

**FILED**

JUL 22 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 31426-0-III

WASHINGTON COURT OF APPEALS  
DIVISION III

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In re the Marriage of:

ELIZABETH KIM,

Respondent.

v.

ANATOLE KIM,

Appellant,

---

ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT

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**ANATOLE KIM'S OPENING BRIEF**

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## I. INTRODUCTION

Under explicit Washington law that is the fundamental policy underlying all decisions related to children of divorcing parents, the formulation of parenting plans and the decision of whether a parent is allowed to relocate with children must be based on both 1) the best interests of the child; and 2) that “the relationship between the child and *each* parent should be fostered unless inconsistent with the child’s best interests,” RCW 26.09.002 (emphasis added), in addition to any other applicable statutory factors. Despite its presumption in favor of relocation, a decision under RCW 26.09.520 is not exempt from these underlying requirements. Rather, the balancing of interests that the Relocation Act means that the trial court must take them into account.

In this case the mother, Elizabeth Kim (“Betsy”), sought to relocate from Yakima to Los Angeles, ostensibly to re-start the medical career she had put on hold because, over her physician husband Anatole Kim’s objections, she wanted to be a full-time “stay-at-home-mom” to raise the couple’s three children, and did so for the past 15 years. The trial court failed to employ the correct legal test and analysis for either the initial parenting plan determination or for the relocation decision. It never conducted the required statutory analysis to determine if the presumption in favor of relocation was rebutted. Instead, it applied a novel, materially different test in its oral decision: Whether the court, as “super parent” (CP

188:13-14), thought relocation was “appropriate.” CP 195:1-2. This clear legal error constitutes an abuse of discretion and requires reversal. The error was compounded by a later finding which confirmed its relocation standard was like that rejected by the Legislature in passing the 2000 Relocation Act: that Anatole was required to prove there was a “compelling basis to deny mother’s relocation request.” FOF 2.19.20, CP 178.

The record shows the harm caused by the unauthorized legal standards. Here, the “super parent” trial court first decided that Betsy should be the primary residential parent, then granted her relocation request despite the determinations of the Guardian Ad Litem, the forensic child psychiatrist, and the clinical psychiatrist that shared parenting was needed (even if not 50-50), and that the proposed relocation would be adverse to the best interests of the children for a number of reasons. These included severing their well-established school settings and friendships and dramatically reducing the time they actually get from their mother, while at the same time effectively cutting them off from their father. Relocation was granted even though the undisputed, overwhelming evidence was that the children need the regular contact of *both* parents given the personal traits of the parents and the ages of the children. Moreover, the children also would be cut off from the regular contact they always had with their paternal grandparents, who moved from New England to Yakima nine years ago to be near and very involved in their lives. There is no evidence in the record

the children's best interests are served by such a drastic reduction in total parental time, including removal of their father, grandparents, schools, friends, and social and church networks at this stage of their lives. The overwhelming evidence, and the trial court's explicit finding, was that relocation will hurt them. CP 195:3. Its later legal conclusion that relocation is in their best interests is not supported by the findings or the evidence. The relocation order also was entered despite the fact other options exist for Betsy to begin re-entry to her medical career while in Yakima.

Discretionary decisions must comport with the specific requirements of applicable statutes. Findings to address such requirements must be supported by substantial evidence and cannot ignore undisputed evidence. Here the trial court failed to follow the statute. Moreover, the evidence shows serious "detrimental effects" to the children from the move, with no benefits to them other than that their mother "will be working, providing a solid role model," CP 198:14-15, but necessarily not the close, nurturing support the children were used to, including taking them to all their activities. The only arguable benefit to Betsy is in taking an out-of-state residency program of her choice to re-enter the medical profession.

Because the record shows no benefits but only harm to – a "detrimental effect of the relocation" – on the children; and only questionable or modest benefit to Betsy, the statutory presumption of RCW

26.09.520 in favor of relocation was rebutted. The evidence also shows Betsy's motivation to relocate was to get away from the children's father rather than simply re-enter the medical profession, a decision that sacrifices the children's best interests and draws into question the propriety of the relocation. Because the trial court used an incorrect legal test, and because the evidence in the record cannot satisfy the requirements of RCW 26.09.002 and 26.09.520, the order granting relocation must be vacated.

The 60-40 disproportionate property division in favor of Betsy also must be vacated because, among other reasons, the trial court failed to consider and compensate Anatole for the support he gave Betsy for her to attend medical school early in the marriage, as is required under *Marriage of Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984).

## II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL

### A. Assignments of Error<sup>1</sup>

1. The trial court erred in entering the Findings of Fact and Conclusions of Law ("FOF-COL") and the Parenting Plan to the extent they provided for relocation and denied shared parenting, CP172-214; 389-396.
2. The trial court erred in entering orders permitting relocation of the children.
3. The trial court erred in entering the following findings of fact supporting relocation contained in ¶ 2.19 of the FOF-COL (findings nos. 11 - 15, 18-20, 22, 24, 26-32, 34, 37), CP 177-79; and to the extent any findings of fact are contained in the conclusions of law

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<sup>1</sup> Appellant complies with RAP 10.3(g) and 10.4(c) by attaching copies of the final orders containing the challenged findings of fact as appendices A, B, and C hereto.

¶¶ 3.8.3, 3.8.4 & 3.8.5, CP 181; and the supporting findings in the trial court's oral ruling, CP 182-213.

4. The trial court erred by ignoring the recommendations of the guardian ad litem when the GAL's recommendations were corroborated by the other evidence at trial.
5. The trial court erred in entering the property division.
6. The trial court erred in entering the findings of fact related to the division of community assets contained in ¶ 2.8 of the FOF-COL: 1, 3, 5, 6 (CP 174); and to the extent any findings of fact are contained in the conclusions of law related to property division, those in ¶¶ 3.8.6, 3.8.8 (CP 181); and Exs. A and B to the Decree (CP 219-225); and the supporting findings in the oral decision at CP 183-213.
7. The trial court erred in entering the child support order, CP 282-298.

**B. Statement of Issues**

1. Must the relocation orders be vacated where the trial court used the wrong legal test, *i.e.*, whether it thought relocation "was appropriate" and that Anatole had to prove "a compelling basis to deny mother's relocation request" to which she was "entitled," rather than the weighing of interests required by RCW 26.09.520? AE 1, 2, 3, 4.
2. Must the relocation orders be vacated because the record establishes it is detrimental to the children to move to Los Angeles and is in the children's best interests to remain in Yakima and have the regular benefit of both parents, the undisputed evidence from all third parties is that the children benefit from the regular presence of both parents, and the move would mean a drastic reduction in the time and energy available from their primary residential parent in their critical middle and high school years? AE 1, 2, 3, 4.
3. The record shows that under the relocation the children receive no benefits but only a "detrimental effect of the relocation" because: 1) they lose their stay-at-home mother and the primary focus she has given to the children the past 14 years by her choice to only apply to distant, out-of-state medical training programs to re-enter the medical profession; 2) they lose their regular, meaningful relationship with their father who will be 1,000 miles away; 3) they lose the regular relationship with their paternal grandparents they had from birth;

- 4) they lose all their close friends, and social and church networks built up over their lifetimes, as they enter seventh and tenth grades over 1,000 miles away from them. Under these circumstances, must the relocation order be vacated because: 1) the statutory presumption in favor of relocation was fully rebutted; 2) the proposed relocation is not in the children's best interests; and 3) permitting relocation would frustrate the express underlying purposes of the statute as stated in RCW 26.09.002 to promote the best interests of the children and to foster the children's relationship with *both* parents unless inconsistent with their best interests? AE 1, 2, 3, 4.
4. The Guardian Ad Litem and the court-appointed consulting forensic psychiatrist both determined that relocating to Los Angeles would be harmful to the children. The evidence in the parenting plan trial corroborated these recommendations. Did the trial court err in disregarding the recommendations on the best interests of the children of the GAL and the court's own forensic child psychiatrist, retained to represent the children when the record supported their recommendations? AE 1, 2, 4.
  5. Where the statute, RCW 26.12.187(1)(a), provides for appointment of a guardian ad litem where the trial court "believes . . . [it] is necessary to protect the best interests of the child[ren]," does the trial court err by disregarding the recommendation of the GAL on the best interests of the children where the recommendation is corroborated and supported by the other evidence produced at trial, including the court-appointed forensic child psychiatrist? AE 1, 2, 4.
  6. Must the FOF-COL and Parenting Plan be vacated because they give preference to the primary residential parent under the temporary orders which orders drastically reduced the daily contact by the father with the children, contrary to the Parenting Act and *Marriage of Kovacs*, 121 Wn.2d 795 (1993)? AE 1, 2, 4.
  7. Must the FOF-COL, Parenting Plan, and relocation orders be vacated because the trial court explicitly refused to take into account the children's Asian culture and family history in making the parenting plan and relocation decision? AE 1, 2, 4.
  8. Should the disproportionate 60-40 property division in favor of the wife be vacated because it failed to compensate the husband for supporting the wife in obtaining her professional degree as required by *Marriage of Washburn*, and/or because it did not explicitly take

into account all the key facts, including the longer future work life and high earning potential for the younger physician wife? AE 5, 6.

9. Should the child support order be vacated because it failed to deduct the maintenance paid from the husband's income and did not include it in the wife's income as required under the statute? AE 7.

### III. STATEMENT OF THE CASE

#### A. Procedural Overview.<sup>2</sup>

Elizabeth Kim ("Betsy") filed for divorce in July, 2010. CP 1-7.

The property portion of the bifurcated trial was held in June 12-14 2012, and the parenting plan trial in September 4-10, 2012, because of late reports and filings related to the parenting plan and relocation issues, *see* RP (6/12/12) pp. 11-12, with an oral ruling on September 13.

Final orders on the dissolution, parenting plan, and relocation were entered on January 25, 2013. CP 172-225, 384-391. The written findings specifically incorporated the oral ruling as "a basis for these conclusions of law. CP 181, ¶ 3.8.9. The child support order was filed February 5, CP 282-98, and was subject to an amended notice of appeal. CP 299-310.

The final orders granted Betsy's request to relocate with the two minor, school-age children, to Los Angeles (CP 180-81, ¶¶ 3.2, 3.8.3, 3.8.5; CP 194: 8-9), after a 2011 relocation request had been denied; the relocation

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<sup>2</sup> Transcripts are referred to by date and page number, i.e., RP (6/13/12) p. x. Since both parties are physicians with the same last name, for clarity, and consistent with the protocol at trial, first names will be used for the parties and no titles other than "Mr." or "Ms." Anatole Kim's mother, who testified in the second set of hearings, is also a physician and psychiatrist and will be referred to as either Mr. Kim's mother or "Dr. Chung-Hi Lyou Kim."

would take effect after the 2012-13 school year. It also divided the community property 60-40 in favor of Betsy. FOF 2.8.1, CP 174.

**B. The Family Background, Status at Time of Parenting Trial, and Objective Evidence From the Guardian Ad Litem Mr. Kenney and Appointed Forensic Child Psychiatrist Dr. Adler, Whose Findings and Opinions Do Not Support the Trial Court's Relocation Decision.**

**1. Basic family background of the Kims and their children.**

Betsy Shizuko and Anatole Kim met in the 1982-83 school year at church activities when she was an undergraduate at Brown University and also admitted to Brown Medical School on an accelerated joint program and Anatole was a medical student at Brown Medical School. RP (6/13/12) pp. 216-18. Betsy grew up in Los Angeles where her father was a prominent physician. RP (9/4/12) pp. 22-24. Anatole grew up in New Jersey, the son of Korean immigrants. RP (6/13/12) pp. 210-15. His father was a professor of education, his mother a board-certified psychiatrist. *Id.* Anatole lived in rural New Jersey and for high school, he went as a day student to nearby Lawrenceville School, a nationally renowned boarding leading to Ivy League colleges. *Id.* He was heavily involved in sports, music, worked, and earned his Eagle Scout. *Id.* Following one year at King's School in England on a music fellowship, Anatole went to Yale College for his undergraduate work, and eventually to Brown Medical School where he met Betsy. *Id.*

The summer after they met, in 1983, Betsy went back to Los Angeles and the two kept in touch. They began dating in the fall of 1983, and in the spring of 1984 Anatole graduated from Brown Medical School. He began as an intern and resident at the University of Michigan Medical School in July 1984. That next academic year was Betsy's senior year at Brown, and she graduated in the spring of 1985. RP (9/4/12), p. 23. The couple was married August 3, 1985, in Los Angeles. *Id.*, p. 24. Betsy managed to change her medical school from Brown to the University of Michigan so she could be with Anatole while he was doing his internship and residency. *Id.* The University of Michigan is a top 10 medical school, more highly ranked than Brown.<sup>3</sup>

Betsy graduated from the University of Michigan in June 1989. She then began her internship and residency training at the UT Southwest in Dallas, where Anatole had gone in June of 1988 to begin a cardiology fellowship. *Id.*, p. 24-25. The couple then moved to Betsy's home town of Los Angeles in 1991, where Anatole had a nuclear medicine fellowship and Betsy finished her residency. *Id.* In 1994, Betsy obtained a part-time position with a pathology group in San Antonio when Anatole began as a tenure-track professor at the UT San Antonio medical school. *Id.*, 27-28. Both their sons, EK and LK, were born in San Antonio. *Id.*, 28, 32.

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<sup>3</sup> See Exs. RE 7.13 & 7.14; RP (6/13/12) pp. 162-63: 1-5 (Betsy's testimony).

Shortly before LK was two, Betsy, who had been reducing her part time hour as a pathologist, stopped working completely after three years of practice. *Id.* at 30. She decided to stay at home with the couple's children, despite Anatole's efforts to persuade her to return to work. *Id.*

In 1998, Anatole took a cardiology job in Missouri, where their daughter, CK was born. *Id.* , 32-34. The hours were too long for a young family and they ultimately moved to Yakima in 2002 for a more balanced lifestyle. *Id.*, 34-35. To buy their home in Yakima, Anatole's parents loaned them \$100,000. RP (9/6/12) p. 312-13; RP (9/14/12), p. 286.

A few years after Anatole and Betsy moved to Yakima, Anatole's parents moved there from New England to be near their grandchildren so they could be, and have been, closely involved in the children's lives on a daily basis. *See* RP (9/6/12) pp. 311-19 (Anatole's mother Dr. Kim).

Betsy and Anatole played different roles in raising the children in Yakima as recognized by the GAL. Anatole was the primary wage earner and rule enforcer, working long hours, while Betsy was home-based and the more emotionally supportive. Both were regularly engaged with the children, though in different ways. For instance, Anatole focused on their academic work, music events, park trips, fishing, and reading; and, with the

boys, scouting.<sup>4</sup> Betsy supervised and kept the children up with their extensive activities and social networks, *i.e.*, sports, ballet, and church activities.<sup>5</sup>

As testified by the Guardian Ad Litem and others, and found by the trial court, this combined effort resulted in well-balanced, socially engaged children who, before the divorce began, did very well in school and their many extra-curricular activities, but kids who need both parents.<sup>6</sup> The children attended Riverside Christian School for their elementary years, and then moved to Davis High School. Consistent with his own upbringing and the desire to offer the children best possible educational opportunities, Anatole sought to have the children explore attending private schools, including boarding schools and Lakeside School in Seattle, as they approached high school age. RP (9/5/12), pp. 217-18. This created tension in the marriage, as Betsy was not supportive of the idea of boarding school. *Id.* However, she did agree to explore having the two boys attend Lakeside, which likely would have required some changes to living arrangements or a move to Seattle, but the boys were not accepted. *Id.*

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<sup>4</sup> *E.g.*, RP (9/4/12) pp. 108-09, Betsy listing the activities Anatole did with the kids, despite her written statement to court that he only supported the children financially.

<sup>5</sup> *E.g.*, CP 186: 1-5, trial court recounting Betsy's "primary role and focus is to move these three kids from one activity to another. She's responsible for managing their social relationships, managing . . . all their physical and emotional needs on a day to day basis."

<sup>6</sup> *See* GAL Update Report, CP 402-03 ("these are great kids and both parents deserve credit for that."); RP (9/5/12) pp 191-93 ("The kids are wonderful. Yeah, I kind of wish I could bring my kids up the same way.") (Dr. Gondo, family friend).

The record is replete with references to how closely tied-in the children are to their Yakima community, as is Betsy with a very strong support network and community participation.

**2. 2010 Divorce Filing and Effect on the Family.**

In July 2010, Betsy served Anatole with an *ex parte* restraining order which removed him from the house and began the current proceedings. Divorce has had a particularly traumatic effect on their oldest child, EK, as seen from his high school transcript, which shows the dramatic change in his performance in the 2010-11 school year, when his grades went from all “A”s and “A-”s before the divorce to a mix of failing and poor grades with occasional A’s or B+’s. *See* Ex. RE 7.5, transcript from January 2010-June 2011. It was also demonstrated by medical care needs EK developed, which included hospitalization and follow-up.

**3. Betsy’s April, 2011 effort to relocate, which was denied.**

Betsy had a current medical license for California and started to investigate what retraining programs were required to resume practice there, as she said she was not a viable candidate for Washington pathology programs, RP (6/13/12) pp. 129-32, despite the fact her medical school was the nationally ranked top ten University of Michigan. RP (6/13/12) pp 155-168 (Betsy, cross exam). Betsy never attempted to obtain licensure in Washington, even though a California license gets reciprocity in

Washington as part of the normal application process.<sup>7</sup> Rather, Betsy only applied to pathology and other programs in Los Angeles. *See* Ex. PE 1.36, list of medical programs Betsy applied to.

Betsy received an offer from the UCLA Department of Pathology for a “surgical pathology fellowship” to begin July 1, 2011, for one year at a salary of \$56,494. Ex. PE 1.38, pp. 1-2. She then sought relocation in April, 2011. CP 60-68. When her request for relocation was denied by the commissioner (CP 100-108), and her revision motion was denied without comment (CP 112), she chose to stay in Yakima with the children rather than move to Los Angeles without them to start her re-entry into medical practice, and without seeking a Washington license.

While Betsy did not apply for a Washington license after having relocation denied, she sent applications to programs only in the Los Angeles area. In June 2012, she received an offer for the 2013-14 academic year as a fellow in forensic pathology for the LA County Coroner at an annual salary of \$69,519. Ex. PE 1.44. She then added a relocation request on the eve of the trial scheduled for mid-June, 2012. CP 162.

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<sup>7</sup> *See* <http://apps.leg.wa.gov/wac/default.aspx?cite=246-919-390>, the most recent update to WAC 246-919-390 which shows California is a state that has medical licensure requirements essentially similar to Washington’s for purposes of obtaining a temporary permit to practice quickly based on reciprocity; and the Department of Health’s link to posting of frequently asked questions on licensure discussing temporary licenses, <http://www.doh.wa.gov/Portals/1/Documents/3000/657-129.pdf>. Anatole explained how he got his license easily by reciprocity in 2002. RP (6/14/12) pp. 283-85. *See* RCW 18.71.090 (reciprocity rules) and RCW 18.71.050 (licensing requirements).

**4. Appointment of the Guardian Ad Litem for the children, Mr. Kenney, and forensic child psychiatrist Dr. Adler, and their recommendations against relocation because of the detrimental effect on the children who need regular contact with both their parents.**

Several months after EK's hospitalization, Anatole moved for appointment of a forensic psychiatrist to evaluate EK and advise and provide a report to the parties regarding his best interests, residential placement, and residential time with the non-residential parent. CP 51. Betsy at the outset agreed, stating she "favored" retaining Dr. Adler "for a parenting evaluation of Anatole and myself, as well as a review of records and evaluation of" EK to obtain an opinion on residential and visitation arrangements for EK. CP 52-54. She agreed that a consultant such as Dr. Adler was "needed for an objective recommendation on how to facilitate healing and reconciliation," since EK was estranged from Anatole at that point. CP 53: 24-26. Betsy withdrew her consent a few days later, stating that the charges for Dr. Adler were too high and that she thought that Dr. Adler was being retained simply as part of a custody battle. CP 55. The court appointed Dr. Adler to conduct a forensic evaluation and advise the parties regarding EK's best interest, residential placement, and residential time. CP 59.

