NO. 77974-5-I

COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

In Re the Marriage of

ALINA FAROOQ, Respondent

v.

AZEEM KHAN, Appellant

REPLY BRIEF OF APPELLANT

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I. INTRODUCTION

This has been an extremely litigious case – first with the Parties' dissolution which included at least one GAL report (CP 1-5), a trial, and the original parenting plan dated 9/5/14 (CP vol.2 36-46); and then with an attempted relocation which was vacated (CP 6-7), then set for trial (*Id* at 6) and denied on 8/31/2015 (CP 11-14) – followed by a second notice by the Mother to relocate that was ultimately allowed by the Superior Court, Judge North in December of 2016,(Ex. A to Respondent's Brief)[1] despite the Father's objections.[2]

Also, as part of this case, the Mother has been held in contempt (CP 8-10), has been denied relocation (CP 11-14), had an order allowing relocation vacated (CP 6-7)[3] before being found to have mislead the Court.

> **So I do think that Ms. Farooq misrepresented at the first trial what her financial circumstances were.** I don't think it's as bad as Mr. Khan is making it out to be, but she did indicate that she was having a lot of difficulty finding a job and that she couldn't find a job in her area of expertise here.

(VR vol 2 p. 989 lns. 18-23)

Notwithstanding that procedural background, at the center of this

[1] The "Final Order and Findings on Objection about Moving with Children and Petition about Changing a Parenting/Custody Order" was filed under a different cause number, 14-3-02506-1 SEA, instead of the dissolution and original parenting plan cause no. 13-3-10458-3 SEA

[2] And along the way, there appear to have been approximately three trials (See CP vol.2 36-46; CP 23-27, CP vol.2 151-152) including a three day "hearing" or trial on 8/26-8/27 and 8/31 relating to the first or second attempted relocation by the Mother (CP 11-14) which was denied by Judge Hollis Hill on 8/31/15. And, there are approximately 700 docket entries for this case.

[3] The 7/14/15 Order vacated the Relocation Order of 2/18/15

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case are the best interests of the child. Was the decision to relocate (and then maintain that relocation) in the bests interests of the child?

In determining what were the best interests of the child, the trial court had to rely on the testimony of the Parties, the documentary evidence presented, and the GAL report (if any). The testimony of the Parties included, of course, a credibility determination and whether or not either of the Parties had prevented or interfered with visitation/custody.

Although the Mother's Responsive Brief asserts that one of the Father's assignments of error (relating to the sufficiency of evidence for the initial relocation) is untimely; no final parenting plan was entered on relocation until 12/27/17 (CP 151-162)[4]; and at the time of issuing the Relocation Order (which was labeled "final") (Ex. A to Respondent's Brief), the Court retained jurisdiction, and "reserve[ed] final ruling on the parenting plan until the review hearing is set in one year…on December 26, 2017" (CP vol.2 125-135 ¶14) At the review hearing the trial court would and did in fact consider new and old evidence with respect to the "new" temporary parenting plan – and therefore was a continuation of the trial and interlocutory orders.

As a result, it is appellant's position that all Azeem Khan's Notice of Appeal was timely, and preserved his arguments with respect to the

[4] The Notice of Appeal was filed within 30 days, on 1/24/18.

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initial (December 2016 temporary plan – CP vol.2 125-135) and final decisions on Relocation (December 2017) (CP 151-162).

II. RE-STATEMENT OF THE CASE[5]

This case involves an Objection to a proposed Relocation and the trial that ensued (which continued through "the review hearing" nearly a year after the "first" trial).

After a contentious dissolution/divorce proceeding, a trial was held and a first, final parenting plan was entered on 9/5/14. (CP vol.2 36-46) The Mother of the Parties' then one-year old child (now five) was named the primary custodian, and the parenting plan provided visitation to the Father. The issue of "relocating" had been raised by the Mother in the past (prior to the first Final Parenting Plan and the Guardian Ad Litem addressed this in her GAL report to the trial court: "**I recommend that Alina be ordered to stay in the area**." (CP 1-5 at CP 4 GAL report).

