APPEAL NO. 48027-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Angela K. Scoutten kna Schreiner

Appellant,

v.

Michael J. Scoutten

Respondent.

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DIVISION II
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STATE OF WASHINGTON
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APPELLANT'S OPENING BRIEF

On Appeal from the Superior Court of Pierce County
The Honorable STEPHANIE A. AREND
No. 11-3-03452-5

Angela K. Scoutten kna Schreiner
Pro Se
5420 60th Ave Ct. W
University Place, WA
98467

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A. INTRODUCTION

This action arose from my request to relocate 40 minutes north to Mercer Island with my 5 year old daughter Memphis. I filed a Notice of Intended Relocation (EX 1) after receiving full time employment with benefits, an offer from my employer for a 20% discount on housing, and to be in closer proximity to my workplace and Seattle Children's Hospital and Everett where I drove Memphis for ongoing medical care 3-5 times a month related to her genetic conditions and special needs. Neither party filed a Petition for Modification of the parenting plan at any time. I requested the Final Parenting Plan entered by agreement on May 3rd, 2013 (CP 40-48) remain in place. I offered to transport Memphis to Mr. Scoutten or his delegate for his visitations three weekends per month. Mr. Scoutten filed an Objection (EX 2) to my relocation on February 19th, 2015. Mr. Scoutten failed to file a Petition for Modification or note a hearing that would provide adequate grounds for relief within 15 days, required by RCW 26.09.480. A temporary hearing was never held.

The trial court committed reversible error by allowing Mr. Miller (Mr. Scoutten's attorney) to prejudice the proposed relocation by putting on a modification case during the relocation trial, before

determining whether to grant or restrict the relocation. Trial was held on five separated days over a period of 4 months. After three separated days of trial were held, the trial court orally ruled denying the relocation request for Memphis on May 4th, 2015. The trial court asked if I still intended on relocating, I indicated to the trial court that I would not be relocating without Memphis. I was no longer pursuing relocation for purposes of RCW 26.09.260 (6). The trial court failed to enter any final orders regarding the denial of the relocation on May 4th, 2015. No relocation took place. No additional evidence was submitted.

The trial court Amended the case Schedule continuing it under "relocation" (CP 74-75) until June 18th, 2015. The same day it also entered an Order for Family court hearing scheduling a "MOD trial" for June, 18th, 2015 (CP 76). The trial court failed to require Mr. Scoutten note a hearing for adequate cause required by RCW 26.09.260 (6) and RCW 26.09.260 (1)-(2). The trial court failed to require Mr. Scoutten to file and serve a Petition for Modification with affidavit setting forth facts. This denied due process and opportunity to file an opposing affidavit. The trial court lacked the authority to provide relief for any issues outside of relocation, and no relocation had taken place. On June, 18th, 2015, almost two

months after the denial of the relocation, the trial court issued an oral ruling and adopted Mr. Scoutten's proposed parenting plan"in total" (EX 4). The trial court adopted Mr. Scoutten's proposed parenting plan placing **sole physical and legal custody** of Memphis with Mr.Scoutten, placing restrictions upon me. The trial court erroneously made a major modification to the parenting plan without requiring that Mr. Scoutten file a Petition for Modification of the parenting plan with affidavit setting forth facts, failed to require adequate cause or any pre-trial procedures, mandatory settlement conference, or mandatory parenting seminars after I was no longer pursuing relocation for purposes of RCW 26.09.260 (6). The trial court orally ruled that the new final parenting plan would start immediately on that upcoming weekend but again failed to file any final orders. On July, 24th, 2015 Mr. Scoutten proposed an entirely new parenting plan and the court adopted it the same day (CP 250-261),(Presentation of Final Orders, July 24th, 2015, Morning Session, VRP pg. 1-14). Six days later, Mr. Scoutten granted his legal decision making rights for Memphis to his brand new wife, Monica Scott, through Power of Attorney (CP 459-461) and Mr. Scoutten went to training. Mr. Scoutten is a deployable Ranger in the U.S. Army, his deployment rotation is 4-5 months

every 8 months. Monica Scott and her niece Courtney had previously been restricted from being around Memphis by the Honorable Clint Johnson in 2014 "until further order of the court" (EX 16). This placed the care of our daughter with an unevaluated third party who had been restricted from being around Memphis. Mr. Scoutten alleged "neglect" in his proposed parenting plans and the trial court adopted those findings. The trial court failed to appoint a GAL required by RCW 26.44.053. The trial court erroneously adopted fraudulent Child Support Orders the same day. Judge Arend made discriminatory and bias statements about me in open court, negatively stereotyping me based upon hearsay.

I appeal and ask the appellate court to vacate all final orders entered on July 24th, 2015 and reinstate the Original Final Parenting Plan entered by agreement on May 3rd, 2013 (CP 40-48).

B. ASSIGNMENTS OF ERROR

No. 1) The trial court erred in it's Abuse of Discretion, failing to consider each of the 11 relocation factors outlined by RCW 26.09.520, and entered factual findings that were unsupported by the record.

No. 2) The trial court erred on Finding of Fact 2.3.10.

No. 3) The trial court erred on Finding of Fact 2.3.1.

No. 4) The trial court erred on Finding of Fact 2.3.2.

No. 5) The trail court erred on Finding of Fact 2.3.3.

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No. 7) The trial court erred on Finding of Fact 2.3.5.

No. 8) The trial court erred on Finding of Fact 2.3.6.

No. 9) The trial court erred on Finding of Fact 2.3.7.

No. 10) The trial court erred on Finding of Fact 2.3.8.

No. 11) The trial court erred on Finding of Fact 2.3 9.

No. 12) The trial court erred by not considering Factor 2.3.11.

No. 13) The trial court erred by improperly applying weight to the relocation factors and applied the most weight to the first factor in violation of RCW 26.09.520.

No.14) The trial court erred by ignoring the rebuttable presumption in favor of relocation pursuant to RCW 26.09.520.

No. 15) The trial court erred by making a major modification to the parenting plan without requiring Adequate Cause after I was no longer pursuing relocation for purposes of RCW 26.09.260 (6).

No. 16) The trial court committed reversible error under Washington Constitution, Article 1, § 3, and the United States Constitution, Fourteenth Amendment by failing to require Mr.

Scoutten file and serve a Petition to Modify Parenting Plan/Residential Schedule with affidavit setting forth facts, with filing of a Summons, Proposed Parenting Plan/Residential Schedule, and Petitioner's Notice of Adequate Cause required by RCW 26.09.260(6) and RCW 26.09.260 (1)-(2).

No. 17) The trial court erred by affecting a substantial right to privacy, allowing inadmissible video evidence to be used in trial in violation of RCW 9.73.030 and RCW 9.73.050

No. 18) The trial court erred by failing to appoint a GAL to investigate allegations of abuse or neglect required by RCW 26.44.053 affecting a substantial right to due process

No. 19) The trial court erred by adopting find of fact #1: Neglect or substantial non-performance of parenting functions in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261), and adopting restrictions in Section 4.3 and 3.10 of the final parenting plan.

No. 20) The trial court erred by adopting finding of fact #2 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261).

No. 21) The trial court erred by adopting finding of fact #3 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261).

No. 22) The trial court erred by adopting finding of fact #4 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261).

No. 23) The trial court erred by adopting finding of fact #5 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261).

No. 24) The trial court erred by adopting finding of fact #6 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261).

