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DIVISION II

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APPEAL NO. 48027-P-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Angela K. Scoutten kna Schreiner

Appellant,

v.

Michael J. Scoutten

Respondent.

APPELLANT'S REPLY TO RESPONDENTS BRIEF

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

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A. Statement of the Issues

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2. Was this a relocation case?

MODIFICATION RULING

3. Was adequate cause "already satisfied" after the Intent to relocate was withdrawn?
4. Where is the non-existent separate Petition to modify with affidavit setting forth facts that Mr. Miller claims his client filed to justify modification under RCW 26.09.260(1) (2)?
5. Did the trial court follow proper procedure before modifying the parenting plan? Was RCW 26.09.260(1) (2) (c) applied without requiring adequate cause, a Petition to modify with affidavit setting forth facts, and a modification trial? Is there evidence of actual detriment to the child? Was there evidence showing any harmful effects to the child?
6. Did the trial court follow proper procedure in determining .191 factors?

B. Introduction

The trial court made numerous substantive and procedural errors throughout this case raising due process concerns. The due process clause of the Fourteenth Amendment "guarantees more than fair process." Troxel v. Granville, 530 U.S. 57, 65, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. In re Marriage of Katare, 175 Wn.2d 23, 35, 283 P. 3d 546 (2012). Errors of law are reviewed De Novo. In re Marriage of Kinnan, 131 Wn. App. 738, 751, 129 P.3d 807 (2006). Trial court's factual findings are reviewed for substantial evidence. In re Marriage of McDole, 122 Wn.2d 604, 610, 859 P.2d 1239 (1993).

First, the trial court erred by not requiring adequate cause or any pre-trial procedures required by both RCW 26.09.260 (6) and RCW 26.09.260(1) (2) and PCLR in this case before making a major modification to an existing parenting plan. Second, Mr. Scoutten failed to file and serve a Petition to Modify with affidavit setting forth facts to justify a modification. The trial court acknowledged that Mr. Scoutten had only filed an Objection to Relocation (RP 443-445), (CP 52-58). An Objection to Relocation does not provide relief for issues outside of relocation (EX D). Relocation did not occur and was withdrawn before the modification ruling. Third, the trial court made both substantive and procedural errors by misinterpreting RCW 26.09.260(6) from the beginning of trial. RCW 26.09.260(6) directs that the trial court SHALL make a decision to restrict or grant the relocation *before* making a determination for modification pursuant to relocation of the child. Mr. Miller argued for a major modification throughout the relocation trial before determining to grant or restrict the relocation, the trial court erred. The trial court applied the incorrect legal standard of "best interest of the child" instead of applying the presumption in favor of relocation that considers both the interests of child *and the relocating parent* outlined in the CRA. The errors were evident, obvious, and clear and materially prejudiced a substantial right, and each mistake affected the outcome of the case in a significant way.

C.Arguments

a. ADEQUATE CAUSE

The trial court orally articulated that if mom did not intend on relocating, that the court had no further authority (RP 404).

> 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" (RP 403).

I withdrew my relocation the morning of May 4th, 2015.

> MS. HOSANNAH: I've had an opportunity to speak with my client, and she is not going to relocate.
> THE COURT: Okay. Thank you. So then we'll go to the Petition for Modification (VRP 441).

Yet, even after I withdrew my relocation on Pg. 441 of the VRP, the trial court still modified the parenting plan citing 26.09.260(6) as it's justification to not require an adequate cause hearing, on Pg 467 of the VRP.

> Monday, May 4th, 2015
> Afternoon Session
> THE COURT: Good afternoon, everybody.
> Please be seated.
> All right. So, first, with respect to the Petition to Modify, when there's been a Notice of Intended Relocation, Mr. Miller correctly cites to the statute that allows for basically—I shouldn't say allows—basically satisfied the adequate cause requirement. In a normal Petition for Modification of Custody, you don't proceed to hearing or trial until you first meet the threshold requirement of adequate cause. In other words, the party who is petitioning has to demonstrate that they have, you know, evidence to support the

> allegations of a substantial change in circumstance and detriment to the child.
>
> **In a relocation case, that adequate cause requirement is already satisfied just by virtue of the 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 relocate, the adequate cause is already satisfied.** So that then takes the Court to substantial change in circumstances… (RP 467, Court's Oral Ruling).

The statutory language intended by the Legislature in RCW 26.09.260(6) does not support the trial court's ruling that adequate cause was "already satisfied". 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"* RCW 26.09.260(6). In this case, the trial court had already denied the relocation for Memphis and I had withdrawn the Intent to relocate well before the trial court ruled that adequate cause was "already satisfied" (RP 441).

> 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.* 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. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order (RCW 26.09.260(6).

The Court of Appeals in Grigsby ruled "The Legislature's choice of language in RCW 26.09.260(6) is noteworthy. The statute provides that a

hearing to determine whether there is adequate cause for the modification is not required "so long as the relocation is being pursued." Had the Legislature indicated that a showing of adequate cause is not required after relocation is proposed, for example, the trial court's modification of the parenting plan here would have been proper. But the normal requirement of a showing of adequate cause is excused only so long as relocation is being pursued... " Marriage of Grigsby, 112 Wiz. App. 1, 57 P. 3d 1166 (2002). The Verbatim Report of Proceedings show that after the relocation trial had ended and the intent to relocate was already withdrawn, the trial court immediately and automatically wanted to hear from Mr. Miller regarding a non-existent "Petition to Modify" before the trial court ever addressed adequate cause or any additional briefings (RP 441).

After the relocation had already been withdrawn, the trial court erred by letting Mr. Miller present an additional "closing argument" for a nonexistent "Petition to Modify" *before* addressing adequate cause. Ms. Hosannah rebuts on pages 456-463 and then Mr. Miller argues Ms. Hosannah's rebuttal on pages 463-467. This improper procedure is recorded in the VRP under "Court's Oral Ruling". This exchange is not the Court's Oral Ruling as it is incorrectly recorded, it is actually Ms. Hosannah and Mr. Miller erroneously arguing for and against modification

after I withdrew my intent to relocate and the relocation trial had ended (RP 441-466).