Still, and despite relocation having been raised during the dissolution proceedings and despite the GAL recommending against it, the

[5] Admittedly, neither *pro se* Party did a very good job citing to the record in their opening briefs. However, the Appellant nevertheless must object to the uncited and irrelevant "facts" that the Respondent includes in her brief. Without citing to any record, not even to her "Exhibits" (which were an attempt at providing a record to the Court of Appeals), these "facts" have no basis and should be ignored.

For purposes of providing a more complete record, the Appellant has now Designated Supplemental Clerk's Papers referred to here as CP vol.2. Appellant may have been under the impression that the exhibits to the Notice of Appeal would be included with the record on review.

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parenting plan was only in place for less than **five** months before the Mother again sought to relocate from Washington State to Atlanta, Georgia. (CP 6-7, CP 11-14) Initially, she was able to obtain an order "essentially by default' which the trial court then vacated after a motion from the Father. (CP 6-7)

With at least one GAL report recommending against relocation (CP 1-5) and having been so close in time to the relocation trial, after a three day trial on the relocation request by the Mother, the trial court (Judge Hollis Hill) denied the request and restrained her from relocating. (CP 11-14 at CP 14) At that time, the trial court made the following important findings making it clear that **the best interests of the child** were aligned with staying in Washington near the Father:

> 2.3.1 The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent.
> [] Does not apply.·
> [X] Does apply as follows:
>
> **The child has strong bonds with both parents which would be damaged were he to be relocated to Georgia.**
>
> 2.3 .2 Prior agreements of the parties.
> [X] Does not apply.
>
> 2.3.3 Disrupting contact between the child and the objecting party or parent is more detrimental to the child than disrupting contact between the child and the person with whom the child resides a majority of the time.
> [] Does not apply.
> [X] Does apply as follows:

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The child's contact with his father is likely to be jeopardized by relocation to Georgia.

The mother can remain in the State of Washington with the child.

2.3.4a The objecting party or parent [] is [X] is not subject to limitations under RCW26.09.191.

[X] Does not apply, although there are mutual restraining orders between the parties.

2.3.4b The following parents or persons entitled to residential time with the child are subject to limitations under RCW 26.09.191.
[X] Does not apply.

2.3 .5 The reasons and good faith of each person seeking or opposing the relocation.
[] Does not apply.
[X] Does apply as follows:

The Court <u>does not find good faith on the part of the mother</u> in so far as she cites lack of job prospects in Washington as a basis for relocation and in so far as she claims that the father has neglected his visitation rights.

2.3 .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.
[] Does not apply.
[X] Does apply as follows:

The young age of the child will make it difficult if not impossible for him to maintain his strong bond with his father if he is relocated to Georgia.

2.3.7 the quality of life, resources, and opportunities available to the child and to the relocating party in the current and proposed geographic locations.
[] Does not apply.
[X] Does apply as follows:

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Both child and mother have resources and opportunities in Washington. The quality of the school district in which the child currently lives is high.

2.3. 8 The availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent.
[] Does not apply.
[X] Does apply as follows:

Numerous barriers exist regarding creating arrangements to foster and continue the child's relations with his father should he relocate including: 1) expense of travel; 2) contentiousness of parties; and 3) mutual restraining orders.

2.3.9 Alternatives to relocation and whether it is feasible and desirable for the other party to relocate.
[ ] Does not apply.
[X] Does apply as follows:

The father is gainfully employed in Washington and he owns a home here.

