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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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NO. 47492-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

REBECCA A. BAMBERG, FKA
Rebecca A. Larsen,
Petitioner-Respondent

vs.

JEREMIAH J. LARSEN,
Respondent-Appellant.

BRIEF OF RESPONDENT

Rebecca A. Bamberg
Pro Se Petitioner-Respondent

7355 SE Drake Ct.
Hillsboro, OR 971234
(360) 560-1614

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Introduction

The parties, Mr. Larsen and Ms. Bamberg, have a grossly significant trial court history and remain engaged in an unhealthy, extremely high conflict post-divorce situation. Mr. Larsen refuses to allow resolution by maintaining an ongoing presence in both the trial court level and appeals court level. This lack of closure has been refused for more than 4 years past the final divorce trial hearing at this point. The parties have been warned multiple times by the Trial Court, this is impacting the children of the parties and hurting them. Mr. Larsen refuses to accept Court decisions, evidenced by his multiple appeals and Motions for Reconsideration at the trial court level.

Statement of Case

This court should disregard Mr. Larsen's statement of case. A more concise, factual background is provided here.

The matter of the marriage between Rebecca A. Larsen, Petitioner, (NKA Rebecca A. Bamberg) and Jeremiah J. Larsen, Respondent, (Cowlitz County Superior Court, Case #10-300611-1), was decided at trial December 22, 2011. In this initial trial, Child Support was decided and

subsequently appealed with notice timely filed January 11, 2012 (Unpublished COA case #43025-8-II). In this initial appeal, Mr. Larsen argued 13 assignments of error, 10 of which were denied. The remaining three were remanded to the lower court in a decision issued October 8, 2013. One of which ordered conflict resolution by court order only. The remaining two applied to child support. The original support order was vacated by the COA and the trial court remanded to resolve the matter. On order of the COA, a subsequent trial was held May 9, 2014, during which Mr. Larsen retained Noelle McLean, Attorney at Law and Ms. Bamberg proceeded as Pro Se. (CR 324) The issues remanded by the COA of crediting Mr. Larsen for Social Security Disability Dependant Benefits received by Ms. Bamberg on behalf of the parties' children, providing a "whole family formula" downward deviation credit and providing conflict resolution by court action only were addressed. (RP Page 4, Line 24 - Pg 5, line 12; CR 328) All issues were resolved and an amended order was entered May 23, 2014 with a judgement issued against Ms. Bamberg to repay the over-payment of child support incurred during the appeal proceedings as a result of the ammended child support order. (CR 328) During the May 9 trial, the issue was raised of child support

arrears held by the Washington State Support Enforcement were vacated as a result of the COA vacating the original order on October 8, 2013.

The arrears was due to Mr. Larsen's non-payment of ordered child care expenses for the duration of the appeals process. (RP Page 5, Line 20-25)

The issue was reserved when the parties were unable to come to a civil agreement. (RP Page 97, Line 1-9)

When the parties continued to be unable to reach civil agreement, Ms. Bamberg retained Jamie Foster, Attorney at Law and filed a motion to enforce payment of daycare expences. (CR 334) Mr. Larsen proceeded as Pro Se. An order was entered February 23, 2015 with a judgement against Mr. Larsen ordering payment of day care expenses. (CR 346) The judgement of overpaid child support as a result of the ammended child support order was satisfied and the balance ordered paid by Mr. Larsen.

Mr. Larsen now appeals for the second time, file March 17, 2015.

Honorable Judge Stephan Warning strikes the Affidavit of Prejudice after the filing of the appeal, March 23, 2015 and a Motion for Relief from Daycare Judgement is signed April 13, 2015.

Summary of Argument

Mr. Larsen simply does not like the factual finding of the court. His appeal is an attempt to undo what the trial court found after carefully considering the fact. Although Mr. Larsen made multiple Motions for Reconsideration (CR 344, 348 and 355) as well as Motion for Relief from Day Care Judgement (CR 352 and 355), The Court denied his motions. In Mr. Larsen's Notice of Appeal filed March 17, 2015, he designates the scope of appeal to review the Child Support Order entered on May 23, 2014. Mr. Larsen additionally asked for review of the Judement entered February 23, 2015. However his notice does not conform to RAP 5.3, as a copy of the order signed February 23, 2015 was not attached and served to the responding party.

