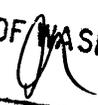


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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

IAN QUINONES, Appellant
and
SUSAN QUINONES, Respondent

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

- A. The trial court erred in finding that the detrimental effect of the relocation does not outweigh the benefit of the change to C.Q. and Ms. Quinones in relocating.

Finding of Fact, 2.3

- B. The trial court erred in finding in favor of Ms. Quinones as to relocation factor set forth at RCW 26.09.520(1) relating to the child's bonds, involvement, and stability with parents and others.

Finding of Fact, 2.3.1

- C. The trial court erred in finding that it would be more detrimental to disrupt the contact between C.Q. and Ms. Quinones than to disrupt the contact between the C.Q. and Mr. Quinones if the proposed relocation was permitted.

Finding of Fact, 2.3.3

- D. The trial court erred in finding that Ms. Quinones' relocation was not in bad faith.

Finding of Fact, 2.3.5

- E. The trial court erred in finding in favor of Ms. Quinones as to relocation factor set forth at RCW 26.09.520(7) relating to the quality of life, resources, and opportunities available to C.Q. and Ms. Quinones.

Finding of Fact, 2.3.7

- F. The trial court erred in finding that there were alternate arrangements available to foster and continue C.Q.'s relationship with and access to Mr. Quinones.

Finding of Fact, 2.3.8

- G. The trial court erred in finding that the factor relating to alternatives to relocation and whether it is feasible or desirable for the other party to relocate did not favor either party.

Finding of Fact, 2.3.9

- H. The trial court erred in finding that the financial impact of Ms. Quinones' employment opportunities in Arizona were more important than the logistics and costs of relocation costs.

Finding of Fact, 2.3.10

- I. The trial court erred in finding that the Petition for Modification should be granted.

Finding of Fact 2.4

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Did the trial court err in finding that the detrimental effect of the relocation does not outweigh the benefit of the change to C.Q. and Ms. Quinones in relocating when weighing the factors set forth in RCW 26.09.520 does not favor Ms. Quinones' relocation?

Assignment of Error A

- B. Did the trial court err in finding in favor of Ms. Quinones as to relocation factor set forth at RCW 26.09.520(1) relating to the child's bonds, involvement, and stability with parents and others when there is not substantial evidence to support the strength of her bond with C.Q. and that she is more concerned with C.Q.'s health than Mr. Quinones?

Assignment of Error B

- C. Did the trial court err in finding that it would be more detrimental to disrupt the contact between C.Q. and Ms. Quinones than to disrupt the contact between the C.Q. and Mr. Quinones when there is not substantial evidence that her bond is stronger with C.Q. and that she attends to his day to day care and health needs more than Mr. Quinones?

Assignment of Error C

- D. Did the trial court err in finding that Ms. Quinones' relocation was not in bad faith when the evidence reflects that Ms. Quinones lost her job with DSHS by abandoning her position, failed to apply for jobs in Washington prior to relocation, accepted a lower paying job in Arizona, has few contacts in Arizona for future employment, and interfered with Mr. Quinones' relationship with C.Q.?

Assignment of Error D

- E. Did the trial court err in finding in favor of Ms. Quinones as to the relocation factor set forth at RCW 26.09.520(7) when the trial court failed to consider the quality of life, resources and opportunities for C.Q. in both Arizona and Washington?

Assignment of Error E

- F. Did the trial court err in finding in favor of Ms. Quinones as to the relocation factor set forth at RCW 26.09.520(7) when there is not substantial evidence that Ms. Quinones' employment and ability to care for C.Q. would provide a better quality of life, resources and opportunities to C.Q. or Ms. Quinones?

Assignment of Error E

- G. Did the trial court err in finding that there were alternate arrangements available to foster and continue C.Q.'s relationship with and access to Mr. Quinones when there is not substantial evidence supporting that skype and telephonic communication were feasible and where the cost of travel would prohibit consistent contact?

Assignment of Error F

- H. Did the trial court err in entering its finding as to alternatives to relocation and the feasibility/desirability of the other party to relocate when it made two contrary findings including that the factor favored Mr. Quinones and that the factor favored neither party?

Assignment of Error G

- I. Did the trial court err in finding that in assessing alternatives to relocation and the feasibility and desirability of the other party to relocate, the factor favored neither party when there was substantial evidence supporting that Mr. Quinones could not work for the FAA in Arizona and Ms. Quinones had a stellar work history with DSHS, numerous contacts in Washington and could apply for employment in this State?

Assignment of Error G

- J. Did the trial court err in finding that the financial impact of Ms. Quinones' employment opportunities in Arizona were more important than the logistics and costs of relocation costs when there was not substantial evidence that Ms. Quinones had employment contacts in Arizona to assist in finding fulltime, long term work, that there were social work positions available to her in Arizona and that there were family members in close proximity to care for C.Q. in lieu of paid daycare?

Assignment of Error H

- K. Did the trial court err in finding that the Petition for Modification should be granted when there was not substantial evidence supporting many of the relocation factors?

Assignment of Error I

II. STATEMENT OF THE CASE

A. Identification of the Parties

This appeal arises from the trial court's Order on Objection to Relocation allowing Ms. Quinones to relocate to Peoria, Arizona with the parties' son. Mr. Quinones is the appellant and Ms. Quinones is the respondent.¹

B. Procedural History/Factual Background

Mr. and Ms. Quinones were married on April 15, 2008. CP __.² Mr. Quinones filed a Petition for Dissolution on June 22, 2012 and the parties were divorced on December 13, 2013. CP __.³ At the time of the requested relocation that is the subject of this appeal, their son, C.Q. was three years old. CP 44.

