NO. 46313-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

DEANNA M. ZANDI,

Appellant,

vs.

VICTOR M. ZANDI,

Respondent.

BRIEF OF RESPONDENT

John A. Hays, No. 16654
Attorney for Respondent

1402 Broadway
Suite 103
Longview, WA 98632
(360) 423-3084

TABLE OF CONTENTS

Page

A. TABLE OF AUTHORITIES 1

B. STATEMENT OF THE CASE 2

C. ARGUMENT

I. THIS COURT SHOULD AFFIRM THE DECISION BELOW BECAUSE APPELLANT'S FAILURE TO ARRANGE FOR TRANSCRIPTION OF COUNSELS' ARGUMENTS AND THE TRIAL COURT'S ORAL RULING LEAVES AN INSUFFICIENT RECORD FROM WHICH TO REVIEW APPELLANT'S ASSIGNMENT OF ERROR 7

II. THE CHILD'S MEDICAL EXPENSES HERE AT ISSUE WERE "INSURED" THROUGH THE FATHER'S KAISER POLICY AND THE MOTHER'S FAILURE TO SECURE TREATMENT FOR THE CHILD AT AN AVAILABLE KAISER FACILITY OR ARRANGE FOR TREATMENT AUTHORIZATION AT AN OUT-OF-PLAN FACILITY DOES NOT MAKE THOSE EXPENSES "UNINSURED" UNDER THE LANGUAGE OF THE CURRENT SUPPORT PLAN 9

D. CONCLUSION 14

E. AFFIRMATION OF SERVICE 15

TABLE OF AUTHORITIES

Page

Cases

Olmsted v. Mulder, 72 Wn.App. 169, 863 P.2d 1355 (1993) 8

State v. Agee, 89 Wn.2d 416, 573 P.2d 355 (1977) 11

State v. Ford, 110 Wn.2d 827, 755 P.2d 806 (1988) 11

State v. Hill, 123 Wn.2d 641, 870 P.2d 313 (1994) 11

State v. Hutsell, 120 Wn.2d 913, 845 P.2d 1325 (1993) 11, 12

State v. Johnson, 113 Wn.App. 582, 54 P.3d 155 (2002) 7, 8

State v. Nelson, 89 Wn.App. 179, 948 P.2d 1314 (1997) 11

State v. Stevens, 58 Wn.App. 478, 794 P.2d 38 (1990) 7

Willener v. Sweeting, 107 Wn.2d 388, 730 P.2d 45 (1986) 12

Court Rules

RAP 9.1 7

STATEMENT OF THE CASE

Tara Zandi is the 18-year-old daughter of Respondent Victor Zandi and his ex-wife, Appellant Deanna Zandi. CP 206-207. Deanna Zandi is the primary residential parent. CP 247. Under an Amended Order of Support entered on December 9, 2009, Respondent is required to provide medical insurance for Tara and is responsible for paying one hundred percent of uninsured medical expenses. CP 1-8. Paragraph 3.19 of that order states:

> 3.19 UNINSURED MEDICAL EXPENSES.
>
> Both parents have an obligation to pay their share of uninsured medical expenses. The father shall pay 100% of uninsured medical expenses and the mother shall pay 0% of uninsured medical expenses per agreement of the parties pending a child support review hearing scheduled for February 17, 2010.

CP 7.

In fact, for the past 20 years respondent has maintained health insurance for his children, including Tara, through Kaiser Permanente. CP 207-208. The implementation of this policy predates the 2009 amendment by a number of years. *Id.* Under that policy treatment for medical events are covered as long as the patient (1) uses a physician and facility approved by Kaiser, (2) obtains prior approval from Kaiser to use an outside provider or medical facility, (3) or goes to any treatment facility for emergent care provided a Kaiser facility is not available. CP 207-208, 237.

In June of 2011, Tara Zandi traveled to Ohio to spend some time with

her maternal aunt. CP 207-208. During this period of time she developed kidney stones and her aunt took her to the emergency room (ER) at a local hospital not on Kaiser's list of approved facilities. CP 38-39, 207-208, 237. No Kaiser-approved emergent care facility was available in the area. *Id.* The local ER treated Tara, provided her with pain medication and released her. CP 42-46, 207-208. The next day Ms Zandi contacted respondent, informed him of Tara' s trip to the emergency room, her need for treatment, and asked him to agree to have Tara's kidney stones treated at a non-Kaiser facility. CP 207-208. Respondent told her to either have Tara taken to a Kaiser facility for treatment or contact Kaiser for pre-approval of treatment at a non-Kaiser facility as is required under his health insurance plan. *Id.* He later provided the following affirmation concerning these contacts with his ex-wife and his daughter.

