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NO. 72527-1-I

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

In Re: the Paternity of: Miluan Heflin,

STEPHANIE BELL

Respondent

and

JUAN SIDRAN HEFLIN

Appellant

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....i

Cases.....ii
Washington cases.....ii
Indiana cases.....ii

Statutes.....iii

Washington statutes.....iii

Indiana statutes.....iii

United States Constitution, Article IV.....iii

Rules of Appellate Procedure.....iii

I. INTRODUCTION.....1

II. ISSUES FOR REVIEW.....1

III. STATEMENT OF THE CASE.....2

IV. LEGAL AUTHORITY AND ARGUMENT.....4

A. Generalized Identity of Legal Issues and Legal Issue Background.....4

B. RCW 4.56.210(2) and RCW 6.17.020(2) Do Not Deprive the Washington Courts of the Jurisdiction or Authority to Enforce a Valid Indiana Order of Child Support.....6

C. The Judgment for Child Support is Fully Enforceable for No Less than Twenty (20) years.....8

D. Issues Not Properly Before this Court on Appeal.....14

i. Interest on the Obligation.....14

ii. Sum of the Obligation.....14

iii. Allocation of payments.....15

E. The Appeal is Brought in Bad Faith and is Interposed for Delay; Terms Should be Awarded Against Heflin and his Attorney. *16*

F. *Bell is Entitled to the Award of Her Attorneys' Fees for Defending Against this Appeal*.....*17*

V. CONCLUSION.....18

TABLE OF AUTHORITIES

CASES.

Washington Cases:

Fidelity Mort. Corp. v. Seattle Times Co.
131 Wn.App. 462, 128 P.3d 621 (2005).....16

In re Schneider, 173 Wn.2d 353,
268 P.3d 215 (Wash. 2011).....8, 9

Marriage of Maccarone, 54 Wn. App. 503,
774 P.2d 53 (1989).....15

Rhinehart v. Seattle Times, 59 Wn.App. 332,
798 P.2df 1155 (1990).....16

TCAP Corp. v. Gervin, 163 Wn.2d 645 (2008)..... 7,8

Indiana Cases:

Estate of Wilson v. Steward, 937 N.E. 2.d 826 (Ind. Ct. App. 2010).....10, 11, 12

Odell V. Green, 72 Ind. App. 65, 77, 122 N.E. 791 (1919).....12

UNITED STATES CONSTUTION.

Article IV, Section 1 of the *United States Constitution*.....*9*

STATUTES.

Washington Statutes

RCW Title 4, Civil Procedure.....7
RCW 4.18.020(1).....7
RCW 4.56.210(2).....1, 4, 5, 6, 7, 8, 14, 16

RCW 6.17. 020(2) 1, 4, 5, 6, 7, 8, 14, 16
RCW 26.18.160.....18
RCW 26.21A.500.....8, 10
RCW 26.21A.515.....9, 17

Indiana Statutes

31-16-12-2.....14
34-11-2-10.....11
34-11-2-12.....11, 12, 13, 14
34-11-4-1.....13

United States Constitution

Article IV.....9

Rules of Appellate Procedure.

RAP 4.1.....14
RAP 18.9.....16

I. INTRODUCTION.

In 2010 the Respondent, Stephanie Bell, filed for enforcement only in the King County Superior Court, an Indiana Order of Child Support. The Appellant, Juan Heflin, is the obligor. On August 28, 2014, the Superior Court issued a Wage Withholding Order. Juan Heflin, objected to the Motion for Wage Withholding claiming that pursuant to RCW 4.56.210(2) and RCW 6.17.020(2) the enforcement of the Indiana Order of child support has a limit of ten years in Washington regardless of any other laws or statutes.

It should be noted that the Index to Clerk's Papers do not necessarily correspond to the documents referenced in the Appellant's Brief. Preparing this Response, Stephanie Bell relies upon the Index to Clerk's Papers.

II. ISSUES.

A. If RCW 4.56.210(2) and RCW 6.17. 020(2) deprive Washington Courts of the authority to enforce a valid and fully enforceable Indiana Order of Child Support?

