SC#93431-2

(Division III Case No. 313654)

SUPREME COURT OF THE STATE OF WASHINGTON

Jamie Stillman, Respondent

v.

Doug Lee, Appellant

PETITION FOR REVIEW UNDER RAP 13.4

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I. INTRODUCTION

A. Identity of Petitioner: Doug Lee, Petitioner, asks the court to accept review of the Division III decision of 4/21/16, reconsideration denied 6/21/16.

B. Outline of Brief: Following this introduction to the case, Mr. Lee will summarize the facts and case (Sec.II), then present the issues for review (Sec.III), and then the reasons for the court to accept review under RAP 13.4(b) (Sec.IV).

C. Overview of Case:

Doug Lee, Appellant, seeks review of the court's decision to disallow Mr. Lee's state and federal income tax deductions from the child support worksheet calculations after a child support modification trial, despite a settlement agreement between counsel that his pay stubs were sufficient evidence upon which to calculate child support, and despite the Respondent's attorney (Ellen Hendrick) conceding there was no prejudice from her having to use Mr. Lee's pay stubs, without his tax returns, to calculate his income. Mr. Lee's income taxes were being prepared at the time of hearing, and in reliance upon the concession and agreement of the Respondent, he proceeded to trial without his tax returns. After the Respondent breached this agreement in ambush at the conclusion of trial, leading to a penal child support order, Mr. Lee sought to enter his then-

completed returns on reconsideration, which was then denied by the trial court, leading to his appeal to Division III and now to this court.

Mr. Lee had a contract in which he provided the consideration of (a) not seeking discovery sanction, and (b) not seeking hearing continuance to complete his tax returns, in exchange for Ms. Stillman's (a) promise that she could calculate "gross and net" taxes based upon Mr. Lee's paystubs alone and (b) did not need his tax returns. There was exchange of consideration, and there was detrimental reliance, and the trial court (and the court of appeals) should have honored this agreement. Pre-trial contracts, and partial settlement contracts, are vital to stream-lining the litigation process, and review to maintain the integrity of this important process is requested.

If review is accepted, Mr. Lee also requests review of the trial court ordering him to pay the Respondent's attorney's fees, despite the intransigence of the Respondent, Jamie Stillman. Ms. Stillman was intransigent regarding the visitation at the outset of this case, and then she was again intransigent in preparation for the hearing, hiring Ms. Hendrick at the last moment. Doug Lee did not request attorney's fees for this intransigence at trial, in a spirit of amity, but he did request the remedy for Ms. Stillman's intransigence be that he not be required to pay any legal fees for Ms. Stillman, given her intransigence. This relief was denied by

the trial court, and such relief is requested in this appeal if review is accepted.

Additionally, during the course of the appeal, Ms. Stillman engaged in an appeal within the appeal (which she eventually abandoned) and otherwise ran up unreasonable fees. Division III refused to clarify which fees they were awarding to Ms. Stillman when asked to do so. This, too, is asked to be reviewed.

II. STATEMENT OF THE CASE

A. Facts and Procedural History in the Trial Court

On 12/10/10, Jamie Stillman, petitioner in the case below, filed her first proposed parenting plan, without scurrilous allegations against Doug Lee, and allowing for agreed visitation. CP: 10-19. In a change of heart portending intransigence to come, Ms. Stillman then, on 2/7/11, proposed a new, restricted parenting plan, laden with scurrilous allegations against Mr. Lee. CP: 25-31. This newly-proposed parenting plan alleged, without evidence, Sec. 2.1 and 2.2 factors of domestic violence, drug and alcohol abuse, and abusive use of conflict, and tried to severely restrict or deny visitation to Mr. Lee. Id.

In another portent of intransigence to come, Jamie Stillman perjured herself in her filings. See, e.g., the *Declaration of Doug Lee, filed 4/4/11*, which exhibits include proof of funds he had given Ms.

Stillman, despite her swearing Mr. Lee had not. CP: 34-43. (See *Ex.A* to CP: 34-43, which verifies that Doug had paid Jamie $4050, which she had, under oath, denied having received.)

Mr. Lee proposed a good faith visitation plan on 4/4/11, which proposed Mr. Lee's visits be Wednesdays from 4:30 to 7:30pm, and Sundays from 2 to 5pm to reintroduce him to his son, after Mr. Lee's absence during his electrical union apprenticeship. CP: 44-51. This proposed parenting plan accompanied Doug Lee's request to restore visitation with his son. CP: 52-53. This proposed parenting plan of Doug Lee was eventually adopted by Commissioner Grovdahl, on 4/27/11, with slight pre-requisites. CP: 74-76.

Prior to the Order of Commissioner Grovdahl of 4/27/11, Jamie Stillman filed a responsive declaration, on 4/22/11, in which she repeated the unfounded and scurrilous allegations from her 2nd proposed parenting plan. CP: 56-57. Additionally, she filed the declaration of Renee Stillman (Jamie's mother), also on 4/22/11, which called Mr. Lee "evil," and made more unfounded and insulting allegations. CP: 60-61. Doug Lee replied to these unfounded allegations on 4/25/11. CP: 66-73.

At hearing on 4/27/11, Commissioner Grovdahl found the abusive allegations made against Doug Lee to be without foundation, and simply established a few pre-requisites to adopting Mr. Lee's proposed parenting

plan, given Big Doug's interim time away from Little Doug. These preconditions were two visits between Doug and Little Doug with a counselor (ultimately Carol Thomas), and then two visits at Fulcrum Institute, and thereafter Doug Lee's Proposed Parenting Plan of 4/4/11 was to become the effective temporary parenting plan. CP: 74-76 & CP 132-39.

Jamie Stillman immediately announced her refusal to cooperate in setting up the visits with Carol Thomas, and so Mr. Lee had to spend the fees to try to compel the visits, and to shorten time to have the matter heard on 4/28/11. CP: 77-87. Commissioner Grovdahl dismissed the request to shorten time "without prejudice," as Commissioner Grovadahl indicated that he was hopeful that Doug Lee had misunderstood Jamie's willingness to disobey the court order, and that while a motion was premature, he would entertain one later if needed; this is presented as an offer of proof, it can be rationally inferred from the following records. See CP: 88-112.

On 5/3/11, Doug Lee once again had to return to court to compel Jamie Stillman's conformity with the court order, and Commissioner Grovdahl ordered that Jamie Stillman must comply with the order that visits with Carol Thomas, Doug Lee, and his son, promptly occur. CP: 88-112. On 5/9/11, Jamie Stillman filed an inappropriate Motion for

Revision. CP: 114-116. See also Doug Lee's Motion to Strike the Revision, filed 5/18/11. CP: 140-45. There was no revision.

The Carol Thomas visits went well. CP: 128-31 & 146-48, which then meant that after two supervised visits at Fulcrum, Doug Lee's parenting plan would take effect. CP: 74-76 & CP 132-39.

So, next, Jamie Stillman tried to prevent the two Fulcrum Institute visits. Therefore, on 5/11/11: Doug Lee again had to file a motion to compel the visits at Fulcrum. CP: 118-25. On the day of the hearing, Ms. Stillman finally agreed to obey the court order to send Little Doug to visit with Big Doug at Fulcrum, and an agreed order was entered. CP: 126-27. This hearing was fully briefed and prepared, with all concomitant costs, even though it settled just before the hearing. Id.

Ms. Stillman next noted another inappropriate motion for revision on 5/19/11. CP: 149-50. On 5/24/11, Mr. Lee again had to move to strike the inapt motion. CP: 151-52. Doug Lee prevailed, and Ms. Stillman's revision was struck by Judge Triplet. CP: 161. It is self-evident that large and excessive legal costs and personal costs were suffered by Mr. Lee due to Ms. Stillman's intransigence.

As matters moved toward trial on child support (only as the parenting plan had settled), Ms. Stillman also refused to participate in pre-

trial preparations. CP: 484-97. This intransigence was expected to delay the trial to set child support.

B. Facts and Procedural History of Discovery Agreement & Income Tax Controversy in the Trial Court

The initial narrative summary, below, is drawn from CP: 498-519.

Shortly before Ms. Hendrick presented her notice of appearance of August 30, 2012 on behalf of Ms. Stillman, Mr. Lee's counsel, Mr. Mason, learned Ms. Hendrick was coming onto the case and so Mr. Mason's office sent to Ms. Hendrick the financial filings of Doug Lee that were available to to-date. *Ex. A in* CP: 498-519.

Doug Lee had been working on getting tax returns and pay stubs in time for trial, but there was no stated need for them prior to trial, as Ms. Stillman had refused to cooperate in pre-trial preparation, and the trial was certain to be continued due to Ms. Stillman's refusal to provide any financial documents. CP: 484-97. (And Ms. Hendrick had not yet appeared in the case to work with to prepare for the child support hearing.)

Doug Lee had been pressuring his accountant to get his tax returns done. *Ex.B* in CP: 498-519. And Mr. Lee kept his accountant on task, but relaxed his anxiety on the issue once Ellen Hendrick (Jamie Stillman's counsel) agreed that she would be able to calculate "gross and net" pay for child support purposes from the pay stubs alone. *Ex.D* in CP: 498-519.

(Obviously, Mr. Lee did keep tax preparation underway, which is why they were available for the reconsideration a few weeks later.)

Ms. Hendrick had filed a motion to compel without a proper CR 26(i) conference, which also violated the local rule, LCR 37. CP: 280-89. *See Ms. Hendrick's motion at CP: 250-70, and her inapt CR 26(i) certification on CP: 255.* And Mr. Lee was expecting to seek sanctions and a continuance.

However, upon the assurances from Ms. Hendrick that she would calculate "gross and net" incomes from pay stubs, the matter was then settled, as Mr. Lee agreed to strike his motion to sanction Ms. Hendrick for violating CR 26(i) and for violating the case scheduling order, and Mr. Lee agreed to forego continuance.

It bears repeating, that Ms. Hendrick agreed that she could calculate gross and net pay from the submitted pay stubs. CP: 498-519, *esp. Ex D.* This was the exchange of consideration creating the discovery and continuance issue settlement agreement, and this is the basis for the stipulated lack of prejudice to Ms. Stillman due to the lack of tax returns.

