

FILED
Court of Appeals
Division II
State of Washington
1/19/2018 1:53 PM

No: 51164-9-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

ROSABLANCA BEINHAUER, Respondent

v.

MARK BEINHAUER, Appellant

BRIEF OF APPELLANT

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I. INTRODUCTION

The issues in this case relate to the attempt by appellant Mark Beinhauer (hereinafter referred to as “Mark”) to collect child support from respondent Rosablanca Beinhauer, his former wife, now known as Rosablanca Abardo (hereinafter referred to as “Rosablanca”).

II. ASSIGNMENTS OF ERROR

Assignments of Error

1. The trial court erred in entering the order of June 6, 2017 denying the request of appellant Mark Beinhauer for a judgment with interest for unpaid child support.
2. The trial court erred in entering the order of June 6, 2017 denying the appellant’s request for attorney’s fees.
3. The trial court erred in entering the order of July 25, 2017 denying appellant’s motion to revise the June 6, 2017 order.
4. The trial court erred in entering the order of September 12, 2017 staying the writs of garnishment issued by appellant’s attorney.
5. The trial court erred in entering the order of October 24, 2017 precluding appellant from pursuing any further collection action against respondent until further order of the court
6. The trial court erred in entering the order of October 24, 2017 awarding the respondent \$1,450.00 in attorney’s fees and \$500.00 in CR 11 sanctions

7. The trial court erred in entering the order of October 24, 2017 declaring that the writs of garnishment issued by appellant's attorney were issued unlawfully and declaring said writs quashed and vacated.
8. The trial court erred in entering the order of November 9, 2017 denying the appellant's motion to revise the October 24, 2017 order.
9. The trial court erred in entering the order of November 9, 2017 granting respondent an additional \$720.00 in attorney's fees against appellant.
10. The trial court erred in failing to grant appellant attorney's fees for proceedings in response to respondent's motion to quash writs of garnishment filed October 3, 2017.
11. The trial court erred in failing to grant the appellant's objection to evidence of a settlement offer filed by respondent on October 6, 2017.
12. The trial court erred in hearing respondent's motion to quash writs of garnishment because it was not filed until three weeks after the initial order based upon said motion was entered September 12, 2017

Issues Pertaining to Assignment of Error

1. If a child support obligee is owed child support, is the obligee entitled to a judgment stating the amount owed? (Assignments of error 1 and 3.)
2. Is a child support obligee entitled to interest on the child support arrears owed to him? (Assignments of error 1 and 3.)
3. Is the court required to award attorney's fees against a child support obligor in proceedings to determine the amount of child support owed? (Assignments of error 2 and 3.)

4. Does an order of child support create an automatic judgment each month that the child support becomes due and unpaid? (Assignments of error 4,5,7 and 8.)
5. Does the failure of the court to declare the amount of child support owed bar a child support obligee from initiating garnishments to collect child support, when it is undisputed that child support is owed? (Assignments of error 4,5, 7 and 8.)
6. May writs of garnishment to collect unpaid child support be issued by the attorney for the support obligee, rather than by the clerk of the court? (Assignments of error 4,5,7 and 8.)
7. Is a child support obligee entitled to an award of attorney's fees with respect to proceedings initiated by the support obligor challenging his right to collect unpaid child support? (Assignment of error 10.)
8. May a support obligor be awarded attorney's fees and sanctions in a proceeding to prevent the collection of child support due, without a showing of bad faith by the support obligee? (Assignments of error 6 and 9.)
9. Must the court strike evidence of a settlement offer that does not result in an agreement? (Assignment of error 11.)
10. May the court hear a motion filed three weeks after the initial hearing on the motion which granted temporary relief pending the hearing.
(Assignment of error 12.)

III. STATEMENT OF THE CASE

The marriage of the parties was dissolved on February 18, 2000. CP 16-23. As part of the division of property, the court entered two qualified domestic relations orders. One awarded Rosablanca one-half of the community interest earned by Mark in the Boeing Company Retirement Plan. CP 24-28. The other order awarded Rosablanca one-half the community interest in Mark's share in the Boeing Company Voluntary Investment Plan. CP 29-32.

