

COURT OF APPEALS NO. 70959-3-I

King County Superior Court of Washington No. 99-3-00253-2 KNT

In re the Marriage of:

Tammy J. Triplett, Appellee/Respondent,

v.

Stephanie L. Case, Appellant/Petitioner

BRIEF OF APPELLANT

Stephanie L. Case, Pro Se
Appellant
2815 Alpine St. SE
Auburn, WA 98002

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ASSIGNMENT OF ERRORS

1. The trial court erred to the prejudice of the Ms. Case and denied Ms. Case's due process of law where the court did not have subject matter jurisdiction over the type of controversy.
2. The trial court erred to the prejudice of the Ms. Case and denied Ms. Case's due process of law when a court disregards local court rules.
3. The trial court erred to the prejudice of the Ms. Case and denied Ms. Case's due process of law where the court inferred hostility and confusion, quoting none existent facts not supported by the record.
4. The trial court erred to the prejudice of Ms. Case by denying due process of law for a fair and impartial hearing.
5. The trial court erred to the prejudice of Ms. Case and denied Ms. Case's due process of law when the court engage in manifest bias and prejudice based on appellant's sexual orientation? The trial court erred to the prejudice of Ms. Case and denied Ms. Case's due process of law by engaging in demeaning epithets to discriminate, intimidate, harass and publicly humiliate the appellant.
6. The trial court erred to the prejudice of Ms. Case and denied Ms. Case's due process of law by dismissing a Petition for Support Modification; where procedurally there was no motion before it.

7. The trial court erred to the prejudice of Ms. Case and denied Ms. Case's due process of law by dismissing a Petition for Support Modification; where there are no findings of fact or conclusions of law to support the decision.

8. The trial court erred to the prejudice and detriment of Ms. Case by denying appellant's due process of law when the court denied the respondents motion to adjust support without prejudice; where procedurally there was no motion before it.

9. The trial court erred to the prejudice of Ms. Case and denied Ms. Case's due process of law when the court failed to adjudicate a motion for default.

10. The trial court erred to the prejudice of Ms. Case where the court based its decision on incorrect view of the law.

11. The trial court erred to the prejudice of Ms. Case where a previous order created and imposed a retroactive impermissible support obligation.

12. The trial court erred to the prejudice of Ms. Case where the court retroactively set support based on a previous order despite another section within the same previous order that maintained the order remained in effect until modified.

13. The trial court erred to the prejudice of Ms. Case by denying due process of law where the findings of fact are insufficient and without specific reasons for denying a deviation request.

ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Did the court on Aug 2nd abuse its discretion by denying a party due process of law in continuing to adjudicate after acknowledging it lacked subject matter jurisdiction. Subject matter jurisdiction refers to the court's authority to entertain a type of controversy, not a particular case. Where a court does lack subject matter jurisdiction over the type of controversy, the order is void.

2. Did the court on Aug 2nd abuse its discretion by denying a party due process of law in violation of LFLR 14(d)(5) wherein Independent Proceedings; except as otherwise stated, Petitions for Modification of Support shall proceed as original determinations, with no threshold or adequate cause hearing required. Did the order entered February 6, 2013 appear to exclude a parties right to a Modification under RCW 26.09.170(1)(5)(a). Should this excluded appearance to deny this right be held invalid and impermissible in light of RCW 26.09.100(2)? Did the orders dated February 6, 2013 and November 8, 2010 impermissibly modify the terms of the last, and prevailing Support Modification entered June 6, 2007?

3. Did the court on Aug 2nd abuse its discretion by denying a party due process of law by creating hostility and confusion of unsupported reference to none existent documents not found nor supported by the record?

4. Did the court on Aug 2nd and Oct 11th, abuse its discretion on two separate occasions in two separate hearings by denying a party due process of law for a fair impartial proceeding with which includes the right to be heard? In any action before the court in this state, the court shall conduct its self in a manner in which accords to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. There can be no fair impartiality in any proceeding when the court is engaged in frequently interrupting a parties right to be heard. Frequent interruptions by the court preventing a parties right to speak undermines a parties right to present argument and introduce evidence. The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can only be protected if procedures protecting the right to be heard are observed. Cannon 2.6

5. Did the court on Aug 2nd and Oct 11th, abuse its discretion on two separate occasions in two separate hearings, by denying a party due process of law for the right to a fair impartial proceeding when the court engaged in demeaning epithets to discriminate, intimidate, harass and

publicly humiliate the appellant? Did the court abuse its discretion in two separate hearings on these two separate occasions on the bias of prejudice and aversion toward the appellant based on stereotype mocking the appellant's sexual orientation? Did the court abuse its discretion and conduct its self in a manner that demotes the independence, integrity, or impartiality of the judiciary. Cannon 1 Did the court abuse its discretion and fail to perform the duties of judicial office impartially, competently, and diligently. Cannon 2 Commissioners and judges shall uphold and apply the law in performing all duties of judicial office fairly and impartially. Ensuring impartiality and fairness to all parties, Commissioners and judges must be objective and open-minded. Cannon 2.2 Commissioners and judges shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment. A commissioner or judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts. Irrelevant references to personal characteristics, even facial expressions and body language can convey to parties, lawyers and others in the proceeding an appearance of bias or prejudice. A commissioner or

judge must avoid conduct that may reasonably be perceived as prejudiced or biased. Harassment, as referenced, is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on the bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. Cannon 2.3

6. Did the court on Sept 9th, abuse its discretion in “dismissing” a Petition for Support Modification by adjudicating a “notice of hearing” where procedurally there was no valid legal motion before it? Trial by Affidavit Motions as directed by LFLR 5(c)(2) shall conform to LFLR 14(c)(1), LCR 7, LFLR 6; this includes LFLR 10 and shall use forms required by LFLR 3. All motion documents shall first be filed in the clerk’s office. No motion for any order shall be heard unless the original documents pertaining to it have been filed with the Clerk. LCR 5 A judgment is void were the record is devoid of a procedural motion not properly before it.

7. Did the court on Sept 9th, abuse its discretion in dismissing a Petition for Support Modification; where there are no findings of fact or conclusions of law to support the decision? CR 52(a)(2)(B) requires entry of written findings and conclusions, and the appellate court is not free to

disregard them. An absence of findings and conclusions in the record on appeal is void or requires reversal and remand.

8. Did the court on Sept 10th, abuse its discretion by adjudicating a “notice of hearing” where procedurally there was no valid “adjustment of support” motion before it? Trial by Affidavit Motions as directed by LFLR 5(c)(2) shall conform to LFLR 14(c)(1), LCR 7, LFLR 6; includes LFLR 10 and shall use forms required by LFLR 3. All motion documents shall first be filed in the clerk’s office. No motion for any order shall be heard unless the original documents pertaining to it have been filed with the Clerk. LCR 5 A judgment is void were the record is devoid of a procedural motion not properly before it.

9. Did the court abuse its discretion by denying a party due process of law when the court failed to adjudicate a properly filed notice of hearing and motion for default?

10. Did the court on Aug 2nd and Oct 11th, abuse its discretion by denying a party due process of law based on an incorrect view of the law? A trial court abuses its discretion if it based its ruling on an erroneous view of the law.

11. Did the court on Oct 11th, abuse its discretion by denying a party due process of law by retroactively setting support? Did the February 6, 2013 order create and impose an impermissible retroactive support

obligation? Similar instances that set legal precedent have previously shown the validity of a retroactively imposed support obligation to be an impermissible retroactive award. The order is void.

