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No. 72228-0-1

WASHINGTON STATE COURT OF APPEALS, DIVISION ONE

In Re the Marriage of:

JONATHAN PHILPOTT,
Respondent,

and

LINDSEY WRIGHT, fka PHILPOTT,
Respondent.

RHEA ROLFE,
Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
HONORABLE RONALD KESSLER

BRIEF OF APPELLANT

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I. INTRODUCTION

The only appellant in this child relocation action is attorney Rhea Rolfe, who appeals CR 11 sanctions entered against her for filing an amended petition. Ms. Rolfe represented the mother, who sought to modify the parties' original parenting plan which, although entered just months earlier, had been repeatedly disregarded by the father and which, given the father's post-decree relocation from Florida to Colorado, was subject to modification.

Following a five-day trial, the trial court determined the amended petition was unwarranted—and *sua sponte* awarded CR 11 sanctions against Rolfe with no opportunity to respond—because it relied on erroneous facts and legal grounds. Factually, it believed a predecessor judge had not granted the mother permission to file the amended petition, though the record clearly shows otherwise. Legally, it believed its authority to modify the parenting plan in a relocation action was strictly limited to modifications necessary to “accommodate the relocation” if properly approved. This legal conclusion is contrary to the Child Relocation Act's express authorization to modify the parenting plan, including modification of the primary residence of the child, so long as the relocation is being pursued. RCW 26.09.260(6). The mother's legal theory, is supported by recent decisions in Marriage of McDevitt, 181 Wn.

App. 765, 326 P.3d 865 (2014), and Marriage of Raskob, ___ Wn. App. ___, 334 P.3d 30 (2014), which, although decided too late to guide the trial court's decision, demonstrate that the trial court abused its discretion by relying on an incorrect legal standard and ultimately erred by entering CR 11 sanctions against Rolfe.

II. ASSIGNMENTS OF ERROR AND RELATED ISSUE STATEMENTS

1. **The court erred in finding "Counsel then filed an Amended Petition on December 13 without obtaining leave of Court." (CP 1204)**

Issue Statement: Philpott argued Wright could not seek modification of the parenting plan under the Child Relocation Act unless Wright objected to the relocation, and Judge Robinson granted Wright permission to amend her petition to object to relocation. Did the successor judge, Hon. Ronald Kessler, err in finding Wright did not have permission to file her amended petition?

2. **The court erred in concluding its authority "is limited to modification of the parenting plan only to accommodate the relocation." (CP 1204)**

Issue Statement: The Child Relocation Act allows a parent to petition the court to modify the parenting plan, including a change in the primary residence of the child, so long as a relocation is being pursued by the other parent. RCW 26.09.260(6). The trial court believed the law limited the court's authority to modify the parenting

plan to the extent necessary to “accommodate the relocation.” Did the trial court err in so concluding?

3. **The trial court erred in dismissing the amended petition for modification without hearing evidence supporting Wright’s request to change the primary residence of the children to her home in Washington.**
4. **The court erred in finding “the objection to the relocation was made in bad faith, was made to unnecessarily increase the cost of litigation, and was made to harass Mr. Philpott.” (CP 1198, 1204, 1206)**
5. **The court erred in finding “the objection was not well-grounded in fact, and was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, or the establishment of new law.” (CP 1198, 1204)**

Issue Statement Related to Assignments of Error 3, 4 and 5: The successor judge, Hon. Ronald Kessler, believed Wright did not have permission to amend her petition (Assignment of Error 1) and believed the law limited the court’s authority to modify the parenting plan in a relocation case (Assignment of Error 2). If either of the first two assignments of error is correct, did the trial court err in finding the amended petition violated CR 11 standards and entering judgment for monetary sanctions against Wright’s attorney?

6. The trial court erred in sanctioning attorney Rhea Rolfe without giving her an opportunity to respond to the court's *sua sponte* decision to award sanctions.

Issue Statement: Due process for awarding sanctions under CR 11 requires, at a minimum, notice and an opportunity to respond. The first mention of CR 11 sanctions for the amended petition was by the trial court in its oral decision granting sanctions, and the court said it would not hear "re-argument of what the Court decided." Did the trial court err in sanctioning Rolfe without giving her an opportunity to contest and explain?

7. The trial court erred in dismissing the original petition for lack of adequate cause.

Issue Statement: The Child Relocation Act, RCW 26.09.260(6), provides that a parent "may file a petition to modify the parenting plan, including a change of the residence in which the child resides a majority of the time, without a showing of adequate cause other than the proposed relocation itself," and RCW 26.18.220(3) provides that an action should not be dismissed for failure to use a mandatory form. Wright's original petition for modification was on the form for general modifications rather than the form specific to the Child Relocation Act and RCW 26.09.260(6). Did the trial court err in refusing to consider the original petition under RCW 26.09.260(6), holding an adequate cause hearing, and dismissing the original petition for lack of adequate cause?

III. STATEMENT OF THE CASE

A. The parties and their two young children lived together in Florida before they separated at the end of 2011.

The parties and their two children lived in South Carolina, Colorado, and Florida until the parties separated at the end of 2011. (CP 6, 9-10) Philpott petitioned for divorce in Florida and, following a two-day hearing, a Florida court granted the divorce and designated Philpott the primary residential parent. (CP 6) The following background facts are taken from the Florida court's findings of fact.

During the marriage Philpott served in the U.S. military and Wright was the primary caretaker for the children, Michaela (born in August 2005) and Nathaniel (born in November 2007). (CP 7-9) Philpott's work hours (typically 10 to 12 hour days) and 20 months of deployment abroad (twice to Japan, once to Iraq), limited his involvement with the children though he contributed to the cooking, bathing, and disciplining of the children when he was home. (CP 9)

The court found the parties appeared to be sexually incompatible. (CP 10) Philpott viewed pornography "persistently" to a degree he described as "a problem" for the marriage, and Philpott had three extra-marital affairs, including one with a 17-year-old. (CP 10-11, 38)

Domestic violence and child abuse were issues in the trial. When Michaela was an infant, Philpott once suppressed her persistent crying by putting a pillow over her mouth – an incident he expressed remorse about. (CP 11) Each parent had attempted harm to himself or herself at different times. Wright twice attempted to cut her wrists. (CP 10) Philpott did the same after the parties separated. (CP 18) Wright testified that Philpott limited her freedom and her involvement in activities outside the home, but the court did not find her credible. (CP 10)

At the end of 2011 the parties agreed they would separate and Wright would move with the children to Colorado, where Philpott's parents live. (CP 13) But life near her former in-laws was unbearable as they encouraged her to seek reconciliation, so she and the children in January 2012 moved to Washington, where the children remained for a year and a half with Wright. (CP 14)

When they arrived in Washington, Philpott told Wright he would no longer communicate with the children, and in February he filed for divorce. (CP 27, 31) In Washington Wright connected with Cole Gross, a good friend of the parties from Florida who had moved to Washington. (CP 14) There they became romantically involved and soon decided to marry. (CP 14-15) Wright began working part time and taking college classes. (CP 17)

B. Philpott's threatening behavior was a major issue at trial. The Florida court found the criminal charges unwarranted, found Wright not credible, and returned primary residential custody to the father.

