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Court of Appeals No. 52109-1-II
Kitsap County Cause No. 17-3-00644-6

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

In re:

GAVIN FAZIO, Petitioner/Appellee,

and

BRITTANY STEPPER, Respondent/Appellant.

OPENING BRIEF OF APPELLANT

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Assignments of Error

1. It was error for the trial court to hold that Mr. Fazio did not violate the parties' Final Child Support Order by claiming a child on his 2017 tax return when he was not current on all child support obligations by December 31, 2017, as required by that Final Child Support Order;
2. It was error for the trial court to determine without explanation that Ms. Stepper acted in bad faith pursuant to RCW 26.18.160 in filing her Motion for Contempt when undisputed evidence shows that Mr. Fazio was behind on his child support obligations as of December 31, 2017, and was aware both Ms. Stepper and the Division of Child Support both believed he was behind on his support as of December 31, 2017, at the time he claimed the child's tax exemption;
3. It was error for the trial court to award attorney fees to Mr. Fazio pursuant to RCW 26.18.160;

Issues Pertaining to Assignments of Error

1. Did the trial court err by holding that Mr. Fazio did not violate the parties' Final Child Support Order;

2. Did the trial court err in summarily holding that Ms. Stepper acted in bad faith pursuant to RCW 26.18.160?
3. Did the trial court err in awarding attorney fees to Mr. Fazio pursuant to RCW 26.18.160?

STATEMENT OF THE CASE

The parties' marriage was dissolved on May 5, 2017, and a Final Parenting Plan and Final Order of Child Support were entered that day for their two children, G.F. (then age 3) and B.S.-F. (then age 10 months). CP 2. The Parenting Plan specified that the children would reside primarily with Ms. Stepper, and Mr. Fazio would have a phased-in schedule that worked up to alternating weekends and some midweek visitation. CP 4-5.

As part of the Final Order of Child Support and subsequent orders, Mr. Fazio was required to pay monthly child support, a percentage of uninsured health expenses, and a percentage of preschool and daycare expenses as discussed further below. CP 18, 22-24. He is entitled to claim their child, G.F., on his tax return "provided he is current in the payment of his child support obligation, uninsured medical costs and work-related daycare by December 31 of the tax year at issue." CP 22, 62.

On May 4, 2018, Ms. Stepper filed a Motion for Contempt alleging that as of December 31, 2017, Mr. Fazio was behind on three aspects of his child support obligation: 1) his monthly child support payment, 2) his share of the children's uninsured health care expenses, and 3) his share of the children's preschool expenses. CP 18. She specifically alleged that, despite being behind on his support obligations and not entitled to claim the child for 2017, Mr. Fazio claimed the child as a tax exemption on his 2017 tax return in violation of the Final Order of Child Support. CP 18-19. She requested judgments for the unpaid expenses, reimbursements for expenses she had to pay on his behalf to avoid collections, a judgment for the lost tax refund funds due to Mr. Fazio claiming the child, and the typical remedial sanctions (civil penalty, purge conditions, and lawyer fees and costs). CP 19-20. The nature of the amounts owed are set forth as follows.

Mr. Fazio's Past-Due Monthly Child Support Payment as of 12/31/17

In support of her motion, Ms. Stepper provided a Conference Board Decision and Debt Calculation from the State of Washington Division of Child Support (hereinafter "DCS"). CP 32-35. The Debt Calculation begins in April of 2016, when the parties operated

under a Temporary Order, through March of 2018, which is the month the Debt Calculation was issued. CP 32-33. This Debt Calculation shows that Mr. Fazio was behind on his monthly child support obligation every month since the Temporary Order was put into place. CP 32-33. In April of 2016, the past-due amount was \$500. CP 32. In April of 2017, the past-due amount was \$2,084.63. CP 32. In March of 2018, the past-due amount was \$2,561.57. CP 33.