As a matter of perspective, the total sum of day care expenses is \$6168.50, accumulated over the period of 3.5 years. When credited for the overpayment of child support accumulated during initial appeals process, the net due is \$3302.46, less than \$1000 per year. (CP 334)

Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.” Substantial evidence was provided to Mr. Larsen and despite his lack of belief, a fair-minded

person would believe the service exchange occurred and he should now pay arrears due.

Argument

Assignment of Error I: Exhibits admitted off record

Mr. Larsen questions the admission of exhibits 1-13 off the record, however evidence in the record testifies otherwise. Mr. Larsen's assignment of error contradicts The Table of Contents (RP Pg 3, Line 3-12) which lists all the exhibits referred to in the trial on May 9, 2014, the very ones Mr. Larsen claims on page 7 of his opening brief were admitted off the record. The record shows these exhibits being entered. (RP Page 27, Line 5; Page 36 line 12, 22; and Page 37, Line 8). No other exhibits are referred to and no other exhibits were entered. There is no evidence to suggest Mr. Larsen's accusation of misconduct is true, but evidence exists to the contrary, as the record shows these exhibits were in fact entered and marked. Mr. Larsen argues discussion relating to these exhibits occurred off the record, but again, this simply did not occur and there is no evidence of such. For example, (RP Page 29, Line 20-21) the question is asked "Ok, then, on Exhibit 2, we've

identified your current 2014 Social Security amount; is that correct?" Clearly referring to an exhibit listed in the Table of Contents, numbered within the Exhibits 1-13 Mr. Larsen claims were admitted off record.

Further, Mr. Larsen attempts to add to the record in his opening brief on page 7, claiming the Honorable Judge Haan addressed him off the record and describes a situation and makes claims of a conversation that simply did not occur on May 9, 2014. In a subsequent hearing on February 2, 2015, Mr. Larsen makes these same claims of this non-occurring conversation of which there is no record. (RP Page 110, Lines 9-15) On Page 8 of his opening brief, Mr. Larsen goes on to quote statement of his attorney which is out of context and has no bearing on the question as to if the Trial Court is guilty of misconduct. Mr. Larsen further deviates from the scope of the Assignment of Error I on a rant regarding matters not in the scope of the trial, nor the scope of this appeal, regarding the children's established method of education and tax credits.

Finally, RAP 5.2(a) limits the time for filing to "30 days after the entry of the decision of the trial court that the party filing the notice

wants reviewed...” The orders for the Ammended Child Support Order were entered May 23, 2014, which is nearly a year prior to the filing of this Notice of Appeal, well over the 30 day limitation for filing.

The Trial Court did not admit documents off the record and this assignment of error does not comply with the Rules of Appellate Proceedure requiring timely filing.

Assignment of Error II: Retained Jurisdiction under UCCJEA

The orders issued February 23, 2015 were not filed with the Notice of Appeal and served to the responding party pursuant to RAP 5.3. Should this Court over look this defect of the notice, and consider the review of the orders entered February 23, 2015 regarding Judgement for Day Care, I give the following response.

Each of these orders were entered as a result of the mandate for the determination set forth by this Court of Appeals. The March 23, 2014 orders were issued on remand of the COA. The Trial Court retained jurisdiction for the February 23, 2015 orders, as it had previously excercised its jurisdiction, had reserved the issue and

had issued a decision in this matter. (CP 324, Page 11, line 8)

Further, Mr. Larsen had not properly brought before The Court his request for a change in jurisdiction under the UCCJEA. (RP Page 107, Line 10-14, Page 109, Lines 19-25) So the question is, did the State of Washington have the authority to act and was a decision within Washington's jurisdiction?

The issue of day care expenses for the period 1/1/12-6/30/14 was reserved in the Amended Order of Final Child Support, entered May 23, 2014. (RP page 107, Line 10-14, CR 324, Page 11, Line 8) The Trial Court has exclusive continuing jurisdiction and allows the right to establish a judgment as it had previously made a decision regarding . The State of Washington did not relinquish jurisdiction to another state and jurisdiction had not been accepted by any other state. This is strictly a matter of enforcement of orders entered by the State of Washington, not a matter of custody, as the matter had been reserved by the Superior Court of Washington for Cowlitz County as stated above.

At the time of the February 23, 2015 orders, Mr. Larsen in fact maintained a presence in Cowlitz County through property

ownership. It should be noted that just 2 months later Mr. Larsen testified in The Superior Court of Oregon he did not reside in Oregon, but Washington, even producing utility bills proving established residency. Mr. Larsen is telling multiple courts multiple stories, according to convenience. Presently Mr. Larsen claims two residences, one in each Oregon and Washington. The matter of Mr. Larsen's residency is what will serve him best to gain his desired outcome for that particular moment in time.