On July 15, 2011, the court entered an order appointing a Guardian Ad Litem to investigate and report on primary residential placement

consistent with the children's best interests and alternate residential provisions, including any limiting factors. CP 115-17. On September 30, 2011, the court substituted Mr. Rick Kenney as the GAL. CP 118.

GAL Kenney and Dr. Adler were delayed in completing their reports for reasons discussed at the first day of trial, June 12, 2012, resulting in bifurcation of the trial. *See* RP (6/12/12), pp. 2-13. Their reports were provided to the parties and to the court. GAL Kenney's June 26 report emphasized the importance of cultural factors as "critical" (CP 335-37, 339, confidential) and concluded that relocation is "not best" for the children because they need the involvement and "balance" of the differences supplied by their two parents:

5. Relocation. The issue of relocation was discussed and it was concluded that a move by the mother is not best for the children. The mother would have to demonstrate an overwhelming need for her to do so. The issue here is the mother's occupational benefit of a move versus the needs of the children. **The children need the involvement and balance of both parents, the benefit of both attachment and limits.**

GAL report, June 26, 2012, p. 13, CP 340 (emphasis added) (confidential).

Similarly, the forensic psychiatrist Dr. Adler gave his extensive report dated June 25, 2012, made "with reasonable medical certainty." CP 341-63 (confidential). His opinion was that relocation would be detrimental to EK, who he had evaluated along with the parents, and his siblings:

A relocation of the children appears to be ill-advised, particularly as it relates to [EK]'s best interests. This has been a

high-conflict divorce, marked by contested custody issues and prominent father-son alienation. Given the problems up to now engaging [EK] in much-needed mental health therapy, a disposition that would only further hamper the likelihood of repairing the father-son relationship seems contraindicated.

June 25, 2012 Evaluation, p. 23, CP 363 (confidential). Dr. Adler highlighted the importance of considering the children's and parents' cultural backgrounds, particularly the recent immigrant status of Anatole's family. CP 344-45, 359-63.

Finally, GAL Kenney gave a written update on September 4 before his trial testimony at the parenting trial, based on the prior work and new interviews with the parents, the two boys and daughter, and two psychiatrists. The GAL recommended shared residential placement and a special master to help make decision making more collaborative. CP 403-05 (confidential). The GAL was clear that "other options [than both parents residing in close proximity, such as relocation to LA] *are detrimental to the children.*"

CP 404 (emphasis added) (confidential). As to relocation:

Both Dr. Adler and I have concluded that a move by the mother is not best for the children. At the same time, a plan should be developed to support her in her professional endeavors without taking away from her parental role.

GAL Report of Sept. 4, p. 7, CP 405 (confidential). The GAL's trial testimony and recommendations were consistent. *See* RP (9/6/12) pp. 367-393; RP (9/10/12) pp. 397-99.

#### IV. ARGUMENT

**A. Standard of Review: Abuse Of Discretion Is The Standard For Reviewing Parenting Plans, Relocation And Evidence Rulings; It Is An Abuse Of Discretion To Make Findings Not Supported By Substantial Evidence.**

The standard of review for parenting plans and for relocation is abuse of discretion. *Marriage of Horner*, 151 Wn.2d 884, 893, 93 P.3d 124 (2004); *Marriage of Grigsby*, 112 Wn. App. 1, 57 P.3d 1166 (2002); *Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997), *superseded by statute on other grounds*, Laws of 2000, ch. 21, § 1.

The standard of review for evidentiary rulings at trial is also abuse of discretion. *Industrial Indem. Co. v. Kallevig*, 114 Wn.2d 907, 926, 792 P.2d 520 (1990). An error in admitting evidence requires reversal when the error is prejudicial, which occurs if that improperly admitted evidence has a substantial likelihood of affecting the outcome of the case. *Carnation Co. v. Hill*, 115 Wn.2d 184, 186, 796 P.2d 416 (1990).

A trial court abuses its discretion when it applies an incorrect legal standard,<sup>8</sup> the record does not support the court's findings, or the facts do not meet the requirements of the correct standard. *Horner*, 151 Wn.2d at 894 (reversing relocation decision under RCW 26.09.520), quoting

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<sup>8</sup> "A trial court would necessarily abuse its discretion if it based its ruling on an erroneous view of the law." *Washington State Physicians Insurance Exchange & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (footnotes omitted) (reversing trial court). *Accord, Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

*Littlefield*, 133 Wn.2d at 47 (reversing relocation decision made before passage of the relocation statute).<sup>9</sup> Moreover, “a trial court must articulate on the record the reasons behind its determinations,” *Horner*, 151 Wn.2d at 894, so that a reviewing court can engage in meaningful review.

Findings of fact may be affirmed only if supported by substantial evidence. *Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). Those findings that are supported must then support the conclusions of law. *Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007), *rev. den.*, 163 Wn.2d 1065 (2008) (“Rockwell I”). “Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise.” *Id.*, quoting *Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

The abuse of discretion standard thus is both substantive and well established: discretionary rulings must be grounded in *both* the correct legal rules *and* the actual facts; they must be founded on principle (the applicable legal rules), reason, and the facts. The trial judge thus is not an untethered “knight errant” who may do whatever “justice” in a case he or

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<sup>9</sup> *Accord, Marriage of Kovacs*, 121 Wn.2d 795, 801, 854 P.2d 629 (1993) (reversing for abuse of discretion).

she deems fit.<sup>10</sup> Rather, the trial court is always is tied to the applicable legal rules and actual facts of the case. *Horner; Littlefield*. This makes sense because completely unbridled discretion means, as a practical matter, no rules, no accountability, and no predictability for clients and their counsel. It obviates the appellate courts.

**B. The Relocation Decision Must Be Vacated Because the Trial Court Failed to Apply the Correct Legal Test. Relocation is Also Not Supported By the Evidence, is Contrary to the Best Interests of the Children in Their Critical Middle and High School Years, and is Contrary to *Marriage of Kovacs*. By Effectively Removing Anatole From A Genuine Role As A Parent and Drastically Reducing Betsy's Time as a Parent, the Children Are Indisputably Harmed; All the Evidence, Including From The Third Party Evaluators, States the Children Need Both Parents In Their Lives on a Regular Basis.**

**1. Under proper relocation analysis, the Parenting Act's express underlying goals in RCW 26.09.002 and binding case law all require that the best interests of the children prevail over the desires of either parent in entry of parenting plans, as this Court recognized in *Marriage of Combs*. Relocation under RCW 26.09.520 is not exempt from this requirement. The Relocation Act of 2000 was passed to insure the parent's interests did not override the child's best interests. The statute creates only a presumption in favor of relocation, which is rebutted when the evidence shows it will have a detrimental effect on the child that is not outweighed by the benefits to the child and relocating parent and thus is not in the child's best interests – a test the trial court failed to apply here, and which the evidence cannot meet.**

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<sup>10</sup> See *Cogle v. Snow*, 56 Wn. App. 499, 505-07, 784 P.2d 554 (1990) (quoting and discussing Justice Benjamin Cardozo's famous reflection on the nature of judicial discretion in *THE NATURE OF THE JUDICIAL PROCESS* (1921) and vacating discretionary decision).

The starting point for applicable legal principles on parenting matters is the policy statute, RCW 26.09.002, adopted as part of the Parenting Act of 1987. *See* Laws of 1987, ch. 460, § 2. It requires the trial court to be governed by both 1) the best interests of the child; and 2) the need to maintain and foster the relationship of the child with *both* parents.<sup>11</sup> Unfortunately, these principles were not followed by the trial court here.

The Parenting Act policy statute states in relevant part:

. . . In any proceeding between parents under this chapter, **the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes** the fundamental importance of the parent-child relationship to the welfare of the child, and that **the**

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<sup>11</sup> The legislative history of the Parenting Act reflects that it includes shared parenting principles and carefully eliminated any presumptions in favor of the primary caregiver during the period of temporary orders. *See Marriage of Kovacs*, 121 Wn.2d 795, 808-09, 854 P.2d 629 (1993). *Kovacs* recognizes that the Parenting Act included elements promoted by “advocates of shared parenting as well as advocates of a primary caregiver presumption,” 121 Wn.2d at 804-05, and that ultimately any presumptions in favor of primary caregivers was removed from the Act. *Kovacs*, 121 Wn.2d at 806-09.

The large body of social research which demonstrates the need -- and desire -- of children for a relationship with *both* parents, particularly the non-custodial parent, is not new. *See, e.g.*, the concurring decision in *Cooper v. Cooper*, 99 N.J. 42, 491 A.2d 606, 620-23 (1984) (Schreiber, J., concurring): “In sum, the social science literature is virtually unanimous in stressing the importance to children of regular, frequent contact with both their parents and in recommending that children's relationships with their noncustodial parents not be lightly disturbed or frustrated.” Judge Schreiber explained:

Researchers have found that a large majority of children whose parents have divorced yearn for their absent parent with surprising persistence and passion. Wallerstein and Kelly, in one of the most complete, long-term studies of children of divorced parents, found that children expressed the wish for increased contact with the noncustodial parent, usually the father, “**with a startling and moving intensity,**” **that they found twice-monthly weekend visits woefully inadequate**, and that “[t]he intense longing for greater contact persisted undiminished over many years.” ”

*Cooper v. Cooper, supra*, 491 A.2d at 621(Schreiber, J., concurring) (emphasis added).

**relationship between the child and each parent should be fostered** unless inconsistent with the child's best interests. . . .

RCW 26.09.002 (emphasis added).

There was no evidence or finding that fostering the children's relationship with either parent was inconsistent with their best interests. Rather, the undisputed evidence is that they need regular contact with *both* parents, in part because of Anatole's and Betsy's different styles which have different strengths and weaknesses and are, in and of themselves, incomplete; the children's upbringing and development would literally be incomplete if either one was missing or greatly diminished, as relocation to Los Angeles necessarily does to the children by removing Anatole. As the GAL put it succinctly, they need the benefit of both "attachment" and "limits", both their mother and their father.

The relocation statute, RCW 26.09.520, contains a general provision establishing the rebuttable presumption in favor of relocation and then lists eleven factors which are to be applied if the move is challenged. The general provision states in relevant part:

. . . There is a rebuttable presumption that the intended relocation of the child will be permitted. A person entitled to object to the intended relocation of the child may rebut the presumption by demonstrating that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the following factors.<sup>12</sup> The factors listed in this section

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<sup>12</sup> The factors are:

- (1) The relative strength, nature, quality, extent of involvement, and stability of

are not weighted. No inference is to be drawn from the order in which the following factors are listed.

RCW 26.09.520. Nothing in the relocation statute states that the overall policy statute of RCW 26.09.002 does not apply in these circumstances. Rather, under the Parenting Act, RCW 26.09.002 is a critical component that states the overarching policy which requires the court to focus on the best interests of the children and on maintaining the relationship with *both*

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the child's relationship with each parent, siblings, and other significant persons in the child's life;

(2) Prior agreements of the parties;

(3) Whether disrupting the contact between the child and the person with whom the child resides a majority of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

(4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;

(5) The reasons of each person for seeking or opposing the relocation and the good faith of each of the parties in requesting or opposing the relocation;

(6) The age, developmental stage, and needs of the child, and the likely impact the relocation or its prevention will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;

(7) The quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations;

(8) The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent;

(9) The alternatives to relocation and whether it is feasible and desirable for the other party to relocate also;

(10) The financial impact and logistics of the relocation or its prevention; and

(11) For a temporary order, the amount of time before a final decision can be made at trial.

parents, absent factors not present here. It necessarily applies to relocations under § 520.

Indeed, it was the Legislature's concern that courts must continue to focus on the best interests of the children rather than, as was done here, defer solely to the interests of the relocating parent in relocation cases that caused it to pass the Relocation Act of 2000 to overrule *Littlefield* and *Marriage of Pape*, 139 Wn.2d 694, 989 P.2d 1120 (1999) to the extent those decisions "restricted the authority of courts to prohibit a parent from relocating a child." Laws of 2000, ch. 21, § 1.<sup>13</sup> See *Grigsby*, 112 Wn. App. at 6-8, describing the genesis and purpose of the 2000 Relocation Act.<sup>14</sup> The Relocation Act, codified at RCW 26.09.405 through .560, was

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<sup>13</sup> "By this act, the legislature intends to supersede the Supreme Court's decisions in [*Littlefield*] and [*Pape*]."

<sup>14</sup> *Grigsby*, 112 Wn. App. at 6-8 (emphasis added):

In enacting [RCW 26.09.450 – 560], the Legislature specifically stated that its intent was to supersede the Supreme Court's decisions in *In re Marriage of Littlefield* and *In re Marriage of Pape*. . . .

In *Littlefield*, the court held that a court may not prohibit a parent from relocating a child unless relocation would harm the child. The court further held that the harm to the child must be "more than the normal distress suffered by a child because of travel, infrequent contact of a parent, or other hardships which predictably result from a dissolution of marriage."

The decision in *Pape* further restricted the authority of courts to prohibit a parent from relocating a child. In *Pape*, the court held that . . . a [trial] court determining whether to allow relocation **must presume that the best interests of the child require the primary placement remain intact.** The effect of this holding is that a primary residential parent will be able to relocate a child unless circumstances aside from the relocation would favor a change in the residential schedule of the child.

**The Relocation Act of 2000 reflects a disagreement with the rationale of these cases and gives courts the authority to allow or disallow relocation based on the best interests of the child.** Under RCW 26.09.520, there is a rebuttable presumption

thus meant to give “courts the authority to allow or disallow relocation **based on the best interests of the child.**” *Id.*, 112 Wn. App. at 7 (emphasis added). As the Supreme Court explained, “trial courts must consider the interests of the child and the relocating person within the context of the competing interests and circumstances required by the” Relocation Act. *Horner*, 151 Wn.2d at 895.<sup>15</sup> The trial court erred here by not only failing to even arguably apply the statutory test, it essentially used the standard of *Pape* the legislature explicitly rejected and replaced when it required “a compelling basis” to deny the relocation request.

*Marriage of Combs*, 105 Wn. App. 168, 19 P.3d 469 (Div. III, 2001), is a good example of this Court staying focused on the child’s best interests to reverse a trial court’s determination of primary residential placement, a decision that was, under *Littlefield* and *Pape*, the virtually unstoppable first

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that the intended relocation of the child will be permitted. But the parent objecting to the relocation may rebut this presumption by demonstrating that the detrimental effect of the relocation will outweigh the benefits of relocation to the child and the relocating person. RCW 26.09.520 lists factors for the court to consider in determining whether relocation should be permitted.

<sup>15</sup> Thus, while the Supreme Court attempted to resolve the typical conflict between a parent who wants to move and a child’s best interests by holding the statute requires that ***both*** be fully considered and balanced under the statute to determine whether the presumption to permit relocation by the primary residential parent is rebutted, the bottom line still appears to be that if the child’s best interests are not served by the move after all factors are considered, it must be denied. As discussed *infra*, the only component missing from the *Horner* analysis was how to factor into the balancing under the statute the non-relocating, fit parent’s fundamental constitutional right to parent, which was not raised to the *Horner* court. (The matter was moot when it reached the Supreme Court and the father did not file any briefs. See *Horner*, 151 Wn.2d at 898-99 (Sanders, J., dissenting). That necessary component to the analysis is discussed *infra*.)

step toward relocation such that the relocation issue was fought at that stage. The lack of focus on the child's best interests in *Littlefield* and *Pape* was, according to *Grigsby*, the basis for the disagreement the Legislature had with those decisions and why the Relocation Act was passed. As noted in *Grigsby*, those cases allowed too much judicial deference to the primary residential parent who wanted to relocate, and not enough attention to the child's interests. By staying focused on the best interests of the child and telling the trial court to take into account where the mother was intending to go and the necessary effect on the child, this Court in *Combs* anticipated the required focus on the effect on the child under the Relocation Act. *Combs* shows the consistent approach taken by Division III in relocation cases to keep the best interests of the children always in the forefront.

In sum, the Relocation Act and *Combs* require that the children's best interests are kept front and center. If their best interests are not *promoted* by the move, if the move thus is detrimental to them, the presumption is overcome and relocation must be denied.

Under the statute, this calculus is to be done by assessing the eleven factors evenly within the context of the overall legal analysis, with no priority to any one factor, and explained in written findings or orally on the record. *Marriage of Horner*, 151 Wn. 2d. at 894-95) (reversing Court of Appeals for failing to require written or oral review of the statutory factors).

This makes sense because otherwise, there is no way for an appellate court to conduct review for compliance with the statute and applicable case law.

Finally, the analysis and application of the statute must also be done within the constraints of the constitutional rights of *each* parent to raise their children, particularly, as here, where there are no disabling factors to restrict parental rights under RCW 26.09.191 or otherwise.<sup>16</sup>

Measured against this background, the Relocation Act reflects a re-emphasis on having courts focus on the children at issue rather than the primary residential parent, consistent with the policies of RCW 26.09.002. In this light, the statutory factors must be applied in favor of the child, not

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<sup>16</sup> *E.g.*, “[T]he interest of parents in the care, custody and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this Court.” *Troxel v. Granville*, 530 U.S. 57, 65, 64-67 (2000), *affirming Custody of Smith*, 137 Wn.2d 1, 969 P.2d 21 (1998). “[T]he ‘liberty’ specially protected by the Due Process Clause includes the righ[t] . . . to direct the education and upbringing of one’s children.” *Glucksberg v. Washington*, 521 U.S. 702, 720 (1997). *See custody of Smith, supra*, 137 Wn.2d at 13-15 (recognizing as fundamental “a parent’s constitutionally protected right to raise his or her children without state interference.”). *Accord, Katare v. Katare*, 175 Wn.2d 23,37-38 & 47-49, ¶¶ 50-51, 57 (Madsen, C.J., dissenting), 283 P.3d 546 (2012), *cert. denied*, 133 S. Ct. 889 (2013) (parental rights may only be restricted where there is a nexus between proven parental conduct and potential harm to the child as demonstrated by supported findings under RCW 26.09.191); *Marriage of Watson*, 132 Wn. App. 222, 233-34, 130 P.3d 915 (2006) (same); *Marriage of Wicklund*, 84 Wn. App. 763, 771-72, 932 P.2d 652 (1996) (same).

Anatole raised the constitutional arguments below at pages 4-5 of his trial brief. CP 166-67. Although the relocation statute has been held constitutional by this Court, *see Marriage of Mombe v Ragone*, 132 Wn. App. 70, 82, 130 P.3d 406, *rev. den.*, 158 Wn.2d 1021 (2006) (relocation statutes constitutional, did not prevent father from moving, but “serve as a valid exercise of state power to protect children”), that analysis does not preclude, but rather supports, the narrowing application of the criteria which Anatole asserts the federal and state constitutions both require, particularly in a case like this where it is undisputed the children need the regular interaction with and contributions of both parents to be whole.

the parent seeking to relocate, with all deference and liberal interpretation on the side of the child's best interest.