Mr. Lee had no warning that this pre-trial settlement agreement would be breached at trial, nor did Doug Lee have any notice that the court would allow this agreement to be breached at trial. CP: 498-519 &

406-420 & 363-65. A short continuance to complete his returns would have been requested by Mr. Lee, "but for" the agreement.

And nowhere has Ms. Stillman shown that she was prejudiced by the need to rely upon the complete pay stubs of Mr. Lee, and she should be judicially-estopped from arguing that she was prejudiced. *Johnson v. Si-Cor Inc.,* 107 Wash. App. 902, 28 P.3d 832, 833 (2001).

Mr. Lee agrees that the gross income used by the court was appropriate. The issue is that the trial court excluded him from taking the deductions for state (Idaho) and federal income taxes as a discovery sanction against him, when there was (a) an agreement and (b) Ms. Stillman's statement of lack of prejudice.

The findings of fact and conclusions of law, and the final orders excluding Mr. Lee's income tax deductions can be found at CP: 442-68.

There were post-trial motions on this matter and on Mr. Lee submitting his tax returns, (a) given their availability, and (b) given the breach of the settlement agreement. The court refused to enforce the settlement agreement, or to admit the tax returns. This appeal followed.

C. Division III Opinion from Which Appeal is Sought

The Division III Opinion of 4/21/16 is included in the Appendix. The decisive quotation from the Division III decision occurs at page 7 in which the court cites Ms. Stillman's statement that she can calculate Mr.

Lee's "gross and net monthly incomes" for the child support modification hearing, and yet Division III still upheld penalizing Mr. Lee for not having his tax returns ready for trial.

This statement, detrimentally relied upon by Mr. Lee, is then essentially ignored by Division III as it proceeds to penalize Mr. Lee for not providing his tax returns, (a) despite the agreement that he did not need to provide them (an agreement upon which he relied), and (b) despite the absence of prejudice to Ms. Stillman.

Mr. Lee's Motion for Reconsideration in Division III was a succinct summary of the errors regarding reliance and contract, noting that the court had over-looked or misapprehended the following facts and issues:

(1) Mr. Lee detrimentally relied upon Ms. Stillman's promises not to need his tax returns: As is clear from the file, Mr. Lee had his taxes nearly done; however, Ms. Stillman stipulated that she did not need them to calculate "gross and net monthly income," and then she got the trial court to impose a surprise detriment upon Mr. Lee that would have been avoided had Ms. Stillman kept her promise, and/or had Mr. Lee sought continuance, which he would have done "but for" detrimental reliance upon Ms. Stillman's stipulation (quoted on page 7 of the Slip Opinion of 4/21/16).

For the most concise statement of the authority to support his reliance argument, Mr. Lee turns to *Klinke v. Famous Recipe Fried Chicken, Inc,* in which the State Supreme Court stated:

> [W]e ...adopt Restatement (Second) of Contracts section 217A as the law in Washington.

Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wash. 2d 255, 262-63, 616 P.2d 644, 648 (1980). The *Klinke* court quoted the adopted section as follows (emphasis added):

> The Court of Appeals also adopted Restatement (Second) of Contracts section 217A. Section 217A (Tent. Drafts Nos. 1-7, rev. and edited 1973) reads:
> ENFORCEMENT BY VIRTUE OF ACTION IN RELIANCE.
> (1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.
> (2) In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant:
> (a) the availability and adequacy of other remedies, particularly cancellation and restitution;
> (b) the definite and substantial character of the action or forbearance in relation to the remedy sought;
> (c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence;
> (d) the reasonableness of the action or forbearance;
> (e) the extent to which the action or forbearance was foreseeable by the promisor.

Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wash. 2d 255, 260, 616 P.2d 644, 647 (1980). Mr. Lee's argument could also be seen as one of equitable esoppel (that Ms. Stillman should have been equitably estopped from denying her stipulation, but the effect is the same – the agreement should have been enforced). The elements of equitable estoppel are:

> (1) an admission, statement, or act, inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury to such other party arising from permitting the first party to contradict or repudiate such admission, statement, or act. *Litz v. Pierce Cy.*, 44 Wash.App. 674, 683, 723 P.2d 475 (1986) (quoting *Shafer v. State,* 83 Wash.2d 618, 623, 521 P.2d 736 (1974)).

Concerned Land Owners of Union Hill v. King Cty., 64 Wash. App. 768, 777, 827 P.2d 1017, 1022 (1992).

Here, Ms. Stillman stipulated that she could calculate the "gross and net monthly income" of Mr. Lee; Mr. Lee acted on that stipulation by not seeking a continuance; and he was grossly injured by Ms. Stillman changing her position at trial.

(2) Ms. Stillman Had Already Stipulated to No-Prejudice: Division III found prejudice to Ms. Stillman, even though she had stipulated to no prejudice! Again, the quote on page 7 of the Opinion of 4/21/16 shows that Ms. Stillman had *stipulated to no prejudice* from the lack of tax returns. It would be unfairly inconsistent for a party to stipulate to no prejudice, and then for it to assert, or for a court to find, prejudice.

This stipulation was a settlement agreement between the parties, and it was a stipulation to the court, upon which Mr. Lee relied.

The policy implication of this decision, if not reconsidered, will authorize prejudicial, surprise, revocations of evidentiary and settlement agreements between counsel. In short, the normal agreements that are part of trial preparations will be rendered useless in general, or are of value only to the cynical and dishonest, to induce reliance that will not be respected. The Division III Opinion of 4/21/16 elides this point by conflating *"calculate gross and net monthly incomes"* with an *agreement to use paycheck deductions.*

(3) Division III conflates "calculation of gross and net incomes" with "use of paycheck deductions": Mr. Lee *never asked that his paycheck deductions be used.* Certainly, deductions can fluctuate for many reasons. Instead, it was Ms. Stillman who said that she could calculate Mr. Lee's "net monthly incomes." Division III failed to follow this distinction, and then prejudicially voided a pre-trial agreement, and allowed its breach.

It is clear that the Division III Opinion of 4/21/16 misses this distinction when it writes:

> For all these reasons, the trial court did not err in determining that Ms. Stillman's September 4, 2012 e-mail was not an agreement to calculate Mr. Lee's net income by deducting the state and federal taxes shown on the 2012 pay stubs.

In re D.W.L., No. 31365-4-III, 2016 WL 1600249, at *7 (Wash. Ct. App. Apr. 21, 2016).

The Opinion of 4/21/16 is clear that the very relief, a continuance to complete his taxes, that Mr. Lee did not seek in reliance upon the stipulation of Ms. Stillman, is the very core of the Division III decision (emphasis added):

> We exercise our discretion in this manner because the trial and this appeal likely would have been unnecessary had Mr. Lee timely prepared his 2010 and 2011 tax returns and provided those returns and his pay stubs to Ms. Stillman.

In re D.W.L., No. 31365-4-III, 2016 WL 1600249, at *8 (Wash. Ct. App. Apr. 21, 2016).

Mr. Lee is being put in this unfair position: Step one: Mr. Lee prepares to seek a continuance so his taxes, nearly done, can be completed. Step two: Ms. Stillman vouches that she does not need his taxes done. Step three: Mr. Lee relies in good faith upon this agreement to forego continuance. Step four: The agreement is breached and Division III says that he was wrong to rely upon Step two.

Doug Lee should not be prejudiced by his good faith reliance upon Ms. Stillman's clear stipulation that she could calculate "net monthly income" (not that she would use his paycheck deductions), and "but for" this stipulation, Mr. Lee would have gotten a continuance to enter is taxes,

which were nearly prepared. There is clear evidence of the promise, as the court quoted it on page 7 of the Slip Opinion of 4/21/16, and the stipulation of Ms. Stillman was specifically formulated to intentionally achieve the reasonable forbearance of Mr. Lee from seeking a continuance until his taxes were completed.

Division III was also asked to clarify that Ms. Stillman's exotic digressions and redundant appeals from this appeal should not be charged to Mr. Lee. Mr. Lee spent only $1630.25 for his opening brief, as the issues were clear and concise. (Cost bill documented in the Motion for Reconsideration of Division III Opinion.) Ms. Hendrick's bill approaches $25,000 due to myriad unnecessary activity, but Division III refused to provide any guidance, and review of that issue is requested, as well.

III. ISSUES PRESENTED FOR REVIEW

Issue Number One: Should the court have honored Mr. Lee's consideration in foregoing continuance and in foregoing discovery sanction against Ms. Stillman in exchange for agreeing to proceed to trial based upon Ms. Stillman's statement that she could calculate "gross and net" incomes on the basis of pay stubs alone? Answer: Yes.

Issue Number Two: When Ms. Stillman induced the reliance of Mr. Lee by stating that she could calculate gross and net income on the basis of pay

stubs, should Ms. Stillman be estopped from arguing otherwise? Answer: Yes.

Issue Number Three: Should Mr. Lee pay Ms. Stillman's attorney's fees given her intransigence. Answer: No.

Issue Number Four: Should Mr. Lee pay for Ms. Stillman's duplicative, useless, and redundant filings in the course of this appeal? Answer: No.

IV. ARGUMENT

A. Contract Law and Protection of Settlement Agreements

Division III's decision in this case renders insecure every settlement agreement that is hammered out on the path to trial. If parties can be ambushed at trial by a bad-faith party breaching such agreements, a deep and abiding chaos will be introduced into litigation.

In limiting and over-ruling the *Maguire* case, the *Barton v. State, Dep't of Transp.* case spelled out in detail the policy benefits of pre-trial, and partial, settlement agreements.

> The *Maguire* court failed to take into account the fact that Washington courts have enforced partial, pretrial settlement devices that do not completely release a covenanting defendant. For instance, Washington courts have found that covenants not to sue,[3] covenants not to execute judgment,[4] *207 and loan receipt agreements[5] do not necessarily " release" a defendant.
>
> Despite the State's arguments to the contrary, we find such settlement devices tend to further the underlying policies of the tort reform act of 1981, chapter 4.22 RCW. *See Jensen v. Beaird,* 40 Wash.App. 1,10, 696 P.2d 612 (1985) (partial settlement devices "encourage out-of-court settlements, help solve the

> economic needs of an injured person confronted with the delays in the court system, and ... simplify complex multiparty litigation"). In particular, partial settlement devices encourage tortfeasors "to place a substantial sum of money at [their] victim's disposal, with the possibility of no recoupment," when "the injured party ... might otherwise have to wait several years while prolonged and varied court battles are waged." *Id.* The *Maguire* court's interpretation of RCW 4.22.070 ignores precedent distinguishing partial settlement devices from releases and interferes with a plaintiff's ability to settle his or her claims.