On May 9, four months after deciding not to communicate with the children, Philpott sought to resume communications. (CP 31) On May 21, 2012, the Florida court entered an order allowing Philpott to visit the children in Washington for 72 hours. (CP 15)

But the visit did not happen following a sequence of events that began with a text sent by Philpott to Cole. A police investigator contacted the Navy which cancelled Philpott's leave and ordered him to return to Florida. (CP 22-23) In Washington an arrest warrant was issued for Philpott. (CP 32)

On June 8, 2012 in Washington State, Wright filed a Petition for Protective Order and an attached 13-page summary of Philpott's abusive behavior. (CP 11, 23) She testified she was terrified of Philpott in the days before she left Florida, feared he would rape her, and that their sexual relations had never been consensual. (CP 12) Philpott was represented by counsel in that proceeding. (CP 49) The Washington court in August 2012 entered a five-year order for protection prohibiting Philpott from contacting Wright or the children. (CP 25, 31, 44; Ex. 103) The order was apparently not appealed and remained in effect on the date the dissolution decree was entered. (CP 49)

Following a two-day trial in February 2013, the Florida court found Gross's and Wright's allegations "spurious" and described them as "half-truths and falsehoods". (CP 12, 18) The Florida court found Wright was not credible and found "the court was presented with no credible evidence that the Husband threatened anyone with harm." (CP 21-22) The court described Wright as having "fraudulently and wrongfully induced the Washington authorities" and having used "half-truths, exaggerations, and prevarications." (CP 47) The Washington arrest warrant it considered "unjustified." (CP 32)

Florida courts, like Washington courts, are directed to make parenting plans based on enumerated statutory factors. See Florida Statutes § 61.13(3); RCW 26.09.187(3). The Florida court's decree includes a 24-page weighing of those factors. (CP 30-53)

Those 24 pages reveal that the court's decision was based on a factual situation that ceased to exist by the time Wright filed her amended petition seven months later. For instance, the Florida court found, based on Philpott's own testimony, Philpott would remain in Florida. (CP 37) The Florida court found Philpott, who by then had been honorably discharged from the Marines, intended to remain for the foreseeable future in Pensacola, where he was gainfully employed and had rented an apartment within walking

distance. (CP 17) In Florida the children would attend “A-rated” schools. (CP 17) There was no evidence that Philpott (who had no residential time during the pendency of the divorce) discussed litigation or made inappropriate comments to the children. (CP 52) Finally, and importantly, the court relied on its finding there was no credible evidence of domestic violence. (CP 48-49)

On the basis of these and other considerations, the Florida court made Philpott the primary residential parent and awarded Wright one-half of the summer break and certain holidays. (CP 78, 82-83) Additionally, the parenting plan provided Wright with a daily 30-minute phone call between 8 a.m. and 8 p.m., during which the children were to be “afforded reasonable privacy.” (CP 74-75) Finally, the parties’ Florida parenting plan, like parenting plans entered in Washington, required that if either parent intends to relocate more than 50 miles away, the parent must give advance notice of the move and an opportunity to object. (CP 84)

Following entry of the decree on May 30, 2013, the children arrived in Florida in June. (VI RP 12)¹

¹ The Verbatim Report of Proceedings is in six volumes:
I RP: December 31, 2013 (hearing before Hon. Palmer Robinson)
II RP: May 28, 2014 (first day of trial before Hon. Ronald Kessler)
III RP: May 29, 2014 (trial)
IV RP: May 30, 2014 (trial)
V RP: June 2, 2014 (trial)
VI RP: June 3, 2014 (trial and oral decision)

C. Within three months of the children returning to Florida, parenting difficulties arose, Philpott quit his job, and he and the children moved to Colorado without giving advance notice to Wright.

Shortly after the children arrived in Florida, Philpott quit the job he had told the Florida court was a stable job he intended to keep. (III RP 150-51) He took another job, but was fired in August 2013 for not learning the job fast enough. (II RP 76, 104)

Philpott failed to adhere to the requirements of the parenting plan. He did not seek agreement from Wright on his choice of childcare providers. (II RP 82-83) He took Michaela's cell phone away from her and, though the domestic violence protection order was still in effect, changed the voicemail to say that Wright must call Philpott in order to reach Michaela. (II RP 90; V RP 111)

But the biggest violation of the parenting plan was his unilateral decision to relocate the children to Colorado without giving Wright the required notice or opportunity to object. (III RP 151-52) The first Wright heard about the move was from Michaela telling her over the phone the family was in the car driving to Colorado. (II RP 110) Not even Philpott's parents or sister knew about the move until the night before. (II RP 176, 213, IV RP 14)

D. Wright petitioned for modification using the general form for modifications, not the form for relocation cases, and the trial court dismissed after determining Wright could not establish adequate cause.

On August 29, 2013, Wright filed a petition for modification of the Florida parenting plan in Washington.² Wright alleged the relocation of the children from Florida to Colorado but, for reasons not clear on the record, cited as legal grounds sections of the modification statute not related to relocations and used the mandatory form for general modifications (form PTMD), not the form specific to modifications arising from a relocation (form OBPT). (CP 88, 91 (citing RCW 26.09.260(1), (2)) Compare form PTMD with form OBPT (both located at www.courts.wa.gov/forms).

E. The trial court, adopting the argument of opposing counsel, considered the petition outside the Child Relocation Act, insisted on an adequate cause hearing, dismissed the petition, and granted permission to file an amended petition under the Child Relocation Act.

