No. 43125-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

In re the Marriage of

MATTHEW ANDERSON
Respondent

and

TAMRA ANDERSON
Appellant

ON REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Statutes, Rules, & Other Authorities

I. INTRODUCTION

Matthew Anderson appeals from an order adjusting child support 29 months after the original order of child support, an order that resulted from binding arbitration. He argues the court had to wait an additional ten months before it could adjust child support, counting from the date the dissolution was finalized (09/20/10), rather than from the effective date of the order of child support (06/01/09). In fact, for many reasons, including overarching policy reasons, this argument must fail. The statute requiring 24 months to elapse before adjusting child support does not turn on entry of "final orders" or "judgment," but, rather, on entry of an "order," a term that easily encompasses the order here. In any case, the court entered the child support order nunc pro tunc, incorporating what the arbitrator did, effective as of the date the arbitrator did it. Moreover, Matthew at first conceded that 24 months had elapsed between the order and the adjustment. Finally, to delay adjustment violates the mandate to meet the children's basic needs.

Likewise, Matthew's challenge to the court's denial of his request for deviation must fail, since the trial court is not bound by the prior order of support in this respect where no present basis exists to deviate from the basic support obligation.

II. RESTATEMENT OF ISSUES

1. May child support be adjusted two years after an order of child support entered after binding arbitration when:

- the father initially conceded that 24 months had passed?
- the arbitration was part of the parties' CR 2A agreement?
- the court entered the arbitrator's order nunc pro tunc, with an effective date more than two years prior to the adjustment?
- the arbitrator's order is an "order" under the statute?

2. When adjusting child support, does the court have the discretion and the obligation to determine whether a deviation from the presumptive amount is justified or not?

III. STATEMENT OF THE CASE

Matthew and Tamra separated and began divorce proceedings in 2008, when their two children were very young. They negotiated an agreement binding under CR 2A, which included a requirement they arbitrate child support. CP 19 ("The foregoing Order of Child Support and attached worksheets reflect the ruling of the undersigned arbitrator, *pursuant to the parties' CR 2A Agreement executed on January 30, 2009*") (emphasis added).

The arbitration resulted in an order of child support dated May 17, 2009 with a start date of June 1, 2009. CP 15, 19, 40. The court incorporated this order into the orders finalizing the dissolution on September 10, 2010. CP 12-25. In particular, the court ordered that "[c]hild support shall be paid in accordance with the *order* of child support signed by the court on this date and dated May 19, 2009. This *order* is incorporated as part of this decree." CP 40, 41 (emphasis added).

At the time the parties arbitrated child support, the state's child support table was capped at $7000 in joint monthly net income. *State ex rel. M.M.G. v. Graham,* 159 Wn.2d 623, 627, 152 P.3d 1005 (2007) ("the table ends at a combined monthly income level of $7,000"). Both Matthew and Tamra work outside the home and are well compensated; together their income in 2009, totaled nearly $12,000. CP 22.

In 2009, for the first time in decades, the Legislature revised the child support tables extending them to $12000 monthly net income. RCW 26.19.020. On September 28, 2011, Tamra moved to adjust child support, as permitted under the arbitrated order and the statute. CP 17, 113-115; RCW 26.09.170. Her motion included

the assertion that "[i]t is more than 24 months since the order was entered by arbitration dated May 19, 2009." CP 114.

Matthew opposed the motion on various grounds, none of which included the argument that Tamra needed to wait to seek an adjustment until September 2012 (i.e., two years after the court incorporated the arbitrated order of child support into final judgment). CP 157-167. Rather, he immediately conceded "[i]t has been more tha[n] two years since support was last ordered ..." CP 157. He also conceded the new level of basic child support under the updated economic tables. CP 162.

The family court commissioner granted the adjustment on December 8, 2011.[1] CP 180-198. Matthew sought revision. CP 203-256. He also obtained new counsel, who argued on revision for the first time that the statute did not permit an adjustment to occur before September 2012. CP 203. The court denied revision. CP 268.

