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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY C. [Signature]
DEPUTY

No-. 47323-2-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In Re: the marriage of

JULIA ZUCATI

Petitioner,

v.

AARON ZUCATI,

Respondent

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

1. Appellant finds error with the Court not having entered detailed findings to support its conclusions for the award of CR 11 sanctions and the alleged actionable conduct.
2. Appellant finds error in the Court's failure to address the statutory violation of RCW 26.09.071 even though it was directly asked to do so.
3. Appellant finds error in the Court's finding of no substantial change of circumstances had occurred.
4. Appellant finds error in the language inserted into the Findings entered by the court, as it contains issues not addressed in the hearing.
5. Appellant finds error with the Court having violated due process by not providing any notice of CR 11 sanctions and failing to hold an evidentiary hearing, while dismissing the evidence held in the file.
6. Appellant finds error with the sanctions and the amount of the award when the court failed to find that the petition filed lacked merit.

B. ISSUES PRESENTED FOR REVIEW

1. **ISSUE ONE:** The Court failed to enunciate reasons or detailed findings for the award of CR 11 sanctions.
2. **ISSUE TWO:** The Court failed to address the statutory violation of RCW 26.09.071.
3. **ISSUE THREE:** The Court ignored Petitioner's Pleadings when making a determination there were no substantial change of circumstances.
4. **ISSUE FOUR:** Issues not addressed by the Court in the Hearing were inserted into the Findings.
5. **ISSUE FIVE:** The Court violated due process by not providing any notice of pending CR 11 sanctions and failing to hold an evidentiary hearing regarding as to those sanctions.
6. **ISSUE SIX:** CR 11 sanctions, were they appropriate?

C. IDENTITY OF THE PARTIES

Petitioner/Appellant is the mother of five children who received notice of the pending dissolution litigation by way of a phone call from the Respondent, while she was traveling on business. That phone call was the prelude to the way the extensive litigation would unfold. The Superior Court file extends to five (5) full volumes of pleadings and two (2) volumes of confidential information.

Respondent is the father of the five children in this case. He has pled to a Domestic Violence charge of assault after forcefully shoving one of his daughter's heads through the sheetrock of the dining room wall because she talked during dinner. Respondent received Social Security payments for two of the children due to their disabilities. Respondent failed to report his true income when requested to do so by The Social Security Administration and, as a result, Respondent obtained money he was not entitled to receive.

The Petitioner/Appellant now has full custody of the children after an agreement to dismiss all back support owed by her in exchange for not receiving any future support from Respondent. Social Security is now seeking to recover the money paid to Respondent from the money Petitioner/Appellant now receives from Social Security due to the

children's disabilities. She is pursuing an appeal and attempting to have Respondent held responsible for the money he received to which he was not entitled.

D. STATEMENT OF THE CASE

This case was long and drawn out. The extensive litigation exhausted the Petitioner's financial ability to pay attorneys and her emotional ability to handle the deluge of unfounded allegations against her by Respondent and his family. Near the end of the case, she was unrepresented by counsel when she attended a settlement conference. Like most unrepresented parties, Petitioner did not have much understanding of the legal terminology or her rights. She ultimately signed documents to get the matter concluded so she could move on with her life.

Due to the confidentiality of Settlement Conferences, no record exists of what transpired. What has been put forth by Respondent about the settlement conference has been refuted by Petitioner/Appellant.

Ultimately, Petitioner/Appellant sought to understand the documents and, a discussion with her current counsel followed. Saddled with the loss of custody of her children, \$547.00 a month in child support, unemployment, and being medically restricted from working, she sought to get the support modified until she could get on her feet.

The result of Petitioner's efforts was a Petition for Modification of Child Support. That Petition was denied. During the Hearing, CR 11 sanctions were leveled against Counsel for Appellant. Those CR 11 sanctions are at the crux of this appeal.

E. ARGUMENT

ISSUE ONE: The Court failed to enunciate reasons and enter detailed findings on the alleged actionable conduct to support its conclusions for the award of CR 11 sanctions.

