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NO. 65663-5-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

DHEERAJ KONERU,
Petitioner/Appellee,

and

ALEKHYA YALAMANCHILI
Respondent/Appellant.

RESPONSE BRIEF OF APPELLEE

Matthew Jolly, WSBA 23167

Law Office of Matthew Jolly
9 Lake Bellevue Drive, Suite 218
Bellevue, WA 98005
Telephone: (425) 462-9394

Attorney for Appellee
Dheeraj Koneru

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I. INTRODUCTION

This is a dissolution of marriage case. Dheeraj Koneru and Alekhya Yalamanchili were married in 2002 and moved to India in 2004. In 2009, the couple negotiated and signed a comprehensive Separation Contract in anticipation of the divorce including a parenting plan for their 4 year old daughter. The couple filed for divorce in Washington -- a state where Sruthi had never resided. After filing the joint petition, Ms. Yalamanchili sought to revoke her agreement to the terms of the Separation Contract including the parenting plan. Mr. Koneru brought a motion before the trial court requesting enforcement of the agreement. Mr. Koneru further requested that the trial court determine whether it had subject matter jurisdiction over the parenting plan for the parties' daughter. The trial court determined it had subject matter jurisdiction and enforced the written agreements of the parties including the agreed Parenting Plan. Ms. Yalamanchili seeks review of the trial court's decision to enforce the agreed parenting plan but not of the court's enforcement of the other terms of the parties' settlement agreement. This court should conclude that the parenting plan action should be dismissed for lack of subject matter jurisdiction because Washington is not the child's home state and the child has a home state elsewhere. If the court concludes that Washington has jurisdiction over the parenting plan, this

court should affirm the trial court's enforcement of the parties' signed, agreed parenting plan.

II. STATEMENT OF ISSUES

A. Whether Washington has jurisdiction over the parenting plan when Washington is not the child's home state and the child has a home state elsewhere.

B. Whether the trial court properly enforced the agreed final parenting plan signed by both parties when there were no genuine disputes about the existence or material terms of the agreement and where substantial evidence established that Respondent knowingly consented to the plan free from duress or coercion.

C. Whether the trial court must enter specific written findings for each individual statutory factor under RCW 26.09.187(3)(a) when adopting an agreed parenting plan.

III. STATEMENT OF THE CASE

A. Background

Dheeraj Koneru and Alekhya Yalamanchili were married on May 5, 2002 in the United States. The couple lived in Washington until 2004 when Koneru and Yalamanchili moved to Hyderabad, India. They have one child, Sruthi (age 4).

While in India, the couple established a life together including building a successful fitness and spa business, enrolling their daughter in a private school (and pre-paying through secondary school), and building and maintaining important relationships with Sruthi's care providers and the extended paternal family in India. CP 119-120. In India, Koneru was the primary care provider for Sruthi from the time she was 2 ½. CP 120. He was primarily responsible for her day-to-day care, was the sole parent who participated at her school, and was the parent who read to and educated Sruthi. *Id.* Koneru's role as primary caregiver for his daughter is confirmed by two separate nannies, both of whom had daily interaction with the family. CP 209-211, 406-410.

During the marriage, Yalamanchili was often controlling, disrespectful and verbally abusive towards Koneru. In her declaration, Ms. B. Ananta Lakshmi (the couple's maid) describes witnessing outbursts of angry and even violent behavior by Yalamanchili. CP 407. Similarly, Ms. Shanti Orwan (the child's nanny) describes witnessing Yalamanchili yelling at Koneru on a frequent basis and that Koneru was quiet and passive in his response. CP 210. She further describes witnessing Yalamanchili having outbursts of "uncontrollable anger", slamming and breaking a door, and slapping Sruthi. *Id.*

In 2009, Yalamanchili passed the Physician's Assistant certification examination and decided she wished to return to the U.S. to commence employment. She located employment in Houston, Texas (where her parents reside) and moved to Houston in April 2009. CP 121. The couple purchased a one way ticket for Yalamanchili and two round-trip tickets for Koneru and Sruthi. CP 272. Koneru and Sruthi traveled to Texas for a short visit to help Yalamanchili get situated. During their stay in Texas, Yalamanchili stated she wanted a divorce. Following Yalamanchili's announcement, Koneru and Sruthi returned to the family home in Hyderabad, as previously planned, where he and Sruthi continued to reside together until December 2009. *Id.*

B. Divorce Filing and Completion of Separation Contract

The couple took steps to file for a divorce in the State of Washington. Yalamanchili did not want to file the divorce in India and the divorce could not be filed in Texas because of that state's 6 month residency requirement. CP 64. Koneru and Yalamanchili believed filing in Washington would be acceptable because Koneru still had family in Washington, had maintained a mailing address in the state, and had a valid Washington State Driver's License. Koneru retained an attorney in Washington, Ms. Loretta Story who took steps to prepare the paperwork for an agreed dissolution. CP 272.