12. Did the court on Oct 11th, abuse its discretion by denying a party due process of law by disregarding section 3.13 within the February 6, 2013 order that maintained the order remained in effect until modified. Did the court abuse its discretion by creating retroactively imposed support arrears?

13. Did the court on Oct 11th, abuse its discretion by not specifying findings of fact? Did the court abuse its discretion when not supported by the evidence? An order for child support shall be supported by written findings of fact as supported by the evidence; upon which the support determination is based and shall include reasons for any deviation from the standard calculation and reasons for denying a party's request for deviation.

STATEMENT OF THE CASE

June 24, 2013, Ms. Case filed a Petition for Support Modification. CP 35-41

June 24, the Case Schedule was issued. CP 42-50

June 29, 2013, Ms. Triplett was personally served. CP 286-288

July 15th, Response to Petition due, set by the case schedule. CP 44

July 16th, Ms. Triplett filed a one form motion to dismiss the petition collectively with a motion to adjust support and mailed to Ms. Case. Under CR 6(e), on July 19th, notice of hearing, motion to dismiss; delivery complete. CP 51-79

August 2nd the trial court dismissed Ms. Triplett's July 16th motion to dismiss petition. Notice of Appeal pg 9

Aug 6, Ms. Triplett filed a Notice of Hearing on the Trial by Affidavit calendar; without a supporting motion as procedurally required by court rules. CP 290

Sept 9th, the TBA court dismissed Petition for Modification. Notice of Appeal pg 3

Sept 10th the TBA court denied without prejudice motion to adjust. Notice of Appeal pg 4-5

Sept 17th, the TBA denied Motion for Reconsideration Notice of Appeal pg 7

Oct 4th Ms. Case, Notice of Appeal, dismissal of Petition. RAP 2.2(a)(3)

Oct 11th the trial court granted an adjustment of support. CP 148-163

Oct 21st upon motion by the Appellate Court, scheduled a hearing Nov 15, 2013.

Nov 21, 2013, Appellate Court accepted review.

STANDARD OF REVIEW

Standard of Review as to whether a court has subject matter jurisdiction is a question of law reviewed de novo. *Young v. Clark*, 149 Wn.2d 130, 132, 65 P.3d 1192; *Crosby v. County of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32; citing *Bour V. Johnwn*, 80 Wn. App. 643, 647, 910 P.2d 548.

Standard of Review for purposes of modifying a child support obligation, a trial court's determination of whether a substantial change of circumstances occurred is reviewed under the manifest abuse of discretion standard. *Marriage of Arvey*, 77 Wn. App. 817, *Marriage of Leslie*, 90 Wn. App. 796, 802, 954 P.2d 330

Standard of Review for the grant, denial or dismissal of a request to modify a child support obligation under the standard of RCW 26.09.170(1), is reviewed for an abuse of discretion. *Shellenberger*, 80 Wn. App. 71. Discretion is abused if the decision is not supported by the record. *Marriage of Choate*, 143 Wn. App. 235. A trial by affidavit is reviewed to determine if the findings of fact are supported by substantial evidence and if the trial court made an error of law subject to correction on appeal. *Shellenberger*, 80 Wn. App. 71.

Interpretation of a court rule is a question of law we review de novo. *State v. Schwab*, 163 Wn.2d 664, 671, 185 P.3d 1151,) (citing *City*

of *College Place v. Staudenmaier*, 110 Wn. App. 841, 845, 43 P.3d 43. Court rules are interpreted in the same manner as statutes and are construed in accord with their purpose. *State v. Wittenbarger*, 124 Wn.2d 467, 484, 880 P.2d 517. A statute must be interpreted and construed so that all of its language is given effect, with no portion rendered meaningless or superfluous. *Lakemont Ridge Homeowners Ass'n v. Lakemont Ridge Ltd. P'ship*, 156 Wn.2d 696. The starting point is thus the rule's plain language and ordinary meaning. See *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318; (citing *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481, citing *McCausland*, 159 Wn. 2d. 607; *Marriage of Leslie*, 90 Wn. App. 796, 802, 954 P.2d 330.

Standard of Review for Findings of fact entered in support of a child support modification order are reviewed to determine whether they are supported by substantial evidence in the record. Substantial evidence is evidence sufficient to persuade a rational person of the truth of the premise. An order modifying a parent's child support obligation is reviewed for an abuse of discretion. Discretion is abused if a child support modification order is based on untenable grounds or reasons if, in entering the order, the court did not consider all relevant factors and the award is unreasonable under the circumstances. *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417.

Standard of Review under the abuse of discretion standard; discretion is abused if the modified award of child support is manifestly unreasonable, is based on untenable grounds, or is based on an erroneous view of the law. Marriage of Scanlon, 109 Wn. App. 167; Marriage of Choate, 143 Wn. App. 235.

Standard of Review for a trial court's modification of a noncustodial parent's child support obligation is reviewed for an abuse of discretion, I.E., to determine whether the trial court exercised its discretion in an untenable or manifestly unreasonable way. Marriage of Griffin, 114 Wn.2d 772, 791 P.2d 519.

OPENING CLARIFICATION

This brief must begin by clarifying confusion based on the letter dated October 24, 2013 received from this court on Commissioner Neel's review on October 21st. However the same confusion continued in this courts ruling on November 21st by Commissioner Kanwzawa.

To clarify, Ms. Case filed a Notice of Appeal on October 4, 2013 based on the dismissal of her Petition for Support Modification Sept 9, 2013 under RAP 2.2(a)(3). Under RAP 2.4b, Ms. Case additionally sought review of the orders dated August 2nd, Sept 10th, and now here an order entered October 11, 2013. The confusion is within the court record at Sub #363, also page 4-5 filed with the Notice of Appeal. The

significance, as noted by Commissioner Kanwzawa in stating that Ms. Case could not appeal the order dated Sept 10th. Ms. Case was not the moving party, it was Ms. Triplett's notice of hearing to adjust that was denied without prejudice and was signed by the court Sept 9th; however entered in the record as Sept 10th. Ms. Case was merely seeking review of these orders in light of numerous errors. Ms. Case will herein use the Sept 10th date to separate the two dual dated orders to maintain reference and clarity.

ARGUMENT

As a consequence of the February 6, 2013 support order that states at Sec 3.9; CP 30

“When reemployment has been obtained, child support shall be recalculated based on obligor's new income, as well as the obligee's then current income, and the adjusted support shall be effective the month following reemployment. If the parents are unable to reach agreement regarding child support based on their respective incomes, the issue of the adjusted and permanent order of child support may be addressed on the family law motions calendar, retroactive to the month following the month in which the obligor is reemployed.”

Ms. Case did in good faith inform Ms. Triplett within two days of reemployment as instructed by Sec 3.9 from the February 6, 2013 order by means of an email letter May 19, 2013. At the same time, in an attempt to reach agreement between parents, Ms. Triplett's income information was requested. Ms. Triplett was additionally advised of Ms. Case's

considerable income reduction and request for deviation. CP 90-91

However, Ms. Triplett refused to provide then current income and in bad faith, demanded Ms. Case supply income information to the Division of Child Support (DCS). CP 89

The Petition in question was initiated as a result of Ms. Triplett's refusal.

The petition gave raise to arguable changed circumstance issues that an adjustment proceeding simply could not address. In fact, the May 19, 2013 letter in several paragraphs was characteristic in substance as the petition.