No. 25) The trial court committed reversible error under Washington Constitution, Article 1, § 3, and the United States Constitution, Fourteenth Amendment failing to provide equal protection of the laws and violating due process throughout the trial and by making a determination for modification before the relocation ruling in violation of RCW 26.09.260 (6).

No. 26) The trial court erred in its words and conduct throughout the proceedings that demonstrate an obvious manifestation of bias and/or prejudice in violation of Canon 2 of Judicial Code of Conduct.

No. 27) The trial court erred by entering a Final Parenting Plan orally on June 18th, 2015 and in writing on July 24th, 2015 in violation of RCW 26.09.181 (b), RCW 26.09.187(vii), RCW 26.09.184, RCW26.09.002, RCW26.09.181(3), RCW26.09.181(7), RCW26.09.181(5), RCW26.44.053, RCW26.09.182, RCW 26.09.165 and without the required signatures.

No. 28) The trial court erred by failing to require the mandatory Pre-trial procedures and ADR/Settlement conference take place pursuant to PCLSPR 94.04 (d) and parenting seminars required by PCLSPR 94.05.

No. 29) The trial court erred by adopting section 2.7 in the ORMDD/ORDYMT that a substantial change of circumstances had occurred at the time of trial.

No. 30) The trial court erred by entering a fraudulent Final Child Support Order on July 24th, 2015.

C. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the trial court Abused it's Discretion when it failed to consider each of the 11 relocation factors required by RCW 26.09.520, improperly weighed the relocation factors, entered factual findings that were unsupported by the record, failed to acknowledge the presumption in favor of relocation and failed to enter written orders after orally denying the relocation on May, 4th, 2015.

2. Whether the trial court committed reversible erred by failing to require Mr. Scoutten file and serve a Petition for Modification with affidavit setting forth facts and note a hearing for adequate cause, and by failing to require both parties attend mandatory ADR or Settlement Conference and parenting seminars before making a major modification to the May 2013 final parenting plan.

3. Whether the trial court erred by not requiring adequate cause **after** a relocation was no longer actively being pursued for purposes of RCW 26.09.260 (6) and making a major modification to the May 2013 final parenting plan awarding sole physical and legal custody to Mr. Scoutten

4. Whether the appellate court should vacate all orders and the Final Parenting plan entered on July 24th, 2015 due to numerous Constitutional violations of due process and procedure throughout this case including fundamental violations of privacy by admitting inadmissible evidence into the court record that lead to undue prejudice of the trial.

5. Whether the trial courts statements were in violation of several rules under Canon 2 of Judicial Code of Conduct negatively stereotyping mother.

6 Whether the trial court erred in not appointing a guardian ad litem for Memphis required by the Legislature after Mr. Scoutten alleged that Memphis had been subjected to child abuse or neglect and adopted those findings into final orders.

D. STATEMENT OF THE CASE

09/14/2011 I filed for divorce following a domestic violence incident documented in a police report (EX 52)

01/03/2012 A temporary parenting plan was entered designating me as primary caregiver of Memphis (CP 31-37).

07/22/2012 Mr. Scoutten's residential time he had delegated to his mother during his deployment was vacated (EX 51).

05/03/2013 Mr Scoutten and I mutually agreed upon a Final Parenting Plan designating me as primary caregiver (CP 40-48).

07/14/2014 Monica Scott was restricted from Memphis (EX 16).

01/31/2015 I filed a Notice of Intended Relocation (EX 1).

02/19/2015 Mr. Scoutten filed an Objection to Intended Relocation filed (EX 52-58).

02/19/2015 An Order Assigning Case To Family Court & Notice of Hearing was filed (CP 59). Hearing was Cancelled.

02/27/2015 An Amended Case Schedule setting a trial date for 04/21/2015 was filed (CP 71-72). Mr. Scoutten entered a proposed parenting plan (CP 60-70), 9 days after he originally filed his Objection to relocation.

04/21/2015 The first day of the relocation trial commenced.

05/04/2015 The court made an oral ruling denying Memphis' relocation. I indicated I would not be relocating without Memphis (VRP 441).

05/04/2015 The trial court asks Mr. Scoutten for his Petition for Modification (VRP 443). One is never produced.

05/04/2015 An Amended Case Schedule (CP 74-75) was entered continuing the relocation trial after the trial court had already orally ruled denying the relocation and I indicated I would not be relocating without Memphis. An Order Setting hearing for Family Ct 2 was entered for a "MOD trial" on June 18th (CP 76).

06/18/2015 The trial court made an oral ruling awarding Mr Scoutten sole physical and legal custody of Memphis (June 18, 2015, Afternoon Session, pg. 1-9).

07/24/2015 The trial court entered four final orders. (Friday, July, 24th, 2015, Morning Session pgs. 1-14)

1. Order re Petition for Modification of Custody (CP 246-249).
2. Order on Objection to Relocation (CP 242-245).
3. Order of Child Support Final Order (CP 441-457).
4. Parenting Plan Final (CP 250-261).

E. Argument

I. The Washington Relocation Act imposes notice requirements and sets standards for relocating children who are the subject of court orders regarding residential time. In re Custody of Osborne, 119 Wash.App. 133, 140, 79 P.3d 465 (2003).

RCW 26.09.520: "Basis for determination. The person proposing to relocate with the child shall provide his or her reasons for the intended relocation. There is a rebuttable presumption that the

intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors. The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed:
(1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life; (2) Prior agreements of the parties; (3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation; (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191; (5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation; (6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child; (7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations; (8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent; (9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also; (10) The financial impact and logistics of the relocation or its prevention; and (11) For a temporary order, the amount of time before a final decision can be made at trial." [2000 c 21 § 14.]

II. Standard of Review

1. Constitutional issues are reviewed de novo.

The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of

law." The Due Process Clause "guarantees more than fair process." Washington v. Glucksberg, 521 U.S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Reno v. Flores, 507 U.S. 292, 301—302 (1993). The liberty interest at issue in this case–the interest of parents in the care, custody, and control of their child–is perhaps the oldest of the fundamental liberty interests. In Meyer v. Nebraska, 262 U.S. 390, 399, 401 (1923). Constitutional issues are reviewed de novo. State v. Dobbs, 87472- 7, 2014 WL 980102 (Wash. Mar. 13, 2014), Dellen Wood Products, Inc. v. Washington State Dept of Labor & Indus., 43636 - 1 - II, 2014 WL 710682, Wn. App., P. 3d (Wash Ct. App. Feb. 25, 2014).

2. Abuse of Discretion

A trial court's decision regarding the relocation of children is reviewed for a manifest abuse of discretion. Horner, 151 Wash.2d at 893, 93 P.3d 124; Bay, 147 Wash. App. at 651, 196 P 3d 753. A trial court manifestly abuses its discretion when our review of the record shows that its decision is based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wash.2d 39, 46-47, 940 P.2d 1362 (1997). A court's decision is manifestly

unreasonable if it is outside the range of acceptable choices, given the facts and the 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. State v. Rundquist, 79 Wash App. 786, 793, 905 P.2d 922 (1995) (citing Washington State Bar Ass'n, Washington Appellate Practice Deskbook § 18.5 (2d ed.1993)), review denied, 129 Wash 2d 1003, 914 P.2d 66 (1996). "When this court considers whether a trial court abused its discretion in failing to document its consideration of the child relocation factors, we will ask two questions. Did the trial court enter specific findings of fact on each factor? If not, was substantial evidence presented in each factor, and do the trial court's findings of fact and oral articulations reflect that it considered each factor? Only with such written documentation or oral articulation can we be certain that the trial court properly considered the best interests of the child and the relocating person within the context of the competing interests and circumstances required by the CRA." In re marriage of Horner, 151 Wash. 2d 884, 93 P. 3d 124, (2004).

