IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In re Parenting and Support of BRITTON LAWRENCE HARPER GIBSON Child, MARIE-CLAIRE HARPER PAGH, Respondent, and WILLARD GIBSON, Appellant.	)	NO. 66833-1-I DIVISION ONE UNPUBLISHED OPINION FILED: December 3, 2012

Lau, J. —Washington's Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), chapter 26.27 RCW, confers subject matter jurisdiction on superior courts to determine child custody when the child's home state declines jurisdiction on inconvenient forum grounds, the child and at least one parent have a significant connection to Washington, and substantial evidence concerning the child's care is available in Washington. RCW 26.27.201(1)(b). Because Britton Harper Gibson's home state of Nevada declined jurisdiction on inconvenient forum grounds, the trial

court properly assumed jurisdiction over this action. And, finding no error in Willard Gibson's numerous claims, we affirm. But because the court made no factual findings to support its intransigence conclusion and the amount of the fees and costs, we vacate the award and remand for entry of findings consistent with this opinion.[1]

FACTS

Parties' Relationship and Domestic Violence History

Marie-Claire Pagh and Willard Gibson started dating in Seattle in 2004 when Pagh was 18 years old and Gibson was 27. They moved in together in December 2004 and lived in Seattle until 2008. They moved briefly to San Diego, California and then to Las Vegas, Nevada, less than a month before the birth of their son, Britton, on June 23, 2008. Pagh and Gibson never married. When the parties lived in Nevada, Gibson controlled Pagh's access to financial resources.

Gibson's history of domestic violence against Pagh is well documented. Pagh first petitioned for a domestic violence protection order (DVPO) against Gibson in November 2005, claiming that Gibson hit and slapped her and threatened to kill her. She also petitioned for a DVPO in June 2006, alleging multiple instances of domestic violence. Gibson has an extensive criminal record of violating the DVPOs.[2] Each time,

[1] The trial court on remand is in the best position to consider Gibson's claim that he had no opportunity to respond to Marie-Claire Pagh's fees and costs documentation before the court ruled on the award.

[2] Gibson's criminal convictions include: domestic violence order/stalking (Seattle Municipal Court # 490351); assault 4 domestic violence/stalking (King County # 05-1-120241); domestic violence order violation (Seattle Municipal Court # 504944); 6 counts domestic violence order violation (Seattle Municipal Court # 494966); and domestic violence order/phone harassment (Seattle Municipal Court # 490351).

Gibson persuaded or threatened Pagh to terminate the DVPOs and resume their relationship.

According to Pagh, Gibson engaged in acts of domestic violence against Britton when he was less than three months old. Pagh testified that Gibson had a short temper and spanked and/or banished Britton to his crib for lengthy periods of time. Pagh described an incident where Gibson pinched Britton while boarding a flight so that Britton would cry and dissuade others from sitting next to them. Pagh also described occasions when Gibson became angry while driving with her and Britton in the car. She claimed that Gibson drove fast and threatened to drive the car off the road and kill them all. Gibson has repeatedly threatened to take Britton away from Pagh and to kill Pagh.

On December 15, 2009, Pagh, Gibson, and Britton returned to Seattle to visit family. They stayed with Gibson's mother in Redmond, Washington, during this trip. Although they had booked return tickets, Pagh testified multiple times that the December 2009 trip's purpose was not only to spend the holidays, but to prepare to move back to Seattle.[3] While in the Seattle area, the couple looked at apartments.

January 2010 Petitions, Jurisdictional Decisions, and Trial

[3] Pagh's entire family, as well as Gibson's mother and brother, live in the Seattle area. Pagh and Gibson's "entire support system is . . . in the Seattle area." Pagh stated, "Will and I decided in December of 2009 that we would be moving back to Seattle." She claimed their lease in Nevada was set to expire at the end of February 2010 and the parties "were planning on having our move [to Seattle] complete by then." In her February 2010 reply to Gibson's response to her DVPO petition, Pagh stated that the couple had insufficient income in Nevada and depended on Gibson's mother for financial support.

Pagh petitioned for the DVPO at issue here after an incident that occurred in late December 2009 at the home of Gibson's mother in Redmond. Pagh claimed that Gibson was angry when she returned home late from shopping. He yelled at her, accused her of cheating, and shoved her against the wall and the guest room bed. On January 2, 2010, Gibson flew to Las Vegas for 24 hours to finalize a real estate deal and pick up clothes for job interviews in Seattle. Gibson called Pagh that night and told her he was gambling and that he had lost all their money. Pagh decided to leave Gibson. She claimed this was the first opportunity for her and Britton to safely escape Gibson's violence and anger. Pagh took Britton to her sister's house in Edmonds, Washington. Pagh told Gibson over the phone that he could not see Britton until he obtained domestic violence and anger management treatment. When Gibson returned to Seattle on January 3, Pagh cut off contact with him.

Pagh filed a pro se DVPO petition[4] on January 14, 2010, under RCW

[4] Pagh later retained counsel in the DVPO and parenting plan/child support matters.

[5] RCW 26.50.070(1) provides:
"Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:
"(a) Restraining any party from committing acts of domestic violence;
"(b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;
"(c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
"(d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;
"(e) Restraining any party from having any contact with the victim of domestic

26.50.070.[5] She alleged that Gibson "becomes extremely angry and violent and I fear for our son's and my safety and well being." In her supporting declaration, she described Gibson's prior acts of domestic violence against her and disclosed the December 2009 incident described above. King County Superior Court issued a temporary emergency DVPO finding: "For good cause shown, the court finds that an emergency exists and that a Temporary Protection Order should be issued without notice to the respondent to avoid irreparable harm." The order also granted Pagh temporary custody of Britton and set a January 28 hearing date.

On January 20, after service of the temporary DVPO, Gibson filed an "emergency motion to establish jurisdiction; compel the return of the minor child to the state of Nevada and for a pick up order; for primary physical custody; supervised visitation; for an award of child support; for plaintiff's attorney's fees and costs incurred herein; and related matters" in Clark County, Nevada. (Formatting and boldface omitted.) Gibson's relief included a request to remove Britton from Pagh's custody and return him to Gibson in Nevada. On January 26, in a separate proceeding (No. 10-3-00907-1 SEA), Pagh petitioned King County Superior Court to determine a residential schedule, parenting plan, and child support. In the petition's "jurisdiction"

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violence or the victim's children or members of the victim's household;

"(f) Considering the provisions of RCW 9.41.800; and

"(g) Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, 'communication' includes both 'wire communication' and 'electronic communication' as defined in RCW 9.73.260."

section, Pagh marked the boxes stating, "The child resides in this state as a result of the acts or directives of the respondent" and that both the mother and father "are presently residing in the state of Washington." In the petition's "jurisdiction over the child" section, Pagh marked the box stating,

> This court has temporary emergency jurisdiction over this proceeding because the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child is subjected to or threatened with abuse.

In response, Gibson argued Nevada had jurisdiction under the UCCJEA.

Meanwhile, the temporary DVPO was reissued on January 28, February 12, February 19, and March 2 to accommodate rescheduled hearing dates. At the March 11 hearing, King County Superior Court Judge James Doerty assigned both the DVPO and the parenting plan/child support actions to himself. After argument from the parties' counsel, Judge Doerty noted that Gibson never submitted a factual declaration rebutting Pagh's assertion in the DVPO matter. Judge Doerty found Pagh's unrebutted factual account adequate to establish jurisdiction for the DVPO and emergency jurisdiction under the UCCJEA. "I think that the facts that are asserted here and are essentially unrebutted because there's no responsive declaration from Mr. Gibson on the facts are sufficient to constitute an emergency and jurisdiction." Report of Proceedings (RP) (Mar. 11, 2010) at 21. He reissued the DVPO pending the outcome of the UCCJEA matter.

Also on March 12, Judge Doerty and Nevada District Court Judge Cynthia Giuliani held an initial UCCJEA telephone conference.[6] The judges agreed that

Nevada, as the child's home state, would retain jurisdiction without prejudice pending a March 18 return hearing. At that telephonic hearing—Pagh and her counsel and Gibson's counsel appeared, but Gibson did not—the Nevada court "advised counsel it had spoken with the Washington Court regarding the jurisdiction and Temporary Protective Order (TPO) issues." The court informed the parties that "Nevada will retain jurisdiction, however, Washington will issue temporary emergency custody orders." The court ordered the parties to confer regarding the jurisdictional issues and to brief the issues for the court.

