

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

In re:

SHILO M. LEYERZAPF (n/k/a STRICKLAND), Appellant

and

BJORN H. LEYERZAPF, Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR PIERCE COUNTY

The Honorable Michael E. Schwartz, Judge

BRIEF OF RESPONDENT

Laura A. Carlsen, WSBA No. 41000
Attorney for Respondent
MCKINLEY IRVIN, PLLC
1200 Pacific Ave., Suite 2000
Phone: 253.952.4290
Fax: 206.223.1999

TABLE OF CONTENTS

Table of Authorities ii

Statement of the Case 1

Argument 27

A. Standard of Review28

 B. The child remained dependent during 2014, so he remained available as a tax exemption for the parties. Ms. Strickland violated court order by claiming the 2014 exemption.....29

 C. The trial court did not lack jurisdiction over Ms. Strickland, and she had sufficient due process to be held in contempt.....34

 D. The fees and costs Ms. Strickland was ordered to Pay are reasonable given the extreme protracted Litigation caused by her insistence at violating the Court order.....42

Conclusion 50

TABLE OF AUTHORITIES

Washington Cases

Bowers v. Transamerica, 100 Wn.2d 581 (1983)43

Burlingame v. Consol. Mines & Smelting, 106 Wn.2d 328 (1986)36, 40

Chilcott v. Globe Navigation, 49 Wn. 302 (1908)47

Childers v. Childers, 89 Wn.2d 592 (1978)29-30

Gimlett v. Gimlett, 95 Wn.2d 699 (1981)30

In re Marriage of Correia, 47 Wn. App. 421 (1987)43

In re Marriage of Hunter, 52 Wn. App. 265 (1988)42, 50

In re Marriage of James, 79 Wn. App. 436 (1995)28

In re Marriage of Logg, 74 Wn. App. 781 (1994)39-40, 42

In re Marriage of Maxfield, 47 Wn. App. 699 (1987)47-48

In re Marriage of Rideout, 150 Wn.2d 337 (2003)48

In re Marriage of Waters, 116 Wn. App. 211 (2002)42

Paternity of M.H., 187 Wn.2d 1 (2016)50

Singleton v. Frost, 108 Wn.2d 723 (1987)28, 42

State v. Bloomer, 94 Wn. App. 246 (1999)36

State v. Karas, 108 Wn. App. 692 (2001)47

State v. Ralph Williams, 87 Wn.2d 327 (1976)37

Washington Statutes

RCW 1.16.050	8,10
RCW 7.21.030	47
RCW 26.09.100	30
RCW 26.09.110	29
RCW 26.18.020	29
RCW 26.18.040	7, 41, 46
RCW 26.18.050	36, 41, 48
RCW 26.18.100	29
RCW 26.18.160	42, 50
RCW 26.19.100	31-32

Court rules

RAP 2.5	35
RAP 18.1.....	50

I. **STATEMENT OF THE CASE**

The parties, Bjorn Leyerzapf (the father) and Shilo Strickland (f/k/a Leyerzapf, the mother) were divorced on September 7, 2001, and they have two children, KL (then age 10, now age 26) and CL (then age 5, now age 20). CP 450-63. The Order of Child Support required Mr. Leyerzapf to pay \$633.15 per month and 68% of day care and extraordinary medical expenses. CP 450-63. Regarding tax exemptions, the Order provided that:

The mother shall claim the tax exemptions for both children every year. Provided, however, that her tax refunds shall be used to pay transportation costs incurred to facilitate the father's residential time with the children. The mother shall provide the father with copies of her tax return by June 1 of each year, along with receipts for transportation costs.

CP 450-63. On May 28, 2003, Ms. Strickland filed a Petition for Modification of Child Support on the basis that one of the children had changed age brackets and requested that Mr. Leyerzapf be responsible for day care costs (at the time, KL was 12 and CL was 6). CP 464-66. Mr. Leyerzapf filed his Response to Petition on June 9, 2003, as part of which he admitted that KL had changed age brackets, but denied there should be any ongoing daycare costs due to the children's ages. CP 467-68. After his response, Ms. Strickland did not file any further documents or schedule a hearing.

On November 17, 2008, Ms. Strickland once again filed a Petition for Modification with the assistance of counsel, alleging that KL needed postsecondary support, there had been a change in age brackets, and there was a need for health insurance. CP 469-72. She further requested that both tax exemptions be awarded to her. CP 469-72. Mr.

Leyerzapf responded, agreed that child support should be modified and agreed that postsecondary support should be ordered for KL. CP 473-47.

The better part of a year passed without Ms. Strickland proceeding with her Petition, as she neither filed any documents or scheduled a hearing between November 17, 2008, through September 1, 2009, when Mr. Leyerzapf scheduled a hearing for November 18, 2009, to resolve the matter. Ms. Strickland did not file any financial documents in support of her Petition until November 12, 2009. On that day, and in response to the scheduled hearing, Ms. Strickland objected to the hearing. Nevertheless, on November 18, 2009, a court hearing was held on the matter and a new Order of Child Support was entered that required Mr. Leyerzapf to pay \$658.61 each month for CL, who was 13 at the time, and pay 58.7% of his expenses beginning November 1, 2009. CP 475-88. The new Order eliminated daycare as a shared expense for the children. CP 475-88. Since KL had both turned 18 and graduated high school, but was not actually enrolled in postsecondary school, the court ordered that "postsecondary education contributions towards [KL's] education shall be determined when she commences school. The right to petition for post-secondary education for [CL] is reserved." CP 475-88. Regarding tax exemptions for the children, the exemption for KL was given to Ms. Strickland, and the exemption for CL was given to Mr. Leyerzapf. CP 475-88. When only one child remained, the parties were then to alternate the exemption, with Ms. Strickland receiving the exemption in odd-numbered years and Mr. Leyerzapf receiving the exemption in even-numbered years. CP 475-88.

At the hearing on November 18, 2009, Ms. Strickland raised for the first time since filing her Petition the year before, the allegation that Mr. Leyerzapf had not paid his percentages of medical and other child-related expenses as required per the previous Order of Child Support. CP 475-88. She had not made that allegation in her Petition or by filing any sort of motion. CP 469-72. Despite this, the Order of Child Support provided that, regarding "Past Due Unpaid Medical Support,"

Mother must provide Father within 30 days of all evidence she has that he owes her for any medical related expenses for the children as well as any other past child support that she claims is owed. If she does not comply within 30 days, her claims are waived. Once evidence is provided, mother must note hearing to be heard within 90 days from today to deal [with] this issue.

CP 475-88. On November 30, 2009, Ms. Strickland retained a new attorney, who substituted for her previous attorney, and filed a Motion for Revision of the Order of Child Support, claiming the commissioner "erred" regarding the lack of judgment for back support, start date, calculation of income, calculation of transfer payment, calculation of standard deviation, failure to award postsecondary support, failure to order back support, failure to order back medical support, and limiting her right to seek reimbursement by issuing time restrictions. CP 492-93. Even though she had objected to Mr. Leyerzapf scheduling the hearing and requested a continuance, she objected to the fact that the Commissioner had set the start date at the time of the hearing instead of the year prior. CP 492-93. Ms. Strickland's Motion did not challenge or even mention the allocation of tax exemptions for the children. CP 492-93.

On January 22, 2010, Judge Thomas Larkin denied, in relevant part, Ms. Strickland's Motion and maintained the timelines for her to provide proof of expenses she claimed Mr. Leyerzapf owed, although he clarified the start date to be the date of his decision - January 22, 2010. CP 494-95. Ms. Strickland did not thereafter file a Notice of Appeal or any Motion challenging this decision.

On April 20, 2010, Ms. Strickland filed a Motion for Contempt, challenging again the Commissioner's Order of Child Support, claiming that Mr. Leyerzapf should not get credit for paying the children's health insurance premiums, that his income was calculated incorrectly, that he was not required to pay medical expenses, and that he was not required to pay "child support." CP 496-505. It should be noted that no "credit" for the payment of health insurance premiums was included in the Child Support Worksheets or the Order of Child Support, and both parents were required to provide health insurance coverage for the children. CP 475-88.

Regarding medical expenses, Ms. Strickland claimed Mr. Leyerzapf had not paid medical expenses from 10/2007 to 11/2009. CP 496-505. In support of this claim, she provided a self-made chart that contradicted her claim and actually showed Mr. Leyerzapf had made monthly payments toward expenses from 10/2007 through 1/2009 totaling \$991.47. CP 496-505. Despite this, she then further claimed that it was "unreasonable to expect [her] to have original invoices, receipts and proof of payment after two years," even though by her own chart, she would only have needed to go back a year. CP 496-505. As part of this chart, she had not factored in the "Extraordinary Health Care Expense"

minimum of \$50.60, which she claimed should be “waived” because the Commissioner had given Mr. Leyerzapf credit for paying the health insurance premium and had incorrectly calculated his income (even though no health insurance premium credit existed and even though she lost on her motion for revision to change the income calculations). CP 496-505.

In response, Mr. Leyerzapf noted that Ms. Strickland was required to provide proof of the expenses within 30 days of January 22, 2010, but she did not provide them until April 20, 2010 (almost 90 days after the decision). CP 506-39. Further, she was to note a hearing “to be heard within 90 days” from the date of January 22, 2010, but she had scheduled her hearing to be on June 2, 2010, which was almost two months late. CP 506-39. Mr. Leyerzapf further provided proof that both he and his attorney had been actively requesting proof of the expenses since Ms. Strickland first claimed they were owed, but had never received any proof that the expenses were incurred or paid. CP 506-39. Instead, Ms. Strickland kept submitting a self-made chart, much like in her Motion for Contempt, that did not factor in the Extraordinary Health Care Expenses minimum that was in effect at that time. CP 506-39. In reply, Ms. Strickland blamed her previous attorney for not submitting the documentation earlier, and then claimed that “I too want this to be over. Instead, Bjorn expects me to provide more ‘evidence.’” CP 540-44.