> Apparently, in the summer of 2011, my daughter was in Ohio, at that time I believe visiting her aunt. Apparently Tara had kidney stones and was taken to the emergency room where she was treated, and which my insurance covered. Tara was released and sent home. I then received a call the following day from my former wife (the mother) asking that I authorize non-Kaiser facilities. I told her that I would not do that and that she needed to contact Kaiser and go though the appropriate channels. Thereafter, my daughter called and requested the same information and I basically repeated the same information that I have told the mother. I told the mother to take our daughter to Kaiser or contact Kaiser and get a referral for other providers. For over twenty years, our children have been covered by Kaiser Insurance and the mother knows specifically how this coverage works. I never heard back from the mother after this occurred. It appears, however, that the mother went outside the

> network of insurance and had a procedure performed that was not pre-authorized by our own insurance. As a result, it appears that there are outstanding medical bills totaling approximately $13,000.00 that are totally uninsured.

CP 207-208.

Although a Kaiser facility was available a number of hours from Tara's location in Ohio, Appellant arranged for Tara's kidney stone surgery at a non-Kaiser medical facility and she did not seek pre-approval from Kaiser. CP 207-208, 237. Kaiser later refused to pay these medical bills on the basis that (1) the facility used was not part of Kaiser's network, (2) the surgery was non-emergent, and (3) noone had sought preapproval for use of a non-Kaiser facility. CP 207-208. Upon learning these facts Respondent went through the Kaiser appeal process. *Id.* Kaiser later affirmed the decision to deny coverage, stating as follows:

> **Reasons for the Decision**
>
> We made our decision for the following reasons. Your 2011 Kaiser Foundation Health Plan of the Norwest Large Group Traditional Copayment Plan Evidence of Coverage (EOC) states, "As a member, you must receive all covered Services from Participating Providers and Participating Facilities inside our Service Area, except as otherwise specifically permitted in the EOC.
>
> We will not directly or indirectly prohibit you from freely contracting at any time to obtain health care Services outside the Plan. However, if you choose to receive Services from Non-Participating Providers and Non-Participating Facilities except as other wise specifically provided in the EOC, those Services will not be covered under this EOC and you will be responsible for the full price of the Services." (How to Obtain Services.)

> Additionally, your EOC states, "Post-stabilization care is Services you receive for the acute episode of your Emergency Medical Condition after that condition is clinically stable. "Clinically stable" means that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during your discharge or transfer from the hospital. We cover post-stabilization care only if one of the following is true:
>
> • A Participating Provider or Participating Facility provides the Services.
>
> • We authorize your receiving the Services from the Non-Participating Provider or Non-Participating Facility before you receive the Services (or later, if extraordinary circumstances delay your ability to call us but you call us as soon as reasonably possible) . . . . (Post-Stabilization Care).
>
> According to the records we receive, our reviewing provider has determined that Tara does not meet the requirements for Post-stabilization care because non-emergency care from a non-participating provider requires prior authorization, which was not received. Additionally, our records do not indicate any request for authorization or assistance regarding this matter was received. Therefore, the charges for these services remain your financial responsibility.

CP 237.

Appellant later brought the instant action, arguing that the bill for Tara's treatment was "uninsured" under the amended support order and that Respondent should pay for it. CP 9-13. Following argument the court ordered Appellant to pay 25% of the outstanding medical bills and ordered Respondent to pay 75% of the outstanding medical bills. CP 246-248. The court later entered the following "Order Regarding Medical Expenses" in support of its oral ruling:

THE FOLLOWING MATTER having come before the court for hearing on declarations with respect to uninsured medical expenses incurred for the purpose of treatment of the parties' child, Tara L. Zandi; the court having reviewed the parties' declarations and having heard argument from counsel; and being fully aware of the premises it is hereby ordered, adjudged and decreed as follows:

1. During the period from June 23, 2011 through July 18, 2011 medical expenses were incurred for the purpose of treating the parties' child Tara L. Zandi, for kidney stone issues. The treatment occurred in the Cincinnati, Ohio metropolitan area.

2. During the time of treatment for kidney stones in Ohio, the parties' child was visiting her aunt. Neither of the child's parents accompanied the child on the trip.

3. Among other things, the treatment included emergency room visits to the hospital and also surgery to remove the kidney stones. The child was covered through the father's Kaiser Permanente medical insurance provided by his employer. However, the nearest Kaiser facility is located in the Cleveland, Ohio area. Kaiser refused to cover the majority of the treatment, including surgery.

4. The current Order of Child Support, filed on December 9, 2009, requires the father to pay 100% of uninsured medical expenses.

5. Because the mother was the primary residential parent of the child, and therefore in a better position to secure coverage for the kidney stone treatment by Kaiser Permanente, the court determines that the uninsured medical expenses for this incident should be divided 75% to the father and 25% to the mother.

Wherefore the court orders as follows:

1. The Father/Petitioner shall be responsible for 75% of the total remaining medical expenses, plus $600.00 already paid by the mother.