On April 11, 2013, prior to resolution of issues in the dissolution case, Ms. Quinones filed a Notice of Intended Relocation seeking to relocate their son to Peoria, Arizona. CP 1-3. Mr. Quinones timely filed an Objection to Relocation and a Motion to Restrain Relocation. CP 83-5.

¹ For clarity, the parties will be referred to herein as Mr. Quinones and Ms. Quinones. No disrespect is intended by the use of these designations.

² At the time of filing the Brief of Appellant, Appellant also files his Supplemental Designation of Clerk's Papers designated this pleading in such.

³ At the time of filing the Brief of Appellant, Appellant also files his Supplemental Designation of Clerk's Papers designated this pleading in such.

A Guardian Ad Litem was appointed and issued a report recommending against relocation based upon her finding that Ms. Quinones had no employment in Arizona, no immediate family in the Phoenix area, and no definitive housing arrangements there. CP 33-34. Further, the Guardian Ad Litem found that Mr. Quinones had a strong bond with C.Q. and that Ms. Quinones had an extensive network of friends and co-workers in Washington. CP 224-57.

On June 19, 2013, a Pierce County Superior Court commissioner entered an Agreed Temporary Order Re: Relocation of Child restraining Ms. Quinones' proposed temporary relocation of C.Q. pending trial. CP 83-5. Ms. Quinones abandoned her proposed relocation and on August 7, 2013, the trial court entered a Final Parenting Plan pursuant to the parties' agreement. CP 88-97. The Parenting Plan designated Ms. Quinones as C.Q.'s primary parent, and provided for Mr. Quinones' visitation every other week-end from Friday at 3:00 p.m. until return to daycare on Monday morning. CP 89. If there was not daycare on Mr. Quinones' Monday visitation, he was to return C.Q. to Ms. Quinones at 6:00 p.m. on Monday. *Id.* Further, Mr. Quinones also had visitation every Monday through Friday from 3:00 p.m. to 6:00 p.m. *Id.*

On December 13, 2013, the parties' Decree of Dissolution and related pleadings were entered by the trial court. CP __.⁴

On February 4, 2014, just six weeks after the parties' dissolution was final, Ms. Quinones filed her second Notice of Intended Relocation of Children. CP 44-48. Ms. Quinones sought to relocate to Peoria, Arizona with C.Q. *Id.* Ms. Quinones' alleged reasons for relocation related to her employment (or lack thereof in Washington and the opportunities in Arizona), improved environment for her health and C.Q.'s health, a lower cost of living, and being closer to her family and job flexibility. CP 44-7.

At trial, Ms. Quinones asserted that her ancestry/roots are in Arizona and her mother lives there, that C.Q. has allergies to dogs, cats, peanuts, tree nuts and asthma that would be better accommodated in Arizona, and that the cost of living is less in Arizona than in Washington. CP 44-7; RP 181-82; 236; 285 (06/03/14). Mr. Quinones timely objected to the proposed relocation. CP 124-133. On April 23, 2013, a court commissioner entered a temporary order restraining Ms. Quinones' relocation with C.Q. CP 199-200.

⁴ At the time of filing the Brief of Appellant, Appellant also files his Supplemental Designation of Clerk's Papers designated this pleading in such.

Ms. Quinones' Education, Work History and Employment.

Ms. Quinones holds a master's degree in social work with an emphasis in program administration and has extensive work experience in the field of social work. RP 183 (06/03/14); Ex. 29. Ms. Quinones was first employed by the State of Washington, Department of Social and Health Services ("DSHS") as a social worker in May of 2009. RP 184 (06/03/14). She worked on and off for DSHS for several years until she accepted a full time position with the agency in March of 2011. RP 184-85 (06/03/14); Exs. 15-17. Leading up to the time she filed her second Notice of Intent to Relocate, Ms. Quinones was employed as a Social Service Specialist III with the State of Washington. RP 185 (06/03/14); Ex. 17. In that position, Ms. Quinones earned approximately \$42,000 per year. RP 247, 307 (06/04/14). Ms. Quinones' performance over the course of her employment reflects exceptional work as described in her performance reviews, which identify her work as reflecting "good self-management skills, little supervision required, knowledgeable, punctual, no excessive absences." Exs. 15-17. Further, Ms. Quinones was a valued team member, extremely approachable, detail oriented and a good communicator. Exs. 15-17.

On November 22, 2013, Ms. Quinones was terminated due to "Abandonment of Position" as she was "no longer showing up for work"

in August of 2013. RP 43-44, 189 (06/02/14; 06/03/14). DSHS official, Scott Adams, testified that an “Abandonment of Position” occurs when an employee fails to show up for work three days in a row with no contact with their supervisor. RP 45 (06/02/14). Mr. Adams, an intake supervisor in the department in which Ms. Quinones previously worked as an intake worker, testified that had Ms. Quinones not abandoned her position, she would have still been gainfully employed by the Department. RP 41, 52-53 (06/02/14).

Mr. Quinones’ Military Service and Employment.

