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COURT OF APPEALS,
DIVISION II OF THE STATE OF WASHINGTON

Debbie J Schultz, FKA Debbie Moeller)	NO. 52213-6
Respondent)	APPELLANT REPLY
)	
Michael O Moeller,)	
Appellant)	

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Introduction:

Mr. Moeller re-alleges the facts as he put forth in his opening brief and furthermore pleads: This whole issue has been a nightmare. It completely unfair that Mrs. Schultz has never appeared one time before the judge and or commissioner even when she has been subpoenaed. Her attorney has violated RPCs and stands before the judge spewing lies with no worry of reprimand. Throughout much of this case, Mr. Moller has been pro-se litigant and obtaining discovery as a pro-se litigant can be difficult to say the least, proven even more difficult when the other party fails to comply.

Nonetheless, what discovery I was able to request was mostly never responded to honestly by Mrs. Schultz. Essentially, anything that was under Mrs. Schultz control that shows the parties were reconciled and cohabitating was denied by her. Throughout litigation, Mrs. Schultz with the assistance of her attorney has suppressed evidence, which ultimately worked in her favor.

Finding of Contempt:

If each issue is reviewed independent of the Reconsideration Order, the standard of review set forth in *Landry* applies to the Trial Courts Finding of Contempt. Under *Landry* the Court will affirm the Trial Court decision unless no reasonable judge would have reached the same conclusion.

However, Mr. Moeller concludes the Court erred in finding he willfully and intentionally disobeyed the Courts order to pay child support.

Mr. Moeller understands there was an order in place to pay child support. However, his actions do not suggest that he was willingly and intentionally avoiding paying child support. Even if the Court disregards Mr. Moeller's contention that the parties where living together from 2007-2012. The facts show Mr. Moeller was making timely monthly payments that exceeded the monthly amount due, which ultimately resulted in a credit for Mr. Moeller, CP 188-196. *Emphasis added.*

Essentially, in the years leading up to Mrs. Schultz contempt filing she was receiving more money from Mr. Moeller than was ordered by the court and or was allowed under law for their aged-out child. Moreover on at least two separate occasions, Mrs. Schultz contacted DCS and requested for them to discontinue wage withholding of Mr. Moeller's wages, CP 271, CP 291 which ultimately put Mr. Moeller further in debt when she reestablished withholding through DCS. At Revision, the Commissioners finding of contempt was upheld however Mr. Moeller was still awarded a credit for overpayment of support. This conclusion is contradictory, how can Mr. Moeller's actions suggest he willingly and intentionally disobeyed the Courts order for support when he was making timely overpayments, which resulted in a credit for his overpayment?

The finding of contempt was made in error, the fact Mr. Moeller was provided a credit for overpayment of support shows his willingness to pay the support that was ordered. In that light and considering Mr. Moeller was awarded a credit for support paid, the Order of Contempt was entered on untenable grounds.

Support Credit:

If each issue is reviewed independent of the Reconsideration Order, then Mr. Moeller believes Mrs. Schultz attorney is correct in his assumption that the standard of review set forth in *Landry* applies to parts of Mr. Moeller's appeal. Under *Landry* the Court will affirm the Trial Court decision unless no reasonable judge would have reached the same conclusion. However, Mr. Moeller concludes if the right law was applied in the application of the support credit, no reasonable judge would of reached the same conclusion.

As previously stated, at Revision Mr. Moeller was provided a credit for support that was paid to Mrs. Schultz for the parties' aged out minor. As was argued in Mr. Moeller's opening appeal brief the Court applied the wrong law when applying Mr. Moeller's credit towards arrears.

As it was out forth in Mrs. Schultz response to Mr. Moeller's appeal, Washington case law *Maccarone* under the guidance of *Roberts* and *Kruger* advise how the Court should have applied Mr. Moeller's support credit,

which was first to be applied to current support, then to the oldest unexpired obligation and interest, any credit left after that application could be applied to interest thereon.

However, for the first time and only now at appeal Mrs. Schultz relays to the Court that they used federal law to obtain their figures in applying the credit Mr. Moeller was awarded at Revision. Mrs. Shultz attorney applied secondary Federal Law in contradiction to the primary standards set forth by Washington State in *Maccrone, Roberts, and Kruger*. Moreover, Mrs. Schultz attorney specifically deceitfully relayed to the court in a very misleading fashion in his June 27, 2018 declaration that his procedure is the “procedure to be followed” and Mr. Moeller’s calculations are wrong, CP 228-229.

The Court abused its discretion by accepting Federal application over State Law.

Order Language:

The orders of June 15 and 29, 2018 share the same language, however Mr. Moeller contends this was not the intention of the Court at the time. Mrs. Schultz attorney argued for verified proof and Mr. Moeller’s attorney, Varo, argued not all support is verifiable since some of the support is in kind support that has no monetary value. The Court agreed and

removed the verified requirement. (Transcript of Proceedings June 15, 2018).