The court, when framing the standard for awarding Rule 11 sanctions, must strive to avoid the wisdom of hindsight in determining whether a pleading was valid when signed, and should test the signor's conduct by inquiring what was reasonable to believe at the time the pleading was submitted. *Eastway Constr. Corp. v. New York*, 762 F.2d 243, 254 (2d Cir. 1985) Here, the Court appears to make the assumption, without enunciating reasons, that the pleadings were not valid or that an inquiry into the facts had not been done. No inquiry was made.

Where it is patently clear a claim has absolutely no chance of success under the existing precedents, and where no reasonable argument can be advanced to extend, modify, or reverse the law as it stands, Rule 11 has been violated. *Id. Doe v. Spokane and Inland Empire Blood Bank* 55 W. App.106 (Wash.App. Div. 1 1989) 780 P.2d 853 (citing *Eastway*

Constr. Corp. New York, 762 F.2d 243, 254 (2d Cir. 1985). Here, the court did not consider all arguments or all evidence when making its decision. The claim in this case had a chance of success because it had a reasonable argument to move it forward. The court chose not to consider all pleadings when making its decision. It is Petitioner/Appellant's position the Court did not consider pleadings in the confidential file when making its determination. The court looked only at one aspect of the Petition for Modification and ignored all others.

In discussing the CR 11 sanctions of *Doe*, the court stated the absence of findings on the issue of inquiry undertaken into the facts and law found no tenable basis upon which the court could conclude whether the attorney had acted reasonably and, hence, whether CR 11 was violated. *Doe* at 121 See also *Bryant v. Tree* 119 Wn.2d 210 (Wash 1992) 829 P.2d 1099.

Here, The January 23, 2015 hearing transcript shows (TR January 23, 3015 P6, L 21) the Court made no inquiry into the reasons for the pleadings and only made reference to the number of volumes of the case and again, (TR January 23, 2015, P9, L 5), made reference to the court file when determining whether sanctions were appropriate. The record is absent any reference to action on the part of Counsel that violated CR 11.

Here, the Court merely appears to be wanting to chill Counsel's enthusiasm in bringing the matter to the attention of the Court, likely due to the fact the case had been long and drawn out. In *Bryant*, the court stated that if vigorous advocacy were to be chilled by the excessive use of sanctions, wrongs would go uncompensated. *Bryant v. Tree* 119 Wn.2d 210 (Wash 1992) 829 P.2d 1099.

Here, the court made no record of its findings in support of the decision to award CR 11 sanctions. (TR January 23, 2015 in general) It merely made the conclusionary statements that it was imposing sanctions. Later, at the presentation hearing, the Court cited the sections of CR 11, by adding a copy of the actual rule to the Findings the Court was apparently attempting to bolster its reasoning for sanctions. Appellant questions the amount awarded and whether it was appropriate in light of the purpose of the rule. *See Findings of Fact, Order being appealed and TR January 23, 2015*. In addition, see TR February 13, 2015, generally.

In the presentation hearing, (TR February 13, 2015, P4 L 4-5; P9 L6-11; P10 L4-13; and P23 L7-17), the court was repeatedly advised that full argument had not been allowed at the hearing. As result of not hearing all arguments, Findings were made against what the court file contained and against what would prove CR 11 sanctions inappropriate.

CR 11 sanctions are inappropriate against Petitioner's Counsel because the record is absent any specific wrongdoings.

ISSUE TWO: The Court failed to address the statutory violation of RCW 26.09.071.

The Court, even though prompted a number of times by Counsel, rejected the request to address the violation of RCW 26.09.071 by attorney Jennifer Johnson in preparing documents for her client's signature. (TR January 23, 2015 9 L 20 - 23); (TR February 13, 2015, P4 L 18 - 25; P6 L 20-25; P7 L 19-25 continued to P8 L 1-3; P8 L 10-16; P9 L 4 - 17; P23 L 14-19).

Ms. Johnson, as an Officer of the Court, has a duty to follow Statutes in all cases, no matter how minor the Statute. Clearly, in this case, following the statutes was not done. If the court looks at the record, (CP Order of Child Support (final) P11) at the bottom, it asks for Income of the Children, none was provided. Not supplying the information that two children in this case were receiving Social Security Income is a clear violation of RCW 26.09.071, and, thus, a violation of the Oath an Attorney takes when being sworn to practice law in the State of Washington.