Mr. Quinones is employed by the Federal Aviation Administration (“FAA”). RP 105 (06/02/14). Mr. Quinones was an active duty service member of the United States Air Force until September of 2008 when he was honorably discharged from service. RP 104-05 (06/02/14). He began employment with the FAA upon military separation. *Id.* Mr. Quinones was deployed once during C.Q.’s life, specifically from July 2011 to February 2012. RP 108-09 (06/02/14). He also travelled to Korea twice during C.Q.’s life, each time for three weeks. RP 268 (06/04/14). During Mr. Quinones’ deployment, he maintained frequent and regular contact with C.Q. by skype, mail and electronic means. RP 109, 272 (06/02/14; 06/04/14). Other than these absences, Mr. Quinones was an active and present parent to C.Q. RP 108-09 (06/02/14). Mr. Quinones testified that

he has no viable employment opportunities with the FAA in Arizona. RP 142 (06/02/14). Further, Mr. Quinones testified that the financial impact of traveling to visit C.Q. in Arizona will be difficult and “almost impossible”. *Id.* Additionally, Mr. Quinones does not have an infinite amount of leave to exercise for visitation.” *Id.* 142.

Cost of Living and Employment as Justification for Relocation.

At trial, Ms. Quinones admitted that she failed to perform any job search whatsoever in the State of Washington. RP 271 (06/04/14). In fact, she testified that she did not apply for jobs in the State of Washington because she was raising C.Q. full time. RP 309 (06/04/14). Neither did she apply for jobs given her uncertainty as to the outcome of the trial. RP 306 (06/04/14). Ms. Quinones testified that she had an offer of employment in Arizona working as a human resources director for a friend who owned a barbeque business, BrushFire Barbeque, located in Tucson, Arizona. RP 201-03, 205-06 (06/03/14); Ex. 30. BrushFire Barbeque was to pay her \$37,500 per year, which, with the lower cost of living in Arizona, would be equivalent to working and living in Washington. RP 247 (06/04/14). Ms. Quinones knew very little about the company for which she would potentially work including the number of employees working for the company or whether the barbeque company had ever employed anyone as a human resources director. RP 203 (06/03/14).

Ms. Quinones testified that her job at BrushFire Barbeque required her to travel to Tucson two to four times per month and provided her with flexibility to work from Peoria. RP 301 (06/04/14).

Ms. Quinones testified that she did not plan on working at BrushFire Barbeque long-term. RP 218 (06/03/14). In terms of future, long-term employment in Arizona, Ms. Quinones also testified that she could rely upon her contacts in Arizona from seven years prior to find different employment, but failed to offer any evidence about these alleged contacts. RP 283, 305 (06/04/14).

C.Q.'s & Ms. Quinones' Medical Conditions as a Justification for Relocation.

Regarding C.Q.'s health, Ms. Quinones testified and medical records support that C.Q. is allergic to cats and dogs and is anaphylactic to peanuts and tree nuts. CP 285; Ex. 39. Ms. Quinones also testified, and medical records reflect, that he has "mild asthma persistent" that is improved with his Flovent maintenance inhaler. RP 285 (06/04/14); Ex. 39. A December 3, 2013 report from Northwest Asthma & Allergy Center, P.S. reflects that Flovent was used for C.Q.'s allergies "with good result". Ex 49. Additionally, C.Q. has an albuterol emergency inhaler. RP 286 (06/04/14).

Ms. Quinones' "Ancestry" as Justification for Relocation.

Ms. Quinones testified that she also wanted to relocate to Arizona due to her "ancestry" (her family history and roots) in Arizona, specifically because her mother and maternal family were born and raised in Arizona. RP 236 (06/04/14). The evidence at trial reflects that her mother and sister live in Tucson, which is an hour and a half away from Peoria. RP 300 (06/04/14). Ms. Quinones' father lives in Texas, which is a considerable distance from Peoria, Arizona. RP 300-01 (06/04/14). Ms. Quinones testified that C.Q. would benefit from a "broader diversity" of experiencing life in two states. RP 293-94 (06/04/14).

Ms. Quinones testified as to her friends and support system in Washington to include her friends Jennifer Hoerner, Gracia Hahn, Betty Olson, and Colleen Sexton whom she saw on a frequent basis. RP 279, 288-89 (06/04/14).

Timing of the Relocation and Other Parenting Issues.

Significantly, during the pendency of the parties' dissolution action, six Child Protective Services ("CPS") complaints were filed with respect to Mr. Quinones' parenting of C.Q. RP 143 (06/02/14). Of the six complaints, three were investigated with each of the investigations resulting in determinations of "unfounded". RP 143-44 (RP 06/02/14). After entry of the final parenting plan, another CPS complaint was filed.

RP 144 (RP 06/02/14). That investigation also resulted in a determination of “unfounded”. *Id.* Mr. Quinones testified that once the final parenting plan was entered reflecting that they could both parent C.Q., all the CPS allegations began. *Id.* Ms. Quinones testified that she tells their four year old to go with his father at visitation time, but that she tells him it is “his choice”. RP 280 (06/04/14).

Trial was held before the Honorable Brian Tollefson on June 2, 3 and 4, 2014. CP 268-277. On June 13, 2014, the trial court announced its oral ruling, which oral ruling was incorporated into the Order on Objection to Relocation to reflect the trial court’s findings of fact, which supported its conclusion(s) of law allowing relocation. CP 361-374; CP 376-81. The trial court granted Ms. Quinones’ request to relocate with C.Q. and a Parenting Plan. CP 361-374, 376-81, 382-93. Mr. Quinones timely filed this appeal. CP __.⁵

III. ARGUMENT

A. Washington’s Child Relocation Act

Washington’s child relocation act is codified at RCW 26.09.405-.560. The act imposes notice requirements and sets forth both procedural and substantive standards for relocating children who are the subject of court orders relating to residential time or visitation.

