

No. 50059-1

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Marriage of

**ROXANNE SHORTWAY**

Appellant/Petitioner,

and

**WILLIAM SHORTWAY,**

Respondent/Respondent

APPEAL FROM THE SUPERIOR COURT FOR KITSAP COUNTY  
(The Honorable Sally F. Olsen)

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**APPELLANT'S REPLY BRIEF**

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## TABLE OF CONTENTS

|   | Page |
|---|------|
| <b>INTRODUCTION</b>   | 1    |
| <b>ARGUMENT</b>   | 1    |
| <b>STANDARD OF REVIEW</b>   | 1    |
| <b>A. THE SUPERIOR COURT ERRED BY HEARING THE MOTION WHEN NO PROPER APPEAL HAD BEEN FILED.</b><br>(Assignment of Error No. 1) . . . . .   | 3    |
| <b>B. THE SUPERIOR COURT ERRED BY ALLOWING A COLLATERAL ATTACK (BY GRANTING RESPONDENT’S MOTION) ON THE ADMINISTRATIVE FINAL ORDER ON DAYCARE ARREARAGES.</b><br>(Assignment of Error No. 1) . . . . .  | 6    |
| <b>C. THE PRIOR ORDER OF THE SUPERIOR COURT JUDGE WAS “AS OF FEBRUARY 28, 2016” AND WAS SPECIFICALLY SILENT AS TO ARREARAGES FOR THE TIME PERIODS AFTER FEBRUARY 28, 2016 WHICH WERE RULED UPON BY THE ADMINISTRATIVE LAW JUDGE.</b><br>(Assignment of Error No. 2) . . . . . | 9    |
| <b>D. THE SUPERIOR COURT ERRONEOUSLY INVALIDATED THE ADMINISTRATIVE LAW JUDGE’S DECISION TO ESTABLISH A “FIXED DOLLAR AMOUNT OF CURRENT AND FUTURE SUPPORT OBLIGATION.” PURSUANT TO RCW 26.23.110.</b><br>(Assignment of Error No. 3) . . . . .                               | 12   |

|   |           |
|---|-----------|
| <p><b>E. THE SUPERIOR COURT ERRONEOUSLY IGNORED THE AUTHORITY OF RCW 26.23.110 AS CITED BY THE ADMINISTRATIVE LAW JUDGE.</b><br/>         (Assignment of Error No. 4) . . . . .</p> | <p>16</p> |
| <p><b>F. THE SUPERIOR COURT DID NOT PROPERLY OFFSET AMOUNTS OWED BY MR. SHORTWAY AGAINST AMOUNTS OWED BY MS. SHORTWAY.</b><br/>         (Assignment of Error No. 5) . . . . .</p>   | <p>17</p> |
| <p><b>CONCLUSION . . . . .</b></p>  | <p>22</p> |

## TABLE OF AUTHORITIES

### Table of Cases

|  | Page  |
|--|---|
| <b><u>Achey v. Creech,</u></b><br>21 Wash. 319, 58 P. 208  | 7   |
| <b><u>Cascade Lumber Co v. Hargis,</u></b><br>167 Wash. 409, 9 p.2d 366  | 8   |
| <b><u>Crosby v. Spokane County,</u></b><br>137 Wash.2d 296, 301, 971 P.2d 32 (1999)  | 2   |
| <b><u>Department of Social and Health Services, Appellant v. Handy,</u></b><br>62 Wash.App.105 (Div. 1), 813 P.2d 610 (1991) | 3, 7, 8, 9,<br>10, 11,<br>12, 16,<br>18, 22 |
| <b><u>Dougherty v. Dep't of Labor &amp; Indus.,</u></b><br>150 Wash.2d 310, 314, 76 P.3d 1183 (2003)                         | 2   |
| <b><u>Favors v. Matzke,</u></b><br>53 Wash.App. 789, 794, 770 P.2d 686 (Ct. App.Wash Div. 1, 1989)                           | 19, 20                                      |
| <b><u>Fay v. Nw. Airlines, Inc.,</u></b><br>115 Wash.2d 194, 197, 796 P.2d 412 (1990)  | 2   |
| <b><u>Globe Construction Co. v Yost,</u></b><br>173 Wash. 528, 23 P.2d 895   | 8   |
| <b><u>In re Dependency of K.R.,</u></b><br>128 Wn.2d 129, 147, 904 P.2d 1132 (1995)  | 21  |
| <b><u>In re Marriage of Aldrich,</u></b><br>72 Wash.App. 132, 864 P.2d 388 (1993)  | 3, 7, 16,<br>17, 18, 19                     |
| <b><u>In re Marriage of Fiorito,</u></b><br>112 Wash.App. 657, 663-64, 50 P.3d 298 (2002)                                    | 2, 3  |
| <b><u>In re Marriage of Peterson,</u></b><br>80 Wash.App. 148, 152 (Wash. Ct. App. Div1, 1995)                               | 1   |
| <b><u>In re Peterson,</u></b><br>80 Wn.App. 148, 156, 906 P. 2d 1009 (1995)  | 1   |

