

NO. 28640-1-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

---

JAMIE LYN RUFF,

Respondent,

vs.

DENNIS ANTON KNICKERBOCKER,

APPELLANT.

---

BRIEF OF APPELLANT DENNIS ANTON KNICKERBOCKER

---

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## **A. ASSIGNMENTS OF ERROR**

1. By way of entry of “Judgment and Order Establishing Residential Schedule” dated October 27, 2009, the superior court of Spokane County, State of Washington (hereafter superior court) erred in exercising subject matter jurisdiction. [CP 275-280].

2. By way of “Findings of Fact and Conclusions of Law on Petition For Residential Schedule” dated October 27, 2009, the superior court erred in exercising subject matter jurisdiction. [CP 269-274].

3. By way of “Residential Schedule Final Order” dated October 27, 2009 the superior court erred in exercising subject matter jurisdiction. [CP 281-288].

4. By way of “Memorandum Opinion” of October 27, 200 the superior court erred in exercising subject matter jurisdiction. [CP 264-268].

5. The superior court further erred in entering that part of its Judgment on October 27, 2009 which states:

. . . at section 3.1 “[t]he court has jurisdiction over the child(ren) as set forth in the findings of fact and conclusions of law.” [CP 276]

6. The superior court also erred on October 27, 2009 in its finding no 2.4 of its Findings of Fact and Conclusions of Law on Petition For Residential Schedule which state:

. . . at section 2.4 “This state is the home state of the child because the child lived in Washington with a parent or person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding [and] [t]he child and the parents or the child and at least one parent or person acting as a parent have significant connection with the state other than mere physical presence, and substantial evidence is available in this state concerning the child’s care, protection, training and personal relationships, . . . and . . . [t]he child’s home state has declined to exercise jurisdiction on the ground that this state is the mere appropriate forum under RCW 26.27.261 or 271.” [CP 271].

7. The superior court likewise erred on October 27, 2009 in entering that part of its memorandum opinion, which states:

. . . “This hearing was held on October 19, 2009 in regards to a final parenting plan for the child of Ms. Ruff and Mr. Knickerbocker. The court heard testimony from several witness (sic) including the GAL, Mary Ronnestad. The court took the decision under advisement. After a review of the 3 volumes of court files and the 47 page report done by the GAL, the court makes the following Findings”. . . . [CP 264]

8. The superior court simultaneously erred in entering that part of its July 17, 2008, ex-parte order, which states:

. . . .”The court adopts paragraphs 2.1, 2.2 and 2.4 of the Motion and Declaration for an Ex-parte Restraining Order and for an Order To Show Cause (Form WPF DR 04.150), as its findings, and finds a need for Washington State to exercise emergency

jurisdiction, if necessary, so child's residence remains stable pending hearing. Father consents to jurisdiction in Washington by filing of his petition." [See Appendix "A"; See also supplemental designation clerk's papers]

9. With respect to the August 07, 2008, Temporary Order the Superior Court erred in appointing the guardian ad litem for lack of subject matter jurisdiction. [CP 259-262]

## **B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether, as a matter of law, the superior court had subject matter jurisdiction at the commencement of the proceedings to make rulings concerning the minor child and subsequently to proceed to final trial? [Assignments of Error numbers One through Nine].

2. Whether, as a matter of law, the superior court subsequently acquired subject matter jurisdiction to make rulings concerning the minor child and subsequently proceed to trial? [Assignments of Error numbers One through Nine].

3. Whether the superior court, abused its discretion, by entry of the court's opinion, Findings, Conclusions, Judgment and Residential Schedule Final Order? [Assignments of Error numbers One through Nine].

4. Whether, the superior court, abused its discretion, by

failing to comply with the Uniform Child Custody Jurisdiction Enforcement Act and the Parental Kidnapping Prevention Act? [Assignments of Error numbers One through Nine].