In short, the relocating parent's individual interests must be subordinated to those of the children. A no fault divorce does not simply set the divorcing parent "free" when there are children whose futures and upbringing are at stake. The literature documents the damage to children of relocation in which one parent is effectively eliminated (a proposition the trial court explicitly recognized), and why these decisions must be viewed from the perspective of keeping both parents closely involved, absent disqualifying factors such as are in RCW 26.09.191.<sup>17</sup> Where these principles are actually followed, it necessarily means more cases like *Combs* in which relocation is denied because it is not in the child's best interest, since the detrimental effects on the child outweigh the benefits to the child and the relocating parent.

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<sup>17</sup> See, e.g., Richard A. Warshak, "Social Science and Children's Best Interests in Relocation Cases: Burgess Revisited", 34 FAMILY L.Q. 83, 85 (2000) (there is a "broad consensus of professional opinion, based on a large body of evidence, that children normally develop close attachments to both parents, and that they do best when they have the opportunity to establish and maintain such attachments."); Linda D. Elrod, "National and International Momentum Builds for More Child Focus in Relocation Disputes," 44 FAM. L.Q. 341, 345 (2010) ("Because the definite trend appears to be away from presumptions for or against a move and toward a best-interests-of-the child approach, the article concludes that **the challenge is how to make the best interests test actually focus on child-centered factors**. A child focus considers the risk to an individual child based on the child's developmental stage, resilience and adaptability, relationship with both parents, and the child's voice.") (emphasis added). See also Weber, "Family and Community Property Law, Ch. 33, Appendix 33-1 §§ 1.A – 1.C & footnotes 1-5, 20 WASHINGTON PRACTICE (2012 Supp.) (describing adverse effects of relocation, citing to studies).

2. **The relocation orders must be vacated because the trial court failed to apply the correct legal test or do the required legal analysis under the correct test. Its test was whether the judge thought relocation “was appropriate” and that Anatole had to prove “a compelling basis to deny mother’s relocation request” to which she was “entitled.”**

The trial court’s oral decision demonstrates it failed to apply the correct legal test for relocation. This is an abuse of discretion and means the decision should be vacated. *See Horner*, 151 Wn.2d at 894 (a discretionary ruling is untenable “if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard”); *Fisons*, 122 Wn.2d at 339 (application of the incorrect legal standard is an abuse of discretion); and *see* Section A, *supra* and cases cited therein.

Instead of first going through the factors to determine whether Anatole had rebutted the presumption of relocation based on a weighing of harms and benefits as the statute directs, it decided to grant relocation, then it created a novel legal standard as to which it examined each of the factors: “whether relocation is appropriate.” RP (9.13.12), p. 13:1-2, CP 195.<sup>18</sup> Moreover, the trial court made its assessment of whether relocation was “appropriate” in the context in which it spoke of a parent’s “entitlement” to

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<sup>18</sup> “Mother is entitled to ask to relocate and it is incumbent on me to go through what I’ve heard in the testimony as to whether or not it’s appropriate.”

seek relocation.<sup>19</sup> Neither in the oral decision nor in the later written findings did the trial court address the statutory presumption of relocation and whether the evidence rebutted it after a careful weighing of harms and benefits to the children and the benefits to Betsy, as required by RCW 26.09.520. Nor did it address the constitutional rights of the non-relocating parent that Anatole raised. *See* CP 166-67. It thus is not surprising that the later findings confirmed the strength of the unauthorized and subjective standard, whether the “super-parent” judge thought relocation was “appropriate,” to require that Anatole prove there “was a compelling basis to deny Mother’s relocation request.” FOF ¶ 2.19.20, CP 178.

Indeed, the court’s choice of “entitlement” to explain its over-arching approach to relocation helps explain its ultimate decision to allow relocation by demonstrating the materially different standard than the legal standard adopted by the legislature and applied by the Supreme Court in *Horton* and as anticipated by this Court in *Combs*. The oral decision, which was expressly incorporated into the written findings, shows this:

The next question, obviously, is the issue of relocation and that is a very difficult question, but I will tell you I am going to allow the

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<sup>19</sup> This is similar to the error the trial court committed in determining the residential placement under the parenting plan, when it went through the statutory factors of RCW 26.09.187, but evaluated them in an erroneous context: what the trial court thought was “right”, as opposed to what is in the best interests of the children as required by the statute. This was made explicit at the outset of the court’s ruling on September 13: the parenting plan requirements “really imposes a duty for me to stand in the position of, I guess, a super parent and say what I think is right and not right” in entering a parenting plan. RP (9/13/12), p. 6.

relocation and I will go through it with you. I need to go through the -- again, the 11 factors. . . . number one is the relative strength, nature, quality and extent of involvement, and the stability of the children's relationship with each parent. Again, that (inaudible) a [in] favor of mother to a substantial degree. The issue -- only issue there that is raised and is raised significantly is **these children's attachment, each of these children's attachment to various friends in the community and their school issues.**<sup>20</sup> There's no question -- and I guess **I have to acknowledge that Dr. Adler, Dr. Hartman, Mr. Kenny all said that relocation is bad, and I accept that. I think that's true, relocation is bad.** It is -- that's why we have a relocation statute. It's not a good thing for kids to move, . . . but relocation is a legal reality and the fact that somebody would say it's bad is coffee table talk. It is not -- does not address the fact that in this life, just as Mr. Kim was entitled to ask for custody of his children, even though I look at that and I go based on the history, it's not a reasonable request. . . .

The same thing that exists here. Mother is entitled to ask to relocate and **it is incumbent on me to go through what I've heard in the testimony as to whether or not it's appropriate.** I think clearly that the relationship that these children have with kids in the community is important and **it's going to hurt them,** but what I gleaned from the testimony is is that these children are really exceptional and I say that because a lot of the testimony from some of the folks who are kind of a almost a distant comment that, you know, what a neat kid Luke was -- what I neat kid Carolyn is. These kids are very socially adapted. I think they're very mature, they're very confident. I don't think they're going to have any difficulty **and I think even though they do have significant relationships in the community, in their lives, they will be able to adapt.** Ethan, I think, will also adapt well. I think he's, frankly, moving into a phase of his life where it has less of an impact because of his age, but, you know, he, too, I think is a very adaptable young man.

RP (9/13/12), pp. 12-13, CP 194-95 (emphasis added).

This decision makes plain the statutory factors were not met. The ruling explicitly states relocation is bad and will hurt the children, but that

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<sup>20</sup> The trial court ignored the undisputed testimony of the strong attachment of the children to their paternal grandparents, who live in Yakima.

they will, eventually, “adapt.” On its face, it does not meet the statute’s requirement to allow relocation. It shows the presumption was rebutted since the children are harmed and get no benefit. The belated conclusion that relocation is in the children’s best interests is wholly unsupported by the trial court’s own findings as well as any fair reading of the record. Only the improper legal test the trial court applied provided a fig leaf of a justification. But that legal test was erroneous, requiring reversal.

3. **The only evidence is that the children need both their parents’ participation during their critical middle and high school years. By seeking to re-enter the medical profession as a single parent, Betsy will no longer be a fully-available parent and Anatole will effectively be cut off from daily or weekly life, leaving the two school-age children without anything close to full-time parenting by their own parents, contrary to RCW 26.09.002.**

One of the ways the children will be harmed is by the removal of both them and Betsy from their established social network and family support system in Yakima. The distance they will live from Betsy’s own relatives in Los Angeles and those relatives’ preoccupation with their own lives and families means they cannot come close to replacing the social-family network that exists in Yakima. Further, Betsy’s extended family in Los Angeles, surprisingly, was not made part of the plan to obtain parenting assistance. This amounts to a severe loss of care for the children at a very important time in their upbringing, which can only be characterized as

harmful. Indeed, the trial court explicitly found this “would hurt them.”

CP 195. Allowing relocation was error.

4. **The FOF-COL and Parenting Plan are contrary to law and an abuse of discretion because the evidence does not support that it is in the children’s best interests to lose both parents’ participation during their critical middle and high school years.**

No evidence supports a finding that such a move is in the children’s best interests where it wrenches them away from their many, and unusually close and well-developed friends where they have lived their entire school lives. Instead, they have been ordered to relocate as seventh and tenth graders to alien schools over 1,000 miles away. LK, the tenth grader, will change to a school with a different honors curricular system (AP instead of his current international baccalaureat program), disrupting his high school years. The children also have established activities including ballet, art, tennis, and piano lessons, boy scouting, and varsity tennis, from all of which they will be severed. As these activities were virtually all initiated and supported by their father and paternal grandmother, it is unlikely that they will be restarted in Los Angeles where Betsy will have precious little time to supervise getting the children plugged into similar activities, much less get them there, while a new pathology fellow getting re-established into medical practice.

Not only are these changes disruptive in and of themselves, but the children will further sacrifice academic and extracurricular stability due to the high likelihood of another move when their mother obtains permanent employment and has to move after her year's training.

Moreover, there is no evidence the children are benefited or it is in their best interests to have their nominal primary parent largely absent from them during this period of change as she herself grapples with re-entering the medical profession as a junior physician, subject to all the worst hours, extra hours, and work on holidays. The evidence is that communications between the children and their father and grandmother have been made more difficult post-separation,<sup>21</sup> so that little regular and meaningful contact and support will be available on a daily basis after the move 1,000 miles away. The extensive network of family and friends which supported the children in getting to their activities in Yakima will not exist. Re-development of Betsy's extensive support system that she had in Yakima will be difficult and slow because she will have little control of her schedule with a new career outside the home.

Further, as noted *supra*, trial established that Betsy only applied for positions in Los Angeles and never sought to obtain a Washington medical license, even as a back-up plan, and even though there was ample time to

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<sup>21</sup> See, e.g., CP 143-55, Anatole's declaration describing Betsy's lack of cooperation in facilitating communication with the children.

see if reciprocity would be granted (as is the norm) after her 2011 relocation request was denied. The fact she chose to not take the UCLA position in 2011 and remain in Yakima, then chose to not seek a local licensing option undercuts her argument she was primarily motivated by a need to resume her medical career, as opposed to leaving the state, even at a cost to the children.

Under these facts, the FOF-COL and Parenting Plan violate the fundamental, underlying premise of the Parenting Act explicitly stated in RCW 26.09.002 that the trial court is to enter such orders as are in the best interests of the children and which promote their continued relationship with both parents. They must be vacated.

**5. The FOF-COL and Parenting Plan also must be vacated for disregard of statutory factors, especially culture in this case.**

The Parenting Act explicitly provides for consideration of the “cultural heritage and religious beliefs of a child” when establishing a parenting plan. RCW 26.09.0184(3). Our Supreme Court and this Court recognized long ago that the factors to be considered in making or modifying parenting plans include “**culture**, family history, the emotional stability of the parents and children, finances, and any of the other factors that could bear upon the best interests of the children.” *Parentage of Jannot*, 149 Wn.2d 123, 127, 65 P.3d 664 (2003) (quoting *Parentage of Jannot*, 110 Wn. App.

16, 19-20, 37 P.3d 1265 (Div. III, 2002) (emphasis added) (addressing factors required in a modification hearing for change of custody).

Yet the trial court explicitly stated it would *not* consider the culture of the parents and children here. It refused to apply the recognized factor because it did not want to appear “discriminatory.” This was an untenable basis and an abuse of discretion because it denied consideration of the children’s cultural and social background as required by RCW 26.09.184, case law, and common sense in order to have a full picture.<sup>22</sup> The trial court failed to apply an applicable legal standard without an acceptable reason in a case where it makes a major difference. This requires reversal.

Anatole presented evidence on the Korean and Japanese culture of the parents and that the cultures were reflected in the parenting done by them – and thus, was necessarily reflected in the personalities and characters of the children and their relationships and interactions with their parents.<sup>23</sup> An example was Anatole’s testimony and the related evidence of how he reinforced academic work and study habits for the children, keeping the children to task in school, especially as the boys got older and the oldest

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<sup>22</sup> See, e.g., CP 186:12-25 to 187:5; the trial court’s statement it did not understand an aspect of the family dynamics involving EK, even though it had been explained, because it erroneously refused to consider cultural background of the children and their family.

<sup>23</sup> In addition to the reports from the GAL and Dr. Adler discussed *supra*, see CP 337 (GAL relating interview on cultural issues with Dr. Gondo, who is a Japanese friend of Anatole); RP (9/6/12) pp. 282-305 (testimony of Dr. Park, a Korean psychiatrist with expertise in Korean culture and adjustments to living in America).

got to high school, while Betsy was more lax in enforcing homework and other academic responsibilities in Anatole's absence.<sup>24</sup>

The eldest, EK, had been an excellent student up until the time the divorce was filed and Anatole was ejected from the family home and then had limited contact under the temporary orders. EK was then in high school, a particularly important time for father-son relationships, which he then largely lost. As is recounted at length in the proceedings and by the GAL and child psychiatrist, EK had a depression episode and his grades sank.<sup>25</sup> EK himself indicated that his grades started coming back when he was having contact with Anatole after truancy hearings, and Anatole was again assisting and coaching him with his schoolwork.<sup>26</sup>

An important part of the narrative of why there was this difference between Anatole's and Betsy's approaches was the cultural and social backgrounds, despite the fact both are physicians, including the differences between the Korean and Japanese approaches to child-raising and education. To ignore these important factors, which are interweaved with all the other evidence, is to deny the children their cultural heritage and to

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<sup>24</sup> *E.g.*, GAL report, CP 339 (parents' styles are "opposites") and GAL update CP 402-05 (confidential) (describing differences); Anatole's testimony at RP (9.5.12) pp 206-11 (contrasting instruction styles), 217-18 (private school conflicts).

<sup>25</sup> Dr. Adler report, CP 341-363 (confidential), including review of treating psychiatrist Dr. Hartman's records of treatment of EK and later interview of Dr. Hartman

<sup>26</sup> *See* GAL report relating EK's comments, CP 332 (confidential).

misunderstand the actions of the parents and the need for continuous, close contact by both, even if it is in different “amounts” at different stages, *i.e.*, Anatole’s more rigorous academic reinforcement taking a higher profile and the children get older and progress through middle and high school.

Anatole’s parental contributions also were misjudged because the cultural context of these parents operating within their Asian heritages was explicitly rejected. FOF 2.19.1, CP 177; CP 184. Despite the cultural consultations performed through the forensic psychiatrist, by the GAL, and the respondent’s cultural consultant – also a psychiatrist – the court failed to realize the role of the Asian father in the Asian family and first generation citizen, and how the children needed regular, daily contact for the purposes of discipline, accountability, role-modeling, and character development.

To ignore important cultural factors is to misunderstand the actions and needs of the parents and children, and here to downplay the need for continuous, close contact with both parents which the GAL affirmed, even if that is in different “amounts” at different stages. Although Anatole did not spend as much time with the children in their infancy and grade-school years, he testified his was a burgeoning role in the Asian culture, increasingly important during the formative years.

Additional evidence about the respective cultures and the effect on parent-child relationships between the children and the parents was received

from the GAL and the forensic child psychiatrist, as was noted, *supra*. The disregard of the cultural and family history factor which help to rebut the relocation presumption is significant and cannot be considered harmless and alone requires reversal.

6. **The findings and conclusions and the parenting plan also must be vacated because, by giving preference to Betsy and her position as primary residential parent under the temporary orders, they are contrary to the Parenting Act and to *Marriage of Kovacs*.**

*Marriage of Kovacs* long ago affirmed the statutory principle in the Parenting Act that the trial court may not draw presumptions from a temporary parenting plan when entering a permanent parenting plan, and held the Act “did not intend to create any presumption in favor of the primary caregiver but, to the contrary, intended to reject any such presumption.” *Kovacs*, 121 Wn.2d at 809. Therefore, in determining the primary residential placement of a child, the trial court cannot draw a presumption in favor of placement with the primary caregiver or in favor of the temporary primary caregiver. *Id. Marriage of Combs, supra*, illustrates this rule. In *Combs*, the trial court believed both parents were equally qualified to be the permanent primary residential parent. *Id.* at 176. The court broke the “tie” by considering the mother’s “success” as the temporary primary parent. *Id.* This Court concluded the trial court abused its discretion by designating the mother the permanent primary parent based

on her “success” as the temporary primary parent. *Id.* at 176–77. Similar problems infect the final orders in this case.

Here, although there was not a “tie” to break in the trial court’s view. The trial court in effect zeroed out Anatole’s role based on what it deemed was the mother’s “success” in being more comforting to the children during the stressful time for the entire family during the temporary orders after Anatole had been removed from the house following service with the divorce papers while was present.<sup>27</sup>

The trial court ignored substantial evidence, including even the inadmissible hearsay comments from the children which it allowed in as well as the GAL’s report, of how essential Anatole was and is to their daily lives and development when it made Betsy the primary residential parent and, as a consequence under its novel legal test, meant it would then granted the relocation and thereby effectively remove Anatole from being a regular part of his children’s lives.

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<sup>27</sup> See RP (9/5/12) pp. 218:24 to 229 (describing in detail the circumstances of service of the divorce papers, having a family meeting with the younger kids about the divorce before being served with a restraining order, being removed from the house on service of the ex parte order, and that EK was told about the divorce privately by Betsy before the papers were served on Anatole).

**C. The Unjustified Disproportionate Property Division Requires Reversal For, Among Other Things, Failing To Apply The Rule of *Marriage of Washburn* That Requires Compensating A Supporting Spouse From the Property Division For Getting A Lucrative Professional Degree During The Marriage Which Ends Before That Benefit is Realized Within the Marriage.**

**1. Basic property division principles.**

Property divisions under RCW 26.09.080 are reviewed for an abuse of discretion. *In re Marriage of Schweitzer*, 81 Wn. App. 589, 595-96, 915 P.2d 575, *aff'd*, 132 Wn.2d 318 (1997) (reversing property award). In a dissolution, all property of the *parties* is before court for distribution. *Marriage of Stachofsky*, 90 Wn. App. 135, 142, 951 P.2d 346 (1998). The ultimate question if a property division is “whether the final division of the property is fair, just and equitable under all the circumstances.” *Baker v. Baker*, 80 Wn.2d 736, 745-46, 498 P.2d 315 (1972). *See also Stachofsky*, 90 Wn. App. at 147. *Accord Stokes v. Polley*, 145 Wn.2d 341, 347, 37 P.3d 1211 (2001); *Marriage of Rockwell*, 157 Wn. App. 449, 238 P.3d 1184 (2010) (“Rockwell II”).

The factors relevant in determining a fair and equitable distribution of the property are provided by statute:

In dividing property in a dissolution proceeding, the court shall, without regard to marital misconduct, make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

- (1) The nature and extent of the community property;

- (2) The nature and extent of the separate property;
- (3) The duration of the marriage; and
- (4) The economic circumstances of each spouse at the time the division of property is to become effective ....

RCW 26.09.080. These factors include the ages of the spouses, their education and prospects for work. Of critical importance in this case,

The court may consider the health and ages of the parties, their prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether ownership of the property is attributable to the inheritance or efforts of one or both spouses.

*Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338, 1343 (1997), citing *Marriage of Olivares*, 69 Wn. App. 324, 329-330, 848 P.2d 1281 (1993). *Accord, Marriage of Hall*, 103 Wn.2d 236, 247-48, 629 P.2d 129 (1985) (under statute, “fair treatment of future earning potential as part of the economic circumstances of the spouses in the property division” is “substantial factor to be considered” in the property division).

