

FILED

MAY 19 2017

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 334309-III

WASHINGTON STATE COURT OF APPEALS-DIVISION III

In re the Marriage of:

JEFFREY K. NEWGARD,

Respondent,

v.

PENNELOPY ANN NEWGARD,

Appellant.

ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT
Hon. Gayle M. Harthcock

SUPPLEMENTAL BRIEF OF APPELLANT

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TABLE OF AUTHORITIES

Cases	Pages
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**COURT OF APPEALS, DIVISION III.,
OF THE STATE OF WASHINGTON**

In re the Marriage of:

JEFFREY K. NEWGARD

Petitioner,

and

PENNELOPY ANN NEWGARD

Appellant.

NO. 33430-9-III

SUPPLEMENTAL BRIEF

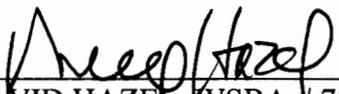
The Court has requested supplemental briefs regarding the applicability of *in Re Marriage of Zandi*, No. 92296-9, decided by the Supreme Court on February 23, 2017. The Supreme Court’s decision in *Zandi* is squarely on point and begs for reversal here. In *Zandi*, the Supreme Court was asked to decide whether the bill of an out-of-network medical provider was an “uninsured medical expense” under RCW 26.18.170(18)(d) and WAC 388-14A-1020. But, the heart of the issue was the parents’ disagreement whether the provider should be in Cincinnati (where the child fell ill) or 186 miles away (where insurance was available). When the mother unilaterally chose Cincinnati, the father closed his wallet despite a child support order which mandated otherwise.

Pennelopy was punished for allegedly violating the joint decision making terms of the parties parenting plan by not having secured prior agreement from the father that their daughter was in need of psychotherapy. Her punishment - contrary to the child support order - was that she bear one hundred percent of the cost of the psychotherapy after February 4, 2014, the date he sent Pennelopy a letter objecting to any psychotherapy for their child. No finding was ever made

as to the necessity or lack of necessity of the psychotherapy. The father never filed a motion asking the mother to be held in contempt for this claimed violation of the parenting plan. The father did not even claim the psychotherapy was unnecessary. He simply claimed he didn't agree to it. The only finding was that the "mother violated the parenting plan's joint decision making provisions" and therefore "Petitioner (father) is not required to pay his percentage of only psychotherapy bills incurred after February 4, 2014."

Disregarding the issue of whether "joint decision making" requires mutual agreement (*Zandi* suggests the answer is an emphatic "no"), the issue before the court is whether fault may be used as a basis for retroactive modification of a child support order. The Supreme Court in *Zandi* specifically held that consideration of fault by either parent is wholly inappropriate in enforcing child support orders and that the parents disagreement over the best treatment should never be a basis to disregard the terms of a child support order.

Respectfully submitted this 16th day of May, 2017



DAVID HAZEL, WSBA # 7833
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of State of Washington that I am an employed at Hazel and Hazel., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of: **Supplemental Brief of Appellant** on the below- listed attorneys of record by the method (s) noted:

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DATED this 17th day of May, 2017.


CHARMIE PULSE