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Washington State Appellate Court, Division One

Thomas O. Baicy, Petitioner	)	Reply Brief of Appellant
	)	
	)	Case no. 74894-7-1
v.	)	
	)	Title Page
Danelle M. Shay, Respondent	)	

Review from King County Superior Court No. 09-3-03868-0KNT

by

Appellant

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Thomas O. Baicy hereby replies to the response of Danelle Shay to his brief appealing the order denying motion for adjustment of child support entered by King County Superior Court UFC Judge Lori K. Smith on February 3, 2016, per RAP 2.2(a)(1).

The mother does not state any assignments of error, so there are none to which a reply is required. Nor does the mother respond to the assignments of error and the issues raised pertaining to the assignments of error in the father's brief. In the father's brief, page 4, he states that the court made oral findings on December 15, 2015, but did not express them in a written order and enter them in the court record until February 3, 2016, as stated in the Order Denying Motion. CP 118-119. In short, the mother contends the court's general denial order and oral findings triggered

the time to appeal on December 15, 2015. RP 40 The father contends the oral findings did not trigger the time to appeal. The father replies as follows:

The mother's contentions are entitled "Restatements of Error" specifically,

1. May one file a motion for a child support adjustment just one and a half months after a court issued a final, written order on a prior child support adjustment motion?

2. What makes an appeal frivolous?

In reply to Restatement of Error No. 1.

The mother's first restatement of error asks if a person can file a motion for adjustment of child support just one and a half months after a court issued a final written order. The plain language of the mother's question expresses the element of a written order. However, the mother does not discuss what constitutes a final written order in a child support hearing as expressed in RCW 26.19.035 (2), which states, written findings of fact supported by the evidence shall be entered by the court whether or not the court deviates, uses the presumptive amount or the advisory amount. Case law is extensive in this regard.

“Written findings of fact must support the court's order or any deviation from the uniform support schedule and be supported by the evidence.” *In re Marriage of Sacco*, 114 Wn.2d 1, 3-4, 784 P.2d 1266 (1990) “The uniform support schedule and requirement of written findings apply to all proceedings in which child support is at issue.” *In re Marriage of Lee*, 57 Wn.App. 268, 274 n.3, 788 P.2d 564 (1990) “On appeal, the reviewing court must defer to the sound discretion of the trial court unless that discretion is exercised in an untenable or manifestly unreasonable way.” *In re Marriage of Griffin*, 114 Wn.2d 772, 779, 791 P.2d 519 (1990)

The court on appeal must know what reasoning of the trial court to determine if the court's ruling constitutes an abuse of discretion or if its against the law as a matter of law and subject to denovo review. The legislature has expressly provided that the trial court must enter written findings of fact in all child support cases. Courts which have tried to satisfy the written requirement by stating the trial court “considered” or “was aware of certain facts and denied” were insufficient to satisfy the reasoning element of written findings of fact under the statutory standard. The appellate court cannot be placed in the position of guessing at the trial court's reasoning, nor can the parties. *In re Marriage of Choate*, 143 Wn.

App. 235, 177 P.3d 175 (2008) However, the court can satisfy the requirement by giving written explanations as to its conclusions. In *re Skay v. Johnson*, 81 Wn. App. 202, 913 P.2d 834 (1996) Therefore, a general denial does not satisfy the standard of written findings of fact supported by the evidence, since it does not express the reasoning of the court and leaves the parties to guess at the courts reasoning. This failure frustrates due process and the appellate process because assignments of error are required and issues pertaining to the assignments of error must be presented to appeal a trial court decision. Consequently, the mother's assumption that oral findings satisfy written findings is flawed and fatal on appeal.

The mother contends in her response the father had to appeal the oral findings of fact entered on December 15, 2015, to preserve his right to appeal. CP 95 The father contends the oral findings of fact do not satisfy the written findings of fact standard supported by the evidence under RCW 26.19.035, so the time allowed to appeal did not begin until the court reduced its oral findings to written findings of fact on February 3, 2016.