The petition made known a parties significant involuntary debt, plus an arguable reason for changed residential living expenses and reserved those arguments for trial. CP 38, 90 In addition, Ms. Case also raised another issue for a determination to hold Ms. Case harmless regarding Ms.

Triplett's Renton Collections debt in conjunction to and involving a District Court cause filed May 17, 2011; to which is the result of unpaid childcare expenses Ms. Triplett did not pay when due. CP 39, 90, 95, 309-314, 343-362 Unpaid childcare expenses that virtually ended July 1, 2009. CP 361, see also CP 57, 316-324, 348-362 Unpaid childcare expenses that unjustifiably influenced the November 8, 2010 adjustment order. Wherein, on October 19, 2010 Ms. Triplett misrepresented to the court that these "late payments to daycare, and the interest and other charges associated therewith, are a direct consequence of the respondent's

failure to pay her day care obligations.” CP 338 Obligations, that were in fact paid and retained by Ms. Triplett directly from Ms. Case’s mandatory income wage deductions. CP 364-368 In fact, Ms. Triplett was directed by the court February 6, 2007 to provide monthly receipts, yet continued to remain silent in spite of her own requests to end childcare and even refused to provide receipts despite official demand. CP 328-335, 343-362 Currently, this unpaid childcare debt, accumulated interest, fees and additional charges, now include attorney fees; when all along the result was due to Ms. Triplett’s concealment and failure to pay the debt. CP 312, 316-324, 343-362 The end unknown consequence was collections action with the consequent outcome a District Court cause. CP 95, 311-324 Ms. Case had no responsibility creating this debt, but will potentially cause Ms. Case financial harm as the second responsible party to a debt Ms. Case already paid by mandatory wage deductions. CP 344, 364-368 Wherein a debt, that under the disguise of Judge Mattson’s May 26, 2009 order, remained concealed, unknown and continued. CP 54-58 In fact, the truth remained concealed and misrepresented throughout the November 8, 2010 adjustment order. Only now, the entire truth is brought to the surface as a result of Ms. Triplett getting personally served a legal summons May 28, 2011 due to the consequential District Court cause filed May 17, 2011

by Renton Collections attorneys against Ms. Triplett for nonpayment of those childcare expenses.

Ms. Case did not discover these related facts until January 15, 2013. CP 309-314

Nonetheless, the resulting harm and misplaced accountability to Ms. Case is staggering, yet all due to Ms. Triplett's enrichment of falsely acquired arrears with additional CR 11 sanctions against Ms. Case caused by the May 26, 2009 order; facts with which remain overwhelming and should be vacated by means of CR 60(b)(4)(5)(11) under RCW 4.72.080 as a result of the substantive evidence that confirms Ms. Triplett's intentional deceit, misrepresentation and repeat concealment. CP 54-58, 83, 95, 301-362

Notwithstanding, Ms. Triplett forgets; because of this current unauthorized demand to supply then current income to DCS rather than rightfully share the information in good faith with Ms. Case, initiated the petition in question. CP 112-121 Therefore, Ms. Triplett herself interfered with any mutual agreement process through oppressive coercion when she chose to, without authority and in bad faith, deny Ms. Case's right to review Ms. Triplett's income and financial information. CP 89-91 Ultimately, when Ms. Triplett's income was finally disclosed had exposed a significant increase. CP 211-223 Ms. Triplett's current intransigence appear on its face an attempt to again conceal from Ms. Case's knowledge,

Ms. Triplett's financial income enrichment. Especially when this income information was requested in good faith based on section 3.9 from the February 6, 2013 court order. CP 30, 89-95, 137-140 In fact, in every aspect of Ms. Case's Declarations, Response's and Replies. CP 80-87, 103-108, 109-111, 112-122, 123-127, and 128-135. Ms. Case's arguments are substantially supported by the record. CP 89-95, 137-142, 176-191, 299-300, 309-371

Notwithstanding the above, substantive issues establish changed circumstances and none of it was ever contemplated; including Ms. Triplett's refusal to provide then current income or Ms. Case's considerable income reduction nor the sizeable increase of Ms. Triplett's income. Moreover, Ms. Triplett did not timely file a response to the Petition.

ASSIGNMENT OF ERRORS 1

On August 2, 2013, the court first pointed out "when a person files a modification of support, it puts it on the trial calendar. This is assigned to the Trial by Affidavit (TBA) court and a motion to dismiss is done without oral argument" and "sent to properly the judicial officer who presides over that calendar." RP Aug 2nd pg 2 Although, the court on Aug 2nd acknowledged the allegations in the petition did allege such changed conditions as to call for the court entertaining the petition. The

court on Aug 2nd, in essence acknowledged from the beginning it did not have subject matter jurisdiction over the type of controversy; the only course of action for the court from that point, was to dismiss. RP Aug 2nd pgs 2, 7

Ms. Case argues that the superior courts lack of subject matter jurisdiction under compelling circumstances is shown here. On Aug 2nd the court itself provided this compelling circumstance and in fact commented that the matter belonged within some other court. Once this subject matter jurisdiction over the type of controversy was established, the court was without authority to continue.

Subject Matter Jurisdiction claimed for the first time on appeal is permitted under Rule RAP 2.5(a)(1). Either a court has subject matter jurisdiction or it does not and where a court fails to observe safeguards, it amounts to denial of due process of law. As courts of general jurisdiction, superior courts have long had the "power to hear and determine all matters, legal and equitable, . . . except in so far as these powers have been expressly denied." *State ex rel. Martin v. Superior Court*, 101 Wash. 81, 94, 172 P. 257, 4 A.L.R. 572. Even under statutory law, jurisdiction is broadly given; a superior court sits as "family court" in RCW Title 26 disputes, adjudicating and enforcing the rights of the parties or their children regarding the determination or modification of parenting plans,

child custody, visitation, or support, or the distribution of property or obligations. RCW 26.12.010 In light of this broad constitutional and statutory grant of subject matter jurisdiction to superior courts, courts may only find a lack of jurisdiction under compelling circumstances, such as when it is explicitly limited. Superior courts broad subject matter jurisdiction is based on our state's constitution . . . in which jurisdiction shall not have been by law vested exclusively in some other courtConst. art. 4, § 6; Marriage of Major, 71 W. App. 531, 859 P.2d 1262, citing Marriage of Thurston, 92 Wn. App. 494. The critical concept in determining whether a court has subject matter jurisdiction is the “type of controversy.” Whidbey Env'tl. Action Network v. Island County, 122 Wn. App. 156, 179, 93 P.3d 885; Dougherty v. Dept of Labor & Indus., 150 Wn.2d 310, 316, 76 P.3d 1183, (quoting Marley v. Dept of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189. The term “subject matter jurisdiction “refers to the authority of a court or tribunal to adjudicate a particular type of controversy, not a particular case. Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189. Subject matter jurisdiction does not turn on agreement, stipulation, or estoppel. Wesley v. Schneckloth, 55 Wn.2d 90, 93-94, 346 P.2d 658. When a court lacks subject matter jurisdiction, dismissal is the only permissible action the court may take. Young v. Clark, 149 Wn.2d 130; Deschenes v. King

County, 83 Wn.2d 714, 716, 521 P.2d 1181; citing Adoption of Buehl, 87 Wn.2d 649.

