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COURT OF APPEALS  
DIVISION 1  
OF THE STATE OF WASHINGTON

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NO 64807-1

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In Re Marriage of:

KRISTIN FLANIGEN,

Appellant

v.

MITCHEL KROGSETH,

Respondent.

2010 JUN 17 PM 1:17

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BRIEF OF RESPONDENT

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## I. INTRODUCTION

The parties' 1998 order of child support required the father to pay his proportionate share of monthly daycare expenses for the parties' two children in the amount of \$389.10 as part of his monthly transfer payment to the mother. The child support order gave notice to the mother that she would be required to account for the expenses for the children as the order stated: "the parent receiving support may be required to submit an accounting of how the support is being spent to benefit the child." CP 4.

The father sought reimbursement for his share of daycare expenses that he paid but were not actually incurred. In response, the mother did not dispute that the father paid more towards daycare expenses than were actually incurred. In fact, the mother made no effort to prove the amount of any daycare expenses incurred since the order was entered. Instead, the mother sought to retroactively adjust child support based on the parties' changes in incomes and the children's graduation in age brackets during the years between entry of the order and the father's motion for reimbursement. The superior court properly rejected the mother's demand for a retroactive adjustment of child support and, consistent with

RCW 26.19.080, ordered the mother to reimburse the father for his overpayment of daycare expenses.

This court should affirm the superior court's decision and award attorney fees to the father for having to respond to this appeal.

## II. RESTATEMENT OF ISSUES

A. When the mother failed to prove that she incurred any day care expenses during the period when the father was paying his purported proportionate share of these expenses directly to the mother, can she rely on equitable defenses, including equitable estoppel and laches as a bar to the respondent's claim for reimbursement for overpaid day care expenses under RCW 26.19.080 (3)? (Issue A).

B. Where the father has met his burden of showing that his overpaid day care expenses exceed twenty percent of the annual expense, is he limited in the amount of reimbursement to only those expenses over twenty percent or more of the respondent's annual day care expenses under RCW 26.19.080(3), especially where the mother did not preserve that issue for appeal? (Issue B).

C. Was it an error for the trial court to order interest at the statutory rate of 12% on the judgment for overpayment of day care expenses, and did the mother preserve this issue for appeal? (Issue C).

D. Whether the respondent is entitled to a judgment for attorney's fees based upon his need and the appellant's ability to pay for legal fees incurred for the appeal? (Issue D).

### III. RESTATEMENT OF THE CASE

#### A. BACKGROUND

These parties were divorced in October 1998. At the time of the divorce, the parties' children were 7 and 5 years of age. At that time, Kristin represented to the court that she was incurring the sum of \$790.85 each month in day care expenses for the minor children. CP 1. Kristin had notice of her obligation to account for the expenses for the children. Paragraph 3.3 of the Order of Child Support provided, "The parent receiving support may be required to submit an accounting of how the support is being spent to benefit the child." CP 4. The court record shows that Kristin did not incur expenses near that level beginning as early as 1999. CP 132-138. The information for the amount of the day care expense was provided by Kristin and Mitchel paid his share of the expense as an additional portion of his child support payments each month. CP 7. The final order provided that "Child support shall be adjusted periodically as follows: per RCW 26.09." CP 8. At no time did either party seek to adjust the child support obligation. At no time was either party barred from adjusting the support obligation by any actions or inactions of the

other. Kristin did not seek to modify and/or adjust the terms of the Order of Child Support until after the support obligation terminated for the parties' oldest daughter, Kaitlin. Kristin did not file her petition to request post secondary educational support until after Kaitlin reached the age of eighteen and after she graduated from high school. Commissioner Ponomarchuk interpreted the original court order to allow an expanded time to request post secondary educational support "as long as the child was dependent" based upon the fact that the original order expanded the term in which the mother could ask for post-secondary support and provided: "Either party may move for post-secondary educational support of the children until such time as the child for whom support is sought graduates from high school or is no longer dependent upon the parties, whichever is later. The motion may be made on the regular family law motion calendar". CP 7; CP 211-212.

B. ORDER ISSUED ON OCTOBER 23, 2009. Kristin appeared at the trial by affidavit to modify the Order of Child Support on October 23, 2009. Mitchel resided in Spokane, Washington at all times relevant herein, and did not appear. Neither party was represented by counsel. The Commissioner was unaware of the jurisdictional issue at the time of the trial and entered an order modifying child support for Reese, requiring a payment of child support for an adult child (Kaitlin) during the summer

months, and entered an order requiring the Mitchel to pay 40% (his modified pro rata share) of post secondary educational expenses. CP 15-41. The commissioner further entered a judgment for unpaid child support for the period of July through September 2009 in the amount of \$1443.48. CP 15.

