

**FILED**

NOV 02 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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 RESPONDENT, JAMIE LYN RUFF

---

Peter S. Lineberger  
Attorney for Respondent  
Bar No.: 24104  
900 North Maple, Suite 102  
Spokane, WA 99201  
509-624-6222

**FILED**

NOV 02 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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 RESPONDENT, JAMIE LYN RUFF

---

Peter S. Lineberger  
Attorney for Respondent  
Bar No.: 24104  
900 North Maple, Suite 102  
Spokane, WA 99201  
509-624-6222

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. STATEMENT OF THE CASE	
A. Additional Facts Necessary for Decision .....	2
B. Procedural History .....	4
III. STANDARD OF REVIEW	
IV. ARGUMENT	
A. Discussion of <i>In re Custody of A.C.</i> .....	9
B. The Trial Court Property Exercised Emergency Jurisdiction .....	12
1. Appellant Cannot Maintain That No Emergency Exists .....	12
2. Even Under RCW 26.27.231, The Emergency Jurisdiction Statute, the Law Does Nor Require Vain or Useless Acts .....	15
C. The Crucial Distinction Between <i>Marriage of A.C.</i> And <i>Ruff v. Knickerbocker</i> .....	20
D. Other Fallacies of Mr. Knickerbocker’s Arguments .....	23
E. Request for Award of Attorney’s Fees .....	25
V. CONCLUSION	
Conclusion .....	26

TABLE OF AUTHORITIES

STATE CASES

*Birkeland v. Corbett*, 51 Wn.2d 554, 565, 320 P.2d 635  
(1958) ..... 17

*Childers v. Childers*, 89 Wn.2d 592, 595 - 97,  
575 P.2d 201 (1978) ..... 16, 19, 24

*Dougherty v. Dep't. of Labor Indus.* 150 Wn.2d 310,  
316 - 17, 76 P.3d 1183 (2003) ..... 11, 12

*Green v. McAllister*, 103 Wn.App. 452, 469, 14 P.3d 795  
(2000) ..... 15

*In re Custody of A.C.*, 165 Wn.2d 568, 200 P.3d 689 .... 9, 10, 11, 12,  
..... 20, 21, 22, 24

*In re Marriage of Furrow*, 115 Wn.App. 661, 63 P.3d  
821 (2003) ..... 11, 12, 13, 25

*In re Marriage of Ieronomikas*, 66 Wn.App. 83, 831 P.2d  
172 ..... 8, 14, 15

*In re Marriage of Kastanas*, 78 Wn.App. 193, 199, 896 P.2d  
726 (1995) ..... 14, 15

*In re Marriage of Major*, 71 Wn.App. 531, 533 - 535, 859  
P.2d 1262 (1993) ..... 11, 12, 13

*Kauzlarich v. Yarborough*, 105 Wn.App. 632, 653, 20 P.3d  
946 (2001) ..... 15

<i>Kelleher v. Ephrata School District</i> , 165, 56 Wn.2d 866, 355 P.2d 989 (1960) . . . . .	15, 19, 24
<i>Oak Harbor School District v. Oak Harbor Education Association</i> , 86 Wn.2d 497, 500, 545 P. 2d 1197 (1976)	15, 19, 24
<i>Parry v. Windmere Real Estate/East, Inc.</i> , 102 Wn.App. 920, 929, 10 P.3d 506 (2000) . . . . .	18
<i>Shinn v. Thrust I.V. Inc.</i> , 56 Wn.App. 827, 843 - 44, 786 P.2d (1990) . . . . .	18

STATE STATUTES

RCW 26.27.011 . . . . .	1
RCW 26.27.101 . . . . .	23
RCW 26.27.111 . . . . .	23, 24
RCW 26.27.121 . . . . .	23, 24
RCW 26.27.201(b) . . . . .	23, 24
RCW 26.27.211(1)(b) . . . . .	23, 24
RCW 26.27.212 . . . . .	21
RCW 26.27.213 . . . . .	16
RCW 26.27.221 . . . . .	21, 23, 24
RCW 26.27.231 . . . . .	10, 14, 16, 21, 23

RCW 26.27.231(1) .....	9, 16
RCW 26.27.231(3) .....	16
RCW 26.27.251 .....	23, 24
RCW 26.27.261 .....	20, 21
RCW 26.27.231(3) .....	16, 20
RCW 26.27.261 .....	21, 23
RCW 26.27.511(1) .....	26
RCW 26.27.941 .....	1

STATE COURT RULES

RAP 9.11 .....	6, 20
RAP 10.3(b) .....	15

## I. INTRODUCTION

This case presents an unusual factual scenario which should be the primary focus of this matter on appeal. Additional facts which were not addressed by appellant (hereinafter referred to as “Mr. Knickerbocker”) will be addressed below by the respondent (hereinafter referred to as “Ms. Ruff”).

While Mr. Knickerbocker’s appeal focuses on Washington’s Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), RCW 26.27.011 - 26.27.941, this case does not involve a typical UCCJEA situation where two parties in two different states are competing for each person’s state of residence to be the state to exercise child custody jurisdiction. Indeed, both parties filed parenting plan actions in the state of Washington simultaneously, and the cases were consolidated by mutual consent. No one ever argued that he or she wanted the custody case adjudicated in Montana.

For this reason, the trial court in this matter handled the case fairly, promptly, and correctly. Mr. Knickerbocker’s only real complaint is that he was not awarded primary placement of the child of the parties. He is using the UCCJEA as a pretext for getting a re-adjudication of the case in a different forum.

None of the trial court's findings are challenged in this appeal, except to the extent that they bear upon the child custody jurisdiction issues argued in the Brief of Appellant. This Brief of Respondent will show that while both parties are able to present a textbook-like presentation of the Washington UCCJEA and cases thereunder, the final analysis of this case turns on the law as influenced by the peculiar facts of this case. The facts of the case compel the conclusion that the trial court decision should be affirmed.

## II. STATEMENT OF THE CASE

### A. ADDITIONAL FACTS NECESSARY FOR DECISION.

Mr. Knickbocker gratuitously refers to a single fact about Ms. Ruff, namely that she was seeing a counselor and sometimes taking medication. Brief of Appellant, pg. 7. Not surprisingly, Mr. Knickerbocker omitted some references in the trial court's Opinion pointing to Mr. Knickerbocker's propensity to "express concerns that Ms. Ruff has 'serious mental problems' and 'needs treatment'. He has made these statements in front of their child on several occasions." CP 265. The Court also noted in its Opinion:

"Mr. Knickerbocker has indicated that Ms. Ruff has mental issues, the mental health records do not show this. . . .