Barton v. State, Dep't of Transp., 178 Wash. 2d 193, 206-07, 308 P.3d 597, 604-05 (2013) (footnotes omitted).

Contract law and the intent of the parties continue to govern such pre-trial settlements:

> "A release is a contract and its construction is governed by contract principles subject to judicial interpretation in light of the language used." *209 *Nationwide Mut. Fire Ins. Co. v. Watson,* 120 Wash.2d 178, 187, 840 P.2d 851 (1992); *see also Del Rosario v. Del Rosario,* 152 Wash.2d 375, 382, 97 P.3d 11 (2004) ("This court has consistently held that personal injury releases are contracts governed by contract principles."); 1 Settlement Agreements in Commercial Disputes: Negotiating, Drafting & Enforcement § 9.01 [B], at 9–3 (Richard A. Rosen ed., 2008) ("Because releases are contracts, contract law governs the formation and interpretation of releases.") (hereinafter Settlement Agreements). "A court's primary task in interpreting a written contract is to determine the intent of the parties." *United States Life Credit Ins. Co. v. Williams,* 129 Wash.2d 565, 569, 919 P.2d 594 (1996); *see also Mills v. Inter Island Tel. Co.,* 68 Wash.2d 820, 829, 416 P.2d 115 (1966) ("[T]he distinction between a covenant not to sue and a release will be preserved according to the intention of the parties."); 1 Settlement Agreements, *supra,* § 9.03[A], at 9–19 (if a release is ambiguous, "the court will proceed to consider the intent of the parties"). In determining whether the partial settlement agreement releases a

> covenanting defendant, Washington courts have explicitly, or implicitly, looked to the intent of the parties to resolve ambiguity.

Barton v. State, Dep't of Transp., 178 Wash. 2d 193, 208-09, 308 P.3d 597, 606 (2013).

Application of *Barton v. State, Dep't of Transp., and Basis for Review:*

In this case, *Barton v. State, Dep't of Transp.*, and the myriad cases therein apply on all four corners. Mr. Lee had a right to ask for a continuance and for discovery sanctions against Ms. Stillman. Mr. Lee forbore his rights in reliance upon Ms. Stillman's statement, acknowledged by Division III, that she could calculate "gross and net" income for Mr. Lee without his taxes. This agreement should have been enforced.

By opening the door to pre-trial chaos, allowing breaking of pre-trial agreements, Division III has made a decision in conflict with the decisions of the Supreme Court (RAP 13.4(b)(1), and Division III has made a decision that is in conflict with decisions of other courts of appeal (RAP 13.4(b)(2)). The turmoil that would be induced by the sudden suspension of contract principles in pre-trial matters is a matter of public significance under RAP 13.4(b)(3)&(4).

The trial court had treated excluding Mr. Lee's tax deductions as a discovery sanction, and on appeal Mr. Lee had argued that it was inappropriate both (a) because of the agreement, and (b) because there was

no prejudice, citing *Magana v. Hyundai Motor America*, 167 Wash.2d 570, 220 P.3d 191 (2009) (prejudice must be shown for non-compliance with discovery before a discovery sanction may issue). However, Division III made a hyperformalist argument that the statute requiring Mr. Lee's tax returns, RCW 26.19.071(2), trumped the agreement and trumped the lack of prejudice. Division III overlooked the agreement of Mr. Lee not to seek continuance, a continuance which could have easily remedied the tax return issue, "but for" the agreement at stake. The prejudice of refusing to enforce the agreement is simply too great, and too contrary to existing precedent. Review is requested.

NOTE ON STANDARD OF REVIEW: The construction of a contract is a legal question subject to de novo review. *Yeats v. Estate of Yeats,* 90 Wn.2d 201, 204, 580 P.2d 617 (1978). The fact of the settlement agreement at issue is to be reviewed as a matter of law. Id.

B. Intransigence as a Basis for Fees

Mr. Lee has conceded that the intransigence issue does not have the same public interest elements as the pre-trial settlement and partial settlement law issues do. However, the Division III decision still violated precedents of other courts of appeal under RAP 13.4(b)(2).

This review of Ms. Stillman's intransigence should also be de novo. *Sunnyside Valley Irrigation Dist. v. Dickie,* 149 Wn.2d 873, 879-

80, 73 P.3d 369 (2003). A court may award attorney fees for "intransigence" if one party's intransigent conduct caused the other party to incur additional legal fees. *In re Marriage of Bobbitt,* 135 Wn.App. 8, 30, 144 P.3d 306 (2006). Intransigence includes obstruction and foot-dragging, filing repeated unnecessary motions, or making a proceeding unduly difficult and costly. *Bobbitt,* 135 Wn.App. at 30.

Combined with Ms. Stillman's outrageous allegations at the outset, refusal to follow visitation orders, and her refusal to participate in pre-trial matters, the entire court file is permeated with Ms. Stillman's intransigence. See *Burrill v. Burrill*, 113 Wash.App. 863, 56 P.3d 993 (2002) (when the matter is permeated by the intransigence of a party, legal fees need not be segregated, but may all be attributed to the intransigent party, at 873). The appellate court can "find" intransigence from the record, even if the trial court did not. *Matter of Marriage of Crosetto*, 82 Wash.App. 545, 918 P.2d 954 (1996), and see *In re Marriage of Morrow*, 53 Wash.App. 579, 590, 770 P.2d 197 (1989).

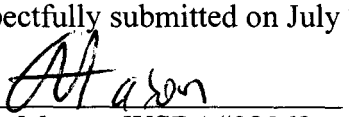
Applying the foregoing authorities, it is clear that Jamie Stillman was intransigent in: (a) the scurrilous allegations which accompanied her second parenting plan; (b) in defying court orders on visitation; and (c) in refusing to participate in pre-trial case preparation. Mr. Lee requests that

the court review this as a matter of law. Mr. Lee requests that all awards of attorney's fees in favor of Ms. Stillman be reversed, and denied on appeal.

V. RELIEF REQUESTED

Mr. Lee asks that the court accept review of Division III's radical overthrow of pre-trial contract law under RAP 13.4(b)(1-4), and accept review of the attorney fee and intransigence issue, as well.

Respectfully submitted on July 20, 2016



Craig Mason, WSBA#32962
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Appendix Exhibit A: Division III Opinion of 4/21/16.

FILED
April 21, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

In the Matter of the Parenting and Support of D.W.L. Child, JAMIE STILLMAN, Respondent, and DOUGLAS C. LEE, Appellant.	)	No. 31365-4-III UNPUBLISHED OPINION

LAWRENCE-BERREY, A.C.J. — Douglas Lee appeals the trial court's orders setting child support and requiring him to pay part of Jamie Stillman's attorney fees. He argues that the trial court erred when it refused to consider his 2010 and 2011 federal tax returns submitted after trial. He also argues Ms. Stillman's intransigence precludes the partial attorney fee award. We disagree, award Ms. Stillman her attorney fees on appeal, and affirm.

FACTS AND PROCEDURE

Mr. Lee and Ms. Stillman are the parents of D.L., who was born in June 2006. Prior to and after the pregnancy, the couple lived apart—Mr. Lee in Los Angeles, and Ms. Stillman in Spokane. The couple ended their relationship in either 2007 or 2008. In October 2010, Mr. Lee returned to Spokane and began to work as a journeyman lineman in November 2010. Ms. Stillman worked as a licensed practical nurse and took classes toward her associate's degree in nursing.

A. *Proposed parenting plans and declarations*

On December 10, 2010, Ms. Stillman filed a petition pursuant to Washington's Uniform Parentage Act, chapter 26.26 RCW, to establish child support and a parenting plan for D.L. Ms. Stillman included a proposed parenting plan for D.L. that provided for supervised visitation with Mr. Lee but sought to restrict contact based on factors set forth in RCW 26.09.191. Mr. Lee responded through counsel and asked the trial court to deny Ms. Stillman's petition. Ms. Stillman retained Bryan Geissler as counsel. Through counsel, Ms. Stillman filed an amended proposed parenting plan that listed additional bases for restricting contact, filed a declaration in support of her proposed restrictions, and sent Mr. Lee discovery questions that requested Mr. Lee's tax returns, W-2s, and pay stubs to verify his income.

On April 4, 2011, Mr. Lee filed a declaration contesting most of the facts in Ms. Stillman's declaration. Mr. Lee also filed a proposed parenting plan, which proposed Wednesday and Sunday visits. Mr. Lee moved the trial court to approve his parenting plan and noted a hearing for April 27. Mr. Lee never responded to Ms. Stillman's discovery requests.

Ms. Stillman filed a response declaration contesting facts in Mr. Lee's declaration. Ms. Stillman also asked for all visits between D.L. and Mr. Lee to initially occur at a therapist's office. Ms. Stillman's mother, brother, and friend also filed declarations contesting facts in Mr. Lee's declaration. Mr. Lee filed a reply declaration contesting many of those facts.

B. *The court commissioner's visitation order and motions relating thereto*

On April 27, 2011, the court commissioner signed a temporary order adopting Mr. Lee's proposed parenting plan, which was conditioned on several weeks of successful supervised visitation. The commissioner ordered the first two visits between Mr. Lee and D.L. to occur with a family counselor, and the next two visits to occur at Fulcrum, a family-oriented dispute resolution facility. The court ordered the two family counselor visits to be spread out over two weeks, with one visit per week, and both Fulcrum visits to occur the third week. If the therapists did not identify any problems, then regular

visitation would start on the fourth week and Mr. Lee's proposed parenting plan would be adopted as a temporary order.

Immediately after the commissioner entered the order, Mr. Lee's attorney arranged a visitation with the therapist the next day, April 28, at 6:00 p.m. That night, Mr. Lee's attorney sent Ms. Stillman's attorney a text message about the scheduled visit, and Mr. Lee personally called Ms. Stillman the next morning. Neither Ms. Stillman nor her attorney responded. On April 28, Mr. Lee moved to compel compliance with the visitation order and to shorten time so the matter could be heard that day. At the expedited hearing, the parties acknowledged they had different understandings of what the court meant when it ruled the first visit was to occur "within a week." Clerk's Papers (CP) at 94. Ms. Stillman's attorney assured the court the first visit would occur inside the seven-day period following its April 27 order. The commissioner denied Mr. Lee's motion without prejudice.