⁵At the time of filing the Brief of Appellant, Appellant also files his Supplemental Designation of Clerk’s Papers designated this pleading in such.

Specifically, RCW 26.09.430 provides that a person with whom the child resides a majority of the time shall notify every other person entitled to residential time or visitation with the child under a court order if the person intends to relocate. If the person who is entitled to residential time objects, the court determines whether or not to allow relocation of the child. RCW 26.09.520 provides the basis for determining whether a child should be allowed to relocate with a parent. There is a rebuttable presumption that the intended relocation of the child will be permitted where the primary parent seeks relocation of the child. *See* RCW 26.09.430; RCW 26.09.520; *In re Marriage of Fahey*, 164 Wn. App. 42, 262 P.3d 128, *rev. denied*, 173 Wn.2d 1019 (2011).

A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person. RCW 26.09.520. At the conclusion of a trial, the trial court may grant or deny relocation based upon an overall consideration as to what is in the child's best interest. RCW 26.09.420; *In re Marriage of Fahey, supra* (citing *In re Parentage of R.F.R.*, 122 Wn. App. 324, 328, 93 P.3d 951 (2004); *In re Marriage of Grigsby*, 112 Wn. App. 1, 7–8, 57 P.3d 1166 (2002)).

In determining whether or not to grant the moving parties' requested relocation, the trial court must weigh ten or eleven factors in making its determination, placing no weight or importance upon any single relocation factor. The factors are, in pertinent part, as follows:

- (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;
 - (2) Prior agreements of the parties;
 - (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;
 - (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191.
 - (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;
 - (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
 - (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;
 - (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;
 - (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;
 - (10) The financial impact and logistics of the relocation or its prevention.
- RCW 26.09.520.

Under the Relocation Act, in determining whether or not to grant the moving parties' requested relocation, the trial court must weigh each

of the factors in making its determination, placing no weight or importance upon any single relocation factor. RCW 26.09.520.

B. Standard of Review

The Court of Appeals overturns the trial court's relocation ruling if it is manifestly unreasonable or based on untenable grounds or untenable reasons under the abuse of discretion standard. *In re Marriage of Fahey, supra*, at 56 (citing *In re Marriage of Horner*, 151 Wash.2d 884, 893, 93 P.3d 124 (2004); *Bay v. Jensen*, 147 Wn. App. 641, 651, 196 P.3d 753 (2008)). Where "substantial evidence" in the record does not support a finding from which a trial court draws a conclusion of law, the court abuses its discretion. *Fahey, supra* at 55-56.

Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Fahey, supra* at 55. Further, a court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wash.2d 39, 47, 940 P.2d 1362 (1997).

Further, proper findings of fact must glean from the record the pertinent facts of the case and thereby resolve conflicting evidence; they must apprise a reviewing court of the legal theories pursued, *Mayer v. Emery*, 3 Wn. App. 315, 321, 475 P.2d 124 (1970), and must support the

conclusions of law. *In the Matter of the Marriage of Monkowski*, 17 Wn. App. 816, 818, 565 P.2d 1210 (1977).

In *Bay v. Jensen*, 147 Wn. App. 641, 196 P.3d 753 (2008), the trial court failed to enter a finding with respect to several of the relocation factors, namely, that the court would likely approve Jensen's intended relocations at the final hearing. *Bay*, 147 Wn. App at 654. This Court stated that "when considering whether a trial court abused its discretion by allowing relocation, we first look to see if the trial court entered specific findings on each factor. *Id.* at 896. If the trial court did not enter the specific findings, we look to see if substantial evidence was presented on each factor and whether the "trial court's findings of fact and oral articulations reflect that it considered each factor." *Id.* A court abuses its discretion if it does not satisfy either of these methods of documenting its consideration of the child relocation factors. *Id.*

In the present case, the trial court considered each of the factors, entered written findings and incorporated its oral ruling in the Findings of Fact portion of the Order on Objection to Relocation. However, many of the trial court's findings in its written and oral ruling were not supported by substantial evidence. Thus, the trial court's conclusion of law and determination to allow C.Q. to relocate is erroneous. Accordingly, this matter should be remanded to the trial court for an entry of findings consistent with the evidence adduced at trial.

1. There is not substantial evidence supporting the trial court's finding in favor of Ms. Quinones as to the factor relating to the bonds, involvement, and stability with parents and others.

The first factor the court considers in a relocation action is the relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life. RCW 26.09.520(1).

The trial court determined that this factor weighed in favor of Ms. Quinones because she was primarily responsible for raising C.Q. while Mr. Quinones was stationed in Korea and later deployed to Afghanistan, and because she was more concerned about C.Q.'s health especially given his asthma and allergy therapy. CP 363-64, 377.

Significantly, the record consists of little evidence as to the strength, nature and quality of the relationship and bond shared between C.Q. and his mother. Ms. Quinones testified that she has been C.Q.'s primary caretaker since his birth and cared for him when Mr. Quinones was in Korea for two, three week trips and his seven month deployment. RP 268 (06/04/14). The evidence reflects that Ms. Quinones took C.Q. to doctor's appointments. Ex. 39.

