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Washington State Appellate Court, Division One

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

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

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by

Appellant

Thomas Owen Baicy  
 1231 West James Street, Apt. 4  
 Kent, WA 98032

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 COURT OF APPEALS DIV 1  
 STATE OF WASHINGTON

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Washington State Appellate Court, Division One

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

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Thomas O. Baicy appeals 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).

ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The court erred by ruling “the petitioner (father) has not provided a sufficient reason (i.e.: a substantial change in circumstances) to permit him to re-note his motion to adjust support.” CP 95, 118-119

Issues pertaining to assignment of error no. 1

1. Is a substantial change of circumstances required as an element for an order of adjustment of child support?

### Assignment of Error No. 2

The court erred by ruling the father had a burden to prove that incomes of the parties should be imputed at an amount different than the previous order, dated May 25, 2011.

#### Issues pertaining to assignment of error no. 2

1. Did the father have a burden to prove incomes should be imputed to either party at amounts different than the previous order?

### Assignment of Error No. 3

The court erred by ruling there was no evidence to refute that the mother earns approximately \$800 per month.

#### Issues pertaining to assignment of error no. 3

1. Did the court have a basis to find that there was no evidence to refute that the mother earns approximately \$800/month?

### Assignment of Error No. 4

The court erred by finding the father failed to provide information to verify that he cannot work a union job, cannot work a union job part-time and/or cannot work a non-union job.

1. Did the father provide evidence that he could not work a union job?

Assignment of Error No. 5

The court erred by finding the father provided no evidence of a search for employment that would not interfere with the parenting plan residential transportation schedule.

1. Did the father have a burden to prove that he has been searching for work that would not interfere with the parenting plan transportation schedule?

## STATEMENT OF THE CASE

The parties present order of child support was entered on May 25, 2011. The petitioner (father) filed a motion for adjustment of child support on November 19, 2015. CP 28-29 The hearing was held on December 15, 2015, by King County Superior Court UFC Judge Lori K. Smith. The court made oral findings on December 15, 2016, 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

The father filed his motion for adjustment of child support with all of the sealed financial documents required under the King County Local Family Law Rules LFLR 10, including a current financial declaration, income tax returns and bank statements. CP 33-38, 120-171. The father attached his federal basic food assistance benefits statement issued by the Washington State DSHS in his sealed financial source documents, evidencing proof of his low income as verified by the state. CP 120-171, at 134

The respondent did not provide a current financial declaration, responding that the one she filed some years ago on September 6, 2013, was still current and that she doesn't file federal income tax returns because her self-employment income is

only \$800 per month. The mother also contended the father was voluntarily unemployed, and contested the father's claim that the residential transportation schedule impairs his ability to work as a union carpenter. CP 41-72

Petitioner replied that the union does not employ part-time carpenters and provided the union agreement showing shift schedules that conflict with the parenting plan transportation schedule. The father also showed that the mother's self-employment income requires federal tax returns and attached the IRS rules in Publication 505 evidencing the requirement. CP 76-89.

The court denied the motion for adjustment of support, stating the father has not met his burden that income should be imputed to either party at an amount different than the previous order, or provided evidence to refute that the mother's income is approximately \$800 per month, or provided evidence that the father cannot work a union job, or evidence that he has sought work that would not interfere with the transportation schedule, or proven that he is not voluntarily under/unemployed. CP 118-119

The petitioner father appeals.

## ARGUMENT

### Assignment of Error No. 1

The court erred by ruling “the petitioner (father) has not provided a sufficient reason (i.e.: a substantial change in circumstances) to permit him to re-note his motion to adjust support.” CP 95, 118-119

### Issues pertaining to assignment of error no. 1

1. Is a substantial change of circumstances required as an element for an order of adjustment of child support?

In re *Anderson v. Anderson*, the court analyzed RCW 26.09.170(7) and decided based on the plain meaning a substantial change of circumstances was not required for a motion for adjustment of child support, but only plea of a change of incomes of the parties and twenty-four months since the last order of was entered. 176 Wn. App. 1017 (2013) The Court reasoned as follows. “The interpretation and applicability of a statute presents questions of law that we review de novo.” *Grey v. Leach*, 158 Wn. App. 837, 844, 244 P.3d 970 (2010) “When interpreting a statute, the court seeks to ascertain the legislature's intent.” *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281(2005). “Where a statute's meaning is plain on its face, we must give effect to that meaning as expressing the

legislature's intent." *Jacobs*, 154 Wn.2d at 600. "Among other things, RCW 26.09.170 governs a parent's ability to modify a child support order; modifications generally are limited to situations where there has been a "substantial change of circumstances." RCW 26.09.170(1) "As an exception to this general limitation, RCW 26.09.170(1)(a) provides,

If twenty-four months have passed from the date of the entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon: (i) changes in the income of the parents; or (ii) changes in the economic table or standards in chapter 26.19 RCW.