2.3 .10 The financial impact and logistics of relocation or its prevention.
[] Does not apply.
[X] Does apply as follows:

Relocation would have significant financial impact on the father were he to fund regular and significant contact with his son

(CP 12-14) (emphasis added)

That decision should have ended the Mother's attempts at relocating but it did not. Instead she sought a new angle or new basis supporting her relocation – a supposed new job in Atlanta for significant pay (coupled with her assertion that she could not find work in Washington). Thus, and ultimately, the Mother attempted a "third" try at

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relocation.[6]

After the Father understandably objected, a trial was held before Judge North over three days in December 2016. (Exhibit A to Respondent's Brief, see also FN1) At that trial, the Mother presented the reason(s) for her desired move from King County to the Atlanta, Georgia area. (VR, Vol.3) The key reason behind her proposed move was a job offer that she testified that she had in Atlanta (compared to the inability to earn similar wages in Washington). (*Id*) Thus, according to Alina, there was a "substantial change" underlying her new Notice of Intent to Relocate and Petition to Modify the Parenting Plan. The Mother also testified that she was unable to find work in Washington despite what appear to be amorphous descriptions of her suggesting she searched for work without hard evidence she had. (VR Vol 3 p.300 lns 1-25 through p.312 lns 1-25; and p.313 lns 18-25)

In fact, the Respondent struggled answering questions about employment and even directly answering basic questions from the Court.

> THE COURT: I'm sorry. I do – Ms. Farooq is just completely disorganized here and I felt I need to have something copied and its not.

[6] Although only two Notices of Intent to Relocate appear to have been filed, there were multiple attempts to do. The first attempt to relocate came during the initial dissolution, before trial and before the GAL report; then a second attempt by default (that was vacated), then a third attempt that was denied (though this was a continuation of the second attempt) and then the fourth and final attempt via a new notice of intent to relocate.

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(VR vol.3 p.319, Lns 23-25)

THE COURT: Yeah, no. It's a mess…
(VR vol. 3 p.322, Ln 19)

> MR. CASSADY: -- sorry to interrupt, but I mean, after the first two pages, there are a slew of e-mails or documents that have nothing to do with her trying to get a job.
> THE COURT: Okay. And I --
> THE WITNESS: What are you talking about? BDA is the interview.
> MR. CASSADY: Azeem arrested while on vacation has nothing to do with a job.
> THE COURT: Okay. Okay.
> MR. CASSADY: Neither does fantasy and lights, talk about ranking of schools in Georgia.

(VR vol.3 p.297, lns 14-25)

After taking testimony (**but without a new GAL report other than the prior report(s) that recommended restraining relocation**), Judge North found that the job offer warranted the Mother's move outside the State despite the result on the Father's visitations and relationship with the child. (Exhibit A to Respondent's Brief: Order on Relocation). It was as if the only new evidence or change in circumstances justifying a new look at relocation was the "inability to find work in Washington despite a diligent search" and "the guarantee of a high paying job in Atlanta."[7]

After the trial, the court entered an order on December 29, 2016 allowing relocation(Ex. A to Resp. Br.),[8] and a temporary parenting plan for the couples then four year old son. The court then set a review hearing

[7] The quotes are intended as summaries of testimony.
[8] See Exhibit A to Respondent's Brief

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to be held again before Judge North in approximately one-year. (CP 125-135 ¶14; see also Ex. A to Resp. Br. at ¶5)

The reason for the review hearing was that the trial court had entered a temporary parenting plan on relocation and not a final one. The review hearing would provide Judge North the opportunity to enter a final parenting plan. And therefore, it follows, that the review hearing was an extension of the original trial (a chance for the Judge to see how things played out, have a second look and revisit the issues from the first trial).[9]

Before the review hearing, the Father obtained new facts that contradicted the Mother's testimony.[10] First, the Father learned that the Mother failed to disclose that she had worked for seven months in Washington in 2016 at Aerotek/Starbucks making $1600/week (equating to $83,200 a year). (CP 23-25 at CP 24) She had testified that she had not worked or was unable to find employment. (VR Vol 3 p.300 lines 1-25)

And, despite the Father having subpoenaed records from the Mother's alleged new employer in Georgia, neither that employer[11] nor the Mother could produce a W-2 or other proof of employment/wages for 2017 in Georgia. (*Id.*, see also Trial Exhibit 101D, SDT)

[9] Although the Father (Azeem Khan) appealed this original decision allowing relocation, it was not a final order and the Father abandoned the appeal.

