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Division II
State of Washington
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No. 53725-7-II

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

Sadie Engebretson, Appellant

v.

Sheldon Sanders, Respondent

RESPONDENT'S OPENING RESPONSE

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I. INTRODUCTION

Sadie Engebretson (Engebretson) appeals a lack of adequate cause finding regarding a minor modification to an existing parenting plan. Engebretson's Motion for Reconsideration was filed timely and denied. Sheldon Sanders (Sanders) as respondent argues that the court did not err in making a finding of no adequate cause and denying Engebretson's motion for reconsideration, as there has been no substantial change since the final parenting plan was entered on October 29, 2018.

For the purposes of respondent's brief, a statement of the case will not be presented. Although statements proffered by Engebretson are argumentative and several statements are misstated or contested in their entirety—the facts accurately reflect the procedural history of the case leading to this appeal. Respondent also requests attorney fees pursuant to RAP 18.1.

II. ARGUMENT

Engebretson claims the superior court erred in its denial of adequate cause and denial of motion for reconsideration; however, absent a showing of abuse of discretion, the court acted properly.

A. STANDARD OF REVIEW

In *In re Marriage of Chandola*, 180 Wn.2d 632, 642, 327 P.3d 644 (2014) the court ruled as follows

The trial court's range of discretion in granting a minor modification of a parenting plan is bounded by the criteria in RCW 26.09.260(5). RCW 26.09.260(5) provides that a court may modify a parenting plan if the petitioner shows: (1) "[A] substantial change in circumstances of either parent or of the child, " and (2) the change either (a) does not exceed 24 full days in a calendar year, or (b) is based on a parent's involuntary work schedule change that makes the parenting plan "impractical to follow."

In re Marriage of Tomsovic, 118 Wn.App. 96, 105, 74 P.3d 692 (2003) details what a "substantial change in circumstance is" when evaluating whether to grant adequate cause for a minor modification and describes as follows: "A 'substantial change in circumstances' is a fact that is unknown to the trial court at the time it entered the original parenting plan or an unanticipated fact that arises after entry of the original plan."

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 Did Not Err By Denying That Adequate Cause Existed To Modify The Parenting Plan Just Entered 191 Days Prior

A hearing for Adequate Cause to Change a Parenting Plan took place on May 7, 2019 after Engebretson filed a Motion to Modify the Parenting Plan entered October 29, 2018. The trial court found that there was no adequate cause to change the parenting plan and denied Engebretson's motion. Engebretson's lists her reasons behind her request to modify the parenting plan to include (1) Sanders' work schedule, (2) the child's behavioral outbursts and Sanders (alleged) resistance to taking the child to counseling, and (3) Sander's refusal to take the child to doctors. All of these claims were either present at the time the final parenting plan was entered or shown not to *actually* be issues at time of hearing.

The case law Engebretson provides in support of her appeal all discuss a "substantial change in circumstance." The trial court properly ruled that there simply was/is no substantial change present and properly denied her Motion to Modify the Parenting Plan. Sanders' work schedule has been the same—long before the final parenting plan was entered—yet was used as a "substantial change in circumstance" in an attempt to change the parenting plan. Engebretson's entire argument at the time of hearing was that Sanders work schedule was the root of all the problems and as such should be considered substantial grounds for a modification action, when in fact his schedule has remained the same long before the final parenting plan was filed. Thus, the court was within its discretion to deny the motion, to find a lack of substantial change of circumstance has occurred and dismiss Engebretson's petition.

C. The Court Did Not Err in Denying Engebretson's Motion for Reconsideration

Engebretson filed a Motion for Reconsideration of the finding of no adequate cause indicating the reasoning was “newly discovered evidence” not known at the time of the hearing. These reasons being (1) Sanders removed the child from school on May 3, 2019, (2) Sanders’ brother Matthew being present at a camping trip, (3) Sanders (alleged) objection to enrolling the child in counseling. Engebretson also brings forth several other claims within the motion for reconsideration (without requesting much weight be awarded) and within this appeal that are not appropriate and are simply brought to fling mud at Sanders due to her motion being denied.

Engebretson stated she was unaware that Sanders removed the child from school until the following week after the adequate cause hearing. This should not have been used to reconsider as it was not “newly found evidence.” The judge properly denied this request.