### **C. STATEMENT OF THE CASE**

Factual Background: At the time this matter was commenced in the superior court of Spokane County, State of Washington in cause number 08-3-01628-3, Kayleigh Lynn Ruff was 09 years old. [CP 1-8] Later, when the case was tried on October 19, 2009, Kayleigh was 10 years old. [CP 270] Kayleigh and Ms. Ruff lived in Great Falls, Montana for a time, while Ms. Ruff attended college. [CP 264] As reflected in the report of the guardian ad litem dated September 08, 2009:

. . . Ms. Ruff met Mr. Knickerbocker in Montana and they were together about five years, until Kayleigh was about three months old. After Kayleigh was born Ms. Ruff tried to make the relationship work. She initially started college before Kayleigh's first birthday and stopped attending when Kayleigh was three years old. During this time she and Kayleigh resided in Great Falls, Montana about an hour away from Mr. Knickerbocker. In 2003 Ms. Ruff returned to Spokane with Kayleigh and Kayleigh resided with her until 2006. Kayleigh then resided with Mr. Knickerbocker until the end of the summer (September) in 2007. Kayleigh returned to Montana in November 2007 in Shelby Montana, a small town, where Mr. Knickerbocker currently resides. Mr. Knickerbocker

has lived in Shelby, Montana since 2008 before which he lived in an apartment in Missoula, Montana from 2005 until 2008. [CP 315-363 Confidential Report]

In 2003 Ms. Ruff moved to Spokane, Washington and Kayleigh continued to live with her until 2006 when Ms. Ruff decided to return to school. [CP 264] At this time Mr. Knickerbocker agreed to take over as the primary parent while Ms. Ruff attended school. [CP 264] From 2006 to the end of summer 2007, Kayleigh then lived with Mr. Knickerbocker and his parents, at their home, in Shelby, Montana. [CP 264]

Since that time Kayleigh has been living with Ms. Ruff. [CP 264] Kayleigh was enrolled in counseling at Children's Home Society in November 2007 due to behavior issues, [CP 265], Kayleigh appeared to be making progress until this court process began in 2008. [CP 265]

In turn, Ms. Ruff has been seeing a counselor for issues of depression and anxiety and working in therapy as well as taking ant-depressant medications when needed. [CP 265]

Mr. Knickerbocker continues to live in Shelby, Montana after having moved to that community from Missoula, Montana. [CP 265]

Procedural History: On October 24, 2002, The Montana Ninth

Judicial District Court Toole County issued an Order for Interim Parenting Plan [CP7-8] at Ms. Ruff's request. [CP 7-8] The interim order addressed the residential provisions for the minor child named Kayleigh Lynn Ruff [CP 7-8] and placed her in Ms. Ruff's "primary custody." [CP 7-8] The order contemplated Ms. Ruff might in the future move to another state. [CP 7-8]

Despite the Montana court's order, Ms. Ruff filed in the Spokane County superior court, a Petition for Residential Schedule/Parenting Plan/Child Support on July 17, 2008, concerning Kayleigh. [CP 3-6] Attached to the petition was a certified copy of the Montana court's interim order. [CP 7-8] Also, in a contemporaneously filed affidavit, Ms. Ruff further stated:

. . . Dennis and I both lived in Shelby, Montana when Kayleigh was born. On October 24, 2002 an order for Interim Parenting Plan was filed in the Montana Ninth Judicial District Court for Toole County. This order stated that if I changed my primary residence we would alternate weekends for visitation. I was named the primary parent of Kayleigh in that order and have continued to be so since her birth. Although an Interim Parenting Plan was filed, the parentage action was never finalized and no formal order exists. . . . After I graduated from college I continued to live in Shelby, Montana . . . when Kayleigh began the second grade she spent the school year in Montana with Dennis.

[See CP 496-497 and CP 94-101; 135-136] Attached to

the affidavit was an Order of Protection also issued by the Ninth Judicial District Toole County, Montana concerning the child. [CP 409-410]

Despite the Montana court orders [CP7-8; 409-410] the Spokane Superior Court issued an ex-parte order on July 17, 2008 stating there was:

. . . “a need for Washington to exercise emergency jurisdiction, if necessary, so child’s residence remains stable pending hearing. Father consent’s to jurisdiction in Washington State by the filing of his petition.” . . .

[CP 513-515 ]

Thereafter, on August 07, 2008, the superior court issued a temporary order appointing a guardian ad litem, [CP 259], and placing Kayleigh with Ms. Ruff. Id. However, during this process there never was any contact between the superior court and the Montana court, requesting or otherwise authorizing any extension of “emergency jurisdiction.” Id. Nor, did the Spokane Ex-Parte Order set forth any deadlines for interstate communication with the Montana court nor address the scope of “emergency jurisdiction.”