The parties' counsel each submitted comprehensive briefing and other documents regarding UCCJEA jurisdictional issues. On April 7, 2010, after reviewing the parties' UCCJEA submissions and participating in a second telephone conference with Judge Doerty pursuant to the UCCJEA, Judge Giuliani declined jurisdiction in favor of Washington state based on inconvenient forum and dismissed the Nevada proceedings. The Nevada court's minute order stated:

> Upon receiving the briefs from counsel in this matter, Court conducted another UCCJEA telephone conference with Judge James Doerty in the Superior Court, Family Division in King County, Washington.
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> The Judges discussed the jurisdictional issues and the [DVPO] case in Washington.
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> Both Judges agreed that Nevada is an inconvenient forum and Nevada should relinquish jurisdiction in this matter to the State of Washington. COURT ORDERED, Washington will assume JURISDICTION in this matter and the Nevada case is hereby DISMISSED. All future Court dates are hereby vacated.

[6] The UCCJEA as adopted in Washington requires courts to communicate in situations involving the exercise of temporary emergency jurisdiction when another state is involved, RCW 26.27.231(4), and when there are simultaneous proceedings. RCW 26.27.251(2), .461.

Gibson filed no motions or appeal challenging the Nevada court's order declining jurisdiction and dismissing the Nevada action.[7]

In May 2010, Judge Doerty granted Pagh's motion to consolidate the DVPO and parenting plan/child support actions. Also in May 2010, Pagh petitioned for reissuance of the protective order and requested it be made permanent. In support, she submitted a new declaration describing, "[Gibson's] violence has extended to our son, Britton."[8] She described the pinching incident discussed above and another incident in late December 2009 when the parties were staying with Gibson's mother. During that incident, Pagh and Gibson were eating dinner when Britton started crying. According to Pagh, Gibson picked Britton up, walked into the back bedroom, and aggressively threw him down on the bed. When Pagh asked what happened, Gibson said he threw Britton on the bed to startle him and stop him from crying.[9] Gibson failed to timely respond to Pagh's May 2010 petition. The court temporarily extended the DVPO.

The court granted Gibson trial continuances in June and November 2010 to allow him to conduct discovery. Gibson's counsel deposed Pagh in December 2010. Trial proceeded on February 1, 2011. Gibson failed to appear.[10] Gibson's counsel

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[7] Gibson's trial brief for the DVPO and parenting plan/child support cases in King County Superior Court acknowledges: "Ultimately, the court in Washington and the Court in Nevada held a conference call where it appears that Nevada declined to asse[r]t [its] jurisdictional authority under the UCCJEA."

[8] Pagh did not mention any specific acts of domestic violence against Britton in her initial petition for a DVPO or her initial supporting declaration filed in January 2010.

[9] Pagh later testified about this incident in her deposition and at trial.

[10] Gibson was arrested on a 2007 warrant on September 10, 2010, for violating

appeared and requested another continuance, which the court denied. Pagh was the only witness to testify at trial.[11]

Pagh moved for an award of attorney fees and costs based on Gibson's intransigence, arguing that Gibson made no effort to clear warrants that were preventing his participation in discovery or a parenting evaluation.[12] She explained:

> [Gibson] has demonstrated a complete disregard for court orders, has refused to take even the simplest steps to participate in discovery, and has needlessly increased the costs of litigation. He has had a string of attorneys on this matter, and has failed to comply with a single case scheduling deadline. [Pagh] had to incur attorneys fees to file a motion in limine due to [Gibson's] failure to timely disclose witnesses, and served his answers to interrogatories four days after the discovery cutoff. At the time of trial, Mr. Gibson had a bench warrant out for his arrest based on his failure to appear. Presumably for that reason, he even failed to appear for the trial.

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the 2005 protection order. He remained in jail from November 27, 2010, until December 16, 2010. A Seattle Municipal Court jury convicted Gibson on January 12, 2011. He left the courtroom before signing a no-contact order. The municipal court judge ordered him to appear the next day to sign it. Because he failed to appear, the court issued a $10,000 bench warrant. The record indicates Gibson made no efforts to clear warrants he claimed prevented participation in discovery and parenting evaluation.

[11] Gibson's proposed findings of fact and conclusions of law submitted at trial for the parenting plan/child support action state in paragraph 2.1:

> All parties necessary to adjudicate the issues were served with a copy of the summons and petition and are subject to the jurisdiction of this court. The facts below establish personal jurisdiction over the parties:
>
> The mother and acknowledged father engaged in sexual intercourse in the state of Washington as a result of which the child was conceived.

(Emphasis added.) Paragraph 2.4 of Gibson's proposed findings of fact and conclusions of law states:

> This court has jurisdiction over the child for the reasons set forth below:
>
> All courts in the child's home state have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or .271.

(Emphasis added.)

[12] Gibson's failure to clear his criminal warrants explains his absence at trial.

Pagh requested a total of $45,876.48 in fees and costs. Gibson responded, alleging that Pagh failed to establish intransigency and failed to itemize the fees and costs. He also filed a declaration opposing Pagh's motion for attorney fees and costs. In reply, Pagh attached an itemized list of fees and costs.

On February 15, 2011, the court issued (1) a final DVPO, (2) a corrected parenting plan final order, and (3) amended/corrected findings of fact and conclusions of law on petition for residential schedule/parenting plan. The DVPO barred Gibson from contacting Pagh or Britton. The order stated, "The terms of this order shall be effective immediately and for one year from today's date, unless stated otherwise here (date): February 1, 2111." The order provided Gibson would have "no access to [Britton], subject to compliance with the Final Parenting Plan filed under this cause number."

The court's corrected parenting plan final order" expressly stated that the parenting plan/residential schedule could be revised and Gibson could visit the child when he "demonstrate[s] to the Court that he has successfully completed a Domestic Violence Perpetrator's Program as certified by RCW 26.50.150, including collateral contact with the Mother, and in full compliance with any and all probation and/or conviction requirements stemming from any criminal matters." Paragraph 3.13 stated in part, "The Father's successful completion of the [Domestic Violence Perpetrator's Program] will be considered as adequate cause for modification of this parenting plan."

In its amended/corrected findings of fact and conclusions of law on petition for

residential schedule/parenting plan, the court found in relevant part:

> 2.1 Notice and Basis of Personal Jurisdiction Over the Parties
> All parties necessary to adjudicate the issues were served with a copy of the summons and petition and are subject to the jurisdiction of this court. The facts below establish personal jurisdiction over the parties:
> Respondent appeared and submits to jurisdiction of this court by consent.
> The child resides in this state as a result of the acts or directives of [Gibson].
> . . . .
> 2.4 Basis for Jurisdiction Over the Child
> This court has jurisdiction over the child for the reasons set forth below:
> This state is the home state of the child because:
> All courts in the child's home state have declined to exercise jurisdiction on the ground that a court of this state is the appropriate forum to determine the custody of the child.
> . . . .
> 2.9 Protection Order
> A Domestic Violence Protection Order protecting Marie-Claire Pagh and Britton Lawrence Harper Gibson from Willard L. Gibson is necessary based upon the evidence presented at trial showing a history of past acts of domestic violence, and Ms. Pagh's fear of imminent harm, and the likelihood of Mr. Gibson committing further acts of violence.

The court also found that Gibson's "intransigence throughout these proceedings warrants an award of attorneys fees and costs in favor of [Pagh]." The court's amended judgment and order establishing residential schedule/parenting plan awarded Pagh a $45,876.48 money judgment against Gibson, constituting all of her attorney fees and costs.

Pagh's Posttrial Move

Pagh and Britton lived with Pagh's sister in Edmonds, Washington, from January 2010 to April 2011. Pagh worked as a file clerk at the law offices of William D. Hochberg in Edmonds from January 25, 2010, through April 7, 2011. She testified at her deposition on December 31, 2010, that she was dating Naji Mehanna. Pagh's

declaration testimony established that she met Mehanna in Nevada in 2008 but was not romantically involved with him until late 2010. Mehanna proposed to Pagh on January 21, 2011. Pagh and Britton moved to Nevada to live with Mehanna in April 2011—two months after trial. Pagh and Mehanna married in June 2011. Pagh currently works for a law firm in Nevada.

