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NO. 90536-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re

MONIQUE ADEL McDEVITT,

Appellant,

And

DAVID ALLEN DAVIS,

Respondent.

Received
Washington State Supreme Court

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ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Petitioner Monique A. McDevitt had already relocated pursuant to Notice of Intention to Relocate and that such was a basis on which the court reviewed and ordered a modification of the prior Parenting Plan. As an issue raised in the Court of Appeals, if this Court accepts review, Respondent argues that the trial court had the authority based upon the Decree language that contemplated a review of the Parenting Plan after the time children attained two years of age.

The decision of Marriage of Grigsby, 112 Wn. App. 1 (2002) is consistent with the Court of Appeals decision as to the relocation issue.

FACTS RELEVANT TO MOTION

A. Petitioner Monique McDevitt based upon the father not objecting relocated from Hawaii to the state of Colorado.

Aside from the factual recitation by Petitioner in the Petition for Review, the bare fact of the actual relocation by the mother, not

an anticipated relocation, permitted a modification of the parenting plan under the authority of RCW 26.09.260(6) as determined in the Court of Appeals.

B. The trial court observed that during the course of the proceedings that a comprehensive, modified parenting plan/residential schedule was warranted.

As expressed in the decision of the Court of Appeals, the proceedings in the Superior Court involved reviews and reservations as to the father's parental contact, all leading to the eventual relocation by the mother. In the underlying decision, the court analyzed that the trial court had referenced the initial parenting plan determination and the need for a review as a "jump-off point" for his analysis, but not as a basis for reopening the parenting plan. Rather, the Court of Appeals went on to reason that the mother's actual relocation to Colorado made appropriate a review under the statute, and addressed the significant factual differences between this case and Grigsby.

C. Father's contact with the children occurred in Colorado, and up until the time of trial it was not indicated that the mother's intention was to relocate back to Hawaii based upon a change of employment for her husband.

The appellate decision recognized that the actual, accomplished relocation rather than an anticipated future one was a proper basis for the court to address a modification. The father, and in seeking temporary relief, made trips and had contact with the children where they had relocated, and that the mother's attempt after the trial decision was announced was an attempt to manipulate and to "veto" the decision contrary to the legislative policy of the parenting plan statute.

D. The trial court considered the evidence that trial to address the best interests of the children.

The court made its analysis and in distinguishing factually and circumstantially the Grigsby case and determined that the mother in moving to the continental U. S., and the outcome that resulted in a "more equal visitation and

sharing of parental responsibility" served the best interests of the children and that the court had all the necessary information after trial to make such a determination.

REASONS THIS COURT SHOULD DENY REVIEW

- A. This court should deny review because there has been an appropriate determination irrespective of the mother's alleged return to the state of Hawaii.**

It became apparent to the trial court, and in the commentary of the Court of Appeals decision that the mother attempted to avoid or thwart a new parenting plan as granted by the trial court. Consistent with the statutory procedure, the Court of Appeals further recognized that upon a decision to relocate again under the guise of an attempted withdrawal of her prior notice of relocation to Colorado, the mother could file a petition accordingly. The Court of Appeals decision has consistently analyzed this case in relation to Grigsby in upholding the trial court.

B. This court should deny review because the Court of Appeals decision is consistent with Grigsby.

The Court of Appeals decision makes a consistent and rational analysis in the distinctions between this case and the decision in Grigsby in Division I which does not result in an inconsistency in the Appellate divisions.

C. The court made an appropriate modification of the parenting plan as authorized by the prior Decree of Dissolution.

As contended in the Brief of Respondent in the Division of the Court of Appeals, Respondent Davis raised the issue of the court having properly exercised its authority in hearing the modification based upon the Decree provisions relating to the need for review after the children were the age of two. This issue is raised in this answer in regard to RAP 13.4(d). As argued in the Brief of Respondent in the event that this court grants review, this issue should be addressed in the additional briefing and hearing of the matter apart from the issues

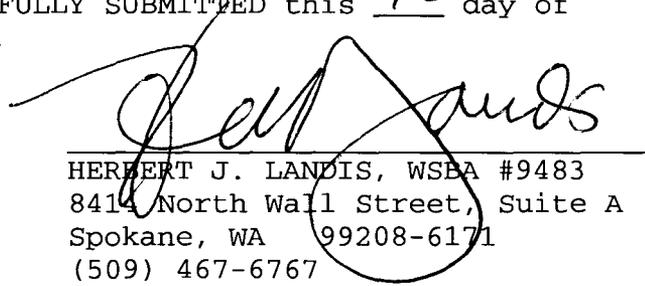
raised in the Published Opinion under the Court of Appeals, Division III, No. 31348-4-III. The Respondent recognizes how the Court of Appeals perceived the trial court rationale, but contends that an additional basis exists for the trial court to have modified the parenting plan. The provision of the initial Decree incorporating the parenting plan is not an open ended reservation as addressed in In re Parentage of C.M.F., 179 Wn.2d 411, 314 P.3d 1109 (2013).

CONCLUSION

Respondent Davis sought modification of the Parenting Plan in an appropriate manner the trial court did so order by virtue of the mother's relocation and the Court of Appeals decision is not in conflict with the Grigsby case in Division I. Additionally, based upon the review authority granted in the original Decree, apart from the interpretation of the trial court ruling by the Court of Appeals, there was a proper exercise of authority by the trial court.

The Petition For Review should be denied,
and this court should decline review.

RESPECTFULLY SUBMITTED this 1st day of
August, 2014.



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