[CP 513-515]

On October 27, 2009 the superior court issued a memorandum

opinion [CP 264-268] along with a Judgment and Order Establishing Residential Schedule [CP 275-280] with Findings of Fact and Conclusions of Law on Petition for Residential Schedule [CP 269-274] and a Residential Schedule Final Order. [CP 281-288] At section 3.1 of the Judgment the Superior Court stated “[t]he court has jurisdiction over the child(ren) as set forth in the findings of fact and conclusions of law.”[CP276] As stated contemporaneously in the findings of fact and conclusions at section 2.4, the Court also concluded it was the home state of the child and that Washington had a significant connection with the child and at least one parent. [CP 271] Yet, the superior court also found that “the child’s home state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 271. [CP 271]

Prior to the entry of these decisions the superior court never communicated with the Montana District Court. Id.

#### **D. STANDARD OF REVIEW**

The issues raised herein are governed by the following standards of review. First, a superior court oral or memorandum decision, if included in the record, may be considered on appeal.

Banuelos v. TSA Washington Inc., 134 Wn. App. 603, 616, 140 P. 3d 652 (2006). Second, since this case involves mixed questions of law and fact, such review is treated as a question of law, to be viewed in the light of the facts and evidence presented. State v. Horrace, 144 Wn. 2d 386, 392, 28 P.3d 753 (2001). Third, pure legal errors including, the proper interpretation and application of a statute, court rule, or prior case law are reviewed de novo. State v. Horrace, 144 Wn. 2d 386, 392, 28 P.3d 753 (2001). In this vein, whether a court has subject matter jurisdiction, poses a question of law, and is thus reviewed de novo. Tostado v. Tostado, 137 Wn. App. 136, 144, 151 P. 3d 1060 (2007), In re Marriage of Thurston, 92 Wn. App. 494, 497, 963 P. 2d 947 (1998), review denied, 137 Wn. 2d 1023 (1999), In re Kastanas, 78 Wn. App. 193, 197, 896 P. 2d 726 (1995). Fourth, with respect to issues addressing the exercise of discretion, the standard of review is "abuse of discretion." And, when the reviewing court addresses an alleged abuse of discretion, questions can and should be separated into questions of fact and the conclusions of law based on those facts. Bartlett v. Betlach, 136 Wn. App. 8, 19, 146 P. 3d 1235 (2006), review denied, 144 Wn. 2d 1004 (2007).

A superior court's discretion is abused when the court has based its decision on untenable grounds or for untenable reasons, or has otherwise failed to abide by the governing law. Deyoung v. Cenex Ltd., 100 Wn. App. 885, 894, 1 P. 3d 587 (2000), review denied, 146 Wn. 2d 1016 (2002). As stated in In re Parentage of Jannot, 110 Wn. App. 16, 22, 37 P. 3d 1265 (2003), aff'd in part, 149 Wn 2d 123, 65 P. 3d 664 (2002):

. . . The abuse of discretion standard is not, of course, unbridled discretion. Through case law, appellate courts set parameters for the exercise of the judge's discretion. At one end of the spectrum the trial judge abuses his . . . discretion if [her] decision is completely unsupportable, factually. On the other end of the spectrum, the trial judge abuses [her] discretion if the discretionary decision is contrary to the applicable law. . . .

Lastly, as stated in In re Marriage of Major, 71 Wn. App. 531, 859 P. 2d 1262 (1993) a challenge to subject matter jurisdiction can be brought at any time. See also, Inland Foundry Co. Inc. v. Spokane County Air Pollution Control Authority, 98 Wn. App. 121, 989 P. 2d 102 (1999), review denied, 141 Wn. 2d 1008 (2000); see also, RAP 2.5(a)(1). This includes prior orders of a court commissioner not designated in the appeal of the final judgment under appeal.

Hwang v. McMahon, 103 Wn. App. 945, 15 P. 3d 172 (2000),  
review denied, 144 Wn. 2d 1001 (2001). See also, RAP 2.4.  
And, a litigant cannot use post filing facts to create subject  
matter jurisdiction when it did not first exist. In re Marriage of  
Iernonimakis, 66 Wn. App. 83, 831 P. 2d 172 (1992), review  
denied, 120 Wn. 2d 1006, 838 P. 2d 1142 (1992).

### E. ARGUMENT

1. As a matter of law, the superior court lacked subject matter jurisdiction at the beginning of this case as subject matter jurisdiction was exclusively vested in Montana and the PKPA and the UCCJEA were not complied with to assert any form of jurisdiction. [Issue No. One].