|   |  |   |
|---|--|---|
| <b><u>Kelly-Hansen v. Kelley-Hansen,</u></b><br>87 Wash.App. Div. 2 (1997)                  |  | 8 |
| <b><u>Loeper v. Loeper,</u></b><br>81 Wash. 454, 142 P. 1138                                |  | 7 |
| <b><u>Loveridge v. Fred Meyer, Inc.</u></b><br>125 Wash.2d 759, 763 (1995)                  |  | 8 |
| <b><u>Munro v. Irwin,</u></b><br>163 Wash. 452, 1 P 2d 329                                  |  | 7 |
| <b><u>Schumacher v. Watson,</u></b><br>100 Wash.App. 208, 211 (Wash. Ct. App. Div. 1, 2000) |  | 1 |
| <b><u>Skinner v. Civil Serv. Comm'n,</u></b><br>168 Wash.2d 845, 850, 232 P.3d 558 (2010)   |  | 2 |
| <b><u>Sprague v. Adams,</u></b><br>139 Wash. 510, 247 P. 960, 47 A.L.R. 529                 |  | 7 |
| <b><u>Woodland v. First National Bank,</u></b><br>124 Wash. 360, 214 P. 630p                |  | 7 |

Constitutional Provisions

None

Statutes

|                | Pages                           |
|----------------|---------------------------------|
| RCW 26.23.110  | 2, 5, 10, 12, 13, 14, 15,16, 22 |
| RCW 34 05.470  | 5                               |
| RCW 34.05.542  | 6                               |
| RCW 74.20A.055 | 9, 10, 16, 22                   |

Regulations and Rules

|                  |   |
|------------------|---|
| WAC 388-02-0605  | 5 |
| WAC 388-02-0645  | 6 |
| WAC 388-02-0650  | 6 |
| WAC 388-14A-3317 | 5 |

Other Authorities

None

**I.**  
**INTRODUCTION**

Despite the Respondent’s attempts to argue that the unresolved issues in the underlying case affect the narrow issues of this appeal, the essence of this appeal is still this: the “final order” of the Administrative Judge which reduced the daycare arrearages for a specific time period should have been properly appealed; without a proper appeal, any actions taken by the Superior Court in the collateral attack (motion) were invalid as to the specific timeframe in the administrative ruling. The fact there are subsequent or concurrent actions pending only provides some context, but does not affect the underlying principles of res judicata that must apply in this case.

**II.**  
**ARGUMENT**

**STANDARD OF REVIEW**

Respondent argues that the standard of review in this case is “abuse of discretion” because Respondent claims that this is a “child support modification case”.<sup>1</sup> However, after researching the matter again, Appellant-Petitioner must respectfully disagree. At the heart of this case is the Superior Court ruling that the Administrative Judge lacked jurisdiction to enter a Final

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<sup>1</sup> *Schumacher v. Watson*, 100 Wash.App. 208, 211 (Wash. Ct. App. Div. 1, 2000) citing *In re Marriage of Peterson*, 80 Wash.App. 148, 152 (Wash. Ct. App. Div1, 1995).  
*In re Peterson*, 80 Wn.App. 148, 156, 906 P. 2d 1009 (1995).

Order on the Daycare Arrearages and to set a monthly amount under RCW 26.23.110. The issue of jurisdiction or lack thereof invokes a “de novo” review, not an “abuse of discretion” review. The question of whether the Superior Court should have been sitting as an Appellate Court or not, is clearly a question of jurisdiction and the proper review is “de nova”. Generally, an appeal from an administrative agency invokes a superior court's appellate jurisdiction. See, *Skinner v. Civil Serv. Comm'n*, 168 Wash.2d 845, 850, 232 P.3d 558 (2010). "Because an appeal from an administrative body invokes the superior court's appellate jurisdiction, ‘all statutory requirements must be met before jurisdiction is properly invoked.’" Id. at 850, 232 P.3d 558 (internal quotation omitted) (quoting *Fay v. Nw. Airlines, Inc.*, 115 Wash.2d 194, 197, 796 P.2d 412 (1990)). With respect to subject matter jurisdiction, the proper standard of review is de novo. "Whether a court has subject matter jurisdiction is a question of law reviewed de novo." *Dougherty v. Dep't of Labor & Indus.*, 150 Wash.2d 310, 314, 76 P.3d 1183 (2003) (citing *Crosby v. Spokane County*, 137 Wash.2d 296, 301, 971 P.2d 32 (1999)).

However, if the Court deems the case to be a “child support order case” that requires an abuse of discretion standard of review, Appellant-Petitioner still prevails because the error of law committed by the Superior Court Judge below by not applying res judicata or recognizing that it must sit as an Appellate Court supports a finding of an abuse of discretion. See e.g. *In re Marriage of Fiorito*, 112 Wash.App. 657, 663-64, 50 P.3d 298 (2002). A

court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds, including an erroneous view of the law. *Fiorito*, 112 Wash.App. at 663-64, 50 P.3d 298.