Over several months, Ms. Story prepared a complete set of paperwork for a divorce including a Petition for Dissolution (CP 1), Decree of Dissolution (CP 385), Findings of Fact (CP 345), Property Settlement Agreement (CP 359), Parenting Plan (CP 350), and Order of Child Support (CP 371). The parties communicated regularly by email as these documents were drafted. The emails from Yalamanchili show that she was anxious for the divorce to be filed quickly, that she was consulting with her own attorney in Texas, and that she actively negotiated the terms of the agreements. CP 179 – 184. On October 4, 2009, she wrote “I really need you to get those papers to me soon so I can go see my lawyer . . . Please do it ASAP.” CP 182. On November 6, 2009, Koneru sent revised drafts to Alekhya, stating “Here are the updates you asked for . . . Can you review it and make sure [Ms. Story] covered everything properly?” CP 183.

On November 17, 2009, both parties signed all of the agreed Washington divorce documents in India. All of the documents were signed at the same time and the parties’ signatures on the Property Settlement Agreement were notarized. CP 370. Section I of the Property Settlement Agreement specifically stated:

Each party hereto acknowledges that he or she is making this Agreement of his or her own free will and volition. **Each party further acknowledges that no coercion, force, pressure or**

undue influence whatsoever has been employed against himself or herself in negotiations leading to the execution of this Agreement either by the other party hereto or by any other person or persons whomsoever. The parties declare that no reliance whatsoever is placed upon representations other than those expressly set forth herein. CP 360 [emphasis added].

Yalamanchili subsequently acknowledged in a sworn declaration that she signed the divorce papers and took them seriously:

He kept calling and harassing me the whole time that he loved me and to come back to him and I kept telling him that I didn't want to do that. I told him that we already separated a long time ago and we also signed the divorce papers and I took them seriously. CP 64.

She also acknowledged in an email to Koneru's parents that she voluntarily consented to Koneru having primary care of Sruthi, stating "I wanted custody as any mother would but he told me he would fight in court if I keep her so I consented." Supp. CP ____; Dkt 42.¹

On December 3, 2009, the parties filed a Joint Petition for Dissolution of Marriage with the Washington court. CP 1. At the time of filing, Yalamanchilil was residing in Houston, Texas and Koneru and Sruthi were residing in Hyderabad, India. Despite this fact, the joint petition stated that Koneru resided in Snoqualmie, Washington (where his cousin had a home). CP 1. The petition asserted jurisdiction over the child on the grounds that:

¹ "Supp CP ____" refers to documents inadvertently omitted from Appellee's initial designation but included in Petitioner-Appellee's First Supplemental Designation of Clerk's Papers, a copy of which is attached hereto.

This state is the home state of the children because the children and the parents and the children 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 children's care, protection, training, and personal relationships, and the children have no home state elsewhere. CP 3.

The petition went on to state that no other state had jurisdiction and that Washington was the last state of residence of the parties before they relocated to India for employment reasons. CP 3.

While Koneru did intend to relocate to the United States with his daughter at some point, he had not yet fixed a date for the move. CP 217. Nor had he determined that he would reside in Washington once he returned to the U.S. CP 217 - 219. At the time they signed the Petition in November 2009, both parties were aware that Koneru and Sruthi were not planning an immediate move to Washington. CP 218.

On December 13, 2009, Koneru came to Washington and stayed with his cousin after dropping Sruthi off with her mother in Texas for a visit. CP 274. Sruthi resided with her mother in Texas for a period in excess of 3 weeks. The couple also divided their property and jewelry and separated their bank accounts as per the Property Settlement Agreement. CP 275. Yalamanchili dropped Sruthi off with Koneru at the end of her scheduled visit on January 5th, 2010. *Id.*

C. Second Parenting Plan and Re-confirmation of Separation Contract

Near the end of her December 2009 visit with Sruthi, Yalamanchili requested that the parenting plan be redrafted to provide her with less residential time with her daughter. CP 124. She further sent a strange, poorly written email stating she wanted less residential time with her daughter. CP 189. In response to this, Koneru had his attorney draft a second, more restrictive parenting plan. CP 191-198. Yalamanchili signed this parenting plan on January 5, 2010. Because the request for a more restrictive parenting plan was so strange, Koneru had Yalamanchili sign a witnessed statement confirming that she was signing the plan of her own free will and free from coercion. CP 200. Koneru has never sought enforcement of this second parenting plan because it was only created in response to Yalamanchili's request under pressure from her boy friend whom she intended to marry. CP 123 – 124. It was Koneru's understanding that Yalamanchili preferred to follow the original parenting plan but was signing the new plan to appease her boyfriend who was not supportive of the child being a part of their life. CP 124.

At the same time (January 5, 2010), Yalamanchili also re-signed all of the original agreements except for the Property Settlement Agreement. This was necessary because the documents that were signed

in November 2009 had been printed and signed in India. As a result, the paper size was not 8.5" x 11" as required for court filings with the King County Superior Court under the then newly implemented e-filing protocols. The Property Settlement was not signed again because that document was not going to be filed with the court (as stated in the Decree). CP 386. Yalamanchili willingly re-signed all of these agreed documents on January 5, 2010 -- six weeks after initially signing them in November 2009. Koneru forwarded copies of all the documents including the second parenting plan to Yalamanchili by email on January 10, 2010. Supp. CP ___; Dkt 42 at Ex. B.