CR 60 Motion

In December 2011, Gibson filed a CR 60 "motion/memorandum for order to show cause and related relief." (Boldface and formatting omitted.) He requested relief on several grounds, including (1) Pagh "committed fraud on the court (or misrepresentation) in asserting inaccurate and incomplete testimony about her residence and the child's (and the Father's) in providing a basis for the court to exercise jurisdiction," (2) "[t]he court exceeded the basis plead[ed] for jurisdiction in finding emergency jurisdiction over [Britton]," (3) the court failed to follow the UCCJEA "where an Interstate conference was held on a date prior to the Father's Response to Petition being filed, with no record made available to the Father upon which to review the bases and facts considered by either court," (4) Pagh "engaged in forum-shopping, having lived in Nevada immediately prior to this action and returning to Nevada shortly afterward," and (5) the "judgments and orders are void for lack of jurisdiction and should be vacated."

After a show cause hearing on February 10, 2012, the court denied Gibson's CR 60 motion. The court's oral ruling stated in relevant part:

> On the facts of this case that have been presented, I do not find a basis to

> grant your CR 60 motion. . . . And whether it's on my analysis of his various opportunities to pursue, to start with, for example, the DVPO bases, the distinctions that you have made are not sufficient in my mind to warrant a -- essentially a finding that the mother, at a minimum, made incomplete assertions and therefore the Washington court was misled or did not have sufficient basis to obtain jurisdiction.
>
> I think the Washington court did have a basis to obtain jurisdiction. And as I think both experienced counsel know, distinctions between factual matters -- "Did I come here for a vacation," "Did I have in my mind that I was going to stay here," "Did I change my mind from vacation to I'm going to stay here because I'm afraid," or whatever, it -- the kinds of distinctions that your client is making are not sufficient in my mind to -- for me to make a credibility determination that the mother was . . . making misrepresentations to the Court.

RP (Feb. 10, 2012) at 56-57. The court continued:

> When [Gibson] had representation [in Nevada], he could have sought some other -- he could have taken some additional action, whether it was to -- through both of his attorneys to ask for the courts to do it right and go on the record and let him be present and so on, and -- and/or he could have appealed that determination. I do think that was a final determination under the UCCJEA . . . but at a minimum he could have sought some relief in the Nevada court because he . . . was represented by counsel.
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> And then there was a whole additional year, essentially, when this was all pending when he could have pursued at least discovery further than he did in order to address the issues that you are now raising, as at least his -- Ms. Willits calls it speculation, but his belief that there was something that wasn't correctly or fully represented to the court at trial. And this is just not a fact pattern that I think CR 60 is -- that I think a CR 60 motion should be granted in.

RP (Feb. 10, 2012) at 61-62. The court's written findings established:

> The court does not find the bases/distinctions in the Mother's pleadings as briefed by the Father in his CR 60 motion (as to jurisdiction) sufficient to warrant a finding that the Mother made incomplete assertions to mislead the court. Nor does the court find a basis under newly discovered evidence/forum shopping, or that the judgment is void. The father had ample opportunity during the pendency of the actions in Nevada and Washington to appeal or seek reconsideration of UCCJEA decisions, to conduct discovery and to raise issues at trial; and the father was almost continuously represented during the relevant periods in both states.

ANALYSIS

Standard of Review

The determination of subject matter jurisdiction is a question of law reviewed de novo. In re Marriage of Kastanas, 78 Wn. App. 193, 197, 896 P.2d 726 (1995). Subject matter jurisdiction is "the authority of the court to hear and determine the class of actions to which the case belongs." In re Adoption of Buehl, 87 Wn.2d 649, 655, 555 P.2d 1334 (1976). A superior court always has jurisdiction to determine whether it has subject matter jurisdiction and whether it should exercise its jurisdiction. Kastanas, 78 Wn. App. at 201.

Parenting Plan/Child Support Action

As discussed above, Washington assumed initial jurisdiction under its temporary emergency jurisdiction powers and later assumed final jurisdiction when Nevada declined on inconvenient forum grounds under the UCCJEA. Gibson argues the Washington trial court erroneously assumed both temporary and final jurisdiction in the parenting plan/child support matter. He claims (1) Pagh failed to state an adequate basis for jurisdiction in her initial parenting plan/child support request, (2) Pagh misled the court regarding the parties' residential history, (3) the Washington and Nevada courts failed to follow UCCJEA procedures and the evidence did not support inconvenient forum as a basis for the Nevada court to relinquish jurisdiction,[13] and

[13] We note and the record shows that Gibson never raised the courts' alleged failure to follow UCCJEA procedures. The omission deprived the courts of any opportunity to cure the perceived deficiencies.

(4) new evidence shows Pagh was forum shopping.[14] Pagh responds that Washington properly assumed both initial and final jurisdiction.

Basis for Initial Jurisdiction

Pagh invoked the court's temporary emergency jurisdiction, RCW 26.27.231, as a basis for the Washington court to assume initial jurisdiction in the parenting plan/child support matter. This statute provides in relevant part:

> A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with abuse.

RCW 26.27.231(1) (emphasis added). At a March 11, 2010 hearing, the Washington court found emergency jurisdiction existed: "I think jurisdiction has been established for purposes of the domestic violence protection order statute and also for emergency purposes under the UCCJEA." RP (Mar. 11, 2010) at 21.

Gibson argues that Pagh "did not select any of the available options as a basis," referring to the two boxes listed under the petition's "temporary emergency jurisdiction" section. Appellant's Br. at 12. But review of the petition indicates that Pagh checked the box marked "other," explained the DVPO's grant of temporary custody to her, and noted Gibson's pending action in Nevada.[15] Nothing in our record indicates that Pagh

[14] Because Gibson's fourth argument is more properly addressed as part of his challenge to the court's CR 60 ruling, we address it below.

[15] Specifically, Pagh wrote, "Upon learning of the issuance of a temporary protection order granting me custody under KCSC # 05-2-31430-3 SEA, the Respondent filed an action to establish parenting plan in Clark County, Nevada # D-10-423976-C. No order has yet been entered in the Nevada case."

deliberately omitted material information. Pagh's alleged failure to properly fill out the form is irrelevant. The trial court's jurisdiction derives from a constitutional or statutory provision and "'[e]levating procedural requirements to the level of jurisdictional imperative has little practical value and encourages trivial procedural errors to interfere with the court's ability to do substantive justice.'" Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 319, 76 P.3d 1183 (2003) (quoting Okanogan Wilderness League, Inc. v. Town of Twisp, 133 Wn.2d 769, 791, 947 P.2d 732 (1997) (Durham, C.J., concurring)). The undisputed record in March 2010 indicated that Gibson committed acts of domestic violence against Pagh in December 2009 immediately before Pagh left Gibson. The court properly assumed temporary emergency jurisdiction under the UCCJEA based on Britton's presence in Washington and Gibson's documented abuse and threats against Pagh.[16] RCW 26.27.231(1).

[16] Gibson acknowledged as much in his March 31, 2010 "Motion and Declaration Requesting UCCJEA Conference Between Washington and Nevada Courts and for Modification of Protection Order to Permit Transfer." His attorney, Ronald C. Mattson, stated in the declaration, "Based on the allegations made in the initial pleadings herein, it is understandable why this court may have felt compelled to act." He went on to argue that "this temporary exercise of jurisdiction over the Parentage action should be terminated."

Gibson makes much of the fact that Pagh had not described any specific acts of violence toward Britton as of March 2010. But for purposes of temporary emergency jurisdiction under the UCCJEA, acts of violence or threats against the child's parent are sufficient. See RCW 26.27.231(1). In his reply, Gibson claims that nothing in the record suggests an emergency existed and there was no basis on which to find "abuse." He cites Ruff v. Knickerbocker, 168 Wn. App. 109, 275 P.3d 1175 (2012), for the proposition that one parent's fear that the other parent will take the child without permission does not constitute abuse of the child or provide a basis for finding an emergency. But as discussed above, under RCW 26.27.231(1), abuse against the child's parent suffices for temporary emergency jurisdiction under the UCCJEA. Ruff did not involve allegations of abuse against a parent. Gibson had the opportunity to challenge Pagh's abuse allegations at the March 11, 2010 hearing and failed to do so.

