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TIMOTHY W. FITZGERALD
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SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

SIRINYA SURINA, Petitioner And AARON SURINA, Respondent.	NO. 17-3-01817-0 PETITIONER'S BRIEF IN SUPPORT OF MOTION FOR SANCTIONS AND FOR ORDER RESTRICTING RESPONDENT FROM ENGAGING IN ABUSIVE LITIGATION

FACTS SUPPORTING SANCTIONS

This case has been complicated by Respondent's spurious and incomprehensible motions including, for example, motions seeking clarification of the 2019 final orders and contempt of child support orders where it is Respondent who is the payor of support and who is in arrears paying his support.[1] Historically, this case and cases that were offshoots of this case have been populated with Respondent's frivolous and nonsensical claims. Examples are: 1) Respondent's complaint filed in United States District Court Eastern District of Washington, 2:20-cv-00345-SMJ against the Spokane County Superior Court justices and Ms. Surina's attorney, claiming the Defendants violated Respondent's Fourth, Fifth and Eighth amendment rights. That action was summarily dismissed against all defendants. Attorney fees were awarded against Respondent. 2) Respondent filed a petition to enforce an out-of-state custody order in Spokane County Superior Court, 19-3-00129-32, alleging that there was a Thai custody order. The Spokane court determined that Respondent's allegations were litigated in the instant Spokane County Superior Court case and that the Thai custody order

[1] Since Mr. Surina filed his objection to relocation on June 9, 2023, 101 documents have been filed up to March 1, 2024. The majority of the documents have been filed by Mr. Surina.

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was obtained without formal legal notice to Petitioner. Consequently, the court found among other things: "The filing of this notice is a frivolous and vexatious action... without basis in law or fact, and solely for the purpose of harassing the Respondent." Accordingly, attorney fees and sanctions were awarded against Respondent.

Respondent's most recent filing dated March 19, 2024, captioned Motion for Reconsideration and Request to Strike Hearing of March 12, 2024, and supplemented by another pleading captioned Supplemental to Motion for Reconsideration is the most egregious example of his filings being in violation of CR 11. Again, Respondent makes assertions that fail to be grounded in fact and are not warranted by existing law or a good faith argument. They are clearly entered for an improper purpose, and his factual contentions lack any reasonable basis either upon information or belief. Among the alleged reasons behind Respondent's motion, he alleges, Petitioner's counsel "... Exhibited conduct that not only contravened ethical standards but also aimed to misconstrue the legal process concerning the custody modification trial." Respondent further alleges in his motion that "... He moved the court for modification trial and was granted that trial. That was clearly evident. Respondent did not petition the court for a relocation TRIAL, but a relocation hearing was to take place prior to the modification trial." Respondent, again, either intentionally or because of lack of knowledge, misstated or misconstrued Judge Dixon's Temporary Order about Moving with Children entered on October 31, 2023. That order provides that the children may move with Petitioner and the final decision about the move would be made at trial (emphasis added).

Respondent's motion comes despite the court's own repeated explanation to Respondent that his failure to show any reason to prevent Petitioner's relocation and that under the circumstances of this case he would necessarily have to establish adequate cause for the modification of the parenting plan. His motion is another example of when Respondent fails to get his way in court he lashes out, whether it be toward the Spokane County Judiciary or opposing counsel. Each time his actions are summarily dismissed and have resulted in either CR 11 sanctions, a finding of vexatious litigation and awards of attorney fees.

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LAW

Respondent's conduct throughout the course of the litigation has been egregious. There are several avenues to rope in Respondent's conduct.

CR 11

The court may impose sanctions, including reasonable attorney fees for violation of CR11 that states in part:

> The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

RCW 26.09.550

> The court may sanction a party if it finds that a proposal to relocate the child or an objection to an intended relocation or proposed revised residential schedule was made to harass a person, to interfere in bad faith with the relationship between the child and another person entitled to residential time or visitation with the child, or to unnecessarily delay or needlessly increase the cost of litigation.

RCW 26.51 et seq.

CR 11 and RCW 26.09.550 both provide avenues for the court to penalize Respondent for his egregious filings in conduct. What they do not do is prevent his future vexatious behavior. Left unabated, the court will again be bombarded with his nonsensical filings Petitioner will be forced to expend substantial sums defending herself. RCW 26.51 et seq. does provide an avenue to prevent Respondent's abusive litigation as defined by RCW

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26.51.020. The actions of Respondent created a rebuttable presumption that he has continuously foisted litigation primarily for the purpose of harassing or intimidating Petitioner. That rebuttable presumption is created under RCW 26.51.050 that states in part:

> (1) The same or substantially similar issues between the same or substantially similar parties have been litigated within the past five years in the same court or any other court of competent jurisdiction; or
> (2) The same or substantially similar issues between the same or substantially similar parties have been raised, pled, or alleged in the past five years and were dismissed on the merits or with prejudice; or
> (3) Within the last ten years, the party allegedly engaging in abusive litigation has been sanctioned under superior court civil rule 11 or a similar rule or law in another jurisdiction for filing one or more cases, petitions, motions, or other filings, that were found to have been frivolous, vexatious, intransigent, or brought in bad faith involving the same opposing party;

SUMMARY

As to Respondent's activities concerning the relocation action, there is no question that he has a right to object to Petitioner's relocation. Nonetheless, his continued peppering the file with motions unrelated to the relocation are frivolous and should be sanctioned under CR 11 including an award of attorney fees. Additionally, as developed during his presentation of his case at trial, it became evident that the only reason he was contesting the relocation was to modify the parenting plan and that he failed to prove any factor required to challenge Petitioner's relocation. With that, Respondent's challenge to relocation and his sundry motions of dubious merit were frivolous and not in good faith and therefore subject to sanctions under RCW 26.09.550.

Unfortunately, without action by the court, pursuant to RCW 26.51 et seq., Respondent will continue to abuse the court system by making claims, allegations, and legal contentions not warranted by existing law or reasonable argument he will continue to make unwarranted motions and claims purely to harass the Petitioner causing her to incur unnecessary legal fees.

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Respectfully submitted this 25TH day of March, 2024.

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