After the hearing, Ms. Stillman's attorney called the therapist to set up visits. Mr. Lee's attorney also called the therapist and set up visits on May 3 and May 9, and e-mailed these times to Ms. Stillman's attorney. That same day, on April 28, Mr. Lee's attorney noted another expedited hearing for May 3 "in case [Ms. Stillman was] recalcitrant," and told Ms. Stillman's attorney he would strike the hearing once Ms.

Stillman confirmed she would bring D.L. to the May 3 visit. CP at 120. On the morning of May 3, Mr. Lee's attorney still had not heard from Ms. Stillman, so he obtained an ex parte order requiring Ms. Stillman to bring D.L. to the visitations on May 3 and May 9. Ms. Stillman brought D.L. to both visits, and both went well.

On May 4, Mr. Lee's attorney e-mailed Ms. Stillman's attorney and asked if the Fulcrum visits could occur the week of May 16. Ms. Stillman's attorney did not respond to the e-mail. On May 11, Mr. Lee obtained an ex parte order scheduling a hearing on the matter for May 12. Also on May 11, Ms. Stillman's attorney's office called Fulcrum and scheduled visits for May 18 and May 20. On May 12, Ms. Stillman's attorney sent a letter to Mr. Lee's attorney in which he described the visits his office scheduled, stated Ms. Stillman would transport D.L. to the visits, and agreed to begin the regular visitation schedule the following week. Mr. Lee struck the May 12 hearing. The Fulcrum visits occurred on May 18 and May 20. After then, visits occurred regularly.

On June 8, 2011, Bryan Geissler withdrew as counsel for Ms. Stillman. In April 2012, Ms. Stillman, pro se, and Mr. Lee entered into an agreed parenting plan, which provided that D.L. would spend the third weekend of each month with Mr. Lee.

C. *Pretrial discovery motion*

On March 15, 2012, the trial court held a status conference and set the case for trial on September 10, 2012. In May 2012, Mr. Lee sent Ms. Stillman blank financial declaration forms and child support worksheets and asked her to complete them. Ms. Stillman filed the completed worksheets and copies of her 2009, 2010, and 2011 tax returns with the court, but did not return the financial declaration. On August 20, Mr. Lee sent Ms. Stillman a draft of the trial management joint report and asked Ms. Stillman to return it. Ms. Stillman retained Ellen Hendrick as counsel on August 28, 2012. At this point, Mr. Lee still had not responded to Ms. Stillman's early discovery questions that sought tax returns, W-2's, and pay stubs to verify his income.

Mr. Lee filed his proposed child support worksheets, his 2011 W-2, and one pay stub from March 2012. Mr. Lee stated he had not filed tax returns in three years, but had hired an accountant to prepare his returns. Ms. Stillman told Mr. Lee that the one W-2 and one pay stub were insufficient proof of his income, and filed motions to continue the trial and to extend the discovery cut-off date so she could subpoena additional financial information. Ms. Stillman set a hearing for September 6, less than one week before trial.

In an e-mail, Mr. Lee threatened sanctions if Ms. Stillman pursued her discovery motions without the requisite CR 26(i) conference. Mr. Lee filed a response and requested that the case proceed to trial and declared that Ms. Stillman had not participated in the CR 26(i) conference. Mr. Lee then e-mailed Ms. Stillman his 2012 pay stubs and filed them all under seal. On September 4, Ms. Stillman replied to Mr. Lee's e-mail with the following:

> In reviewing the pay statements you sent, it is apparent that not all were provided. However, I believe I have enough to calculate his gross and net monthly incomes. I will strike the hearing set for the 6th.

CP at 518.

D. *Trial*

The court held a bench trial on September 10, 2012. The sole issues were determination of the appropriate child support obligation and attorney fees. In his opening, Mr. Lee asked the trial court to hold each party responsible for their own attorney fees, arguing that Ms. Stillman's intransigence required multiple trips to court to enforce the temporary visitation order. Mr. Lee testified he had to file two expedited motions and threaten a third one to get visits to occur. Ms. Stillman denied that she resisted the commissioner's temporary visitation order, but acknowledged it was necessary to go to court to get visitations to occur. In closing, Mr. Lee argued:

> [W]e do not ask for any attorney's fees for any past intransigence. We do hope that the Court will not hold Mr. Lee responsible for any, given the obvious [sic] of the court file showing the costs that he had to undertake to get these visits moving . . . .

Report of Proceedings (RP) (Sept. 10-11, 2012) at 158.

On the issue of child support, Mr. Lee testified that he knew he needed to provide his tax returns for 2010 and 2011 to verify his income. Mr. Lee acknowledged that at the time of trial, he had not filed tax returns for 2009, 2010, or 2011. After the noon recess, Mr. Lee's attorney provided Ms. Stillman with Mr. Lee's W-2s from 2009 and 2010, stating that he had "misunderstood Ms. Hendrick last week that she ha[d] enough to go on, and when the W-2s came in the end of last week, I didn't provide those; now I did." RP (Sept. 10-11, 2012) at 56. The W-2s indicated amounts for federal and state income tax withholdings. The 2009 and 2010 W-2s were admitted at trial, and Mr. Lee filed an amended child support worksheet based on these two W-2s. In closing, Ms. Stillman acknowledged that Mr. Lee's W-2s did show his tax withholdings. However, Ms. Stillman argued that the trial court should not give Mr. Lee any credit for taxes paid because those withholdings did not necessarily reflect final tax liability and are insufficient under RCW 26.19.071(2).[1]

[1] RCW 26.19.071(2) provides in relevant part: "**Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify

The trial court used Mr. Lee's W-2 from 2011 to calculate his gross annual income to be $94,118 and monthly gross income to be $7,843. To determine Mr. Lee's net monthly income, the trial court subtracted $96.94 for mandatory union dues and instructed counsel to deduct Mr. Lee's Federal Insurance Contributions Act taxes when preparing their worksheets.

On the issue of attorney fees, the trial court conducted a "need versus ability to pay" analysis. The court found that Mr. Lee was living with his parents, and while he was assisting his ailing father, this living arrangement saved Mr. Lee a significant amount of money. The trial court found that Ms. Stillman needed her attorney fees paid, and that it would take a long time before Ms. Stillman would have the resources to pay. The trial court found that Ms. Stillman was responsible for the $1,500.00 she had initially paid her attorney, and ordered Mr. Lee to pay the $3,075.88 balance of Ms. Stillman's attorney fees. In its September 11 oral ruling, the trial court explained why Mr. Lee was not responsible for $1,500 of Ms. Stillman's attorney fees: "[I]t did take quite a degree of motion work to [resolve the visitation issue.] It does not appear to have been absolutely necessary, given prior court orders. For that reason, mom will need to be responsible for [the initial] $1,500 [retainer for] Ms. Hendrick." RP (Sept. 10-11, 2012) at 173-74.

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income and deductions."

E. *Posttrial motions for reconsideration*

On September 26, 2012, Mr. Lee filed his 2011 federal and Idaho tax returns and a declaration from his payroll administrator explaining his 2012 payroll deductions. Mr. Lee moved the court to admit his tax returns and his payroll administrator's declaration, pointing out that the only disagreement between the parties' proposed child support worksheets was whether Mr. Lee could deduct his federal and state income taxes from his gross monthly income. Ms. Stillman moved to strike the tax returns and declaration from the record and noted a hearing for October 24.

On October 5, 2012, Mr. Lee filed his first posttrial motion in which he asked the trial court to clarify its September 11 oral rulings, to amend its oral findings after trial pursuant to CR 52, and to reconsider its decision under CR 59(a)(4) due to newly discovered evidence. While Mr. Lee's motion did not explicitly characterize Ms. Hendrick's September 4, 2012, e-mail as a "settlement agreement," Mr. Lee generally argued that he detrimentally relied on Ms. Hendrick's e-mail, and the trial court should accordingly deduct his tax expenses from his gross income. This motion did not ask the trial court to reconsider its prior rulings regarding attorney fees.

On October 16, 2012, Mr. Lee filed his 2010 federal tax return.

On October 24, the court held a hearing to enter final orders from the trial and to address Mr. Lee's posttrial motion. For the first time, Mr. Lee argued that Ms. Stillman's September 2012 e-mail constituted an agreement that she would calculate Mr. Lee's net income based on the state and federal deductions reflected in the 2012 pay stubs, and also argued that the court sanctioned Mr. Lee for his late disclosures by excluding his income taxes when it calculated his net income. The trial court denied Mr. Lee's motion for reconsideration. In denying his motion, the court rejected the argument that the 2010 and 2011 tax returns were newly discovered evidence, and instead described them as "newly created" evidence. RP (Oct. 24, 2012) at 21. In addition, the trial court explained why it did not allow the tax deductions shown on the pay stubs admitted at trial:

> And certainly no federal or state income tax netting should be part of [the calculation] in light of the evidence at trial that there was no filings.
>
> Mr. Lee should not be able to take advantage of some deduction that he didn't, in fact, engage through his own financial contributions.[2]

RP (Oct. 24, 2012) at 22.

The trial court awarded Ms. Stillman $1,843.40 in attorney fees for the posttrial motions, based on the financial circumstances of the parties. In its written order

---

[2] The pay stubs show that state and federal taxes were deducted from Mr. Lee's wages and paid to the government. But until final tax returns are prepared and filed, it is not possible to know to what extent these deductions are refunded. For this reason, the pay stubs are not very good evidence of final tax liability.

following the hearing, the trial court found that Mr. Lee had an actual monthly net income of $7,308.59, which resulted in a $962.00 monthly child support payment for 2012 and a $936.94 monthly payment going forward.[3]

On October 29, 2012, Mr. Lee filed a second motion for reconsideration on the same failure to deduct taxes argument. However, Mr. Lee also included a new argument—that Ms. Stillman's pretrial intransigence precluded the court from awarding her attorney fees at the trial. Another round of briefing ensued. The trial court denied Mr. Lee's second motion for reconsideration without oral argument. This appeal followed.

