

FILED
COURT OF APPEALS
DIVISION II

2013 FEB 11 AM 10:51

NO. 43543-8-II

STATE OF WASHINGTON

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

C. Forrest
DEPUTY

In re:

ERIC ALMOND,

Appellant,

And

PATRICIA ALMOND,

Respondent.

REPLY OF APPELLANT

FORREST LAW OFFICE, PLLC
Kathleen A. Forrest, WSBA 37607
PO Box 88702
Steilacoom, WA 98388
(253) 588-1011

Attorney for Appellant

TABLE OF CONTENTS

SUMMARY OF ARGUMENT.....1

REPLY TO REPENDENT’S ARGUMENT.....2

 A. The trial court established the offset to be awarded to Eric for un-incurred expenses from April 30, 2007, not January 30, 2008.....2

 B. Eric was not seeking a modification of child support order when he sought reimbursement of the un-incurred daycare expenses.....3

 C. It is inequitable for a court to deny Eric the opportunity to seek reimbursement of un-incurred expenses included in the support obligation4

 D. Patricia should not be awarded interest on the unpaid maintenance in her cross-appeal.....5

 E. Eric should be awarded attorney fees because Patricia was intransigent when she failed to reimburse Eric the un-incurred expenses.....5

CONCLUSION7

TABLE OF AUTHORITIES

CASES	Page(s)
In re Marriage of Capetillo, 85 Wn.App. 311, 932 P.2d 691(1997).....	4
In re Marriage of Bobitt, 135 Wn.App. 8, 30, 144 P.3d 306 (2006).....	6
 STATUTES	
Wash. Rev. Code 26.19.080 (3).....	3,4,5

SUMMARY OF ARGUMENT

This case is not about the retroactive modification of a child support order. Eric is seeking to remove un-incurred expenses that were invalidly transferred to Patricia since April 30, 2007. This is authorized by statute. In order for the court to determine the final judgments the court was required to compute child support and maintenance dating back to April 30, 2007. The court also considered the child support and maintenance payments submitted by Eric each month. The court made the correct ruling at trial regarding past child support that was due. The court failed to account for payments made to Patricia when calculating the interest, however.

Both parties agree that the court was correct in removing the daycare and pre-school expenses from the monthly child support payments that were not incurred. Thus, the court ruled that these expenses must be removed from April 30, 2007. The court also acknowledged that monthly payments were made each month to

Patricia and that this must be accounted for. The only issue that is disputed is the manner in which interest was calculated.

REPLY TO RESPONDENT'S ARGUMENT

A. The trial court should have established the offset to be awarded to Eric, for un-incurred expenses from April 30, 2007, not January 30, 2008.

This case is very simple. The order dated April 30, 2007 required Eric to pay child support in the amount of \$967.66 and daycare expenses in the amount of \$429.55. The court correctly ruled that un-incurred expenses should be removed and that appropriate interest is added to existing child support.

“So the judgment from January 30, 2008, needs to be recalculated for a total of \$33,483.08, which is taking away the un-incurred expenses, plus appropriate interest amount that should have been awarded on those consolidated judgments at that time.” RP 11 (3/26/12).

The two disputed issues are whether the recalculation should begin at April 30, 2007 and whether the recalculation should account for the monthly payments made by Eric since April 30, 2007.

If an obligor parent pays for Court ordered daycare or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment. RCW 26.19.080(3).

The trial court removed the un-incurred daycare and preschool expenses and ordered that the interest on the new amounts is calculated. Eric does not dispute that \$733.36 represented his proportionate share of the actual daycare expense that was incurred.

B. Eric was not seeking a modification of child support order when he sought reimbursement of the un-incurred daycare expenses.

The statute does require a party to modify the child support order to seek reimbursement of un-incurred daycare expenses. Patricia was obligated to reimburse Eric with these un-incurred expenses from the entry of the order on April 30, 2007. For this reason the entry of the order on January 30, 2008 did not bar Eric from seeking the un-incurred daycare expenses. Moreover, the

trial court ruled that Eric had the right to be reimbursed for these un-incurred expenses.