C. ORDER ISSUED DECEMBER 18, 2009. When the Kristin did not immediately receive payment in full on the judgment for \$1443.48, she filed a motion for contempt. Mitchel had paid all current child support payments beginning with the entry of the October 23, 2009 order, and had made some payments toward the judgment. CP 71-76. However, he did not have the funds to pay the judgment in full. Kristin did not timely serve Mitchel and the contempt hearing was continued to December 18, 2009. Mitchel filed a motion for Reimbursement of Day Care Expenses not incurred and scheduled the hearing for December 10, 2009. CP 62, CP 68. Kristin declined to provide any receipts and asked the court to dismiss the motion. CP 70. Mitchel also filed a Civil Rule 60 Motion to set aside the court's order requiring him to pay post secondary educational expenses. All hearings were continued to December 18, 2009 in front of Commissioner Ponomarchuk.

The financial information provided to the court showed that Mitchel did not own a home, had a personal loan of \$45,000 for debt

consolidation, and owed \$7500 to the IRS. CP \_\_\_\_ (Sub107-108). The court set his monthly gross income at \$4100, although Mitchel argued that it was lower than that. Conversely, Kristin's income had increased to over \$6000 per month, an increase of over 57 % since the entry of the original decree. CP 1-14; CP 15-41. Kristin declined to provide any day care receipts for the hearing on December 3, 2009, and again refused to provide any receipts for the hearing on December 18, 2009. CP 77-84; CP 97-99. During the hearing on December 18, 2009, at the suggestion of counsel for Mitchel, the commissioner agreed to enter a judgment in the amount of \$32,684.10, which could be reduced once Kristin provided the necessary receipts. RP 6, lines 2-9. The court further offset the child support arrearage judgment of \$1443.48. The final judgment was subject to reduction to allow an additional thirty days for Kristin to gather any necessary receipts. The court's order also required Kristin to sign a Satisfaction of Judgment for the \$1443.48. CP 91-93. To this date she has declined to sign the Satisfaction of Judgment as required by the court.

#### IV. ARGUMENT

- A. THE OBLIGEE PARENT HAS NO EQUITABLE DEFENSES TO THE CLAIM FOR REIMBURSEMENT OF DAY CARE NOT INCURRED AND DID NOT RELY ON ANY ACTS OF THE OBLIGOR IN FAILING TO SEEK AN ADJUSTMENT OF CHILD SUPPORT.

1. Standard of Review. This court should review the trial court's decision entering a judgment in favor of the father to reimburse him for overpaid child support for an abuse of discretion, not de novo. This court regularly reviews child support decisions "for abuse of discretion and will overturn such award only when the appealing party demonstrates that the trial court's decision is manifestly unreasonable, based on untenable grounds, or granted for untenable." *Abercrombie v. Abercrombie*, 105 Wn. App. 239, 242, 19 P.3d 1056 (2001). The fact that the commissioner's decision was based on documentary evidence does not affect the standard of review because appellate courts regularly review child support modifications or adjustments for abuse of discretion, and those cases are typically decided in the lower court on documentary evidence alone. See *Parentage of Jannot*, 149 Wn.2d 123, 128, 65 P.3d 664 (2003). ("It is important to note that Washington courts have applied the abuse of discretion standard when reviewing child support modifications and temporary parenting plans, determinations that are also based on affidavits alone"). "[I]n the area of domestic relations, the appellate courts have granted deference to the trial courts because '[t]he emotional and financial interests affected by such decisions are best served by finality,' and de novo review may encourage appeals. *Jannot*, 149 Wn.2d at 127 (*quotations omitted*).

Under the abuse of discretion standard, the trial court is granted “broad discretion” in making decisions related to child support, and “the reviewing court cannot substitute its judgment for that of the trial court unless the trial court's decision rests on unreasonable or untenable grounds.” *Marriage of Dodd*, 120 Wn.App. 638, 644, 86 P.3d 801 (2004). In this case, the trial court’s decision granting the father a judgment to reimburse him for payments toward daycare expenses that the mother failed to prove were actually incurred was not an abuse of discretion .