Therefore, the court reasoned RCW 26.09.170(7)(a), permits adjustments if twenty-four months have passed from the date of the entry of the order. In *Anderson*, the court stated "The court's authority under this statute is limited to simply conforming existing calculations in a child support order to the parties' current circumstances and the current statutory standards." The *Anderson* court also stated "By its nature, an adjustment action does not require the moving party to show a substantial change in circumstances to obtain relief." *supra* Thus, under the plain meaning of the statute, a motion for adjustment is timely if filed after twenty-four months

if based upon a change of income of the parties as a matter of law, which the court does not have the discretion to deny.

The court in *Anderson* cited other court decisions which came to the same conclusion, ruling, "As stated, RCW 26.09.170 outlines some of the procedures for modifying child support orders, and subsection (7) allows the parties to adjust a child support order every 24 months without showing a substantial change in circumstances" citing *Kauzlarich v. Dep't of Soc. & Health Servs.*, 132 Wn. App. 868, 874, 134 P.3d 1183 (2006); see also in re *Marriage of Scanlon*, 109 Wn. App. 167, 173, 34 P.3d 877 (2001). "A 24-month adjustment action under RCW 26.09.170(7) is a routine action that may be effected by moving for a hearing; no summons or trial is necessary." "An adjustment action therefore simply conforms existing provisions of a child support order to the parties' current circumstances." *Scanlon*, 109 Wn. App. at 173.

Here, it has been over four years since the order of child support was ordered on May 25, 2011. The respondent (mother) has not filed a financial declaration or disclosed her current income since she modified the parenting plan on

September 6, 2013, placing substantially all the transportation burden on the father, rendering him unemployable with the union on Mondays and Fridays three weeks out of every month. The mother's attorney fails to disclose how the mother's financial circumstances have changed dramatically. The mother now lives with her meretricious attorney, Richard Cassady, with whom she has multiple children, so her entire financial life is different than it was nearly five years ago. The father has managed his four-plex over the last four years, but has not secured employment outside his home due to the burdensome transportation arrangements during the week days on Mondays and Fridays, three weeks a month, so his income should not be based upon his historical rate of pay as ordered on May 25, 2011, because that was under a different parenting plan that allowed him to work on Mondays and Fridays, without the current transportation schedule. RCW 26.09.170(7) makes it clear that parties to orders of child support may adjust their child support orders every twenty-four months merely by pleading a change of incomes. The intent of the statute is plain according to the cited court decisions and cannot be altered by the court's discretion,

since it is an issue of law. The legislature does not consider such motions frivolous, but has enacted the statutory provisions under RCW 26.09.170 as the law of the state of Washington to make certain parents' child support obligations are consistent with their present financial circumstances.

Therefore, as a matter of law, since it has been more than twenty-four months since the last order of child support was entered, and the petitioner pleads a change of income, the petitioner should have been granted the relief sought in his motion for adjustment of support. Moreover, the court should have found the mother failed to comply with LFLR 10 and ruled the father was the prevailing party.

Errors of law require de novo review. As a matter of law, a substantial change of circumstances is not required for a motion for adjustment of child support. RCW 26.09.170 Since the court denied the motion based on lack of proof of a substantial change of circumstances, the court committed an error of law. As a matter of law, this issue requires de novo review.

## Assignment of Error No. 2

The court erred by ruling the father had a burden to prove that incomes of the parties should be imputed at an amount different than the previous order, dated May 25, 2011.

### Issues pertaining to assignment of error no. 2

1. Did the father have a burden to prove incomes should be imputed to either party at amounts different than the previous order?

