

FILED

MAR 12 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

31619-0
Case No. 31690

**COURT OF APPEALS OF THE STATE OF
WASHINGTON
DIVISION III**

Catherine Allen, Respondent

v.

Jeffrey Allen, Appellant

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

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A. Introduction

There are no assignments of error pertaining to the matter of the court's ruling for a modification of child support as no violations were made.

B. Assignments of error

There are no assignments of error pertaining to the matter of the court's ruling for a modification of child support. Please refer to section C (Summary of Argument) and D (Argument).

C. Statement of the Case

A statement of case by respondent is inapplicable.

D. Summary of Argument

There are no assignments of error pertaining to the matter of the court's ruling for a modification of child support.

1. Ms. Allen disagrees that violations were made by the court; therefore, she disagrees with Mr. Allen's request for a reversal of the court's decision pertaining to a modification of child support.
2. Neither the court nor Judge Pro Tem Harry Ries created an ethics violation as it is Mr. Allen's responsibility to notify the court of a conflict of interest. Additionally, this issue is a separate issue which does not pertain to the court's ruling regarding modification of child support and was being addressed by Mr. Allen. Moreover, the court made every effort to assist Mr. Allen regarding this issue.

3. Ms. Allen filed proper documentation, including all required financials with the court. All proper documentation was provided to Mr. Allen by the State's Prosecuting Attorney, Jerry Hamley.
4. Mr. Allen's constitutional rights were not taken away from him. He was given ample time to state his case and more than sufficient time to file a response to the motion.
5. Mr. Allen has not been put in undue hardship for his travels to Grant County; Mr. Allen has traveled, by choice, numerous times over the past during winter conditions. A change of venue would actually create undue hardship on both the appellant and the respondent.

E. Argument

Ms. Allen argues that there have been no errors made by the court during the hearing for the motion for a modification of child support.

1. As Judge Pro Tem Harry Ries sat on the bench on November 1, 2012 for the hearing regarding Mr. Allen's motion for a change of venue, the court had no way of knowing of Mr. Allen's conflict with Judge Pro Tem, Harry Ries, and since it has been over four years since Harry Ries acted as Mr. Allen's attorney, he likely did not recall at the time of the hearing that Mr. Allen had been a former client. On the contrary, Mr. Allen likely was aware of said conflict at the time of the hearing but made no mention of the conflict of interest as Harry Ries sat on the bench. Mr. Allen waited to notify the court of conflict until after Judge Pro Tem Harry Ries made his ruling, when Mr. Allen filed a request for a revision. The revision was not heard due to Mr. Allen's choice to strike the hearing which was scheduled with the help of Commissioner Charlson. Additionally, Pro Tem Harry Ries did not make a ruling on the Motion for Modification of Child Support; therefore, this issue does not pertain to this appeal.

2. Mr. Allen states Pro Tem Ries denied a change of venue based on a single letter response by the state's prosecuting attorney, Jerry Hamley, and that no declarations were provided by either Mr. Hamley or Ms. Allen while in review. However, Mr. Allen's change of venue had been heard by the court on November 1, 2012. Pro Tem Ries stated he would review the file and write a ruling later. In his writing, he stated the change of venue would be granted if the state prosecuting attorney, Mr. Hamley agreed. Mr. Hamley wrote a response stating he disagreed because Mr. Allen was using his motion for change of venue to delay a modification of child support which was long overdue. All declarations in response to Mr. Allen's motion to change venue have been filed with the court previous to the hearing; therefore, no further declarations were necessary. Furthermore, the state's motion for a modification of child support had been filed in August 2012 and was on the docket prior to Mr. Allen's motion for a change of venue.
3. It was also noted by Mr. Allen that I had previously filed a change of venue. I had cancelled my motion and it had not been heard in court. As I explained in my "Responsive Declaration of Catherine Allen RE Motion for Order re: Review of Judgment", I did not pursue my change of venue because I realized the cost that would be involved in a change of venue and to hire new attorneys who were not familiar with an already very lengthy case would be substantial, creating a financial burden on both parties.
4. Mr. Allen states he was forced to cancel a hearing for his reconsideration for change of venue which had been arranged by my Commissioner Charlson and the court clerk. On March 22, 2013, Mr. Allen and I appeared before Comm. Charlson for Mr. Allen's Motion for Order re Review of Judgment. Comm. Charlson informed Mr. Allen that he