On June 2, 2010, the court determined that Mr. Leyerzapf was not in contempt. CP 545-47. On June 11, 2010, Ms. Strickland filed a Motion for Revision, alleging that the Commissioner “erred” and that a judgment for back support should have been entered against Mr. Leyerzapf, he

should have been held in contempt, and he did not pay medical expenses for the children. CP 548-49. She claimed that it was Mr. Leyerzapf's responsibility to obtain proof of the medical expenses for the children. CP 548-49. On July 11, 2010, Judge Thomas Larkin denied her Motion for Revision and upheld the Commissioner's Order completely. CP 550-51. Ms. Strickland did not thereafter file a Notice of Appeal or other motion to challenge the order.

On September 24, 2014, Mr. Leyerzapf filed the Motion for Contempt that is at issue in this matter. CP 58-60. He claimed that Ms. Strickland had violated the 9/7/2001 Order of Child Support for taking the children's tax exemptions without providing copies of her tax returns each year or providing receipts for transportation costs as ordered. CP 62-64. Further, he claimed that she had taken the tax exemption for CL in 2012, which had been awarded to him per the 11/18/2009 Order of Child Support in even-numbered years, and as a result, he had to pay \$2,022.97 to the IRS instead of receiving a refund. CP 62-64. He asked that she be ordered to amend her tax return, sign Form 8332 so he could amend his taxes, and that she pay \$75.00 for his tax preparer to handle the amendment. CP 62-64. He also asked that she be ordered to sign Form 8332 for 2014 as well, since it would be his year to claim CL. CP 62-64. He further requested that she be required to reimburse the \$20.00 court facilitator fee, wages lost from work for him to appear in court, and an order:

Granting sanctions for contempt, including a forfeiture for each day the contempt of court continues, and establishing conditions by which the contempt may be purged and granting any other relief, including reasonable attorney

fees and costs and make up residential time, as may be appropriate under Chapter 7.21 RCW, Chapter 26.09 RCW, Chapter 26.10 RCW, Chapter 26.26 RCW, and RCW 26.18.040.

CP 58-60. He scheduled his hearing for October 16, 2014, CP 552, and she was personally served with the paperwork at her home via delivery to her husband at her home on September 28, 2014, well over two weeks before the hearing, CP 553-54. Despite this time, she did not respond to the Motion but instead appeared at the hearing and requested a continuance so she could retain legal counsel. CP 65. The hearing was then continued for over a month to November 17, 2014, so she could find an attorney. CP 555. At the same time, she was directed to the Department of Assigned Counsel to determine if she qualified for a court-appointed attorney. CP 66.

On October 29, 2014, over 19 days before the hearing, attorney Rose Eberhart appeared on behalf of Ms. Strickland as a private attorney, not as assigned counsel. CP 556. Despite the time available before the hearing, no documents were filed with the court by either Ms. Strickland or her attorney on or before the November 17, 2014, hearing. On November 17, 2014, Ms. Strickland and her attorney appeared in court to request another continuance so a response could be provided. CP 67. A new hearing date was scheduled for December 1, 2014. CP 560.

Ms. Strickland submitted her response on November 25, 2014, for the December 1, 2014, hearing. CP 68-74. In response, Ms. Strickland admitted that she had taken the tax exemption, stating "I did claim [CL] on my taxes, but I used all of the money to pay back court costs and loans given to me for [CL's] treatment and counseling." CP 68-72. She further

claimed "Mr. Leyerzapf does not pay his portion of the medical bills for our children." CP 68-72. She did not provide any medical bills with this response or an accounting of what she believed was owed.

Per state and local rules, her response was late, as November 27 (Thanksgiving) and 28 (the day after Thanksgiving) were court holidays per RCW 1.16.050, and Pierce County Local Rule (PCLSPR) 94.04(c)(3) requires the response to be "filed and served on all parties and attorneys no later than 12:00 noon four (4) court days prior to the hearing time." That Ms. Strickland filed her response on November 25 meant there was no way for Mr. Leyerzapf to file his reply in time for the court to receive it two court days before the hearing. Further, no proof of service of the documents on Mr. Leyerzapf was provided to the court. In fact, Mr. Leyerzapf provided proof that she had mailed the response to him on November 26, 2014, and per CR 5, service of pleadings by mail is "deemed complete upon the third day following the day upon which they are placed in the mail," which meant service was not complete on Mr. Leyerzapf until December 3 (two days after the hearing). CP 128-51.

Due to the late response, on December 1, 2014, the court continued the hearing to January 5, 2015, and required Ms. Strickland to "timely provide documentation regarding possible offset of medical bills" and reserved reimbursement of Mr. Leyerzapf's lost wages for court appearances to the next hearing. CP 76.

On December 29, 2014, Ms. Strickland filed a declaration and health care records. CP 77-80, 412-44. She stated that she took the tax exemption because CL required treatment after entering pleading guilty

(Alford Plea) to molesting Mr. Leyerzapf's daughter with his current wife when she was very young. CP 77-80. She argued:

During tax season, [Mr. Leyerzapf] contacted me and said he attempted to e-file his taxes but was denied first time with [CL] because the system notified him that someone had already claimed [CL]. He asked if this was true, and I said yes, because he refused to pay his share of medical bills so I claimed him to help pay these expenses. . . . So, it appears to me as if he may have fraudulently filed his taxes knowing I had already claimed him and why.

CP 77-80. Regarding medical expenses, she claimed she was "able to locate" proof of \$3,252.78 in expenses that Mr. Leyerzapf had not reimbursed. CP 77-80. She provided a variety of excuses as to why she could not provide proof of expenses incurred, including that the facilities were closed, that providers would not return her calls, and that she had to focus on her son instead of "saving receipts." CP 77-80. She did not claim to have ever sent these expenses to Mr. Leyerzapf so he could pay them, and she did not provide proof that she had done so.

In support of her claimed \$3,252.78 in medical expenses, Ms. Strickland provided a few medical invoices, some for CL, but many for expenses in her own name (totaling \$570.21), expenses for her other child from another relationship (totaling \$785.31), non-medical expenses not covered by court order (totaling \$30), and duplicates that did not add up to \$3,252.78. CP 412-44. Of the legitimate medical expenses, she had not factored in that Mr. Leyerzapf was to pay only 58.7%. CP 412-44. At the hearing, Ms. Strickland admitted that no spreadsheet had been provided of the expenses, that expenses had been included for other children, that some were duplicate expenses, and that some of the expenses had already been paid by Mr. Leyerzapf. CP 105-21. Despite

this, she insisted that the total owed was \$3,252.78 (the full amount she had requested) and that judgment be entered for that amount. CP 105-21. She had not filed a Motion for any judgment, but that was her request of the court. CP 105-21.

Per RCW 1.16.050, January 1 is a court holiday, so Ms. Strickland's response was due to be "filed and served on all parties and attorneys" that day at noon. On December 31, 2014, Ms. Strickland filed via counsel "Proof of Mail Delivery" showing mail tracking delivery to Mr. Leyerzapf on December 30, 2014, the day after the paperwork was due to Mr. Leyerzapf. CP 562-64. Per CR 5, service of pleadings by mail is "deemed complete upon the third day following the day upon which they are placed in the mail," which meant service was not complete on Mr. Leyerzapf until January 2, 2015, one court day before the hearing. Again, this left Mr. Leyerzapf no opportunity to reply, so the January 5, 2015, hearing was continued to January 12, 2015, so Mr. Leyerzapf could reply. CP 89.

On January 12, 2015, Mr. Leyerzapf represented himself and argued that even though Ms. Strickland is a professional accountant, her claimed expenses did not add up. RP 3 (1/12/15 Hearing). He noted that there were expenses provided that he had already paid, RP 6 (1/12/15 Hearing), that Ms. Strickland had included expenses for other people, RP 3 (1/12/15 Hearing), and that it contained many duplicates, RP 7 (1/12/15 Hearing), which counsel for Ms. Strickland admitted was true, RP 7 (1/12/15 Hearing). Mr. Leyerzapf indicated that he was happy to pay and had always paid, but he was having a hard time figuring out what he needed to pay in light of those issues. RP 14 (1/12/15 Hearing). In

response, Ms. Strickland argued via counsel that judgment and sanctions should be entered against Mr. Leyerzapf for filing Ms. Strickland's tax return with the court and for her claimed \$3,675 in expenses. RP 10 (1/12/15 Hearing).

In her ruling, Commissioner Robyn Lindsay held that she was not going to issue a judgment "at this point" and held that "Shilo Strickland intentionally failed to comply with a lawful order of the court dated on 11/18/2009." CP 92-95. "This order was violated in the following manner . . . Mother claimed the child on her taxes during father's year." CP 92-95. The court then held that:

[T]he parties may mediate the amount of tax exemption that Mr. Leyerzapf would have received against the back medical support Mrs. Strickland should have received. It is the Commissioner's belief that the amounts would be about the same.

CP 92-95. On January 22, 2015, undersigned counsel appeared for Mr. Leyerzapf and filed a Motion for Revision of the commissioner's ruling. CP 96-104. Judge Thomas Larkin heard the revision motion on February 13, 2015, and decided that the Commissioner had not issued a decision he could revise, as it was a "non-decision" for the parties to go to mediation before going back to court. CP 124-25. Specifically, Judge Larkin stated:

COURT: [A]n order is an order. It needs to be followed through with. . . . And this is an appeal, essentially, from [the Commissioner's] decision, which was somewhat a non-decision, I guess I'd describe it that way, but there was an order and she asked you to do some things, and what were those?

