

No. 49220-2 II

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

---

SHILO STRICKLAND f/k/a LEYERZAPF

Appellant,

v.

BJORN LEYERZAPF.

Respondent.

---

REPLY BRIEF OF APPELLANT

---

Appeal from the Superior Court of Pierce County  
No. 00-3-04114-3  
The Honorable Michael Schwartz, Presiding

---

E. Allen Walker,  
Attorney for Appellant  
2607 Bridgeport Way West, Ste. 2C  
Tacoma, WA 98466  
Telephone: 566-3383

## **Table of Contents**

1. WHETHER CONTEMPT CAN BE FOUND WHEN THERE WAS NO PERSONAL SERVICE OF PROCESS?.....	3
2. WHETHER THE COURT HAS AUTHORITY TO ALLOCATE A TAX EXEMPTION FOR A CHILD WHO HAS REACHED THE AGE OF MAJORITY? .....	4
3. WHETHER THE ATTORNEY’S FEES AWARDED IN THE CONTEMPT CITATION WERE EXCESSIVE? .....	6
4. WHETHER APPELLANT MET HER BURDEN OF EXERCISING DUE DILIGENCE IN COMPLYING WITH THE COURT ORDER? ....	7

### **Cases**

<u>Childers v. Childers</u> , 89 Wn.2d. 592, 595, 575 P.2d 201 (1978).....	5
<u>Marriage of Logg</u> , 74 Wn.App. 71, 875 P.2d 647,649 (Div. III 1984).....	3
<u>State v. Ralph Williams’ North West Chrysler Plymouth, Inc.</u> , 87 Wn.2d 327, 328, 553 P.2d 442 (1976) .....	3

### **Statutes**

RCW 26.18.050(2).....	4
-----------------------	---

**1. WHETHER CONTEMPT CAN BE FOUND WHEN THERE WAS NO PERSONAL SERVICE OF PROCESS?**

Respondent ignores the case of Marriage of Logg, 74 Wn.App. 71, 875 P.2d 647,649 (Div. III 1984), which is on point and which once again clarifies that “if there is not proper service, there is not jurisdiction”. In order for there to be jurisdiction, there must be service of process. There was no service of process. Logg again sets forth: “Notice without proper service is not enough to confer jurisdiction”. Ibid. Here, we don’t have service of process as to the mother as to the contempt citation. The fact that there was notice, as per Logg, is insufficient to “confer jurisdiction”. Ibid. The case must be dismissed for that reason.

Respondent cites State v. Ralph Williams’ North West Chrysler Plymouth, Inc., 87 Wn.2d 327, 328, 553 P.2d 442 (1976), to try to claim that the fact that appellant was never personally served with the contempt - - that there still existed jurisdiction for contempt. Ibid at 332 However, the Ralph Williams’ case says that “actual notice” is required and there was no actual notice given to appellant that is anywhere documented as to the show cause for contempt. There was no personal jurisdiction as to the contempt. In addition, the type of contempt that was being pursued in the Ralph Williams’ case was not pursuant to RCW 26.18; rather, it was general civil contempt. Ibid. at 335. Respondent cited no case law

indicating that personal service is not required for an RCW 26.18 contempt proceeding.

RCW 26.18.050(2) sets forth:

Service of the order to show cause shall be by personal service, or in the manner provided in the civil rules of superior court or applicable statute.

There was no jurisdiction for RCW 26.18 contempt given no proper service of process. There was absolutely no service whatsoever of any process for the relevant contempt. The requirements of RCW 26.18.050(2) were not met and the contempt order must be vacated.

**2. WHETHER THE COURT HAS AUTHORITY TO ALLOCATE A TAX EXEMPTION FOR A CHILD WHO HAS REACHED THE AGE OF MAJORITY?**

First off, it is unclear how the relevant tax exemption has been allowed to survive adulthood. The original final Order of Child Support from November 18, 2009, contemplated an end to the Court determining who gets which tax exemption upon either child achieving adulthood. This can be seen by logically considering CP 479 where once the older child reached the age of majority, the father was granted even years to claim the remaining minor child's deduction. The respondent would have this Court believe that despite the fact that the original trial Court specifically ended the parties' ability to claim a tax exemption for the

older child that the younger child's exemption would survive reaching the age of majority.