UCCJEA and Final Jurisdiction

Gibson also challenges the Washington court's final determination assuming jurisdiction in the parenting plan/child support matter after Nevada—undisputedly Britton's "home state"[17] under the UCCJEA—declined jurisdiction on inconvenient forum grounds.[18] Washington's superior courts have broad constitutionally based

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The court based its decision partly on the parties' "huge history" of domestic violence, including Gibson's prior DVPO violations. RP (Mar. 11, 2010) at 23. The March 11, 2010 record overwhelmingly establishes a basis for the court's emergency jurisdiction.

Finally, Gibson contends the court's exercise of temporary emergency jurisdiction violated the UCCJEA because the court failed to state an expiration date. The record on appeal contains no written order for the temporary jurisdiction decision. But the court made clear at the hearing that its jurisdictional decision was based both on the domestic violence statute and the UCCJEA. It clearly extended the domestic violence protection order—which granted temporary custody to Pagh—until "June 11, 2010 pending outcome of UCCJEA matter."

[17] The UCCJEA defines "home state" as "the state in which a child lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding." RCW 26.27.021(7). Temporary absences are included within this six-month period. RCW 26.27.021(7).

[18] Gibson challenges the trial court's finding that "[Washington] is the home state of the child because: All courts in the child's home state have declined to exercise jurisdiction on the ground that a [Washington court] is the appropriate forum to determine the custody of the child." He argues that under the UCCJEA, Nevada is the home state of the child. He is correct, but the Washington court's mistake in calling Washington the home state due to Nevada's declination of jurisdiction is immaterial. The Washington court was clearly assuming jurisdiction based on RCW 26.27.201(1)(b) or (c) (providing that a Washington court may assume jurisdiction over a child custody action if

> a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:
>
> (i) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
>
> (ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships [or if]

jurisdictional authority. Orwick v. City of Seattle, 103 Wn.2d 249, 251, 692 P.2d 793 (1984). We strictly and narrowly read efforts by the legislature to limit that jurisdiction. Here the court assumed jurisdiction under the UCCJEA,[19] which authorizes Washington courts to exercise jurisdiction over custody determinations only if:

> (a) [Washington] is the home state of the child on the date of the

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> (c) [a]ll courts having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or 26.27.271).

As discussed below, that assumption of jurisdiction was proper.

Gibson also assigns error to the court's finding that the parties signed an acknowledgment of paternity and that this affidavit was filed in Nevada. But he devotes no argument to this issue in his brief. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." Palmer v. Jensen, 81 Wn. App. 148, 153, 913 P.2d 413 (1996). Further, Pagh testified at trial that Gibson's name was on the birth certificate. In his reply, Gibson contends "it is not correct [for the court] to find that any such record was filed in Washington." Appellant's Reply Br. at 6. The court made no such finding. The court found that the acknowledgement of paternity was filed in Nevada.

[19] The UCCJEA provides the basis for initial subject matter jurisdiction over a child custody dispute in Washington. "Laws governing the existence and exercise of jurisdiction in child custody cases, and regulating the interstate enforcement of child custody determinations, spring from Congress as well as the state legislatures. The National Conference of Commissioners on Uniform State Laws (NCCUSL) is the source of the [Uniform Child Custody Jurisdiction Act] UCCJA, the state law that has dominated the field since its approval in 1968. . . .

"NCCUSL has been in existence for over 100 years to promote uniformity in state law and interstate cooperation by developing uniform acts and endeavoring to secure their enactment by voluntary action of each state government." Patricia M. Hoff, The ABC's of the UCCJEA: Interstate Child-Custody Practice Under the New Act, 32 Fam. L.Q., 267, 269 (Summer 1998). In July 1997, an updated and enhanced version of the UCCJA, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), was unanimously adopted by the NCCUSL. "The Act was approved in February 1998 by the American Bar Association House of Delegates." Hoff, supra, at 267-68. And the Act was subsequently made available for state adoption. Most states have now adopted the UCCJEA, and in 2001, Washington replaced the UCCJA by adopting the UCCJEA. Chapter 26.27 RCW.

> commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
>
> (b) A court of another state does not have jurisdiction under (a) of this subsection, or a court of the home state of the child [Nevada] has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under RCW 26.27.261 or 26.27.271, and:
>
> (i) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
>
> (ii) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
>
> (c) All courts having jurisdiction under (a) of this subsection have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under RCW 26.27.261 or 26.27.271; or
>
> (d) No court of any other state would have jurisdiction under the criteria specified in (a), (b), or (c) of this subsection.

RCW 26.27.201(1) (emphasis added).[20]

Nevada has also adopted the UCCJEA and its law closely tracks Washington law regarding initial child custody jurisdiction. See NRS 125A.305 (describing Nevada's initial child custody jurisdiction rules). A Nevada court can decline jurisdiction based on inconvenient forum if certain requirements are met:

> 1. A court of this state which has jurisdiction pursuant to the provisions of this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion or request of another court.

[20] The UCCJEA makes clear that these jurisdictional rules are the exclusive basis for assuming jurisdiction over a custody determination matter and that the UCCJEA is not merely an alternative jurisdictional scheme to assume jurisdiction. RCW 26.27.201(2). The UCCJEA, in conformity with the Federal Parental Kidnapping Prevention Act, makes the home state basis of jurisdiction within the UCCJEA the preferred basis for assuming jurisdiction under the UCCJEA. RCW 26.27.201(1)(a), (b).

> 2. Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:
>
> (a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
>
> (b) The length of time the child has resided outside this state;
>
> (c) The distance between the court in this state and the court in the state that would assume jurisdiction;
>
> (d) The relative financial circumstances of the parties;
>
> (e) Any agreement of the parties as to which state should assume jurisdiction;
>
> (f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;
>
> (g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and
>
> (h) The familiarity of the court of each state with the facts and issues in the pending litigation.
>
> 3. If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

NRS 125A.365(1)-(3) (emphasis added); see also Friedman v. Eighth Judicial Dist. Court of State, ex rel. County of Clark, 264 P.3d 1161, 1167-68 (Nev. 2011).[21] The

[21] Washington has a substantially similar rule permitting declination of jurisdiction on inconvenient forum grounds:

"(1) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

"(2) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

"(a) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

"(b) The length of time the child has resided outside this state;

"(c) The distance between the court in this state and the court in the state that

Nevada Supreme Court has held, "The decision to decline jurisdiction on inconvenient/more appropriate forum grounds is for the court of the state that has UCCJEA jurisdiction to make, not the state to which deferral is pressed." Friedman, 264 P.3d at 1167-68.

As discussed above, Washington properly assumed temporary emergency jurisdiction in this case. The UCCJEA requires the court assuming temporary emergency jurisdiction to communicate and coordinate with any other court in which related child custody proceedings are pending:

> (3) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under RCW 26.27.201 through 26.27.221. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.
>
> (4). . . . [U]pon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under RCW 26.27.201 through 26.27.221, shall

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would assume jurisdiction;

"(d) The relative financial circumstances of the parties;

"(e) Any agreement of the parties as to which state should assume jurisdiction;

"(f) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

"(g) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) The familiarity of the court of each state with the facts and issues in the pending litigation.

"(3) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper." RCW 26.27.261 (emphasis added).

> immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to RCW 26.27.201 through 26.27.221, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

RCW 26.27.231. A state with jurisdiction over a pending child custody determination may decline to exercise its jurisdiction in favor of a court with a more convenient forum. RCW 26.27.261; NRS 125A.365. Once that state declines jurisdiction, the state with temporary emergency jurisdiction then exercises general jurisdiction over the matter. See RCW 26.27.231(3).

Gibson first claims that both UCCJEA conferences between the Washington and Nevada courts failed to follow statutory requirements regarding notice, participation, and provision of a record.[22] Notice and participation are not required before courts communicate regarding jurisdiction. RCW 26.27.101 provides for discretionary communication between courts regarding UCCJEA matters:

> (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.
>
> (2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.
>
> (3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.
>
> (4) Except as otherwise provided in subsection (3) of this section, a

[22] We question whether these claims are properly raised in this appeal. Gibson relies on inapposite case authority to overcome his failure to appeal Nevada's order declining jurisdiction on inconvenient forum grounds and dismissing his action. The order affected a substantial right and discontinued his Nevada action.

