FILED
Court of Appeals
Division II
State of Washington
9/2/2020 10:56 AM

NO. 54617-5-II

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

CARRISA N. BROWN,

Appellant,

v.

SEAN A. BROWN,

Respondent.

REPLY BRIEF OF APPELLANT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

ROBERT W. FERGUSON
Attorney General

LIANNE S. MALLOY
Senior Counsel
WSBA No. 15028
P.O. Box 40124
Olympia, WA 98504-0124
Telephone: (360) 586-6548
OID No. 91021

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I. INTRODUCTION

The Court should overturn the trial court's $5,000 attorney's fee award against the State of Washington, in its entirety. The superior court erred when it awarded attorney's fees under Civil Rule 11 and its equitable power. When a trial court makes an attorney's fee award under Civil Rule 11, or because of a party's bad faith, the court's authority to award fees stems from its ability to control judicial proceedings and the parties before it. Neither ground encompasses the ability to sanction a state agency because the agency makes a preliminary decision that is incorrect. The trial court misapplied the law when it sanctioned the Department of Social and Health Services Division of Child Support (DCS) for miscalculating the amount of Sean Brown's back child support obligation. Sean has not cited any authority that supports the trial court's award of attorney's fees, and the undersigned is unware of any.

II. ARGUMENT IN REPLY

The superior court erred, as a matter of law, when it awarded Sean[1] attorney's fees under Civil Rule 11 and its equitable powers. Civil Rule 11 applies to judicial proceedings, in which a party fails to conduct a reasonable inquiry or acts with an improper motive. Civil Rule 11; *Biggs v.*

[1] Sean Brown and Carrisa Brown will be referred to by their first names for clarity, as is the general practice in family law cases. No disrespect is intended.

Vail, 124 Wn.2d 193, 196, 876 P.2d 448 (1994). It does not apply to actions outside the trial court's purview, such as DCS's prelitigation child support calculation.

An attorney's fee award arising from a party's prelitigation bad faith only applies to situations where a party engages in " 'obdurate or obstinate conduct that necessitates legal action' to enforce a clearly valid claim or right." *See Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 927, 982 P.2d 131 (1999). It does not apply to a party's dispute with an administrative agency, which predates the trial court's involvement in the controversy. *See Maytown Sand & Gravel, LLC v. Thurston Cty.*, 191 Wn.2d 392, 423 P.3d 223, *as amended* (2018), *overruled on other grounds by Yim v. City of Seattle*, 194 Wn.2d 682, 451 P.3d 694 (2019).

Both Civil Rule 11 and the trial court's equitable authority to award attorney's fees because of a party's bad faith derive from the court's authority to manage its affairs and the parties before it. *See Kunath v. City of Seattle*, 10 Wn. App. 2d 205, 232-33, 444 P.3d 1235 (2019) (explaining that the purpose of Civil Rule 11 is to curb abuse of the judicial process); *Maytown,* 191 Wn.2d 392 (explaining that the "bad faith" exception to parties paying their own attorney's fees arises from the court's equitable power to regulate and manage its affairs and the parties before it).

The trial court misapplied Civil Rule 11 and its equitable authority when it sanctioned DCS. The trial court awarded attorney's fees to reimburse Sean for challenging DCS's debt calculation. RP (Jan. 21, 2020) at 26-27; RP (Feb. 18, 2020) at 46, 48. Because DCS calculated the amount Sean owed before Sean raised the arrearage issue judicially, or DCS was joined in the dissolution action, the award is unrelated to the trial court's authority to manage judicial proceedings or the parties before it. Neither Civil Rule 11 nor prelitigation bad faith come into play in this circumstance.

Sean failed to cite any legal authority to rebut DCS's argument that he is not entitled to attorney's fees. *See* Respondent's Brief in Reply to Appellant State of Washington (Response Br.). Instead, he has misstated some of the facts, portrayed himself as a victim, and resorted to name-calling. *See* Response Br. Sean falsely asserts that DCS's erroneous debt calculation occurred because of a "dubious secret deal" DCS made with Carrisa behind his back. Response Br. at 1. Sean does not support this assertion with a citation to the record.