In In re Custody of A.C., 165 Wn. 2d 568, 574, 200 P. 3d 689 (2009) it was stated:

. . . Both Montana and Washington have adopted the UCCJEA, making the act the exclusive basis to determine jurisdiction of this interstate child custody dispute. RCW 26.27.201(2); Mont. Code Ann sec 40-7-201(2) The UCCJEA determines when one state may modify an "initial child custody determination" made by another state. RCW 26.27.201(1),.221 Under the UCCJEA, a Washington court may modify Montana's initial custody determination only if either Montana declines jurisdiction or all parties have left that state RCW 26.27.221. The UCCJEA provides, in pertinent part: Except as otherwise provided in RCW 26.27.231, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under RCW 26.27.201(1)(a) or (b) and: (1) the court of the other

state determines it no longer has exclusive, continuing jurisdiction under RCW 26.27.211 or that a court of this state would be a more convenient forum under RCW 26.27.261; or (2) [a] court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent does not presently reside in the other state RCW 26.27.221. In essence the UCCJEA provides that unless all of the parties and the child no longer live in the state that made the initial determination sought to be modified, that state must first decide it does not have jurisdiction or decline jurisdiction. . . Montana has jurisdiction over this dispute because Montana made the initial child custody determination. . . . [Mr. Knickerbocker] is a person acting as a parent under the act who still resides in Montana, and Montana has not declined jurisdiction. RCW 26.27.221.

In A.C. it was argued, "there is no current Montana custody decree in effect so there is no initial determination to be modified." In re the Custody of A.C., at 575, As should be the case here, such an argument should fail "[s]ince the trial court's action in this case occurred after Montana's prior determination concerning custody . . . it was a modification of Montana's initial determination." In re the Custody of A.C., at 575. Similarly, it is the Montana court which must make the jurisdictional determination. In re the Custody of A.C., at 576 RCW 26.27.221(1)

2. As a matter of law, the superior court lacked jurisdiction over the subject matter as no emergency existed. [Issue No. Two]

In general, subject matter jurisdiction is an elementary prerequisite to the exercise of judicial authority. In re Leland, 115 Wn. App. 517, 526, 61 P. 3d 357 (2003), overruled on other grounds, In re PRP of Higgins, 152 Wn.2d 155, 95 P. 3d 330 (2004). Where a court has no subject matter jurisdiction the proceeding is void. *Id.* A court's lack of subject matter jurisdiction may be raised by a party, or the court, at any time in a legal proceeding. *Id.* The authority of a tribunal is confined by the terms of its authorizing statute. *Id.* The tribunal has no power to assume jurisdiction greater than that conveyed by the statute. *Id.* The UCCJEA is consistent with 28 U.S.C. sec 1738 A, the Parental Kidnapping Prevention Act of 1980 (PKPA). In re Marriage of Hamilton, 120 Wn. App. 147, 150, 884 P. 3d 259 (2004).

Here, by definition, no "emergency" existed when, in July 2008, the superior court commissioner, entered an ex-parte custody order and claimed "emergency jurisdiction" to do so stating, "the court adopts paragraphs 2.1, 2.2, and 2.4 of the "Motion and Declaration for an Ex-parte Restraining Order and for an Order To Show Cause" as its findings, and finds a need for Washington State to exercise emergency jurisdiction, if necessary, so child's residence

remains stable pending hearing. Father consents to jurisdiction in Washington by filing of his petition.” A party cannot consent to subject matter jurisdiction. Rust v. Western Washington State College, 11 Wn. App. 410, 419, 524 P. 2d 204 (1974).

Since Montana had already issued an interim initial custody order, as a matter of law, no jurisdiction was available in Washington to address the matter. As stated in In re Marriage of Kastanas, 78 Wn. App. 193, 199, 896 P. 2d 726 (1995) under the federal Parental Kidnapping Prevention Act of 1980 (PKPA) emergency jurisdiction was unavailable to the Washington court. As therein stated at 28 U.S.C.A. 1738A, Pub. L. sec 8(a) Stat 3569, and as quoted in part in Kastanas, at 1999, “(g) a court of a State shall not exercise jurisdiction in any proceeding for a custody determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.”