Patricia's reference to the modification statute is not appropriate. Eric was not seeking a modification of the child support order; he was requesting reimbursement of funds to which he was entitled under the statute.

Child support payments become vested judgments as the installments become due. *In re Marriage of Capetillo*, 85 Wn.App. 311, 932 P.2d 691 (1997). However, an obligee has the right to reimbursement for overpayment of un-incurred expenses as an offset to child support arrearages of the obligor. RCW 26.19.080. The modification of the January 30, 2008 court order was not a retroactive modification of the child support order.

C. It is inequitable for a court to deny Eric the opportunity to seek reimbursement of un-incurred expenses included in the support obligation.

The trial court acknowledged that there was a valid judgment entered on January 30, 2008. The trial court also acknowledged

that it was inequitable for Eric to pay expenses that were not incurred by Patricia dating back to April 30, 2007. There is no statute of limitations preventing a party from seeking reimbursement of un-incurred daycare expenses. The statute explicitly permits this reimbursement by the obligee. RCW 26.19.080.

D. Patricia should not be awarded interest on the unpaid maintenance in her cross-appeal.

The trial court did not award interest on the maintenance payments because it was impossible to determine what part of the monthly payment was maintenance. The court awarded interest to the child support award in lieu of awarding interest to the maintenance.

E. Eric should be awarded attorney fees because Patricia was intransigent when she failed to reimburse Eric the un-incurred expenses

Patricia has already been awarded attorney fees by the court for Eric's failure to pay the full amount of child support and

maintenance each month. The court did not modify those judgments awarding attorney fees to Patricia.

A court may award attorney fees for “intransigence” if one party’s intransigence caused the other party to incur additional legal fees. *In re Marriage of Bobitt*, 135 Wn.App. 8, 30, 144 P.3d 306 (2006). “Intransigence” is defined as obstruction, foot-dragging, or making a proceeding unduly difficult and costly. *Bobitt*, 135 Wn.App. at 30.

Patricia has exponentially increased the costs of Eric’s legal fees because of her refusal to cooperate at two mediation sessions. This matter would not have proceeded to trial if Patricia had notified the Division of Child Support that no daycare or pre-school expenses had been incurred. Even after two mediation sessions paid for by Eric, Patricia refused to acknowledge that these expenses were not being incurred. When Patricia testified at trial, she finally acknowledged that no expenses were incurred. Patricia’s conduct goes beyond intransigence. A party should not have to pay for mediation sessions and a trial to determine whether daycare expenses have been incurred.

Eric should be awarded attorney fees.

CONCLUSION

Appellant respectfully requests that the order and judgment of the trial court is modified so that Eric's monthly payments toward child support and maintenance is considered in when calculating interest.

The Court should order that only interest on unpaid child support is accrued. It should adopt Eric's final judgments amounts of \$14,768.68 for unpaid child support and \$14,345.70 for unpaid maintenance. The total for both judgments since April 2012 should be \$29,114.38.

RESPECTFULLY SUBMITTED this 11th day of February, 2013.

FORREST LAW OFFICE, PLLC
Kathleen A. Forrest
Kathleen A. Forrest, WSBA 37607
PO Box 88702
Steilacoom, WA 98388
(253) 588-1011

FILED
COURT OF APPEALS
DIVISION II

2013 FEB 11 AM 10:51

STATE OF WASHINGTON

BY  _____
DEPUTY

CERTIFICATE OF SERVICE

I certify that on 11th day of February, 2013, I caused a true and correct copy of this **Appellant's Reply Brief** to be served on the following in the manner indicated below:

Attorney for Father/Appellant
Kathleen A. Forrest
Forrest Law Office
PO Box 88702
Steilacoom, WA 98388
Kathleen@forrestlawoffice.com

Attorney for Mother/ Appellee
Stephen Fisher
Attorney at Law
6314 19th St. W Ste. 8
Fircrest, WA 98466-6223
steve@fircrestlaw.com

US Mail
 Hand delivery

By:  _____
John P. Forrest