At the very outset Philpott insisted the court cannot proceed without first making a determination of adequate cause.³ (CP 1332-

² Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Florida lost jurisdiction when Philpott and the children moved out of state. RCW 26.27.211(1)(b). Washington has jurisdiction because the children's relatively lengthy residence here January 2012 through May 2013 made Washington the only recognized "home state" of the children under the UCCJEA at the time the petitions were filed. RCW 26.27.201.

³ As a general rule, a petition for modification of a parenting plan does not receive a full hearing unless the court first determines, on the basis of affidavits filed with the court, adequate cause for the

33) He argued “this is not a relocation case” and must proceed as a “major modification” that requires an adequate cause determination. (CP 1332) A commissioner of the court agreed that adequate cause is required, continued the temporary orders hearing, and asked that one of the parties file a motion to determine whether adequate cause is established. (CP 1654, 1659) Wright moved for revision of the commissioner’s order by a judge pursuant to RCW 2.24.050, noting the hearing before the assigned judge, Hon. Palmer Robinson, for hearing with oral argument on December 6, 2013. (CP 1667)

Wright separately moved for leave to amend her petition in an effort to bring the case unquestionably within the scope of the Child Relocation Act. (CP 181) She asked that the court either (1) find that the original petition was sufficient to invoke the Child Relocation Act (essentially the same claim she made in the motion for revision); or (2) grant leave to amend the petition to conform to the form “Objection to Relocation / Petition for Modification of Custody Decree / Parenting Plan / Residential Schedule (OBPT).” (CP 183-84) In her reply, Wright stuck to her position that an

hearing is established. RCW 26.09.270. However the Child Relocation Act exempts relocation cases from the requirement of a determination of adequate cause. RCW 26.09.260(6); Marriage of McDevitt, 181 Wn. App. 765, 326 P.3d 865 (2014); Marriage of Raskob, ___ Wn. App. ___, 334 P.3d 30, 36 (2014),

objection to relocation can be made as a motion to modify, citing RCW 26.09.480(1) and RCW 26.09.260(6). The motion to amend was pursued, she said, only because the commissioner adopted Philpott's argument that Wright must object to the relocation in order to pursue modification under the Child Relocation Act. (CP 353-54) The motion to amend the petition was noted for November 1, 2013 without oral argument before the assigned judge, Hon. Palmer Robinson. (CP 1663)

Meanwhile Philpott, following the commissioner's instructions, filed a motion for a determination of no adequate cause. (CP 129) Though the motions for revision and amendment were pending, the briefing on adequate cause moved forward for hearing on the October 31 date set by the commissioner. (CP 1654, 1660, 1662) Philpott's motion incorporated by reference his earlier pleadings. (CP 129, 1230, 1323)

He argued that since Wright had not objected to the relocation she could not pursue modification under the Child Relocation Act, RCW 26.09.260(6):

Before Ms. Wright can ask the court to modify the parenting plan, she has to comply with the rest of the section: file an objection; bring a motion asking the court to restrain the relocation of the children (and presumably return them to Florida), using the procedures and standards of RCW 26.09.405 through .560.

(CP 134)

Wright responded to the adequate cause motion on the merits, explaining that the Child Relocation Act allows a hearing on a petition for modification of the primary residence without an adequate cause determination as required in other modification actions. (CP 206)

On October 31, before the assigned judge considered the motions for revision or amendment, the commissioner heard the motions regarding temporary orders and adequate cause. The commissioner found adequate cause to issue a temporary order granting temporary residence with Wright, and entered detailed provisions for parental behavior and contacts with the children. (CP 369-71) However the commissioner did not rule on adequate cause for the modification since the motions for revision and amendment were pending before the assigned judge. (CP 369-74)

Judge Robinson ruled on Wright's still-pending motion to amend the petition or, alternatively, find the original petition sufficient to proceed under the Child Relocation Act (CP 377) The court denied both alternatives at that time but ruled Wright "may renew her motion to amend after [the adequate cause] hearing." (CP 378) Proceeding outside the Child Relocation Act, Judge Robinson ruled a determination of adequate cause is necessary,

denied the motion for revision, and scheduled the adequate cause motion for hearing on December 13. (CP 1718)

On December 13, Judge Robinson, who by then knew the case would be transferred to another judge effective January 13, 2014, ruled Wright failed to establish adequate cause, denied the original petition and returned the children to Colorado. (CP 422-25) However the judge granted Wright's motion for leave to file an amended petition under the Child Relocation Act to be heard by the successor judge. (CP 424)

On the same day the court filed its ruling, Wright filed her amended petition using form OBPT. (CP 413, 422) That form is designed to accommodate both objections to the relocation or objections to the relocating party's proposed revised parenting plan, which the relocating party is supposed to serve on the other party when he gives his notice of intent to relocate. RCW 26.09.440. The form allows the parent to request modification under the Child Relocation Act, including a change in the primary residence. RCW 26.09.260(6).

In her petition Wright made clear she was seeking modification, including a change in the primary residence of the children. (See ¶¶ 2.3, 3.1, CP 413-14) She alleged that no adequate cause determination is necessary because relocation of

the children is being pursued. (See ¶ 3.2, CP 414) Though she outlined the factors the court must consider in an objection to relocation (¶ 3.7, CP 416-19), she provided these reasons as the basis for her objection to the father's presumed interest in maintaining the residential schedule established by the Florida parenting plan, as Philpott had filed neither a notice of relocation as required under Florida law nor a proposed revised parenting plan as required by Washington law. (¶¶ 3.8, 3.9, CP 419-20)

F. At trial the judge considered only two alternatives: either residency with the father in Florida or residency with the father in Colorado. The trial court did not consider either party's request for modification except to the extent necessary to, in the court's words, "accommodate the relocation."