In this case, the Superior Court abused its discretion by taking an erroneous view of the law, specifically the law as articulated in *Aldrich* supra, and *Handy, supra*, which applies to cases dealing with Administrative Law Final Orders and the Superior Court.

**A. THE SUPERIOR COURT ERRED BY HEARING THE MOTION WHEN NO PROPER APPEAL HAD BEEN FILED. (Assignment of Error No. 1)**

Respondent fails to even address the first point that no proper appeal was filed. The motion should not have been heard on the specific issues ruled upon in the Final Order entered by the Administrative Law Judge, specifically Daycare Arrearages from March 1, 2016 to September 30, 2016. Just as the Superior Court seemed to sidestep this issue, so does the Respondent on appeal. This procedural flaw by the Respondent should not have been ignored. See arguments in Appellant's Opening Brief, *In re Marriage of Aldrich*, 72 Wash.App. 132, 864 P.2d 388 (1993) and *Department v. Handy*, 62 Wash.App.105 (Div. 1), 813 P.2d 610 (1991). The point is that once there was a failure by the Respondent to properly appeal, the findings of fact and conclusions of law in the Administrative Final Order should have been given full effect by the Kitsap Superior Court in considering the motion filed by Respondent which collaterally attacked the administrative final order. This

point alone should have been sufficient for the Superior Court to deny the Respondent's motion so that the Final Order of the Administrative Law Judge could be administratively enforced and properly considered in the Superior Court. After all, that is the point of having the Office of Child Support have quasi-judicial power under Washington Law.

The Administrative Final Order included the following specifics:

- 5.4 The child support order provides that William Shortway shall pay 71% of daycare expenses. Roxanne Shortway provided credible evidence of the daycare expenses she has incurred for the period of **March 1, 2016 through September 30, 2016**. The expenses are reasonable and necessary for the time Sophie Shortway has spent in day care while Roxanne Shortway is at work. Therefore, William Shortway should be responsible for his proportionate share of child care from March 1, 2016 forward.
- 5.5 **Past Due Day Care Expenses:** Roxanne Shortway has incurred total daycare expenses for the period March 1, 2016 through September 30, 2016, in the amount of \$4,344.32 USD. William Shortway's 71% share of this total equals \$3,084.46 USD
- 5.6 **Current and Future Day Care Expenses:** Roxanne Shortway currently incurs monthly day care expenses in the amount of \$400.00 CAD per month during the school year (September-May) and \$600.00 CAD per month, during the summer (June-August). Her approximate yearly total of work related day care expenses for Sophie Shortway is \$5,400.00 CAD. Using the rate of exchange for CAD to USD, current of the date of this order (1.3199), the yearly total of work related day care expenses for Sophie Shortway in US Dollars is \$7,127.46 USD. William Shortway's 71% share of this total equals \$5,060.49 USD per year, or \$421.70 USD per month. Therefore, beginning September 1, 2016, William Shortway owes \$421.70 USD per month for ongoing child care expenses.

5.7 **Annual Review:** Either party may ask for an annual review of the support order under RCW 26.23.110 and WAC 388-14A-3317 for the purpose of serving a new Notice of Support Owed. An annual review of a support order is the determination of arrears and current support amount with an effective date which is at least twelve months after the date of the last notice of support owed, or the last administrative order or decision based on a Notice of Support Owed, became a final administrative order.

Page 5 of the Final Order, CP 565.

The Administrative Ruling clearly informed the parties that Reconsideration was due in 10 days or an Administrative Appeal to the Superior Court was due in 30 days.<sup>2</sup> CP 553-579. Clearly, an appeal could

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<sup>2</sup> APPEAL RIGHTS

**Reconsideration:** You have the right to request that the Administrative Law Judge (ALJ) reconsider this Final Order RCW 34 05.470 and WAC 388-02-0605. Your request must be in writing and must be received by the ALJ within ten (10) calendar days of the mailing date of the Final Order. If the reconsideration request is not received within this ten-day period it will not be considered, and the time line to ask for superior court review continues to run.

If the reconsideration request is timely, the ALJ then has twenty (20) days to either decide the request or mail you and the other parties a written notice specifying the date the ALJ will decide the request. The reconsideration request is denied if no action is taken by the ALJ within the twenty-day period. If the request is timely, the time line to ask for superior court review will start on the date the reconsideration order is mailed

**Superior Court Review:** You also have the right to appeal this Final Order to superior court within thirty (30) calendar days of the mailing date of the Final Order. RCW 34.05.542(3) and WAC 388-02-0645. You do not need to file a request for

have and should have been filed if Respondent felt there was an error. However, instead of filing a proper reconsideration or Appeal of the Administrative Ruling, the Respondent filed a “Motion Regarding Day Care Arrearage and Administrative Ruling” in Superior Court. CP 553-579. The Motion, not being a proper reconsideration or Appeal of the Administrative Final Order should have been denied as to all issues ruled upon in the Administrative Final Order.