COUNSEL FOR MS. STRICKLAND: The commissioner had ordered that they mediate the issue and there's been no mediation.

COURT: Exactly. That was her order. And so I'm wondering why we're here in front [of] me today when what we need to do first is follow her order and the decisions that she made before I'm going to take a look at it because that's the order. That's what the record is. Ordered you to do it and then there's an expectation that it's going to be done. And if it's not or if you get it resolve[d], well, that takes care of that, but you have to do that before I'm going to make a decision in this case.

RP 11-12 (2/13/15 Hearing). Counsel for Mr. Leyerzapf noted that Mr. Leyerzapf had already tried to arrange mediation with Ms. Strickland, who ignored his requests, and that he had already spent a lot of time and money just trying to resolve the issue of the exemptions while Ms. Strickland had not filed a motion or undertaken effort to resolve the issue of the medical expenses. RP 12-13 (2/13/15 Hearing). In response, the Court held that the parties needed to mediate. RP 13 (2/13/15 Hearing).

After the hearing, Mr. Leyerzapf again contacted Ms. Strickland to schedule mediation and said:

Good morning. So the commissioner asked us to work out the difference in the tax exemption versus medical bills. She did not take into account that my proportionate share is 58.7 percent of the medical bills. I think it would be fair if you would at least let me claim [CL] on taxes this year. Please let me [k]now as soon as possible.

CP 128-51. Ms. Strickland did not respond. CP 128-151. He then contacted the Pierce County Center for Dispute Resolution (PCCDR) to schedule mediation, hoping that would prompt a response. CP 128-51. He contacted them several times about scheduling with a variety of dates, but each time, he was told Ms. Strickland would not be available. CP

128-51. Finally, he was informed that Ms. Strickland could only be available on Mondays at 1:30 p.m. and no other times. CP 128-51. They eventually were able to schedule mediation for April 20 after working on it for many weeks. CP 128-51. At mediation, she claimed that she was unaware of how much Mr. Leyerzapf had to pay to the IRS because she took the tax exemption (even though it was part of Mr. Leyerzapf's motion), and they still could not reconcile the confusing expenses. CP 128-51. She also claimed she did not have the form that needed to be signed so Mr. Leyerzapf could amend his taxes. CP 128-51. Later, Ms. Strickland claimed they had not even mediated. CP 152-66.

On June 1, 2015, Mr. Leyerzapf sent out what he believed was his final child support payment after 14 years of regular, monthly payments. CP 128-51. CL was already 18 and had texted his dad about how excited he was to graduate. CP 128-51. Along with this payment, Mr. Leyerzapf sent the tax form needed to amend his tax return. CP 128-51. Suddenly, despite years of making regular payments in the same way each month, Ms. Strickland claimed she never received the last payment and went to the Division of Child Support (DCS) for enforcement. CP 128-51. Shortly thereafter, Mr. Leyerzapf was contacted by a DCS caseworker, who told him that CL was one credit shy of graduating, but that she needed to gather additional information from Ms. Strickland. CP 128-51. Mr. Leyerzapf was stunned, especially since CL had sent him a picture of his cap and gown for graduation. CP 128-51. Mr. Leyerzapf was notified in July that he owed back support, although he was advised that if no proof was provided to DCS that CL was enrolled in school, DCS would close the case. CP 128-51. Meanwhile, Mr. Leyerzapf tried to get the child to

go to summer school to finish up his last credit, but Ms. Strickland refused, claiming he would need to attend school in the fall and support would need to continue to be paid to her until December. CP 128-51.

On August 5, 2015, Mr. Leyerzapf filed a Motion for Clarification, Termination, and Offset, requesting that child support be terminated as of June, 2015, since the child was 19 and no longer enrolled in school. CP 126. He further filed a motion to revisit/review the contempt motion regarding the tax exemptions since the parties had since gone to mediation per the Commissioner's instructions. CP 127. He specifically requested judgment for the lost income tax refund income due to her violation of the Order of Child Support, attorney fees and costs for the necessity of filing the motions. CP 127. In support of these motions, Mr. Leyerzapf declared that he had now been trying to resolve this matter for over a year, that Ms. Strickland had a long history of trying to get the tax exemptions for the children, that she had now taken them for both 2012 and 2014 despite the 11/18/10 Order of Child Support giving him the exemptions in even-numbered years, that she was deliberately obfuscating the medical expenses to confuse the issue on tax exemptions (especially since she was an accountant and capable of reconciling receipts and providing an accounting), and that he still could not resolve with her exactly what expenses he owed because she consistently changed the amounts owed and provided duplicates/expenses for others. CP 128-51. He also explained the difficulties he had, as explained above, about trying to have a hearing on his contempt motion in the first place. CP 128-51. Mr. Leyerzapf was specific about his requests, saying:

Tax exemptions: [Ms. Strickland] has wanted the tax exemptions for years, and she intentionally took them from me for two years, which took thousands of dollars of income away from me in violation of the court order. I just would like her to be required to fix it, amend her returns, and reimburse me for the lost income and lost wages from taking this to court.

Medical expenses: [Ms. Strickland] has a long history of claiming that I have not paid my share of medical expenses without (admittedly) providing proof of those expenses to me. I am happy to pay my portion if we can reach a correct number, but that should not be used as a tool to delay resolution of the tax exemption issue. If [Ms. Strickland] cannot come up with the correct information or take the time to calculate a proper number, then it should be up to her to raise the matter with me or with the court on her own motion.

Child support: [CL] is 19 and would be graduated if [Ms. Strickland] had gotten him that one extra credit or into summer school. [Ms. Strickland] is just trying to extend the amount of money she gets from me each month, and support should be officially terminated. Child support for [CL] should terminate as of the end of June 2015.

Attorney fees and costs: I lost time and wages from work going to multiple hearings, which [Ms. Strickland] continued due to her behavior. If she had simply followed the court order from the beginning, we wouldn't be here, so I ask that the court award me attorney fees and costs as well as lost wages for this matter.

CP 128-51. Ms. Strickland was personally served with the motions and all supporting documents on August 5, 2015, CP 579-80, which was three weeks before the scheduled hearing date of August 26, 2015, CP 576-78. Despite local rules, Ms. Strickland did not provide her response until the day of the hearing, August 26, 2015. CP 152-66. Yet again, it was necessary to continue the hearing so Mr. Leyerzapf could reply. CP 168. As part of continuing the hearing, the court did order DCS to "halt any and

all efforts to report any debt/delinquency to credit agencies until further court order.” CP 168. The hearing was continued until October 8, 2015. CP 581-82.

In response, Ms. Strickland argued that the motion could not proceed because they had not actually mediated, although she acknowledged that they did sit in a room with a mediator for several hours at PCCDR while trying to reach a resolution. CP 152-66. She further claimed, for the first time, that she did send medical expenses to Mr. Leyerzapf, but he somehow refused the mail. CP 152-66. She claimed to have provided proof of sending Mr. Leyerzapf expenses, but did not indicate when or where she had done so. CP 152-66. Finally, she claimed that CL had extensive learning disabilities that caused poor grades and he was enrolled at the Northwest Career & Technical High School with an “estimated graduation date” of March, 2016. CP 152-66. She did not deny that she had taken the tax exemptions for 2012 and 2014 in violation of the court order. CP 152-66.

In reply, Mr. Leyerzapf explained that they had gone to mediation and had mediated for several hours without resolution. CP 169-89. He further stated that he never refused mail from Ms. Strickland, and that she had not provided any proof of sending him any documents. CP 169-89. He provided other documents that she had previously mailed to him as evidence. CP 169-89, 128-51. Regarding CL, Mr. Leyerzapf provided proof that CL had been an exemplary student and had received straight As in school, and he was otherwise unaware of any learning disabilities that would cause CL be one credit short only of graduating. CP 169-89. He further provided proof of the summer school opportunities that had

been available to CL that summer so he could graduate without going to school for another year. CP 169-89.

On October 8, 2015, the court heard the matter and ordered the following regarding the tax exemptions Ms. Strickland took for 2012 and 2014:

[T]he father's motion for judgment is granted as follows: Ms. Strickland shall amend her 2012 & 2014 tax returns so the father may claim [CL] as a tax exemption for those years. The court finds that the father is entitled to those exemptions and the mother took them improperly. The mother shall promptly sign all forms necessary to amend the returns and provide them to father's attorney.

CP 191-93. Regarding child support, the court further ordered:

The request to terminate child support is denied, except as follows: child support shall continue for six (6) months or until the child graduates high school, whichever is sooner. The six months begin Sept. 2015/when he started school. The mother shall provide accurate proof of the child's medical expenses to the father, and if there is a dispute about how much is owed, either party may apply to the court to resolve the dispute.

CP 191-93. Regarding attorney fees, the court ordered that "[t]he request for attorney fees & costs is reserved."

On October 16, 2015, Ms. Strickland filed a Motion for Revision asking the court to deny Mr. Leyerzapf's request for judgment, the termination of child support, and award her attorney fees. CP 194-200.

On November 25, 2015, Judge Michael E. Schwartz heard Ms. Strickland's Motion for Revision, granting in part and denying in part her requests. CP 207-09. Regarding child support, Judge Schwartz granted Ms. Strickland's request and ordered that child support would continue "until the child graduates high school. The mother shall provide to the

father by January 10, 2016, the child's grades, curriculum, class schedules, and all other information regarding his progress toward completion of his high school degree." CP 207-09. Regarding the tax exemptions, revision was denied, as the Court ordered that "Revision is denied regarding the tax returns . . . and those provisions stand." CP 207-09. But for the change regarding child support, the remainder of the order was not revised. CP 207-09.