As a matter of law, each parent is required to disclose all income and resources of his or her household and shall be considered by the court when the court determines the child support obligation of each parent. RCW 26.19.071(1) The father's tax returns evidence his present income over the last two years, which is substantially different than the imputed income of \$3295 entered in the order of child support on May 25, 2011. Nevertheless, Mr. Cassady argued the father's income had not changed since May 25, 2011, but the father's tax returns verify that his current income is approximated twenty percent of the imputed income in 2011. CP 120-171, RP at 28 Mr. Cassady concludes the father's motion for adjustment of support should be denied based on no change of income, even though the father 's present income

is a fraction of the imputed amount of \$3295, since the last order was entered on May 25, 2011. The father lived alone then, he lives alone now.

The court asked the father in court, what evidence do I have that your employment was different, prior to the change in the schedule? The father responded that he has pay stubs at home. The court then asked, Are they contained in the documents that I have. I do not recall seeing pay stubs? RP at 16, lines 11-21 Here again, the court evidences its awareness of the sealed financial documents filed by the father, even by memory, so acting as if the court is estranged to the fact that ATM statements are not bank statements is incredulous. Now the court suggests that the father should have shown pay stubs from four years prior to the action to prove a change of income. This is error. The father is only required to show a change of income from the income imputed in the last order of child support. Pay stubs from four or five years prior to the action are not required under LFLR 10. At that time, the court used the historical rate of pay at \$3295 a month. The father's present monthly net income after property tax payments of \$961 is less than the poverty level. He verified his income according to the LFLR 10 requirements, which shows a change of income from

\$3295 when the last order was entered to \$701. Even if the mother's income is the same, the change of the father's income qualifies for an adjustment of child support, since it changes the child support obligation.

It is not the burden of the father to discover or prove the income of the mother, it is the statutory obligation of the mother to disclose her financial resources and income in her household, just as it is the father in his household. The mother failed to provide the income and resource information as required by law and LFLR 10. The mother provided an ATM bankcard statement showing purchases in September 2015, then it skips six months to solo transaction on March 24, 2015, then it skips four months back to November 19, 2014, and finally, a month back to October 5, 2014. It is not six months of banks statements as Mr. Cassady stated in court on December 15, 2015. RP at 6 Moreover, it is clear that the court had not reviewed the sealed financial source documents because Judge Smith was asking Mr. Cassady if six months of bank statements were provided. Mr. Cassady lied in open court, stating yes to the direct question. RP at 6, lines 3-5 Mr. Cassady claims there are six months of bank statement "even though there are only two pages" because they go back to October 5, 2014. RP

at 6, lines 18-22 In actuality, they skip six months from September 2015 to a solo transaction in March 2015, thereby skipping the entire six month period required prior to the date of filing the motion for adjustment under LFLR 10.

Judge Smith asks Mr. Baicy to look at the bottom of the page and go up from there, and says, "What is the very last date?" RP at 7- 8 The Judge did not have the two page ATM statement in front of her, but had reviewed it, and stated to Mr. Baicy, doesn't it have a date of 2014? It's as if Judge Smith was suggesting skipping several months of statements is proof of six months of bank statements because the document skips the time period. Under this reasoning, if the date was 2010, would the two page ATM statement constitute five years of bank statements. The court's reasoning was clearly erroneous and against the law and as well as LFLR 10. This is a clear incident of Mr. Cassidy misrepresenting the record and the court failing to adhere to the sealed financial documents requirements in favor of Ms. Shay, but in deprivation of the father's right to procedural due process of law. An ATM statement is not a bank statement under LFLR 10. Bank statements are issued monthly showing all deposits, withdrawals, charges, fees, and miscellaneous expenses. Even if an account

has no activity, a monthly bank statement is issued by the court. Ms. Shay did not file any monthly bank statements with the court. Yet this is all the mother provided to comply with LFLR 10, thereby failing to meet her burden of proof and production regarding her income and resources of her household.

When the father stated the mother has not filed tax returns as required by LFLR 10, her attorney, Mr. Cassady misrepresented the law, saying, "She hasn't earned enough to file a tax return. I'm not sure what else to provide." RP at 10 The father cited and provided IRS Publication 505 in his reply, evidencing the requirement of filing federal tax returns for self-employment income over \$600 a month, so he openly misrepresented the law in open court, and the court was fully advised in advance of the hearing, yet did not state that the mother should have filed tax returns. On the other hand, the court imposed a heightened requirement beyond tax returns and attached schedules for the father, stating, "are there documents that you attached to your tax returns to supplement the information that you have in the tax returns?" thereby the court invented a requirement for the father, finding that was in violation of LFLR 10 for not providing any supporting documentation to confirm the information that's in the tax returns. The Judge stated the