F. *Payment of transcription costs for appeal*

On January 28, 2013, Mr. Lee filed a statement of arrangements notifying this court that transcripts from trial were unnecessary per RAP 9.2. Accordingly, Mr. Lee never ordered verbatim reports of proceedings from trial or his own posttrial motions for this appeal. On February 8, Ms. Stillman designated transcripts from the trial as well as the two posttrial hearings under RAP 9.2(c), and asked Mr. Lee to coordinate with the court reporter to pay for the transcripts. Mr. Lee filed a response and argued that

[3] This decrease in Mr. Lee's child support obligation was because Ms. Stillman anticipated that St. Luke's would promote her from part-time to full-time by 2013, so the trial court imputed full-time employment for Ms. Stillman beginning in 2013.

transcripts were unnecessary because the trial court file was sufficient to show that Ms. Stillman defied orders and filed false claims, and therefore this court could determine Ms. Stillman was intransigent as a matter of law. Similarly, Mr. Lee argued that the trial court file contained the September 2012 "agreement," and therefore this court could determine it was binding as a matter of law.

Ms. Stillman moved this court to compel Mr. Lee to order and pay for the transcripts. Our court commissioner determined that RAP 9.2(c) required Ms. Stillman to file her motion with the trial court. The trial court granted Ms. Stillman's motion in part, and found that Mr. Lee needed to order "that portion of the transcript that encompasses the Court's rulings," both pretrial and posttrial. RP (Apr. 19, 2013) at 54. The trial court stated:

> [A]s I recall, Mr. Mason's argument [on the intransigence issue] was, [']Look at the entire file, Judge. She didn't do this, she didn't do this, et cetera.['] So when it comes to that issue, the transcript of the Court's oral decision plus a review of the entire file will enable you to argue and will enable Mr. Mason to argue without the necessity of a transcript of the testimony at trial
>
> . . . .
>
> I'm not finding that the intransigent argument needs anything but just the Court's ruling and then this [sic] historic pleadings and contempt . . . .

RP (Apr. 19, 2013) at 50-52.

On April 24, 2013, the trial court entered a written order requiring Mr. Lee to pay for transcripts of the October 24, 2012 and November 1, 2012 hearings. Mr. Lee thereafter ordered transcripts from these hearings, as well as a transcript from the April 19, 2013 hearing, and filed them. Ms. Stillman moved the trial court to reconsider its order, arguing the trial court also intended to compel Mr. Lee to order its immediate posttrial rulings on September 11, 2012. The trial court denied Ms. Stillman's motion to reconsider. Ms. Stillman filed a notice of appeal, No. 31811-7-III, assigning error to the trial court's April 24, 2013 written order and its subsequent order denying reconsideration. Ms. Stillman later withdrew that appeal. On October 15, 2014, Ms. Stillman ordered the September 10 and 11, 2012, transcripts for this court's review.

ANALYSIS

Mr. Lee seeks to reargue the case to this court. He attempts to frame the standard of review as de novo by citing to the written record rather than the trial testimony. On the issue of attorney fees, he argues Ms. Stillman was not entitled to attorney fees because she was intransigent in that her amended petition improperly alleged protective factors, and also that she failed to assure Mr. Lee that she would adhere to the court commissioner's temporary visitation order. On the issue of child support, he argues the trial court erred in not adhering to an e-mail agreement between counsel that his 2012 pay

stubs were sufficient for calculating his net income; or alternatively, the trial court improperly penalized him for not timely filing his tax returns. Because the trial court, not the appellate court, is the finder of facts, we must examine the true bases of the trial court's decisions, and whether the required quantum of evidence supports these decisions.

A. *Bases of attorney fee award*

RCW 26.26.140 gives the trial court discretion to award attorney fees to a party in an action filed pursuant to chapter 26.26 RCW. *In re Marriage of T.*, 68 Wn. App. 329, 334, 842 P.2d 1010 (1993). The trial court required Mr. Lee to pay a portion of Ms. Stillman's attorney fees on the basis that Ms. Stillman had substantial need, and Mr. Lee had the ability to pay. Mr. Lee does not assign error to the trial court's determinations in this respect. Rather, Mr. Lee argues that the trial court is or should be precluded from awarding fees because Ms. Stillman was intransigent.

During closing arguments, the parties argued the issue of intransigence to the trial court. In its oral ruling, the trial court acknowledged some difficulty in getting the initial visits scheduled, but did not classify this difficulty as being caused by Ms. Stillman, much less by her intransigence. The trial court, however, refused to require Mr. Lee to pay the portion of Ms. Stillman's attorney fees relating to this initial difficulty. In doing so, the

trial court declined to reimburse Ms. Stillman for $1,500 of her attorney fees that she paid her attorney as a retainer.

There is no evidence that Ms. Stillman was intransigent. The fact that Mr. Lee repeatedly filed motions when he anticipated that Ms. Stillman would violate the commissioner's order does not establish intransigence. The fact is Ms. Stillman never violated a court order. But even if Ms. Stillman improperly alleged protective factors in her amended petition, and even if she failed to timely assure Mr. Lee that visitations would occur as ordered, we find no abuse of discretion in the trial court's decision to award attorney fees incurred *after* these initial difficulties. We conclude that the trial court did not abuse its discretion when it apportioned attorney fees in a manner that reimbursed Ms. Stillman only for those fees incurred after the initial difficulties.

B. *Bases of child support order*

In its oral ruling, the trial court explained it did not deduct state and federal taxes from Mr. Lee's W-2s because Mr. Lee failed to provide sufficient evidence of the amounts he ultimately had to pay. RCW 26.19.071(2) requires a party to provide tax returns for the preceding two years and current pay stubs to verify income and deductions. It is undisputed that Mr. Lee failed to provide the documents required by RCW 26.19.071(2) either prior to or during the trial. However, his accountant prepared

returns for 2010 and 2011 after trial, and Mr. Lee filed these returns with the court posttrial and unsuccessfully argued that the state and federal taxes reflected in those returns should be deducted in calculating his net income.

Mr. Lee makes two arguments as to why the trial court erred in rejecting his reconsideration motion. First, he argues that the September 4, 2012 e-mail from Ms. Stillman's counsel constituted an agreement that Mr. Lee's net income would be based on the deductions shown in the 2012 pay stubs. Second, he argues that the trial court refused to consider the filed returns as a discovery sanction, and that the sanction was in error because Ms. Stillman failed to establish prejudice.

1. *The September 4, 2012 e-mail*

Ms. Stillman's attorney struck her motion to compel discovery once Mr. Lee provided the 2012 pay stubs. In striking the motion, Ms. Stillman's attorney stated:

> In reviewing the pay statements you sent, it is apparent that not all were provided. However, I believe I have enough to calculate his gross and net monthly incomes. I will strike the hearing set for the 6th.

CP at 518. We note that there is nothing in the e-mail that indicates which deductions Ms. Stillman agreed to in the pay stubs. We also note that Ms. Stillman did not deduct the state and federal taxes shown on the pay stubs in her child support worksheets she filed on the day of trial. In response to Ms. Stillman not deducting state and federal taxes,

Mr. Lee offered and the court admitted his 2009 and 2010 W-2s. Finally, we note that the above e-mail response did not cause Mr. Lee to detrimentally rely; rather, his 2010 and 2011 tax returns were not ready prior to trial, and were not prepared until several weeks after trial. For all these reasons, the trial court did not err in determining that Ms. Stillman's September 4, 2012 e-mail was not an agreement to calculate Mr. Lee's net income by deducting the state and federal taxes shown on the 2012 pay stubs.

2. *Failure to admit tax returns after trial*

The trial court correctly observed that the 2010 and 2011 tax returns that were filed weeks after trial were not newly *discovered* evidence, but rather were newly *created* evidence. Mr. Lee argues that the trial court refused to admit the 2010 and 2011 tax returns as a sanction, and such sanctions constitute error because Ms. Stillman was not prejudiced by the late disclosures. In support of his argument, he cites *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 933 P.2d 1036 (1997).

In *Burnet*, the trial court precluded the plaintiffs from pursuing their corporate negligence claim based on their violation of a scheduling order. *Id.* at 491-92. We affirmed the sanction, but the Supreme Court reversed. In reversing, the *Burnet* court held that when imposing sanctions for discovery violations under CR 37(b)(2), the trial court must indicate on the record whether the sufficiency of a lesser sanction was

explicitly considered, whether the conduct that lead to the sanction was willful, and whether the violation substantially prejudiced the opponent's ability to prepare for trial. *Id.* at 493-94.

Here, unlike *Burnet*, the trial court was faced with the decision of whether to admit evidence *after* trial. The proper analysis falls under CR 59, not CR 37(b). Because Mr. Lee does not attempt to analyze the issue on appeal under CR 59, we need not either. Rather, we conclude that *Burnet* is inapplicable when considering whether evidence should be admitted posttrial under CR 59.

C. *Attorney fees on appeal*

Both parties request attorney fees against the other. Because Ms. Stillman has prevailed, we consider her request. She argues that she is entitled to an award of attorney fees based on (1) RCW 26.26.140; (2) RCW 26.18.160; (3) Mr. Lee's intransigence; (4) Mr. Lee's noncompliance with RAP 9.2(c); and (5) RAP 18.9, relating to a frivolous appeal.

As previously stated, RCW 26.26.140 authorizes an award of reasonable attorney fees to a prevailing party in an action filed pursuant to chapter 26.26 RCW. We exercise our discretion and award Ms. Stillman her reasonable attorney fees on appeal. We exercise our discretion in this manner because the trial and this appeal likely would have

been unnecessary had Mr. Lee timely prepared his 2010 and 2011 tax returns and provided those returns and his pay stubs to Ms. Stillman.

Ms. Stillman is also entitled to costs under RCW 26.26.140 for providing the transcripts from the trial proceedings on September 10, 2012, as well as costs for providing the transcripts from the trial court's oral rulings on September 11, 2012. *See* RAP 9.2.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Lawrence-Berrey, A.C.J.

WE CONCUR:

Siddoway, J.

Korsmo, J.

Appendix Exhibit B: Division III Denial of Reconsideration of 6/21/16.

