

66833-1

66833-1

NO. 66833-1-I

COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON

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WILLARD GIBSON

APPELLANT

v.

MARIE-CLAIRE PAGH

RESPONDENT

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COURT OF APPEALS, DIVISION 1  
STATE OF WASHINGTON  
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**APPELLANT'S BRIEF ON APPEAL**

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## **I. ASSIGNMENTS OF ERROR**

1.1 Error #1. The court erred in finding that the Father was subject to the jurisdiction of this court, and/or that he submitted to jurisdiction by consent. CP 794, ¶ 2.1.

1.2 Error #2. The court erred in finding that the child resides in Washington State as a result of the acts or directives of the Father. CP 795. ¶ 2.1.

1.3 Error #3. The court erred in finding that the parties signed an Acknowledgement of Paternity and/or that said Affidavit was filed in Nevada. CP 795 ¶ 2.2. The court erred in entering findings about the timing of said filing as it pertains to this action. CP 795 ¶ 2.2.

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#### **Issues Pertaining to Assignments of Error**

A. Whether Washington had subject matter jurisdiction pursuant to the UCCJEA, including whether "acts and directives" of a party are statutory factors, whether the parties could consent to jurisdiction or whether jurisdiction could rest on the testimony of the party where facts do not support that testimony.

B. Whether the Father sufficiently preserved his objections to jurisdiction where he was at all relevant times a resident of Nevada, was served in Nevada and made no physical appearance in this matter.

- C. Whether the UCCJEA was followed
- D. Whether Mother's omissions in pleadings created a sufficient basis for finding jurisdiction
- E. Whether WA or NV was the home state and whether there was a basis for relinquishment based on inconvenient forum
- F. Whether facts or pleadings supporting emergency jurisdiction existed
- G. Whether the judgments and orders were void for lack of jurisdiction and thus should be vacated
- H. Whether Washington can disregard out-of-state Order with errs pertaining to jurisdiction
- I. Whether the Mother was forum shopping when she stayed in Washington long enough to litigate and left shortly after trial
- J. Whether failure by the Father to seek review of an interlocutory decision is a basis for denying relief under CR 60
- K. Whether the Mother's nondisclosure of engagement and intent to return to NV (evidence discovered post-trial) was fraud
- L. Whether Mother's intent to move to Nevada as of the time of trial defeats the requirements for residency/domicile as it

pertains to jurisdiction

M. Whether the Mother's false statements about residential history constitute fraud on the court under CR 60

N. Whether the court had authority to enter a DVPO pertaining to a minor child for a period longer than one year

O. Whether the relief granted at trial (Parenting Plan) exceeds Petition or addresses the child's best interests.

P. Whether there is evidence to support intransigence by the Father to justify an award of all of the Mother's attorney's fees

Q. Whether the court erred in ordering fees where they were not requested or plead in the Mother's Petitions

R. Whether the court erred in not allowing the Father the opportunity to review billing detail before awarding the entire sum of fees requested (without a finding as to the method of calculation)

## **II. STATEMENT OF THE CASE**

**2.1 Background and Procedure:** This case goes to the heart of the UCCJEA's intent to prohibit forum-shopping by a parent who left the other parent while on vacation in this state, kept the child from that parent, failed to disclose the child's residential history in another state,

litigated in this state, and then returned to marry and reside in the original state—without disclosing those intentions to the trial judge. The UCCJEA was not followed in several instances in this case, starting from the mandatory disclosures about the child’s residential history in the Mother’s Petition, to undocumented “consent” by the Father (contrary to his Response to Petition), to a failure to record whatever discussions occurred between Washington and Nevada, the child’s home state. These procedural flaws aside, Washington as a forum state for various decisions was just that—a temporary location for the Mother who retained ties long enough to litigate and then returned to the child’s home state, the state where the parties had resided prior to commencement of this action, and the state with all relevant information concerning the child. The Father was forced to litigate in Washington (trial, CR 60 motion, appeal), over his standing objection to jurisdiction. These Orders should be void *ab initio*.

## **2.2 Statement of Facts:**

### ***Procedural/chronological facts:***

Appellant Willard Gibson and Respondent Marie-Claire Pagh never married. CP 211. They resided in Nevada when their son

BRITTON LAWRENCE PAGH GIBSON was born on June 23, 2008. RP 69. CP 127. (The Father is named on the birth certificate, but no Affidavit of Paternity was produced for the court in this case. RP 48.) They continued to reside in Nevada when they flew to Washington State for a holiday visit on December 15, 2009, at the invitation of Pam Gibson, Will's mother. RP 28, 72. CP 211. There were return tickets for January 15, 2010.

On January 5, 2010, Will returned to Nevada to take care of a real estate transaction, with plans to return to WA before their return flight in mid-January. CP 35, CP 211, CP 261, 274. RP 27. CP 932.

Upon Will's departure, Marie-Claire took Britton and went to her sister's home in Edmonds, Snohomish County, Washington. RP 27, 35. CP 128. This was with the stated intent of giving Will's mother "a break." CP 128. CP 212. CP 1032. When Marie-Claire learned by phone that night that Will had lost money gambling, she told him she was keeping the child and would not allow him access until certain conditions were met. CP 212. RP 44. Will told Marie-Claire that he would take legal action if she tried to keep his son away from him. CP 129. CP 932. CP 1053.

On January 14, 2010, Marie-Claire filed a Petition for Domestic Violence Protection Order in King County, Washington, stating that she was a resident of King County. CP 1. The Declaration in support of it was served on Will 1/29/2010 in Nevada. CP 865-866.

On January 19, 2010, Will filed a paternity action in Clark County, Nevada, the child's home state. CP 823.

On January 25, 2010, Marie-Claire filed a Petition for Residential Schedule in Washington. CP 112-123.

Will continually objected to Washington State asserting jurisdiction over the child. CP 142-144, CP 58, 77

The Washington record does not reflect how or when a UCCJEA conference took place between Washington and Nevada. CP 887-888. Said conference was not recorded in any manner that would make it reviewable as required by UCCJEA—there are minute entries in Nevada on 3/12/2012 (CP 987) and 4/7/2012 (CP 1031). No parties or counsel were present. CP 987, 1031. No briefing was provided to Judge Doerty in Washington in advance of the conference. CP 887-888. Will's Washington counsel did not know these conferences had occurred, but had been assured by Judge Doerty that he would be

given notice if it were to occur. CP 885. RP 20 of 3/11/2010 hearing. Washington assumed jurisdiction on the basis of Nevada, the child's home state, relinquishing jurisdiction, based on the Nevada record provided in the CR 60 motion response.

