Court of Appeals
Division I
State of Washington

NO. **72527-1-I**

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

In Re the Paternity of: M.H.

STEPHANIE BELL,

Respondent,

and

JUAN SIDRAN HEFLIN,

Appellant

APPELLANT'S REPLY BRIEF

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APPELLANT'S REPLY BRIEF

The parties are referred to by their first name in this brief. No disrespect is intended.

Appellant Juan Heflin hereby replies to the respondent's brief.

This appeal is from the WAGE WITHHOLDING ORDER entered on August 28, 2015, which in this brief is referred to as the WWO. (CP 66 – 69).

The basis for issuance of the WWO is the February 24, 2011 ORDER CONFIRMING AMOUNT OF SUPPORT OBLIGATION, which in this brief is referred to as the OCASO in this reply. (CP 12 -13)

Labeling the February 24, 2011 order with the name "ORDER CONFIRMING AMOUNT OF SUPPORT OBLIGATION" is misleading. The OCASO does not confirm a determination of arrears made by the originating court in the state of Indiana. Rather, the OCASO is a determination by the Washington court of arrears and interest that have allegedly accumulated under the original Indiana Order for child support issued on March 23, 1994.

The main issues on this appeal are

1. Whether the remedies for enforcement of the obligation represented by the OCASO expired and became barred by RCW 6.17.020(2) and 4.56.210(2) upon expiration

of the 10th year following M.H.'s 18th birthday which fell on May 13, 2003;

2. If so, whether the trial court erred in issuing the WWO on August 28, 2014 after the remedies for enforcement had expired and become barred 15 months previously on May 13, 2013, depriving the court of the authority to issue a wage withholding order after that date;

3. Whether the WWO language characterizing its stated balance of $117,290.92 as *"principal"* is error where the record clearly shows that this sum consists of both *principal* and *interest.*

4. Whether the balance Stephanie asserts as owed by Juan is erroneous.

Juan does not challenge the validity of the Indiana Order of Child Support. What Juan challenges is the continued enforcement after all remedies for enforcement have expired and become barred pursuant to RCW 6.17.020(2) and 4.56.210(2).

The statement in Stephanie's Reply Brief that Juan attempted to discharge his child support obligation in bankruptcy is false. Juan filed a chapter 13 bankruptcy. This is confirmed by the so-called "Settlement Agreement" (payment arrangement) filed in the Chapter 13 Bankruptcy case. (CP 27 – 30)

That the $110,709.23 sum established by the OCASO represents a mixed balance of principal and interest is clearly shown by the record. Stephanie through counsel has changed the characterization of that figure from one of mixed *principal* and *interest* to one of *principal* only. How did that come to be? The OCASO plainly shows that the $110,709.23 sum is a mix of principal and interest. It states:

> "NOW, THEREFORE, IT IS HEREBY:
>
> "ORDERED: the Indiana Order of Support, in the sum of $110,709.23*, is hereby confirmed as registered by this Court pursuant to this Court's Order of October 28, 2010 and RCW 26.21A.500. et. seq. per the laws of Indiana, the obligation shall bear interest at the rate of 18% interest per annum. * * * ."
>
> "*Credit is given to the father for wire transfers of $1,300 and $1,350 plus interest of $2,350 (59 months at 1.5% per year. This reduces his total obligation to **$110,709.23 which includes interest**." (sic)

Although the OCASO states that the $110,709.23 figure consists of both *principal* and *interest*, it makes no finding regarding how much is *principal* or how much is *interest*. This is critically important because, as shown in appellant's opening brief, post-judgment interest can be assessed only on the *principal* portion of the accumulated arrears and not on the *interest* portion. The OCASO's failure to identify how much is *principal* and how much is *interest* makes it impossible to properly apply Juan's payments as between principal or interest, or to determine what the

balance of either is at any given point in time, or to determine if and when Juan has satisfied the obligation represented by the OCASO.