While the amended petition awaited trial, the case was transferred to Judge Ronald Kessler effective January 13, 2014 (CP 376)

Before and during trial, Philpott brazenly repeated his claim that the court may not change the primary residence. First, in his response to the amended petition, he admitted the court may modify but noted "There is no basis to change custody; the court has jurisdiction to modify the long distance parenting plan *but not to*

change custody." (CP 427 (emphasis added)) He cited no authority for the emphasized language.⁴

In his trial brief, Philpott claimed the only issue for trial was long distance parenting plan with Wright in Washington and Philpott and the children in Colorado. (CP 920) In a colloquy with the judge on the first day of trial, he stressed that no law permits a change of the primary residence when one parent moves closer to the other. (II RP 14)

In her own trial brief, Wright maintained, as she has from the beginning, the Child Relocation Act gives the court authority to change the primary parent in response to a relocation. (CP 1017) Echoing Philpott's argument from the adequate cause motion on the original petition, Wright informed Judge Kessler that Judge Robinson's concern had been the form used:

The concern of the court in finding no adequate cause for modification was apparently with the *form* used, as [RCW 26.09.260(6)] makes it clear that a person objecting to a relocation may file a petition to

⁴ In his response to the amended petition Philpott asked that, "if the court does modify the current order, it should not change the primary residence of the children with the father, per the current order; but should modify some of the Florida provisions for contact with the mother which have proved unworkable and led to substantial litigation on the mother's part." (CP 428) At trial, too, Philpott maintained his requests for modifications to the parenting plan. (III RP 30 (telephone call schedule), 31 (phone ownership), 74 (parenting restrictions under RCW 26.09.191(3)(e))) In his proposed parenting plan he asked for 55 additional days of residential time per year. (CP 1020)

modify the parenting plan, that the court has the authority to change the primary residential parent.

(CP 1017) She also emphasized that new grounds for modification have arisen, particularly Philpott's plea of guilty in Washington to the criminal charge the Florida court had refused to believe due to Philpott's steadfast denial. (CP 1018).

On the first day of trial, Judge Kessler limited the issue to Florida versus Colorado:

This is strictly a relocation. The only issue is a relocation. Florida and Colorado are the two places we're talking about here.

If Ms. Wright prevails on the relocation, Mr. Philpott will be required to return to Florida with the children.

If Ms. Wright does not prevail, Mr. Philpott may remain in Colorado.

Those are the issues before the Court. We're not re-litigating domestic violence. We're not re-litigating the contempt.

(II RP 15) The court cited no authority.

G. At trial Wright presented evidence showing the family did not fare well in Colorado.

Philpott and the two children arrived in Colorado in early August after completing their drive from Florida. Though they had less than a day's notice, Philpott's parents, Lynn and Sandi Philpott, accepted the family into their home. Space is limited; the children share a bedroom. (IV RP 58-59) Philpott's father, Lynn

Philpott, does Christian missionary work and works part time as a driver delivering doors. (II RP 146, 148, 179) Sandi Philpott works full time. (II RP 207)

The children had not spent significant time with the Philpott grandparents. The grandparents had never visited the family in Florida. (V RP 73) Contact with the grandparents had been very limited, consisting mostly of a few months during which Philpott was deployed and Wright and the children, then ages three and one, lived with the grandparents in Colorado. (V RP 74)

Lynn Philpott testified the children were reserved when they arrived, and Michaela still won't hold his hand. (II RP 152, 175). Nathaniel, he says, has a problem with bed wetting. (II RP 182)

Philpott's sister, Christine Bauer, also lives in Colorado, about a 10-minute drive from the Philpott house. (II RP 189) She sees the children about twice a week. (II RP 191) Christine Bauer testified that she has seen Michaela be "quiet", maybe depressed. (II RP 204-05) Her husband testified the children do not always get along with each other; there is minor fighting. (III RP 19)

The extended Philpott family is very religious. Bauer's husband founded a ministry that teaches people to "witness," which she explained as sharing the gospel with people. (II RP 193, III RP

9)) She and her husband go witnessing, as does Lynn Philpott. (II RP 148, 191, III RP 9)

The extended Philpott family's religious beliefs affect the children. Philpott takes away books like Harry Potter that have witches or magic. (V RP 91-92) He does not want Wright to have the children because of her views on gay rights and because she does not believe in rigid gender roles for the children. (V RP 93)

Wright testified to concerns about the Philpott family's view on whether women should have equal standing. Philpott's sister and brother-in-law testified that because the bible says the wife should submit to the husband, the husband has final say on the bigger decisions in their marriage. (II RP 210, III RP 11) Philpott's mother testified that a wife ought to be submissive in all respects to the husband. (IV RP 10) When Wright was entitled to a visit over Labor Day Weekend in 2013, Philpott's mother acted to prevent the visit by taking the children camping in the mountains, explaining that "[Philpott's] the decision maker for these children." (IV RP 32)

Philpott and his family made Wright's telephone access difficult. (VI RP 50) Though most kids in the neighborhood over the age of five have their own phones and can call their parents whenever they like, the Philpott children are not allowed this privilege. (V RP 104) Philpott said he wants to be present to

supervise phone calls with Wright. (V RP 82, 99) He keeps the phone on "speaker phone" mode so he can hear the conversation, but this meant Wright could also hear all the noise in the background, including movies, video games, and on several occasions Philpott's loud singing. (IV RP 77; V RP 99) At least a dozen times the phone was hung up before the children wanted to end the call. (IV RP 78) When Michaela wanted to continue a call, Philpott would take away the phone and Michaela's crying could be heard as he did so. (IV RP 76)

In late August, Philpott took away the children's phone and changed the voicemail to say that anyone who wants to speak to the children needs to call him instead. (III RP 103; V RP 110) On August 23rd and 26th Philpott had his father read to Wright a statement Philpott wrote announcing his unilateral conditions or guidelines for telephone calls inconsistent with the detailed provisions in the parenting plan. (III RP 107, 112, 115-16; Exs. 70, 71) In the presence of Nathaniel, he said no further calls would be allowed until Wright complies with Philpott's demands. (III RP 115-16; Exs. 70, 71) He had Michaela read his guidelines over the phone to Wright, which Michaela did because she was desperate to figure out a solution. (IV RP 76-77)

Philpott has had difficulty finding steady work in Colorado. By the time of trial nine months after the move, Philpott was doing part-time, hourly work for a company called 212 Degrees Restoration. (II RP 216) His hours depend on the availability of work. (II RP 216)

Philpott acted recklessly with the children. Video showed him filming himself and the children while driving the children at 75 miles per hour. (III RP 86; Exs. 38, 200) Philpott admitted he is being sued for an automobile accident that occurred while he was driving and talking on his cellphone, though the testimony does not state whether the children were with him. (III RP 132)