On January 11, 2010, Yalamanchili requested a copy of the second parenting plan she had signed on January 5, 2010. CP 276. Because Koneru had given the signed plan to his attorney, he offered to email an unsigned copy of the plan. *Id.* Koneru emailed an unsigned copy of the parenting plan document to Houston where Yalamanchili signed the second parenting plan a second time. *Id.* Yalamanchili has acknowledged signing the document on January 11, 2010 in Houston but asserted she did so under duress. At the time of her acknowledged signature, she had just spent the prior 3 weeks with her daughter and Koneru was over 1500 miles away. Supp. CP ___; Dkt 42.

D. Litigation History

On January 19, 2010, Yalamanchili retained an attorney in Washington and filed a document claiming to revoke her Joinder and the Agreements. CP 29. On February 17, 2010, Yalamanchili filed a motion requesting a temporary parenting plan (3 weeks on/3 weeks off) and that, if Koneru returned to India, Sruthi should reside with her. Koneru argued that the agreed parenting plan previously signed by the parties should be enforced by the court and filed a motion seeking permission to return to India with his daughter. Both motions were heard on March 4, 2010 before Commissioner Sassaman.

At the hearing, the commissioner questioned whether Washington had jurisdiction over the residential schedule for Sruthi and ordered that the parties address the issue of jurisdiction to the trial judge. CP 256. She similarly stated that any issue about enforceability of the signed final orders must be addressed to the trial judge. The Commissioner then ordered that Sruthi reside with her mother in Texas on a temporary basis and that Koneru have residential time 1 week per month with Sruthi. *Id.* Commissioner Sassaman reasoned that Koneru needed to return to India to run his business but could not remove Sruthi from the United States under the terms of an agreed temporary restraining order. The commissioner further ordered a Guardian ad Litem investigation and that the temporary

residential schedule would be reviewed two months later on May 4, 2010.

CP 257.

On March 9, 2010, Koneru filed a motion for revision of the commissioner's decision. CP 259. He further filed a separate motion seeking determination of whether Washington had subject matter jurisdiction over the parenting plan and requesting that the trial judge enforce the final dissolution pleadings previously signed by both parties. CP 270 - 294. All of these matters were set before Judge Michael Fox in the King County Superior Court for April 23, 2010. Pursuant to the local rules of the King County Superior Court, Judge Fox was provided with copies of every declaration (including all exhibits) submitted to Commissioner Sassaman for the March 4, 2010 hearing. In addition, both parties submitted further declarations and briefing to Judge Fox. CP 259 - 269, 270-294, 295-297, 298-326, 327-337, 402-413. In all, Judge Fox had before him multiple declarations from both parties, third party declarations submitted by both parties, the exhibits thereto, and the rulings of Commissioner Sassaman. *Id.*

In response to the motion to enforce the signed agreements, Yalamanchili claimed for the first time that the parenting plan presented by Koneru differed from the one she signed. Specifically, Yalamanchili complained that the plan proffered by Koneru awarded her half rather than

2/3rds of Sruthi's summer vacation in the event that Dheeraj relocated to the United States. CP 302. In support of her claim, she produced an unsigned parenting plan that contained a provision granting her 2/3rds of the vacation period if Koneru moved to the U.S. Although the signed parenting plan had been the subject of litigation for the prior two months, Yalamanchili never previously claimed that the plan produced by Koneru differed from the one she signed. Koneru denied that the unsigned plan produced by Yalamanchili was anything other than a draft circulated as part of the months of negotiation between the parties prior to signing. Supp. CP ____; Dkt 42. Importantly, the plan actually signed by the parties grants Yalamanchili the entire summer with Sruthi so long as Dheeraj and Sruthi continue to reside in India. CP 352. Thus, the disputed provision of the plan had no impact on Sruthi's present residential schedule.

On April 23, 2010, Judge Michael Fox entered an order enforcing the parties' prior agreement including the agreed parenting plan. CP 338.

In his order, Judge Fox found as follows:

The parties signed a full and final settlement agreement in November 2009. This agreement was in writing, signed by the parties, and was the product of negotiation between the parties. During the preparation of the agreement, Mr. Koneru was represented by Ms. Loretta Story and Ms. Yalamanchili consulted with her own attorney in the State of Texas.

There is no genuine dispute about the existence or material terms of this agreement.

The Court does not find that Respondent was coerced into signing the agreement as she had ample time to review the agreement, consulted with her own attorney, and there is not substantial evidence of coercion or duress.

The agreements are in writing and signed as required by CR 2A. The signatures of Respondent are sufficient without signatures of an attorney on her behalf based both on the fact that she was then representing herself in the Washington proceedings and upon the holding of Patterson v. Taylor, 93 Wn.App. 579 (1999).

Judge Fox further signed and approved the Decree of Dissolution, Findings of Fact and Conclusions of Law, Parenting Plan, and Order of Child Support that the parties had previously signed prior to filing the dissolution action. CP 338. Judge Fox made no explicit findings regarding Washington's subject matter jurisdiction over the parenting plan, relying on the jurisdictional findings contained in the agreed Findings of Fact and Conclusions of Law. CP 345.