Both the DVPO Petition and the Petition for Residential Schedule were consolidated in Washington in June 2010 (CP 190-191), and the matter was continued several times, each time with the DVPO being reissued without reaching the merits (CP 26, 29, 58, 77, 80-84, 192-196, 287-291, 379)—until trial in February 2011.

Trial before Judge Doerty occurred on February 1, 2011, at which time the Mother testified that she had lived with her sister for 13 months and intended to do so indefinitely. RP 36. The Mother in fact was engaged to a Nevada resident and had plans to marry and move there as of 1/21/2011. CP 934-935. She did not disclose this to at trial.

The Father did not appear for trial because he feared arrest and because of the cost of traveling from Nevada to Washington. CP 689. A deputy was present at trial for that purpose. RP 98:17.

Final orders were entered on 2/14/2011 and an amended set on 2/15/2011. CP730-748, CP 749-771. The DVPO was entered with an

expiration date of 2111—100 years later. CP 754. The Final Parenting Plan provided for no contact between the Father and child—not even supervised—until conditions were met. CP 735-744. The court ordered the Father to pay over \$45,000 in attorney’s fees to the Mother. CP 745-748. Amended Orders were signed and entered on 2/15/2011. CP 749-866. Findings of Fact and Conclusions of Law were signed on 2/15/2011. CP 768-771.

The Father timely appealed. CP 772-817. Briefing was initially delayed because the Mother contested the qualification of counsel. That was resolved in September 2011, and in the process of briefing, CR 60 issues were raised and this matter was postponed until that decision could be heard. Judge Fleck denied the Father’s CR 60 motion on February 10, 2012, after which the Father’s Notice of Appeal was amended to include that Order. CP 1129-1130.

***Substantive facts that pertain to legal issues:***

The Mother stated on 1/14/2010 in the DVPO Petition “I live in this county.” CP 1. (Edmonds is in Snohomish County, not King County.) The parties had come to Washington State for a holiday visit. CP 1045, 1047, 1055.

She told the court the child had lived in “King County 12/09 to present.” CP 21. The Mother did not check the option:

“I left my residence because of abuse and this is the county of my new or former residence.” CP 1.

The Mother left blank the entire section related to jurisdiction, checking no boxes, thus giving the court no basis for assuming jurisdiction over the child. CP 21-22.

She did not select the option:

This court has temporary (emergency) jurisdiction over this proceeding because the children are present in this state and the children have been abandoned, or it is necessary in an emergency to protect the children because the children, or a sibling or a parent of the children is subjected to or threatened with abuse RCW 26.27.231. CP 22.

The “initial custody determination” for purposes of the UCCJEA<sup>1</sup> was the Ex Parte Temporary Order for Protection on the same date the Petition was filed, even without having any stated basis for jurisdiction over the child—emergency, temporary or otherwise. CP 23-25. There is no place on this Order for the court to state the basis for jurisdiction.

On January 26, 2010, Marie-Claire stated in her Petition for Residential Schedule that Britton was residing with her in King County. CP 114. She stated that the Mother and Acknowledged Father were

presently residing in the State of Washington. CP 115. She left blank any boxes that would support a request for emergency jurisdiction. CP 116. She left blank the required five-year history of the child's residences. CP 117. (The parties were then under a lease in Nevada that terminated 2/28/2010. CP 1118.)

On 3/11/2010, Judge Doerty stated: "I think jurisdiction has been established for purposes of the domestic violence protection order statute and also for emergency purposes under the UCCJEA." CP 868. Neither Petition was amended to address a correct basis for jurisdiction. The Mother never plead emergency jurisdiction. She admitted her paperwork was "mis-filled out" and had "errors." CP 1054.

The Mother's Petition for Residential Schedule asserts as a basis for jurisdiction over the child: "The child resides in this states as a result of the acts or directives of the respondent." CP 115. No specific acts or directives are listed.

The Mother's Petition asserted emergency jurisdiction over the child, but did not select any of the available options as a basis. CP 116. She relied on the Ex Parte Temporary DVPO as having "granted custody" to her. CP 116.

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<sup>1</sup> RCW 26.27.021(4)

Mother's counsel references UCCJEA discussions with Judge Fox as early as the March 11, 2010 hearing before Judge Doerty. CP 878 (RP 27 of 3/11/2010 hearing). The Father's Response to Petition, outlining the bases for his objections to jurisdiction was filed 3/29/2010. CP 142-144. Judge Doerty assured the parties in open court on 3/11/2010 that notice would be given of any communication between WA and NV courts. CP 885 (RP 20 of 3/11/2010). No UCCJEA discussions were docketed in WA. CP 887-888. Father's WA counsel requested a UCCJEA conference on 3/31/2010. CP 147-151. That request was withdrawn after some communication from the court. CP 890. No briefing was submitted to Judge Doerty before the UCCJEA determination was made. No record was made of the UCCJEA discussions between judges.

The Mother's engagement was not known to the Father or to the court until after trial—engagement pictures were posted on 3/27/2011, stating that the Mother's fiancé, a resident of Nevada, had been in Washington for just a short time." CP 897-904. She married on June 18, 2011 in Henderson, NV, and is listed as a resident there. CP 907.

There was no Acknowledgement of Paternity ever filed in

Washington. RP 48:12-14.

***Historical facts relevant for context and background:***

The parties met at a nightclub when the Marie-Claire was under drinking age (18), but did not disclose that to Will.

Marie-Claire filed and retracted prior DVPO Petitions. CP 1103, 1106. Prior cases involving DV allegations were resolved with probation terminated and charges dismissed in September 2006. CP 200. In May 2007, the Mother herself applied to terminate a DVPO entered 7/13/2006. CP 71-76. Despite seeking protection from Will, she returned to him and even welcomed him back to his own home after an arrest incidental to an auto accident when the parties were together, due to a DVPO Marie-Claire told Will she'd had dismissed, but had not. She requested its dismissal after the fact. CP 71-76. Despite this volatility, the parties were engaged shortly after Britton's birth. CP 211. The Mother talked about wedding plans with Will's Mother in December 2009. CP 211. The Mother spoke glowingly of the Father as both a husband and father after the child's birth. CP 206/1116 [same]. She filed the 2010 DVPO Petition under an old cause number, from 2005. CP 1.

She tested positive for marijuana at Britton's birth. CP 202.