After both sides present closing arguments for and against modification, the trial court finally issues a ruling regarding adequate cause (RP 467). Additionally, an affidavit setting forth facts is required to find adequate cause.

> RCW 26.09.270 A party seeking to modify a parenting plan must submit with his motion "an affidavit setting forth facts supporting the requested modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits." And the court must deny the motion unless it finds adequate cause from the affidavits to hear the motion (RCW 26.09.270).

To justify a full hearing on a petition to modify a residential schedule, the petitioner must demonstrate that adequate cause exists. In re Marriage of Tomsovic, 118 Wn. App. 96, 104, 74 P.3d 692 (2003); RCW 26. 09.270. Along with the motion to modify, the petitioner must submit affidavits with specific relevant factual allegations that, if proved, would permit a court to modify the parenting plan under RCW 26.09.260. Tomsovic, 118 Wn. App. at 104. If the trial court finds that the affidavits establish a prima facie case, it sets a hearing date on an order to show cause why the party requested modification. Mr. Scoutten failed to file a Petition to Modify with affidavit setting forth facts to permit adequate cause or a modification

in this case. Mr. Miller states in his reply "While Angie is correct that there was not a technical adequate cause hearing, this is only a result of the unique procedural posture of the case and should not constitute a reversible error. In addition, this issue was not addressed at trial and should be barred for review by RAP 2.5 (a)."(pg. 43) The issue of Adequate Cause was addressed at trial (RP 446, RP 467). Additionally, Errors of law are reviewed De novo. In re Marriage of Kinnan, 131 Wn. App. 738, 751, 129 P.3d 807 (2006). The Legislature required Adequate Cause before a modification could be granted by both RCW 26.09.260(6) and RCW 26.09.260(1) (2) in this case.

Mr. Miller goes on to say on pg. 43 of his reply ..."Before a modification can be set for a hearing, adequate cause must be established; this requires an affidavit setting forth facts that arose since the entry of the last PP. Zigler at 809. In addressing the modification statute after the Relocation trial, the Court requested supplemental briefing before it made it's ruling. The supplemental briefing goes beyond what is required to be found to pass the adequate cause hurdle required outside of the relocation statute." The trial court determined that adequate cause was already satisfied (RP 467) before Mr. Miller provided his brief (RP 478). The brief was specifically limited to addressing detriment and RCW 26.09.260(2) (c), not adequate cause. Therefore, Ms. Hosannah limited her argument to

actual detriment as directed by the trial court (RP 478). The adequate cause threshold had already been determined "satisfied" by the trial court before the attorneys submitted their briefs. Mr. Miller claims on pg. 43 of his response to the appeal that the trial court applied RCW 26.09.260(1) (2) (c) to modify the parenting plan, not RCW 26.09.260(6). However, the report of proceedings shows that the trial court specifically applied RCW 26.09.260(6) to justify it's decision to not require adequate cause after the intent to relocate had been withdrawn, and proceeded to modify the parenting plan (RP 467). Mr. Miller goes on to say "Had the Court modified the parenting plan under the relocation statute after Angie withdrew her relocation request, the Court *may* have erred..." (pg. 42,Respndent's Brief). That is exactly what happened in our case, the trial court *did* modify the parenting plan specifically applying RCW 26.09.260(6) *after* I withdrew my relocation request on May 4th, 2015. The trial court specifically cites RCW 26.09.260(6) in the courts oral ruling to justify not requiring adequate cause, and then proceeds to modify the parenting plan (RP 467). Mr. Miller cites *In re Marriage of Mcdevitt* to justify the trial courts actions in this case. My case is factually similar on all fours to Grigsby, and not similar in any way to McDevitt. The Court of Appeals in the Mcdevitt case specifically stated how the McDevitt case was different than Grigsby. The Appellate Court found that there were two

distinct factual differences between McDevitt and Grigsby. "The biggest difference is the fact that unlike the mother in Grigsby, Ms. McDevitt actually did relocate while the motion was pending. Judge Cozza here was thus dealing with an accomplished relocation rather than an anticipated one." In re Marriage of Mcdevitt, 181 Wn. App. 765, 326 P. 3d 865 (2014). In my case and the Grigsby case, relocation did not occur. My case is factually similar to Grigsby where the parent who had requested to relocate withdrew their relocation and did not relocate, before the trial court modified the parenting plan without requiring adequate cause. "The other significant difference is that unlike Grigsby, here the trial court had ruled on the parenting plan modification before Ms. McDevitt acted to withdraw her request to relocate" In re Marriage of Mcdevitt, 181 Wn. App. 765, 326 P. 3d 865 (2014). In my case and the Grigsby case, the trial court modified the parenting plan *after* we withdrew our requests to relocate. When a judgment is entered without procedural due process it is void. Ebbighausen, 42 Wn. App. at 102. Sumey, 94Wn. 2d at 762. The trial court abused it's discretion.

b. Relocation Trial

Despite Mr. Millers claims, all court documentation records this as a relocation trial, not a modification trial. The Order Assigning Case to Family Court and Notice of Hearing is filed under RELOCATION (CP

59). All Court paperwork indicates this case was continued under a relocation trial on three separate occasions. See Orders Amending Case Schedule (CP 71-72, CP 74-75, CP 199-200). The Note for Motion Docket indicates this was only a relocation trial (CP 51). The trial court never amended the track assignment to a modification trial.

> PCLR 3 (d) Amendment of Case Schedule. The court, either on motion of a party or on its own initiative, may modify any date in the Order Setting Case Schedule for good cause, including the track to which the case is assigned, except that the trial date may be changed only as provided in PCLR 40(g). If an Order Setting Case Schedule is modified or the track assignment is changed, the court shall prepare and file the Order Amending Case Schedule and promptly mail or provide it to the attorneys and self-represented parties.