**B. THE SUPERIOR COURT ERRED BY ALLOWING A COLLATERAL ATTACK (BY GRANTING RESPONDENT’S MOTION) ON THE ADMINISTRATIVE FINAL ORDER ON DAYCARE ARREARAGES.**

The Respondent attempts a convoluted and tortuous analysis of the underlying case by trying to draw the Appeals Court’s attention to the fact that other issues in the case are still pending and that there are other Petitions to be decided in this case. Almost every case has numerous issues, some of which are pending and some of which are resolved. The underlying case is no different from other cases where different Petitions have been filed to address different issues. However, this appeal focuses on the specific issues of one final order, the final order entered by the Administrative Law Judge on

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reconsideration before requesting review in superior court. DSHS cannot request superior court review. Page 7 of the Final Order, CP 567. Please refer to WAC 388-02-0650 for information about how to serve your request for superior court review.

October 17, 2016. CP 553-579. This appeal focuses on the collateral attack made to that final order by a Motion filed on October 27, 2016 by the Respondent that should not have been granted by the Superior Court. CP 533-579.

The Motion filed by Respondent was a collateral attack on the final order that clearly offends the principles of res judicata. Thus, the February 3, 2017 “Order Regarding Daycare Arrearage and Administrative Ruling”. CP 621, 622-627 should not have been granted.

Contrary to the Respondent’s attempt to cloud the specific issues by pointing to matters not currently before the Court, the fact that there was a FINAL ORDER and a Collateral Attack puts the facts of this case squarely in the most basic of res judicata analysis set forth in any of the cases cited, especially *In re Marriage of Aldrich*, 72 Wash.App. 132, 864 P.2d 388 (1993) and *Department of Social and Health Services v. Handy*, 62 Wash.App.105 (Div. 1), 813 P.2d 610 (1991).

None of the cases cited by Respondent in footnotes 7 and 8 of Respondent’s Brief change the specific basic res judicata analysis.<sup>3</sup> For

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<sup>3</sup> These cases cited generally by Respondent have no specific applicability, except to “generally” discuss basic concepts of res judicata and issue preclusion in fact patterns that are distinguishable from the current case: *Achey v. Creech*, 21 Wash. 319, 58 P. 208; *Loeper v. Loeper*, 81 Wash. 454, 142 P. 1138; *Woodland v. First National Bank*, 124 Wash. 360, 214 P. 630p; *Sprague v. Adams*, 139 Wash. 510, 247 P. 960, 47 A.L.R. 529; *Munro v. Irwin*, 163

example, *Kelly-Hansen v. Kelley-Hansen*, 87 Wash.App. Div. 2 (1997), at 328-329, the discussion regarding res judicata covers the topics of merger or bar and “issue preclusion” but significantly are dealing with “judgments” that have been entered. The discussion in *Kelly-Hansen* actually supports Appellant-Petitioner’s position that the Administrative Final Order cannot be collaterally attacked by Respondent.

Similarly, the case cited by Respondent of *Loveridge v. Fred Meyer, Inc.* 125 Wash.2d 759, 763 (1995), only supports the position that res judicata does not apply to a non-party. Obviously, *Loveridge* does not apply here where both Petitioner and Respondent were parties in both the Administrative action that resulted in the Administrative Final Order and the Superior Court case before Judge Olsen.

Moreover, even if the Superior Court could hear the motion to determine the daycare arrearage, it was required to apply the findings made by the Administrative Law Judge to the relevant time periods. The Superior Court erred because it misapplied the case of *Department of Social and Health Services v. Handy*, 62 Wash.App.105 (Div. 1), 813 P.2d 610 (1991) (as described below).

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Wash. 452, 1 P 2d 329; *Cascade Lumber Co v. Hargis*, 167 Wash. 409, 9 p.2d 366; *Globe Construction Co. v Yost*, 173 Wash. 528, 23 P.2d 895

**C. THE PRIOR ORDER OF THE SUPERIOR COURT JUDGE WAS “AS OF FEBRUARY 28, 2016” AND WAS SPECIFICALLY SILENT AS TO ARREARAGES FOR THE TIME PERIODS AFTER FEBRUARY 28, 2016 WHICH WERE RULED UPON BY THE ADMINISTRATIVE LAW JUDGE.**  
(Assignment of Error No. 1)

Just as the Superior Court turned the basic principles of the case of *Department of Social and Health Services, Appellant v. Handy*, 62 Wash.App.105 (Div. 1), 813 P.2d 610 (1991) on its head, the Respondent’s arguments are equally erroneous. The guidance provided by the Court of Appeals in *Handy, supra*, was clear on both points: (a) the need for a proper appeal; and (b) the basic interface between child support enforcement and the Superior Court. Basically, the same questions are before the Court in this appeal.

