89413-2

Court of Appeals No. 43094-1-II

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

JAMES HAMILTON,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH SERVICES,

Respondent.

APPEAL FROM COURT OF APPEALS DIVISION II

OF THE STATE OF WASHINGTON NO. 43094-1-II

PETITION FOR REVIEW TO THE SUPREME COURT

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I. IDENTITY OF PETITIONER

James Hamilton is the Petitioner in this petition for discretionary review to the Washington Supreme Court of a Court of Appeals decision terminating review.

II. CITATION TO COURT OF APPEALS DECISION

The Petitioner seeks to review the Court of Appeals decision dated July 23rd, 2013, vacating the award of attorney's fees and the Order Denying Petitioner's Motion for Reconsideration dated September 12th 2013.

III. ISSUE PRESENTED FOR REVIEW

The issue is whether the Court of Appeal's decision overturning the Trial Court's order directing the Department of Social and Health Services (DSHS), Division of Child Support (DCS) to pay James Hamilton's attorney's fees arising from a child support dispute should be reviewed by the Supreme Court and reversed.

The Trial Court did not make detailed written findings on the issues of fact on attorney's fees in this case, but the record is replete with evidence. The Court of Appeals Opinion provides that it made findings of fact based on the record, but it is the Petitioner's position that the record and Clerk's Papers actually support the Trial Court's award of attorney's fees and support a finding that the State's actions were frivolous and

should not have been taken. The law supports a finding for attorney's fees even if the State's actions do not amount to being frivolous. The Petitioner respectfully requests that the Supreme Court should have grounds to reverse the Court of Appeals denial of attorney's fees and reinstate the Trial Court award of attorney's fees.

IV. STATEMENT OF CASE

Mr. Hamilton is the Petitioner in this request for review to the Supreme Court. His daughter, BJH, left his home in July of 2010 when she was 16 years old because she did not want to abide by the house rules. He grounded her for sneaking her boyfriend in the house overnight. She ran away with her boyfriend. When she left, there was a child support order in place providing that her mother, Michelle Johansen, pay the father, Mr. Hamilton, $376.00 per month child support as the residential parent. Mr. Hamilton had had primary residential care of his daughter for several years.

After staying at the boyfriend's family's home for a short time, BJH went to a shelter in Aberdeen. Mr. Hamilton had hoped that she would tire of this nonsense and come home. The Shoots, who are not blood related to BJH, and who had very little prior contact with Brittney, took her into their residence and applied for public assistance on August 12th, 2010, less than a month after she left her father's home. Mr. Shoot is

BJH's mother's husband's relative. Mr. Hamilton asked that his daughter be returned home, he filed a runaway report, and he ultimately had to hire counsel and file a Youth at Risk Petition to get her home. Mr. Shoot refused to allow him to talk to his child.

The State petitioned to establish a legal financial obligation against Mr. Hamilton despite his lawful custody order.

Below is a time line of events:

7-5-10 BJH runs away from home. Father is monitoring her whereabouts through Facebook.

8-6-10 Mr. Hamilton discusses filing a missing person report with local police as evidenced by uncontroverted sworn testimony of the father at Youth at Risk proceeding, December 3, 2010, heard by Judge Sullivan, the same Judge that awarded attorney's fees.

8-10-10 BJH emails the Shoots saying that her father won't sign over custody of her to them. **CP at 408**.

8-12-10 Karen Shoot signs a declaration saying she did not wrongfully deprive the legal physical custodian of custody. **CP at 410**.

8-13-10 Caseworker Narrative documents that Father will not sign anything to authorize Karen Shoot to have custody. **CP at 408 & 412.**

8-14-10 BJH calls her father wanting to enroll in school up north, Mr. Hamilton told her he wanted her home.

9-6-10 Mr. Hamilton files a missing person report. **CP at 418.**

9-23-10 State serves Notice of Support Debt and Demand for Payment on Mr. Hamilton. State later acknowledges that the order they relied to make this demand was superseded and dismisses their action. **CP at 416**

10-20-10 Mr. Hamilton called to talk to BJH and Mr. Shoot admitted under oath that he would not allow it. Uncontroverted Testimony at Youth at Risk Hearing, December 9, 2010, heard by the same Judge who awarded attorney's fees, Judge Sullivan.

10-27-10 Mr. Hamilton's lawyer sends letter to J. Blankenfeld at Division of Child Support stating that Mr. Hamilton had filed run away child report and contesting Ms. Shoot's claim to custody. **CP at 420.**

11-5-10 Conference Board decision issued by DSHS stating that the State was withdrawing its Notice of Support Debt and Demand for Payment that was served on Mr. Hamilton because it was based on an order that was no longer in effect. **CP at 414-416.**

11-18-10 State serves Mr. Hamilton with *second* Finding of Financial Responsibility despite being clearly advised that Mr. Hamilton was contesting Ms. Shoots claim to custody. See Exhibit G to Memorandum Supporting Award of Attorney's Fees. **CP at 422-431.**

11-22-10 Hamilton files Youth at Risk Petition.

12-9-10 **Court enters findings that the child was absent from the**

home without parental consent and the child was beyond parental control such that the child's behavior substantially endangered the health and safety and welfare of the child or another person. Order on Youth at Risk. **CP at 436.**

1-11-11 Letter to Pacific County Prosecutor advising of Administrative support issues and Shoots harboring a runaway. **CP at 440.**

1-13-11 Father faxes Petition to modify to DCS and sends documents to Pacific County for filing. Memo came from DCS indicating Ms. Shoot failed to send copy of her filings in the administrative proceeding to counsel for Mr. Hamilton. **CP at 440-449.**

1-18-11 Administrative hearing takes place. Mr. Hamilton requests continuance. The Shoots oppose. Continuance granted.