Pam Gibson had visited the parties in Nevada on six occasions. CP 209. None of the Mother's family members had interacted with or seen Britton prior to their trip to Washington in December 2009.

Marie-Claire cut off communication with the Father when he returned from his short trip to Nevada, January 5-6, 2010. CP 128. She changed her phone number so the Father had no way to contact her. RP 44. She returned her engagement ring when she met with Will's mother on January 9, 2010, and made mostly financial demands on the Father, saying nothing about harm or fear of harm. CP 214.

No acts of domestic violence involving the child were alleged in Marie-Claire's Declaration in Support of Petition for Protection Order dated 1/12/2010, filed 1/26/2010 (using the paternity cause number, 10-3-00907-1 SEA). CP 124-129. The Mother left the child in the Father's care on 12/28-30/2009. CP 213. Judge Doerty noted on 3/11/2010, that the evidence regarding the child and allegations of abuse was "extremely scant." RP 22 of 3/11/2010 hearing.

The Mother's requests at trial were different from those plead in her Petitions—she requested total suspension of the Father's contact

with the child (the proposed Parenting Plan filed with the Petition had requested just supervised visitation, CP 133).

As a courtesy to the court, a summary timeline of events contained in the record is provided as **Appendix A**.

### **III. LEGAL ARGUMENT**

#### **3.1 Standard of Review.**

3.1.1 Trial court's decision re jurisdiction. A trial court's decision as to subject matter jurisdiction is a question of law that is reviewed *de novo*. The question of jurisdiction may be raised at any time during the proceeding and this court conducts a *de novo* review of jurisdictional facts. ***Marriage of Robinson***<sup>2</sup>. A judgment entered without subject matter jurisdiction is void. ***Id.***, at 168. There is no presumption that courts have jurisdiction unless it is proved otherwise. ***Id.***, at 172. No objection is necessary to preserve an objection to lack of subject matter jurisdiction, **RAP 2.5(a)**. ***In re Marriage of Ortiz***.<sup>3</sup>

3.1.2 CR 60(b). This court reviews a trial court's decision whether to vacate or amend a judgment or order under CR 60 for an

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<sup>2</sup>159 Wash. App. 162, 170, 248 P.3d 532 (2011)

<sup>3</sup>108 Wn.2d 643, 649-50, 740 P.2d 843 (1987)

abuse of discretion. ***Shaw v City of Des Moines.***<sup>4</sup> A court abuses its discretion when its decision is based on untenable grounds or reasoning. ***Luckett v Boeing Co.***<sup>5</sup> The party attacking a judgment under CR 60(b)(4) must establish by clear and convincing evidence the existence of fraud that prevented it from fully and fairly presenting its case. ***Lindgren v Lindgren.***<sup>6</sup> Review is limited to determining whether the evidence shows that fraud, misrepresentation or misconduct was “highly probable.” ***Dalton v State.***<sup>7</sup>

3.1.3 DVPO. The court reviews evidentiary decisions and decisions to grant or deny a protection order for abuse of discretion. ***Hecker v Cortinas.***<sup>8</sup> A court’s decision is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. ***In re Marriage of Littlefield.***<sup>9</sup>

3.1.4 Attorney fees. The trial court is granted broad discretion in determining an award of attorney fees under RCW 26.26.140. ***State ex rel. T.A.W. v. Weston.***<sup>10</sup>

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<sup>4</sup>109 Wn. App. 896, 900, 37 P.3d 1255 (2002).

<sup>5</sup> 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).

<sup>6</sup>58 Wn.App. 588, 596, 794 P.2d 526 (1990).

<sup>7</sup>130 Wn. App. 653, 666, 124 P.3d 305 (2005)

<sup>8</sup> 110 Wash.App. 865, 869, 43 P.3d 50 (2002).

<sup>9</sup> 133 Wash.2d 39, 47,940 P.2d 1362 (1997)

<sup>10</sup> 66 Wn. App. 140, 831 P.2d 771 (1992)

### 3.2 Subject Matter Jurisdiction must be based on facts.

Unlike personal jurisdiction, subject matter jurisdiction is not determined based on the consent of the parties. *In re Marriage of Robinson*.<sup>11</sup> It is fundamental to the concept of subject matter jurisdiction that a court cannot acquire it by the stipulations of the parties. The Appellate Court in *In re Marriage of Hamilton*,<sup>12</sup> cited *In re Marriage of Murphy*.<sup>13</sup> *op. cit.*, citing as authority *Wampler v. Wampler*.<sup>14</sup> The *Murphy* case made the important point that even under the previous law, [the] UCCJA, a court cannot acquire subject matter jurisdiction by stipulation of the parties.

#### 3.2.1 Mother's assertions about basis for jurisdiction were false and incomplete.

In the present case, the Mother made false and incomplete statements regarding her residence, with the effect of misleading the court. "I live in this county" she claimed on 1/14/2010 when she filed a Petition for DVPO, while visiting family in Washington for the holidays, and nine days after she had taken the parties' child from the home of the paternal grandmother without notice to or consent from

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<sup>11</sup>159 Wn. App. 162, 171.

<sup>12</sup>120 Wash. App. 147, 84 P.3d 259 (Div. III, 2004)

<sup>13</sup>90 Wash. App. 488, 952 P.2d 624 (Div. III, March 1998)

the Father. The Father has not had contact with the child since. “King County 12/09 to present” she wrote regarding where the child lived. The Mother claimed to be residing with her sister at an Edmonds WA address (Snohomish County, not King). Notably, the Mother did not check the option indicating that she left her residence because of abuse and that King County was her new residence. Furthermore, the Mother failed to complete at all the UCCJEA-required information to inform the court about the child’s prior residences, thus giving the court no basis for assuming jurisdiction—either home state or emergency jurisdiction—over the child.

**3.2.2 Family’s presence in Washington was temporary only.**

They were here to visit. The Mother did not request emergency jurisdiction (which would have been temporary only—just long enough for her to get an appropriate order in the proper state—Nevada). She did not allege any acts of domestic violence against the child. She used an outdated, 2005 cause number, a case that predated the existence of the child. All of these omissions and misstatements were for the purpose of getting the Order she wanted without fully disclosing to the court the extent of her circumstances,

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<sup>14</sup>25 Wash. 2d 258, 267, 170 P.2d 31 6 (1946)

the child's residential history—which, if known, would have led the court to question further, and perhaps decline to enter an order so prejudicial to the Father before first addressing jurisdiction. This is the cart that has driven this horse ever since.

