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

No. 339718

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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CHRISTY JO LYLE

Respondent,

vs.

KEITH LYLE,

Appellant.

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BRIEF OF RESPONDENT CHRISTY LYLE

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Camerina B. Zorrozua, WSBA 36249  
Attorney for Respondent

Maxey Law Offices, P.S.  
1835 W. Broadway Ave.  
Spokane, WA 99201  
(509) 326-0338

**ORIGINAL**

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### **A. ISSUES**

1. Whether the initial child support hearing before the court commissioner was a "hearing on the merits."
2. Whether the trial court abused its discretion by granting the Petition to Modify Child Support and adopting the final worksheet and order upon revision of the commissioner's ruling.
3. Whether attorney's fees should be granted in favor of Respondent, should she succeed on appeal.

### **B. SHORT ANSWER**

The initial hearing before Court Commissioner Anthony Rugel on July 1, 2015, in the Superior Court of Spokane, State of Washington, was a full and complete child support modification hearing presented on its merits. Honorable Judge Raymond Clary, in the Superior Court of Spokane County, State of Washington, had statutory authority to grant the Petition to Modify Child Support upon revision of the commissioner's ruling under RCW's 2.24.050,

26.09.175, and LAR 0.7. The trial court did not abuse its discretion or exceed its authority by granting the Petition for Modification, making specific findings, and adopting the new worksheet and order on modification. The trial court's findings are supported by the evidence, which was likewise considered by the court commissioner at the initial hearing. As such, the trial court's order and findings should be upheld on appeal. Finally, Respondent, Christy Lyle, should be granted reasonable attorney's fees, should she prevail.

### **C. STATEMENT OF THE CASE**

#### **1. Factual and Procedural Background.**

On November 20, 2014, MS. LYLE filed a Petition to Modify the original Order of Child Support dated June 24, 2009, asserting a change in circumstances and other bases for relief. [CP

540-544]. The 2009 child support order deviated from the standard child support calculation and assigned no transfer payment to either parent. [CP 13-17]. The worksheet filed in 2009 reflects that MR. LYLE'S standard child support obligation was \$720 to MS. LYLE'S \$423. [CP 8-12]. The finding for deviation was simply: "parents entered into a shared parenting plan where the children reside equally with both parties." [CP 14]. There are no other findings for deviation listed in the 2009 order.

MS. LYLE'S Petition asserts a "substantial change in circumstances," including financial hardship in her home; both children entering a new age category; increased child-related expenses; and a significant disparity in incomes, given MR. LYLE'S wage increases and remarriage after 2009. [CP 540-544]. Before the hearing, both parties filed financial documents including pay stubs, receipts, financial declarations, and

tax returns. [CP 26-31, 32-129, 130-227, 456-459]. Likewise, each party filed sworn declarations and exhibits, included in the record. [CP, 232-237, 239-239, 240-248, 263-419, 420-455].

The court commissioner reviewed the court file and other documents in the record, finding that the children's continued involvement in rodeo and other activities was anticipated in 2009, and the order could not be modified since it failed to assign those specific costs. The commissioner also found no severe economic hardship in the mother's home because she voluntarily continued to pay for the children's activities without MR. LYLE'S agreement to share the costs. The commissioner stated, "It's very much could be a moral issue ... But the court isn't always in a position including this case to enact any sort of order that forces someone to do the right thing." [RP 474].

MS. LYLE filed for revision of the commissioner's ruling under RCW 2.24.050 and LAR 0.7. [CP 465-67]. Twenty-seven pleadings were identified for the Revision hearing, and the transcript was also provided. [CP 465-7; RP 468-76]. MS. LYLE asked the trial court to revise the commissioner's decision denying the Petition for Modification. [CP 456].

On August 13, 2016, Honorable Judge Raymond Clary presided over the hearing on revision, allowing each party to present argument. [RP 492-539]. The matter was taken under advisement, and a Memorandum Decision was handed down on October 27, 2015. [RP 477-81].

The trial court made specific findings based upon the evidence, including, "The evidence demonstrates that Mr. Lyle has disproportionately greater income than Ms. Lyle." [CP 478]. Furthermore, the trial judge found that MS. LYLE had shown a substantial change of circumstances

based on the children entering into a new age category and their significantly increased rodeo expenses, citing *In re Marriage of Hoseth*, 115 Wash.App. 563, 571 (2003). [CP 479]. The trial judge noted that MS. LYLE had "demonstrated increased rodeo expenses and other child support expenses had caused her to struggle to make ends meet," and, "the children are now receiving school lunches at reduced prices due to Ms. Lyle's deteriorating financial condition," finding that those facts also establish a substantial change in circumstances. [CP 479-480].

