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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

In Re the Marriage of:

CATHERINE M. ALLEN,

Respondent

vs.

JEFFREY R. ALLEN,

Appellant

STATE OF WASHINGTON'S BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION.....1

II. COUNTERSTATEMENT OF THE ISSUES.....2

III. STATEMENT OF THE CASE.....2-6

IV. ARGUMENT.....7

 A. Standard of Review.....7

 B. Jeffrey Allen received proper legal notice of the State’s Motion to Adjust Child Support.....7-10

 C. Jeffrey Allen had sufficient opportunity to present his response to the State’s Motion to Adjust Child Support prior to and during the hearing on March 28, 2013, resulting in no violation of his due process.....10-13

 D. The trial court did not abuse its discretion by granting the state’s motion to adjust the father’s child support..... 13-16

V. CONCLUSION.....16-17

TABLE OF AUTHORITIES

Cases

1. <i>Marriage of Griffin</i> , 114 Wn.2d 772, 776, 791 P.2d 519 (1990).....	7
2. <i>Wash. State Physicians Ins. Exch & Assn v. Fisons Corp</i> , 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).....	7
3. <i>In re Hendrickson</i> , 12 Wn. 2d 600, 606, 123 P.2d 322 (1943).....	10
4. <i>Ware v. Phillips</i> , 77, Wn.2d 879, 884, 468 P.2d 444 (1970).....	10
5. <i>State ex rel. Adams v. Superior Court</i> , 36 Wn.2d 868, 872, 220 P.2d 1081 (1950).....	10
6. <i>Morley v. Morley</i> , 131 Wash. 540, 230 P. 645 (1924).....	10
7. <i>State of Washington v. Herbert Rice, Jr.</i> , 120 Wn.2d 549, 556, 844 P.2d 416 (1993).....	15

Statutes

RCW 26.09.170.....	7
RCW 26.09.170(5).....	7
RCW 26.09.170(6).....	7
RCW 26.09.170(7).....	7
RCW 26.09.170(9)(b).....	8

RCW 26.09.175.....	8
RCW 7.21.050.....	12
RCW 7.21.010(a).....	12
RCW 26.19.035(1)(c).....	14
RCW 26.19.035(3).....	14
RCW 26.19.075(2).....	14
RCW 26.09.280.....	15,16

Court Rules

CR 5.....	8
CR 5(b)(2).....	8

I. INTRODUCTION

This case involves a dispute regarding an adjustment of a child support order. The dispute arose when Catherine Allen requested services from the Division of Child Support in obtaining an adjustment of her order of Child Support entered in Grant County Superior Court on November 6, 2009. Her request was forwarded to the Yakima County Prosecutor's Office/Ephrata Family Support Division.

Mr. Allen made no objection to the Motion for Adjustment of the Order of Child Support, but objected to the matter being heard in Grant County and sought a change of venue to Snohomish County. His request was denied by the trial court and the matter proceeded in Grant County Superior Court on March 28, 2013. RP at 20.

The issue of venue appears to be the focus of Mr. Allen's appeal. Mr. Allen also raises an issue of judicial misconduct/conflict of interest. Neither of these issues were included in Mr. Allen's Notice of Appeal and, therefore, are not properly before this Court. The only matters designated in Mr. Allen's Notice of Appeal are: 1) March 28, 2013 Order of Child Support, Washington State Child Support Worksheets. CP at 166-175; and 2) March 28, 2013 Order Re: Adjustment of Child Support. CP at 177.

II. COUNTER STATEMENT OF THE ISSUES

1. Did Jeffrey Allen receive adequate notice of the State's Motion to Adjust Child Support, along with supporting financial documents prior to the Court rendering a decision on March 28, 2013?
2. Was Jeffrey Allen given an opportunity to be heard and respond to the State's Motion to Adjust Child Support both before and during the hearing on March 28, 2013?
3. Did the Court abuse its discretion by granting the State's motion to Adjust the Child Support owed by Jeffrey Allen for the support of his two children?

III. STATEMENT OF THE CASE

Catherine and Jeffrey Allen signed an Agreed Order of Child Support and Child Support Worksheets in Grant County Superior Court on November 6, 2009, designating Mr. Allen as the Obligor and requiring him to make monthly child support payments in the amount of \$200.00.