On September 30, 2017, DCS served on Mr. Fazio a Notice of Support Debt and Demand for Payment, which Mr. Fazio contested by saying he had made "more direct payments to Ms. Stepper than were credited." CP 34. At that time, his arrears totaled \$1,388.48. CP 34. He requested a Conference Board to hear his claim and provided documentation in support. CP 34. In response, as the Conference Board decision indicates, Ms. Stepper reviewed her records and agreed that Mr. Fazio deserved credit for several payments that had been made directly to her for child support and spousal support (which Mr. Fazio had also been required to pay for a short amount of time). CP 34. On February 16, 2018, the Conference Board issued its decision and granted only those credits

to Mr. Fazio, noting that Mr. Fazio's "[a]rrears will be recalculated based on the direct payment support amounts listed in this decision." CP 35.

On March 1, 2018, DCS issued its recalculation of Mr. Fazio's arrears with the appropriate credits included per the Conference Board Decision. CP 32-33. That Debt Calculation showed that even with the credits, Mr. Fazio owed \$1,961.57 in back child support as of December 2017. CP 33. He owed this same amount in November 2017 and in January 2017. CP 33. As of the time the Debt Calculation was submitted in March of 2018, Mr. Fazio owed \$2,561.57 in back child support. CP 33.

In response, Mr. Fazio indicated that he believed he was owed more credit than he received from the Conference Board decision, but did not provide any new evidence in support of his claim. CP 75-112.

Mr. Fazio's Past-Due Daycare and Preschool Payments

On August 30, 2017, the parties attended mediation over the children's preschool and daycare, agreeing they would attend Noah's Ark for both in a CR 2A Agreement (hereinafter "Agreement"). CP 37. As part of this Agreement, Mr. Fazio was

required to pay \$1,518.55 to Ms. Stepper by September 1, 2017 for his unpaid share of the child's daycare expenses through that date. CP 37. From September 1, 2017, the parties agreed to split the cost of the children's preschool 50/50. CP 37.

In her Motion for Contempt, Ms. Stepper alleged that even though the child began preschool shortly thereafter, Mr. Fazio had not paid any portion of the monthly amount save for \$10 for a "Dad's Night Plate." CP 24, 36. She provided a Statement of Account from the preschool showing the registration fee, her payment of 50% of the registration fee, monthly amounts due of \$115, her monthly payments of \$57.50 representing her 50% share, and Mr. Fazio's one and only \$10 payment for "Dad's Night Plate."

CP 36. As of December 31, 2017, Mr. Fazio had not paid:

- 50% of the \$75 registration fee, totaling \$37.50
- 50% of the \$115 October tuition, totaling \$57.50
- 50% of the \$115 November tuition, totaling \$57.50
- 50% of the \$115 December tuition, totaling \$57.50

Total owed as of December 31, 2017: \$210

CP 36. As of the time of filing her Motion for Contempt in May of 2018, Mr. Fazio still had not made any payments and owed \$318.

CP 24, 36.

In her Motion, Ms. Stepper indicated that this had been a chronic problem for Mr. Fazio, who had opposed the children going to that preschool until Ms. Stepper agreed to pay for half, even though their child support pro rata percentages for expenses were 61.5% to him/38.5% to her based on their incomes. CP 24-25. She also indicated that even though he had been required to contribute to expenses for Noah's Ark before the CR 2A had been entered, he had still refused to pay his share, which is why the CR 2A required him to pay \$1,518.55 in back daycare expenses. CP 24, 37.

In response, Mr. Fazio did not provide any proof of payments for preschool and did not contest that he had not paid his share. CP 61-62. He claimed he was never told when the start date for preschool was, CP 61-62, although he simultaneously provided a message from Ms. Stepper via Our Family Wizard on August 31, 2017 – almost one month before the child began preschool – stating that it would begin “mid-September,” CP 72. Similarly, Mr. Fazio stated he never received information on costs so he knew what to pay, CP 61-62, but also provided the message from Ms. Stepper stating “[t]here is a \$75 registration fee and it is \$150 a month after that,” CP 72. She also forwarded an email from the

school to him reiterating the registration fee and monthly fee information. CP 70. Ms. Stepper further indicated that bills for preschool were sent directly to Mr. Fazio, that he had full and equal access to the preschool so he could obtain whatever information he wanted, and that he was obviously able to talk to them and make payments to them as he had paid the \$10 "Dad's Night Plate" fee directly to them. CP 24, 36, 113.