The trial court itself referred to this as a relocation trial, not a modification trial after I withdrew my relocation.

> THE COURT: "**In a relocation case**, that adequate cause is already satisfied just by virtue of the 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 relocate, the adequate cause is already satisfied (RP 467).

"Relocation trials are given priority in family court, so filing an objection to get a quicker trial to resolve issues outside of relocation is cutting in front of other parents who have been waiting to have their issues heard and resolved by the court. Plus, relocation trials do not resolve any requests for relief outside of the issues involved in a potential change in a child's residence... Relocation objections must be filed in good faith, and

the relocation trial will not provide relief for issues outside of relocation." (EX D, Pierce County Family Court, Relocation: What you need to know when considering objecting to a relocation). The trial court erred by providing relief for Mr. Scoutten outside of relocation. Additionally, the trial court erred by never considering Mr. Scoutten's reason for Objecting, or if it was in good faith required by the 5th relocation Factor. The trial court accused me of having bad faith and a boyfriend without any evidence to support it's statements (RP 432). I don't have a boyfriend. The other issue is that the trial court let Mr. Miller hijack the relocation trial and argue for a major modification throughout the relocation trial. The statutory language is unambiguous:

> "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" (RCW 26.09.260 (6).

The word "may" in a statute denotes discretion and is distinct from the word "shall," which indicates a mandatory action. Pierce v. Yakima County, 161 Wn. App. 791, 800-01, 251 P.3d 270 (2011). The trial court abused it's discretion by combining the issues and allowing Mr. Miller to argue for a modification from the first day of trial. By combining the issues, the trial court used the incorrect legal standard and the presumption for relocation disappeared. 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).

"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." Horner, 151 Wn.2d at 894. A modification trial has a different legal standard than a relocation trial. The trial court incorrectly used the legal standard of "the best interest of the child" instead of applying the required rebuttable presumption outlined in the Washington's Child Relocation Act. The CRA shifts the analysis away from only the best interests of the child to an analysis that focuses on both the child and the relocating person. By combining the issues, the trial court abused it's discretion and Mr. Miller prejudiced the outcome of the relocation by arguing for a modification from the first day of the relocation trial. Further, the trial court did not include the presumption in it's ruling at the conclusion of trial. RCW 26.09.260(6) was misinterpreted by the trial court. The incorrect Legal standard was applied and the presumption in favor of relocation disappeared. The Child Relocation Act does not apply a "best interest of the child" standard; instead, it applies 11 specific factors for the court to consider. [NOTE: These cases implicitly overrule the prior relocation decisions of In re Parentage of R.F.R., 122 Wn. App. 324, 328, 93 P.3d 951 (2004) and In re Marriage of Grigsby, 112 Wn. App. 1, 7, 57 P.3d 1166 (2002), which stated in dicta "The Relocation Act of 2000...gives courts the authority to allow or disallow relocation based on the best interests of the child." (Grigsby) In re Marriage of Momb, 132 Wn. App. 70, 79, 130 P.3d 406 (2006); In re Marriage of Horner, 151 Wn.2d 884, 895, 93 P.3d 124 (2004). "'the [relocation act] both incorporates and gives substantial weight to the traditional presumption that a fit parent will act in the best interests of . . . the child and the relocating person.'" Horner, 151 Wn.2d at 895 (quoting In re Custody of Osborne, 119 Wn. App. 133, 144-45, 79 P.3d 465 (2003)). The Horner court emphasized that the interests and circumstances of the relocating parent are "[p]articularly important" and that, "[c]ontrary to the trial court's repeated references to the best interests of the child, the standard for relocation decisions is not only the best interests of the child." Id. at 894. Instead, "<u>trial courts consider the interests of the child and the relocating person</u> within the context of the competing interests and circumstances required by the [relocation act]." Id. at 895. The trial court overlooked the statutory presumption that a proposed relocation will benefit the child and, therefore, will be granted. Horner, 151 Wn.2d at 895.

Mr. Miller's closing argument specifically asks the trial court to deny the relocation based on the "best interest of Memphis" standard instead of

applying the presumption in favor of relocation and considering the interest of the relocating parent.

> "...**basically we break this all down to what's in the best interest of Memphis**, and that's not in **Memphis' best interest**, and I think Ms. Schreiner has looked at that. I don't think she has even contemplated what's in **Memphis' best interest**. Just from her behaviors, you can see that. So on that basis, Your Honor, I would ask this Court to not grant the relocation" (RP 414, Closing argument by Mr. Miller).

The trial Court specifically stated she was only considering the best interest of Memphis in her oral ruling denying relocation, and does not mention the presumption in favor of relocation or the interest of the relocating parent on any of the factors.

> THE COURT: "So I don't see, on balance, how that is to **Memphis' best interest**" (RP 434, Court's Oral Ruling).

The trial court failed to include the presumption at the conclusion of trial required by Horner. The trial court only considered the best interest of Memphis, Mr. Scoutten and third parties on all of the relocation factors.

> THE COURT: "It seems to me on balance, the factors weight against granting the relocation and I'm going to deny mother's request"(RP 440).

c. Petition to Modify

Mr. Miller's attempt to deceive both the trial court and the Appellate Court should not go unnoticed. Mr. Miller states "This is a case where Mike filed a Petition to Modify, which gave the court authority to modify the parenting plan regardless of whether Angie would later withdraw her

relocation." (Pg. 1-2, Respondents Brief) Later, Mr. Miller admits his client only filed an Objection to Relocation. "For Judicial economy, Mike's Modification was included with his Objection; Mike paid the required filing fee" (Pg. 3, Respondents Brief).