> record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.
>
> (5) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(Emphasis added.) Nevada's corresponding statute is nearly identical to Washington's. See NRS 125A.275. Neither statute contains a notice requirement, and in both statutes, the decision whether to allow the parties to participate is discretionary. Here, both parties were represented by counsel in Nevada and in Washington. Both parties submitted briefing on jurisdiction before the April 7, 2010 telephone conference and jurisdictional decision. Gibson's arguments regarding notice and participation fail.[23]

Gibson also argues that the Washington and Nevada courts failed to provide the parties an adequate record of their communications. We disagree. The Uniform Act (UCCJEA § 110), RCW 26.27.101(5), and NRS 125A.275(5) define "record" identically: "'[R]ecord' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." Nowhere does the Uniform Act or either state statute require that the communication be recorded or transcribed verbatim. Comments to the Uniform Act further explain the "record"

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[23] Gibson argues that his "Washington counsel knew nothing of [the March 12] UCCJEA conference when he filed, on 3/31/2010, a request that UCCJEA conference occur in the paternity action." Appellant's Br. at 24. Even if that is true, both parties and their Nevada counsel were aware of the March 12 conference and received the court's minute order regarding that conference as discussed above. That is all the statute requires. See RCW 26.27.101(4); NRS 125A.275(4) ("The parties must be informed promptly of the communication . . . ."). Any lapse in notifying Washington counsel about the March 12 conference rests with Gibson's Nevada counsel, not the court.

requirement:

> This section does require that a record be made of the conversation and that the parties have access to that record in order to be informed of the content of the conversation. The only exception to this requirement is when the communication involves relatively inconsequential matters such as scheduling, calendars, and court records. Included within this latter type of communication would be matters of cooperation between courts under Section 112. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the communication between the courts, or a memorandum or an electronic record made by a court after the communication.
>
> . . . . The parties' participation in the communication may amount to a hearing if there is an opportunity to present facts and jurisdictional arguments. However, absent such an opportunity, the participation of the parties should not to be considered a substitute for a hearing and the parties must be given an opportunity to fairly and fully present facts and arguments on the jurisdictional issue before a determination is made. This may be done through a hearing or, if appropriate, by affidavit or memorandum. The court is expected to set forth the basis for its jurisdictional decision, including any court-to-court communication which may have been a factor in the decision.

Uniform Child Custody Jurisdiction and Enforcement Act (1997) § 110 cmt.

Here, the Nevada court issued a minute order after the March 12, 2010 telephone conference describing the communication between the courts and the jurisdictional decisions made:

> Court conducted a UCCJEA telephone conference with Judge James Doerty in the Superior Court, Family Division in King County, Washington.
>
> The Judges discussed the jurisdictional issues and the [Temporary Protective Order] case in Washington.
>
> Both Judges agreed that Nevada will retain jurisdiction in this matter without prejudice given that Nevada is the home state of the child and both parties have been represented on record in Nevada.
>
> COURT ORDERED, Nevada will assume JURISDICTION in this matter WITHOUT PREJUDICE. The March 18, 2010 return hearing shall remain on calendar.

(Emphasis added.) Both parties' counsel appeared and participated in the March 18

return hearing. Pagh appeared by telephone, and Gibson did not appear. On April 1, 2010, the Nevada court issued an order—drafted by Gibson's counsel and signed by counsel for both parties—indicating in part the following:

> On March 18, 2010, this matter having come before this Honorable Court . . . .
>
> Court reviewed the issues. Court advised counsel it had spoken with the Washington Court regarding the jurisdiction and Temporary Protective Order (TPO) issues. Court stated Nevada will retain jurisdiction, however, Washington will issue temporary emergency custody orders.

(Emphasis added.) The April 1 order stated, "[B]ased upon [the Nevada court's] discussion with the Washington Court, jurisdiction remains in NEVADA at this time." It further ordered the parties to confer regarding the jurisdictional issues and to brief the court on those issues, "or, Plaintiff shall RESPOND to Defendant's OPPOSITION pleadings." The order also provided, "The COURT shall ISSUE a MINUTE ORDER upon RECEIPT of counsel's BRIEFS.

Both parties thoroughly briefed the jurisdiction issue as ordered by the court. In accordance with the April 1 order, the court considered their submissions and the parties were informed of the final jurisdictional decision via the April 7, 2010 minute order.[24] That order stated:

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[24] Regarding the second UCCJEA conference on April 7, Gibson argues, "While the Nevada court instructed the parties' counsel appearing in that action to provide briefing to the Nevada court about the UCCJEA issues, there was no such communication or expectation on the part of Washington. Nowhere on the Washington docket is there even any record of any UCCJEA conference. Nowhere is there any evidence that Judge Doerty received or reviewed any briefing before this conference took place." Appellant's Br. at 25-26. He speculates in his reply that both UCCJEA conferences were improper because "Judge Doerty had no briefing from Washington counsel for either party, nor access to the briefing submitted in Nevada. . . . [Gibson's] Washington counsel was given no . . . notice or opportunity to present information

> Upon receiving the briefs from counsel in this matter, Court conducted another UCCJEA telephone conference with Judge James Doerty in the Superior Court, Family Division in King County, Washington.
>
> The Judges discussed the jurisdictional issues and the TRO case in Washington.
>
> Both Judges agreed that Nevada is an inconvenient forum and Nevada should relinquish jurisdiction in this matter to the State of Washington. COURT ORDERED, Washington will assume JURISDICTION in this matter and the Nevada case is hereby DISMISSED. All future Court dates are hereby vacated.

The minute orders and the court's April 1 order are part of the court record. They constitute "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form" within the meaning of RCW 26.27.101(5). They amply convey to the parties the basis of the jurisdictional decision (inconvenient forum) and describe the communications between the courts. Gibson's assignments of error regarding these communications lack merit.[25]

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analyzing the issues based on Washington law." Appellant's Reply Br. at 8-9. He claims, "A UCCJEA conference that occurs without both judges being fully informed and briefed from both sides should not be considered valid." Appellant's Reply Br. at 8 (boldface omitted). He cites no authority requiring both courts in a UCCJEA conference to receive briefing. See State v. Logan, 102 Wn. App. 907, 911 n. 1, 10 P.3d 504 (2000) ("'Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.'") (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)). The Nevada court received and reviewed extensive briefing from both parties on the issue and the courts conferred before the jurisdictional decision, which is all the statute requires.

[25] Gibson cites In re Joseph V.D., 373 Ill. App. 3d 559, 868 N.E.2d 1076 (2007), for the proposition that failure to provide a record of communication is grounds for dismissal. But in Joseph V.D., there was "no record of the communication between the [Illinois] court and the Nevada court, either in the form of a transcript of an open-court description of the communication or in the form of some separate document or other medium retrievable in perceivable form." Joseph V.D., 373 Ill. App. 3d at 562. Here, a record of the communication exists as discussed above.

Regarding provision of a record, Gibson contends "[t]here is no record to support on what factual bases the court(s) found Nevada to be an inconvenient forum

RCW 26.27.201(1)(b) expressly conferred jurisdiction on the Washington court after Nevada decided to decline jurisdiction under its own UCCJEA provisions.

Gibson makes several related arguments contesting the Washington court's jurisdiction. He contends that Pagh misled the court regarding the parties' residential history and failed to disclose Britton's history of living in Nevada. The record shows that Pagh disclosed to both the Washington and Nevada courts that Britton lived in Nevada from the time he was born until the December 2009 trip to Seattle. To the extent Gibson argues Pagh misrepresented residence information, the record demonstrates that Pagh correctly reported she lived with her sister's family in Washington starting in January 2010, before she filed her DVPO and parenting plan/child support petitions.[26] Nothing in this record indicates that Pagh misled the Nevada court when she stated, "Except for [Gibson] being [in Nevada], all the necessary witnesses and evidence are in the state of Washington."

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or what other considerations went into the decision to decline jurisdiction." Appellant's Reply Br. at 8. Gibson cites no authority requiring courts to publish or provide factual findings supporting a jurisdictional decision under the UCCJEA. And the parties' briefing in the Nevada court provides ample evidence of the arguments and facts the court considered.

