

No. 94722-8
COA No. 75438-6-1.

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

Lucy Stokstad, Respondent

v.

Bruce Stokstad, Appellant

ANSWER TO PETITION FOR REVIEW

Marya M. Santor
SANTOR LAW FIRM
19125 North Creek Pkwy, Suite 120
Bothell, WA 98011
Tel. 425-329-2647 Fax. 425-491-7110
Attorney for Respondent

Table of Contents

A. Identity of Respondent.....1

B. Court of Appeals Decision.....1

C. Issues Present for Review.....1

D. Statement of Case.....2

E. Argument Regarding Whether Review Should be
Accepted.....4

F. Conclusion.....11

Table of Authorities

Cases

In re Marriage of Briscoe, 134 Wash.2d 344, 348, 949 P.2d 1388 (1998)5

In re Marriage of Dicus, 110 Wash.App. 347, 353, 40 P.3d 1185 (2002).....5

In re Marriage of Greenlee, 65 Wn.App. 703, 708, 829 P.2d 1120 (1992).....10,11

In re Marriage of Hughes, 69 Wash.App. 778, 782, 850 P.2d 555 (1993).....5

In re Marriage of Wixom, 190 Wn.App. 719, 725, 360 P.3d 960 (Div. 3 2015).....10

In re Parentage of Fairbanks, 142 Wash. App. 950, 956, 176 P.3d 611, 614 (2008).....4, 5

In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017).....1,7, 8, 9, 10

Statutes

RCW 16.18.190(2)5

RCW 16.18.190(4)5

RCW 26.18.16011

RCW 74.20.101(3)7

Rules and Regulations

RAP 13.4.....2, 8, 10
RAP 14.2.....11

Out of State Case Law

Louko v. McDonald, 189 Vt. 426, 22 A.3d 433, 2011 VT 33,
(2011).....7

A. Identity of Respondent

Lucy Stokstad is the Respondent in this matter and respectfully requests that the Court deny review on the issues presented by Bruce Stokstad and award attorney's fees and costs to Lucy Stokstad.

B. Court of Appeals Decision

The Court of Appeals found "no abuse of discretion or reversible error" and affirmed the trial court's decision and denied both parties' request for attorney's fees on appeal. In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017)

C. Issues Present for Review¹

1. The issue of whether or not a lump sum benefit payment made directly to an adult child by Social Security (on the basis of an obligor parent's disability) can be credited against the obligor parent's support arrears is not an issue of substantial public interest, but an issue that has already been fully resolved by statute and case law.

2. The Petition for Review as it relates to a Conference Board Decision should be denied, as both Court of Appeals decisions in question are unpublished opinions.

¹ Bruce Stokstad listed a number of Issues Presented for Review and in his conclusion stated that he wanted review of all issues argued before the trial and appellate court. Lucy Stokstad is only addressing those issues which he argued in Section VI of his Petition.

3. The issuance of the Notice of Credit on January 23, 2015 without first seeking a show cause order does not give rise to grounds to support a Petition for Review.

4. A finding that an attorney cannot double bill for the same attorney's fees does not give rise to grounds to support a Petition for Review.

5. The Court of Appeal's denial of an award of attorney's fees to Lucy Stokstad on appeal does give rise to grounds to grant a Petition for Review under RAP 13.4 and such fees should be award.

D. Statement of the Case

The central issue in the Petition for Review involves a lump sum payment in the amount of \$16,225.00 to the child from Social Security as a result of Lucy Stokstad's finding of disability and award of benefits.

Lucy Stokstad received a lump sum payment from Social Security for back payments in January 2012, and the Division of Child Support garnished approximately \$16,412.50 (one-half of that lump sum payment issued to Lucy Stokstad) and paid those funds to Bruce Stokstad. CP 1-6, 110-113 At the same time, the adult child received a lump sum payment for \$16,225.00 from Social Security. CP 116 On or about February 6, 2012, Division of Child Support issued a Notice of Credit to Bruce Stokstad indicating that the full amount of

the Social Security payment to the child had been credited "to reduce the noncustodial parent's past-due support debt." CP 258 However, the initial calculations of Division of Child Support credited Lucy Stokstad a total of only \$649. CP 267.