No 1) The trial court erred in its Abuse of Discretion by failing to consider each of the 11 statutory factors outlined by RCW 26.09.520, and made findings that were unsupported by the record.

"For the appellate court to determine whether the trial court correctly applied the statutory mandates to the given facts of a particular case, the trial judge has a special responsibility to make sufficient factual findings sufficient to permit appellate review. This also maintains public confidence in the judiciary. If the trial court fails to specifically address each factor, the record does not support that substantial evidence was presented on each relocation factor, and the trial court's written findings and oral ruling do not reflect that it considered each factor, "we cannot review the trial court decision because its basis is unclear," and we must remand to the trial court for entry of specific findings of fact or oral articulations of the child relocation factors." Horner, 151 Wn.2d at 897 (citing In re Parentage of Jannot, 149 Wn.2d 123, 65 P. 3d 664 (2003). In this case, the trial court itself recognized that it did not consider each of the 11 statutory factors under RCW 26.09.520, admitting there was not substantial evidence in the record to make findings on each factor and made several findings that were unsupported by the record. We review challenges to a trial court's

A Yes, I would " (VRP 152, Agosto, P.-Cross by Ms. Hosannah).

The trial court's finding that Memphis' "*siblings* and other significant persons exist here in Pierce County not in Mercer Island" is unsupported by the record because Memphis *has no siblings* and the record is devoid of any evidence regarding that.

The trial court goes on to say: "It's very clear to me, based upon the evidence that was presented that Memphis has a very strong relationship with her father, with her maternal grandmother, with her paternal grandmother and with father's fiancé. The issue is the relationship that she has with her mother" (VRP 425, Court's Oral Ruling).

There was substantial evidence in the record supporting that I had a caring and supportive relationship with Memphis.

Q How would you describe your relationship with Memphis?
A Good. I mean, I spend a lot of time with her I usually cuddle with her I get her ready for school in the morning. I go to bed with her every night, and we spend time together after school." (VRP 362, 363 Schreiner, A.-Direct by Ms. Hosannah).

The trial court relied on Mr. Scoutten's testimony to determine my relationship with Memphis. "Washington courts have looked negatively at the "self-serving testimony of the parties and their friends because of the general lack of adequate evidence helpful in determination of custody". In re Guardianship of Palmer, 81 Wn.2d.604, 608, 503 P 2d 464, 467, 1972 Wash., *8-9 (Wash. 1972). Rather, the Appellate courts have suggested that the trial

courts rely on expert opinion since parties individual testimony is often subjective rather than objective." In re Marriage of Woffinden, 33 Wn. App. 326, 330, 654 P 2d. 1219, 1221, 1982 Wash. App. *8 (Wash. Ct. App. 1982) The DVD video the court cites was inadmissible evidence pursuant to RCW 9.73.050 and RCW 9.73.030 (See No.17 below).

No. 4) The trial court erred on Finding of Fact 2.3.2.
(2) Prior agreements of the parties;

The trial court found that prior agreements of the parties "Does not apply" (CP 242-245) The prior agreement of the parties was entered May, 3rd, 2013 (CP 40-48).

THE COURT: "I don't recall anybody testifying whether the parenting plan that was entered in 2013 was done by agreement or done after trial, ordered by the Court, as opposed to by the parties, so that factor on agreement of the parties is that there is none, and it doesn't weigh one way or the other" (VRP, 430, Court's Oral Ruling).

Judge Arend herself acknowledged in the VRP that *there was* a prior agreement of the parties on April 23rd, 2015

Q (By Ms. Hosannah) Was your parenting plan developed by agreement?
A (Scoutten, M.) Yes
Q And—
THE COURT: From my understanding, are you talking about the one that was filed on May 3rd, 2013?
MS. HOSAHHNAH: Yes, Your Honor. That's the only parenting plan in place.

THE COURT: Okay. (VRP, 326, Scoutten, M.-Cross by Ms. Hosannah)

No. 5) The trial court erred on Finding of Fact 2.3.3
(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;

The trial court only considered third parties on this factor

The court stated: "Setting aside Factor 1 for a moment and trying to look at Factor 3 in isolation, it's difficult for me to reach a conclusion that the disruption of with either one of those things would be more detrimental to the child. It's not really before me about how it would be—how to factor in the detriment to disrupting the contact with the extended people. Again, that's part of Factor No.1, not Factor No.3, but I do think those relationships would be disrupted, and I do think that would be very detrimental to Memphis" (Court's Oral Ruling, VPR 431).

No. 6) The trial court erred on Finding of Fact 2.3.4
(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

The trial court stated:
"The fourth factor is whether there are .191 factors, and both counsel indicate there are none, and I didn't see any evidence of that, so that factor does not apply" (Court's Oral Ruling VRP, 432).

The Order on Objection (ORDYMT or ORGRRE) made the finding that.191 factors "Does not apply", yet the trial court adopted two contradictory Orders on the same day listing 6 separate Findings of fact for .191 Factors (CP 246-249, CP 40-48).

No. 7) The trial court erred on Finding of Fact 2.3.5

(5) The reasons of each person for seeking or opposing the relocation and the good faith of <u>each of the parties</u> in requesting or opposing the relocation;

This factor is unambiguous that it requires the consideration of "each of the parties." The trial court failed to consider Mr. Scoutten's reasons for objecting relocation required by this factor.

"Relocation objections must be filed in good faith, and the relocation trial will not provide relief for issues outside of relocation." (Pierce County Family Court, Relocation: What you need to know when considering objecting to a relocation, Rev 1, October 5, 2011)

The trial court stated: "I don't think, absent employment, that Mother would be proposing to move unless she's proposing to move for a relationship or to be with someone that she has not articulated during the course of this trial" (Court's Oral Ruling, 432).

The record is devoid of any evidence supporting the assumption by the trial court that I was supposedly in a relationship

No. 8) The trial court erred on Finding of Fact 2.3.6
(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;

THE COURT:"There wasn't really a lot of discussion about that here .." (VRP, 435). I do think, however, that disrupting her contact with, what I understand now, the extended family and Dad is going to impact her development in other ways...So disrupting contact with dad—again, going back to that—does impact No. 6 negatively on Memphis' development, but I didn't hear anything else with respect to the other portions of that No 6 Factor." (VRP, 436, Court's Oral Ruling).

The court admitted there was not substantial evidence in the record to make a determination on the age, developmental stage, 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. The trial court was required to consider the only the child and relocating party pursuant the CRA. The court only considered the non-relocating party and third parties on this factor. Certainly being closer in geographical proximity to her Specialists located at Seattle Children's Hospital and Everett pertained to Memphis' special needs outlined in the Notice of Intended Relocation (EX 1), but the court failed to consider Memphis on this factor.

No. 9) The trial court erred on Finding of Fact 2.3.7
The quality of life, resources, and opportunities available to the child <u>and to the relocating</u> party in the current and proposed geographic locations.

The trial court never compared the geographic locations required to be considered on this factor. The court should have considered the geographical proximity being so close to my workplace and Seattle Children's Hospital, cutting down commute time on a daily basis for myself and for Memphis 3-5 times a month for her appointments and it would have been closer to her specialists at

Seattle Children's hospital and Everett that I included in my Notice of Intended Relocation (EX 1). The court never considered me as the relocating party on any of the factors as required in The Washington Relocation Act. I also testified about activating my real estate license in Mercer Island.