[26] Gibson argues in his reply brief that he submitted proof that Pagh was a resident of Nevada at the time she filed her January 2010 DVPO and parenting plan/child custody petitions. He cites evidence showing that the parties' Nevada lease did not expire until February 2010 and claims the parties' December 2009 trip to Washington was only a vacation because they had round trip tickets. He mischaracterizes the requirements for "residence." Residence, or domicile, requires physical presence and intent to make a home in the future. In re Marriage of Robinson, 159 Wn. App. 162, 168, 248 P.3d 532 (2010). Pagh's declarations state that in January 2010 when she filed the DVPO and parenting plan/child custody petitions in Washington, Pagh was physically present in Washington and intended to reside here. Gibson's arguments lack merit.

Even if we assume Pagh misled the court, jurisdiction was still proper. RCW 26.27.271 provides that Washington should not assert jurisdiction if the person attempting to invoke jurisdiction has engaged in unjustifiable conduct. Gibson argues that Pagh's wrongful retention of Britton, erroneous or incomplete statements on her petitions, and other acts constitute unjustifiable conduct. But RCW 26.27.271(1)(b) establishes an exception to the unjustifiable conduct rule when "[a] court of the state otherwise having jurisdiction under RCW 26.27.201 through 26.27.221 determines that this state is a more appropriate forum under RCW 26.27.261." That is exactly what happened here. Even if Pagh engaged in wrongful conduct, the conduct cannot deprive the trial court of jurisdiction.

Gibson also contends that the "[e]vidence does not support inconvenient forum as basis for relinquishment." Appellant's Br. at 27 (boldface and formatting omitted). This contention challenges the Nevada court's decision to decline jurisdiction under the UCCJEA's inconvenient forum provisions, not the Washington court's assumption of jurisdiction when Nevada declined. See Friedman, 264 P.3d at 1167-68 (decision to decline jurisdiction on inconvenient/more appropriate forum grounds is for the court of the state that has UCCJEA jurisdiction to make, not the state to which deferral is pressed).[27] We decline to review the Nevada court's determination to decline

[27] Gibson cites In re Marriage of Verbin, 92 Wn.2d 171, 595 P.2d 905 (1979) for the proposition that "Washington is not bound to an out-of-state decision that is not supported by the record." Appellant's Br. at 30. Verbin is inapposite. There, a father actively participating in Washington dissolution and child custody proceedings filed another divorce and custody action in Maryland, seeking custody of his two children. Verbin, 92 Wn.2d at 174. The record indicated that the father told "patent falsehood[s]" to the Maryland court regarding his knowledge of proceedings in other jurisdictions.

jurisdiction.

Finally, Gibson challenges the court's findings that (1) he "appeared and submits to the jurisdiction of this court by consent" and (2) "[t]he child resides in [Washington] as a result of the acts or directives of [Gibson]." He first claims, "At no time did he

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Verbin, 92 Wn.2d at 174. Both actions went to trial. The Maryland court issued a decree of divorce granting custody to the father, and the Washington court issued a decree of dissolution awarding custody of one child to the mother and one child to the father. Verbin, 92 Wn.2d at 176-78.

On appeal, the father assigned error to the Washington court's refusal to decline jurisdiction and enforce the Maryland decree. Verbin, 92 Wn.2d at 178. Our Supreme Court noted that the father "was apparently intent on concealing the fact that he had fraudulently invoked the jurisdiction of the Maryland court" and explained that "[a] court may refuse to give full faith and credit if the decree was fraudulently obtained." Verbin, 92 Wn.2d at 176, 182. The court refused to enforce the Maryland decree under the full faith and credit clause, U.S. Constitution, article IV, section 1:

> Here, even though appellant was actively involved in litigation over the custody of both his daughters, he falsely attested to the Maryland court that he was not involved in such litigation at the time he filed his divorce complaint. Although he later admitted the fact of the Washington proceedings, it appears from the record that he never fully apprised the Maryland court of their nature and extent. The Maryland court thus had no reason to believe Washington could or would adequately protect the best interests of the children involved. In view of respondent's inability to present evidence in her favor, it is not surprising that the court awarded appellant custody of both children. Yet, had it been fully aware of the nature and extent of the Washington proceedings, it may well have declined jurisdiction, or at least required more evidence regarding Aimee's welfare. Appellant, having perpetrated this fraud on the Maryland court, may not now require a Washington court to enforce his Maryland decree.

Verbin, 92 Wn.2d at 182-83.

In contrast, here, nothing in the record indicates the Nevada court was not fully apprised of the nature and extent of the Washington proceedings. Both parties were represented in Nevada and briefed the court regarding jurisdictional issues. The Nevada and Washington courts conferred. No evidence shows either party fraudulently misled the courts. The record shows that at the time the Nevada action was filed, Pagh and Britton lived in Washington and intended to stay here. We need not analyze Britton's connections with Nevada because Nevada declined jurisdiction. Nevada is not required to retain jurisdiction and may decline it if another state appears to be a more appropriate or convenient forum. See NRS 125A.365.

consent or submit himself to Washington's jurisdiction." Appellant's Br. at 20. Gibson confuses personal and subject matter jurisdiction. The court's finding referred to personal jurisdiction. Unlike subject matter jurisdiction, a party may consent to personal jurisdiction by appearing in the proceedings and arguing the case on its merits or seeking affirmative relief. In re Estate of Little, 127 Wn. App. 915, 922, 113 P.3d 505 (2005); In re Support of Livingston, 43 Wn. App. 669, 671-72, 719 P.2d 166 (1986). Here, Gibson submitted a trial brief and his attorney appeared for him at trial. Gibson's trial brief indicates he "submitted a proposed final parenting plan asking that he be designated as the child's primary custodial parent based upon [Washington law]." He consented to personal jurisdiction by requesting affirmative relief and making an argument on the merits. See In re Marriage of Maddix, 41 Wn. App. 248, 251-52, 703 P.2d 1062 (1985).

Regarding the court's "acts or directives of [Gibson]" finding, Gibson argues that "'[a]cts and directives' of a parent is not a basis for jurisdiction under the UCCJEA." Appellant's Br. at 28 (boldface and formatting omitted). Even assuming that is true, later in the findings, the court made clear that its basis for jurisdiction was the UCCJEA: "All courts in the child's home state have declined to exercise jurisdiction on the ground that a court of this state is the appropriate forum to determine the custody of the child." As discussed above, the court properly based its assumption of UCCJEA jurisdiction on Nevada's determination to decline jurisdiction. The extraneous "acts and directives" statement is irrelevant.

We conclude that (1) Nevada declined jurisdiction on inconvenient forum grounds, (2) the Washington trial court properly assumed jurisdiction under the UCCJEA, and (3) sufficient evidence established that "the child and at least one parent . . . have a significant connection with [Washington] other than mere physical presence" and "[s]ubstantial evidence is available in [Washington] concerning the child's care, protection, training, and personal relationships" under RCW 26.27.201(b). The parties met and lived in Washington for several years before moving to Nevada, both parties' families reside in Washington, and the parties depended on Gibson's mother (a Washington resident) for financial support while living in Nevada. See In re Marriage of Steadman, 36 Wn. App. 77, 79-80, 671 P.2d 808 (1983) (presence of supportive family members can establish a significant connection). Pagh and Britton lived with Pagh's sister in Washington at the time she filed the petitions at issue, Pagh intended to reside in Washington, and she lived and worked in Washington until two months after trial. Jurisdiction was proper.

Scope of Relief

Gibson argues that even if we deny relief on jurisdictional grounds, the residential schedule should be vacated because it exceeds the relief Pagh requested in her initial parenting plan/child support petition.[28] He cites In re Marriage of Leslie, 112

[28] In her initial parenting plan/child support petition filed in January 2010, Pagh indicated that Gibson "may exercise up to 2 hours per week professionally supervised visitation pending completion of a year-long domestic violence perpetrator's treatment program." Pagh argued at trial—and the court agreed in its final parenting plan order—that Gibson should have no contact with Britton until he completed such a program.

Wn.2d 612, 772 P.2d 1013 (1989) for the proposition that "[t]o the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void." Appellant's Br. at 43. He claims—without argument or citation to authority—that because he failed to appear at trial, the court's judgment was entered by default.