The trial court made additional findings that provide a statutory basis for modification including that MS. LYLE illustrated a financial hardship resulting from the child support order; and the parents experienced a change in income since 2009, with MR. LYLE now earning "an income twice that of Ms. Lyle." [CP 480]. The trial

court appropriately considered the income of other adults in MR. LYLE's household, finding that, "Mr. Lyle's household ... has an annual gross income of \$100,000 versus Ms. Lyle's annual gross income of \$30,000." [CP 480].

The trial court concluded, "The overriding policy is to act in the children's best interests. This includes providing support commensurate with the parents' income, resources, and standard of living." [CP 481]. Having satisfied "multiple statutory and factual bases to support modification," MS. LYLE's Petition was granted. [CP 481]. The trial judge finally commented that, "It is likely that if the parties had remained married, their children would have the standard of living which this modification will afford," adopting MS. LYLE's proposed worksheet beginning on July 1, 2015. [CP 481, 482-86].

MR. LYLE's counsel opposed the findings and order on modification, which were entered on October 27, 2015. [CP 487-89, 490-91]. His appeal was filed on November 25, 2015.

This brief is offered on behalf of MS. LYLE in response to the Appeal Brief filed by MR. LYLE's counsel on September 27, 2016.

#### **D. ARGUMENT**

"[T]rial courts are given broad discretion in matters dealing with the welfare of children." *In re Marriage of McDole*, 122 Wash.2d 604, 610, 859 P.2d 1239 (1993) (citing *In re Marriage of Kovacs*, 121 Wash.2d 795, 801, 854 P.2d 629 (1993); *In re Marriage of Cabalquinto*, 100 Wash.2d 325, 327-28, 330, 669 P.2d 886 (1983)). "A trial court's decision will not be reversed on appeal unless the court exercised its discretion in an untenable or manifestly unreasonable way."

*McDole*, 122 Wash.2d 604, 610, 859 P.2d 1239 (citing *Cabalquinto* at 330, 669 P.2d 886; *In re Marriage of Griffin*, 114 Wash.2d 772, 779, 791 P.2d 519 (1990); *In re Marriage of Timmons*, 94 Wash.2d 594, 600, 603-04, 617 P.2d 1032 (1980); *George v. Helliard*, 62 Wash.App. 378, 385, 814 P.2d 238 (1991); *Chapman v. Perera*, 41 Wash.App. 444, 446, 704 P.2d 1224, review denied, 104 Wash.2d 1020 (1985)). "A trial court abuses its discretion if its decision rests on unreasonable or untenable grounds, or if it bases its ruling on an erroneous view of the law or employs an incorrect legal analysis." *In the Matter of the Parentage of A.L.*, 185 Wash.App. 226, 238-239, 340 P.3d 260 (2014) (citing *Dix v. ICT Grp., Inc.*, 160 Wash.2d 826, 833, 161 P.3d 1016 (2007); *In re Marriage of Schnurman*, 178 Wash.App. 634, 638, 316 P.3d 514 (2013)). "Moreover, a trial court's findings will be upheld if they are supported by substantial evidence." *McDole*, 122 Wash.2d at

610, 859 P.2d 1239 (citing *Chapman* at 449, 704 P.2d 1224).

The record clearly reflects that, on revision, the trial court carefully considered the evidence originally presented to the court commissioner at the initial child support modification hearing. The trial court took this matter under advisement and issued a Memorandum Decision, which discusses MS. LYLE's fulfillment of statutory requirements as well as the evidence the court relied upon in its findings.

MR. LYLE takes the position that the trial court lacked authority to make findings on revision. This argument is erroneous, since the commissioner had the authority at the original hearing to either grant or deny the Petition, adopt a new worksheet, findings, and order for modification of child support. RCW 2.24.050 extends that authority to the trial court when a

revision is sought.

Under RCW 2.24.050, "all of the acts and proceedings of court commissioners ... shall be subject to revision by the superior court." "Such revision shall be upon the records of the case, and the findings of fact and conclusions of law entered by the court commissioner." RCW 2.24.050. LAR 0.7 specifically applies to revisions in Spokane County. Likewise, the procedure for Modification of Child Support in Spokane County is set forth under LSPR 94.04 (f)(5)(C).

MR. LYLE makes no claim that any of these provisions were violated specifically, offering only a summary argument that, "The Court should have remanded the matter to a commissioner for a hearing on the child support modification docket." *Appellant's Brief*, Page 3.

On July 7, 2015, in accordance with RCW

2.24.050 and LAR 0.7, MS. LYLE filed for revision of the court commissioner's ruling dated July 1, 2015. [CP 465-467]. Because MS. LYLE sought revision, the modification issue was placed in the hands of the trial court. The trial court's authority is not limited to simply remand or affirm, and MR. LYLE doesn't get to delay finalization of a child support modification by demanding that the trial court refrain from making findings on the evidence to resolve a case on revision. MR. LYLE can't force a trial court to remand this matter through the appeals process, since he cannot support his position in any way.