ASSIGNMENT OF ERRORS 2

However, on Aug 2nd the court continued. The court, then without authority, gave the parties each one minute to argue “why the petition shouldn’t go forward to the trial in light of the person how filed it.” RP Aug 2nd pgs 2-3 The court had just established it was without subject matter jurisdiction over the type of controversy. RP Aug 2nd pg 2 However, by so continuing, created additional error attempting to seek adequate cause or threshold, which is inconsistent with LFLR 14(d)(5)¹. RP Aug 2nd pgs 2-3, see also CP 117 The court abused its discretion when the court’s inquiries were nothing short of meeting a threshold or adequate cause hearing; while by definition of LFLR 14(d)(5), adequate cause or threshold hearings, when none are required where Petitions for Modification of Support shall proceed as original determinations.

Nonetheless, without discovery, evidence or presentation the court continued commenting despite the issues raised by Ms. Case’s response. CP 80-95 And even after first commenting that the petition did allege statutory requirements of a change in circumstances. The court concluded

¹ LFLR 14(d)(5) Independent Proceedings. Except as otherwise stated, Petitions for Modification of Support shall proceed as original determinations, with no threshold or adequate cause hearing required.

further after inquiry, by commenting that Ms. Case's requested deviation reason did not meet the criteria to deviate. The court went on to state; "the court won't even be able to look at those factors." RP Aug 2nd pg 71. 10 This is incorrect; support is based on the parent's income, resources, and standard of living in light of the totality of the financial circumstances. Marriage of Lee 57 Wn. App. 268, 788 P.2d 564; Marriage of Leslie, 90 Wn. App. 796, 802, 954 P.2d 330; Marriage of Scanlon, 109 Wn. App. 167; see also Shellenberger, 80 Wn. App. 71. A court necessarily abuses its discretion if its decision is based on an erroneous view of the law. Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054, citing Marriage of Scanlon, 109 Wn. App. 167; Marriage of Choate, 143 Wn. App. 235.

Additionally, Ms. Case argues the February 6, 2013 order obstructed a right to petition for modification and should be held invalid and void. CP 27-34 The February 6th order specifically stated in Sec 3.9 the adjusted or permanent order "may" be addressed on the family law motions calendar if the parties cannot agree. CP 30 Ms. Case reached out in good faith and attempted agreement between parents; however it was Ms. Triplett's bad faith interference and unauthorized demand requirements that affected Ms. Case's right of review that escalated the

petition. This “may” was permissive and should not be construed to deny other remedy available through other statutes or court rules.

In *Parkland Light & Water Co. v. Tacoma-Pierce County Bd. of Health*, 151 Wn. 2d 428, 437, 90 P.3d 37 the court noted;

“It is well established that the use of “may” in a statute indicates that the provision is permissive and not binding, while the use of “shall” indicates a mandatory obligation.”

Notwithstanding, Ms. Case argues; why should the use of “may” in the course of a judicial order have a different meaning than that of a statute or court rule. When, as here, the order appears to exclude a parties “at any time” right to a Modification under RCW 26.09.170(1)(5)(a)². Moreover, this excluded appearance to deny this right should be held invalid and impermissible in light of RCW 26.09.100(2).³

Ms. Case argues an adjustment action simply conforms existing provisions of a child support order to the parties current financial circumstances. An adjustment of child support under RCW 26.09.170 is narrower in scope than a modification of child support under RCW 26.09.170(1) and is more limited in terms of the relief that can be granted

² RCW 26.09.170(5)(a) A party to an order of child support may petition for a modification based upon a showing of substantially changed circumstances at any time.

³ *RCW 26.09.100(2)* in part: Provisions in the decree for periodic adjustment or modification shall not conflict with RCW 26.09.170 except that the decree may require periodic adjustments or modifications of support more frequently than the time periods established pursuant to RCW 26.09.170.

by a trial court. Marriage of Scanlon, 109 Wn. App. 167. Ms. Case further argues that none of the modified provisions, in either the Feb 6, 2013 nor the Nov 8, 2010 adjustment orders was a part of nor entered in the original decree and were not a part of nor entered on the last and prevailing Support Modification entered June 6, 2007. CP 1-12 Ms. Case argues the Nov 8, 2010 and Feb 6, 2013 order should be held as invalid modifications. CP 13-26, 27-34 Nevertheless, as previously noted, the Feb 6th order interfered with RCW 26.09.170(1)(5)(a); that the “may” within the order was permissive in substance and therefore contradicts with RCW 26.09.100(2) as an impermissible interference denying Ms. Case the right to petition for modification under RCW 26.09.170(1)(5)(a).

The February 6, 2013 order was entered on the basis of an adjustment. CP 27-34 Likewise, the November 8, 2010 order was also entered on the basis of an adjustment. CP 13-26 The November 8, 2010 order worked a future support obligation and redefined the terms of the June 6, 2007 order. CP 1-12 As did the February 6, 2013 order by working in a retroactive provision in Sec 3.9 and a periodic adjustment in Sec 3.16. CP 30-31 However, in Sec 3.13 of the February 6th order, the court went on to state; “This is an interim temporary order and shall remain in effect until a subsequent child support order is entered by this court or is terminated.” CP 31 Under the terms of Sec 3.9, the court

retroactively set the point at which support was to begin and in complete contradiction to Sec 3.13 that the order would remain in effect until modified. CP 30-31 Ms. Case argues that Sec 3.9 provides a contradictory retroactive provision and creates an impermissible retroactive award. Suggesting, as here, if the order is not modified until some time in the future, but support was by this order to begin some time designated in the past; constitutes a leverage of retroactive impermissible arrears.

ASSIGNMENT OF ERRORS 3

On Aug 2nd and Oct 11th, the court frequently interrupted Ms. Case's attempts to speak and address the issues. RP Aug 2nd, pg 4 ll. 18, 25, pg 5 ll. 6, 13, 19, pg 7 l. 13-21 and RP Oct 11th, pg 7 l. 16, pg 8 l. 19, pg 9 ll. 9, 22, pg 12 l. 10 However, on Aug 2nd, the court additionally read confusion and uncertainty into the February 6th order Ms. Case recited. RP Aug 2nd pg 5 ll. 3-25 Here, the courts frustration and aggravation was more than noticeable; however the report of proceedings simply cannot articulate these nonverbal expressions and conduct behavior. On Aug 2nd, the court referred to an order that was purportedly agreed to by Ms. Case and appended Ms. Case's signature. On two separate occasions Ms. Case denied this statement and again attempted to speak. In fact, at no point on Aug 2nd was Ms. Case given opportunity to

address the allegations in the petition or the substantive evidence; nor the ability to raise the default fact that Ms. Triplett did not file a response to the petition within the 20 days as defined by rules. CP 301-371; RP Aug 2nd pg 4 l. 18, pg 5 ll. 6, 17; RP Oct 11 pg 8 l. 19, pg 9 l. 21

Nevertheless, the court continued, saying the order was signed by the court March 20th and entered into the record March 21st. RP Aug 2nd pg 5 ll. 22-25 It is unknown exactly what and/or who's order the court was referring to, it was certainly not the February 6, 2013 order. CP 27-34 In fact, if this March order were true, this unknown referenced order would have been entered into the court record between entries dated Feb 25, 2013 and April 1, 2013, where there are no March 2013 entries. Therefore, the propounded March 20th-21st support order is not supported by nor does it even exist in the court record. Accordingly, this is an abuse of discretion and unarguably untenable.

ASSIGNMENT OF ERRORS 4 and 5

The conduct of the court on August 2nd and Oct 11th was egregious and served a gross injustice. Ms. Case refers to Canon rules 1, 2.2, 2.3 and 2.6.