Letter to Prosecutor advising of Administrative support issues, necessity of his involvement, and Shoots harboring a runaway. **CP at 452.**

1-28-11 Pacific County Prosecutor files Notice of Appearance to represent the State of Washington. **CP at 454-455.**

3-8-11 Father notes hearing in Superior Court requesting State's motion for back support be denied among other things. See Exhibit L to Memorandum Supporting Award of Attorney's Fees. **CP at 459-462.**

6-27-11 Administrative hearing continued. **CP at 184.** Father filed second motion for determination of back support. **CP at 185 – 186.**

7-27-11 Agreed Order of Continuance, requested by the mother. **CP at 188 - 189.**

7-29-11 State Prosecutor, David Burke, requests continuance. **CP at 191-193.**

9-1-11 Letter to Pacific County Prosecutor with itemization advising amount of legal fees as directed by the Court. **CP at 195-204.**

9-6-11 Administrative hearing continued awaiting State Prosecutor's approval of attorney's fees. **CP at 206-207.**

9-16-11 Father notes up hearing to determine attorney's fees. **CP at 209-212.**

10-13-11 Administrative hearing reset to negotiate settlement. **CP at 214.**

The Shoots asked Mr. Hamilton for permission to enroll in school where they lived and he said no that he wanted her home. The State was aware of this. The Shoots enrolled her anyway. Petitioner Hamilton believes that the Shoots' actions met the statutory definition for the criminal act of harboring a runaway. Mr. Hamilton filed a Youth at Risk Petition that was heard in the Pacific County Superior Court in December of 2010 and the Superior Court ordered that Brittney return home. She went home in December of 2010 and graduated from her local high school in his care.

There was a Superior Court order that gave Mr. Hamilton custody

& child support dated December 14, 2007. The State withheld the child support that the child's mother was ordered to pay to Mr. Hamilton to reimburse Shoots' public assistance grant for the child and repeatedly tried to establish a child support obligation against him. This was in violation of the Superior Court order. The amount that was wrongfully withheld from Mr. Hamilton was $1,692.00. The Pacific County Superior Court ordered that that amount be awarded to Mr. Hamilton in a judgment against the State of Washington, and that Mr. Hamilton be reimbursed for his attorney's fees in a reasonable amount recognizing he had spent that amount trying to recover his child support and responding to administrative actions the State had taken to establish child support against him when he had legal custody.

By the time the State filed its administrative action to establish child support against Mr. Hamilton in August 2010. By this time, Mr. Hamilton had reported to the authorities that his daughter was a run away and had gone to the police trying to get assistance in getting her back. He had called his daughter and the Shoots advising them that he wanted her home and that she did not have his permission to enroll in another school. It is well documented that although Mr. Hamilton did not want to forcibly arrest his daughter to bring her home, he emphatically refused to sign over custody to the Shoots or to agree to payment of any support to the Shoots.

CP at 408 & 412. Mr. Hamilton believed that Brittney's runaway adventure would come to a screeching halt before school started. Unfortunately, the Shoots interfered and gave her a place to escape her father's normal household rules.

V. ARGUMENT

Review should be accepted by the Supreme Court under **RAP 13.4 (b)(4)** because this case involves an issue of substantial public interest that should be determined by the Supreme Court and because the decision of the Court of Appeals is in conflict with a decision of the Supreme Court, namely, Costanich v. Washington State Dept. of Social and Health Services 164 Wash.2d 925, 194 P.3d 988 (2008). See **RAP 13.4(b)(1).**

The public policy question that this case raises for the Courts is how society wants to treat a situation that many families are faced with about the time that kids are in their late teens and challenging their parents authority and wisdom. This case presents a factual situation where a parent is providing their child a good home with rules and structure, but the child chooses to run away. The holding of the Court of Appeals that disallows attorney's fees encourages a policy whereby strangers can step in and take the child in and make the biological parent pay them for the child's care when the parents were simply trying to get the child to abide by normal family rules. In this case, the State supported the "stranger"

when it knew the father had legal custody and wanted his daughter to come home voluntarily. The father incurred thousands of dollars in attorney's fees fighting off two State Administrative actions for child support. This action on the part of the State encourages a child to act out, run away and find someone to take them in who wants the support money from a good parent or in this case simply requests public support from the State who in turn pursues a father who is acting in accordance with how society wants him to act.

Here, the parent, Mr. Hamilton, made it clear that he would not allow another person to have legal custody or enroll his child in school elsewhere. He filed a missing person report, he asked to talk to her to encourage her to come home and was denied by the Shoots and yet the State, who knew these things, allowed the Shoots to be paid public funds to support his child and then pursued the lawful custodian, Mr. Hamilton, for reimbursement. Mr. Hamilton submits that this is not the message we want to send to our youth and hold society to. The burden is on the stranger who is asserting custody to show legal custody before the State pursues an action against the legal custodian. It is the State's duty in producing forms to comply with the law and in their investigation to insure that the "stranger" has met their burden.

The Trial Court was well aware of the effort that Mr. Hamilton had

to go through to get his daughter returned to him when it ordered reasonable attorney's fees against the State. Mr. Hamilton had already expended attorney's fees at the administrative level because of the State's mistake in relying on the superseded support order, and because he had to respond to a second administrative petition served on him by the State on November 18th, 2010, *after* they were well aware of the father's request that the child be returned home and his notification of the police and the authorities.

The Pacific County Superior Court ordered that the State be ordered to pay reasonable attorney's fees to Mr. Hamilton. Washington law provides:

> The court may order reasonable fee of experts and the child's guardian ad litem, and other cost of the action including blood or genetic test costs, to be paid by the parties in proportions and at times determined by the court. The court may order that all or a portion of a party's reasonable attorney's fees be paid by another party, except that an award of attorney's fees assessed against the state or any of its agencies or representatives shall be under RCW 4.84.185.

RCW 26.26.140

> In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the non-prevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or

> involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the non-prevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

RCW 4.84.185

The State acted in a frivolous manner and therefore the Court was authorized to award attorney's fees in this matter against the State. The State first sent Mr. Hamilton a determination of child support and wrongfully relied on an order that had been modified. Mr. Hamilton told the State's attorney this fact and they failed to dismiss the action. Mr. Hamilton had to hire an attorney to get the State to get them to recognize this error. **CP at 420**. Then the State served him with a second notice of financial responsibility after they had received numerous notifications from Mr. Hamilton's counsel that he was contesting the Shoot's custody and they had acknowledged his legal custody order by dismissing their initial action. **CP at 422**.

