

74894.7

74894.7

No. 74894-7-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

IN RE PARENTING AND SUPPORT OF:

BAINYA SHAY, Child,
THOMAS O. BAICY,
Appellant,

and

DANELLE M SHAY,
Respondent.

RESPONDENT'S BRIEF

CASSADY • FILER, L.L.P.



Richard B. Cassady, Jr., WSBA #28655
Attorney for Respondent Danelle M. Shay

The Colman Building - Suite 100
811 First Avenue
Seattle, Washington 98104
(206) 623-5133

STATE OF WASHINGTON
2016 AUG 19 AM 10:37

TABLE OF CONTENTS

Table of Authorities	ii
Introduction	1
A. Restatements of Error	2
B. Restatement of the Case	2-3
C. Summary of Argument	3
D. Argument	3-10
No. 1. Appellant does not allege a substantial change in circumstances occurred between the first child support adjustment order, and Appellant's request for a second child support adjustment.	3-4
No. 2. If there has been no substantial change in circumstances 24 months must from the date of entry of the child support adjustment order prior to seeking another child support adjustment or modification.	4-7
No. 3 The trial Court properly denied Appellant's second request for a child support adjustment.	7-8
No. 4 Appellant's appeal is frivolous.	8-9
E. Conclusion	9-10
Declaration of Service	10

TABLE OF AUTHORITIES

Table of Cases [Alphabetical]

Streater v. White, 26 Wn. App. 430, 434-35, 613 P.2d 187 (1980) 8-9

Constitutional Provisions

None

Statutes

RCW 26.09.170 4-7

Rules and Regulations

RAP 18.9(a) 8

INTRODUCTION

This is a responsive brief to the appeal made by Thomas O. Baicy, Appellant, of the trial court's February 3, 2016 denial of allowing him to file another, second motion for child support adjustment. CP 118-119. As pointed out by the Appellant in his appeal brief, he filed his first motion for support adjustment on November 19, 2015. CP 28-29. A contested hearing on Appellant's first child support adjustment motion was held on December 15, 2015. After hearing argument from both sides and reviewing pleadings submitted by both parties, the trial made oral findings on the record, and issued a final, written order denying the motion for child support adjustment that same day. CP 95. This order was not appealed, therefore, is a final order. Just 1-1/2 months later, Appellant sought permission to file for second motion for child support adjustment. CP 117. It is undisputed no substantial change in circumstances occurred since entry of the first child support adjustment order, and the request to file for a second child support adjustment motion and hearing. The law does not allow parties to file a motion for child support adjustment just 1-1/2 months after entry of a child support adjustment order. The request to file for another child support adjustment so soon after the last adjustment was properly denied. This appeal is frivolous, and fees and costs should be awarded.

//

A. RESTATEMENTS OF ERROR

1. May one file a motion for child support adjustment just 1-1/2 months after a court issued a final, written order on a prior child support adjustment motion?

2. What makes an appeal frivolous?

B. RESTATEMENT OF THE CASE

Facts/Procedure: November 19, 2015 Appellant filed his motion for child support adjustment. CP 28-29. A contested hearing on the motion was held on December 15, 2015. After hearing argument from both sides and reviewing the pleadings submitted by both parties, the trial court issued oral findings on the record, and a written final order denying the motion for child support adjustment on the same day. CP 95. Please note the Appellant falsely, and repeatedly claims in his appellate brief no such written order was entered. This is clearly contradicted by the court order. CP 95. By letter dated January 29, 2016, the Appellant sought permission to file for another child support adjustment by stating

“At my hearing on my motion for adjustment of child support before your court you ordered I had not provided verification of my income, so now I am now prepared with copies of my renters’ contracts. Please let me know when my hearing can be noted.”
CP 117.

The trial court found the Appellant had not provided a sufficient reason (i.e., substantial change in circumstances) to be allowed to file a second

motion to adjust child support, so the request was denied. CP 118.

Appellant appealed.

C. SUMMARY OF ARGUMENT

Appellant's appeal is without merit. No appeal was filed for the December 15, 2015 written order entered for the Appellant's first child support adjustment motion, so that is a final order. Appellant does not claim a substantial change in circumstances in his two sentence request to file for a second child support adjustment just 1-1/2 months later. Appellant just wanted to submit information he didn't at the first support adjustment hearing. CP 117. No Washington statute or caselaw supports having a second child support adjustment just 1-1/2 months after a written order on the first child support adjustment was entered. No rational argument can be made on the law or the facts the denial by the trial court for a second motion for child support adjustment was improper, or this appeal has any merit, therefore, this appeal is frivolous.