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FILED
June 21, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

In the Matter of the Parenting and Support of	)	**No. 31365-4-III**
D.W.L.	)	
Child,	)	**ORDER DENYING MOTION FOR RECONSIDERATION AND DENYING MOTION FOR CLARIFICATION OF FEES**
JAMIE STILLMAN,	)	
Respondent,	)	
and	)	
DOUGLAS C. LEE,	)	
Appellant.	)	

The court has considered appellant's motion for reconsideration and to clarify attorney fees, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED the motion for reconsideration of this court's decision of April 21, 2016, is denied.

PANEL: Judges Lawrence-Berrey, Korsmo, and Siddoway

FOR THE COURT:

George Fearing

GEORGE FEARING
CHIEF JUDGE

Appendix Exhibit C: Motion for Reconsideration filed 5/11/16.

Ellen's Stamp last 86

No. 313654

COURT OF APPEALS, DIVISION III, OF THE STATE OF WASHINGTON

Jamie Stillman, Respondent	)	
	)	Motion to Reconsider
v.	)	(and Request for Clarification)
	)	
Doug Lee Appellant	)	

To: Division III, and to Ellen Hendrick for Ms. Stillman

1. IDENTITY OF MOVING PARTY

Appellant, Doug Lee, appears to ask the court to reconsider its Opinion of 4/2/16, and to clarify the scope of any attorney fee award not reconsidered.

2. CONCISE STATEMNT OF RECONSIDERATION REQUESTED

The court over-looked or misapprehended the following facts and issues:

(a) Detrimental Reliance and Mr. Lee Foregoing Continuance:

Mr. Lee would have sought continuance, "but for" Ms. Stillman's stipulation that she could calculate "gross and net monthly incomes." (See quotation of Ms. Stillman's counsel, cited on page 7 of the Division III Slip Opinion of 4/21/16) It is un-rebutted, that Mr. Lee was having his taxes done (as they were done in time for him to file them

on reconsideration), and any requested continuance would have been very short. In reliance upon Ms. Stillman's stipulation, the child support trial went forward.

In short, as he submitted, Mr. Lee would have sought continuance of the child support hearing, "but for" Ms.Stillman's stipulation that she did not need his taxes (cited on page 7 of the Slip Opinion of 4/21/16, mailed with the ruling).

So, the "reliance" of not seeking a continuance was additional consideration, as well as foregoing the sanctions for the lack of a CR 26(i) conference, which was also required under Spokane County LCR 37.

Division III overlooked this aspect of the stipulation by Ms. Stillman as the greater of the two types of detrimental reliance Mr. Lee provided in his settlement agreement, which was breached at trial, to his prejudice.

As is clear from the file, Mr. Lee had his taxes nearly done; however, Ms. Stillman stipulated that she did not need them to calculate "gross and net monthly income," and then she got the trial court to impose a surprise detriment upon Mr. Lee that would have been avoided had Ms. Stillman kept her promise, and/or had Mr. Lee sought continuance, which he would have done "but for" detrimental reliance upon Ms. Stillman's stipulate (quoted on page 7 of the Slip Opinion of 4/21/16).

(b) Ms. Stillman Had Already Stipulated to No-Prejudice:

Again, the quote on page 7 of the Opinion of 4/21/16 shows that Ms. Stillman had *stipulated to no prejudice* from the lack of tax returns. It would be unfairly inconsistent for a party to stipulate to no prejudice, and for it to assert, or for a court to find, prejudice.

This stipulation was a settlement agreement between the parties, and it was a stipulation to the court, upon which Mr. Lee relied.

The policy implication of this decision, if not reconsidered, will authorize prejudicial, surprise, revocations of evidentiary and settlement agreements between counsel. In short, the normal agreements that are part of trial preparations will be rendered useless in general, or are of value only to the cynical and dishonest, to induce reliance that will not be respected.

Ms. Stillman stipulated to no prejudice in that she could "calculate gross and net monthly incomes" without Mr. Lee's tax returns. His returns were only a few weeks from being ready, but, in reliance upon this stipulation, he forewent trial continuance.[i]

The Division III Opinion of 4/21/16 elides this point by conflating *"calculate gross and net monthly incomes"* with an *agreement to use paycheck deductions*.

Mr. Lee *never asked that his paycheck deductions be used.*

Instead, it was Ms. Stillman who said that she could calculate Mr. Lee's "net monthly incomes." It was Ms. Stillman who indicated that she was able to calculate the proper monthly net income.

The Opinion of 4/21/16 misses this distinction when it writes:

> For all these reasons, the trial court did not err in determining that Ms. Stillman's September 4, 2012 e-mail was not an agreement to calculate Mr. Lee's net income by deducting the state and federal taxes shown on the 2012 pay stubs.

In re D.W.L., No. 31365-4-III, 2016 WL 1600249, at *7 (Wash. Ct. App. Apr. 21, 2016) – cited for page numbers only.

The Opinion of 4/21/16 is clear that the very relief, a continuance to complete his taxes, that Mr. Lee did not seek in reliance upon the stipulation of Ms. Stillman, is the very core of the decision (emphasis added):

> We exercise our discretion in this manner because the trial and this appeal likely would have been unnecessary had Mr. Lee timely prepared his 2010 and 2011 tax returns and provided those returns and his pay stubs to Ms. Stillman.

In re D.W.L., No. 31365-4-III, 2016 WL 1600249, at *8 (Wash. Ct. App. Apr. 21, 2016).

Doug Lee should not be prejudiced by his good faith reliance upon Ms. Stillman's clear stipulation that she could calculate "net monthly income" (not that she would use his paycheck deductions), and "but for"

this stipulation, Mr. Lee would have gotten a continuance to enter is taxes, which were nearly prepared.

Although the *Klinke* case (see endnote) applies to use detrimental reliance to take a transaction out of the Statute of Frauds, its principles apply all the stronger here, where Mr. Lee had a written assurance, and he acted in reliance upon it. Ms. Stillman (a) made a promise which would reasonably induce Mr. Lee to not seek continuance so his taxes could be filed, (b) she did in fact induce Mr. Lee to forebear seeking a continuance; and (c) there is no other suitable remedy other than to enforce Ms. Stillman's stipulation that she could calculate "net monthly incomes" without Mr. Lee's taxes. (d) There is clear evidence of the promise, as the court quoted it on page 7 of the Slip Opinion of 4/21/16, and (e) the stipulation of Ms. Stillman was specifically formulated to intentionally achieve the reasonable forbearance of Mr. Lee from seeking a continuance until his taxes were completed.

Reconsideration is requested, and reconsideration of the award of attorney's fees is requested.

(NOTE: Mr. Lee had not only asked for a finding of intransigence for Ms. Stillman's defiant statements that she would not obey trial court visitation orders, requiring ex parte action, but Mr. Lee

also requested fees on appeal because of Ms. Stillman's wildly fruitless litigation tactics on appeal, discussed in the next section.)

3. CONCISE STATEMENT OF CLARIFICATION REQUESTED

Mr. Lee asks the court to clarify for which legal work of Ms. Stillman's counsel will Mr. Lee be responsible, if reconsideration is denied, given that the original appeal was very simple, clear, and concise.

Attached as **Exhibit A** is an authenticated copy of Mr. Mason's bill for the opening brief in the very simple appeal in this case. The complete bill for the opening brief was only $1630.25.

The issues were very simple and clear.

Ms. Stillman asked the ruling about whether the trial transcript was necessary for the appeal to be transferred from the Division III Commissioner, who originally intended to make the determination, to the trial court. Division III then referred the decision to Trial Judge Tompkins.

Next, as is noted in the Opinion of 4/21/16, Trial Judge Tompkins saw no need for more than the transcript of the trial court's rulings to determine the very narrow appeal issues in this case. Mr. Lee ordered and paid for these.

After Judge Tompkin's ruling for this case, Ms. Stillman then appealed that ruling of Judge Tompkins, which ended in Ms. Stillman

withdrawing that appeal (case no. 318117) after many costly hours of work on Mr. Lee's behalf. **Exhibit B** is an authenticated bill of Craig Mason, Mr. Lee's counsel, for the appellate work in case no. 318117 – Ms. Stillman's wild goose chase, which she finally abandoned.

The Mr. Mason bill for Mr. Lee is $2973.00, which is a reasonable bill for the work, and which is far below the unreasonable sums requested by Ms. Stillman for much irrelevant, duplicative, and failed, work.

Trial Judge Tompkins' un-appealed and un-reversed ruling should bind Ms. Stillman as to the fact that there was no necessity for any other transcript, nor for all the argument regarding it. Mr. Lee should not be charged for those costs and fees, and he has requested that he be granted his own those fees and costs for that frivolous appeal, finally withdrawn.

In fact, much of Ms. Stillman's counsel's work was unnecessary, or was redundant, or the fee is simply not reasonable under RPC 1.5.

Clarification is requested as to which legal work of Ms. Stillman's should be compensable.

As this court has summarized the law of attorney fee awards (emphasis added):

Generally, a determination of reasonable attorney fees begins with a calculation of the " lodestar," which is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. Scott Fetzer Co. v. Weeks, 122 Wn.2d 141, 149-50, 859 [180 Wn.App. 184] P.2d 1210 (1993); Berryman v. Metcalf, 177 Wn.App. 644, 660, 312 P.3d 745 (2013).

Under the lodestar method of determining reasonable fees, the court must first "exclude from the requested hours any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims." Mahler v. Szucs, 135 Wn.2d 398, 434, 957 P.2d 632 (1998). Second, the trial court may adjust or apply a multiplier to the award " either upward or downward to reflect factors not already taken into consideration" -- specifically, the contingent nature of success and the quality of work performed. Ross v. State Farm Mut. Auto. Ins. Co., 82 Wn.App. 787, 800, 919 P.2d 1268 (1996), reversed on other grounds, 132 Wn.2d 507, 940 P.2d 252 (1997); see also Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 598-99, 675 P.2d 193 (1983). " The lodestar amount may be adjusted to account for subjective factors such as the level of skill required by the litigation, the amount of potential recovery, time limitations imposed by the litigation, the attorney reputation, and the undesirability of the case." San Juan County v. No New Gas Tax, 160 Wn.2d 141, 171, 157 P.3d 831 (2007).