It may be argued that the missing information was inadvertent. However, (CP Child Support Worksheets from Respondent, (sub 95)

P4) shows documents filed by previous counsel for Respondent put the required information into the form. Ms. Johnson knew, or should have known after reviewing documents when she got into the case, that the income the children receive for their disabilities is to be included in the forms. Failing to do so violates RCW 26.09.071. It is clearly set out in the law. It is also in the instructions for preparing the Worksheets, all household income is required.

Counsel will likely argue the information regarding the Social Security received by the children was an 'known fact' of the case. While that is true, it is also true that knowledge of the children's income does not automatically provide for a deviation in child support calculations. However, there is simply no defense available for not putting the information, mandated by Statute and the instructions of form preparation, into the form.

As can be seen in the verbatim report of the hearings, the statutory violation was very deliberately not addressed by the court, even though specifically asked to address the issue. (TR January 23, 2015, P 9 L20-23).

CR 11 sanctions should be leveled against Ms. Johnson for knowingly having her client sign a document that lacked mandated

information, thus misrepresenting facts about the income of the Respondent's household. The signature of a party or an attorney constitutes a certification by that party or attorney that they have read the pleading and to the best of their knowledge, after an inquiry reasonable under the circumstances, it is not imposed for any improper purpose. *Mitchell v. Washington State Institute of Public Policy* 153 Wn.App. 803 225 P.3d 280 (2009). Appellant requests appropriate sanctions for Jennifer Johnson's violation of CR 11 be imposed.

ISSUE THREE: The Court ignored Petitioner's Pleadings when making a determination there were no substantial change of circumstances.

A trial court imposing CR 11 sanctions must specify the sanctionable conduct in its order. *Biggs II*, 124 Wn.2d at 201. Here, the trial court found there to be no substantial change of circumstances. *See Findings/Conclusions on Petition for Modification of Child Support* which was attached to the Notice of Appeal, Page 2, Paragraph 2.3. The Court cut short the hearing and not all arguments were presented. (TR January 23, 2015 generally and TR February 13, 2015 P9 L 12-13). The Court admitted not hearing all arguments when it stated it did not have to hear argument on everything alleged. (TR February 13, 2015, P9 L12-13). The court further stated it could rule off the pleadings submitted by the

parties and their responses. (TR February 12, 2015, P9 L1-14).

In this case, proof of the economic hardship due to Petitioner's inability to work, was put forth in the confidential file. (CP Letter from Dr. Duong Than, MD) Economic hardship is a substantial change of circumstances and, under RCW 26.09.170(5)(a), a party may petition the court for a modification based on a substantial change of circumstances at any time. Economic hardship was one of the reasons the modification was being sought. (CP Amended Petition for Modification of Child Support P2 L7-12).

While the court indicated it could rule off the pleadings, it apparently did not do so. The economic hardship argument was ignored in favor of CR 11 sanctions even when a letter from Petitioner's doctor attesting to the fact she was unable to work was part of the pleadings and was filed in the confidential part of the court file. The blanket statement that there was no substantial change of circumstances was the reason put forth for the denial of the Petition in the Findings. This point was argued in the February 13, 2015 presentation hearing at P10 L 7-16. Ms. Johnson quoted CR 11, as if that was a rebuttal to the court not addressing the economic hardship issue.

ISSUE FOUR: Can issues not addressed by the Court in the Hearing be inserted by Counsel into the Findings?

There is something inherently wrong with Counsel preparing an order which fails to follow the record. Can Counsel insert language that was not even addressed by the Court in the Motion Hearing? (TR January 23, 2015 in its entirety). The Court merely "looked at the case" and awarded CR 11 fees. (TR January 23, 2015 P9 L 5-6). That was the extent of any exacting language for finding the award appropriate. The Court went on to cite the language of CR 11, while omitting specifics as to alleged behavior that would support the sanctions being awarded. The court went to great length to quote from the record as to what it considered 'deceitful' allegations against Counsel for Respondent. (TR February 13, 2015, P5 L2-25 and P6 L1-19.) Quite plainly, stating facts in this case is apparently considered wrongful acts on the part of Counsel for Appellant.