Please note the vast majority of Appellant's brief seems to be arguing an appeal of the December 15, 2015 order, but no appeal of that order was filed, so this brief ignores it as not properly before this Court.

D. ARGUMENT

1. DOES APPELLANT ALLEGE A SUBSTANTIAL CHANGE IN CIRCUMSTANCES OCCURRED BETWEEN THE FIRST CHILD SUPPORT ADJUSTMENT HEARING, AND HIS REQUEST FOR A SECOND CHILD SUPPORT ADJUSTMENT HEARING?

No the Appellant does not allege a substantial change in circumstances between the first child support adjustment hearing, and his request for second child support adjustment hearing.

Not only does Appellant allege no substantial change in circumstances has occurred, he argues in his appellate brief no substantial change in circumstances was required.

2. WHEN MAY A PARTY FILE FOR ADJUSTMENT OF CHILD SUPPORT IF THERE HAS BEEN NO SUBSTANTIAL CHANGE IN CIRCUMSTANCES?

As pointed out by the Appellant in his brief, if there is no substantial change in circumstances, Washington law requires only 24 months must pass since the date of the entry of last child support adjustment before another adjustment or modification may be requested.

RCW 26.09.170

Modification of decree for maintenance or support, property disposition—Termination of maintenance obligation and child support—Grounds.

(1) Except as otherwise provided in RCW 26.09.070(7), the provisions of any decree respecting maintenance or support may be modified: (a) Only as to installments accruing subsequent to the petition for modification or motion for adjustment except motions to compel court-ordered adjustments, which shall be effective as of the first date specified in the decree for implementing the adjustment; and, (b) except as otherwise provided in this section, only upon a showing of a substantial change of circumstances. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(2) Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the

party receiving maintenance or registration of a new domestic partnership of the party receiving maintenance.

(3) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child or by the death of the parent obligated to support the child.

(4) Unless expressly provided by an order of the superior court or a court of comparable jurisdiction, provisions for the support of a child are terminated upon the marriage or registration of a domestic partnership to each other of parties to a paternity order, or upon the remarriage or registration of a domestic partnership to each other of parties to a decree of dissolution. The remaining provisions of the order, including provisions establishing paternity, remain in effect.

(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.

(b) An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(6) An order of child support may be modified one year or more after it has been entered without a showing of substantially changed circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child;

(b) If a party requests an adjustment in an order for child support which was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based;

(c) If a child is still in high school, upon a finding that there is a need to extend support beyond the eighteenth birthday to complete high school; or

(d) To add an automatic adjustment of support provision consistent with RCW 26.09.100.

(7)(a) 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.

(b) Either party may initiate the adjustment by filing a motion and child support worksheets.

(c) If the court adjusts or modifies a child support obligation pursuant to this subsection by more than thirty percent and the change would cause significant hardship, the court may implement the change in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a motion for another adjustment under this subsection may be filed.

(8)(a) The department of social and health services may file an action to modify or adjust an order of child support if public assistance money is being paid to or for the benefit of the child and the child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011 and reasons for the deviation are not set forth in the findings of fact or order.

(b) The department of social and health services may file an action to modify or adjust an order of child support in a nonassistance case if:

(i) The child support order is at least twenty-five percent above or below the appropriate child support amount set forth in the standard calculation as defined in RCW 26.19.011;

(ii) The department has determined the case meets the department's review criteria; and

(iii) A party to the order or another state or jurisdiction has requested a review.

(c) The determination of twenty-five percent or more shall be based on the current income of the parties and the department shall not be required to show a substantial change of circumstances if

the reasons for the deviations were not set forth in the findings of fact or order.

(9) The department of social and health services may file an action to modify or adjust an order of child support under subsections (5) through (7) of this section if:

(a) Public assistance money is being paid to or for the benefit of the child;

(b) A party to the order in a nonassistance case has requested a review; or

(c) Another state or jurisdiction has requested a modification of the order.