2. The mother has not met her burden of showing that any significant day care expenses were incurred, and has not shown any facts that would support her claim of Equitable Estoppel. This court should reject the mother’s belated demands for “equity” to avoid her obligation to reimburse the father when there is no evidence in the record that she acted in good faith or even attempted to show that she incurred the expenses for day care as ordered in the original order. It is Kristin’s burden to prove that the expenses were in fact incurred in order to avoid her mandatory obligation for repayment. She cannot come to court asking for relief from the judgment, when she has made no effort whatsoever to meet her burden.

The mother is ignoring the fact that the right to reimbursement created a mandatory provision for payments after June 1996. *Fairchild v. Davis*, 148 Wash.App. 828, 207 P.3d 449 (2009); *Barber*, 106 Wash. App. At 398, 23 P.3d 1106 (“reimbursement of overpaid day care or special child rearing expenses pursuant to RCW 26.19.080(3) is generally mandatory for payments made after June 6, 1996.”) Kristin refused to even make an attempt to provide any receipts for day care expenses until after the second hearing on the issue. She should not be heard now to argue that equitable principles apply to relieve her of any obligation whatsoever to be a good steward of the funds paid by Mitchel. It was Kristin’s burden to keep records to show that the funds were being spent as required in the court order. CP 4. She has not even attempted to meet that burden, but instead asks the court to relieve her of the obligation to show that she did not keep funds that she was not entitled to keep.

Furthermore, the mother’s claim of equitable estoppel and laches are not preserved for review by this court because her claim arose for the first time after the hearing, and after the time for reconsideration had expired. CP 102-108. None of the declarations filed by the mother for the hearing on December 18<sup>th</sup> provided any information whatsoever in support of her claim for equitable estoppel or laches. Further, the mother defiantly refused to even attempt to provide any documentation of day care

expenses to the court. RP 9, lines 14-22. Absent any indication in the record that appellant advanced this particular claim in any substantive fashion at trial, it cannot be considered on appeal. *Marriage of Studebaker*, 36 Wn. App. 815, 818, 677 P.2d 789 (1984); *see also* RAP 2.5(a); *Lindblad v. Boeing Co.*, 108 Wn. App. 198, 207, 31 P.3d 1 (2001) (declining to review issue, theory, argument, or claim of error not presented at the trial court level). The purpose of this rule is to afford the trial court an opportunity to correct alleged errors, thereby avoiding unnecessary appeals and retrials. *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 527, 20 P.3d 447, *rev. denied*, 145 Wn.2cd 1004 (2001). The arguments filed by Kristin in her motion for reconsideration were too late to be considered by the commissioner and should not be considered by this court for the first time on appeal.

Even if this court considers the mother's claim of equitable estoppels and laches, this court should reject it because Kristin has failed to meet her burden to prove either claim. "The doctrine of equitable estoppel rests on the principle that where a person, by his acts or representation, causes another to change his position or to refrain from performing a necessary act to such person's detriment or prejudice, the person who performs such acts or makes such representations is precluded from asserting the conduct or forbearance of the other party to his own

advantage”. *Hartman v. Smith*, 100 Wash.2d 766, 769, 674 P.2d 176 (1984) (quoting *Dickson v. United States Fid. & Guar. Co.*, 77 Wash.2d 785, 788, 466 P.2d 525 (1970)). Further, in order for Kristin to prevail in her argument that equitable estoppel bars Mitchel’s claim, she must prove that Mitchel, “knowing his rights, took no steps to enforce them until the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state”. *Crodle v. Dodge*, 99 Wash. 121, 131, 168 P.986 (1917) (quoting 10 R.C.L. 396) (cited with approval in *Brost v. L.A.N.D., Inc.*, 37 Wash.App. 372, 375-376, 680 P.2d 453 (1984). There is absolutely no evidence that has been provided or that can be provided by Kristin to show that Mitchel knew of his right to reimbursement prior to the time he filed his motion and that he purposely failed to act on it. There are no facts to show that Kristen relied upon any act or failure to act by Mitchel in determining whether or not she would seek a modification of the prior order. Our courts have noted that laches should not be employed as a “mere artificial excuse for denying to a litigant that which he is fairly entitled to receive”. *Marriage of Barber*, 106, Wash.App. 390, 397, 23 P.3d 1106 (2001) (quoting *Brost v. L.A.N.D., Inc.*, 37 Wash.App. 372, 375-76, 680 P.2d 453 (1984)).

