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Court of Appeals  
Division II  
State of Washington  
2/20/2019 8:54 AM

No. 52554-2

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

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DANIEL RITTSCHER, Appellant

v.

ASHLIE RITTSCHER, Respondent

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RESPONDENT'S OPENING RESPONSE

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## I. INTRODUCTION

Daniel Rittscher (Rittscher) appeals an order denying his request for reimbursement of alleged overpayments and the superior court's granting of sanctions and attorney fees. Ashlie Rittscher (NKA Ashlie Anderson, herein Ms. Anderson) as respondent argues that Rittscher has no basis to appeal this ruling as his motion for reconsideration leading to this appeal was brought after the period of reconsideration had expired, making this appeal frivolous and moot. This appeal is merely using the court to harass, cause unnecessary delay and increase the litigation costs to Ms. Anderson.

For the purposes of respondent's brief, a statement of the case will not be presented. Although statements proffered by Rittscher are argumentative and the last paragraph of the section is contested in its entirety, the facts included in the foregoing paragraphs are an accurate reflection of the procedural background leading to this appeal.

## II. ARGUMENT

Rittscher claims the superior court erred in its denial of reimbursement of daycare expenses and in granting sanctions and attorney fees; however, this argument is moot as the motion for reconsideration was not timely filed. "A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision," see CR 59(b). The order denying reimbursement and granting attorney fees and sanctions was

entered on July 10, 2018. Rittscher filed a motion for reconsideration on July 24, 2018, fourteen days after the order was entered, thus four days beyond the timeframe to motion had expired.

A. Standard of Review

According to *Lilly*, this court has previously ruled that “[the] denial of a motion for reconsideration is within the sound discretion of the trial court and will be overturned only upon an abuse of discretion. *Lilly v. Lynch*, 945 P. 2d 727, at 735 (1997). Abuse of discretion is “based on untenable grounds or for untenable reasons.” *In re Marriage of Littlefield*, 133 Wn. 2d 39, 46-47, 940 P.2d 1362 (1997).

B. The Court’s Denial of Reimbursement of Daycare Expenses was Not Erroneous Nor an Abuse of Discretion

Mr. Rittscher requested an accounting of daycare expenses incurred by Ms. Anderson to which she provided a written accord of who was the private nanny or caregiver and the amounts paid for each year. The statement by appellant that the court erred erroneously because there was “no factual findings which would support the court’s denial of the petition,” see *Appellant’s Brief* at 10, is a misapplication of the facts. Ms. Anderson proffered evidence that she did in fact pay for childcare. Appellants entire argument is that childcare expenses did not occur, when they in fact did. Thus, the court was within its discretion to deny reimbursement.

C. The Court Did Not Err in Granting Sanctions and Awarding Attorney Fees

As Rittscher noted in his brief CR 11 Sanctions are appropriate when an attorney continues to prosecute the case by filing pleadings and motions and legal memoranda, *MacDonald v. Korum Ford*, 80 Wn App. 877, 912 P2d 1052 (1996). Rittscher's attorney has continuously brought claims and motions to delay and harass Ms. Anderson. "A lawsuit is frivolous when it cannot be supported by a rational argument on the law or facts. The statute also requires the action be frivolous in its entirety, i.e., if any of the claims asserted are not frivolous, then the action is not frivolous. *Biggs v. Vail*, 119 Wash.2d 129, 133, 830 P.2d 350 (1992). The motions brought by Rittscher's attorney leading up to this appeal and the appeal in and of itself is a frivolous move to further delay, harass and incur attorney fees for Ms. Anderson.

III. Motion for Attorney's Fees

Ms. Anderson hereby moves this court for additional sanctions against Rittscher in the form of reimbursement of Ms. Anderson's attorney's fees and costs, in the amount of \$3000, related to Rittscher's petition for reimbursement, motion for reconsideration and the present appeal on the basis that: (1) the appeal is frivolous; (2) Rittscher has abused the court rules and procedures. RAP 18.9; CR 11.

In *Streater v. White*, 26 Wn.App. 430, 435, 613 P.2d 187, rev. denied, 94 Wn.2d 1014 (1980), the Court of Appeals held that a court should consider

that: (1) a civil appellant has a right to appeal under RAP 2.2; (2) all doubts should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous; however, (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no possibility of reversal.

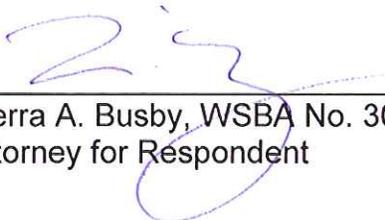
This court is allowed to impose sanctions against Rittscher based upon the conclusion that it has used CR 59, and the rules of appellate procedure for the purpose of delay and harassment. RAP 18.9(a). The appellate rules are not designed to place unjustified burdens, financial and otherwise, upon opposing parties nor are they designed to provide recreational activity for litigants. *Rich v. Starczewski*, 29 Wn. App. 244, 250, 628 P.2d 831, rev. denied, 96 Wn.2d 1002 (1981).

#### IV. CONCLUSION

Both parties in this case were already afforded their day in court with respect to the underlying case and have vested interested to protect. The superior court properly ruled in denying Rittscher's reimbursement of childcare expenses and awarding sanctions and attorney fees. Rittscher's lack of proffered evidence that Ms. Anderson did *not* incur childcare expenses and thus he overpaid and is due overpayment reimbursement makes this appeal as frivolous as his previous motions that resulted in the award of sanctions and attorney fees.

Rittscher's present argument is contradictory, retaliatory and advanced without merit. Absent any sanctions, Rittscher will have already succeeded in harassing Ms. Anderson, increasing her costs, and presenting additional distractions to obtaining the relief sought. Based upon the conclusion that Rittscher has lacked timely filing leading to the present appeal, this appeal was brought frivolously and in an attempt to harass and cause undue delay, this court should find that the trial court did not error in denying Rittscher's motion to reconsider and should award Ms. Anderson her attorney's fees and costs incurred herein.

DATED this 19<sup>th</sup> day of February, 2019.

  
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# CHILD FOCUSED LAW, PLLC

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## Transmittal Information

**Filed with Court:** Court of Appeals Division II  
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**Appellate Court Case Title:** Ashlie Renee Rittscher, Respondent v. Daniel Gilbert Rittscher, Appellant  
**Superior Court Case Number:** 15-3-00304-1

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