However, the record does not reflect substantial evidence as to her bond and emotional ties with C.Q. Further, regarding other significant

individuals in C.Q.'s life, while Ms. Quinones' mother testified about her relationship with C.Q., namely one that is "loving, hugging," C.Q.'s maternal grandmother and has only seen C.Q. nine times since he was born and talks on the phone with C.Q. several times per week. RP 230-31 (06/03/14). Mrs. Quinones' mother and sister reside in Tucson, which is approximately one and a half hours from Peoria. RP 231-32, 300 (06/03/14; 06/04/14). The record does not contain substantial evidence to support a finding in favor of relocation where there is substantial evidence to support C.Q.'s strong bond with Mr. Quinones and others in the State of Washington.

Specifically, the evidence supports that C.Q. and Mr. Quinones have an exceptionally strong bond. Mr. Quinones' girlfriend, Ms. LeeAnn Watzlawick, testified that Mr. Quinones is nurturing and actively involved in his son's life. RP 66-67 (06/02/14). Mr. Quinones' active involvement includes teaching C.Q. Spanish, taking him to the park, teaching him "right" from "wrong". RP 67-68 (06/02/14). Additionally, Ms. Watzlawick also testified as to the significant role she plays in C.Q.'s life and that C.Q. tells her he loves. 70. RP 141 (06/02/14). At the time of trial, the parties parenting plan allowed Mr. Quinones to enjoy contact with C.Q. nearly every day of the month. In addition to Mr. Quinones' every other week-end schedule, he was able to enjoy significant daytime

hours with C.Q. every day of the week from 3:00 p.m. to 6:00 p.m. RP 112 (06/02/14). Despite Mr. Quinones' military obligations during C.Q.'s life, Mr. Quinones has always maintained a strong bond with his son.

C.Q.'s daycare provider, Penny VanVleet, also played a significant role in C.Q.'s life and testified that she was more of a close friend or aunt to C.Q. than a caretaker. RP 91 (06/02/14). She testified that she reads to and plays with C.Q. and when he leaves her care, he "usually wants me to carry him to the car and help him buckle his seatbelt." *Id.* Ms. VanVleet also testified as to the strong relationship between Mr. Quinones and C.Q. and described the beautiful nature of their interaction when Mr. Quinones would skype C.Q. when he was deployed. RP 93 (06/02/14). Mr. Quinones testified that he would "Skype phone call with Penny [and C.Q]" to maintain a relationship with his son. RP 109 (06/02/14). Further, Ms. VanVleet testified that Mr. Quinones and C.Q. have a "very strong, bonded relationship" and that C.Q. enjoys spending time with his father. She testified that she believed it "would be the hardest thing on him [C.Q.] is not being able to see him [Mr. Quinones] daily." RP 70 (06/02/14).

In sum, the testimony at trial supports the strong and loving bond and consistent presence between Mr. Quinones and C.Q. The evidence also supports that Ms. Quinones has been C.Q.'s primary caregiver and plays an active and consistent role in his life as well. The trial court's

findings on this factor, however, are not supported by substantial evidence where there is little, if any, evidence as to Ms. Quinones' emotional or other bond with C.Q. and where Mr. Quinones' deployment occurred when C.Q. was between eighteen months and twenty five months old. CP 29. Where there is insufficient evidence in the record to support the trial court's finding as to this factor, the court erred in making this finding. This matter should be remanded to the trial court for entry of proper findings supported by the evidence adduced at trial.

2. There is not substantial evidence supporting the trial court's finding that it would be more detrimental to disrupt the contact between C.Q. and Ms. Quinones than disrupt contact between C.Q. and Mr. Quinones.

The third factor the trial court considers in a relocation case is whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation. RCW 26.09.520(3).

The trial court found this factor to weigh in favor of Ms. Quinones basing its finding on her primary responsibility for attending to the health needs and day-to-day care of the child and his allergy and asthma issues. CP 364-65, 377. Ms. Quinones testified about her concern that Mr. Quinones does not "believe" C.Q. needs two puffs of his inhaler each day.

RP 221 (06/03/14). Ms. Quinones also testified as to her knowledge of how to take care of and treat her son's medical issues.

However, there is no evidence in the record that his persistent "mild" asthma could not or would not be adequately addressed in Washington.

The record reflects substantial evidence that disrupting the contact with Mr. Quinones would be more detrimental to C.Q. than disrupting the contact with Ms. Quinones. Aida Perez, Mr. Quinones' sister, testified to the effect of relocation to Arizona on C.Q. by stating that the move away from Father would be "devastating" as Mr. Quinones and C.Q. "love each other" and are "close" and that Mr. Quinones provides "normalcy" for C.Q. RP 60 (06/02/14). Finally, Mr. Quinones testified that should Ms. Quinones be allowed to relocate, he does not think a normal, sustainable relationship could continue with him and C.Q. RP 145 (06/02/14). Further, there is no evidence that Mr. Quinones does not appreciate or appropriately attend to his son's health needs.

In sum, there is not substantial evidence to support the court's finding that disrupting C.Q.'s contact with Mr. Quinones would not be more detrimental to C.Q. than disrupting contact with Ms. Quinones particularly where Mr. Quinones has such a strong bond with C.Q. and spends such significant time with him pursuant to the parties' parenting

plan. The trial court's finding of fact that it would be more detrimental to disrupt contact between Ms. Quinones and C.Q. than it would between Mr. Quinones and C.Q. is not supported by substantial evidence. This matter should be remanded to the trial court for entry of proper findings supported by the evidence adduced at trial.