Ms. Case is a transsexual female post 2002, however despite Ms. Case's gestures of discomfort and body language of disapproval; the court continued to publicly humiliate Ms. Case with negative pronoun

stereotyping by repeatedly referring to her as “sir” while frequently interrupting Ms. Case’s attempts to speak. RP Aug 2nd, pg 4 l. 1, pg 5 l. 11 On October 11th the presiding commissioner was the same as August 2nd; wherein Ms. Case once again faced the same Canon Rule violations 1, 2.2, 2.3 and 2.6. Ms. Case was for a second time, treated with extreme prejudice and disrespect by the court. The consistent interruptions prevented the ability to present or argue the issue’s just as the court did on Aug 2nd and was an obvious abuse of discretion. Ms. Case argues that she was denied fair impartial treatment to present argument and introduce evidence; that consistently being referred to as “sir;” is disrespectful, is a labeled epithet and a demeaning slur. RP Oct 11, pg 7 l. 10, pg9 ll. 15, 23, pg 13 l. 8. However, even despite bringing the disrespectful demeaning discomfort to the courts attention. RP Oct 11, pg 7 l. 11 On Oct 11th, Ms. Case pointed out the commissioner was same and had reviewed CP 299-300. RP Oct 11, pg 9 ll. 13-18 In fact, CP 299-300 was filed July 25th, for the Aug 2nd hearing. The court continued the inappropriate pronoun reference; when Ms. Case became visually angry and again attempted to speak; wherein the court responded, “I am doing the best I can.” That Ms. Case is just expected to be appeased by this, that this somehow justifies public humiliation, displayed disrespect and unfair proceedings. RP Oct 11, pg 9 ll. 15-25 and pg 10 l. 1 In fact, the court specifically asked Ms.

Triplett if she had seen CP 299-300. RP Oct 11, pg 12 l. 5 Ms. Triplett without hesitation committed perjury and openly lied to the court. RP Oct 11, pg 12 l. 6 Ms. Triplett had not only seen this sealed document; Ms. Triplett never provided contrary corroboration, but as a substitute did indeed present comment by reply “despite what he may have posted to the contrary on his Facebook page.” CP 193

Ms. Case can only distinguish this manifest bias and prejudice is due to perceived negative pronoun stereotyping and aversion toward Ms. Case’s sexual orientation. In fact, Ms. Case even commented on the courts behavior, as Ms. Case had not seen this form of humiliation in ten years. RP pg 9 l. 25 Notwithstanding, although both the Aug 2nd and Oct 11th Report of Proceedings provide a written verbatim account; these verbatim reports do not capture nor illustrate the nonverbal demeanor, frustration or aggravation established and displayed by the court on August 2, 2013 and October 11, 2013.

In fact, as a result and based on the above experienced circumstances, Ms. Case as a separate prayer un-assign’s error to this public policy concern and at the same time asks; since we live in a state that now recognizes legal same sex marriage equality, public accommodations equality; insurance, consumer loan and employment equality. Ms. Case additionally argues as a matter of public policy that

this form of treatment, distain for individual freedom of choice and disrespectful discrimination within the boarders of this state's judicial system cannot continue nor prevail; it is contrary to law, it is a gross abuse of discretion of judicial power and violates the oath of ethical standards.

Ms. Case prays this court will, in addition, specifically rule on this topic as a matter of public policy and publish that standard; thus providing all people of this state assurance this form of performance and conduct behavior shall not be tolerated in the judiciary in the State of Washington.

ASSIGNMENT OF ERRORS 6-9

As a result of the August 2nd order; the court abused its discretion and erred offering legal advice by advising Ms. Triplett submit to the TBA commissioner, quoting "that's what the rules require; submit your motion without oral argument to the commissioner who presides over that trial; that if you set out the facts, may grant relief if that commission finds that there is no substantial change of circumstance." RP Aug 2nd, pg 7-8

On August 6, 2013, Ms. Triplett filed "a notice of hearing - Dismiss Petition to modify & grant adjustment of support" on the TBA calendar. CP 290 Ms. Triplett however, did not file any motion, supporting documentation or declaration with the clerk's office to be recorded in the court file.

Motion, how made is defined by CR 7(b)(1);

An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought.

LCR 7(b)(1) details this process even further and in the form required by

LCR 7(b)(5)(B)(i-vi)

Filing is further defined by CR 5(e);

The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him or her, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk.

LCR 5(d) defines local filing;

No motion for any order shall be heard unless the original documents pertaining to it have been filed with the Clerk.

A motion must be presented to the trial court in a procedurally correct manner in order for the court to rule on the motion. Ms. Triplett's notice of hearing did not include a motion and did not follow LFLR 5(c)(2) nor LFLR 14(c)(1) with which shall conform to LFLR 6 and LCR 7 which affirms motion documents shall first be filed with the clerk's office and use forms required by LFLR 3.

Ms. Case argues "what motion;" we have nothing but a "notice of hearing," without original documents pertaining specifically to address the TBA court nor was anything filed by Ms. Triplett or the court with the Clerk. LCR 5, CR 5(e) Ms. Triplett's "notice of hearing," was without

compliance of LCR 7(b)(3)(C), LFLR 5(c)(2), LFLR 14(c)(1) in the form proscribed by LCR 7(b)(5)(B) and is missing completely; (i) requested relief, (ii) statement of facts, (iii) statement of issues (iv) evidence relied upon or (v) authority.

In fact, Ms. Triplett did not follow nor comply CR 4(a)(2), RCW 26.09.175(4),⁴ LFLR 14(b)(1)(B) or the Summons from the onset of the Petition. CP 35 Wherein, each affirms a response “shall” be filed and served within 20 days. By the terms of RCW 26.09.175(4), response to a petition was mandatory, meaning Ms. Triplett carried a mandatory duty to respond to the petition within 20 days and the court carried an imperative duty to enter a judgment of default. Ms. Triplett had within 20 days with which to file a motion to dismiss if brought before expiration under any one of the CR 12(b) reasons. Moreover, RCW 26.09.175(5)⁵ provided the avenue in which to address the petition after the mandatorily required response to the petition had been filed. Ms. Triplett did not. Instead, Ms. Triplett filed late in the incorrect court a dual purpose motion; a motion to dismiss jointly with a motion to adjust despite RCW 26.09.175(4)(5). Ms.

⁴ RCW 26.09.175(4) A responding party's answer and worksheets shall be served and the answer filed within twenty days after service of the petition or sixty days if served out of state. A responding party's failure to file an answer within the time required shall result in entry of a default judgment for the petitioner.

⁵ RCW 26.09.175 (5) At any time after responsive pleadings are filed, any party may schedule the matter for hearing.