father should have provided copies of his leases of his apartments to verify his income when it is not required by law. In fact, the ruling of the court is a violation of due process because the father cannot be ordered to file personal financial documents of persons not before the court, such as his tenants, since it interferes with private affairs of persons not before the court under the Washington State Constitution, Article 1 § 7. However, for the mother, the court acted as if there was no requirement to file a tax return at all if her self-employment income was only \$800 a month, thereby showing disregard for the well known tax law for self-employed persons, which requires a return if income is only \$600 a year. However, the court increased the father's burden of proof beyond the filing of tax returns, which exceeds law and LFLR 10. RP 12-13

The court ordered it was the father's burden to prove the mother's income had changed, but the law does not impose that burden on the father. RCW 26.19.071 and LFLR 10 require each party to submit specific financial information without the other party requesting it, so the father was never in the position of having the burden of proving the mother's income or resources. Since the court ruled the father failed to prove the mother's income had

changed, the court erred as a matter of law, thereby requiring the order denying the adjustment of child support to be reversed.

Moreover, as stated under Error no. 1, the mother's financial circumstances have substantially changed since the last order of child support entered on May 25, 2011. The mother now lives with her meretricious attorney, Richard Cassady, with whom she has three natural children, so her entire financial disposition is different than it was five years ago. When the mother moved in with Mr. Cassady her household resources changed substantially, which must be disclosed to the court as a matter of law.

LFLR 10 requires a financial declaration in a motion regarding child support together sealed financial documents, including last six months of pay stubs or other documents if pay stubs are not provided evidencing the income. Under LFLR 10 (b)(4) parties must file "All statements related to accounts in financial institutions in which the parties have or had an interest during the last six (6) months. "Financial institutions" includes banks, credit unions, mutual fund companies, and brokerages."

Ms. Shay has filed a financial declaration dated September 11, 2013, showing her monthly net income to be \$765, but her monthly household expenses to be \$2251, yet no debts, liabilities, or

obligations under Paragraphs 5.10 and 5.11, except her past due child support obligation incurred during her incarceration. Her declaration omits income from other adults in the household as required under line 3.5, so she has either falsified her income or her monthly expenses are false or are being paid by someone else. In either case, her statement then was false on its face. Two years later on November 24, 2015, she declares “my income has not really changed since the past several years” and “my expenses have not really changed either”. If her income has not changed, her expenses since her last financial declaration have exceeded her monthly net income by \$38,636.00, yet she still has no debts, liabilities, or other obligations. The law requires the income of other adults in the household to be disclosed and Ms. Shay's failure to do so should have been reason to find she did not meet her burden of proof or production with respect to her income and resources as required by RCW 26.19.071.

The mother contended her income and expenses “really had not changed in past several years”. CP 41-72 So what has changed for the mother in the last five years. She has had three children with Mr. Cassady. The mother contends her income has not changed, but she provides financially for all these children, an apparent

impossibility. She now lives with Mr. Cassady and he is the father of her other children, it is natural that Mr. Cassady's income pays the mother's monthly expenses. The mother's primary financial resource is the income of Mr. Cassady, since she and Mr. Cassady took four impromptu vacations in the summer of 2015 alone, thereby evidencing they are doing very well financially. So by an objective standard, the mother has been substantially enriched financially. Her vacations all conflicted with the father's visitation occurred on June 4, 2015, June 26, 2015, July 10, 2015, and July 24, 2015. Those are just the vacations the father knows of and was usually given notice the day before his visitation that Ms. Shay would be vacationing this weekend, so not to pick up their daughter. If the mother and Mr. Cassady can afford to pick up and go routinely on vacations, the mother's financial declaration and sealed financial source documents are a fraud. Therefore, the trial court should have set aside the response of the mother in its entirety and sanctioned the mother for failing to comply with LFLR 10 per LFLR 1 as requested by the father.

Ms. Shay sought to fabricate arguments in response to Mr. Baicy, but she failed to provide the essential LFLR 10 information in her response, which is required for the court to enter a finding of her

income and resources. CP 41-72 Ms. Shay omitted the income in her household of her meretricious attorney, Mr. Cassady, who assisted her in falsifying her personal financial information before the court, thereby constituting fraud and in violation of the rules of professional conduct. Ms. Shay even stated in her declaration that she does not file federal tax returns because her income is only \$800 a month. Mr. Baicy presented IRS Publication 505, showing self-employed persons must file tax returns for self-employment income if the income is \$600 a year or more, so Ms. Shay is required to file tax returns, but openly confesses in court proceedings she does not have to do so. CP 76-89

Since Ms. Shay did not provide tax returns, she was required to provide other documentation verifying her income source, such as documents from other adults in the household; i.e., Richard Cassady.