3. There is not substantial evidence supporting the trial court's finding that Ms. Quinones did not act in bad faith in seeking relocation.

The fifth factor requires that the trial court consider the reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation. RCW 26.09.520(5). The trial court found that neither party acted in bad faith. CP 378, 365-66. However, the trial court's finding that Ms. Quinones did not act in bad faith is not supported by substantial evidence. The evidence supports that Ms. Quinones' reasons, timing, and the circumstances surrounding her relocation to Arizona constitute bad faith.

As described above, Ms. Quinones initially filed a Notice of Intention to Relocate on April 11, 2013 only to abandon this request after the Guardian Ad Litem issued her report recommending against C.Q.'s relocation. CP 4-37; Ex. 12. Later, just six weeks after the parties' dissolution was final, Ms. Quinones filed her second Notice of Intention to Relocate. CP 44-48. Prior to filing the Notice of Intention to Relocate,

Ms. Quinones stopped showing up for work with the State of Washington and was terminated for abandoning her position. RP 43-44, 189 (06/02/14; 06/03/14). Ms. Quinones was performing her job well as indicated by DSHS' "Performance and Development" plans, which speak highly of her as an employee, stating that she possessed qualities of good self-management skills, little supervision required, superior customer service skill, valued team member, knowledgeable, punctual, no excessive absences. Exs. 15-17.

Ms. Quinones admitted that she made no effort to search for jobs in the State of Washington and accepted a lower paying job from a friend who owned a barbeque business in Tucson, Arizona, which is located one and a half hours from Peoria, Arizona. RP 271, 306, 309 (06/04/14); Ex. 30.

At trial, Ms. Quinones testified that her reasons for relocating were to be "closer to family, medical, and cost of living." RP 182 (06/03/14). But, as described above, Ms. Quinones' Arizona job with an annual salary of \$37,500 was effectively equivalent (with the difference in cost of living) as her State of Washington job paying \$42,000 annually. RP 247 (06/04/14). Ms. Quinones also testified as to "extensive networking opportunities" in Arizona, but provided no documentation to the court

evidencing a network of opportunities or contacts for employment. RP 305 (06/04/14).

Ms. Quinones also cited to her desire to return to her “ancestry” in relocating to Arizona. RP 236 (06/04/14). However, the record reflects that the only relatives with whom C.Q. has a close relationship are Ms. Quinones’ mother and sister who live in Tucson, Arizona, an hour and a half away from Peoria. RP 300 (06/04/14). Ms. Quinones testified that her father lives in Texas, but this is a substantial distance from Peoria, Arizona. RP 300-01 (06/04/14).

Finally, with respect to Ms. Quinones’ desire to relocate to Arizona due to C.Q.’s allergies, the majority of his allergies related to items that are present in Arizona and Washington, namely, dogs, cats, peanuts and tree nuts. RP 285 (06/04/14). With regard to his allergies, C.Q. has a “mild” case of persistent asthma, which is adequately maintained and controlled by a Flovent inhaler. RP 285 (06/04/14); Ex. 39.

Ms. Quinones’ fails to provide substantial evidence that her proposed relocation is in good faith, or not in bad faith. Accordingly, the trial court erred in making this finding. This matter should be remanded to the trial court for entry of proper findings supported by the evidence adduced at trial.

4. The trial court's finding as to the quality of life, resources, and opportunities available to the child and relocating parent in both locations is improper and is not supported by substantial evidence.

The seventh factor the court considers in its determination as to whether or not to allow relocation is the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations. RCW 26.09.520(7).

The trial court found that C.Q.'s quality of life would be about the same in either location ("I think, you know, quality of life, resources, and opportunities for the child probably are going to be about the same in either location."). CP 368-69, 378-88. In so stating, the trial court's oral decision reflects that it failed to articulate that it considered the opportunities available to C.Q. in both Arizona and in Washington as well as the resources and quality of life he would have in the two locations. Where the trial court did not consider such, its finding of fact is erroneous.

Further, *assuming arguendo*, that the trial court properly considered the aspects of this factor, there is not substantial evidence to support its finding that this factor weighed in favor of Ms. Quinones because she had an employment offer in Arizona providing flexibility as well as family to help with child care and extracurricular activities. CP 368-69, 378-88. Specifically, the record does not support that Ms.

Quinones' job opportunities are better in Arizona including through her contacts or her family members particularly in light of her stellar job performance with DSHS, the fact that she would still be employed with DSHS had she not abandoned her position, and her contacts in the State of Washington. RP 52-53 (06/02/14).

The evidence supports that Ms. Quinones failed to perform any job search in Washington after filing for relocation, including seeking re-employment from her former employer, DSHS. RP 271, 306, 309 (06/04/14). The record reflects that Ms. Quinones has many friends in Washington including former co-workers with whom she could have networked in her search for re-employment, but she failed to do so. RP 297-98 (06/04/14).

Regarding networking opportunities in Arizona, while Ms. Quinones testified as to "extensive networking opportunities" there, she provided no evidence as to specific networking opportunities or contacts for employment. RP 279 (06/04/14). In fact, Ms. Quinones' alleged contacts were from seven years ago. RP 283 (06/04/14). Further, as described above, Ms. Quinones' job offer in Arizona was not only outside of her area of expertise, but would provide her less income. CP 202 (06/03/13).