Mr. Fazio's Past-Due Uninsured Medical Expenses Payments

As part of her Motion for Contempt, Ms. Stepper also alleged that Mr. Fazio had not paid his share of the children's medical expenses in full. CP 25.

In July of 2017, B.S.-F. went to the Emergency Room at Harrison Medical Center/CHI Franciscan. CP 25. Two medical bills were generated from this visit: one from CHI Franciscan for \$218.79, CP 45-47 and one from West Sound Emergency Physicians for \$503.00, CP 48-49. CP 25. Since the children are on Mr. Fazio's medical insurance plan, billing and insurance information goes to him directly. CP 25. At that time, Mr. Fazio was responsible for paying 61.5% of these costs. CP 25. He paid CHI Franciscan three amounts: \$124.87 on 8/22/17, \$136.84 on 12/15/17, and \$9.23 on

12/15/17. CP 25, 50. Ms. Stepper also paid CHI Franciscan \$205.46 representing her share of expenses. CP 50.

Regarding the West Sound Emergency Physicians bill, Mr. Fazio did not pay any amount to that provider for that bill. CP 25, 48. On 10/31/17, it was sent to collections, who contacted Ms. Stepper on 11/18/17. CP 49. After Mr. Fazio refused to make that payment, Ms. Stepper paid it in full on 12/2/17 so collection efforts would stop and it would not impact her credit rating. CP 38, 40. She requested reimbursement from Mr. Fazio since she had paid his share of the expense, CP 39-40, and after he requested additional information several times, he refused to reimburse Ms. Stepper, CP 25-26. Instead, he paid \$136.84, as listed above, to CHI Franciscan – a separate company – and demanded that Ms. Stepper seek reimbursement from them. CP 25-26, 50. However, by that time, the child had incurred additional charges at CHI Franciscan, so the payment was applied to Mr. Fazio's \$101.52 share of those costs. CP 25-26, 41, 50, 52. Ms. Stepper never did receive reimbursement for Mr. Fazio's share of uninsured medical expenses that she paid on his behalf, and as of 12/31/17, he still owed \$101.98. CP 26-27.

Despite Being \$2,381.55 Behind in His Child Support Obligations on 12/31/17, Mr. Fazio Claimed the Child in Violation of the Order of Child Support

On February 3, 2018, Ms. Stepper notified Mr. Fazio via Our Family Wizard that since he was behind on child support as of 12/31/17, she would be claiming G.F. on her 2017 tax return per the Final Order of Child Support:

Gavin,

Currently you are behind on child support for both the 2016 and 2017 year. While you have attempted to bring the issue to a conference board, the balance currently remains.

Please refer to the child support order in which states that I am to claim both children. If something changes with the outcome, then the original order division will remain, but for now you are behind and I am to claim [G.F.] on my taxes.

Thank you,
Brittany.

CP 30. Our Family Wizard keeps track of when parties read messages sent to them, and Mr. Fazio read this message from Ms. Stepper the same day she sent it to him, about 18 minutes after she sent it. CP 30. Thirteen days later, the parties received the Conference Board decision that indicated Mr. Fazio would only receive partial credit for back payments, stating “[a]rrears will be

recalculated based on the direct payment support amounts listed in this decision.” CP 35. Despite receiving this notice and knowing that there would still be arrears, Mr. Fazio informed Ms. Stepper on February 22, 2018, that he would be claiming G.F. on his tax return, stating “Just to inform you, [G.F.] was claimed on my taxes yesterday evening as he will be each and every year per our final divorce orders.” CP 31. When Ms. Stepper responded and advised him that she had already claimed G.F., he responded with “Have fun with your IRS problems!” CP 31.