On April 23, 2012, Ms. Allen submitted a request to the Division of Child Support requesting the State's assistance in obtaining an adjustment of her child support order. On July 24, 2012, her request was forwarded to the Yakima County Prosecutor's Office/Ephrata Family Support Division.

On August 7, 2012, the State of Washington filed a Motion and Declaration for Adjustment in Grant County Superior Court. CP at 1-2. The State then filed a Notice of Hearing on August 9, 2012, scheduling an Adjustment Hearing for November 1, 2012. CP at 3-4. Proposed Child Support Worksheets were filed by the State on August 15, 2012, along with Sealed Confidential Financial Documents that included Catherine's financial declaration, confidential information form, paystubs, 2010 income tax return, W-2s and a record of earnings from the father's employer. CP at 5-35.

No further documents or responsive pleadings were filed by the State or the other parties from August 15, 2012, until Mr. Allen filed a Motion for Order Re: Transfer Case to New Venue on October 5, 2012. CP at 36-37. However, Mr. Allen did not note the motion for a hearing but instead presented an ex-parte order that was not signed by Ms. Allen. Court Commissioner Chlarson denied Mr. Allen's Order because the order was not agreed to by both parties and could not be signed ex-parte. CP at 40.

On October 17, 2012, Mr. Allen filed a Note for Motion Docket for Change of Venue to be heard on October 26, 2012. CP at 43. The Court ruled at the October 26, 2012 hearing for change of venue that

service upon Ms. Allen was improper and the hearing would be continued to November 1, 2012 to be heard at the same time as the Motion for Adjustment. RP at 2-4. Pro-tem Commissioner Harry Ries was unable to reach a decision and advised that he would provide a written decision to the parties on the issue of change of venue. RP at 9-14. The issue of child support modification or adjustment was not addressed and Mr. Allen claimed to have no notice of the pending proceedings for an adjustment of child support. RP at 11.

On November 6, 2012, Pro-Tem Commissioner Harry Ries filed a written decision/letter to the parties regarding the issue of change of venue and invited the State to make a statement regarding the State's position on the issue of change of venue. CP at 68-69. The attorney for the state, Jerry Hamley, filed a written response on behalf of the State on November 13, 2012, indicating that venue was appropriate and the matter should proceed since there has already been a significant delay. CP at 70. Pro-Tem Ries signed an order February 7, 2013, denying Mr. Allen's Motion for Change of Venue to Snohomish County and ordering the case to remain in Grant County. CP at 71.

On February 12, 2013, the State filed updated Child Support Worksheets and updated employment security data for the parties (under

seal), as well as a Notice of Hearing for Modification (Adjustment) of Support setting the hearing for March 28, 2013. CP at 72-81. On February 12, 2013, Amy Gioletti, Office Specialist for the State of Washington, signed a declaration of mailing stating that she deposited the Notice of Hearing, proposed child support worksheet and sealed financial source documents in the U.S. mail to Jeffrey Allen on February 12, 2013. That declaration was filed with the Court on March 28, 2013. RP at 27, CP 181.

Mr. Allen filed a Motion for Order for Review of Judgment on February 19, 2013. CP at 82. Mr. Hamley on behalf of the State, filed a response to Mr. Allen's motion. CP at 95. Mr. Hamley opined that because the original Order of Child Support was filed in Grant County and the Modification (Adjustment) of support would be decided on affidavits and not live testimony that venue should not be transferred and that venue was proper in Grant County. CP at 96. The matter was addressed before Commissioner Chlarson on March 22, 2013. RP at 15. Mr. Allen alleged a conflict of interest with Pro-Tem Harry Ries who had heard the Motion for Change of Venue. RP at 15. Commissioner Chlarson advised Mr. Allen that his motion should have been a Motion for Reconsideration or a Motion for Revision and that she is unable to review another

Commissioner's decision. The matter would have to be heard by a Superior Court Judge. RP at 15-17. The court agreed to set a revision hearing before a superior court judge for March 29, 2013, and to have the hearing on the adjustment heard on the same day. Mr. Allen apparently struck the revision hearing set for March 29, 2013. RP at 18-19 and 22.