Despite Mr. Larsen's continued presence or lack of presence in the State of Washington, the Superior Court of Washington for Cowlitz county had in fact previously exercised its jurisdiction appropriately. There was no action in any other state to accept jurisdiction and Washington therefore retained jurisdiction.

Again, Mr. Larsen deviates from the scope of this assignment of error onto a tangent about the children's day care providers and private investigators. I object to these statements. This is not in the scope of this appeal and the comments and ask The Court to strike any comments outside the scope of the appeal.

The Trial Court did not act inappropriately in retaining jurisdiction.

Assignment of Error III: Question of Document Credibility

Mr. Larsen's third assignment of error can be summarized and argued by the RP pg 118, ln 11-15,

"Mr. Larsen--while quoting from the statutes for one proposition was--it stand for exactly the opposite, I think, of what Mr. Larsen is pursuing; but, his response is, basically, I don't believe it."

The Court of Appeals does not review issues of credibility.

"Credibility determinations are for the trier of fact and are not subject to review." *State v. Camarillo*, 115 Wash.2d 60, 71, 794 P.2d 850 (1990) "This court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Cord*, 103 Wash.2d 361, 367, 693 P.2d 81 (1985)."

Mr. Larsen argues no actual expense occurred although bartering is a common practice and utilized across many professions and private exchanges. The exchange of services was documented and the income of such claimed on Ms. Bamberg's tax returns as income. The expense of the day care expense likewise was documented and claimed. (RP page 108, line 20- page 109, line 5.) This documents the income gained during the bartered services in two fold, once with receipts and once declared on federal income tax forms to be taxed. This is not a matter of hiding income from the International Revenue Service simply to be gained as a

“windfall” from Mr. Larsen in the form of “manufactured” day care expenses. These expenses were incurred, documented and Mr. Larsen steadfastly refuses to pay the ordered child support in the form of day care expenses.

Evidence is weighed in "light most favorable to the prevailing party." (Weyerhaeuser v. Tacoma, 123 Wn app59, 96 P3d 460 division 2 (2004)

Here, the role of the COA is not to determine credibility of evidence. Proof was provided Ms. Bamberg worked the dates which day care expenses were incurred. This proof was examined by the court and a determination made.

"The Petitioner has provided proof that she's been working. Obviously something has to be done with the kids during this time period." (RP 118, Lines 5-7) The Trial Court reviewed the documentation and "When I review this, I think there's enough information there to support the claim." (RP pg 118, ln 16-17)

Mr. Larsen argues who the day care providers are is reason enough to not to fully support the parties' children. There is no language in the parties' parenting plan or child support order the providers must be licenced providers. (RP Page 117, line 6-24)

Mr. Larsen argues the Trial Court gave the “Respondent an additional 3 weeks to manufacture documentation” when the order

provided for two weeks after the trial. (CP 324, Page 11, line 10)

There is no evidence the documentation was not provided to Mr. Larsen as ordered. But to the contrary, the information had been provided and by Mr. Larsen's statements in his brief, when the parties were unable to reach a civil agreement, his lawyer withdrew after four month of attempting to negotiate an agreement for payment. Subsequently, Ms. Bamberg filed a motion to enforce. In the subsequent hearing February 3, 2015, Mr. Larsen does not object to the judgement or the calculation. (RP pg 123, ln 5-14)

The standard here is to determine if a reasonable-minded person would reach a different decision than that of the Trial court. Ms. Bamberg presented receipts and evidence of days worked from her employer, as well as tax returns showing the bartered income was taxed, documenting the necessity of care and care of the parties' children had occurred. Cross-examination of the day care providers and Ms. Bamberg's employer would only serve to consume more time and resources, as they would testify to the accuracy of the documentation provided to Mr. Larsen. Therefore, a reasonable minded person would come to the same conclusion as

the Trial court. To pursue this further would only consume more court resources as well as the resources of the parties, the care providers and employers. The employer is a small-town, single doctor practice with a total of two employees at the time of trial. The child care providers include another small business owner, as well as those who stand to lose income if called into testify. The income loss is substantial for all involved to satisfy Mr. Larsen's determination to have opportunity to cross-examination.

