

CASE NUMBER
201703018170
SN:524.0 PC:9

FILED
9/7/2023
Timothy W Fitzgerald
Spokane County Clerk

SUPERIOR COURT OF WASHINGTON, COUNTY OF SPOKANE

In re:

Sirinya Surina

Petitioner

And

Aaron Surina

Respondent

No. 17-3-01817-0

**PETITIONER'S RESPONSE BRIEF TO
RESPONDENT'S MOTION FOR
EMERGENCY RELIEF**

INTRODUCTION

1. On May 30, 2023, Ms. Surina notified Mr. Surina that she had closed on a home in Cheney by text message and was intending to relocate the principal residence of the parties' children. *Dec. of S. Surina*, 2:5-7 (filed June 16, 2023).
2. Ms. Surina began seeking legal counsel and a Notice of Appearance was filed June 15, 2023.
3. On June 9, 2023, Mr. Surina served his Summons and Objection to Ms. Surina's relocation. [SN: 482].
4. On June 16, 2023, Ms. Surina served her Notice of Intent to Relocate. [SN: 493]
5. A party intending to relocate may not do so during the period in which any party entitled to time with the children may object. *RCW 26.09.480(2)*.
6. Only the parties are entitled to notice of an intended relocation. The Objection has been filed, served, and Answered. No other party is left to respond.

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- 1 7. A party intending to relocate may not do so if the objecting party notes a hearing to prevent
2 the relocation for a date **not more** than fifteen days following timely service of an
3 objection to relocation. *Id.*
- 4 8. To properly restrain Ms. Surina's relocation on a temporary basis, Mr. Surina's Motion to
5 Restrain was to be filed and properly noted not later than June 24, 2023, which calculates
6 a true deadline of June 26, 2023. *RCW 26.09.480(2); CR 6.*
- 7 9. Ms. Surina relocated on June 28, 2023. *Dec. of S. Surina, passim* (filed July 10, 2023);
8 *Dec. of Ruben Ingebritson*. [SN: 512].
- 9 10. Mr. Surina filed a Motion to Restrain the temporary relocation on July 3, 2023, that was
10 not accompanied by a Notice of Hearing. [SN: 496].
- 11 11. Mr. Surina filed a Motion to Restrain the temporary relocation on July 12, 2023 that was
12 substantially different from the Motion filed on July 3, 2023. [SN: 506]. This Motion was
13 accompanied by a Notice of Hearing for a date that was not confirmed by the court. [SN:
14 497].
- 15 12. Mr. Surina did not properly note a hearing on a Motion to Restrain until sixty-five days
16 after the June 26, 2023, deadline. The hearing was properly noted on Wednesday, August
17 30, 2023. [SN: 520].
- 18 13. After June 26, 2023, the issue of a temporary restraint of Ms. Surina's relocation was
19 foreclosed. The final relocation is the remaining triable issue.
- 20 14. To progress this matter to trial, counsel for the Petitioner dispatched Interrogatories and
21 Requests for Production to the Respondent by first-class mail on July 5, 2023. No answers
22 have been received as of September 7, 2023.
- 23 15. The court has not yet issued a Case Scheduling Order setting this matter for trial.

ARGUMENT

1. MR. SURINA’S MOTION TO RESTRAIN IS UNTIMELY AND ITS REQUESTS
ARE INCOMPATIBLE WITH WASHINGTON LAW

“Unless the special circumstances described in RCW 26.09.460 apply, the person intending to relocate the child shall not, without a court order, change the principal residence of the child **during the period in which a party may object...**If the objecting party notes a court hearing to prevent the relocation of the child **for a date not more than fifteen days following timely service of an objection to relocation, the party shall not change the principal residence of the child pending the hearing...**” (emphasis added)

RCW 26.09.480.

Mr. Surina’s Summons and Objection were filed on June 12, 2023. [SN: 481]. No other person is entitled to notice of the relocation. Ms. Surina was served the objection on June 9, 2023. [SN: 482]. Per RCW 26.09.480, to properly restrain the relocation on a temporary basis, Mr. Surina must have filed, served, and noted a hearing to be heard within fifteen days of June 9, 2023. It is insufficient for a Notice of Hearing to simply be filed; the motion must be **heard** within fifteen days. *RCW 26.09.480*. The legal deadline for this filing was Saturday, June 24, 2023, which the civil rules extend to Monday, June 26, 2023. *CR 6(a)*. Mr. Surina’s motion to restrain was not filed until July 3, 2023 which was **not** accompanied by a Notice of Hearing. [SN: 496]. A second Motion to Prevent a Temporary Relocation was filed on July 12, 2023. [SN: 506]. An improperly noted Notice of Hearing for July 28, 2023 was filed simultaneously. [SN: 507].

