

PC: 12

I. INTRODUCTION

May it please the court(s); Aaron Surina, the appellant, respectfully submits this motion to vacate the order entered by the Spokane County Superior Court on April 19, 2024, which erroneously reversed a previously stipulated agreement between the parties concerning the educational arrangements for their minor children. This stipulated agreement, reached on September 14, 2023, and approved by the court, was designed to protect the children's educational continuity and emotional well-being by allowing relocation only under specific conditions. The agreement was critical in maintaining the stability of the children's education and their connections to their community and support network.

The Superior Court's order, issued without proper notice or legal basis, violated the principles of due process as established in *In re Marriage of Pape*, 139 Wn.2d 694, 989 P.2d 1120 (1999), which mandates that parties in family law cases must be given proper notice and an opportunity to be heard. The court's decision to alter the terms of the stipulated agreement without a motion from either party constitutes a clear breach of due process, depriving the appellant of the opportunity to protect his children's best interests.

Additionally, the erroneous order falls under the purview of Civil Rule 60(b)(1), which allows for relief from a judgment or order due to mistake, inadvertence, surprise, or excusable neglect. The court's action in this case was a mistake that resulted in significant harm to the children's educational stability, warranting immediate correction under this rule.

Furthermore, the court's decision is "based on untenable reasons," as defined in *State v. Derri*, 17 Wn. App. 2d 376 (Wash. Ct. App. 2021), discussing *Burrell*. A decision is based on untenable reasons if it applies an incorrect legal standard or if the facts do not meet the requirements of the correct standard. Here, the court disregarded the stipulated agreement and the legal standards governing such agreements, as established in *In re Marriage of Jacobson*, 90 Wn. App. 738 (Wash. Ct. App. 1998), which underscores the importance of adhering to agreed parenting plans that include residential placement, and *In re Marriage of Littlefield*, 133 Wn.2d 39, 51, 940 P.2d 1362 (1997), which emphasizes that, in the absence of agreement, the court has the responsibility to establish a plan in the best interests of the children.

In this case, the Superior Court's failure to adhere to the stipulated agreement and the correct legal standards represents an abuse of discretion, as no reasonable judge would have ruled as the court did in this instance. The appellant respectfully urges the court to vacate the April 19, 2024, order and reinstate the original stipulation to correct the procedural and substantive errors that have occurred, thereby ensuring that the children's education and well-being are protected as intended by the parties' agreement.

The Superior Court's order must be vacated because it was issued in violation of established legal procedures and based on incomplete and misleading information. The court, under its inherent authority and pursuant to Rule 60, has the obligation to correct such errors, especially when they have a profound impact on the welfare of the children involved.

The original stipulation, which was legally binding and in the best interests of the children, should be reinstated to restore the agreed-upon educational stability and to correct the injustice caused by the erroneous order.

This motion seeks the court's intervention to rectify a situation where the procedural integrity of the judicial process was compromised, and the rights of the appellant and his children were disregarded. The appellant respectfully urges the court to vacate the April 19, 2024, order and to reinstate the original stipulation to ensure that the children's education and well-being are protected in accordance with the agreement that was reached by the parties and approved by the court.

II. BACKGROUND

Stipulated Agreement:

On September 14, 2023, both parties agreed to, and the court approved, a stipulation regarding the educational arrangements for the minor children, specifically requiring that they attend school in Spokane School District 81, including Sacajawea Middle School and Jefferson Elementary. This agreement was made in the best interests of the children, ensuring their educational continuity and social well-being.

Erroneous Order:

Despite the clear stipulation, on April 19, 2024, the Spokane County Superior Court issued an order mandating a change in the children's school placement. This order was issued without any motion from either party requesting such a change, except

for a motion to dismiss the petition to modify custody, which had already been denied. The Court's refusal to allow the petition to modify custody pursuant to the relocation, despite the clear statutory rights of the children and the Appellant, further exacerbated the situation.

Denial of Due Process:

The Appellant's attempts to seek relief were systematically ignored, including a Request for Judicial Notice that was critical for providing context to the court. Additionally, multiple motions, including those related to the opposing party's non-compliance with child support orders and instances of custodial interference, were left unaddressed. One such example involves a motion concerning an employer's failure to follow an income withholding order, leading to an unwarranted accumulation of \$9,000 in arrears, despite garnishments from every paycheck. This situation, which went unnoticed by the court, could have severe repercussions on the Appellant's ability to maintain his livelihood.