**3.2.3 Father did not subject himself to or consent to Washington jurisdiction.**

The Father's opposition to jurisdiction was properly raised in his Response to Petition in the paternity case and repeatedly preserved in the various reissuances of the DVPO throughout the case. At no time did he consent or submit himself to Washington's jurisdiction. There is nothing in the record to support this finding.

**3.3 UCCJEA was not followed in determining jurisdiction.**

The UCCJEA<sup>15</sup> governs whether a court has jurisdiction to make initial custody decisions or to modify a foreign decree. RCW **26.27.011, .051, .221**. The UCCJEA arose out of a conference of states in an attempt to deal with the problems of competing jurisdictions entering conflicting custody orders, as well as the problem of forum shopping. *Custody of A.C.*,<sup>16</sup> Both Washington

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<sup>15</sup> Uniform Child Custody Jurisdiction and Enforcement Act, codified in Washington under RCW 26.27.

<sup>16</sup>165 Wn.2d 568, 200 P.3d 689 (2009).

(RCW 26.27) and Nevada (Nev. Rev. Stat. §125A.005 et seq.) have adopted the UCCJEA.

The UCCJEA establishes a hierarchy for determining which state has jurisdiction. The children's home state,<sup>17</sup> if one exists, has priority, and no other state may assert jurisdiction unless the home state declines. RCW 26.27.201(1). *Parenting of A.R.K-K.*<sup>18</sup> In the present case, the child's home state was Nevada. He was born there in June 2008 and lived there continuously until December 15, 2009. The family had come to Washington State to visit family members for the holidays. When this action was filed on January 12, 2010, only the Mother and child were present in the state; they had been here less than a month, and their continued presence here was over the objection of the Father. It was thus error to find that Washington was the home state (CP 795).

**3.3.1 No stated basis for jurisdiction in initial custody determination.**

The Mother's Ex Parte Temporary DVPO resulting from the Mother's Petition qualifies as the "initial custody determination"

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<sup>17</sup> Defined as the state in which a child lived with a parent for at least six consecutive months immediately before the commencement of the child custody proceeding. RCW 26.27.021(7).

under the UCCJEA (**RCW 26.27.021(4)**). However, the pleadings in that action not only were insufficiently completed by the Mother, but the initial Temporary Order has no place for the court to indicate the basis upon which to determine that jurisdiction exists. It simply states: “the court has jurisdiction.” The only assumption available is that the basis is that which was plead in the Petition—the Mother’s false and incomplete assertions. The Order states that Redmond, WA, is the place where the Father can be served—though the Mother knew at all times that the Father was residing in Nevada and had returned to the child’s home state.

### 3.3.2 **Mother failed to disclosed child’s residential history.**

The Mother also failed to disclose the child’s prior history of residing in Nevada since birth. This is one of the ways the UCCJEA is designed and intended to protect children and families from litigation in a foreign forum—but without this disclosure requirement being followed, the effect is meaningless. The Washington court thus asserted jurisdiction in this determination based on false and/or incomplete information from the Mother. However, while temporary orders can confer jurisdiction, “a temporary order can confer only

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<sup>18</sup>142 Wn.App. 297, 174 P.3d 160 (2007)

temporary jurisdiction.” *Parenting of A.R.K.-K.*<sup>19</sup>

**3.3.3 Child’s home state was Nevada.**

The Father correctly initiated an action in the child’s home state, Nevada, and Nevada made a finding that it was in fact the home state of the child (“habitual residence” in their terminology). CP 992. Temporary emergency jurisdiction was conferred on Washington (though no basis/grounds for same is stated).

**3.3.4 No basis asserted or found for emergency jurisdiction.**

When the jurisdictional issues were addressed by Judge Doerty on 3/11/2010, without any response or hearing from the Father, Judge Doerty asserted emergency [temporary] jurisdiction even though he also found that the allegations pertaining to the child were “extremely scant.” There were no allegations regarding the child at the time the initial custody determination was made—the 1/14/2010 Temporary DVPO. In that filing, the Mother asserted acts of abuse directed at her alone. Her reply dated 2/19/2010 contains more detail about incidents from years past, but nothing describing any specifics regarding harm to the child. Because the initial custody determination was merely continued in effect, there remained no

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<sup>19</sup>142 Wn. App. 297, 304 (2007).

foundation for the emergency jurisdiction asserted by the court on 3/11/2010, as there had not yet been a full, two-sided hearing.

**3.3.5 First UCCJEA conference did not follow statutory requirements regarding notice, participation, record**

The day after that hearing to reissue the Temporary DVPO, some kind of UCCJEA conference was held between Judge Doerty and a judge in Nevada pertaining to that case. Despite Judge Doerty's assurance the day before that such a hearing would occur with notice and participation by the parties and be on the record, there is nothing in this record that shows notice or participation, nor was there a record of said conference as required by **RCW 26.27.101**.<sup>20</sup> That provision states:

(4) Except as otherwise provided in subsection (3) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

The purpose of such a record is to give the parties and a reviewing court the opportunity to review and understand the basis for the decision made. Father's Washington counsel knew nothing of this UCCJEA conference when he filed, on 3/31/2010, a request that UCCJEA conference occur in the paternity action. Based on the

Nevada record provided in the CR 60 motion, the interim decision was that jurisdiction would remain in Nevada, the Washington temporary order (DVPO—there were no temporary orders issued in the paternity case) would remain in effect, but the issue would be revisited at a later date. Father’s Washington counsel was not aware of this, and his briefing was never reviewed because, once he learned that some UCCJEA conference had in fact already taken place, the Washington motion was withdrawn.

**3.3.6 UCCJEA was not followed when courts conferred a second time on jurisdictional issues.**

In April 2010, Washington and Nevada courts again conferred, though the context is not clear—there is no mention of it on the dockets for either the DVPO or the Paternity matters (which were not consolidated until June 2010). Again **RCW 26.27.101**<sup>21</sup> was not followed. There is no record of what was communicated and on what grounds. While the Nevada court instructed the parties’ counsel appearing in that action to provide briefing to the Nevada court about the UCCJEA issues, there was no such communication or expectation on the part of Washington. Nowhere on the Washington docket is

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<sup>20</sup> Nev. Rev. Stat. §125A.275

there even any record of any UCCJEA conference. Nowhere is there any evidence that Judge Doerty received or reviewed any briefing before this conference took place. This is a case of one hand not knowing what the other hand was doing. The only information available to Judge Doerty in the Washington court file were the pleadings containing the Mother's erroneous assertions regarding jurisdiction, and allegations of domestic violence the Father had not yet had the opportunity to answer. There is no record of any briefing made available to Judge Doerty, nor information about the Father's position, the presence of evidence and witnesses in either state, or any other analysis useful for that determination.