Yalamanchili filed a Motion for Reconsideration. After Judge Fox had rejected her prior claims of duress and her claims regarding the summer residential schedule, Yalamanchili for the first time asserted that the parenting plan presented by Koneru also contained a different provision for Winter Vacation and that she was supposed to have "winter vacation" with Sruthi every year so long as Sruthi continued to reside in India with her father. CP 390. The plan signed by the parties and Judge

Fox awards Yalamanchili Spring Vacation with Sruthi every year but Yalamanchili asserted for the first time that she should have received Winter Vacation every year as well so long as Sruthi and her father remained in India. Judge Fox denied the motion for reconsideration without requesting a response from Koneru. CP 400. As a result, Koneru never had an opportunity to respond in the record before Judge Fox to the new allegation that he had surreptitiously changed the Winter Vacation provision of the agreed parenting plan. There is therefore no information in the record regarding whether there is a Winter Vacation at Sruthi's school in India or regarding the duration of any such vacation.

Following denial of her motion for reconsideration, Ms.

Yalamanchili filed a Notice of Appeal. CP 441.

IV. ARGUMENT

A. Washington lacks subject matter jurisdiction to adopt a final parenting plan in this matter because India is Sruthi's "home state" as that term is defined by the UCCJEA.

Washington superior courts have general jurisdiction and lack subject matter jurisdiction only when expressly denied. *In re Marriage of Thurston*, 92 Wash.App. 494, 498 (1998). Lack of subject matter jurisdiction renders the superior court powerless to pass on the merits of a case. *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 556 (1998). Subject matter jurisdiction cannot be conferred

by the consent of the parties. *Wampler v. Wampler*, 25 Wash.2d 258, 267 (1946); *In re Custody of R.*, 88 Wash.App. 746, 762 (1997). Parties may not waive subject matter jurisdiction and the issue may be raised by the parties or court at any time. *Skagit*, 135 Wash.2d at 556. This court reviews questions of subject matter jurisdiction de novo. *Thurston*, 92 Wash. App. 494, 497 (1998)

The determination of subject matter jurisdiction to establish a parenting plan is governed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), RCW 26.27, *et seq.* RCW 26.27.201 states (in relevant part):

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;

Under the terms of this statute, this court must first determine whether Washington was Sruthi's "home state" either (1) at the time the proceedings commenced or (2) within six months prior to the commencement of the proceeding if the child is absent from this state but a parent or person acting as a parent continues to live in this state. If so, then Washington may assert jurisdiction. If not, the court must determine whether there is another "home state" that has jurisdiction. If Sruthi does have another "home state", then Washington may only assert jurisdiction if that home state has expressly declined jurisdiction specifically stating that Washington would be a more appropriate forum for this case. As stated by this court in *In re the Matter of Parenting, Parentage and Support of A.R.K.-K.*, 142 Wash.App. 297, 303 (2007):

When interstate custody issues arise, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Chapter 26.27 RCW, establishes a hierarchy for determining which state has jurisdiction. The children's home state, if one exists, has priority, and no other state may assert jurisdiction unless the home state declines.

1. Washington is not Sruthi's Home State under the express language of the UCCJEA.

The UCCJEA at RCW 26.27.021(7) defines the child's "home state" as follows:

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or person acting as a parent. A period of temporary absence of a child, parent, or person acting as a parent is part of the period.

Whether Washington is a child's home state is determined as of the date of the commencement of the proceedings. RCW 26.27.201(1)(a). RCW 26.27.021(5) defines "commencement" as the "filing of the first pleading in the proceeding." These proceedings were commenced on December 3, 2009 when the parties filed their joint Petition for Dissolution of Marriage. At that time, Sruthi was residing in Hyderabad, India with her father. With the exception of a 3 week temporary absence during her visit to Texas in April 2009, Sruthi had resided in India virtually her entire life. There is no possible reading of RCW 26.27.021(7) that allows Washington to qualify as Sruthi's home state and neither party has asserted that Washington is Sruthi's home state in either the original Petition or the Cross-Petition. In fact, Yalamanchili has squarely acknowledged that Washington is not Sruthi's home state, stating:

Because Sruthi lived in India for nearly the entire six months prior to December 3, 2009, Washington would not be her home state.
CP 308.

Because Washington was not Sruthi's home state at the time these proceedings commenced, Washington may not assert jurisdiction over the residential schedule under RCW 26.27.201(1)(a).

2. India is Sruthi's "home state" under the UCCJEA.

Even if Washington is not Sruthi's home state, RCW 26.27.201(1)(b) permits Washington to assert jurisdiction if no other state qualifies as Sruthi's home state and Sruthi and at least one of her parents have a significant connection with Washington and there is substantial evidence concerning her care in Washington. This is the basis upon which the parties themselves asserted Washington had jurisdiction and the basis contained in the Findings of Fact and Conclusions of Law signed by Judge Fox. CP 345.

This court must treat a foreign country as if it were a state for purposes of applying the UCCJEA. RCW 26.27.051. Sruthi was residing in India at the time the petition was filed and had been living there since shortly after her birth -- a period well in excess of 6 months. Because Sruthi had been residing in India for more than 6 months, India was Sruthi's "home state" at the time the proceedings commenced under the plain language of the statute. As such, Washington is not able to assert jurisdiction over the parenting plan unless India expressly declines to assert jurisdiction in favor of Washington being a more appropriate forum.

RCW 26.27.201(1)(b). India has not declined jurisdiction and, in fact, there is active litigation in India which had already commenced at the time of Judge Fox's decision. Yalamanchili has acknowledged in the record both that India is Sruthi's home state and that India has not declined to exercise jurisdiction, stating:

Although India is Sruthi's "home state" for purposes of applying the statute, no India court has declined to exercise jurisdiction and no court has entered a custody order that would deprive this court of jurisdiction². CP 309.