The respondent provides no authority that specifically grants a lower court authority to allocate a tax exemption for a child who has already reached the age of majority. Indeed, in this case, the Court contemplated that there would be no tax exemption for those of the age of majority consistent with the law. This was specifically determined by Court Commissioner Robyn Lindsay. CP 120. Again, it was understood by the parties and the Court that once a child reaches the age of majority, that that ended the ability for the Court to award an exemption, just as it did with the relevant child's older sibling, because when the older child reached the age of majority, only the age of minority child's exemption alternated between the parties. CP. 479.

The respondent cites Childers v. Childers, 89 Wn.2d. 592, 595, 575 P.2d 201 (1978), but that case was not a case that addressed tax exemptions. That was a case addressing post-secondary education and did not address tax exemptions for minor or dependent children.

The Court Commissioner's determination that tax exemption allocation ended was a final determination on January 12, 2015, when the Commissioner determined that. CP. 123 It was not timely revised or reconsidered or appealed specifically beyond a revision to Judge Larkin,

who ordered the parties to follow the Commissioner's order. CP 124-25. No appeal was made from Judge Larkin, so Commissioner Lindsay's Order still stands with her determination that the 2014 exemption had previously expired due to the child being an adult. CP 124-25. Later determinations regarding this specific issue were thus *ultra vires*.

When the lower Court "resurrected" the 2014 tax exemption, the Court was without authority to do so among other reasons, because it was already the law of the case that the exemption had expired given the prior Commissioner's order that was not revised, appealed, otherwise modified or vacated on that issue. This was an *ultra vires* determination by Judge Schwartz on November 25, 2015. CP. 207-09, 238-40, 291-95; CP 120.

### **3. WHETHER THE ATTORNEY'S FEES AWARDED IN THE CONTEMPT CITATION WERE EXCESSIVE?**

The respondent gives no justification for the excessive attorney's fees that were awarded, including particularly the routine working copy charges and secretarial work as referenced in appellant's opening brief, PP.9-14. The excessive fees order should be vacated by the lower court.

In addition, the Honorable Michael Schwartz, on November 25, 2015, specifically denied an award of attorney's fees. CP 208. How then, given no appeal from this order, can the attorney's fees pre-dating this unappealed order stand? The fees awarded prior to November 26, 2015,

should be determined also to have been *ultra vires* and that decision should be vacated as to those attorney's fees.

**4. WHETHER APPELLANT MET HER BURDEN OF EXERCISING DUE DILIGENCE IN COMPLYING WITH THE COURT ORDER?**

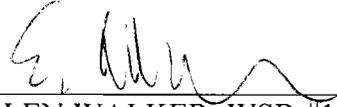
The declaration of appellant's husband Bradley Strickland, contrary to the misrepresentation (P. 49, Respondent's brief) of Respondent, was signed, wherein he refused to cooperate in amending the 2014 tax return. CP 235. Appellant was unable to amend the joint return given her husband's refusal to cooperate.

The contempt judgment dated march 4, 2016 (CP 291-95) appealed in this case was not a subsequent judgment - - the appeal as to the contempt finding therefore was timely. Indeed, the presentation and Judgment on the contempt were set over and entered on June 24, 2016. CP 398-400. This appeal was timely and rightly included the contempt determination for which there was no jurisdiction due to lack of personal service of process.

**CONCLUSION**

For the reasons set forth, the contempt judgment should be vacated and the matter dismissed. In the alternative, the excessive attorney's fees awarded should be vacated and the matter remanded for a determination of reasonable fees.

Respectfully submitted this 17 day of May, 2017.

A handwritten signature in black ink, appearing to read "E. Allen Walker", written over a horizontal line.

E. ALLEN WALKER, WSB #19621  
Attorney for Appellant

**WALKER ALLEN LAW OFFICE**  
**May 22, 2017 - 10:08 AM**  
**Transmittal Letter**

Document Uploaded: 1-492202-Reply Brief.pdf

Case Name: Shilo Strickland f/k/a Leyerzapf v. Bjorn Leyerzapf

Court of Appeals Case Number: 49220-2

**Is this a Personal Restraint Petition?**      Yes       No

**The document being Filed is:**

Designation of Clerk's Papers                      Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Reply

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Susan Heilesen - Email: [suework2607@yahoo.com](mailto:suework2607@yahoo.com)

A copy of this document has been emailed to the following addresses:

[lcarlsen@mckinleyirvin.com](mailto:lcarlsen@mckinleyirvin.com)