Opposing Counsel's Misconduct:

Opposing counsel, Mr. Kempner, exhibited a blatant disregard for procedural fairness and the integrity of the court. He disregarded the Respondent's timely filed motions, which were served, noted for hearing, and accompanied by proposed orders. Without responding to these motions, he acted as though his long tenure as an attorney afforded him the privilege to manipulate the court's process. He submitted orders that did not reflect the facts or findings of the court, contributing to a legal landscape where

the Appellant's motions were sidelined, and the orders he submitted became the default law.

Fraud on the Court:

During the March 12, 2024 hearing, Mr. Kempner further compounded the injustice by misleading Honorable Judge Palubicki. He misrepresented the case's status, acting as if the relocation was still pending, despite the fact that it had already been resolved through a stipulated order on October 31, 2023. The relocation had been permitted based on the parties' agreement, which had been thoroughly litigated and settled. Despite this, the court was misled into believing that new orders were required, effectively reversing the established stipulation without any formal motion, notice, or hearing, thereby denying the Appellant due process.

Violation of CR 60:

The court, through its inherent authority under CR 60, has the power to correct "clerical mistakes" and other significant errors in its orders. The orders issued on April 19, 2024, were not only procedurally flawed but also substantively incorrect, as they contradicted the existing stipulation and the parties' agreement. The Appellant was never notified of any motion to dismiss the stipulation, and no hearing was held to discuss such an action. The resulting orders were therefore issued in clear violation of due process and should be vacated to prevent further harm to the children's educational and emotional well-being.

This situation led to the issuance of orders that were not supported by the procedural history or the facts of the case, ultimately harming the children by disrupting their educational stability without any legitimate legal basis. The court must act to correct these errors and reinstate the stipulated agreement to protect the best interests of the children.

III. ARGUMENT

1. **Violation of Procedural Due Process:** The court's decision to reverse the ~~agreed-upon stipulation without a motion violates procedural due process.~~
Parties are entitled to a fair opportunity to argue their case, including any changes to agreed-upon stipulations which significantly affect their rights and the welfare of their children.
2. **Best Interests of the Children:** The initial stipulation was agreed upon considering the best interests of the children. The unilateral reversal of such a stipulation without comprehensive evaluation or justification disrupts the children's educational and social stability.

IV. RELIEF SOUGHT

Aaron Surina respectfully requests that this Court:

- (a) **Vacate the Order Issued on April 19, 2024:**

This order, which contradicted the previously approved stipulation between the ~~parties regarding the children's schooling, was issued without proper motion or grounds.~~

The stipulation, which was agreed upon by both parties and adopted by the Court, permitted the relocation on the condition that the children's schooling would not be disrupted. The relocation was not denied because the agreement was made in the best interests of the children, and the stipulation was drafted and submitted by counsel for the Petitioner on October 31, 2023. However, the order issued on April 19, 2024, was based on misrepresentations and omissions by Petitioner's counsel, who failed to disclose the full context of the stipulation and misled the Court, which was not familiar with the detailed history of the case. The order was thus issued in error, as there was no motion before the Court to alter the stipulation, nor any legitimate reason to revisit the agreed-upon terms.

(b) Reinstate the Original Stipulation:

Reinstate the original stipulation agreed upon by both parties and approved by the Court on September 14, 2023, which was subsequently formalized by Petitioner's counsel on October 31, 2023. This stipulation, which was made in the best interests of the children, provided for the children's continued attendance at their current schools, ensuring their educational stability and well-being. The stipulation was reached after thorough consideration and litigation, and it represents the parties' mutual agreement on how to best support the children's education during the relocation.

Request to Strike Misrepresentations of Harassment

(c.) Strike Any Misrepresentations of Mr. Surina Regarding "Harassment"

The court's characterization of Mr. Surina's actions as "harassment" for objecting to the abduction of his children is a gross misrepresentation that undermines the true nature of his concerns. Mr. Surina's objections were not born out of a desire to harass Ms. Surina but rather to protect his children from a unilateral and unlawful relocation that was executed without his knowledge or consent, in direct violation of the court-ordered parenting plan.

Ms. Surina's actions—moving with the children, enrolling them in a new school district, and purchasing a home without providing any notice to Mr. Surina—constitute custodial interference. This move was not a minor oversight but a deliberate attempt to deprive Mr. Surina of his court-ordered residential time with his children, which has a long history of being violated by Ms. Surina. The lack of notice not only disrupted the children's lives but also severely impeded Mr. Surina's ability to fulfill his parental responsibilities, work with his employer, and maintain the stability that the children desperately need.

