

**FILED**

SEP 27 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

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SEP 27 2016

MAXEY J. ...

COURT OF APPEALS DIVISION III OF THE STATE OF  
WASHINGTON

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CHRISTY LYLE

Respondent,

and

KEITH LYLE

Appellant.

No. 339718

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Appellant's Brief

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Conducting a child support modification hearing on a revision  
when the lower court never ruled conducted its own hearing on the merits

The sole issues for this Court to decide is whether the Honorable Judge Raymond Clary of the Spokane County Superior Court erred in his entering a, worksheet, findings and order when the lower court never conducted an actual child support modification hearing, instead of remanding for a hearing before the child support modification commissioner.

Statement of Facts

On June 24, 2009, a final parenting plan was entered where the minor children of the parties resided equally with the parents. (CP 1-7)

Also on June 24, 2009, a final order of child support was entered. (CP 13-17) The order provides that a deviation was granted to Mr. Lyle due to the shared schedule contained within the parenting plan. (CP 13-17). This resulted in a zero transfer payment. (CP 13-17)

On November 20, 2014, Christy Lyle filed a petition for modification of child support alleging several bases for such. (See CP 21-25, 26-31)

Also on November 20, 2014, Ms. Lyle filed financial records (32-129)

On December 8, 2014, additional financial records were filed. (CP 130-227)

On July 1, 2015, a hearing occurred before Commissioner Tony Rugel. (CP 468-476) Commissioner Rugel dismissed the petition for modification of child support finding there had been no change in circumstances since the prior order was entered. (CP 463-464 and CP 468-476). As contained within the transcript of the entire hearing before Commissioner Rugel, the parties never argued the actual merits of the case. (CP 468-476) The parties never argued the actual deviation basis, actual incomes or parties or the particulars to the modification. (CP 468-476)

Commissioner Rugel never reached the issue of incomes of the parties, incomes of other adults in the respective households, additional children in the father's household for deviations among other areas. (CP 468-476) As a result of Commissioner Rugel not even reaching these issues for determination, they would not have been before a reviewing Court for determination.

Ms. Lyle filed a motion to revise. (CP 465-467)

On August 13, 2015, a revision hearing occurred before Judge Raymond Clary in Spokane Count Superior Court. (CP 492-539).

On October 27, 2015. Judge Clary had filed (signed October 26 2015), findings of fact, worksheets and order re modification. (CP 482-487,487-489,490-491). The Court also issued a Memorandum Decision (CP 477-481)

#### Legal Argument

When conducting a child support modification hearing on a revision, if the lower court never reached the underlying merits of the case, may a Court on revision make it's own determination instead of remanding. ?

The Court went beyond what was before it. The Court should have remanded the matter to a commissioner for a hearing on the child support modification docket. Instead the Court went beyond the issue before it, namely, did the Court err in finding no change in circumstances (as well as the case law that developed since the final order of support was entered as to child support in shared parenting plan cases including *In re Marriage of Schnurman*, 178 Wn.App. 634, 636, 316 P.3d 514 (2013), *review denied*, 180 Wn.2d 1010, 325 P.3d 914 (2014). *In Re A.L* 185 Wn. App 226, 340 P. 3<sup>d</sup> 260, 2014.)

Judge Clary went beyond what was before him on revision and made determinations to incomes of the parties and a transfer payment.

Commissioner Rugel never addressed nor reached the incomes of the parties.

Judge Clary never addressed the issue of deviations for Mr. Lyle having additional children in his household nor did he address the issue of Ms. Lyle having income of another adult in her household. Commissioner Rugel never reached the deviation issue.

Judge Clary's determination deprived Mr. Lyle of his opportunity to argue for a deviation based on having additional children in his household that he has a duty to support.

Judge Clary's determination on revision denied Mr. Lyle the opportunity to discuss Ms. Lyle having an income of another adult in her household.

Judge Clary should have revised Commissioner Rugel to the extent he could find a change of circumstances occurred, particularly in light of AL, but remand to the Commissioner for the actual child support modification hearing to occur.

Judge Clary's decision does even reference to Commissioner Rugel's determination that In Re AL did not apply as that involved a case regarding public assistance. Judge Clary should have revised Commissioner Rugel's attempt to distinguish AL and remand for further proceedings.

Conclusion

Judge Clary erred in failing to remand to the child support commissioner for a hearing to occur. Judge Clary further erred in conducting his own child support modification hearing when that issue was not presented and the issue before the Court was whether In Re AL 185 Wn. App 225 could be a basis to modify the final order of support.

September 26, 2016

Respectfully submitted,



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