Philpott's testimony about the health needs of the children showed he either disregarded them (*e.g.*, Michaela's Epipen treatments for peanut allergy (III RP 490, 53, 57; V RP 136-37) and treatments for eczema and dry skin (VI RP 7-8)) or downplayed them (*e.g.*, Michaela's headaches, which he believes she exaggerates even though they caused vomiting and are accompanied by visible changes in her eyes (III RP 125; V RP 87-88) Though the children's aunt had experienced similar headaches and eye symptoms in her own ten-year-old daughter, and received a diagnosis and treatment, Philpott refused a referral to the same

doctor, saying he was unsure whether Michaela is faking the headaches. (V RP 87-89)

Later, during a court-ordered visit during this action, he effectively disallowed a court-ordered therapy phone call with the children over the Thanksgiving holiday. When the connection was lost he disallowed a call to re-establish the connection. (III RP 159) When Colorado CPS suggested counseling for the children, Philpott refused because that might be used against him in court. (III RP 173) He has disallowed any therapy for the children. (VI RP 25-27)

Philpott's defiance of the parenting plan affected schooling: he chose a school without consulting Wright and specifically did not enroll them in the school the parties had earlier agreed to, a high-quality K-12 charter school Wright herself attended just 15 minutes from the Philpott home. (CP 13; V RP 153-54). After briefly considering home schooling by Philpott's mother, Philpott unilaterally chose a school with no language programs; he does not know whether the school has music programs. (III RP 141; V RP 83-84) He failed to list Wright as an emergency contact or as a person who may pick up the children from school. (II RP 118-20; III RP 97-98, III RP 126; V RP 108)

Since being returned to Colorado at the end of 2013, the children's academics have worsened. (V RP 141-42) Michaela's math level has declined and she is less confident in her reading. (V RP 141-42)

Philpott may have also been defying the terms of the protection order. That order, entered August 8, 2012, requires that Philpott not have any firearms in his possession until August 12, 2017. Philpott brought with him from Florida at least two guns, a handgun and a semiautomatic AR-15 rifle. (II RP 145, III RP 142-44) He claimed to have sold them to his father and his brother-in-law, Steve Bauer. (III RP 142-44) But his father only said Philpott "got rid of them." (II RP 145) and that one gun "went to a friend's house." (II RP 174) Philpott's brother-in-law claimed he took possession of multiple firearms from Philpott. (III RP 25-26) He said he received them from a "friend" of Philpott, but neither Philpott nor Bauer could remember the name of the friend. (III RP 26) Philpott also could not recall the name of the "friend," though he recalled that gun is not registered. (III RP 142)

According to Wright's sister, who lives in Colorado and sees the children weekly, Philpott has made it clear he dislikes Gross and says things when the children are around. (V RP 81) "You can tell they're used to [Philpott] not liking [Gross]." (V RP 81) She

testified she knew the Philpott family to be emotionally abusive, just as her own family had been physically abusive when they were growing up nearby. (V RP 103)

H. The children fared better during the time they lived with Wright in Washington.

The children fared well while living temporarily with Wright and Gross in Washington from January 2011 to June 2013 (during the pendency of the divorce proceeding), and again from September through December, 2013 (during the pendency of the original petition to modify). The children have a good relationship with Gross. (IV RP 65-66) He encourages their phone time with Philpott. (IV RP 67-68) In a telling incident related by Gross's mother, Michaela was "ecstatic" and "shocked" that Gross was willing to delay an activity Michaela wanted to do (walk the dog with him) so she could have her phone time with Philpott *and* come on the walk. (IV RP 67-68) Apparently she was not accustomed to that much respect. The children were doing well in Washington, according to Gross's mother. (IV RP 4-65)

Wright encouraged phone contacts with Philpott. (VI RP 15) Whereas Wright regularly wrote letters to the children when they are in Philpott's care, he wrote none while they were in Wright's care. (VI RP 20)

In Washington the children began seeing a therapist once a week from September 2013 until their return to Colorado in December 2013. (V RP 22) The therapist, Rochelle Long, testified the children were distressed about the phone calls with their father while they were living with their mother. (V RP 38) At times Michaela did not want to talk to him and Nathaniel felt put in the middle when Philpott would ask him to put Michaela on the phone. (V RP 38)

According to the therapist, Michaela had concerns about going to live with Philpott. (V RP 39-40) When the children learned they would be returned to Philpott in December, they began to “shut down” and Michaela was “very upset.” (V RP 43) Michaela expressed to the therapist her strong distaste for Colorado and religion. (V RP 44-45) “She had indicated that she did not feel she could wear what she wanted to wear, be who she was, and that she felt she had to be a different person.” (V RP 39-40)

Michaela had concerns for her safety; she feared she would be spanked for her mistakes. (V RP 41) She had fears about not being able to call the police in Fort Collins, Colorado, believing they would not respond because everyone in that town is connected through friendships and religion. (V RP 45-46) Nathaniel expressed safety concerns as well. Nathaniel was “very clear”

about his being afraid of being hurt by his Dad. (V RP 52) The therapist had no concerns about Wright's parenting. (V RP 51) The therapist's full report is exhibit 63.

Wright is currently a full-time student majoring in history at the University of Washington, where she needs another 28 credits to earn her BA. (V RP 123-24; VI RP 22) She has worked over two years as a part-time customer service representative for the City of Mercer Island. (V RP 123)

Gross has a protection order against Philpott. (IV RP 72-73) Gross testified that Philpott's actions show he still hates Gross and the children have confirmed as much. (IV RP 72-73) Cole testified Philpott threatened to shoot Gross on sight next time he sees him. (IV RP 73)

I. Before trial Philpott admitted the criminal charges and entered a plea of guilty.

In the weeks before trial, Philpott pleaded guilty to the criminal charge he had denied to the Florida court and in the adequate cause hearing. (Exs. 4, 129; II RP 65-69) The factual basis for the plea is Philpott's statement admitting his intent to harass Wright and Gross:

In King County, Washington, between 1/8/12 and 4/30/12 with intent to harass, I did make an electronic communication to Cole D. Gross and Lindsey Philpott

[now Wright], anonymously or repeatedly whether or not contact connection occurred.

(II RP 69; Ex. 129)

At trial Philpott admitted that his denial of the harassment in the Florida dissolution action and the protection order case was contrary to his recent plea. (III RP 77; Ex. 88 (Philpott's March 2012 declaration from the protection order case))

According to his mother, Philpott around that time confessed other "things he had done that were detrimental to his family." (IV RP 51) The court disallowed further questioning about what those things were. (IV RP 51)

J. Believing it could only modify only to the extent necessary to "accommodate the relocation", the court limited the evidence Wright could present.