When the record is reviewed, it shows the following: 1) Deception alleged on the part of the Respondent was shown in the signing (under penalty of perjury) of the Child support Worksheets which lacked statutorily required information. The court ignored it. These documents, when signed, were certified by Counsel and the Respondent as being true and correct and not being submitted for an

improper purpose. Petitioner believes the submission of these documents creates a CR 11 violation on the part of Counsel for Respondent, Jennifer Johnson.

2) Further, deception was shown by the fact restrictions were placed against the Petitioner in the final parenting plan, (CP Parenting Plan, Final, (sub 157) P2 L 1-11) without proof of any wrongdoing on the part of Petitioner. The pleadings lack any specifics as to alleged actions to support the restrictions. This case has, in proposed Parenting plans, restrictions that were stricken/reserved. (CP Parenting Plan, Temporary (sub 42), P2 L1-9). Obviously, the court did not find compelling evidence the restrictions should apply. Additionally, in the Temporary Parenting Plan, signed by the court, no restrictions appear. (CP Parenting Plan Temporary (Sub 104), P2 L1-7).

Then, three months later, Ms. Johnson enters the case and, on December 11, 2014, enters a Temporary Parenting Plan citing restrictions against Petitioner. (CP Parenting Plan Proposed by Respondent P2 L1-11), This Plan did not cite any specific things Petitioner was alleged to have done which would warrant restrictions. Yet, the parenting plan allows visits every other weekend from Friday

to Sunday. (CP Parenting Plan Proposed by Respondent P2 L17) and all other scheduled holidays and vacations. With what can be said is a 'normal' every other weekend visitation schedule, restrictions were somehow thrown into the mix. After reviewing the court files a number of times, looking for some basis in fact for the restrictions, none could be found. Inquiry into *why* the restrictions were there have gone unanswered.

The court, when signing a Proposed parenting plan in which restrictions are present, must have evidence of wrongdoing in order to allow the restrictions. (RCW 26.09.191(6)). Again, Ms. Johnson counsel submitted restrictions, not only absent any proof, but absent following the civil rules of evidence, proof, and procedure, as required by the Statute. The Court signed them.

Additionally, Counsel failed to set out express findings of wrongdoing which would support a basis for these restrictions. Again, a violation of the Statute. The Court, in this case, entered a Final Parenting Plan on December 20, 2014, which included the same restrictions in the Proposed plan. (CP Parenting Plan Final (Sub 157) P2 L1-11) and, absent specific findings to support the restrictions. Are these not examples of 'deception' on the part of Counsel to restrict

the facts? Is it not a violation of the CR 11 to sign and submit pleadings for which a proper investigation has not been concluded and elements of the pleadings are false and not supported by actual evidence under the rules of evidence? CR 11 sanctions are warranted against Jennifer Johnson for failing to follow the Statute and case laws with regard to the Parenting Plan.

3) There are also serious concerns about the income of Respondent pled in his Financial Declaration in which he states his total household income is \$2272.19 (net) (CP Financial Declaration of Respondent) (which again fail to include the Social Security income of the children (CP Financial Declaration of Respondent P2 L 9). (See CP Child Support Worksheets of Respondent (Sub166)). Child Support Worksheets were prepared by Jennifer Johnson and signed by her client as to being true and correct. Please note on page 3 of CP Child Support Worksheets from Respondent (Sub 166) under 22d 'income of children', there is nothing listed which shows the Social Security Income of the children. Nor is there anything listed under 22e of this document under 'other income' which indicates this money is received. This is deceptive. Respondent knew he was receiving the money and his signature declares he read the document and that it

was true and correct. Additionally, Counsel submitted it to the court as being properly prepared, true and correct. This, too, is deceptive and it constitutes a violation of CR 11 as to Jennifer Johnson.

These issue are noted to show a pattern of conduct. The court, in this case, refused to address this issue and, instead, leveled CR 11 sanctions against Counsel for the Petitioner/Appellant failing to cite any specific reason. (TR January 13, 2015 P5 L 2-10 and P6 L20-25).

Additionally, the issue of "reasonable inquiry" was never discussed in the January 23, 2015 hearing. (TR January 23, 2015, generally). This issue was objected to at the February 23, 2015 hearing. (TR February 23, 2015 P9 L 18-25 and continuing to P10 16). Reasonable inquiry by Counsel for the Petitioner was made. (CP Letter from Dr. Duong Than, MD) Yet, the court determined it had not been. Proof had been submitted, (CP Letter from Dr. Duong Than, MD) and was in the confidential file at the time of the hearing.