The State argues that its actions were not frivolous because it relied on RCW 26.23.035(2)(a) which allows them to distribute money to a person other than the person with legal custody if it obtains a written statement from the child's physical custodian that says she has custody with the payee's consent.

> The State may only distribute support payment to the payee under a support order or to another person who has lawful physical custody or has custody with the payee's consent, but prior to distributing this money to anyone other than the payee, the Support Registry must obtain a written statement from the child's physical custodian that
>
> 1. the custodian has lawful custody of the child or
> 2. custody with the payee's consent.

RCW 26.23.035(2)(a).

In this case, the Division of Support knew that the Shoots did not have lawful custody of the child. Counsel for the Petitioner sent DCS a copy of the last custody order and sent letters to them prior to DCS filing their second notice of intent to establish child support. Counsel for Petitioner sent a letter to Mr. Blankenfeld from DCS on October 27th, a month before the second action was filed. **CP at 420.** The State should not be allowed to claim ignorance and simply acknowledge Ms. Shoot's affidavit is a truthful statement about her having lawful custody when they knew that the father had legal custody orders and that the father was refusing to sign documents giving the Shoots custody nor pay child support. **CP at 412.** If this is not a blatant example of frivolous administrative action it would be hard to conceive of a situation which would be more blatant.

Administrative Procedure Act

The form that DCS used did not comply with the RCW 26.23.035

(2) (a) and should be considered the equivalent of a frivolous action on the part of the State.

The State form said she (Karen Shoot) "did not wrongfully deprive the legal physical custodian of custody of the child", not that she had custody with the payee's consent. **CP at 410.** She did not have custody with the payee's consent. The State knew she did not have custody with the payee's consent. The State specifically noted this in their record. **CP at 408 & 412** dated August 10th, and August 13th, 2010.

The State did not obtain the correct statement to comply with the statute. Had they done so, this case may not have happened because the Shoots could not have truthfully stated that they had lawful custody of the child with the payee's consent. The Shoots knew that Mr. Hamilton was not consenting to them having legal custody. The State used a form that did not conform to the statute. The fact that the State knew Mr. Hamilton was contesting the child custody claim is further evidenced by his call to DCS on September 7th , 2010, as documented in the State's Conference Board Decision. **CP 135.**

The State had ample evidence: letters from counsel, caseworker notes and missing person reports evidencing that the father had consistently refused to authorize to pay Mrs. Shoots, give her legal custody or the right to receive his child support. This evidence was all in the

State's hands prior to them serving Mr. Hamilton with the second Finding of Financial Responsibility and most of it about the same time as Ms. Shoots requested payment.

The Petitioner is also entitled to request fees under the Administrative Procedure Act which allows review of administrative procedures to provide greater public and legislative access to administrative decision making. The intent of the Act is set forth below:

> The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making.

RCW 34.05.001

Furthermore, the Act gives the Agency authority to informally settle matters in order to avoid more elaborate proceedings under the Administrative Procedure Act.

> Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter.

RCW 34.05.060

DCS failed to recognize the issues here and settle this matter when

Mr. Hamilton offered to accept a huge compromise in attorney's fees. **CP at 195-204** as encouraged by the statue set forth above.

Mr. Hamilton is entitled to judicial review under the Administrative Procedures Act as well.

> A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:
> (1) The agency action has prejudiced or is likely to prejudice that person; (2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; &
> (3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

RCW 34.05.530

The Court has found that, in some circumstances, the states action does not even have to be frivolous to merit and award of attorney's fees to the prevailing party.

> RCW 4.84.185 does not require a party seeking attorney fees to show that the opposing party acted in bad faith. Attorney fees can be awarded simply upon a showing that the opposing should have realized that he or she had no chance of prevailing on the merits.

Highland School Dist. No. 203 v. Racy, 149 Wash. App. 307, 202 P.3d 1024, (2009).

The State cited Alyska Pipeline Servs. Co. v. Wilderness Soc'y, 421 U.S. 240 (1975), as authority for the claim that the prevailing party is

not entitled to recover fees unless it is statutorily allowed. This case is outdated in that RCW 4.84.185 now expressly allows for recovery of fees.

In Alyska was the Court stated that attorney fees must be granted only when expressly and narrowly allowed by statute, with the caveat that:

> We do not purport to assess the merits or demerits of the 'American Rule' with respect to the allowance of attorneys' fees. It has been criticized in recent years, and courts have been urged to find exceptions to it. It is also apparent from our national experience that the encouragement of private action to implement public policy has been viewed as desirable in a variety of circumstances.

Alyska at 271.

The State also cited Wagner v Foote, 128 Wn.2d 408 (1996) to advance the position that attorney's fees should not be recovered by the prevailing party. Wagner is distinguishable because it discussed the error of granting fees for expert witnesses, not the award of attorney's fees.

The State also argues that because the hearing of the action was de novo at the Superior Court, it is not an appeal of an agency decision. This argument is not successful in Costanich v. Washington State Dept. of Social and Health Services, 164 Wash.2d 925, 194 P.3d 988 (2008)

> During oral argument, the Department argued our review is not included in the statutory language, which deems the attorney fee award applies to "review of an agency action" and because our review was conducted under the attorney fee statute only, Costanich should not receive attorney fees here. **However, our review is necessitated only because of the initial agency action; the attorney fees in dispute are inseparable from that review.**

> **Often, a review has many interlinked pieces and an agency** action may implicate possible remedies under multiple statutes. Each statute is encompassed in the review of the agency action; our review is only one part of the underlying dispute between the Department and Costanich. This does not bring the review outside the scope of the EAJA. Awarding Costanich attorney fees for our review is consistent with the statute's purpose to afford Costanich "a greater opportunity to defend [herself] from inappropriate state agency actions and to protect [her] rights." Laws of 1995, ch. 403, § 901. A denial of attorney fees to Costanich at this level would undermine the core purpose of the EAJA.