**2. The trial court’s failure to compensate Anatole for supporting Betsy during the marriage in getting her medical degree as required by *Marriage of Washburn* requires vacation of the property division.**

In *Marriage of Washburn*, 101 Wn.2d 168, 174-75, 178-81, 677 P.2d 152 (1984) the Supreme Court established a clear rule that requires compensation in the property division for a spouse who supports the other spouse in obtaining a lucrative professional degree where the marriage ends before that

degree contributes to the community. The rationale is simple: the supported spouse should not “walk away” with the valuable earning capacity without “paying back” the spouse who supported her while she got it. *Id.*

When a person supports a spouse through professional school in the mutual expectation of future financial benefit to the community, but the marriage ends before that benefit can be realized, *that circumstance is a “relevant factor” which must be considered in making a fair and equitable division of property and liabilities pursuant to RCW 26.09.080, or a just award of maintenance pursuant to RCW 26.09.090. A professional degree confers high earning potential upon the holder. The student spouse should not walk away with this valuable advantage without compensating the person who helped him or her obtain it.*

*Marriage of Washburn*, 101 Wn. 2d 168, 178, 677 P.2d 152, 158 (1984).

Here the assets of the marriage are sufficient “to permit compensation to be effected entirely through property division,” the trial court erred in failing to compensate Anatole at all for the assistance and support to Betsy in obtaining her lucrative degree. But nowhere in the September 13 oral decision, nor in the FOF-COL does the trial court address this requirement, which has been well-established for nearly 30 years, and which Anatole raised in his trial brief, CP 170, lines 9-11, and argued in closing. RP (9/10/12) pp. 438-39. Given the demonstrated earning potential of the degree,<sup>28</sup> the fact the marriage ended “before the benefit can be realized,” the trial court erred because Betsy, “[t]he student

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<sup>28</sup> See Ex. RE 7.27, p. 2, 2009 AMGA physician compensation survey showing the median earnings for pathologists of \$335,648 in the Western United States.

spouse[,] should not walk away with this valuable advantage without compensating the person who helped him or her obtain it,” *Washburn*, 101 Wn.2d at 178, and there can be no suggestion this failure was harmless.

Under these circumstances, failing to apply the rule of *Washburn* means the trial court abused its discretion in its property division for failing to apply the legal rule applicable legal to this situation, *i.e.*, where one spouse was supported by the other in obtaining a high-earning professional degree and the marital community never got the benefit of that earning capacity. *See, e.g., Horner, supra* (reversing for the trial court’s failure to apply the correct legal rule on relocation); *Fisons, supra*, (reversing for failure to apply the correct legal rule).

Indeed, under all these facts, *Washburn* not only demonstrates the clear error in entering a disproportionate property award in favor of Betsy, it strongly supports, if it does not actually require, a disproportionate property award in Anatole’s favor to compensate for the “valuable advantage” she got and chose to not use during the marriage, such as Anatole’s proposed 60-40 division in his favor.<sup>29</sup>

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<sup>29</sup> Although Betsy’s counsel argued that *Marriage of Hall* supported her request for a disproportionate award to her, *Hall* relies on *Washburn* and, in fact, supports Anatole’s position with its recognition that age and future earning capacity should be taken into account in the property division. *See Hall*, 103 Wn.2d at 247-48.

**3. The property division must also be vacated for failure to take into account Betsy's longer future earning capacity and other factors as stated in *Marriage of Gillespie* which make a disproportionate division in her favor unfair and inequitable.**

The trial court's 60-40 division of assets also failed to take into account several key facts and circumstances specifically identified in *Gillespie* and underlying cases including *Washburn* as important under the statute, including the ages and future earning capacity of the parties, and whether the property was acquired through the efforts of one of the spouses. This failure demonstrates both an abuse of discretion and that this division of the parties' accumulated property was unfair and inequitable and must be vacated. Under the statute,

The court may consider the health and ages of the parties, their prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether ownership of the property is attributable to the inheritance or efforts of one or both spouses.

*Marriage of Gillespie, supra*, 89 Wn. App. at 399. This the trial court did not do as part of the property division. If it had, it could not have made a disproportionate division in Betsy's favor.

First, the evidence showed that Betsy went to one of the top 10 medical schools in the country, while Anatole did not.<sup>30</sup> While the parties

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<sup>30</sup> See Exs. RE 7.13 & 7.14, rankings of medical schools showing Betsy's School, U. Michigan, is ranked #10 for research and #8 for primary care. Brown's medical school is not ranked in the top 25 for research, and is listed at #24 for primary care. See *Id.*

married after Anatole graduated from medical school, he supported Betsy through medical school (her parents paid the tuition). Second, and of particular importance, is the fact that Betsy is six years younger and thus has more years to work for two reasons: her significantly younger age; and the greater longevity of women over men. She thus has more working years to acquire assets for living and retirement than does Anatole, sufficient that she should not be granted an advantage in the division of the current property, which was obtained through Anatole's earnings.

Third, the evidence also is undisputed that Betsy chose to not work outside the home during the marriage over Anatole's objections, which objections were educational and professional. That unilateral decision by Betsy had a major financial impact of denying the marital community, and the supporting spouse, the advantages of the professional degree which she obtained with his support. Awarding her the majority of the parties' property while failing to compensate Anatole for his support of her getting her degree rewards her and penalizes Anatole for working hard to support the family and is, on its face, unfair and inequitable under *Washburn*.

Under these circumstances, any disproportionate property division in Betsy's favor was inequitable and unfair and must be vacated. The trial court should be given guidance that, while a new property division is in the

trial court's discretion on remand,<sup>31</sup> under these facts, it would be an abuse of discretion to award Anatole less than half the total community assets given the requirement of *Washburn* to compensate the supporting spouse for the professional degree.

Finally, the trial court erred in treating as a gift rather than a loan the \$100,000 Anatole and Betsy received in April, 2002 from Anatole's parents to help buy a house in Yakima. A gift requires donative intent by the donor, then delivery. *Oman v. Yates*, 70 Wn.2d 181, 185, 422 P.2d 489 (1967). Both Anatole and his mother, Dr. Chung-Hi Lyou Kim, testified the money was a loan, not a gift. RP (9/6/12), pp. 312-13 (Dr. Kim); RP (6/14/12), p. 286 (Anatole). It was contemporaneously documented as a loan to be repaid by an April, 2002 letter to his parents. Ex. RE 18. Betsy did not offer any testimony to dispute that the funds were intended as a loan to the couple and were only documented as a gift for purposes of the lender. *See* PE 14. But no testimony at trial disputed the characterization of the funds as a loan as between Anatole's parents and the couple. The trial court erred in treating it as a gift.

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<sup>31</sup> *See Marriage of Rockwell*, 157 Wn. App. 449, 238 P.3d 1184 (2010) (vacating property division for trial court's failure to actually exercise discretion in new property division on remand after first reversal).

**D. The Support Order Should Be Vacated For Failure To Recognize The Statutory Inclusion and Deduction For Maintenance.**

Child support is determined by state-determined support schedules calculated on mandatory worksheets developed by the administrative office for the courts. RCW 26.19.035; *Marriage of Sievers*, 78 Wn. App. 287, 305, 897 P.2d 388 (1995). The purpose of the schedule is to insure support orders that meet children's basic needs and provide additional support commensurate with the parents' incomes and resources and standard of living, and which equitably apportions the support among the parents. RCW 26.19.001. The statute includes "maintenance actually received" as a component of gross monthly income. RCW 26.19.071(3)(q). It also excludes from net income "Court-ordered maintenance to the extent actually paid." RCW 26.19.071(5)(f). Failing to complete the mandatory worksheets is reversible error. *Marriage of Sacco*, 114 Wn.2d 1, 4-5, 784 P.2d 1266 (1990).

Anatole submitted proposed child support worksheets with proposed final order on December 17, 2012. CP 418 (notice of presentation); CP 472-78 (proposed worksheets). The proposed worksheets used the state-required form and were based on the statute and the trial court's ruling on maintenance and support. Anatole had been paying \$4,500 per month as a

combined total for support and maintenance since August 2010,<sup>32</sup> with about \$2500 being maintenance. The court made clear it would impose maintenance of \$2,500 through August 2013, and \$1,000 per month for the next year. Following the mandatory form, Anatole's proposed worksheets included the amount paid for maintenance as a deduction from the father's income on the worksheet, and income to the mother. CP 422. The trial court refused to include maintenance where it was required on the mandatory forms; it left maintenance off the final worksheets entirely, apparently because it would adjust the numbers between the support and maintenance and it had determined at the September 13 hearing to require \$2,500 in maintenance.<sup>33</sup> As a result, the proportions changed from 65.8% for Anatole and 34.2% for Betsy when the maintenance was included in the schedules, to 77.6% for Anatole and 22.4% for Betsy without it.<sup>34</sup>

The trial court's failure to follow the statute in this matter is reversible error. *Marriage of Sacco, supra*; see cases cited in Section A, *supra*.<sup>35</sup> Since those erroneous percentages drive the latter parts of each

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<sup>32</sup> RP (9/13/12), p. 19, CP 201.

<sup>33</sup> See RP (9/13/12) pp. 19-20, CP 201-02; RP (1/25/13) pp. 40-41.

<sup>34</sup> See CP 293 (first two pages of final child support worksheet entered by the court) and CP 472 (proposed worksheet pages submitted by Anatole. They are App. D hereto.

<sup>35</sup> The recent decision in *Marriage of Wilson*, 165 Wn. App. 333, 267 P.3d 485 (2011), is not to the contrary. In *Wilson* the trial court did not complete the maintenance portions of the worksheets because it was newly-ordered and thus there was no history of maintenance having been "actually received." *Id.* at 342-43. Nevertheless, Division II still had to remand for correction of the child support worksheets due to other errors. *Id.*

parent's shared financial obligations, and a central purpose of the support statute is to insure the "equitable apportionment" of all the associated child expenses, RCW 26.19.001, the error is not harmless. The court should vacate the support order so it can be re-entered as corrected and an adjustment made for the improper payments that were required.

In addition, if the relocation orders are vacated, the amount of time spent by the children with each parent will necessarily be different. In those circumstances, the support order should be vacated and recalculated to reflect the amount of time spent with each parent.

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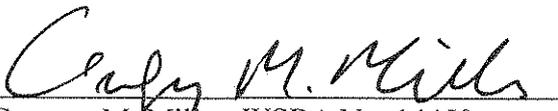
at 344-45. Here the trial court recognized Anatole had been "actually paying," and Betsy had been "actually receiving," maintenance of about \$2,500 since August of 2010. CP 202. Even under the *Wilson* rationale, the support worksheets in this case must reflect the historic payments "actually paid" by Anatole and "actually received" by Betsy.

## V. CONCLUSION

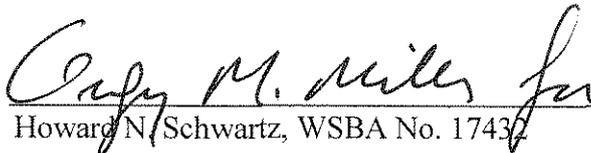
Anatole Kim respectfully asks the Court to vacate the order permitting relocation in any of its manifestations (findings and conclusions, parenting plan, etc.) and remand with directions for entry of an order which provides for the best interests of the two minor children in Yakima or such other location as both parents agree and are able to locate so that the requisite parenting from each parent is continuously available to the children. He also asks the Court to vacate the support order and the property division for the reasons given above, and remand with instructions on the range of discretion under these circumstances.

Dated this 19<sup>th</sup> day of July, 2013.

**CARNEY BADLEY SPELLMAN, P.S.**

By   
Gregory M. Miller, WSBA No. 14459

**LAW OFFICE OF HOWARD SCHWARTZ**

  
Howard N. Schwartz, WSBA No. 17432

*Attorneys for Appellant Anatole Kim*

APPENDICES

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# APPENDIX A

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FILED

2013 JAN 25 P 4:08

CLERK OF  
SUPERIOR COURT  
YAKIMA, WASHINGTON

Superior Court of Washington  
County of YAKIMA

In re the Marriage of:

ELIZABETH KIM

No. 10-3-00708-6

Petitioner,

Findings of Fact and  
Conclusions of Law  
(Marriage)  
(FNFCL)

and

ANATOLE KIM

Respondent.

I. Basis for Findings

The findings are based on trial which occurred on June 12, 13 & 14, 2012; September 4, 5, 6 & 10, 2012 and the court's oral decision of September 13, 2012; a verbatim transcript which is attached hereto and incorporated herein by reference. The following people attended:

- Petitioner, Elizabeth S. Kim;
- Petitioner's Lawyer, David P. Hazel;
- Respondent, Anatole S. Kim;
- Respondent's Lawyer, Howard N. Schwartz;

The court also heard and considered the testimony of the following persons:

- Steven Kessler, mother's business valuation expert;
- Brian Gosline, father's business valuation expert;
- Richard Kenney, court appointed guardian ad litem;
- Laura Pickett;
- Janet Feldman;

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Vivian Conley;  
Tricia Gilmore;  
Roy Gondo;  
Chung-Hi Kim;  
Mark Frey;  
Kevin Martin;  
Mark Peterschmidt;  
Elizabeth Low;  
Robert Tan;  
Kwang-Hie Park, MD, father's expert on Asian culture

**II. Findings of Fact**

Upon the basis of the court record, the court  *Finds*:

**2.1 Residency of Petitioner**

The Petitioner is a resident of the State of Washington.

**2.2 Notice to the Respondent**

The respondent was served in the following manner:

Personal Service.

**2.3 Basis of Personal Jurisdiction Over the Respondent**

The facts below establish personal jurisdiction over the respondent.

*The respondent is currently residing in Washington.*

The parties lived in Washington during their marriage and the petitioner continues to reside, or be a member of the armed forces stationed, in this state.

**2.4 Date and Place of Marriage**

The parties were married on August 3, 1985 at Los Angeles, California.

**2.5 Status of the Parties**

Husband and wife separated on July 17, 2010.

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**2.6 Status of Marriage**

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined.

**2.7 Separation Contract or Prenuptial Agreement**

There is no written separation contract or prenuptial agreement.

**2.8 Community Property**

The parties have real or personal community property as set forth in Exhibits A & B. These exhibits are attached or filed and incorporated by reference as part of these findings.

Other:

1. The court determined that a 60/40 split of community assets in favor of the mother is appropriate.

2. The court finds that the father is not entitled to rent and ~~did not find father's argument that mother got to live in the community home rent free post-separation and the fact that she refused his entreaties to work outside the home over his objection a compelling reason to provide any compensation from petitioner.~~

3. The court considered mother's expert testimony that father's interest in the Yakima Heart Center was \$171,000.00 and that father's expert valued his interest in the Yakima Heart Center at \$12,000.00 and believes \$75,000.00 is a reasonable value of that asset. The court finds it appropriate to divide all retirement accounts accrued during the marriage with 60% to the mother and 40% to the father via qualified domestic relations orders.

4. The court finds that the family home has a value of \$480,000.00.

5. The court finds that while testimony was provided that the \$100,000.00 down payment provided from father's parents was a loan, the court finds there is no legal obligation to repay that money and therefore finds it was a gift.

6. The court finds it is appropriate for the home to be sold as requested by the mother and for the net proceeds to be split with mother to receive 60% and father to receive 40%. The court finds that any monies in mother's attorney's trust account deposited for home repairs should be split with mother to receive 60% and father to receive 40% of the remaining monies. The court finds father's accounting of the community bank accounts to be accurate and those accounts should be split with mother to receive 60% of the proceeds and father to receive 40%. The court finds that the three US Bank accounts in the children's names are to be managed jointly. ✕

*accounts*

*over 90 N/A  
court will provide a  
transaction history of  
these accounts by 2/1/13  
from date of  
separation to date  
present*

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FamilySoft FormPAK 2012

*N/A  
\* Respondent  
will provide a  
transaction history of  
these accounts by 2/1/13  
from date of  
separation to date  
present*

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*Court retains jurisdiction regarding these accounts*

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7. The court finds that any of the children's accounts contributed to by either party's parent's are to be managed by the parent who's parents contributed such funds.

8. The court finds that father's gun collection has a value of \$15,000.00. The court acknowledges that the Steinway piano is father's separate asset but has determined that the community has a community interest of \$11,500.00 in that asset for <sup>23,000</sup> reconditioning. The court finds each party has a vehicle valued at \$12,000.00.

9. The court finds it is appropriate for father's family jewelry in mother's possession to be distributed to the parties children when they are adults, including but not limited to the semi-precious stone necklace, Mikimoto Pearl necklace (long opera length), Mikimoto Pearl earrings, Antique Black Pearl necklace (opera length), Antique Pink Pearl Necklace (opera length), multi-stone broach, and Mikimoto graduated Pearl necklace.   
*- Held in trust for 60% of HS.*

10. The court accepts mother's valuation of remaining community assets at \$4,000.00 and each party is to receive one-half of such personal property.

**2.9 Separate Property**

The husband has the following real or personal separate property:

- 1. Steinway piano subject to a community interest of \$11,500.00 for reconditioning. <sup>23,000</sup>
- 2. Father's John Hancock account. <sup>HS</sup>

**2.10 Community Liabilities**

There are no known community liabilities.

**2.11 Separate Liabilities**

The husband has no known separate liabilities.

The wife has no known separate liabilities.

**2.12 Maintenance**

Maintenance was ordered because:

- 1. The court finds that father earns substantial income and that the mother has been out of the workforce for 16-17 years.
- 2. Mother has received family support of \$4,500.00 a month since August, 2010.

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3. Father has the ability to pay maintenance and mother has the need.

**2.13 Continuing Restraining Order**

Does not apply.

**2.14 Protection Order**

Does not apply.

**2.15 Fees and Costs**

Father is to pay all guardian ad litem fees incurred. Mother's request for attorney fees is not granted as the court finds that father contributed substantially to her fees post-separation.

*Handwritten:* 1/3/15 B.S.  
and Dr. Ad Litem

**2.16 Pregnancy**

The wife is not pregnant.

**2.17 Dependent Children**

The children listed below are dependent upon either or both spouses.

Name of Child	Age	Mother's/Father's Names
██████████ E.K.	17	Elizabeth Kim Anatole Kim
██████████ L.K.	14	Elizabeth Kim Anatole Kim
██████████ C.K.	12	Elizabeth Kim Anatole Kim

**2.18 Jurisdiction Over the Children**

This court has jurisdiction over the children for the reasons set forth below:

This state is the home state of the children because the children lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

**2.19 Parenting Plan**

The parenting plan signed by the court on this date is approved and incorporated as part

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of these findings.

Other:

1. The court considered testimony regarding the Asian culture as it applied to the parenting of the parties minor children and have determined that cultural considerations are inapplicable in deciding residential provisions for these children. *physical need to go to day today*
2. The court finds that mother *primarily* cared for the children while father was the primary breadwinner, and also served as an instructor and coach to the children. *and managed all of their*
3. The court finds that the mother managed the day-to-day affairs of the children. *stronger*
4. The court finds that the children have demonstrated attachment and affection towards mother. *1 year*
5. The court finds that the parties oldest child *E.K.* had *an* event in 2010 for which he had received medication and counseling.
6. The court finds that *E.K.* is estranged from his father.
7. The court finds that *E.K.* school work is more productive when he is with his father.
8. The court finds that the parties second oldest child *L.K.* has a developing relationship with his father as evidenced by the their involvement in Boy Scouts.
9. The court finds that father works many hours but does focus on the academic achievements of the children.
10. The court finds that mother has a stronger relationship with the children as a stay at home mother however also finds that the parties did not agree that once the children were school age that she would continue to be a stay at home mother and further that father constantly wished for her to return to the workforce, but mother unilaterally refused. *H>*
11. The court finds that mother tended to the daily needs of the children in their day-to-day care.
12. The court does not find that the mother neglected *E.K.'s* health issues and educational issues.
13. The court finds that mother has provided the bulk of the parenting functions in the past for the parties children.
14. The court finds that father's past exercise of parenting functions were more limited due to his career.

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15. The court finds that mother has been more involved in the emotional needs of the children.

16. The court finds that the children have expressed a preference to be with their mother.

17. Within the trial the court considered mother's petition to relocate to Los Angeles, California and considered the 11 statutory factors in determining mother's petition for relocation.