Further, Counsel put forth language in the Findings that the pleadings were interposed for improper purpose such as to harass, cause unnecessary delay and needless increase of costs in litigation. Nothing can be found in the Hearing transcript as to just how the court came to its determination the pleadings were done for an

improper purpose. (TR January 23, 2015 in general). The Court made no inquiry into the reasons for the pleadings having been filed. The Court seemed to ignore the reasons stated in the Amended Petition to Modify the Parenting Plan (CP Amended Petition for Modification of Child Support P2 L7-12). Yet, CR 11 was cited and language specific to CR 11 was inserted into the Findings, without any specific actions cited to support the finding which spoke to improper purpose. In fact, the Court went so far as to have Counsel attach a printed copy of CR 11 to be incorporated into the pleadings.

In actuality, proof of the substantial change of circumstances (which was pled in the CP Amended Petition for Modification of Child Support, P2 L7-12) was provided and thus a showing of proper investigation had been done, the law had been read (RCW 26.09.071 and RCW 26.09.170), and a right to file pleadings was determined. This showing should have negated a finding under CR 11 of improper purpose.

Further, the record is clear on the issue of increased cost of litigation because the court file is chuck full of lengthy pleadings from the Respondent. Those pleadings are costly to prepare and file. In addition to those costs, the increased cost of adding another attorney

to the case because Ms. Johnson was "too busy" is not the Petitioner's fault. (TR January 13, 2015 P19 L 1-4)

Lastly, the criminal defense costs incurred are solely the responsibility of the Respondent, due to his criminal domestic violence behavior.

In sum, the increased cost of litigation in this case that appear to be a reason for the CR 11 sanctions are solely the result of actions on the part of the Respondent and his counsel(s), not the Petitioner or Petitioner's counsel.

ISSUE FIVE: The Court violated due process by not providing any notice of pending CR 11 sanctions and failing to hold an evidentiary hearing regarding as to those sanctions.

Due Process is a fundamental right, given by our constitution and laws, which requires notice and opportunity to be heard. Even criminals have the right to due process.

Here, the Court, sua sponte, imposed CR 11 sanctions and gave no notice or opportunity to be heard on the issues. Procedural Due Process is allowed in order that the right to sufficient notice, the right to an impartial arbiter and the right to give testimony and present relevant evidence are not infringed. The Court, in this case, imposed the sanctions, without notice, without citing any justification and

without an opportunity to direct the court to the evidence in the file pleadings. The Court here, focused on one issue and ignored the other issues in the Petition. In the February 13, 2015 hearing the Court stated it did not have to hear argument on everything alleged, and could rule off the pleadings submitted. (TR February 13, 2015, P9 L 12-14). Yet, the Court did not consider the proof submitted (CP Letter from Dr. Duong Than, MD) to show the substantial change of circumstances pled in the Amended Petition to Modify Child Support. (CP Amended Petition for Modification of Child Support P2 L7-12). The hearing concluded. The presentation hearing was filled with tension emanating from the Judicial Officer who apparently has a prejudice against hearing further matters of the case (TR January 23, 2015 P6 L 21, P9 L 5-6)

The Court made note of the number of volumes of the court file and, in awarding sanctions upon her 'look at this case' appears to be fee shifting by using CR 11 to do so. CR 11 is not meant to act as a fee shifting mechanism, but rather as a deterrent to frivolous pleadings. *Biggs v. Vail* 124 Wn.2d 193 (Wash. 1994) citing *Bryant* at 220, 829 P.2d 1099. Pleadings filed in this case were supported by evidence of a substantial change of circumstances (CP Letter from Dr. Duong

Than, MD), and misrepresentation to the court as stated in the February 13, 2015 hearing, (See TR generally). Due process rights of Petitioner and her Counsel were violated.

ISSUE SIX: CR 11 sanctions, were they appropriate?