Thus, both parties acknowledge (1) that Washington is not Sruthi's home state, (2) that India is Sruthi's home state, and (3) that India has not declined to exercise jurisdiction. By the plain terms of the UCCJEA, this court can not assert subject matter jurisdiction over the parenting plan given these acknowledged facts. RCW 26.27.201.

3. The child has no significant connection to Washington and there is not substantial evidence in this state concerning the child.

Even if this court were to determine that India was not Sruthi's home state as that term is defined by the UCCJEA and thus Sruthi had no home state, the court still lacks subject matter jurisdiction over the parenting plan. If a child has no "home state", the court can assert

² The fact that no court has entered an "order that would deprive this court of jurisdiction" is irrelevant in an original custody determination and would only be relevant if a party were asserting exclusive continuing jurisdiction in a parenting plan modification action. RCW 26.27.211.

jurisdiction only if it finds that she has a significant connection with Washington or that substantial evidence concerning her care is in Washington. RCW 26.27.201(1)(b); *In re Marriage of Hamilton*, 120 Wash.App. 147, 157 (2004). Sruthi arrived in Washington for the first time on January 5, 2010 after a 3 week visit with her mother in Texas and over a month after the petition was filed. Prior to the filing of these proceedings, Sruthi had never been present in Washington. She has no care providers, no medical providers, and very little family present in Washington. Sruthi has no significant connection with Washington and there is virtually no evidence concerning her care in Washington. As a result, Washington has no basis to assert jurisdiction over the parenting plan under the plain terms of the UCCJEA even if Sruthi were determined to have no home state.

4. This action should be remanded with instructions to dismiss

The appropriate remedy when a parenting plan is adopted by the trial court despite a lack of subject matter jurisdiction is to remand the case with instructions to dismiss it for lack of jurisdiction. *In re Custody of A.C.*, 165 Wn.2d 568, 577 - 578 (2009). As the parenting plan is the only one of Judge Fox's orders about which Appellant asserts assignments of error, the dismissal of the parenting plan proceedings for lack of jurisdiction renders the Appellant's case moot.

While Koneru would prefer to have an enforceable final parenting plan after spending substantial resources on these proceedings, he has reluctantly concluded that a void or voidable Washington parenting plan is just as bad or worse as no parenting plan at all. Given the absence of proper jurisdiction, the current Washington parenting plan is likely unenforceable in Texas (where Ms. Yalamanchili resides) or any other state in the U.S. See, e.g. Seligman-Hargis v. Hargis, 186 S.W.3d 582 (Texas App. 2006) (agreed Parenting Plan dismissed for want of jurisdiction when same party who initiated proceedings and filed an agreed parenting plan later asserted lack of jurisdiction). By dismissing the parenting plan action, the parties will cease spending further resources on this litigation and can focus on obtaining a valid, enforceable parenting plan from a court with proper jurisdiction such as the Indian courts. While it is unfortunate that the parties are in this situation due to the lower court's improper assertion of jurisdiction, this court must abide by the express terms of the UCCJEA even when it creates unfortunate results. As stated by the Washington Supreme Court when it concluded that it lacked subject matter jurisdiction over a parenting plan despite the fact that litigation had been ongoing in this state for over 5 years:

Child custody cases are often disturbing. We are concerned both for parents who wish to raise their children free from interference and for the welfare of the children who are often bounced from one

custodial situation to another. We regret the delay that these proceedings may have had on A.C.'s custody determination; but until Montana has divested itself of jurisdiction over A.C., issues concerning A.C.'s custody are properly for Montana, not Washington, to decide. *In re Custody of A.C.*, 165 Wn.2d 568, 577 - 578 (2009).

B. The Separation Contract Signed by the Parties Prior to Filing the Divorce was properly enforced by the trial court.

RCW 26.09.070 expressly authorizes pre-dissolution separation contracts in anticipation of divorce:

(1) The parties to a marriage or a domestic partnership, in order to promote the amicable settlement of disputes attendant upon their separation or upon the filing of a petition for dissolution of their marriage or domestic partnership, a decree of legal separation, or declaration of invalidity of their marriage or domestic partnership, may enter into a written separation contract providing for the maintenance of either of them, the disposition of any property owned by both or either of them, the parenting plan and support for their children and for the release of each other from all obligation except that expressed in the contract.

As set forth expressly in the language of the statute, the purpose of such agreements is to promote the amicable settlement of disputes attendant upon the dissolution of a marriage. *Id.* Indeed, the compromise of litigation is to be encouraged. Marriage of Feree, 71 Wash.App. 35, 41 (1993).