It is noteworthy that counsel for Ms. Strickland was asked directly on November 25, 2015, "Is the child enrolled in school right now?" RP 11 (11/25/15 Hearing). In response, Ms. Strickland stated "Yes, he is enrolled in school. . . . He is actually attending classes." RP 11 (11/25/15 Hearing).

On January 19, 2016, Mr. Leyerzapf filed a Motion for Review and Enforcement, CP 212, because Ms. Strickland had not amended her tax returns or provided information as required about CL's school, CP 213-27. Mr. Leyerzapf had further learned from the child, who was almost 20 at the time, that he was not enrolled in school, but was instead working full time and supporting himself. CP 213-27. Regarding the tax returns, Ms. Strickland still had not amended her tax returns or signed the form so that Mr. Leyerzapf could amend his tax returns. CP 213-27. He even provided proof of attempts to contact her to resolve the matter and gain her compliance outside of court, which were ignored. CP 213-27. He demonstrated that he had even notified her, via undersigned counsel, that if she did not comply by January 15, he would have no choice but to file a Motion with the court. CP 213-27. She did not respond. CP 213-27. He requested that she be ordered to amend her returns, sign the appropriate

forms, and provide them within 24 hours of the hearing or else “be sanctioned for each additional day that she has not complied with the order.” CP 213-27. He also asked that, in the alternative, a Special Master be appointed to sign the forms for her. CP 213-27. Finally, he asked “that a judgment be entered against Ms. Strickland for sanctions as well as my fees and costs incurred in filing this motion. Ms. Strickland was never entitled to take the tax exemptions she took, and it has taken me too many court hearings just to get what was already granted to me via court order.” CP 213-27. He asked that the court “[p]lease help put this matter to rest.” CP 213-27.

The hearing on Mr. Leyerzapf’s motion was scheduled for February 5, 2016. 587. Per local rules, this meant Ms. Strickland’s response was due on Wednesday, February 3, by noon. PCLR 7. On February 4, 2016, after having received no response whatsoever to the motion from Ms. Strickland, undersigned counsel filed a Declaration of no response on February 4, 2016 (the day before the hearing). CP 228-29. At 4:25 p.m. the day before the hearing, Ms. Strickland filed via counsel her response, claiming for the first time that she could not amend her tax return because her current husband, Bradley Strickland, refused to sign the forms. CP 230-34. At this time, she also admitted that CL had been dis-enrolled from school the previous semester because he was not going, and at the time of the November 25, 2015, hearing on her Motion for Revision, when Ms. Strickland argued that child support should not terminate because CL was still in “high school,” he had already been disenrolled from school. CP 230-34. Even though originally due on January 10, 2016, and the hearing was almost a month later on February

5, 2016, Ms. Strickland still had not provided CL's grades, curriculum, class schedules, or all other information regarding his progress toward completion of his high school degree. CP 230-34. She simply declared that he had been disenrolled but was set to re-enroll soon, so she argued child support should continue. CP 230-34. Separately, Mr. Leyerzapf learned that CL was only two credits short of graduating high school when he started attending Clover Park Technical College, that on September 21, 2015, he had been enrolled in three classes, but he was dis-enrolled on November 10, 2015, for lack of attendance. CP 49-57. As of January 27, 2015, he had not re-enrolled at the school, not for Winter quarter, which had already started, or for Spring quarter, which was coming up soon. CP 49-57.

On February 5, 2016, Judge Schwartz heard the Motion for Review and Enforcement, and he ordered the following regarding child support:

Child support is terminated as of December 1, 2015, as the child was disenrolled from school in November of 2015. The court further orders that child support shall not have been due as of when the child stopped attending school, but whether and how much credit is owed is reserved for further court order after the court has received more specific information about when exactly the child stopped attending school (regardless of when the school disenrolled him for lack of attendance).

CP 238-40. Regarding Ms. Strickland's compliance as to the tax exemptions and amending her tax returns, the court ordered:

The Court also issues a show cause order for contempt for the violation of the order regarding failure to amend her tax returns. . . . The Court is making it very clear to the mother that she needs to comply with the order regarding tax returns. The show cause hearing is set for 3/4/2016.

Ms. Strickland shall appear in court (Pierce County Sup. Court) in person at 9:00 [a.m.] on 3/4/16 and show cause why she should not be held in contempt for violating the 11/25/15 order (and underlying 10/8/15 order). If you fail to appear in person and defend at these proceedings the court may grant all of the relief requested and/or issue a bench warrant for your arrest without further notice to you. If imprisonment is requested in the motion and you cannot afford an attorney, you may request the court to appoint an attorney to represent you.

CP 238-40. Counsel for Ms. Strickland, Rose Eberhart, signed the order and received a copy at the hearing. CP 238-40.

On February 29, 2016, Mr. Leyerzapf filed additional information in support of the upcoming hearing, noting that despite the passage of several weeks, Ms. Strickland still had not amended her tax returns. CP 241-65. He had learned from his accountant that he was coming up on the IRS' limitation period where he would no longer be able to amend his 2012 tax return if Ms. Strickland did not comply with court orders by April 15, 2016. CP 241-65. He requested that a Special Master be appointed to sign the forms since Ms. Strickland continually refused and had refused for years. CP 241-65. He also requested all costs and fees be reimbursed to him, including lost income tax return funds, interest, and his accountant fees. CP 241-65. Regarding child support, he noted that Ms. Strickland still had not provided further information as to when CL stopped attending school. CP 241-65.

On March 2, 2016, Ms. Strickland submitted a Financial Declaration and "Evidence" of CL's attendance at school, which showed that he had 11 unexcused absences between 9/22/15 and 10/29/15, which is when it appeared he had stopped attending school altogether.

CP 274-88. Ms. Strickland also filed with her "Evidence" a newspaper article about a spouse who refused to sign a joint tax return. CP 274-88.

On March 4, 2016, Ms. Strickland personally appeared in court and argued, via counsel, that she should not be held in contempt for taking the 2012 tax exemption because Commissioner Lindsay had determined it would be a "wash" with the medical expenses. RP 10 (3/4/16 Hearing). She then argued that there was no bad faith in taking the child's 2014 tax exemption because "the child support order no longer applied because the child was over the age of 18." RP 10 (3/4/16 Hearing). Judge Schwartz questioned this statement as well. RP 10-13 (3/4/16 Hearing). Ms. Strickland was held in contempt for taking the tax exemptions and refusing to amend her returns so they could be claimed by Mr. Leyerzapf. CP 291-95. Specifically, the court ordered that:

The mother/Petitioner was only entitled to claim [CL] in odd-numbered tax years. Despite this, she claimed [CL] in 2012 and 2014, which were years the father/respondent was entitled to claim [CL]. The 11/25/15 order required the mother to amend her 2012 and 2014 tax returns. To date, it does not appear she has taken any steps to do so.

CP 291-95. Regarding her ability to comply with the order, the court found that Ms. Strickland had "the ability to sign the correct forms so the exemption could be properly allocated." CP 291-95. The order acknowledged that Ms. Strickland did have that ability to sign the forms/comply with the order, as she did so for the first time in court that day by signing the forms so Mr. Leyerzapf could amend his tax returns. CP 291-95. "Ms. Strickland is able to sign the forms and has done so in court today." CP 291-95. She was then ordered to:

[P]ay the \$100 civil penalty, costs & fees as set forth in this order. Mr. Leyerzapf shall have a judgment against Ms. Strickland for \$425 in fees he incurred for his accountant, interest accrued on the funds Mr. Leyerzapf was unable to use because he had to pay the IRS due to the loss of the tax exemptions for [CL] from the date of the return to present (said amount is to be calculated and reduced to judgment by agreement or further court order.

CP 291-95. Child support was terminated as of November 1, 2015. CP

291-95. Attorney fees were also reserved for future determination

“pending receipt of an itemized accounting of time spent on this matter.”

CP 291-95.

Ms. Strickland signed the Order of Contempt as she personally appeared in court. CP 291-95. Ms. Strickland did not appeal the Order of Contempt within 30 days of its entry.

On April 21, 2016, Mr. Leyerzapf filed a Motion for Judgment for “1) attorney fees and costs incurred during this matter, 2) interest on the funds paid to the IRS by Mr. Leyerzapf as well as his lost refund; 3) overpaid child support per the March 4, 2016, Order on Show Cause re: Contempt.” CP 296. In support, Mr. Leyerzapf declared that he had first filed his Motion for Contempt regarding the tax exemptions on September 24, 2014, almost two years prior. CP 297-312. Even though she never denied taking the exemptions and actually admitted it, he still “had to go through 15 held hearings (20 were scheduled, but 5 were continued/cancelled for various reasons), and [Ms. Strickland] still has not amended her returns or paid the funds she owes.” CP 297-312. He further claimed,

She claimed over and over that I owed her funds for medical expenses, which she attempted to use as an offset

for any funds she owed me for taking the tax exemptions during my years, but she never once provided accurate proof of the expenses (what she did provide included duplicate entries and receipts of her own medical costs, and even then she did not factor in my percentage of what was owed).

CP 297-312. He noted that even though she had not filed a motion of her own, she “nevertheless received court orders that attempt to address her concerns (such as court-ordered mediation and the 10/8/15 order about providing proof of the expenses and an avenue to resolve disputes), and I have still had to go to court several times just to try to get [Ms. Strickland’s] compliance with court orders.” CP 297-312. He asked that the court take those circumstances into account when determining what amount of attorney fees he should receive. CP 297-312.

Regarding IRS funds, he requested the interest on the funds he had to pay the IRS in 2012 due to loss of the exemptions, interest on the refund he did not receive in 2014 due to loss of the exemptions, and the amount he should have been refunded in 2012 if he had the exemptions in the event the IRS denies his request to reimburse since Ms. Strickland took so long to sign the necessary forms (with Ms. Strickland receiving dollar-for-dollar credit to the extent the IRS does pay). CP 297-312.