In *Handy, supra*, Mr. Handy’s argument was that the *filing* of the dissolution petition in that case automatically deprived the Office of Support Enforcement of jurisdiction. This is similar to the argument that Mr. Shortway makes that the *filing* of the Petition for Modification of Child Support somehow deprives the OSE/ALJ in the Shortway case of jurisdiction. See also Transcript of Oral Argument on 1-13-2017 page 13-17.

Contrary to the Respondent’s flawed analysis, in *Handy*, the Court of Appeals specifically found that “RCW 74.20A.055(1) specifically provides that it is the absence of a superior court order and not the absence of a dissolution filing that authorizes OSE to proceed to establish a child support

obligation. (*Handy* at p. 109) On this point, the Court of Appeals in *Handy* further stated:

**[6] DSHS asserts that where a superior court order does not deal with the same time period that is addressed in the administrative proceeding, that the superior court order is “silent” resulting in an “absence” of a superior court order and OSE is authorized to proceed. We agree. It is a general rule of statutory construction that statutes be [...] construed to best effect their purpose. The legislature has enjoined the court to interpret the statute liberally to achieve its purposes. We feel that this is best done by construing “**in the absence of a superior court order**”, RCW 74.20A.055(1), to mean **in the absence of a superior court order dealing with the same period of time as in the administrative proceeding.****

*Emphasis added, footnotes omitted.*

The lesson of *Handy, supra* is clear: whether the Administrative Law Judge in *Handy* was proceeding under RCW 74.20A.055(1) or RCW 26.23.110 (as in this case), a temporary order or a final order, the principle is still the same: silence on the specific time-frame by the Superior Court is “absence” of a superior court order which authorizes the OSE to proceed.

Respondent in the case below also argued that a “prospective” order entered by the Superior Court, which does not contain any specific timeframes also deprived the Administrative Law Judge of jurisdiction. See February 3, 2017 hearing transcript, pages 15 to 20 and discussion with Superior Court re issues. CP \*\*\*

Significantly, as in *Handy*, even if the superior court judge there had entered a temporary order that was arguably “prospective” but it did not

explicitly cover any specific time period. The lack of specific time period in the superior court order in Handy was treated as being “silent”. Similarly, in this Shortway case, the Judge Olsen order dated August 29, 2016 was for the time frame from August 2012 to February, 2016. CP 485-488. The Judge Olsen Order did not explicitly cover any specific time periods after that date. The facts of this case and Handy are so similar in that respect, that the applicability of Handy should be obvious. Therefore, Judge Olsen was clearly erroneous in her application of Handy.

Moreover, even if the Superior Court could somehow convert its ruling on “arrearages” to be “prospective”, the lack of a specific timeframe still makes it “silent” on the time periods addressed by the Administrative Law Judge. Since the Superior Court Order dated August 29, 2016 specifically stated that it was “to February, 2016” it was “silent” on any time periods after that date. Thus, the Administrative Law Judge had properly applied the principles of Handy and ruled on the time frames before it, March 1, 2016 to September 30, 2016.

Based on the fact that the Administrative Law Judge did have jurisdiction, the appeal process should have been followed in order to address any alleged errors that Mr. Shortway claimed. Mr. Shortway failed to properly appeal so the Administrative Law Judge’s Final Order must be recognized as a valid order.

Oddly, the Respondent seems to argue that the fact that a Petition for Modification of the Child Support Order was filed somehow generally authorized the Superior Court to enter any order it desired on arrearage, just because the Petition was pending. The only issue pending before the Superior Court at that hearing was the Motion made by Respondent as to the specific Final Order entered by the Administrative Law Judge. As the Respondent admits in his brief, the Appellant-Petitioner's Petition for Modification of Child Support is still pending. That Petition was NOT before the Court at the same time as the motion, so a general ruling based on a Petition to be heard in the future cannot be the basis for finding that the "issue was before the court." This illogical argument by the Respondent should be ignored as having no basis in statute or law.

Thus, based on the foregoing, and the arguments previously made by Appellant-Petitioner in her Opening Brief, the Superior Court was erroneous in granting the Respondent's motion and Appellant-Petitioner requests that this Court set aside the Superior Court's Order entered on February 3, 2017 and instruct the Superior Court on the applicability of Handy.

**D. THE SUPERIOR COURT ERRONEOUSLY INVALIDATED THE ADMINISTRATIVE LAW JUDGE'S DECISION TO ESTABLISH A "FIXED DOLLAR AMOUNT OF CURRENT AND FUTURE SUPPORT OBLIGATION." PURSUANT TO RCW 26.23.110. (Assignment of Error No. 3)**

Contrary to the arguments of Respondent that RCW 26.23.110 was not before the trial court, in principle, RCW 26.23.110 should be considered by

this Court. The **entire** Final Order entered by the Administrative Law Judge was before the Superior Court and the procedural error made by the Superior Court by proceeding even without a proper appeal would apply equally to all parts of the Final Order made by the Administrative Law Judge.