RPC 1.5(a) lists 12 factors to consider when evaluating the reasonableness of attorney fees for purposes of attorney ethics. Washington courts have ruled that the factors should be considered when addressing fee shifting in litigation. Mahler, 135 Wn.2d at 433 n.20; Fetzer, 122 Wn.2d at 148-49; Brand v. Dep't of Labor & Indus., 139 Wn.2d 659, 666, 989 P.2d 1111 (1999); Berryman, 177 Wn.App. at 660. Factor 4 directs consideration of " the amount involved and the results obtained." RPC 1.5(a)(4) (emphasis added). Our courts have disagreed as to the importance of this " proportionality" factor. Two courts have written that, in assessing the reasonableness of a fee request, a " vital" consideration is " the size of the amount in dispute in relation to the fees requested." Berryman, 177 Wn.App. at 660; accord Fetzer, 122 Wn.2d at 150. An earlier court wrote [180 Wn.App. 185] that the amount of damages involved is not a compelling factor in fixing the amount of fees. Travis v. Wash. Horse Breeders Ass'n, 111 Wn.2d 396, 409, 759 P.2d 418 (1988).

Target National Bank v. Higgins, 321 P.3d 1215, 1220-21, 180 Wn.App. 165 (Wash.App. Div. 3 2014).

As the *Mahler* and *Berryman* courts note:

> " Courts must take an active role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998).

Berryman v. Metcalf, 312 P.3d 745, 177 Wn.App. 644, 657 (2013). And the court goes on to add (emphasis added):

> While the trial court did enter findings and conclusions in the present case, they are conclusory. There is no indication that the trial judge actively and independently confronted the question of what was a reasonable fee. We do not know if the trial court considered any of Farmers' objections to the hourly rate, the number of hours billed, or the multiplier. The court simply accepted, unquestioningly, the fee affidavits from counsel.

Berryman v. Metcalf, 312 P.3d 745, 177 Wn.App. 644, 658 (2013).

With the foregoing in mind, Mr. Lee asks the court to clarify for which legal matters he may be charged in the award of attorney's fees.

The court is asked to look at the concise statement of issues in the opening brief, and its modest bill in **Exhibit A**, and then to see the spectacular blizzard of inapplicable argument and digression that was generated by Ms. Stillman.

The scope of the attorney fee award is asked to be clarified, if not stricken on reconsideration.

4. CONCLUSION AND RELIEF REQUESTED

Reconsideration: Reconsideration is requested, as once Ms. Stillman stipulated to the lack of prejudice from not having Mr. Lee's income tax returns, she should have been bound to her stipulation. (To repeat: She stipulated that she could calculate net monthly income; Mr. Lee never said she stipulated to his present deductions as the measure of net income.)

Once Mr. Lee relied upon this stipulation to not seek the short continuance necessary to complete his tax returns, the agreement and his detrimental reliance upon it should have been respected by the trial court, and on appeal.

This relief is requested on reconsideration.

Clarification of Which Litigation Activities of Ms. Stillman Are to Be Compensated, and in What Degree: Next, if reconsideration is denied, clarification of the attorney fee award is requested, as Mr. Lee's appeal required only a very concise response.

Instead of a concise response, Ms. Stillman's counsel engaged in many, many hours of wasteful, duplicative, and simply "wheel-spinning" legal charges. This is not only a matter of "reasonable fees" for actions

undertaken, but a request for a clarification of which actions, or portions of Ms. Stillman's legal activity, are even at issue for a fee award:

> Under the lodestar method, the court first determines the number of hours reasonably expended in the litigation. Mahler v. Szucs, 135 Wash.2d 398, 434, 957 P.2d 632 (1998). The court should discount any wasteful, duplicative, or otherwise unproductive efforts. Fetzer II, 122 Wash.2d at 151, 859 P.2d 1210.

SeaHAVN, Ltd. v. Glitnir Bank, 226 P.3d 141, 154 Wn.App. 550 (Wash.App. Div. 1 2010).

Entire quadrants of Ms. Stillman's legal activity were fruitless, or were clearly "deadends," for which Mr. Lee (and Ms. Stillman) should not be charged.

Indeed, Mr. Lee had requested fees for the obstructionism of the convoluted legal filings of Ms. Stillman, that long-delayed (and distracted) him from his concise, and inexpensive, request that the court enforce an agreement upon which he relied to his detriment.

This clarification is requested during reconsideration.

Respectfully submitted, 5/10/16

Craig A. Mason, Attorney for Appellant
W. 1707 Broadway
Spokane, WA 99201
WSBA#32962
509-443-3681

[i] For the most concise statement of the authority to support his reliance argument, Mr. Lee turns to *Klinke v. Famous Recipe Fried Chicken, Inc,* in which the State Supreme Court stated:

> [W]e ...adopt Restatement (Second) of Contracts *263 section 217A as the law in Washington.

Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wash. 2d 255, 262-63, 616 P.2d 644, 648 (1980).

The *Klinke* court quoted the adopted section as follows (emphasis added):

> The Court of Appeals also adopted Restatement (Second) of Contracts section 217A. Section 217A (Tent. Drafts Nos. 1-7, rev. and edited 1973) reads:
>
> ENFORCEMENT BY VIRTUE OF ACTION IN RELIANCE.
> (1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.
> (2) In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant:
> (a) the availability and adequacy of other remedies, particularly cancellation and restitution;
> (b) the definite and substantial character of the action or forbearance in relation to the remedy sought;
> (c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence;

(d) the reasonableness of the action or forbearance;
(e) the extent to which the action or forbearance was foreseeable by the promisor.

Klinke v. Famous Recipe Fried Chicken, Inc., 94 Wash. 2d 255, 260, 616 P.2d 644, 647 (1980).

Mr. Lee's argument could also be seen as one of equitable esoppel (that Ms. Stillman should have been equitably estopped from denying her stipulation, but the effect is the same – the agreement should have been enforced).

> The elements of equitable estoppel are:
> (1) an admission, statement, or act, inconsistent with the claim afterwards asserted; (2) action by the other party on the faith of such admission, statement, or act; and (3) injury to such other party arising from permitting the first party to contradict or repudiate such admission, statement, or act.
> *Litz v. Pierce Cy.,* 44 Wash.App. 674, 683, 723 P.2d 475 (1986) (quoting *Shafer v. State,* 83 Wash.2d 618, 623, 521 P.2d 736 (1974)).

Concerned Land Owners of Union Hill v. King Cty., 64 Wash. App. 768, 777, 827 P.2d 1017, 1022 (1992).

Here, Ms. Stillman stipulated that she could calculate the "net monthly income" of Mr. Lee; Mr. Lee acted on that stipulation by not seeking a continuance; and he was injured by Ms. Stillman changing her position at trial.

Exhibit A: $1630.25 fee and cost bill for Mr. Lee's Opening Brief on Appeal.

Authentication: I, Craig A. Mason, counsel for Mr. Lee, swear under penalty of perjury that the attached is my true and accurate bill to Mr. Lee for the Opening Brief on Appeal in this case.

Signed and Sworn in Spokane, WA on 5/10/16, _____

Mason Law

1707 W. Broadway
Spokane, WA 99201
Phone: 509-443-3681 | Fax: 509-462-0834

Douglas Lee
511 Juneberry Ln.
Priest River, ID 83856

Invoice Date: May 07, 2016
Invoice Amount: $1,630.25

Matter on Appeal - Douglas Lee

Attorney's Fees

3/31/2013	Appeal -- Draft Issues and Statement of the Case	C.M.	3.00	$600.00
4/2/2013	Drafting & researching appellate brief	C.M.	3.20	$640.00
4/2/2013	Table of cases/Table of Contents/Title Page/Final Draft of Brief	C.M.	1.80	$360.00
4/3/2013	Proofread Opening Brief of Appellant. Scan/copy. Prepare Certificate of Service. Instructions to messenger. Letter to client with copy.	L.M.	.25	$18.75
SUBTOTAL:			8.25	$1,618.75

Costs

4/3/2013	Photocopies for March 2013.	$11.50
SUBTOTAL:		$11.50

Exhibit B: $2970.00 fee and cost bill for Mr. Lee's Briefing on Ms. Stillman's (eventually abandoned) appeal of Judge Tompkin's transcript ruling in Division III case no. 318117.

Authentication: I, Craig A. Mason, counsel for Mr. Lee, swear under penalty of perjury that the attached is my true and accurate bill to Mr. Lee for Responding in Division III case no. 318117.

Signed and Sworn in Spokane, WA on 5/10/16, _____.

Mason Law

1707 W. Broadway
Spokane, WA 99201
Phone: 509-443-3681 | Fax: 509-462-0834

Douglas Lee
511 Juneberry Ln.
Priest River, ID 83856

Invoice Date: May 10, 2016
Invoice Amount: $2,973.00

Matter: Paternity of Douglas William Lee and APPEAL

7/3/2013	Following up on COA deadlines and with transcriptionist in court	C.M.	.20	$40.00
7/3/2013	Receipt of Hendrick's Motion to Stay Appeal and Notice of Appeal. Scan to file. Copy for attorney Mason.	L.M.	.10	$7.50
7/3/2013	Review Ellen Hendrick's Motion	C.M.	.50	$100.00
7/5/2013	Proof read Appellant's Notice that Opening Brief will not be Amended and Request to Deny Ms. Stillman's Stay in her Cross-Appeal. Prepare Certificate of Service. Copy/scan and complete instructions to messenger.	L.M.	.25	$18.75
8/6/2013	Receipt of letter from Court of Appeals. Calendar deadline. Update Index. Email to client.	L.M.	.10	$7.50
8/20/2013	Coordinate pick up of transcript from court reporter. Phone/email exchanges. Instructions to messenger.	L.M.	.10	$7.50
8/21/2013	Receipt of Ellen's Motion for Extension of Time to file Motion for Discretionary Review. Update index. Email to attorney Mason.	L.M.	.10	$7.50
9/4/2013	Scan Ellen's Motion for Leave to File Over-length Motion, Motion to Dismiss, and Motion for Discretionary Review. Receipt of letter from Court of Appeals. Calendar hearing date/deadlines. Update Index.	L.M.	.15	$11.25
9/6/2013	Response on Motion for Discretionary Review (worked 3.0, billed 2.0)	C.M.	2.00	$400.00

