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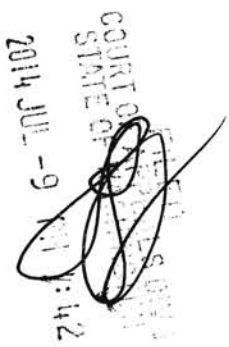

NO. 71525-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

ROBERT HENSLEY

Appellant,

v.

GLORIA HENSLEY (BRINKLEY)

Respondent.

APPELLANT'S REPLY

Prepared by:

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APPELLANT'S REPLY

Appellant Robert Hensley (the father) replies as follows:

Respondent's (the mother's) arguments are few and represent an incorrect recitation of the facts properly before the court. The mother concedes that there is in fact an error between the verdict and the order presented to the court by Terry Forbes under the direction of the mother as signed by the judge.

Respondent argues that "all Mr. Hensley and his attorney have shown is that there was a mathematical error of $6846.66 in his favor." Yet the record indicates that Respondent experienced a windfall not ordered in the verdict, in the amount of $10,241.17.

Amounts awarded pursuant to the verdict of the court:

Total Day Care Expenses:	$ 0.00 (CP 52)
Appellant's portion (65%)	$ 0.00 (CP 43)
Judgment for Back Child Support	$ 8,555.95
Included $350.00 Civil Penalty and Attorney Fees	
TOTAL VERDICT AGAINST THE FATHER	$ 8,555.95 (CP 43)

Amounts awarded under the subsequent judgment:

Judgment for Back Child Support	$10,285.13 (CP 44)
Windfall in favor of Respondent	<$ 1,729.18
Judgment for Back Day Care	$ 8,555.95 (CP 44)
Windfall in favor of Respondent	<$ 8,555.95
Civil Penalty and Attorney Fees	$ 350.00 (CP 44)

TOTAL WINDFALL TO MOTHER <$10,635.13

Respondent appears to have little or no fear of boldly misrepresenting the facts, even before this Court, which then begs the question of the veracity of her remaining statements. Consider her statement:

> "I did not instruct my attorney to submit a false order with a sum well over six thousand dollars less than I was owed."

This may be accurate statement that she did not instruct her attorney to save the father any money, however, the record indicates that her attorney prepared an order that resulted in a $10,635.13 windfall above the verdict of the court at her instruction.

The mother's' response does not offer any legal explanation for the difference between the verdict and the order of support. The issue before the Court is whether the difference between the two and the conditions surrounding its presentation constitute fraud on the court. The basic standards governing fraud on the court are reasonably straightforward. As set forth in *Cox v. Burke,* 706 So. 2d 43, 47 (Fla. 5th DCA 1998):

> The requisite fraud on the court occurs where "it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter

by improperly influencing the trier of fact or unfairly hampering the presentation of the opposing party's claim or defense." *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) . . . . The trial court has the inherent authority, within the exercise of sound judicial discretion, to dismiss an action when a plaintiff has perpetrated a fraud on the court.

Is the evidence clear and convincing? The court is without jurisdiction to exceed the verdict, or in the event that the court seeks to impost judgment *non obstante verdicto*, then the record most so reflect. Yet the record is silent. Instead, the record declares that a verdict was reached, and the mother through her now disbarred attorney presented an order to the court which created an enormous windfall for the mother in excess of ten thousand dollars.

The mother has demonstrated twice that the order does not comport with the verdict but somehow she believes that the error was in the father's favor. The verdict awards judgment in favor of the mother in the amount of 65% of daycare expenses (CP 43), but is silent as to what that amount actually is. The court must therefore rely upon the Child Support Worksheet to make its determination, and the Child Support Worksheet supplied by the mother sets the total day care at $00.00 (CP 52), which makes the father's obligation by calculation $00.00, yet the judgment summary yields a number that is coincidentally the exact same

number as the award of back child support, and the back day care is created out of whole cloth by the mother and her attorney.

$8,555.95 in child support arrears is not $10,285.13 and it never will be. The order does not comport with the verdict.

All facts must be documented in writing. An incomplete child support worksheet must be rejected by the court; since her CSW was accepted by the court it must be concluded that it is complete. The line for daycare expense is blank. She did not provide a legal reason for not completing the CSW that Terry Forbes was required to complete under the laws of the State of Washington and the Rules of the Court.

That is an argument for collecting support on a legal valid order, however, the order she is attempting to collect is not a final order. Her attorney Terry Forbes under his own volition, or by instruction from the mother, presented an order that did not comport with the verdict of the court. Fraud on the court has to be committed by an officer of the court; Terry Forbes was an officer of the court, not Gloria Brinkley (the mother) which vitiates the entire proceeding. Fraud on the court can be argued in any court at any time. CR 60(b)(5). A void order or judgment is void even before reversal. *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920). "It is clear and well established law that a void order can be challenged in any court." *Old Wayne Mut. L. Assoc. v McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907).

The mother continues to respond that the calculations found in the Child Support Order are incorrect while avoiding the underlying issue that the Order does not comport with the verdict and she never offers a legitimate reason why.

In summary, the mother agrees that the Child Support Order is in error. The windfall in her favor was present from the very beginning and has skewed the life of the father from the date of its entry to the present. Because the order is so widely different from the verdict, one can only conclude that the order was presented sentiently, with an unconscionable scheme calculated to interfere with the judicial system's ability impartially act to adjudicate the matter and to enter an order that comported with the verdict, where counsel for the mother improperly influenced the trier of fact to enter an order that created a windfall larger than the verdict amount itself. For these reasons, the order should be set aside and the case dismissed.

Respectfully submitted this 8th day of July, 2014.

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CERTIFICATE OF SERVICE

The undersigned now certifies that a true copy of APPELLANT'S REPLY was served on the following:

Gloria Hensley (Brinkley)
9911 32nd Drive SE
Everett, Washington 98208
Pro Se

by first class, U.S. Mail, this 8th day of July, 2014.

STEPHEN PIDGEON, WSBA#25265
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