By entering its Order on February 3, 2017, the Superior Court was also ignoring the Statutory Authority provided by RCW 26.23.110 that the Administrative Law Judge was exercising. It was clear that the Administrative Law Judge was exercising its statutory authority to make a ruling as to reduce the amount of anticipated child care to a fixed dollar amount. In entering the February 3, 2017 Order, Judge Olsen clearly ignored the fact that nowhere in any of the prior rulings made by the Superior Court was there any “fixed dollar amount” for the periods covered by the Administrative Law Judge’s Final Order. A “percentage” of the child care (in this case 71%) is simply not the same as a “fixed dollar amount.” Therefore, for Judge Olsen to conclude that the administrative court did not have jurisdiction was an untenable error of law as it was wholly unsupported by the facts.

Moreover, even though the order prepared by Respondent and signed by Judge Olsen did not specifically mention RCW 26.23.110, Paragraph 13 of the February 3, 2017 order signed by Judge Olsen is a clear reference to what

the Court did under RCW 26.23.110, which was establishing a monthly obligation to pay \$421.70.<sup>4</sup> At paragraph 13, Judge Olsen ruled:

13. That the administrative court lacked subject matter jurisdiction to enter an order establishing Mr. Shortway's monthly obligation to pay \$421.70 per month for the day care expenses incurred by Ms. Shortway, and to enter a judgment against Mr. Shortway in the amount of \$3,084.46 for day care expenses paid by Ms. Shortway but not reimbursed by Mr. Shortway as the orders of the Superior Court were not silent on Mr. Shortway's obligation to pay a portion of the day care expense as the order of the Superior Court were not silent on the period of time contemplated by the administrative court's order.

Page 5, February 3, 2017 Superior Court Order, CP 626.

By making the rule in Paragraph 13 of the February 3, 2017 Order above, the Superior Court was directly invalidating the authority for the ruling which was contained at Section 5.2 of the Administrative Law Order, which stated as follows:

**5.2 Authority for Notice of Support Owed:** RCW 26.23.110(1)(a) provides that the Department may serve a Notice of Support Owed on a responsible parent (also known as the noncustodial parent) when a support order does not state the current and future support obligation as a fixed dollar amount. RCW 26.23.110(10) further provides, in relevant part:

An adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the fixed dollar amounts established in the adjudicative order were based. The fixed dollar amounts of current and future support obligation or the amount of the support debt, or both, determined under this section

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<sup>4</sup> The Administrative Final Order also stated:

**6.1 Current and Future Support Amount for the Day Care Portion of the Obligation:** Beginning October 1, 2016, William Shortway owes \$421.70 USD per month for the day care portion of his child support obligation, with a like payment due on the 1<sup>st</sup> day of each month thereafter.

Page 5 of Administrative Order attached to Motion; CP 565.

shall be subject to collection under this chapter and other applicable state statutes.

Page 4 of Administrative Final Order, CP 564.

This ruling has direct impact on the statutory authority of the Administrative Law Judge and is also part of the Trial Court's finding that a fixed dollar amount of \$421 per month was not within the Administrative Judge's jurisdiction.

Based on the foregoing and as argued in the Appellant's Opening Brief, the Order dated February 3, 2017 should be set aside and the Superior Court should be instructed to apply the Final Order of the Administrative Law Judge to the time periods from March to September, 2016. For subsequent timeframes which may be addressed when the pending Petition to Modify Child Support is ruled upon, the Superior Court would be free to rule upon any time periods not already addressed by itself or a future Administrative Law Judge.

Significantly, nothing cited by the Respondent in his Answering Brief should lead the Court to apply RAP 2.5(a) to refuse to hear the issue of the RCW 26.23.110 since the substance of it was addressed by the Superior Court's ruling and reason for raising the issue as it relates to the Appeal is that it does fall within RAP 2.5(a) as a ruling by the Superior Court Judge on jurisdiction and the erroneous ruling that Superior Court had jurisdiction based on its findings that the Administrative Law Judge did not have jurisdiction. CP 622-627.

**E. THE SUPERIOR COURT ERRONEOUSLY IGNORED THE AUTHORITY OF RCW 26.23.110 AS CITED BY THE ADMINISTRATIVE LAW JUDGE. (Assignment of Error No. 4)**

The Respondent argues both on appeal and below that somehow RCW 74.20A.055 should be interpreted to mean that just because a Final Child Support Order had been entered, that the Office of Support Enforcement had no jurisdiction. This argument seems to assume that a superior court always supersedes an Administrative Law Judge's ruling. That is simply erroneous thinking and needs to be corrected. Both the Administrative Law Judge and the Superior Court Judge derive their authority from application of the law, including various parts of the Revised Code of Washington. In this case, the application of RCW 74.20A.055 to this case should have been consistent with Handy, *supra*, in simply noting that the absence of the Superior Court's "specific" reference to a time-frame in the August 26, 2017 Superior Court ruling did allow the Administrative Law Judge to proceed. By failing to apply the law as interpreted by Handy simply and consistently to both RCW 74.20A.055 and RCW 26.23.110, the Superior Court was perpetuating error. Therefore, the February 3, 2017 Order should be corrected to reflect consistent application of the principles of Handy to both types of administrative orders.