The hearing for an Adjustment (Modification) of Child Support was, therefore, held in front of Commissioner Chlarson on March 28, 2013. RP at 20-34. When asked if he disputed the income used in the State's worksheets, Mr. Allen responded with allegations of "judicial problems" and then proceeded to again address the venue argument and Motion for Reconsideration. RP at 21-25.

Mr. Allen acknowledged that his net monthly income was "around \$3600.00". RP at 26. Because Mr. Allen did not file any contrary income information, proposed worksheets or respond to the State's Motion, the Court found there was a sufficient basis to grant the motion and signed the State's Order on Adjustment, Order of Child Support and Child Support Worksheets. RP at 29-34. Mr. Allen now Appeals the Order of Adjustment, Order of Child Support and Child Support Worksheets.

IV. ARGUMENT

A. Standard of Review.

A trial court's decision modifying a parent's child support obligation is reviewed for an abuse of discretion. See *Marriage of Griffin*, 114 Wn.2d 772, 776, 791 P.2d 519 (1990). A trial court abuses its discretion if its decision is made on unreasonable or untenable grounds. *Wash. State Physicians Ins. Exch & Assn v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

B. Jeffrey Allen received proper legal notice of the State's Motion to Adjust Child Support.

There are two distinct procedures the Washington State Legislature has established when addressing changes to a child support order. A party may petition to modify a child support order or file a motion for an adjustment. RCW 26.09.170.

The criteria for a petition to modify is set forth in RCW 26.09.170(5) and (6). The criteria for a motion to adjust are set forth in RCW 26.09.170(7) and includes:

- (a) If twenty-four months have passed from the date of entry of the order or the last adjustment or modification, whichever is later, the order may be adjusted without a showing of substantially changed circumstances based upon:
 - (i) Changes in the income of the parent...

(b) Either parent may initiate the adjustment by filing a motion and child support worksheets.

The state is authorized to file an action to modify or adjust child support if a party to an order in a nonassistance case has requested a review. RCW 26.09.170(9)(b).

While service of a petition to modify is governed by RCW 26.09.175, there is no specific statutory direction on providing notice for a motion to adjust support. Because a motion is filed in an existing action, the procedure for service of the motion is governed by CR 5. This rule authorizes service on a party by mail with the postage prepaid. Proof of service is permitted by a declaration of mailing. CR 5(b)(2).

On November 6, 2009, an Order of Child Support was entered in the Grant County Superior Court. This order required Jeffrey Allen to pay child support to Catherine Allen in the amount of \$200.00 per month for his two children. Catherine Allen requested the state to assist her in a review of this order and that request was forwarded to the Yakima County Prosecutor's Office/Ephrata Family Support Division.

On August 7, 2012, the state filed a Motion To Adjust Support. This motion was based upon the passage of more than twenty-four months since entry of the last child support order and a change in the income of the parties. The motion was mailed to each parent and a Declaration of

Mailing was filed. CP at 1-4. In addition, on August 15, 2012, the state filed and distributed financial source documents, CP at 5-30, and a proposed Child Support Schedule Worksheet.

CP at 31-35.

Although the original motion was noted for a hearing on November 1, 2012, the focus of this appeal are the orders entered on March 28, 2013. Notice of this hearing was filed and mailed to the parties on February 25, 2013. CP at 93-94. In addition to the notice of the hearing, the state mailed a copy of the proposed Child Support Schedule Worksheet and another copy of the sealed financial source documents to Jeffrey Allen on February 12, 2013. RP at 27.

While Jeffrey Allen maintains he never received these documents, RP at 27-28, his own declarations contradict his position. In sworn declarations filed with the court on February 19, 2013 and March 21, 2013, he specifically references these documents as follows:

- 1) "I also believe upon looking at documentation from the state prosecutors that her business income from a side business was not taken into account." CP at 88;
- 2) "Upon reviewing the state's support worksheets..." CP at 102;
- 3) "The Sealed Financial documents do not provide a complete history of her accounts and employment history." CP at 102.

Jeffrey Allen received proper legal notice of the state's motion to adjust support that was set for hearing on March 28, 2013. He also

received copies of the proposed child support schedule worksheets and the sealed financial source documents. The trial court correctly found that proper legal notice was given to Jeffrey Allen. RP at 27-28.