The facts from the trial record in the narrative above are limited because the court limited the scope of issues at trial to preclude consideration of Wright's motion to modify the primary residence of the children.

The court denied questioning on several inquiries relevant to establishing the details of a parenting plan regardless of which parent is the primary residential parent and in which state. Specifically, the court disallowed questioning on Philpott's porn habit (II RP 212), on Philpott's having had sex with the parties'

babysitter (II RP 213), on whether Philpott telephoned the children between the dates of the decree and the children's arrival in Florida (a 3-week period) (III RP 158), on the children's relationships with persons in Washington (III RP 160, V RP 50-51), on Gross's mother's observations of the parties' parenting in Florida before the divorce (IV RP 60-61, 62, 64), on events post-decree but pre-relocation (IV RP 69), on the quality of the children's relationships with the parents (V RP 28-29 (therapist)), on the children's developmental stages and needs (V RP 31(therapist), on Philpott's denial of Wright's phone contact with the children (III RP 103-04), and on the Philpotts' anti-feminist views. (III RP 26).

Similarly, the court disallowed evidence that would prove a history of domestic violence and which would inform the court's decision on limitations to address the domestic violence in spite of the fact Philpott recently had pled guilty to the domestic violence charge in Washington. For example, the court disallowed evidence on pre-divorce threats against Wright's partner even where the earlier threats are the basis of current fears (IV RP 73), on the "Family Wizard" scheduling software (III RP 104), on the "pillow incident" (III RP 82), on the meaning of Philpott's "liking" gun-related posts on Facebook (III RP 169), and on rape. (III RP 20)

Perhaps the worst example of the court's narrow view came when the court showed an utter lack of concern for the safety of children in their father's care. When the children's therapist was questioned about Michaela not feeling safe with her father (V RP 39-43), the court did not want to hear the evidence: "Does it -- does any of this have to do with whether Michaela is returning to her father in Florida versus Colorado?" (V RP 44) And, when asked about the children's schoolwork in Washington, the judge cut off the testimony: "This is Colorado and Florida; not Colorado and Washington. . . . This man relocated to Colorado from Florida. That's what we're talking about." (V RP 50)

K. The trial court allowed the relocation and granted a limited modification of the parenting plan.

The court gave an oral decision immediately following trial. (V RP 132) That oral ruling was transcribed and incorporated into the court's written order. (CP 1201)

With respect to Wright's objection to the relocation from Florida to Colorado, the court found Wright would indeed move to Florida if the court disallowed the relocation and (assuming Philpott was unwilling to move back to Florida) made her the primary

residential parent.⁵ (CP 1203) The court considered the relocation factors (see RCW 26.09.520) and weighed them on the record, limiting its analysis to a comparison of the children's home with Philpott in Florida with their new home with Philpott in Colorado. (CP 1205-07) The court permitted the relocation from Florida to Colorado. (CP 1208)

With respect to the motion to modify, the court concluded "there was no need for adequate cause for hearing this petition for modification." (CP 1202) But the court believed the law allowed the court to modify only to the extent necessary to accommodate the relocation:

The law is clear. A relocation is not a modification. The remedy is limited to modification of the parenting plan only to accommodate the relocation if it is properly approved.

(CP 1204)

The court thus limited its modifications to (1) requiring that communications go through Philpott's parents and Gross (CP 1207), (2) requiring that the father allow the children to talk on the phone in private (CP 1204, 1208), and (3) ordering that neither

⁵ Though moving to Florida would be a major disruption, Wright and Gross each testified they would have moved to Florida had they known about the relocation in advance, and they would still go back to Florida if the relocation is disallowed and Philpott chooses to stay in Colorado. (IV RP 83; V RP 121, 124)

party may record the phone calls. (CP 1208) The court concluded any other issues must be addressed through a minor modification petition. (CP 1204, 1207)⁶

L. The court *sua sponte* sanctioned Wright's attorney, Rhea Rolfe, and made her and Wright jointly and severally liable for the attorney fee award.

In its oral decision the trial court sanctioned Wright for filing the amended petition:

Now, looking at RCW 26.09.550, the Court concludes that the objection to the relocation was made in bad faith, was made to unnecessarily increase the cost of litigation, and was made to harass Mr. Philpott.

(VI RP 1432) The court required her to pay Philpott's attorney fees incurred since the date on which she filed the amended petition.

The court then turned to Wright's attorney, Rhea Rolfe, and *sua sponte* sanctioned Rolfe under CR 11 and announced both Wright and Rolfe would be jointly and severally liable for the attorney fee award. (VI RP 143-44, CP 1204-05) The court's oral reasoning appears to include several grounds:

⁶ In closing argument Philpott reiterated his request for modifications. (VI RP 101) The judge then asked him why the court should "modify this parenting plan under your theory other than substitute the word Colorado for Florida?" (VI RP 101) Philpott responded, "We think the court can if it wants to." (VI RP 101) The judge described that as a "slippery slope" and Philpott withdrew his request. (VI RP 102)

First, the court found Wright filed her amended petition on December 13 without leave of court as required by CR 15(a). (VI RP 143; CP 1204) (When Rolfe rose to clarify, the court said, "Sit down, I'm ruling" (VI RP 143-44), which was transcribed verbatim into the written order. (CP 1204))

Second, the court concluded that, whether the petition was allowed or not, it was not warranted by law that limits any modification to the extent necessary to "accommodate" the relocation:

The Court concludes that the objection was not well grounded in fact and was not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, or the establishment of new law.

The law is clear. A relocation is not a modification. The remedy is limited to modification of the parenting plan only to accommodate the relocation if it is properly approved. It was imposed – interposed for improper purpose to harass and cause needless increase in the cost of litigation.

(VI RP 144; CP 1204)

Third, the court assumed Judge Robinson's finding of no adequate cause for a non-relocation petition foreclosed any request for modification in the properly pleaded relocation petition. Based on that assumption, the court concluded the amended petition was an abuse of the Child Relocation Act:

I find that Ms. Wright's opposition to relocation was made in bad faith. It was made for the sole purpose

of attempting to reopen a modification which had been dismissed by Judge Robertson (sic) in her finding of no adequate cause for the modification. The reality is, she doesn't really care whether the children live with Mr. Philpott in Florida or Colorado. Her only goal is to reverse the Florida Court's decision that Mr. Philpott is the primary residential parent. It is an abuse of the Washington relocation statute.