Costanich at 933. This case, like the Costanich case, has issues that are under review with the Superior Court because of the agency action. Had the agency not given public assistance to the "stranger", this case probably would not have been in a Superior Court action where the father had to file a Youth at Risk Petition, because his daughter would have had to come home and follow house rules if she wanted to be supported. It would not have become an action where the father had to request his money back from the State that was due to him from the mother and he would not have had to fight against the State trying to get support out of him when he had custody.

The Court of Appeals found that RCW 4.84.350 was not a basis for attorney's fees in this case because the Superior Court proceeding in this case did not constitute judicial review of agency action. Mr. Hamilton maintains that the analysis applied in the Wells case noted in the Court of Appeals Opinion, if applied here, would be broader than the interpretation

allotted by the Court of Appeals in this case, and would exact a finding that the Superior Court proceeding in this case did constitute judicial review of agency action.

The Court of Appeals discusses the law on judicial review of agency action at page 6 of its Opinion dated July 23, 2013.

> The APA provides the exclusive means for judicial review of agency action. RCW 34.05.570(3) and (4) provide for judicial "[r]eview of agency orders in adjudicative proceedings" and judicial "[r]eview of other agency action." Under those provisions, only *final* agency actions are subject to judicial review. *Wells Fargo Bank, NA v. Dep't of Revenue*, 166 Wn.App. 342, 356, 271 P.3d 268, 276, *review denied,* 175 Wn.2d 1009 (2012). "An agency action is final when it 'imposes an obligation, denies a right, or fixes a legal relationship as a consummation of the administrative process.'" *Wells Fargo Bank*, 166 Wn.App. at 356 (internal quotation marks omitted) (quoting *Bock v. State Bd. of Pilotage Comm'rs*, Wn.2d 94, 99, 586 P.2d 1173 (1978)).

The Wells case, decided in 2012, provides that **"An agency action is final when it imposes an obligation, denies a right, or fixes a legal relationship . . .** Wells at 356. On page 7 of its Opinion, the Court of Appeals found that in Mr. Hamilton's case:

> Hamilton filed for a modification of the 2007 child support order and requested, among other things, that the Superior Court set his child support obligation to zero for the period BJH lived with the Shoots. After the trial court entered an order relieving Hamilton of support obligations during that period, DCS dismissed the administrative action before any administrative hearing was held or ruling was issued.

> Thus, there was no final agency action for the superior court to review. Hamilton's suit in superior court was not judicial review of agency action; it was a separate proceeding Hamilton instituted to avoid the administrative process. Accordingly, we hold that the attorney's fees award to Hamilton for prevailing in a judicial review of agency action was erroneous.

The Court of Appeal's Opinion provided that:

> "After the trial court entered an order relieving Hamilton of support obligations during that period, DCS dismissed the administrative **action before any administrative hearing was held or ruling was issued so there was no final agency actions for the superior court to review.**"

Final agency action is defined more broadly than just "a final agency action". See Wells, Id. at 356. It includes **imposing an obligation, denying a right** or fixing a legal relationship. Wells at 356.

In Hamilton's case, DCS held the child support due to him from BJH's mother in violation of the Superior Court child support order entered in 2007 even after the first Legal Financial Finding was dismissed and he had notified the State in writing that he was contesting the Shoots having custody. **They denied him a right**. They can do so if they go through the right procedure under RCW 26.23.035(2), but they did not. They had the wrong form for the public assistance payee and they pursued two legal financial obligations against Mr. Hamilton even after they knew and had been advised in writing that there was a valid Superior Court order giving Mr. Hamilton custody and they knew he was contesting the

Shoots having continued custody. The State then proceeded to contest the reasonable attorney's fees ordered on August 9, 2011, **CP at 343,** even after counsel sent an itemization to the State's attorney with a reasonable attorney's fees settlement request of $3,753.00 on September 1, 2011. The State's continuing challenge to the award of reasonable attorney's fees caused Mr. Hamilton to incur significant additional fees and all but a very minimal amount of all of his total fees in this action are attributable to the State's unreasonable actions.

VI. ATTORNEY'S FEES AND COSTS

Pursuant to RAP 18.1(b), the Petitioner, James Hamilton, is requesting his reasonable attorney's fees and expenses associated with the appeal and review to the Supreme Court and that the Trial Court's original award of fees and costs be reinstated.

VII. CONCLUSION

The attorney's fee award authorized in Trial Court should be upheld. If there is an issue as to how much is attributable to the State's actions, the Court should remand to the Trial Court for further findings.

Respectfully submitted this 9th day of October, 2013.

KRIS ZABRISKIE, WSBA #17938
Attorney for Petitioner James Hamilton

APPENDIX "A"

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Parentage of B.J.H., Child, JAMES HAMILTON, Respondent, and MICHELLE A. BALDWIN, now JOHANSEN, Mother, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Appellant.	No. 43094-1-II UNPUBLISHED OPINION

McCARTHY, J.P.T.[1] — The Department of Social and Health Services Division of Child Support (DCS) appeals a trial court's attorney fees award to James Hamilton following DCS's attempt to establish Hamilton's support obligation for his 16-year-old daughter who had run away from home. The trial court ordered DCS to pay Hamilton the child support that DCS had collected from the child's mother while the child lived with relatives, and it also awarded Hamilton $12,000 for attorney fees under (1) RCW 4.84.350, (2) RCW 4.84.185, and (3) RCW

[1] Judge John A. McCarthy is serving as judge pro tempore of the Court of Appeals, Division II, under CAR 21(c).

26.26.140. We hold that the trial court erred in awarding Hamilton fees because the trial court relied on inapplicable statutes. Accordingly, we vacate the attorney fees award and remand to the trial court for further proceedings.

FACTS

Hamilton is the biological father and legal physical custodian of BJH.[2] In July 2010, BJH ran away from home. BJH stayed with her boyfriend and at a youth shelter before moving in with her stepaunt and uncle, the Shoots. The Shoots promptly contacted Child Protective Services (CPS) to report that BJH had run away from home and was staying with them. CPS interviewed BJH, Hamilton, and the Shoots. CPS determined that although Hamilton preferred BJH to return home and abide by his rules, he did not want to force her to do so. Hamilton agreed that BJH could stay with the Shoots, but he refused to sign any custodial agreement, financially assist the Shoots in taking care of BJH, or sign any paperwork allowing the Shoots to enroll BJH in school.