Moreover, in arguing that Handy does not apply, Respondent is missing the point of Aldrich, the point being that once Respondent failed to properly appeal the Administrative Law Judge's Final Order, the Superior

Court was bound by the Administrative findings and rulings, EVEN IF they were ERRONEOUS.

**F. THE SUPERIOR COURT DID NOT PROPERLY OFFSET AMOUNTS OWED BY MR. SHORTWAY AGAINST AMOUNTS OWED BY MS. SHORTWAY.**

(Assignment of Error No. 4)

Contrary to the arguments made by the Respondent, Appellant-Petitioner did not “invite error” and Appellant-Petitioner’s decision not to order the December 9, 2016 transcript was because the oral argument was not believed to be necessary for the appeal. The concession that the Administrative Law Judge’s calculations or conversion rates were erroneous had already been made in her written documents and was already part of the written record on appeal. CP 599, Page 4 of the Petitioner’s December 8, 2016 Memorandum. Therefore, the transcript does not add anything new to the underlying facts, and therefore does not prejudice the Respondent in any way. Moreover, the point that Petitioner was making and which was contained in the Petitioner’s Memoranda (and which is already part of the record at CP 582-594 and CP 596-600) was that the error by the Administrative Law Judge could not be corrected by the Superior Court because Respondent had failed to properly appeal it. As it was cited in Petitioner’s memoranda, the failure of the Respondent to appeal was the reason for the alleged “windfall” to Petitioner. This is the specific point that Petitioner was making by citing *Aldrich, supra* in her memorandum of law filed on December 8, 2016, CP 596-600. In *Aldrich*, as previously argued

below, there was an error committed by the Department of Social and Human Services in calculating child support; but because there was no proper appeal, the error, as it was, had to stand (it could not be modified by the Superior Court, even if it wanted to). That is the point here and still is the point.

It was also conceded that the Superior Court could calculate the arrearages due by offsetting what one party owed with prior overpayments. The oral argument was consistent with and merely recited the same arguments that were made in writing at CP 582-594 AND CP 596-600: that it was Ms. Shortway's position that the underlying amounts used in the offset should have resulted in her favor in the amount of **\$3,191.02** based on the following calculations:

|  |                   |  |
|--|-------------------|--|
| TOTAL OWED BY MR. SHORTWAY FOR DAYCARE EXPENSES<br>As of December, 2016  | \$4,349.56        | See ALJ Final Order<br>CP 563                                      |
| Offset by Amount "overpaid" as of February, 2016                         | -1,158.54         | Judge Olsen's Prior Ruling against Petitioner Mother<br>CP 485-488 |
| <b>AMOUNT OWED BY MR. SHORTWAY<br/>After offset as of December, 2016</b> | <b>\$3,191.02</b> | <b>IN U.S. DOLLARS</b>   |

See page 3 of Supplemental Memorandum filed 12-11-2016, CP 613.

As supported by *Handy, supra*, and *Aldrich, supra*, because the Final Order by the Administrative Law Judge was not properly appealed by the Respondent, the Superior Court Judge was obligated to accept the finding in

the Final Order made by the Administrative Law Judge that the total amount owed by Mr. Shortway, as of December, 2016, was \$4,349.56. Therefore, the proper offset that should have been ordered should have been in favor of Petitioner-Mother in the amount of \$3,191.02, not \$329.00 in favor of Respondent-Father.

As previously argued, while reward is certainly appropriate, Appellant-Petitioner asks the Court of Appeals to direct entry of the Judgment in favor of Petitioner because Petitioner wishes to avoid further expense of re-litigating the issues again. More than two years have passed since Petitioner sought to collect child care arrearages from Respondent. Respondent has been able to avoid paying these amounts.

The transcript that Respondent argues should have been ordered does not add anything new and nothing in it is inconsistent with the written documents already made part of this record.

In this case, where this Court has ample undisputed facts that would allow this Court to make the calculation requested, rather than remanding the case back to the Superior Court, Ms. Shortway believes that if this Court applies the principles of res judicata as articulated by *Aldrich, supra*, the erroneous calculation of the Administrative Law Judge is clearly part of the record and cannot be changed. Therefore, Appellant-Petitioner requests that this court calculate the amount of the offset and correct the Judgment to the proper amount.