(VI RP 138, 144; CP 1206)

Immediately after announcing it would sanction Rolfe, the court closed by stating the parties, in their presentation of final orders, may not re-argue what the court has decided. (VI RP 145) The court thus allowed Rolfe no opportunity to respond to the sanctions the court gave notice of just moments earlier.

After receiving evidence on the amount of attorney fees, the court entered final orders determining the final sanction amount and awarding judgment against Rolfe in the amount of \$27,738.56. (CP 1198, 1201)

Rhea Rolfe appeals from the order on award of attorney fees and the final judgment. (CP 1211) Wright has not appealed.

IV. ARGUMENT

A. This court reviews CR 11 sanctions for abuse of discretion.

This court reviews CR 11 sanctions for abuse of discretion. Washington State Physicians Ins. Exch. v. Fisons Corp., 122 Wn.2d 299, 338-39, 858 P.2d 1054 (1993).

In this case, the decision that the amended petition was unwarranted depended on the court's underlying rulings on the merits of the relocation action. Relocation and modification decisions, like the CR 11 decision, are reversed for abuse of discretion. Marriage of Horner, 151 Wn.2d 884, 896, 93 P.3d 124 (2004) (reversing decision in relocation action); Parentage of Jannot, 149 Wn.2d 123, 125, 65 P.3d 664 (2003) (reversing trial court's denial of adequate cause in modification action).

The trial court abuses its discretion if its decision "is manifestly unreasonable or based upon untenable grounds or reasons." Horner, 151 Wn.2d at 893 (quoting State v. Brown, 132 Wn.2d 529, 572, 940 P.2d 546 (1997)). Each of these three standards is well-defined by the Supreme Court:

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it 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.

Horner, 151 Wn.2d at 894; Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

The following analysis relies on each of these three standards: untenable factual grounds (the trial court's mistaken finding that Wright did not have permission to amend her petition); untenable legal reasons (construing the RCW 26.09.260(6) to prohibit modification of the parenting plan); and outside the range of acceptable choices, given the facts and applicable legal standard (ordering sanctions without giving Rolfe an opportunity to respond).

B. The trial court erred when it sanctioned Rolfe without giving her notice or an opportunity to respond.

Procedural due process requires, at a minimum, notice and an opportunity to be heard before an attorney may be sanctioned under CR 11. See Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 224, 829 P.2d 1099 (1992) (though CR 11 was first raised in reply brief on appeal, respondent's attorney had constitutionally sufficient opportunity to respond at oral argument). "[T]he potential target of the sanction must have notice that sanctions are contemplated and of what his or her alleged deficiency is and have a reasonable

opportunity to contest and explain.” Watson v. Maier, 64 Wn. App. 889, 900 n.3, 827 P.2d 311 (1992).

Notice and opportunity to respond are required as well when the court awards sanctions on its own motion:

When the court believes there may have been a CR 11 violation, it may commence the sanction process on its own initiative. The court should issue an order directing the attorney or party to show cause why it has not violated CR 11.

3A Washington Rules Practice, 6th ed., p. 251.

Rolfe received no notice that the court was considering sanctions and was given no opportunity to respond. Philpott had not raised CR 11 in his response to the amended petition (CP 426), in his trial brief (CP 920), in his opening statement (II RP 22-35), or in closing argument (VI RP 85-103). CR 11 was first raised by the court itself in its oral ruling. (VI RP 144) The court closed its oral decision by setting a date for presentation and directing that presentation “is not a time for re-argument of what the Court decided.” (VI RP 145)

Given this lack of opportunity to respond, the trial court’s sanction of Rolfe was outside the range of acceptable choices and the trial court abused its discretion. Bryant, 119 Wn.2d at 224; Watson, 64 Wn. App. at 900.

C. The trial court applied an incorrect legal standard when it ruled that a modification under the Child Relocation Act cannot change the primary residence of the child.

If Rolfe had been given an opportunity to respond, she could have explained that she objected to the relocation primarily because Philpott had argued, and Judge Robinson decided, an objection to relocation was necessary in order to pursue a modification under the Child Relocation Act, and that the scope of modification permitted by the Child Relocation Act includes modification of the primary residence of the children.

“A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law.” Fisons, 122 Wn.2d at 339. The successor judge held an erroneous view of the law that permeated the court’s decisions on the amended petition, first when it limited the scope of issues at trial and finally when it determined the amended petition was unwarranted under CR 11.

The court’s view of the law is summarized in the court’s own words in its final order:

The law is clear. A relocation is not a modification. The remedy is limited to modification of the parenting plan only to accommodate the relocation if it is properly approved.

(VI RP 144; CP 1204)

The court’s statement is contrary to recent case law that affirms the availability of a broader modification, including situations

where the relocating parent is moving closer to the other parent. Marriage of McDevitt, 181 Wn. App. 765, 326 P.3d 865 (2014); Marriage of Raskob, ___ Wn. App. ___, 334 P.3d 30 (2014). While these decisions were handed down too late to aid the trial court in making its decisions on the original and amended petitions, they demonstrate that Wright and her attorney acted appropriately in seeking a modification of the parenting plan.

In Marriage of McDevitt, 181 Wn. App. 765, 326 P.3d 865 (2014), Division Three held that the trial court had authority under subsection (6) to modify the parenting plan in a relocation action to expand the non-residential parent's time with the children, even where the father did not have adequate cause to seek a minor modification under other subsections. The original parenting plan was entered in 2009, awarding primary residential placement to the mother in Hawaii and granting the father, who resided in Spokane, no overnight residential time. McDevitt, 181 Wn. App. at 766-67. In 2012, the father filed a petition for a "minor" modification, *i.e.*, a change of 24 or fewer days per year, RCW 26.09.260(5)(a). Id. at 767. On the very next day, the mother filed a notice of intent to relocate the children from Hawaii to Colorado, a location closer to the father's home in Spokane. Id. At trial, she testified she had been living in Colorado since the time of the request. Id.