B. May the Appellant, Juan Heflin, raise and argue claims and issues previously decided by the Superior Court or claims or issues not raised and argued in the lower Court?

III. STATEMENT OF THE CASE.

This appeal involves the registration and enforcement of an Indiana Order of Child Support in Washington. The parties, Stephanie Bell and Juan Sidran Heflin had one child, Miluan Heflin who was born on May 13, 1985. (For convenience the names of the parties will generally be used in lieu of their designation as either Appellant or Respondent.)

In 1994, Stephanie Bell resided in Indiana. She commenced an action to establish paternity and for an order for child support in the Vigo Circuit Court of Indiana, Cause No. 9402 JP 106. On March 23, 1994, the Vigo Circuit Court entered an Order of paternity and ordered Juan Heflin to make child support payments. (CP 5)

Juan Heflin failed to make all of his Indiana court ordered child support payments. In September of 2010, Stephanie Bell filed in the King County Superior Court, for enforcement only, a petition to enforce the child support obligation. Juan Heflin objected to the registration of the Indiana Order in Washington and the amount of

the claimed obligation. In the original proceeding in Washington, Juan Heflin limited his defense to registration of the Indiana Order of support claiming payment in full of his support obligation.

Through a series of vigorously contested motions, the sum of obligation of Juan Heflin for past due child support, interest and costs was entered by the King County Superior Court on February 23, 2011. (CP 12-13; Subject No. 43.)

Numerous attempts, both by agreement and by motion, were made to secure the cooperation of Juan Heflin in making his child support payments. Juan Heflin went so far as to attempt to discharge his child support obligation in bankruptcy. In December of 2011 Juan Heflin, with the advice of counsel, entered into Settlement promising to pay his past due child support obligation. (CP 23-30) In the Settlement Agreement, Juan Heflin specifically acknowledged his obligation to Stephanie Bell in the sum of $128,054.36 as of October 25, 2011. (CP 23-3)

Juan Heflin defaulted in his promised payments per the Settlement Agreement. In August of 2014, Stephanie Bell filed a Motion for Wage Withholding Order (CP 17-22; Subject No. 60.) and her supporting declaration with accounting. (CP 23-31; Subject No. 61).

In response to the Motion for Wage Withholding, Juan Heflin filed a Memorandum of Law in Response to Motion for wage Withholding Order (CP 33-35; Subject No. 63) and the Declaration of Juan Sidran Heflin (CP 36-42; Subject No. 64.).

The only issues raised by Juan Heflin in opposition to the Motion for Wage Withholding were that the Court lacks jurisdiction to issue a wage withholding in that jurisdiction to enforce the Indiana Order of Child Support expired ten years after the child's 18th birthday and the judgment is therefore unenforceable per RCW 4.56.210 and RCW 6.17.020(2).

On August 28, 2014, the King County Superior Court entered an Order for Wage Withholding, which Order is the subject of this appeal. (CP 66-69)

IV. LEGAL AUTHORITY AND ARGUMENT

A. Generalized Identity of Legal Issues and Legal Issue Background.

In the lower Court and in response to the Motion of the Respondent for Wage Withholding Order, Juan Heflin confined his objection to a very narrow legal theory that: RCW 4.56.010(2) and RCW 6.17.020(2) creates an absolute bar to the enforcement of

the Indiana Order of Child Support in Washington ten years after the child's 18th birthday. Juan Heflin claims an action was not started within ten years of the child's 18th birthday and that the Indiana child support order may only be enforced for ten years per Washington law. (Stephanie Bell is confused by Juan Heflin's arguments. Juan Heflin argues Stephanie Bell failed to commence an action for past due child support within the statutorily prescribed ten years of the child's 18th birthday. This ignores both the 1994 action in Indiana and the 2010 action in Washington to enforce the 1994 Indiana order of child support. In his next argument, Juan Heflin claims that the judgment, which is an **action** for past due child support, is time barred. It is undisputed that an action was commenced within ten years of the child's 18th birthday. Per the Order, CP 5, the action was commenced in Indiana when the child was nine (9) years old.)