The cases cited by Respondent do not support the arguments that he is stretching to make. The lack of transcript issue for the December 9, 2017 hearing that Respondent suggests is supported by *Favors v. Matzke*, 53 Wash.App. 789, 794, 770 P.2d 686 (Ct. App.Wash Div. 1, 1989) demonstrates that Respondent does not understand the rule regarding the lack of transcript as articulated in that case. Respondent conveniently ignores the fact that in order to prevail with this argument Respondent must prove that he was prejudiced in the appeal by the lack of the transcript. Since the Petitioner had already mentioned in writing (already part of the record on appeal in Petitioner Declaration at CP 628-634 and the other Memoranda filed by Petitioner at CP 596-600, CP 608-10, and CP 611-613) that the conversion rates and mathematics issues by the Administrative Law Judge were admittedly erroneous, the lack of transcript did not prejudice any argument that Respondent may make about the mathematics. However, the point that Appellant-Petitioner has continued to make is that the mathematical error **COULD NOT BE CORRECTED UNLESS THERE WAS A PROPER APPEAL BY RESPONDENT**; and since there was no proper appeal, the mathematical error had to be accepted “as is”.

As for the Respondent’s argument on the doctrine of “invited error”, Respondent is plainly wrong. There was no “invited error”. The declaration on conversion rates was submitted to demonstrate the Petitioner’s candor in acknowledging the error, and also to demonstrate that even the alleged

corrections that Respondent was seeking were erroneous. The consistent argument had always been that the mathematical error made by the Administrative Law Judge could not and should not be changed. This candor by the Petitioner should not be used against her to dismiss her argument that the error did not matter, especially since Judge Olsen did not even use Petitioner's conversion rates in the calculations for offset. Instead, Judge Olsen made a ruling which used the partial evidence from the materials presented at the Administrative Hearing by Respondent (not the complete record from the Administrative Hearing of 145 exhibits that would otherwise have been part of the record if there was an appeal). The case cited by Respondent in support of this doctrine of invited error is clearly distinguishable on the facts of this case. In *In re Dependency of K.R.*, 128 Wn.2d 129, 147, 904 P.2d 1132 (1995), the "invited error" was regarding the admissibility of a polygraph test which was allowed based on motion of the appellant who later complained about it on appeal. In this case, the error that Appellant is appealing, (the failure of the Superior Court to use the "erroneous" calculation in the offset calculations because of the finality of the Administrative Order) was NOT made with Petitioner's "invite" but over Petitioner's objection. Therefore, this doctrine of "invited error" does not apply. If anything, it was Respondent who invited the Superior Court to make the error which is the basis of this appeal. It was Respondent who

invited the Court below to ignore the final order of the administrative judge by filing a motion instead of a proper appeal.

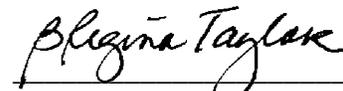
## CONCLUSION

Based on the facts, authorities, and analysis set forth above and in the Appellant's Opening Brief, the Superior Court erred in its Order Regarding Day Care Arrearage and Administrative Ruling entered on February 3, 2017. The Superior Court misapplied the Handy case, ignored RCW 26.23.110 on "fixed dollar amounts", and misapplied RCW 74.20A.055 where new child support was not being established. Therefore, as indicated above, Appellant-Petitioner respectfully requests that:

- a) the February 3, 2017 Order Regarding Day Care Arrearage and Administrative Ruling be set aside and that this Court find in favor of Appellant;
- b) this Court calculate the proper amounts due to Petitioner and that a Judgment against Respondent in favor of Appellant-Petitioner be ordered in the amount of \$3,191.02, plus statutory interest of 12% as of December 31, 2016;

DATED: October 11, 2017.

Respectfully submitted,



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B. REGINA TAYLOR  
Attorney for Appellant/Petitioner  
Washington State Bar Association  
membership number 32379

**DECLARATION OF SERVICE**

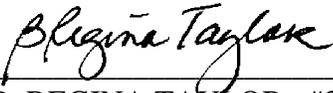
*I Declare:*

I am over the age of 18 and competent to testify. I served the following documents on the above-named Respondent through his attorney Mark Yelish

| Description             | Date     | Method   |
|-------------------------|----------|--|
| Appellant's Reply Brief | 10-11-17 | Priority Mail to:<br>Mark Yelish<br>Attorney at Law<br>623 Dwight Street<br>Port Orchard, WA 98337 |
|                         |          | Email to:<br><b>Mark@Yelishlaw.com</b>   |
|                         |          | Fax to:<br><br>(360) 876-3970  |
|                         |          |  |
|                         |          |  |

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

Signed at Bremerton, Washington on October 11, 2017.

  
\_\_\_\_\_  
B. REGINA TAYLOR #32379  
Attorney for Roxanne Shortway

**B REGINA TAYLOR ATTORNEY AT LAW PC**

**October 11, 2017 - 4:09 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50059-1  
**Appellate Court Case Title:** In Re The Marriage of: Roxanne Shortway, Appellant v William Shortway,  
Respondent  
**Superior Court Case Number:** 12-3-00369-1

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