Under the reasoning and holding in Kastanas, Washington could not take jurisdiction consistent with the PKPA. See, In re Marriage of Ieronimakis, 66 Wn. App. 83, 831 P. 2d 172, review denied, 120

Wn. 2d 1006, 838 P. 2d 1142 (1992). When Ms. Ruff filed her initial papers in Washington subject matter jurisdiction had already been vested in Montana. As a result, no child custody determination regarding Kayleigh could be entered in Washington which would be consistent with the PKPA under 28 U.S.C. sec 1738A(2)(A-E), see also, RCW 26.27.251(1)-(3).

4. Alternatively, and additionally, as a matter of law, any “emergency jurisdiction” evaporated in August 2009. [Issue No. Four]

RCW 26.27.231 is the “emergency jurisdiction” section of the Uniform Child Custody Jurisdiction Enforcement Act of Washington. As stated at RCW 26.27.231 (3). “[i]f there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, (i.e., Montana) any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under RCW 26.27.201 through RCW 26.27.221. (i.e., Montana). (Emphasis and bracket material added) As further stated in RCW 26.27.231 (4) a court of

this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in , or a child custody determination has been made by, a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, (i.e. Montana) shall immediately communicate with the other court . . . (i.e., Montana) to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. (Emphasis and bracket material added) The failure to comply with the mandates of RCW 26.27.231 illustrate the improper exercise of subject matter jurisdiction in terms of the court's ex-parte order and total lack of any true "emergency".

As stated in 32 P. Hoff, The ABC's of the UCCJEA, *Family Law Quarterly*, No. 2 (Summer 1998), under UCCJEA Sec 204, courts have temporary emergency jurisdiction when a child who is in the state and has been abandoned, or an emergency makes it necessary to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. (Emphasis added) The UCCJEA narrows the UCCJA's definition of emergency by excluding neglect cases . . . Section

206(a) makes it clear that a court may exercise emergency jurisdiction under section 204 even if a proceeding has been commenced in another state. However, immediate judicial communication is mandatory when there are simultaneous proceedings. The object is to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order. . . . The duration of a temporary emergency order depends upon whether custody has been, or is being, litigated elsewhere. (Emphasis added) If there is no prior custody order enforceable under the UCCJEA and no proceeding has been commenced in a court with jurisdiction under sections 201-203, then the temporary emergency order becomes a final determination, if it so provides, when the state becomes the child's home state. (i.e., in six months) (Emphasis added) This assumes that notice has been given in accordance with the Act. If there is a previous decree or custody proceeding has been commenced in a court having jurisdiction under sections 201-203, the temporary emergency order must specify a period that the court considers adequate to allow the person to obtain an order from the court of jurisdiction. (Emphasis added) How long the order should last is

one of several issues to be discussed when the emergency court communicates with the sister state court, at section 204(d) requires it to do. (A court that learns of an emergency proceeding has the reciprocal duty to communicate with the emergency court.) The emergency remains in effect until an order is obtained from the other state within the specified period or the period expires. (Emphasis added).

Here, at the time Ms. Ruff commenced her Spokane action and sought an ex-parte order, Montana alone had subject matter jurisdiction consistent with the UCCJEA. In fact, Montana had issued an initial interim custody order at Ms. Ruff's request as defined by the UCCJEA. Thus, an interstate communication between the Spokane Court and the Montana Court was immediately required by the UCCJEA before entry of any further order by the superior court at Ms. Ruff's request.

5. As a matter of law, the superior court could not assert "home state jurisdiction" as stated in its findings. [Issues No two through four]

As noted in Ieronimakis, supra., a UCCJA case, jurisdiction cannot be created after the fact. Although the UCCCJA has been since amended and replaced with the UCCJEA, In re Marriage of

Hamilton, supra., the principle is still nonetheless sound for all of the reasons cited in Ieronimakis. At the time this matter was commenced Montana was exercising exclusive jurisdiction and thus the child's residency for the last six months was irrelevant.

6. As a matter of law, the superior court could not conclude it had home state jurisdiction and in the same breath also conclude so did another state. [Issues Nos. three through four]

By definition, there can be only one home state of the child.

RCW 26.27.021(7). Thus, it makes no sense for the superior court to have entered back to back findings and conclusions wherein it was written:

. . . at section 2.4 "This state is the home state of the child because the child lived in Washington with a parent or person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding [and] [t]he child and the parents or the child and at least one parent or person acting as a parent have significant connection with the state other than mere physical presence, and substantial evidence is available in this state concerning the child's care, protection, training and personal relationships, . . . and . . . [t]he child's home state has declined to exercise jurisdiction on the ground that this state is the mere appropriate forum under RCW 26.27.261 or 271. . . .