> RCW 26.09.270 A party seeking to modify a parenting plan must submit with his motion "an affidavit setting forth facts supporting the requested modification and shall give notice, together with a copy of his affidavit, to other parties to the proceedings, who may file opposing affidavits." And the court must deny the motion unless it finds adequate cause from the affidavits to hear the motion (RCW 26.09.270).

Mr. Scoutten only filed an Objection to Relocation (CP 52-58), it was filed with no attachments and no RTS was filed required by PCLR 3. He paid a filing fee for the Objection to Relocation, not a filing fee for a Petition to Modify with affidavit setting forth facts. An Objection to Relocation is filed on form: WPF DRPSCU 07.0730. A Petition to Modify is filed on form: WPF DRPSCU 07.0100. The forms are different, have different requirements, and apply to different statutes. Relocation was withdrawn on May 4th, 2015 and did not occur, therefore, modification was improper under Grigsby. Mr. Scoutten is free to file a Petition to Modify with affidavit setting forth facts required by RCW 26.09.260(1) (2) and PCLSPR 94.04 (g) if he would like to schedule a hearing to determine adequate cause before a modification trial will be granted, but in this case he failed to file a Petition with affidavit setting forth facts to justify

modification outside of relocation. Additionally, a Petition to modify must be filed together with a proposed parenting plan required by RCW 26.09.181 (b), an affidavit setting forth facts required by RCW 26.09.270, the filing of a Summons, and Petitioner's Notice of Adequate Cause on the mandatory forms in accordance with PCLSPR 94.04 (g). Mr. Scoutten did not meet any of the above requirements for the trial court to have the authority to modify the parenting plan outside of relocation.

> Petition to Modify Parenting Plan
> PCLSPR 94.04 (g) Petition to Modify Parenting Plan/Residential Schedule
> (1) How Initiated. An action for modification of a final parenting plan/residential schedule is commenced by the filing of a Summons, Petition for Modification of Custody, Proposed Parenting Plan/Residential Schedule, and Petitioner's Notice of Adequate Cause on the mandatory forms under the existing dissolution, paternity, or other case.
> (2) Case Schedule. Upon filing, the Clerk's Office shall issue an Order Setting Case Schedule. Refer to Appendix, Form A.
> (3) Requirements. The petitioner(s) shall obtain an Order Finding Adequate Cause on the Commissioners' dockets on or before the court hearing date specified in the Order Setting Case Schedule or the petition will be dismissed without further notice. The petitioner(s) and respondent(s) shall attend the mandatory Impact on Children seminar. A settlement conference, or other dispute resolution process, is required prior to trial, unless waived by the Court; see PLCR 16(c).
> (4) Case Assignment. All Petitions to Modify Parenting Plan/Residential Schedule shall be assigned to Family Court.

On pg. 3 of his response Mr. Miller again perjures himself, "Mike filed a proposed PP with his Modification, seeking to change the custodial parent from Angie to himself..."

> RCW 26.09.181 (1) (b) 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 proposed parenting plan was not filed with a modification as Mr. Miller claims. Mr. Scoutten filed an Objection to Relocation with no attachments. A proposed parenting plan was filed by Mr. Scoutten independent from any motion on February 27th, 2015 (CP 60-70), and he filed a different proposed parenting plan as an exhibit during trial (EX 42). The final parenting plan wasn't filed and served until the day of presentment. The final parenting plan is different from both proposed parenting plans entered during trial, and was entered before 90 days of filing and service. "A proposed parenting plan is not a Petition to Modify with affidavit setting forth facts (Ziglar). A parenting plan is "a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation." RCW 26.09.004(3). A motion to modify a parenting plan is just that, a motion seeking to modify a parenting plan. RCW 26.09.270. The motion includes "an affidavit setting forth facts supporting the requested . . .modification." RCW 26.09.270. A motion to modify a parenting plan is not a parenting plan" (Ziglar).

Because Mr. Scoutten never filed a Petition with affidavit setting forth facts, I was denied the opportunity to respond to a motion outlined in RCW 26.09.181 on form WPF DRPSCU 07.0200 Response to Petition. An affidavit setting forth facts was also never filed in this case, therefore, I was denied the opportunity to file an opposing affidavit outlined in RCW 26.09.270. Mr. Miller admitted on record to the trial court that his client had not filed a separate Petition to Modify with affidavit setting forth facts on May 4th, 2015. Mr. Miller stated that his client had only filed an Objection to Relocation (RP 445). The trial court acknowledged on record that Mr. Scoutten had not filed a Petition to modify, and abused it's discretion by not requiring one and then modifying the parenting plan.

> THE COURT: I don't have a working copy of the petition, and so—and Ms. Hosannah says there wasn't a separate Petition, but for some reason I had it in my mind that there was.
> MS. HOSANNAH: No, it was just in the Objection.
> MR. MILLER: It's in the Objection. Yes, the objection is to the Petition and modification of custody decree. So it's all in this one document.
> THE COURT: There is no separate petition? Because I noted that your proposed parenting plan, Exhibit 42, alleges .191 factors.
> MR. MILLER: It does.
> THE COURT: Okay.
> (RP 445).

An Objection to Relocation can only be used to modify the parenting plan applying RCW 26.09.260(6) "pursuant to relocation of the child", whereas

in this case relocation did not occur. At this point in the trial, I had already withdrawn my intent to relocate (RP 441).

d. Substantial Change of Circumstances

Judge Arend supported her ruling that there was a substantial change of circumstances by citing an unrelated, unpublished opinion. Unpublished opinions have no precedential value and cannot be cited as authority. RAP 10.4 (h). State v. Sigman, 118 Wash. 2d 442, 444 n. 1, 826 P 2d 144, 24 A.L.R.5th 856 (1992); see also RCW 2.06.040.