18. In considering the relative strength, nature, quality and extent of involvement in stability of the children's relationship with each parent, the court finds that it is primarily with the mother.

19. The court finds that father's work schedule would've made it difficult for him to have been the primary residential parent.

20. The court finds that while Dr. Adler, Dr. Hartman and Mr. Kenney all opposed relocation, the court did not find this as a compelling basis to deny mother's relocation request. The court finds that father's request for primary residential placement was not reasonable.

21. ~~The court does find that the children's relationships they have in the community will be harmed as a result of the relocation.~~ H.H. H.J.

22. The court further finds that the children will adapt to the relocation.

23. The court finds no prior agreements as to relocation.

24. The court finds that disrupting contact between the children and their mother would be more detrimental than disrupting contact between the children and their father.

25. The court finds no limiting factors as to either parent.

26. The court does not find that mother made any effort to negatively impact father's relationship with the children.

27. The court finds that as mother is not licensed to practice medicine in Washington, and is in need of retraining and has a job offer in southern California, where she is licensed that will provide for her financially that the relocation request is not in bad faith.

28. The court further finds that there is no certainty of the mother finding employment in Washington.

29. The court finds that father's opposition to relocation is made in good faith.

30. The court finds that the best place for mother to pursue employment is in southern California.

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31. The court finds that given the age of the children and their developmental stage, relocation would be tolerated by the children. *and will not have any negative impact on the children*

32. The court does not find that the physical, educational, and emotional development of the children will be impaired by relocation. *H.S.*

33. The court finds that the quality of life is similar in the current community and the community mother is proposing, however mother's employment opportunities are greatly enhanced in southern California. *B.H.*

34. The court does not find any viable alternative to arrangements to foster and continue the child's relationship and access to the other parent.

35. The court finds mother's proposed parenting plan pursuant to the relocation to be reasonable.

36. The court finds that regarding the financial impact of relocation, given the income levels of the parties it can be accommodated.

37. The court finds relocation is appropriate and has considered father's wish to have the older children attend private boarding school in making that decision, and evaluating father's relationship with the children.

38. The court finds it is appropriate to keep the existing residential schedule with the exception that on father's weekends his visitation will be extended from Sunday evening until Monday morning, until such time as mother relocates with the children.

**2.20 Child Support**

There are children in need of support and child support should be set pursuant to the Washington State Child Support Schedule. The Order of Child Support signed by the court on this date and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

Other:

1. The court finds that since father's income fluctuates it would be appropriate to average his 2010 and 2011 income to determine child support.

2. The court concludes it would be appropriate to have the parties exchange yearly tax returns and to modify child support retroactively, *to date of petition if* as appropriate. *H.S.*

3. The court finds it is appropriate to impute income to mother at the sum of \$5,700.00 a month gross.

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4. The court finds that it is appropriate for father to continue to provide health insurance for the children and that he should receive a support credit for that and mother is to provide health insurance if it becomes available for less money and the parties will share that cost proportionately.

5. The court finds it is appropriate to share travel costs proportionate to each parties income.

**2.21 Other:**

**III. Conclusions of Law**

The court makes the following conclusions of law from the foregoing findings of fact:

**3.1 Jurisdiction**

The court has jurisdiction to enter a decree in this matter.

**3.2 Granting a Decree**

The parties should be granted a decree.

Other:

Mother's request to relocate to Los Angeles is hereby granted.

**3.3 Pregnancy**

Does not apply.

**3.4 Disposition**

The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor children of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

**3.5 Continuing Restraining Order**

Does not apply.

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**3.6 Protection Order**

Does not apply.

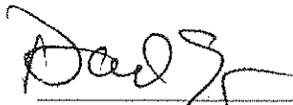
**3.7 Attorney Fees and Costs**

Does not apply.

**3.8 Other**

*D.K.M.S.*

- 1. Father is to pay all the guardian ad litem fees. *+Dr. Adler.*
- 2. Mother's request for attorney fees is denied.
- 3. Mother's request to relocate with the children is hereby granted.
- 4. Cultural issues are inapplicable to this case and should not be considered by the court.
- 5. The court concludes joint residential placement as requested by father and recommended by the guardian ad litem is not appropriate and it is in the best interest of the children to primarily reside with their mother and allow her to relocate with the children to Los Angeles, California.
- 6. The court determines that it is just and equitable to award mother 60% and father 40% of the major assets of the parties.
- 7. The father's request for reimbursement for rent for mother living in the home post-separation is denied.
- 8. The court considers father's value in the Yakima Heart Center to be \$75,000.00.
- 9. The basis for these conclusions of law and a final order of the court are as set forth in the findings of fact and the verbatim transcription of the court's decision held on September 13, 2012, a copy of which is attached hereto and incorporated herein by reference.

Dated: 1/25/13   
 Judge/Commissioner

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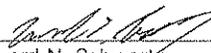
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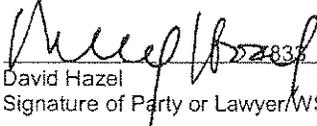
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Approved for entry:  
Notice of presentation waived:

 174321-25-13  
Howard N. Schwartz Date  
Signature of Party or Lawyer/WSBA No.

 837  
David Hazel Date  
Signature of Party or Lawyer/WSBA No.

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Anatole Kim

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Elizabeth Kim

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# APPENDIX B



1 Yakima, Washington

2 September 13, 2012

3 PROCEEDINGS

4 THE COURT: Have a seat, please. Alright. We are here for the decision in  
5 the Kim dissolution. Preliminarily, I will find that there are jurisdictional issues have been  
6 met. The parties are irreconcilably divided, I suspect, and that they were married on and  
7 separated on the dates reflected in the petition.

8 I think that where I wanted to start was -- we'll start with the children's  
9 issues first and the -- some of the things that I was invited to do and consider and I must start  
10 with the cultural issues. It was -- I've been invited, and I will say it's not very clear what I  
11 was invited to do. I was -- I think initially it was suggested I should consider the Asian  
12 culture and I was frankly left with, well, what is an Asian culture and my understanding is is  
13 that -- I did a little research and Asia is distinguished among other continents by virtue of its  
14 diversity of ethnicities and cultures and the quantity of people living there. I think that in  
15 and of itself suggests that Asia doesn't provide any guidance. Should I balance husband's  
16 Korean ancestry versus wife's Japanese ancestry? Frankly, I don't know that either of you  
17 have ever been to Japan or Korea, maybe you have. I don't know that it's very significant. I  
18 think to balance Korea versus Japan is -- although perhaps there's some historical precedent  
19 for it, it is nothing short of racism and I won't do it. I think it would be just wrong on so  
20 many levels. Frankly, I wouldn't know whether somebody from Seoul is the same as  
21 somebody from Busan or somebody from Tokyo is the same as somebody from Nagasaki. I  
22 wouldn't have any clue about that. They certainly aren't in this country, and I think what we  
23 have here is a husband from New Jersey and a wife from Southern California, and I can no  
24 more balance those two states than I can Korea and Japan. What I think we're left with is,  
25 frankly, Washington residents and Washington children, and that's the way I've analyzed it.

1 I don't think there's any room for ethnicity here. I think the fact is is that you, the Kim  
2 family, has been a fairly traditional family in a lot of different levels and culture has perhaps  
3 some subtle impact that you all might want to wrestle with individually but I don't think it's  
4 got any place in the courtroom.

5                   As I went through the testimony and I kept, obviously, notes  
6 throughout, I considered the testimony of all of the witnesses. There are some more  
7 important than others. The testimony of the collateral, the character witnesses are as  
8 expected supportive of the person who called them. I considered Mr. Kenny's testimony and  
9 report, Dr. Adler, Dr. Benjamin, comments from Dr. Hartman, and particularly the parents,  
10 Mr. and Mrs. Kim. I frankly think that this case could have been decided with their  
11 testimony alone. It was significant.

12                   I'm going to go through this, I guess, using the statute but I also made a  
13 number of notes that I think fit within -- I know fit within the statutory provisions, but I think  
14 it -- I'll start with, I guess, the relative strength, nature and stability of the child's relationship  
15 with each parent, and this is a request for joint custody on the one side, actually sole custody  
16 by the father. Joint custody is a fallback position and sole custody requested by the mother.  
17 These are some of the things that I observed that prior to the separation and rather than use  
18 names, I'll use the title or position one holds in the family, but mother was charged with the  
19 care of the children. Father's tasks or duties were essentially as breadwinner and most  
20 recently, I think, more perhaps some to a certain extent when he was younger, the children  
21 younger, but certainly more now as an instructor and a coach. The quantity of time that each  
22 parent has spent with the children is vastly different. I think it was clear that father's work  
23 duties were substantial. I frankly know a number of doctors and they have my respect not  
24 for just what they have accomplished educationally but what they -- how they allocate the  
25 time in their lives and their practices are daunting (as heard).

1 Mother's time was spent with the children. It was historically and I  
2 think it continues to be mother's primary role and focus is to move these three kids from one  
3 activity to another. She's responsible for managing their social relationships, managing their  
4 diets, what they eat, their moods, all of their physical and emotional needs on a day to day  
5 basis. I would expect, and I think it has happened, that a child living in that kind of  
6 environment of care is going to be motivated to develop a more significant relationship with  
7 one parent over the other and I think it's going to be natural that the children would be more  
8 likely to feel strong, to feel more secure with the parent with whom they have a (inaudible)  
9 and substantial history.

10 The three kids have demonstrated, I think, an attachment and an  
11 affection for their mother. They have turned out by everyone's testimony to be very well-  
12 adapted, very social -- socially well integrated and capable kids. I think <sup>E. K. 's</sup> role is -- I  
13 don't know what to do with <sup>E. K.</sup> I got involved in this case about a year and a half ago  
14 and I know at the time I heard the revision issue, it seemed clear to me that there had to be  
15 something that was going on and I hoped that there would be <sup>E. K. 's</sup> some black  
16 and white answer that would tell us what <sup>E. K. 's</sup> dealing with, but his role in the family has  
17 been given -- well, I guess I characterize as an elevated status and I think -- I don't know  
18 clearly why. The diagnosis I hoped for never did materialize. He clearly had a n  
19 ~~\_\_\_\_\_~~ event in his life in 2010, got some treatment, ~~\_\_\_\_\_~~  
20 ~~\_\_\_\_\_~~ with Dr. Hartman and others. I frankly don't -- I'm now told  
21 that he's doing okay. He's doing better. ~~\_\_\_\_\_~~. I can't  
22 figure out exactly what happened to him. Was this situational ~~\_\_\_\_\_~~ and I use that  
23 phrase as a lay person. I've heard of it. Is this some sort of organic problem that he's got? I  
24 don't know. Is some of it -- is it a combination of events and it could be -- is it because he's  
25 the oldest child. Mr. Kim's mother was very emphatic about how important the oldest male

1 child is. I don't say that from a cultural perspective but it was clearly a personal perspective  
2 on her part that may be transferred to other people. Does he get more pressure than the other  
3 kids? Is his emotional distress caused by just growing up? Is it caused by the recent  
4 involvement of dad, and I think dad has become increasingly involved and there is a  
5 complexity to their relationship that is not found between mother and child.

6 The only changes that I can see in the record as I listened to the  
7 testimony was he's now an older teenager. Dad's got more involvement of late and the  
8 parents have separated. My understanding from the testimony is that historically he has been  
9 a well-adjusted boy and I don't know that that -- it sounds like that is where he is now going.  
10 I suspect he will be marked or scarred by this period in this life and I don't know he'll ever  
11 be able to forget it and I don't know how it will influence him going forward. For whatever  
12 reason his relationship with each of his parents is different. It is clear, Mr. Kim admitted in  
13 his testimony that his relationship with Ethan had -- was estranged. It is getting better but it  
14 is estranged. That is supported by Dr. Adler's report and Mr. Kenny. <sup>E.K.</sup> appears also  
15 bright enough to know that he gets benefits from each of his parents. He seems to admit that  
16 his school work is more productive, at least done more promptly with his dad around, and I  
17 don't mean that to diminish mother's efforts to cajole, manipulate, threaten or beg him to do  
18 his work. I think it's a combination of activities.

19 <sup>L.K.</sup> and <sup>C.K.</sup> I think to a certain extent, were largely overlooked in  
20 this case. And again, <sup>E.K.</sup> took a primary role. <sup>L.K.</sup> has clearly had a developing  
21 relationship with his father. That's demonstrated through the Boy Scouts and, frankly, the  
22 private school quest and the expectations that I think father is now imposing on <sup>L.K.</sup>  
23 <sup>C.K.</sup> was addressed to a greater extent by mother and, again, because of her age, she  
24 hasn't -- doesn't appear to have gotten on the radar with regard to life achievements and  
25 whatnot.

1                   The focus seems to be, again, dad's primary focus is, I think, fairly  
2 traditional in a lot of ways and, again, he works hard, many hours, whether it's 100 hours or  
3 40 hours or somewhere in between, he works hard. I suspect that when he's not at work he  
4 still has that on his mind and I say that with respect because it's hard to leave the kind of  
5 work you do behind, but I think you have pursued your career with intensity, it has been  
6 successful because of the intensity of which you've pursued it, but there are certain sacrifices  
7 and here, I think your focus has been certainly of late more on academic achievement,  
8 activities such as Boy Scouts and building their academic resumes.

9                   Looking at the first provision of the residential provisions is the relative  
10 strength, nature and stability of the child's relationship with each parent. I think very clearly  
11 some of what I've said, mother has a very -- has clearly the stronger relationship with the  
12 children, and I'm going to go back and forth a little bit. I think that, you know, you examine  
13 the Parenting Plans and the definitions that are provided and it really imposes a duty for me  
14 to stand in the position of, I guess, a super parent and say what I think is right and not right,  
15 and I say that with some qualification because I think each of you has pursued and you both  
16 are intelligent, both have pursued the type of parenting that you think is appropriate but the  
17 statute provides for certain things.

18                   The lead in paragraph to the residential provisions talks about a loving,  
19 stable and nurturing relationship and that is the first definition provided under parenting  
20 functions is maintaining -- or part of a parenting function is maintain a loving, stable,  
21 consistent, and nurturing relationship with the child or children. I think real clearly that has  
22 been mom's focus throughout her testimony. She described, and I think she summed it up in  
23 the end is that she tries to understand what they're thinking, why they're thinking the way  
24 they do. She described during her testimony, for instance, a list of the things that she does,  
25 how she balances the children's activities, how she balances their friendships with and

1 frankly, screens their friendships. It is a chaotic and full-time job. The -- and again, without  
2 denigrating what dad has done -- father's time, I think it's been terribly important but the fact  
3 is is that that focus has been on mom because she's been there more and it was a job that she  
4 wanted over some disagreement, but it was the job she wanted and it was the job ultimately  
5 they agreed she would pursue. She's the full-time mom and I can't find that she's done a  
6 bad job. I don't find that there are any agreements of the parties that were knowingly and  
7 voluntarily entered into.

8                   Each parent's past and potential for future performance of parenting  
9 functions. Again, I think that's a certain redundancy to what I've already said. It's clearly in  
10 the past the parenting functions-- and the parenting functions are described as maintaining a  
11 loving, stable, consistent, nurturing relationship with the child; B, attending to the daily  
12 needs of the child, and then describes what those are such as feeding, clothing, physical care  
13 and grooming, supervision, health care, daycare, engaging in other activities which are  
14 appropriate to the developmental level of the child and that are within the social and  
15 economic circumstances of the particular family; C, attending to adequate education for the  
16 child, including remedial or other education essential to the best interest of the child; D,  
17 assisting the child in developing and maintaining appropriate interpersonal relationships; E,  
18 exercising appropriate judgment regarding the child's welfare consistent with the child's  
19 developmental level and the family social and economic circumstances, and lastly, providing  
20 for financial support.

21                   Well, the past exercise of parenting function is, I don't there could be  
22 any dispute, has been mother. She has in fact made it an effort and I think the children have  
23 been the demonstration of the success of that effort, again, by virtue of everybody that talked  
24 about that they're wonderful kids, so I think she is clearly the one that had the day to day  
25 contact and took it upon herself or that it would be her job to provide that loving, stable.

1 consistent relationship with each child. She attended to the daily needs, that was clear.

2 C, attending to adequate education of the child, I think certainly both  
3 parents have been involved in that. I think mother probably as during the past the children  
4 had more attention from their mother from an educational perspective. Clearly she had more  
5 contact with the school and -- but I think both were clearly interested and involved.

6 D, assisting the child in developing and maintaining appropriate  
7 interpersonal relationships. Again, I think mother has -- not every parent manages the  
8 relationships that their children have. Some just accept it for what it is and I think here  
9 maybe that's also consistent with the Riverside concept but Mrs. Kim has made it very clear  
10 that she is managing those relationships and all of the kids seem to be real -- the kids'  
11 friends, seem to be very appropriate for them. The fact that Mr. Kim has excised some of the  
12 time where those relationships I don't think is consistent with this requirement. I understand  
13 why it happens but, again, those relationships are important.

14 E, exercising appropriate judgment regarding the child's welfare  
15 consistent with the child's developmental view, I think both parents have attempted to  
16 exercise appropriate judgment. There are some issues that come into play there that weigh  
17 on me and in the exercise of that function, and I will tell you that part of the child's welfare  
18 is how they are treated in a divorce. I think it is significant how -- a lot of times you see only  
19 the tip of the iceberg but the way this divorce started was a sit down family conference and it  
20 was clear to me what went on. There was -- usually it would be my experience that those  
21 conferences and conversations are based on a feeling that the children need to know the truth  
22 and I don't think that's true at all. What it is is an assignment of blame. It's an effort to ally  
23 the children with one parent over the other. There was some discussion about a -- whether or  
24 not an order was served. I think in some cases that might be important. Here, I don't think  
25 you need an order. You would know that that was inappropriate, and so I look at that and I

1 think mother is clearly exercised that her judgment with regard the children's welfare given  
2 their developmental level and their social and economic circumstances and Father has  
3 provided financial support for the kids.

4                   The issue with regard to -- in the past, again, the parenting function. I  
5 think I need to address, is whether or not <sup>E. K.</sup> [REDACTED] was cast aside, disregarded by mother. I  
6 think that was very unclear. The question -- the focus was on Dr. Hartman and whether or  
7 not there is something that can point us at mother and say did she do something wrong. Did  
8 she terminate? The easy answer, I guess, would have been <sup>E. K.</sup> [REDACTED] describing to the guardian  
9 ad litem what happened. Dr. Hartman could have said, I guess if she knew, that it was  
10 stopped, but my understanding is Dr. Hartman was ill. <sup>E. K.</sup> [REDACTED] is a very powerful young man.  
11 I will tell you as an aside, I don't know where to fit this in, but the comment that was made  
12 that -- about -- the heart to heart talk about his grades, and he says, well, I've had good grade  
13 and now I want to get bad grades. And I thought you got your hands full. That's a clever  
14 kid and he's baiting you to see how you respond. You can come back to him with, well, you  
15 know, your grades are important for your career. He knows you're going to say that. He's a  
16 challenging kid and so did he control the counseling, I don't think there's any question about  
17 it. Should he continue? I suppose so, although I still, as I said earlier, I don't know where he  
18 is emotionally right now, other than that the parents say he's getting better. He's visiting his  
19 dad, at least at some level.

