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**ORDER OF THE  
SUPREME COURT OF WASHINGTON  
(NOVEMBER 9, 2022)**

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THE SUPREME COURT OF WASHINGTON

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WAYNE JANKE, ET AL.,

*Respondents,*

v.

RONALD SIMON, ET AL.,

*Petitioner.*

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No. 101060-5

Court of Appeals No- 38056-4-III

Before: Steven C. GONZÁLEZ, Chief Justice.

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Department I of the Court, composed of Chief Justice Gonzalez and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its November 8, 2022, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied.

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DATED at Olympia, Washington, this 9th day of  
November, 2022.

/s/ Steven C. González  
Chief Justice

**OPINION OF THE COURT OF APPEALS OF  
THE STATE OF WASHINGTON DIVISION III  
(JUNE 2, 2022)**

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**UNPUBLISHED OPINION  
IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON DIVISION THREE**

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**IN THE MATTER OF THE CUSTODY OF: C.S.+**

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**WAYNE JANKE and DORIS STRAND,**

*Respondents,*

**v.**

**RONALD SIMON and TERESA SIMON,**

*Appellants.*

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**No. 38056-4-III**

**Before: PENNELL, J., SIDDOWAY, C.J.,  
FEARING, J.**

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<sup>+</sup> To protect the privacy interests of the minor child, we use their first and last name initials throughout the body of this opinion. Gen. Order 2012-1 of Division III, *In re Use of Initials or Pseudonyms for Child Victims or Child Witnesses* (Wash. Ct. App. June 18, 2012), [https://www.courts.wa.gov/appellate\\_trial\\_courts/?fa=atc.genorders\\_orddisp&ordnumber=2012\\_001&div=III](https://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=2012_001&div=III).

PENNELL, J.

Ronald and Teresa Simon appeal from the trial court's denial of reconsideration of an order striking their CR 60 motion for relief from judgment and imposing attorney fees as a CR 11 sanction. We affirm in part and reverse in part. The order striking the CR 60 motion is affirmed but we reverse the CR 11 sanction, without prejudice, based on insufficient findings. This matter is remanded for further proceedings.

### FACTS

Ronald and Teresa Simon are the biological parents of C.S. In 2015, Wayne Janke and Doris Strand petitioned for nonparental custody of C.S. Extensive litigation ensued, including the appointment of a guardian ad litem (GAL). Ultimately, in 2018 the petition was granted and both parties were ordered to pay a share of the GAL fees.

In 2019, the Simons moved for relief from judgment under CR 60, arguing they had newly discovered evidence as well as evidence of fraud.<sup>1</sup> The court denied the motion, ruling (1) the fraud alleged was not perpetrated by an opposing party, (2) the Simons failed to make a showing of fraud, and (3) the Simons failed to show the alleged newly discovered evidence could not have been uncovered earlier.

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<sup>1</sup> The Simons appear to have filed a similar motion in August 2018. *See Clerk's Papers (CP)* at 3584; 1 Report of Proceedings (Apr. 12, 2019) at 31. This motion does not appear to be included in the appellate record.

In 2020, the Simons filed another CR 60 motion. This motion raised several new factual arguments concerning the alleged conspiracy against them, but shared the same fundamental legal defects as their prior motion. In response, Doris Strand moved to strike the Simons's motion, asserting it was duplicative of the previous CR 60 motion. The trial court granted the motion to strike and imposed on the Simons \$2,500 in attorney fees as a CR 11 sanction due to the "repetitive nature" of the motion. Clerk's Papers (CP) at 4831. The Simons then unsuccessfully moved for reconsideration of this order.

The Simons now appeal from the trial court's denial of reconsideration of the order striking their CR 60 motion and imposing attorney fees as a CR 11 sanction.

## ANALYSIS

### *Order striking the CR 60 motion*

Under CR 12(f), a party may move in the trial court to strike any redundant or immaterial portion of a pleading or motion prior to filing a responsive pleading. CR 60 sets forth the procedures governing motions for relief from judgment. A motion for relief from judgment based on newly discovered evidence must be made within one year. CR 60(b)(11). A motion for relief based on fraud must be made within "a reasonable time." *Id.* We review a trial court's disposition of a CR 60 motion for abuse of discretion. *Coogan v. Borg-Warner Morse Tec Inc.*, 197 Wn.2d 790, 820, 490 P.3d 200 (2021). Motions to strike under CR 12(f) are reviewed under the same standard. *Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 244,

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178 P.3d 981 (2008). Our case law permits us to affirm the trial court on any basis supported by the record and the law. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989).

The Simons's motion for relief from judgment was untimely under the plain terms of CR 60. To the extent the motion was based on newly discovered evidence, it was not filed within one year of the 2018 nonparental custody order. To the extent the CR 60 motion was based on fraud, it was not filed within a reasonable amount of time, particularly in light of the Simons's prior litigation.

The Simons's motion also fails on the merits. In order to justify vacating a judgment on the basis of newly discovered evidence, the Simons must show new evidence:

(1) would probably change the result if a new trial were granted, (2) was discovered since trial, (3) could not have been discovered before the trial by the exercise of due diligence, (4) is material, and (5) is not merely cumulative or impeaching.

*Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013).

To obtain relief from a judgment due to fraud, a party must demonstrate fraudulent conduct or a misrepresentation that caused the entry of the judgment such that the losing party was prevented from fully and fairly presenting its case or defense. *Lindgren v. Lindgren*, 58 Wn.App. 588, 596, 794 P.2d 526 (1990). The moving party must establish fraud with clear and convincing evidence. *Id.*

The nine fraud elements are: (1) a representation of an existing fact; (2) the fact is material; (3) the fact is false; (4) the defendant knew the fact was false or was ignorant of its truth; (5) the defendant intended the plaintiff to act on the fact; (6) the plaintiff did not know the fact was false; (7) the plaintiff relied on the truth of the fact; (8) the plaintiff had a right to rely on it; and (9) the plaintiff had damages.

*Baddeley v. Seek*, 138 Wn.App. 333, 338-39, 156 P.3d 959 (2007).

The Simons fail to point to any newly discovered evidence that is material to their case, or any evidence of fraud. The Simons's arguments requesting relief from judgment are difficult to understand and appear to be based on allegations of an elaborate conspiracy involving the court and the GAL. The Simons fail to address the elements of fraud, do not allege fraud by an adverse party (*i.e.* not the court or the GAL), and fail to describe why they were unable to discover the claimed new evidence or fraud sooner than the time of filing. These are similar to the defects that led the trial court to deny the Simons's CR 60 motion in 2019. Indeed, due to the similarity of subject matter between the two motions, the 2020 CR 60 motion can easily be interpreted as another attempt at the failed prior motion. Thus, it was not an abuse of discretion for the trial court to rule the Simons's 2020 CR 60 motion was repetitive, grant the motion to strike under CR 12(f), and deny the Simons's subsequent motion for reconsideration.



**CR 11 sanction**

“[CR 11] permits a court to award sanctions, including expenses and attorney fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation.” *Delany v. Canning*, 84 Wn.App. 498, 509-10, 929 P.2d 475 (1997). The rule applies to pro se parties as well as attorneys. *See West v. Wash. Ass’n of County Officials*, 162 Wn.App. 120, 136, 252 P.3d 406 (2011). We review the imposition of a CR 11 sanction for abuse of discretion. *Kilduff v. San Juan County*, 194 Wn.2d 859, 874, 453 P.3d 719 (2019).

The trial court here found that “[b]ased on the repetitive nature of several successive CR (60) motions on the same grounds, CR (11) sanctions are appropriate.” CP at 4831. The court did not explicitly find the Simons had filed their CR 60 motion for an improper purpose such as harassment. Nor did the court find the Simons made a baseless filing without a reasonable inquiry into law and facts.

The trial court’s finding was insufficient to support the CR 11 sanction. “[I]n imposing CR 11 sanctions, it is incumbent upon the court to specify the sanctionable conduct in its order.” *Biggs v. Vail*, 124 Wn.2d 193, 201, 876 P.2d 448 (1994). “The court must make a finding that either the . . . [pleading, motion, or legal memorandum] is not grounded in fact or law and the attorney or party failed to make a reasonable inquiry into the law or facts, or the paper was filed for an improper purpose.” *Id.* “If a . . . [pleading, motion, or legal memorandum] lacks a factual or legal basis, the court cannot impose CR 11 sanctions unless it also finds that the attorney [or party] who signed and filed the . . . [pleading, motion, or legal memorandum] failed to conduct a reasonable inquiry into the factual and legal

basis” of the filing. *In re Jones v. A.M.*, 13 Wn.App. 2d 760, 768, 466 P.3d 1107 (2020) (quoting *Bryant v. Joseph Tree, Inc.* 119 Wn.2d 210, 220, 829 P.2d 1099 (1992)).

Because the trial court’s findings were insufficient to support the attorney fee award as a CR 11 sanction, we reverse the sanction and remand so that the trial court may consider whether a CR 11 sanction is appropriate in light of the aforementioned standards. See *Biggs v. Vail*, 124 Wn.2d at 202 (setting forth procedure for remand on CR 11 findings).

### APPELLATE ATTORNEY FEES

Doris Strand requests an award of attorney fees under RAP 18.1 for having to defend against a frivolous appeal. Because the Simons have prevailed in part on their appeal, we cannot find the appeal was wholly frivolous. The request for attorney fees on appeal must be denied.

### CONCLUSION

The order striking the Simons’s CR 60 motion is affirmed. The trial court’s award of attorney fees as a sanction under CR 11 is reversed without prejudice. This matter is remanded for further proceedings.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

WE CONCUR:     /s/ Pennell           J.  
                      /s/ Siddoway       C.J.  
                      /s/ Fearing           J.