C. Jeffrey Allen had sufficient opportunity to present his response to the State's Motion to Adjust Child Support prior to and during the hearing on March 28, 2013, resulting in no violation of his due process.

The essential elements of procedural due process are notice and opportunity to be heard. *In re Hendrickson*, 12 Wn.2d 600, 606, 123 P.2d 322 (1942). A litigant who is denied notice and opportunity to be heard is denied procedural due process of law in violation of article I, section 3 of the Washington Constitution. *Ware v. Phillips*, 77 Wn.2d 879, 884, 468 P.2d 444 (1970) (quoting *State ex rel. Adams v. Superior Court*, 36 Wn.2d 868, 872, 220 P.2d 1081 (1950)). Due process requires at a minimum notice and an opportunity to be heard. *Morley v. Morley*, 131 Wash. 540, 230 P. 645 (1924).

Mr. Allen alleges in his brief that Commissioner Chlarson, who presided over the hearing for Adjustment of Child Support “gag ordered” him with the threat of jail and barred him from his constitutional right for a fair hearing. Appellant’s brief at 4. He further alleges that the gag order prevented him from making any comments, remarks, defense or providing paperwork in his defense during the hearing for modification (adjustment).

Appellant's brief at 8. However, his Notice of Appeal makes no such reference to any due process violations. CP at 162.

During the modification (adjustment) hearing on March 28, 2013, the Court asked Mr. Allen if he had any dispute regarding the income the State used to calculate the support amount, Mr. Allen responded by alleging a judicial problem and attempted to revisit the issue of venue that had already been adjudicated. RP at 21-23. The Commissioner advised him that the issue before the Court was the modification (adjustment) of child support. RP at 25.

When again asked if he had a dispute regarding income, Mr. Allen interrupted Commissioner Chlarson and responded that he only received the State's Motion and Worksheets. RP at 25. When the Court inquired as to why Mr. Allen had not responded to the State's motion, he advised it was because he had been working on his motion for change of venue. RP at 25.

Mr. Allen acknowledged receiving the State's Motion for Adjustment and the Child Support Schedule Worksheets (RP at 25), but when the Court advised that a declaration of mailing was filed, stating that Notice of Hearing (for March 28, 2013), Proposed Child Support Worksheet, and Sealed Financial Source Documents were mailed to him on February 12, 2013, he responded that the documents must be mailed

with return receipt and since they were not he did not receive them. RP at 27. The Court concluded that service was proper and that Mr. Allen acknowledged receiving the motion and failed to respond. RP at 29.

The Court went further stating that the matter had been pending since August of 2012, with multiple continuances and that there “has been way more time than necessary to get something before the court.” RP at 29. Mr. Allen continued to interrupt the Commissioner throughout the proceeding and was warned by the Commissioner to stop interrupting. RP at 29. After further interruption, the Court warned Mr. Allen that if he interrupted one more time he would be found in contempt and could go to jail as a result. RP at 29-30.

Pursuant to RCW 7.21.050, the judge in an action or proceeding may summarily impose either a remedial or punitive sanction...upon a person who commits a contempt of court within the courtroom...for the purpose of protecting the authority and dignity of the court. Contempt of court means intentional: (a) Disorderly, contemptuous, or insolent behavior toward the judge while holding court, tending to impair its authority, or to interrupt the due course of a trial or other judicial proceeding. RCW 7.21.010(a).

Even after Mr. Allen’s continued interruption and disregard for the Court, the Court allowed Mr. Allen to continue speaking even after he

disregarded the Commissioner's warning and continued to interrupt the proceeding. RP at 29-33. There was no finding of contempt and Mr. Allen was allowed to present his case, even though he failed to present any information contrary to that contained in the State's proposed Orders and income information.

D. The trial court did not abuse its discretion by granting the state's motion to adjust the father's child support.

Jeffrey Allen, in his Notice of Appeal, has requested a review of the following orders entered by the trial court:

- Order Re: Adjustment of Support; and
- Order of Child Support; and
- Child Support Schedule Worksheet.