Ms. Shay did not provide financial statements for any accounts which she has or has had for the last six months, except what appears to be two weeks of debit card information for the last two weeks of September, 2015, which is not even one month of financial history on one debit account. Her debit card account skips the prior six months in which she and Mr. Cassady went on four vacations. The last six months would have shown financial

expenditures from the four known vacations (which she declared impromptu on the days of the father's visitation.) Her sealed financial documents provides a mere skeletal bone of information, upon which, the King County Superior Court certainly could not rely in her favor per LFLR 10 and for findings of fact and conclusions of law as required by law.

On the other hand, Mr. Baicy's financial declaration was based on actual numbers. He rents three apartments, which when all rented, provide a monthly gross income of \$2250. In between renters, income drops and thus, in 2014 the average monthly income was \$1700. However, property taxes are fixed, which when converted to a monthly payment are \$961, and deducted from gross income, resulting in \$701 monthly net income. DSHS has verified the financial statements of Mr. Baicy and found he qualifies for Federal Food Assistance, yet the trial court disregards all the same financial information and refuses to adjust Mr. Baicy's child support according to law. CP 120-171, at 134. Mr. Baicy's tax returns verify his income as required by law and LFLR 10 in these proceedings. He has also provided the last six months of his bank statements. All of these facts were argued by the father before the trial court, but

seemingly disregarded, since the court denied the motion for adjustment of support in its entirety. CP 120-171

Therefore, in light of the substantial financial evidence provided by Mr. Baicy under LFLR 10 and the absence of the income and resource evidence of Ms. Shay under LFLR 10, the finding of the court is clearly erroneous and should be reversed in favor of Mr. Baicy.

### Assignment of Error No. 3

The court erred by ruling there was no evidence to refute that the mother earns approximately \$800 per month.

#### Issues pertaining to assignment of error no. 3

1. Did the court have a basis to find that there was no evidence to refute that the mother earns approximately \$800/month?

RCW 26.19.071(1) requires each parent to a child support adjustment motion to provide all income and resources of their respective households. In King County, LFLR 10 specifically requires **(a) When Financial Information is Required.**

**(1)** Each party shall complete, sign, file, and serve on all parties a financial declaration for any motion, trial, or settlement conference

that concerns the following issues:

**(A)** Payment of a child's expenses, such as tuition, costs of extracurricular activities, medical expenses, or college;

**(B)** Child support or spousal maintenance; or

**(C)** Any other financial matter, including payment of debt, attorney and expert fees, or the costs of an investigation or evaluation.

**(2)** A party may use a previously-prepared financial declaration if all information in that declaration remains accurate.

**(3)** Financial declarations need not be provided when presenting an order by agreement or default.

**(b) Supporting Documents to be filed with the Financial**

**Declaration.** Parties who file a financial declaration shall also file the following supporting documents:

**(1)** Pay stubs for the past six months. If a party does not receive pay stubs, other documents shall be provided that show all income received from whatever source, and the deductions from earned income for these periods;

**(2)** Complete personal tax returns for the prior two years, including all Schedules and all W-2s;

**(3)** If either party owns an interest of 5% or more in a corporation, partnership or other entity that generates its own tax return, the

complete tax return for each such corporation, partnership or other entity for the prior two years;

**(4)** All statements related to accounts in financial institutions in which the parties have or had an interest during the last six (6) months. "Financial institutions" includes banks, credit unions, mutual fund companies, and brokerages.

**(5)** If a party receives or has received non-taxable income or benefits (for example, from a trust, barter, gift, etc.), documents shall be provided that show receipts, the source, and any deductions for the last two (2) years.

**(6)** Check registers shall be supplied within fourteen (14) days if requested by the other party.

**(7)** If a party asks the court to order or change child support or order payment of other expenses for a child, each party shall also file completed Washington State Child Support Worksheets.