The court's reference to Mr. Surina's actions as "harassment" fails to recognize the legal and emotional significance of his objections. The move, carried out without proper notice and in violation of the parenting plan, placed the children in a situation that was both destabilizing and harmful. It also deprived them of the crucial after-school time with a fit and involved biological parent, further eroding their relationship with Mr. Surina.

Moreover, the court's refusal to consider the reality of Ms. Surina's lifestyle—running a bar and opening a second one, while lacking the time to parent effectively—only exacerbates the injustice. This is not a case of a stay-at-home mother providing

constant care; rather, it is a situation where the children are being raised in an environment that is far from ideal, often exposed to the bar environment and late-night activities. Despite her financial success, as evidenced by her ownership of multiple bars and new vehicles, Ms. Surina continues to receive child support, claiming the benefits of primary custody without fulfilling the responsibilities.

~~The appellant respectfully requests that the court strike any references to "harassment"~~ from the record, as they are not only factually incorrect but also deeply prejudicial. The focus should remain on the best interests of the children, which includes ensuring that their relationship with both parents is respected and that any actions taken by either parent are in compliance with the court's orders. Mr. Surina's actions were in defense of his children's well-being and his rights as a father, not as a means of harassment, and the court must acknowledge this by removing any such mischaracterizations from the record.

(d) Grant Any Other Relief Deemed Just and Proper:

The Court should also consider any additional relief necessary to correct the procedural and substantive errors that have occurred, to ensure that the children's best interests are protected, and to restore fairness to the proceedings.

V. CONCLUSION

For the reasons set forth above, Aaron Surina respectfully urges this Court to grant this motion to vacate the erroneous order and restore the stipulation that remains in the best interest of the children.

Affidavit and Verification

I, Aaron Surina, declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 12th day of August, 2024, at Spokane, WA

Aaron Surina

12000 N. Stinson Dr, Hayden, ID 83835

ams@surina.org 707-200-4372

/s/ _____

Signed and Respectfully submitted by: Aaron Surina, Appellant

Certificate of Service

I hereby certify that on this 12th day of August, **2024**, I have duly served a copy of this motion to all parties of record in this case via ECF and Hand Delivery

Signed: Aaron Surina **/s/** _____

[Caselaw and elementary procedural requirements of due process]

Marriage of Flynn,

94 Wn. App. 185, 94 Wash. App. 185, 972 P.2d 500 (Wash. Ct. App. 1999)

"we hold the commissioner abused his discretion by not granting an evidentiary hearing to Ms. Maris. Again, in fairness, neither the trial court nor the parties had the benefit or the guidance provided by Littlefield and Bower. Nevertheless, in construing the modification statute and applying the recent case law, we decide the trial court erred. Therefore, we reverse the commissioner's decision that adequate cause did not exist to order an evidentiary hearing on the merits. We remand for further proceedings consistent with this opinion. In view of our decision that the commissioner initially erred we need not discuss the additional contentions pertaining to the failure to revise or grant relief under CR 60."

In re Marriage of Pape,

139 Wn.2d 694, 989 P.2d 1120 (1999):

" Due process in family law cases requires that parties be given proper notice and an opportunity to be heard. CR 60(b)(1): This rule allows for relief from a judgment or order due to mistake, inadvertence, surprise, or excusable neglect. "

Marriage of Jacobson

90 Wn. App. 738 (Wash. Ct. App. 1998)

*" **Under RCW 26.09.184, a parenting plan must include residential placement and the parents are encouraged to work together to develop such a plan. In re Marriage of Littlefield, 133 Wn.2d 39, 51, 940 P.2d 1362 (1997). But, in the absence of agreement, the trial court is given that responsibility."*

State v. Derri

17 Wn. App. 2d 376 (Wash. Ct. App. 2021)

...Discussing Burrell

" (3) The decision is "based on untenable reasons," that is, it is "based on an incorrect standard or the facts do not meet the requirements of the correct standard." State v. Dye, 178 Wash.2d 541, 548, 309 P.3d 1192 (2013) (quoting In re Marriage of Littlefield, 33 Wash.2d 39, 47, 940 P.2d 1362 (1997)). Alternatively, a trial court abuses its discretion when "no reasonable judge would have ruled as the trial court did."