“As we have consistently stated, where the trial court has weighed the evidence, our review is limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment.” (Holland v. Boeing Co., 90 Wn.2d 384, 390, 583 P.2d 621 (1978); quoting Morgan v. Prudential Ins. Co. of America, 86 Wn.2d 432, 545 P.2d 1193 (1976))

It is evident, and not of argument, Ms. Bamberg is employed and produces an income, evident by IRS tax returns. Mr. Larsen does not argue the fact Ms. Bamberg produces an income or has gainful employment. He argues only that the care for the children occurred during working hours and payment was made. Substantial evidence exists, both by receipts and claim of income/deductions on federal tax forms. This supports the lower court's findings, the

conclusion of law and the judgement. As mentioned above, case law dictates this court is to defer to the trier of fact, the lower court, and does not review issues of credibility. The children were of the age where day care was necessary in order for Ms. Bamberg to produce said income. Evidence in the form of receipts were signed by the providing parties and copies provided to Mr. Larsen and the court. Any further proof would provide the same results and the same numbers. At no time did Mr. Larsen comply with the court orders to fully support the children he is obligated to support by payment of expenses incurred.

RCW 26.19.001 and the rest of the statutory framework show that the Legislature intended the best interests of children to be the paramount priority. (*Mattson v. Mattson*, 976 P. 2d 157 - Wash: Court of Appeals, 2nd Div. 1999)

But in essence this boils down to adequately supporting the children of the parties. At this juncture, the best interests of the children is to provide full support to them as well as diffuse the animosity between the parents that clearly are incapable of co-operation. The proof has been provided, evaluated by the court and judged adequate to prove child care was provided and payment made to those providers in the form of cash and services.

Withholding reimbursement only serves to prevent the children from enjoying a the benefits of being fully provided for.

On Page 9 of his brief, Mr. Larsen makes attempts to change the the record of his testimony. RP page 124, line 10-12 states, "...for the children being watched by their grandparents and the Petitioner's husband, which I find applaudable--" There is proceedure in place for correcting a record, if Mr. Larsen feels his transcriptionist is incorrect. (RAP 9.10) As it stands, however, this is the record submitted by Mr. Larsen.

This section again, Mr. Larsen deviates from the scope of the appeal, arguing again about tax exemptions and the children's method of education. These issues have been litigated , are decided, and are not within the scope of this review.

Assignment of Error IV: Imputing Wage

The Trial Court's decision to impute Ms. Bamberg's wage was entered May 23, 2014. This Appeal was filed March 17, 2015, nearly a year later. RAP 5.2 limits the deadline for appeal to 30 days. This assignment of error is not eligible for review under

RAP 5.2 as the Notice of Appeal filed March 17, 2015 exceeds the 30 day time limit to appeal this decision of the court.

In imputing Ms. Bamberg's wage, The Court carefully considered the unique circumstances of this case. At the time of trial 12/22/11, Ms. Bamberg was recently graduated from massage school and newly employed, re-entering the work force in a new career after a 6 year hiatus as a home maker. This line of work necessitates building a clientele in order to be paid, as pay is based on massages performed, not hourly. In the second trial, The Court considered this, as well as, the fact the children are home schooled, which was agreed by the parties and not subject to the original appeal. (CP page 70, line 13- page 71, line 7.) This decision is under the scope of a court's discretion to consider unique circumstances in each case and has a reasonable basis for which it was reached.

That being said, I reiterate the fact that this decision is not eligible for review under RAP 5.2 as the Notice of Appeal was filed more than 30 days after the entry of the order.

Assignment of Error V: Judgement for daycare not incurred

The Trial Court's decision to enter a judgement in the amount of \$3305.46 occurred as a branch of Mr. Larsen's third assignment of error, the evidence which proved day care expenses were incurred. Given his belief the Trial Court erred in accepting the documentation to evidence the day care expense, this would be perceived by Mr. Larsen as an error.

However, should this court affirm the Trial Court's acceptance of the evidence, it would be reasonable to follow that the judgement issued as a result of that evidence would also be affirmed.

Argued above, in response to the Assignment of Error III, it is clear this judgement is fair and owed in support of the children of the parties. I ask this court to affirm the Trial Court findings that the expenses for daycare were in fact incurred and subsequently this judgment is appropriate.

Conclusion

It is unfortunate, and to the detriment of the parties' children, that the parties in this matter are not able to come to an agreement civilly. This is

especially true if the issue at hand involves money. This appeal is not a matter of Trial Court error, but a matter of Mr. Larsen refusing to accept a court decision which is contrary to his own beliefs. Clearly, Mr. Larsen is emotional about this matter and perceives a great personal injustice with the thought of providing full support owed to these children, which includes the extraordinary expense of day care not provided for in the basic support calculation.