While the garnished funds were accounted for in the Debt Calculation and Case Payment History maintained by the State of Washington Division of Child Support CP 109-113, the payment received by the child was not. On February 17, 2015, a Conference Board Decision was issued by the State of Washington Department of Social and Health Services which found that Lucy Stokstad was entitled to a credit for the \$16,225.00 received by the adult child. CP 116

While Bruce Stokstad has made numerous allegations of what the Division of Child Support told him and his son, none of those allegations are support by citations to the record. While Bruce Stokstad did file a declaration full of inadmissible hearsay (after the original hearing on the matter), nothing in that declaration supports the contention that the child was told anything by the Division of Child Support. CP238-240 The allegation that the child was involved in the alleged conversation was crossed out. CP 239. Additionally, a report by Bryan Cooper of the Division of Child Support, which was attached to the declaration, contradicts many of Bruce Stokstad's allegations. CP

306-307 Finally, the issue of what happened to the lump sum payment made to the child and if the child "refunded" the father those funds when he received payment for his personal judgment in this case, was not resolved at the trial court level. As Lucy Stokstad did not brief the issue at the trial court level (the alleged evidence associated with this was filed by Bruce Stokstad after the February 19, 2016 hearing) and much of the record from the litigation is not contained in the Clerk's Papers, it is impossible to fully respond to Bruce Stokstad's allegations. However, Bruce Stokstad has not produced any admissible evidence regarding what he alleges related to what he and the child were advised and such allegations should not be considered.

E. Argument Regarding Whether Review Should Be Accepted

1. The issue of whether or not a lump sum benefit payment made directly to an adult child by Social Security (on the basis of an obligor parent's disability) can be credited against the obligor parent's support arrears is not an issue of substantial public interest, but an issue that has already been fully resolved by statute and case law.

The Court in In re Parentage of Fairbanks addressed this very issue.

RCW 26.18.190 addresses the effect of benefits paid by the Social Security Administration on behalf of a child. RCW 26.18.190(2) specifically provides that when Social Security

benefit payments are made on behalf of the child of a disabled person, that amount is treated for all purposes as if the disabled person had paid the benefits toward the satisfaction of that person's child support obligation for the period for which the benefits were paid.

"The statute is unambiguous: Disability benefits paid directly to the children are in partial satisfaction of the disabled parent's support obligation." In re Marriage of Briscoe, 134 Wash.2d 344, 348, 949 P.2d 1388 (1998) (citing In re Marriage of Hughes, 69 Wash.App. 778, 782, 850 P.2d 555 (1993)). Under the mandatory language of the statute, courts must allow the offset. In re Marriage of Dicus, 110 Wash.App. 347, 353, 40 P.3d 1185 (2002).

In re Parentage of Fairbanks, 142 Wash. App. 950, 956, 176 P.3d 611, 614 (2008)

There is nothing in the statute or the case law which would support the conclusion that the fact the payment was made directly to the child (as he had turned 18 when the lump sum payment was made) would change the intent of the statute or the court ruling.

Bruce Stokstad argues that credit for the lump sum payment should be denied because RCW 16.18.190(4) conflicts with RCW 16.18.190(2). RCW 16.18.190(4) stands for the proposition that Lucy Stokstad would not be entitled to reimbursement from Bruce Stokstad, if the funds paid by Social Security were in excess of her support obligation. The funds were not in excess of her support obligation and RCW 16.18.190(4) does not conflict with the RCW 16.18.190(2) or relevant case law.