Sean wrongly claims that DCS only reluctantly backed down after he took the matter to court, and never admitted it erred. Response Br. at 1-2. But the only objection to the debt calculation that Sean discussed with DCS was his claim that he was the primary custodial parent for an unspecified part of the debt period, which he never followed up on. CP at 241. Because

Sean preferred to proceed in court, DCS respected that choice and did not engage in further efforts to resolve the matter administratively. CP at 241.

When the Grays Harbor County Deputy Prosecuting Attorney researched the caseworker's debt calculation, she determined that DCS was assessing an obligation under Sean's 2011 Pacific County child support order for months in 2016 and 2017 that Sean's child received public assistance. CP at 84-85. She observed that the 2012 Grays Harbor County child support order modified the Pacific County order when it made Carrisa the paying parent and set her obligation at zero. CP at 84-85, 208-16. The Deputy Prosecuting Attorney explained that while DCS may have the ability to go back and establish child support for public assistance periods, DCS cannot enforce Sean's 2011 Pacific County child support order prospectively, after it was modified in Grays Harbor County. CP at 84-85. She speculated that the caseworker included 2016 and 2017 in Sean's child support obligation because the caseworker did not know about the 2012 Grays Harbor County order or failed to understand its effect on Sean's obligation. CP at 84-85; RP (Jan. 21, 2020) at 25-26.

If Sean had accepted DCS's invitation for review by an in-house attorney, the in-house attorney would have been responsible for reviewing all relevant child support orders and understanding that the 2012 Grays Harbor County order terminated Sean's child support obligation under the

Pacific County order. Because Sean elected to proceed judicially, he cannot show that further administrative review would have been unsuccessful. CP at 241.

Sean misunderstands DCS's argument when he claims DCS is criticizing and blaming him for turning down its offer to review DCS's debt calculation. Response Br. at 2. Sean's decision about whether he should seek further review by DCS or proceed directly to superior court involves weighing many factors and considering information to which DCS is not privy. DCS does not analyze Sean's choice; it only addresses whether given that choice, Sean is entitled to attorney's fees under applicable statutes and case law.

Sean's request for sanctions under RAP 18.9 should be denied. RAP 18.9 authorizes the Court to award sanctions against a party who uses the Rules of Appellate Procedure to cause delay, files a frivolous appeal, or fails to comply with the Rules of Appellate Procedure. *Schorno v. Kannada*, 167 Wn. App. 895, 904, 276 P.3d 319 (2012). There is no reasonable argument that any of these situations apply. DCS's brief presents compelling arguments and is far from frivolous. An appeal is not frivolous if it raises at least one debatable issue. *Advocates For Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). Sean's bald request for sanctions should be denied.

III. CONCLUSION

This Court should reverse the superior court. No attorney's fees should be awarded to Sean for superior court or appellate-level litigation.

RESPECTFULLY SUBMITTED this 2nd day of September, 2020.

ROBERT W. FERGUSON
Attorney General

LIANNE S. MALLOY, WSBA No. 15028
Senior Counsel
P. O. Box 40124
Olympia, WA 98504-0124
(360) 586-6548
OID No. 91021

PROOF OF SERVICE

I certify that I caused to be served a copy of the Reply Brief of Appellant Department of Social and Health Services on all parties or their counsel of record on the date below as follows:

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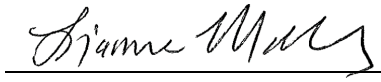
☒ E-filed and e-delivered to opposing counsel via this Court's portal at:

Gary Morean at gmorean@izglaw.com; and

Rebecca Bernard at rbernard@co.grays-harbor.wa.us

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 2nd day of September, 2020, at Olympia, Washington.



LIANNE S. MALLOY
Senior Counsel

SOCIAL AND HEALTH SERVICES DIVISION, ATTORNEY GENERALS OFFICE

September 02, 2020 - 10:56 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	54617-5
Appellate Court Case Title:	Carrisa N. Brown, DSHS, Appellant v. Sean A. Brown, Respondent
Superior Court Case Number:	12-3-00127-8

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Address:
P.O. Box 40124
Olympia, WA, 98504-0124
Phone: (360) 586-6565

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