This claim fails. Under CR 55(a)(1), a party is subject to default if the party "has failed to appear, plead, or otherwise defend . . . ." Gibson participated in this case. Counsel appeared for him, filed briefs and responses to Pagh's petitions, and participated in discovery. Gibson's voluntary absence from the trial was not the equivalent of failing to appear and prosecute the action. See Tacoma Recycling, Inc. v. Capitol Material Handling Co., 34 Wn. App. 392, 394-95, 661 P.2d 609 (1983) (although defendant failed to attend bench trial, judgment did not qualify as default judgment because defendant had previously appeared and filed pleadings). The trial was a hearing on the merits. Although Gibson failed to appear, his counsel appeared and cross-examined Pagh. The court considered the parties' trial briefs. "When a tribunal considers evidence, the resulting judgment is not a default judgment even if one party is absent." Stanley v. Cole, 157 Wn. App. 873, 880, 239 P.3d 611 (2010); see also In re Marriage of Daley, 77 Wn. App. 29, 32, 888 P.2d 1194 (1994). The final parenting plan order was not equivalent to a default judgment.

Instead, the rule for nondefault judgments applies. CR 54(c) provides, "Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the

party has not demanded such relief in his pleadings."[29] Thus, if the trial court finds merit in a claim, the court is obligated by CR 54(c) to grant that relief, even though the claim has not been included in the original pleadings. State ex rel. A.N.C. v. Grenley, 91 Wn. App. 919, 930, 959 P.2d 1130 (1998). Additionally, if a party argued a claim to the trial court that was not included in the original pleadings, the court may treat that claim as if it had been pleaded. Grenley, 91 Wn. App. at 931. Pagh argued in her trial brief and at trial that Gibson should have no contact with Britton until completing a domestic violence perpetrator's treatment program. Evidence showed that Gibson committed acts of domestic violence against Pagh and Britton as late as December 2009, immediately before Pagh left Gibson. The record demonstrates that the trial court found merit in Pagh's claim. It therefore properly granted that relief under CR 54(c).

DVPO

Gibson assigns error to the court's DVPO regarding Britton. He makes both factual (sufficiency of the evidence) and jurisdictional arguments.

Factual Issues[30]

Gibson first alleges that the initial temporary DVPO "simply states: 'the court has jurisdiction,'" and that we should therefore infer that it based its jurisdictional

[29] See also Allstot v. Edwards, 114 Wn. App. 625, 632, 60 P.3d 601 (2002) (under CR 54(c), claim for special damages that was argued and ruled on in trial court is treated as if it had been pleaded even though claim was not included in original pleadings).

[30] To the extent Gibson here repeats his arguments asserting that Pagh lied to the court regarding the parties' residency, we address that claim above.

decision on Pagh's "false and incomplete assertions."[31] Appellant's Br. at 22. We construe this as a sufficiency of the evidence argument. Gibson omits most of the court's jurisdictional statement. The complete statement states:

> The court has jurisdiction over the parties, the minors, and the subject matter. The respondent will be served notice of his or her opportunity to be heard at the scheduled hearing. RCW 26.50.070. For good cause shown, the court finds that an emergency exists and that a Temporary Protection Order should be issued without notice to the respondent to avoid irreparable harm.

RCW 26.50.070(1)(a)-(e) gives the court authority to enter an ex parte temporary DVPO:

> (1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:
> (a) Restraining any party from committing acts of domestic violence;
> . . . ;
> (d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;
> (e) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household.

(Emphasis added). The statute provides, "Irreparable injury . . . includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner." RCW 26.50.070(2). A hearing must be held within two weeks of the ex parte temporary DVPO's issuance. RCW 26.50.050. At the hearing, the court has authority to issue a permanent order or reissue the temporary order. RCW 26.50.050, .060. Absent a

[31] To the extent Gibson complains that Pagh incorrectly or inaccurately filled out the DVPO petition form, we address that claim above.

clear abuse of discretion, we will not disturb a trial court's decision to grant or deny a DVPO. Hecker v. Cortinas, 110 Wn. App. 865, 869, 43 P.3d 50 (2002).

As discussed above, Pagh asserted in her DVPO petition and attached declaration that "[Gibson] becomes extremely angry and violent and I fear for our son's and my safety," that Gibson had a history of domestic violence against her, and that Gibson recently hit and shoved her. (Emphasis added.) These grounds support the court's grant of a temporary DVPO and temporary custody to Pagh.[32] Gibson makes much of the fact that Pagh initially described acts of violence toward herself and not toward Britton. But Pagh later supplemented her declaration to allege acts of violence toward Britton as discussed above. Gibson speculates that Pagh made up these allegations to ensure that the court renewed the DVPO. We conclude that Pagh stated a sufficient basis for the initial DVPO, and the court properly reissued it several times on the same grounds to accommodate rescheduled hearing dates.

At the March 11, 2010 hearing, the court noted that the evidence concerning violence against Britton was scant and informed Pagh that she needed more evidence to support extensions of the DVPO. Pagh later submitted declarations detailing Gibson's acts of violence against Britton. When the court made its final order protecting both Pagh and Britton, the record showed Gibson had committed acts of violence against both. We decline to disturb the trial court's decision to grant the temporary and final DVPOs.

[32] Regarding the initial custody determination, the court also had UCCJEA temporary emergency jurisdiction under RCW 26.27.231 when Pagh filed her request for a parenting plan and order of child support as discussed above.

Jurisdictional Issues

Gibson claims the court lacked jurisdiction because Pagh improperly filed her DVPO petition under an old cause number in the wrong county. This claim fails.

A domestic violence protection order, regardless of whether it stands alone or is incorporated within another court order, is an order under the Domestic Violence Prevention Act, chapter 26.50 RCW. The Act establishes that Washington's "superior, district, and municipal courts" have jurisdiction over domestic violence matters. RCW 26.50.020(5). Here the court had jurisdiction "to issue the type of order," Mead School District No. 354 v. Mead Education Ass'n, 85 Wn.2d 278, 284, 534 P.2d 561 (1975), that is, to issue a temporary and then a permanent DVPO. Gibson does not dispute that all Washington superior courts have subject matter jurisdiction to hear domestic violence cases under RCW 26.50.020(5). "'If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction.'" Dougherty v. Dep't of Labor & Indus., 150 Wn.2d 310, 316, 76 P.3d 1183 (2003) (quoting Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)).

While jurisdiction refers to the power of a particular court to hear and decide cases, venue concerns only the place where the suit may be brought within the state. Dougherty, 150 Wn.2d at 316. "A court may acquire jurisdiction even though it is not the court of proper venue." Dougherty, 150 Wn.2d at 315. The remedy for filing in the wrong county under the venue statutes is a change of venue, not dismissal for lack of

subject matter jurisdiction. J.A. v. Dep't of Soc. & Health Serv., 120 Wn. App. 654, 659, 86 P.3d 202 (2004). Gibson never moved for a change in venue below and does not argue on appeal that venue was improper. This argument is waived. RAP 2.5(a); 10.3(a)(6).

Gibson also contends the court lacked jurisdiction over him regarding the DVPO. We assume he means personal jurisdiction. A party waives the claim of lack of personal jurisdiction by "consent[ing], expressly or impliedly, to the court's exercising jurisdiction." In re Marriage of Steele, 90 Wn. App. 992, 997-98, 957 P.2d 247 (1998). Consent may be established by proceeding and arguing the case on its merits. In re Marriage of Markowski, 50 Wn. App. 633, 637, 749 P.2d 754 (1988). The court acquires personal jurisdiction when a party appears in the proceedings. In re Estate of Little, 127 Wn. App. 915, 922, 113 P.3d 505 (2005). As discussed above, Gibson consented to personal jurisdiction by submitting briefs and other documents and appearing throughout the proceedings through his counsel.

Duration of DVPO With Respect to Britton

Gibson argues that even if we deny relief on jurisdictional grounds, the DVPO should be deemed to have expired one year after issuance with regard to Britton because it improperly purports to extend the order beyond one year. Gibson correctly notes that under RCW 26.50.060(2), a protection order may not restrain a respondent's contact with his or her own minor children unless it is entered for a fixed period of one year or less. The protection order here is purportedly effective until February 1, 2111,

and, thus, clearly exceeds the one year requirement. We conclude the order involving Britton was valid pursuant to RCW 26.50.060(2) until it expired on February 15, 2012. Muma v. Muma, 115 Wn. App. 1, 7, 60 P.3d 592 (2002) (protection order purporting to extend for 49 years was valid and effective only for one year after issuance).