(10) If testimony other than affidavit is required in any proceeding under this section, a court of this state shall permit a party or witness to be deposed or to testify under penalty of perjury by telephone, audiovisual means, or other electronic means, unless good cause is shown. [Emphasis added.] RCW 26.09.170.

3. DID THE TRIAL COURT PROPERLY DENY APPELLANT'S REQUEST TO HAVE A SECOND CHILD SUPPORT ADJUSTMENT HEARING?

Yes, in light of the fact only a mere 45 days passed between the date of entry of Appellant's first child support adjustment order, and his request for a second child support adjustment hearing, the denial was proper.

One may not file for a child support adjustment without a substantial change in circumstances if less than 24 months have passed since the entry date of the last child support adjustment order. It is undisputed only 45 days passed between the first child support that last child support adjustment order, December 15, 2016, and Appellant's attempt to have a second child support adjustment hearing, January 29, 2016. Not even two months had passed since the first child support adjustment order before Appellant's second request. Neither these facts,

nor the law are disputed, therefore, the Court's denial of a second child support adjustment motion was proper.

4. IS THE APPELLANT'S APPEAL FRIVOLOUS?

Yes, in light of the undisputed facts concerning (1) only a mere 45 days passed between the entry of the order concerning Appellant's first child support adjustment, and his request for a second child support adjustment, (2) no substantial change in circumstances, and (3) the law requires 24 months in between child support adjustment motions, this appeal is frivolous.

There are no debatable issues upon which reasonable minds might differ concerning this appeal, and this appeal is so totally devoid of merit, there is no reasonable possibility of reversal.

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party... who... files a frivolous appeal... to pay terms or compensatory damages to any other party who has been harmed by the delay... See RAP 18.9(a).

In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, we are guided by the following considerations: (1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal. SEE Jordan, IMPOSITION OF TERMS AND COMPENSATORY DAMAGES IN FRIVOLOUS APPEALS, Wash. St. B. News, May 1980, at 46. Streater v. White, 26 Wn. App. 430, 434-35,

613 P.2d 187 (1980).

There are no disputes about the relevant facts – (a) less than two months passed since the entry of the last child support adjustment order, and Appellants’s request for a second child support adjustment, and (2) there were no substantial change in circumstances in between. There are no disputes about the relevant law – 24 months must pass when there has been no substantial change in circumstances, and a request for child support adjustment is made. None of these facts or law are reasonably debatable. There is no reasonable possibility of reversal of the trial court’s decision. Appellant’s appeal is clearly frivolous.

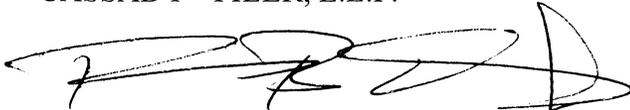
E. CONCLUSION

This appeal should be denied, and terms assessed against the Appellant for this frivolous appeal. The facts when the last child support adjustment order was entered, December 15, 2015, and the Appellant’s request to have a second child support adjustment motion, January 29, 2016, are not disputed. It is undisputed Appellant did not allege a substantial change in circumstances in his January 29, 2016 letter. It is undisputed 24 months must pass since entry of the last child support adjustment order before seeking another child support adjustment. Thus, there are no debatable issues upon which reasonable minds might differ concerning this appeal. In addition, it is so totally devoid of merit, there is

no reasonable possibility of reversal. This appeal is frivolous, and terms should be assessed against the Appellant.

Respectfully submitted this 18th day of August, 2016.

CASSADY • FILER, L.L.P.



RICHARD B. CASSADY, JR., WSBA #23655
Attorney for Respondent Danelle M. Shay

The Colman Building – Suite 100
811 First Avenue – Suite 100
Seattle, Washington 98104
(206) 623-5133

DECLARATION OF SERVICE

I, Richard B. Cassady, Jr., AM OVER THE AGE OF 18 NOT A PARTY TO THE PROCEEDINGS, AND DECLARE:

I sent, via ABC Legal Messengers, the original of this RESPONDENT'S BRIEF to be personally delivered no later than August 19, 2016 to the Court of Appeals, Division I. Furthermore, a copy has been sent to the Appellant via first class mail postage prepaid at 1231 W. James St., #4, Kent, WA 98032.

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

Signed at Seattle, Washington, on August 18, 2016.



Richard B. Cassady, Jr.