“The Court was concerned that Mr. Knickerbocker continued to allege that Ms. Ruff and ‘her whole family’ had mental problems and needed help. The Court is concerned that it appears Mr. Knickerbocker has no concerns that he states this in front of his child and repeats it during exchanges causing further distress to his daughter.” CP 266.

Should anyone wonder why the trial court entered its Ex Parte Restraining Order claiming emergency jurisdiction, one need only look at the supporting documentation filed by Ms. Ruff, particularly her initial affidavit. See CP 496 - 499. In this she informs the trial court of several incidents and facts which clearly showed that Mr. Knickerbocker intended to and was about to abduct Kayleigh from the State of Washington. CP 498. He even tried to abduct Kayleigh from her Spokane daycare with no notice to Ms. Ruff, going so far as to try to open a window through the outside to get in to Kayleigh while the daycare provider was holding him off. CP 498, lines 16 through 22.

On a much brighter side, the Court found that Ms. Ruff has been the primary parent of Kayleigh for most of Kayleigh’s ten years, that Kayleigh has continued to attend the same school and daycare over the time she had been in Spokane, and that the GAL finds that Kayleigh is a bright child, receives good grades and scored well on the WASL’s. Kayleigh enjoys school and according

to the school records has had no absences. She appears to have many friends.

CP 266.

**B. PROCEDURAL HISTORY.**

It should be emphasized that the Montana Order for Interim Parenting Plan was entered on October 24, 2002 (CP 7 - 8), and that no further orders in regard to parenting time were entered by the Montana court. The lapse of time between the Montana order and Mr. Knickerbocker's filing of his petition (see below) was almost six years. Ms. Ruff attached copies of this Interim Parenting Plan to all of her initial filings, including her affidavit with ex parte motion for temporary restraining order. . . . CP 496 - 512.

One glaring omission from Mr. Knickerbocker's recitation of the procedural history is that Mr. Knickerbocker, virtually simultaneously with Ms. Ruff, and through his own counsel, filed a petition for parenting plan in the Spokane County Superior Court under case number 08-3-01629-1. Ms. Ruff's petition was the very immediately preceding petition filed in the Superior Court, case number 08-3-01628-3. In other words, both parties filed petitions in Washington on July 17, 2008. These cases were consolidated by agreement of the parties on August 6, 2008. CP 521 - 523. As that Order indicates, both

petitioner and respondent moved through counsel for an order consolidating these cases. CP 521.

On the same day, the trial court entered its Temporary Order after a hearing, ordering a guardian ad litem and specifying Mr. Knickerbocker's residential time with Kayleigh. Both parties were represented by counsel at that time. CP 527 - 528. From the face of the Temporary Order, it is clear that neither party lodged any objection to the trial court's entry of the Temporary Order on jurisdictional grounds.

In fact, the only mention of jurisdiction in the early part of these proceedings is in the Ex Parte Restraining Order entered on July 17, 2008. CP 513 - 515. In that matter, the trial court, acting through its court commissioner, stated that "it finds a need for Washington State to exercise emergency jurisdiction, if necessary, so child's residence remains stable pending the hearing." CP 514. The emergency was set forth in Ms. Ruff's affidavit, CP 496 - 512, and supported by reference to paragraphs 2.1, 2.2, and 2.4 of the Motion/Declaration for Temporary Restraining Order and Order to Show Cause CP 514.

The next sentence in that July 17, 2008 Ex Parte Restraining Order

states “Father consents to jurisdiction in Washington State by the filing of his petition.” CP 514. This statement of father’s consent obviously refers to *in personam* jurisdiction. CP 514. This plain inference is taken from the fact that the court refers to his filing of a petition, which is the usual way that a person may waive objection to personal jurisdiction by making a voluntary appearance.

The remainder of Mr. Knickerbocker’s statement of the procedural history is adequate up to the time he filed his Brief of Appellant. However, after the undersigned counsel for Ms. Ruff entered his appearance, Ms. Ruff moved that additional evidence be taken on the merits of this review under RAP 9.11. The file of this Court shows that the matter was argued to the Court of Appeals commissioner, motioned to modify the ruling to a panel of this Court, and motioned to the Washington Supreme Court for a review of this Court’s decision to allow the additional evidence under RAP 9.11. The final motion by Mr. Knickerbocker was denied by the Supreme Court commissioner. When no motion to modify that ruling was made, the case was returned to this Court for normal briefing on the appeal.

The additional evidence put in the record appears at CP 516 through 534. This consists of the Montana Ninth Judicial District Court, Toole County

case number DR 02-015, Stipulation and Order of Dismissal filed in that court on January 8, 2009. Attached as exhibits to that document are two documents from the Spokane County, Washington cases filed on January 17, 2008: Order Authorizing Consolidation of this Cause into Cause Number 08-3-01629-1 (CP 521 - 523), and the August 6, 2008 Temporary Order, CP 525 through 534. In the Montana District Court's Stipulation and Order of Dismissal (Appendix A), the pro se parents of Kayleigh jointly stipulated to the entry of an Order of Dismissal. The Stipulation states, in part, that:

“ . . . the parties both agree that Washington State now has jurisdiction for entry of the final parenting plan and child support orders in this action. Toward that end, both parties filed separate actions in Washington State, Spokane County Superior Court seeking a permanent parenting plan and order of child support for the minor child, Kayleigh Ruff. These two actions were eventually consolidated under Spokane County Superior Court cause number 08-3-01628-3. A copy of the Washington State, Spokane County Superior Court order consolidating the cases under one cause number is attached hereto as Exhibit A.

In addition, Temporary Orders regarding residential schedule, visitation and child support have been entered in the Washington State action and replace any such Temporary Order still pending in the Montana State action. Conformed copies of said Washington State Temporary Orders are attached hereto as Exhibit B.

Thus, pursuant to the pending action in Washington State and

the Temporary Orders entered therein, the parties hereby stipulate that the following order should be entered, dismissing this action.” CP 517 - 518.

The Order signed by the Montana judge states as follows:

“Based on the foregoing stipulation of the parties it is hereby ORDERED, ADJUDGED AND DECREED that this matter is DISMISSED without any award of costs or fees to either party.” CP 518 - 519.

Both the Stipulation and the Order were signed by Mr. Knickerbocker and Ms. Ruff, signed in December and November, 2008, respectively.