Karen Shoot then applied to DCS for support enforcement services and public assistance for BJH. As part of the application, Karen Shoot attested that she had physical custody of BJH and that she did not wrongfully deprive the legal physical custodian of custody. After the Shoots applied for public assistance for BJH's care, DCS stopped distributing support payments to Hamilton that it collected from BJH's mother.[3] On August 27, 2010, DCS sent Hamilton notice that it was enforcing a 1996 child support order entered in Grays Harbor County Superior Court

[2] We refer to BJH, a minor, by her initials to protect her privacy.

[3] DCS distributed these support payments directly to the Shoots or used them to reimburse the State for public assistance paid for BJH's care.

that set his support obligation at $390.66 per month.[4] Hamilton called DCS and claimed that he should not have to pay support for the month of August because BJH lived with him in August; DCS treated the telephone call as an oral hearing request. Once Hamilton's attorney informed DCS that the 1996 order it was enforcing had been superseded by a 2007 order, making Hamilton BJH's legal custodian and ending Hamilton's support obligation, DCS withdrew the notice of support debt and demand for payment.

On September 5, Hamilton reported BJH as a runaway. The sheriff's office contacted the Shoots and confirmed with CPS that Hamilton knew that BJH was with the Shoots and that he had given permission for her to stay there. Hamilton also contacted CPS to discuss the support paperwork he received from DCS. CPS told Hamilton that CPS did not place BJH, that she was staying with the Shoots with his permission, and that he had a custody order that he could enforce if he chose to do so. Hamilton reiterated to CPS that BJH could remain with the Shoots but he would not provide any support or sign any documents to make BJH's life easier.

On November 18, DCS served Hamilton with an administrative notice and finding of financial responsibility to establish his child support obligation.[5] The matter was set for a hearing because Hamilton claimed that he did not consent to BJH living with the Shoots and,

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[4] When DCS receives an application for public assistance on behalf of a child, DCS is required to take appropriate action to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys. Former RCW 74.20.040(1) (2007).

[5] If public assistance is paid for the care and maintenance of a child, the State may pursue a support action to obtain reimbursement of the monies expended. RCW 74.20A.030; *In re Parentage of I.A.D.*, 131 Wn. App. 207, 217, 126 P.3d 79 (2006). In the absence of a controlling superior court order setting a responsible parent's support obligation, DCS can set support obligations administratively. RCW 74.20A.055(1).

thus, he was wrongfully deprived of custody.[6] The administrative hearing was continued numerous times at Hamilton's request because he wanted his child support obligation determined by a court. On November 22, Hamilton filed an at-risk-youth petition; the trial court granted the petition and ordered BJH to return to Hamilton's home at the conclusion of her school semester.

On January 20, 2011, Hamilton filed a petition to modify the 2007 child support order, requesting that the trial court recalculate BJH's mother's support obligation and award him back child support that DCS had collected from BJH's mother during the time BJH lived with the Shoots. Hamilton also moved for orders setting his back support obligation at zero and awarding him attorney fees against DCS. Although DCS filed a notice of appearance in the superior court modification case, it did not file a response to Hamilton's petition or motions.

At the motion hearing, DCS argued that Hamilton was not entitled to the support payments that DCS collected from BJH's mother and withheld from Hamilton during the period that BJH lived with the Shoots. DCS did not litigate Hamilton's back support obligation, which was set at zero. The trial court ruled that DCS could not retain the child support it had collected from BJH's mother during the period that BJH lived with the Shoots. The trial court further entered an order of child support setting Hamilton's back support obligation at zero, awarded a judgment of $1,676 against DCS for the withheld support, and reserved an award of attorney fees. Once the order relieving Hamilton of back child support was provided to DCS, DCS dismissed the pending administrative action seeking child support from Hamilton.

[6] DCS is authorized to excuse support payments from a legal custodian who has been wrongfully deprived of physical custody of the child. RCW 74.20.065.

Months later, in a separate order, the trial court ordered DCS to pay Hamilton $12,000 for attorney fees. DCS timely appeals only the award of attorney fees.[7]

ANALYSIS

DCS argues that the trial court erred in awarding attorney fees to Hamilton because attorney fees are not warranted under any of the statutory bases the trial court relied on. The trial court concluded that an award of attorney fees against DCS was statutorily authorized by (1) RCW 4.84.350 for prevailing in judicial review of an agency action, (2) RCW 4.84.185 for responding to a frivolous action, and (3) RCW 26.26.140 for costs under the Uniform Parentage Act, 26.26 RCW. We agree with DCS that the trial court erred, and we vacate the attorney fees award to Hamilton.

I. STANDARD OF REVIEW

A trial court may grant attorney fees only if authorized by contract, statute, or a recognized ground in equity. *Gander v. Yeager*, 167 Wn. App. 638, 645, 282 P.3d 1100 (2012). We apply a two-part review standard to orders involving attorney fees: "(1) we review de novo whether there is a legal basis for awarding attorney fees by statute, under contract, or in equity and (2) we review a discretionary decision to award or deny attorney fees and the reasonableness of any attorney fee award for an abuse of discretion." *Gander*, 167 Wn. App. at 647. A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *State v. Dixon*, 159 Wn.2d 65, 76, 147 P.3d 991 (2006).

[7] DCS does not appeal the underlying judgment for the withheld child support of $1,676.

II. RCW 4.84.350—PREVAILING PARTY IN JUDICIAL REVIEW OF AGENCY ACTION

The trial court identified RCW 4.84.350[8] as a basis for the fees award and concluded that Hamilton was entitled to fees because he had prevailed in judicial review of agency action. We disagree because the superior court proceeding did not constitute judicial review of agency action.