The only legal issues that may properly be appealed are limited to the arguments in the lower court by Juan Heflin that RCW 4.56.210(2) and RCW 6.17.020(2) bars the enforcement of the Indiana Order of Child Support. (See Heflin Memorandum of Law and Response to Motion for Wage Withholding Order, CP 33-35; and Declaration of Juan Sidran Heflin, CP 36-42)

In the King Superior Court, Juan Heflin filed an untimely Supplemental Memorandum of Law raising issues of the statute of limitations in defense to the Motion for Wage Withholding. (CP 48-58). The Superior Court did not consider the late submission of the Supplemental Memorandum of Law filed by Juan Heflin. (Verbatim Report of Proceeding, page 4, li 11-15) Juan Heflin did not contest the amount of the obligation as claimed in the Motion for Wage Withholding and the Court properly treated the issue as unopposed. (Verbatim Report of Proceedings, page 19, line 21 to page 20, line 12.) Juan Heflin has filed this appeal raising issues from the Supplemental Memorandum of Law and new issues not heard by the trial court or issues previously ruled upon by the Superior Court.

B. RCW 4.56.210(2) and RCW 6.17.020(2) Do Not Deprive the Washington Courts of the Jurisdiction or Authority to Enforce a Valid Indiana Order of Child Support.

Juan Heflin's legal argument is, regardless of the ongoing validity of an Indiana Order for child support, Washington limits all foreign child support orders to ten (10) years. Juan Heflin does not cite any relevant authority for this argument because no such authority exists and it would clearly defy the laws of Washington. Juan Heflin cites a large number of Washington cases, involving

only Washington claims of various types, to somehow support this argument that any judgment is only enforceable for ten years in Washington. RCW Title 4, *Civil Procedure*, relied upon by Juan Heflin, gives deference to the law of the issuing state for purposes of the limitation of any action in Washington.

RCW 4.18.020(1) provides in pertinent part:

> **Conflict of laws—Limitation periods:**
>
> (1) Except as provided by RCW 4.18.040, if a claim substantively based:
>
> (a) Upon the law of other state, the limitation period of that state applies: (Emphasis added.)

To apply RCW 4.56.210 as argued by Juan Heflin would directly contradict the substantive provisions of RCW 4.18.020, RCW 26.21A.515 (Discussed below) and would result in a ruling that valid foreign child support orders are not enforceable in Washington after ten (10) years. This is not the statutory or case law of Washington.

Likewise, applying the Washington limitations of action pursuant to RCW 6.17.020 to foreign judgment or child support order would make any sister state Order or judgment no different than a Washington Order of Child Support. In the case of *TCAP Corp. v. Gervin*, 163 Wn2d 645 (2008) the Washington Supreme

Court ruled on the issue of the duration of a judgment for collection in Washington: "We hold a registered foreign judgment in Washington expires, and therefore becomes unenforceable, under RCW 6.17.020(7) when the underlying foreign judgment expires." *TCAP Corp.*, supra, at 647. As set forth below, the underlying Indiana Order for child support has not expired and is fully enforceable.

C. The Judgment for Child Support is Fully Enforceable for No Less than Twenty (20) years.

Any discussion of the time limits enforce an out of state child support Order in Washington begins with RCW 26.21A.500, et. seq.

Washington adopted the Uniform Interstate Family Support Act (UIFSA) which act is codified under RCW 26.21A. A good background of the UIFSA is set forth in the Washington Supreme Court opinion, *In re Schneider*, 173 Wn.2d 353, 355, 268 P.3d 215 (Wash. 2011) Per *Schneider,* supra, at 358-359:

> The UIFSA was developed in response to federal legislation impacting state child support enforcement laws. Kurtis A. Kemper, Annotation, *Construction* [268 P.3d 218] *and Application of Uniform Interstate Family Support Act,* 90 A.L.R. 5th 2, at 31 (2001). Prior to the development of the UIFSA, when parties in a child support action lived in different states, each state could issue its own child support orders. *Id.* This potential for competing child support orders, with varying terms and duration depending on the issuing jurisdiction, resulted in a proliferation of litigation. Unif.