**ORDER OF THE SUPERIOR COURT OF  
WASHINGTON, FOR SPOKANE COUNTY  
ON RESPONDENTS' MOTION  
FOR RECONSIDERATION  
(FEBRUARY 9, 2021)**

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SUPERIOR COURT OF WASHINGTON,  
FOR SPOKANE COUNTY

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IN RE: C.S.,

*Child,*

DORIS STRAND,

*Petitioner,*

and

RONALD SIMON, TERESA SIMON,

*Respondents.*

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No. 15-3-02130-1

Before: Rachelle ANDERSON, Judge.

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**I. Basis**

This matter came before the court upon motion by the respondents, Ronald and Teresa Simon for Reconsideration.

## **II. Findings**

After reviewing the case record to date, the basis for the motion, the court finds there is good cause to enter this order.

## **III. Order**

IT IS ORDERED THAT:

3.1 Respondents' motion for reconsideration under CR59 is hereby denied.

3.2 Petitioner's request for \$500 in attorney fees is hereby denied.

3.6 Other: No specific points of CR 59 is argued. The Respondents fail to state a claim upon which relief can be granted. Additionally, if looking to CR 59(4), The Respondents have failed to address the required facts for relief. There is no showing any "newly discovered evidence" would change the result at trial if new trial were stated; no showing this evidence is newly discovered since trial or that it would not have been discovered prior with due diligence; The "newly discovered evidence" is not material to the issue at hand at trial and this is duplicative, cumulative argument.

/s/ Rachelle Anderson  
Judge

Dated: 2/9/2021

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Presented by:

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Spencer W. Harrington, WSBA #35907  
Attorney for Petitioner

Approved by:

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Teresa Simon, Respondent Pro Se

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Ronald Simon, Respondent Pro Se

**ORDER OF THE SUPERIOR COURT  
OF WASHINGTON, FOR SPOKANE COUNTY  
ON PETITIONER'S MOTION TO STRIKE  
RESPONDENTS' DUPLICATIVE  
CR60 MOTION  
(JANUARY 29, 2021)**

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SUPERIOR COURT OF WASHINGTON,  
FOR SPOKANE COUNTY

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IN RE: C.S.,

*Child,*

DORIS STRAND,

*Petitioner,*

and

RONALD SIMON, TERESA SIMON,

*Respondents.*

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No. 15-3-02130-1

Before: RACHELLE ANDERSON, Judge.

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**I. Basis**

This matter came before the court upon motion to strike respondents' duplicative CR60 motion.

## **II. Findings**

After reviewing the case record to date, the basis for the motion, and pleadings of the parties, the court finds there is good cause to enter this order. Based on the repetitive nature of several successive CR (60) motions on the same grounds, CR (11) sanctions are appropriate.

## **III. Order**

**IT IS ORDERED THAT:**

3.1 Petitioner's motion to strike respondents' duplicative CR60 motion is hereby granted.

3.2 All further motions by either party must be presented to the assigned Judge for approval prior to filing with the court, noting for hearing, or serving other parties.

3.3 Other: No further CR(60) motions to set aside the Non-Parental Custody Decree may be filed until the current appeals to the Division Three Court of Appeals are decided on this matter. Respondents Ronald and Teresa Simons shall pay \$2,500 in attorneys' fees to Mr. Harrington as a CR (11) sanction. If this amount is not paid within 30 days. Mr. Harrington may reduce to a judgment without further notice.

/s/ Rachelle Anderson  
Judge

Dated: 2/9/2021

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Presented by:

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Spencer W. Harrington, WSBA #35907  
Attorney for Petitioner

Approved by:

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Teresa Simon, Respondent Pro Se

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Ronald Simon, Respondent Pro Se

Approved by:

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Kimberly Kamel, WSBA # 30041  
Former Guardian ad Litem



**ORDER OF THE SUPERIOR COURT  
OF WASHINGTON, FOR SPOKANE  
COUNTY ON PETITIONER'S MOTION TO  
STRIKE RESPONDENTS' DUPLICATIVE  
CR 60 MOTION AND FOR ATTORNEY  
FEES/SANCTIONS  
(APRIL 12, 2019)**

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**SUPERIOR COURT OF WASHINGTON,  
FOR SPOKANE COUNTY**

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**IN RE: C.S.,  
DOB XX/XX/01**

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**No. 17-2-03739-1**

**Before: Timothy B. FENNESSY, Judge.**

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**I. BASIS**

This matter came before the court upon petitioner's motion to strike respondents' duplicative CR60 motion and for attorney fees/sanctions.

**II. FINDINGS**

After reviewing the case record to date, the basis for the motion, and argument of counsel, the court finds there is good cause to enter this order. The oral ruling of this court is hereby incorporated herein by reference in its entirety.

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### **III. ORDER**

**IT IS ORDERED THAT:**

3.1 Petitioner's motion to strike respondents' duplicative CR60 motion is hereby [ ] denied.

3.2 Petitioner's motion for attorney fees/sanctions is hereby denied.

Dated: 4-12-19

/s/ Timothy B. Fennessy  
Judge Timothy B. Fennessy

**ORDER OF THE SUPERIOR COURT  
OF WASHINGTON, FOR SPOKANE  
COUNTY ON DISMISSING PETITION  
AND FOR SANCTIONS  
(DECEMBER 12, 2017)**

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SUPERIOR COURT OF WASHINGTON,  
FOR SPOKANE COUNTY

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IN RE: C.S.,  
DOB XX/XX/01

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No. 17-2-03739-1

Before: Michael P. PRICE, Judge.