9/8/2013	Prepare Certificate of Service re Response on Motion for Discretionary Review. Copy/scan. Instructions to messenger. Index.	L.M.	.10	$7.50
9/11/2013	Researching and Drafting against Hendrick's Appellate Motions (worked 2.5, billed 1.5)	C.M.	1.50	$300.00
9/12/2013	Response, drafting & research cont.	C.M.	1.20	$240.00
9/12/2013	Finalize Response -- Two hours of research and final editing (2.0) at no charge	C.M.	2.00	No Charge
9/12/2013	Proof read Motion to Dismiss. Copy/scan final. Instructions to messenger. Calendar reminder to email to client AFTER honeymoon.	L.M.	.20	$15.00
9/17/2013	More material from Ellen on Motion on Merits (no charge)	C.M.	.50	No Charge
9/18/2013	Receipt of Ellen's Ellen's Reply to Response to Motion to Dismiss or, in the Alternative, to Affirm on the Merits Ellen's Sealed Financials. Index/scan. Review COA filings on-line. Email to attorney Mason.	L.M.	.10	$7.50
9/30/2013	Letter from Court of Appeals. Calendar response deadline for Motion for Consolidation.	L.M.	.10	No Charge
10/9/2013	Telephonic hearing with Court of Appeals/Prep & hearing (spent 1.6, billed 1.0)	C.M.	1.00	$200.00
11/6/2013	Prep for hearing and hearing in COA on Jamie's Motions (spent 1.8, billed 1.0)	C.M.	1.00	$200.00
11/8/2013	Prepare Notice of Unavailability and instructions to messenger & Certificate of Service. (both cases)	L.M.	.10	$7.50
12/13/2013	Receipt of 2 rulings from Court of Appeals. Calendar deadlines.	L.M.	.10	$7.50
12/13/2013	Separate Court of Appeals filings into 2 binders, according to case number since they will not be consolidated. Re-index.	L.M.	.25	$18.75
1/5/2014	Mail Court of Appeals December rulings to client.	L.M.	.10	No Charge
1/13/2014	Receipt of Hendrick's Motion to Modify Commissioner's Ruling in both Court of Appeals Cases. Also, Motion to Extend Time for Filing Designation of Clerk's Papers/Statement of Arrangements. Scan and index.	L.M.	.10	$7.50
1/24/2014	Print emailed letter from COA. Calendar deadline of 2/3/14. Index.	L.M.	.10	$7.50
1/25/2014	Response on Ellen's Motion to Modify (spent 1.6, billed 1.0, no charge .6)	C.M.	1.00	$200.00
1/25/2014	Proof read Response to Ellen's Motion to Modify. Prepare Certificate of Service and instructions to messenger. Copy/scan and email to client. Index.	L.M.	.25	$18.75
2/3/2014	Receipt/review of Hendricks' Reply Brief. Scan to file. Index.	L.M.	.10	$7.50
2/16/2014	Receipt of Ellen's Notice of Unavailability. Calendar entries. Scan to file.	L.M.	.10	$7.50
4/9/2014	Receipt of court's 2 rulings Denying Ellen's Motion to Modify the Commissioner's Ruling of 12/13/13. Calendar 30 day appeal deadline. Update indexes.	L.M.	.15	$11.25

4/24/2014	Receipt of Ellen's Motion for Extension of Time to File Designation of Clerk's Papers. Scan to file/Index.	L.M.	.10	$7.50
5/1/2014	Receipt of letter from COA. Calendar 5/8/14 for Ellen's due date re Designation of Clerk's Papers and Statement of Arrangements. Index.	L.M.	.10	$7.50
5/9/2014	Receipt of Ellen's 5/8/14 COA filings. Scan to file and index.	L.M.	.15	$11.25
7/15/2014	Receipt of Hendricks' Index of Clerk's Papers and Index of Exhibits for Court of Appeals. Scan to file/index.	L.M.	.10	$7.50
7/21/2014	Receipt of Ellen's Motion to Extend Time to File Opening Brief of Appellant and Certificate of Service. Scan to file/Index.	L.M.	.10	$7.50
7/29/2014	Print letter from Court of Appeals granting Ellen's Motion to Extend Time to File Opening Brief. Calendar entries. Index. Email status to client.	L.M.	.10	$7.50
8/27/2014	Receipt of Ellen's Motion for Order Granting Voluntary Withdrawal of Review and AMENDED version of the same thing. Scan/index.	L.M.	.10	$7.50
9/3/2014	Receipt of letter from Court of Appeals. Calendar our deadline for filing response to Ellen's Amended Motion for Order Granting Voluntary Withdrawal of Review. Index.	L.M.	.10	$7.50
9/8/2014	Receipt and review of Ellen's Reply to Response to Appellant's Motion to Withdraw her Appeal. Scan/index.	L.M.	.10	$7.50
9/11/2014	Call with client (no charge)	C.M.	.30	No Charge
10/15/2014	Receipt of Hendrick's Supplemental Statement of Arrangements. Index/scan.	L.M.	.10	$7.50
1/6/2015	Phone call from opposing counsel (Rachel) re transcript by Judge Thompkins' Court Reporter not yet started - more than six months late.	L.M.	.10	No Charge
1/9/2015	Receipt of Hendrick's Motion to Extend Time for Filing VRP. Index.	L.M.	.10	$7.50
2/5/2015	Receipt of Ellen's 2nd Motion to Extend Time for Filing VRP. Index.	L.M.	.10	No Charge
2/12/2015	Receipt of letter from Court of Appeals, granting extension of time to file supplemental report of proceedings (Ellen) to 2/27/15. Calendar entry. Index.	L.M.	.10	$7.50
3/26/2015	Receipt of Verbatim Report of Proceedings re Trial of Sept. 2012. Scan in 3 parts. Prepare binder for same. Index.	L.M.	.20	$15.00
3/30/2015	Receipt of Ellen's Motion to Supplement Record with Copies of Docs. Scan/index.	L.M.	.10	$7.50
4/3/2015	Receipt of letter from Court of Appeals setting hearing for 5/13/15 re Ellen's Motion to Supplement. Calendar date/deadlines. Index.	L.M.	.10	$7.50
4/3/2015	Response on Appellate Motion of Jamie (spent 2.1 hours, billed 1.5)	C.M.	1.50	$300.00

4/29/2015	Prepare 2 Certificates of Service re Response on Motion to Supplement & Time. Copy/scan/instructions to messenger. Indexing.	L.M.	.15	$11.25
4/29/2015	Mot. to Division III (no charge)	C.M.	.70	No Charge
5/4/2015	Receipt of Ellen's Reply to Response to our Motion to Supplement AND for Order Denying Mr. Lee's Motion to Affirm on the Merits AND atty. fees/sanctions. Scan/index.	L.M.	.10	$7.50
5/5/2015	Receipt of Hendricks' Motion to Strike our 2010 and 2011 Tax Returns from the record. Scan/index.	L.M.	.10	$7.50
5/11/2015	Response to Ellen's motion	C.M.	1.40	$280.00
5/11/2015	Proof-read Craig's Response to Ellen's latest filing. Prepare Certificate of Service. Copy/scan/instructions to messenger. Index.	L.M.	.25	$18.75
5/12/2015	Phone call from COA with PIN/Bridge Info. for 5/13/15 hearing. Prepare files for hearing.	L.M.	.25	$18.75
5/13/2015	Prep for Appeals Hearing and Hearing (took 1.7 billed only 1.0)	C.M.	1.00	$200.00
5/20/2015	Print letter/ruling from Court of Appeals. Calendar deadlines. COA denied Ellen's motion and denied attorney fees to either side regarding THIS motion. Scan to file/Index.	L.M.	.10	$7.50
5/20/2015	Email to COA on correcting whose brief is due	C.M.	.20	No Charge
5/20/2015	Review COA Ruling (we won)	C.M.	.30	$60.00
SUBTOTAL:			21.75	$2,898.75

Costs

7/5/2013	Photocopies for June 2013.	$4.75
8/8/2013	Photocopies for July 2013.	$7.25
10/5/2013	Photocopies for September, 2013.	$45.25
1/26/2014	Photocopies for January, 2014.	$8.75
12/2/2014	Photocopies for November, 2014.	$6.50
1/2/2015	Photocopies for December, 2014.	$1.75
SUBTOTAL:		$74.25

Ellen

No. 313654

COURT OF APPEALS, DIVISION III, OF THE STATE OF WASHINGTON

Jamie Stillman, Respondent	)	
	)	Motion to Reconsider
v.	)	(and Request for Clarification)
	)	
Doug Lee Appellant	)	

To: Division III, and to Ellen Hendrick for Ms. Stillman

1. IDENTITY OF MOVING PARTY

Appellant, Doug Lee, appears to ask the court to reconsider its Opinion of 4/2/16, and to clarify the scope of any attorney fee award not reconsidered.

2. CONCISE STATEMNT OF RECONSIDERATION REQUESTED

The court over-looked or misapprehended the following facts and issues:

(a) Detrimental Reliance and Mr. Lee Foregoing Continuance:

Mr. Lee would have sought continuance, "but for" Ms. Stillman's stipulation that she could calculate "gross and net monthly incomes." (See quotation of Ms. Stillman's counsel, cited on page 7 of the Division III Slip Opinion of 4/21/16) It is un-rebutted, that Mr. Lee was having his taxes done (as they were done in time for him to file them

SUPREME COURT, STATE OF WASHINGTON

Court of Appeals, Division III, No. 313654

Jamie Lynn Stillman,	)	No. Not Yet Assigned
	)	
Respondent,	)	PROOF OF SERVICE
v.	)	Petition for Review
	)	Under RAP 13.4
Douglas C. Lee,	)	
	)	
Appellant.	)	

I, Lori Mason, declare under penalty of perjury under the laws of the State of Washington, that on July 21, 2016, I provided Eastern WA Attorney Services a copy of Mr. Lee's Petition for Review Under RAP 13.4 to be delivered to the following:

ELLEN HENRICK
1403 W BROADWAY AVE
SPOKANE, WA 99201-1901

Counsel for Jamie Stillman

On July 21, 2016, a copy of this Proof of Service was sent 1st class

/////

MASON LAW
Craig A. Mason, Attorney
W. 1707 Broadway Ave.
Spokane, WA 99201
509-443-3681

mail via USPS to the following:

Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

LORI MASON 7/21/16
Paralegal to Craig A. Mason