Ms. Stepper provided the trial court with copies of her tax returns, demonstrating that the loss of the child exemption cost her \$1,608, which she asked to have reimbursed to her. CP 27.

May 25, 2018 Contempt Hearing

On May 25, 2018, the parties appeared before the Honorable Judge William C. Houser to argue the motion. VRP 3 (5/25/18 Hearing). Judge Houser took the matter under advisement and issued his ruling on May 29, 2018, stating:

After reviewing the material presented in more detail following the hearing in the matter, there is insufficient evidence to find Mr. Fazio in contempt as requested by Mr. Stepper. [Counsel for Mr. Fazio] may submit her request for attorney fees for my review.

CP 117-18. Thereafter, Mr. Fazio submitted a proposed Order on Contempt, which included a statement that Ms. Stepper had brought the motion in "bad faith." CP 125, 127. In response, Ms. Stepper argued, via counsel, that "[t]he court did not make a finding that Ms. Stepper acted in bad faith in bringing her motion. Indeed, Ms. Stepper did not act in bad faith, as she submitted independent calculations by DCS and other bills to support her argument that Mr. Fazio should not have claimed the child as a tax exemption in 2017[.]" CP 125.

On June 15, 2018, the parties once again appeared before the Honorable Judge William C. Houser for presentation of the order, at which point Judge Houser stated, "I'm going [to] make alterations on Paragraph 3. I'm going to strike the word "support orders were obeyed." I don't think that is the finding I found." VRP 10 (6/15/18 Hearing). Regarding "bad faith," he stated:

As far as paragraph 6, the issue of bad faith, I am going to have that remain in the document. I do find that there was bad faith, which is why I asked that we have a hearing concerning the attorney's fees. And I was not clear on that, I'm sure, but that's what my mindset was.

VRP 10-11.

The Contempt Hearing Order was signed by the court on June 15, 2018, and provides that the following regarding bad faith:

This proceeding was brought by Respondent Brittany Stepper to enforce a support order. Petitioner Gavin Fazio is the prevailing party in the proceeding. The Court further finds that Respondent Brittany Stepper acted in bad faith in bringing the proceeding before the court without substantive evidence of a violation of the support order by Petitioner Gavin Fazio, and pursuant to RCW 26.18.160, Petitioner Gavin Fazio is entitled to an award of reasonable attorney fees[.]”

CP 130. Mr. Fazio was then given a judgment of \$1,716.75 in attorney fees against Ms. Stepper. CP 129-30.

Ms. Stepper timely filed her Notice of Appeal on July 12, 2018, attaching the Contempt Hearing Order and Court’s Decision Letter. CP 132-136.

STANDARD OF REVIEW

The Court of Appeals generally reviews a trial court’s award of attorney fees for abuse of discretion. *Clausen v. Icicle Seafoods, Inc.*, 174 Wn.2d 70, 81, 272 P.3d 827 (2012). However, a trial court’s decision on statutory entitlement to fees and costs is a question of law reviewed de novo. *Mehlenbacher v. DeMont*, 103 Wn. App. 240, 244, 11 P.3d 871 (2000).

"The trial court abuses its discretion if its decision is 'manifestly unreasonable or based on untenable grounds or untenable reasons.'" *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 136 (1997). "A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard." *Id.* at 47.

ARGUMENT

- A. It was error for the trial court to hold that Mr. Fazio did not violate the parties' Final Child Support Order by claiming a child on his 2017 tax return when he was not current on all child support obligations by December 31, 2017, as required by the Final Child Support Order.**

As described above in the Statement of the Case, the parties' Final Order of Child Support only allows Mr. Fazio to claim G.F. on his tax return "provided he is current in the payment of his child support obligation, uninsured medical costs and work-related daycare by December 31 of the tax year at issue." CP 22, 62. As Ms. Stepper demonstrated, Mr. Fazio was not current on his "child

support obligation” as of December 31, 2017, as he owed \$1,961.57 at that time. In fact, the record from DCS shows that he has never been current in his child support obligation, even with DCS enforcing the order and garnishing his wages. He owed \$1,961.57 well before December 2017, and he continued to owe that and more after December 2017.