Matthew also requested the court continue the deviation granted him in the arbitration order "because the children spend a

[1] This is the date that matters in terms of the statute's 24-month requirement, although, in this case, it is not dispositive. *See In re Marriage of Roth & Coke*, 72 Wn. App. 566, 574, 865 P.2d 43 (1994) (a party may file a motion before 24 months have elapsed, but the adjustment may not be ordered before the 24 months have elapsed). Matthew's argument includes the premise that no motion may be filed until 24 months have elapsed. See, e.g., Br. Appellant 8 and 9.

significant amount of time with me." CP 157. He did not argue that this fact, even if true, resulted in any lesser costs to Tamra for when the children are in her care. CP 158. Rather, he argued that he pays a lot for various extracurricular activities. Id.

The commissioner denied the deviation finding "no good reason exists to justify deviation." CP 187. Matthew does not challenge this factual finding, but argues the court had no authority on a motion to adjust to alter the deviation granted by the original order of child support. CP 204; Br. Appellant, at 14-17. The court also denied this challenge on revision. CP 268.

IV. ARGUMENT IN RESPONSE TO APPEAL.

A. THE COURT PROPERLY ADJUSTED CHILD SUPPORT AFTER MORE THAN 24 MONTHS HAD ELAPSED SINCE THE ARBITRATED ORDER OF CHILD SUPPORT.

Washington child support policy has two goals: to insure support adequate to meet the needs of children commensurate with the parents' income, resources, and standard of living and to equitably apportion that support obligation between the parents. RCW 26.19.001.[4] In other words, the law aims to provide for the

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[4] The statute provides:

> The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and

children and to do so fairly. To those ends, the Legislature devised a child support statutory scheme, which operates almost mechanically to allocate the child support obligation between parents.

When it revised the child support tables in 2009, the legislature accounted for changes that have occurred over several decades, such as the fact that many families have two working parents and earn combined monthly net incomes in excess of $7000, with a commensurate increase in meeting the children's basic needs. RCW 26.19.020. That is the case here.

Though signed into law on April 13, 2009, the statute became effective on October 1, 2009. RCW 26.19.020.[5] Under the new table, the basic child support obligation for the two children in this family in September 2010, the date final judgment was entered, would have been $1145 per child, as compared to the former maximum presumptive amount of $767 per child. CP 22. Had the court been doing more than incorporating the earlier arbitration order, this higher amount would have applied. *See State v.*

> standard of living. The legislature also intends that the child support obligation should be equitably apportioned between the parents.

[5] http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1794&year=2009 (act "takes effect")

Brewster, 152 Wn. App. 856, 859, 218 P.3d 249 (2009) ("[u]nder common law, pending cases must be decided according to the law in effect 'at the time of the decision'") (internal citation omitted). Instead, the arbitrated order, as incorporated by the court, reflects the tables in effect in May 2009. CP 40-41.

This child support order includes a provision permitting adjustment "[p]er statute." CP 17. The statute permits adjustments after "twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later," if there have been changes either "in the income of the parents" or "in the economic table." RCW 26.09.170(7). Both of these changes apply here. However, Matthew complains the court cannot begin counting the 24 months until September 2010, 16 months after the start date of the child support order entered by the arbitrator. This result, he argues, is required by the "plain meaning" of the statute. Br. Appellant, at 9-11. In fact, for many reasons, this result violates both the spirit and letter of Washington law.