Prior to the entry of the June 29, 2018 order, my June 27, 2018 declaration, CP 216-227, raised the issue regarding the offset language, but the Court and or my attorney failed to correct the issue regarding the language of the June 15, 2018 order at the June 29, 2018 entry of the final contempt order. Both orders fail to accurately reflect what transpired in court on June 15, 2018, subsequently the language as was written by Mrs. Schultz attorney was strictly relied upon in later hearings under this cause just as his creatively written and misleading 2007 child support order failed to capture the opinion of the Court at that time as well and subsequently lead to the improper enforcement by DCS and overpayment by Mr. Moeller.

The transcript of proceedings accurately reflects the order of the court however, the subsequent orders written and edited by Mrs. Schultz attorney do not. The Appeals Court has the authority under RAP 7.2 E and CR 60(4) to rectify the orders language all subsequent orders adopted under said language should be reheard and or vacated.

Reconsideration Order:

The Trial Courts decision on reconsideration was based on documentary evidence in the Courts record, which was provided by the parties and no oral argument was considered and or allowed. Therefore, the

reviewing court has the authority to review the Order on Reconsideration under the De Novo review standard; *Franklin County v. Sellers*, 97 Wash. 2d 317, 325, 646 P.2d 113, 117 (1982).

The De Novo standard is applied when the appellate court is in as good a position as the trial court to judge the evidence. Because of this, if all the relevant evidence is in documentary or deposition form, the appellate court should be able to substitute its judgment for that of the trial court about facts as well as application. *Southwest Wash. Prod. Credit Ass'n. v. Seattle-First Nat'l Bank*, 19 Wash. App. 397, 406, 577 P.2d 589, 594 (1978), rev'd on other grounds, 92 Wash. 2d 30, 593 P.2d 167 (1979).

A big issue regarding facts between the parties is whether there was a period of cohabitation that took place between March 2007 up to June 2012. The evidence in the court file provides witness declarations provided by Mr. Moeller, CP 60-74. One particular declaration is that of Mrs. Schultz half-sister/half-cousin Melanie Magana, which was provided by Mrs. Schultz in a separate cause as evidence.

Magana's declaration supports Mr. Moeller's claim cohabitation/reconciliation, CP 72 line 22-CP 73 Ln 2. combined along with other forms of documentation i.e. school enrolment forms. CP 287, CP 289 and a custody information form, which was completed by Mrs. Schultz

and identified the parties living together at one of the alleged addresses, CP 470.

However, throughout the contempt proceedings Mrs. Schultz, provided the Trial Court with declarations in which she denies the cohabitation happened. To put it in context, below is Mrs. Schultz's admittance of the party's reconciliation which was provided by her and her attorney prior to the contempt matter in an unrelated case, cause number 12-2-04409-6: Declaration of Debbie Moeller, January 2, 2013:

Quote: *"I have been involved with Mr. Moeller on and off again for close to 17 years. We have three children together, Elayna (15yrs), Janessa (11 yrs), and Cali (4yrs) I divorced Mr. Moeller in 2005 due to his continual verbal, mental, and at times, physical abuse. At that time we only had the two older children. Unfortunately, I reconciled with Mr. Moeller in 2007 upon promises that he had changed. It was during that time that our third child, Cali was born. The abuse continued but I truly did not know how to get Mr. Moeller out of our lives. He came and went as he pleased for the most part. Yet he never contributed to the household bills and I never had him on bills or housing documents. I finally got Mr. Moeller to leave the house in May 2012..."* **End Quote**

Once money became the issue, Mrs. Schultz story changed, and her attorney has possibly violated RPC 3.3 (4) by providing testimony from Mrs. Schultz to the court he knew to be false. I understand that Mrs. Schultz attorney doesn't control her testimony, however in this case he knew of her prior statements to the court regarding the party's cohabitation and nonetheless presented to the court statements that were contradictory to his

prior filings on behalf of Mrs. Schultz. I pray for the court do a thorough De Novo review of the record.

Mootness:

Mrs. Schultz claim that Mr. Moeller's appeal on the Trial Court's Reconsideration Order being "moot" is inappropriate. Mrs. Schultz argues that the Order on Reconsideration addresses extended through to the April 2019 order that denied Mr. Moeller's request for extension of time and his motion to vacate was dismissed. However, whether the facts support interlocutory review is a totally different question than whether the evidence at trial supported the factual determination. Therefore, the April 2019 order denying Mr. Moeller's extension and offset request has no implication on the errors assigned here at review.

Attorney Fees:

If Mrs. Schultz would only be honest, we would not be here. The cost of her attorney should be hers to bare. I cannot afford my own attorney, unfortunately the attorney I had was also my employer, as a result of that relationship my employment has severed, and I am unemployed. I do not have the financial ability to pay anyone's attorney fees.

Conclusion

For the forgoing reasons, Mr. Moeller request the Court of Appeals decide as follows:

- (1) Reverse the finding of Contempt
- (2) Remand the accounting of the application of Mr. Moeller's support credit and apply Washington State Law towards the credit application;
- (3) Reverse on De Novo the Denial of Mr. Moeller's Reconsideration.
- (4) Deny Mrs. Schultz request for attorney fees.

Respectfully submitted September 6, 2019

/s/ Michael Moeller
Appellant, Pro Se

Certificate of Service

I certify that on the 6th of September 2019, I delivered via email a true and accurate copy of the forgoing Reply of Appellant to:

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/s/ Michael Moeller
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MICHAEL MOELLER

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