filed his motion incorrectly and in the wrong court. She told him that it should have been filed as “Motion for Revision or Motion for Reconsideration”. Although she pointed out the timeframe to file has lapsed, and he filed incorrectly, she made due diligence and went beyond her scope of duty to help Mr. Allen and made arrangements for his motion to be heard in the correct court. She spoke with the civil judge to see if he would hear the case the same day. He was not able to do so, but agreed to hear the case the following Friday, March 29. Commissioner Chlarson offered to change the hearing for Modification of Child support from the 28th to the 29th so both hearings were on the same day, limiting travel time; however Mr. Allen stated he would not attend the hearing on March 29, that he would cancel the revision hearing which she had set for the 29th; therefore, she kept the modification of child support hearing for the 28th (see CP page 18, line line 24 through page 19, line 6).

5. Mr. Allen states he noted in his motion for Change of Venue that he was not provided the appropriate response by myself or state Prosecuting Attorney Mr. Hamley, in accordance to rules and regulations on submittal of paperwork. Mr. Allen did not, however, file any response to the motion for modification of child support. Additionally, Mr. Hamley filed a sworn statement that the documents were filed (see CP page 27, line 13 to page 28, line 3)
6. Mr. Allen attempted to claim I have hidden income from a financial services business. I do not own a financial services business. All my income was provided to the state, the court, and Mr. Allen.
7. Mr. Allen states Comm. Chlarson “gag ordered” him. Commissioner Chlarson simply told Mr. Allen that he needed to stop interrupting her and to have respect to the court (see

CP page 29, line 21 through 25). On March 28, 2013, Mr. Allen continuously interrupted and argued with Commissioner Chlarson. He asked her to step down from the bench, without basis for doing so. He claimed it was a conflict of interest because she scheduled his hearing with the civil judge on March 29, a day in which he has scheduled parent time. He argued that he would be found in contempt if he was not able to pick up his children after school. Commissioner noted that would not be a contempt and also that both parties, he and myself, would have been present; therefore, neither of us would be with the children. Additionally, Mr. Allen does not follow a set time schedule for picking up the children. He picks up a various times as is convenient for him. If he is not able to pick the children up right after school, they ride a bus to the daycare.

8. Mr. Allen states he was never served paperwork for the modification. He previously stated this during the hearing for a motion of change of venue on October 26, 2012 (see CP page 4, line 13-16) and every hearing since, but he NEVER filed a response to the motion for the modification for child support. The commissioner noted that the motion had been pending since August and Mr. Allen had more than necessary time to file something before the court (see CP page 29, line 7-15).
9. Mr. Allen once again complains he did not have an attorney. He stated this previously in the hearing on October 26, 2012 (see CP page 6, line 13-15) and had plenty of time to hire legal representation before March 2013. Likewise, although Mr. Allen continued to claim he was unable to obtain legal representation due to the distance, Mr. Allen DID hire an attorney after the ruling was made for the modification of child support (Scott Ashby), in order to assist him with the filing of his appeal.

10. Mr. Allen states he was put in undue hardship and stress because of long distance travel and pass conditions. Mr. Allen has never had a problem with traveling to Grant County, even in winter conditions. Mr. Allen relocated to Pierce County more than a year prior to my relocation to Snohomish County, to live with his grandmother. He continued to travel to Grant County two times per weekend, every other weekend, both to pick up and drop off his children for nearly a year.

E. Conclusion

The court did not make any errors in the ruling on the modification of child support. The court acted with justice and due diligence, assisting Mr. Allen and only requesting respect by Mr. Allen.

1. Mr. Allen had the opportunity to a fair hearing. He was not gag ordered; he was asked to discontinue interrupting the commissioner when she spoke, and to show the court respect. Mr. Allen had been able to continue to state his case otherwise.
2. Mr. Allen's complaints regarding the issues of conflict of interest pertain to the motion for a change of venue and are separate from the motion of modification of child support.
3. Mr. Allen was properly served the necessary paperwork in order to proceed with the modification of child support and he chose not to file a response to the motion.

Ms. Allen respectfully asks the court to dismiss Mr. Allen's request to reverse the court's decision and award her costs and fees for maintaining Mr. Allen's appeal (RCW 26.09.140).

Respectfully submitted this 9th day of March, 2014.



Catherine Allen, Pro Se