On revision, the trial judge had an opportunity to review the transcript, pleadings, and exhibits, which were all before the commissioner at the July 1st hearing. The trial court heard argument from counsel and issued a

Memorandum Decision, which identifies the evidence relied upon, and applies the law accordingly. MR. LYLE had every opportunity to present his case to the trial court, and he did so through counsel. The trial court was not moved by MR. LYLE's argument, as set forth in the Memorandum Decision, as the best interests of the children was the court's main objective. [CP 477-81]. It should be noted that the trial judge's findings rely upon the same asserted facts as basis for modification that the commissioner found precluded relief under RCW 26.09.170 (specifically, rodeo fees and other costs associated with the children's activities). [RP 468-76, CP 477-81]. On one hand, the court commissioner found those costs to have been contemplated, and voluntarily undertaken, leading to MS. LYLE's financial strain; and on the other, the trial court found that this fact, along with the disparity of incomes and entry into a new age

category, did satisfy the statutory requirements for change of circumstances. Unfortunately for MR. LYLE, the judge's decision overrules the court commissioner's.

MR. LYLE makes no claim that the procedure was not properly followed. MR. LYLE fails to identify any statute, court rule, or case to support his request for remand. Because the Memorandum Decision is sound, supported by the evidence, and the trial court did not abuse discretion, the decision should be maintained on appeal.

The court has broad discretion in these matters to apply the law. It would be unfair to the Lyle children, Tait and Bailey, if they were denied reasonable support from their father. *In the Matter of the Parentage of A.L.*, 185 Wash.App. 226, 340 P.3d 260 (2014), discusses the legislative intent behind the child support

statutes, "to insure that child support orders are adequate to meet a child's basic needs and to *provide additional support* commensurate with the parents' income, resources, and standard of living." *A.L.*, 185 Wash.App. at 236, 340 P.3d 260 (citing RCW 26.19.001(emphasis added)). Further, "The legislature also intended that the child support obligation be *equitably apportioned* between the parents." *Id.*

"Nowhere does the statutory scheme or supporting case law state the parent receiving the support transfer payment must be the parent with whom the child resides a majority of the time." *A.L.*, at 242. "There is also no statutory provision, or case law, that prohibits a transfer payment from the advantaged parent to the disadvantaged parent in an equally shared residential arrangement." *Id.*

The law is clear that the shared custody order makes no difference when it comes to applying the child support modification statutes. As the trial court found, MS. LYLE met her burden under RCW 26.09.170. Evidence before the court reflects that MR. LYLE'S income is twice as much as MS. LYLE'S. [CP 32-129, 130-227, 447-428]. MR. LYLE's household has a combined annual income of \$100,000, and even if we assume that has to cover four children and two adults, that is still twice as much income per capita than the mother has available in her home. As a result, the Lyle children receive reduced-cost lunches, a benefit that extends to MR. LYLE, despite the fact that his family's income far exceeds that which might qualify for the program.

The order entered in 2009 results in an economic hardship in MS. LYLE's home. A substantial change in circumstances occurred over six years, as the parties' incomes are no longer

comparable, and the children have moved into a new age category with increased expenses. Based upon *A.L.* and applicable RCW's, the Petition for Modification was properly granted. The trial court appropriately adopted a worksheet with standard calculations for each parent, making adequate and sufficient findings in support of its ruling based on the evidence presented. MR. LYLE's appeal is without merit.

Accordingly, MR. LYLE's appeal should be denied.

RAP 14.1, 14.2, and 14.3 grants the appellate court authority to determine whether, to whom, and in what amount costs may be awarded on review. Should she prevail, MS. LYLE hereby moves this Court to grant her costs and reasonable fees on appeal. Under RCW 26.09.140 courts may grant reasonable attorney's fees based upon need and ability to pay. Given the trial

court's findings regarding disparity of incomes, MS. LYLE has illustrated a need, and MR. LYLE has the ability to pay reasonable fees associated with defending this action.

#### **E. CONCLUSION**

MR. LYLE is unable to illustrate that the trial judge abused discretion and there is no other basis for reversal or remand of the findings and orders adopted upon revision of the commissioner's ruling.

For the reasons stated herein, MS. LYLE respectfully requests that the appeal be denied, and that reasonable attorney's fees be granted in her favor under RCW 26.09.140, RAP 14.1, 14.2, and 14.3. MS. LYLE does not have the financial ability to pay the costs associated with this appeal as illustrated in financial declaration of Christy Lyle filed herewith. If MS. LYLE

substantially prevails, fees should be awarded to  
her.

Respectfully submitted:

A handwritten signature in cursive script, appearing to read 'C. B. Z.', is written above a horizontal line.

Camerina B. Zorrozuza, WSBA #36249  
Attorney for Respondent,  
CHRISTY LYLE