Triplett's initial motion to dismiss the petition was not filed within 20 days with which the response to the petition was due. CP 44 In addition, Ms. Triplett's motion to dismiss was not filed until July 16th and was mailed to Ms. Case by an attorney. CP 289 However, under CR 6(e) 3-days shall be added, thus this motion to dismiss the petition notifying Ms. Case of the action, became officially effective on July 19th, well past the 20 days with which the response to the petition was due. Ms. Triplett did not respond with the mandatory form averring the petition for modification until July 30th; 31 days after being personally served. Ms. Triplett acknowledges responding July 30th and at that time denied 1.4 despite her own admission of interfering with Ms. Case's right to review income. CP 89, 96-97, 292-293 And further, in the face of being personally served garnishment proceedings for the unpaid childcare debt Ms. Triplett concealed and falsely claimed was of Ms. Case's doing. Ms. Triplett also denied 1.6 despite insurmountable evidence that suggests she misrepresented and concealed the whole story. CP 309-314

Even under CR 8(d), averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. RCW 26.09.175(4) specifically addresses the courts course. Ms. Triplett had within 20 days to respond, of which response is required and on forms

designated as mandatory. Ms. Triplett's motion to dismiss the petition was not in any way a CR 12(a)(4) counter claim nor did Ms. Triplett aver or mention CR 12(b)(6) or any other CR 12(b) defenses other than stating, "motion to dismiss;" likewise, Ms. Triplett did not aver any section of the Petition 1.1 through 1.6 on the mandatory form until 31 days after being served. CP 96-97

On Aug 2nd, by response declaration filed July 25th; Ms. Case did request by prayer, a default judgment and sanctions. CP 86 Ms. Case filed a response and combined motion with notice of hearing for default August 9, 2013, and served Ms. Triplett. CP 101-108 However prior to a response, discovered mandatory forms were required. Ms. Case memorialized that motion Aug 12th by immediately amending the default motion to comply with RCW 26.09.006 and was filed within days of the original filing and served. CP 109-122 The amended motion for default merely complied with mandatory forms. However, were a party's failure to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. RCW 26.18.220(3). The context meaning of "format," refers to paper documents. CR 10, GR 14 This is not the same nor should it be construed as the same for failure to properly file a procedural motion. Nonetheless, the court did not

dismiss, deny nor consider Ms. Case's default motion; the court failed to adjudicate the default motion entirely. CP 101-122

Notwithstanding, in RCW 26.09.175(4) the word "shall" result in entry of a default judgment is defined as mandatory. "The word 'shall' in a statute is presumptively imperative and operates to create a duty.....The word 'shall' in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent." State v. Krall, 125 Wn.2d 146, 148, 881 P.2d 1040, (citing *Erection Co. v. Dep't of Labor & Indus.*, 121 Wn.2d 513, 518, 852 P.2d 288. However, "the meaning of 'shall' is not gleaned from that word alone because purpose is to ascertain legislative intent of the statute as a whole." As the Court in Krall explains, "in determining the meaning of the word 'shall' the court traditionally considers the legislative intent as evidenced by all the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another." (citing *State v. Huntzinger*, 92 Wn.2d 128, 133, 594 P.2d 917. Any argument that the statute's use of "shall" is permissive is without merit. In *Erection Company v. Department of Labor and Industries*, 121 Wn.2d 513, the Washington State Supreme Court explained:

ordinary The court must give words in a statute their plain and meaning unless a contrary intent is evidenced in the statute. It is well settled that the word 'shall' in a statute is presumptively imperative and operates to create a duty. The word 'shall' in a statute thus imposes a mandatory requirement unless a contrary legislative intent is apparent.

A statutory construction is a question of law reviewed de novo. *W. Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 607, 998 P.2d 884.

When a statute and a court rule irreconcilably conflict, the statute supersedes the court rule if the nature of the right at issue is substantive. *Marriage of Leslie*, 90 Wn. App. 796, 802, 954 P.2d 330 The primary objective of any statutory construction inquiry is to ascertain and carry out the intent of the Legislature. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24. When statutory language is clear and unequivocal, courts must assume that the legislature meant exactly what it said and apply the statute as written. Absent ambiguity, a statute's meaning must be derived from the wording of the statute itself without judicial construction or interpretation. *Ricketts v. Wash. State Bd. of Accountancy*, 111 Wn. App. 113, 116, 43 P.3d 548, 549; (quoting *Fray v. Spokane County.*, 134 Wn.2d 637, 649, 952P.2d 601.

Ms. Case also argues, because a dismissal of the petition effects a substantial right and in effect determined a parties right to modify child

support and discontinued the modification proceeding the appellate court has entertained appeals from the trial court deciding a petition to modify, citing *Marriage of Choate*, 143 Wn. App. 235, 177 P.3d 175. A trial by affidavit is reviewed to determine if the findings of fact are supported by substantial evidence and if the trial court made an error of law subject to correction on appeal. *Shellenberger*, 80 Wn. App. 71. In making a decision to grant or deny a modification of a child support obligation, a trial court must enter findings of fact and conclusions of law on the issue of whether a substantial change of circumstances has occurred. Such a decision, however, would require supporting findings and conclusions that no substantial change in circumstances had occurred. *Marriage of Lee* 57 Wn. App. 268, 788 P.2d 564. However, whether a substantial change in circumstances had occurred is a factual question within the court's discretion after consideration of the circumstances of both parties. *Marriage of Chapman*, 34 Wn. App. 216, 220, 660 P.2d 326; *Marriage of Belsby*, 51 Wn. App. 711, 713, 754 P.2d 1269. Therefore, the proper standard of review is whether the findings are supported by substantial evidence and whether the trial court has made an error of law that may be corrected upon appeal. This result is not inconsistent with *Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353. In *Rosier*, because the record on appeal is identical to that considered by the trial court, the reviewing court will

not be bound by findings of fact that are unsupported by substantial evidence. Marriage of Stern, 68 Wn. App. 922, 846 P.2d 1387; Marriage of Shellenberger, 80 Wn. App. 71, 80-81, 906 P.2d 968. Further, the court's findings of fact and conclusions of law should be sufficient to suggest the factual basis for its ultimate conclusions. Marriage of Monaghan, 78 Wn. App. 918, 925, 899 P.2d 841.

Ms. Case argues the Aug 6, 2013 “notice of hearing” on the TBA calendar was improperly noted without a motion. CP 290 The “notice of hearing” was the result of procedurally flawed irregularity and comprised of no legal motion to be on that calendar, but regardless of LCR 5, the matter was heard, adjudicated and with prejudice dismissed; upon which effected Ms. Case’s due process rights and is void. It is unknown precisely what the TBA court relied upon because the record is devoid of any factual motion nor evidenced documents to support accurately what original documents pertaining to it was provided. Notice of Appeal pg 3-5

Therefore, on Sept 9th the TBA court dismissed Ms. Case’s petition on untenable grounds, unknown findings and unidentified applicable law. The TBA court never considered whether a substantial change had occurred nor considered the circumstances of either party; nonetheless improperly before the court to begin with. Moreover, the TBA court failed to enter findings of fact and conclusions of law to

support the order dismissing the petition; likewise, there is nothing in the record to support this dismissal. These facts remain the same for Ms. Triplett's unsupported notice of hearing to adjust that was denied without prejudice on Sept 10, 2013.

The trial court is required by CR 52(a)(2)(B) to enter written findings and conclusions, and the appellate court is not free to disregard them. Findings of fact are required in connection with all final decisions in divorce proceedings and for all orders of child support, including orders in support-modification proceedings. RCW 26.19.035(2) An absence of findings and conclusions in the record on appeal requires reversal and remand. *Marriage of Lee*, 57 Wn. App. 268, 788 P.2d 564; see also *Marriage of Stern*, 68 Wn. App. 922, 846 P.2d 1387. Only the entry of written findings of fact demonstrate that the trial court properly exercised its discretion. *Marriage of McCausland*, 159 Wn. 2d. 607.

Ms. Case argues that no findings of fact or conclusions of law were entered for dismissing the petition. Notice of Appeal, pg 3 Further, on Sept 16th upon a motion for reconsideration Ms. Case specifically sought the basis and explicitly requested the court provide findings of fact and conclusions of law regarding its dismissing the petition. CP 123-127 The court simply denied the motion for Reconsideration and abandoned

answering Ms. Case's request without responding or providing any reasons for dismissing the petition. Notice of Appeal, pg 7

Because the appellant court has no findings, they are not only unable to review critical rulings, but it is unclear just what the trial court based those rulings on, both factually and legally. However true, Ms. Case also argues, this is not simply a matter for remand to enter findings of fact and conclusions of law; both the Sept 9th and Sept 10th matters are essentially void; there was no legal procedural motion to be before the court.

