL and my client is still  
7 looking to move forward with that.

8 COURT'S RULING

9 THE COURT: All right. So I listened to the tape  
10 and actually watched the tape as well because FTR gold has  
11 little cameras where you can see little tiny boxes, the four  
12 different views of the courtroom. Originally, the Mother was  
13 asking for a default. The Father did appear. He may not  
14 have submitted paperwork at the time.

15 He did ask to continue that hearing, but was denied  
16 since he'd been given time to respond. So he didn't get his  
17 continuance, but I didn't find the factors were present to  
18 find him in default. And I did note that counsel did file a  
19 response recently. With respect to the request for a GAL,  
20 Commissioner Hillman weighed the information he was given.  
21 The Mother alleged a number of factors, but they were  
22 suspicions only and there were not any concrete facts  
23 submitted.

24 Commissioner Hillman did note that Family Court  
25 Services would investigate as the case went along. I did not  
find separate evidence to support a separate appointment of a

1 guardian ad litem at this time. Now, with respect to the  
2 Tennessee order, counsel has argued that the Mother didn't  
3 get notice that it was committed under somehow lack of proper  
4 notice and fraud. One of the findings was, Defendant was  
5 properly served with notice of these proceedings.

6 Defendant did not appear before this Court. So the  
7 Mother argues that the Tennessee Court lacked jurisdiction to  
8 enter a court emergency order in 2011. Commissioner Hillman  
9 commented, as I would comment on my review, that nowhere does  
10 the order say that it's an emergency. Counsel argued it can  
11 be implied, but I can't start implying things on another  
12 jurisdiction's order. The Commissioner did not find this to  
13 be so, nor does this court.

14 And I would note, if there's a challenge to the  
15 validity of the order, it has to be challenged in that state.  
16 I don't have any basis to look at another state's order and  
17 determine that it is void for lack of jurisdiction. And it  
18 should also be pointed out, this is four or five years ago.  
19 It's not six months ago. And there is sort of a lack of any  
20 movement on doing anything since this order was originally  
21 entered.

22 So Commissioner Hillman also went through the  
23 criteria to establish the factors for major modification and  
24 went through a step-wise analysis on why there wasn't enough  
25 for a major modification. And I would adopt those as well.  
I don't think that mere allegations are sufficient to

1 establish a basis for major modification. The court did  
2 find, however, there was sufficient information to find a  
3 minor modification.

4 And I agree with that analysis. The Mother also  
5 asked the court to find 191 restrictions and, again, there's  
6 insufficient evidence to be provided to come anywhere near  
7 this time restriction. It's possible that the investigation  
8 by Family Court Services might flush this out, but it's not  
9 present now. The court also found there was no evidence that  
10 the child is not currently living at present with the Father.

11 So respectfully, counsel, your motion for revision  
12 is denied. The temporary visitation schedule as set forth by  
13 the Commissioner on January 4th will continue until further  
14 order of the Court. So I don't know if you have an order  
15 prepared or want just a blank order from this courtroom for  
16 the succinct motion for revision.

17 MR. FLOYD: Would Your Honor entertain a motion for  
18 attorney's fees if this is going to be held over, for having  
19 to appear?

20 THE COURT: I'm only addressing what's in front of  
21 me.

22 MR. FLOYD: Understood.

23 THE COURT: So any other of those -- believe me, I  
24 have such a puddle of cases to deal with up here.

25 MR. FLOYD: Okay.

THE COURT: Any of the temporary orders need to

1 go --

2 MR. FLOYD: Sure.

3 THE COURT: -- down the family law motions.

4 MR. FLOYD: Okay.

5 THE COURT: When I inherited this case load, I  
6 think they told me I have, like, 460 cases. And just it's a  
7 little amazing how many cases come with a UFC rotation. So  
8 those motions can be properly noted and made downstairs.

9 MR. FLOYD: Thank you, Your Honor.

10 MS. PALMISANO: Thank you, Your Honor.

11 THE COURT: Thank you.

12 (Hearing adjourned at 1:59 p.m.)

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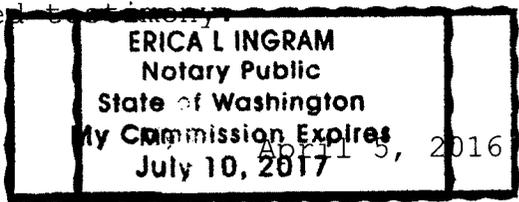
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CERTIFICATE OF TRANSCRIBER

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I, the undersigned Notary Public in and for the State of Washington, do hereby certify or declare under penalty of perjury under the laws of the state of Washington that the foregoing is a true and correct transcription to the best of my ability of the digitally recorded testimony.

*Erica L. Ingram*



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Signature

Date

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# APPENDIX C

### **36-6-205. Part definitions.**

As used in this part, unless the context otherwise requires:

**(1)** Abandoned means left without provision for reasonable and necessary care or supervision;

**(7)** Home state means the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six (6) months of age, home state means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period;

### **36-6-219. Temporary emergency jurisdiction Order enforcement Communication with foreign courts.**

**(a)** A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

**(b)** If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 36-6-216 36-6-218, a child-custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 36-6-216 36-6-218. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 36-6-216 36-6-218, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

**36-6-216. Jurisdiction to make custody determination.**

**(a)** Except as otherwise provided in § 36-6-219, a court of this state has jurisdiction to make an initial child custody determination only if:

**(1)** This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

**(2)** A court of another state does not have jurisdiction under subdivision (a)(1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under §§ 36-6-221 or 36-6-222, and:

**(A)** The child and the child's parents, or the child and at least one (1) parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

**(B)** Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

**(3)** All courts having jurisdiction under subdivision (a)(1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under §§ 36-6-221 or 36-6-222; or

**(4)** No court of any other state would have jurisdiction under the criteria specified in subdivision (a)(1), (2), or (3).

**(b)** Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

**(c)** Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

# APPENDIX D

### **T.C.A. 36-5-2101(22): Definitions**

As used in parts 20-29 of this chapter, unless the context otherwise requires:

**(22)** "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

### **T.C.A. 36-5-2611(a) Modification of Child Support Order of Another State**

**(a)** After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if § 36-5-2613 does not apply and after notice and hearing it finds that:

**(1)** The following requirements are met:

**(A)** The child, the individual obligee, and the obligor do not reside in the issuing state;

**(B)** A petitioner who is a nonresident of this state seeks modification; and

**(C)** The respondent is subject to the personal jurisdiction of the tribunal of this state; or

**(2)** The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under parts 20-29 of this chapter, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.