Mr. Surina filed a Motion for Emergency Relief on August 29, 2023 that is, in essence, a Motion to Restrain Ms. Surina’s relocation with a hearing date of September 14, 2023. [SN: 519; 520]. The parties’ final parenting plan that mirrors the state’s template forms explicitly delineates

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1 when a custodial parent may move **after** an objection is served but **before** trial without a court
2 order. The custodial parent may relocate temporarily unless,

- 3
- 4 • The other party gets a court order saying the children cannot move, or
- 5 • The other party has scheduled a hearing to take place no more than 15 days after the
- 6 date the *Objection* was served on the custodian. (However, the custodian may ask the
- 7 court for an order allowing the move even though a hearing is pending if the custodian
- 8 believes that s/he or a child is at unreasonable risk of harm.)
- 9 • The court may make a different decision about the move at a final hearing on the
- 10 *Objection.*”

11 *Final Parenting Plan*, 7 (filed Dec. 20, 2019); *FL All Family 140 Template Form as amended*
12 *05/2016.*

13 Accordingly, Mr. Surina has been on notice that his hearing needed to be scheduled within
14 fifteen days of serving his objection, failed to do so, and his motion should be denied.

15 2. MR. SURINA’S REPRESENTATION OF THE PRIOR PROCEEDING
16 INTENTIONALLY MISLEADS THE COURT ON WASHINGTON LAW AND THE
17 COURT’S OWN RULING

18 Mr. Surina misquotes the court stating, “Judge Dixon clarified on June 23, 2023 that the
19 children would not be moved prior to a timely filed trial on the matters.” *Resp. ’s Emergency*
20 *Mot.*, 2. Mr. Surina’s representation of this court’s decision is factually incorrect and is
21 incompatible with Washington law.

22 “THE COURT: ...With respect to moving, she has not moved. She has stated on
23 the record that she still lives in the same school district. There will need to be –
24 you have her address. There will need to be a trial on the relocation and on your
25 petition to change custody. That will not be decided on a motion except maybe on
26 a temporary basis. **So if we’re worried about timelines, I suggest that one or**
27 **both of you make sure that the pleadings have been answered and note it for**
a trial setting.” (emphasis added). *VROP*, 21:18-22.

1 As noted above, Washington law dictates three applicable deadlines regarding the relocation
2 of children subject to a Final Parenting Plan. First, if no objection is filed and served within 30
3 days of providing notice, a full and final order granting the relocation shall be entered. *RCW*
4 *26.09.500*. Second, if an objection is filed but no Motion to Restrain and Notice of Hearing are
5 filed to be heard within fifteen days, the temporary relocation may occur, but the matter shall
6 proceed to a contested trial on the merits for a final determination. *RCW 26.09.480(2)*. Finally, if
7 an Objection is served and a Motion to Restrain is noted to be heard within fifteen days after
8 service of the objection, the party intending to relocate **shall not** change the principal residence
9 of the children without a court order. *Id.*

11 The instant matter falls into the second category. An Objection was filed and served but the
12 Motion to Restrain was not filed and properly set for hearing until **eighty-two** days after service
13 of the Objection. The first Motion to Restrain was not noted for a hearing until July 12, 2023 –
14 **thirty-three** days after service of the Objection. Mr. Surina’s representation that this court
15 misunderstands Washington law is incorrect and inappropriate. Ms. Surina, and all other litigants,
16 rely on Washington law to dictate their actions. Mr. Surina substantially missed the applicable
17 deadline and now seeks to regain position with this untimely motion.

19 “THE COURT: I understand. Now, has she moved out of the school district with the children?
20
21

22 MR. BISCEGLIA: She has not, your Honor. **The home has closed**; that is correct.”

23 THE COURT: That she purchased?
24

25 MR. BISCEGLIA: **Yes, that she purchased.**

26 THE COURT. Okay. But she still lives within the kids in the same school district?
27

1 MR. BISCEGLIA: That's correct."

2 (emphasis added).

3
4 *VROP*, 17:10-18.

5
6 The court correctly opined that the instant relocation will need to be submitted for a contested
7 trial for a final determination. This is proper procedure for the determination of a relocation where
8 there is no agreement of the parties. However, this court's ruling is not in juxtaposition with
9 Washington law as Mr. Surina represents.

10
11 3. MS. SURINA IS PREJUDICED BY MR. SURINA'S BAD FAITH OBJECTION

12 Ms. Surina faces substantial prejudice by Mr. Surina's bad faith objection, motion, and lack
13 of adherence to mandatory deadlines. As indicated on the record, Ms. Surina had closed on a
14 home at the contempt hearing before Judge Dixon on June 23, 2023. *VROP*, 18:7-12. "The
15 timeline of closing, hiring an attorney, filing. So I wanted to note that into the record." *Id.* The
16 upcoming relocation was echoed in her pleadings before the court for consideration. *Dec. of*
17 *Sirinya Surina*, [SN: 486].