ASSIGNMENT OF ERRORS 10-13

Generally, an appellate court will "review the decision or parts of the decision designated in the notice and other decisions in the case as provided in sections (b), (c), (d), and (e). RAP 2.4(a) Section (b), which applies in this case, provides as follows:

The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review. RAP 2.4(b).

Ms. Case additionally sought review under RAP 2.4(b) for orders dated Aug 2nd, Sept 9th, and Sept 10th that all draw into question the legality, valid legitimacy and soundness for the orders entered May 26, 2009, November 8, 2010 and February 6, 2013. However, on Sept 24th,

Ms. Triplett again filled another motion to adjust support. CP 294-298

Ms. Case argues the Oct 11, 2013 order prejudicially affects the decision designated in the notice; and the resulting order was entered before the appellate court accepted review on November 21, 2013. CP 148-155 See also Exhibit 1

Despite a failure to respond to the petition, disregarded rules and procedures or objections, an adjustment was granted on October 11th. On the order; the court hand wrote at Sec 2.1, "This adjustment is made pursuant to the ruling of Feb 6, 2013." CP 148 Based on a requested deviation from the courts oral ruling in Sec 3.8, Ms. Case wrote, "denied did not meet criteria," but the court over wrote, stating "court finds no basis to deviate." CP 151 The court then retroactively set the support start date at June 1, 2013 as noted by Sec 3.9 from the February 6th order. CP 30 However, this is in complete contradiction of Sec 3.13 from the February 6th order that stated the order remained in effect until modified. CP31 The importance of this contradiction is in the validity of a retroactively imposed support obligation which has previously been shown to be an impermissible retroactive award. This state reflects long-settled law that a modification of child support may not operate retroactively. See *Wilburn v. Wilburn*, 59 Wn.2d 799, 801-02, 370 P.2d 968 (1962); *Koon v. Koon*, 50 Wn.2d 577, 579, 313 P.2d 369 (1957); *Sanges v. Sanges*, 44

Wn.2d 35, 38-39, 265 P.2d 278 (1953); McGrath v. Davis, 39 Wn.2d 487, 489, 236 P.2d 765 (1951); Kinne v. Kinne, 137 Wash. 284, 242 P. 388 (1926); Beers v. Beers, 74 Wash. 458, 133 P. 605 (1913); Shoemaker, 128 Wn.2d 116, citing Marriage of Scanlon, 109 Wn. App. 167. Although reserved as a result of repeat errors from the beginning; Ms. Case argues the start date should have begun the day of the hearing IF based on the Feb 6th order at Sec 3.13 that the order shall remain in effect until modified. CP 31 Here, as a result of this retroactively imposed support obligation; in addition to being denied a meager \$87 to improve Ms. Case's involuntarily accrued debt; Ms. Case now incurred five months of additional arrears. RP Oct 11, pg 12 l. 17, pg 13 l. 18

Ms. Case acknowledges the court did address the income amounts by discussing calculation differences. The court ruled Ms. Case's figures to be accurate and set the presumptive amount at \$287 per month based on one child, but crossed out Ms. Case's involuntarily incurred debt from the support worksheet. CP 145

Lastly, the court discussed Ms. Case's requested deviation, but denied the deviation request on the basis that the legislation did not intend this form of involuntary accumulated debt; despite the result was incurred from an involuntary unemployment situation. Nonetheless, the court continued disrespectful pronoun stereotyping and again stated this was not

a basis for deviation. The court described this as “the legislation meaning was only for debt that is usually referenced as people who have substantial debt because of members of their immediate family have an illness that is created and not having health care.” Ms. Case objected by attempting to reference the rules, but again was cut short from speaking. RP Oct 11, pg 13 ll. 8-15 The oral ruling, based on the courts descriptive legislation meaning is inaccurate, is clearly an incorrect view of the law and amounts to an abuse of discretion.

RCW 26.19.020 expressly gives a trial court discretion, in appropriate circumstances, to deviate from the standard amount of child support established by the Washington State Child Support Schedule. In the absence of a written finding of fact, an appellate court may look to the oral opinion to determine the trial court's basis for resolving the issue. *Marriage of Griffin* 114 Wn.2d 772, 791 P.2d 519. An order modifying a child support obligation must be supported by written findings of fact and conclusions of law. *Marriage of Scanlon*, 109 Wn. App. 167. A court necessarily abuses its discretion if its decision is based on an erroneous view of the law. *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054, citing *Marriage of Scanlon*, 109 Wn. App. 167; *Marriage of Choate*, 143 Wn. App. 235.

The court made no findings about lifestyles, expenditures or the needs of the parties. Case Law suggests, as do the statutes, that support is based on the overall “total circumstances” of the parties, this includes leaving the obligor with enough resources to pay rent, buy food and other essentials; this includes preexisting debt and paying for transportation fuel to get to and from employment. Marriage of Scanlon, 109 Wn. App. 167; Shellenberger, 80 Wn. App. 71.

Ms. Triplett was made fully aware in writing that Ms. Case’s income was \$10k lower than previously contemplated, however now when comparing current incomes, supports a substantial inequity. Here, Ms. Triplett earns \$25 per hour as compared to Ms. Case earning \$17.60 per hour. Ms. Triplett’s income is acknowledged. CP 211-223 Ms. Case’s income is acknowledged. CP 254-265 Ms. Triplett’s income significance is \$6.45 per hour or \$1085 per month more than Ms. Case’s entire monthly income. Ms. Case merely requested a minimal deviation of \$87.00 from the \$287 per month obligation to restore order to a runaway debt involuntarily incurred. CP 176-191 The minimal \$87 deviation request, in no way harmed Ms. Triplett with such a significant per hour wage increase and did not leave Ms. Triplett without sufficient support. Ms. Case specifically provided the court with evidence supporting RCW 26.19.075(1)(c)(i)(ii); the debt was not voluntarily incurred; was the result

of an unfortunate lengthy involuntary unemployment situation and included a current explanation of additional increased expenditures in the form of monthly fuel receipts. CP 177-181 This is an additional loss of income in addition to Ms. Case's over all wage reduction. Ms. Case's request was very reasonable on the basis of RCW 26.19.075(1)(c)(i)(ii), plus the record is supported by substantial evidence to sustain the minimal \$87 request to deviate. Deviation under these circumstances was equitably appropriate.

RCW 26.19.075 sets the standards for deviation; a nonexclusive list of reasons for deviation from the presumptive amount includes: "Possession of wealth, extraordinary debts that have not been voluntarily incurred; extraordinarily high income of a child, a significant disparity of the living costs of the parents due to conditions beyond their control or special needs of disabled children. Nonetheless, the results correspond equitably within each parent's income, resources, and standard of living in light of the totality of the financial circumstances. Marriage of Lee 57 Wn. App. 268, 788 P.2d 564; Marriage of Leslie, 90 Wn. App. 796, 802, 954 P.2d 330; see also Marriage of Scanlon, 109 Wn. App. 167; Shellenberger, 80 Wn. App. 71.