Mr. Fazio’s argument is to denigrate Ms. Stepper with vitriolic comments, claiming she was lying about payments she had received. However, this is not supported by the evidence, which he had already submitted to the Conference Board in detail. The Conference Board’s Decision reflects review of this evidence, which did give him some credit. Nevertheless, nothing demonstrated he was owed additional credits, and per DCS’ calculations and the Conference Board’s Decision, he still owed back support as of December 31, 2017. The fact that Ms. Stepper took the time to review her records and agree that he was owed some credits demonstrates that she was not lying about payments, but rather trying to be accurate about them.

The evidence presented shows that Mr. Fazio was behind on child support, which stands alone as a reason he was not entitled to take the 2017 child tax exemption.

Additionally, Mr. Fazio was also behind on his payments for the child's daycare/preschool and medical expenses. As described above, Mr. Fazio had never made a payment for the preschool, and in his response, he provided no proof that he had made any payments other than \$10 for a Dad's Night Plate.

Lastly, Mr. Fazio was behind on his uninsured medical expenses, as he also did not provide any proof of making payments to West Sound Emergency Physicians.

In sum, Mr. Fazio has a long history of avoiding his child support obligations, even as represented with a neutral third party such as DCS and even after a chance to present his evidence to them, and he was not current on his obligations as of 12/31/17. Therefore, he was not entitled to claim G.F. for tax year 2017.

Moreover, he had notice from Ms. Stepper and DCS prior to claiming the child that he was not entitled to the exemption. Ms. Stepper provided him the invoices and proof of payment, notified him of the costs via Our Family Wizard's expense reimbursement

function, and notified him via Our Family Wizard message that he was behind on support and not entitled to the exemption. He received these notices well in advance of taking the exemption, and he even received the Conference Board Decision that he would not be receiving full credit on his claims before he took the exemption. From all appearances, he knew he was not entitled to the exemption per court order and opted to take it anyway, letting the chips fall as they may. The end result of this is that Ms. Stepper lost funds, and Mr. Fazio brazenly violated a lawful court order with full knowledge of its contents.

B. It was error for the trial court to determine without explanation that Ms. Stepper acted in bad faith pursuant to RCW 26.18.160 in filing her Motion for Contempt when undisputed evidence shows that Mr. Fazio was behind on his child support obligations as of December 31, 2017, and was aware both Ms. Stepper and the Division of Child Support believed he was behind on his support as of December 31, 2017, at the time he claimed the child's tax exemption.

As noted above, Ms. Stepper was found to have filed the motion for contempt in "bad faith" because the court stated there was "insufficient evidence." This is not an appropriate basis for a finding of bad faith and should be reversed.

RCW 26.18.160 provides that a child support obligee can only be required to pay attorney fees to the obligor in an enforcement action upon a finding of "bad faith":

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 unless the obligee has acted in bad faith in connection with the proceeding in question.

Even if this Court finds that Ms. Stepper did not provide proof sufficient to hold Mr. Fazio in contempt, that does not mean she acted in bad faith, which is much more involved than simply losing a motion or not prevailing. Bad faith is defined as "dishonesty of belief or purpose." Black's Law Dictionary at 134. A party acts in bad faith by "delaying or disrupting litigation." *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 46, 111 S. Ct. 2123, 115 P.Ed.2d 27 (1991)). Bad faith involves an act that "affects 'the integrity of the court and, [if] left unchecked, would encourage future abuses.'" *Id.* (citations omitted).

Bad faith has also been defined as three types: "prelitigation bad faith," "procedural bad faith," and "substantive bad faith."

Rogerson Hiller Corp. v. Port of Port Angeles, 96 Wn. App. 918, 928, 982 P.2d 131 (1999). Prelitigation bad faith refers to "'obdurate or obstinate conduct that necessitates legal action' to enforce a clearly valid claim or right," similar to a "remedial fine" imposed when a party is "wasting private and judicial resources." *Id.* (citations omitted).