First, and most simply, the court made the effective date of the child support order the date of the arbitration order, that is, the court entered the order nunc pro tunc. "A nunc pro tunc order allows a court to date a record reflecting its action back to the time

the action in fact occurred." *State v. Hendrickson,* 165 Wn.2d 474, 478, 198 P.3d 1029 (2009). To enter an order nunc pro tunc falls squarely within the court's discretion. *Id.* (nunc pro tunc order reviewed for abuse of discretion). Here, the parties agreed to arbitrate child support, received an order from the arbitrator, and complied with that order beginning on its start date of June 1, 2009. The trial court did nothing on September 20, 2010, except incorporate this order into the final judgment dissolving the marriage. It entered the order of child support nunc pro tunc, that is, "reflecting its action back to the time the action in fact occurred." *Hendrickson,* 165 Wn.2d at 478; *see, also, In re Marriage of Holmes,* 128 Wn. App. 727, 741, 117 P.3d 370 (2005) ("[t]he trial court has discretion to make the modification effective on the filing date of the petition, the date of the order, or at any time in between").

The same conclusion is reached by a more scenic route. After urging a "plain meaning" of the statute, Matthew then conflates the term used in the statute (i.e., "order") with the term "judgment." See, e.g., Br. Appellant, at 11-12. He urges this Court not to render "malleable" the term "order" lest it lead to confusion. Br. Appellant, at 13-14. This horse is already out of the barn.

First, an order and a judgment are not necessarily the same thing. Though often used interchangeably, these two terms often have different meanings. For example, CR 58 defines when "judgment" is entered. But not every order is a judgment, as RAP 2.2, with its various species of "decisions," illustrates.[6] Rather, "the court may find that an instrument entitled as a judgment is in fact an order or final order; and an instrument entitled as an order may in fact be a final judgment. [citations omitted.]" *Nestegard v. Investment Exchange,* 5 Wn. App. 618, 623, 489 P.2d 1142 (1971). The meaning often turns on the context, such as whether the issue is appealability or claim preclusion. *See, e.g., Kemmer v. Keiski,* 116 Wn. App. 924, 932, 68 P.3d 1138 (2003) (preclusive effects); *Wlasiuk v. Whirlpool Corp.,* 76 Wn. App. 250, 255, 884 P.2d 13 (1994) (appealability). Accordingly, the "court looks to the content of the instrument, not its title, and substance controls over form." *Wlasiuk,* 76 Wn. App. at 255.

Here, the context is an order of child support entered pursuant to binding arbitration. It bears noting that Washington law encourages settlement of disputes and strongly encourages arbitration. *Hadley v. Cowan,* 60 Wn. App. 433, 438-439, 804 P.2d

[6] RAP 2.2 in included in the appendix. It describes the following kinds of decisions: "final judgment," "decision," "order," and "disposition."

1271 (1991) (favors settlements between family members); *Davidson v. Hensen,* 135 Wn.2d 112, 118, 954 P.2d 1327 (1998) (strong public policy favoring arbitration). Arbitration is a highly valued mechanism by which parties with disputes may avoid "the formalities, the delay, the expense and vexation of ordinary litigation." *Barnett v. Hicks,* 119 Wn.2d 151, 160, 829 P.2d 1087 (1992). Indeed, the "very purpose of arbitration is to avoid the courts insofar as the resolution of the dispute is concerned." *Id.* Here, the parties used arbitration to avoid a costly trial, reaching a result on child support less than a year after the proceeding commenced. For reasons not in the record, there was a delay of 16 months between arbitration and entry of judgment dissolving the marriage. However, no one disputes that the order entered by the arbitrator took effect on its stated start date of June 1, 2009.

Matthew now seeks to use this delay to evade the order of child support reached through arbitration. This makes no sense. By statute, an order entered under arbitration becomes final within 90 days if no action is taken contesting the award. *MBNA Am. Bank, NA v. Miles,* 140 Wn. App. 511, 514, 164 P.3d 514 (2007). Matthew has never contested the validity of the arbitration order itself. One division of this Court has declared such an order to be

"the equivalent of a final judgment entered by a court." *Dougherty v. Nationwide Ins. Co.,* 58 Wn. App. 843, 849, 795 P.2d 166 (1990), *review denied,* 116 Wn.2d 1009 (1991).[7] Whether or not it is a final judgment, the arbitrator's decision should be treated as an "order" for purposes of the child support statute, since the document is entitled "order," it functioned precisely as an "order," and this treatment best serves the purpose of the child support statute. Under Matthew's reading, he not only gets the benefit of the lower child support table (in effect at arbitration, but not at entry of judgment), he also gets this benefit for an additional 16 months. This violates the legislative judgment, long overdue, that the basic needs of children were being understated by the previous child support tables. In this case, for example, the difference between the basic support obligation under the tables is nearly $400 per child per month (i.e., $767 versus $1165)!