[10] The Mother testified at the relocation trial that she had not been working in 2016 (VR vol 2. p. 251, Lines 1-25; p. 261, lines 1-20, VR Vol 3, p. 300 Lines 1-25)

[11] An employer/business that apparently was dissolved. See Trial Exhibit 101 E

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The Father presented this evidence to Judge North at the review hearing (*Id* and Trial Exhibits 101A: Workforce Job Summary; 101B Allegis Group Documents; and 101C Aerotek Document). He did so because the trial court's decision to allow relocation was based on the Mother's testimony about not having a job in Washington but having a very good paying job waiting for her in Atlanta, thus necessitating the relocation.

Although at the conclusion of the three day "review hearing" Judge North found that the Mother had misled the trial court (VR Vol.2 989, lns 18-23), and despite evidence that the Mother made abusive use of conflict (including repeatedly threatening to call "ICE" on the Father (CP 24, CP 26) and ICE contacting Azeem[12], Judge North chose to use the review hearing as an opportunity to make tweaks to the parenting plan and declined to make a significant change such as denying relocation and reverting back to the original parenting plan which provided for visitation and residence in Washington State.

As a result, the Father appealed, asserting that the trial court was in error by refusing to "vacate" the temporary parenting plan which had been based on the prior (perjured) testimony of the Mother (Alina Farooq).

By keeping the temporary parenting plan in place (and making it

[12] .CP 23-25 at CP 24

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final), the trial court disregarded the perjury and as a result, either provided no penalty to the Mother for lying about the relocation, or, essentially rewarded her for lying[13] -- in either or both cases, to the detriment of the best interests of the child which (absent the "new" job facts from the Mother) were found (by the GAL and the Court) to not be served by relocation away from the Father. (CP 1-5)

III. STANDARD OF REVIEW

The Appellate Court reviews the record to decide if substantial evidence supports a trial court's findings of fact. *Panorama Vill. Homeowners Ass'n v. Golden Rule Roofing, Inc.*, 102 Wn. App. 422, 425, 10 P.3d 417 (2000). Substantial evidence exists when the record includes enough evidence to persuade a fair-minded, rational person of the truth of the finding. *In re Marriage of Spreen*, 107 Wn. App. 341, 346, 28 P.3d 769 (2001). Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact. *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009)

A trial court's decision to modify a parenting plan is reviewed for abuse of discretion. *In re Marriage of McDole*, 122 Wn.2d 604, 610, 859

[13] Although no formal "motion to vacate" had been filed, Azeem Khan had raised this issue before the trial court (VR vol.2 p.988, lns 11-25) and the trial court did make an oral finding that Alina Farooq had misled the court. (VR vol.2 p. 989 lns. 18-23). Therefore, either a motion to vacate was considered by the Court, or, the review hearing acted as a continuation of the trial on relocation since no final parenting plan had yet been entered.

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P.2d 1239 (1993); *In re Parentage of Jannot*, 149 Wn.2d 123, 128, 65 P.3d 664 (2003).

This court reviews a trial court's evidentiary decisions for abuse of discretion. *Hollins v. Zbaraschuk*, 200 Wn. App. 578, 580, 402 P.3d 907 (2017) A trial court abuses its discretion when it makes a manifestly unreasonable decision or bases its decision on untenable grounds. " *In re Det. of Duncan*, 167 Wn.2d 398, 402, 219 P.3d 666 (2009)

IV. ARGUMENT

Azeem Kanh asserted two Assignments of Error[14] that relate to the issue of relocation (either from the initial trial or else the review hearing – trial continuation). However, in his Issues and Argument section, the Assignments of Error are perhaps broader. For purpose of refocusing this appeal, the Assignments of Error (and argument thereon) are:

- Whether the evidence of perjury (or untruthful evidence)[15] by the Mother (along with interference with the father's relationship with the

[14] Appellant Azeem Khan had made a facial challenge to the constitutionality of the Relocation Act under RCW Chapter 26.09. This argument is abandoned in this appeal and instead, the challenge to the relocation act is part of Assignment of Error 2: Did the trial court apply the Relocation act correctly in this case. Appellant also forgoes the challenge that he raised to certain financial considerations or "caps" relating to his travel to Atlanta, and will reserve those for further proceedings in the trial court. The focus for the Appellant in this Court is squarely on the trial court's decision regarding relocation and the parenting plan.