20                   But in any event, I can't find that mother did anything inappropriate  
21 with regard to <sup>E. K.</sup> [REDACTED] continuing his counseling with Dr. Hartmann, and I also don't find that  
22 she did anything wrong in how she initiated the examination of the <sup>E. K.</sup> [REDACTED] and the problems  
23 he was dealing with. I think it's easy from a distance with or with 20/20 hindsight to be able  
24 to piece apart somebody's conduct and say you could have done this, you could have done  
25 that. The fact is I suspect for both of you this had to have had just ripped your guts out. You

1 know, you spend your whole life with your dad working hours and hours and hours so your  
2 kids, your family can have a great life, or your mom, and you've dedicated -- you know, it  
3 reflects on both of you and what it did to you I cannot even imagine, except you both seem  
4 like real nice people and it had to tear you apart. So with regard to the past parenting  
5 functions, I think I would have to find that mother has provided -- well, I do find that mother  
6 has provided for the bulk of that.

7                   Father's past exercise of parenting functions is more limited but it was  
8 limited by, I guess, the world we live in and he is, like so many of us, and that probably  
9 would be the people in this room to a certain extent, not everybody, but the main focus often  
10 falls -- for career falls on the father, the husband and that does come with consequences and  
11 those consequences often aren't felt until you get to this point in a life where the relationship  
12 is now over, but the -- as between the (inaudible) of the parents, I find that the mother has in  
13 the past exercised the parenting functions as described and/or taken a greater responsibility  
14 for performing those functions.

15                   The future performance is something that I will address next, or not  
16 right now, but next -- in the next piece here.

17                   The emotional needs and developmental level of the children. The emotional  
18 needs, again, I think that fits with what I just described, describing again the emotional needs  
19 of the children as relative to their contact with the parents. These are, I think, pretty mature  
20 kids, regardless of their age and frankly regardless of their emotional complications. I think  
21 they are really pretty good kids, pretty mature, but they are still dependent on primarily  
22 mother based on the fact that she has been the pri -- she's been their primary contact and has  
23 exercised her parenting function to a larger extent than the father and done so successfully.  
24 With regard to the child's relationships with siblings and other adults, obviously these kids  
25 are a team, and it would be inappropriate to isolate one from another and that's, frankly, one

1 of the reasons why I thought private school was not a good idea. The children, frankly, need  
2 to be together regardless of their parents. Clearly, the children have significant relationships  
3 with friends and school and have -- mother has enhanced those relationships and those  
4 experiences and I think would find in favor of her in that regard.

5           The wishes of the parents and the wishes of a child. I think there are  
6 two things. The wishes of the parents is not very often revealed. I think it has been revealed  
7 to a certain extent here by two issues. One is the Lakeside School enrollment or plan. I  
8 don't call that an agreement but I would say that it is a form of testimony, an expression of  
9 an opinion as to their relative importance or the roles they each occupy in their relationships  
10 and it was clear to me that from the testimony that the plan was is that the children would go  
11 -- they wanted them to go to Lakeside. Mother would go to Seattle and dad would commute.  
12 What that means to me is that there was an understanding that it was mother's role to be with  
13 the children. She was the trusted person and the one who would discharge that role or  
14 obligation to the children and that it would be father who would defer essentially to mother.

15           The other is the effort to enroll both <sup>E. K.</sup> [redacted] and <sup>L. K.</sup> [redacted] in private schools.  
16 Again, I think it was an effort or at least reflective of a feeling that at least as between father  
17 and the children that they don't need to be always with him. That it is a -- that they are --  
18 can be on their own and in a different and strange environment. I think the children have  
19 expressed their feelings by their conduct and <sup>E. K.</sup> [redacted] clearly has -- and I think there's no  
20 question his relationship with his father is estranged. The text messages that I was invited by  
21 both parties to look at don't reflect blame to either parent really, but it does reflect an effort  
22 by each of the children in one form or another to cry out with what's going on in their lives  
23 and it did not -- it showed to me a preference for time with their mother over their father, and  
24 a concern or confusion about certain things that were going on in dad's home.

25           I think dad's employment schedule is such that it would be difficult for

1 him to parent on a full-time basis. I think it is a very difficult schedule. It doesn't mean it  
2 can't be done but I think it makes it difficult and as such -- even looking at mother working  
3 full-time, I still think that dad's schedule is much more grueling even if compared to a full-  
4 time schedule that mother might enjoy, so again, based on those provisions, I would have to  
5 find that mother is the parent with whom these children should reside on a full-time basis or  
6 have primary residential placement. Father would have alternate.

7           The next question, obviously, is the issue of relocation and that is a very  
8 difficult question, but I will tell you I am going to allow the relocation and I will go through  
9 it with you. I need to go through the -- again, the 11 factors. Some of them I have already  
10 gone through and I'm not going to be redundant about it but number one is the relative  
11 strength, nature, quality and extent of involvement, and the stability of the children's  
12 relationship with each parent. Again, that (inaudible) a favor of mother to a substantial  
13 degree. The issue -- only issue there that is raised and is raised significantly is these  
14 children's attachment, each of these children's attachment to various friends in the  
15 community and their school issues. There's no question -- and I guess I have to  
16 acknowledge that Dr. Adler, Dr. Hartman, Mr. Kenny all said that relocation is bad, and I  
17 accept that. I think that's true, relocation is bad. It is -- that's why we have a relocation  
18 statute. It's not a good thing for kids to move, perhaps from one house to another within --  
19 on the same block it can be disruptive, but relocation is a legal reality and the fact that  
20 somebody would say it's bad is coffee table talk. It is not -- does not address the fact that in  
21 this life, just as Mr. Kim was entitled to ask for custody of his children, even though I look at  
22 that and I go based on the history, it's not a reasonable request. I think it was phrased, you  
23 know, this was never a custody case. Well, it is legally because father's entitled to do it. Do  
24 the facts stack up, I don't believe so and that's what my ruling has been.

25           The same thing that exists here. Mother is entitled to ask to relocate and

1 it is incumbent on me to go through what I've heard in the testimony as to whether or not it's  
2 appropriate. I think clearly that the relationship that these children have with kids in the  
3 community is important and it's going to hurt them, but what I gleaned from the testimony is  
4 is that these children are really exceptional and I say that because a lot of the testimony from  
5 some of the folks who are kind of a almost a distant comment that, you know, what a neat  
6 kid <sup>L. K.</sup> was -- what I neat kid <sup>C. K.</sup> is. These kids are very socially adapted. I think  
7 they're very mature, they're very confident. I don't think they're going to have any  
8 difficulty and I think even though they do have significant relationships in the community, in  
9 their lives, they will be able to adapt. <sup>E. K.</sup>, I think, will also adapt well. I think he's,  
10 frankly, moving into a phase of his life where it has less of an impact because of his age, but  
11 you know, he, too, I think is a very adaptable young man.

12                   Number two, there are no prior agreements. Three, whether disrupting  
13 the contact between the children and mother will be more detrimental and disrupting the  
14 contact between child and the father. And I think clearly disrupting the contact between the  
15 child and the mother is going to be more detrimental because of the role that she has  
16 occupied in these children's lives.

17                   Four, whether either parent of person entitled to residential time is  
18 subject to limitations, and I find no limitations and I would address very briefly the request  
19 by father in his Parenting Plan that the mother is engaged in the abusive use of conflict  
20 and/or parental alienation, and I find that neither has occurred. Frankly, the incident in the  
21 way this case started, that family conference is what I believe is -- falls under the term of  
22 abusive use of conflict. I'm not finding that either parent is subject to that but that's an  
23 example of what took place. Did mother engage in alienation? You know, it's kind of like  
24 the relocation concept addressed by the various experts. Relocation is bad. Well, of course,  
25 it's bad. Alienation, is that an odd creature? No, I think everybody -- you're alienated from

1 one another. It's pretty hard not to have some element or symptom of alienation going on.  
2 Has there been an effort to destroy a relationship, and I don't mean the flip side and the  
3 friendly parent, but has there been any effort here to destroy the other parent's relationship  
4 and I can't find it. And you can disagree with me and I suspect you do but it isn't -- the  
5 testimony is what I relied on and everybody was given an opportunity to speak on this issue,  
6 and not in a conclusory fashion but to provide me with facts and it didn't happen. I think -- I  
7 will tell you there is an inconsistency in some of the argument that on the one level mother is  
8 destroying dad's relationship, which would suggest that she is aggressive, adversarial,  
9 decisive, manipulative. And the other is -- and the same argument is made is that she is  
10 passive, indecisive, and lax, I think is the term that was used. Those are inconsistent and,  
11 frankly, I looked at that -- the argument on both sides of the coin and it doesn't work. The  
12 fact is I don't think either of you maybe likes each other very much anymore, but I can't  
13 find that either of you has engaged in any kind of ongoing effort or conduct that is  
14 determined to -- that would allow for any limitations. So there are no limitations.

15                   Number five, the reasons of each person for seeking or opposing the  
16 relocation and the good faith of each of the parties in requesting or opposing relocation. The  
17 request for the relocation is reasonable to me. I think the opposition to it is also equally  
18 reasonable. Mrs. Kim's request is hotly contested but at the end of the day, as I look at it,  
19 she needs -- she's going to need some form of retraining. The testimony was sketchy but it's  
20 clear to me based on what I've heard and what I know is that there are continuing medical  
21 education requirements. The idea that someone who has been out of the profession for 16  
22 years, 17 years, can simply walk back in even if it is dealing with non-complaining patients,  
23 I don't know how you do it without getting some training. The fact is that she is not licensed  
24 in the State of Washington. She is licensed in the State of California. She has a very good  
25 job offer that provides financial resources for the family and for herself and a career for her.

1 I think her request is reasonable. It is also consistent with what these folks have done. They  
2 have relocated many times for employment related issues. In the past it was relocating for --  
3 to accommodate husband's career, father's career, and it is now an effort by her to get her  
4 career back on track. The alternative would be to require her to stay in Yakima where she has  
5 no employment opportunities. To require her to pursue a career in the State of Washington  
6 which is possible, I guess, but I don't know that it provides any certainty. The certainty that  
7 we have is clearly in Southern California.

8 Mr. Kim's opposition is absolutely in good faith. I don't question it for  
9 a minute and I need to address the, I think, that there's a question that comes up in the case  
10 about the real reason for relocation and whether or not this fits into the alienation issue.

11 Well, I think -- one can always say the first step of alienation is separation. Does the fact  
12 that Mrs. Kim going to be in another state mean that there is a separation physically and that  
13 that may satisfy her in some way, does that mean that's the real reason for this, I don't  
14 believe so. One can make the argument, one can suspect that there is bad faith involved, but  
15 I don't see it as a fact that I can find. I think that the real reason is she wants to pursue  
16 employment opportunities and the best place for her to do that is Southern California and the  
17 opposition with regard to it being a temporary move, I don't think is realistic. I think the fact  
18 is she has, at least pursuant to her testimony, ample opportunities to continue work in that  
19 area.

20 Six, the age developmental stage and needs of the child, the likely  
21 impact of the relocation or it's prevention -- or it's prevention will have on the child's  
22 physical, educational and emotional development taking into consideration any special  
23 needs. The age of the children is appropriate. I've described their developmental level. I  
24 think they are all very well adapted, very mature. I think any damage created by relocating,  
25 any uncertainties they're going to have are going to be easily resolved by their various --

1 their respective personalities. I think they're both -- all three of the kids are going to be able  
2 to handle it.

3                   The physical, educational and emotional development, I don't think is  
4 going to be impaired by a move. I think the educational level is frankly something that I  
5 think comes as much from the -- from home as it does outside of the home. I think both  
6 parents in this case have pursued the importance of education, both in their own lives and  
7 with their children, they've just done it differently and I think -- I don't see that there will be  
8 any negative impact on the children by allowing them to move.

9                   The quality of live -- No, 7, the quality of life, resources and  
10 opportunities available to the child and to the relocating party in the current and proposed  
11 geographic locations. The quality of life, at least as I heard the testimony would be  
12 unchanged between Yakima and Torrence, California. The resource is available, at least as  
13 to the mother, are going to be -- together with opportunity -- employment opportunities are  
14 greatly enhanced. I think there are certain benefits to the children. Mother will be working,  
15 providing a solid role model and that is, again, not to denigrate what she has done for the last  
16 16 years but I think both have a useful -- are useful tools for the parents, so I think the  
17 quality of life available to each is going to be relatively similar with exception of the  
18 employment opportunities available to the mother.

19                   8, the availability of alternative arrangements to foster and continue the  
20 child's relationship with an access to the other parent. Mother has proposed and not with  
21 any great rebuttal, but has proposed a Parenting Plan that allows for extended time between  
22 the father and the children.

23                   I don't see that there are any other alternative arrangements that are  
24 available in this situation, other than the visitation that has been proposed. Now, in the  
25 alternatives to relocation I addressed earlier, I don't believe that there are any reasonable or

1 realistic alternatives to relocation.

2                   10, the financial impact and the logistics of the relocation. There are not  
3 any particular testimony on that issue other than mother has submitted a financial declaration  
4 regarding her California expenses and clearly it will cost more for travel, but I think it is  
5 given that the income level of these parents it is something that can be accommodated.

6                   Based on those 11 [sic] factors I think that it is appropriate for the  
7 children to relocate. I also under the relocation issue -- again, I place some importance on  
8 the Lakeside decision or plan and the effort to have the boys enrolled in a private school  
9 because the effort to enroll the boys in private school in particular was, again, a singular  
10 statement by father that relocating the children to a distant location away from family and  
11 away from either parent was appropriate and that is a form of testimony that was reflecting  
12 his belief in his relationships with the children. Mother opposed that move and I think that is  
13 consistent with the relocation decision. His objection didn't really come until -- unless it  
14 applies to the relocating efforts of the mother. Otherwise, relocation seemed appropriate.  
15 The Lakeside issue I've already addressed. I think that has an impact on how -- in  
16 understanding these parents' relative positions in the family. And I can say that as of June of  
17 this year that was father's position.

18                   With regard to child support. Father's income has changed fairly  
19 dramatically in the last couple of years. I don't know whether the 2011 income represents a  
20 realistic annual income. It is certainly larger than it was in 2008, 9 or 10. I think it is larger  
21 than it has been so far in 2012. What I'm going to order is that the father's income would be  
22 an average over the last two years and would be modified every year to reflect each new year  
23 as it passes. I'm always concerned about that because I don't want the father to -- if father's  
24 income goes up and there is a request for an extension on the tax return, there's a delay of the  
25 amount of -- and how that support can be recalculated and it works to his benefit, so I -- any

1 increase would be -- if there's an increase in his support level that would be back dated to the  
2 date of modification or when it should have been modified, and if it goes down, it would go  
3 down when the -- I guess at some subsequent date when the information is provided. I think  
4 it's important that there be some transparency and some urgency to seeing the taxes are  
5 completed. I understand there can be issues that are outside of the control of either party but  
6 in any event the thrust of this is the average of the last two years with dad's income.

7 MR. HAZEL: Is it appropriate to ask questions as we go?

8 THE COURT: Yes, go ahead.

9 MR. HAZEL: When you say last two years, do you mean '11 and '12 year to  
10 date?

11 THE COURT: '11 to '10.

12 MR. HAZEL: '10 and '11?

13 THE COURT: Yes. As reflected in the tax return. I don't -- we are employed  
14 essentially as a private individual. (Inaudible) different ways. income comes in and I think  
15 it's best reflected in the tax returns. Mother's income is as provided in her worksheet and  
16 I'm going to impute it at her -- the level that she would be earning in California. Typically the  
17 non-custodial parent's income doesn't have much of an effect on the support and I don't  
18 think it would be -- I don't want to create a -- when she goes to work an issue regarding a  
19 modification at that point. The difference between what her child support is and her need is  
20 going to be made up in spousal maintenance. So I'm going to impute income to her at  
21 \$5,700.00.

22 MR. HAZEL: Starting when?

23 THE COURT: The effective date of this order which would be something  
24 we'll talk about in a minute.

25 Health insurance, my understanding -- we didn't hear much about that.

1 but my understanding is dad provides that, is that correct Mr. Schwartz?

2 MR. SCHWARTZ: Yes --

3 THE COURT: Alright.

4 MR. SCHWARTZ: -- he does provide it as an expense so we can factor that  
5 into the support worksheets.

6 THE COURT: Yeah, the only issue I guess I was concerned about was if mom  
7 works for L.A. County and -- they're still in L.A. and whether or not they have health  
8 insurance in the future, I suspect they will, that it may be cheaper for you to get health  
9 insurance and so there ought to be some understanding that if dad's paying a \$1,000.00 a  
10 month for health care and mom can get it for 300, mom ought to provide it. Whatever will  
11 save the most money, but otherwise it's a shared cost.

12 Travel expense will be shared proportionately. I'm not going to put a  
13 fixed sum in. It will be on an as incurred basis.

14 Spousal maintenance. Husband earns between 250, 270 and up to 3 and  
15 a quarter, and I know I'm rounding numbers. This last year was -- 2011, was a good year,  
16 but it's been 270, 290, 322, I think was this last year. It reflects a pretty good income and I  
17 don't see and there's no -- nothing suggesting that that would end going forward. Mrs. Kim  
18 has not been in the work force for 16 to 17 years. I think it's unrealistic that she's going to  
19 be working here in Yakima. She would be begin -- the plan is that she would return to the  
20 work force in June of next year, 2013. Anticipated earnings were, I believe, 60 to 70,000 a  
21 year. There is a difference between them of roughly 230 to \$240,000.00 a year. Mrs. Kim  
22 has been receiving maintenance since August of 2010. I believe it was \$4,500.00 a month  
23 and the issue of it being allocated was reserved but they filed a joint income tax return in  
24 2011, and I think that resolves that issue.

25 The additional -- because of the child support, and I don't know what

1 it's going to be. A couple of things occurred. One, the -- I didn't average his income each  
2 year but I estimate that he's going to end up paying around \$2,500.00 a month in child  
3 support. The number in your worksheet, Mr. Hazel, identifying mother's deductions from  
4 income, I think is -- there's a clerical error. You -- there was a 9 percent tax imposed on the  
5 amounts over 63,000, I think, and rather than apportioning that per month, you took the total  
6 amount of \$2,700.00 and subtracted it from her income, so her income is actually going to be  
7 higher than what is shown on your worksheet for California, but -- so I'm estimating that it  
8 will be roughly \$2,500.00.

9 I'm going to order maintenance between -- from now, September 2012  
10 through August of 2013 of \$3,000.00 a month.

11 MR. HAZEL: I'm sorry, the amount was?

12 THE COURT: \$3,000.00 a month.

13 MR. SCHWARTZ: Through August --

14 THE COURT: I'm sorry, no. I'm sorry, that was the wrong number,  
15 \$2,500.00. That's in addition to the child support, so --

16 MR. SCHWARTZ: And that's through August of --

17 THE COURT: Through August of 2013, and from September of 2013 to  
18 August of 2014, \$1,000.00 per month. I used the financial declaration that was provided by  
19 mother and it suggests that with child support and her income that her monthly expenses will  
20 be met. I am still ordering a \$1,000.00 per month from 2013 -- September 2013 to August  
21 2014, twelve months at a thousand because I believe given the disparity of their incomes, the  
22 size of husband's income and the uncertainties of relocation that that is appropriate and it  
23 provides some buffer, if you will, for Mrs. Kim as she moves forward. The financial  
24 declarations are estimates. I'm giving weight to it but I don't want to give (inaudible) to it  
25 and suggest that it is a hard and fast number, so that's why I ordered the thousand past that.