In Mr. Allen's brief, he cites no specific errors committed by the trial court in entering the orders on March 28, 2013. This was an action filed by the state to adjust the child support owed by Jeffrey Allen for his two children. The state's motion was based upon the passage of more than twenty-four months since entry of the last support order and a change in the income of the parents. CP at 1-2.

The orders entered on March 28, 2013, CP at 166-175, were based upon the Washington State Child Support Schedule. "The child support schedule shall be applied in all proceedings in which child support is

determined or modified”, RCW 29.19.035(1)(c), and upon the filed worksheets. See RCW 26.19.035(3).

The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support using the standard calculation. RCW 26.19.075 (2).

In this case, Jeffrey Allen provided no evidence to dispute the state’s worksheet or evidence of income. He provided no reason for the court to deviate from the presumptive amount of support. The Order of Child Support entered on March 28, 2013, was based upon the filed worksheet and the child support schedule. The trial court did not abuse its discretion by granting the state’s motion and signing the orders on March 28, 2013.

The major focus of Jeffrey Allen’s argument is the failure of the trial court to grant his motion to change venue from Grant County. The state maintains this issue is not properly before this Court because the Order that denied Mr. Allen’s motion was entered on February 7, 2013, CP at 71, and was not designated for appeal. Furthermore, Mr. Allen struck his own motion for revision of this order. RP at 18-19 and 22. Court Commissioner Chlarson correctly ruled that the issue of venue was not before her at either the March 22nd or the March 28th hearing. RP at 15-16 and 21.

It should be pointed out, however, that Mr. Allen provided the trial court with a misleading version of the venue statute when he filed his motion for review of the Order that denied his motion to change venue. The venue statute for modification of child support is set forth in RCW 26.09.280 and provides:

Every action or proceeding to change, modify, or enforce any final order, judgment, or decree entered in any dissolution or legal separation or declaration concerning the validity of a marriage or domestic partnership, whether under this chapter or prior law, regarding the parenting plan or child support for the minor children of the marriage or the domestic partnership maybe brought in the county where the minor children are then residing, or in the court in which the final order, judgment, or decree was entered, or in the county where the parent or other person who has the care, custody, or control of the children is then residing.

In his motion filed with the trial court on February 19, 2013, Mr. Allen omitted that portion of the above statute that allowed for the modification to take place in “the court in which the final order, judgment or decree was entered”. CP at 85.

A trial court’s decision for change of venue is reviewed based on an abuse of discretion. See *State of Washington v. Herbert Rice, Jr.*, 120 Wn. 2d 549, 556, 844 P. 2d 416 (1993). This was a motion to adjust the support

owed under the terms of a Grant County Superior Court order. RCW 26.09.280 specifically permits the matter to be heard in Grant County even if the parties no longer reside there. The trial court did not abuse its discretion by denying Jeffrey Allen's motion to change venue and Mr. Allen has failed to provide any basis for this Court to conclude that the trial court abused its discretion in entering orders that adjusted the child support owed by Jeffrey Allen for his two children.

V. CONCLUSION

The decision made by the trial court on March 28, 2013, should be affirmed. Jeffrey Allen has failed to provide any basis for this Court to conclude that the trial court abused its discretion in entering orders that adjusted the child support owed by Jeffrey Allen for his two children. His appeal is without merit and should be denied.

Respectfully submitted,

DATED: 9/4/14


KACIE L. MAGGARD, WSBA #40133
Deputy Prosecuting Attorney
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**COURT OF APPEALS OF WASHINGTON
DIVISION III**

In re the Marriage of:

Catherine Allen

Petitioner,

and

Jeffrey Allen

Respondent.

Court of Appeals No: 316190

DECLARATION OF MAILING

I, AMY GIOLETTI, state that:

1. I am over the age of 18, a citizen of the United States and not a party to this action, and
2. On September 5, 2014, I deposited the following documents:

STATE OF WASHINGTON'S BRIEF

In the U.S. Mail by regular mail with postage affixed and addressed to be delivered to:

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Jeffrey Allen
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Catherine Allen
3617 Geyer Lane
Everett, WA 98203

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Ephrata, Washington on 9-5-14.



 AMY GIOLETTI, Paralegal