Stephanie's reply brief asserts that

> "Juan Heflin has waived any claim, objection or defense he might have had to the sum of the obligation as found by the Superior Court." (Reply Brief at p. 15)

That statement is categorically false. Juan has not waived any claims or defenses. Stephanie makes no argument and cites no authority in support that bald assertion.

The amount of the obligation was not at issue on Stephanie's August 2014 Motion for Wage-Withholding Order. The issue was whether the court has authority to issue a wage-withholding order.

The amount of the obligation stated in Stephanie's Motion for Wage Withholding Order as the balance owed has its source in the spreadsheet attached to Stephanie's June 16, 2014 Declaration. (CP 23 – 30 at CP 26). An examination of that spreadsheet reveals that Stephanie, her counsel, and/or NCS, are improperly calculating and adding interest on interest at 18% per annum to the balance asserted as due. They are adding 18% interest on the mixed "balance" of principal and interest resulting in a monthly interest accrual of between $1,759.53 to $1,770.82 during the period covered by the spreadsheet.

The spreadsheet states that the "principal balance" owed as of Nov-11 is $118,054.36. There is no calculation or explanation as to how that figure was determined. 18% of $118,054.36 is $21,249.7848. That figure divided by 12 yields a monthly interest amount of $1,770.82, the same amount shown in the "Interest this month" column of the spreadsheet.

It bears repeating that the OCASO states that the $110,709.23 figure consists of both *principal* and *interest*. The trial court's Order dated October 28, 2010 (CP 6 – 7) contains the finding that the total *principal* amount of support to be paid under the Indiana Order until the child's 18th birthday was $37,191 (CP 7, text below line 28). The total additional *principal* support that was to be paid under the Indiana Order from the child's 18th to 21st birthday is $12,012 (52 weeks x $77 per week x 3 years = $12,012). Thus, the maximum *principal* support that was to paid to M.H.'s 21st birthday was $49,203 ($37,191 + $12,012 = $49,203) *before* the application of credits for payments made by Juan.

Thus, the maximum *principal* support included in the combined figure of $110,709.23 is $49,203 and the minimum pre-OCASO accrued *interest* included in that figure is $61,506.23. Therefore, post-OCASO interest can be calculated on a figure no higher than $49,203 and not a figure of $110,709.23 or $118,054.36 as the spreadsheet attached to

Stephanie's June 16, 2014 declaration shows they have been doing. The $49,203 figure is not the actual *principal* component of the OCASO's $110,709.23 "confirmed" amount. The actual principal component is substantially less. But the court's findings in the OCASO and other orders neither disclose nor make any finding as to what the actual principal component is.

The characterization of the OCASO's $110,709.23 figure consisting of mixed principal (maximum of, though much less than, $49,203) and interest (minimum of, though much more than, $61,506.23) as 100% *principal* appears for the first time in the 2nd paragraph on page 1 of the SETTLEMENT AGREEMENT (CP 27 – 29) attached to Stephanie's June 16, 2014 declaration (CP 23 – 30), which recites as follows:

> WHEREAS, on February 23 2011 and on April 11, 2011, under King County cause number 10-3-06637-7 Judgments were entered against Juan Heflin for unpaid child support and expenses, in the principal sums of $110,709.23, and $12,804.64, respectively.

On its face, the foregoing recital is false. As already shown, the $110,709.23 figure is not wholly a *principal* sum. It is a mixed sum of both principal and interest.

The SETTLEMENT AGREEMENT further recites on page 1 (CP 27) as follows:

> WHEREAS, on or about October 25, 2011, Juan Heflin filed a Chapter 13 Petition with the United States Bankruptcy Court for the Western District of Washington at Seattle. At the time of filing his chapter 13 petition, Juan Heflin was indebted to Stephanie Bell in the sum of $128,054.36.

That recital has also been shown to be false in that the $128,054.36 figure is based on the addition of interest upon interest at 18% per annum.