### **3.3.7 Failure to follow UCCJEA is a basis for dismissal.**

Washington case law does not yet address this specific question—the consequences of the failure to provide a record of communication between courts as required by the UCCJEA. There is a case on point out of Illinois, interpreting statutory language identical to that in Washington's **RCW 26.27.101**.<sup>22</sup> The court in *In re Joseph*

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<sup>21</sup> Nev. Rev. Stat. §125A.275

<sup>22</sup>750 ILCS 36/110(d), (e)

**V.D.**<sup>23</sup> determined that since “the trial court failed to comply with its statutory duty to provide a record of any communication under the Act,” it must “vacate the judgment on the petition for custody and remand the cause for proceedings consistent with the Act.”

**3.3.8 Evidence does not support inconvenient forum as basis for relinquishment.**

Though Nevada minute entries indicate that the basis for relinquishment in April 2010 was that Washington was the more convenient forum, the evidence does not support that result. The child was born in Nevada and had lived its entire life in Nevada. The child and parents were in Washington for the holidays. The alleged incidents of DV during the child’s life occurred in Nevada. The incident that allegedly occurred in Washington was witnessed only by the Mother and Father, both of whom up to that time resided in Nevada. The only relative who had had any significant contact with the child was the Father’s Mother, Pam Gibson, who resided in Redmond, Washington, but had visited the child six times in Nevada. CP 209. The presence of brothers and sisters of the Mother was not tied to knowledge about the child’s situation at all. CP 208, CP 1019-

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<sup>23</sup>373 Ill.App. 3d 559, 562 (2007)

1020. Even the Mother concedes this in part by complaining that the Father’s listed witnesses “live outside the state of Washington (one in Virginia and five in Nevada).” CP 330. The only person arguably inconvenienced by litigating in Nevada would have been the Mother—by virtue of her stated intent to change her residence to Washington as of the date of filing, instead of returning to the parties’ home in Nevada.

**3.3.9 “Acts and directives” of a parent is not a basis for jurisdiction under the UCCJEA.**

The Mother plead (CP 115) and the court after trial found (CP 769) that the child was present in the State of Washington due to the “acts or directives” of the Father. But this is not a statutory basis for determining jurisdiction under either **RCW 26.26** or **RCW 26.27**. Nowhere is there any description of the “acts or directives”<sup>24</sup> plead or found to exist. The parties came to Washington State to visit family over the holidays. It was the Mother who acted on or about January 5, 2010, to remove the child from the paternal grandmother’s home

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<sup>24</sup> An out-of-state case interpreting this language (a jurisdictional question between Virginia and Kansas) found that though an incident of physical abuse had occurred between the parents, that did not cause, nor had the father ordered the mother and child to move from the home state (Virginia) to Kansas and the Kansas action was dismissed. Thus jurisdiction remained with Virginia. *McNabb v McNabb*, 31 Kan.

and, nine days later, to initiate court action in Washington State. The Father did not “act” or “direct” that the child come to Washington for other than a family visit. He opposed and objected the Mother’s unilateral decision to keep the child from him and to remain in Washington instead of returning him to his home state. There are no tenable grounds upon which the court could make this finding; nor does this finding support any of the court’s conclusions or orders under the applicable legal standards.

**3.4 Without a proper basis for jurisdiction, Washington had no authority to enter orders.**

Without a proper factual basis for the relinquishment by Nevada, Washington should not have proceeded to enter any orders, including a finding of best interests of the child on a default basis.

**3.4.1 Washington can reject an out of state order that errs on the grounds for jurisdiction**

This court is not bound by an out-of-state determination not supported by jurisdictional facts. In *In re Marriage of Verbin*,<sup>25</sup> the Washington court was “fully justified” in refusing to enforce a Maryland Order where a Father had obtained in that state without

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App.2d 398, 65 P.3d 1068 (2003)

<sup>25</sup> 92 Wn.2d 171, 595 P.2d 905 (1979).

fully disclosing family law proceedings occurring in Washington State. While this case predates the current codification of interstate jurisdictional law in the UCCJEA, it stands for the principle that Washington is not bound to an out-of-state decision that is not supported by the record. Thus, under a more full and complete review of the facts in this case, the Nevada decision to relinquish jurisdiction need not dictate the outcome of this court's analysis.

#### 3.4.2 New evidence points to forum shopping by the Mother

The Mother's speedy departure from the State of Washington after trial, and her non-disclosure of those intentions, known to her on the day of trial (stemming from her engagement on January 21, 2011), point to an improper motive for filing and litigating these case issues in Washington—forum shopping. This is a “divisive and deplorable practice,” and to allow it is to “encourage parents to bring suit in a state where the other parent is financially or physically unable to vigorously litigate.” *Verbin*, at 184. That's exactly what has happened in this case—the Mother choosing Washington as a forum inconvenient to the Father for purposes of litigation, knowing at the time of filing that none of the parties resided in Washington and at the

time of trial that she was intending to return to Nevada where the parties and child had resided immediately prior to the case filing in Washington. In *Robinson*,<sup>26</sup> the uncontested Washington decree of dissolution was vacated because the parties had moved to Connecticut. Other jurisdictions have ruled similarly:

**3.5 The court should not have denied CR 60 relief on the basis of the Father failing to seek interim review of the jurisdictional determination that did not comply with the UCCJEA.**

**3.5.1 Interim review is not required to preserve right on appeal as to jurisdiction.**

The court in denying the Father's **CR 60** motion denied relief at least in part on the finding that the Father could have (thus the implication is that he should have) sought review of the Nevada decision to relinquish jurisdiction to Washington—this despite no record being made available upon which he could formulate that review. The determination regarding jurisdiction, however, was an interlocutory order—not the final determination in the case. The Father had no automatic right to review and final determinations are still up to the trial judge. The Father maintained his objection to jurisdiction and such a challenge is appropriate even on appeal. The

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<sup>26</sup>159 Wash. App. 162, 172-173.