An award of sanctions under CR 11, is reviewed for an abuse of discretion. *Biggs v. Vail* 124 Wn.2d 197. In making a determination as to whether sanctions are appropriate, the Court in *Biggs* stated it must keep the purpose behind CR 11 in mind as it was put in place to deter *baseless* filings and *to curb abuses of the judicial system*. (emphasis added). (See also *Bryant v. Joseph Tree*, 119 Wn.2d 210, 219, 829 P.2d 1099) (1992). Here, the court made a determination to award sanctions, Sua Sponte, without any inquiry as to the reasoning behind the filing, without reviewing the pleadings, no notice for Due Process purposes, and without citing any specific behavior of filing to support its decision. CR 11 sanctions are inappropriate against Counsel for Petitioner/Appellant.

CR 11 means that the signor has read the document and has 1) conducted a reasonable investigation into the facts that support the pleading; 2) has conducted a reasonable investigation into the law to determine that the document is supported by existing law or a good faith argument for extension, modification or reversal of existing law;

and 3) has not filed the document for any improper purpose. (*Bryant v. Tree* 119 Wn.2d 120 (Wash, 1992) 829 P.2d 1099).

In the case at bar, there are no clear and convincing CR 11 violations on the part of Petitioner's Counsel. It appears, from reading the record, the Judicial Officer in this case only considered the amount of pleadings in the file (TR January 23, 2015 P6 L21 and P9 L5-6) when making the determination as to CR 11 violations. Once the Court cited CR 11 as having been violated, Jennifer Johnson used the base language of CR 11 to bolster the decision (TR January 23, 2015 P 9 L 5-17) rather than citing specific acts on the part of Counsel that it deemed to have been violated and how Counsel's actions violated CR 11. The Court appeared to focus on one issue and not on any of the other reasons cited in the Amended Petition for Modification of Child Support. (CP Amended Petition for Modification of Child Support, Page 2, L7-12)

Next, the Court relied upon Respondent's counsel to 'fill in the blanks' as to which element(s) of CR 11 were violated. Counsel for the Respondent prepared the Findings and Order, using language *she* wanted in the Order and not what the court actually said. (TR January 23, 2015, generally). The Findings and Order are filed with the Notice

of Appeal. Counsel for Respondent added language regarding 'CR 11 violations' which were never addressed by the Court, and when objected to, the Court merely said "The Court can modify its findings at any time. The Court can reconsider its findings. The Court can add findings." (TR January 13, 2015 P14 L22-25). These statements from the Court left Counsel for Petitioner astonished at the lack of procedural due process and the fact actual evidence was in the pleadings to refute allegations of CR 11 violations, which was being ignored.

Both practitioners and judges who perceive a possible CR 11 violation must bring it to the offending party's attention as soon as possible. *Biggs v. Vail* 124 Wn.2d 193 876 P.2d 448 (1994) Without such notice, CR 11 sanctions are unwarranted. *Biggs* citing *Bryant*, 119 Wash.2d at 224, 829 P.2d 1099. Here, no notice was given from either the judge or Counsel from Respondent that CR 11 sanctions were being considered.

The Court's Findings must justify its Conclusions. *Mitchell v. Washington State Institute of Public Policy* 153 Wn.App 803 225 P.3d 280 (2009). Here, there is nothing in the record of the January hearing to justify the Conclusions of the Court as they pertain to CR 11

sanctions. (See TR January 23, 2015, generally).

Lastly, Ms. Johnson submitted a cost bill with which Counsel for Petitioner took great exception at the presentation hearing. (TR February 13, 2015, P16-23) Ms. Johnson stated she was simply too busy to stay in the case, withdrew, and entered a limited notice of appearance. (TR February 13, 2015, P19, L 2-4) The billing shows Ms. Johnson billed her client because she was too busy to stay in the case.

Ms. Johnson billed her client for appearing in court for a hearing which was stricken because it was inadvertently not confirmed. (TR February 13, 2015, P 17 L 9-17; P22, L22-25 and P23 L1-5). In Lewis County, hearings which are not confirmed are stricken from the docket and attorneys receive the docket two days prior to any hearings. Thus, the attorney could see the matter was not on the docket and there would be no need for her to appear. Yet, she billed her client.

Further, Ms. Johnson billed her client and expects Counsel, under CR 11 sanctions to pay, for her communications with Counsel working another aspect of the case. (TR January 13, 2015, P20 L25; P21 L1-7).

