

No. 46313-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DEANNA M. ZANDI,

Appellant,

vs.

VICTOR M. ZANDI,

Appellee.

APPELLANT'S BRIEF

By DARREL S. AMMONS
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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
A. ASSIGNMENTS OF ERROR	1
B. ISSUE PRESENTED	1
C. STATEMENT OF THE CASE	1
D. ARGUMENT	4
1. The Trial Court Is Required To Follow The Order Of Child Support In Apportioning Uninsured Medical Expenses	4
E. CONCLUSION	5

TABLE OF AUTHORITIES

Cases

<i>Kemmer v. Keiski, et al.</i> , 116 Wash.App. 924, 68 P.3d 1138 (2003)	4
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Statutes

RCW 26.18.170	4
RCW 26.19.080	4

A. ASSIGNMENTS OF ERROR

1. The trial court erred in the apportionment of uninsured medical expenses based upon the mother being in a better position to secure insurance coverage because she was the primary residential parent.

B. ISSUE PRESENTED

1. Is the trial court required to follow the order of child support in apportioning uninsured medical expenses between the parties?

C. STATEMENT OF THE CASE

On March 30, 2012, the Appellant filed a Petition for Modification of Child Support. The Petition further requested the Court to require the Appellee, Victor M. Zandi, Jr., to pay uninsured medical expenses due to their child, Tara, requiring emergency medical care in Ohio. Tara required urgent medical care to treat and ultimately remove a large kidney stone. CP 114, P. 1, L. 18-25; P. 2, L. 1-23.

On July 6, 2011, while Tara was visiting her aunt in Ohio, she developed intense pain that required a visit to the local emergency room in Cincinnati, Ohio. Tara was diagnosed with a

kidney stone 4 mm in diameter that would not pass on its own, causing Tara excruciating pain. The kidney stone was blocking fluid out of the kidney. As a result, Tara was required to have a form of surgery that would break up the kidney stone to allow it to pass and alleviate the excruciating pain. CP 114, P. 2, L. 5-23; P. 3, L. 1-21.

Unfortunately, the nearest Kaiser Permanente facility was located approximately 6 to 7 hours away from Tara's aunt's home. Therefore, there was no viable option but to treat Tara locally rather than through the Kaiser health care network. CP 113, P. 2, L. 1-18.

The medical bills associated with Tara's treatment for her kidney stone are as follows: Urology Center \$6,649.00 (in collection); Professional Radiology \$29.00; NE Radiology \$28.25; Out Patient Anesthesia \$787.20 and 540.00; Tri State Urologic Services \$6,301.10 (in collection); and Bethesda Hospital \$205.00. Kaiser did pay for the initial emergency room visit. The total unpaid costs for the kidney stone treatment are \$14,539.55 (without interest). CP 115, P. 47-61; CP 113, P. 2, L. 13-18.

Tara was insured with Kaiser through the Appellee's employment at Longview Fibre Company. After the treatment was completed the bills were turned into Kaiser Permanente for

payment. Unfortunately, Kaiser Permanente refused to pay the bills. Because the Appellee has Kaiser insurance coverage for Tara through his employment, Kaiser's communication with Appellant was limited. Kaiser advised Appellant that the bills are not covered. Appellant submitted an appeal to Kaiser. However, Kaiser denied the appeal and the bills are currently outstanding. CP 113, P. 2, L. 19-23; P. 3, L. 1-10.

Appellant has done everything within her power to get Kaiser to pay the medical expenses. She has no interest in any delay in getting the bills paid. That is because the medical providers will have a claim against Appellant as well as the Appellee. The most recent Order of Child Support, filed December 9, 2009, requires the Appellee to pay "100%" of uninsured medical expenses. CP 94, P. 7, L. 13-16. There was a child support review hearing on March 31, 2010. However, the Court denied any changes to the Order of Child Support.

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A hearing on declarations was heard on December 5, 2013. The trial court apportioned Tara's uninsured medical expenses as follows:

Father – 25%;

Mother – 75%

CP 135, P. 2, L. 12-15.

D. ARGUMENT

1. The Trial Court Is Required To Follow The Order Of Child Support In Apportioning Uninsured Medical Expenses.

RCW 26.18.170 states in part as follows:

- (1) Whenever a parent has been ordered to provide medical support for a dependent child, the department or the other parent may seek enforcement of the medical support as provided under this section.

...

- (17) If a parent required to provide medical support fails to pay his or her portion, determined under RCW 26.19.080, of any premium, deductible, copay, or uninsured medical expense incurred on behalf of the child, pursuant to a child support order, the department or the parent seeking reimbursement of medical expenses may enforce collection of the obligated parent's portion of the premium, deductible, copay, or uninsured medical expense incurred on behalf of the child.

In *Kemmer v. Keiski, et al.*, 116 Wash.App. 924, 68 P.3d

1138 (2003) the Court of Appeals restated the longstanding law

pertaining to the enforceability of judgment/orders, not timely appealed, as follows:

When a judgment disposes of all claims and all parties, it is both appealable and preclusive. It remains appealable for 30 days. If not appealed in that period of time, it directly precludes all further proceedings in the same case, except "clarification" and enforcement proceedings, and it collaterally precludes other suits based on the same claim.

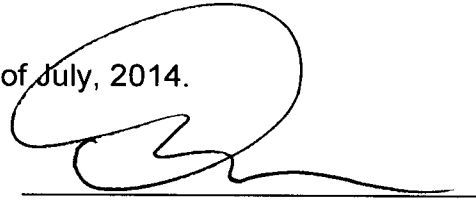
In the present case, the current order of child support entered on December 9, 2009 clearly sets forth the parties' respective responsibilities for uninsured medical expenses. The father has 100% responsibility and the mother has no responsibility. The Appellee never requested reconsideration of the Order of Child Support. Further, he did not appeal the Order of Child Support. Therefore, there was no basis for the trial court to deviate from the Order of Child Support in apportioning the uninsured medical expenses regarding the kidney stone. There is no evidence to suggest that the mother's conduct, in any way, contributed to Kaiser's refusal to cover the health care expense.

E. CONCLUSION

Based upon the foregoing, the Appellant requests that this court reverse the trial court's apportionment of uninsured medical

expenses and order that the Appellee is responsible for 100% of the medical expenses.

Respectfully Submitted this 23rd of July, 2014.

A handwritten signature in black ink, consisting of a large, rounded initial 'D' followed by a stylized 'A' and a long horizontal flourish extending to the right.

Darrel S. Ammons
WSBA #18223
Attorney for Appellant

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DECLARATION OF SERVICE

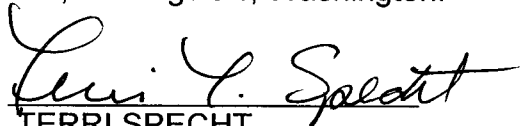
I, Terri Specht, declare as follows:

On July 23, 2014, I deposited in the United States mail a true and correct copy of Appellant's Brief, postage affixed, addressed as follows:

Victor M. Zandi, Jr.
661 22nd
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 July 23, 2014, at Longview, Washington.


TERRI SPECHT

DARREL S AMMONS ATTORNEY AT LAW PLLC

July 23, 2014 - 1:40 PM

Transmittal Letter

Document Uploaded: 463130-Appellant's Brief.pdf

Case Name: Deanna M. Zandi v. Victor M. Zandi

Court of Appeals Case Number: 46313-0

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

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Statement of Arrangements

Motion: _____

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Brief: Appellant's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Petition for Review (PRV)

Other: _____

Comments:

Declaration of Service is attached to the Appellant's Brief.

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

A copy of this document has been emailed to the following addresses:

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