The $110,709.23 sum has not been entered as a judgment of the superior court. The February 24, 2011 OCASO does not purport to do any more than to "confirm" that figure as the amount owed under the Indiana Order of child support. There is no language in the OCASO directing that the $110,709.23 sum be entered as a judgment of the superior court.

The February 24, 2011 OCASO does not have a judgment summary as required by RCW 4.64.030(2)(a) which provides:

> "On the first page of each judgment which provides for the payment of money, **including foreign judgments** * * * the following shall be succinctly summarized: The judgment creditor and the name of his or her attorney, the judgment debtor, the amount of the judgment, the interest owed to the date of the judgment, and the total of the taxable costs and attorney fees, if known at the time of the entry of the judgment, and in the entry of a foreign judgment, the filing and expiration dates of the judgment under the laws of the original jurisdiction."
>
> [Bold emphasis added]

RCW 4.64.030(3) provides:

> " * * * The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section. The clerk is not liable for an incorrect summary."

By the express terms of RCW 4.64.030(3) the "confirmed" sum of $110,709.23 has not yet taken effect as a judgment of the superior court because the OCASO does not have a judgment summary. As directed by RCW 4.64.030(3), the inclusion of the required judgment summary would have required the principal and interest components of the $110,709.23 figure to be separately stated in the summary.

The omission to separately state the principal and interest components of the $110,709.23 sum makes it impossible to ascertain the balance owed by Juan under the February 24, 2011 OCASO. One cannot determine the balance, if any, owed under that Order, unless one knows the amount of the principal portion and the interest portion of the $110,709.23 "confirmed" sum.

As shown, the following statements in Stephanie's August 8, 2014 Motion for Wage Withholding Order (CP 17 – 22) and her declaration (CP 23 – 30) are false:

> "After applying all payments against accrued the principal and interest (sic), the respondent is obligated to the petitioner/obligee in the principal sum of $117,290.92. With interest and as of April 1, 2013 the total debt is $122,547.10. Interest from April 1, 2013 accrues at the daily rate of $57.84."

(Motion for Wage Withholding Order, CP 21 l. 22 – 27)

> "As of April 1, 2013, the respondent is obligated to me in the sum of $122,547.10. Interest has accrued in the stat at the rate of $57.84 per day from April 1, 2013. A copy of the support debt calculation is attached hereto and incorporated herein by this reference."

(Declaration of Stephanie Bell, CP 24 l. 24 – 27)

These statements are false because, as shown, interest does not accrue upon interest and Stephanie and her counsel have been calculating interest upon interest from the inception of this matter. As a result, all assertions by Stephanie and her counsel regarding the sum owed by Juan "after applying all payments against accrued principal and interest" are substantially overstated and unreliable.

The SETTLEMENT AGREEMENT (CP 27 – 29) attached to Stephanie's June 16, 2014 declaration (CP 23 – 30), states that:

> 4. If Mr. Heflin defaults on his obligation by not making the agreed payment(s) within the Thirty (30) day grace period the entire original debts, including principal and interest which would have accrued, are immediately due and payable in full without further notice. In the event of default, all prior payments made hereunder will be applied first to accrued interest, costs and then to the principal judgment amount.

(CP 28)

Stephanie's Reply Brief states at page 3 that

> "Juan Heflin defaulted in this promise payments per the Settlement Agreement. In August 2014, Stephanie Bell filed a Motion for Wage Withholding Order (CP 17-22;

> Subject No. 60. (Sic)) and her supporting declaration with accounting. (CP 23-31; Subject No. 61)."

Thus, the original obligation under the February 24, 2011 OCASO was reinstated and the Settlement Agreement is of no further effect.

It is established that M.H. was born May 13, 1985, that M.H.'s 18th birthday was on May 13, 2003, and that the 10th year after M.H.'s 18th birthday expired on May 13, 2013. When Stephanie filed her UIFSA petition in September 2010 to establish an amount of arrears owed, M.H. was 25 years of age and the 10th year after M.H.'s 18th birthday had not yet passed.