**(8)** For additional requirements for a Settlement Conference, see LFLR 16.

**(c) Documents to be filed under Seal.** Tax returns, pay stubs, bank statements, and the statements of other financial institutions should not be attached to the Financial Declaration but should be submitted to the clerk under a cover sheet with the caption "Sealed

Financial Source Documents". If so designated, the Clerk will file these documents under seal so that only a party to the case or their attorney can access these documents from the court file without a separate court order.

It is the duty of the court to render judgment according to the evidence or the lack thereof before the court.

Here, the court ruled there was no evidence to refute that the mother earns approximately \$800 per month, but the court was to base its finding upon the elements required under RCW 26.19.071(1) and LFLR 10, with which, the mother failed to comply, not the absence of the information. The mother's two page ATM print out showing two weeks transactions from September 2015, and one transaction six months prior in March 2015, and another four months in November 2014, are not financial statements defined under LFLR 10, therefore, the mother did not comply with the sealed financial document requirements under LFLR 10 at all, for which the court should have issued sanctions per LFLR 1 for non-compliance as requested by Mr. Baicy.

Assignment of Error No. 4

The court erred by finding the father failed to provide information to verify that he cannot work a union job, cannot work a union job part-time and/or cannot work a non-union job.

1. Did the father provide evidence that he could not work a union job?

The father provided information to the court in her reply that he cannot work a union job due to conflicts in the transportation schedule, requiring the father to pick up the child from school on Friday afternoons and return the child to school on Monday mornings, resulting in the father being unavailable for a normal work schedule on Mondays and Fridays or forty percent of the normal weekday work schedule for union jobs or any job for that matter. Ms. Shay alleged that Mr. Baicy is voluntarily unemployed in her response to the motion for adjustment. Mr. Baicy is a self-employed apartment manager. The residential transportation provisions in the present parenting plan dated September 6, 2012, impair Mr. Baicy's ability to work or to seek full-time employment, because they require him to drive eighty-five miles from Kent to Redmond on Friday afternoons and Monday mornings three weeks a month. There are no part time union employees or half days

available to union carpenters. The court must consider this issue objectively and consider the question: How many employers would hire a person knowing the person will require two half days a week? Moreover, the person wants to take Friday afternoon off and then report to work on Monday afternoon, which is basically a four day holiday weekend three times a month. It's absurdity. Consenting to such an employee's request would cause instant strife and dissension among employees. It is, therefore, not allowed.

A normal union employee work week is five eight hour days, Monday thru Friday. There are no part-time union carpenters who work Tuesday thru Thursday. The union agreement does not provide for special arrangements to work half days due to parenting plan transportation schedules. The father cannot report to work at noon on Monday and take Friday afternoons off as a union carpenter. The union carpenter agreement was filed as Exhibit A with the motion for adjustment of support. CP 16-27 Even if a carpenter is working four ten hour day work week, he must be available either Monday thru Thursday or Tuesday thru Friday per Article 16 under Hours of Work. 2015-2018 Agreement between Associated General Contractors of Washington and Carpenters, Piledrivers, and Millwrights of the Pacific Northwest Regional Council of Carpenters affiliate of the

United Brotherhood of Carpenters and Joiners of America. CP 16-27 at 25 Ms. Shay and Mr. Cassady, ignore the father's work conflict as a result of having to transport the child on Friday mid-afternoon and Monday mid-mornings from Kent to Redmond in our state's worst traffic. The transportation schedule renders the father virtually unemployable for the union, and most other occupations. The union agreement evidences the that father is unemployable at the union under the present residential transportation schedule.

Therefore, the finding of the court that the father failed to provide information to verify that he cannot work a union job, either part-time or full time, is clearly erroneous, and should be reversed.

Assignment of Error No. 5

The court erred by finding the father provided no evidence of a search for employment that would not interfere with the parenting plan residential transportation schedule.

1. Did the father have a burden to prove that he has been searching for work that would not interfere with the parenting plan transportation schedule?

The court found the father had submitted evidence of the union hours of employment being eight continuous hours, or four tens, but then stated the father has provided no information that he

has asked the “union for some leeway, with regard to either the start time or the end time”. RP at 38 The suggestion of the court that Mr. Baicy should ask the union to make a special exception for him is untenable. The union does not have the power to modify its contract unilaterally for some employees. Since there is no such thing as a part-time union carpenter, the finding that the father did not provide evidence of a search for such a job is erroneous, since it is factually impossible under the union agreement to find a part-time union job as a carpenter, since it does not exist under the union contract. CP 16-27 Moreover, the father does not have a burden to prove he is not voluntarily unemployed if he is rendered unemployable due to compliance with a court order; i.e., he cannot work on Monday mornings or Friday afternoons, three weeks a month, or he risks being in contempt of court for failure to comply with the residential transportation schedule. Consequently, the father's job prospects are severely limited.