Bruce Stokstad further argues that Lucy Stokstad should not receive the credit because the credit must be used for the period for which benefits are paid. The lump sum payment to the child was for payments over the course of a two year period from June 2009 through June 2011. This is not in contention as Bruce Stokstad submitted this information. CP 306 (also see CP 258) Nor is it in contention that the back support at issue included this time period, (1) back child support in the amount of \$14,928.08 for the period of May 1, 2009 through June 30, 2011, (2) back medical support in the amount of \$4,276.72 for the period of October 22, 2007 through May 31, 2011, (3) back additional support in the amount of \$4,211.88 for the period of August 25, 2007 through June 30, 2011. CP 28-42 Nor does it appear to be in contention that more was owed in back support for the relevant time period than was paid to the child from Social Security. Although the August 19, 2011 order does not break out the monthly amount owed for the relevant time periods, it seems clear from the figures that the amount owed for the relevant time period was in excess of the \$16,225.00 payment to the child and Bruce Stokstad has produced no evidence to the contrary.

Bruce cites a number of out of state cases to support his contention that the credit should not be allowed. "None of the cases he cites address provisions analogous to Washington statutes and regulations."

In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017)

It should also be noted that the cases cited by Bruce Stokstad represent the position of the minority of jurisdictions. Louko v. McDonald, 189 Vt. 426, 22 A.3d 433, 2011 VT 33, (2011) The majority of jurisdiction that have addressed these issues have found the a credit is appropriate. Id.

Bruce Stokstad further argues that the credit should be denied because the Division of Child Support failed to provide notice and an opportunity to be heard. RCW 74.20.101(3) provides

The rights of the payee under an order for support shall not be prejudiced if the department grants credit under subsection (2)(a) of this section. If the department determines that credit should be granted pursuant to subsection (2) of this section, the department shall mail notice of its decision to the last known address of the payee, together with information about the procedure to contest the determination.

The Division of Child Support did this. See CP 258-259. Bruce Stokstad clearly received these documents as he filed them with the Court. He also had benefit of counsel regarding these documents as he sent them to his attorney on February 11, 2012. See fax cover sheet at CP 257. He cannot now claim he didn't receive notice.

2. The Petition for Review as it relates to a Conference Board Decision should be denied as both Court of Appeals decisions in question are unpublished opinions.

RAP 13.4 states Petition for Review will only be accepted: ..."If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals...." Both of the decisions in question are unpublished opinions. The issue of whether or not a Conference Board Decision is binding is not an issue in conflict.

Additionally, it is Lucy Stokstad's position that the rulings are not in conflict. The Appeals Court in our case specifically stated that it was not addressing the issue.

In a related contention, Bruce claims the superior court erred when it "impliedly" found that he was bound by the Conference Board decision when he failed to seek review of the subsequent ALJ decision. Because Bruce fails to demonstrate that the superior court erred in applying the credit based on Washington law, we need not address any alternative bases for the court's decision.

In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017)

3. The issuance of the Notice of Credit on January 23, 2015 without first seeking a show cause order does not give rise to grounds to support a Petition for Review.

The basis of Bruce Stokstad's argument in this matter is unclear, however he has offer no support for his contention that CR 60(e) would apply to a determination of the Division of Child Support in this matter or the issuance of a Notice of Credit.

4. A finding that an attorney cannot double bill for the same attorney's fees does not give rise to grounds to support a Petition for Review.

Bruce Stokstad argues that Lucy is attempting to relitigate an issue. This is not true. During the underlying case the Court issued two interim attorney's fees award judgments related to specific matters. At the conclusion of the case, the Court issued an attorney's fees award that included the entire amount of attorney's fees owed in the case, which encompassed the earlier attorney's fees' awards/judgments. The Court Commissioner and the Trial Judge found the early attorney's fees judgments were superseded by the later judgment. This finding is supported by the fact the fees bill in the early judgments were also billed in the later judgment. The Court's of Appeal's found:

...Bruce does not dispute that the 2011 judgment included an attorney fee award for the identical services included in the 2009 and 2010 judgments. Bruce makes no showing that he was entitled to be paid twice for the same services. The court did not err in removing the two earlier judgment liens.

In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017)

Bruce Stokstad still has made no showing that the removal of the earlier judgments was improper.

5. The Court of Appeal's denial of an award of attorney's fees to Lucy Stokstad on appeal does give rise to grounds to grant a Petition for Review under RAP 13.4 and such fees should be awarded.