The Court in this case abused its discretion in awarding CR 11

sanctions. A Court may award sanctions if pleadings are filed for an improper purpose. Here, no such finding was in the record, only in the 'fill in the blanks' order prepared by Ms. Johnson.

Petitioner and her counsel ask the Court to reverse the CR 11 sanctions and reverse the Order of payment of \$2,990 in fees to Ms. Johnson on behalf of Respondent.

F. ATTORNEY FEES, COSTS and CR 11 SANCTIONS

The court may award reasonable attorney fees to maintain or defending an action under RCW 26.09, provided the party seeking fees submits an affidavit of need as required by RAP 18.1(c). As a result of having to file this appeal, Petitioner and her Counsel seek attorney fees and costs. An appeal of the CR 11 sanctions became necessary because the Court in this case:

1. Did not specifically set out what actions the Court deemed to have violated CR 11
2. Allowed Counsel to insert language into the Findings which was not a part of the Motion Hearing, expand language not asserted by the Court in the Motion Hearing and making Conclusions the Court did not address when it issued its ruling
3. Leveled CR 11 sanctions when the Court did not hear all arguments on the issues.

4. Did not consider the pleadings when making its ruling. The Court, while stating it could rule on the pleadings, (TR February 13, 2015 P 9 L12-14) seemed to ignore Petitioner's pleadings that supported the argument.

5. Gives the appearance of fee shifting and seeking to chill further pleadings from Petitioner.

In determining attorney fees on appeal, the court must consider the merit of the issue and the financial resources of both parties. *In re King*, 66 Wash. App. 134, 139, 831 P.2d 1094 (1992).

Here, the issues have merit and the trial court abused its discretion. The financial resources of Petitioner are dire, to say the least. She has no other source of income and depends on the money received from Social Security to support herself and her five (5) children, along with assistance from her family.

In addition, Counsel for Petitioner is a sole practitioner who works from her home and is currently dealing with significant health issues. Petitioner and her counsel request attorney fees and costs for having to file this appeal.

G. CONCLUSION

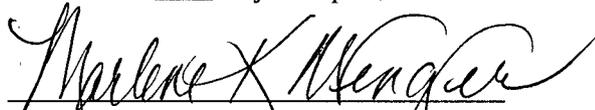
CR 11 sanctions were leveled against Counsel for Petitioner at a Motion hearing where Petitioner was seeking a Modification of Child

Support. Those sanctions had been leveled, without notice to Counsel, without specific findings of wrongdoing, and in an apparent attempt to shift fees to aid Respondent in his costs. The Court abused its discretion in awarding these sanctions.

As a result of actions on the part of Counsel for Respondent, Petitioner and Counsel for Petitioner seek CR 11 sanctions against Respondent's Counsel, Jennifer Johnson, for various violations of Statute and misleading the court by not adhering to them. She also had her client sign documents which were meant to conceal facts from the court; for inserting unproven restrictions in the Parenting Plan, in violation of CR 11's requirement that they are well grounded in fact; and putting forth these documents for an improper purpose.

Petitioner seeks reversal of the CR 11 sanctions leveled against Counsel for the Petitioner, attorney fees and costs for having to file this appeal be awarded, and CR 11 sanctions be leveled against Jennifer Johnson.

Dated this 8 day of April, 2015



MARLENE K. WENGER, WSBA 35478

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FILED
COURT OF APPEALS
DIVISION II

2015 APR 10 PM 1:31

STATE OF WASHINGTON

BY C. [Signature]
DEPUTY

**WASHINGTON STATE COURT OF
APPEALS, DIVISION II**

In re:

JULIA ZUCATI

Petitioner,

and

AARON ZUCATI

Respondent.

No. 47323-2-II

No. 13-3-00156-1

Affidavit of Service

I Declare:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served the following documents to AARON ZUCATI:

BRIEF OF APPELLANT

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date:

Address: 1220 N. Washington Ave. Centerville, WA, 98531

4. Service was made:

The Brief of Appellant was placed in the Mail, first class postage prepaid on April 8, 2015.

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

Signed at Winlock, WA on 3/13/2015.

[Signature]
MARLENE K. WENGER, WSBA 35478

Fees:

Service

-0-