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No. 68541-4-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In Re the Marriage of:

JOHNNY R. CLARK
Appellant
v.

BRENDA L. CLARK
Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE JEFFREY M. RAMSDELL

OPENING BRIEF OF APPELLANT

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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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A. ASSIGNMENTS OF ERROR

Assignments of Error

I believe that the issues in this case are more appropriately and simply expressed as follows:

1. The trial court erred when it calculated child support without knowing what existing orders were in place at that time or the amount ordering the Father to pay on behalf of other children from previous relationships. CP 619-681.

2. The trial erred when it did not enter written finding of fact based upon a request for child support deviation when entering the order of child support as required under RCW 29.19.075 and RCW 26.19.035. CP 527-542.

3. The trial court erred when it failed to include parents' birthdays, religious Holidays and other Special Occasions for residential time in the final order in conflict with its oral ruling? CP 789-883.

4. The trial court erred when it ordered the father to pay the mother's Attorney's fees and costs without determining the father's ability to pay? CP 543-548.

Issues Pertaining to Assignments of Error

1. Pursuant to RCW 26.19.075, the court is required to consider children from other relationships, require disclosure of new domestic partner's income and resources and to consider all child support obligations paid and, received on behalf of other children. (Assignment of Error 1 and 2.).

2. Where a parent has involved the children in religious beliefs and cultural heritage activities with the child, those should remain a core part of the children's

lives. (Assignment of Error 3.).

3. The courts oral ruling and final orders entered with respect to the final parenting plan are in contrast to each other. Holding that a harmless error occurred is not consistent with a change in the parenting plan, thereby causing a decrease in residential time with the children. (Assignment of Error 3.).

4. The court failed to consider the financial resources of the Father by him to pay the Mother's attorney's fees. (Assignment of Error 4.).

B. STATEMENT OF THE CASE

Statement of Facts

This case involves the dissolution of a five-year marriage of Johnny Clark and Brenda Clark¹. CP 559-564. The parties marriage was dissolved after a four-day trial which included the parties representing themselves pro-se throughout the trial. The trial included a number of exhibits which were all included as part of the record, testimony from both parties and testimony from various witnesses. The parties have two children between them, Johnny now age 6 and Marley age 4. CP 789-883. The Mother has an additional child who is currently 12 years old from a previous relationship and the Father has 2 additional children from previous relationships, ages 17 and 10.

The unique features of this case involve the immediate number of children involved between these two parents; the children that each parent has from previous relationships and those family households impacted by the child support orders entered in this case. A starting point of this appeal involves the child

¹ Brenda Clark will be referred to as Mother and Johnny Clark will be referred to as Father throughout the document; no disrespect intended.

support orders entered in this case. CP 30-42 (Temporary Child Support Order); CP 527-542 (Final Child Support Order). This appeal is brought in light of the existing child support obligations on behalf of Johnny Clark that existed at the time any orders were entered in this case and coincidentally were modified during the time of prior to final orders being entered in this case. It is well-established that this Court will not reverse the trial court's decisions in a dissolution proceeding absent a manifest abuse of discretion and that the Court cannot substitute its judgment for that of the trial court unless the trial court's decisions rest on untenable grounds. Here, the trial court did abuse its discretion when setting child support, entering a final parenting plan in contrast to its oral ruling and awarding attorneys fees and costs. CP 549-558. Accordingly, this court should remand for further proceedings.

C. SUMMARY OF ARGUMENT

When child support includes support for children involved in a case before the court, the child support schedule is applied to the mother, father and children of the family before the court in order to determine the presumptive amount of support. When a deviation is required, the court looks at the income of other adults in the household, children from other relationships, debt, and looks to insure that the children's basic needs are met with *either* parent. A deviation does just that, when requested and reviewed appropriately. A similar review is performed by the court when determining whether either parent shall be ordered to awarded and or pay attorney's fees and costs.

D. ARGUMENT

Washington child support policy has two goals: to insure support adequate to meet the needs of children commensurate with the parents' income, resources, and standard of living and to equitably apportion that support obligation between the parents. RCW 26.19.001² In other words, the law aims to provide for the child and to do so fairly. To those ends, the Legislature devised a child support statutory scheme, which operates almost mechanically to allocate the child support obligation between parents. One component of the formula used to determine support is the number of children receiving support. See RCW 26.19.011 (defining basic child support). In this case, for example, the difference between the basic support obligation for a two-child family and a four-child family is \$251.20, not including any special child care rearing expenses.

Nowhere does the statute allow a court to choose how many children it may count in arriving at the basic support obligation. Rather, simply and straightforwardly, the family is comprised of the number of children receiving support. RCW 26.19.011 (1) ("'basic child support obligation' means the monthly child support obligation determined from the economic table based on the parties' combined monthly net income and the number of children for whom support is owed"). A child who has reached the age of majority but, based on a finding of continued dependence, still receives financial support, is a child receiving support and must be counted for purposes of deriving the basic support

² The statute provides: The legislature intends, in establishing a child support schedule, to insure that child support orders are adequate to meet a child's basic needs and to provide additional child support commensurate with the parents' income, resources, and standard of living. The legislature also intends that the child support obligation.

obligation. In failing to follow the statute, the trial court erred. Any deviation consideration in the presumptive child support amount must be based on the children's needs and be commensurate with the parents' income, resources, and standard of living, and the relationship between the additional child support and these factors must be stated with specificity in findings of fact. It is an abuse of discretion when a court chooses to exceed the presumptive child support amount without having the appropriate child support orders before it for review and consideration. *Marriage of Bell*, 101 Wn.App. 366, 377, 4 P.3d 849 (2000). RCW 26.19.001; RCW 26.19.065(3); *McCausland*, 159 Wn.2d at 621. The father is actively engaged in the children's lives, attends education activities, participates in public library book reading, sports and such that the children effectively have a home to reside, and the children enjoy a nominal standard of living. All he asks here is that he not be penalized for being prudent in anticipating and providing for the costs of providing for the children when they are with him.

The Mother did not provide information during trial proceedings related to occupants of her household for those adults living there, therefore a disclosure of all income from all sources was not done. The failure to disclose household income from those sources, doesn't provide the court with the information necessary to make a fair a just adjudication, particularly when addressing child support deviations. The Mother's failure to enlighten the court about how her new spouse's income is integrated within the home leaves significant financial related questions unanswered. Not providing information on how one's income is available to contribute towards the household budget is grounds for vacating the

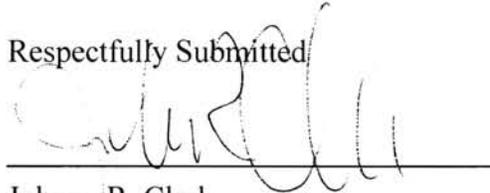
child support order. The lower court erred in failing to make specific findings as to the reasons for the granting or denying of a downward deviation. CP 789-883 pg 90, lines 12-17.

E. CONCLUSION

For the foregoing reasons, the Appellant respectfully asks this Court to vacate the order of child support and remand for recalculation using the proper four-child family table. It is further requested that this Court vacate the parenting plan and remand for further modification.

Dated this 9th Day of May, 2014 in Seattle, Washington

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Johnny R. Clark", written over a horizontal line.

Johnny R. Clark
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