[15] Fraud, dishonesty or misleading or false testimony – however one may phrase it. Though the Court did make a finding that both Parties had credibility issues. (CP 36-46 at CP 37-38 ¶3)

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child) was sufficient to restrain relocation and revert to the original Washington based parenting plan (Assignment of Error #1).

➢Whether the trial court properly applied the Relocation Act to the facts of this case, including utilizing the best interests of the child standard and whether there was sufficient evidence (Assignment of Error #2)

This Reply Brief will take these arguments/assignments in reverse order.

ASSIGNMENT OF ERROR 2: The Trial Court failed to weigh the factors required by the Relocation Act and failed to ascertain the best interests of the child.

There is a 'strong presumption in favor of custodial continuity and against modification.'" *In re Marriage of McDole*, 122 Wn.2d at 610 And, there is a strong overlap between case law considering "relocations" versus those considering "modifications" of a parenting plan which include a relocation. In both cases, the best interests of the child must be and remain paramount.

A trial court's authority to modify a parenting plan is strictly controlled by statute. *In re Marriage of McDevitt*, 181 Wn. App. 765, 769, 326 P.3d 865 (2014). The best interest of a child is served by stability unless a change is "required to protect the child from physical, mental, or emotional harm." 26.09.002 **One action that is detrimental to a child's best interests is interference with a parent's relationship to that child**.

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In re Marriage of Velickoff, 95 Wn. App. 346, 357, 968 P.2d 20 (1998).

RCW 26.09.260 governs modification of parenting plans. *Bower v. Reich*, 89 Wn. App. 9, 14, 964 P.2d 359 (1997) This statute requires that a court find a substantial change in the circumstances of the child or the nonmoving party before modifying a parenting plan. 26.09.260 The court must also find that modification is necessary for the best interests of the child. *Id* On the other hand, relocations are governed by RCW 26.09.405 et seq. and are presumptively permitted if no one objects within 30 days of receiving notice. RCW 26.09.520 However, an objecting parent 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," RCW 26.09.520. RCW 26.09.520 sets forth 11 factors to be considered for relocation. These factors were considered in minimal fashion by the trial court and are addressed below.

> (1) The relative strength, nature, quality, extent of involvement, and stability of the child's relationship with each parent, siblings, and other significant persons in the child's life;

Unlike the trial court in the first relocation trial, and despite incredible patience throughout the first and second trials (on relocation) Judge North failed to make written findings with respect to a number of significant factors including this one – other than noting that "Ms. Farooq is the primary caretaker of the child." (Ex. A to Respondent's Br. ¶4(a).

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That "finding" fails to address the strength and nature of the child's relationship and involvement of each parent. And thus fails to address the best interests of the child.[16] Judge North does conclude (without the findings that support this) that "the court is allowing the children to move and the changes are in the children's best interest considering the move." (*Id*. at ¶5) (Order on Relocation)

While the factors are not meant to be prioritized, determining the best interests of the child (and the legal standard to apply) are crucial to the trial court's decision here. If the best interests of the child cannot be determined because of a lack of evidence, and there are a lack of findings to support a relocation determination, then the case should be remanded for additional findings with a recommendation that either the prior GAL report be adopted or if the trial court deems necessary, a new GAL report should be made.