With regard to the “familial contacts” referenced in the judge’s oral ruling, Ms. Quinones’ family members live in Tucson, Arizona. Ms. Quinones’ mother testified that no family members reside in Peoria, the area in which she would be seeking employment. RP 182 (06/03/14). Further, the record reflects that under Ms. Quinones’ proposed parenting plan, she will be required to pay a portion of airline travel for C.Q.’s visitation with Mr. Quinones, which will be financially impactful to both parties in terms of additional out of pocket expenses. CP 113-123 (06/02/14).

The evidence and testimony presented at trial does not support the trial court’s finding that Ms. Quinones’ job opportunities including through her family and other contacts in Arizona are more ample than those available to her in Washington. This matter should be remanded to the trial court for consideration of the factor as required and entry of proper findings supported by the evidence adduced at trial.

5. There is not substantial evidence supporting the trial court’s finding that there are sufficient alternative arrangements to foster and continue C.Q.’s relationship with Mr. Quinones.

In determining whether to grant or deny relocation, the court also considers the availability of alternative arrangements to foster and continue the child’s relationship with and access to the other parent. RCW 26.09.520(8). The trial court found that there are alternative arrangements

for Mr. Quinones to maintain communication with C.Q. The trial court's ruling provides that there are alternative arrangements for Mr. Quinones to have contact with C.Q. including "facetime and Skype, and of course travel to the State of Arizona to see the child." CP 369-70, 379-80. However, the court also recognized Mr. Quinones' concern that Ms. Quinones previously interfered with his skyping with C.Q. while Mr. Quinones was deployed to Afghanistan. CP 369-70. Thus, the trial court ruled that the skyping alternative would be feasible if a "very fixed, rigid schedule that mother cannot alter is put in place." CP 370.

There is not substantial evidence to support that these potential alternatives for fostering and continuing C.Q.'s relationship with Mr. Quinones are feasible and realistic. The evidence presented at trial reflects that Ms. Quinones has a history of denying and/or restricting communication between Mr. Quinones. Specifically, daycare provider, Penny VanVleet, testified that Ms. Quinones admonished her for allowing Mr. Quinones to communicate with C.Q. and restricted by Skype time with C. Q. while he was deployed. RP 94 (06/02/14). Guardian Ad Litem, Kelley LeBlanc's initial GAL report reflects her finding and opinion that Ms. Quinones has little respect for Mr. Quinones as a parent and little insight into how "damaging continued obstruction of a normal father-child relationship might prove to be". CP 23. Further, Mr.

Quinones testified that it appeared that there was always an excuse as to why Ms. Quinones did not allow him to communicate with their son including work conflicts, dinnertime, bedtime and busy week-end schedules. RP 109 (06/02/14). Ms. Quinones' actions in denying communication with Mr. Quinones during his deployment would likely continue if Mother was relocate to Arizona with C.Q. RP 112 (06/02/14).

Furthermore, the trial court disregarded the financial consequences for both parties in terms of transportation costs associated with C.Q.'s visits with Mr. Quinones. Under Ms. Quinones' proposed parenting plan, both parties would have to contribute to pay for airfare for C.Q.'s visitation with Mr. Quinones impacting the parties' financial circumstances negatively. CP 113-123.

There is not substantial evidence to support the trial court's finding that exist alternative arrangements for maintaining communication with the child given Ms. Quinones' history of withholding C. Q. from Mr. Quinones and the fact that in-person visitation would involve airline travel, which is expensive and burdensome. This matter should be remanded to the trial court for entry of proper findings supported by the evidence adduced at trial.

6. The trial court's finding as to the factor relating to alternatives to relocation and the possibility of the objecting party relocating is erroneous.

Pursuant to the relocation statute, the court also considers the alternatives to relocation and whether it is feasible and desirable for the other party to relocate as well. RCW 26.09.520(9). In this case, the trial court erred in two ways.

- a. The trial court's finding is erroneous because the trial court made two contradictory findings.

The trial court failed to make a proper factual finding as to this factor of the relocation statute because the court's oral ruling sets forth two contradictory findings. Specifically, Judge Tollefson's oral ruling contradicts itself, stating that "this factor probably weights in favor of the father," but also stating that "factor number nine doesn't favor either party." CP 370-71, 379-80. Given these contradictory statements, the court erred in failing to clearly articulate its finding as to which party is favored by the factor, or whether neither party is favored. Thus, the appellate court should remand the matter to the trial court for entry of a proper finding supported by the evidence adduced at trial.

- b. The trial court's finding is erroneous because there is not substantial evidence supporting the finding that the factor weighs in favor of neither party.

Assuming arguendo that the trial court's oral ruling does not present two contrary findings and the court's finding reflects that that this factor favors neither party, there is not substantial evidence supporting such. The evidence in the record reflects that Mr. Quinones could not transfer to Arizona given that there were no FAA jobs in that State. RP 142 (06/02/14). Further, the record supports that there are alternatives to Ms. Quinones relocating to Arizona including the potential for seeking re-employment with DSHS. Specifically, the record reflects a history of stellar work for DSHS as well as the testimony of a DSHS supervisor that she would still have her job with DSHS but for her abandonment of position, which was a product of her simply not showing up for work. RP 41, 52-53 (06/02/14). Further, she could have reached out to her business contacts in the State of Washington to seek employment. RP 279, 288-89 (06/04/14).