Moreover, the legislature used the term "order," not "judgment" or "final judgment" or even "final order." RCW

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[7] Division Two disagreed with *Dougherty* regarding whether an arbitration award would be a "final judgment" in terms of preclusive effect, and noted this aspect of *Dougherty* appeared to be *obiter dictum. Channel v. Mills,* 61 Wn. App. 295, 299, 810 P.2d 67 (1991); *accord Larsen v. Farmers Ins. Co.,* 80 Wn. App. 259, 265, 909 P.2d 935 (1996). The Supreme Court has acknowledged but not resolved this disagreement. *American States Ins. Co. v. Chun,* 127 Wn.2d 249, 254, 897 P.2d 362 (1995). However, the disagreement is immaterial here, since we are not dealing with whether the arbitrator's order was a "judgment" or a "final judgment" or whether it had preclusive effect or was appealable.

26.09.170(7) ("the date of entry of the order"). By comparison, the term "order" is fairly broad, certainly broad enough to encompass the order of child support entered here. This more expansive term reflects the fact that family law litigation can take awhile and be accomplished in pieces, and reflects the policy of meeting the children's basic needs. If an adjustment is warranted every 24 months, then it should be 24 months between the actual effective dates of child support, not 40 months, as Matthew argues.

Finally, even if it was error for the court to adjust child support less than 24 months after "judgment," it was an error Matthew invited when he conceded that 24 months had passed since the last adjustment. CP 157. "Under the invited error doctrine, a party may not set up an error at trial and then complain of it on appeal." *Casper v. Esteb Enters.,* 119 Wn. App. 759, 771, 82 P.3d 1223 (2004) (internal citations omitted). *See, also, Hollenback v. Shriners Hosps. for Children,* 149 Wn. App. 810, 822, 206 P.3d 337 (2009) (concession of fact at trial waives right to contest). Even Matthew agreed, at the outset, that the time was right to adjust child support. It is not fair, especially to the children, for him to change his mind now.

B. THE COURT PROPERLY DENIED THE REQUESTED DEVIATION.

Under the original order of child support, Matthew was allowed to pay an amount that deviated from the basic child support obligation based on the arbitrator's findings that the children spend a significant amount of time in his household and the deviation did not result in insufficient funds in the primary residence. CP 15. The factual basis for this decision (i.e., the effects of the residential time on the households' economies) is not part of the court record, nor was it subject to review when the trial court finalized the dissolution. *See Boyd v. Davis,* 127 Wn.2d 256, 263, 897 P.2d 1239 (1995) (trial court reviews arbitral award only for whether it exhibits *on its face* "erroneous rule of law or a mistaken application of law"). Consequently, since arbitration, Matthew has paid $700 ($350 for each child), instead of the basic support amount of $873 (calculated according to what was then the top of the support tables). CP 14, 22.

The statute permits, but does not require, a credit for residential time spent in an obligor parent's home. RCW 26.19.075(1)(d). Even where residential time is split equally, this credit remains discretionary with the court. *M.M.G.,* 149 Wn. 2d at 638. Most importantly, a deviation is permitted only where it will not

"result in insufficient funds" in the receiving household and only after the court considers evidence "concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and ... the decreased expenses, if any, to the party receiving support ..." RCW 26.19.075(1)(d).[8]

Here, the children spend five out of fourteen days with Matthew, or 35.6%. CP 2, 162. Matthew argued he spends a lot on extracurricular activities while the children are in his care, but those expenses are not related to the children's basic needs, as Tamra observed, but to extracurricular activities like skiing and horseback riding. CP 158, 171. Moreover, there is nothing in the record to suggest, let alone prove, that Tamra's expenses are in

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[8]The relevant statutory provision follows:

> (d) Residential schedule. The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

any way reduced as a result of the residential distribution. Presumably, she must still pay the same for space and beds and towels and electricity and heat, etc.

