No. 46313-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DEANNA M. ZANDI,

Appellant,

vs.

VICTOR M. ZANDI,

Respondent.

APPELLANT'S REPLY BRIEF

By DARREL S. AMMONS
Attorney for Appellant

WSBA # 18223
DARREL S. AMMONS
ATTORNEY AT LAW, P.L.L.C.
1315 14th Avenue
Longview, WA 98632
Telephone: (360) 501-8090
Fax: (360) 501-8064

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A. ARGUMENT

This action is based on a modification of child support petition. The petition was heard on declarations without oral testimony, pursuant to RCW 26.09.175(6). All of the evidence, including the declarations and accompanying exhibits, were made part of the appellant record for review. Further, the courts findings, conclusions and order were made part of the record for review. Therefore, the Respondent's claim of on insufficient record for appeal is without merit.

1. The Respondent's Claim that the Appeal Should be Dismissed Because the Argument of Counsel and the Court's Oral Ruling were Not Transcribed, is Without Merit.

RCW 26.09.175(6) states in relevant part as follows:

> (6) Unless all parties stipulate to arbitration or the presiding judge authorizes oral testimony pursuant to subsection (7) of this section, a petition for modification of an order of child support shall be heard by the court on affidavits, the petition, answer, and worksheets only.

In the present case, the remaining issue, regarding the allocation of the Kaiser uninsured medical expenses, was heard by the court on declarations without testimony. This is because it was part of a child support modification petition. All of the evidence, in the form of declarations with accompanying exhibits, have been made a part of the record for review. Further, the court's written findings of fact, conclusions of law and order have been made part of the record for review.

In *Favors v. Matzke,* 53 Wash.App 789, 770 P.2d 686 (1989) the court stated in part as follows:

> The Favorses argue that some testimony, admitted during trial, is missing from the verbatim report of proceedings. However, they are unable to apprise the court of the significance of such missing testimony in relation to the issues on appeal nor have they obtained the additional record as provided by RAP 9.2.
>
> We believe the record submitted contains all evidence necessary for a consideration of the issues raised and that respondents have failed to demonstrate any prejudice from an incomplete record.

In the Matter of *Estate of Watlack,* 88 Wash.App. 603, 945 P.2d 1154 (1997) the court stated in part as follows:

ANALYSIS

> Mr. Watlack's children contend this appeal should be dismissed because the appellants did not file a report of proceedings, citing *Heilman v. Wentworth,* 18 Wash.App. 751, 571 P.2d 963 (1977), *review denied,* 90 Wash.2d 1004 (1978) and *City of Seattle v. Torkar,* 25 Wash.App. 476, 610 P.2d 379, *review denied,* 94 Wash.2d 1001 (1980). These cases are distinguishable because they involved incomplete records that were insufficient for adequate review by the appellate court. Here, appellants are not asserting any factual challenges, but are challenging whether the conclusions are supported by the court's findings. RAP 9.1(a) provides that the record on review may consist of a report of proceedings but does not make the filing of such a report mandatory. Because the clerk's papers and findings of fact and conclusions of law provide a sufficient record for review here, the filing of a report of proceedings was not necessary. These unchallenged findings of fact are verities on appeal. Our review is limited to determining whether the conclusions of law are supported by findings of fact. *Holland v. Boeing Co.,* 90 Wash.2d 384, 390, 583 P.2d 621 (1978).

In the present case, all of the evidence in the form of declarations and exhibits are part of the record for review. Further, the court's written findings, conclusions and order are part of the record for review. What, if any, value that the attorneys' oral argument, or the court's oral ruling, would add to the record for review is unknown. Transcription of oral

parts of the record that are not evidence would only add to the costs of the appeal. The record for review before this court is complete and sufficient.

The Respondent has the burden of apprising this court of any significance that the transcription of the argument of counsel or the oral ruling of the court would add to the record. The burden has not been met. Finally, the Respondent has failed to identify any prejudice as a result of not having the attorney's argument or the court's oral ruling as part of the record.

2. The Finding by the Court that the Appellant is the Primarily Residential Parent is Not a Sufficient Basis to Conclude that the Order of Child Support Should Not be Followed.

The Appellant has not assigned error to the factual determinations made by the court. However, the Appellant does assign error to the conclusions and order of the court in application of the findings. Specifically, a trial court lacks authority to disregard a child support order that allocates uninsured medical expenses between the parties simply because one party is the primary residential parent.

The facts in the case are for the most part undisputed. The child, age 17 at the time, traveled to the Cincinnati, Ohio area to visit her aunt. However, Kaiser Permanente does not have medical facilities in the Cincinnati area.

The child developed a kidney stone emergency. The closest Kaiser facility was in the Northeastern part of Ohio in the Cleveland area. Therefore, immediate treatment for the kidney stone emergency was necessary.

Despite efforts of the aunt and the child to secure coverage, Kaiser continues to refuse to pay the bills. C.P. 114, P.3, Lines 7-17. After the appeal process available within Kaiser, Kaiser continues to deny payment.

The mother has no blame in Kaiser's failure to provide insurance coverage in this case. Being the primary residential parent should not impose blame or fault on the Appellant for the uninsured expenses. The order of child support should control.

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B. CONCLUSION

Based upon the forgoing, court should reverse the trial court and assign 100% of the uninsured medical expenses to the Respondent.

Respectfully Submitted this 18 of December, 2014.

Darrel S. Ammons, WSBA #18223
Attorney for Appellant

NO. 46313-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DEANNA M. ZANDI, Appellant, vs. VICTOR M. ZANDI, Respondent.	DECLARATION OF SERVICE

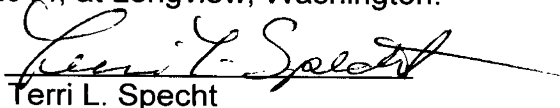
I, Terri L. Specht, declare as follows:

On December 18, 2014, I personally served a true and correct copy of the Appellant's Reply Brief, to the address listed below:

John A. Hays
Attorney at Law
1402 Broadway, Suite 103
Longview, WA 98632

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED Dec. 18, 2014, at Longview, Washington.



Terri L. Specht

DARREL S AMMONS ATTORNEY AT LAW PLLC

December 18, 2014 - 3:50 PM

Transmittal Letter

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Court of Appeals Case Number: 46313-0

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Comments:

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Sender Name: Darrel S Ammons - Email: dsalaw@cni.net

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jahays@3equitycourt.com
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