### III. STANDARD OF REVIEW

Ms. Ruff takes issue with one statement and cited reference in Mr. Knickerbocker’s section on the Standard of Review, namely, the last sentence on page 13 with the citation to *In re Marriage of Ieronimakis*, 66 Wn.App. 83, 831 P.2d 172, *review denied*, 120 Wn.2d. 1006, 838 P.2d 1142 (1992). It is not that the statement on the top of page 13 is not a correct statement of what was held in *Ieronimakis*, it is that the facts of *Ieronimakis* are completely different from the facts here. In *Ieronimakis* the court held that a trial court may not rely on facts which come into existence after the dissolution petition was filed in determining a child custody jurisdiction question. Such is not the case here.

In this case, the trial court found that an emergency existed, appropriately invoking, in effect, the standards set forth in RCW 26.27.231(1). More is addressed on this point in the Argument section of this Brief of Respondent.

#### IV. ARGUMENT

In this section we will attempt to follow the arguments of Mr. Knickerbocker, numbered 1 through 8, (note the Brief of Appellant omits a paragraph number 3). Our section headings differ from those set forth in the Brief of Appellant.

As an initial matter, Ms. Ruff wishes to save time for everyone by conceding that under Mr. Knickerbocker's headings numbered 5 and 6, at pages 20 and 21 of the Brief of Appellant, Ms. Ruff concedes these points. Washington was not the home state of the child at the commencement of this proceeding; Montana was the home state. Two states cannot be a home state simultaneously. It should be noted that these concessions make no difference in our argument or the correct affirmance of this appeal.

##### A. DISCUSSION OF *IN RE CUSTODY OF A.C.*

Mr. Knickerbocker's argument of pages 13 and 14 regarding the 2009 case of *In re Custody of A.C.*, 165 Wn.2d 568, 200 P.3d 689, consists mostly

of a quote from the case. Of course we have no argument with this. The odd aspect of Mr. Knickerbocker's reliance on *A.C.* is that, while he asserts that under *A.C.* the Montana court must first make a jurisdictional determination, in the instant case the Montana case did make such determination before the entry of the Findings of Fact and Conclusions of Law, Judgment and Order Establishing Parenting Plan, and Residential Schedule. Please refer to CP 517 through 534, which is the Stipulation and Order of Dismissal made by the Montana court in January 2009 at the request of both parties. As discussed in our Statement of Facts, this Order entered at the behest of the parties was an effective compliance with the requirements of *A.C.*, as well as with RCW 26.27.231. Although the Order does not contain the statutory terms of art "declines to exercise jurisdiction," or "defers to the jurisdiction of the Washington court" it has the same effect by the fact that it attaches to it the order consolidating the two Washington cases (one filed by Ms. Ruff and one filed by Mr. Knickerbocker) and the Washington Temporary Order of August 6, 2008.

Another aspect of *Custody of A.C.* should be noted here, and this will be emphasized again later in this Brief. The issue is this: Mr. Knickerbocker argues that the Washington orders were made without "subject matter

jurisdiction” under the UCCJEA. But *A.C.* points out a significant aspect which cannot be ignored here, namely, that the Washington Superior Court did in fact have subject matter jurisdiction in *A.C.*, as stated in footnote 3, 165 Wn.2d 568 at 573:

“The UCCJEA uses the term ‘subject matter jurisdiction,’ and for consistency we use the statutory language. *However, Washington courts did, in fact, have subject matter jurisdiction over the parties and the issues. See* CONST. Art. IV., Section 6 (describing general jurisdiction of superior courts); *Dougherty v. Dep’t. of Labor and Indus.*, 150 Wn.2d 310, 316 - 17, 76 P.3d 1183 (2003) (subject matter jurisdiction concerns the type of controversy, not the facts of an individual case). The statute might have more accurately used the term “exclusive venue” instead of “subject matter jurisdiction.” (Emphasis supplied).

Of course, courts are bound to follow legislative acts which delimit the *authority* of our Superior Courts. This statutory *authority* has to be distinguished from constitutional or inherent subject matter jurisdiction. *See e.g., In re Marriage of Major*, 71 Wn.App. 531, 533 - 535, 859 P.2d 1262 (1993). As to *A.C.*’s footnote 3, compare *In re the Marriage of Furrow*, 115 Wn.App. 661, 63 P.3d 821 (2003) (Court of Appeals rejected argument that the trial court lacked subject matter jurisdiction to terminate parental rights, because Superior Courts have constitutional jurisdiction over family law matters;

but reversed on grounds that parental termination must follow authorized statutory procedures, including appointment of a guardian ad litem).

The point made by footnote 3, we believe, is that while a child custody order may be reversed for lack of statutory authority “jurisdiction” as contrary to the UCCJEA, such a decision renders the reversible order *voidable*, not void. *Furrow*, 115 Wn.App. At 669. Therefore, the only issue in the case is whether the Washington Court substantially followed the UCCJEA - fulfilling its duties and requirements - or whether its final orders are reversible for not substantially following the UCCJEA.

**B. THE TRIAL COURT PROPERLY EXERCISED EMERGENCY JURISDICTION.**

**1. Appellant Cannot Maintain That No Emergency Existed.**

Beginning at the bottom of page 14 and ending on the upper part of page 17 of Appellant’s Brief, Mr. Knickerbocker attempts to say there was no emergency. First, he repeats his argument that orders entered without subject matter jurisdiction are void. We have addressed above the fact that the courts of Washington in fact have subject matter jurisdiction over the type of controversy and proceeding as is presented here. *A.C., supra, Dougherty*,

*supra, Major, supra, Furrow, supra.*

Then Mr. Knickerbocker asserts the *non sequitor* “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 . . .” Of course the trial court referred to paragraphs 2.1, 2.2, and 2.4 of the motion and declaration for ex parte restraining order and found a need for Washington state to exercise emergency jurisdiction “so child’s residence remains stable pending hearing.” This statement is, as born out by the record, completely sustainable. It certainly was not an abuse of discretion. We have referred to the affidavit of Ms. Ruff which set forth the emergency (Mr. Knickerbocker trying to abduct Kayleigh), and the fact that these matters were before the trial court at the time.

Mr. Knickerbocker then sets up his straw man with the quote “Father consents to jurisdiction in Washington by filing of his petition,” and states that a party cannot consent to subject matter jurisdiction. We agree that a party cannot consent to real constitutional subject matter jurisdiction. However, this comment in the ex parte restraining order is an obvious reference to Mr. Knickerbocker’s consent to *in personam* jurisdiction in Washington. Temporary emergency

jurisdiction was established by the trial court's preceding sentence as just referenced.