I stated: "And then I'm going to get my license and hopefully get some deals that way" (Schreiner, A. –Cross by Mr. Miller VRP 47).

No. 10) The trial court erred on Finding of Fact 2.3.8
(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

The ORDYMT or ORGRRE states: "This Court finds no evidence of any feasible alternative arrangements to foster and continue the child's relationship with the father and extended family if allowed to relocate" (CP 242-245).

Certainly, there were other alternative arrangements to foster and continue the child's relationship with Mr. Scoutten. The most obvious example is that I offered to provide transportation for Mr Scoutten to continue his visitation schedule without any changes outlined in the Notice of Intended Relocation (EX 1).

No. 11) The trial court erred on Finding of Fact 2.3.9
(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

The court admits it did not consider any alternative arrangements.

The Court: "I didn't hear any evidence of any other alternatives to relocation, and I certainly didn't hear anything from Mr Scoutten that would indicate it was feasible for him to also relocate. Then

how one determines that that weighs in favor of or against relocation is really more a personal choice than something that the Court can analyze and weigh..." (VRP 439).

No. 12) The trial court erred by not considering Finding of Fact 2.3.11. (11) For a temporary order, the amount of time before a final decision can be made at trial.
The trial court did consider this factor.

No 13) The trial court erred by applying weight to the relocation factors, and erroneously applying the most weight to the first statutory factor.

RCW 26.09.520 states: "The factors listed in this section are not weighted. No inference is to be drawn from the order in which the following factors are listed."

The trial court stated: "So the Court has the discretion to **assign the weight that it deems appropriate to** each of the factors..." (VRP 424, Court's Oral Ruling).

The trial court goes on to say: "So the first factor which, interestingly, although not weighted by the legislature in other contexts, **is given the greatest amount of weight**..."(VRP, 424, Court's Oral Ruling).

No. 14) The trial court erred by ignoring the rebuttable presumption in favor of relocation pursuant to The Washington Relocation Act.
"There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating <u>that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors</u>."(RCW 26.09.520)

The trial court simply stated:
"...it seems to me that on balance, the factors weigh against granting the requested relocation for Memphis, and I'm going to deny mothers request" (Courts Oral Ruling, VRP 440).

The relocating parent is entitled to a rebuttable presumption that the relocation will be allowed. In re Parentage of R.F.R., 122 Wn.App 324, 328, 93 P.3d 951 (2004). "

Courts interpret statutory presumptions to give them the force intended by the legislature. Larson The CRA's 11 child relocation factors "serve as a balancing test between many important and competing interests and circumstances involved in relocation matters," while the presumption in favor of relocation operates to **give particular importance to the interests and circumstances of the relocating parent, not only the best interests of the child**. Horner, 151 Wn.2d at 894. The significant yet surmountable hurdle the legislature established for the opposing party supports the view that the presumption does not disappear upon a party's production of evidence. If it disappeared as suggested, the presumption would do little to further the legislature's apparent purpose of generally favoring relocation. As we apply the presumption, it provides the standard the trial court uses at the conclusion of trial to resolve competing claims about relocation. This approach furthers the legislature's policy reflected in the presumption. Larson, 2015 WL 4204116, at *7 Horner, 151 Wn.2d at 894.

In my case, the trial court failed to consider the relocating parent on any of the 11 statutory factors outlined in RCW 26.09.520 and actually failed to even consider the child on several. On most factors the trial court opted to consider third parties and the non-relocating parent. The trial court expressed no specific detriments. What surmountable harm would occur to Memphis by relocating 40 minutes north by keeping the same exact residential schedule with Mr. Scoutten? And, if harm will occur, how does it compare to the benefits, if any, to the child from moving to Mercer Island? Nowhere in the findings or the record does the trial court support this conclusion by expressly balancing the detriment and benefit of the relocation, as the statute requires. In re Marriage of Littlefield, the Washington Supreme Court held that even though a trial court has authority to find that the "primary residential parent's relocation would harm the child[,]" it may bar relocation only if the consequent harm would exceed "the normal distress suffered by a child because of travel, infrequent contact of a parent, or other hardships which predictably result from a dissolution of marriage." In re Marriage of Pape, the Washington Supreme Court held that the "presumption" in a relocation action "is in favor of

'custodial' continuity, not environmental stability or environmental continuity".

No. 15) The trial court erred by modifying an existing parenting plan without requiring a finding of Adequate Cause after I was no longer pursuing relocation for purposes of RCW 26.09.260 (6).

A court shall deny the motion without a hearing if the affidavit does not establish "adequate cause." In re Marriage of Lemke, 120 Wn. App. 536, 540, 85 P.3d 966 (2004). Adequate cause is a factual inquiry that requires the moving party to present evidence sufficient to support a finding on each fact he or she must prove to justify modification. Lemke, 120 Wn. App. at 540. A showing of adequate cause requires more than prima facie allegations, In re Custody of B.J.B 146 Wn.App. 1, 189 P. 3d 800 (2008), review denied, 165 Wn.2d 1037, 205 P 3d 131 (2009). Mr. Scoutten failed to submit a Petition for Modification with affidavit setting forth facts outlining allegations.

RCW 26 09.260(6) states:" A hearing to determine adequate cause for modification shall not be required *so long as the request for relocation of the child is being pursued.*"

I indicated to the court I would not be relocating on May 4th, 2015· Ms. Hosannah: "I've had an opportunity to speak with my client, and she is not going to relocate" (VRP 441).

The trial court modified the parenting plan on June 18th, 2015.

The Supreme Court in Grigsby held that if the relocation is no longer being pursued, adequate cause is required. "A court may not, under RCW 26.09.260(6), order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain relocation of the child if the parent that had indicated a desire to relocate has since decided not to relocate. The normal showing of adequate cause to modify a parenting plan is excused under RCW 26.09.260(6) only so long as relocation is being pursued. Where a parent pursued relocation at trial but then decided against relocation following an adverse judgment, the relocation is no longer being pursued for purposes of RCW 26.09.260(6)" In re Marriage of Grigsby 112 Wn.App. 1, 7-8, 57 P. 3d 1166 (2002).

In my case, the trial court interpreted RCW 26.09.260 (6) incorrectly.

THE COURT: "Mr. Miller correctly cites to the statute that allows for basically—I shouldn't say allows—basically satisfies the adequate cause requirement..."(VRP 467 Court's Oral Ruling) "In a relocation case, that adequate cause requirement is already satisfied just by virtue of filing of the relocation, and it doesn't go away regardless of the outcome of that decision. So even though mom has decided that she isn't going to move, the adequate cause is already satisfied" (VRP 467, Court's Oral Ruling).

RCW 26.09.260 (6) goes on to clarify that the legislature only permits the trial court to make a modification to the parenting plan "pursuant to relocation". "Pursuant to" is defined by Merriam Webster dictionary as "in accordance with" (http://www.merriam-webster.com/dictionary/pursuant%20to). "Relocate" is defined as "a change in principal residence either permanently or for a protracted period of time" (RCW 26.09.410). A relocation never took place

The paperwork provided by Pierce County Family Court reaffirms Grigsby stating: "Relocation objections must be filed in good faith, and the relocation trial will not provide relief for issues outside of relocation." (Pierce County Family Court, Relocation: What you need to know when considering objecting to a Relocation, Rev 1, October 5, 2011).