In any case, Matthew does not dispute the court's factual finding that no basis supports the deviation. Br. Appellant, at 5. Thus, this finding is a verity. *McCleary v. State,* 173 Wn.2d 477, 514, 269 P.3d 227 (2012) ("Unchallenged findings of fact are verities on appeal"). Rather, he contends that the adjustment procedure does not permit the court to deny the deviation he requested because the deviation was included in the original order of support. Br. Appellant, at 14-17. To be sure, the adjustment procedure offers a streamlined alternative to a modification proceeding, allowing parties to conform "existing provisions of a child support order to the parties' current circumstances" without proving a substantial change of circumstances. *In re Marriage of Scanlon,* 109 Wn. App. 167, 173, 34 P.3d 877 (2001).[9] Indeed, one commentator describes the legislature's enactment of the adjustment procedure as "completely revolution[ing] the standards

[9] Just for the record, the court's discussion in *Scanlon* regarding the differences between modifications and adjustments is *obiter dictum*, since the father had filed a petition to modify, not a motion for adjustment, and the trial court had modified child support without any findings or apparent factual support for doing so. 109 Wn. App. 174. It was this trial court error that the appellate court reversed.

for obtaining a modification, rendering the substantial change of circumstances standard obsolete in most cases." Radin, *Child Support,* WASHINGTON FAMILY LAW DESKBOOK, §§ 28.7 (2006).

Nevertheless, Matthew argues that in an adjustment proceeding, the court *must* deviate if the preceding order included a deviation, even where no facts support the deviation and even where the deviation would result in insufficient funds for the children while in the obligee parent's household. Br. Appellant, at 14-17. In other words, he claims once a deviation is ordered, it must always be ordered unless a party proves a substantial change of circumstances. However, such a limitation on the court's authority does not comport with the text or the goals of the child support statute, nor is deviation under these circumstances compelled by any procedural requirement.

First, of course, the court has broad discretion in ordering child support. *In re Yeamans,* 117 Wn. App. 593, 601, 72 P.3d 775 (2003). In particular, "[i]t is within the trial court's discretion to grant or deny a deviation and, generally, trial courts are not reversed on such decisions." *In re Marriage of Goodell,* 130 Wn. App. 381, 391, 122 P.3d 929 (2005). Rather, the deviation "is an exception and should only be used where it would be *inequitable* not to do so." *Id.*

391 (emphasis added). Most importantly, a deviation is not permitted where the children would be deprived of the basic support they need. Here, both of these principles militate against deviation. It would be inequitable to order a deviation where it is not justified by the facts – unfair to the children and to Tamra, in violation of both of the basic goals of child support. RCW 26.19.001.

To support the contrary view, Matthew relies heavily on *In re Marriage of Trichak,* 72 Wn. App. 21, 24, 863 P.2d 585 (1993), however his reliance is misplaced. First, it is worth noting that there was no procedure for adjusting child support when *Trichak* began modification proceedings. *Id.,* at 22 (petition to modify filed in 1991). The adjustment provisions were added in 1992. *In re Marriage of Roth & Coke,* 72 Wn. App. 566, 573, 865 P.2d 43 (1994) (became effective June 11, 1992). Thus, any alteration in the child support order in *Trichak* had to be justified by a substantial change of circumstances. Consequently, *Trichak* cannot and does not stand for the principle that a judge is barred from "modifying a deviation in an *adjustment* proceeding," as Matthew claims. Br. Appellant, at 16 (emphasis added). That principle simply was not in play in *Trichak*.