The parties have one son, Karl Beinhauer, who was born on January 18, 1992. CP 45. At the time of the divorce, Rosablanca was named the primary residential parent. CP 18. However, Mark later sought a modification of the parenting plan. This resulted in a new parenting plan being entered November 12, 2004 designating Mark as the primary residential parent. CP 36-43. Karl was 12 years and 10 months of age at that time. A child support order entered that same day required Rosablanca to pay \$200.00 per month child support beginning June 1, 2004. CP 46. The order declared that there was no back child support owed. CP 49.

In January 20, 2017 Mark filed an amended motion for contempt. CP 55-63. (It corrected the original motion, which had been filed but not served on Rosablanca.) Besides requesting a finding of contempt for failure to pay child support, the amended motion asked the court to declare

that Rosablanca owed Mark \$13,600.00 in unpaid support from July 1, 2004 through January 17, 2017. An additional \$13,647.87 was requested in interest. The motion also asked for an award of attorney's fees and costs.

Rosablanca responded by stating that Mark's request for unpaid child support demonstrated a pattern of abusive, manipulative and vindictive behavior towards her and their son. CP 66-71 She claimed that she had been supporting Karl since he moved in with her in June 2015, which would be when he was 23 years old. She stated Mark had threatened to burn down the house if she continued to live there, which resulted in Rosablanca letting Mark keep the house and her being left without a place to stay for a few months. She claimed that she did not hear from Mark about child support for 10 years until he was getting ready to retire from Boeing. She claimed that the only reason he reopened the child support collection case was to manipulate her into giving up her court-ordered right to part of his retirement. Rosablanca also claimed that Karl lived with her for 6 months when he was 16 and had been severally injured. Rosablanca went on to state that Mark kicked Karl out of the home in June 2015. She claimed that Karl's girlfriend continued to stay in the home and had a relationship with Mark. Rosablanca alleged that after

Karl moved in with her, she was able to get him to turn his life around and become a productive citizen.

Rosablanca also claimed that she had given Mark \$15,000.00 in cash to pay off all child support due. CP 67. There were no receipts or bank statements submitted to support this claim. This was supposedly corroborated by Karl's declaration stating that he recalls his mother giving his father a large stack of cash to settle child support when he was 12 years old. CP 64-66. Since Karl turned 13 in January 2005, there would have been at most \$1,600.00 due in child support for the 8 months since June 1, 2004 under the November 12, 2004 order at the time of this alleged payment. Rosablanca's claim was further contradicted by a Department of Social and Health Services conference board decision, which reported that Rosablanca claimed that she had given Mark \$5,000.00 in cash plus a \$10,000.00 promissory note in return for closing the child support case. CP 12. No evidence was produced of this or any other payment.

Mark, in his reply declaration, denied the allegations of abusive, manipulative and vindictive behavior. He denied sleeping with their son's ex-girlfriend or threatening to burn the house down. He denied receiving \$15,000.00 in cash or even \$5,000.00. He also denied that Karl had lived with her for 6 months when Karl was injured at age 16. He stated that he

originally dropped the request for child support enforcement at Rosablanca's request because the state was threatening to take her driver's license away. He stated that she can afford to pay the child support owed, since she is able to go to Hawaii every year for about 2 to 4 weeks. CP 72-79.

The motion was heard by Commissioner Sabrina Ahrens on June 6, 2017. She denied a finding of contempt. She also denied Mark's request for a judgment for back child support with interest and denied Mark's request for attorney's fees. CP 80-81. This decision was sustained by Judge Edmund Murphy on a motion to revise on July 25, 2017. CP 82-84.

On August 25, 2017 petitioner's attorney issued writs of garnishments directed to the Boeing Company Employee Retirement Plan and to Boeing Company Voluntary Investment Plan. CP 89-94. These writs of garnishment were stayed by the court in an ex parte hearing on September 12, 2017. CP 95-96. The order was issued pursuant to Rosablanca's motion to quash writs of garnishment. CP 97-100. Even though the court issued a temporary order staying the writs pursuant to the motion, the motion itself was not filed with the court until 3 weeks later on October 3, 2017.

In her motion, Rosablanca again stated that Mark had not contacted her about child support for over 10 years until he was ready to

retire from Boeing. She again referred to an offer from Mark to cancel the support debt if she gave up her rights to his retirement. She stated that in the support enforcement proceedings DCS had determined she owed \$13,856.72 in September 2015 and that she had worked out a payment plan to pay \$200.00 per month until the debt was paid in full. She stated she had been making the agreed payment of \$200.00 per month from January 2016 and was current on those payments to D.C.S. She noted that Commissioner Ahrens had denied respondent's prior request for a consolidated judgment. She acknowledged that there was a valid D.C.S. case for back support. She also claimed that a writ of garnishment may not be issued by an attorney in this case, but had to be done by the clerk of the court. CP 98-100.

In his response to Rosablanca's motion, Mark again stated that he had asked the state to suspend collection of child support because it was threatening to take her driver's license. He also said that he had requested the state to begin collecting child support again after June 2014 when he had a heart attack. He felt that he might need the money in order to get ready for his possible retirement and that he was not trying to punish Rosablanca. CP 108-109.

The court temporarily stayed the garnishment writs at an ex parte hearing on September 12, 2017. On October 24, 2017 Commissioner

Diana Kiesel heard Rosablanca's motion to quash the writs of garnishment. The court ruled that there was no legal authority for the garnishment, since Mark had not obtained a judgment for unpaid support. It stated that you need an order of judgment in order to be able to garnish. RP10/24/17, page 2. It also ruled that the writs had to be issued by the clerk of the court. RP 10/24/17, page 2. Since the court had stayed all further proceedings to collect unpaid child support, Mark did not have the option to simply go to the clerk's office and have the writs of garnishment reissued by the court. CP 118. The court also awarded \$1,450.00 in attorney's fees and \$500.00 in CR 11 sanctions. CP 117-118. Since the court heard the motion, it in effect ruled that the 3 week delay in filing did not bar the motion. It also failed to grant Mark's objection to the use of evidence of a settlement proposal he had made. CP 110-111.

Mark then moved to revise the decision of Commissioner Keisel. CP 119-120. The motion was heard by Judge Edmund Murphy on November 9, 2017. Judge Murphy sustained the commissioner's decision and awarded an additional \$720.00 attorney's fees to Rosablanca's attorney. CP 121-122. The court held that this case was different from the ones cited in support of Mark's position because he had sat on his rights for a substantial period of time. RP 11/9/17, page 4. It also apparently felt

that the failure to grant a consolidated judgment for the unpaid child support bared collection proceedings. RP 11/9/17, page 5.

Appellant Mark Beinhauer appeals from the order on revision and asks the court to vacate the prior order restraining him from collecting child support due to him. He also requests that the court sustain the validity of writs of garnishment issued by an attorney. However, if the court requires that the writs be issued by the clerk of the court, it would be a simple matter to remedy that problem on remand.

IV. ARGUMENT

1. An obligee who is owed back child support is entitled to a judgment for the total amount owed.

RCW Chapter 26.18 on enforcement of child support begins with legislative findings in section 26.18.010, stating that “there is an urgent need for vigorous enforcement of child support... and that stronger and more efficient statutory remedies need to be established to supplement and complement the remedies [otherwise available].” RCW 26.18.030 (3) goes on to state “This Chapter shall be liberally construed to assure that all dependent children are adequately supported.” This shows that RCW 26.18 should be interpreted where possible in favor of vigorous enforcement.

A judgment for a total arrearage is an appropriate remedy for the court to order on a motion to enforce child support. To begin with, it's the settled law of this state that child support obligations become judgments once they're overdue. "Payments which have accrued before modification become a vested judgment." *Marriage of Glass*, 67 Wn.App. 378, at 389 (1992)

Although it may not be technically necessary for the enforcement of these judgments, a court may appropriately combine them into one judgment to provide a sum certain where the exact arrearage is in dispute, or when the obligee is seeking a lien for enforcement. "Barbara was entitled to receive a judgment for the full amount of the overdue family support." *Glass, supra*.

This is also supported by *Pace v Pace*, 67 Wn.2d 640 (1965) "...under our law, past-due installments for support money under a divorce decree constitute fixed obligations... the inherent right to enforce them by usual means may not be denied." Combining arrears into one judgment is a "usual means" to enforce the obligation.

In the case at bar, no reason is cited by the court for its order denying Mark the requested judgment to enforce his right to the money he is owed. He brought an appropriate action to enforce the obligation under

a statute that is to be liberally construed in his favor and requested an appropriate remedy.