1. There is no genuine dispute about the existence or material terms of the Separation Contract.

A motion to enforce a settlement agreement is treated like a summary judgment motion and reviewed de novo. Lavigne v. Green, 106

Wash. App. 12, 16 (2001). The burden is on the party seeking to enforce the settlement agreement to prove there is no genuine dispute regarding the existence or material terms of the agreement. *Marriage of Feree*, 71 Wash.App. 35, 41 (1993). The preferred way for the moving party to meet this burden is by affidavit or declaration. *Id.* at 42. Live testimony is a waste of judicial resources. *Id.* at fn 9. If the moving party is able to produce affidavits or other evidence that show the absence of a genuine dispute of fact, the burden then shifts to the non-moving party to produce evidence demonstrating the presence of a material dispute of fact. *Id.* at 44. Generally, agreements that are both written and signed by the parties are valid and enforceable. CR 2A. *Marriage of Feree*, 71 Wash.App. 35, 40 (an agreement made in writing is not barred from enforcement under CR 2A); *In re Patterson*, 93 Wash.App. 579, 582-583 (1999)(CR 2A does not bar enforcement of agreements made in writing or put on record). The agreements between Mr. Koneru and Ms. Yalamanchili were put in writing and included all the material and relevant terms. The agreements were further signed by both parties. By producing copies of the signed agreements, Mr. Koneru met his burden of showing the absence of genuine disputes of material fact about the existence or terms of the agreement. Ms. Yalamanchili produced no affidavits or other evidence contravening the existence or material terms of the agreement, instead

asserting that the terms of the agreement should not be enforced on alternate grounds. Accordingly, Mr. Koneru has met his burden of establishing no genuine disputes of fact are present regarding the existence or terms of the agreement.

2. Yalamanchili has not met her burden of establishing a material issue of fact regarding her claimed defense of coercion/duress.

While Yalamanchili does not dispute that she signed the agreed final divorce papers produced by Koneru, she asserts that the parenting plan³ should not be enforced because she was coerced into signing the agreement by Koneru. When the non-moving party seeks to raise a defense to prevent enforcement of an agreement, the claim is also resolved through application of the summary judgment standard. *Brinkerhoff v. Campell*, 99 Wash.App. 692 (2000). The burden is on the non-moving party to demonstrate the existence of a genuine dispute about a material fact regarding the alleged defense. *Id.* If the non-moving party is able to produce affidavits or other evidence demonstrating the existence of a material dispute of fact about the relevant defense, then the burden shifts to the party seeking to enforce the agreement to produce evidence showing the absence of material disputes of fact.

³ Yalamanchili has not assigned error to the enforcement of the Decree of Dissolution, Findings of Fact, Property Settlement Agreement or Order of Child Support, all of which were signed at the same time and under the same circumstances.

In support of her claimed defense of coercion, Yalamanchili produced an affidavit claiming she only signed the settlement agreement because Koneru threatened to keep Sruthi from her if she did not do so. A party may not rely on bare allegations to carry them to trial. *Reed v. Davis*, 65 Wn.2d 700, 706-707 (1965). The purpose of summary judgment motions is to allow the court to pierce formal allegations of facts in pleadings or affidavits when it appears there are no genuine issues. *Id.* The party seeking to avoid summary judgment may not rest on mere allegations or denials but must set forth specific facts showing there is a genuine issue for trial. *Id.* “The whole purpose of summary judgment procedure would be defeated if a case could be forced to trial by a mere assertion that an issue exists without any showing of evidence.” *Reed* at 707.

Yalamanchili fails to produce any evidence in support of her claim of coercion and duress other than the bare allegation itself. In response, Koneru produced clear and unambiguous evidence contradicting Yalamanchili’s claim and showing the absence of coercion. During the marriage, Yalamanchili was typically the aggressive and controlling spouse while Koneru was passive. CP 210. The parties’ nanny (CP 209 - 211) and maid (CP 406-410) both confirm that Yalamanchili was angry, abusive and even violent. The Separation Contract was negotiated over a

period of several months from April 2009 through November 2009.

During the period of the negotiation, Yalamanchili was living over 10,000 miles away from Koneru and was free from his direct influence or any reasonable basis for fear. Emails between the parties establish that Yalamanchili was pressing for completion of the agreements, was consulting with an independent attorney in Texas, and was negotiating for specific terms to the agreements. CP 179 – 184. In an email in September 2009, Yalamanchili acknowledges she “consented” to Koneru having custody of Sruthi. Supp. CP ____; Dkt 42. On November 17, 2009, Yalamanchili signed a complete set of dissolution documents including a Petition, Parenting Plan, Child Support Order, and Property Settlement Agreement. CP 345 - 384. The notarized Property Settlement Agreement signed by Yalamanchili on November 17, 2009 expressly acknowledges that “no coercion, force, pressure or undue influence whatsoever has been employed against himself or herself in negotiations leading to the execution of this Agreement either by the other party hereto or by any other person or persons whomsoever.” CP 360. Yalamanchili then signed the agreements a second time on January 5, 2010. CP 191 - 198.

Importantly, this second signature occurred after she had Sruthi in her care in Texas for a period of over 3 weeks during Christmas and thus it is impossible to reasonably conclude under those circumstances that her

access to her daughter was being held hostage to her signature. If she truly felt that she had been coerced, Yalamanchili could have chosen to seek relief from the terms of her agreement in either the Washington or Texas courts without fear of losing contact with her daughter because her daughter was residing with her at that time. The fact that not only did she not choose to do so but then also signed the documents a second time on January 5, 2010 at the end of her scheduled residential time with Sruthi severely undermines her claim of duress. At the time of this second set of signatures, Yalamanchili also signed a witnessed statement stating “I, Alekhya Yalamanchili, am signing these separation documents of my own free will before the two witnesses below. I have not been forced or coerced by anyone to sign them”. CP 200. In a declaration filed with the superior court on January 5, 2010, she acknowledges that she signed the final documents and that she took them seriously. CP 64. The evidence produced by Koneru more than meets his burden of demonstrating the absence of genuine disputes of material fact about the claimed coercion or undue influence.