THE COURT:
There is a whole host of cases dealing with modification based on allegations that the present environment is detrimental, and there's, as you can imagine, all kinds of circumstances. So the only one that I found that was even remotely close to this is a recent—relatively **recent unpublished opinion** called In Re the Marriage of Johnathan Arras, 183 Wn. App. 1009 from 2014 out of King County. It's a Division 1 case. There, the Court of Appeals upheld the trial Court's exercise of it's discretion to modify a parenting plan. One of the –here's how it's similar, and it's very—it's not on all fours by any means, but here's how it's similar. It says, "In another finding, the Court discussed another substantial change in circumstances, which is really the first issue that the court has to address—" is there a substantial change in circumstance, and they said=="the parties' inability to get along and the son's worsening behavior." They entered findings that says the parents have been unable to completely get along to provide appropriate joint decision making, but then it goes on from there, and the findings talk about how this manifests itself in the child's suffering of mental health and behavioral issues. In this case, what I heard during the trial and what was argues in closing argument is that the environment with Mom is detrimental because—well, I should step back. **Substantial change of circumstances has to be the child and the non-moving parent, which is Mom, so arguably, at least under the Arras case, the inability of these two parents to jointly co-parent their child is a substantial change in circumstance** when you

have a parenting plan that requires joint decision making, and I think evidence is largely undisputed that these two parents are not co-parenting their child and they a not exercising joint decision making, certainly when it comes to medical issues. So—but then the question is whether or not that is causing a detriment to the child, and here's where-if I had had a little bit more time to conduct a little bit more research, I would like to get my hands on a couple of cases that talk about actual detriment in this context **because I didn't get any evidence that I think demonstrates the actual detriment**...(VRP 468, 469, 470, Court's Oral Ruling).

THE COURT...I think that the evidence was basically undisputed that while I don't see these two people as making joint decisions regarding Memphis' medical care, it does appear she is getting good medical care and unlike some of the cases where you saw that the child—the dispute is whether the child even needs medical care and then the child isn't taken to be seen by the specialist or whatever, this isn't that case. The child appears to be getting good medical care, but there we have the problem with the parents. Similarly, I would agree with Ms. Hosannah. It appears that the child is doing well in school. There's a number of cases dealing with modifications where there's problems in school and we could cite to that a an—as evidence of an actual detriment of what's going on in the household or the parent's inability to co-parent or exercise joint decision making so they're here. That doesn't manifest itself in her behavior at school or her performance at school as showing any detriment. In closing, Ms. Hosannah argued that there was no evidence of detrimental environment or cause for concern, and, as I just indicated, comparing it to the cases that are published and unpublished, I'm really struggling here with that second pierce of the actual detriment... What I don't have is any case law that indicates to me that that's evidence of actual detriment to the child...(VRP 472-474, Court's Oral Ruling).

Evidence of our co-parenting disagreements before the divorce are outlined in both of Ms. Hosannah's briefs (CP 88-99)(CP 100-103). The facts are clear that Mr. Scoutten has a history of Domestic violence with me (RP 338), that we have had problems co-parenting because Memphis is often left with third parties on his residential time for months on end due

to his on-going military service (RP 332)(EX 14)(CP 38-39). Problems co-parenting was well established before the divorce.

Mr. Miller himself said Memphis should not be removed from my and my and my mother's home:

MR.MILLER: "...there's no obvious abuse. There's no obvious harm to this child". He goes on to say "I think it would be extremely detrimental to this child to pull her out of St. Pats, to pull her out of her grandmother's environment" (RP 407).

Both Memphis and I lived with my mother, Memphis' grandmother. Mr. Miller himself argued for Memphis to stay in our environment when it suited his argument against relocation. We did not relocate.

e. RCW 26.09.260(1)(2)

Mr. Scoutten did not complete any pre-trial requirements, meet adequate cause, or file and serve a Petition to modify with affidavit setting forth facts to give the court authority to modify the parenting plan outside of relocation. Relocation trials do not provide relief for issues outside of relocation (EX D). Custodial changes are viewed as highly disruptive to children, and there is a strong presumption in the statutes and case law in favor of custodial continuity and against modification. McDole, 122 Wn.2d at 610. There is a strong presumption against modifying a parenting plan and it requires a two step process, first adequate cause must be found and then the parties must proceed to trial and prove (1) a substantial change occurred in circumstances as they were previously

known to the court, (2) the present arrangement is detrimental to the child's health, (3) the modification is in the child's best interest, and (4) the change will be more helpful than harmful to the child. Mr. Scoutten never made it past the adequate cause phase. The legislature has clearly stated its goal of maintaining residential continuity in the children's lives. RCW 26.09.002; In re Marriage of Combs, 105 Wn. App. 168, 174, 19 P.3d 469 (2001). Judge Arend adopted Mr. Scoutten's proposed parenting plan "in total" on June 18th, 2015(RP 6, June 18th, 2015 Afternoon Session). The trial court adopted a parenting plan awarding me weekend visitation when I was working in violation of RCW 26.09.187 (vii) Each parent's employment schedule. I testified my days off were Thursday Friday (RP 22). When a judgment is entered without procedural due process it is void. Ebbighausen, 42 Wn. App. at 102. Sumey, 94Wn. 2d at 762. A permanent parenting plan was entered without following any of the requirements outlined in RCW 26.09.181. The final parenting plan was entered the same day it was presented on July 24th, 2015. Judge Arend allowed Mr. Miller to "fill out the blanks" after Judge Arend signed the final parenting plan (RP 14, Presentation of Final Orders). Additionally, the trial court did not follow the determination of the legislature as expressed in its policy Statement RCW 26.09.002 and RCW 26.09.003 which reads in part: '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' and that '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 changing relationship of the parents or as required to protect the child from physical, mental or emotional harm'. 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..." RCW 26.09.002.

To protect the best interest of the child, the trial court must consider (iii) Each parent's past and potential for future performance of parenting functions, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child (RCW 26.09.187).