No. 16) The trial court erred by not requiring Mr. Scoutten to file and serve a Petition to Modify Parenting Plan/Residential Schedule with affidavit setting forth facts, with filing of a Summons, Proposed Parenting Plan/Residential Schedule, and Petitioner's Notice of Adequate Cause required by RCW 26.09.270, RCW 26.09.181 (b) and RCW 26.09.260 (1)-(2)-(6).

The Due Process Clause of the 14th Amendment requires due process and equal protection of the laws. Mr. Scoutten failed to file a Petition for Modification of the parenting plan required by RCW 26.09.260(6) and The US Constitution equal protection of the laws.

RCW 26.09.260(6) states: "The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a **petition to modify the parenting plan**...".

RCW 26.09.270 states: "Child custody—Temporary custody order, temporary parenting plan, or modification of custody decree—Affidavits required. A party seeking a temporary custody order or a temporary parenting plan or modification of a custody decree or parenting plan shall submit together with his or her motion, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his or her affidavit, to other parties to the proceedings, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted." [2011 c 336 § 691, 1989 c 375 § 15; 1973 1st ex.s. c 157 § 27.]

RCW 26.09 181 (b) states: "In proceedings for a modification of custody or a parenting plan, a proposed parenting plan shall be filed and served with the motion for modification and with the response to the motion for modification."

A fundamental element of due process is the right to a hearing on the merits of a petition, including the right to cross-examine or to question any witness called by the other parent, or on behalf of the child, as well as the right to present evidence on one's own behalf. The trial court failed to require Mr. Scoutten file and serve a Petition for Modification with affidavit setting forth facts, denying due process to file a response and equal protection of the laws.

No. 17) The trial court erred by affecting a substantial right to privacy, allowing inadmissible video evidence to be used and admitted into evidence in violation of RCW 9.73.030 and RCW 9.73.050

Roe V. Wade in 1972 firmly established the right to privacy as fundamental, and required that any governmental infringement of that right to be justified by a compelling state interest. Substantial Rights to privacy were violated pursuant the Due Process Clause of the Fourteenth Amendment of the United States Constitution. This was a civil matter, not a criminal matter. Washington is a two-party consent state. RCW 9.73.050 specifically prohibits admissibility of intercepted communication in evidence.

RCW 9.73.050 states: "Any information obtained in violation of RCW 9.73.030 or pursuant to any order issued under the provisions of RCW 9.73.040 shall be inadmissible in any civil or criminal case in all courts of general or limited jurisdiction in this state, except with the permission of the person whose rights have been violated in an action brought for damages under the provisions of RCW 9.73.030 through 9.73.080, or in a criminal action in which the defendant is charged with a crime, the commission of which would jeopardize national security." [1967 ex.s. c 93 § 3.]

RCW 9.73.030 states: "Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership, corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any: (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, <u>without first obtaining the consent of all the participants in the communication;</u> (b) Private conversation, by any device electronic or otherwise designed to record or transmit such conversation regardless how the device is powered or actuated without first obtaining the consent of all the persons engaged in the conversation."

RCW 9.73.030 is unambiguous: "Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded."

The trial court admitted it *did not know* if Mr. Scoutten had obtained my consent to be filmed.

THE COURT: "So I suppose if Ms. Schreiner was unaware that she was being video taped, and I don't know if she was or not..." (VRP 427).

I did not consent to be recorded by Mr. Scoutten, and there is no evidence in the record to indicate that Mr. Scoutten obtained my consent to be recorded required by statute. The statute further requires: "That if the conversation is to be recorded that said announcement shall also be recorded" (RCW 9.73.303). Mr. Scoutten did not meet these qualifications. The trial court accepted video DVD into evidence that was inadmissible. The trial court placed special importance upon the video DVD, citing it for findings of fact and prejudicing the outcome of the trial.

The Court: "In addition, what was most compelling to me, quite frankly, was Exhibit 37, I believe, which was the video." (Thursday, June 18th, 2015, Afternoon Session, pg. 5)

Additionally, Mr. Miller admits to doctoring the video DVD in open court (VRP 311,312,313).

Ms. Hosannah: "Mr. Scoutten, the video that was shown today, is that the original form that the video was provided to you attorney?"
Mr. Miller: "Wait. Wait. I already told you we combined them."(Scoutten, M.-Cross by Ms. Hosannah VRP 311)
Mr Miller: "Wait a minute. You think I altered it?"
Ms. Hosannah: "It's not consistent with what you gave me"
(Scoutten, M –Cross by Ms. Hosannah VRP 313).

No. 18) The trial court erred by not appointing a GAL to investigate allegations of abuse or neglect required by RCW 26.44.053 in cases where alleged neglect or abuse has occurred.

The trial court adopted written findings of neglect and five other .191 factors listed on the Final Parenting Plan (CP 250-261), and the ORGRRE (CP 246-249).

RCW 26.44.053 states." (1) In any judicial proceeding under this chapter or chapter 13.34 RCW in which it is alleged that a child has been subjected to child abuse or neglect, the court **shall** appoint a guardian ad litem for the child as provided in chapter 13.34."

A fundamental element of due process is the right to a hearing on the merits of a petition, including the right to cross-examine or to question any witness called by the other parent, or on behalf of the child, as well as the right to present evidence on one's own behalf. The federal Child Abuse Prevention and Treatment Act (CAPTA) requires states receiving CAPTA grants to certify that the state has

in effect and is enforcing, a state law that for every case involving an abused or neglected child which results in a judicial proceeding, a GAL **shall** be appointed to represent the child's best interests. (42 U.S. Code § 5106a - Grants to States for child abuse or neglect prevention and treatment programs). The GAL may be either a court-appointed special advocate (CASA) or an attorney, or both (USC 5106a(b)(2)(A)(ix). Parents or other custodians of a child have the right to "notice" of any petition filed regarding that child and to be notified of any hearing regarding that petition. The right to notice encompasses the right to be formally given the petition, which also must state what the parent has done or not done that makes court involvement necessary. The right to notice is a fundamental element of the constitutional right to due process. Additionally, The National Child Abuse and Neglect Data System (NCANDS) require all investigations of Abuse or neglect be reported Failure to report or false reporting is a misdemeanor under RCW 74.34.053. In this case, no one reported this supposed "neglect" to the proper authorities, the trial court failed to appoint a GAL, and did not keep a written report as required by RCW 26.44.030, RCW 26.44.031, and RCW 26 44.040.

No. 19) The trial court erred by adopting find of fact #1: Neglect or substantial non-performance of parenting functions in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261).

The trial court failed to orally articulate that I supposedly neglected Memphis but adopted those findings in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261) on July 24th, 2015 The trial court adopted a contradictory order the same day regarding. 191 factors. The ORDYMT/ORGRRE (CP 242-245) under 2.3.4b states .191 factors "Does not apply." The trial court failed to appoint a GAL to investigate the finding of neglect adopted by the trial court in final orders required by RCW 26.44.053.

RCW 26.44.053 states:" (1) In any judicial proceeding under this chapter or chapter 13.34 RCW in which it is alleged that a child has been subjected to child abuse or neglect, the court **shall** appoint a guardian ad litem for the child as provided in chapter 13.34."

RCW 26.09.191 (6) requires:" In determining whether any of the conduct described in this section has occurred, the court shall apply the civil rules of **evidence, proof, and procedure**."