Procedural bad faith is "unrelated to the merits of the case" and refers to "'vexatious conduct during the course of litigation,'" such as "dilatory tactics during discovery, failure to meet filing deadlines, misuse of the discovery process, and misquoting or omitting material portions of documentary evidence." *Id.* at 928.

Substantive bad faith occurs when "a party intentionally brings a frivolous claim, counterclaim, or defense with improper motive," although "[b]ringing a frivolous claim is not enough, there must be evidence of an 'intentionally frivolous [claim] brought for the purpose of harassment.'" *Id.* at 929 (see also *In re Pearsall-Stipek*, 136 Wn.2d 255, 266-67, 961 P.2d 343 (1998) (holding that the petitioner's "repeated and wholly meritless efforts" despite the fact that the "claims were barred by res judicata and insufficient

evidence" may have constituted bad faith, but the finding was not made").

Our Courts of Appeals, including this Court, have repeatedly held that a lot is required in order to establish bad faith.

For example, in *Marriage of Cummings*, bad faith was not found even when the moving party/mother 1) filed the same motion three times without advising the court of the previously denied motions, 2) filed the motion to enforce court-ordered requirements against the father even though she had not complied with the same requirements, and 3) did not provide proof sufficient to prevail at the hearing. *In re Marriage of Cummings*, 101 Wn. Ap. 230, 6 P.3d 19 (2000).

There, the parties' final Child Support Order provided that the parties would exchange tax returns each year and adjust the monthly child support payment accordingly. *Id.* at 232. Two years later, the mother sought to enforce that provision via motion to the court, saying the father had not complied, but her motion was denied as she had not provided any tax returns either. *Id.* Thereafter, the tax return exchange provision was modified to require the mother to provide her tax return ***first*** which would then

trigger the father's requirement to provide his return so they could adjust support. *Id.* After agreeing to this change, the mother did not provide any tax returns to trigger this process, and after 12 years passed with no exchange of returns, she again filed a motion to enforce the provision. *Id.* at 232-33. Again, her motion was denied as she had not provided any of her own tax returns to trigger the husband's obligation, and the court ordered that she comply with that provision first. *Id.* at 233.

Thereafter, the mother created and filed tax returns for back years to trigger the provision and then filed her motion again two years later. *Id.* She did not advise the court of the previous motions that had been denied. *Id.* She requested arrearages, interest, and attorney fees. *Id.* Her request was granted, and she received large judgments for back support, interest, and attorney fees. *Id.* at 233-34.

On review, the Court of Appeals reversed, holding that the mother's failure to provide any tax returns annually as required by the order meant the father's obligation had not been triggered, so he had complied with the actions required of him. *Id.* Further, the fact that the mother had not abided by the order and that she

waited 12 years to file the motion meant she was not entitled to equitable relief. *Id.* at 234. Therefore, the judgments against the father were reversed. *Id.* at 235. Despite being the prevailing party, the Court of Appeals held that the father was not entitled to attorney fees per RCW 26.18.160, stating “[w]hile this motion was not well-advised, a family court commissioner and a trial judge granted it. There is no evidence of bad faith.” *Id.*

Similarly, in *Marriage of Logg*, no bad faith was found even when the mother sought enforcement of an order that had never been personally served. There, the father could not be personally served with the dissolution paperwork, and service by publication was attempted but not done correctly. *In re Marriage of Logg*, 74 Wn. App. 781, 783, 875 P.2d 647 (1994). Nevertheless, the father was defaulted, and a Child Support Order was entered requiring him to pay support. *Id.* It does not appear that he was ever provided with a copy of the final Child Support Order. *Id.* However, after he failed to make payments for several years, the mother filed a Motion for Contempt and requested arrearages, which were granted. *Id.*

On review, the Court of Appeals reversed, holding that the lack of service meant there was no jurisdiction over the father and the child support award must be set aside. *Id.* at 786. However, even though the father was then determined to be the prevailing party, the Court of Appeals held that the mother had not acted in bad faith such that fees were appropriate under RCW 26.18.160. *Id.* at 785.