Mr. Knickerbocker refers at length to *In re Marriage of Kastanas*, 78 Wn.App. 193, 199, 896 P.2d 726 (1995). This portion of his Brief, and the citations to the previously mentioned *Marriage of Ieronimakis* case, are of no avail to Mr. Knickerbocker's case because in neither case did the trial court exercise emergency jurisdiction as did the trial court here - where it exercised temporary emergency jurisdiction under the facts as discussed above. Moreover, *Kastanas* and *Ieronimakis* were decided well before the adoption of RCW 26.27.231 in the revised UCCJEA, Ch. 65, Section 204, Wash.L. 2001.

Although Mr. Knickerbocker states as his Assignment of Error No. 8 that the trial court erred in its July 17, 2008 Ex Parte Order finding a need for Washington state to exercise emergency jurisdiction, he points to and claims no facts in the trial court's orders or in the record which contradict the trial court's findings that Kayleigh's residence was threatened by Mr. Knickerbocker's blatant attempt to abduct her from Washington and return her to Montana. Therefore, it is difficult to see how a reversal of the trial court's decision could

be made, when a factual error is claimed but no factual basis for the error is given. Arguments unsupported by fact or law are disregarded by the Court of Appeals. RAP 10.3(b) and (g); *Kauzlarich v. Yarborough*, 105 Wn.App. 632, 653, 20 P.3d 946 (2001); *Green v. McAllister*, 103 Wn.App. 452, 469, 14 P.3d 795 (2000) (appellate court need not review a challenge to findings that does not cite to the record showing why the findings are not supported by the record). Because *Kastanas* and the other cited case, *Ieronimakis, supra*, do not deal with emergency jurisdiction, citations to these cases are inapposite and this argument may be disregarded.

In sum, Mr. Knickerbocker utterly fails to support his claim that no emergency existed.

2. Even Under RCW 26.27.231, The Emergency Jurisdiction Statute, the Law Does not Require Vain or Useless Acts.

It has long been the law of this state that courts “presume that the Legislature did not engage in vain and useless acts and that some significant purpose or object is implicit in every legislative enactment.” *Oak Harbor School District v. Oak Harbor Education Association*, 86 Wn.2d 497, 500, 545 P.2d 1197 (1976); *Kelleher v. Ephrata School District*, 165, 56 Wn.2d 866,

355 P.2d 989 (1960). A statute should not be construed so that the provision is meaningless. *Childers v. Childers*, 89 Wn.2d 592, 596 - 97, 575 P.2d 201 (1978).

Beginning above the middle of page 17 and continuing through most of page 20 of Appellant's Brief, Mr. Knickerbocker refers to the emergency jurisdiction statute, RCW 26.27.231, and paraphrases extensively from the summer 1998 edition of the Family Law Quarterly. The interesting point we wish to make in connection with this recitation is two-fold: (1) we have already argued and established that the trial court initially had temporary emergency jurisdiction to protect Kayleigh because Kayleigh was present in Washington and it was necessary in an emergency to protect her because she was threatened with abuse (abduction) RCW 26.27.231(1); and (2) the temporary emergency jurisdiction statute presumes that the previous child custody determination (in this case the Montana interim custody order) was in fact not being abandoned by a party (Mr. Knickerbocker), and there are "competing" child custody orders. See RCW 26.27.231(3).

Mr. Knickerbocker in this section of his Brief is insisting on all of the technical requirements of RCW 26.27.231 concerning specification of the period

of a temporary order, immediate judicial communication, and adequate time to allow the other party (in this case, Mr. Knickerbocker) “to obtain an order from the court of jurisdiction (Montana).” All of this presumes that Mr. Knickerbocker was clamoring to have his petition for modification of the parenting plan heard in Montana; but of course, he was not, because he filed his petition for establishment of a parenting plan here in Washington on July 17, 2008 at virtually the same time as did Ms. Ruff. All of this is to underscore the fact that it would have made no difference if the trial court had “immediately” contacted the District Court of Toole County, Montana. The parties demonstrated by their submission to personal jurisdiction and their requests for relief to the Washington court that they were abandoning any attempt to enforce a sister state’s child custody jurisdiction.

All of the complaints of Mr. Knickerbocker are really subject to waiver or equitable estoppel. A waiver is the intentional and voluntary relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of that right. *Birkeland v. Corbett*, 51 Wn.2d 554, 565, 320 P.2d 635 (1958). If Mr. Knickerbocker believes he had a right to have his case heard in the Montana court, he certainly waived it. Because he had counsel prior to trial, and

he did through counsel file his case in Washington and consolidate his case with Ms. Ruff's case, he did waive the rights he is claiming now. As stated in *Shinn v. Thrust I.V. Inc.*, 56 Wn.App. 827, 843 - 44, 786 P.2d 285 (1990), a waiver by conduct occurs if the actions of the person against whom waiver is claimed are inconsistent with any intention other than waiver.

With regard to equitable estoppel, the case of *Parry v. Windmere Real Estate/East, Inc.*, 102 Wn.App. 920, 929, 10 P.3d 506 (2000), defines it as: The person must show that he reasonably relied on the other party's prior act; that prior act is inconsistent with a later assertion by that person; and that the reliance was reasonable; and that the reliance was justifiable and to his detriment. Clearly in this case, Ms. Ruff has relied to her detriment on Mr. Knickerbocker's assertion of all forms of subject matter and personal jurisdiction in the Washington court by his actions. To allow Mr. Knickerbocker to now undo what he has already done, would cause extreme detriment to Ms. Ruff in the form of lost funds, waste of time and stress.

What this demonstrates is that an insistence upon the technical requirements which ordinarily would obtain in a temporary emergency jurisdiction case do not exist here. Neither party wanted Montana to exercise

its child custody jurisdiction, as demonstrated by their stipulation for an order of dismissal to the Toole County District Court in late 2008.

None of this is to say that subject matter jurisdiction may be conferred by consent of the parties. We have already conceded that point as an axiom of basic law. However, when it would be useless to throw out this case after a trial of several days and when the actions requested by Mr. Knickerbocker would be useless and futile, this Court may and should disregard this kind of approach in this appeal. The law does not require vain and useless acts. *Oak Harbor School District v. Oak Harbor Education Association, supra, Kelleher v. Ephrata School District, supra, Childers v. Childers, supra.* Mr. Knickerbocker's appeal is asking this Court to rule that the trial court should have indulged in a vain and useless act. This argument must fail.

The Stipulation and Order of Dismissal entered in Toole County Montana District Court on January 8, 2009 speaks for itself and renders the technical notification and communication arguments under this section of Mr. Knickerbocker's Brief unnecessary and of no avail.