2. A child support obligee is entitled to interest on the child support arrears owed to him.

Part of Mark's amended motion for contempt requested a judgment for interest of 12% for the child support arrears. The interest calculations were supported by a "schedule of payments" document provided with the motion. Petitioner did not dispute the calculations.

The relevant portion of RCW 4.56.110, states:

Interest on judgments shall accrue as follows: ... (2) All judgments for unpaid child support that have accrued under a superior court order or an order entered under the administrative procedure act shall bear interest at the rate of twelve percent.

This statutory interest must be enforced as stated clearly and definitively in *Glass*, 67 Wn.App. 378 (1992).

In *Sanborn*, this court held that a court has no power to decline to award interest on a judgment for overdue maintenance. We now hold that a court has no power to decline to award the full amount of statutory interest due on a judgment for overdue child support and/or spousal maintenance.

In the case at bar, no reason is cited by the court in its order denying Mark the judgment for interest as requested.

3. A child support obligee who prevails in an enforcement action against the obligor is entitled to attorney fees.

Part of Mark's amended motion for contempt included a request for attorney fees. RCW 26.18.160 addresses attorney fees in child support enforcement cases. It states:

In any action to enforce a support or maintenance order under this chapter, the prevailing party is entitled to a recovery of costs, including an award for reasonable attorney fees. An obligor may not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question.

Mark should have been the prevailing party in this case. Even without a finding of contempt, Mark should have been awarded a judgment for the full child support arrears as well as interest. Mark is the obligee, rather than the obligor, so no finding of bad faith is necessary.

Attorney fees are particularly appropriate in this case in light of the irrelevant evidence Rosablanca brought forward in response to the motion. For instance, Rosablanca included evidence regarding Mark's relationship

with their child after the child became an adult, and Mark's relationship with their child's ex-girlfriend. This had no logical bearing on the case and was just an attempt to muddy the water.

4. An order of child support creates an automatic judgment each month that child support becomes due and is unpaid.

Washington State courts have repeatedly held that orders of child support provide a sufficient basis for enforcement, "Each unpaid installment did become a separate and final judgment as it became due bearing interest from the due date, (citation omitted) consequently unpaid support payments will support a writ of garnishment upon affidavit." *Casa del Rey v. Hart*, 31 Wn.App. 532. (1982).

In the case at bar, each support payment became a valid enforceable judgment as Rosablanca failed to pay them.

5. The failure of the court to declare the amount of child support owed cannot bar a child support obligee from initiating garnishments to collect child support.

Our courts have held that they may not deny the obligee's right to enforcement. "Payments which have accrued before modification become a vested judgment." *Marriage of Glass*, 67 Wn.App. 378, at 389 (1992).

“...under our law, past-due installments for support money under a divorce decree constitute fixed obligations... the inherent right to enforce them by usual means may not be denied.” *Pace v. Pace*, 67 Wn.2d 640 (1965).

The cases of *Pace* and *Starkey v. Starkey*, 40 Wn.2d 307 (1952), share many similarities to the case at bar and show in no uncertain terms that Mark is entitled to enforce the child support order regardless of any order or agreement appearing to set payment plans or otherwise retroactively modify the child support order. In *Pace*, as in this case, a child support obligor with arrears sought an order to dismiss a writ of garnishment against him. Mr. Pace had successfully obtained an order modifying his support obligation going forward and fixing his payments on the arrears at \$50 per month. He argued this order, which was never appealed, should prevent the obligee from enforcing her right to the arrearage by garnishment because the order set a payment plan. His motion was denied, and the Supreme Court of Washington affirmed. The Court found that the order “could not and did not purport to provide the exclusive method by which respondent could collect her judgment.” *Pace*, at 641. As quoted above, the Supreme Court of Washington ruled courts may not interfere with the obligee’s right to enforce her rights by the usual means. They went on to say holding as the obligor wished would “defeat a

reasonable solution to a support problem” and would deny the obligee her statutory rights to enforce the judgment. *Pace*, at 641.