In support of his request for fees, undersigned counsel provided a declaration of fees with attached bills on May 26, 2016, totaling 62 pages. CP 313-74. The fees included attendance at almost 20 court hearings as well as the preparation of court documents totaling \$16,870.50 and \$1,123.95 in costs. CP 313-74.

In response, Ms. Strickland continued to assert the position that she was entitled to those tax exemptions because of medical expenses,

although she still had not filed any proof of getting them to Mr. Leyerzapf, would not agree as to what was owed, and had not filed her own motion with the court. CP 375-79. She then asserted for the first time that Mr. Leyerzapf was never entitled to those tax exemptions, and then alternatively asserted that the fees Mr. Leyerzapf incurred were his fault because he did not simply let her keep the tax exemptions she took. CP 375-79. She then claimed she was struggling financially. CP 375-79. Other than her own financial declaration, she did not provide any financial evidence of her claims. CP 375-79.

The hearing on this Motion was scheduled for June 3, 2016, which meant that Ms. Strickland's response was due by noon on June 1. CP 380-95. Once again, she did not file her response on time, as it was neither filed nor served until the end of the day. CP 380-95. This resulted in the hearing being continued to June 24, 2016. CP 398-400.

Nevertheless, Mr. Leyerzapf replied by June 2, pointing out the lack of information in Ms. Strickland's response as well as that she was made aware in September of 2014 that she was facing contempt for taking the tax exemptions, and for two years and 20 hearings, she persisted in going to court and refusing to comply with the court orders. CP 380-95. As a result of her ongoing lack of compliance, Mr. Leyerzapf incurred extensive fees, when at any point, Ms. Strickland could have simply complied with the court order. CP 380-95. He argued that Ms. Strickland had been intransigent and was in contempt, neither of which depended on her ability to pay. CP 398-400.

On June 24, 2016, Mr. Leyerzapf's Motion for Judgment was granted, and he was awarded "\$809.19 interest for the 2012 funds Mr.

Leyerzapf paid to the IRS; \$161.12 interest for the 2014 refunds Mr. Leyerzapf did not receive from the IRS; \$2,022.97 for the 2012 tax return funds Mr. Leyerzapf would have received from the IRS (with Ms. Strickland to receive a dollar-for-dollar credit on this \$2,022.97 to the extent the IRS pays those funds to Mr. Leyerzapf), \$2,114.14 in child support Mr. Leyerzapf overpaid to Ms. Strickland” CP 398-400.

Regarding attorney fees, the court ordered that Ms. Strickland pay:

\$17,501.02 in reasonable attorney fees and costs Mr. Leyerzapf incurred connected to this contempt proceeding per the statute. The court finds that the contempt statute authorizes attorney fees and costs connected to the issue for which the contemnor is found in contempt. The amounts Mr. Leyerzapf incurred for attorney fees are reasonable in light of the number of times Mr. Leyerzapf had to come to court for relief, and Mr. Leyerzapf’s attorney’s hourly rate is reasonable given her experience and hourly rates in the community. The Court does not award attorney fees and costs incurred connected to the parties’ court ordered mediation.

Ms. Strickland filed her Notice of Appeal on July 25, 2016, thirty days after entry of the Order on Mr. Leyerzapf’s Motion for Judgment. CP 401-09.

In sum, since Mr. Leyerzapf filed his Motion for Contempt on 9/24/14, the parties attended 17 hearings to address the issue of Ms. Strickland taking the tax exemptions, which Ms. Strickland never denied that she took in violation of the Order of Child Support, and which does not include the costs incurred in scheduling/addressing the additional 8 hearings that never occurred due to agreed continuances. This totals 25 hearings to address two tax exemptions and gain Ms. Strickland’s compliance in following the court order.

Of those 17 hearings, six were continued at the time of the court hearing (meaning parties and attorneys had appeared in court for the hearing and waited for the case to be called) because Ms. Strickland filed her response later and did not follow Civil or Local Rules. At each of these hearings, Ms. Strickland insisted there were medical expenses that she was owed, but she never filed her own motion to resolve the issue, provided proof of her claimed amount, acknowledged that Mr. Leyerzapf was only required to pay his pro rata percentage per the Order of Child Support, or agreed to his calculations based on the evidence as to what needed to be paid. Instead, the medical expenses were routinely used to obstruct and obfuscate Mr. Leyerzapf's contempt claims about the tax exemptions.

II. ARGUMENT

Ms. Strickland has a long history of using ambiguous claims that Mr. Leyerzapf owes her money to avoid claims against her for her own actions. Despite being a professional accountant, she has never once filed appropriate, cognizable proof as to what exactly is owed. She has made these claims each time the parties came to court since 2001 whenever there was an issue about her own behavior. In 2009, she was actually court ordered to provide proof to the court and file a motion to resolve the dispute, but did not do it. She has a long and continuous history of making the claim and attempting to use it as a shield to fend off claims against her without actually doing anything to try to resolve the matter. Throughout these proceedings, she claimed that she provided the expenses to Mr. Leyerzapf, but never provided proof of doing so. She simultaneously claimed that she just "let the expenses go." RP (11/25/15)

15. She never once filed a motion to resolve the dispute, and nevertheless, she received as part of Mr. Leyerzapf's own attempts to correct her wrongdoing, court orders that provide a mechanism to resolve any disputes about what is owed. Even Mr. Leyerzapf undertook, through assistance of counsel, to bring to the court calculations about what he believed was owed based on the evidence she provided (removing her own medical expenses, expenses for other children, and duplicates) and factoring in the pro rata percentage they were to use to divide the expenses. Still, Ms. Strickland continued to insist that Mr. Leyerzapf refused to pay while simultaneously not responding to the work Mr. Leyerzapf had done to try to resolve the issue. And still, Ms. Strickland maintained that she was owed the tax exemptions. As the record shows, she violated a court order without even trying to follow it, then persisted in her violation for two years and numerous court hearings before finally signing the form necessary to give the exemptions to Mr. Leyerzapf. She was held in contempt, and that finding should be upheld. Moreover, she should be responsible for the costs to Mr. Leyerzapf for her contemptuous actions.

A. Standard of Review

A finding of contempt is reviewed under the abuse of discretion standard. *In re Marriage of James*, 79 Wn. App. 436, 440, 903 P.2d 470 (1995). A trial court abuses its discretion when "no reasonable person would take the position adopted by the trial court." *Singleton v. Frost*, 108 Wn.2d 723, 730, 742 P.2d 1224 (1987).

B. THE CHILD REMAINED DEPENDENT DURING 2014, SO HE REMAINED AVAILABLE AS A TAX EXEMPTION FOR THE

PARTIES. MS. STRICKLAND VIOLATED COURT ORDER BY CLAIMING THE 2014 EXEMPTION.

Ms. Strickland makes claims that CL was not subject to the Order of Child Support because he turned 18 in 2014. This is not correct per applicable law.

RCW 26.18.100 requires a court to order child support for a child “dependent upon either or both spouses.” RCW 26.18.020 defines a “dependent child” as “any child for whom a support order has been established or for whom a duty of support is owed.” Based on these, it is not age, but dependency, that determines when child support applies and when it ends. *Childers v. Childers*, 89 Wn.2d 592, 595, 575 P.2d 201 (1978). This was a deliberate distinction made by our Legislature as they amended child support laws specifically to remove references to the “minority” or “majority” age and began focusing on a “dependent” child instead. *Id.* Even other statutory references make the distinction between a minor child and a dependent child. *See also* RCW 26.09.110 (“The court may appoint an attorney to represent the interests of a **minor or dependent child . . .**”) (emphasis added). Therefore, the dissolution act and provisions for support base the support obligation on “dependency, not minority, and ending the obligation at emancipation, not majority.” *Childers v. Childers*, 89 Wn.2d at 597.

A dependent child, then, is “one who looks to another for support and maintenance, one who is in fact dependent, one who relies on another for the reasonable necessities of life.” *Id.* at 598. Age is but one part of this consideration, as other factors include “the child’s needs, prospects, desires, aptitudes, abilities, and disabilities, and the parents’

level of education, standard of living, and current and future resources.”

Id. Ultimately, dependency “is a question of fact to be determined from all surrounding circumstances,” or more specifically, “all relevant factors.”

Id.; RCW 26.09.100.

For example, in *Childers*, the children at issue were over the age of 18, but lived at home with a parent while continuing to attend school. *Childers v. Childers*, 89 Wn.2d at 598. Our Supreme Court held that those children were appropriately found to be “dependent” on the parents, who then in turn continued to be subject to a child support order. *Id.*

Similarly, in the instant case, in 2014, the child lived at home with his parents while still attending high school.

Like Ms. Strickland, some parties have argued that RCW 26.09.170 ends child support at age 18, as it states that “[u]nless otherwise agreed in writing or expressly provided in the decree,” child support ends by “emancipation of the child” However, the distinction here is in the statute itself - “[u]nless . . . expressly provided in the decree” *Gimlett v. Gimlett*, 95 Wn.2d 699, 701-02, 629 P.2d 450 (1981). Our Supreme Court explained that simply ending support at age 18 would nullify the other provisions of the child support statutes above that reference dependency and the court’s ability to award postmajority support. *Id.* at 702; RCW 26.09.100. Rather, the focus of RCW 26.09.170(3) is on the language of the Order itself and whether it provided some notice of the termination date (and the potential that support lasts beyond a child’s 18th birthday). *Gimlett v. Gimlett*, 95 Wn.2d at 703. To alleviate this issue, the Supreme Court held, “[t]he court order, in granting continued payments after majority, can specify the

conditions for their termination in light of the circumstances of the parties. If this is not done, however, support will terminate as of a specific date, i.e., the 18th birthday of the child.” *Id.* at 703-04. Therefore, the Court held, emancipation occurs “upon reaching the age of majority or emancipation in fact whichever event first occurs.” *Id.* at 704. However, that term only applies if the Order itself does not “expressly” provide otherwise. *Id.* at 703-04; RCW 26.09.170.