Errors of law to determine the correct legal standard are reviewed de novo. In re Marriage of Kinnan, 131 Wash.App. 738, 751, 129 P.3d 807 (2006). There was no evidence or proof of neglect to Memphis Procedure was not followed for appointment of a GAL.

"Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A 42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight"(RCW 26.44.020(16)).

Mr. Miller claimed that I supposedly did not live at my mother's residence and therefore that qualified as neglect or substantive non-performance of parenting functions. Substantial evidence in the court record does not support the conclusion that I did not live with my mother, nor does that meet the correct standard defining neglect as a "clear and present danger" since Memphis was always cared for Both my mother and I testified I lived at the same residence as my mother with Memphis:

Q And Angie lives at your house til this day?
A Yes.
Q Yes?
A Yes. (VRP 137, 138, Agosto, P.-Direct by Mr. Miller).

A She's up at six. She's out of the bathroom at seven. We get Memphis up at six—or she does because I'm getting ready.
Q Okay.
A I get myself ready. She gives Memphis her medicine. They have some time—the whole bathroom thing she gets to do with Memphis" (VRP 138, Agosto, P. –Direct by Mr. Miller).

Testimony from the private investigator, Mr. Crockett, concluded that he did not know where I resided.

Q Do you have any idea where she's living?
A I do not. (VRP 214, Crockett, M.-Direct by Mr. Miller)

Mr. Scoutten and I had **agreed** to enter into a babysitting contract with my mother that so I could work (EX 31). By all accounts Memphis had a home, food, shelter, and was well cared for. Mr. Scoutten himself testified that Memphis was doing "very well" in private school (VRP 309, Scoutten, M. –Direct by Mr. Miller). Additionally, the trial court stated in the VRP that it did not see evidence of detriment on May 4th, 2015.

THE COURT: "...I didn't get any evidence that I think demonstrates the actual detriment" (Court's Oral Ruling,VRP 470)

"An abused child is a child who has been subjected to child abuse or **neglect** as defined in this section."(RCW 26.44.020)

Mr. Miller himself admitted this was not an abuse case, erroneously reported in the VRP under "Court's Oral Ruling"

Mr. Miller: "**this is not a case of abuse**...This is not a case of Memphis not having a home because she had a home in her grandma's house..." (Court's Oral Ruling,VRP 446).

Mr. Miller goes on to say: "That's what makes, I believe, this case a little bit more difficult in the sense of there's no obvious abuse. **There's no obvious harm to this child**..." (VRP 407, Closing Argument by Mr. Miller).

No. 20) The trial court erred by adopting finding of fact #2 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261). The

absence or substantial impairment of emotional ties between child and mother.

There was no expert testimony to support the conclusion that there was an absence of emotional ties between Memphis and I. The doctored video DVD is inadmissible evidence pursuant RCW 9.73.030 and RCW 9.73.050.

No. 21) The trial court erred by adopting finding of fact #3 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261). The abusive use of conflict by the mother which creates the danger of serious damage to the psychological development of the child.

Mr. Miller misrepresented a previous Order of the court to support this finding. The order addressing my test message states that my single text message to Mr. Scoutten's *relative* "does not rise to the level" of abusive use of conflict (EX 15).

No. 22) The trial court erred by adopting finding of fact #4 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261). Mother's residential and job instability that the court find's detrimental to the child.

There is no evidence in the record to support that I lived anywhere other than my mother's residence since the divorce in May of 2013. At the time of trial, I had already been working full time for 6 months. From 2012-2015 I worked as a real estate agent and there was not any factual evidence in the record that I had an unstable work history. Mr. Miller "misrepresented" my work

history and listed every job I've ever held prior to even being married in 2009 and "argued" that I had all of those jobs in a short period of time right before trial which is a complete lie.

No. 23) The trial court erred by adopting finding of fact #5 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261). Mother's failure to communicate and participate in joint decision making and co-parenting.

Both parents were blamed in the email by Jennifer Knight, our co-parenting counselor (EX53). Mr. Scoutten testified it was on both parts (VRP 347), yet the Order suggests it was "mother's failure"?

No. 24) The trial court erred by adopting finding of fact #6 in Section 2.2 and 2.7 of the ORMDD/ORDYMT (CP 246-249) and section 2.2 of the Final Parenting Plan (CP 250-261). Mother has engaged in making untrue statements, including untrue allegations against the father and statements used to deprive the father of his opportunities to speak with the child including on the child's birthday.

The court does not specifically cite the "untrue allegations" so I'm not sure what she is referencing. I testified Mr. Scoutten was scheduled to have Memphis for her birthday last year, however, a few days beforehand he informed me he was cancelling because it was also his birthday and he wanted to "party". I testified my phone had died while I was putting together the big car I bought Memphis for her birthday (VRP 81). There is no evidence that I knowingly or purposely denied Mr Scoutten to speak to Memphis.

No. 25) The trial court committed reversible error under Washington Constitution, Article 1, § 3, the United States Constitution, Fourteenth Amendment by failing to provide a fair relocation trial, equal protection of the laws and numerous violations of Due Process and by making a determination for modification before determining to permit or restrain relocation in violation of RCW 26.09.260 (6).

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (United States Constitution, Amendment XIV Section 1.)

A joint statement of evidence was not entered before trial by either party, and witnesses were disclosed after trial (CP 198). No evidence was disclosed before trial denying due process and equal protection of the laws. I was denied due process to appear on February 27th, 2015 to set a trial date. The hearing was cancelled. Mr. Scoutten did not serve me a Note for Motion Docket (CP 51).

PCLR 3 (b) states: The plaintiff/petitioner shall serve a copy of the applicable Order on the defendant/respondent along with the initial pleadings; provided that if the initial pleading is served prior to filing, the plaintiff/petitioner shall within five (5) court days of filing serve the applicable Order."

I was denied due process and equal protection of the laws to file an opposing affidavit regarding .191 factors due to the trial court failing to require Mr. Scoutten to file a Petition for Modification. I

was denied due process when the trial court failed to require an adequate cause hearing required by RCW 26.09.260(6), when the trial court failed to appoint a GAL to investigate alleged neglect required by RCW 26.44.053, when the trial court failed to require mandatory Settlement Conferences and Parenting Seminars, when the trial court allowed Mr. Miller to prejudice the outcome of the relocation trial by arguing for a major modification during the relocation trial and before determining to restrict or grant the relocation in violation of RCW 26.09.260 (6).

RCW 26.06.260 (6) states: "In **making** a determination of a modification **pursuant to relocation** of the child, the court **shall first** determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09 405 through 26.09.560."

THE COURT: "...And then we go to the Objection. So basically, the way I do a relocation trial is the person who is seeking to relocate takes the stand, is sworn in and provides the reasons for the intended relocation. Then their testimony stops. That raises the rebuttable presumption, and the responding party then puts on their case.
MR. Miller: Okay. How about the Petition to Modify? So you want to do that—
THE COURT: Can we do it **all at the same time** as that—as part of your case in chief? (VRP, 7)

The trial court expressed confusion over how to interpret the law and asked *Mr. Miller* for his opinion on how to interpret the law...