The record also reflects that C.Q.'s asthma could be sufficiently addressed with his medication and his other allergies

could have been managed by avoiding peanuts and tree nuts (whether in Washington or Arizona). Ex. 39. Finally, Ms. Quinones could continue to facilitate her relationship and C.Q.'s relationship with her family members living in Arizona by visiting them as she had done historically. RP 300 (06/04/14). Accordingly, this Court should remand the matter to the trial court for entry of a finding consistent with the requirements of the statute and as supported by the evidence adduced at trial.

7. There is not substantial evidence supporting the trial court's finding that the financial impact relating to Ms. Quinones' employment opportunities in Arizona weighs in favor of relocation.

The final factor that the court considers is the financial impact and logistics of the relocation or its prevention. RCW 26.09.520(10). The trial court's factual finding as to this factor is as follows:

Let's talk about the prevention first. If the relocation is prevented then you have a mother who's out of work being supported by other means, can't go on very long. If she relocates, she'll have a job and other employment opportunities that she identified. She has family that can assist her in caring for the child in Arizona. Childcare here will be in the form of daycare. Probably the more important factor to look at is going to be consideration of the transportation costs. Father will have to spend money to visit the child in Arizona. It's certainly an important consideration in my evaluation. But, all in all, the

more I think about it , when it says logistics,
that part probably favors the father; but when you
look at the financial impact on the mother on factor
number ten and her employment opportunities, which
I've mention over and over, **it's probably a
more important consideration than the
transportation element. The more I think about it,
the financial impact of the employment opportunities
is more and more of an important factor to consider
in factor number ten than the transportation costs."**

CP 371-72 (bold added); *See also* CP 380.

The trial court's oral ruling appears to find that the financial impact of Ms. Quinones' employment opportunities in Arizona are more important than the logistics of relocation including the transportation costs associated with visitation. CP 372. However, this finding is not supported by substantial evidence. First, the trial court cites to Ms. Quinones' family being available to "assist in caring for the child in Arizona" to avoid the use of paid daycare. CP 371. However, the record reflects that family available to care for the child is not located in the city in which Ms. Quinones is relocating, namely, Peoria. Instead, Ms. Quinones' sister and mother reside in Tucson, about an hour and a half away from Peoria. RP 300 (06/04/14).

Second, there is no evidence in the record of specific "employment opportunities" available to Ms. Quinones in Arizona

other than the BrushFire Barbeque. Ms. Quinones presents no evidence that there is or will be employment available to her in the field of social work in Arizona. Further, the “extensive networking opportunities” in Arizona about which Ms. Quinones testified were only vague, undocumented references. RP 282-83, 305 (06/02/14; 06/04/14). Further, Ms. Quinones’ “contacts” involved family and individuals she knew seven years prior. RP 283 (06/04/14). In sum, there was not sufficient evidence from which the trial court found that the financial impact of Ms. Quinones’ employment in Arizona weighs in favor of the logistics of relocation or its prevention.

8. There is not substantial evidence supporting the trial court’s finding that the detrimental effect of the relocation outweighs the benefit of the change to C.Q. and Ms. Quinones.

Finally, as described above, the party objecting to relocation may rebut the presumption in favor of relocation by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person based upon analysis of the relocation factors. In this case, the trial court’s finding that the detrimental effects of relocation do not outweigh the benefit of the change to C.Q. and Ms. Quinones.

CP 362-373, 377. Given the trial court's erroneous findings as to numerous relocation factors, the trial court's determination that the detrimental effects of relocation do not outweigh the benefit of the change to C.Q. and Ms. Quinones is not supported by substantial evidence and is erroneous.

IV. CONCLUSION

For the reasons described above, the trial court findings are improper due to its failure to adequately consider a specific relocation factor, its entry of contradictory findings, or the lack of substantial evidence in the record supporting its finding. Because many of the trial court's findings are either improper or not supported by substantial evidence, the trial court's decision allowing relocation is erroneous. Thus, the trial court's decision should be reversed and this matter should be remanded back to the trial court for entry of findings of fact based upon the evidence presented at trial and a decision as to relocation in accordance with those findings.

RESPECTFULLY SUBMITTED this 26th day of January, 2015.

LAW OFFICE OF JENNIFER A. WING, PLLC

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I, Julie M. Lawless, Paralegal to Jennifer A. Wing, WSBA No. 27655, declare under penalty of perjury under the laws of the State of Washington, and pursuant to GR 17 that the foregoing electronic signature attached to this declaration is a complete and legible image that I have examined personally and that was received by me via:

- FAX at the following number (253) 722-1305 or via
- EMAIL at the following address: julie@jwinglaw.com

Dated this 26th day of January, 2015, at Tacoma, Washington.



Julie M. Lawless

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of January, 2015, counsel for Respondent was served with a true and correct copy of the foregoing Appellant's Opening's Brief by personal delivery at the following address:

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I arranged for the original of the foregoing document to be filed with the Court of Appeals, Division II, by personal delivery to the following address:

Clerk of the Court
Washington State Court of Appeals, Division II
950 Broadway, #300
Tacoma, WA 98402

DATED this 26th day of January, 2015.



Julie M. Lawless

Paralegal for Jennifer A. Wing, WSBA #27655