The court "may consider whether additional legal fees were caused by one party's intransigence and award attorney fees on that basis." In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017) citing In re Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). "Determining intransigence is necessarily factual, but may involve foot-dragging, obstructing, filing unnecessary or frivolous motions, refusing to cooperate with the opposing party, noncompliance with discovery requests, and any other conduct that makes the proceeding unduly difficult or costly." In re Marriage of Wixom, 190 Wn.App. at 725 citing In re Marriage of Greenlee, 65 Wn.App. 703, 708, 829 P.2d 1120 (1992).

The Court of Appeals found:

As the court aptly commented, counsel's actions permeated the proceeding-"On a global level, [Bruce's attorney] has transformed a simple Motion to pay off old judgments in which [Bruce] would receive a considerable sum into major litigation." Substantial evidence supports the court's findings. The court did not abuse its discretion in awarding attorney fees for intransigence.

In re Marriage of Stokstad, 75438-6-I (Unpublished Opinion, Div. 1 2017)

The appeal to the Court of Appeals and the present Petition for Review is just a continuance of Bruce Stokstad and his counsel's intransigence and has greatly increased the difficulty and costs associated with a simple matter. Failing to award attorney's fees for such conduct goes against the findings in Matter of Marriage of Greenlee 65 Wn.App. 703, 829 P.2d 1120 (Div. 1 1992) and does nothing to discourage this type of behavior in the future. Attorney's fees should be awarded to Lucy Stokstad for both the need to respond to the original appeal as well as the Petition for Review pursuant to RAP 18.9 (a), Matter of Marriage of Greenlee, 65 Wn.App. 703, 829 P.2d 1120 (Div. 1 1992), and RCW 26.18.160².

F. Conclusion

Lucy Stokstad respectfully requests that Bruce Stokstad's Petition for Review be denied and that her Petition for Review be granted and the Court find that she should be awarded attorney's fees. Bruce Stokstad has acted in bad faith throughout the litigation to resolve the issue of the liens on Lucy Stokstad's property. This bad faith has continued with the filing of the present frivolous Petition for Review. Attorney's fees should be awarded to Lucy Stokstad together with costs pursuant to RAP 14.2.

DATED at Mill Creek, Washington this 4th day of August, 2017.

² Lucy Stokstad may be considered the prevailing party under this statute based on Bruce Stokstad's bad faith. RCW 26.18.160



Marya M. Santor, WSBA No 38615

Attorney for Respondent

Santor Law Firm

19125 North Creek Parkway, Suite 120

Bothell, Washington 98011

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that the following is true and correct:

That on August 4, 2017, I arranged for service of the foregoing Answer to the Court and to the parties to this action as set forth below. The parties have mutually agreed to alternate electronic service.

Office of Clerk
Court of Appeals, Division I
600 University Street
Seattle, Washington 98101

E-Filing

Andrekita Silva
WSBA No 17314
Attorney for Petitioner
Law Office of F. Andrekita Silva
1325 Fourth Avenue, Suite 2000
Seattle, Washington 98101

Email

DATED at Mill Creek, Washington this 4rd day of August, 2017.



Marya M. Santor, WSBA No 38615
Attorney for Respondent
Santor Law Firm
19125 North Creek Parkway, Suite 120
Bothell, Washington 98011

SANTOR LAW FIRM

August 04, 2017 - 4:31 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94722-8
Appellate Court Case Title: In the Matter of the Marriage of Lucy Stokstad v. D. Bruce Stokstad
Superior Court Case Number: 94-3-01842-0

The following documents have been uploaded:

- 947228_Answer_Reply_20170804163105SC924277_5724.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- ak@seattle-silvalaw.com
- andrekita@aol.com

Comments:

Sender Name: Marya Santor - Email: marya@santorlaw.com

Address:

19125 N CREEK PKWY STE 120

BOTHELL, WA, 98011-8000

Phone: 425-329-2647

Note: The Filing Id is 20170804163105SC924277