In the instant matter, the Order of Child Support did expressly provide otherwise, as it stated that:

Support shall be paid until the child reaches the age of 18, or as long as the child remain(s) enrolled in high school, whichever occurs last, except as otherwise provided below in Paragraph 3.14.

CP 475-88. Paragraph 3.14 further provided:

The post secondary education contributions towards [KL’s] education shall be determined when she commences school. The right to petition for post secondary education for [CL] is reserved.

CP 475-88. Per the express terms of this Order, child support did not terminate at age 18 if the child was still enrolled in high school despite his age. CP 475-88. As described above, the parties went to court about the child’s failure to graduate and attendance at a technical college to obtain his high school diploma, and it was officially ordered that child support terminated when the child stopped attending that school on November 1, 2015. CP 291-95. Since the child had not yet emancipated, and since the court determined support was owed until that date, the child remained dependent throughout 2014. RCW 26.19.100 provides that a court may award the federal tax exemption for a “dependent” child to either or both

parents. The parties' Order states that "[w]hen only one exemption remains, alternated with mother in odd years and father in even years." CP 475-88. Ms. Strickland mis-quotes this order in her brief, as she alleges it is "clear" a court cannot require a parent to grant a tax exemption for a child over 18 because "[e]ven the original child support order recognized that by ordering that the younger child's exemption (the child relevant in this appeal" was just granted to the parents on alternating years upon the older child obtaining the age of eighteen." APPELLANT'S BRIEF AT 9. This language is not contained in the parties' child support order, as it only states:

Income tax exemptions

[KL] to the mother and [CL] to the father. When only one exemption remains, alternated with mother in odd years and father in even years.

CP 475-88. The Order makes no reference to age, except as outlined above where it discusses that child support terminates "whichever occurs last" of the child either turning 18 or graduating high school. Further, the order does not even reference when the exemption terminates for a specific child as Ms. Strickland asserts, as it says "when only one exemption remains" not "when KL turns 18."

Therefore, CL remained dependent through the date support was terminated on November 1, 2015, as neither party has challenged that order of the court. As a dependent, RCW 26.19.100 allows the court to award the federal tax exemption to either or both parents, and their Order of Child Support gave that exemption to Mr. Leyerzapf in even-numbered years.

It is curious that Ms. Strickland makes this argument, as asserting that CL was no longer dependent such that the parents could claim him as a tax exemption also means, then, that he was no longer subject to a child support order. Per Ms. Strickland's logic, this would then mean that Mr. Leyerzapf is owed reimbursement from 1/1/2014 through 11/1/2015 for overpaid child support. At a rate of \$658.61 per month, this would total \$14,489.42 that Ms. Strickland owes Mr. Leyerzapf for overpaid child support based on her position to this Court.

Furthermore, Ms. Strickland's argument as a whole makes little sense since she claimed CL on her taxes for 2014. It strains the mind to argue on one hand that the child is emancipated and no longer available as an exemption, but on the other hand, claim that child as a dependent on a tax return. This argument really just demonstrates that Ms. Strickland was acting in bad faith not only when she claimed CL on her tax return, but also with the court as part of the proceedings outlined above.

Finally, Ms. Strickland argues that it was the Commissioner who decided that the court had no authority to award the child as an exemption for 2014, claiming that she was allowed to take the exemption. First, the Order issued by the Commissioner on 1/12/15 did not say anywhere that Ms. Strickland was entitled to the exemption, that she was allowed to claim it, or that the 2009 Order of Child Support was modified in any way. Second, Mr. Leyerzapf raised the issue of the 2014 tax exemption both at that hearing, RP 10-11(1/12/15 Hearing), and at the revision hearing shortly thereafter, RP 1-2 (2/13/15 Hearing). In fact, at that revision hearing, Ms. Strickland asserted to the court via counsel that

the exemption had not yet been claimed for 2014. RP 10 (2/13/15 Hearing). Both attorneys argued about the accuracy of the claim that the child was no longer available as a tax exemption. RP 1-2, 10 (2/13/15 Hearing). At that hearing, Judge Larkin's decision about the Commissioner's order was that it was a "non-decision," and he sent the parties to mediation to try to resolve the matter. RP 12-13 (2/13/15 Hearing). Despite these arguments, the knowledge that there was a court Order of Child Support giving Mr. Leyerzapf the exemption in even-numbered years, that the Commissioner's decision was labeled a "non-decision," and that the parties were to mediate the issue, Ms. Strickland thereafter claimed the exemption anyway.

Moreover, even if Ms. Strickland had acted in good faith reliance on the Commissioner's comment about the exemption portion of the Order no longer being in effect due to the child's age, she was still ordered on November 25, 2015, to amend her tax return to fix this issue, but she refused. CP 207-09, 238-40, and 291-95.

In sum, the parties' Order of Child Support allocates the "one exemption" that "remains" between the parents, and in even-numbered years, the exemption was to go to Mr. Leyerzapf. CP 475-88. That Ms. Strickland was able to claim CL on her 2014 taxes demonstrates that he "remained" as an exemption available to the parents, and that court Order means it should have gone to Mr. Leyerzapf.

//

//

C. THE TRIAL COURT DID NOT LACK JURISDICTION OVER MS. STRICKLAND, AND SHE HAD SUFFICIENT DUE PROCESS TO BE HELD IN CONTEMPT

Ms. Strickland further claims that the court lacked personal jurisdiction over her because she was not personally served with the Order to Show Cause.

First, it is noteworthy that Ms. Strickland raises this issue for the first time on appeal. She did not raise the issue of personal service of the Order to Show Cause below despite participating in the proceedings, her attorney's attendance at the proceedings, and her personal appearance at the contempt proceeding. Per RAP 2.5, this Court may "refuse to review any claim of error which was not raised in the trial court," subject to the following exceptions:

(1) Lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right.

RAP 2.5(a). Ms. Strickland did not address the second or third factor in her brief, and as discussed below, while she couched her argument about service as one of jurisdiction, it is not actually a question of jurisdiction per relevant law. Her attorney was present when the Order to Show Cause was issued, and she signed it. Ms. Strickland responded to the hearing for contempt, appeared for it, and participated in it without comment about personal service. To wait until an appeal to raise the issue for the first time is bad faith, which has been Ms. Strickland's pattern throughout these proceedings.

Ms. Strickland also claims that because she was not personally served with an Order to Show Cause her own attorney signed, that somehow the court lost jurisdiction over her. This is not accurate.

RCW 26.18.050(2) states that “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.” At the heart of this issue regarding personal service is that parties are “entitled to notice of the time and place of the hearing and the nature of the contempt charge” so they can adequately prepare a defense. *State v. Bloomer*, 94 Wn. App. 246, 251, 973 P.2d 1062 (1999).

Ms. Strickland’s reliance on *Burlingame* is misplaced, as the case does not support her contention that “there must be personal service in order for a court to have jurisdiction over contempt.” Instead, the focus of *Burlingame* is that due process - i.e. notice and an opportunity to be heard - is critical for a contempt finding, and even that requirement is minimal in contempt proceedings.

In *Burlingame*, our Supreme Court reviewed a trial court’s decision to vacate a contempt finding on the basis that the alleged contemnor did not receive adequate notice of the contempt proceedings. *Burlingame v. Consol. Mines & Smelting Co.*, 106 Wn.2d 328, 329, 722 P.2d 67 (1986). There, the respondent was personally served in California, but it was alleged that the show cause order failed to satisfy the necessary due process requirements because it failed to advise him that not attending the hearing could result in judgment issued against him. *Id.* at 332. Agreeing with the allegations, the trial court vacated the order. *Id.* On review, our Supreme Court noted that “until adequate ‘notice . . . actual or

constructive . . . is given, the court has no jurisdiction in any case to proceed to judgment.” *Id.* (citing *Ware v. Phillips*, 77 Wn.2d 879, 882, 468 P.2d 444 (1970)). The Court further explained that,

Traditionally, however, minimal notice has satisfied due process requirements for a valid judgment of contempt of court. In *Hovey v. Elliott* . . . the United States Supreme Court stated that the requirements of a valid contempt order are (1) notice, and (2) an opportunity to be heard. The Court emphasized that of these two requirements the most significant is the opportunity to be heard. The notice requirement is important only because it protects an individual’s right to be heard.

Id. at 332 (discussing *Hovey v. Elliott*, 167 U.S. 409, 17 S.Ct. 841, 42 L.Ed. 215 (1897)). Actual notice of the hearing via counsel is also considered by our Supreme Court to be sufficient due process to hold a party in contempt. In *State v. Ralph Williams*, the petitioners there had been ordered to place funds in a trust account within 15 days, but did not do so. *State v. Ralph Williams’ North West Chrysler Plymouth, Inc.*, 87 Wn.2d 327, 328, 553 P.2d 442 (1976). As a result, the respondent filed a Motion for Order to Show Cause re: Contempt, and counsel for the petitioners was present at the hearing when the Order to Show Cause was issued. *Id.* at 328-29. At the hearing, the petitioners appeared with their counsel and were held in contempt. *Id.* at 329. On appeal, the petitioners argued that the court did not “acquire personal jurisdiction over them, because they were not personally served with the show cause order.” *Id.* at 331-32. In rejecting this assertion, the Court noted that personal jurisdiction had already been acquired as part of the larger proceeding (a trial on the merits), and the contempt proceeding was “a

continuation of the trial on the merits.” *Id.* at 332. Instead, the Court explained, actual notice of the contempt proceeding is most critical. *Id.*

In the context of contempt proceedings relating to alleged disobedience or defiance of a lawful judgment, decree, order, or process of a court by one directly bound thereby or in privity thereto, that it is unnecessary that the one charged be personally served with a copy of the order. It is sufficient if the alleged contemnor has knowledge of the order and its legal effect.