Father should not be precluded from seeking and obtaining relief simply because the court believed there was something else he could have done to set the record straight beforehand.<sup>27</sup> This is not an administrative law proceeding in which a litigant must exhaust all available remedies. See, for example, *Habitat Watch*,<sup>28</sup> *Dils*,<sup>29</sup> *Hanson v Hutt*.<sup>30</sup> There is no mandate that a party must seek reconsideration (a possibility Judge Fleck inquired about and a basis for her denial of the Father's motion to vacate) or take actions to make sure the court does what it was supposed to have done under the statutes in place already.<sup>31</sup> Jurisdictional mistakes are appealable error, and it's an error that can be raised any time.<sup>32</sup>

### 3.5.2 Review of interlocutory decisions is discouraged.

In fact, case law discourages interim review: "Discretionary review is not favored because it lends itself to piecemeal, multiple

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<sup>27</sup> J. Fleck: "from the first quarter of 2010 until the first quarter of 2011 when the father had an ability to do all sorts of legal—take all sorts of legal steps" RP 29 (2/10/2012)

Fleck: "he could not have respectfully said, 'Your Honors, you didn't make a record . . .'" RP 14 (2/10/2012)

<sup>28</sup>155 Wn.2d 404

<sup>29</sup>51 Wn.App. 216 (1988)

<sup>30</sup>83 Wn.2d 195 (1974)

<sup>31</sup>RAP 2.3 allows a party, but does not require a party, to seek review of certain interlocutory orders.

<sup>32</sup> J. Fleck: "I do think that was a final determination under the UCCJEA" RP 62

appeals” and “we do not favor interlocutory review.” ***Right-Price v Connells Prairie***.<sup>33</sup> Moreover, the appellate court is empowered to hear all bases for appeal in an appeal of right, including those orders that might have been reviewed on a discretionary basis under RAP 2.3. ***Id.; Kreidler v. Eikenberry***.<sup>34</sup> The Illinois decision cited above (***Joseph V.D.***) came about after the final decision in the case, but was vacated based on the failure of the interim communication to be recorded (without that having been challenged beforehand).

### **3.5.3 Jurisdiction can be raised at any time.**

Without jurisdiction, all orders in this matter are void. Because jurisdiction can be raised at any time, the Father is not prejudiced in any way by his failure to seek an interim review of jurisdictional determinations between the courts while these cases were pending. The final determination regarding jurisdiction was made by Judge Doerty in Washington on February 15, 2011. The Father timely appealed that final order. Judge Fleck abused her discretion in relying on the procedural possibility (or expectation) that the Father seek interim review—reconsideration or otherwise—to

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(2/10/2012)

<sup>33</sup> 105 Wn. App. 813, 820-21, 21 P.3d 1157 (2001)

correct the Nevada court's errors leading up to the relinquishment decision.

**3.6 Newly discovered evidence warranted an order to vacate under CR 60(b)(3).**

**3.6.1 Father had no way of discovering Mother's engagement**

Under **CR 60(b)(3)**, a litigant may move a trial court to vacate a judgment in light of 'newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule **59(k)**." *Isla Verde Int'l Holdings, Inc., v City of Camas*.<sup>35</sup> The Father discovered, after trial, that the Mother had become engaged shortly before trial, then married and returned to Nevada shortly after trial. This was not information known to him or discoverable by him at trial or within the discovery period leading up to trial (the engagement, January 21, 2010, occurred ten days before trial). The Mother's engagement pictures were not posted until March 28, 2010, after the time period for requesting a new trial under **CR 59(b)** had passed. The Mother still had a good faith obligation to disclose to the court the entirety of her intentions and where the child was to

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<sup>34</sup>111 Wn.2d 828, 836, 766 P.2d 438 (1989)

<sup>35</sup>99 Wn. App. 127, 142, 990 P.2d 429 (1999), aff'd on other grounds, 146 Wn.2d 740 (2002).

reside.

**3.6.2 New evidence shows that Mother did not intend to reside in Washington at time of trial, thus defeating basis for jurisdiction.**

The Mother's intention to live in Nevada as a result of her engagement to a Nevada resident is another basis upon which the court could find that Washington was not her state of residence if she had been forthcoming and honest in her trial testimony. The court in ***Robinson*** explained that residence ("domicile")—the basis for jurisdiction—is comprised of two elements: residence in fact coupled with the intent to make a place of residence one's home. "Simply stated, domicile has two aspects: physical presence and intent to reside." ***Id.***, at 168. At the time of trial, the Mother had physical presence, but based on the engagement, no intent to reside in Washington. She moved shortly after trial and remains in Nevada to this day. This court conducts a "de novo review of the facts" surrounding jurisdiction. It is proper to inquire whether the facts support the self-serving statements of a party as to intent in a way that the intent can be said to be genuine. ***Id.***, at 169. The Mother's testimony at trial was that she intended to stay with her sister until she

could afford a place on her own (CP—all the while knowing that she was engaged and planning to marry and move to Nevada. She had no present intent to make Washington her home.

### **3.6.3 Mother litigated in Washington for purposes other than domicile.**

In ***Wampler, supra***, the court found that when a resident of Washington who went to Wyoming solely for the purpose of obtaining a divorce and not with the bona fide purpose of establishing a permanent residence, the result was that the Wyoming orders were void. Similarly, the Mother here used the Washington court system to obtain a DVPO and Parenting Plan with no intention of making Washington her permanent residence. Within weeks of the trial she was engaged to a Nevada resident (who was present in Washington for just a short visit in March 2011) and moved to/married in Nevada.

### **3.6.4 Mother's testimony is not conclusive**

The validity of these orders is subject to collateral attack and, "if it be affirmatively shown that such facts did not exist, the record will be a nullity notwithstanding the recital that they did exist." ***Wampler***, 25 Wn.2d, at 263. In other words, just because the Mother testified that she and the child lived here, the fact that she said it doesn't matter.

The court must find a valid basis for jurisdiction. “Proof of residence is essential and a divorce obtained with the aid of an assumed residence is not in good faith and does not give the court jurisdiction of the case.” *Id.*, citing *Mapes v Mapes*.<sup>36</sup> In *Hollingshead v Hollingshead*,<sup>37</sup> also cited in *Wampler*, at 265, a Nevada decree of divorce between parties domiciled in New Jersey was void for lack of jurisdiction. The same result should apply here. If the Mother was not in fact living here at the time of filing, or intending to live here at the time of trial, Washington had no jurisdiction over this case.

**3.7 If judgment was void for lack of jurisdiction, it must be vacated.**

The orders in this matter—all of them—should be vacated under **CR 60(b)(5)** if there is no jurisdiction and those decisions are void.

**3.8 Mother’s assertions to the contrary were fraudulent.**

Not only did the Mother, in her initial filings, misrepresent the status of the parties and the child as to their residency at that time, but at trial led the court to believe she intended to reside in Washington State indefinitely. All of the elements of fraud are met in this scenario.

