

FILED

JAN 10 2011

COURT OF
DIVISION III
STATE OF WASHINGTON
By _____

**DIVISION III COURT OF APPEALS FOR THE STATE OF
WASHINGTON**

Case # 29174-0-III

(Trial Court No.: 09-3-02310-5)

**Snodgrass, Allan H/W Snodgrass,
Hillary W/H,**

Respondents

v.

Jolicoeur, Roger Wiley, Judy,

Appellants.

REPLY Brief of Appellants

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Page 1 **I. INTRODUCTION TO REPLY BRIEF**

Appellants, Roger Jolicoeur, and Judy Riley, maternal biological grandparents of Megan and Matthew Snodgrass, were statutory intervenors in the California dissolution of their deceased daughter, under California Family Code Section 3102, and Appellants were granted visitation under an order that was not appealed in California, and were legally in the place of a parent in California.

The Respondents refused to obey this unappealed order.

Instead, the Respondents filed for a declaratory judgment in Washington that was a collateral attack on the valid California order, and this relief was granted by the Washington Court without any of the procedures of the UCCJEA (RCW 26.27) being followed.

This failure to give full faith and credit to the California order, and this failure to follow the procedures of RCW 26.27, are being appealed herein.

Page 1 **II. RESTATEMENT OF THE CASE**

Page 1 **A. Errors in Respondents' "Statement of the Case"**

The Respondents elide the fact that they appeared in California, and Respondents omit that the California court carefully parsed constitutional issues as it ordered the Jolicouers into the legal position of the deceased mother, and the Respondents ignore the importance of their failure to appeal the California order and its findings that maintaining the maternal family culture is in the best interests of the children..

Page 3 **B. Errors in the Response Brief – the Metaphysical Veto**

The Washington trial court may not simply pull from the air a determination that a California trial court has not “substantially complied” with the UCCJEA. Instead, there must be specific and narrow factual findings made that cannot be found in this case. The Jolicoeurs were legally in the place of the deceased parent, and remain in California, and the California order should have been respected under the UCCJEA.

Page 8 **III. CONCLUSION: CALIFORNIA'S FINAL ORDER GIVING THE JOLICOEURS PARENT-LIKE STANDING INVOKE THE UCCJEA, AND THAT CALIFORNIA ORDER SHOULD NOT BE IGNORED.**

TABLE OF CASES

Page 6 *In re Marriage of Nurie*, 176 Ca.App. 4th 478 (2009).

(Opening Brief and all authorities are incorporated herein.)

TABLE OF AUTHORITIES

Page 1 UCCJEA (RCW 26.27) and *en passim* -- cited on nearly every page.

Page 2 California Family Code Section 3102 and *en passim*.

Pages 3-4 RCW 26.27.421(1) is quoted.

Pages 4-5 RCW 26.27.201 is quoted.

Page 6 RCW 26.27.221 is quoted.

APPENDIX

(The full text of the UCCJEA was included with the opening brief.)

Page 10 California Family Code Section 3102

I. INTRODUCTION TO REPLY BRIEF

Appellants, Roger Jolicoeur, and Judy Riley (hereinafter Jolicoeurs), maternal biological grandparents of Megan and Matthew Snodgrass, were statutory intervenors in the California dissolution of their deceased daughter, under California Family Code Section 3102, and Appellants were granted visitation under an order that was not appealed in California.

The Respondents refused to obey this unappealed order, and the Washington order ignoring the California Order is at issue on this appeal.

Instead, the Respondents filed for a declaratory judgment in Washington that was a collateral attack on the valid California order, and this relief was granted by the Washington Court trial court without any of the procedures of the UCCJEA (RCW 26.27) being followed.

This failure to give full faith and credit to the California order, and this failure to follow the procedures of RCW 26.27, are being appealed herein.

The position of the Respondents, and of the court below, were it to become the law of Washington, would essentially eviscerate the UCCJEA.

Reversal and remand is proper.

II. RESTATEMENT OF THE CASE

Appellants herein use the Respondents' characterization of the case to clarify their errors, and to sharpen the legal decision for the court.