1 Any questions?

2 MR. HAZEL: It ends in 2014?

3 THE COURT: Yes. With regard to property division. The overall, what I'm  
4 going to do is divide the assets of these parties, 60 percent to wife, 40 percent to husband. I  
5 need to address Mr. Kim's concerns regarding rent, the fact that Mrs. Kim wasn't working  
6 during the marriage. You know, it's -- you have made a -- crafted a very successful life  
7 pursuing it the way you do, and I wouldn't frankly expect you to change because you've  
8 been very successful in the way you've approached things. The fact is is that there are other  
9 realities and the new reality is is that the two of you have ended your relationship. The fact  
10 is is that it is not her pursuit of -- or her decision, her desire not to pursue a career is a reason  
11 why you may have wanted to get a divorce 17 years ago, but the fact is is that both of you  
12 followed that, the fact that she didn't -- she chose motherhood over career is not something  
13 that is entitled to compensation and I think that's a very critical part of this. The fact that  
14 you have a substantial income and she doesn't is important. You paid the mortgage -- or not  
15 the mortgage, but money to her each month and she got to live rent free because it's her  
16 house. You have the ability and you each have the duty to provide for the other. You have a  
17 greater financial ability and you would not be entitled to compensation and I can't imagine  
18 any judge ever granting that kind of compensation that you asked. And so, with that in mind,  
19 I'm going to go through the various assets.

20 The Yakima Heart Center, I had a value of from 171 from Mr. Kessler  
21 to a low of, I believe, 12,000 from Mr. Gosslé. I'm fixing a value of \$75,000.00. There  
22 are a number of things that each of these appraisals did not address. Frankly, Mr. Kessler  
23 was not allowed any access to the business. That had an impact. I don't want to see this as a  
24 reward for that. On the other hand, Mr. Gosslé didn't consider certain other factors such as  
25 the various agreements that the parties enjoy here. Coming up with an exact number there is

1 difficult. I'm putting value of \$75,000.00 on the Heart Center and that's awarded to  
2 husband.

3                   There were some -- I went through -- I saw very little difference in the  
4 numbers. The 401K -- husband's 401K, I had at a value of \$229,301.00. I split that between  
5 the parties. The Lincoln Financial, I had a value of 136,838, and that would be split between  
6 the parties. The Valec --

7                   MR. HAZEL: Your Honor, when you say split --

8                   THE COURT: Split, it could be 60/40, yeah.

9                   MR. SCHWARTZ: You're splitting these all 60/40?

10                  THE COURT: All assets are going to be divided 60/40. The University of  
11 California which was, I believe, wife's, I'm going to split that as well, 60/40. I know that's  
12 an extra QDRO but just to be consistent throughout. I had one question on the Met Life  
13 which was in husband's name of \$36,678.00. Mr. Schwartz, you didn't have that in your  
14 division of assets so I wasn't too clear as to -- you want -- we can come back to it.

15                  MR. SCHWARTZ: Okay, I'm trying to determine if that's something that was  
16 separate before. He had one insurance policy, I know that was prior to marriage.

17                  THE COURT: Okay, I don't know. I looked at the paperwork I had and it was  
18 a word retirement but I don't know that it was describing that account as a retirement  
19 account, but --

20                  MR. HAZEL: It's in Tab No. 19 and we only had a 2009 statement.

21                  THE COURT: Okay.

22                  MR. HAZEL: So we don't have the updated statement but the value at that  
23 time was \$36,678.00.

24                  THE COURT: Alright. And that's the number I went with, but I understand  
25 that some of these numbers are going to change and that's why I think a QDRO is the only

1 way to do it.

2 MR. HAZEL: And it was during marriage, not prior.

3 THE COURT: Okay, whether -- yeah, there wasn't much activity prior to  
4 marriage.

5 MR. HAZEL: It's the John Hancock policy that we acknowledge was separate.

6 THE COURT: Okay, and I have a note here that John Hancock's separate to  
7 husband.

8 The residence is agreed we valued at 480,000. The primary issue there  
9 is the \$100,000.00 contribution from husband's parents. And husband invites that I should  
10 treat that as a loan and wife asks that I treat it as a gift and not subject to repayment. I can't  
11 -- I don't how I can legally find that it is a loan. There's no question that the money was  
12 paid or given. It has been described frankly with legal consequences attached that it would  
13 not be a loan. Had there been a debt on the house that would be impacted by this, it would  
14 have been -- that debt would have been defeated. It was asked for by, as I understand it, the  
15 lender and that's fairly common but with that comes consequences. There's an exchange.  
16 You get the money they want to loan you but you have to give up on a claim that this is a  
17 debt and I can't -- I don't think it would be right to say that there's some sort of ethical or  
18 moral debt. There may be, but that's not a legal debt. There are no terms regarding  
19 repayment. There are -- there is a clear and definitive statement that it is a gift and that no --  
20 there will be no obligation for repayment.

21 The mother has suggested and I think it is consistent with the way to do  
22 this is that I'm going to award the house to her in order that it be sold and that the proceeds  
23 be divided 60/40. So they will be dividing the net proceeds. Now, I did -- I know there was  
24 some tes -- there was some comment at various points. I don't recall any particular  
25 testimony about any repairs that have been made to the residence. I know there was an issue

1 -- Mr. Hazel, is that something that -- if you need we can come back --

2 MR. HAZEL: I think the only issue, Your Honor, is that there's still money in  
3 my trust account from the repairs.

4 MRS. KIM: Yeah, there's 7,000 that Commissioner --

5 THE COURT: How much?

6 MR. HAZEL: The amount left is -- I knew it last week. Do you recall?

7 MR. SCHWARTZ: I believe 2,000 to 3,000.

8 MR. HAZEL: Between 1 and --

9 THE COURT: Pardon.

10 MR. SCHWARTZ: I think it was 2 to 3,000 in both their testimonies.

11 THE COURT: Okay.

12 MR. HAZEL: She -- yeah, she says 1 to 2,000.

13 MR. SCHWARTZ: I think her testimony was 2 to 3.

14 MR. HAZEL: Whatever.

15 THE COURT: And the idea is that the parties will end up dividing whatever  
16 that is. It's possible that getting the house ready for sale may require use of those funds but  
17 in any event the house will be sold. The net proceeds after costs of sale will be divided  
18 proportionately.

19 There are some bank accounts. Mr. Hazel, as petitioner, included a  
20 number of accounts and Mr. Schwartz as respondent, indicated there were two accounts.  
21 Frankly, added them up and I think during the testimony there was an addition that the two  
22 of you were within \$500.00 of each other, so I -- although there was some discussion about  
23 not providing records and that can be frustrating. I'm going with the numbers that Mr.  
24 Schwartz had used, frankly, because it's limited to two accounts, although I come up with  
25 again, as I said, almost the same amount but that was the Yakima Federal checking at

1 79, 221, and the Yakima Federal Savings of one fifty four seven. I did have a question --

2 MR. HAZEL: 154,700?

3 THE COURT: 154,700. There was another account which was entitled the  
4 U.S. Bank money market. The last four digits were 4476 -- or 4176. I think, and it had  
5 \$7,477.00. I don't -- I could not find any backup for that or whether it still exists. It would  
6 have been Tab 32, I believe.

7 MR. HAZEL: That's correct. He was ordered to provide an accounting of it  
8 which was never received.

9 THE COURT: Well, if it's -- that order remains. We need to get a record of it  
10 if that account exists. I did not include it in my numbers but if it exists, it will be divided  
11 proportionately as well.

12 MR. KIM: We gave them final statements in June at the settlement --

13 THE COURT: What, say it again.

14 MR. KIM: I believe we gave them final statements --

15 MR. SCHWARTZ: Did we have one for this U.S. Bank account?

16 MR. KIM: I think we gave them that, too.

17 MR. SCHWARTZ: Okay, I think we've exchanged that but we'll figure that  
18 out. We gave you those --

19 THE COURT: All I'm saying --

20 MR. SCHWARTZ: -- statements after court in June.

21 THE COURT: My note listed that account as, I think, said there had been no  
22 activity in it. I didn't, frankly, know what that meant. I couldn't find anything in my notes  
23 about it.

24 There are some other bank accounts -- specifically there's a Yakima  
25 Federal CD in Ethan's name and that is, as I understand it, money that was contributed by

1 father or his family, and that would be an account controlled by father. There were some  
2 children's savings accounts that -- and that would be Tab 43, and that is to be managed by  
3 mother. There are three U.S. Bank accounts in each of the children's name and those would  
4 be jointly managed. So the three U.S. Bank accounts in each of the children's names are  
5 joint. The Yakima Fed CD to <sup>E. K.</sup> █████ is dad's and the children's savings accounts, as I  
6 understand it, that was money created by or deposited by mother's family to be controlled by  
7 her. Again, it's, as I understand, the children's money. It's set up for them but the question  
8 is who's going to manage it.

9                   The guns are valued at 15,000 and awarded to husband. So there's  
10 going to be some number shifting and I -- my idea with that, that would be accommodated by  
11 the sale of the home proceeds, so that they would be -- they made -- because 15,000 is going  
12 to dad. Mom's not getting any of the guns, but that's going to create a disparity between  
13 them, so --

14                   The Steinway piano initially was valued at, I think, at 80,000. In  
15 rebuttal or at the end of the trial, mother/wife indicated a value of \$45,000.00. Husband  
16 indicated a value of 7. Mother's asked -- or wife is asking that she be -- that the community  
17 be reimbursed the roughly \$23,000.00 that was invested in the piano and I believe that the  
18 argument by father was that it's like a -- frankly like an interest in investment than any other  
19 personal piece of property like a car. I think very clearly a Steinway piano is not a car. It is  
20 an investment. If one had a piece of personal property, one would not -- the value -- it was  
21 valued at \$7,000.00 so it would make no sense to put \$23,000.00 into it, and frankly if you  
22 did, I'd order reimbursement because it would be a poor expenditure of funds. So half of  
23 that money, which is roughly, I think, at eleven five -- I don't remember the exact amount,  
24 would be reimbursed to the community.

25                   With regard to the -- oh, the vehicles, I'm putting a value of \$12,000.00

1 on each vehicle and each will get their own vehicle.

2 MR. HAZEL: 12,000 even?

3 THE COURT: Yes. The jewelry was an issue that I, frankly, understood to be  
4 -- there to be some agreement on that the mother would have the jewelry and then it would  
5 be passed on to the children. How you accomplish that is kind of complicated. I don't know  
6 if there's at some point a level of trust on that or it needs to be some sort of trust arrangement  
7 would be provided. I think that that's appropriate that jewelry be handled that way.

8 The household goods is kind of -- it's always a problem. And not a lot  
9 of time spent on it and for good reason. One of the things I'm not clear about is who's got  
10 what item or who -- is there something, for instance, Mr. Kim is out of the home. Is there  
11 something that he doesn't have that he wants. I'm, frankly, my inclination is to put an equal  
12 value on it or to put no value. I don't see that as -- that personal property as having much  
13 value to anybody but these individuals. As counsel knows, this is garage sale value. It is not  
14 replacement cost, so I -- I guess in an effort to make sure that -- to resolve the issues, I don't  
15 know clearly quite what value to put on it other than I'm going to go with mother's or wife's  
16 number simply because it's in there. I would not -- that's \$4,000.00. I know it could be 10.  
17 I would say that it's divided equally between the parties. I don't have enough information --

18 MR. SCHWARTZ: Well, Your Honor, we on Exhibit 25 have proposed that  
19 he receive certain items of personal property.

20 THE COURT: I don't know which of those he's got or doesn't have.

21 MR. SCHWARTZ: Well, most of it -- much of the furnishings he has not  
22 received, some of it he has but others he has not and that's part of what we were trying to  
23 accomplish here. If we just say 50/50 on personal property, I think we're setting ourselves  
24 up for a whole lot more problems.

25 THE COURT: Alright. Well, I'll reserve on that because I'm going to want to

1 look at -- I'll look at it again, and give the parties an opportunity to speak on it. I know not  
2 to be -- diminish the importance of it but the microwave oven is significant in some ways but  
3 not so significant in others and I guess I don't want to overplay this but (inaudible) to look at  
4 other numbers, I need to look at it.

5                   With regard to the fees, both attorney and expert, I'm not going to  
6 award any additional fees to mother/wife. I am going to say that husband is responsible for  
7 the fees that have been expended. He will be responsible for the guardian's fee. I'm not  
8 going to split it and that's because of the incomes that you each have. You have much greater  
9 ability to pay than does Mrs. Kim, so the fees that have been expended will be for the  
10 guardian and any of the consultations that he required with various practitioners would be  
11 borne by the husband, but I'm not going to award any additional fees over and above what  
12 have been already made. Any questions at this point?

13                   MR. HAZEL: I don't believe so, Your Honor. Oh, yes. The Parenting Plan  
14 between now and June, do we stay the same?

15                   THE COURT: Well, let me go backwards into that. I didn't say this but the  
16 Parenting Plan -- the one I had was the one that mother proposed for California and it  
17 seemed reasonable to me. It provides for mutual -- or joint decision making throughout and it  
18 sets out a plan. I suspect that there may be some issues that may come up at presentation but  
19 I would suggest that that's the appropriate plan. Second, are there -- with regard to -- well,  
20 let me ask you, Mr. Schwartz, what are you asking for? Mr. Hazel, by asking the question  
21 invites me to believe that there would be something other than the status quo that should be  
22 observed.

23                   MR. SCHWARTZ: We were asking for at least 50 percent, Your Honor --

24                   THE COURT: Okay.

25                   MR. SCHWARTZ: -- and particularly with the children leaving in a year, and

1 he's going to see them, I think we figured five to six times a year, so if there's any way to  
2 increase, say, on the weekends, go through Monday, anything would be appreciated at this  
3 point in time. In the past we had proposed that because basically they had a holiday schedule  
4 where if the kids weren't in school instead of returning Sunday night, it would be Monday  
5 morning and so on, so just any additional time at this point because naturally he wants to  
6 spend as much time with the kids as he can while he can.

7 MR. HAZEL: Your Honor, we oppose that. We just at most just keep it the  
8 status quo. It's working as well as it possibly can work and we believe any additional time  
9 will be very, very difficult for the children. I'd say, you know, maybe give him spring break  
10 this year and perhaps the second part of -- who had the second part of Christmas last year?

11 MRS. KIM: I did.

12 MR. HAZEL: Give him the second part of Christmas this year.

13 THE COURT: Well, I guess I'll be optimistic. I'm going to allow visits  
14 through Sunday and through Monday morning. If it's a problem, I suspect it can be brought  
15 up and we'll hear about it. And, again, I guess I want to make sure, I emphasize that I think  
16 these kids are pretty mature and I don't place a lot of stock in either parent's control over  
17 these kids in the sense that either of you is going to be able to do much to influence the other  
18 so if it's not working I would urge each of you to handle and go, hey, it's not working, we  
19 need to do something different rather than just blindly looking forward, but if it doesn't  
20 work, I'm sure it can come back.

21 And I do want to say just, again, to make sure that I addressed the  
22 residential provisions that I went -- I used the residential provisions and then went into the  
23 relocation provisions, but the analysis -- and in particular I think I indicated I would come  
24 back to the future performance of parenting function. When I looked at the residential  
25 provisions, my decision includes the relocation factors as they would apply to the residential

1 provisions. I think each parent's potential for future performance of the parenting functions  
2 is as I've indicated, I think much easier -- or going to be much more likely to be performed  
3 and to a greater degree by mother than it will be by father and I say that because of their  
4 respective employment obligations and the way they have conducted themselves up to this  
5 point is a suggestion that that's the way it would also go forward, so to the extent that there is  
6 a legal requirement that I look at the residential provisions in establishing residential  
7 placement and taking into account the relocation, I have done so and I've addressed them  
8 individually but I considered them jointly when I -- as I make my analysis, alright. Any  
9 questions, Mr. Schwartz?

10 MR. SCHWARTZ: No.

11 THE COURT: Mr. Hazel?

12 MR. HAZEL: No, Your Honor.

13 THE COURT: Alright.

14 MR. HAZEL: Well, actually I do have one. Is the guardian discharged?

15 THE COURT: Say what?

16 MR. HAZEL: Is the guardian discharged?

17 THE COURT: Yes.

18 MR. SCHWARTZ: I think the guardian who just got discharged might have a  
19 question while his discharge is pending. He raised his hand.

20 THE COURT: Pardon me.

21 MR. SCHWARTZ: Mr. Kenney had raised his hand (inaudible) --

22 THE COURT: Did you raise your hand?

23 MR. KENNEY: Yes, I did.

24 THE COURT: I didn't see it. What's your question?

25 MR. KENNEY: Thank you. I raised it earlier. Regarding my fees, you said

1 that the husband is responsible for the guardian's fees --

2 THE COURT: Yes.

3 MR. KENNEY: Then you made a comment I didn't quite understand,  
4 something to the effect that there's no reimbursement over what has already been paid.

5 THE COURT: Well, as between husband and wife.

6 MR. KENNEY: Oh, okay.

7 THE COURT: I'm not ordering that husband pay to wife any additional sums.

8 MR. KENNEY: (Inaudible -- can't hear him).

9 THE COURT: That's right.

10 MR. KENNEY: Thank you for the verification. Discharge is (inaudible).

11 THE COURT: Alright.

12 MR. KENNEY: One question on that. May I have opportunity to say goodbye  
13 to the children?

14 THE COURT: Well, I think that's a parental decision that I would not have  
15 any opinion on.

16 MR. KENNEY: Okay. Thank you.

17 (END OF TRANSCRIPT)

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# APPENDIX C

17

FILED

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REGISTRATION  
EX OFFICIO CLERK OF  
SUPERIOR COURT  
YAKIMA, WASHINGTON

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Superior Court of Washington  
County of YAKIMA

In re the Marriage of:

ELIZABETH SHIZUKO KIM

and

ANATOLE SUNG KIM

Petitioner,

Respondent.

No. 10-3-00708-6

Order of Child Support

Final Order (ORS)

Clerk's Action Required

I. Judgment Summary

1.1 Judgment Summary for Non-Medical Expenses

Does not apply.

1.2 Judgment Summary for Medical Support

Does not apply.

II. Basis

2.1 Type of Proceeding

Order of Child Support (TMORS, ORS) - Page 1 of 10  
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

WSSR

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This order is entered under a petition for dissolution of marriage or domestic partnership, legal separation, or declaration concerning validity.

decree of dissolution, legal separation or a declaration concerning validity.

**2.2 Child Support Worksheet**

The child support worksheet which has been approved by the court is attached to this order and is incorporated by reference or has been initialed and filed separately and is incorporated by reference.

**2.3 Other**

**III. Findings and Order**

**It Is Ordered:**

**3.1 Child(ren) for Whom Support is Required**

Name (first/last)	Age
██████████ E. K.	17
██████████ L. K.	14
██████████ C. K.	12

**3.2 Person Paying Support (Obligor)**

Name (first/last): Anatole Kim  
Birth date: ██████████ 1957  
Service Address:

*The Obligor Parent Must Immediately File With the Court and the Washington State Child Support Registry, and Update as Necessary, the Confidential Information Form Required by RCW 26.23.050.*

*The Obligor Parent Shall Update the Information Required by Paragraph 3.2 Promptly After any Change in the Information. The Duty to Update the Information Continues as long as any Support Debt Remains due Under This Order.*

For purposes of this Order of Child Support, the support obligation is based upon the following income:

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A. Actual Monthly Net Income: \$ 16,344.

**3.3 Person Receiving Support (Obligee)**

Name (first/last): Elizabeth Kim  
Birth date: ██████63  
Service Address:

*The Obligee Must Immediately File With the Court and the Washington State Child Support Registry and Update as Necessary the Confidential Information Form Required by RCW 26.23.050.*

*The Obligee Shall Update the Information Required by Paragraph 3.3 Promptly After any Change in the Information. The Duty to Update the Information Continues as Long as any Monthly Support Remains Due or any Unpaid Support Debt Remains Due Under This Order.*

For purposes of this Order of Child Support, the support obligation is based upon the following income:

A. Actual Monthly Net Income: \$ 4,720.

The obligor may be able to seek reimbursement for day care or special child rearing expenses not actually incurred. RCW 26.19.080.