Contrary to the claims made by Kristin in her brief, Commissioner Ponomarchuk did not state that he had no discretion to consider equitable

arguments to deny the father's request for reimbursement. Rather, he was only specifically discussing Kristin's claims that she might have adjusted child support earlier had she known that Mitchel would ask for repayment. Commissioner Ponomarchuk's point, which is well taken, was that in hindsight Kristin may now believe that she should have taken action previously. RP 6. However, the court has no authority to go back in time to modify child support when no motions or petitions were brought earlier.

Mitchel was not aware of Kristin's decision to terminate day care expenses almost immediately following the divorce. CP 64. Her attorney argues that he "could have pursued this and found out", yet the relationship between these parties was so acrimonious that there was no sharing of any information whatsoever. Kristin details the lack of communication in the attachment to her declaration wherein she states, "Had you stated, however, as you did in your memorandum, that "Petitioner has been unwilling to work cooperatively on potential opportunities for financial aid," that in and of itself would have constituted perjury, as it has been at least a decade, if ever, since you have made any attempt to communicate with me directly or even be courteous enough to reply to my efforts to communicate with you". CP 180-210. There was no communication between the parties. The only thing that Mitchel knew was that he was obligated for the full payment of child support each

month. He paid all support payments in full since the entry of the orders. He had no reason to believe that the day care obligation was practically eliminated immediately following entry of the Order of Child Support in 1998. Mitchel had no knowledge whatsoever of his right to claim reimbursement of the expenses until he consulted an attorney in 2009. CP 64-66. Kristin was in full possession of this information and all information necessary to make the decision about whether or not she would file a motion to adjust and/or modify the child support. The courthouse doors were never closed to her. In fact, she has shown that with or without counsel she has the ability to litigate and present her position when necessary. CP 126, CP 102, CP 97, CP 95, CP 77, CP 70, CP 61, CP 42. She has no entitlement to day care expenses when she is not actually incurring them. There was absolutely no action on Mitchel's part that caused Kristin to forego her right to request an adjustment of child support.

Kristin has an extremely high burden to show that the equitable principles of laches and estoppel should apply. Even if her response inferred some reliance on these equitable principles, she utterly failed to show the necessary "clear and convincing evidence" to support the extraordinary relief that she was requesting. "Courts do not favor equitable estoppel, and the party asserting it must prove every element

with clear, cogent, and convincing evidence.” *In re Marriage of Sanborn*, 55 Wash.App.124, 129, 777 P.2d 4 (1989).

Kristin claims “day care” expenses for summer camps and sports camps in 2005 and asks the court to offset the judgment by this amount. However, as Kristin’s declaration acknowledged, she was unemployed beginning in September 2003 through April 2008, so there were no work related day care expenses. CP 102-114; CP 108-210. The only expenses that she provided or even claimed to have incurred for work related day care during the period covered by the judgment were expenses for the Boys and Girls Club in 2003 totaling \$105 for the entire year. The issue is not that Kristin cannot produce any records for work related day care expenses because the records are difficult to produce; the issue is that no expenses were incurred. Kristin’s claims that she would have sought an increased child support obligation from Mitchel had she known he would seek reimbursement of day care expenses. This is not borne out by her declarations. She repeatedly refers to his “consistently delinquent payment”, and the fact that he “skipped payments altogether” and her ongoing efforts to collect support. CP 180-210. (In spite of her claims, Mitchel was completely current in his child support obligations after eleven years up to the date of Kaitlin’s graduation). Kristin’s declarations show that she in no way believed Mitchel was earning much higher wages,

and in fact knew that he was living month to month on his income. Kristin has not met her burden to show the court that there was any action by Mitchel that induced her to forego her right to request modified or adjusted child support.

The court cannot make a finding that repayment would impose a financial hardship on Kristin where her household income is \$209,770 per year and Mitchel's income is \$42,599 per year. She owns a home and Mitchel does not. CP 159; CP \_\_\_ (Sub 108). Any financial hardship she may have is self imposed. There is no information at all to show how repayment of this obligation would impact her. In fact, she is excused from the obligation to make a direct payment as is required by the statute. If the court had followed the strict terms of the statute, her repayment obligation would be over \$2700 each month. The court allowed Kristin to repay the obligation over a period of 53 months, assuming that the educational expenses remain constant. ( $\$32,684.10 / \$610.20 \text{ per month} = 53.56 \text{ months}$ ). The order as written will only minimally impact Kristin's household expenses, and will not provide a hardship to her.