Mr. Larsen continues to use court proceedings as a vehicle to perpetuate his misperceptions of reality and pursue his vehement campaign to malign the character of Ms. Bamberg. He does so throughout his brief, deviating frequently outside the scope of this review, often describing Ms. Bamberg, the Respondent, and her character in negative terms which are not fact-based and generally engaging in a campaign to smear her character and using court proceedings as a vehicle to harrass. Two of the subjects he deviates to are the children's method of education (home schooling and tax exemptions) where included in his first appeal and denied and have been repeatedly litigated for change and denied. To unravel his statements, which are false and misleading vs. those which are true, would consume a significant amount of time.

This matter centers on the payment of day care expenses incurred but no amount of evidence is going to convince Mr. Larsen to part with the money owed to Ms. Bamberg as support for the children. The expense is reasonable, he owes less for 3.5 years than what many parents pay in 6 months. In considering Mr. Larsen's statement he provides the majority of support, his portion is minimal and clearly Ms. Bamberg has worked to keep the expense as low as possible, mutually beneficial to both parties.

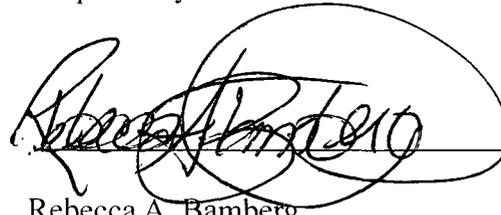
On page 34 of his brief, Mr. Larsen requests this court to “reverse the child tax credit award, vacate the day care award in it's entirety including Respondent's daycare judgment...” This is simply outside the scope of this appeal, set out by the notice. Child tax credits have been litigated repeatedly, were not reserved and are not eligible for review. Day care is an extraordinary expense provided for in the Child Support Order, previously litigated, not reserved and again, not eligible for review.

This appeal is frivolous in that many of Mr. Larsen's grievances have been previously litigated or fall outside the scope of this review. RAP 18.9(a) provided for a party to be sanctioned for filing a frivolous appeal and compensory damages awarded.

I respectfully ask this court to dismiss Mr. Larsen's appeal entirely and affirm the Trial Court's decisions. Under the authority of RAP 2.4(a)(2), I ask this court to either order Mr. Larsen to pay this judgment in full within 30 days or establish a payment plan with severe consequences if not satisfied fully and timely. I ask this court to consider whether Mr. Larsen has acted in good faith or is engaging in frivolous filings in effort to harrass Ms. Bamberg and delay his obligation to fully support the parties' children by reimbursement of daycare expenses incurred.

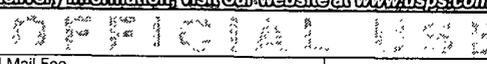
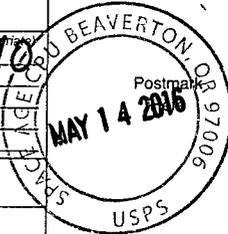
DATED this 14th day of May, 2015.

Respectfully submitted

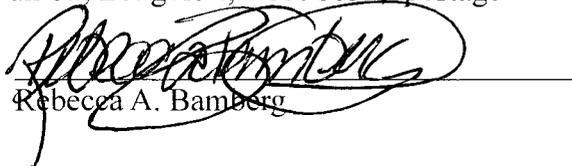


Rebecca A. Bamberg
 Petitioner-Respondent,
 FKA Rebecca A. Larsen

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I certify that I mailed a copy of the foregoing Brief of Respondent to Jeremiah J. Larsen at 3270 Oak St., Longview, WA 98632, postage prepaid, on May 14, 2015.



Rebecca A. Bamberg

May 14, 2015

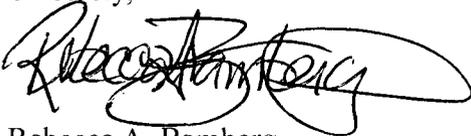
David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

RE: COURT OF APPEALS NO. 47492-1-II

Dear Mr. Ponzoha:

Enclosed please find the Brief of Respondent as well as the Affirmation of Service for the above mentioned case.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Bamberg", written over a large, stylized oval flourish.

Rebecca A. Bamberg
FKA Rebecca A. Larsen

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