CR 60 Motion[33]

Gibson argues the trial court improperly denied CR 60 relief on the ground that he failed to seek review of the Nevada court's jurisdictional decision. Pagh responds that no substantial evidence shows the trial court abused its discretion or based its decision on untenable grounds.

In his CR 60 motion, Gibson requested vacation of the court's February 15, 2011 orders under CR 60(b)(1), (3), (4), and (5). Those provisions state that the court may vacate an order or judgment for the following reasons:

> (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
> . . . ;
> (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
> (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
> (5) The judgment is void.

CR 60(b)(1), (3), (4), (5). We review denial of a motion to vacate for abuse of discretion. In re Welfare of M.G., 148 Wn. App. 781, 792, 201 P.3d 354 (2009). A court abuses its discretion if its decision is manifestly unreasonable or based on

[33] To the extent Gibson repeats his jurisdictional arguments regarding UCCJEA procedure and his allegations regarding Pagh's incomplete or erroneous statements on the DVPO and parenting plan/child support petitions, we address those arguments above. The judgment is not void for lack of jurisdiction.

untenable grounds. M.G., 148 Wn. App. at 792.

Gibson argues the trial court based its decision on an improper ground, namely that he could and should have sought review in the Nevada court.[34] His argument is based on the premise that the order declining jurisdiction and dismissing the case in Nevada was only an interlocutory order, not a final order for purposes of appealability. But regardless of whether Gibson should have taken action in the Nevada court after its ruling, we may affirm on any basis the record supports. Truck Ins. Exch. v. Vanport Homes, Inc., 147 Wn.2d 751, 766, 58 P.3d 276 (2002). On this record, the trial court's denial of Gibson's CR 60 motion was not unreasonable or untenable.

As discussed above, Washington based its jurisdiction on the UCCJEA—Nevada declined jurisdiction and RCW 26.27.201(b) expressly conferred jurisdiction on the Washington court. Gibson now argues that new evidence shows that Pagh did not have a significant connection with Washington sufficient to establish subject matter jurisdiction. He relies on (1) evidence of Pagh's engagement to Naji Mehanna shortly before trial, (2) evidence that Pagh moved back to Nevada two months after trial to live with Mehanna, and (3) evidence that Pagh married Mehanna in Nevada in June 2011 and continues to live there with him and Britton. Gibson argues this new evidence shows Pagh knew at the time of trial that she intended to return to Nevada and "points to forum shopping by [Pagh]." Appellant's Br. at 30 (boldface

[34] We note that the trial court did not base its CR 60 decision solely on this ground as Gibson seems to argue. The court reviewed the parties' CR 60 briefing and stated, "The court does not find the bases/distinctions in the Mother's pleadings as briefed by the Father in his CR 60 motion (as to jurisdiction) sufficient to warrant a finding that the Mother made incomplete assertions to mislead the court.

omitted).

Gibson's assertion is entirely speculative. Pagh's CR 60 submissions show she lived and worked in Washington from January 2010 until April 2011, when she moved to Nevada. The evidence does not support Gibson's claim that Pagh, at the time of trial, "had no present intent to make Washington her home" and intended to move back to Nevada. Appellant's Br. at 36. The record only indicates she was engaged at that time and that she and Mehanna "made plans to marry in June 2011." As discussed above, Pagh established a significant connection with Washington. The record before the CR 60 court indicated that Pagh was raised in Washington, the parties met and lived in Washington before moving to Nevada, both parties' families reside in Washington, Britton was conceived in Washington, and the parties depended on Gibson's mother (a Washington resident) for financial support while living in Nevada. At the time of trial, Pagh had lived and worked in Washington for over a year. Gibson's speculative and conclusory allegations regarding forum shopping lack merit.

Gibson also claims that Pagh committed fraud on the court. He repeats the above arguments and claims Pagh falsely informed the trial court of her residence and failed to inform the trial court of her intention "to reside in Nevada with her soon-to-be husband." Appellant's Br. at 39. Gibson correctly notes that domicile requires physical presence and intent to reside. In re Marriage of Robinson, 159 Wn. App. 162, 168, 248 P.3d 532 (2010). Pagh returned to Washington in December 2009 and lived and worked in Washington from January 2010 until April 2011. She stated in her DVPO

petition that she "live[s] in this county" and on her parenting plan/child support petition that she was "presently residing in the state of Washington." Nothing in the record shows that at the time she filed those documents, she intended to later marry and move back to Nevada. And as discussed above, no evidence indicates that at the time of trial Pagh intended to move to Nevada. The trial court did not abuse its discretion when it stated:

> The court does not find the bases/distinctions in the Mother's pleadings as briefed by the Father in his CR 60 motion (as to jurisdiction) sufficient to warrant a finding that the Mother made incomplete assertions to mislead the court. Nor does the court find a basis under newly discovered evidence/forum shopping, or that the judgment is void.

Regardless of Gibson's repeated claims regarding Pagh's actions, Washington properly assumed subject matter jurisdiction based on Nevada's determination to decline jurisdiction on inconvenient forum grounds. As discussed above, even alleged "wrongful conduct" cannot deprive the trial court of jurisdiction in such a case. RCW 26.27.271(1)(b). The trial court properly denied the CR 60 motion to vacate.

Attorney Fees and Costs

Gibson argues that the trial court erred in awarding Pagh $45,876.48 in attorney fees because of his intransigence. He argues that (1) the fee award exceeded the scope of relief Pagh pleaded in her original petitions, (2) Pagh presented no factual basis for the court to find intransigence, (3) no findings relate his behavior to Pagh's fees, (4) he had no opportunity to address the basis for the fee amount because Pagh submitted billing statements for the first time in reply to his objection, and (5) the court

made no findings supporting the calculation of the fee amount.

A court may award attorney fees if one party's intransigence caused the other party to incur additional legal fees. In re Marriage of Bobbitt, 135 Wn. App. 8, 30, 144 P.3d 306 (2006). Attorney fees based on intransigence have been awarded where a party engaged in obstruction and foot-dragging or made the proceeding unduly difficult and costly. Bobbitt, 135 Wn. App. at 30. When awarding attorney fees on the basis of intransigence, a trial court must make findings sufficient to allow appellate review. Bobbitt, 135 Wn. App. at 30; In re Marriage of Greenlee, 65 Wn. App. 703, 708-09, 829 P.2d 1120 (1992). Where a party's misconduct "permeate[s] the entire proceedings, the court need not segregate which fees were incurred as a result of intransigence and which were not." In re Marriage of Burrill, 113 Wn. App. 863, 873, 56 P.3d 993 (2002). We review a trial court's award of attorney fees for abuse of discretion. In re Marriage of Mattson, 95 Wn. App. 592, 604, 976 P.2d 157 (1999).

Here the trial court awarded Pagh the entire amount of fees and costs she requested—$45,876.48—because Gibson's misconduct "permeated the entire proceedings . . . ." Burrill, 113 Wn. App. at 873. It explained, "The Court finds that [Gibson's] intransigence throughout these proceedings warrants an award of attorneys fees and costs in favor of [Pagh]." (Emphasis added.) Because the court made no factual findings to support its award amount and "intransigence throughout these proceedings" conclusion, we remand for entry of appropriate findings of fact. Under Burrill, fee segregation is not required where the findings support the court's

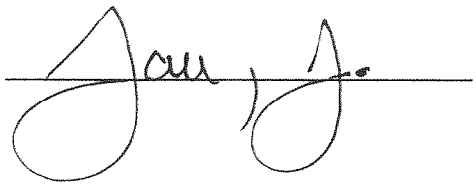
determination that a party's wrongful conduct permeated the entire proceedings.

Attorney Fees on Appeal

Gibson requests an award of attorney fees on appeal. Because Gibson is not the prevailing party on appeal, none of the authorities he cites entitles him to an award of fees and costs. Pagh also requests appellate attorney fees and costs but cites no authority for her request and devotes no argument to it. We deny her request. See RAP 18.1; Bay v. Jensen, 147 Wn. App. 641, 661, 196 P.3d 753 (2008) ("RAP 18.1(b) requires more than [a] bald request for attorney fees on appeal.").

CONCLUSION

For the reasons discussed above, we affirm the trial court's order denying CR 60 relief and orders related to the DVPO and parenting plan/child support actions. We deny fees on appeal. We also vacate the fees and costs awarded by the trial court and remand for entry of appropriate findings of fact consistent with this opinion.



WE CONCUR: