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Division II
State of Washington
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Court of Appeals No. 50907-5-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

MARILYN LOUISE MILLER,

Appellant

v.

JACK DEAN MILLER,

Respondent

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Mr. Miller has provided a “Respondent’s Brief,” which does not address the actual law applicable to this present issue on appeal. Mr. Miller also refers to facts which are not supported by the record, are irrelevant, and/or are verities on appeal.

Pursuant to RCW 26.18.160, because Mr. Miller was found in contempt for failing to pay spousal maintenance, attorney’s fees and costs to Ms. McCormick were mandatory. The trial court’s only discretionary decision would be as to the amount and reasonableness of the attorney’s fees and costs to the prevailing party, which was never challenged below.

Here, the superior court erred by denying Marilyn McCormick’s request for reasonable attorney’s fees and costs despite the uncontested fact that she was the prevailing party in an action to enforce spousal maintenance and upon a finding of contempt against Mr. Miller.

Mr. Miller provides no authority or support for his assertion that reasonable attorney’s fees and costs are discretionary for the proceeding at issue. Nor does he contest any of the authority Ms. McCormick provided that shows reasonable attorney’s fees and costs are in fact required to be awarded to the prevailing party.

The Court should reverse the decision below regarding attorney's fees and costs and award Ms. McCormick her attorney's fees and costs as outlined at the superior court level and on this appeal.

II. ARGUMENT

A. Pro Se Parties Are Held to the Same Standard

As a general rule, pro se litigants must be held to the same standard as an attorney. *Kelsey v. Kelsey*, 179 Wn. App. 360, 367–68, 317 P.3d 1096 (2014); *Edwards v. Le Duc*, 157 Wn. App. 455, 460, 238 P.3d 1187 (2010); *Batten v. Abrams*, 28 Wn. App. 737, 739 n.1, 626 P.2d 984 (1981). While Ms. McCormick is sympathetic to the fact that Mr. Miller temporarily lost some of his income (when he lost one job, he made less income for a while with his replacement employment), but this did not change his legal obligation to make spousal maintenance payments. And it does not change the fact that he was capable of making those payments but chose to pay other bills instead. As the superior court judge stated during the hearing on revision, “[Mr. Miller’s] remedy is get into court and ask the court for relief. And not, not use self help. Not just decide, I’m just not going to pay.” RP 33. The superior court found that he willfully and intentionally did not pay required spousal maintenance; those findings are verities on appeal here. CP 417–18. As a result, he was properly found to have violated a court order regarding spousal maintenance and found to

be in contempt. CP 413–14. Once that issue was resolved, attorney’s fees and costs were mandatory.

B. Attorney’s Fees and Costs Are Mandatory Because Mr. Miller Willfully and Intentionally Violated the Court Order Regarding Maintenance and Was Found in Contempt.

As Ms. McCormick stated in her opening brief, RCW 26.18.160 mandates that reasonable attorney’s fees and costs be awarded to the prevailing party in an action to enforce spousal maintenance. Despite the mandatory language contained in this statute, the superior court denied Ms. McCormick’s request for reasonable attorney’s fees and costs, erroneously reasoning that there was discretion to grant or deny fees and costs. Ms. McCormick provided numerous case citations that hold that RCW 26.18.160 and other attorney’s fees statutes like it use mandatory language. Appellant’s Opening Brief at 4–7. Mr. Miller did not refute any of the authority Ms. McCormick provided and merely offered conclusory statements without any legal backing or analysis.

Further, Mr. Miller dedicates a significant amount of time in his brief to describing Commissioner Johnson’s decision. However, that decision is not before this Court. The superior court, the Honorable Michael Schwartz, revised (reversed) Commissioner Johnson’s decision, and instead found that Mr. Miller acted willfully and intentionally when

violating the spousal maintenance court order. CP 417–18. As a result, the superior court found Mr. Miller to be in contempt. CP 413–14.

Accordingly, Ms. McCormick was the prevailing party under RCW 26.18.160 and was entitled to reasonable attorney’s fees and costs associated with the action to enforce spousal maintenance.

Lastly, while appellate courts may defer to trial courts in some circumstances, this is not one of those circumstances. As pointed out in Ms. McCormick’s opening brief, the issue before this Court is one of statutory interpretation (whether the statute requires the superior court to award reasonable attorney’s fees and costs to the prevailing party, or whether the court maintains discretion to deny reasonable attorney’s fees and costs). Appellant’s Opening Brief at 4. Issues of statutory interpretation are reviewed de novo on appeal, and this Court owes no deference to the superior court in its erroneous interpretation of the statute. *Id.*

C. Reasonableness of the Attorney’s Fees and Costs Requested Below is Not Before This Court.

The issue for this Court on appeal is whether or not it is mandatory for a court to award attorney’s fees to a prevailing party in an action to enforce spousal maintenance. This Court does not need to decide whether the attorney’s fees and costs Ms. McCormick requested as a prevailing party

are reasonable. *See, e.g., In re Marriage of Anderson*, 49 Wn. App. 867, 873–74, 746 P.2d 1220 (1987) (granting attorney’s fees and costs but remanding to the trial court to determine the appropriate amount of attorney’s fees to be awarded). Instead, that is an issue for the superior court to decide. It is noteworthy that Mr. Miller never objected to the amount of fees and costs requested in the required format at the superior court level at any time, yet in his Respondent’s Brief here, he argues for the first time that the fee request below is “outrageous if not predatory.” No such argument was ever made below, but Ms. McCormick’s counsel submitted a fee declaration/cost bill outlining the fees associated with the enforcement/contempt action. CP 400–02. Therefore, the fees and costs incurred by Ms. McCormick should have been awarded.

In addition to the above, Ms. McCormick does not have to demonstrate a financial need for assistance with attorney’s fees as may be the case in other circumstances; nor does she have to show that Mr. Miller has the ability to pay them. Those are not prerequisites under RCW 26.18.160 when finding that a party is in contempt of a court’s order and thus, deciding that reasonable attorney’s fees and costs are appropriate. *Rhinevault v. Rhinevault*, 91 Wn. App. 688, 696, 959 P.2d 687 (1998) (“entitled to such an award without showing financial need or Mr.

Rhinevault's ability to pay"); *Anderson*, 49 Wn. App. at 873 ("petitioner need not show financial need under this statute").

III. CONCLUSION

Ms. McCormick should have been awarded reasonable attorney's fees and costs as the prevailing party in an action to enforce spousal maintenance pursuant to RCW 26.18.160. She was the prevailing party because the superior court found Mr. Miller intentionally and willfully refused to pay spousal maintenance as required by a court order and he was found to be in contempt. Thus, the superior court erred when it denied her request outright. This Court should REVERSE the superior court and hold that reasonable attorney's fees and costs should have been awarded to Ms. McCormick. This Court should also award Ms. McCormick her attorney's fees on appeal, as requested pursuant to RAP 18.1(a) in Ms. McCormick's opening brief.

DATED this the 12th day of March, 2018.



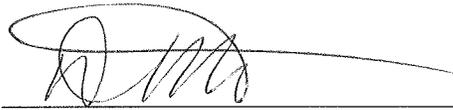
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CERTIFICATE OF SERVICE

I certify that on March 12, 2018, I caused a copy of the foregoing document to be served on the following party of record via first class mail and email as follows:

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DATED this 12th day of March, 2018, at Auburn, Washington.



Diane M. Hickman

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