Id. (citing *In re Koome*, 82 Wn.2d 816, 821, 514 P.2d 520, 524 (1973)).

There, the fact that counsel for the petitioners were present at the hearing when the Order to Show Cause was issued, that they responded regarding the contempt hearing, and that both the petitioners and their counsel appeared at the contempt hearing was sufficient to show the petitioners had received actual notice of the hearing. CP 332. Similarly, Ms. Strickland had actual notice of the contempt hearing, as her attorney was present when the Order to Show Cause was issued (and her attorney signed the Order), Ms. Strickland responded regarding the contempt hearing by filing her response materials on March 2, 2016, CP 266-73, and Ms. Strickland was personally present in court with her attorney on the date of the contempt hearing, as is evidenced by comments on the record, and her signature on the Order on Contempt, CP 295. Moreover, Ms. Strickland was initially personally served with the Order to Show Cause obtained by Mr. Leyerzapf on 9/24/14 regarding her contempt for taking the tax exemptions, and as described above, she subsequently participated in numerous proceedings regarding her compliance with the Order of Child Support in that regard.

Further, Ms. Strickland's reliance on *Marriage of Logg*, is also misplaced, as it does not support her position that failure to serve an Order to Show Cause for contempt means the order "must be vacated" as she claims. This is primarily because in *Logg*, Division III considered whether original service of a Summons and Petition for Dissolution on a non-Washington resident was sufficient, not service of a Show Cause order for contempt, which is an important distinction. *In re Marriage of Logg*, 74 Wn. App. 781, 875 P.2d 647 (1994). There, the parties lived in Washington, but the husband left and began living in Oregon, although he was a truck driver who moved around frequently. *Id.* at 783. They had discussed the divorce, and the wife had handed him copies of some paperwork, which she said included the Summons and Petition. *Id.* Thereafter, the wife was unable to personally serve the husband or even locate him, as he was absent on business when she tried to have him served at his home address. *Id.* Eventually, she attempted to serve him by publication, although he did not respond and default orders were entered against him. *Id.* After he had not paid child support per the default orders for over five years, Support Enforcement filed a Motion for Contempt and had him served with an Order to Show Cause. *Id.* at 784. He challenged the validity of the underlying orders by asserting there was no personal jurisdiction, and after he was held in contempt, he appealed. *Id.* On appeal, the court focused not on service for the contempt motion, as that was not at issue, but on original service of the Summons and Petition as well as the validity of the default orders. *Id.* The court found flaws with the basis to have the husband served by publication, and they determined that since there were questions about whether Washington

could exercise personal jurisdiction, the failure to effect original service meant the orders later obtained by default could not be used as a basis for contempt. *Id.* at 786.

Nothing in *Logg* discusses the method of service for an Order to Show Cause, and our courts have distinguished original service of a Summons and Petition from service of an Order to Show Cause for contempt. See *Burlingame*, 106 Wn.2d at 334. Our Supreme Court in *Burlingame* explained that it is the “nature of a proceeding that determines what process is ‘due’,” and:

The function of notice in a civil proceeding varies significantly from the function of notice in a contempt of court proceeding. In a civil proceeding a private party initiates the action, and the court acts merely to enforce the rights of that party. The service of a summons and complaint as required by Civil Rule 3 is the court’s only guarantee that the defendant knows a court proceeding has been initiated and the extent of the claim asserted. **In contrast, the contempt of court power is available only to individuals who are already aware of the existence and nature of the proceeding. The contempt of court power is used by courts to enforce or punish violations of a court order or judgment and to prevent or punish unlawful interference with the proceedings of a court.**

Id. (emphasis added). “Notice therefore is not as crucial as it is in the initiation of a civil proceeding,” and a “party accused of contempt of court need not be provided the same type of notice as is provided the defendant in a civil proceeding.” *Id.* at 335. As long as the person had notice of the time and place of the hearing as well as the nature of the proceeding, notice is sufficient. *Id.*

In this matter, Ms. Strickland had notice of the proceedings, participated, and appeared. She did not allege then or now before this

Court that she was unaware of the proceedings, that her attorney did not advise her of the Order to Show Cause, or that she did not have notice of the time, place, or nature of the proceedings. Indeed, she appeared in the correct time and place for the hearing, and she responded as to the nature of the proceedings, so she had the notice deemed sufficient by our Supreme Court.

Additionally, RCW 26.18.040 specifically provides that our courts retain “continuing jurisdiction” to enforce support “until all duties of either support or maintenance, or both, of the obligor, including arrearages, have been satisfied.” RCW 26.18.050(5) further provides that a court may “use a contempt action to enforce a support or maintenance order until the obligor satisfies all duties of support, including arrearages, that accrued pursuant to the support or maintenance order.”

In this matter, the court already had personal jurisdiction over Ms. Strickland as a party to the proceedings, a Washington State resident for many years, who was initially served in Washington State with Mr. Leyerzapf’s Motion for Contempt, and who had appeared in court and requested relief from the court. There is no question that she had actual notice of the hearing, as the Order to Show Cause issued on 2/5/16 was issued at a hearing she had participated in, as she submitted a response the day before the hearing, and the Order itself was signed by counsel for Ms. Strickland, who appeared with her at the contempt hearing on 3/4/16.

//

//

//

D. THE FEES AND COSTS MS. STRICKLAND WAS ORDERED TO PAY ARE REASONABLE GIVEN THE EXTREME PROTRACTED LITIGATION CAUSED BY HER INSISTENCE AT VIOLATING THE COURT ORDER

Ms. Strickland claims that the fees she was ordered to pay were not reasonable despite her actions. She cites no law regarding her claim that Mr. Leyerzapf should not be awarded attorney fees for her contempt or that they are unreasonable, and she raises many issues not raised before the trial court.

RCW 26.18.160 provides that in an action to enforce a support order, “the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees.” This award is mandatory, *Marriage of Logg*, 74 Wn. App. at 786, and both a Motion for Contempt and a Motion for a Judgment are included as actions to enforce a support order within the statute, *Marriage of Abercrombie*, 105 Wn. App. 239, 243-44, 19 P.3d 1056 (2001). These fees are awarded without consideration of either party’s need or ability to pay. *In re Marriage of Hunter*, 52 Wn. App. 265, 758 P.2d 1019 (1988).

The amount of fees awarded depends on the circumstances. *In re Marriage of Waters*, 116 Wn. App. 211, 63 P.3d 137 (2002) (finding that former husband was entitled to fees that accrued in his successful action to enforce a child support order). “A determination of whether attorneys’ fees are reasonable must be determined in light of the circumstances of each case.” *Singleton v. Frost*, 108 Wn.2d 723, 731, 742 P.2d 1224 (1987). Trial courts have “broad discretion in determining the amount of attorneys’ fees.” *Id.*

As part of determining reasonable attorney fees, the trial court is to consider the “total hours necessarily expended in the litigation by each attorney, as documented by counsel, and that the total hours expended should then be multiplied by each lawyer’s reasonable hourly rate of compensation considering *inter alia* the difficulty of the problem, each lawyer’s skill and experience and the amount involved. The court may also consider the quality of the work performed, but only if the level of skill has varied substantially from the norm of other attorneys possessing the same experience, qualifications and abilities.” *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597-99, 675 P.2d 193 (1983). As part of considering the total hours spent, the “attorneys must provide reasonable documentation of the work performed. This documentation need not be exhaustive or in minute detail, but must inform the court, in addition to the number of hours worked, of the type of work performed and the category of attorney who performed the work The court . . . should therefore discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time.” *Id.*

In fact, our courts have specifically endorsed a larger fee award when “protracted litigation” led to the eventual order on appeal. *In re Marriage of Correia*, 47 Wn. App. 421, 735 P.2d 691 (1987).

Despite this law, Ms. Strickland makes many claims about the fees she was ordered to pay.

First, she claims that it was unreasonable to pay for the preparation of the itemized fee declaration. This is disingenuous, as she specifically requested that she receive an itemized fee declaration at the contempt hearing on March 4, 2016, and that was reduced to court order.

RP 17-18 (3/4/16 Hearing). Ms. Strickland had in hand a lodestar declaration that listed the hours spent, the attorney's hourly rate, and the type of attorney, and she specifically requested a more in-depth, itemized statement showing the "time" for "particular items" so that the parties could discuss whether the fees were reasonable.

Second, she claims she was charged for clerical work. As can be seen from Mr. Leyerzapf's invoices, many entries were redacted so that only what was directly in preparation for or attendance at a court hearing was included. This means that even though the sole purpose of Mr. Leyerzapf's appearance in court and hiring an attorney was to address the tax exemptions and Ms. Strickland's contempt, he still did not receive reimbursement for all of his fees and costs.

Third, she claims she was charged for reviewing a settlement offer. This claim was raised at the June 24, 2016, hearing, and that amount was removed from the final calculation of what was to be paid by agreement. RP 19 (6/24/16 Hearing).

Fourth, she claims she was charged for mediation despite the court's order. Per the discussion on the record at the June 24, 2016 hearing, fees incurred as part of the parties' mediation, which were not significant since Mr. Leyerzapf attended mediation without counsel, were removed from the final fee award to Mr. Leyerzapf. RP 21 (6/24/16 Hearing). This is easily determined by the fact that the initial claimed amount was \$17,994.45, CP 313-74, and the ultimate amount ordered was \$17,501.02, CP 291-95. The fee statements themselves do not reflect this change at the hearing, of course, since they were prepared before the hearing. CP 313-74.