[CP 271].

7. As a matter of law, the superior court was required to immediately speak with Montana and failed to do so. As such there was no declination of jurisdiction in favor of Spokane. [Issue no.

three]

As stated at RCW 26.27.101 (1), a court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. As also mandated at RCW 26.27.251(2), except as otherwise provided in RCW 26.27.231 (i.e., emergency jurisdiction), a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to RCW 26.27.281. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding. (Emphasis added), see also, RCW 26.27.231(4). In fact, pursuant to RCW 26.27.421 (1) “[a] court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter.”

Here, there was no immediate communication despite the fact the superior court and the Montana court are in the same time zone and easily accessible by telephone. Nor was there any stay issued. Nor was the matter dismissed in recognition of the Montana court's valid, certified order. In short, there was no "emergency" the Montana court could not adequately address and no jurisdiction to proceed in superior court.

8. As a matter of law, the lack of subject matter jurisdiction renders the proceedings of the superior court including the appointment of a guardian ad litem, void. [Issues One through Four]

It is well established that a judgment or other decision rendered by a court lacking subject matter jurisdiction is void ab initio and is legally no judgment or decision at all. Wesley v. Schneckloth, 55 Wn. 2d 90, 93-94, 346 P. 2d 658 (1959); State v. Brennan, 76 Wn. App. 347, 349 n.4, 884 P. 2d 1343 (1994); Rust v. Western Wash. State College, 11 Wn. App. 410, 418, 523 P. 2d 204 (1987). Thus, this proceeding and all decisions entered herein by the superior court are void and of no effect. Id.

#### **F. REQUEST FOR AWARD OF ATTORNEY'S FEES**

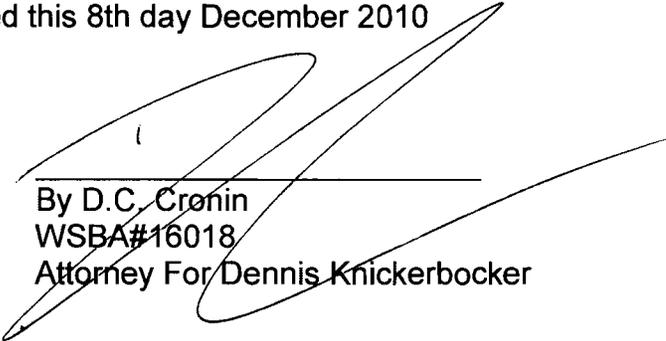
Pursuant to RAP 18.1 and Chapter 26.27 the Child Custody Jurisdiction statute, Mr. Knickerbocker requests reasonable

attorney's fees and expense. As provided in RCW 26.27.511(1) "[t]he court shall award the prevailing party, . . . necessary and reasonable expenses incurred by or on behalf of the party, including costs, communications expenses, attorneys' fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings." The respondent in this case cannot establish "the award would be clearly inappropriate." RCW 26.25.511(1). In fact, it was Ms. Ruff who wrongfully commenced these proceedings while ignoring proceedings she previously commenced in Montana.

#### **G. CONCLUSION**

Mr. Knickerbocker respectfully requests the challenged decisions of the Superior Court as set forth in the assignments of error and this appeal be reversed and the matter dismissed as void.

Respectfully submitted this 8th day December 2010



By D.C. Cronin  
WSBA#16018  
Attorney For Dennis Knickerbocker

Declaration of Service

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington, that on this date declarant personally filed the original and one copy of the document entitled: BRIEF OF APPELLANT DENNIS ANTON KNICKERBOCKER  
at:

Court of Appeals of the State of Washington, Division III  
Clerk of the Court  
500 N. Cedar Street  
Spokane, WA 99201

AND

that on this date declarant placed in the mails of the United States Postal Service a properly stamped and addressed envelope containing a true and correct copy of: BRIEF OF APPELLANT DENNIS ANTON KNICKERBOCKER directed by first class mail to Opposing Pro Se Respondent, namely:

Jaime Ruff  
3315 W Bismark Ave Apt 3N  
Spokane WA 99205-7462

DATED this 3<sup>rd</sup> day of January , 2011

  
TK Cronin  
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