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**I. Basis**

Ronald & Teresa Simon moved the court for: attorney fees and dismissal of The petition. The parents appeared with their attorneys. C.S. did not appear.

**II. Finding**

After reviewing the case record to date, and the basis for the motion, the court finds that:

C.S. did not appear for his hearing today. C.S., Wayne Janke and Doris Strand did not disclose the Custody litigation pleading in Superior Court or The appeal pending in Div III. The Janke/Strand's listed (continued or attachment)

As “guardians” and likely co-authored The pleadings. The Court finds this is a clean attempt by C.S., Wayne Janke and Doris Strand to commit fraud on the Court and attorney fees per CR 11 are appropriate

The “guardians” listed on the petition, Wayne Janke and Doris Strand, and C.S. are jointly and Severally liable for the attorney fees awarded as a sanction per CR 11

All other findings are continued in the Oral record on cooperated.

### **III. Order**

IT IS ORDERED that:

1. The Petition is dismissed with prejudice.
2. Ronald Simon is awarded attorney fees of \$600.00 at the Statutory Interest rate of 12% payable by C.S., Doris Strand and Wayne Janke.
3. Teresa Simon is awarded attorney fees of \$600.00 at the Statutory Interest rate of 12% payable by C.S., Doris Strand and Wayne Janke.

The Judgment Shall accrue interest on the unpaid balances at 12%, C.S., Wayne Janke and Doris Strand are Jointly Severally liable.

App.20a

Presented by:

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{signature not legible}

Approved by:

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{signature not legible}

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{signature not legible}  
Superior Court Judge

**JUDGEMENT OF THE SUPERIOR COURT OF  
WASHINGTON, FOR SPOKANE COUNTY  
(DECEMBER 12, 2017)**

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SUPERIOR COURT OF WASHINGTON,  
FOR SPOKANE COUNTY

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IN RE: C.S.,  
DOB XX/XX/01

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No. 17-2-03739-1

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**JUDGEMENT SUMMARY**

1. Judgment Creditor: Ronald Simon and Teresa Simon
2. Judgment Debtor: C.S., Wayne Janke and Doris Strand, Jointly & Severally
5. Attorney Fees: \$1200, in CR11 Sanction 5
9. Attorney Fees, Costs and Other Recovery Amounts Shall Bear Interest at 12% per annum.
10. Attorney for Judgement Creditor: Dennis Cronin - Ronald Simon Teresa Simon - Teresa Simon

{signature not legible}

Judge

Dated: 12-12-2017

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND ORDER RE: DE FACTO PARENTING  
(JANUARY 6, 2017)**

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

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IN RE: C.S.

*Child,*

WAYNE JANKE and DORIS STRAND,

*Petitioners,*

v.

RONALD SIMON and TERESA SIMON,

*Respondents.*

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No. 15-3-02130-1

No Mandatory Form

Before: Maryann MORENO, Judge.

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**I. Basis**

This matter having been tried to the Court commencing Monday, October 17, 2016 and concluding Thursday, October 27, 2016, the Court having heard testimony from Wayne Janke, Doris Strand, Kimberly Kamel, Maureen Weisbeck, Rose Hone, Teresa Simon, Ronald Simon, Jayn Courchaine, and Sheila Thorne,

the Court having reviewed the exhibits admitted during the trial, the Joint Trial Management Report of the parties, the Report of the Guardian ad Litem, the Memoranda of the parties and having heard and considered the motions in limine and arguments of counsel, and being otherwise fully informed in the premises hereby enters the following:

## **II. Findings of Fact**

### **A. Procedural Facts**

- 1) C.S. was born on XX-XX-2001
- 2) Teresa Simon and Ronald Simon are the biological parents of C.S.
- 3) On March 19, 2015 C.S. filed a CHINS petition in the Spokane County Superior Court Juvenile Division.
- 4) On March 30, 2015 an assessment was filed by DSHS case worker Sheila Thorne MSW.
- 5) On April 01, 2015 CHINS Petition was dismissed.
- 6) On March 31, 2015, Wayne Janke and Doris Strand filed a petition for a declaration of de facto parentage and a motion for entry of ex-parte orders.
- 7) Among other statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon suffers from years of untreated bipolar and schizophrenia which was untrue.
- 8) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon uses illegal drugs.



9) Among other untrue statements, the March 31, 2015 declaration of Doris Strand indicated C.S. had lived in her home his entire life until a few weeks ago.

10) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon used drugs daily.

11) Among other untrue statements, the March 31, 2015 declaration of Doris Strand stated Teresa Simon and Ron Simon have long term stability issues, drug and alcohol issues, and mental health issues.

12) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated he and Doris Strand had C.S. in their home since he was one week old.

13) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated C.S.'s parents, Teresa and Ronald Simon, never cared.

14) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated C.S.'s biological parents never seemed to care about him or want him around.

15) Among other untrue statements, the March 31, 2015 declaration of Wayne Janke stated the Janke Strand home has always been C.S.'s home not the other one.

16) On March 31, 2015, an ex-parte order was issued placing C.S. with Doris Strand and Wayne Janke and restraining Teresa Simon and Ronald Simon from any contact with C.S. Prior to securing the order Doris Strand and Wayne Janke failed to secure leave to proceed from Juvenile Court.

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17) On April 01, 2015, an order was entered dismissing the CHINS proceeding.

18) On April 03, 2015, the ex parte order of March 31, 2015 was reissued after a hearing to quash and a guardian ad litem was ordered to be immediately appointed pursuant to *In Re: L.B.*, 155 Wn. 2d 692.

19) On April 15, 2015, Teresa Simon and Ronald Simon filed their response to the petition denying the allegations and requesting the petition be dismissed and C.S. returned to their custody.

20) On April 24, 2015, an agreed order was entered without prejudice and without drawing any conclusions maintaining C.S. in the care of Doris Strand and Wayne Janke based upon an initial contact from the guardian ad litem prior to her formal appointment.

21) The April 24, 2015 order was specifically reviewable upon completion of a mental health evaluation of C.S. ordered by the Court the provider to be agreed upon by the parties and the guardian ad litem.

22) On April 27, 2015, the guardian ad litem was formerly appointed.

23) On September 11, 2015 an order was entered regarding visitation for Ronald Simon

24) On November 17, 2015, new counsel appeared for Teresa Simon and Ronald Simon.

25) On January 06, 2016, new counsel substituted for Ronald Simon.

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26) On January 11, 2016, the guardian ad litem filed her first "partial" report which did not address de facto parenting or adequate cause.

27) On February 12, 2016, the Court entered an order that the determination of the existence or non existence of a de facto parenting relationship should be determined as a threshold matter in a testimonial proceeding with examination and cross examination of witnesses and presentation of exhibits, if any and that the de facto issue would be tried first.

28) On February 12, 2016 the guardian ad litem was ordered to address the de facto parenting factors in her report of investigation.

29) The Court also determined the guardian ad litem was not an expert for purposes of determining de facto status or investigation.

30) On February 12, 2016 trial was continued to May 16, 2016.

31) On May 23, 2016, the guardian ad litem requested instruction on ongoing duties.

32) On June 17, 2016, the Court ordered that the guardian ad litem's obligations for investigation were complete.

33) On \_\_\_\_\_, the guardian ad litem filed her second report addressing de facto parenting.

34) On October 10, 2016, Ronald Simon filed a motion in limine regarding scope of trial issues and presentation.

36) Ronald Simon and Teresa Simon claim C.S. resided with them primarily although Mr. and

Mrs. Simon acknowledge C.S. spent considerable time with Wayne Janke and Doris Strand.

37) Ronald Simon and Teresa Simon deny ever giving consent to Wayne Janke and/or Doris Strand to be a parent for C.S. or the establishment of a parent child relationship between C.S. and Wayne Janke and/or Doris Strand.

38) Ronald Simon and Teresa Simon claim C.S. did not really live with Wayne Janke and Doris Strand but did visit on lots of weekends, and over-nights, and went hunting with Wayne Janke and went camping with Wayne Janke and Doris Strand.

39) Ronald Simon and Teresa Simon indicated Wayne Janke and Doris Strand did not assume financial responsibility for C.S. but did pay for lots of stuff.

40) Ronald Simon and Teresa Simon do not agree that Wayne Janke and Doris Strand played any sort of parental role but don't deny C.S. has a bonded relationship with Wayne Janke and Doris Strand.

41) Wayne Janke and Doris Strand testified C.S. lived with them all of his life from about one week after birth and that they provided all essentials, school supplies, extra-curricular activities.

42) Wayne Janke and Doris Strand indicate C.S. referred to them as "Mom" and "Dad." And the school records indicate they were the first contact and many people believed they were C.S.'s parents. C.S. refers to Janke/Strand as Mom & Dad.

43) C.S. is a good student, he's very active in sports, very engaged, he's a good kid, he's a good boy and he knows what's going on.

44) Mr. Simon and Ms. Strand originally had a relationship as friends when they worked together at Albertsons.

45) Eventually Mr. Janke became friends and Mr. Simon married Teresa Simon.

46) The relationship between Doris Strand, Ronald Simon Teresa Simon and Wayne Janke was very, very, close.

47) It is unclear when C.S. began spending time at the Janke/Strand residence. It started very minimally and then expanded over time.

48) Originally there were other care providers for C.S. and Ms. Strand was paid for care giving.

49) C.S.'s caregivers changed over the years.

50) The first overnight between C.S. and Doris Strand was in Idaho on Mother's day.

51) Doris Strand asked for permission from Ronald Simon and Teresa Simon for the overnight visit.

52) Wayne Janke and Doris Strand were very physically active people with C.S. which was great for a young boy.

53) Teresa Simon and Ronald Simon believed C.S. should have these experiences as a young child. It was all good.