A commissioner of the trial court determined there was not adequate cause to hear the father's petition for a minor modification under subsection (5), but allowed the mother's petition to go forward to trial. Id. At trial the father had no objection to the relocation itself. Id. at 773. But he asked the trial court to grant him additional residential time, including one three-night weekend per month and half of every school vacation, including summer vacation. Id. at 767. This request far exceeded the relief available as a minor modification. See RCW 26.09.260(5)(a) (limiting minor modification to 24 days per year). Following trial, the court adopted the father's proposed parenting plan.

This Court affirmed the trial court's modification of the parenting plan, holding the trial court had authority to modify the parenting plan under subsection (6) even though the father did not object to the relocation itself:

The third sentence [of subsection (6)] clearly states that the relocation petition itself is basis for modifying a parenting plan. The second sentence of subsection (6) also expressly permits consideration of new parenting plans as a result of a relocation request.

Id. at 771. While the trial court's decision did not change the primary residence of the child, it did grant the non-relocating parent significantly more residential time in the best interests of the child, a change that did more than merely accommodate the relocation.

In Marriage of Raskob, ___ Wn. App. ___, 334 P.3d 30 (2014), this Court considered challenges to a modification where the relocation itself was not objected to because, as in this case, no notice was given and there was no meaningful opportunity to object. The father accepted the relocation as a *fait accompli*. This Court again held that the non-relocating parent's acceptance of the relocation does not prevent consideration of a modification under subsection (6). Id. at 36.

The parenting plan in Raskob provided that a relocation to a place more than 30-minutes drive time would give rise to notice provisions under the Child Relocation Act. Id. at 33. The mother, who was the primary residential parent, moved farther than 30 minutes away without giving the proper notice. Id. at 33.

Like the father in McDevitt, the father in the Raskob case did not object to the relocation. Id. at 33; McDevitt, 181 Wn. App. at 773. The father "accepted the relocation as a '*fait accompli*' but sought adjustments or modifications to the parenting plan." Raskob, 334 P.3d at 33.

On appeal, the mother argued the trial court abused its discretion when it modified the residential schedule of the parenting plan by awarding additional residential time to the father. On appeal the parties disputed whether the number of nights increased

to a degree that changed the primary residence of the children. But it matters not, held this Court, because subsection (6), unlike a “minor modification” under subsection (5), does not limit the number of days that can be changed. Id. at 36 nn.15, 17.

This Court in Raskob summarized the law:

RCW 26.09.260(6), an exception to the requirements of RCW 26.09.260(1), allows a trial court to make a “major” modification to a parenting plan, including an adjustment to the residential schedule “pursuant to a proceeding to permit or restrain a relocation of the child.” . . . Therefore, in a relocation case, it is not necessary for the court to consider whether there is a substantial change in circumstances other than the relocation itself, or to consider the factors contained in RCW 26.09.260(2).

Id. at 35.

McDevitt and Raskob make clear that a modification on a relocation petition is not limited to the smallest changes necessary to, in the words Judge Kessler, “accommodate the relocation”. (CP 1198, 1204) The Legislature, in enacting the Child Relocation Act, has deemed the relocation itself to be sufficient grounds to proceed directly to an inquiry into the best interests of the child without wasting time and resources on pre-trial adequate cause hearings and factual inquires at trial into whether the change in circumstances is “substantial” enough to justify modification.⁷

⁷ The trial court also erred in requiring an adequate cause hearing and dismissing the original petition. Both McDevitt and Raskob

Wright was not acting in bad faith or without authority of law when she asked the court to consider the evidence of the children's relative thriving during the time they spent in Washington, the myriad ways Philpott and his extended family members in his Colorado home have obstructed her rights under the parenting plan, and his history of domestic violence, including his recent plea to cyberstalking. (See III.G, III.H, and III.I, supra) Wright was not acting in bad faith in when believed the court would follow the statute as written and allow evidence of the best interests of the children which the court excluded as not relevant to the court's Florida v. Colorado perspective. (See III.J, supra)

D. The trial court erred when it relied on its erroneous finding that Judge Robinson had not granted Ms. Wright leave to amend her petition.

Judge Kessler's belief that the amended petition was sanctionable was tainted by his belief that Rolfe filed the amended petition without leave of court.

hold no adequate cause hearing is necessary under the Child Relocation Act and RCW 26.09.260(6). Judge Robinson should have held a full hearing on the original petition for modification rather than putting form over substance and requiring Wright to file an amended petition on a different form. See RCW 26.18.220(3) ("A party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading.")

The record is clear that Judge Robinson permitted the amended petition. In her oral decision at the adequate cause hearing, she ruled, "I am going to allow, though, at this point Ms. Philpott to amend the petition to be an objection to relocation." (I RP 38) Her written order, entered December 16, 2013, stated succinctly, "Court allows mother to amend her petition to object to relocation," and Wright filed her amended petition on the same day. (CP 413, 424) Thus no substantial evidence supports the court's findings that "Counsel then filed an Amended Petition on December 13 (sic) without obtaining leave of Court" and "it's not even clear that the objection to relocation is properly before the Court." (CP 1204)

The court's mistaken finding taints its conclusion that "the objection to relocation was made in bad faith, was made to unnecessarily increase the cost of litigation, and was made to harass Mr. Philpott." (CP 1204, lines 9-10) The court's mistaken finding was the fact the court cited in support of that conclusion. (CP 1204, lines 19-18) To the extent the court's sanction relies on that conclusion which is based on a finding not supported by the record, the court's decision is an abuse of discretion based on untenable grounds. Horner, 151 Wn.2d at 894.

V. CONCLUSION

Rhea Rolfe was warranted in her decision to file the amended petition on behalf of her client. Her decision is supported by the original judge's order granting her leave to file the amended petition and by the Child Relocation Act's provision allowing a change in the primary residence of the child. The successor judge erred when, misunderstanding the original judge's ruling and applying incorrect law, he concluded CR 11 sanctions were warranted against Ms. Rolfe, and further erred in awarding those sanctions *sua sponte* without giving Rolfe an opportunity to respond. This court should reverse the judgment against Ms. Rolfe.

Respectfully submitted: January 9, 2015.



Brendan Patrick, WSBN 25648
Attorney for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 9, 2015, I deposited in the mails of the United States of America, postage prepaid, an envelope containing a true and correct copy of the Brief of Appellant to:

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DATED at Seattle, Washington, January 9, 2015,



Brendan Patrick