Another practical application of facts to this situation directs attention to the period of time since the Montana interim custody order, and the conduct of

the parties in the intervening six years. It is a matter of records that the parties soon consensually deviated substantially from the Montana interim custody order, in large part because of Ms. Ruff's move with Kayleigh to Spokane County, Washington. Although lapse of time taken alone cannot defeat subject matter jurisdiction, because the Washington Supreme Court observes that child custody jurisdiction under the UCCJEA is more akin to venue than to actual subject matter jurisdiction (*Custody of A.C.*, footnote 3), Mr. Knickerbocker has presented insufficient grounds to avoid the trial court's orders. Obviously, Washington was the more convenient forum for adjudication of Kayleigh's residential schedule. See RCW 26.27.261. This fact was recognized by Ms. Ruff, Mr. Knickerbocker, and their respective counsel of record during the pretrial stages of this case. The Montana Order of Dismissal of the case there is simply an expression of the facts and law. CP 517 - 534.

C. THE CRUCIAL DISTINCTION BETWEEN *MARRIAGE OF A. C. AND RUFF V. KNICKERBOCKER*

During briefing surrounding the RAP 9.11 motion in this case, Mr. Knickerbocker developed an argument that the case of *Custody of A.C.* and this case were factually identical, or at least so similar as to be indistinguishable

- thus compelling the conclusion that this Court should follow *A. C.* to the extent of dismissing this case and sending the case back to Montana. This argument, however, fails to recognize the critical distinction surrounding the facts of the two cases.

The differences between *A. C.* and the present case are these: In *A. C.*, the state of Montana's temporary custody order placing *A. C.* with the foster parents was terminated *prior to* the foster parents' filing of the petition for nonparental custody in Washington. 165 Wn.2d 572, 573. Later in the opinion, the Supreme Court refers to the termination of the temporary custody order as a dismissal. 165 Wn.2d at 575. The order of termination/dismissal of Montana's temporary custody of the child made no reference to a case pending in another state or RCW 26.27.261, for the obvious reason that there was no such case.

In this case, the Montana dismissal of the Toole County case was made with specific reference to the Washington case filed before the dismissal in Montana. With reference to the UCCJEA statutes regarding exclusive, continuing jurisdiction (RCW 26.27.221), temporary emergency jurisdiction (RCW 26.27.231), and inconvenient forum (RCW 26.27.261), the Montana

court clearly considered Washington to be the court with jurisdiction under its emergency temporary jurisdiction powers, a more convenient forum, and the proper state to enter a final parenting plan.

Thus, although Mr. Knickerbocker may point to a number of similarities between the cases (*e.g.*, *A.C.* involves the same states; child was born in Montana in both cases; one party continues to reside in Montana; appointment of guardian ad litem in both cases), the differences are much more important than the similarities.

Any claimed analogy that both the mother and child relocated to Washington is misplaced. The timing is critical. In *A.C.*, the mother relocated to Washington *after* the Montana court terminated the temporary custody order. In this case, the Montana temporary custody order was dismissed after both parties had filed for parenting plans *in this state*.

The same timing issue applies with respect to another alleged analogy. In *A.C.* the Montana resident subsequently filed an action in Washington seeking placement *after* the Montana order was dismissed with no reference to pending competing jurisdictional issues, as there were none. In this case, he filed before the Montana action was dismissed. The Montana court considered this fact

under RCW 26.27.231 and 26.27.261, and dismissed.

Nowhere in his argument does Mr. Knickerbocker acknowledge the difference between treating states with pending jurisdictional conflicts, and treating such courts' orders as the 2009 Montana dismissal order in this case as an order plainly made under the laws of the Washington and Montana UCCJEA.

D. OTHER FALLACIES OF MR. KNICKERBOCKER'S ARGUMENTS.

Mr. Knickerbocker's approach essentially rests on the proposition that a party in a non-initiating state who wishes to file in a new state would have to have the initial state's jurisdiction declined or dismissed *before* he could file in the new state. This approach would nullify and render useless all of the UCCJEA statutes concerning communication between courts with competing claims to child custody jurisdiction, and simultaneous proceedings. The statutes which appellant would render useless include at least the following: RCW 26.27.101, 26.27.111, 26.27.121, 26.27.201(b), 26.27.211(1)(b), 26.27.221, 26.27.231, 26.27.251, and 26.27.261. Of course, his proposition was never asserted by any case. It has long been the law of this State that courts "presume that the legislature did not engage in vain and useless acts and that some significant

purpose or object is implicit in every legislative enactment.” *Oak Harbor School District v. Oak Harbor Education Association, supra, Kelleher v. Ephrata School District, supra.* A statute should not be construed so that the provision is meaningless. *Childers v. Childers, supra.*

While we acknowledge the obvious proposition that subject matter jurisdiction may not be conferred by consent, this is not the case here. The parties approached the Montana court seeking permission for the Montana case to be dismissed, which it did, in deference to the Washington orders which were attached to the Stipulation. Both the Washington court and the Montana court had the authority to proceed as they did. In this connection, the *Custody of A.C.* case certainly gives rise to support for respondent’s position rather than appellant’s. See *A.C., supra*, footnote 3. The Montana Order for Interim Parenting Plan was attached to Ms. Ruff’s petition in this case and referred to in the body of the petition. CP 7-8; CP 5. Montana made its declination of child custody jurisdiction decision by its Order of January 8, 2009.

In argument number 7 beginning at the bottom of page 21 of his Brief, Mr. Knickerbocker continues to insist that the declination of child custody jurisdiction by the Montana court had to come in a certain time sequence. We

have adequately addressed this issue in other portions of this Brief. Our arguments will not be repeated here.

In his final argument as item 8 on page 23 of his Brief, Mr. Knickerbocker returns to the argument that an order entered without subject matter jurisdiction is void *ab initio* and is legally no judgment or decision at all. While that statement of black letter law is correct, it fails to take into account the distinguishing facts of this case, which are that when our State Supreme Court asserts that Washington courts always have subject matter jurisdiction over matters of child custody and support, it is difficult to see how the judgment in this case could be “void *ab initio*.” We submit it cannot. Such a decision, if improperly rendered in violation of the UCCJEA, would be voidable. *Furrow, supra*. However, when the parties and the two states’ courts substantially complied with all the requirements of the UCCJEA, and allowed the case to proceed to trial in the more convenient forum on the child custody matter, there is no need to reach the question of whether such a judgment can be void or voidable.