In fact, the court in *Trichak* acknowledged that "the trial court clearly had the ability to modify the deviation provision." 72 Wn. App. at 24. In other words, the mother in *Trichak* could have challenged the factual basis for the deviation in the modification proceeding, but she did not do so. *Id.* Instead, she raised a purely legal challenge to whether a child's Social Security income could offset a parent's child support obligation. *Id.*; *see, also Id.,* 72 Wn. App. at 26 ("Whether a child's Social Security income may form the basis for a deviation"). Since she had failed to raise this legal issue when the court first ordered the offset, she was precluded from raising it in a modification proceeding. In other words, the court did not allow her to revive in a modification proceeding a legal issue she should have appealed.

The circumstances here are different. Tamra's challenge is to the factual basis for a deviation. CP 114 (alleging "[t]here is no longer any factual basis to allow Father a deviation in his child support obligation"). For what it's worth, this is a challenge she could not have brought to the arbitrator's award. In any case, it is Matthew's burden to establish grounds for deviation, including in an adjustment proceeding. In fact, the adjustment proceeding allows

precisely for this kind of recalibration between a prior order and the parties' circumstances.

In *Trichak*, the court noted that the issue raised by the mother was not only a purely legal issue, but it was one "unrelated to [the needs of the child]." 72 Wn. App. at 24. Certainly that is not the case here. Matthew failed to show any reduction in expenses to Tamra or any actual increase in expenses (for basic needs) to him. He must prove these facts. *See, e.g., In re Marriage of Healy,* 35 Wn. App. 402, 405, 667 P.2d 114 (1983) (rejecting contention that expenses per child will be reduced per rata when a child leaves home). Without this kind of proof, the presumptive child support obligation represents what is necessary to meet the children's basic needs. Thus, the court could not order a deviation without violating the statute, including the statutory mandate to provide for the children's basic needs. Simply, Matthew does not get the benefit of the deviation in perpetuity just because he got it once.

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V. CONCLUSION

For the reasons above, Tamra Anderson respectfully asks this Court to affirm the trial court's order of child support.

Dated this 17th day of August 2012.

RESPECTFULLY SUBMITTED,

/s/ Patricia Novotny

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Attorney for Respondent

RULE 2.2
DECISIONS OF THE SUPERIOR COURT THAT MAY BE APPEALED

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) Final Judgment. The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

(2) (Reserved.)

(3) Decision Determining Action. Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.

(4) Order of Public Use and Necessity. An order of public use and necessity in a condemnation case.

(5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) Termination of All Parental Rights. A decision depriving a person of all parental rights with respect to a child.

(7) Order of Incompetency. A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.

(8) Order of Commitment. A decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing.

(9) Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment.

(10) Order on Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.

(11) Order on Motion for Arrest of Judgment. An order arresting or denying arrest of a judgment in a criminal case.

(12) Order Denying Motion to Vacate Order of Arrest of a Person. An order denying a motion to vacate an order of arrest of a person in a civil case.

(13) Final Order after Judgment. Any final order made after judgment that affects a substantial right.

(b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, iscontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information, or a decision granting a motion to dismiss under CrR 8.3(c).

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

(5) Disposition in Juvenile Offense Proceeding. A disposition in a juvenile offense proceeding that:

(A) is below the standard range of disposition for the offense,

(B) the state or local government believes involves a miscalculation of the standard range,

(C) includes provisions that are unauthorized by law, or

(D) omits a provision that is required by law.

(6) Sentence in Criminal Case. A sentence in a criminal case that

(A) is outside the standard range for the offense,

(B) the state or local government believes involves a miscalculation of the standard range,

(C) includes provisions that are unauthorized by law, or

(D) omits a provision that is required by law.

(c) Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. If the superior court decision has been entered after a proceeding to review a decision of a court of limited jurisdiction, a party may appeal only if the review proceeding was a trial de novo and the final judgment is not a finding that a traffic infraction has been committed.

(d) Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

[Amended December 5, 2002; September 1, 2006; September 1, 2008; September 1, 2010]

NOVOTNY LAW OFFICE

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