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No. 104074-1

SUPREME COURT
OF THE STATE OF WASHINGTON

ARYNN HAUK,

Petitioner,

v.

BRANDON WUESTHOFF,

Respondent.

RESPONDENT'S ANSWER TO AMICUS CURIAE MEMORANDUM

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RULES AND REGULATIONS

A. Amicus's concern with how the Court of Appeals' opinion *might* be applied in future cases with dissimilar facts does not warrant review under RAP 13.4(b)(4).

RCW 26.09.525 provides that when a child has "substantially equal residential time" with the parents, the rebuttable presumption favoring relocation does not apply. RCW 26.09.525(1)(a). The statute defines substantially equal residential time as "arrangements in which forty-five percent or more of the child's residential time is spent with each parent." RCW 26.09.525(2). Whether a child spends substantially equal residential time with each parent is based "on the amount of time designated in the court order." RCW 26.09.525(2)(b).

Division Two affirmed the trial court's decision denying mother's request to relocate the daughter based on the trial court's conclusion that mother was not entitled to the presumption that relocation will be allowed. The trial court had found the daughter spends substantially equal residential time with the parents because "over the course

of the entirety" of the parties' parenting plan, which included five phases, culminating in a "50/50" schedule when the daughter started kindergarten, "the child will spend 46.9% of the time with [father]." (Finding of Fact (FF) 11(c), CP 417) Accordingly, the trial court found "on its face, the 2020 Parenting Plan is a substantially equal parenting plan." (FF 11(e), CP 418)

In affirming the trial court's decision, the majority of the court held that the trial court's computation of each parent's residential time "based on the totality of the [parenting] plan" was consistent with a plain language reading of RCW 26.09.525(2)(b), which states that in determining the percentage of residential time the parents have with the child, the court must "base its determination on the amount of time *designated in the court order*." (Op. 9, emphasis in original) Accordingly, the majority held that RCW 26.09.525(2)(b) "supports the trial court's calculation of residential time by looking to the applicable

parenting plan and not just the phase of the parenting plan applicable at the time the relocation motion is filed." (Op. 9)

Contrary to Amicus's assertion (Amicus Memo 13), the majority's interpretation of RCW 26.09.525 does not mean that parents have substantially equal residential time simply because "the parenting plan *eventually* provides for equal time in the future." (emphasis added) A child spends substantially equal residential time with the parents if based "on the amount of time designated in the court order," the child spends "forty-five percent or more" with each parent. RCW 26.09.525(2).

The entire premise of Amicus's claim that review of Division Two's opinion is warranted under RAP 13.4(b)(4) is its concern how the majority's interpretation of RCW 26.09.525 *may* be applied when one parent "is subject to limitations under RCW 26.09.191 and has not completed requirements necessary to exercise substantially equal

residential time under a phased-in parenting plan." (Amicus Memo 7) However, this issue is wholly outside the scope of Division Two's opinion. The phased parenting plan at issue here imposed no RCW 26.09.191 limitations on either parent and the transition to each subsequent phase was unconditional. (*See* CP 427-30) Further, there was no dispute that when the total amount of residential time unconditionally designated to each parent under the parenting plan is calculated, the daughter spends more than forty-five percent with each parent.

When faced with a parenting plan that unconditionally established a residential schedule for the parties' daughter throughout her minority, Division Two properly interpreted RCW 26.09.525 as requiring courts, in determining whether a child has substantially equal residential time with the parents based on the "amount of time designated in the court order," to include time designated in future phases of the parenting plan "and not

just the phase of the parenting plan applicable at the time the relocation motion is filed." (Op. 9)

That a parent with RCW 26.09.191 limitations and whose residential time in future phases of a parenting plan is conditioned on "proof of completion/compliance" with certain court-ordered requirements *may* try to claim they have substantially equal residential time under RCW 26.09.525 does not warrant review of Division Two's opinion, as it is based on hypothetical facts that were not before the lower courts. Even if such a claim were made, the success of that claim is questionable.

As the majority's interpretation of RCW 26.09.525 was premised on the plain language of the statute requiring courts to consider the "amount of time designated in the court order" in determining whether a child has substantially equal residential time, it is unlikely that residential time that is conditioned on a parent's future speculative compliance with court-ordered requirements

can be included in the calculation. Further, any alleged adverse consequences from a determination that the parents have substantially equal residential time under the circumstances described by Amicus will be limited.

The impact of a determination that parents have substantially equal residential time is to eliminate the presumption favoring relocation. RCW 26.09.525. Instead, whether the child is allowed to relocate must be based on the child's best interests after considering the factors under RCW 26.09.520, which includes whether "either parent or a personal entitled to residential time with the child is subject to limitations under RCW 26.09.191." RCW 26.09.520(4). The likelihood that relocation will be denied if, as Amicus describes, the parent objecting to relocation "has limitations under RCW 26.09.191 for domestic violence and/or substance abuse" and has not "completed the requirements placed on them

for their child's safety" (Amicus Memo 12-13) is exceedingly low.

B. This Court should deny review.

For the reasons stated above and in respondent's answer to petition, this Court should deny review.

I certify that this answer is in 14-point Georgia font and contains 924 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 21st day of July, 2025.

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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 July 21, 2025, I arranged for service of the foregoing Respondent's Answer to Amicus Curiae Memorandum, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 21st day of July, 2025.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

SMITH GOODFRIEND, PS

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