54) In 2013, 2014, 2015 C.S. was frequently going back and forth a lot between the Simon home and the Strand/Janke residence, so much so, that the four adults devised a schedule similar to a visitation schedules. The Janke/Strand had a board for scheduling at the Janke/Strand residence. Changes to schedule were also by text message.

55) Wayne Janke and Doris Strand and Mr. and Mrs. Simon each took trips with C.S.

56) For years there was no hesitation by Teresa Simon or Ron Simon to authorize such trips between C.S. and Wayne Janke.

57) In 2012-2013 there was a trip to Disneyland and then the booking of a trip to the Bahamas without consent.

58) There was a discussion between Ronald Simon and Teresa Simon and Doris Strand and Wayne Janke "you know you need to let me know you want to do this first or let me give permission. I need to give permission."

59) Wayne Janke and Doris Strand requested permission for the trips from Ronald Simon and Teresa Simon after the trips were arranged which began an over stepping of boundaries by Wayne Janke and Doris Strand.

60) The over stepping of boundaries escalated with the fateful booking of the Hawaii trip without permission from Teresa Simon or Ronald Simon that really caused all of this to escalate.

61) It is a given that Wayne Janke and Doris Strand enjoyed considerable time with C.S. and that C.S. was provided for on a daily basis.

62) Teresa Simon was forthcoming in her testimony that a routine was established with schooling and Doris Strand as a babysitter with Doris Strand often picking C.S. up after school as did Ms. Simon.

63) Teresa Simon testified about trips and holidays together and a desire to expose C.S. to what could be given to him and thus allowed the activities with

Wayne Janke and Doris Strand because she thought the activities would be good for C.S. and Teresa Simon and Ron Simon liked to see C.S. involved in those things. They also celebrated holidays and the Simon household.

64) According to Teresa Simon, Wayne Janke and Doris Strand began to over step their boundaries but they didn't say much because they were good friends.

65) According to the testimony, Wayne Janke and Doris Strand were able to buy C.S. and alienating him from them and Teresa and Ronald Simon continued to feed him, clothe him and shelter him and pay his expenses.

66) Throughout C.S.'s life, Mr. and Mrs. Simon continued to buy C.S. clothes and gifts, to feed him, to pay expenses for him, to pay for dental care, and to pay for orthodontic care.

67) Teresa Simon was forthcoming she is diagnosed with bipolar disorder that is managed and that there was no difficulty she may have had.

68) Teresa Simon was forthcoming that in her distant past she had a problem with drugs which she overcame. There's no evidence to the contrary.

69) Ronald Simon argues that Ms. Strand and Mr. Janke spending considerable time with C.S.

70) Ronald Simon confirmed that Doris Strand would babysit off and on but not as much time as Ms. Strand claimed.

71) Ronald Simon worked three nights a week with Albertson's until he retired and attended to his

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rental homes in the day. He had eight or ten homes and he remodeled them.

72) Ronald Simon also attended all parent teacher conferences for C.S.

73) Ronald Simon engaged in the pick up and drop off of C.S. to school and functions and activities.

74) Ronald Simon and Teresa Simon never walked away, never stopped parenting, and continued to support C.S., continued to pay his health care needs and, as the many, many, photographs illustrate, were actively involved in C.S.'s life.

75) The Court is aware of the guardian ad litem's interviews of persons who thought C.S.'s parents were Wayne Janke and Doris Strand.

76) The testimony and report of the guardian ad litem were not helpful.

77) Wayne Janke and Doris Strand continued to ask Ronald Simon and Teresa Simon for permission to do things with C.S. until 2012 when Wayne Janke and Doris Strand began overstepping their boundaries.

78) Ronald Simon and Teresa Simon allowed the activities because of C.S.'s close association with Wayne Janke and Doris Strand.

79) The Court is also aware the initial allegations about Ronald Simon and Teresa Simon by Doris Strand and Wayne Janke haven't been proved and are untrue

80) The initial untrue declarations were used to form a large part of the Commissioners issuing



restraining orders and allowing C.S. to reside with Wayne Janke and Doris Strand.

81) There was some level of coaching of C.S. in attempting to alienate him from his parents.

82) Ms. Hone testified she was the mother of C.S.'s best friend.

83) Ms. Hone was also C.S.'s third grade teacher.

84) Ms. Hone always believed Ms. Strand was C.S.'s mother

85) They had contact over the years regularly.

86) Since the C.S. and her son were best friends they did a lot of things together and her son would stay over at the Ms. Strand's and Mr. Janke's home.

87) On one occasion, Ms. Hone's son did spend an overnight at the Simon's.

88) Ms. Hone is the teacher who has a sign in sheet that Ms. Strand signed as C.S.'s mother.

89) Ms. Weisbeck is the administrator of Bowdish Middle School.

90) Ms. Weisbeck first had contact with C.S. concerning a bullying issue at school.

91) Ms. Weisbeck's sole contact was with Ms. Strand who she thought was C.S.'s mother until it came to light the Simons were C.S.'s biological parents.