Stephanie persists in asserting that RCW 26.21A.515(1)(a) governs the **duration** of the child support obligation. By its clear terms, that statute governs the **duration** of **current payments** rather than the duration or lifetime of the obligation:

> "(1) * * * the law of the forum state governs: (a) the nature, extent, amount, and **duration** of **current payments** under a registered support order;" (Emphasis added).

Stephanie's Reply Brief misconstrues the holding in the Indiana case of *Estate of Steward*, 937 N.E.2d 826 (Ind. Ct. App. 2010). In *Steward*, supra, the court expressly stated that if the claim under consideration was one for enforcement of a child support obligation, the claim is barred:

> "Clearly then, if this claim constitutes an attempt to enforce a child support obligation, it is barred, according to the plain and ordinary terms of Indiana Code Section 34-11-2-10."
>
> *Steward*, supra, 937 N.E. 2d 829.

Juan's counsel provided the trial court with a Supplemental Memorandum of Law (CP 48 – 59). That memorandum contains no new factual material and no new argument. It does no more than show the court what the applicable law is accompanied by explanation. The parties should inform the court of the applicable statutory and case law. The court's obligation is to follow the law regardless of the arguments raised by the parties. In *State v. Quismundo*, 164 Wn.2d 499 (Wash. 2008), the court stated that:

> A trial court's obligation to follow the law remains the same regardless of the arguments raised by the parties before it.
>
> 164 Wn.2d 506

In *Optimer Intern., Inc. v. RP Bellevue, LLC*, 214 P.3d 954, 151 Wn.App. 954 (Wash.App. Div. 1 2009) the court stated:

> ¶ 7 As our Supreme Court recently emphasized, we may not "excuse an order based on an erroneous view of the law because the trial court considered and rejected an equally erroneous argument." *State v. Quismundo*, 164 Wash.2d 499, 505, 192 P.3d 342 (2008). " A trial court's obligation to follow the law remains the same regardless of the arguments raised by the parties before it." *Quismundo*, 164 Wash.2d at 505-06, 192 P.3d 342. Here, RP Bellevue contested the

> enforceability of the lease's waiver provision. Optimer urged its validity. The superior court ruled on the issue. We have an obligation to see that the law is correctly applied. Thus, we must consider the effect of the current Arbitration Act on the parties' arbitration agreement.[6]

It is the court's duty to apply the correct version of a statute, even if that version of the statute was not cited below. *Chmela v. Dep't of Motor Vehicles*, 88 Wn.2d 385, 393, 561 P.2d 1085 (1977).

The courts of Indian follow the same rule as Washington regarding tolling of statutes of limitation while a party is a nonresident. In *Haton v. Haton*, 672 N.E.2d 962 (Ind.App. 1996), the Indiana trial court had denied a mother's petition to determine and reduce delinquent child support to judgment on the basis that the claim was brought outside the period of limitations. The Court of Appeals of Indiana affirmed. The court held that the nonresident tolling of the statute of limitations under IC § 34-1-2-6 applies only to new causes of action and not where the Superior Court retained personal and subject matter jurisdiction by virtue of the previously entered divorce decree:

> Once an Indiana trial court enters an original divorce decree awarding custody and support, it retains subject-matter jurisdiction as well as personal jurisdiction over the parties, even if they later move out of state. *Weber v. Harper*, 481 N.E.2d 426 (Ind. Ct. App. 1985), trans. Denied. Consequently, the petition filed by Luttrell in 1995 was merely a continuation of 1970 divorce action, and the Marion Superior Court retained both personal