E. REQUEST FOR AWARD OF ATTORNEY’S FEES.

In Mr. Knickerbocker’s request for attorney’s fees, it seems ironic that

the last sentence of his request states that “it was Ms. Ruff who wrongfully commenced these proceedings while ignoring proceedings she previously commenced in Montana.” If this is true, then it is also true that Mr. Knickerbocker wrongfully commenced these proceedings in Washington while ignoring proceedings commenced in Montana. Of course, neither party wrongfully commenced these proceedings in Washington because of the facts and circumstances coupled with the legal principles outlined above.

Ms. Ruff also invokes RCW 26.27.511(1), and requests necessary and reasonable expenses incurred by and on behalf of Ms. Ruff, including all expenses and fees mentioned in the statute, as the prevailing party in this appeal.

#### V. CONCLUSION

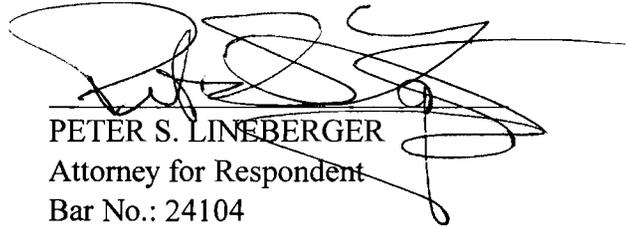
Respondent Jamie Ruff respectfully requests this Court to deny the appeal of Mr. Knickerbocker. The Spokane County Washington Superior Court properly exercised child custody jurisdiction throughout these proceedings, and the findings, judgments, and orders entered by that court throughout these proceedings were proper.

In particular, the trial court correctly determined that (1) it should exercise temporary emergency jurisdiction at the commencement of this case due

to the danger to the child, and (2) that at the conclusion of the trial it properly had complied with the temporary emergency jurisdiction statute and the other statutes referred to therein based upon the Montana District Court's Order of Dismissal of the case on January 8, 2009.

In light of the foregoing, Jamie Ruff requests denial of the appeal and requests an award of all of her necessary costs, expenses, and reasonable attorney's fees incurred by her in the defense of this appeal, pursuant to the statutory authority cited above.

Respectfully submitted this 2nd day of November, 2011.



PETER S. LINEBERGER  
Attorney for Respondent  
Bar No.: 24104

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 2011, a true and correct copy of a Brief of Respondent, in the above-entitled matter was delivered via facsimile transmission and by regular messenger service in the City of Spokane, to the following:

Dennis C. Cronin  
Attorney at Law  
1212 N. Washington, Suite 304  
Spokane, WA 99201



---

TAM HENRY, Legal Asst to  
PETER S. LINEBERGER

APPENDIX "A"

FILED

JAN 8 2009

*Debra Munson*  
CLERK  
DEPUTY

MONTANA NINTH JUDICIAL DISTRICT COURT, TOOLE COUNTY

IN RE THE PARENTAGE OF )

KAYLEIGH LYNN RUFF, )

Minor Child. )

No. DR 02-015

STIPULATION AND ORDER OF  
DISMISSAL

I. STIPULATION

COMES NOW the Petitioner/Mother, Jamie Lyn Ruff, and the Respondent/Father, Dennis Anton Knickerbocker, both appearing pro se in the above captioned matter, and both hereby stipulating that the following Order should be entered by this court dismissing this matter.

Both parties stipulate to and seek dismissal of this action because the parties both agree that Washington State now has jurisdiction for entry of the final parenting plan and child support orders in this action. Toward that end, the parties both filed separate actions in Washington State, Spokane County Superior Court seeking a permanent parenting plan and order of child support for the minor child, Kayleigh Ruff. These two actions were eventually consolidated under Spokane County Superior Court Cause No. 08-3-01628-3. A copy of the Washington State, Spokane County Superior Court Order consolidating the cases under one cause number is attached hereto as Exhibit A.

In addition, Temporary Orders regarding residential schedule, visitation and child support have been entered in the Washington State action and replace any such temporary orders still

*CS*  
Cover sheet = CP 516

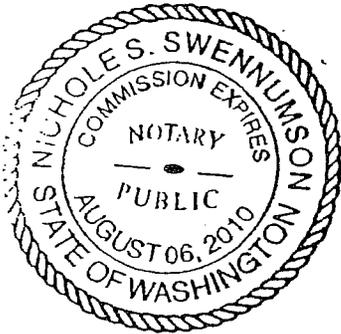
CP 517

1 pending in the Montana State action. Conformed copies of said Washington State Temporary  
Orders are attached hereto as Exhibit B.

3 Thus, pursuant to the pending action in Washington State and the Temporary Orders  
4 entered therein, the parties hereby stipulate that the following Order should be entered,  
5 dismissing this action.

6  
7 By: Jamie Lyn Ruff  
8 Jamie Lyn Ruff  
Petitioner/Mother, pro se

9 Signed and sworn to before me this 24<sup>th</sup> day of NOVEMBER, 2008.



Nichole Swennumson  
Print Name: Nichole Swennumson  
Notary Public in the State of Washington,  
Residing at Spokane  
Commission Expires: Aug. 6, 2010

17  
18 By: Dennis Anton Knickerbocker  
19 Dennis Anton Knickerbocker  
Respondent/Father, pro se

20 Signed and sworn to before me this 19<sup>th</sup> day of December, 2008.

Vicki L. Knickerbocker  
Print Name:  
Notary Public in the State of Montana,  
Residing at  
Commission Expires: 01-07-2010

## II. ORDER

Based on the foregoing stipulation of the parties, it is HEREBY ORDERED,  
JUDGED AND DECREED that this matter is DISMISSED without any award of costs or

1 fees to either party.

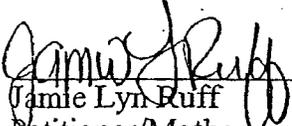
3 DATED this 8<sup>th</sup> day of January, 2008.

4  
5   
JUDGE/COMMISSIONER

6 Presented By:

Copy Received, Approved as to Form,  
Notice of Presentment Waived

7  
8   
9 Dennis Anton Knickerbocker  
Respondent/Father, pro se  
324 6th Avenue South  
10 Shelby, MT 59474

11  
12   
13 Jamie Lyn Ruff  
Petitioner/Mother, pro se  
9305 E. Mission Avenue  
Spokane, WA 99206

CERTIFICATE OF SERVICE

This is to certify that the foregoing was duly served  
by mail upon SR & DK at their address this

8<sup>th</sup> day of January, 2008

By Debra Munson Deputy  
Clerk of District Court

P.O. Box 850 Shelby, MT 59474  
Phone 406-434-2271

AUG 06 2008

THOMAS R. FALLOUIS  
SPOKANE COUNTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR  
SPOKANE COUNTY

In re the Parentage of:  
KAYLEIGH RUFF

JAMIE RUFF

Petitioner

DENNIS KNICKERBOCKER

Respondent

NO. 08-3-01628-3

ORDER AUTHORIZING  
CONSOLIDATION OF THIS CAUSE  
INTO CAUSE NO. 08-3-01629-1

Clerk's Action Required

MOTION

The Petitioner and Respondent through their counsel, move this court for an order consolidating Spokane County cause number 08-3-01629-1 into this Spokane County cause number.