For purposes of awarding fees under RCW 4.84.350, "judicial review" means judicial review as provided under the Administrative Procedures Act (APA), chapter 34.05 RCW. RCW 4.84.340(4). The APA does not define "judicial review," but Part V of the statute governs judicial review. RCW 34.05.510-.598. The APA provides the exclusive means for judicial review of agency action. RCW 34.05.510. RCW 34.05.570(3) and (4) provide for judicial "[r]eview of agency orders in adjudicative proceedings" and judicial "[r]eview of other agency action." Under those provisions, only *final* agency actions are subject to judicial review. *Wells Fargo Bank, NA v. Dep't of Revenue*, 166 Wn. App. 342, 356, 271 P.3d 268, 276, *review denied*, 175 Wn.2d 1009 (2012). "An agency action is final when it 'imposes an obligation, denies a right, or fixes a legal relationship as a consummation of the administrative process.'" *Wells Fargo Bank*, 166 Wn. App. at 356 (internal quotation marks omitted) (quoting *Bock v. State Bd. of Pilotage Comm'rs*, 91 Wn.2d 94, 99, 586 P.2d 1173 (1978)).

The trial court considered Hamilton to have prevailed in judicial review of agency action because DCS attempted to administratively set Hamilton's support obligation at $617 per month while BJH lived with the Shoots, but the superior court ruled that Hamilton did not owe any back support for that period. The trial court's order states:

[8] RCW 4.84.350(1) provides, "[A] court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees."

> Hamilton met his burden of showing that he has prevailed in a judicial review of agency action under RCW 4.84.350. Had . . . Hamilton not responded to the administrative action, [DCS] would have entered support orders against him. He appeared by phone at at least two of these administrative hearings and had to obtain contested continuances from the Administrative Law Judge. The Shoots contested the continuances.

Clerk's Papers (CP) at 503.

In the absence of a controlling superior court order setting a responsible parent's support obligation, DCS may set support obligations administratively. RCW 74.20A.055(1). An administrative support order will be superseded to the extent an inconsistent order is entered by a superior court. RCW 74.20A.055(7). Thus, the administrative process parallels the judicial process for determining child support obligations.

DCS attempted to administratively set Hamilton's support obligation; it sent Hamilton a notice and finding of financial responsibility to which Hamilton objected and requested an administrative hearing. But the administrative hearing never occurred because Hamilton obtained multiple continuances to allow the superior court to determine his support obligation.

Hamilton filed for a modification of the 2007 child support order and requested, among other things, that the superior court set his child support obligation to zero for the period BJH lived with the Shoots. After the trial court entered an order relieving Hamilton of support obligations during that period, DCS dismissed the administrative action before any administrative hearing was held or ruling was issued.

Thus, there was no final agency action for the superior court to review. Hamilton's suit in superior court was not judicial review of agency action; it was a separate proceeding Hamilton instituted to avoid the administrative process. Accordingly, we hold that the attorney fees award to Hamilton for prevailing in a judicial review of agency action was erroneous.

III. RCW 4.84.185—FRIVOLOUS ACTION

DCS next argues that the trial court erred by awarding Hamilton attorney fees under RCW 4.84.185. Again, we agree.

Under RCW 4.84.185, in any civil action, a court may award attorney fees to the prevailing party if the action is "frivolous and advanced without reasonable cause." An action is frivolous if it cannot be supported by any rational argument on the law or facts. *Clarke v. Equinox Holdings, Ltd.*, 56 Wn. App. 125, 132, 783 P.2d 82 (1989).

Hamilton argued that DCS's attempt to set support administratively and to withhold from him the support BJH's mother paid constituted frivolous agency action under RCW 4.84.185. DCS responded that defense of its position was not frivolous because it had statutory authority and a factual basis to distribute support to the Shoots (or reimburse the State) under RCW 26.23.035(2). The trial court rejected DCS's argument and authority and entered an order awarding fees against DCS, stating that Hamilton had "demonstrated that [DCS]'s response to his petition and motions were frivolous or advanced without reasonable cause as required by RCW 4.84.185." CP at 503.

The majority of Hamilton's petition and motions did not involve DCS. The two issues that involved DCS were Hamilton's request that his support obligation for the period that BJH lived with the Shoots be set at zero and his request that he receive the back support that DCS had collected from BJH's mother but not distributed to him.

DCS did not litigate Hamilton's back support obligation in superior court. DCS attempted to administratively set Hamilton's support obligation, but the matter was continued to allow Hamilton to have the matter decided in superior court. By the time Hamilton filed his petition in superior court, BJH had returned to Hamilton's home as a result of the at-risk-youth

petition proceeding. The monthly support paid by BJH's mother was sufficient to reimburse all but $184 of the amount paid in public assistance for BJH's care during the time she lived with the Shoots. Because of the small amount of money at issue, DCS did not contest Hamilton's support obligation being set at zero. DCS dismissed its administrative action after the superior court entered its order.

The only issue DCS litigated was whether DCS owed Hamilton back support payments that it collected from BJH's mother during the period that BJH lived with the Shoots.[9] The trial court ruled that DCS was not authorized to distribute the support payments to Karen Shoot because there was no legal assignment of custody to Karen Shoot.

DCS maintains on appeal, as it did in its memorandum on attorney fees to the trial court, that its position was not frivolous or advanced without reasonable cause because DCS was statutorily authorized to pay the support it collected from BJH's mother to the Shoots rather than to Hamilton. We agree.

DCS relies on RCW 26.23.035(2), which provides:

> The division of child support may distribute support payments to the payee under the support order or to another person who has lawful physical custody of the child or custody with the payee's consent. . . . Prior to distributing support payments to any person other than the payee, the registry shall:
>
> (a) Obtain a written statement from the child's physical custodian, under penalty of perjury, that the custodian has lawful custody of the child or custody with the payee's consent.

[9] Whether DCS distributed the support payment from BJH's mother directly to the Shoots or retained the money as reimbursement for public assistance paid to the Shoots for BJH's care is immaterial. Payment of public assistance operates as an assignment by operation of law of any rights to a support obligation from another person. RCW 74.20.330; *see also* RCW 74.20A.030 (authorizing the State to pursue a support action to obtain reimbursement for public assistance monies expended for care and maintenance of a child). Thus, if the Shoots were entitled to distribution of support payments for BJH, that right was assigned to the State by operation of law when the Shoots accepted public assistance for BJH's care.