18
19 Ms. Surina's intended relocation has already been before the court previously on contempt
20 where Mr. Surina contended Ms. Surina had already relocated. She had not relocated at that time
21 and the court declined to make a finding of contempt. Ms. Surina never concealed the fact that
22 her home had closed, her lease was ending, and she had nowhere else to go. *Not. of Int. to Reloc.*,
23 *passim*. "The house has closed, but I was hesitant to file anything with the court before the
24 transaction closed and I knew where I was going. The notice of intent to relocate requires I list a
25

1 new address...**I could not do that if I did not know where I was going...**” *Dec. of Sirinya*
2 *Surina*, 1:24-2:2 [SN: 486].

3
4 Mr. Surina brings a bad faith objection to Ms. Surina’s relocation when no request to change
5 the parenting plan has been made, the new school for the parties’ children is more than suitable,
6 and the travel time of the parties increases by a mere eleven minutes. *Dec. of Sirinya Surina*, 3:22-
7 23 (filed July 10, 2023). Ms. Surina relied upon Washington law and Mr. Surina’s failure to
8 properly note a hearing for the fifteen days after his objection was served prejudices Ms. Surina
9 by shifting Mr. Surina’s obligations onto her.

10
11 Mr. Surina has not been substantially harmed by Ms. Surina’s temporary relocation. In fact,
12 he has suffered no articulable harm. Ms. Surina’s new home is fifteen minutes from Mr. Surina’s
13 residence, and no request was made by Ms. Surina to modify the Final Parenting Plan. *Dec. of S.*
14 *Surina*, Ex. B (filed June 16, 2023). Mr. Surina’s claim that the children’s change of school poses
15 severe detriment is also untenable. Mr. Surina has no decision-making authority over the
16 children’s education which includes where they attend school. *Final Parenting Plan*, 2 [SN: 349].

17
18 Mr. Surina’s objection is based on issues that have previously been litigated before this court.
19 In his July 12, 2023 Motion to Restrain Ms. Surina’s relocation, Mr. Surina indicates the
20 circumstances do not justify allowing the move before the court makes a final decision stating,
21 “*The petitioner works 6 days a week regardless of the claims that she only spends 20 minutes a*
22 *week at her business. She’s the sole proprietor of the lounge and bar. I am a stay at home Dad.*”
23 [SN: 506]. Ms. Surina and other witnesses have already responded to this allegation. *Dec. of S.*
24 *Surina*, 2:23-3:5 (filed June 16, 2023); *Dec. of A. Ahenakew-Moccasin*, [SN: 498]. The issue of
25 Ms. Surina’s presence at her restaurant has already been litigated and contradicted by multiple
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1 sworn declarations, but Mr. Surina did not like the court's ruling, so he rejects it. This intent is
2 echoed in his current motion where Judge Dixon's statements of procedure were deliberately
3 misstated to fit Mr. Surina's requests. Accordingly, Mr. Surina's Motion to Restrain is untimely,
4 brought in bad faith, and should be denied.

5
6 **CONCLUSION**

7
8 Washington law specifies three applicable deadlines for parties involved in a relocation action.
9 First, if no objection is filed and served within 30 days of providing notice, a full and final order
10 granting the relocation shall be entered. *RCW 26.09.500*. Second, if an objection is filed but no
11 Motion to Restrain and Notice of Hearing are filed **to be heard** within fifteen days, the temporary
12 relocation may occur, but the matter shall proceed to a contested trial on the merits for a final
13 determination. *RCW 26.09.480(2)*. Finally, if an Objection is served and a Motion to Restrain is
14 noted to be heard within fifteen days after service of the objection, the party intending to relocate
15 **shall not** change the principal residence of the children without a court order. *RCW 26.09.480(2)*.
16

17 Mr. Surina's Motion to Restrain Ms. Surina's temporary relocation is untimely and
18 incompatible with Washington law. The Motion misstates the record and fails to contemplate the
19 mandatory factors prescribed by RCW 26.09.520 that may give the court a factual basis to
20 evaluate the intended relocation. For the foregoing reasons, Mr. Surina's Motion should be denied
21 because it is untimely, fails to consider applicable law, and prejudices Ms. Surina.
22

23 SUBMITTED this 7th day of September, 2023.

24 

25 Jane E. Brown, 25093

26 Jonathan P. Bisceglia, 58463

27 Attorneys for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September 2023, I caused to be served a true and correct copy of the foregoing document, by the method indicated below and addressed as follows:

Aaron Surina
PO Box 30123
Spokane, WA 99223
Aaron.surina@gmail.com
aaron@surina.org

_____	U.S. MAIL
_____	OVERNIGHT MAIL
_____	DELIVERED
_____	FACSIMILE
<u> X </u>	E-MAIL


Jonathan P. Bisceglia