2. The Mother/Respondent shall be responsible for payment of 25% of the remaining medical expenses, less the sum of $600.00 already paid by the mother on said medical bill.

CP 246-248.

Following entry of this order Appellant filed timely notice of appeal.

See, Notice of Appeal.

ARGUMENT

I. THIS COURT SHOULD AFFIRM THE DECISION BELOW BECAUSE APPELLANT'S FAILURE TO ARRANGE FOR TRANSCRIPTION OF COUNSELS' ARGUMENTS AND THE TRIAL COURT'S ORAL RULING LEAVES AN INSUFFICIENT RECORD FROM WHICH TO REVIEW APPELLANT'S ASSIGNMENT OF ERROR.

Under RAP 9.1(a) the "record on review" may include information from any of the following four sources: (1) a "report of proceedings," (2) "clerk's papers," (3) exhibits, and (4) a certified record of administrative adjudicative proceedings. RAP 9.1(a). The failure to adequately perfect the "record on review" sufficient to allow the court to review a particular assignment of error precludes the court's consideration of that issue. *State v. Johnson*, 113 Wn.App. 582, 54 P.3d 155 (2002).

For example, in *State v. Stevens*, 58 Wn.App. 478, 794 P.2d 38 (1990), a defendant convicted of first degree statutory rape appealed, arguing in part that the trial court had erred when it admitted colposcope photographs into evidence. However, the defendant failed to include these exhibits in his designation of clerk's papers. As a result, they were not made a part of the record on appeal and the court refused to consider this argument.

Similarly, in *State v. Johnson*, *supra*, the defendant appealed from his conviction for murder and argued in part that the trial court erred when it admitted certain autopsy photographs. The court of appeals refused to

consider this argument because the defendant did not include the photographs in the record on appeal. The court held: "And Johnson's complaints about the autopsy photographs are unreviewable as he has not provided the exhibits." *State v. Johnson*, 113 Wn.App. at 491. *See also Olmsted v. Mulder*, 72 Wn.App. 169, 183, 863 P.2d 1355 (1993) (the burden is on the party aggrieved by a court decision to perfect the record so this court has before it all the evidence necessary to resolve the issue).

In the case at bar appellant's single assignment of error is as follows:

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

Brief of Appellant, 1.

While the record on appeal does contain the parties' competing claims as to why the disputed medical bill qualified or did not qualify under amended support order as an "uninsured" expense, it does not include any detailed written findings of fact or conclusions of law setting out the court's reasoning in apportioning the expense at issue. In the absence of detailed findings a transcription of the court's oral ruling upon the motion is critical for this court's adequate determination whether or not the court abused its discretion in its decision to apportion the costs. In addition, review of that transcript is also necessary to determine the ultimate arguments and concession if any of the parties. Thus, appellant's failure to secure

transcription of the motion and the court's oral ruling precludes review of appellant's assignment of error. As a result, this court should affirm the decision of the trial court.

II. THE CHILD'S MEDICAL EXPENSES HERE AT ISSUE WERE "INSURED" THROUGH THE FATHER'S KAISER POLICY AND THE MOTHER'S FAILURE TO SECURE TREATMENT FOR THE CHILD AT AN AVAILABLE KAISER FACILITY OR ARRANGE FOR TREATMENT AUTHORIZATION AT AN OUT-OF-PLAN FACILITY DOES NOT MAKE THOSE EXPENSES "UNINSURED" UNDER THE LANGUAGE OF THE CURRENT SUPPORT PLAN.

Under the amended support order here at issue, Respondent was required to pay all "uninsured medical expenses." The relevant portion of this order stated:

> 3.19 UNINSURED MEDICAL EXPENSES.
>
> Both parents have an obligation to pay their share of uninsured medical expenses. The father shall pay 100% of uninsured medical expenses and the mother shall pay 0% of uninsured medical expenses per agreement of the parties pending a child support review hearing scheduled for February 17, 2010.

CP 7.

In her Petition for Modification Appellant argued that the medical bill for treating Tara's kidney stone was an "uninsured medical expense" because Respondent's Kaiser medical plan refused to pay.[1] Respondent countered

---

[1]The unpaid medical bill here at issue was for the subsequent treatment of Tara's kidney stone, not for her initial trip to the emergency room. Kaiser did pay for the latter expense as was provided under the

this claim by arguing that the treatment costs were not an "uninsured medical expense" because Kaiser's refusal to pay based solely upon Appellant's failure to have Tara treated at a Kaiser approved facility and Appellant's failure to seek pre-approval for treatment at a facility outside Kaiser's plan. Following argument on this issue the trial court entered a written order that specifically included finding of fact that the bills at issue were covered medical expenses under the Kaiser policy that Respondent maintained. Findings 3 and 5 addressed this issue and stated:

> 3. Among other things, the treatment included emergency room visits to the hospital and also surgery to remove the kidney stones. The child was covered through the father's Kaiser Permanente medical insurance provided by his employer. However, the nearest Kaiser facility is located in the Cleveland, Ohio area. Kaiser refused to cover the majority of the treatment, including surgery.
>
> . . .
>
> 5. Because the mother was the primary residential parent of the child, and therefore in a better position to secure coverage for the kidney stone treatment by Kaiser Permanente, the court determines that the uninsured medical expenses for this incident should be divided 75% to the father and 25% to the mother.