BASIS

Good cause exists to enter this order. The Court's oral findings are incorporated into this order by reference.

ORDER

IT IS HEREBY ORDERED that Spokane County cause No: 08-3-01629-1 shall be consolidated into Spokane County cause No: 08-3-01628-3. All the pleadings filed by both parties shall be transferred to Spokane County Superior Court file number 08-3-01628-3 treated as one proceeding.

521

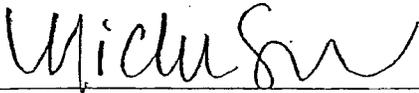
1 ||  
2 DATED this 16<sup>th</sup> day of August 2008.

3 **Michelle Ressa**

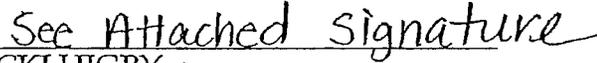
4 \_\_\_\_\_  
5 COMMISSIONER

6 Presented by:

7 Agreed to by:  
8 Notice of presentation waived:

9 

10 \_\_\_\_\_  
11 NICHOLE SWENNUMSON  
12 WSBA #36821  
13 Attorney for Petitioner/Mother

14 

15 \_\_\_\_\_  
16 VICKI HIGBY  
17 WSBA #31259  
18 Attorney for Respondent/Father

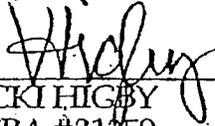
2 DATED this \_\_\_\_ day of August 2008.

3  
4 \_\_\_\_\_  
COMMISSIONER

5  
6 Presented by:

Agreed to by:  
Notice of presentation waived:

7  
8  
9 \_\_\_\_\_  
NICHOLE SWENNUMSON  
WSBA #36821  
Attorney for Petitioner/Mother

  
\_\_\_\_\_  
VICKI HIGBY  
WSBA #31259  
Attorney for Respondent/Father

# Exhibit B

COPY  
ORIGINAL FILED

AUG 06 2008

THOMAS R. FALLOQUIST  
SPOKANE COUNTY

SUPERIOR COURT STATE OF WASHINGTON  
SPOKANE COUNTY

In re the Parentage of:  
KAYLEIGH RUFF

NO. 08-3-01628-3

JAMIE RUFF

TEMPORARY ORDER

Petitioner,

and

DENNIS KNICKERBOCKER

Respondent.

BASIS

The Petitioner moved the Court for a temporary order under cause number 08-3-01628-3 and the Respondent moved the Court for a temporary order under cause number 08-3-01629-1.

FINDINGS

GOOD CAUSE EXISTS to grant the following order. Other oral findings of the Court are incorporated into this order by reference.

ORDER

THEREFORE, IT IS SO ORDERED:

1. A Guardian ad Litem shall be appointed to investigate all issues in this matter including the allegations of neglect and abuse. The costs of the Guardian ad Litem is reserved until a full hearing with all financial

TEMPORARY ORDER

Exhibit B  
Page 1 of 10

625

*Robert Cossey & Associates*  
The Holmes Building  
628 1/2 N. Monroe  
Spokane WA 99201  
(509) 327-5563

1 information from the parties occurs.

- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
2. The Father shall have residential time with the child from August 8, 2008 until August 23, 2008 at noon. The Father shall pick the child up on August 8, 2008 before noon and transport the child back to Montana. The Father shall submit gas receipts and the Mother shall be responsible for 60% of the gas expense. The parties shall meet at a mutually agreed upon location in Missoula on August 23, 2008.
  3. Once school starts the child shall continue to reside primarily in the mother's care. The Father shall have residential time with the child once a month from Friday until Sunday. The parties shall meet in Missoula to exchange the child at an agreed upon time and location given the child's school schedule. The parties shall meet on Sundays at an agreed upon time and location in Missoula but no later than 3:00 pm. If there is a long weekend in a month the Father shall have that long weekend as his residential time (not major holidays).
  4. Transportation costs shall be divided 60/40 until a full financial hearing on this matter. Proof of expense shall be required.
  5. Each parent shall have reasonable and liberal telephone contact with the child while the child is in the other's parent care without interference from the other parent.
  6. Both parents shall have full and equal access to all of the child's records including but not limited to medical; dental; school; counseling; etc. Both parents shall sign any authorizations required for full and equal access.
  7. Neither parent shall disparage the other parent in the presence of the child nor allow any third party to disparage the other parent in the presence of the child.
  8. Both parents shall inform the other parent of all of the child's appointment including but not limited to medical; dental; counseling; etc. This notice shall be in writing and given within a reasonable time before the appointment.
  9. Neither parent shall allow the child to be exposed to second hand smoke.
  10. Neither party shall discuss this case with the child nor allow any third party to discuss this case with the child besides a counselor and Guardian ad Litem.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
DATED this 6<sup>th</sup> day of August 2008.

Michelle Ressa

COMMISSIONER

Presented by:

Agreed to by:

Notice of presentation waived:

  
NICHOLE SWENNUMSON  
WSBA #36821  
Attorney for Petitioner/Mother

See Attached Signature  
VICKI HIGBY  
WSBA #31259  
Attorney for Respondent/Father

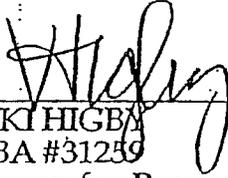
DATED this \_\_\_\_\_ day of August 2008.

\_\_\_\_\_  
COMMISSIONER

Presented by:

Agreed to by:  
Notice of presentation waived:

\_\_\_\_\_  
NICHOLE SWENNUMSON  
WSBA #36821  
Attorney for Petitioner/Mother

  
\_\_\_\_\_  
VICKI HIGBEE  
WSBA #31239  
Attorney for Respondent/Father

**FILED**  
SEP 17 2008  
THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

In re the Parentage of:  
KAYLEIGH LUN RUFF

JAMIE RUFF

Petitioner,

and

DENNIS A. KNICKERBOCKER

Respondent.