THE COURT: "If I denied the relocation, the first question would be whether or not the petitioner intended to still relocate even if I

had denied the child's ability to relocate. If the answer is, no, I'm not going to relocate, **then that's the end of it and we don't go any further.** If the answer is, Yes, I'm still going to relocate then we would go into the next phase which is, Okay, how do we need to modify the parenting plan and the custody situation to accommodate that circumstance? But we have this additional here where there's a Petition to Modify in addition to that, so it doesn't—first, I should rule on the relocation and then I should consider the Petition for Modification, it seems to me. Now, whether you want to break your argument up. It kind of makes sense, yes, to do that, **but I'm open to whatever you all think is**—makes the most sense "

MR. MILLER: **I can combine my argument**. We can do it either way. You can segregate it. I had a little difference of opinion when you said that if you say yes—or if you decline the relocation and Mom still wants to move, then you have to figure out another parenting plan, I think or if she said, No, I'm not going to move, then we have to figure out a parenting plan again

THE COURT: Okay. No, if I deny the child's relocation with Mom then the question that goes to mom as the relocating parent is do you still intend to relocate. If her answer is no, then that's – except for the fact that your client filed a Petition to Modify, that is the end of the discussion. **The Court has no further authority. The parenting plan that is in place would remain in place, and Mom wouldn't move, child wouldn't move**, but in this case, your client has also filed a Petition to Modify. So regardless of Mom's answer, regardless of my ruling on the relocation, **I think** we still go to the Petition to Modify, and it may make it cleaner to separate the arguments on there, **but I don't have a strong—I mean, I'm pretty clear on the relocation and the order that you're required to go into by law, which is how I outlined it. It's a little less clear to me on the Petition to Modify following the objection to relocation, so I'm open to either one of you expressing your views"**

MR. MILLER: No, I think you clarified it for me. (VRP 403, 404, 405).

26) The trial court erred in its words and conduct throughout the proceedings that demonstrate an obvious manifestation of bias and/ or prejudice in violation of several rules under Canon 2 of Judicial Code of Conduct that warrant

disqualification of the current judge under Rules 2.1, 2.2, and 2.3.

The trial court judge made bias and unsupported statements about me, negatively stereotyping me to criminals engaging in substance abuse because I couldn't remember someone's full name during the beginning of a deposition, but recalled it throughout the trial.

THE COURT: "You know, honestly, that's the kind of thing we often hear in the criminal side of the house when we have defendants who are engaging in substance abuse; that they, you know, oh gosh, it wasn't my jacket. Well, it was my friend's. Well, what your friend's name? Joe. I don't know Joe's last name. This is the kind of thing that we often hear in other contexts, and it was disturbing to me that Mom doesn't know the last name of the person that she is staying in their home with the four year old child" (Court's Oral Ruling, VRP 429, 430).

I testified several times throughout the trial that I knew my friends last name (VRP 32, 39). I also never gave any testimony to indicate that I had stayed overnight in their home with Memphis.

The Judicial Code of Conduct under Canon 2.3 states negative stereotyping is a manifestation of prejudice or bias:

Code of Conduct under Canon 2 states. "RULE 2.2 Impartiality and Fairness A judge shall uphold and apply the law,* and shall perform all duties of judicial office **fairly and impartially.***COMMENT [1] To ensure impartiality and fairness to all parties, a judge must be **objective and open-minded**. [2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question." RULE 2.3 states: "A judge shall not, in the performance of judicial duties, **by words or conduct manifest**

bias or prejudice, or engage in harassment, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. COMMENT [1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. [2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; **negative stereotyping; attempted humor based upon stereotypes**; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and **irrelevant references to personal characteristics** "

No. 27) The trial court erred by entering a Final Parenting Plan on July 24th, 2015 in violation of RCW 26.09.181 (b), RCW 26.09.187 (vii) RCW 26.09.184, RCW 26.09.002, RCW 26.09.165., RCW 26.09.181(3), RCW 26.09.181 (7), RCW 26.09.181 (5), RCW 26.44.053, and RCW 26.09.182.

RCW 26.09.181 (b) states: "In proceedings for a modification of custody or a parenting plan, a proposed parenting plan shall be filed and served with the motion for modification and with the response to the motion for modification."

The trial court did not require Mr Scoutten to file a motion for modification and he filed a proposed parenting plan separate from any motion, I was denied due process to respond.

RCW 26.09.184 states: The objectives of the permanent parenting plan are to: (a) Provide for the child's physical care; (b) Maintain the child's emotional stability; (c) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for future modifications to the permanent parenting plan; (d) Set forth the authority and responsibilities of each parent with respect to the child, consistent with the criteria in RCW 26.09.187 and 26.09.191; (e) Minimize the child's exposure to harmful parental conflict; (f) Encourage the parents, where appropriate under RCW 26.09.187 and 26.09.191, to meet their responsibilities to their minor children through agreements in the permanent parenting plan, rather than by relying on judicial intervention; and

(g) To otherwise protect the best interests of the child consistent with RCW 26.09.002.

Mr. Scoutten said: "My custodial time would be exercised by my wife at that time or my mother or some other agreement that is worked out if my parenting plan is adopted" (Scoutten, M.-Cross by Ms. Hosannah,VRP 323).

Monica Scott, his wife, had been restricted from being around Memphis after locking her outside of the home and the police were called, and admitted that she allowed Memphis be around the cousin who Memphis accused of sexually abusing her in a report by a physician (EX 28). The order restricting contact was entered June, 17th 2014 by the Honorable Clint Johnson. The order is valid "until further order of the court" (EX 16).

Monica testified:
Q And the Court also said you can't go over there anymore?
A Correct.
QAnd that was the one with Courtney?
A Yes
Q And Courtney is your niece?
A Yes.
Q Regarding—just briefly regarding Courtney, during that period of time in January of 2014, do you recall was there any contact between Courtney and Memphis, to your knowledge?
A In January 2014?
Q When all those allegations of sexual abuse came about
A Sure. Sure. We were—back up. Again, like I was saying at the very beginning, my sister has an open door. We're a very close family. My brother and sister hang out with all of our children. If Memphis were around Courtney, it would have been in a situation where we were all there.
Q Okay. Do you know if Memphis was ever around Courtney during that period of time?

A I'm sure she was. I mean, they're cousins. (VRP 173,174, Scott, M -direct by Mr Miller)

RCW 26.09.187 (3) states: (a) The court shall make residential provisions for each child which encourage each parent to maintain a loving, stable, and nurturing relationship with the child, consistent with the child's developmental level and the family's social and economic circumstances.

RCW 26.09.187 (vii) requires trial court consider..."Each parent's employment schedule, and shall make accommodations consistent with those schedules

The final parenting plan adopted was in direct conflict with my work schedule. I testified my days off were Thursday and Friday. The court adopted a PP granting me every other weekend visitation *during the time that I testified I was working*

Q What are your hours?
A Nine to six
Q What days?
A Five days a week
Q Which days?
A Saturday, Sunday, Monday, Tuesday, Wednesday.
Q And you are off Thursday and Friday?
A Yes
(VRP 22 Schreiner, A –Direct by Ms. Hosannah).

The final parenting plan did not foster my relationship with Memphis required by RCW 26.09.002.

RCW 26.09 002 states: "The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements The best

interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. **Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.**"

There was no evidence of harm to Memphis. By all accounts, she had a home, clothing, food, shelter, and was doing "very well" in private school at cost to both parents (EX 25, EX 48).

RCW 26.09.181 (7) states: "The final order or decree shall be entered not sooner than ninety days after filing and service."

The trial court erroneously entered the final parenting plan was the same day it was presented on July, 24th, 2015. The trial court erred by entering a final parenting plan that crossed out the mandatory language that is required to be in all court orders containing parenting plan provisions pursuant to RCW 26.09.165 or RCW 26.09.181 (3).