CP 247.

These two findings specifically state that there was coverage for the treatment under Respondent's policy ("The Child was covered through the father's Kaiser Permanente medical insurance . . .") and that Kaiser's refusal

---

applicable policy.

to pay was based upon Appellant's failure to follow the requirements under the policy ("Because the mother was the primary residential parent of the child, and therefore in a better position to secure coverage for the kidney stone treatment by Kaiser Permanente . . ."). In this case Appellant did not assign error to either of these two findings. As the following explains that failure means that these findings are verities on appeal.

The purpose of findings of fact and conclusions of law is to aid an appellate court on review. *State v. Agee*, 89 Wn.2d 416, 573 P.2d 355 (1977). The Court of Appeals reviews these findings under the substantial evidence rule. *State v. Nelson*, 89 Wn.App. 179, 948 P.2d 1314 (1997). Under the substantial evidence rule, the reviewing court will sustain the trier of facts' findings "if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *State v. Ford*, 110 Wn.2d 827, 755 P.2d 806 (1988). In making this determination, the reviewing court will not revisit issues of credibility, which lie within the unique province of the trier of fact. *Id.* Findings of fact are considered verities on appeal absent a specific assignment of error. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

In addition, the placement of a finding of fact in the section marked "Conclusions of Law," or the placement of a conclusion of law in a section marked "Findings of Fact," is not dispositive on which standard of review

applies to an error assigned to that "finding" or "conclusion." *State v. Hutsell*, 120 Wn.2d 913, 845 P.2d 1325 (1993). Rather, if the term or phrase describes factual issues or determines credibility between two witnesses, it is a finding of fact and will be reviewed under the substantial evidence rule even if included in a section marked "Conclusions of Law." *Id.* By the same token, a term or phrase carrying legal implications is a conclusion of law and will be reviewed *de novo* even if included in a section marked "Findings of Fact." *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986).

As was noted above, in the case at bar the trial court's order contains a specific finding that the expenses related to Tara Zandi's kidney stone treatment were covered under Respondent's insurance policy. Since Appellant did not assign error to these findings they stand as verities on appeal. Thus, there is no support for Appellant's claim that these expenses were "uninsured" under the amended support order and are thereby Respondent's responsibility.

However, even had Appellant assigned error to these findings any such assignment would also fail because there is substantial evidence in the record to support the trial court's conclusion. Both Respondent's affirmation given in opposition to the motion as well as Kaiser's findings in its appeal process clearly state that there was coverage and that the reason Kaiser refused to pay was based in the failure to either use an available Kaiser

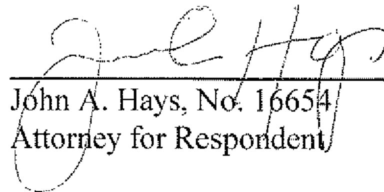
facility or obtain pre-approval for use of a non-Kaiser facility. Thus, in this case the trial court did not err in its order requiring Appellant to pay 25% of these expenses. As a result this court should affirm the decision of the trial court.

CONCLUSION

This court should affirm the decision of the trial court.

DATED this 20th day of November 2014.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Respondent

COURT OF APPEALS OF WASHINGTON, DIVISION II

DEANNA M. ZANDI, **Appellant,**	**NO. 46313-0-II**
vs.	**AFFIRMATION OF SERVICE**
VICTOR M. ZANDI, **Respondent.**	

The under signed states the following under penalty of perjury under the laws of Washington State. On this date I personally e-filed and/or placed in the United States Mail the Brief of Respondent with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Darrel S. Ammons
   Attorney at Law
   1315 14th Avenue
   Longview, WA 98632
   dsalaw@cni.net

2. Victor M. Zandi,
   661 22nd Avenue
   Longview, WA 98632

Dated this 20th day of November, 2014, at Longview, WA.

Diane C. Hays

HAYS LAW OFFICE

November 20, 2014 - 2:16 PM

Transmittal Letter

Document Uploaded: 463130-Respondent'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:

Designation of Clerk's Papers   Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

■ Brief: Respondent'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

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: ________

Comments:

No Comments were entered.

Sender Name: Diane C Hays - Email: jahayslaw@comcast.net

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

dsalaw@cni.net