Fifth, she claims 3.10 hours to draft a Motion was unreasonable. The work cited was actually for two motions, including a lengthy, substantive declaration from the client with extensive supporting exhibits and pinpoint references to those exhibits in the declaration. CP 126, 127, 445-49, 128-51, 356. It is not unreasonable for it to take 3.1 hours to prepare two motions and supporting evidence, including a lengthy written statement from a client.

Finally, she claims that it was error to include fees from before the Order to Show Cause was issued. Mr. Leyerzapf came to the court in September of 2014 for the sole purpose of having Ms. Strickland held in contempt for taking the two tax exemptions awarded to him. As demonstrated above, Ms. Strickland did anything and everything she could to make the matter more expensive, including A) causing many continued hearings due to her failure to follow the Civil Rules or Local Rules, despite the assistance of counsel, B) asserting she was owed thousands of dollars in unpaid medical expenses, which she never proved, and which had the effect of prolonging proceedings extensively to resolve those figures, C) continuing to take another tax exemption from Mr. Leyerzapf as proceedings continued, D) refusing to amend her tax returns even when court ordered to do so, E) refusing again to amend her tax returns even after being warned of contempt, and F) ultimately being held in contempt for taking the tax exemptions and refusing to give them back. Mr. Leyerzapf came to court in September of 2014 to have Ms. Strickland held in contempt for taking the two tax exemptions, and it took almost two years but he did prevail on that claim, and Ms. Strickland was held in contempt.

Further, Mr. Leyerzapf requested attorney fees at every turn, and those issues were reserved. His original motion requested “sanctions for contempt . . . including reasonable attorney fees and costs . . . as may be appropriate under Chapter 7.21 RCW, Chapter 26.09 RCW, Chapter 26.10 RCW, Chapter 26.26 RCW, and RCW 26.18.040.” CP 58-60. Since the commissioner sent the parties to mediation, attorney fees were not addressed at the 1/12/15 hearing. CP 92-95. Nevertheless, Mr. Leyerzapf preserved this issue by filing for revision, at which point he was told there was nothing to revise, the Commissioner’s order was a “non-decision,” and to go to mediation. CP 124-25. When mediation failed and Mr. Leyerzapf brought the matter back to court, he again requested attorney fees and costs. CP 127, 128-51. The court ordered that “[t]he request for attorney fees & costs is reserved.” CP 191-93. After Ms. Strickland was ordered to amend her tax returns but failed to do so, Mr. Leyerzapf again requested attorney fees when he filed his Motion for Review. CP 212. At that hearing, the court again reserved the issue of fees and costs. CP 238-40. When Judge Schwartz scheduled a show cause hearing on contempt, Mr. Leyerzapf again requested he be reimbursed his fees and costs, specifically stating, “Ms. Strickland was never entitled to take the tax exemptions she took, and it has taken me too many court hearings just to get what was already granted to me via court order.” CP 241-65. The contempt order again reserved the issue of fees and costs. CP 291-95. Lastly, when Mr. Leyerzapf filed his final Motion for Judgment to address the reserved attorney fees, he again requested an order and judgment for “attorney fees and costs incurred during this matter.” CP 296. He specifically included in his request that

he be reimbursed for his attorney fees and costs incurred from the date he filed his Motion for Contempt to present. CP 297-312.

Finally, it should be noted that RCW 7.21.030 also provides that a court in a contempt action may order the contemnor to pay “a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney fees.”

E. **MS. STRICKLAND DID NOT SATISFY HER BURDEN OF PROOF OR DUE DILIGENCE AS TO HER INABILITY TO COMPLY WITH THE ORDER; SHE IS IN CONTEMPT.**

Lastly, Ms. Strickland claims she was not in contempt, or at the least, she did not have the ability to comply.

At the outset, there is a question as to whether this issue is even subject to appeal, as Ms. Strickland did not file her Notice of Appeal from the Order on Contempt or within 30 days of the Order on Contempt. The Order of Contempt was entered on 3/4/16, CP 291-95, and Ms. Strickland’s Notice of Appeal was filed over four months later on 7/25/16, CP 401-09. Our courts have already held that a “defeated party may not extend the time for taking an appeal by having a subsequent judgment entered.” *In re Marriage of Maxfield*, 47 Wn. App. 699, 702, 737 P.2d 671 (1987). “If notice of appeal is not filed within 30 days from entry of an appealable order, the Court of Appeals is without jurisdiction to consider that order.” *Id.* As a result, the order becomes “final and effective.” *Chilcott v. Globe Navigation Co.*, 49 Wn. 302, 95 P. 264 (1908). The exception to this rule is if the underlying order is held to be void, *State v. Karas*, 108 Wn. App. 692, 697, 32 P.3d 1016 (2001), although this is

distinguished from an order that a party considers “incorrect or erroneous,” *In re Marriage of Maxfield*, 47 Wn. App. at 703.

Since Ms. Strickland appealed from the order on attorney fees, but not the order on contempt, her appeal was not filed within 30 days from entry of an appealable order, and this Court is without jurisdiction to hear that claim.

Regarding contempt itself, RCW 26.18.050(1) states that if “there is reasonable cause to believe the obligor has failed to comply with a support . . . order, the court may issue an order to show cause requiring the obligor to appear at a certain time and place for a hearing, at which time the obligor may appear to show cause why the relief requested should not be granted.” In the instant matter, there is no question that Ms. Strickland did not comply with the court’s order. She admitted that she took the tax exemptions for 2012 and 2014, and she admitted that she did not amend her tax returns to give those exemptions back to Mr. Leyerzapf.

Despite this, Ms. Strickland claims she was unable to comply. Per RCW 26.18.050(4), “[i]f the obligor contends at the hearing that he or she lacked the means to comply with the support . . . order, the obligor shall establish that he or she exercised due diligence in seeking employment, in conserving assets, or otherwise in rendering himself or herself able to comply with the court’s order.” Ms. Strickland bears the burden of proving her inability to comply. *In re Marriage of Rideout*, 150 Wn.2d 337, 77 P.3d 1174 (2003). In support of her claims, Ms. Strickland claimed that she had to take the tax exemptions because she was owed several thousand dollars in unpaid medical expenses from Mr. Leyerzapf, but as

described above, she admitted that she never sent those expenses to Mr. Leyerzapf for payment in the first place, nor did she ever approach the court. She never provided any proof that she tried to work with Mr. Leyerzapf to resolve the issue ahead of time. Further, even while represented by counsel and part of a court proceeding, she continued to take the tax exemptions from Mr. Leyerzapf in even-numbered years. She never filed a motion with the court about her claimed medical expenses, and she never asked the court for permission to take the tax exemptions in lieu of her expenses. Moreover, what expenses she did not support her claim. Ms. Strickland was required to exercise due diligence in trying to comply with the Order giving Mr. Leyerzapf the tax exemptions, but it appears she did nothing but just violate the order.

Then, after she was ordered to amend her tax returns so Mr. Leyerzapf could take the tax exemptions, Ms. Strickland again refused. In support of her claim, she filed a purported, unsigned declaration from her current husband saying he refused to consent to amend the tax return without explanation. CP 235. Aside from this, she provided nothing but her own self-serving declaration simply reiterating that her husband would not consent and that she did not “have the money.” CP 230-34. She did not describe any efforts to gain her husband’s compliance or investigate other ways to cause the amendment of her tax return (for example, by doing what Mr. Leyerzapf had been asking since 9/2014 and signing IRS Form 8332 so Mr. Leyerzapf could claim CL on his amended tax returns, which would then trigger the IRS to require her and her husband to amend their tax return; it should be noted that this is what was ordered and what happened as part of the contempt hearing, CP 291-95). Later,

she provided her own self-serving Financial Declaration, but no supporting documentation such as pay stubs, tax returns, or evidence of expenses. CP 268-73. She never once explained what she had done to try to amend her taxes, including any efforts to do so on her own or work with a tax preparer (although she did acknowledge that she herself is an accountant on her Financial Declaration). CP 268-73. She never explained how it required money for her to amend her tax return, although her Financial Declaration showed she had savings and a decent income. CP 268-73. Ultimately, she had the burden to prove she exercised due diligence in trying to comply with the order, and she did not. The contempt finding should be upheld.

CONCLUSION AND REQUEST FOR FEES

Mr. Leyerzapf requests that his fees be reimbursed to him for having to defend against this appeal. Per *Paternity of M.H.*, 187 Wn.2d 1, 13, 383 P.3d 1031 (2016) and RCW 26.18.160, the prevailing party is entitled to fees on appeal regarding enforcement of a support order just as with the contempt order issued by the trial court. "A prevailing party is entitled to costs and attorney fees incurred at the trial level and on appeal." *Paternity of M.H.*, 187 Wn.2d at 13. See also *Hunter v. Hunter*, 52 Wn. App. 265, 273, 758 P.2d 1019 (1988). RAP 18.1 also allows a party to recover attorney fees in responding to an appeal.

SIGNED AND DATED this 26th day of April, 2017.



Laura A. Carlsen, WSBA No. 41000

MCKINLEY & IRVIN PLLC
April 26, 2017 - 4:12 PM
Transmittal Letter

Document Uploaded: 1-492202-Respondent's Brief.pdf

Case Name: Strickland f/k/a Leyerzapf v. 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: Respondent's

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:

Respondent's Response Brief

Sender Name: Lisa Urlacher - Email: mdonaldson@mckinleyirvin.com

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

awalker@tacomalegal.com