> and subject matter jurisdiction in this case. See *Mueller v. Mueller*, 259 Ind. 366, 287 N.E.2d 886 (1972); Weber, 481 N.E.2d 426. We conclude, under these circumstances, that the nonresident tolling exception is inapplicable. To accept Luttrell's argument that the tolling provision applies would lead to the untenable result that an action against an absent party would richly never be barred even where the party is amenable to process and subject to the jurisdiction of the court." [672 N.E.2d 964]
>
> Although our research has revealed no Indiana case directly on point, the majority of jurisdictions which have considered the issue have held that the tolling provision of a statute does not apply with a non-resident defendant is amenable to service of process and subject to the jurisdiction of the court. See *Frazier v. Castellani*, 130 Mich.App. 9, 342, N.W. 2d 623 (1983; 55 A.L.R.3d 1158. The language in Frazier is instructive and reflects the reasoning of the majority that, where a plaintiff's right of action is not affected by the defendants absence from the state, justice is not require a strict construction of the tolling provision:
>
> The purpose of a tolling provision is to protect the right of the plaintiff to bring an action and to prevent a defendant from defeating a claim by absenting himself from the jurisdiction. It preserves [the] plaintiff's claim until such time as service on the defendant is made available. Statutes of limitation are designed to promote diligence on the part of the plaintiff, to prevent litigation of stale claims and to establish a reasonable, but limited, time for bringing an action . . . The mere fact of the defendant's absence from the state will not suspend the limitation period when the defendant is amenable to process and subject to the jurisdiction of the court.
>
> *Frazier*, 342 N.W.2d at 626.

In reaching the conclusion that the non-resident tolling statute does not apply under the circumstances, the *Hatton* court cited and discussed

the following decisions from other jurisdictions: *Frazier v. Castellani*, 130 Mich.App. 9, 342 N.W.2d 623 (1983); 55 A.L.R.3d 1158; *Ewing v. Bolden*, 194 Mich.App. 95, 486 N.W.2d 96 (1992); *Brown v. Vonsild*, 91 Nev. 646, 541 P.2d 528 (1975), and stated that

> We are persuaded by the reasoning of the Ewing, Frazier, and Brown decisions and join the majority of those states which have considered the issue and have held that a statute tolling the running of a period of limitations does not apply where the party claiming the benefit of the period of limitations was subject to the jurisdiction of a court in that state. See 55 A.L.R.3d 1158 and cases cited therein. Accordingly, we conclude that IC § 34-1-2-6 did not apply to toll the running of the period of limitations in this case because Steven was subject to the continuing jurisdiction of the Marion Superior Court. Because the period of limitations was not tolled, the trial court did not err in denying Latrelle's petition to reduce delinquent child support to judgment. [672 N.E.2d 965]

Appellant's Opening Brief addresses the issues of (i) Interest on the obligation; (ii) The sum of the obligation; and (iii) Allocation of payments, because Stephanie appears to be asking this court to endorse her and her counsel's practice of mischaracterizing the $110,709.23 figure as being 100% principal rather than a mixed figure of both principal and interest, of charging interest upon interest, and of misapplying payments made by Juan.

This court should not allow itself to be misled into endorsing Stephanie's mischaracterizations of the sum, if any, owed by Juan as being

100% principal or of validating the miscalculated and grossly overstated sum that Stephanie asserts is owed by Juan. Doing so would only serve to perpetuate the ruin and destruction of Juan's financial life that has been wrought by the proceedings below.

Juan's appeal is clearly not frivolous.

Juan understands that further proceedings for clarification and correction of the errors and omissions which Juan has identified must be filed in the trial court. Juan will do very soon.

Juan does not waive but rather expressly preserves the arguments and authorities stated in his Opening Brief on this appeal as well as any and all grounds for pursuing vacation, correction, and/or clarification of the trial court's orders under CR 60 including but not limited to the February 24, 2011, OCASO. (CP 1 -13)

Respectfully submitted this 24th day of June 2015.

Helmut Kah, WSBA # 18541
Attorney for Appellant

PROOF OF SERVICE BY MAIL

I hereby certify that on June 24, 2015, I deposited a true and complete copy of the Appellant's Reply, together with any attachments, in the U.S. Mail, with first class postage prepaid, enclosed in a sealed envelope addressed to:

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DATED: June 24, 2015.

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