RCW 26.09.181 (3) states: The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

The mandatory Good Faith Proposal is crossed out in Section VII. of the Final Parenting Plan (CP 250-261) and does not contain the required signature of the Respondent. The required language referenced in RCW 26.09.165 is also crossed out.

RCW 26.09.165 states: All court orders containing parenting plan provisions or orders of contempt, entered pursuant to RCW 26.09.260, shall include the following language: "WARNING: VIOLATION OF THE RESIDENTIAL PROVISIONS OF THIS ORDER WITH ACTUAL KNOWLEDGE OF ITS TERMS IS PUNISHABLE BY CONTEMPT OF COURT, AND MAY BE A CRIMINAL OFFENSE UNDER RCW 9A.40.060(2) or 9A.40.070(2). VIOLATION OF THIS ORDER MAY SUBJECT A VIOLATOR TO ARREST. [1994 c 162 § 2; 1989 c 318 § 4.]

Judge Arend's signature is crossed out in Section VIII on page 10 of the final Parenting plan, and is missing on the last page (CP 250-261). The trial court signed the Final Parenting Plan without allowing me to review or sign it first. The trial court allowed Mr. Miller to fill out the blanks of the final parenting plan after signing it.

THE COURT: "There's a few blank lines on there, and I'm not sure if Ms. Hosannah or her client have signed. I have signed, so please don't leave the courtroom.
Mr. Miller: We'll fill the blanks out appropriately." (Friday, July 24th, 2015, Morning Session, pg14.)

No. 28) The trial court erred by not requiring Pre-trial and Settlement Procedures required by PCLR 16, PCLSPR 94.04 (d) and RCW 26.09.181 (5) . Both parties were denied the opportunity to engage in a mandatory Settlement Conference/ADR before trial. A pre-trial conference was never held. Additionally, parenting seminars were not completed pursuant to PCLSPR 94.05.

PCLR 16 (4) (c) states: "Some form of Alternative Dispute Resolution ("ADR") is required in all cases prior to trial except as noted otherwise below. (2) Family Law Cases. Judicial Officers shall make themselves available for settlement conferences in dissolutions, paternity cases involving petition/motion for

establishment of residential schedule or parenting plan, post-dissolution petitions for modification of custody and related Family Law matters, except in Non-Parental Custody Petitions under RCW 26.10, which are exempt from mandatory ADR unless ordered by the Assigned Judge."

The trial court denied Mr. Scoutten and I the opportunity to engage in meaningful settlement negotiations required by statute, nor were we required to attend parenting seminars.

RCW 26.09.181 (5) states:"Where mandatory settlement conferences are provided under court rule, the parents shall attend a mandatory settlement conference. The mandatory settlement conference shall be presided over by a judge or a court commissioner, who shall apply the criteria in RCW 26.09.187 and 26.09.191. The parents shall in good faith review the proposed terms of the parenting plans and any other issues relevant to the cause of action with the presiding judge or court commissioner. Facts and legal issues that are not then in dispute shall be entered as stipulations for purposes of final hearing or trial in the matter."

PCLSPR 94.05 States: Parenting Seminars "This rule shall apply to all cases filed under Ch. 26.09, Ch. 26.10, or Ch. 26.26 RCW which require a parenting plan or residential schedule for minor children. This rule does not apply to modification cases based solely upon relocation.
b) Mandatory Attendance. **In all cases** governed by this rule, all parties shall complete an approved parenting seminar."

I was no longer pursuing relocation for purposes of RCW 26.09.260(6) and no relocation occurred; therefore parenting seminars were required before a modification could take place.

No 29) The trial court erred by determining a Substantial change of Circumstance occurred at the time of trial.

RCW 26.09.260 states: (1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child."

No substantial change occurred. The .191 Factors listed in this section are not supported by evidence, proof and procedure I was denied due process to file an opposing affidavit for .191 factors.

RCW 26.09.002 states: "The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served **when the existing pattern of interaction** between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional **harm** "

"An abused child is a child who has been subjected to child abuse or neglect as defined in this section" (RCW 26.44.020(1)).

Mr. Miller: **"It's not a substantial change in the sense of abuse or physical impairment"** (VRP 465, 465)

At the time of the modification ruling I had already indicated to the court that I was not pursuing relocation, was working in a full-time position since January 2015, and was residing with my mother and Memphis. A substantial change of circumstance for Memphis and

myself had not occurred. A showing of a "clear and present danger" to Memphis was not supported by factual evidence.

No. 30) The trial court erred by entering a fraudulent Final Child Support Order on July 24th, 2015.

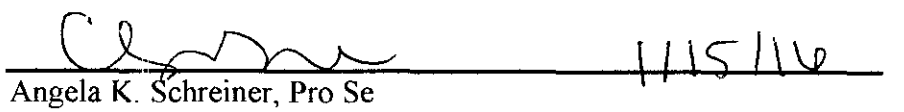
When comparing Mr. Scoutten's financial declaration with his child support worksheets, it's evident there is a $68,414.20 discrepancy between actual gross income on Mr. Scoutten's 2014 Taxes (CP 281-299) and reported gross income on the child support worksheets(CP 441-457).

F. Conclusion

The trial court committed reversible error by violating fundamental rights of due process and procedure, erred by Abuse of Discretion, and failed to provide equal protection of the laws and Impartial Judge. I ask that the Appellate Court vacate all final orders entered on July, 24th, 2015 and reinstate the Original Final Parenting Plan entered by agreement on May, 3rd, 2013 (CP 40-48).

January 15th, 2015

Respectfully submitted,



Angela K. Schreiner, Pro Se

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COURT OF APPEALS
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2016 JAN 19 AM 9:55
STATE OF WASHINGTON
BY DEPUTY

Court of Appeals of the State of Washington
County of Pierce

In re: Angela K Scoutten nka Schreiner Petitioner, and Michael J Scoutten Respondent.	**No.** Appeal # 48027-1 **Return of Service** **Trial Brief** **(RTS)**

I Declare:

1. I am over the age of 18 years, and I am not a party to this action.

2. I served the following documents to (name) JOHN A. MILLER:

☒ other: APPELANTS OPENING TRIAL BRIEF

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: _____ Time: _____ a.m /p.m.

Address: _____

_____

4. Service was made.

☐ by delivery to the person named in paragraph 2 above.

☐ by delivery to (name) _____, a person of suitable age and discretion residing at the respondent's usual abode.

☐ by publication as provided in RCW 4.28.100. (File Affidavit of Publication separately.)

☒ (check this box only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on (date) _____. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Tape return receipt below.) The copies were mailed on (date) 1/15/16.

☒ (check this box only if there is a statute authorizing service by mail) by mailing a copy postage prepaid to the person requiring service by any form of mail requiring return receipt. (Tape return receipt below.) The copy was mailed on (date) 1/15/16.

5. Service of Notice on Dependent of a Person in Military Service.

☐ The Notice to Dependent of Person in Military Service was ☐ served on ☐ mailed by first class mail on (date) _____.

☐ Other:

6. Other:

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at (city) TACOMA, (state) WA, on (date) 1/15/16.

Signature

ANGELA SCHREINER
Print or Type Name

Fees:
Service _____
Mileage _____
Total _____

(Tape Return Receipt here, if service was by mail.)

File the original Return of Service with the clerk. Provide a copy to the law enforcement agency where protected person resides if the documents served include a restraining order signed by the court.