In *Starkey v. Starkey*, 40 Wn.2d 307 (1952), Mr. Starkey sought and obtained an order which, among other things, purported to enjoin his ex-wife from executing on the child support arrearage owed to her and instead ordered that Mr. Starkey pay the arrearage at \$25 per month, with no interest, until it was fully paid. On appeal, however, the Washington State Supreme Court held that, despite the good intentions of the lower court, it was “without power to enter such an order.”

The court goes on to state that “The unpaid installments did, however, provide the basis for writs of garnishment, writs of attachment, and general executions. The provisions of the instant decree which purports to deny the plaintiff the right to pursue those remedies, which deprive her of interest on the arrearage, and which permit payment thereof on a monthly basis, are therefore, in effect, attempted modifications of the interlocutory order with respect to accrued and unpaid support money. This, as indicated above, may not be done.” *Id.*

There is an exception to this rule against retroactive modifications of child support orders. Child support orders may sometimes be retroactively modified through traditional forms of equitable relief such as equitable estoppel or laches. These defenses were not argued at the trial

court level and should not be considered on appeal, However, for the sake of completeness and because some of the court's decisions in this case hint at these principles, this brief will address equitable defenses anyway.

Equitable relief is not appropriate in the current case. To begin with, our courts have carved this exception very narrowly with due regard for the legislature's express preference for enforcement. "Equitable relief from past-due support obligations should be limited to those cases where enforcement would create a severe hardship on the obligor-parent and where the facts support traditional equitable remedies." *In re The Marriage of Capetillo and Kivett*, 85 Wn.App. 311, 319 (1997).

Equitable estoppel, laches, and equitable credit are the equitable defenses that have been recognized by Washington courts in child support cases. Equitable credit involves cases in which a non-custodial obligor directly provides for the child for an extended period of time and asks that those costs be credited against his or her back child support. See *Schafer v Schafer*, 95 Wn.2d 78 (1980). The facts in the present case would not support such a claim, and the court action is inconsistent with it and no further discussion is warranted.

Equitable estoppel and laches are similar and the fact patterns sometimes overlap. Equitable estoppel requires the obligor to show 1) the obligee states something, or acts in a way that is inconsistent with a later

claim, 2) the obligor acts in good faith on this statement or action, and 3) the obligor would be injured if the obligee is allowed to contradict their act or statement and proceed with their claim. *Capetillo* at 320.

Furthermore, as the court in *Capetillo* points out, equitable estoppel is not favored and requires the party who claims it to prove it by clear, cogent, and convincing evidence.

A court might construe Rosablanca's claim she paid Mark \$15,000 for child support as an equitable estoppel claim in which Mark agreed to accept \$15,000 and in exchange he would not collect child support, However, the evidence presented would not support such a claim, and certainly not by clear, cogent and convincing evidence. Rosablanca's story about the pay-off changes between the administrative enforcement action and the subsequent court enforcement action. She has no documentary evidence to corroborate either of her accounts. And Mark denies them both. The administrative judge did find that Rosablanca owed back support despite her claim, and the trial court never found she had made any payment.

Laches is a similar defense that requires the party who claims it to show 1) the obligee had knowledge of facts constituting a cause of action, 2) he or she unreasonably delayed commencing the action, and 3) the obligor is damaged as a result of the delay. *Capetillo* at 318.

As in equitable estoppel, *Capetillo* points out an additional hurdle for laches cases, “Absent unusual circumstances, the doctrine of laches should not be invoked to bar an action short of the applicable statute of limitation.” Quoting *In re Marriage of Hunter*, 52 Wash.App. 265 (1988). Mark filed his case within the statute of limitations for child support enforcement.

Mark did not delay unreasonably, and there do not appear to be unusual circumstances which would favor such a finding. He suspended collection of support so that Rosablanca would not have her license suspended, and he began enforcing it again after suffering a heart attack and contemplating his position for retirement. These are abundantly reasonable motivations, and there is nothing unusual about the circumstances.

Successfully employing laches in a child support case requires a strong showing of damage resulting from an unreasonable delay. This requires more than the obligor “showing he is having to do now what he has been legally obligated to do for years” *Capetillo* at 318. A finding that laches applies was overturned in *Capetillo*, where the trial court found the obligor altered his work hours, dissipated his settlement funds, married, and never sought a support modification. The appellate court found there

was insufficient showing those acts were taken in reliance on the obligee's failure to enforce support.