In this case, Mr. Scoutten admitted he was unable to provide Memphis' physical care due to his military service(RP 323-324). The parenting plan entered in this case placed sole legal and physical custody with Monica Scoutten through power of attorney (CP 459-461). Despite Mr. Scoutten's testimony that he was "nondeployable" during trial (RP 113), Mr. Scoutten deployed in December 2015 and is currently deployed overseas (EX. A, military orders). The modification placing Memphis primarily Monica instead of Mr. Scoutten was not in Memphis' best interest. Memphis' new counselor says she's having problems adjusting to "the

current living situation" (EX B). Additionally, Monica Scoutten has since physically assaulted me in front of Memphis resulting in an order of protection (EX.C). Monica Scott/Scoutten had been restricted from Memphis and I in 2014 (EX 16), the final parenting plan does not comply with the objectives outlined in RCW 26.09.187 (e) Minimize the child's exposure to harmful parental conflict.

Pursuant to RCW 26.09.184, the "objectives of the permanent parenting plan are to:
(a) Provide for the child's physical care; Parenting functions include (b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

Finding on RCW 26.09.260(2)(c)Detriment
There was no evidence of detriment to Memphis in this case, and no evidence the of the effect the child's environment has had on the child. A finding of detriment must be supported by evidence that shows the **effect the child's environment has had on the child**".

> In re Marriage of Kovacs for support. 67 Wn. App. 727, 840 P.2d 214 (1992). Wildermuth v. Wildermuth holds that there must be direct evidence of detriment. Wash.App. 442, 542 P.2d 463 (1975). Here is what the Wildermuth court held: "the controlling statute requires more than a showing of illicit conduct by the parent who has custody. There must be a showing of the effect of that conduct upon the minor child or children." Id. at 445, 542 P.2d 463.

f.191 factors

Due process requires a standard of proof that is commensurate with the weight of the interests at stake, Santosky 455 U.S. At 755. Due process

requires that the court provide notice of the issue to be argued. 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 (RCW 26.09.191). "Mere accusations, without proof, are not sufficient to invoke the restrictions under the statute." In re Marriage of Caven, 136 Wn.2d at 809. Procedure was not followed regarding .191 factors. Mr. Scoutten didn't file or serve a Petition to modify with affidavit setting forth facts. I was denied substantive rights to formally respond or defend against .191 factors. Judge Arend did not appoint a GAL to investigate the allegations of abuse or neglect required by RCW 26.44.053. Due process rights were never provided required by RCW 26.44.100 and RCW 26.44.040.

D. Conclusion

The trial court's substantive and procedural decisions raise due process concerns. The Due Process Clause guarantees, at a minimum, an impartial decision-maker and a fair decision-making process. Gourley v. Gourley, 158 Wn.2d 460, 467, 145 P.3d 1185 (2006) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.") I was not given notice of the issues to be argued. Mr. Scoutten failed to file and serve a Petition to Modify with affidavit

Mr. Scoutten failed to file and serve a Petition to Modify with affidavit setting forth facts. I was denied an opportunity to be served or respond. Adequate cause was not required. An opportunity to engage in any pre-trial procedures, meaningful settlement negotiations, parenting seminars, engage in discovery or ability to call witnesses was denied. Finally, the judge's expressions of concern for Mr. Scoutten and third parties alone, and her predilection to negatively stereotype me to criminals engaging in substance abuse calls her impartiality into serious question. Judge Arend got basic facts of the case wrong including the city that I was requesting to move, Judge Arend said I worked in Sammamish (RP 9, Presentation of Final Orders, Friday July 24, 2015). I testified I worked in Mercer Island numerous times during trial (EX 1). The trial court gave contradictory oral rulings. In order for the public to have faith in the judiciary, basic facts of the case should be remembered by the trial court and basic procedures should be followed. Such errors cast doubt on the integrity of the proceeding and the resulting decision.

Respectfully submitted,

5/6/16

Angela K. Schreiner, Pro Se

DEPARTMENT OF THE ARMY
BRAVO COMPANY, 2ND BATTALION, 75TH RANGER REGIMENT
JOINT BASE LEWIS-MCCHORD WASHINGTON 98433-9510

REPLY TO
ATTENTION OF:

AORG-SN-CB

04 December 2015

MEMORANDUM FOR RECORD

SUBJECT: Deployment for Training

1. PURPOSE: To document that SFC Scoutten, Michael will be deployed for training.

2. GENERAL: SFC Michael Scoutten will be deploying on or around December 2015 and will return on or around April 2016.

3. POC for this memorandum is 1LT Royce Vessell at 253-967-9276.

MICHAEL P. FERRITER
CPT, IN
Commanding

Ex. A

EX. B

Gmail

Angela Schreiner <angiekschreiner@gmail.com>

FW: daughter

dawn@sunrisepsychology.com <dawn@sunrisepsychology.com> Wed, Jan 13, 2016 at 6:31 PM

To: Angela Schreiner <angiekschreiner@gmail.com>

Angela,

I just wanted to forward you the original e-mail I had sent to you so that you know I did respond to your initial request. I have been meeting with Memphis since August 2015. I am working with Memphis on the adjustment to the divorce and current living situation. I hope that you will bring her in on Monday so that we can talk as well. It is important to make sure that everyone is on the same page in regards to parenting, discipline, what is said to Memphis, etc.

Thank you for your quick response today.

Dawn

From: Dawn Fisher, MA, LMHC, NCC [mailto:dawn@sunrisepsychology.com]
Sent: Monday, November 16, 2015 4:31 PM
To: Psychology Today <no-reply@psychologytoday.com>
Subject: RE: daughter

Angela,

Thank you for your e-mail. I am working with your daughter, Memphis. I spoke with Michael, and read the parenting plan, and it does say that he has decision-making rights in regards to non-emergency healthcare decisions and to provide you with the decision to utilize mental health services. I am happy to speak with you regarding Memphis, her counseling, and the things being worked on. I think it would be beneficial for you to be involved in this process, for both Memphis and myself. Please call me when you are available to.