DCS argues that RCW 26.23.035(2) authorized it to distribute support payments to Karen Shoot because she had custody of BJH with Hamilton's consent and DCS obtained a declaration from Karen Shoot stating under penalty of perjury that she did not wrongfully deprive Hamilton of custody of BJH.

Although we are not a fact-finder on this issue, we consider the evidence in the record as part of our review of whether DCS's position was frivolous. Our review of the record before the trial court shows that DCS had evidence that Hamilton knew that BJH was staying with the Shoots and for months DCS also believed that he did not require her or attempt to get her to return home. Hamilton said that although he wanted BJH to return home on her own, he did not want to force her to return. And CPS records show that Hamilton repeatedly told its workers that BJH could remain at the Shoots' home.

It appears that Hamilton's early consent or acquiescence waned when DCS determined that he needed to provide support for his daughter; and he eventually forced BJH to return home by filing an at-risk-youth petition in late November. Hamilton's decision to file the at-risk-youth petition is evidence that he withdrew his prior consent or acquiescence to BJH living with the Shoots. But evidence of Hamilton's position during the preceding five months is consistent with DCS's argument that the Shoots had custody of BJH with Hamilton's consent between July and November.

Karen Shoot's application to DCS for nonassistance support enforcement includes a declaration signed under penalty of perjury that she "[d]id not wrongfully deprive the legal physical custodian of custody of the child." CP at 254. DCS argues that the declaration satisfies the statutory requirement for a written statement from the child's physical custodian that the custodian had custody with the payee's consent. Hamilton argues that Shoot's declaration is

insufficient. Because the language from the declaration does not parallel the language in RCW 26.23.035, reasonable minds may disagree about whether Karen Shoot's declaration that she did not wrongfully deprive Hamilton of custody satisfies the statutory requirement of a written statement that she had physical custody with Hamilton's consent. But the issue is at least debatable, and in light of the additional evidence DCS asserted, its position is not frivolous.

DCS's position is frivolous only if it cannot be supported by any rational argument on the law or facts. *Clarke*, 56 Wn. App. at 132. Based on Karen Shoot's declaration signed under penalty of perjury and the information provided to DCS from the Shoots and CPS, we hold that DCS's position that it was authorized to pay support to the Shoots rather than Hamilton (and, thus, Hamilton was not entitled to back support) was not frivolous or advanced without reasonable cause as RCW 4.84.185 requires. Accordingly, the trial court erred in concluding that RCW 4.84.185 provided a basis for an attorney fees award to Hamilton.

IV. RCW 26.26.140—UNIFORM PARENTAGE ACT

Finally, DCS argues that the trial court erred by awarding Hamilton fees under RCW 26.26.140. The parties dispute whether RCW 26.26.140 should apply to the modification action.

RCW 26.26.140 provides that an attorney fees award against a State agency, such as DCS, shall be determined under RCW 4.84.185.[10] Because the trial court relied on RCW 4.84.185 as an independent basis for awarding fees, we address it regardless of whether RCW 26.26.140 applies. Thus, since we have already determined that DCS's position was not

[10] RCW 26.26.140 provides, "The court may order that all or a portion of a party's reasonable attorney's fees be paid by another party, except that *an award of attorney's fees assessed against the state or any of its agencies or representatives shall be under RCW 4.84.185.*" (Emphasis added.)

frivolous and RCW 4.84.185 does not apply, whether RCW 26.26.140 applies is irrelevant and we do not address it further.

V. ATTORNEY FEES ON APPEAL

In one sentence of his brief, Hamilton requests that he be awarded "reasonable attorney's fees for having to respond to this appeal." Br. of Resp't at 22-23. This is an inadequate request for fees because Hamilton has not provided argument and citation to authority to establish that an attorney fee award is warranted. RAP 18.1(b); *Phillips Bldg. Co. v. An,* 81 Wn. App. 696, 704-05, 915 P.2d 1146 (1996). We deny Hamilton's request for fees on appeal.

VI. CONCLUSION

Hamilton was not entitled to fees under the statutes the trial court relied on and, thus, the trial court erred in awarding attorney fees to him. Accordingly, we vacate the attorney fees award and remand to the trial court for further proceedings. [11]

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

McCarthy, J.P.T.
MCCARTHY, J. P.T.

We concur:

Johanson, J.
JOHANSON, J.

Worswick, C.J.
WORSWICK, C.J.

[11] Because we vacate the attorney fees award in its entirety, we do not reach DCS's argument that the trial court miscalculated the amount of the award. But we note that even if attorney fees were warranted for every hour Hamilton identified as related to the back support issue (including those at the administrative level), it appears that the trial court erroneously doubled that amount.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IN THE MATTER OF THE PARENTAGE OF B.J.H.,
Child,

JAMES HAMILTON,

Respondent,

and

MICHELL A. BALDWIN, now JOHANSEN,
Mother,

v.

DEPARTMENT OF SOCIAL & HEALTH SERVICES,

Appellant.

No. 43094-1-II

ORDER DENYING MOTION FOR RECONSIDERATION

RESPONDENT moves for reconsideration of the Court's **July 23, 2013** opinion. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Johanson, McCarthy, J.P.T.

DATED this 12th day of September, 2013.

FOR THE COURT:

Worswick cj
CHIEF JUDGE

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RCW 4.84.185

Prevailing party to receive expenses for opposing frivolous action or defense.

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

[1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

Notes:

Administrative law, frivolous petitions for judicial review: RCW 34.05.598.

RCW 26.26.140
Costs.

The court may order reasonable fees of experts and the child's guardian ad litem, and other costs of the action, including blood or genetic test costs, to be paid by the parties in proportions and at times determined by the court. The court may order that all or a portion of a party's reasonable attorney's fees be paid by another party, except that an award of attorney's fees assessed against the state or any of its agencies or representatives shall be under RCW 4.84.185.

[1994 c 146 § 4; 1984 c 260 § 35; 1975-'76 2nd ex.s. c 42 § 15.]