Interstate Family Support Act (2008) 611, 9 pt. 1B U.L.A. cmt. at 139 (Supp.2011). The UIFSA addressed this " chaos" by establishing a " one-order" system for child support orders by providing that one state would have continuing exclusive jurisdiction over the order. *Id.* at 139-40. The UIFSA enforces the one-order system in a variety of ways, including registration of out-of-state child support orders for either enforcement, modification, or both. *In re Schneider*, 173 Wn.2d 353, 358-359, 268 P.3d 215 (Wash. 2011)

"The UIFSA provides that the duration of child support is governed by the laws of the original forum state." *In re Schneider*, 173 Wn.2d 353, 355, 268 P.3d 215 (Wash. 2011). RCW 26.21A.515 provides in pertinent part:

> **RCW 26.21A.515 Choice of law.**
> (1) Except as otherwise provided in subsection (4) of this section, **the law of the issuing state governs:**
> (a) The nature, extent, amount, and **duration** of current payments under a registered support order;
> (Emphasis added.)

The adoption of RCW 26.21A. represents a statutory codification of the United States Constitution Full Faith and Credit Clause. Article IV, Section 1 of the *United States Constitution* provides in pertinent part:

> Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Juan Heflin is attempting to re-ignite the long dead litigation tactic of competing claims concerning the duration of a foreign order of child support. The argument of Juan Heflin against Washington's enforcement of the Indiana Order of Child Support hinges on whether the Court ignores RCW 26.21A.500 et. seq. and if Indiana law bars the enforcement of the Indiana order of child support ten years after the child's 18th birthday.

Directly relevant to this appeal is the decision in the Indiana Court of Appeals case of *Estate of Wilson v. Steward*, 937 N.E. 2d 826 (Ind. Ct. App. 2010). Steward addressed both the commencement of an action and the statute of limitations in Indiana for collection and enforcement of a child support judgment.

In *Steward*, supra, the ex-wife filed a claim against the estate of the late husband for unpaid child support. The claim was based upon a 1989 judgment against the father/obligor. The trial court awarded the mother damages and the father's estate appealed. Almost identical to the legal challenge by Juan Heflin, in *Steward*, supra, the father contented that an action for unpaid child support was not commenced within ten years of the child's 18th birthday as required by Indiana Code (IC) 34-11-2-10. In

Steward, supra, Court of Appeals determined that the action against the father for support was commenced well within the statutory limits of IC 34-11-2-10. The fact that a claim against the estate was filed after ten years was irrelevant because the underlying action was commenced against the father within the statutory time period.

In this case, the action for child support was commenced in 1994 when the child was eight years old. (CP 5)

Having determined that IC 34-11-2-10 does not apply, the Court of Appeals in Steward addressed the claim that the mother's action to enforce the judgment is barred under the Indiana statute of limitations, IC 34-11-2-12. IC 34-11-2-12 provides:

> Every judgment and decree of any court of record of the United States, of Indiana, or of any other state shall be considered satisfied after the expiration of twenty (20) years.

The mother's judgment in Steward was entered on July 25, 1989. The mother filed a claim against the estate of her late husband on September 10, 2009, or more than twenty years after the entry of the judgment. The Indiana Court of Appeals held that the mother's judgment claim was not time barred. In arriving at this conclusion, the Steward opinion noted that "[T]he unique

phraseology of Indiana Code Section 34-11-2-12 sets it apart from all other statutes of limitation listed in Indiana Code Chapter 34-11-2." *Steward,* supra, at 829.

Per *Steward*, supra, at 830 "[A] judgment that is less than twenty years old constitutes prima facie proof of a valid and subsisting claim, whereas a judgment that is over twenty years old stands discredited, with the lapse of time constitutes prima facie proof of payment." (Citations omitted.) Per *Steward*, supra, the presumption of payment may be overcome and the obligated must plead and prove payment to avail the obligor of the presumption of payment. The Court went on to quote, with approval, *Odell V. Green*, 72 Ind. App. 65, 77, 122 N.E. 791 (1919) that: "[N]othing in our statues indicate[s] an intention to utterly destroy judgments after the lapse of twenty years."