Kristin claims that "no one keeps records back as far as I've requested". CP 126-128. Boys and Girls Clubs are licensed facilities and she should have the information if in fact she made payments beyond the \$105 she documented. The reason that no expenses for the 2005 year

were allowed was that Kristin's own declaration shows she was not working and the expenses were not for work related day care but were for an elite hockey camp. CP 126 – 128. Mitchel is not asking for claims back to 1999, although it is clear from Kristin's records that his judgment would in fact be much, much higher if he had pursued a claim that far. CP 126-128. He only asked for reimbursement for the years when his children were older. Kristin's claim that she "would have asked for more support sooner" would have failed since her income is much higher than his, and he has had periods of unemployment.

**B. THE FATHER'S CLAIM FOR REIMBURSEMENT OF OVERPAID DAY CARE EXPENSES UNDER RCW 26.19.080(3) IS NOT LIMITED TO EXPENSES THAT EXCEED TWENTY PERCENT ONCE HE HAS MET THE MINIMUM THRESHOLD.**

RCW 26.19.080(3) provides in the relevant part:

Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table...If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future

support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period....” RCW 26.19.080 (3).

The intent of the legislature was not that the obligor would only be able to recoup the overpayments that exceed twenty percent. This definition would result in an absurd interpretation of the statute. Our courts have long recognized that statutes should be construed to give effect to its manifest purpose and to avoid an absurd result. *City of Auburn v. Hedlund*, 165 Wash.2d 645, 201 P.3d 315 (2009). Moreover, “Statutes should be construed to effect their purpose, and strained, unlikely, or absurd consequences resulting from a literal reading are to be avoided.” *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987); *State v. Keller*, 98 Wn.2d 725, 728, 657 P.2d 1384 (1983). In reading RCW 26.19.080(3), the intent is that only substantial overpayments (as in the instant case) are subject to refund. Once Mitchel has met his burden of showing that the expenses that were not incurred exceed twenty percent of his annual obligation, then he was entitled to full reimbursement. The 20% cap is merely a threshold to get through the courthouse door. Contrary to the claims made by Kristin in her brief, *In re Marriage of Fairchild*, 148 Wn.App. 828, 833, 201 P.3d 1053 (2009) does not support her argument that the amount of the reimbursement is limited. Rather, (in the dissenting opinion) *Fairchild* clarifies that the court “is not concerned

about minor overpayments, thus the 20 percent excess payment threshold for invoking court involvement.” *Fairchild*, id. at 833 (Korsmo, J., *dissenting*). Twenty percent of Mitchel’s annual obligation is \$933.84. The overpayment of \$32,684.10 far exceeds the threshold amount and was properly ordered.

C. THE COURT IS OBLIGATED TO ORDER INTEREST AT THE STATUTORY RATE ON A CHILD SUPPORT RELATED JUDGMENT.

Kristin raises the issue of statutory interest for the first time on appeal. As noted above regarding her equitable estoppel and laches claims, she cannot advance an argument for the first time on appeal. *Marriage of Studebaker*, id. at 818. If the court is inclined to consider Kristin’s argument, it still must fail as there is no basis for the court to decline to order statutory interest on the judgment. RCW 4.56.110(2) provides in the pertinent part:

“Interest on judgments shall accrue as follows: ...All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.”

The judgment in this case is related to a child support obligation. As noted in *Marriage of Glass*, 67 Wn.App. 378, 835 P.2d 1054 (1992), the court has no authority to adjust the interest on a judgment. As further clarified by *Marriage of Sanborn*, 55 Wn.App. 124, 129-130, 777 P.2d 4,

7 (1989), “the court must award interest on a judgment at the statutory rate of 12%.” In this case, Kristin has the use of Mitchel’s funds for the next 53 months. It would be unjust to allow her to use those funds for the next four years without paying interest for her use of his money. There is no basis to avoid interest on the judgment for overpayment of child support.

**D. MITCHEL IS ENTITLED TO AN AWARD OF ATTORNEY’S FEES BASED UPON THE FINANCIAL RESOURCES OF THE PARTIES.**

Respondent asks this court for his attorney fees and costs for having to respond to this appeal on the basis of his need and the appellant’s ability to pay attorney fees. RCW 26.09.140. This court has discretion to award attorney fees after considering the relative resources of the parties and the merits of the appeal. RCW 26.09.140; *Leslie v.*

*Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003 (1999). RCW 26.09.140 provides that,

“The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the costs to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment. Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.”