> (2) Prior agreements of the parties;
>
> [none]
>
> (3) Whether disrupting the contact between the child and the person with whom the child resides most of the time would be more detrimental to the child than disrupting contact between the child and the person objecting to the relocation;

[16] The findings also fail to address the amount of time that each parent has with the child to determine whether or not a presumption in favor of relocation (or the Relocation Act itself) would apply.

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Judge North found that "It would be more detrimental for the child to not be with Ms. Farooq the majority of the time." But that alone does not address relocation. If she remained in Washington, this would be unaffected. (Ex. A to Resp. Br. Order on Relocation ¶4(c))

> (4) Whether either parent or a person entitled to residential time with the child is subject to limitations under RCW 26.09.191;
>
> [yes there were .191 factors for both parents but no limitations]
>
> (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;
>
> Here the Court found that "Ms. Farooq intended to relocate in good faith because of a job and opportunities in education in Atlanta, GA." (Ex. A to Resp. Br., Order on Relocation ¶4(e))

This finding is not based on the best interests of the child, and instead, is based on the interests of the Mother in relocating. And, as addressed in the factual section above and in the argument section below, it turns out that Ms. Farooq's intentions were <u>not</u> in good faith. Thus, while this finding was arguably supported during the "first" trial before Judge North. It was not supported during the second trial (review hearing). Judge North should have vacated or changed his finding under this prong since the evidence did not support leaving the finding as it was.

> (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;

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Judge North found: "If move is allowed: Daniyal is young for a long distance relationship, but his ability to have a long distance relationship is better than it was 16 months ago. Daniyal is more able to maintain a long distance relationship." (Ex. A to Resp. Br. Order on Relocation ¶4(g))

This finding does not address the needs of the child and the impact the relocation (or its prevention) would have on the child's physical, educational and emotional development. It just finds that at this age, it's a little easier for the child to be apart than it was a year prior. And, that finding was made despite no new GAL report and no expert or independent witness on the development of the child, the child's needs or impact that this move could have.

And the lack of a finding here would appear to contradict the standard found in RCW 26.09.002[17] (That the best interest of a child is served by stability unless a change is 'required to protect the child from physical, mental, or emotional harm.')

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

[17] Even though 26.09.002 applies to Modifications, this "best interest" standard surely applies in all cases, regardless of whether there is a modification or a relocation (and hence likely why the Appellant attempted a constitutional challenge to the statute – if in case the presumption of a parent's relocation trumps the best interests of the child – but it doesn't, it can't).

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> Judge North found that "The quality of life for Ms. Farooq and Daniyal is better in Atlanta, GA." (Ex. A to Resp's Brief, Order on Relocation ¶4(h))

However, Judge' Hill's findings (CP 11-14) contradict this finding, and with more detail, particularly that the quality of the school district where the child resided was high and that the relationship between the father and the child would be damaged.

So what evidence supports Judge North's finding with respect to this prong? Ms. Farooq's life will be better, she asserts, but what about the child? What specific facts lend to a better life in Atlanta, especially without the Father's continuous involvement? Especially after a recent trial that found the opposite and without an updated GAL report ordered by the trial court.

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

The Court wrote: *Findings:* It is important to allow as much time as possible between Mr. Khan and Daniyal. ." (Ex. A to Resp's Brief, Order on Relocation ¶4(i)) But if that is the case, then wouldn't a denial of the relocation serve that interest/finding. Thus, isn't a finding in favor of relocation, it is a finding that the best interests of the child are served by "as much time as possible with Mr. Khan", which in turn means keeping the current plan.

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And, if the idea is to have as "much time as possible with Mr. Khan", would that not require a finding by the trial court as to what the visitation was at the time of relocation and whether the Relocation Act and its presumption applied at all? And whether instead, the modification procedures (and adequate cause) should have applied to this case.