In this case, the Washington judgments against Juan Heflin are approximately four years old and far from presumed paid or satisfied. (CP 12-13)

If the claim or judgment had not been perfected, the claims are tolled per Indiana law because Juan Heflin has not been a resident of Indiana. In accordance with IC 34-11-4-1 *Tolling of time while nonresident*:

> The time during which the defendant is a nonresident of the state is not computed in any of the periods of limitation except during such time as the defendant by law maintains in Indiana an agent for service of process or other person who, under the laws of Indiana, may be served with process as agent for the defendant.

In his appeal, Juan Heflin acknowledges IC 34-11-4-1, but makes the unsupported claim that Washington law should control the tolling of the Indiana statute of limitations. The fact that Washington law may be more favorable to Juan Heflin on the issue of the tolling of any statute of limitations does not make Washington law applicable to cause of action arising from an Indiana case.

Juan Heflin argues that the statute of limitations is not an issue, and goes on to argue the statue of limitations. Juan Heflin states that the Indiana Statute of limitations and the Washington statute of limitations are the same. This is not true as set forth in *Steward*, supra, and IC 34-11-2-12. Juan Heflin misquotes the law of Indiana and ignores the validity of the Indiana Order of child support and the duration for enforcement of any judgments in Washington per the Indiana statute of limitations.

D. Issues Not Properly Before this Court on Appeal.

RAP 4.1(a) allows for the review of a trial Court decision. Excepting the claim that RCW 4.56.210 and RCW 6.17.020 bar enforcement of the judgment and issuance of a Wage Withholding Order, the other claims and issues raised by Juan Heflin and his attorney in this Appeal are not properly before this Court.

Stephanie Bell will address some of the far ranging, untimely and settled issues out of an abundance of caution.

i. *Interest on the Obligation.* Interest is determined and applied per RCW 26.21A.515(1(b). At the time of the entry of the Order for child support, per Indiana law 31-16-12-2, interest was 1 and ½ % per month. This issue was raised and decided in the Order of the Superior Court on February 23, 2011. (CP 12-13)

ii. Sum of the Obligation. The sum of the obligation was confirmed by Juan Heflin in his Settlement Agreement dated December 7, 2011 and attached to the Declaration of Stephanie Bell. (CP 23-31.) In response and objection to the Motion for Wage Withholding, other than a legal "Hail Mary" of falsely claiming that no evidence was submitted as to the past due child support, Juan Heflin failed to object the sum of the obligation as set forth in the Declaration of Stephanie Bell (CP 23-31) with attached

accounting. (Verbatim Report of Proceedings, Page 19, 6-7). Juan Heflin is asking the Court of Appeals to ignore the unchallenged accounting, the acknowledgement of Juan Heflin of his support obligation (CP 23-31) and to re-litigate payments and the obligation. All accrued interest is simple and the debt was affirmed by Juan Heflin during settlement negotiations. Juan Heflin had the opportunity to object to the accounting, yet failed and refused to do so. 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.

iii. Allocation of payments. This is yet another claim first raised on appeal. Alleging an issue concerning the allocation of past due support payments, Juan Heflin and his attorney misrepresent the holdings of their citied cases setting forth the manner in which support payments are to be applied. In Juan Heflin's Opening Brief, page 29, he cites *Marriage of Maccarone*, 54 Wn. App. 503, 774 P.2d 53 (1989) and sets forth a statement of order for child support payments. None of the cases cited by Juan Heflin set forth the sequencing of payment application standards, 1 – 4, as alleged by Juan Heflin. *Marriage of Maccarone*, supra,

simply states that payments are to be applied against the current obligation and the balance against principal and interest.