Even reading Yalamanchili’s submissions in the light most favorable to her, reasonable minds can reach but one conclusion: Yalamanchili signed the parenting plan of her own free will. When reasonable minds can reach but one conclusion, summary judgment is

appropriate. *Marriage of Feree*, 71 Wash.App. 35, 45 (1993).

Yalamanchili's coercion claim is reminiscent of the claim raised by the appellant in *In re Patterson*, 93 Wash.App. 579, 585 (1999). In *Patterson*, the appellant claimed he had been coerced by a mediator into signing a settlement agreement but offered no evidence to support his allegation. *Id.* at 585. The Court of Appeals held that the trial court properly rejected the claimed defense and affirmed the trial court's decision to enforce the agreement. *Id.* at 586.

3. Yalamanchili has not raised a genuine issue of material fact regarding the terms of the settlement agreement.

Yalamanchili asserts that the terms of the parenting plan presented to the court differ from the parenting plan she signed. Koneru filed the agreed parenting plan with the court on February 26, 2010 for the hearing before Commissioner Sassaman and requested that the court adopt the plan as a temporary plan pending finalization of the divorce.

Yalamanchili did not claim that the plan differed in any respect from the one she signed until April 21, 2010, two months later. Prior to April 21, 2010, Yalamanchili asserted that she had signed the plan proffered by Koneru but that she had done so under duress. Further, her claim that Dheeraj surreptitiously changed the summer schedule makes little sense. The claimed dispute concerns a summer provision that will only be in

place if/when the father relocates to the U.S. and does not effect the current residential schedule at all. The difference between 2/3rds and half of a typical summer break amounts to a little more than a week of residential time. Thus, she is alleging that Koneru committed fraud in order to gain an extra week and a half of residential time at some unspecified future date. This allegation does not make practical sense and is not material given that such a small amount of residential time is involved.

Yalamanchili claimed a second fraudulent change to the parenting plan regarding the award of winter vacation residential time but did so for the first time in her Motion for Reconsideration filed on May 3, 2010. As a result, Koneru was never given an opportunity to respond to this allegation. There is therefore no information in the record regarding the claimed “winter vacation” period that Yalamanchili claims she believed she would have with her daughter so long as Koneru remained in India. Thus, the court has no information in the record that was before the trial court as to how short the child’s “winter vacation” is at her school in India or whether this claimed variance is genuine or material. However, Koneru has expressly denied making any changes to the signed parenting plan. Further, the parenting plan does expressly award Yalamanchili spring

break with the child every year – an issue repeatedly overlooked by Yalamanchili.

In support of her claim that Koneru surreptitiously changed the terms of the parenting plan, Yalamanchili is again relying on a bare assertion without substantive evidence. A bare assertion that a party engaged in a conspiracy or some other misdeed is not sufficient to avoid summary judgment. *Reed v. Davis*, 65 Wn.2d 700 (1965)(Plaintiff's allegation that Defendant engaged in a secret kick-back agreement is not enough to raise genuine issue of fact without supporting evidence). The mere existence of a prior, unsigned draft with different terms does not establish that the plan signed by Yalamanchili on November 17, 2009 contained those terms. Parties to a parenting plan dispute routinely circulate draft parenting plans that contain provisions that do not make it into the final agreement. If the mere existence of such a draft is enough to create a genuine issue of material fact, then it will be prohibitively difficult to enforce any negotiated, agreed parenting plan. Importantly, Yalamanchili has not produced a signed parenting plan that contains different terms for her residential time with the child. While Yalamanchili may have desired more favorable terms for her summer and winter residential time, the court is not compelled to relieve her of her decision to agree to the less favorable terms. *In re Patterson*, 93 Wash.App. 579, 585

(1999). Even if the court concludes that Yalamanchili mistakenly signed the parenting plan believing it contained more favorable terms, this is not grounds for denying enforcement of the agreement. *Snap-On Tools v. Roberts*, 35 Wash.App. 32 (1983). A unilateral mistake generally is not grounds for rescinding a contract unless one party is mistaken about a material fact of the contract and the other party knows or has reason to know of the mistake. *Id.* at 34-35.

In an effort to bolster her argument that the agreed parenting plan was intended to include different summer and winter vacation provisions, Yalamanchili points to a November 6, 2009 email from Koneru in which he makes reference to more favorable provisions for her Winter and Summer residential time. CP 184. However, this same email also refers to several other residential provisions that were not included in the final parenting plan – many of which were changed to favor Yalamanchili. For example, the email states that Yalamanchili would only receive Winter Vacation and Summer Vacation residential time so long as Sruthi remained in India. CP 184. The actual final parenting plan, however, gave Yalamanchili Spring Vacation every year instead of Winter Vacation. CP 352. Similarly, the November email specifically states that Yalamanchili should not receive Thanksgiving residential time. CP 184. The actual final parenting plan awards her the Thanksgiving holiday every