Notes:

Severability -- 1984 c 260: See RCW 26.18.900.

RCW 26.23.035
Distribution of support received — Rules — Child support pass through suspension.

(1) The department of social and health services shall adopt rules for the distribution of support money collected by the division of child support. These rules shall:

(a) Comply with Title IV-D of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 and the federal deficit reduction act of 2005;

(b) Direct the division of child support to distribute support money within eight days of receipt, unless one of the following circumstances, or similar circumstances specified in the rules, prevents prompt distribution:

(i) The location of the custodial parent is unknown;

(ii) The support debt is in litigation;

(iii) The division of child support cannot identify the responsible parent or the custodian;

(c) Provide for proportionate distribution of support payments if the responsible parent owes a support obligation or a support debt for two or more Title IV-D cases; and

(d) Authorize the distribution of support money, except money collected under 42 U.S.C. Sec. 664, to satisfy a support debt owed to the IV-D custodian before the debt owed to the state when the custodian stops receiving a public assistance grant.

(2) The division of child support may distribute support payments to the payee under the support order or to another person who has lawful physical custody of the child or custody with the payee's consent. The payee may file an application for an adjudicative proceeding to challenge distribution to such other person. Prior to distributing support payments to any person other than the payee, the registry shall:

(a) Obtain a written statement from the child's physical custodian, under penalty of perjury, that the custodian has lawful custody of the child or custody with the payee's consent;

(b) Mail to the responsible parent and to the payee at the payee's last known address a copy of the physical custodian's statement and a notice which states that support payments will be sent to the physical custodian; and

(c) File a copy of the notice with the clerk of the court that entered the original support order.

(3) If the Washington state support registry distributes a support payment to a person in error, the registry may obtain restitution by means of a set-off against future payments received on behalf of the person receiving the erroneous payment, or may act according to RCW 74.20A.270 as deemed appropriate. Any set-off against future support payments shall be limited to amounts collected on the support debt and ten percent of amounts collected as current support.

(4) The division of child support shall ensure that the fifty dollar pass through payment, as required by 42 U.S.C. Sec. 657 before the adoption of P.L. 104-193, is terminated immediately upon July 27, 1997, and all rules to the contrary adopted before July 27, 1997, are without force and effect.

(5) The division of child support shall ensure that the child support pass through payment adopted under section 2, chapter 143, Laws of 2007 pursuant to 42 U.S.C. Sec. 657(a) as amended by section 7301(b)(7)(B) of the federal deficit reduction act of 2005, is suspended as of May 1, 2011, and all rules to the contrary adopted before May 1, 2011, are without force and effect. The department has rule-making authority to implement this subsection.

[2010 2nd sp.s. c 3 § 1; 2007 c 143 § 2; 1997 c 58 § 933; 1991 c 367 § 38; 1989 c 360 § 34.]

Notes:

Effective date -- 2010 2nd sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 1, 2011." [2010 2nd sp.s. c 3 § 2.]

Severability -- 2007 c 143: See note following RCW 26.18.170.

Short title -- Part headings, captions, table of contents not law -- Exemptions and waivers from federal law -- Conflict with federal requirements -- Severability -- 1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability -- Effective date -- Captions not law -- 1991 c 367: See notes following RCW 26.09.015.

RCW 34.05.001
Legislative intent.

The legislature intends, by enacting this 1988 Administrative Procedure Act, to clarify the existing law of administrative procedure, to achieve greater consistency with other states and the federal government in administrative procedure, and to provide greater public and legislative access to administrative decision making. The legislature intends that to the greatest extent possible and unless this chapter clearly requires otherwise, current agency practices and court decisions interpreting the Administrative Procedure Act in effect before July 1, 1989, shall remain in effect. The legislature also intends that the courts should interpret provisions of this chapter consistently with decisions of other courts interpreting similar provisions of other states, the federal government, and model acts.

[1988 c 288 § 18.]

RCW 34.05.060
Informal settlements.

Except to the extent precluded by another provision of law and subject to approval by agency order, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is strongly encouraged. Agencies may establish by rule specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter.

[1988 c 288 § 106.]

RCW 34.05.530
Standing.

A person has standing to obtain judicial review of agency action if that person is aggrieved or adversely affected by the agency action. A person is aggrieved or adversely affected within the meaning of this section only when all three of the following conditions are present:

(1) The agency action has prejudiced or is likely to prejudice that person;

(2) That person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged; and

(3) A judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action.

[1988 c 288 § 506.]

RCW 4.84.350

Judicial review of agency action — Award of fees and expenses.

(1) Except as otherwise specifically provided by statute, a court shall award a qualified party that prevails in a judicial review of an agency action fees and other expenses, including reasonable attorneys' fees, unless the court finds that the agency action was substantially justified or that circumstances make an award unjust. A qualified party shall be considered to have prevailed if the qualified party obtained relief on a significant issue that achieves some benefit that the qualified party sought.

(2) The amount awarded a qualified party under subsection (1) of this section shall not exceed twenty-five thousand dollars. Subsection (1) of this section shall not apply unless all parties challenging the agency action are qualified parties. If two or more qualified parties join in an action, the award in total shall not exceed twenty-five thousand dollars. The court, in its discretion, may reduce the amount to be awarded pursuant to subsection (1) of this section, or deny any award, to the extent that a qualified party during the course of the proceedings engaged in conduct that unduly or unreasonably protracted the final resolution of the matter in controversy.

[1995 c 403 § 903.]

Notes:

Findings -- 1995 c 403: See note following RCW 4.84.340.

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

Certificate of Service by Mailing

I declare under penalty of perjury under the laws of the State of Washington that on October 9th, 2013, I deposited a true and correct copy of Petition to Review to the Supreme Court into the United States Mail, proper postage affixed thereto, to :

Court of Appeals Division II
950 Broadway, Suite 300
Tacoma, WA 98402

Lianne S. Malloy
Assistant Attorney General
P.O. Box 40124
Olympia, WA 98504-0124

Dated 9th day of Oct, 2013, at Montesano, Washington.

KRIS ZABRISKIE, WSBA #17938