In the Superior Court proceedings, Heflin filed an untimely Supplemental Memorandum of Law seeking to raise new issues for consideration by the Superior Court. As set forth in the verbatim Report of Proceedings, page 4, li 11-5, the additional issues raised by Juan Heflin, were not considered by the Court.

E. *The Appeal is Brought in Bad Faith and is Interposed for Delay; Terms Should be Awarded Against Heflin and his Attorney.*

RAP 18.9 (a) authorizes the appellate court to order a party or his counsel to pay terms or compensatory damages for the violation of the rules for a frivolous appeal.

> A frivolous appeal is one which, when all doubts are resolved in favor of the appellant, is so devoid of merit that there is no chance of reversal. Fidelity Mort. Corp. v. Seattle Times Co., 131 Wn.App. 462, 473, 128 P.3d 621 (2005)

> A frivolous action is one that cannot be supported by any rational argument on the law or facts. *Rhinehart v. Seattle Times*, 59 Wn.App. 332, 340, 798 P.2d 1155 (1990).

Juan Heflin and his attorney have argued that RCW 4.56.210(2) and RCW 6.17. 020(2) deprive Washington Courts of jurisdiction or the authority to enforce a valid and fully enforceable Indiana Order of Child Support after ten years, regardless of the

validity of the underlying judgment or obligation. This claim lacks any merit and directly contradicts established Washington law.

Juan Heflin and his attorney have misrepresented the law, the facts of the case, interposed new claims in this appeal and are attempting to litigate claims and issues resolved years ago by the Superior Court.

The actions of Juan Heflin and his attorney are not about issues of law, but rather are about using every device and tactic, no matter how absurd, to defeat the child support obligation of Juan Heflin. Sanctions against Juan Heflin and his attorney, are needed and necessary.

F. *Bell is Entitled to the Award of Her Attorneys' Fees for Defending Against this Appeal.*

RCW 26.21A.515 provides in pertinent part:

> **RCW 26.21A.515 Choice of law.**
> (3) A responding tribunal of this state shall apply the procedures and remedies of this state to enforce current support and collect arrears and interest due on a support order of another state registered in this state.

Stephanie Bell is entitled to the award of her costs and attorney's fees on appeal and in accordance with RCW 26.18.160, *Child Support Enforcement, Costs*:

> In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

Stephanie Bell respectfully requests the award of her costs and attorneys' fees for being forced to defend against this Appeal.

CONCLUSION.

The appeal of Juan Heflin and his counsel lacks any legal or factual basis. Juan Heflin has used every artifice to avoid his child support obligation. His attorney have made misleading claims and representations completely contrary to the law or the facts. (Juan Heflin and his attorney have been untimely in submitting their pleadings; have filed no less than three Appellant's Briefs; Juan Heflin and his attorney have raised issues either not considered or raised before the lower Court; Juan Heflin and his attorney have cited a string of cases unrelated to the issues before this Court;

Juan Heflin and his attorney have misquoted and/or misrepresented the law and facts of this case. An excellent example is the Appellant's Opening Brief, page 12, **The Hearing and Order Entered on August 28, 2014**, Juan Heflin and his attorney claim with regards to the accounting for the unpaid child support "No testimony or evidence was presented at the hearing." This is not true and dishonest with this Court. (See Clerk's Paper 23-30, the Declaration of Stephanie Bell and the Verbatim Report of Proceedings, page 20, li 8-10.)

It is difficult enough to collect past due child support without having to expend additional time and effort to address frivolous and untimely/previously decided issues and false representations to this Court. This appeal is not about a legitimate issue but is rather an attempt to punish Stephanie Bell. Juan Heflin's attorney is not worried about what is right or correct, the "game" is to cost Stephanie Bell as much time and money as possible to prevent her from collecting past due child support.

It is respectfully suggested that this Court affirm the lower Court ruling and award Stephanie Bell her costs and attorneys' fees

for being forced to defend against this appeal. It is also suggested that terms in an amount deemed appropriate be assessed against Juan Heflin and his attorney, Helmut Kah as result of the filing of this frivolous appeal.

Dated this 19th day of May, 2015.

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