Just as in *Capetillo*, in the present case, Rosablanca cannot show how she has been injured in reliance on Mark's delay in enforcement. If anything the record shows she has benefited. She did not have her license suspended early on and now appears to be in a better position to pay, given her frequent visits to Hawaii. Mark on the other hand, stands to lose a great deal if he is left only collecting \$200 a month through the earlier administrative enforcement. The statute of limitations would prevent collection once their child turns 28, by which time Rosablanca will have not even paid off the interest on what she owes.

For all these reasons, the commissioner's order denying contempt on June 6, 2017, and the judge's order denying revision on July 25th, cannot be interpreted to deny Mr. Beinhauer his right to enforce his order of child support by usual means, namely by writs of garnishment. In *Pace*, *Starkey* and the case at bar, the court may not keep the obligee of a child support order from enforcing arrearages because to do so would effectively be a prohibited retroactive modification of the earlier order, and would "defeat a reasonable solution to a support problem".

Even taking into account the narrow exception for equitable relief in child support cases, there is no legal reason in this particular case that Mark should be prevented from recovering the back support he is due.

6. Writs of garnishment to collect unpaid child support may be issued by the attorney for the obligee, rather than by the clerk of the court.

The statutes on garnishment are ambiguous with regard to attorneys issuing writs in Superior Court. On one hand, RCW 6.27.020, states that clerks of the courts may issue writs of garnishment in Superior or District courts, and that attorneys may issue writs of garnishment in District Court. It says nothing about whether attorneys may issue writs of garnishment in Superior Court. On the other hand RCW 6.27.100 states:

(1) A writ issued for a continuing lien on earnings shall be substantially in the form provided in RCW 6.27.105. All other writs of garnishment shall be substantially in the following form, but *if the writ is issued under an order or judgment for child support*, the following statement shall appear conspicuously in the caption: "This garnishment is based on a judgment or order for child support"; *and if the writ is issued by an attorney*, the writ shall be revised as indicated in subsection (2) of this section:

(2) If an attorney issues the writ of garnishment, the final paragraph of the writ, containing the date, and the subscribed

attorney and clerk provisions, shall be replaced with text in substantially the following form:

"This writ is issued by the undersigned attorney of record for plaintiff under the authority of chapter 6.27 of the Revised Code of Washington, and must be complied with in the same manner as a writ issued by the clerk of the court.

Dated thisday of,
20

....
Attorney
for
Plaintiff

....
Address

....
Address
of the
Clerk of
the
Court"

....
Name of
Defendant

....
Address of
Defendant

[Emphasis Supplied]

This statute requires particular language for a garnishment to collect child support and additional particular language when an attorney issues the writ. Since child support enforcement is under the jurisdiction of the Superior Court, this seems to imply attorneys may issue writs in

Superior Court, at least in case of child support. District Court has no jurisdiction to issue child support orders. See RCW 26.12.010.

The same provisions regarding particular language appear in RCW 6.27.105 relating to garnishments on earnings. The attorney for the judgment creditor may also issue writs under the requirements of RCW 6.27.370 relating to garnishments issued to the federal government. This would seem to indicate that writs issued by an attorney apply with equal force as those issued by the clerk of the court, and no further distinction seems to be made between Superior and District Courts.

Even if the writs of garnishment in this case should have been issued by Clerk of the Superior Court, rather than by Mark's attorney, they should not be quashed. Mark's attorney did provide an affidavit as required by RCW 6.27.060. Having provided this, the clerk would have issued the same writs if they had been requested. There are no additional safeguards which were circumvented which would prejudice the respondent.

If the order quashing the prior writs stands, assuming no injunction against the clerk issuing future writs, they could be immediately reissued by the Clerk of the Superior Court, which would only serve to duplicate paperwork and make life more difficult for both the clerk's office and the garnishee.

RCW 6.27.005 states the legislative intent for the current garnishment statutes. The last sentence of this statement of intent is “The state should take whatever measures that are reasonably necessary to reduce or offset the administrative burden on the garnishee consistent with the goal of effectively enforcing the debtor's unpaid obligations.”

Quashing the current writs of garnishment only increases the administrative burden on the garnishee, while having no impact on any unfair prejudice to the judgment debtor.

Given the law and legislative intent of both the child support statutes and the garnishment statutes, the writs of garnishment issued on August 25th, 2017 should be allowed to stand.