Appellant's opening brief asserted that he had approximately a 50/50 plan. However, the mother testified that she had the child "80 percent of the residential time since his birth until now". (VR vol.1 p.17 lns 9-11) But, in its findings, the trial court does not address the visitation arrangement that was in effect at the time in terms of division of time – and sometimes the parenting plan itself does not determine what the parents do in actuality or as a practicality. If the Father had substantial visitation at the time, and if the trial court found that the more visitation with the Father, the better, then in that case, shouldn't the trial court also be considering the adequate cause threshold under these circumstances? Especially where a recent relocation trial has just taken place.[18] But, be

[18] Where parents share equal residential time under a parenting plan, the plain language of the CRA prevents its application. *In re Marriage of Snider and Stroud*, 6 Wn. App. 2d 310, 317, 430 P.3d 726 (2018); *In re Marriage of Worthley*, 198 Wn. App. 419, 428, 393 P.3d 859 (2017). In that situation, both parents are presumptively fit, and neither is entitled to a favorable presumption. *Snider*, 6 Wn. App. 2d at 317; *Worthley*, 198 Wn. App. at 431 (where "both parents are equally entrusted to act in the child's best interests," the CRA presumption in favor of the relocating parent is inapplicable).

Whether the CRA's provisions apply depends on the factual question of whether the child resides with one parent the majority of the time; custodian designation is not controlling. *In re Marriage of Jackson*, 4 Wn. App. 2d 212, 220, 421 P.3d 477 (2018)

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that as it may, the appropriate action to take is to remand for a determination by the trial court of the approximate days that the Father had visitation in certain time frames so that a determination as to whether the presumptions and/or relocation act should have applied.

> (9) The alternatives to relocation and whether they are feasible and desirable for the other party to relocate also;

"Findings: It is not feasible for Mr. Khan to move to Atlanta, GA" (Ex. A to Resp's Brief, Order on Relocation ¶4(j))

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

"The financial impact favors the relocation because there are better opportunities for Ms. Farooq in Atlanta, GA." (Ex. A to Resp's Brief, Order on Relocation ¶4(k)) While the Mother presented evidence that this was the case, it does not address the bests interests of the child, and, as it turns out, was false and is not supported by the evidence (presented at the Review Hearing).

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

Although this factor was not addressed in the trial court's order, it

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The chief question is whether the parenting plan evidences an intent to share child-rearing and for nearly equal time. If the plan is relatively equal in time shared, then the parent intending to relocate must move for modification of the parenting plan and prove adequate cause. RCW 26.09.260(1). The focus then is on the best interests of the child and <u>not</u> the interests of the relocating parent.

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is relevant because a review hearing was ordered.

In addressing the 10 factors that the Court did, not a single factor truly addresses the best interest of the child. The ones that may address the bests of the child imply that restraining relocation would be in the best interests of the child.

Although a trial court only manifestly abuses its discretion when it makes an unreasonable decision or bases its decision on untenable grounds, a court's decision is manifestly unreasonable if: it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn. 2d 39, 47, 940 P.2d 1362 (1997)

Without findings that provide the Parties and the Appellate Court with sufficient evidence as to why relocation should be allowed in this case, and why that is in the best interest of the child, the relocation should not be permitted to stand. The case should be remanded to the trial court to take additional evidence and make additional findings with respect to the best interests of the child.

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ASSIGNMENT OF ERROR 1: During the Review Hearing, the Evidence of Perjury and Evidence of the Mother's Interference with the Father's Relationship with the Child was Sufficient to Restrain Relocation and/or Cause Reversion back to the original Final Parenting Plan

As discussed above, after being denied relocation after a trial before Judge Hollis Hill, the Mother filed a new Notice of Intent to Relocate citing a new ground for her move (a new "substantial change in circumstances"). At the subsequent relocation trial (on 12/14/16, 12/15/16 and 12/22/16) the Mother testified that while she could not find work in Washington[19] that she was able to secure a guaranteed job with a high salary in Atlanta, Georgia. (VR vol. I p.17 lns 21-25; p.18 lns 1-13)

But the company that Alina Farooq alleged to be working for (and had testify) only made/grossed $120,000 per year (Trial Exhibit 101E) making it suspicious if not impossible to pay the salary alleged (without more evidence to support where the money would come from).