Thank You

Dawn Fisher

pg. 1 of 2

Dawn M Fisher, MA, LMHC, NCC
Owner/Therapist
Sunrise Psychology, LLC
9101 Bridgeport Way SW, Ste D2
Lakewood, WA, 98499
Ph 253-987-6825 Fax 253-590-0875
www.sunrisepsychology.com

Taking the First Step is the Hardest

From: Psychology Today
Sent: Friday, November 13, 2015 2:04 PM
To: Dawn Fisher, MA, LMHC, NCC
Subject: daughter

Psychology Today

This email comes to you via your profile with Psychology Today.

From: Angela Schreiner
Email: angiekschreiner@gmail.com
Phone: (206) 228-4349

Subject: daughter

Hello, I'm checking to see if you are the counselor seeing my daughter and how long she's been seeing you. My ex husband Michael Scoutten said he put our daughter in counseling with someone name "Dr. Fisher" but did not give me any additional information. In our parenting plan, it says he is to discuss all major decisions with me and I am to have access to our daughters medical records. Please let me know if you are or aren't the counselor. Thank you, Angela Schreiner (206) 228-4349

---
*If you reply, check the original sender's email address is in your 'To:' field.

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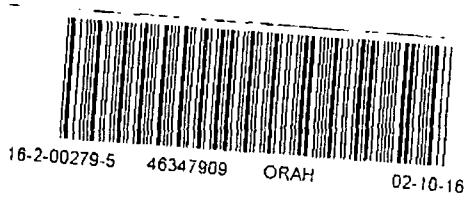
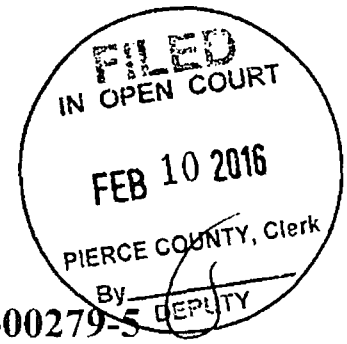
EX. C





SUPERIOR Court of Washington
For PIERCE COUNTY

ANGELA K SCHREINER

Petitioner

vs.

MONICA L SCOUTTEN

Respondent

No. 16-2-00279-5

Order for Protection - Harassment (ORAH)

Court Address 930 TACOMA AVE SOUTH TACOMA WA 98402

Telephone Number: (253) 798-7455

(Clerk's action required)

Warning to the Respondent: Violation of the provisions of this order with actual notice of its terms is a criminal offense under chapter 10.14 RCW and will subject a violator to arrest. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under chapter 7.21 RCW.

1. Full Faith and Credit: The court has jurisdiction over the parties, the minors and the subject matter. This order is issued in accordance with the Full Faith and Credit provisions of VAWA. 18 U.S.C. § 2265.

2. Notice of this hearing was served on the respondent by ☒ personal service ☐ service by publication pursuant to court order ☐ other _____.

3. Minors addressed in this order:

Name (First, Middle Initial, Last)	Age	Race	Sex
MEMPHIS T SCOUTTEN	5	W	F

Based upon the petition, testimony, and case record, the court finds that the respondent committed unlawful harassment, as defined in RCW 10.14.080, and was not acting pursuant to any statutory authority, and **It is therefore ordered that**:

X	Respondent is **restrained** from making any attempts to keep under surveillance petitioner and any minors named in the table above.

X	Respondent is **restrained** from making any attempts to contact petitioner and any minors named in the table above.
X	Respondent is **restrained** from entering or being within 500 ft (distance) of petitioner's ☒ residence ☒ place of employment ☐ other: ☐ The address is confidential ☒ Petitioner waives confidentiality of the address which is: 5420 - 60th ave ct. W; University Place Wa. 98467
	Judgment is granted against respondent for fees and costs in the amount of $_____.
	Other: *********FILING FEE WAIVED **********

It is further ordered that the clerk of court shall forward a copy of this order on or before the next judicial day to:

X **PERICE** County Sheriff's Office South Sound 911

X **LESA RECORDS TACOMA,** Police Department **where petitioner lives** and shall enter it in a computer-based criminal intelligence system available in this state used by law enforcement to list outstanding warrants.

X The clerk of court X petitioner shall forward a copy of this order on or before the next judicial day to:

X **PIERCE** County Sheriff's Office,

X **LESA RECORDS TACOMA,** Police Department **where respondent lives** which shall personally serve the respondent with a copy of this order and shall promptly complete and return to this court proof of service.

Or ☐ Petitioner has made private arrangements for service of this order.

Or ☐ Respondent appeared; further service is not required.

Or ☐ Respondent did not appear. The restraint provisions in this order are the same as those in the temporary order. The court is satisfied that the respondent was personally served with the temporary order. Further service is not required.

This Antiharassment protection order expires on 6/1/16.

If the duration of this order exceeds one year, the court finds that respondent is likely to resume unlawful harassment of the petitioner when the order expires.

Dated 2/10/16 at 2:00 a.m./p.m.

Judge/Court Commissioner

I acknowledge receipt of a copy of this Order:

Petitioner — Date 2/10/16

I acknowledge receipt of a copy of this Order:

Respondent — Date 2/10/16

FILED
IN COUNTY CLERK'S OFFICE
A.M. FEB 10 2016 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY_____ DEPUTY

PS 2 of 2

2/10/2016 10677 0089

EX. D

Relocation

RCW 26.09.405 through RCW 26.09.915

What you need to know when you are considering objecting to a relocation.

Only primary residential parents with a temporary or permanent parenting plan or other similar court order must give notice of a pending change in a child's residence. If your family does not have an applicable court order, then the relocation statute does not apply, and any pleadings related to a pending move must not be in the form of a relocation objection.