Notwithstanding, if the father were to find a minimum wage part-time job, working Tuesday thru Thursday, the job would result in less than a quarter of his historical rate of pay in the amount of \$3295, entered in the last order of child support on May 25, 2011.

A full-time minimum wage job would yield about half the net income that is currently imputed to him.

The court neglected to consider that under the parenting plan entered with the order of child support on May 25, 2011, the parents shared transportation of the child equally. The father only had the responsibility to pick up the child on Friday night and the mother would pick up the child from the father on Sunday night. The mother lived in Black Diamond with her dad and the father lived in Kent, where he still resides.

When the mother moved in with Mr. Cassady in Redmond, the mother modified the parenting plan, placing substantially all the transportation burden on the father, not just the majority of the transportation as found by the court. RP at 36 The father argued before the court in this proceeding that he is required to provide sixty-nine trips from Kent to Redmond and back, while the mother is only required to provide three trips from Redmond to Kent, since she only picks up the child during the summer with no burden to get the child ready for school. CP 76-89 at 79 It's not just the amount of transportation, but the time of the transportation during the typical work days on Monday and Friday, which results in lost employment opportunities for the father. The court's finding that

“Many people have pick-up and drop-off drive times that are significant. And they somehow manage to work” is a general statement that does not depict the extremely disproportionate transportation burden on the father. RP at 39 On the contrary, very few parents have an obligation to provide 96 percent of an 85 mile round trip 69 times a year, while the other parent makes the trip three times. Plus, the transportation is at a time he could be employed, so he's losing valuable job opportunities. All of this occurred when the parenting plan was modified on September 6, 2012, so the court's reasoning that imputation of income at the time of the last order on May 25, 2011, is irrational because the present transportation arrangements did not exist under the parenting plan entered with the order of child support. To put it another way, 69 trips at 85 miles a trip is 5,865 miles a year. That's the mileage burden on the father that was imposed on him when the parenting plan was modified on September 6, 2012. The mother's mileage burden: three trips times 85 miles is 255 miles. That is a substantial change of circumstances to the ordinary person living in the Pacific Northwest who has to drive Highway 167 to I-405 to Redmond and back to Kent. The average trip takes two hours. At 69 trips times two hours, that's 138 hours on the highway for the

father, together with, gas, wear and tear on his vehicle, and loss of time that he needs to be working. The mother's time burden: three trips time two hours is six hours a year, all on summer Monday mornings. This is not the transportation arrangement of many other parents. It is a transportation schedule that has resulted in a substantial financial hardship for the father. The general rule, if there is one, is that residential transportation schedules yield to work schedules, so parents careers are not jeopardized and child support can be paid. The amount of travel time on the eighty-five mile trip from Kent to Redmond and back during high traffic times on Friday afternoon and Monday morning is a substantial change from the shared transportation arrangement in the parenting plan entered on May 25, 2011, all of which, was disregarded by the court in the findings entered on February 3, 2016. The current parenting plan, requiring the father to provide ninety-six percent of the transportation (69 of 72 trips) was not in place when the order of child support was entered on May 25, 2011, so the court's reasoning that "income was imputed to him then so court believes it is still the best evidence with regard to the father's ability to pay should be now" is clearly an abuse of discretion. RP at 39 The father's historical rate of pay five years ago in 2011, is not the same

as his historical rate of pay the last five years, and the circumstances changing it were proximately caused by the grossly unfair transportation provision under the parenting plan, entered by default on September 6, 2012, relieving the mother from all transportation, except one trip a month in the summer, when she moved in with Mr. Cassady.

Under the current parenting plan, Mr. Baicy cannot work construction. Since he cannot work on Monday mornings and Friday afternoons, his employment opportunities are sparse.

Therefore, the finding of the court that he is denied an adjustment of support because he has not provided proof of search of employment is erroneous, since it could not result in full time employment at the historical rate of pay of \$3295, entered on May 25, 2011.

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.

May 28, 2016.

  
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Respectfully submitted,  
Signature

  
\_\_\_\_\_  
Thomas O. Baicy

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