And, on top of that the business became insolvent by at least the date of the review hearing. (Trial Ex 101E)

And, the Father submitted evidence proving that the Mother had also lied about not earning income in Washington in 2016,[20] since, she had

[19] VR vol.5 p. 601 lns 19 – 25; p. 602 lns 1-25; p 603 lns 1-25; p. 604 lns 1-25; p. 608 lns 19-25; p.609 line 1-25; p. 612 lns 1-13
[20] VR vol.5 p. 601 lns 19–25; p. 602 lns 1-25; p.60

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been earning $1600/week (which would equate to an $83,200/year pace if permanent). (Trial Exhibit 101C – Aerotek Document)

In addition to the evidence that showed that Mother had lied about her alleged lack of Washington income and alleged prospects of a well-paying Atlanta, GA job, there was evidence presented at the Review Hearing portion of the trial that the Mother had repeatedly attempted to interfere with the Father's residential time (after her move to Atlanta) if not have him removed from the picture altogether (through deportation). (Trial Exhibit 111, VR vol.5 p.592 Lns 1-20) And, the Father testified that he was contacted by a Department of Homeland Security from Atlanta about his residence and visits to Atlanta. If the Father cannot freely visit his child in Atlanta in accordance with the temporary parenting plan due to the threats of arrest and immigration removal, then that is interference with the Father's residential time and is grounds for denial of relocation, or reversion to the original plan.

Although a trial court only manifestly abuses its discretion when it makes an unreasonable decision or bases its decision on untenable grounds. a court's decision is manifestly unreasonable if: it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on

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an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn. 2d at 47

For the Court not to consider the evidence submitted by the Father or to have afforded it the proper weight results, in this case, under these circumstances, a manifest abuse of discretion or based upon untenable reasons/foundations including insubstantial evidence to support the trial court's decision to enter a final parenting plan that permits or cements the relocation to Atlanta, Georgia (when the original temporary plan and decision to allow relocation is based upon the lack of income in Washington and the promise of a new job in Atlanta – both of which were provably false).

It is not tenable to allow the status quo to continue despite no GAL report discussing the ramifications of the relocation on the child, and/or the effects on him from the limitations on visitation with the Father. Just like with the original relocation trial, at the Review Hearing, the trial court either improperly substituted its judgment for the GAL or improperly substituted its judgment as to the bests interests of the child – improper because there were insufficient findings and insufficient facts to support such findings.

And, when taken in the light of the bad faith/fraud on the court, this case must be remanded to the trial court and published so that parents

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know that they can't intentionally deceive the court for purposes of gaining a favorable relocation result, and then delay the process after relocation such that the Washington Courts would never disturb the original decision on relocation (even if it were temporary).

Washington needs to take a strong stance to deter perjury.

By remanding this case for additional evidence and findings and, hopefully, a new GAL report, the Appellate Court sends the message that parents who misrepresent material facts will not be free to benefit.

And, in the end, and despite the fraud and bad conduct of the Mother, it may be that the GAL(s) (perhaps one in Georgia and one in Washington) recommend that the child remain in Atlanta. But, by doing nothing, we serve a great injustice to this case, this child, the Father and to future parents and judges who are tricked and defrauded by a parent seeking to justify their relocation (knowing that if they can just move, no matter how far the deception went, they'll never be asked to return).

VI. CONCLUSION

For these reasons, the King County Superior Court decision of King County Superior Judge North in entering a final parenting plan allowing relocation should be reversed and remanded for a new trial on the issue of relocation with the directive to have a new GAL report made.

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DATED this 14th day of January, 2019

By _____

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PROOF OF SERVICE:

I, Noah Davis, certify that I filed the foregoing with the Court using the Court's electronic filing system which sent an electronic copy to the Respondent, Alina Farooq, at the address that she has on file with the Court: alinaaaa@me.com

So certified, this 14th day of January 2020,

s/Noah C. Davis
Noah C. Davis, #30939

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