In the instant matter, the record shows that the financial resources of Kristin and her household are far greater than those in Mitchel's household. Mitchel has no home, owes money to the IRS, owes funds on a personal loan totaling \$45,000 to consolidate his debt, and borrowed funds to pay the costs of his motion. CP 159; CP \_\_\_\_ (Sub 108). His household income is \$42, 599 per year and Kristin's household income is \$209,770 per year. CP 140; CP \_\_\_\_ (Sub 107). He should be awarded legal fees and reimbursement for costs incurred for this appeal. Respondent will comply with RAP 18.1(c).

#### V. CONCLUSION

Before the court gets to Kristin's arguments for equitable relief, she must show that she met her burden to provide documentation of her use of child support funds for the children's day care. Kristin has not met this burden, and the funds are subject to her mandatory obligation for repayment. Kristin has requested that the court ignore the mandatory terms of the statute requiring reimbursement for overpayment of day care expenses not actually incurred based upon her claimed equitable defenses, however she shows no acts on her part which would entitle her to equitable relief. There is no evidence provided by Kristin to show that she would suffer a financial hardship. Kristin's claim of equitable estoppel fails because there is no information that Mitchel knew that the day care

expenses were not actually being incurred or that he even knew he had the right to file a claim. However, Kristin was aware of this information at all times. Kristin solely possessed the information necessary to make the decision whether or not to file a motion to adjust the child support. Kristin determined that it would not be in her best interest to adjust the support because it would most likely be reduced. Kristin further determined that at no time during the proceeding in the lower court would she actually attempt to provide even one receipt for day care expenses incurred by the children. For that reason her claim for equitable relief fails. It is Kristin's obligation to prove every element of equitable estoppel with clear, cogent and convincing evidence. She has not met her burden.

Once Mitchel satisfies the statutory minimum overpayment requirement to file his claim, there is no reduction of 20% of the overpayment. RCW 26.19.080(3) is mandatory in its obligation for repayment of expenses not actually incurred. Kristin's reading of the statute would mean that the legislature intended for parents to unjustly take just a portion of the money that they were not entitled to each year. That is an absurd reading of the statute. Rather, the statute requires that the amount in controversy be at least 20% of the total support owed for the year before a claim may be filed. Once that threshold is met, the party may go forward with the claim for the full amount. Mitchel is entitled to

his full judgment with interest. There is no basis to waive interest on the judgment, and an award of statutory interest relating to a child support obligation is not discretionary. Finally, Mitchel is entitled to an award of attorney's fees for having to respond. Kristin has the ability to provide payment for the judgment and has far greater resources than Mitchel. The cost of the appeal will most likely be near or equal to the entire judgment that she owes to Mitchel. She has the funds to make this decision without significant worry on how it will impact her household; Mitchel does not. He should be awarded fees in the amount of \$15,000 for this appeal.

RESPECTFULLY SUBMITTED this 17<sup>th</sup> day of June, 2010.



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Andrea F. Taylor, WSBA #15598  
Attorney for Respondent

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COURT OF APPEALS  
DIVISION 1  
OF THE STATE OF WASHINGTON

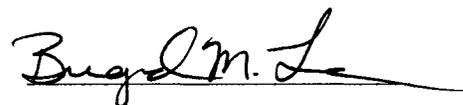
In re: )  
Kristin Flanigen )  
 ) NO. 68407-1  
Appellant, )  
 ) DECLARATION  
and ) OF SERVICE  
 )  
Mitchel Krogseth )  
Respondent. )  
 )

I, Brigid M. Litras, do hereby state under the laws of perjury of the State of Washington as follows:

I certify that I forwarded via ABC Legal Messenger a copy of the **Brief of Respondent** for delivery to:

Joseph Hunt, Attorney for Kristin Flanigen 407 ½ N. 45<sup>th</sup> St. Seattle, WA 98103. The Brief was received by his office on June 17, 2010 as shown by the attached stamped cover sheet.

DATED this 18th day of June, 2010.

  
Brigid M. Litras

**Andrea F. Taylor**  
Attorney at Law  
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Suite 201  
Bellevue, WA 98004  
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NO 64807-1

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In Re Marriage of:  
KRISTIN FLANIGEN,  
Appellant  
v.  
MITCHEL KROGSETH,  
Respondent.

---

BRIEF OF RESPONDENT

---

Law Office of Andrea F. Taylor  
2229 112<sup>th</sup> Avenue NE, Suite 201  
Bellevue, Washington 98004  
425-646-6432 FAX 425-454-3354  
Attorney for Respondent



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