other year. CP 353. While the final parenting plan does not include all the residential provisions discussed by the parties in this or other emails, the changes favor Yalamanchili just as much as they disfavor her. In order to accept Yalamanchili's argument that the November 6, 2009 email is evidence that Koneru surreptitiously changed the plan, the court would have to believe that he not only took away some of Yalamanchili's winter and summer residential time but that he also added Thanksgiving and Spring Vacation time. Because the language of the November 9, 2009 email is inconsistent with several provisions of the final parenting plan in ways that both favor and disfavor Yalamanchili, it is inconsistent with her claim that it reflects the intended terms of the final parenting plan. On the other hand, the email is consistent with Koneru's claim that the parenting plan was the product of extensive and ongoing negotiation between the parties with give and take on both sides. This email is therefore not evidence of genuine issue of material fact regarding the terms of the agreed parenting plan and undermines Yalamanchili's argument that the terms of the parenting plan were dictated by Koneru.

It is inappropriate to bar enforcement of a settlement agreement that is not genuinely disputed. *Marriage of Feree*, 71 Wash.App. 35, 41 (1993). “[A] nongenuine dispute can be, and should be, summarily resolved without trial.” *Id.* The disputes about the parenting plan raised

by Yalamanchili are not genuine both because they are unsupported by any specific evidence and because they are so small as to be immaterial. Under the plan signed by Judge Fox, Yalamanchili has her daughter the entire summer break and entire spring break. Even if the unsigned draft provisions put forward by Yalamanchili were put in place, the only change to the current residential schedule would be an additional residential period for Winter Vacation. The duration of this claimed vacation period is unknown and unspecified (Koneru had no opportunity to respond on this issue). Under these circumstances, Yalamanchili has not met her burden of establishing the presence of a genuine dispute of material fact.

C. The Trial Court is not required to enter written findings on the factors set out in RCW 26.09.187(3)(a).

Unlike settlement agreements regarding property issues, agreements of the parties with respect to a parenting plan for their children are not binding on the trial court. RCW 26.09.070(3). Thus, the trial court is not compelled to accept a parenting plan merely because both parents have agreed to the plan. The agreements of the parties is but one factor amongst many set forth in the statutory provisions governing determination of a final parenting plan at the time of a dissolution of marriage. RCW 26.09.187(3)(a). However, neither is the court required to enter specific findings of fact regarding the statutory factors set forth in

RCW 26.09.187(3)(a). Yalamanchili cites no authority in support of the proposition that the court must enter specific findings evidencing consideration of the statutory factors prior to adopting a final parenting plan. Parties to a dissolution proceeding must submit their pleadings on forms approved by the administrator of the courts. RCW 26.09.006. Neither the form Parenting Plan nor the form Findings of Fact and Conclusions of Law include specific findings for each of the factors under RCW 26.09.187(3)(a). Further, in King County Superior Court the local court rules specifically authorize the presentation of final orders in a dissolution action on an Ex Parte basis. KCLFLR 5(c). None of this suggests that individual and specific written findings are required in support of a final parenting plan adopted by the court.

In the present case, there was a contested hearing before Judge Fox on April 23, 2010 prior to adoption of the final parenting plan. At that hearing, Judge Fox had well over a hundred pages of affidavits including statements from the parties, child care providers, physicians, and relatives regarding the best interests of the child. The parties, counsel for both parties, and the child's duly appointed Guardian ad Litem were all present at the hearing. After reviewing these voluminous materials and hearing from counsel, Judge Fox adopted the parties' agreed parenting plan as the final parenting plan for this child. He expressly approved and

incorporated the agreed parenting plan in both the Findings of Fact and Conclusions of Law and in the Decree of Dissolution. Section 2.19 of the Findings of Fact states:

The parenting plan signed by the court on this date is approved and incorporated as part of these findings. This parenting plan is the result of the agreement of the parties. CP 347 - 348.

Similarly, Section 3.11 of the Decree of Dissolution states:

The parties shall comply with the Parenting Plan signed by the court on this date. The Parenting Plan signed by the court is approved and incorporated as part of this decree. CP 387.

Nothing in the statutory framework or associated case law required Judge Fox to enter findings more detailed than those contained in the Findings and Decree in this matter. Judge Fox's express approval and adoption of the agreed parenting plan is all that is required.

The standard of review to overturn a trial court's determination of a final parenting plan is abuse of discretion. *Dugger v. Lopez*, 142 Wash.App. 110 (2007). A trial court abuses its discretion when its decision is based on untenable grounds or reasons, or is manifestly unreasonable. *Id.* In support of the parenting plan, the trial court could reasonably rely not only on the agreements of the parents but also the affidavits of Koneru and others asserting that placing Sruthi in the primary care of her father was in her best interests. Under these circumstances, Yalamanchili has failed to establish that Judge Fox's decision was based

on untenable grounds or was manifestly unreasonable. The parenting plan adopted by Judge Fox should be affirmed.

V. CONCLUSION

Appellee Dheeraj Koneru requests that this matter be remanded to the superior court with instructions to dismiss the parenting proceedings for lack of jurisdiction. In the event that this Court concludes that Washington has jurisdiction over the parenting plan, Appellee requests that the trial court's decision below be affirmed.

RESPECTFULLY SUBMITTED this 12 day of October, 2010.



Matthew Jolly, WSBA #23167
Attorney for Petitioner/Appellee