If your family does have an applicable court order, then the relocating parent must give notice of the move to the other parent, and the other parent must file a timely objection with the court.[1] If a timely objection is filed, then the court will permanently decide whether the primary parent is allowed to relocate the child after a trial.

The primary residential parent has a constitutional right to move. The relocation statute is designed to protect this right while giving the other parent a say if he or she believes the move would be detrimental to the child. Under the statute, it is presumed that the primary parent will be permitted to relocate with the child unless the objecting parent meets the **high burden** of rebutting that presumption.

Unless the relocating parent has obtained a court order, a child cannot be relocated during the statutory period allowed for objecting to the move. However, once the time to object is up, **the relocation is not automatically prevented or delayed while a relocation trial is pending**. If a parent wants to stop the move while the trial is pending, he or she must note a hearing for a temporary order to prevent the move within **15 days** of filing a timely objection.[2] A judicial officer will determine whether or not the move will be temporarily prevented, and he or she will record a temporary order. Either parent has the right to file a motion with the assigned trial judge to revise the commissioner's temporary order.

Rebutting the Presumption for Relocation

To rebut the presumption, an objecting parent must demonstrate that the **detrimental effect** of the relocation **outweighs the benefit of the change to the child *and the relocating parent***. The judge will not only consider any advantages or disadvantages of the move to the child. He or she will also look at the benefits of the move for the relocating parent such as job opportunities and family support, including a new partner or spouse. The objecting parent has the burden of proving the problems with the move are greater than its benefits.

Factors Considered by the Court

In rebutting the presumption for relocation, the objecting parent should **address as many statutory factors as possible**. The factors are not weighted, so one factor is not automatically more important than another. These factors are found in RCW 26.09.520, and they are,

(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;

---

[1] "The objection shall be in the form of: (a) A petition for modification of the parenting plan pursuant to relocation; or (b) other court proceeding adequate to provide grounds for relief." RCW 26.09.480(1).

[2] Absent circumstances in RCW 26.09.460(3), the child's resident cannot change pending the temporary hearing and resulting order. RCW 26.09.480(2).

(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.

Time Before Final Decisions are Made at Trial

As noted above, **factor (11)** applies to temporary orders restricting relocation, and it considers how long it will be before a final decision on relocation can be made. The time before a final decision can be made varies depending on whether there is already a pending action and the case type of the pending action.

Cases with a Pending Action

In family court, **Petitions for Modification** are scheduled for trial within **1 year of filing**. **Dissolutions and Residential Schedules** where a guardian ad litem has been appointed are scheduled within **18 months and 14 months** respectively.

Dissolutions and Residential Schedule cases can also be heard by judges not assigned to family court. These cases often have no appointed guardian ad litem, but not always. Generally, trials outside family court are scheduled **within 18 months** of the trial assignment date.

A notice of relocation and objection to relocation can properly be filed up to the day of trial for the case types noted above. Again, there has to be a permanent or temporary parenting plan, or similar order, made in the case. The type of action that is pending will affect when the final decision on relocation will be made. Some examples of the differences are outlined below.

Example 1

Several years after a permanent parenting plan is entered placing both children with Mother, Father files a **Petition for Modification** because his son has been living with him by agreement for six months. The day after Father's petition is filed, or even up to the day of trial, Mother could give notice of a planned move with their daughter. If asked to make a temporary order pending trial, the judicial officer will look to the trial date for the modification action filed by Father before Mother gave notice of relocation and he objected. The relocation issue will be tried as part of the original modification action.

Example 2

A **Dissolution** or **Residential Schedule** petition has been filed, and a judicial officer has made temporary orders placing the child primarily with Father. If Father plans to change his residence, he must notify Mother of planned change, and Mother must object in proper form. Mother may or may not obtain new temporary orders pending the relocation trial, but the final relocation decision will be made as part of the dissolution trial.

Advancing the Trial Date

When an action is pending, the filing of a notice or objection to a relocation may be grounds to advance the trial date. This possibility depends on, among other things, the type of case that is pending, whether it is in family court, and how prepared you are for trial on all of the issues. To advance a trial date, you must obtain the court's approval upon motion as allowed by law.

Cases Without a Pending Action

When an objection to a move includes a Petition for Modification of an existing permanent parenting plan/residential schedule **solely** due to receiving notice of the primary parent's move, the case type is **Relocation**.

Relocation trials are scheduled within **6 months**. Relocation trials are given priority in family court, so filing an objection to get a quicker trial to resolve issues outside relocation is cutting in front of other parents who have been waiting to have their issues heard and resolved by the court. Plus, relocation trials **do not** resolve any requests for relief outside the issues involved in a potential change in a child's residence.

Do not use a relocation objection to "get even" with the other parent, or to lower your child support obligation because you lost your job. Relocation objections must be filed in good faith, and the relocation trial will not provide relief for issues outside relocation. You may be required to pay the other party's **attorney's fees** if your objection to relocation is frivolous, or if you should have filed your case under different legal grounds.

FILED
COURT OF APPEALS
DIVISION II

2016 MAY -6 PM 3:40

STATE OF WASHINGTON

BY AP
DEPUTY

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re: Angela K. Scoutten/Schreiner Petitioner, and Michael J. Scoutten Respondent.	**No.** 48027-1-II **Return of Service (Optional Use) (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_____:
   [X] other: APPELANT'S REPLY TO RESPONDENTS BRIEF
   APPEAL NO. 48027-1-II

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

   Date: _____5/06/2015_____ Time: ____3pm_____ a.m./p.m.

   Address: __1019 Regents Blvd._#204_____

   __Fircrest Wa 98466_____

4. Service was made:

   [ ] 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) _____5/6/2016_____.

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

Signed at (city) _____university place_____, (state) ____wa_____, on (date) _____.

_____ Signature

Angela K Schreiner_____ Print or Type Name

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

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☐ Adult Signature Restricted Delivery	$
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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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