No. 08-3-01628-3

ORDER OF CHILD SUPPORT  
TEMPORARY (TMORS)

Clerk's Action Required

**I. Judgment Summary**

Does not apply because no attorney's fees or back child support has been ordered.

**II. Basis**

**2.1 Type of Proceeding**

This order is entered pursuant hearing for temporary child support.

**2.2 Child Support Worksheet**

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

### III. Findings and Order

It is Ordered:

#### 3.1 Children for Whom Support is Required

Name	Age
KAYLEIGH LUN <sup>lyn</sup> RUFF	9

#### 3.2 Person Paying Support (Obligor)

Name: DENNIS KNICKERBOCKER  
Birth date: May 28, 1980  
Service Address: 324 6th Avenue So.  
Shelby,, MT 59474

*The Obligor Parent Must Immediately File With the Court and the Washington State Child Support Registry, and Update as Necessary, the Confidential Information Form Required by RCW 26.23.050.*

*The Obligor Parent Shall Update the Information Required by Paragraph 3.2 Promptly After Any Change in the Information. The Duty to Update the Information Continues as Long As Any Monthly Support Remains Due or Any Unpaid Support Debt Remains Due Under This Order.*

Monthly Net Income: \$ 2119.85

#### 3.3 Person Receiving Support (Obligee)

Name: JAMIE RUFF  
Birth date: August 13, 1977  
Service Address: 9305 E. Mission  
Spokane, WA 99206

*The Obligee Must Immediately File With the Court and the Washington State Child Support Registry, and Update as Necessary, the Confidential Information Form Required by RCW 26.23.050.*

*The Obligee Shall Update the Information Required by Paragraph 3.3 Promptly After Any Change in the Information. The Duty to Update the Information Continues as Long as Any Monthly Support Remains due or Any Unpaid Support Debt Remains Due Under This Order.*

Monthly Net Income: \$ 2161.28

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

**3.4 Service of Process**

*Service of Process on the Obligor at the Address Required by Paragraph 3.2 or Any Updated Address, or on the Obligees at the Address Required by Paragraph 3.3 or Any Updated Address, May Be Allowed or Accepted as Adequate in Any Proceeding to Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of Written Notice to the Obligor or Obligees at the Last Address Provided.*

**3.5 Transfer Payment**

The obligor parent shall pay the following amounts per month for the following child:

<u>Name</u>	<u>Amount</u>
KAYLEIGH LYN RUFF	\$ <u>322.00</u>
<b>Total Monthly Transfer Amount</b>	\$ <u>322.00</u>

*The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or other Similar Document Issued by a Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle May Be Denied or May Be Suspended if the Obligor Parent Is Not in Compliance with This Support Order as Provided in Chapter 74.20A Revised Code of Washington.*

**3.6 Standard Calculation**

\$ 322.00 per month. (See Worksheet line 15.)

**3.7 Reasons for Deviation From Standard Calculation**

The child support amount ordered in paragraph 3.5 does not deviate from the standard calculation.

**3.8 Reasons Why Request for Deviation Was Denied**

A deviation was not requested.

**3.9 Starting Date and Day to be Paid**

Starting Date: September 1, 2008

Day of the month support is due: 5th

**3.10 Incremental Payments**

Does not apply.

**3.11 How Support Payments Shall be Made**

Enforcement and collection: The Division of Child Support (DCS) provides support enforcement services for this case because: this is a case in which a parent has requested services from DCS, Support payments shall be made to:

Washington State Support Registry  
P.O. Box 45868  
Olympia, WA 98504  
Phone: 1-800-922-4306  
or 1-800-442-5437

A party required to make payments to the Washington State Child Support Registry will not receive credit for a payment made to any other party or entity. The obligor parent shall keep the registry informed whether he or she has access to health insurance coverage at reasonable cost and, if so, to provide the health insurance policy information.

**3.12 Wage Withholding Action**

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below:

**3.13 Termination of Support**

Support shall be paid provided that this is a temporary order, until a subsequent child support order is entered by this court.

**3.14 Post Secondary Educational Support**

The right to petition for post secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.

**3.15 Payment for Expenses not Included in the Transfer Payment**

The mother shall pay 50 % and the father 50 % (each parent's proportional share of income from the Child Support Schedule Worksheet, line 6) of the following expenses incurred on behalf of the child listed in Paragraph 3.1:

Day care. *long - distance transportation expense*

Payments shall be made to the provider of the service. *for daycare.*

**3.16 Periodic Adjustment**

Does not apply.

**3.17 Income Tax Exemptions**

Tax exemptions for the child shall be allocated as follows:

Reserved.

**3.18 Medical Insurance for the Children Listed in Paragraph 3.1**

Each parent shall maintain or provide health insurance coverage if:

(a) Coverage that can be extended to cover the child is or becomes available to each parent through employment or is union-related; and

(b) The cost of such coverage for the mother does not exceed \$82 (25 percent of mother's basic child support obligation on Worksheet line 7), and the cost of such coverage for the father does not exceed \$81 (25 percent of father's basic child support obligation on Worksheet line 7).

The parent(s) shall maintain health insurance coverage, if available for the child listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the physical custodian or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the custodian or parent seeking enforcement or the Department of Social and Health Services may seek direct enforcement of the coverage through the employer or union of either parent or both parents without further notice to the parent as provided under Chapter 26.18 RCW.

**3.19 Extraordinary Health Care Expenses**

Unless specifically ordered otherwise, the person receiving support is responsible for ordinary health care expenses of the children. However, both parents have an obligation

533

to pay their share of extraordinary health care expenses. Extraordinary health care expenses mean those monthly medical expenses that exceed 5% of the basic support obligation from the Child Support Schedule Worksheet, Line 5.

The father shall pay 50% of extraordinary health care expenses (unless stated otherwise, the father's proportional share of income from the Worksheet, line 6) and the mother shall pay 50% of extraordinary health care expenses (unless stated otherwise, the mother's proportional share of income from the Worksheet, line 6).

### 3.20 Back Child Support

Back child support that may be owed is not affected by this order.

### 3.21 Back Interest

Back interest that may be owed is not affected by this order.

Dated: September 17, 2008

Michelle Rena  
Commissioner

Presented by:

Approved for entry:  
Notice of presentation waived:

Nichole Swennumson  
NICHOLE SWENNUMSON  
WSBA #36821  
Attorney for Petitioner

Shannon Deonier  
SHANNON DEONIER  
WSBA #  
Attorney for Respondent

Jamie Ruff  
JAMIE RUFF  
Petitioner

524