At the conclusion of the hearing on December 15, 2015, UFC Chief Judge Lori K. Smith asked the mother's attorney,

Richard Cassady to prepare an order, stating “It can simply state that the motion for adjustment is denied, and the request for fees and terms is also denied.” RP 40, lines 8-12 When the court instructed Mr. Cassady that the order can merely state the motion for adjustment is denied, the court did not fulfill the statutory requirement of written findings of fact as a matter of law, since written findings must state the reasons the court ruled in applying the law to the facts. Written findings of fact are required by statute, so the absence of them is error. Child support modifications are governed by statute, so the court does not have the authority to disregard the statutory requirements by entering a general denial because written findings are mandated under RCW 26.19.035 in all child support cases. The order entered on December 15, 2015, did not satisfy the statutory elements, which would have triggered the thirty day period for appeal. The court alluded to this rule of law in its order on February 3, 2016, when the court characterized its findings on December 15, 2015, as oral findings.

Therefore, the time to appeal did not begin to run until February 3, 2016. The father's notice of appeal was filed on March 2, 2016, and is, therefore, timely.

At the hearing on December 15, 2015, the father provided all of his financial information required under LFLR 10, including the last two years of tax returns and six months of bank statements. The court instructed the father that he was required to verify his income on his tax returns by providing copies of his rental contracts with his tenants, thereby adding to the LFLR 10 requirement. The father accepted the instruction in good faith, believing if he satisfied the additional verification requirement, he could schedule another hearing and have a meaningful opportunity to be heard. Since no written findings of fact were entered by the court, the father wrote a letter to Judge Lori K. Smith on January 29, 2016, stating he had copies of his renters' contracts to verify his income and asked Judge Smith when he could note his hearing. CP 117. Judge Smith responded by finally issuing written findings of fact on the hearing that was held on December 15, 2015, memorializing her oral findings, and denied the father an opportunity to note another motion for adjustment. The intent of the new hearing was to comply with the instruction of the court because, according to Judge Smith, the father was required to show copies of his rental agreements with his tenants to verify his income for Judge Smith. LFLR 10 requires tax returns together with all schedules to verify

income and expenses, but not copies of tenant contracts to verify income, so the father contends the court erred as a matter of law by adding to LFLR 10. On the other hand, the mother failed to provide a current financial declaration and the last six months of monthly bank statements without consequence from the court.

Notwithstanding, the father was not trying to file a new motion for adjustment, but was supplying his rental contract information in good faith before the court so that the motion for adjustment that was already filed could be heard in its entirety, since Judge Smith ruled the parties still did not comply with LFLR 10. Consequently, the entire response of the mother in characterizing the father's request for another hearing as a second motion for adjustment is lacks critical information, since the father believed he was supplying financial verification information requested by the court for the motion already filed.

The mother does not discuss the assignments of error and the issues pertaining to the assignments of error in her response brief. Her entire response is based on the assumption that oral findings of fact satisfies the written findings of fact requirement for child support orders. The mother's response omits discussion of

the statutory requirement of written findings of fact under RCW 26.19.035, for all cases where child support is at issue.

Therefore, the mother's response does not challenge any of the factual information related to the assignments of error and the issues raised in the father's brief, rendering such facts as verities on appeal.

Restatement of Error No. 2.

What makes an appeal frivolous?

This is a non-issue, since the father contends his appeal is timely.

#### CONCLUSION

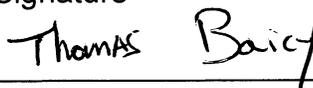
Based on the aforementioned, the appellant requests the court to reverse the order denying the motion for adjustment of child support, entered on February 3, 2016, and order that the proposed orders of the father for the hearing held on December 15, 2015, be entered by the court as the prevailing party.

September 14, 2016.



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Respectfully submitted,  
Signature



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Thomas O. Baicy

Affidavit of Service to Parties is filed together with this Brief.

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