92) Ronald Simon told Ms. Weisbeck C.S. lived with Wayne Janke and Doris Strand and Wayne Janke and Doris Strand were the primary contact.

93) Jayn Courchaine has been involved with Mr. and Mrs. Simon since 1988.

94) Ms. Courchaine was involved in the Simon's life right after C.S. was born.

95) Ms. Courchaine would be over at the Simon home about once or twice a week during 2001 and 2003.

96) According to Ms. Courchaine's observations, C.S. spent at least one half his time with Mr. and Mrs. Simon.

97) She was out of Spokane for several years until 2009 but returned. She would go to the Simons home and C.S. would be there at least half the time

98) According to Ms. Courchaine's observations the relationships between C.S. and Ronald Simon as very good.

99) Ms. Courchaine loaned Teresa Simon money for Ms. Strand of about \$5,000.

100) In the CHINS petition filed by C.S. in March of 2015 stated "my real parents have stepped in when I turned 13." He also stated "Wayne and Doris have raised and taken care of me since I was one week old."

101) Sheila Thorne works with the Department of Social and Health Services Children's Administration as a CHINS family assessor and is an MSW.

102) Ms. Thorne has done a lot of these cases and has talked with lots of people.

103) Ms. Thorne is pretty well trained in sizing up situations.

104) Ms. Thorne testified C.S. was coached with his CHINS petition and statements therein.

105) Ms. Thorne indicated Mrs. Simon was very appropriate in her reaction to the CHINS and wanted her son to be heard.

106) Ms. Thorne wrote in her assessment Teresa Simon stated "we planned to raise the child mutually, but they aren't giving me my time."

107) The school records indicate the Janke/Strand address but the telephone number is for Mr. and Mrs. Simon until fifth grade when the number is Ms. Strands.

108) The school records indicate in the 5th grade the parental guardian is switched and flipped back to Ms. Strand and Mr. Janke then in 7th grade back to the Simons.

109) The school district for C.S.'s school is not Mr. and Mrs. Simon's neighborhood.

110) The school district for C.S.'s school is the Strand/Janke neighborhood.

111) Everyone desired for C.S. was to attend school at Ponderosa which is in the Strand/Janke school district.

112) It made sense Mr. and Mrs. Simon would say C.S. resided at the Janke/Strand address within the school district in order to allow C.S. to continue to attend those schools.

113) As time went on Mr. and Mrs. Simon stopped paying Ms. Strand for childcare.

114) Ms. Strand and Wayne Janke paid for many things for C.S. but Wayne Janke and Doris Strand did

not pay for health care, did not pay for out of pocket medical, and did not pay C.S.'s dental costs.

115) Ronald Simon and Teresa Simon testified to lots of receipts for expenses they paid on behalf of C.S. but there was no similar documentation from Wayne Janke or Doris Strand corroborating their alleged claims of expenses paid for C.S.

116) For 2012, 2013, and 2014 Wayne Janke claimed C.S. on his federal income tax return as an exemption. He received a refund in 2014 and lower taxes as a consequence.

117) It is reasonable to infer there was an agreement between Mr. and Mrs. Simon and Wayne Janke to reimburse Wayne Janke and Doris Strand for expenses paid for C.S.

It is reasonable to infer that the 5,000 loan, gifts, and gift cards given to MS. Strand by Ronald and Teresa Simon was to reimburse Ms. Strand for expenses for C.S.

118) It is reasonable to infer that payment of Doris Strand's surgery by Ronald Simon and Teresa Simon was to reimburse Ms. Strand for expenses for C.S.

119) It is reasonable to infer the financial assistance and labor assistance from Ronald Simon to fix Mr. Janke's home was to reimburse Mr. Janke for expenses for C.S.

120) Ronald Simon and Teresa Simon are not wealthy people.

121) Ronald Simon and Teresa Simon are fit parents.

123) Additional facts are set forth in the transcript of the Court's oral decision and incorporated herein.

The Court having entered the above findings of fact now hereby enters the following:

### **III. Conclusions of Law**

1) The Court has reviewed all of the published case law in Washington concerning de facto parenting and there is not a published case in Washington with a similar fact pattern as presented in the case at bar.

2) The de facto parent doctrine is an equitable doctrine which looks to the equities of a situation. If a de facto parenting relationship is established the de facto parent stands in legal parity with the biological parent. Deference is given to the parents of the child and those parental rights have the protection of the state. Consequently, Petitioners must make a threshold showing that the natural parents consented to and fostered the parent child relationship.

3) The burden of proving a de facto parent status is upon the petitioners. They have the rowing oar. If a person is deemed a de facto parent they're entitled to certain rights that they wouldn't have otherwise. And the burden is a burden of clear, cogent, and convincing evidence.

4) To diminish parental rights requires extraordinary and compelling reasons.