Those elements are:

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<sup>36</sup> 22 Wn. 2d. 742, 167 P.2d 405

<sup>37</sup> 91 N.J. Eq. 261, 110 Atl. 19

(1) representation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by the plaintiff. ***Stieneke vs Russi***.<sup>38</sup>

Each element of fraud must be established by clear, cogent, and convincing evidence. ***Stiley v. Block***.<sup>39</sup>

(1) **Mother asserted facts in sworn testimony.** The Mother wrote, prepared and signed pleadings asserting various facts (saying she was residing in Washington when she had just arrived from Nevada, that the child and father also resided in Washington, when they did not) and testified personally at trial (indefinite residence in Washington, versus intent to return to Nevada due to engagement).

(2) Where the parties resided was **material to the outcome** of this proceeding. No orders could enter at all if there was no jurisdiction. Jurisdiction is based on residency and intent. Once the child and parents do not presently reside in the state, jurisdiction ceases.

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<sup>38</sup> 145 Wn. App. 544 (2008)

<sup>39</sup> 130 Wn.2d 486, 505, 925 P.2d 194 (1996).

**Parenting of A.R.K.-K.**<sup>40</sup> (Washington lost jurisdiction when both parents moved to Montana). Because the case proceeded in Washington, witnesses otherwise available to the Father were not able to testify due to the burden of the distance.

(3) **The Mother's statements were false.** The child was not a resident of Washington at the time of filing—Nevada was his home state. The Mother did not reside in King County, but rather Snohomish County. The Father did not reside in Washington, but rather Nevada. At the time of trial, the Mother intended to reside in Nevada with her soon-to-be husband. She led the court to believe otherwise. RP 36.

(4) **The Mother knew of the falsity of her statements.** She knew that she had come to Washington for a family vacation, taken the child from the Father and withheld him, then filed her action when she learned of the Father's gambling loss, not out of any fear for her safety (or she would have filed closer in time to any alleged incident). She knew she was engaged and planning to marry as of the trial date. She knew the Father was at all times a resident of Nevada. She knew the child had minimal contacts with anyone outside Nevada. She admitted

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<sup>40</sup> 142 Wn. App. 297, 303, 174 P.3d 160 (2007)

that her paperwork was “mis-filled out” and had “errors.” CP 1054.

(5) **The Mother intended that her words be relied upon**, acted upon. In this case, she committed fraud against the court, in asserting, under oath, these falsities and misrepresentations. She intended the court to rely upon them—which is one reason for omitting information about the child that might have been an obstacle to the relief she was requesting (such as the child’s residential history). Disclosing to the court her actual circumstances and residency would have created a problem—the Mother intended for the court to rely on her false assertions of residency to avoid that problem.

(6) The recipient of this information—the **court—had no basis upon which to know the Mother’s statements were false**. She signed her Petition under oath/penalty of perjury. The court had no independent reason or basis for disbelieving the Mother’s assertions on the initial filing—and if that was the basis for Judge Doerty’s discussions about UCCJEA jurisdiction, he didn’t even have the Father’s Response or any briefing to alert him to the possible falsity of those assertions.

(7) **The court relied upon the truth of the Mother’s assertions** in finding jurisdiction at trial, and in proceeding even on the basis of

temporary jurisdiction prior to trial. The scope of the factual assertions relied upon in the UCCJEA conference(s) are unknown without a record, but all that was available to Judge Doerty at that time were the Mother's pleadings, so that had to be the basis relied upon from the standpoint of the Washington court.

(8) **The court had the right to rely on the Mother's testimony.** The Mother was sworn at trial and signed her statements under penalty of perjury. Such testimony is the basis for the trial court's determinations.

(9) **Damages were suffered**—the court was duped. Justice was not done. Orders were entered that should not have been, and the duty of the court to ensure fairness even to absent parties, was not met. The court's obligation to ensure the best interests of a 2-year-old child were thwarted by the Mother's false statements.

The court in the **CR 60** motion abused its discretion in not recognizing and finding the fraud committed on the court by the Mother, based on newly discovered evidence that exposed her dishonesty at trial, in addition to that which she asserted in her Petitions.

**3.9 If appeal as to jurisdiction is not granted, DVPO exceeded statutory authority as to duration.**

The court entered a DVPO under **RCW 26.50** with a duration of 100 years—expiration date 2/15/2111. **RCW 26.50.060(2)** expressly limits such orders to one year in duration. The court thus lacked authority to enter this order restraining the Father’s contact with his child for longer than one year. The order should be deemed to have expired one year after it was issued. *Muma v Muma*<sup>41</sup> (protection order purporting to extend until minor children reached age 18 was effective only for one year after issuance). This is particularly egregious where the court initially stated that the evidence pertaining to domestic violence regarding the child was “scant.” And the fact that the final order entered by default, without hearing testimony from the Father (though he had submitted written statements controverting and denying the Mother’s allegations). Default judgments are generally disfavored as the overriding concern of the courts is to do justice. *Norton v Brown*,<sup>42</sup> *Calhoun v Merritt*.<sup>43</sup>

**3.10 If appeal as to jurisdiction is not granted, the Residential Schedule should be vacated because it exceeds the relief requested in the Petition**

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<sup>41</sup> 115 Wash.App.1, 7, 60 P.3d 592 (2002)

<sup>42</sup> 99 Wn. App. 188 (1999)

<sup>43</sup>Wn. App. 616, 620 (1986)

To the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void. *Marriage of Leslie*.<sup>44</sup> The Mother's Petition for Residential Schedule referenced a proposed Parenting Plan. CP 117. That Plan requested a schedule of supervised visits with the Father until he completed DV treatment. CP 133. The Order that entered by default after trial (where Father did not appear) gave the Father no access to the child until he complied with treatment *and* criminal proceeding requirements. CP 762. The court did not make any findings directly relating the Father's criminal activity to parenting or even to the child directly.

**3.11 If appeal as to jurisdiction is not granted, judgment awarding fees on trial court level should be reversed.**

**3.11.1 An award of fees exceeded the scope of relief plead in the Mother's Petitions**

This request, too, exceeded that which was plead by the Mother and thus should be denied. CP 119 is the signature page of the Mother's Petition for Residential Schedule. The box requesting payment of "court costs, guardian ad litem, attorney and other reasonable fees" was not checked. The Father was therefore given no notice that this relief would be requested or could be granted at trial.