To her second ground for reconsideration—Sanders’ brother being present at a camping trip. Engebretson was aware of this camping trip as previously stated, shown via exhibits and this was not proper grounds to be used to reconsider as it was not “newly found evidence.”

Lastly, the claim that Sanders objected to counseling—this was contested via exhibits of text messages showing his willingness to cooperate and request to seek other professionals. Sanders indicated that it is imperative for the child to receive individual counseling with one counselor so that Aiden is able to build a relationship with that counselor to be able to express himself openly.

All of Engebretson's claims of "newly discovered evidence" were not newly discovered nor were they adequate grounds to determine there is a substantial change to justify a modification to the parenting plan that was entered just 6 months prior in October 2018.

Engebretson brings forth several claim that Sanders' fiancée's son is abusing the child of this action yet fails to provide for the court that Sanders' fiancé is a CPS Social Worker and if these claims were as substantial as Engebretson claims—she would be requesting a major change, not a change that would provide the child equal time with the other boy. It is clear Engebretson is throwing mud at Sanders in attempt to further her agenda despite her claims lacking merit and being completely fabricated.

Additionally, there has been no showing that Judge Bashor abused his discretion in finding there was no substantial change of circumstances to justify a modification nor that he abused his discretion in finding no adequate cause to proceed to a hearing. Without these findings, this court should dismiss Engebretson's appeal.

III. RESPONSE TO MOTION FOR ATTORNEY FEES

The court of appeals should not award Fees on appeal. RAP 18.1 allows for attorney's fees on appeal if there is a basis in the law. There is no basis to award attorney's fees to Appellant. As such, the court should not grant attorney's fees to her. If fees are to be granted to anyone, they should be on behalf of the Respondent. He has had to have counsel for the past 3 years in order to get a final parenting plan entered and now to defend himself in court against Ms. Engebretson. Statutes for attorney's fees (RCW 26.10.080 and 26.09.1410) are designed to assist a person so

they won't be deprived of their day in court by reason of financial disadvantage. Ms. Engebretson has certainly never been denied her day in court. Mr. Sanders believes she has used litigation to harass him, followed by repeated petitions for modification/motions for contempt and now this appeal, which allege the same facts, but always with a twist, are a means of harassment.

IV. MOTION FOR ATTORNEY'S FEES

Sanders hereby moves this court for sanctions against Engebretson in the form of reimbursement of Sanders' attorney's fees and costs, in the amount of \$3,000, related to Engebretson's Motion for Adequate Cause, Motion for Reconsideration and the present appeal on the basis that: (1) the appeal is frivolous; (2) Engebretson 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 permitted to impose sanctions against Engebretson 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).

V. CONCLUSION

Both parties in this case were already afforded their day in court with respect to the underlying case and have a vested interest to protect. The Superior Court properly ruled in denying Ms. Engebretson's Motion for Adequate cause and Motion for Reconsideration re Adequate Cause. Ms. Engebretson's lack of proffered evidence that a substantial change in circumstances occurred in the six (6) months between the Finalization of the parenting plan and her motion for adequate cause make this appeal just as frivolous as the motion giving rise to this appeal.

Ms. Engebretson's present argument is contradictory, retaliatory, repetitive and advanced without merit. Absent any sanctions, Engebretson will have already succeeded in harassing Sanders, increasing his costs, and presenting additional distractions to obtaining the relief sought. Based upon the conclusion that Ms. Engebretson has lacked sound argument giving rise to this appeal, the fact that this appeal was brought frivolously and, in an attempt, to harass and cost Mr. Sanders substantial attorney fees for having to defend, Mr. Sanders prays this court award him fees.

The decision of the trial court must be upheld. The trial court did not abuse its discretion in the factual findings made, nor did it error as to application or interpretation of the law. There was no misconduct by the judge. The evidence and the application of

the law did not meet the adequate cause requirement necessary to modify an existing decree. The Sanders respectfully request that the trial court decision be upheld.

DATED this 24 day of December, 2019.



CARLEE K. BLISS, WSBA No. 54441
Attorney for Respondent

CERTIFICATE OF SERVICE

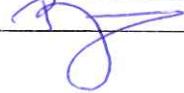
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Signature: 

CHILD FOCUSED LAW, PLLC

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