A. Errors in the Response Brief “Statement of the Case”

First, the Respondents (Snodgrasses) attempt to use their contempt of the unappealed California order as an offensive weapon when they state that Mr. Jolicoeur has not seen the children for three years. *Response at p.1 (hereinafter, R: 1)*. The Respondents kept the children from their maternal grandparents, and continued to do so even after the California court ordered that maintaining the maternal family’s cultural connection with the children was in the best interests of the children. *Clerk’s Papers: pp. 225-249, Declaration of [CA Attorney] Robert A. McCarty, Jr. [and exhibits] esp. at p. 238 (trial minutes ordering visitation) and pp. 230-232 (written decision of the court, ordering visitation at p. 231, and specifically finding that Mr. Snodgrass was “frustrating visitation” at p. 232)*. This specific finding was also not appealed.

Second, the Snodgrasses concede that the California court found that California had jurisdiction. *R: 2*.

Third, the Snodgrasses concede that the Snodgrasses filed a subsequent and competing motion for declaratory relief in Washington, stating that the Jolicoeurs “did not have any rights to the children.” *R:2*.

However, the California court had proper initial jurisdiction over the children in the dissolution, and then California had proper jurisdiction over the children under California Family Code Section 3102, under the authority of which the Jolicoeurs were statutory intervenors, standing in

the place of the deceased mother. Then the Jolicoeurs were granted visitation under an order that was not appealed in California.

The Jolicoeurs did have rights to these children under a valid, unappealed, California order. This order was final, and the Snodgrasses were in contempt of it.

Fourth, the Respondents then relied upon the Washington trial court to act as a court superior to California's court, and despite California having had proper jurisdiction beginning with the dissolution, the Washington court ignored the UCCJEA on the basis that the California court was "not in substantial conformity with the UCCJEA, Article 3."

R:2.

Fifth, both parties seem to clearly agree that the issue for Division III to address is whether the UCCJEA requirements of deference and consultation may be ignored on these facts.

The Jolicoeurs believe that to allow a subsequent state to ignore orders from a court that has jurisdiction in making the prior orders will simply return these parties, and all future parties, to a chaotic condition of pre-UCCJEA forum-shopping, and contradictory court orders.

B. Errors in the Response Brief "Argument" -- the Metaphysical Veto

The Respondents quote RCW 26.27.421(1) at R:3, which is repeated here (emphasis added):

(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 *or* the *determination was made under factual circumstances*

meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

The Respondents would give trial courts a universal veto to simply locate an *essential* “substantial conformity,” and as long as this philosophical “essence” is present, then each trial court may announce a metaphysical veto upon the jurisdiction of the prior state’s orders.

RCW 26.27.201 does not define jurisdiction in a manner which leaves its existence so metaphysically perilous (emphasis added):

(1) Except as otherwise provided in RCW 26.27.231, a court of this state has jurisdiction to make an initial child custody determination *only if*:

(a) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:

(i) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) *All courts* having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or 26.27.271; or

(d) No court of any other state would have jurisdiction under the criteria specified in (a), (b), or (c) of this subsection.

(2) Subsection (1) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Each factor in that “only if” list, *supra*, must apply before Washington can assume jurisdiction.

California had its jurisdiction ripped from it by the Washington trial court order at issue. And if the anarchy of the pre-UCCJEA-jungle is to prevail in Washington State, we can expect other states to reciprocate and ignore Washington orders.

After advocating the “metaphysical veto” in their interpretation of “substantial conformity” under RCW 26.27.421, the Snodgrasses then act as if California did not have a California Family Code Section 3102, with its own careful constitutional jurisprudence, and Respondents act as if the Jolicoeurs were not legally statutory intervenors and granted visitation under an order that was not appealed in California.

On page four of the Snodgrass brief, they explicitly act, *ipse dixit*, as a court of appeal on California law, and despite a California order giving the Jolicoeurs visitation, and despite the fact that the California trial court’s interpretation of its own law was not appealed, the Respondents first invited Judge Sypolt, and now invite this court, to sit as a court of appeal on California law. *R:4*.

The Respondents then take their legal argument to the next level by citing *In re Marriage of Nurie*, 176 Ca.App. 4th 478 (2009) to the normal effect that a state loses jurisdiction when both parents leave the state. *R*: 4-5.

However, *Nurie* has nothing to say about these facts, where a valid and unappealed California order granted intervention and visitation to California residents (the Jolicoeurs), *who still reside in California*, under California Family Code Section 3102, *acting in the place of a parent*.

Next, the Respondents quote RCW 26.27.221. *R*:5.

But the Snodgrasses misinterpret that statute. RCW 26.27.221 reads (emphasis added):

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* do not presently reside in the other state.