In the instant case, a finding against Ms. Stepper of bad faith is unsupported by the evidence. Ms. Stepper filed her motion with supporting documentation from third parties, including DCS' own accounting of Mr. Fazio's arrears, medical bills, proof of payment, school costs, and proof of school payments. She did not file the motion without consulting Mr. Fazio first and giving him an opportunity to resolve the issue, and when he provided evidence to the Conference Board that showed he was entitled to credit, she participated in the process and even agreed to some credits where she believed they were appropriate. The bills that were unpaid had been unpaid for quite some time, and Ms. Stepper had even gone above and beyond by paying Mr. Fazio's share when necessary, even though the Order of Child Support states that Mr. Fazio makes

twice what she makes and she is only required to pay around 31% of expenses.

In fact, the only finding made by the court was that there was "insufficient evidence" for a contempt finding, but even the trial court refused to indicate that Mr. Fazio had obeyed the Child Support Order by striking that sentence from the Contempt Hearing Order. CP 134. Arguably, if the trial court cannot state that Mr. Fazio obeyed the order after reviewing the evidence, then that should not be used to find that Ms. Stepper acted in bad faith.

Further, *Rogerson Hiller* makes it clear that even filing a motion with insufficient evidence is not enough to support a finding of bad faith, as there must still be evidence that the motion was designed to harass the other party. The fact that Ms. Stepper had undisputed evidence supporting her claim that Mr. Fazio had not paid all of his child support obligations as of 12/31/17 should at least demonstrate that she acted in good faith by filing the motion.

Therefore, Ms. Stepper asks that this Court reverse the finding of bad faith against her.

//

C. It was error for the trial court to award attorney fees to Mr. Fazio pursuant to RCW 26.18.160

Without a finding of bad faith against Ms. Stepper, it is an error to order her to pay attorney fees to Mr. Fazio. Fees were not requested on any other basis, nor were fees awarded on any other basis. Therefore, this Court should reverse the award of attorney fees against Ms. Stepper.

CONCLUSION

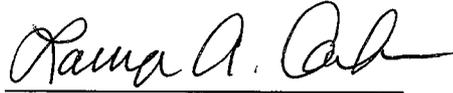
For the reasons set forth above, Ms. Stepper respectfully requests that this Court reverse the trial court's decision and remand for entry of appropriate orders. Further, Ms. Stepper requests an award of attorney fees and costs pursuant to RAP 18.1, which allows this Court to award her attorney fees based on rights enumerated in applicable law. She requests fees pursuant to RCW 26.18.160, which allows a prevailing party to recover reasonable attorney fees incurred in filing the motion. She also requests fees pursuant to 26.09.140, which allows the Court to award her fees based on her need for assistance and Mr. Fazio's ability to pay. An affidavit of financial need will be provided as required per RAP.

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DATED: March 20, 2019.

CARLSEN LAW OFFICES, PLLC

A handwritten signature in black ink, appearing to read "Laura A. Carlsen", written in a cursive style.

Laura A. Carlsen, WSBA No. 41000

PROOF OF SERVICE

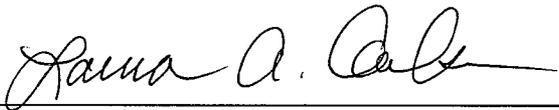
Laura Carlsen certifies as follows:

On March 20, 2019, I served upon the following a true and correct copy of this Motion and Declaration, via

Susan L. Caulkins Davies Pearson PC 920 Fawcett Ave. Tacoma, WA 98402 scaulkins@dpearson.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Electronically <input type="checkbox"/> Overnight Mail
--	---

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED AND DATED this 20th day of March, 2019, at Auburn, Washington.



Laura Carlsen

CARLSEN LAW OFFICES

March 20, 2019 - 5:59 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52109-1
Appellate Court Case Title: Gavin Fazio, Respondent v. Brittany Stepper, Appellant
Superior Court Case Number: 17-3-00644-6

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