5) As enunciated in *In re: Parentage of L.B.*, 155 Wn. 2d 679, 708, 122 P. 3d 161 (2005) there are four factors the Court looks at when determining a de facto status. Those factors are: (1) the natural or legal parent consented to and fostered the parent-like

relationship, (2) the petitioner and the child lived together in the same household, (3) the petitioner assumed obligations of parenthood without expectation of financial compensation, (4) the petitioner has been in a parental role for a length of time sufficient to have established with the child a bonded, dependent, relationship parental in nature. In addition, recognition of a de facto parent is limited to those adults who have fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life. This additional requirement is sometimes referred to as a fifth factor. *In re: De Facto Parentage and Custody of M.J.M.*, 173 Wn. App. 227, 294 P. 3d 746 (2012).

6) And, as to factor one the focus primarily is whether or not there was intent and whether the Simons were intending that they were giving consent and allowing Ms. Strand and Mr. Janke to foster a parent like relationship.

7) Burdens of proof have many different levels. In a regular civil case you've got preponderance of the evidence—a tipping of the scales. It is not much. Then you have the criminal arena where the burden is "beyond a reasonable doubt." And that is the highest burden. "Clear Cogent and convincing is very close to beyond a reasonable doubt. It is a very high burden placed on certain types of cases, cases that deal with terminating parental relationships with a child and granting a parental relationship with a child.

8) In *In re: Custody of B.M.H.*, 179 Wn. 2d 224, 234, 315 P. 3d 470 (2013) it was observed the Court in parentage and custody cases affords "considerable deference to parents as the court balances their fundamental right to make decisions regarding the

care, custody, and control of their children with the interests of other parties and the need to ensure stable and safe environments for children. *In re: Custody of Smith*, 137 Wn. 2d 1, 13-14, 969 P. 2d 21 (1998), *aff'd sub nom, Troxell v. Granville*, 530 U.S. 57, 120 S. Ct. 2054, 147 L. Ed. 2d 49 (2000).” In all cases the Courts defer to the parents of the child.

9) The published opinion *In re: Parentage of M.F.*, 168 Wn. 2d 528, 228 P. 3d 1270 (2009) is instructive. In *M.F.* the Washington State Supreme Court held the child already had two existing parents, they have rights, they have duties, they are involved parents and here the Simons not only existed but were involved in C.S.’s life. *See also, In re: Parentage of J.B.R.*, 184 Wn. App. 203, 336 P. 3d 648 (2014); *In re: Custody of B.M.H.*, 165 Wn. App. 361, 267 P. 3d 499 (2011), *affirmed in relevant part, reversed in part on other grounds*, 179 Wn. 2d 224, 315 P. 3d 470 (2013). In such a circumstance to recognize third parties as de facto parents would put these people in conflict.

10) In *In re: Custody of A.F.J.*, 179 Wn. 2d 179, 314 P. 3d 373 (2013) it was indicated that the de facto parent doctrine is an equitable doctrine that affords a trial court flexibility to examine each unique case on a fact specific basis and the determination is left in the able hands of trial judges to determine whether, in each case, the elements have been met without imposing limitations on the scope of the judge’s review.

11) In *In re: B.M.H.*, *supra.*, it was held that when a parent is otherwise fit, a third party has a high burden under RCW 26.10 to justify interference with a parents constitutional rights. “Attaining de facto status is no easy task.”

12) In *In re: Marriage of Allen*, 28 Wn. App.637, 648, 626 P. 2d16 (1981) it was observed “where the reason for deferring to parental rights—the goal of preserving families—would be ill served by maintaining parental custody, as where a child is integrated into the nonparent’s family, the de facto family relationship does not exist as to the natural parent and need not be supported.”

13) Wayne Janke and Doris Strand failed to establish by clear, cogent, and convincing evidence that Ronald Simon and Teresa Simon intended to consent to and fostered a parent child relationship between C.S. and Wayne Janke and Doris Strand.

14) Wayne Janke and Doris Strand failed to establish by clear, cogent, and convincing evidence that the parental family unit of Ronald Simon and Teresa Simon was not and is not worthy of continued support. Parents have a fundamental right to make decisions concerning the care, custody, and control of their children.

15) Wayne Janke and Doris Strand failed to establish by clear, cogent, and convincing evidence that the family unit of Ronald Simon, Teresa Simon, and C.S. should not be supported.

16) Wayne Janke and Teresa Simon failed to establish by clear, cogent, and convincing evidence they are de facto parents.

17) Additional Conclusions as may be set forth in the transcript of the Court’s oral decision are incorporated herein.



The Court having entered the foregoing Findings of Fact and Conclusions of Law now hereby enters the following:

**IV. Order**

4.1) The petition for establishment of de facto status is denied and dismissed.

/s/Maryann Moreno  
Judge

1-6-17

Presented by:

/s/ D.C. Cronin  
WSBA #16018  
Attorney for Ronald Simon

**DOCKET REPORT  
(JULY 26, 2018)**

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SUPERIOR COURT OF WASHINGTON  
COUNTY OF SPOKANE

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JANKE, WAYNE J, STRAND, DORIS CHRISTINE,

*Plaintiff/Petitioner(s),*

v.

SIMON, RONALD, SIMON, TERESA,

*Defendant/Respondent(s).*

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COA NO. 35974-3-III

SUPERIOR CT NO. 2015-03-02130-1

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