The logic of this statute is clear. Step One: Does Washington State have authority to make an “initial” determination of jurisdiction under RCW 26.27.201(a) or (b). (Answer: No under (a), but yes under (b).) Step Two: “and” (1) the court of the other state surrenders jurisdiction (which California did not) “or” (2) there is no parent or person *acting as a*

parent in California. (Answer: Under a final, unappealed, California order, the Jolicoeurs are legally acting “as a parent,” in the place of the deceased mother, and so Washington does not have proper jurisdiction.)

Restatement of the Narrowest Possible Issue to Be Decided:

Without addressing the finality and contempt issues, one precise legal question for the Washington court is this: *Are the Jolicoeurs – who were granted intervention through California Code section 3102 -- “acting as a parent” under Washington law for purposes of recognizing a California order regarding visitation, and, thus, is a Washington trial court required to follow UCCJEA procedures vis-à-vis California before assuming jurisdiction?* (Answer: Yes and yes.)

The California intervention carefully explored all constitutional issues, carefully offered the Snodgrasses a chance to work out the Jolicoeurs’ visits, and offered the Snodgrasses that they could find a means of maintaining the “maternal family culture,” to the court’s satisfaction.

After the Snodgrasses’ inaction, the California court then ordered visits under a final (and unappealed) order, which the Snodgrasses subsequently defied, and then forum-shopped to avoid.

Another way of stating the issue is this: While California has jurisdiction over a party with legal standing and rights in the place of a parent, may a party to the California action bring suit in Washington to

forum-shop in hopes of defying a final California order and ignore the UCCJEA? (Answer: No.)

The longer answer is that allowing such forum-shopping contempt of a final, unappealed order will effectively return all interstate visitation issues to a pre-UCCJEA condition of anarchy.

III. CONCLUSION: CALIFORNIA'S FINAL ORDER GIVING THE JOLICOEURS PARENT-LIKE STANDING INVOKE THE UCCJEA, AND THAT ORDER SHOULD NOT BE IGNORED.

Appellants, Roger Jolicoeur, and Judy Riley, maternal biological grandparents of Megan and Matthew Snodgrass, were statutory intervenors in the California dissolution of their deceased daughter, under California Family Code Section 3102, and Appellants were granted visitation under an order that was not appealed in California.

The California court carefully parsed the constitutional issues as applied to the Jolicoeur case, and ordered visitation. The Respondents refused to obey this unappealed order.

Instead, the Respondents filed for a declaratory judgment in Washington that was a collateral attack on the valid California order, and this relief was granted by the Washington trial court without any of the procedures of the UCCJEA (RCW 26.27) being followed. This failure to give full faith and credit to the California order, and this failure to follow the procedures of RCW 26.27, are being appealed herein.

The California order should be respected, and the visits should be enforced by the Washington court, as the most responsible remedy in the aftermath of this legal error.

Reversal and remand for sufficient remedy to this violation of the letter and spirit of the UCCJEA is respectfully requested.

Respectfully Submitted,

1/10/11



Craig Mason, WSBA#32962
Attorney for Appellants

APPENDIX: CALIFORNIA FAMILY CODE SECTION 3102

a) If either parent of an unemancipated minor child is deceased, the children, siblings, parents, and grandparents of the deceased parent may be granted reasonable visitation with the child during the child's minority upon a finding that the visitation would be in the best interest of the minor child.

(b) In granting visitation pursuant to this section to a person other than a grandparent of the child, the court shall consider the amount of personal contact between the person and the child before the application for the visitation order.

(c) This section does not apply if the child has been adopted by a person other than a stepparent or grandparent of the child. Any visitation rights granted pursuant to this section before the adoption of the child automatically terminate if the child is adopted by a person other than a stepparent or grandparent of the child.

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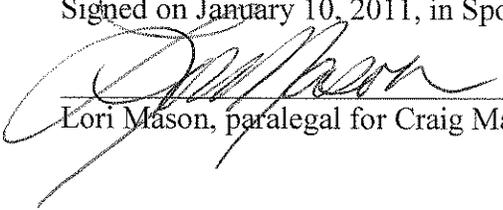
CERTIFICATE OF SERVICE

I declare, under penalty of perjury under the laws of the State of Washington, that on the 10th day of January 2011, I caused a true and correct copy of this REPLY BRIEF to be served on the following in the manner indicated below:

GEOFFREY D. SWINDLER
ATTORNEY AT LAW
316 W. BOONE AVE., STE. 880
SPOKANE, WA 99201

Via Eastern WA Attorney Services

Signed on January 10, 2011, in Spokane, Washington.



Lori Mason, paralegal for Craig Mason