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<sup>44</sup> 112 Wn.2d 612, 772 P.2d 1013 (1989)

The Petition was never amended. Likewise in her Petition for DVPO, item 10, “require the respondent to pay the fees and costs of this action” was not marked. CP 3. To the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void. ***Marriage of Leslie.***<sup>45</sup>

3.11.2 **No supporting finding or factual basis for intransigence.**

The court ordered all of the Mother’s attorney’s fees be paid by the Father on the basis of intransigence, but did not cite any behaviors or actions on the part of the Father that were “intransigent,” nor that caused any increase to the Mother’s legal costs. The Father’s objection to jurisdiction had merit and the Father’s participation, while on the one hand may seem minimal (he filed just four Declarations in the entire case—one opposing the DVPO, one to support his request for a continuance of trial, one opposing the request for fees, and one in reply for his CR 60 motion), cannot at the same time be cause for the Mother’s fees. The Mother conducted minimal discovery—serving a set of Interrogatories on the Father on 11/29/2010 (CP 693) about a month before the original trial date. (Curiously, work on preparing these was billed by Mother’s attorneys on 12/1/2010, *two days later*—CP 718,

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<sup>45</sup> 112 Wn.2d 612, 772 P.2d 1013 (1989)

719.) The Father conducted a deposition of the Mother. The opportunity to request and be granted fees for bad faith in any particular portion of the case (motions) was available to the Mother but no fees were granted until after trial—on the basis, primarily, that the Father did not appear for trial.

3.11.3 **No findings connecting Father's actions to Mother's fees.**

There was no nexus or explanation found by the trial court between the Father's actions/inaction and actual cost that resulted to the Mother.

3.11.4 **No opportunity to address basis for fee amount.**

The Father was given no explanation of the basis for the Mother's fee requests until the Mother submitted billing statements for the first time in reply to the Father's response/objection on that basis. CP 692-729. Thus the Father had no opportunity to review for reasonableness and identify questionable items or entries before the court issued the Order that the Father pay over \$45,000 in fees to the Mother. It was error to allow the Mother to "sandbag" the Father on an item with such huge monetary consequences. Even if some fees were within the court's discretion to award (if the court overcomes the fact that no request for fees was ever plead), the reasonableness of the sum warrants

review and consideration once the basis is provided. That information should have been submitted with the Motion for Fees, not for the first time in reply. If the fee award is not reversed on any other grounds set forth herein, the court should remand to allow the Father the opportunity to review and address those billing records.

**3.11.5 The court made no findings to support calculation of fee amount**

The trial court must indicate on the record the method it used to calculate the fee award. *Marriage of Knight*.<sup>46</sup> There is no such record in this case.

In *Van Camp*,<sup>47</sup> which is not directly on point because it involved fees under **RCW 26.09.140** (dissolution) in which the “overriding” concern is equity—need and ability to pay—the court still affirmed an award of fees because the court had been able to hear from experts on both side as to reasonableness of fees, to adjust the requested hours to a reasonable level and also to reject entries showing duplicate work. In *Knight*, the court also considered whether a party failed to prevail and whether the attorney’s work appeared to be totally necessary. A court’s decision to award attorney fees requires the court to exclude from the

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<sup>46</sup> 75 Wn. App. 721, 729, 880 P.2d 71 (1994)

requested hours “any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims.” *Mahler v. Szucs*.<sup>48</sup> In the present case, there was no such opportunity for this analysis because the records were produced for the first time in reply for the motion regarding fees.

(Oddly, the motion for fees, filed 2/4/2011—after trial—references as an “unknown” whether the Father will appear for trial, when that fact would have been known three days prior. CP 662. How the Father’s failures in criminal matters, for which the Mother is but a witness and not a party incurring attorney fees relate to the fee motion after this default trial is not explained at all. At most, the Mother argues that a Motion in Limine was required to limit the Father’s presentation at trial. Nowhere are those particular fees/expenses delineated, nor is the basis for awarding *all* of the Mother’s fees set forth.)

It was error for the court to award the entire amount requested for the entire case when records (on reply) show excessive, repetitive billing and included work done in other matters.

### 3.12 **Attorney fees on appeal should be awarded to the Father on appeal.**

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<sup>47</sup> 82 Wn. App. 339, 918 P.2d 509 (1996)

<sup>48</sup> 135 Wn.2d 398, 434, 957 P.2d 632, 966 P.2d 305 (1998).

**RAP 18.1** allows this court to award fees where it is statutorily allowed. In a paternity action attorney fees can be awarded on almost any basis under **RCW 26.26.140**. Pursuant to **RCW 26.26.140**, the appellate court, too, has broad discretion to award attorney fees. Fees can be awarded to the prevailing party in a frivolous action under **RCW 4.84.185**. In awarding attorney fees on appeal, the court should examine the arguable merit of the issues on appeal and the financial resources of the respective parties. *Griffin*.<sup>49</sup>

**RAP 14.2** allows for costs to the prevailing party and **RAP 14.3** includes reasonable attorney's fees as allowable costs. If the Father prevails, he should be awarded all of his post-trial fees and costs, in an amount to be determined by affidavit following oral argument, if any. This action came about by the Mother's retaliatory behavior toward the Father without regard to the child's relationship with his father, but using contact as a way to punish the Father for gambling losses. She chose a forum that would preclude him from actively and vigorously participating in litigation (then complains because he did not do so).

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<sup>49</sup> 114 Wn.2d 773, at 779, 791 P.2d 519 (1990)

#### IV. CONCLUSION

This matter belonged in Nevada to begin with and, now that the Mother has returned there, should be litigated where the information can be fully aired and a decision made that will meet Britton's best interests going forward. Without a basis for subject matter jurisdiction under the UCCJEA, without the court following the requirements of the UCCJEA regarding communication with another court, and without a truthful factual basis for the Mother's assertions at the time of filing and at trial, all orders from the trial court (Judge Doerty) in this action are void. Alternatively, the court should find that the trial court (Judge Fleck) abused its discretion in not granting the relief in the Father's CR 60 Motion and dismissing/vacating the orders on that basis. Aside from lack of jurisdiction, the court's orders exceeding the relief plead, the statutory limitations of **RCW 26.50**, as well as due process with regard to fees and should be reversed and/or remanded as requested herein.

RESPECTFULLY SUBMITTED this 4<sup>th</sup> day of June, 2012.

MICHAEL W. BUGNI & ASSOCIATES

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of June, 2012, the original of the foregoing document was transmitted for filing to the Court of Appeals, Division I, by US Mail:

Via US Mail:

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Dona Harris