7. A child support obligee is entitled to attorney fees in a proceeding brought by the obligor challenging the obligee's right to collect unpaid support.

Any proceeding seeking to challenge the obligee's right to collect child support is essentially the same as defending against support enforcement brought by the obligee under RCW 26.18. Therefore the attorney fee rules under RCW 26.18.100 should apply. A prevailing obligee is entitled to recover attorney fees.

Since Mark should have prevailed in enforcing the back child support he is owed, he should also have recovered attorney fees from the hearings on Rosablanca's motion to prevent enforcement. Similarly, Mark had to appeal to be able to enforce his right to collect. He is also entitled to attorney fees on appeal.

8. A support obligor should not be awarded attorney fees and sanctions in a proceeding to prevent the collection of child support due without a showing of bad faith.

As noted above, such a proceeding should be governed by RCW 26.18.160, which requires an obligor to show bad faith on the part of an obligee in order to recover attorney fees.

Because Rosablanca should have failed to prevent enforcement and did fail to show bad faith on Mark's part, she should not have been awarded attorney fees or sanctions.

9. A court must strike evidence of a settlement offer that does not result in an agreement.

ER 408 regarding Compromise and Offers to Compromise states as follows:

In a civil case, evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This rule does not require exclusion of any evidence otherwise discoverable merely because it is presented in the course of compromise negotiations. This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

Rosablanca offered evidence that Mark offered to drop his claim for back child support if she dropped her claim on a portion of his retirement. This was clearly an attempt to prove the invalidity of Mark's claim with evidence of an offer to compromise, in clear violation of ER 408. This evidence should have been stricken and may well have played an impermissible part in one or more of the court's decisions in this case.

10. A court may not hear a motion filed three weeks after the hearing granting temporary relief pending the hearing.

Pierce County has local rules governing the filing of motions and when this should happen in relation to the hearing. PCLSPR 94.04(c) deals with this specifically for family court matters. This rule states that a note for commissioner's calendar, the motion, the notice of hearing and any supporting pleadings must be filed simultaneously and at least 14 days before the hearing.

In disregard for these rules, Rosablanca did not file her motion for the October 24th hearing along with her note for commissioner's calendar on September 12th. This is the date she obtained relief before the *ex parte* commissioner, and she should have filed her motion immediately. Instead she filed her motion three weeks later on October 3rd. This also violates CR 5 (d)1, which requires filing prior to service or promptly thereafter.

This caused prejudice to Mark, given the flimsy argument they presented. It was not clear for several weeks whether or not Rosablanca and her attorney really planned to stand by their arguments at the October 24th hearing, or if they planned to concede at the hearing.

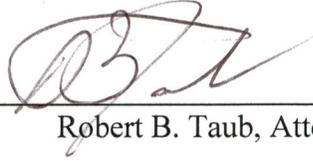
V. FEES AND COSTS

In addition to the fees and costs Mark is entitled to from his efforts at the trial court level, Mark also requests Rosablanca be assessed for the attorney fees and costs associated with this appeal. As stated above, RCW 26.18.160 calls for attorney fees and costs to be awarded to the prevailing party in an action to enforce child support. When fees and costs are authorized at the trial court level, they may also be had on appeal. See, e.g., *Puget Sound Plywood, Inc. v. Master*, 86 Wn.2d 135 (1975).

VI. CONCLUSION

Because Rosablanca has unpaid child support obligations she owes to Mark, and because no equitable relief for her was argued or appropriate, Mark is entitled to recover such unpaid obligations by the usual methods of enforcement, including garnishment. As a prevailing obligee, Mark is also entitled to attorney fees and costs associated with his enforcement actions, and Rosablanca is not entitled to any for her defense. Therefore, this court should reverse the Superior Court orders quashing the writs of garnishment and enjoining enforcement of child support, allow Mark to collect the support he is owed, and award him the fees and costs he is entitled to.

Dated this 19th day of January, 2018



WSBA # 900

Robert B. Taub, Attorney for Appellant



WSBA # 46344

Tobin Standley, Co-counsel for Appellant

ROBERT TAUB & ASSOCIATES

January 19, 2018 - 1:53 PM

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Superior Court Case Number: 97-3-02328-8

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