**3.4 Service of Process**

*Service of Process on the Obligor at the Address Required by Paragraph 3.2 or any Updated Address, or on the Obligee at the Address Required by Paragraph 3.3 or any Updated Address, may Be Allowed or Accepted as Adequate in any Proceeding to Establish, Enforce or Modify a Child Support Order Between the Parties by Delivery of Written Notice to the Obligor or Obligee at the Last Address Provided.*

**3.5 Transfer Payment**

1 The obligor parent shall pay the following amounts per month for the following children:

2	Name	Amount
3	██████████ E. K.	\$900.65
4	██████████ L. K.	\$900.65
5	██████████ C. K.	\$900.66
6	<b>Total Monthly Transfer Amount</b>	<b>\$2,701.96</b>

6 *The Obligor Parent's Privileges to Obtain or Maintain a License, Certificate, Registration, Permit, Approval, or Other Similar Document Issued by a Licensing Entity Evidencing Admission to or Granting Authority to Engage in a Profession, Occupation, Business, Industry, Recreational Pursuit, or the Operation of a Motor Vehicle may Be Denied or may Be Suspended if the Obligor Parent is not in Compliance With This Support Order as Provided in Chapter 74.20A Revised Code of Washington.*

10 **3.6 Standard Calculation**  
11 \$2,702 per month. (See Worksheet line 17.)

12 **3.7 Reasons for Deviation From Standard Calculation**  
13 The child support amount ordered in paragraph 3.5 does not deviate from the standard  
14 calculation.

16 **3.8 Reasons why Request for Deviation Was Denied**  
17 A deviation was not requested.

18 **3.9 Starting Date and Day to Be Paid**  
19 Starting Date: September 10, 2012  
20 Day(s) of the month  
21 support is due: 10th

22 **3.10 Incremental Payments**  
23 Does not apply.

24 **3.11 Making Support Payments**  
25 Select Enforcement and Collection, Payment Services Only, or Direct Payment:

Order of Child Support (TMORS, ORS) - Page 4 of 10  
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

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Direct Payment: Support payments shall be made directly to:

Elizabeth Kim

A party required to make payments to the Washington State Support Registry will not receive credit for a payment made to any other party or entity. The obligor parent shall keep the registry informed whether he or she has access to health insurance coverage at reasonable cost and, if so, to provide the health insurance policy information.

Any time the Division of Child Support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the receiving parent might be required to submit an accounting of how the support, including any cash medical support, is being spent to benefit the children.

**3.12 Wage Withholding Action**

Withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the obligor parent at any time after entry of this order unless an alternative provision is made below:

*[If the court orders immediate wage withholding in a case where Division of Child Support does not provide support enforcement services, a mandatory wage assignment under Chapter 26.18 RCW must be entered and support payments must be made to the Support Registry.]*

**3.13 Termination of Support**

Support shall be paid:

until the children reach the age of 18, or as long as the children remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.

**3.14 Post Secondary Educational Support**

The right to request post secondary support is reserved, provided that the right is exercised before support terminates as set forth in paragraph 3.13.

**3.15 Payment for Expenses not Included in the Transfer Payment**

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The petitioner shall pay 22.4% and the respondent 77.6% (each parent's proportional share of income from the Child Support Schedule Worksheet, line 6) of the following expenses incurred on behalf of the children listed in Paragraph 3.1:

Long distance transportation expenses.

Payments shall be made to.

**3.16 Periodic Adjustment**

Does not apply.

**3.17 Income Tax Exemptions**

Tax exemptions for the children shall be allocated as follows:

The Father shall claim <sup>L.K.</sup> each year and Mother shall claim <sup>E.K.</sup> The parties shall alternate <sup>C.K.</sup> as a tax exemption with father receiving even years and mother odd. When the oldest child can no longer be claimed as a tax exemption, the Father will continue to claim <sup>C.K.</sup> and Mother will claim <sup>C.K.</sup> When <sup>C.K.</sup> can no longer be claimed, the parties will alternate claiming <sup>C.K.</sup> with Father receiving even years and Mother odd.

**3.18 Medical Support - Health Insurance**

Each parent shall provide health insurance coverage for the children listed in paragraph 3.1, as follows:

**3.18.1 Health Insurance** (either check box A(1) or check box A(2) and complete sections B and C. *Section D applies in all cases.*)

- A. Evidence
  - (2) There is sufficient evidence for the court to determine which parent must provide coverage and which parent must contribute a sum certain. Fill in B and C below.
- B. Findings about insurance:
 

The court makes the following findings:

Elizabeth Kim (Parent's Name)	Anatole Kim (Parent's Name)	Check at least one of the following findings for each parent.
[ ]	[ ]	insurance coverage for the children is available and accessible to this parent at \$ cost (children's portion of the premium, only).
[ ]	[X]	insurance coverage for the children is available and accessible to this parent at \$471.47 cost (children's portion of the premium, only).

Order of Child Support (TMORS, ORS) - Page 6 of 10  
WPF DR 01.0500 Mandatory (6/2010) - RCW 26.09.175; 26.26.132

**HAZEL & HAZEL**  
ATTORNEYS & COUNSELORS AT  
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1420 Summitview  
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<input type="checkbox"/>		Insurance coverage for the children is available but not accessible to this parent at \$ cost (children's portion of the premium, only).
	<input type="checkbox"/>	Insurance coverage for the children is available but not accessible to this parent at \$ cost (children's portion of the premium, only).
<input type="checkbox"/>		Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
	<input type="checkbox"/>	Neither parent has available or accessible insurance through an employer or union; but this parent is able to provide private coverage at a cost not to exceed 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	(Check only one parent) Both parties have available and accessible coverage for the children. The court finds that this parent has better coverage considering the needs of the children, the cost and extent of each parent's coverage, and the accessibility of the coverage.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Other:

C. Parties' obligations:

The court makes the following orders:

Elizabeth Kim (Parent's Name)	Anatole Kim (Parent's Name)	Check at least one of the following options for each parent.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through <b>employment or is union-related</b> as long as the cost of such coverage does not exceed 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide health insurance coverage for the children that is available through <b>employment or is union-related</b> even though the cost of such coverage exceeds 25% of this parent's basic support obligation. It is in the best interests of the children to provide such coverage despite the cost <i>because</i> :

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<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide <b>private</b> health insurance coverage for the children as long as the cost of such coverage <u>does not exceed</u> 25% of this parent's basic support obligation.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall provide <b>private</b> health insurance coverage for the children even though the cost of such coverage <u>exceeds</u> 25% of this parent's basic support obligation. It is in the best interests of the child(ren) to provide such coverage despite the cost <b>because</b> :
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall pay \$        towards the health insurance premium being paid by the other parent. This amount is this parent's proportionate share of the premium or 25% of this parent's basic support obligation, whichever is less. This payment is only required if this parent is not providing insurance as described above.
<input type="checkbox"/>	<input type="checkbox"/>	This parent's contribution to the health insurance premium is calculated in the Worksheet and included in the transfer payment.
<input type="checkbox"/>	<input type="checkbox"/>	This parent shall be <b>excused</b> from the responsibility to provide health insurance coverage and from the responsibility to provide monthly payment towards the premium <b>because</b> :  (Only one parent may be excused.)

D. Both parties' obligation:

If the children are receiving state financed medical coverage, the Division of Child Support may enforce the responsible parent's monthly premium.

The parent(s) shall maintain health insurance coverage, if available for the children listed in paragraph 3.1, until further order of the court or until health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

A parent who is required under this order to provide health insurance coverage is liable for any covered health care costs for which that parent receives direct payment from an insurer.

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A parent who is required under this order to provide health insurance coverage shall provide proof that such coverage is available or not available within 20 days of the entry of this order to the other parent or the Washington State Support Registry if the parent has been notified or ordered to make payments to the Washington State Support Registry.

If proof that health insurance coverage is available or not available is not provided within 20 days, the parent seeking enforcement or the Department of Social and Health Services may seek direct enforcement of the coverage through the other parent's employer or union without further notice to the other parent as provided under Chapter 26.18 RCW.

**3.18.2 Change of Circumstances and Enforcement**

A parent required to provide health insurance coverage must notify both the Division of Child Support and the other parent when coverage terminates.

If the parents' circumstances change, or if the court has not specified how medical support shall be provided, the parents' medical support obligations will be enforced as provided in RCW 26.18.170. If a parent does not provide proof of accessible coverage for the child(ren) through private insurance, a parent may be required to satisfy his or her medical support obligation by doing one of the following, listed in order of priority:

1. Providing or maintaining health insurance coverage through the parent's employment or union at a cost not to exceed 25% of that parent's basic support obligation;
2. Contributing the parent's proportionate share of a monthly premium being paid by the other parent for health insurance coverage for the child(ren) listed in paragraph 3.1 of this order, not to exceed 25% of the obligated parent's basic support obligation; or
3. Contributing the parent's proportionate share of a monthly premium paid by the state if the child(ren) receives state-financed medical coverage through DSHS under RCW 74.09 for which there is an assignment.

A parent seeking to enforce the obligation to provide health insurance coverage may apply for support enforcement services from the Division of Child Support; file a motion for contempt (use form WPF DRPSCU 05.0100, Motion/Declaration for an Order to Show Cause re Contempt); or file a petition.

**3.19 Uninsured Medical Expenses**

Both parents have an obligation to pay their share of uninsured medical expenses.

The petitioner shall pay 22.4% of uninsured medical expenses (unless stated otherwise, the petitioner's proportional share of income from the Worksheet, line 6) and the respondent shall pay 77.6% of uninsured medical expenses (unless stated otherwise, the respondent's proportional share of income from the

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Worksheet,  
line 6).

**3.20 Back Child Support**

Back child support that may be owed is not affected by this order.

**3.21 Past Due Unpaid Medical Support**

Unpaid medical support that may be owed is not affected by this order.

**3.22 Other Unpaid Obligations**

Other obligations that may be owed are not affected by this order.

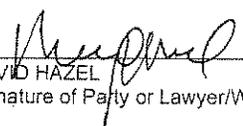
**3.23 Other**

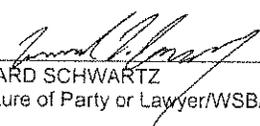
Dated: 2/6/13

  
\_\_\_\_\_  
Judge/Commissioner

Presented by:

Approved for entry:  
Notice of presentation waived:

  
\_\_\_\_\_  
DAVID HAZEL 7833  
Signature of Party or Lawyer/WSBA No.

  
\_\_\_\_\_  
HOWARD SCHWARTZ 17432  
Signature of Party or Lawyer/WSBA No.

# APPENDIX D

## Washington State Child Support Schedule Worksheets

Proposed by   State of WA  Other (CSWP)  
 Or,  Signed by the Judicial/Reviewing Officer. (CSW)

Mother Elizabeth KIM  
County YAKIMA

Father Anatole KIM  
Case No. 10-3-00708-6

Child(ren) and Age(s):		
<b>Part I: Income (see Instructions, page 6)</b>		
<b>1. Gross Monthly Income *</b>	<b>Father</b>	<b>Mother</b>
a. Wages and Salaries (Imputed for Mother)	\$	-
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	\$2,500.00
e. Other Income	-	-
f. Imputed Income	-	\$
g. Total Gross Monthly Income (add lines 1a through 1f)	\$	\$
<b>2. Monthly Deductions from Gross Income</b>		
a. Income Taxes (Federal and State) Tax Year: 2012	\$	\$
b. FICA (Soc. Sec. + Medicare)/Self-Employment Taxes	\$	\$
c. State Industrial Insurance Deductions	\$	-
d. Mandatory Union/Professional Dues	\$	-
e. Mandatory Pension Plan Payments	\$	-
f. Voluntary Retirement Contributions	-	-
g. Maintenance Paid	\$2,500.00	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$	\$
<b>3. Monthly Net Income (line 1g minus 2i)</b>	\$	\$
<b>4. Combined Monthly Net Income (line 3 amounts combined)</b>	\$	
<b>5. Basic Child Support Obligation (Combined amounts ---)</b>		
E.K. \$1206.00		
L.K. \$1206.00		
C.K. \$1206.00		
	\$3,618.00	
<b>6. Proportional Share of Income (each parent's net income from line 3 divided by line 4)</b>	.658	.342

Part II: Basic Child Support Obligation (see Instructions, page 7)		
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)	\$2,380.64	\$1,237.36
8. Calculating low income limitations: Fill in only those that apply. Self-Support Reserve: (125% of the Federal Poverty Guideline.)	\$1,164.00	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.	-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.	-	-
c. Is Monthly Net Income Greater Than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, then enter that amount or the presumptive \$50 per child, whichever is greater.	-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.	\$2,380.64	\$1,237.36
Part III: Health Care, Day Care, and Special Child Rearing Expenses (see Instructions, page 8)		
10. Health Care Expenses	Father	Mother
a. Monthly Health Insurance Paid for Child(ren)	\$920.82	-
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	\$920.82	-
d. Combined Monthly Health Care Expenses (line 10c amounts combined)	\$920.82	
11. Day Care and Special Expenses		
a. Day Care Expenses	-	-
b. Education Expenses	-	-
c. Long Distance Transportation Expenses	-	-
d. Other Special Expenses (describe)	-	-
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	-	-
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)		
13. Total Health Care, Day Care, and Special Expenses:(line 10d plus line 12)	\$920.82	
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	\$605.90	\$314.92
Part IV: Gross Child Support Obligation		
15. Gross Child Support Obligation (line 9 plus line 14)	\$2,986.54	\$1,552.28
Part V: Child Support Credits (see Instructions, page 9)		
16. Child Support Credits		
a. Monthly Health Care Expenses Credit	\$920.82	
b. Day Care and Special Expenses Credit	-	

WSCSS-Worksheets - Mandatory (CSW/CSWP) 07/2011 Page 2 of 5

31426 0-000000423

App. D-2

## Washington State Child Support Schedule Worksheets

[X] Proposed by [X] Mother [ ] State of WA [ ] Other (CSWP)  
 Or, [ ] Signed by the Judicial/Reviewing Officer. (CSW)

**Mother** Elizabeth Shizuko Kim  
 County YAKIMA

**Father** Anatole Sung Kim  
 Case No. 10-300708-6

Child(ren) and Age(s):		
<b>Part I: Income</b> (see Instructions, page 6)		
<b>1. Gross Monthly Income</b>	<b>Father</b>	<b>Mother</b>
a. Wages and Salaries (Imputed for Mother)	\$	-
b. Interest and Dividend Income	-	-
c. Business Income	-	-
d. Maintenance Received	-	-
e. Other Income	-	-
f. Imputed Income	-	\$
g. Total Gross Monthly Income (add lines 1a through 1f)	\$	\$
<b>2. Monthly Deductions from Gross Income</b>		
a. Income Taxes (Federal and State) Tax Year: 2013	\$	\$
b. FICA (Soc. Sec.+Medicare)/Self-Employment Taxes	\$	\$
c. State Industrial Insurance Deductions	-	-
d. Mandatory Union/Professional Dues	-	-
e. Mandatory Pension Plan Payments	-	-
f. Voluntary Retirement Contributions	\$	-
g. Maintenance Paid	-	-
h. Normal Business Expenses	-	-
i. Total Deductions from Gross Income (add lines 2a through 2h)	\$	\$
<b>3. Monthly Net Income</b> (line 1g minus 2i)	\$	\$
<b>4. Combined Monthly Net Income</b> (line 3 amounts combined)		\$
<b>5. Basic Child Support Obligation</b> (Combined amounts )		\$3,618.00
E.K. \$1206.00		
L.K. \$1206.00		
C.K. \$1206.00		
<b>6. Proportional Share of Income</b> (each parent's net income from line 3 divided by line 4)	.776	.224

<b>Part II: Basic Child Support Obligation</b> (see Instructions, page 7)			
7. Each Parent's Basic Child Support Obligation without consideration of low income limitations (Each parent's Line 6 times Line 5.)		\$2,807.57	\$810.43
8. Calculating low income limitations: Fill in only those that apply.			
Self-Support Reserve: (125% of the Federal Poverty Guideline.)		\$1,164.00	
a. Is combined Net Income Less Than \$1,000? If yes, for each parent enter the presumptive \$50 per child.		-	-
b. Is Monthly Net Income Less Than Self-Support Reserve? If yes, for that parent enter the presumptive \$50 per child.		-	-
c. Is Monthly Net Income Greater Than Self-Support Reserve? If yes, for each parent subtract the self-support reserve from line 3. If that amount is less than line 7, then enter that amount or the presumptive \$50 per child, whichever is greater.		-	-
9. Each parent's basic child support obligation after calculating applicable limitations. For each parent, enter the lowest amount from line 7, 8a - 8c, but not less than the presumptive \$50 per child.		\$2,807.57	\$810.43
<b>Part III: Health Care, Day Care, and Special Child Rearing Expenses</b> (see Instructions, page 8)			
10. Health Care Expenses	Father	Mother	
a. Monthly Health Insurance Paid for Child(ren)	\$471.47	-	
b. Uninsured Monthly Health Care Expenses Paid for Child(ren)	-	-	
c. Total Monthly Health Care Expenses (line 10a plus line 10b)	\$471.47	-	
d. Combined Monthly Health Care Expenses (line 10c amounts combined)		\$471.47	
11. Day Care and Special Expenses			
a. Day Care Expenses	-	-	
b. Education Expenses	-	-	
c. Long Distance Transportation Expenses	-	-	
d. Other Special Expenses (describe)			
	-	-	
	-	-	
	-	-	
e. Total Day Care and Special Expenses (Add lines 11a through 11d)	-	-	
12. Combined Monthly Total Day Care and Special Expenses (line 11e amounts Combined)			
13. Total Health Care, Day Care, and Special Expenses (line 10d plus line 12)		\$471.47	
14. Each Parent's Obligation for Health Care, Day Care, and Special Expenses (multiply each number on line 6 by line 13)	\$365.86	\$105.61	
<b>Part IV: Gross Child Support Obligation</b>			
15. Gross Child Support Obligation (line 9 plus line 14)	\$3,173.43	\$916.04	
<b>Part V: Child Support Credits</b> (see Instructions, page 9)			
16. Child Support Credits			
a. Monthly Health Care Expenses Credit	\$471.47	-	
b. Day Care and Special Expenses Credit	-	-	

**FILED**

JUL 22 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 31426-0-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

In re Marriage of:

ELIZABETH KIM,  
Respondent,

vs.

ANATOLE KIM,  
Appellant.

CERTIFICATE OF SERVICE

**FILED**

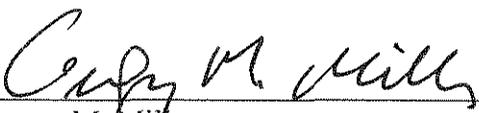
JUL 19 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

I declare under penalty of perjury that I caused copies of the OPENING BRIEF, APPENDICES A-D, and this Certificate of Service to be filed and served upon counsel of record on 19<sup>th</sup> day of July, 2013 as follows:

Renee S. Townsley, Clerk Court of Appeals, Div. III 500 N. Cedar Street Spokane, WA 99201	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> Fax – 509-456-4288 <input type="checkbox"/> Email <input type="checkbox"/> Other
Peter S. Lineberger 900 North Maple, Ste. 102 Spokane, WA 99201 Phone: 509-624-6222 Fax: 509-624-1229 Email: <a href="mailto:psline@pslinelaw.com">psline@pslinelaw.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> Fax <input checked="" type="checkbox"/> Email <u>7/20/13</u> <input type="checkbox"/> Other _____

Dated this 19<sup>th</sup> day of July, 2013.

  
\_\_\_\_\_  
Gregory M. Miller

**ORIGINAL**