In Marriage of Holmes, 128 Wn. App. 727, 734, 117 P.3d 370; the trial court made a number of findings about the lifestyles, expenditures,

and needs of the parties. In fact, the Appellate Court noted “Our reading of RCW 26.19.075 is supported by the child support worksheets themselves, which are required by RCW 26.19.050 and appended to chapter 26.19 RCW. The child support worksheets provide for calculation of a basic child support obligation and a presumptive transfer payment for each parent, but do not provide for the calculation of a net support transfer payment.”

When deciding income to a parent for the purpose of establishing an obligation of support, the court must consider not only how much money the parent is capable and qualified to earn from employment, but also the parent's preexisting debts and reasonable monthly living expenses. *Shellenberger*, 80 Wn. App. 71. When a court chooses to grant or deny a request for deviation, it must provide “specific reasons” for its decision in written findings of fact, and those findings must be supported by substantial evidence. *In re Marriage of Bell*, 101 Wn. App. 366, 371, 4 P.3d 849 (quoting RCW 26.19.075 (2); citing 137 Wn. App. 417, Mar. 2007 *State ex rel. J.V.G. v. Van Guilder*, (quoting RCW 26.19.075(3).

Wherein, “specific reasons” require written findings; Ms. Case argues that simply stating as the court did on the Oct 11th order in Sec 3.8 “court finds no basis to deviate,” does not specifically explain in a rational way to ascertain exactly what basis the court denied the deviation. CP 151

The statute unequivocally requires written findings of fact to support or deny any deviation and in full consideration of the total circumstances of both households. The trial court's acceptance of, and reliance on, these worksheets without findings showing consideration of all household circumstances constitutes error similar to that the Supreme Court noted in McCausland, 159 Wn. 2d. 607. In McCausland, any deviation from the standard calculation is necessarily a fact-intensive decision. citing Marriage of Choate, 143 Wn. App. 235. A deviation from the standard amount is an exception and should only be used if it would be inequitable not to do so. In re Marriage of Goodell, 130 Wn. App. 381, 391, 122 P.3d 929. The legislative purposes was affirmed and supported by the Supreme Court in Marriage of Sacco, 114 Wn.2d 1, 784 P.2d 1266. There, the court remanded a child support determination holding that the trial court is required to calculate, according to the schedule, the presumptive amount of child support, even if the trial court decides to deviate from it. The Supreme Court further held that while the statute allows a trial court to deviate from this amount in certain circumstances, written findings supported by the evidence must be entered if the court does so. RCW 26.19.075(3), see also Marriage of Lee 57 Wn. App. 268, 788 P.2d 564.

To finish this brief, Ms Case respectfully asks this court for fees and costs under RAP 18.1 which authorizes the appellate court to order

one party to pay the other's reasonable fees and costs based on the requesting party's demonstrated financial need and the other party's ability to pay. Marriage of Kimpel, 122 Wn. App. 729, 735, 94 P.3d 1022; other citation omitted.

Ms. Case has incurred hundreds of dollars in fees, costs and lost wages from a new job responding to Ms. Triplett's repeat filed and unfiled motions and notices, wherein Ms. Triplett's own intransigence since February 6, 2007 remained silent and concealed, nevertheless created a disastrous but avoidable financial burden and yet currently forced a petition because of unauthorized bad faith demands. Where, in addition to numerous errors noted herein; a mandatory response to the petition was untimely.

Ms. Case's financial documents establish her modest income. CP 257-265 And, Ms. Triplett's substantially higher income. CP 205, 210-223 Ms. Case provided evidence of financial distress by reason of unpaid involuntary debt as a result of extended involuntary unemployment. CP 176-191 Neither of these unfortunate situations had held Ms. Case out to be at fault nor done so intentionally in bad faith to evade a support obligation. Ms. Case has demonstrated a need for an award of fees and costs on appeal.

CONCLUSION

Due to the nature of events, necessitates applying them in reverse. On Oct 11th, there are judicial issues defined as disrespect, prejudice and stereotyping based on a persons sexual orientation were the lack of fair and impartial hearings prevented justice. Denied a party deviation based on an incorrect view of the law with inadequate findings which by statute require specific findings where none exist. These facts require reversal and remand.

However, in turning to the orders entered Sept 9th and Sept 10th that essentially opened the way to Oct 11th; in which the court denied an adjustment of support without prejudice with which allowed Ms. Triplett to again pursue Oct 11th because the court dismissed a petition for modification for which this appeal is concerning. Wherein, both orders were procedural flawed, was improperly before the court without a motion; nonetheless the irregularity was pursued. These procedural defects alone require that both orders be void. And by so doing negates the order established on Oct 11th as it should have never take place under these circumstances.

Next, in turning to the order entered on Aug 2nd, here, the court from the beginning established that it was without subject matter jurisdiction over the type of controversy, this despite confirming the petition did allege such changed conditions as to call for the court

entertaining the petition. Nevertheless, the court continued in error with efforts to demonstrate adequate cause or threshold; where by local court rule none shall be required. However, despite the courts conduct that initiated the prejudice and unfair impartiality with frequent interruptions as the court did on Oct 11th; despite the persistence of an unknown and unsupported court order, to which only added unnecessary frustration and aggravation into the Aug 2nd proceeding. The court was from the beginning without subject matter jurisdiction over the type of controversy. This alone requires the matter be void. As a consequence, the Sept 9th, Sept 10th and Oct 11th orders should not have advanced and are void.

Lastly, the petition was initiated as a product of the opposing parties intransigencies, unauthorized demands and attempts to conceal by interfering with the appellant's right to review income. The petition did allege such changed conditions as to call for the court entertaining the petition, included the personal misfortune of the appellant and several arguable issues that an adjustment simply could not address. Moreover, the opposing party never timely responded to the petition; but instead created months of unjustifiable delay. The required mandatory response to the petition was not filed until 31 days after being served, whereas court rules and statutes alike; define this required response "within 20 days." Further, where a party fails to respond; mandatory statute understanding

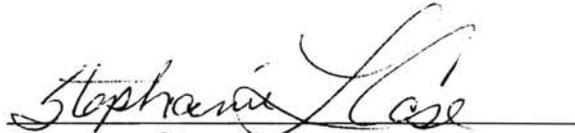
demands an order of Default. Thus, Aug 2nd, Sept 9th, Sept 10th and Oct 11th are nonexistent and void, as neither order should have proceeded forward.

In addition, the February 6, 2013 order should be held invalid and void as a result of creating an impermissible retroactive award. Wherein both the November 8, 2010 and the February 6, 2013 orders should be held invalid for impermissibly modifying provisions that were not a part of nor entered in the last and prevailing Support Modification entered June 6, 2007. Likewise, it is equitably disproportionate and unsound to continue holding damage to Ms. Case, where the May 26, 2009 order should be vacated on the declarable basis of clear and convincing evidence that validate Ms. Triplett's misrepresentation, repeat concealment and intentional deceit; that indeed exploded into a created yet avoidable damage by means of escalation initiated by KidKare Schoolhouse Inc. through Renton Collections resulting in a pending District Court Cause against Ms. Triplett for unpaid childcare expenses that Ms. Case undeniably paid through mandatory employer wage withholding. Moreover, as a result of these intransigencies, Ms. Triplett shall bear this entire debt and all associated costs, fees and expenses forthwith, alone.

Therefore, Ms. Case prays this court rules on each error and voids or vacates these orders as described, and remands for an order of Default consistent with the mandatory requirements of RCW 26.09.175(4).

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Auburn, WA on 3/26/2014.


Signature of Appellant

Stephanie L. Case
Pro Se